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REPORT FROM THE COMMISSION

on the investigation related to the manipulation of statistics in Austria as referred to in Regulation (EU) No 1173/2011 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area (Commission Decision of 3 May 2016)

{SWD(2017) 105 final}

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EXECUTIVE SUMMARY

On 3 May 2016, the European Commission launched a formal investigation into the possible manipulation of statistics in Land Salzburg¹, Austria. That Decision was taken in accordance with Article 8(3) of Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area in conjunction with Commission Delegated Decision 2012/678/EU of 29 June 2012 on investigations and fines related to the manipulation of statistics, as referred to in Regulation (EU) No 1173/2011.

The investigation aimed at assessing whether the serious indications of misrepresentation of debt and deficit data in 2012 and previous years could be confirmed and, if so, whether it was the result of intent or serious negligence.

This report presents the findings of the Commission in the light of the investigation conducted, together with the key facts supporting those findings. The written observations submitted by the Republic of Austria on the Commission preliminary findings, are attached in a Commission Staff Working Document accompanying this report, and the observations have been duly taken into account when considered relevant². The report contains a detailed description of the main reasons for the revisions of the government debt of Austria in the April 2014 EDP Notification, amounting to EUR 1 192 million euro for 2012, EUR 879 million for 2011 and EUR 523 million for 2010, on the basis of an analysis of the compilation, control and reporting of financial transactions in Land Salzburg.

The main conclusions are that severe irregularities took place in the compilation, control and reporting of financial, as well as non-financial, transactions in Land Salzburg for several years, notably through the concealment of bank accounts, assets and the required financing of these, which ultimately led to the concealment and misreporting of Maastricht debt³ relevant

¹ When mentioning 'Land Salzburg' in this report, the Commission is not referring to the Austrian State of Salzburg as such or to its population, but rather to the entities involved in the direct or indirect compilation of deficit and debt data, namely the State Office of Land Salzburg, and the State Government of Land Salzburg

² It should be pointed out, that any cross-reference in the written observations to a page number would be the page number of the preliminary findings.

³ According to Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community, OJ L 145, 10.6.2009, p. 1, the indicator is defined as consolidated general government gross debt at nominal (face) value, outstanding at the end of the year, in the following categories of government liabilities (as defined in ESA 2010): currency and deposits, debt securities and loans. The general government sector comprises the subsectors: central government, state government, local government and social security funds.

liabilities. By serious negligence, public accounting rules were not followed, control was lacking, financial and non-financial transactions were not appropriately reported, and recommendations from the Austrian Court of Audit were ignored. In addition, documentation was intentionally falsified and misleading information was intentionally sent to the national statistical authorities as well as to the Austrian Court of Audit (RH). For at least five years, therefore, it resulted in Austria reporting a lower level of government debt to the Commission (Eurostat) than the actual correct one, amounting to misrepresentation of debt data relevant for the application of Articles 121 or 126 TFEU, or for the application of Protocol 12 annexed to the TEU and to the TFEU (i.e. to a misrepresentation of the Maastricht debt of the Republic of Austria) under Article 8(1) of Regulation (EU) No 1173/2011. The misrepresentation of the government debt of Austria was, by the end of 2012, equal to EUR 1 192 million⁴.

The report establishes that, from the year 2002, the executive and legislative powers in Land Salzburg respectively acted and legislated in a way that granted unlimited powers to the Financial Department of Land Salzburg, to enter and conclude high-risk financial transactions with credit institutions, for unlimited time and unlimited amounts. At the same time, the Financial Department was, by decree, exempted from being monitored by the Internal Audit of Land Salzburg which, according to the RH findings of 9 October 2013 audit report, is "*contrary to the usual rules in public administration*" and "*contributed to the existence of severe control gaps in financially relevant areas*".

The report establishes that the State Office of Land Salzburg (*Amt der Salzburger Landesregierung*) and the State Government of Land Salzburg (*Salzburger Landesregierung*) played a key role in the events surrounding the non-recording and non-reporting of financial transactions and stocks. The involvement of other institutions, namely the regional Court of Audit (*Salzburger Landesrechnungshof*), Statistics Austria (*Statistik Austria*), the Austrian Central Bank (*Österreichische Nationalbank*) and the Austrian Federal Financing Agency (*Österreichische Bundesfinanzierungsagentur*), is also discussed in the report.

Other key findings are also presented in this report. Even if in the April 2014 EDP notification Maastricht Debt was revised for years 2010-2012, it appears that the misreporting of debt, as well as possibly deficit, may have started at least from 2008 onwards, and that the level of Maastricht debt presented by the Austrian statistical authorities for the years 2008 and 2009 is still underestimated.

Finally, the report concludes that whereas the Commission (Eurostat) was only informed of this case on 10 October 2013, the Austrian statistical authorities were aware of the possibility of misrepresentation of the accounts of Land Salzburg since, at least, 6 December 2012. The report also concludes that both Statistics Austria and the Austrian Central Bank were aware of sizeable inconsistencies in the data reported by Land Salzburg, before the so called 'financial scandal' became public at the end of 2012.

⁴ As well as a minor amount of 7 million euro as far as the misrepresentation of government deficit is concerned

Based on the findings in this report, regarding the behaviour of the authorities of the Member State in the period from the entry into force of Regulation (EU) No 1173/2011 on 13 December 2011 until the launch of the investigation on 3 May 2016, the Commission has decided to adopt a recommendation to the Council to impose a fine on the Republic of Austria, as foreseen in Regulation (EU) No 1173/2011.

List of acronyms used

Acronym	German	English
EDP	Verfahren bei einem übermäßigen Defizit (VÜD)	Excessive Deficit Procedure
ESA	Europäische System Volkswirtschaftlicher Gesamtrechnungen (ESVG)	European System of Accounts
LRH	Landesrechnungshof	State Court of Audit (in this document the Land Salzburg's Court of Auditors)
BMF	Bundesministerium für Finanzen	Austrian Ministry of Finance
OeNB	Österreichische Nationalbank	Central Bank of Austria
OeBFA	Österreichische Bundesfinanzierungsagentur	Austrian Federal Financing Agency
RH	Rechnungshof	Austrian [Federal] Court of Audit
STAT	Statistik Austria	National Statistical Institute of Austria
SLH	Salzburger Landes - Hypothekenbank AG	-
VRV	Voranschlags- und Rechnungsabschlussverordnung	Austrian Regulation on Budget and Closed Accounts of State and Local Governments

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List of attached documents

Commission Staff Working Document: Observations of the Republic of Austria on the preliminary findings of the investigation related to the manipulation of statistics in Austria

1. INTRODUCTION

1.1. Background

1.1.1. Relevant provisions and principles of EU law

1. Member States are obliged to report their annual deficit and debt data to the Commission (Eurostat), in full compliance with European statistical rules and procedures (European System of Accounts, ESA⁵).
2. According to Article 16 of Council Regulation (EC) No 479/2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community⁶, “Members States shall ensure that the actual data reported to the Commission (Eurostat) are provided in accordance with principles established by Article 2 of Regulation (EC) No 223/2009. In this regard, the responsibility of the national statistical authorities is to ensure the compliance of reported data with Article 1 of this Regulation and the underlying ESA 2010 accounting rules”.
3. Under Article 3 of Council Regulation (EC) No 479/2009, Member States shall report to the Commission (Eurostat) their planned and actual government deficits and levels of government debt twice a year, the first time before 1 April of the current year (year n) and the second time before 1 October of year n. The data provided in year n concern years n-1, n-2, n-3 and n-4.
4. Since 13 December 2011, Regulation (EU) No 1173/2011⁷ on the effective enforcement of budgetary surveillance in the euro area, empowers the Commission to launch investigations if there are serious indications of manipulation of statistics, intentionally or due to serious negligence. Certain criteria, procedures, and rules relevant for the exercise of that mandate have been laid down in Commission Delegated Decision 2012/678. According to Regulation (EU) No 1173/2011, such investigations may lead to a recommendation from the Commission to the Council to the effect that the Council should impose a fine on the Member State. The fine to be recommended is calculated by the Commission but the Council has the final say on its imposition and size. If it is found that the Member State has, intentionally or by serious negligence, misrepresented its

⁵ The relevant reporting described in the current case was made under Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community, OJ L 310, 30.11.1996, p. 1, (ESA 95). Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union, OJ L 174, 26.6.2013, p. 1, (ESA 2010) is applicable from 1 September 2014.

⁶ Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community, OJ L 145, 10.6.2009, p. 1.

⁷ Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area, OJ L 306, 23.11.2011, p. 1.

deficit and/or debt data, the Council may decide to impose a fine of up to 0.2% of GDP on that Member State.

5. The Commission considers, in general, that serious negligence can consist in the patent breach of the duty of care of a person responsible for the production of general government deficit and debt data, as mentioned in recital 10 of Commission Delegated Decision 2012/678, but could also consist in serious deficiencies in the organisation of the data flows between public entities and the statistical authorities, including arrangements regarding the responsibility of national officials and staff involved in these workflows, the central verification of accounting data by Member States at all levels of general government, and robust and effective supervisory and control systems at national level.
6. Finally, the Court of Justice of the European Union has consistently held that a Member State cannot plead conditions existing within its own legal system in order to justify its failure to comply with obligations resulting from EU law. While each Member State is free to allocate areas of internal legal competence as it sees fit, the fact remains that it alone is responsible towards the European Union under article 258 TFEU for compliance with obligations arising under EU law ⁸.
7. On a similar note, it is settled case-law of the Court of Justice, in the area of Member States' liability for making good loss and damage caused to individuals by breaches of EU law for which they can be held responsible (e.g. failure to transpose directives), that the state liability applies to any case in which a Member State breaches EU law, "*whatever be the organ of the State whose act or omission was responsible for the breach*"⁹. Thus, "[a] Member State cannot [...] plead the distribution of powers and responsibilities between the bodies which exist in its national legal order in order to free itself from liability on that basis"¹⁰. Similar principles shall apply by analogy to the Member States' liability for manipulation of statistics, and it is therefore sufficient to establish such liability that the misrepresentation of data is the result of intent or negligence somewhere in the government sector.

1.1.2. Facts and procedure

8. At the end of 2012, the Austrian Federal Court of Audit (hereinafter "RH") launched an audit into the financial management of Land Salzburg. The audit undertook a more detailed scrutiny of the internal control systems and of the financial management of Land Salzburg, addressing the recording of transactions in public accounts, their risk profile

⁸ Case C- 33/90, Commission of the European Communities v Italian Republic, [1991] ECR I- 05987 ,paragraph 24.

⁹ Joined Cases C-46/93 and C-48/93, Brasserie du pêcheur/Factortame, [1996] ECR I-01029, paragraph 32.

¹⁰ Case C-302/97, Konle, [1999] ECR I-03099, paragraph 62.

and their related cash management, and followed up on the press conference by officials of Land Salzburg on the alleged unlawful actions by the Head of the Budget Unit. Furthermore, the audit involved an inventory exercise with regard to open financial transactions of Land Salzburg as of 31 December 2012 and to the results of the early termination of financial operations, occurring in the last quarter of 2012.

9. On 9 October 2013, the RH published its report on the financial situation of Land Salzburg¹¹ which pointed to a series of irregularities in the compilation, monitoring and reporting of financial transactions in the State of Salzburg, having taken place over several years. Following the RH findings, the Commission (Eurostat) immediately took contact with Statistics Austria (hereinafter “STAT”), which provided further information during the following days. However, beyond an overall analysis of the possible magnitude of the impact it was not possible for STAT and the Commission (Eurostat), at such short notice, to analyse the statistical impacts of the findings. As a consequence, the Commission (Eurostat), in its Excessive Deficit Procedure (hereinafter “EDP”) news release of 21 October 2013, expressed a reservation on the quality of the data reported by Austria.
10. On 10 March 2014, STAT provided the Commission (Eurostat) with the results of its internal analysis of the statistical implications of the RH findings and announced that, after the incorporation of the new data for Land Salzburg, the general government debt of the years 2010, 2011 and 2012 would be revised upwards (+0.2pp of GDP in 2010, +0.3pp in 2011, +0.4pp in 2012). The Commission (Eurostat) required further clarifications, which STAT promptly provided in written form on 28 March 2014. In its EDP news release of 23 April 2014, Eurostat withdrew its reservations on the quality of the data reported by Austria, since the necessary revisions had been introduced by STAT in the reported deficit and debt data.
11. After an examination of the facts by the Commission (Eurostat), it was assessed that the case of unreported debt in the Land Salzburg was serious. The elements that led to that conclusion include, amongst other, the fact that the RH had published findings¹² indicating the existence of several and severe irregularities in the financial management of Land Salzburg, that as a result of those irregularities there was an incorrect reporting of debt figures for non-negligible amounts, on which the national statistical authorities were allegedly not informed during many years and finally, that the regional government in Land Salzburg, in exercising its legal powers, seemed to have facilitated the incorrect reporting of transactions.

¹¹ That report can be found in <http://www.rechnungshof.gv.at/berichte/ansicht/detail/land-salzburg-finanzielle-lage-1.html>

¹²

http://www.rechnungshof.gv.at/fileadmin/downloads/2013/berichte/teilberichte/salzburg/Salzburg_2013_07/Salzburg_2013_07_1.pdf

12. Consequently, the Commission (Eurostat) assessed that a more thorough analysis of the facts occurred in Land Salzburg was needed. In that internal preliminary phase of analysis, it appeared that the amount of misreporting was material, that there were indications of either serious negligence or intentional misreporting and that the events were carried out during several years.

1.2. The formal Commission investigation into suspected manipulation of statistics in Austria as referred to in Regulation (EU) No 1173/2011

13. On the basis of its internal analysis, the Commission (Eurostat) concluded that there were serious indications of misrepresentation of statistics which justified carrying out a full investigation pursuant to Article 8(3) of Regulation (EU) No 1173/2011. It was therefore decided by the Commission to open an investigation into the misrepresentation of EDP data in Austria. On 3 May 2016, the Commission launched a formal investigation into the possible manipulation of statistics from the Land Salzburg, Austria¹³.

14. The Commission investigating team interviewed in separate meetings representatives of STAT, the State Office of Land Salzburg (*Amt der Salzburger Landesregierung*), the regional Court of Audit (*Salzburger Landesrechnungshof – LRH*), the Austrian Central Bank¹⁴ (*Österreichische Nationalbank - OeNB*) and the Austrian Federal Financing Agency¹⁵ (*Österreichische Bundesfinanzierungsagentur - OeBFA*). The written records of each meeting have been established and signed by all participants.

15. The quotations that appear in the endnotes (listed as a, b, c...) of this report have been taken from the official records of those meetings and reproduce exactly the statements made by the representatives of the different institutions interviewed.

¹³ Commission Decision C (2016) 2633 final of 03.05.2016, on the launch of an investigation related to the manipulation of statistics in Austria as referred to in Regulation (EU) No 1173/2011 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area.

¹⁴ The OeNB is currently responsible for the compilation of financial accounts for all institutional sectors, with the exception of the government sector. In the past, however, the OeNB also compiled the financial accounts of the general government. In 2009, it was agreed between STAT and the OeNB that the former should overtake the compilation of the Financial Accounts for the general government (S.13) after a transition period, with the view to also use to a maximum possible extent direct data sources for financial accounts compilation. Financial accounts for the general government, compiled by STAT, were transmitted to Eurostat for the first time in September 2014.

¹⁵ The Bundeshaushaltsgesetz (Federal Budget Law) empowers the Austrian Ministry of Finance (BMF) to take on board loans on the capital market and to on-lend these funds to the Länder and extra-budgetary units. This authority has been delegated to the OeBFA by the BMF. Hence, the OeBFA acts on behalf and on the account of the BMF, i.e. the federal government, and in that sense when the report makes a reference to the OeBFA lending, this is equivalent to federal government lending. Furthermore, the OeBFA provides data and metadata to the statistical authorities to be used for the calculation of the interest accrual adjustment and data on receipts and debt of the federal government.

16. This report presents the findings of the Commission in the light of the investigation conducted in accordance with the Commission Delegated Decision 2012/678, together with the key facts supporting those findings. The written observations submitted by the Republic of Austria on the Commission preliminary findings are inserted in a Commission Staff Working Document accompanying this report, and have been duly taken into account when considered relevant.
17. It should be noted that when carrying out its investigation into the misreporting of deficit and debt, the Commission has aimed to uncover the full extent of the problem and how it occurred, in the interest of preventing future cases. It is therefore inevitable that the scrutiny has included facts which occurred before the entry into force of Regulation (EU) No 1173/2011 on 13 December 2011. In that regard, it should be kept in mind that misrepresentation of EDP data was equally unlawful (although it carried no potential penalty) before the entry into force of Regulation (EU) No 1173/2011, in the sense that Member States were and are equally required to provide complete and reliable data to the Commission on the basis of the pre-existing rules, in particular Regulation (EC) No 479/2009.
18. However, for the purpose of applying the special regime of sanction laid down in Article 8 of Regulation (EU) No 1173/2011, the primary aim of the investigation has been to examine whether that misrepresentation of data took place after the entry into force of the latter Regulation. The relevant behaviour of the Member State on which the Commission may base a recommendation to the Council is thus its behaviour in the period from 13 December 2011 until the launch of the investigation on 3 May 2016.
19. Moreover, in the frame of the written observations to the Commission preliminary findings, the State Office of Land Salzburg has questioned the fact that the statements made by individual employees of the State Office of Land Salzburg during the meeting between the Commission and that entity have been considered statements of the State Office of Land Salzburg itself¹⁶. In this context it should be recalled that the Commission is empowered by article 8 of Regulation (EU) No 1173/2011 to investigate putative misrepresentations, and that the modalities of these investigations are defined in the Commission Delegated Decision 2012/678 and include requests for information from any government entity, directly or indirectly involved in compiling the relevant data (Article 3 of the said Decision). The request for information was organized in meetings in late September 2016 with the entities directly or indirectly involved in compiling deficit and debt data , and the Commission must presume that the opinions expressed by representatives and staff members of the entities concerned during these meetings necessarily express the view of the those entities.

¹⁶ Section B, paragraph 11 of the observations from the State Office of Land Salzburg, Annex II of the Commission Staff Working Document accompanying this report.

20. In addition, minutes were drawn up by the Commission and sent to all attendees for their review. All amendments requested and introduced in the minutes by the attendees were accepted by the Commission.
21. Furthermore, the specific case of one individual, who was an employee of the State Office of Land Salzburg, but a former employee of the LRH is indicated in the footnotes of the minutes, and specific statements of that individual in his former capacity as employee of the LRH have not been considered to represent the views of the State Office of Land Salzburg.
22. Finally, with regard to the argument raised by Austria in its observations on the Commission preliminary findings¹⁷, it should be noted that the investigation of the Commission is of an administrative nature and not of a criminal one. The mandate of the Commission to conduct investigations as laid down in Regulation (EU) No 1173/2011 and Commission Delegated Decision 2012/678 is completely autonomous from any criminal proceedings in Austria and cannot be restricted by the circumstance that certain facts relevant to the Commission investigation may also be subject to criminal proceedings at national level.

¹⁷ Introduction, point 3, first bullet point of the Commission Staff Working Document accompanying this report.

2. MAIN FINDINGS

23. This section provides a detailed description of the main reasons for the misrepresentation of the Austrian government deficit and debt that led to upward revisions, in the April 2014 EDP notification, for the years 2010 to 2012. That misrepresentation was the result of the misreporting by Land Salzburg of data sent to the national statistical authorities at least during those years. Moreover, this section aims at ascertaining the level of responsibility of different institutions for the misreporting, both at regional and national level.
24. A considerable amount of liabilities, as well as other financial positions, had never previously been reported by Land Salzburg in the financial statements it submitted to the Austrian statistical authorities.
25. On 6 December 2012, the *Finanzreferent*¹⁸ of Land Salzburg, the Director of the Financial Department and the Director of the LRH held a joint press conference^a, where it was announced that Land Salzburg had suffered a “mere accounting loss” of EUR 340 million in financial derivative investments, as the result of the unlawful actions of the Head of the Budget Unit, who had concealed her actions, deceived her supervisors and falsified documentation. It was only after that press conference that the RH and other entities started to investigate in-depth the accounts of Land Salzburg, in order to fully unveil the consequences of that misreporting.

2.1. An overview of the financial positions of Land Salzburg: 2002-2012

26. Table 1 provides an overview of Land Salzburg's Maastricht-relevant liabilities for the period 2001-2012.
27. The first row of the table reflects the financial debts (*Finanzschulden*) of Land Salzburg as reported in the balance sheets¹⁹ compiled by the State Office of Land Salzburg for the years 2002-2012²⁰. According to information from STAT, those '*Finanzschulden*' should at least include both loans and government bonds, but might also include other liabilities not relevant for Maastricht debt. In that sense, although one may see *Finanzschulden* as a proxy, further analysis must always be undertaken for the compilation of Maastricht debt. Nevertheless, it has finally been ascertained by the Commission, which can be observed in Table 1, that in the Land Salzburg case, and for 2012, the stock of *Finanzschulden* was nearly identical to the Maastricht debt.

¹⁸ The *Finanzreferent* is, in practice, the equivalent to a Minister of Finance of a region.

¹⁹ *Vermögensrechnung*.

²⁰ Those balance sheets were sent to the Commission (Eurostat) by the State Office of Land Salzburg on 18 October 2016.

28. As can be observed from the table, there is a break in the series from 2011 to 2012. That element demonstrates that whereas Land Salzburg managed to unveil the stock of existing liabilities as of 31 December 2012, it has not revised its balance sheets backwards for the years 2002-2011²¹. In that context, the Commission requested the State Office of Land Salzburg to provide data on the financial liabilities of Land Salzburg, as the data were known by/available to the Financial Department at the end of 2012, i.e. as it would have been effectively reported had this case not been exposed on 6 December 2012. The State Office of Land Salzburg has argued that such a compilation has not been undertaken, as in fact the financial statements of Land Salzburg for 2012 were only compiled after the in-depth investigations of the RH and private auditors were undertaken. Nevertheless, the in-depth analysis by the RH performed in 2013 points to the fact that the medium-term financial planning of Land Salzburg, prepared on 16 November 2012, pointed to a total EUR 874 million of debt to be reported by the Land Salzburg as of 31 December 2012²². In the absence of more detailed information provided by the State Office of Land Salzburg, the Commission has to accept this as the amount of debt to be effectively reported as of 31 December 2012. It is shown in row (1a) of Table 1.

29. Row (3) of Table 1 shows the contribution of Land Salzburg's debt to the Austrian Maastricht debt, as estimated by STAT on 30 September 2013, i.e. at the date of the last EDP notification sent by the Austrian statistical authorities before the Commission (Eurostat) was informed about the possibility that Land Salzburg's debt could be underestimated. As can be inferred by the comparison of rows (3) and (1) (see row (5)), that estimation by STAT took into account not only the debt data as reported by Land Salzburg, but also other data sources²³.

²¹ In an electronic mail sent to the Commission (Eurostat) on 4 November 2016, the State Office of Land Salzburg argued that to produce such a backward revision would be very expensive and inefficient from a resource allocation point of view.

²² The RH 2013 points out, in paragraph 98.1, page 256 that "*The Stability Report of Land Salzburg was prepared on the basis of the figures set out in the estimates and the financial statements. The liabilities, cash flows and consequential costs of the financial operations of the Province of Salzburg (see note 40), which were already incomplete in the country's accounts, were not taken into account in this Stability Report. The initial value used for the medium-term forecast was based exclusively on the loans reported at the end of 2012 in the amount of approx. EUR 874 million, which were shown at nominal value*". In the original German version, "*Der Stabilitätsbericht wurde auf Grundlage der in den Voranschlägen und Rechnungsabschlüssen dargestellten Zahlen erstellt. Die Verbindlichkeiten, Zahlungsflüsse und Folgekosten der Finanzgeschäfte des Landes Salzburg (siehe TZ 40), die schon in den Rechnungsabschlüssen des Landes nur unvollständig ausgewiesen waren, fanden auch im Stabilitätsbericht keine Berücksichtigung. Der für die mittelfristige Prognose verwendete Ausgangswert beruhte ausschließlich auf den mit Ende 2012 ausgewiesenen Darlehen in Höhe von rd. 874 Mio. EUR, die zum Nominalwert dargestellt wurden*".

²³ It must be observed (row (5)) that, in fact, for years 2002 to 2005 the contribution of Land Salzburg's debt to the Austrian Maastricht debt as estimated by STAT is lower than the *Finanzschulden* reported in the balance sheets of Land Salzburg. This occurs due to consolidation effects of the so called *Innere Anleihe*, i.e. the fact that

30. For example, the estimation by STAT took into account a considerable part of what is included in the *Voranschlagsunwirksame Erläge*, i.e. cash transited through the accounts of Land Salzburg that is owed to a third entity, which was ascertained by STAT²⁴ to include also the lending from the OeBFA to finance the *Salzburger Landeswohnbaufonds*²⁵. It was ascertained that for 2011 it amounted to EUR 1 050 million, as can be seen in row (2.b), and was entirely included in *Voranschlagsunwirksame Erläge* (see section 2.3.4 below).
31. Furthermore, and after receiving information from the OeNB, STAT concluded that Land Salzburg had financed itself, in 2010, through the issuing of government securities amounting to EUR 300 million. Even if such an amount was nowhere visible in the balance sheets of Land Salzburg, STAT took the decision to follow the direct data source of the OeNB (after cross-checking with further indirect data sources) and to include those amounts in the debt of Land Salzburg (see section 2.3.5 below).
32. If, for 2011, the EUR 1 050 million reported under row (2) (and visible in row 2.b) and the EUR 300 million of securities as disclosed in the OeNB's security-by-security data base are added to the amount of debt reported under row (1), it would amount to a debt of EUR 2 126 million. The difference (EUR 166 million) to the amount of debt estimated by STAT in 2011 (2 293 million euro) is mainly explained by the inconsistencies reported by the State Office of Land Salzburg regarding the lending from the OeBFA. In case of discrepancies, STAT consistently chose to rely on the information provided by the OeBFA^b. Even if STAT has the possibility to change the figures from the data sources when compiling national accounts, it does not have the mandate to oblige entities to amend the data reported^c (see section 2.3.4 below).
33. Row (4) of Table 1 reflects the contribution of Land Salzburg's debt to the Austrian Maastricht debt, as calculated by STAT on 31 March 2014, i.e. after Eurostat expressed a reservation on the Austrian data leading to a joint analysis of Land Salzburg's liabilities by STAT and the State Office of Land Salzburg.
34. Row (7) of Table 1 illustrates the revisions to the Austrian Maastricht debt undertaken by STAT following the unveiling of the misreporting of debt in Land Salzburg. It can be observed that debt data for the years prior to 2010 were not revised by the statistical authorities. In Austria's observations of 25 January 2017 on the preliminary findings of the investigation, STAT states that, "*According to the EDP Regulation, the Member*

the State Office of Land Salzburg borrowed money from a state fund and repaid it in the same year or in the following year, as explained by STAT on 16 November 2016.

²⁴ STAT has discussed that issue, by electronic mail, with the then Director of the Financial Department, the Head of the Budget Unit and one of its employees. An official from the OeBFA was also in copy of those electronic mails exchanged on 27 September 2012.

²⁵ The *Landeswohnbaufonds* is a public fund, classified inside the general government sector in the national accounts, which purpose is to finance and support the construction and acquisition of social housing.

*States are obliged to notify data for the years n-4 to n. In the notification of April 2014, therefore, only data for the years 2010 to 2014 were to be communicated. The notification of changes to data on previous years is mandatory only on the basis of other EU regulations*²⁶." The Commission understands from that statement that years prior to 2010 had not been subject to any investigation, either regarding deficit or debt. Notwithstanding that statement by STAT, the Commission concludes, based on its meetings with Austrian authorities in the frame of the investigation, notably with the State Office of Land Salzburg, that the misreporting of data may have started at least as early as 2008^d.

35. Finally, row (6a) reflects the difference between the calculation of Land Salzburg's debt taking into account all data sources available in March 2014 (row (4)) and the debt effectively reported by Land Salzburg (row (1a)) for those years, under the *Finanzschulden*. This means that, if other indirect data sources had not been used in the compilation of Land Salzburg's contribution to the Austrian Maastricht debt, the impact of the revisions to the Austrian Maastricht debt would not only have amounted to 0.4% of GDP in 2012, but rather to 0.9% of GDP in that year.
36. In Austria's written observations to the Commission preliminary findings, the Austrian authorities suggest that the actual amount of Maastricht debt for 2012 as finally reported in the April 2014 EDP notification, i.e. including the corrections that followed the unveiling of the misrepresentation of debt, was lower than the amount of the Maastricht debt of 2012 as reported during the 2012 EDP notifications²⁷. On this basis, Austria claims that there was no misrepresentation of debt in the contested EDP notifications.
37. It is important to clarify that the deficit and debt reported in the 2012 EDP notifications regarding year 2012 consists of planned, rather than actual, data. Planned data are not actual figures but consist of forecasts provided by Member States' governments. Forecasts cannot be assimilated to actual figures provided by Member States to the Commission and in this sense be compared, in terms of relevance, accurateness, completeness and reliability, to actual data, i.e. to liabilities effectively incurred.
38. Council Regulation (EC) No 479/2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community²⁸ is absolutely clear in establishing that, in the EDP context, the Commission assesses only

²⁶ In the German version: "*Die Mitgliedstaaten sind gemäß VÜD-Verordnung verpflichtet, Daten für die Jahre n-4 bis n zu notifizieren. Im Rahmen der Notifikation vom April 2014 waren daher ausschließlich Daten für die Jahre 2010 bis 2014 mitzuteilen. Die Mitteilung von Änderungen von Daten über frühere Jahre ist nur aufgrund von anderen EU-Verordnungen verpflichtend.*"

²⁷ Table 1 of section 1.3 of the introductory statements of the Commission Staff Working Document accompanying this report.

²⁸ Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community, OJ L 145, 10.6.2009, p. 1.

the quality of actual data. Furthermore, it is the absence of quality of actual data that may ultimately lead the Commission to either express a reservation or to amend those data.

39. Moreover it is the opinion of the Commission that the amount of debt for 2012 reported as planned data in the October 2012 EDP Notification was in fact also underestimated by the EUR 1 192 million of debt that was unveiled in April 2014. Any other interpretation would suggest that the statistical authorities were already aware, in October 2012, of the existence of such unreported Maastricht-relevant liabilities, which is nevertheless not the conclusion of this Commission investigation.

Table 1: Maastricht liabilities of Land Salzburg for years 2002-2012

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
MEUR											
Vermögensrechnung											
Finanzschulden	454	454	433	433	434	431	431	497	654	776	3.507
<i>as reported by Land Salzburg (and RH)^a</i>	454	454	433	433	434	431	431	497	654	776	874
Voranschlagsunwirksame Erläge	192	298	274	356	562	649	1.156	1.512	1.495	1.227	546
National Accounts compilation by STAT											
as of 30.09.2013	347	339	346	378	471	606	1.113	1.180	1.929	2.293	2.318
<i>Land Salzburg</i>	347	339	346	378	401	407	521	460	1.069	1.243	1.268
<i>of which on-lending by ÖBFA</i>	0	0	0	0	191	197	423	359	580	755	780
<i>Wohnbaufonds</i>	0	0	0	0	70	199	592	720	860	1.050	1.050
<i>of which on-lending by ÖBFA</i>	0	0	0	0	70	199	592	720	860	1.050	1.050
as of 31.03.2014	347	339	346	378	471	606	1.113	1.180	2.451	3.172	3.509
<i>Land Salzburg</i>	347	339	346	378	401	407	521	460	1.591	2.122	2.459
<i>of which on-lending by ÖBFA</i>	0	0	0	0	191	197	423	359	580	755	780
<i>Wohnbaufonds</i>	0	0	0	0	70	199	592	720	860	1.050	1.050
<i>of which on-lending by ÖBFA</i>	0	0	0	0	70	199	592	720	860	1.050	1.050
(5) = (3) - (1)	-106	-114	-86	-55	38	174	682	683	1.274	1.516	-1.189
(6) = (4) - (1)	-106	-114	-86	-55	38	174	682	683	1.797	2.396	3
(6a) = (4) - (1a)	-106	-114	-86	-55	38	174	682	683	1.797	2.396	2.635
<i>as % of GDP^b</i>	-	-	-	-	-	-	-	-	0,6%	0,8%	0,9%
(7) = (4) - (3)	0	0	0	0	0	0	0	0	523	879	1.192
<i>as % of GDP^b</i>	-	-	-	-	-	-	-	-	0,2%	0,3%	0,4%

Note: all amounts are depicted in nominal value

^a according to RH 2013, the amount of liabilities to be reported by Land Salzburg in the end of 2012 was of EUR 874 million

^b as of GDP reported on the 31 March 2014

2.2. Institutional responsibilities in Land Salzburg

40. Land Salzburg has, like all Austrian States, a Parliament (*Landtag*), a State Government (*Landesregierung*), a Governor (*Landeshauptmann*) and a State Office (*Amt der Landesregierung*).
41. The *Landtag* is responsible for legislating in non-federal matters for the Land, for monitoring the execution of the laws and for electing the State Government. The *Landtag* also has the LRH under its supervision.
42. The LRH is headed by a Director, who is appointed by the *Landtag* for a term of twelve years; re-appointment is not permitted. The LRH is responsible for monitoring the management of Land Salzburg and of other legal entities controlled by the Land, as well as of those who receive public sponsorship and of the local entities with a population of less than 10 000 inhabitants. The audits of the LRH focus on compliance with the laws, on the correct calculation of figures, and on the economic efficiency and effectiveness of the financial management of the State Office. Reports produced by the LRH include main findings, suggestions and recommendations. A follow-up review of whether the suggestions and recommendations have actually been implemented by the respective units can also be carried out. There is, however, no possibility for the LRH to enforce the implementation of suggestions and recommendations – the main power of the LRH lies in the publicity of its reports.
43. The *Landtag* nominates the State Government, which is headed by a State Governor (*Landeshauptmann*) and which holds executive power. In Land Salzburg, the State Government is composed of seven members, each holding under his or her (political) responsibility some departments of the State Office. In particular, the member of the State Government responsible for the financial affairs (*Finanzreferent*) is the supreme decision-making person regarding financial affairs, being responsible for ensuring the good functioning of his or her area of competence and bearing the ultimate responsibility for all the activities, outputs and outcomes of the financial management of the Land.
44. Furthermore, the State Government appoints, subject to the approval of the Federal Government, the *Landesamtsdirektor*, who is the head of the State Office of Land Salzburg. The State Office of Land Salzburg is the administrative support of Land Salzburg and is divided into several departments, including the *Abteilung 8: Finanz- und Vermögensverwaltung* (hereinafter, the Financial Department). In addition, the Directorate-General (*Landesamtdirektion*) also includes the Internal Audit²⁹ (*Interne Revision*), a central division (*Stabstelle*).

²⁹ The role of the Internal Audit of Land Salzburg is to check the internal control procedures and the risk management, as well as to ascertain if the control mechanisms in the State Office are well established.

45. The Budget Unit (Referat 8/02 – Budgetangelegenheiten), which played a central role in the events (see sections 2.2 and 2.3), is a Unit of the Financial Department. Amongst other, that unit had under its responsibility the medium and long-term financial planning and the management of debt and investment. In addition, the Budget Unit had a great influence on the bookkeeping of the financial assets and financial transactions carried out in the *Voranschlagsunwirksame*. Until July 2012, that unit had a head of unit, one employee and one secretary.
46. In addition, in the context of the financial management of Land Salzburg, a Financial Advisory Board (*Finanzbeirat*) was established in 2007, with the objective of supervising and defining the strategy for the Financial Department. That Advisory Board did not have decision-making powers and was mainly responsible for an annual review of the financial and risk strategy of Land Salzburg, and in particular for the evaluation of the adequacy of the risk limits relative to the risk capacity and for the appropriateness of the introduction of further risk limits. The Board based its deliberations on the information prepared by the Budget Unit. In addition to the head of the Financial Department, who chaired that Board, it also included two consultants from the private sector and two employees of the Budget Unit (the latter having no voting rights).
47. Finally, the Accounting Unit (Referat 8/04 – Landesbuchhaltung) was included in the Financial Department and was responsible for the recording of the budgetary accounts (*Voranschlagswirksame*) as well as for the extra-budgetary accounts (*Voranschlagsunwirksame*). Until the beginning of 2007 that unit was a Department (*Abteilung 14 – Landesbuchhaltung*)³⁰.

2.2.1. Granting of powers

48. In 2006, the *Landtag* adopted the State Budget Law, the Article IV of which states that, *“The State Government is empowered, to meet the current demand of money, to take earmarked reserves, to borrow cash to incur debts and to make derivative financial transactions to generate additional income, if from these actions it expects an economic advantage for the State; this includes the active management of financial assets for the Landeswohnbaufonds³¹.”* According to the information provided to the Commission, that legal provision was introduced at the specific request of the Head of the Budget Unit, and the *Landtag* agreed to that request^e.

³⁰ This report uses the term 'Accounting Unit' to refer to both the Accounting Unit or the Accounting Department

³¹ Original German version: *“Die Landesregierung ist ermächtigt, zur Deckung des laufenden Geldbedarfes zweckbestimmte Rücklagen in Anspruch zu nehmen, Kassenkredite aufzunehmen, Umschuldungen vorzunehmen sowie zur Erzielung von Zusatzerträgen abgeleitete Finanzgeschäfte durchzuführen, wenn diese Maßnahmen einen wirtschaftlichen Vorteil für das Land erwarten lassen; dies schließt die aktive Verwaltung des Finanzvermögens für den Landeswohnbaufonds mit ein..”*

49. Furthermore, it was established in a report from the RH that full powers had *de facto* been granted to the Budget Unit already in 2002 to use the financial resources of Land Salzburg, as well as those of the *Landeswohnbaufonds*, with a view to obtain economic advantages for Land Salzburg³². At that time, the *Finanzreferent* granted the Director of the Financial Department, the Head of the Budget Unit and an employee of that unit, single signature powers of attorney for engaging in financial transactions through the *Salzburger Landes - Hypothekenbank AG*³³ (SLH) concerning a vast number of operations. Moreover, on 6 February 2003, the *Finanzreferent* granted, to the same persons, powers of attorney to enter and conclude high-risk financial transactions with other credit institutions, for an unlimited time and unlimited amounts. Those three individuals were also given the power to open and close bank accounts. Those powers were effective until mid-July 2012, when the *Finanzreferent* of Land Salzburg at the time withdrew those powers from the Head of the Budget Unit³⁴.
50. During the Commission investigation, it was furthermore explained by State Office officials that the powers conceded specifically to the Head of the Budget Unit were never questioned due to her high reputation^f.
51. Likewise, the Guidelines for the Financial Management of Land Salzburg³⁵, created by the *Finanzreferent* and valid from 4 June 2007, stated that the goal of financial

³² Paragraph 15.1, page 84, of the report prepared by the RH in 2013, *Land Salzburg – Finanzielle Lage*. The original German version states: "*Der Finanzreferent Wolfgang Eisl stellte mit 28. Februar 2002 eine „Vollmacht für Handelsgeschäfte mit Firmen und Institutionen“ für die Hausbank des Landes Salzburg, die Salzburger Landes-Hypothekenbank AG, aus. Jeweils einzelvertretungsbefugt waren der Leiter der Finanzabteilung, die Leiterin des Budgetreferats und ab 5. Juli 2002 auch ein Mitarbeiter des Budgetreferats. (...)*"

³³ Salzburger Landes - Hypothekenbank AG is classified in the Financial Corporations sector (S.12). Land Salzburg holds a 10% participation in SLH through Land Salzburg Beteiligungen GmbH, which is a Land Salzburg's holding corporation, 100% controlled by Land Salzburg and also classified in the Financial Corporations sector (S.12).

³⁴ Paragraph 15.1, page 86, of the report prepared by the RH in 2013, *Land Salzburg – Finanzielle Lage*, of the original German version, states: "*Mit 6. Februar 2003 erteilte der Finanzreferent (...) eine weitere Vollmacht, die — im Gegensatz zur gegenüber der Salzburger Landes-Hypothekenbank AG geltenden Vollmacht — an einen unbestimmten Kreis von Kreditinstituten und anderen Institutionen gerichtet war. Diese Vollmacht war inhaltlich an die Vollmacht aus dem Jahr 2002 angelehnt und enthielt auch die Berechtigung zur Erteilung von Untervollmachten. Ebenso waren Konto – und Depotöffnungen bzw. – schließungen durch die drei Bevollmächtigten (Leiter der Finanzabteilung, Leiterin des Budgetreferats, Mitarbeiter des Budgetreferats) möglich, wobei jeweils zwei Bevollmächtigte gemeinsam vertretungsbefugt waren. In weiterer Folge wurde diese Vollmacht Kreditinstituten und Institutionen, mit denen das Land Salzburg Finanzgeschäfte vornahm, vorgelegt.*"

³⁵ *Richtlinien für das Finanzmanagement*

investments on derivatives was not only to incur savings on interest expenditure but also the provision of additional income to government.³⁶

2.2.2. Internal monitoring

52. In a memo dated 2 February 2004³⁷, the *Finanzreferent* of Land Salzburg decided that, from that day onwards, the Budget Unit would stop reporting their recordings on the *Voranschlagsunwirksame*³⁸ to the Accounting Unit, and in particular would stop reporting the financial investments undertaken by the Budget Unit in the context of the management of the *VuF (Versorgungs- und Unterstützungsfonds*, a pension provision fund of Land Salzburg)³⁹. However, as confirmed during the Commission investigation, the information to be reported by the Budget Unit to the Accounting Unit was "*necessary for carrying out a proper accounting*"^g.
53. That decision was partly changed only in 2008. However, as stated by the State Office of Land Salzburg during the Commission investigation, on 28 September 2016, "(...) *some transactions were still exempted from the reporting obligations*" even after 2008.
54. According to a statement given in the course of the Commission investigation, the decision from 2004 was necessary given that the investments engaged by the Budget Unit, notably in the *VuF*, were, at the time, providing a considerable income to Land Salzburg^h, and its complex transactions needed a quick reaction from the Budget Unitⁱ. Moreover, the staff of the Accounting Unit was not capable of monitoring those transactions due to their complexity^j.

³⁶ Paragraph 17.2, page 90, of the report prepared by the RH in 2013, *Land Salzburg – Finanzielle Lage*, of the original German version, states: "*Der RH wies — wie bereits 2009 — kritisch darauf hin, dass die Richtlinien für das Finanzmanagement des Landes Salzburg ausdrücklich auch die Erzielung von zusätzlichen Erträgen aus Derivaten als Ziel der Finanzgeschäfte definierten, und betonte das damit verbundene Risiko. Er verwies darauf, dass die zur Ertragsoptimierung abgeschlossenen Derivate mit der Aufgabenerfüllung einer Gebietskörperschaft nicht vereinbar waren.*"

³⁷ That memo was provided to the Commission (Eurostat) by the State Office of Land Salzburg, in the meeting held between the two institutions on 28 September 2016.

³⁸ In the original memo: "*Für Aufträge, die unmittelbar von der Abteilung 8 veranlasst wurden, trägt die Abteilung 14 keine Verantwortung. (...) Für sämtliche von der Abteilung 8 in Anspruch genommenen Instrumente im Rahmen des Liquiditäts- und Portfoliomanagements besteht nur eine eingeschränkte Prüfpflicht der Abteilung 14.*"

³⁹ In the original memo: "*Darüber hinaus ist die Geschäftsführung des Versorgungs- und Unterstützungsfonds der Abteilung 8 (Referat 8/02) übertragen. Dieser unselbständige Verwaltungsfonds veranlagt auch Geldmittel des Landes. Diese Veranlagungen und Geldmittel stehen nicht zur Deckung des allgemeinen Liquiditätsbedarfes des Landes zur Verfügung, sondern sind zweckgebunden zu verwenden. Der Abteilung 8 obliegt die gesamte Gestlonierung des Fondsvermögens und ihr gehen auch alle Kontoauszüge betreffend diesen Verwaltungsfonds zu.*" (*Versorgungs- und Unterstützungsfonds*, is a pension provision fund of Land Salzburg)

55. Also, the Commission ascertains that not only was the Budget Unit exempted from its obligation to report to the Accounting Unit, but the staff of the latter was under the instructions of the Head of the Budget Unit. As a foreseeable consequence of that organisational set-up, the Accounting Unit would accept the data as provided.^k
56. Moreover the Commission ascertains that the internal accounting and the public accounts produced by the State Office of Land Salzburg, and notably by the Financial Department, were exempted from being monitored by the Internal Audit from 1999 onwards^l. According to the RH, that state of affairs was "*contrary to the usual rules in public administration*" and ultimately "*contributed to the existence of severe control gaps in financially relevant areas*"⁴⁰.
57. Summing up, the increase in powers conceded to the Budget Unit of Land Salzburg was not accompanied by a parallel increase of the monitoring of the actions of that unit. In fact, the increase in the powers granted to the Budget Unit was rather accompanied by a decrease in the reporting obligations of that unit to other units of the State Office of Land Salzburg.

2.2.3. Monitoring by the LRH

58. The LRH has the responsibility of auditing, amongst others, the financial management of the State Government of Salzburg and its funds, focusing on legal compliance and on the correct calculation of figures. Nevertheless, it appears that the Financial Department (and financial statements) of Land Salzburg were never subject to a detailed audit by the LRH in the period between 2002 and 2012^m.
59. According to both the present and the former Heads of the LRH, such detailed audits of the financial management of Land Salzburg were not conducted due to lack of staff, insufficient resourcesⁿ and the lack of specific training of the staff at that time on how to audit those transactions^o.
60. Nevertheless, as can be seen from LRH's audit reports concerning the financial statements ('*Rechnungsabschluss*') of Land Salzburg⁴¹ for the years 2008-2011, their conclusion was invariably the same: "*The tests conducted by the LRH revealed that the accounting records and financial statements were duly made and complete. The cash*

⁴⁰ Page 27, of the report prepared by the RH in 2013, *Land Salzburg – Finanzielle Lage*, in the original German language version, states: "*Entgegen den sonst üblichen Regelungen in der öffentlichen Verwaltung war die Interne Revision des Landes Salzburg per Erlass des Landesamtsdirektors ausdrücklich von der Prüfung der Gebarung und des Rechnungswesens ausgenommen. Die Interne Revision leitete daraus auch die Unzuständigkeit für die Kontrolle des Finanzmanagements ab. Dies führte zu Kontrolllücken in finanziell relevanten Bereichen, die dazu geeignet waren, fehlerhaftes, unwirtschaftliches Handeln bzw. in letzter Konsequenz strafrechtlich relevante Sachverhalte nicht zu entdecken.*"

⁴¹ <http://www.salzburg.gv.at/pol/lt-rechnungshof/lrh-berichte/lrh-archiv.htm>

balance is correct and proven by bank statements”⁴². However, the Commission concluded that cross-checking with bank statements were in fact not made^P. Consequently, that statement in the conclusion of the LRH reports was not correct.

61. Finally, it is the understanding of the Commission that such detailed audits to the financial management of Land Salzburg were also not an immediate concern of the *Landtag* at that time⁹.

2.3. Financial Management of Land Salzburg in the period 2002-2012

62. This section provides a description of some of the irregularities that occurred in the financial management of Land Salzburg in the period between 2002 and 2012 focusing on the key role of the Financial Department of Land Salzburg in those events, and notably of the Budget Unit. Furthermore, this section aims at clarifying the participation of other regional and national institutions on the monitoring of Land Salzburg, on its financing, as well as on the compilation of the national accounts.

2.3.1. The four-eye principle

63. The four-eye principle is a fundamental accounting principle, which entails that a certain action, i.e. a decision, transaction, etc., must be approved by at least two people in order to be taken. That controlling mechanism is used to facilitate delegation of authority, to increase transparency and to make it harder for an individual acting alone to defraud an organization.

64. As mentioned earlier, in 2002 the *Finanzreferent* granted single signature powers of attorney to three employees of the Financial Department to engage in financial transactions with the SLH. Those powers were further extended in 2003 for an unlimited period of time, unlimited amounts, and without any restrictions on number of transactions or credit institutions with whom they could deal.

65. As also mentioned earlier, in 2004 a memo from the *Finanzreferent* exempted the Budget Unit from providing any sort of information to the Accounting Unit. That decision was significantly detrimental to the respect of the four-eye principle, given that a considerable amount of the financial transactions engaged on behalf of Land Salzburg were undertaken by the Budget Unit. Due to the fact that single signature powers had been granted two years before, that memo implied that financial transactions were neither checked a second time internally by the Budget Unit nor checked by the Unit in charge of compiling the final accounts of Land Salzburg. Likewise, it became apparent during the

⁴² Original German language version: “*Der LRH stellte fest, dass der Rechnungsabschluss ordnungsgemäß und vollständig erstellt wurde. Der Kassenabschluss war korrekt und der buchmäßig ausgewiesene Geldbestand wurde dem LRH durch Bankauszüge nachgewiesen.*“

Commission investigation that the Head of the Budget Unit was able to interfere in the bookkeeping records⁴³.

66. If the Internal Audit had not been exempted by decree from monitoring the Financial Department in 1999, it is likely that it would have been able to point out those failures of the internal control procedures.
67. Even though the decision in the memo from 2004 was finally changed in 2008, some transactions were still exempted from the reporting obligations⁴⁴, notably the transactions between the core budget of Land Salzburg and the funds, namely the *VuF* and the *Landeswohnbaufonds*, as well as all transactions recorded under the *Voranschlagsunwirksame* (see section 2.3.3).
68. In addition, the Head of the Budget Unit was, simultaneously, also responsible for the financial issues of the *Landeswohnbaufonds*,^r which meant that, when transactions existed between the two institutions, the Head of the Budget Unit of Land Salzburg was the only person involved acting and recording amounts on both sides. That state of affairs was also a clear violation of the four-eye principle.
69. Finally, several statements by the State Office of Land Salzburg indicate that the four-eye principle was not respected in the reporting of information flows either⁴⁵.
70. Hence, the Commission concludes that since, at least, 2002, Land Salzburg did not comply with the four-eye principle in the context of the financial management of Land Salzburg, in several respects. That principle is paramount in ensuring sound financial management⁴⁶. The Commission considers that Land Salzburg's failure to comply with that principle constitutes serious negligence.

⁴³ See endnote k.

⁴⁴ See endnote g.

⁴⁵ See endnotes r, s, t and u

⁴⁶ For example, the second paragraph of page 24, of the report prepared by the RH in 2013, Land Salzburg – Finanzielle Lage, states that, "*In financial management, the separation of frontoffice (trade) and backoffice (settlement and control) is an essential ICS principle which contributes to the quality assurance, making it more difficult to act improperly, and ensures compliance with the regulations and the traceability of the transactions.*" The original German version: "*Im Finanzmanagement ist die Trennung von Frontoffice (Handel) und Backoffice (Abwicklung und Kontrolle) ein wesentliches IKS-Prinzip, das zur Qualitätssicherung beiträgt, doloese Handlungen erschwert und die Einhaltung der Vorschriften sowie die Nachvollziehbarkeit der Geschäfte gewährleistet.*"

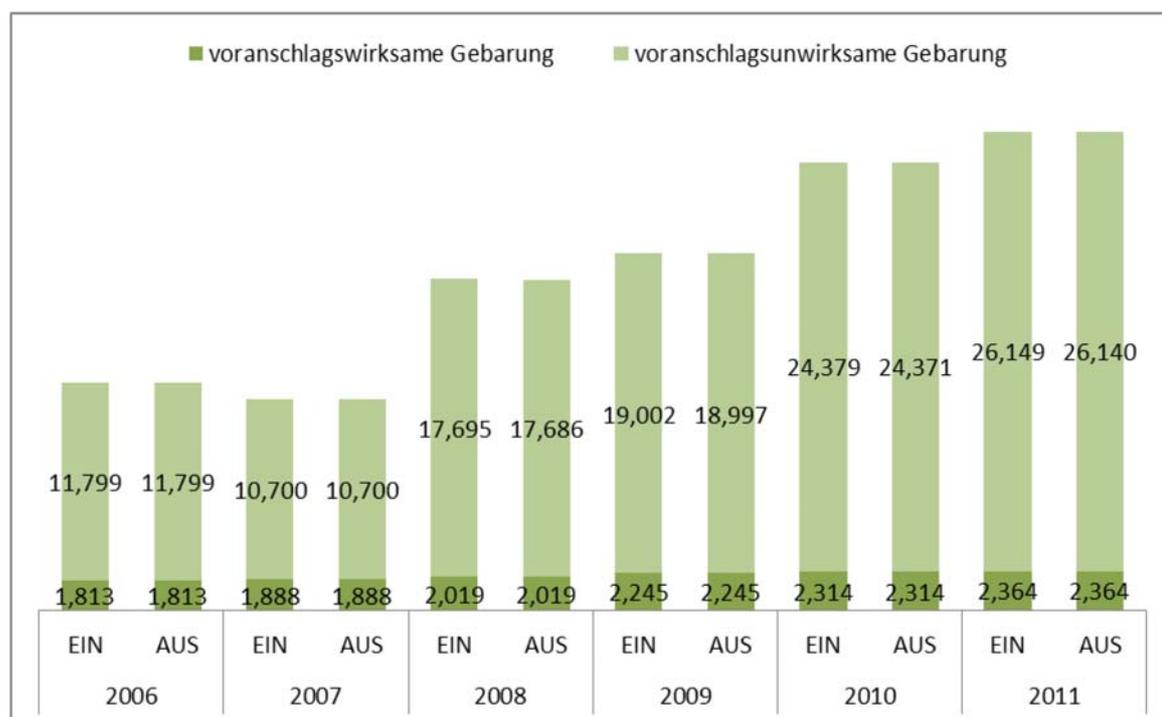
Furthermore, paragraph 9.1, page 72, of the report prepared by the RH in 2013, Land Salzburg – Finanzielle Lage, states that, "*Due to the lack of the possibility of observing the four eyes principle, internal control was inexistent. Therefore, possible errors could not be detected*". In the German version: "*Aufgrund der fehlenden Möglichkeit, das Vier-Augen-Prinzip einzuhalten, war eine interne Kontrolle nicht gegeben. Dadurch konnten mögliche Fehler nicht entdeckt werden.*"

2.3.2. Forging of signatures and falsification of documentation

71. During the Commission investigation, the State Office of Land Salzburg informed the Commission that many signatures were forged by the aforementioned Head of the Budget Unit as a direct consequence of the memo of 2008 introducing the need for some of the financial transactions to be signed by two employees^s.
72. Furthermore, when requested to explain how it was possible that some bank accounts could be concealed from the RH when that entity undertook audits of the State Office of Land Salzburg (see section 2.3.3), the State Office of Land Salzburg explained that minutes and financial statements had also been falsified by the Head of the Budget Unit^t.
73. Similarly, the reports drawn up on the basis of the information prepared by the Budget Unit and presented by the Financial Department to the *Finanzbeirat* were falsified. It was ascertained by the Commission that that falsification might have started from years 2005/2006^u.

2.3.3. Extra-budgetary Accounts

Chart 1: Cash flows in the accounts of the State Office of Land Salzburg (EUR million)⁴⁷



⁴⁷ As in page 203 of the report prepared by the RH in 2013, *Land Salzburg – Finanzielle Lage*

74. Chart 1 above shows the recording of cash flows in the accounting of the State Office as regards the budgetary accounts (*voranschlagswirksame Gebarung*) and extra-budgetary Accounts (*voranschlagsunwirksame Gebarung*), for the years 2006 to 2011. As explained above, for the years under analysis, the recording in the *voranschlagswirksame* was under the responsibility of the Accounting Unit and the reporting in the *voranschlagsunwirksame* was under the responsibility of the Budget Unit, even if, in principle, the bookkeeping of both sets of accounts should have been under the sole responsibility of the Accounting Unit⁴⁸.
75. As can be observed from that chart, at least for the years 2006 to 2011 the growth in the inflows (EIN) and outflows (AUS) in the extra-budgetary accounts was considerably higher than the one in the budgetary accounts.
76. Based on the statements of the State Office of Land Salzburg, the Commission concludes that the Financial Department of the State Office of Land Salzburg started to conceal bank accounts under the *voranschlagsunwirksame*⁴⁹ from 2003 onwards^v. Even if those accounts should only include transition items (flows), stocks of assets and liabilities were also included^{w x}, i.e. the debt of Land Salzburg was concealed under that accounting framework, possibly from 2003 onwards.
77. Notwithstanding their considerable volume, the *voranschlagsunwirksame* were not effectively and efficiently monitored by the Accounting Unit of Land Salzburg during the years 2002 to 2012^y. It would appear that, had those accounts been correctly monitored by the Accounting Unit, the irregularities could have possibly been unveiled before 2012.
78. Furthermore, those irregularities were only possible because not all the information requested by the RH in the context of its audits was provided by the Head of the Budget Unit^z.
79. Finally, the interest flows concerning those financial instruments were also recorded in the *voranschlagsunwirksame* and consequently were not visible in the financial statements of Land Salzburg^{aa}.
80. Table 2 shows the interest payable and receivable in the Austrian national accounts, as it was provided to the Commission (Eurostat) by STAT.

⁴⁸ This, as shown in section 2.2, was not the case.

⁴⁹ See endnote *t*

Table 2: Interest receivable and payable of Land Salzburg for years 2002-2012

	MEUR										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
National Accounts compilation by STAT											
as of 30.09.2013											
D.41 receivable	28	28	43	33	38	41	32	36	38	40	71
Land Salzburg	27	27	42	32	31	27	17	18	15	15	46
Wohnbaufonds	1	1	1	1	7	14	15	17	22	25	25
ESA D.41 payable	5	6	7	9	12	22	21	19	26	33	30
Land Salzburg	5	5	7	9	11	19	16	15	16	21	18
Wohnbaufonds	0	0	0	0	1	3	5	4	9	12	12
EDP D.41 payable	5	6	7	9	12	22	21	19	26	33	30
Land Salzburg	5	5	7	9	11	19	16	15	16	21	18
Wohnbaufonds	0	0	0	0	1	3	5	4	9	12	12
as of 31.03.2014											
D.41 receivable	28	28	43	33	38	41	32	36	38	40	72
Land Salzburg	27	27	42	32	31	27	17	18	15	15	47
Wohnbaufonds	1	1	1	1	7	14	15	17	22	25	25
ESA D.41 payable	5	6	7	9	12	22	21	19	26	33	76
Land Salzburg	5	5	7	9	11	19	16	15	16	21	63
Wohnbaufonds	0	0	0	0	1	3	5	4	9	12	12
EDP D.41 payable	5	6	7	9	12	22	21	19	26	33	23
Land Salzburg	5	5	7	9	11	19	16	15	16	21	11
Wohnbaufonds	0	0	0	0	1	3	5	4	9	12	12
Revisions											
D.41 receivable	0										
Land Salzburg	0	0	0	0	0	0	0	0	0	0	1
Wohnbaufonds	0	0	0	0	0	0	0	0	0	0	-1
ESA D.41 payable	0	45									
Land Salzburg	0	0	0	0	0	0	0	0	0	0	46
Wohnbaufonds	0	0	0	0	0	0	0	0	0	0	0
EDP D.41 payable	0	-7									
Land Salzburg	0	0	0	0	0	0	0	0	0	0	-7
Wohnbaufonds	0	0	0	0	0	0	0	0	0	0	0

81. Firstly, it is the understanding of the Commission that the interest payable should have been revised by STAT at least also for years 2010 and 2011, along with the revisions undertaken to the debt (see Table 1). In a letter sent by STAT to Eurostat on 28 March 2014 it was stated regarding revisions to years 2010 and 2011: "As one outcome of our bilateral meeting with officials from Land Salzburg it can be taken for sure that no additional resources will be dedicated to further clarify earlier years. That means that our estimates will remain unchanged".

82. Furthermore, it is the understanding of the Commission that, following the fact that it was ascertained that debt is underestimated for years prior to 2010, consequently interest payable may also be misrepresented, and as may therefore be the Austrian government deficit for those years.

2.3.4. Lending from the OeBFA to Land Salzburg

83. As can be observed in Table 1, from 2006 onwards Land Salzburg started to obtain financing through the lending from the OeBFA. As it was concluded from the data provided by STAT, the funds lent by the OeBFA to Land Salzburg for which the final

beneficiary was the *Landeswohnbaufonds* were recorded in the item *Voranschlagsunwirksame Erläge*⁵⁰, in the balance sheet of Land Salzburg.

84. In a meeting held on 8 September 2010 between STAT and the Budget Unit of the State Office of Land Salzburg, STAT explained that all the funds lent by the OeBFA should be reported for ESA and EDP purposes as loan assets of the federal government and loan liabilities of the state government concerned. That recording *de facto* also leads to an increase of the *Finanzschulden*, as defined according to the Austrian public accounting guidelines⁵¹. Furthermore, STAT informed the Budget Unit of Land Salzburg that the *Voranschlagsunwirksame* is aimed at including only transition items (transactions, flows)⁵², not a 'permanent' stock of assets and liabilities.
85. The recording of the majority of the funds on-lent to the *Landeswohnbaufonds* in the *Voranschlagsunwirksame Erläge* cannot be considered as a case of misreporting, as it did not affect the debt of the Republic of Austria, due to the consolidation exercise undertaken by STAT. Nevertheless, as a general observation, the fact that this item of the financial statements was used to record stocks of liabilities reflects a serious misuse of the accounts and it is surprising that such an easily detectable misuse of the accounts was not unveiled by any of the monitoring entities.
86. However, a part (EUR 166 million; see section 2.1) of the funds lent by the OeBFA to Land Salzburg were in fact not reported in any item of the balance sheet⁵³. Even if STAT included those amounts in the Austrian Maastricht Debt in accordance with their consolidations practices⁵⁴, the absence of those amounts in the balance sheet of the State Office of Land Salzburg amounts to a case of false statement from the State Office of Land Salzburg to the Austrian statistical and monitoring entities.
87. Furthermore, it should be stated that consolidation practices do not only involve using the most reliable data when realizing that a considerable discrepancy exists, as was done by STAT during those years. The best consolidation practices should also concern informing

⁵⁰ It, as explained in section 2.1, is meant to include the cash transited through the accounts of Land Salzburg that is owed to a third entity.

⁵¹ As can be observed in Table 1, which is based on the balance sheets of the Land Salzburg and which, for 2012, include those liabilities under the item *Finanzschulden*,

⁵² See footnote 50.

⁵³ It follows from the electronic mail exchange of 27 September 2012 between STAT and the State Office of Land Salzburg (namely the Head of the Budget Unit and the Director of the Financial Department, with a representative from the OeBFA in copy).

⁵⁴ I.e., in case of discrepancies between the information reported by the OeBFA and the information reported by Land Salzburg concerning the on-lending of funds, STAT used the information reported by the former in the compilation of the Maastricht debt, as it is considered to be the most reliable information.

the relevant authorities of the existence of such discrepancies, given that misreporting in one item may imply misreporting in other items⁵⁵.

88. Likewise, the OeNB has informed the Commission that the compilation practices of the OeNB, in the compilation of the financial accounts, involved comparing the raw data on lending received from the OeBFA with the consolidated information as provided by STAT^{bb}. Good practices for consolidation should involve the comparison of two independent sets of raw data, rather than the comparison of one set of raw data with an output resulting from those same data. In case of the latter, it is improbable that there will be inconsistencies as one dataset is derived from the other.
89. The role of the LRH in the recording and use of the lending from the OeBFA remains unclear to the Commission⁵⁶. On one side, the OeBFA has stated that the cross-checking of the information regarding these funds is the responsibility of the LRH^{cc}, but on the other side the LRH has stated that that cross-checking is the responsibility of the OeBFA^{dd}. Hence, the Commission concludes that, for the period between 2006 and 2012, neither the OeBFA nor the LRH monitored the use of the funds or the recording of such funds in the accounts of the State Office of Land Salzburg.
90. Furthermore, on 12 October 2012, after receiving a table from STAT⁵⁷ that showed the debt of Land Salzburg from 2011 onwards, as compiled by STAT (see Table 1, row 3), the RH requested further information on the EUR 1 050 million of debt of the 'funds'⁵⁸, asking more specifically to what funds STAT was referring. Whereas, as explained in this section, those loans should be recorded in the balance sheet of Land Salzburg as the debt of Land Salzburg, the Commission has not received information on further correspondence exchanged between the two entities on this issue, i.e. the Commission is not aware that the RH, in face of that misuse of the accounts of Land Salzburg, further raised the issue either with STAT or the State Office of Land Salzburg.
91. As mentioned above, the incorrect reporting of the lending from OeBFA did not affect the debt of the Republic of Austria, due to the standard procedure consolidation exercise undertaken by STAT. Nevertheless, it is important to stress that had the statistical and monitoring authorities given more attention and undertaken active follow-up to these inconsistencies in due time, this would automatically have led to a closer and deeper

⁵⁵ In Austria's observations of 25 January 2017 on the preliminary findings of the investigation, STAT claims that it has always informed the relevant entities about the consolidation and the adjustments carried out for the ESA/EDP compilation purposes.

⁵⁶ In Austria's observations of 25 January 2017 on the preliminary findings of the investigation, the OeBFA has reiterated that one of the responsibilities of the LRH is to monitor the recording and use of the loans provided by the OeBFA to the Länder.

⁵⁷ Sent on 2 October 2012

⁵⁸ *Landesfonds*

analysis of the totality of financial statements of the State Office of Land Salzburg. Thereby such an action would have certainly unveiled the misreporting at an earlier stage, given that as explained in section 2.3.3, the debt of Land Salzburg was concealed under the extra-budgetary accounts. As established in this report, the extra-budgetary accounts were never subjected to exhaustive analysis.

2.3.5. Recording of securities (liabilities)

92. In 2011, STAT was informed by the OeNB⁵⁹ that the State Office of Land Salzburg had borrowed money through the sale of bonds amounting to EUR 300 million in 2010. As discussed internally by STAT⁶⁰, those securities were not visible in the accounts of the State Office of Land Salzburg reported to STAT. Even if such an amount was not reported in the balance sheets of Land Salzburg (in any liability item), STAT took the decision to follow the direct data source of the OeNB and hence to include them in the debt of Land Salzburg.

93. When the RH⁶¹ inquired into the differences between the debt reported by Land Salzburg (*Finanzschulden*) and the table produced by STAT depicting the debt of each of the Länder, STAT explained to the RH that, among others, the difference included EUR 300 million regarding securities "*that we found nowhere in the Rechnungsabschluss*".

94. This clarification by STAT could have justified an immediate follow-up from the RH, for example by starting a new audit procedure. The Commission is not aware that any immediate and urgent follow-up to this issue was undertaken by the RH.

2.3.6. Financial derivatives

95. In the written observations to the Commission preliminary findings, Austria argues that in accordance with Regulation (EC) No 479/2009, liabilities arising from financial derivatives are not part of public debt⁶². Although this statement is correct *strictu sensu*, the reason why it is relevant to address the issue of the financial derivatives relates to the fact that Land Salzburg had to incur debt to finance its investments in financial derivatives. This is the same debt that was misrepresented in Land Salzburg's deficit and debt data.

⁵⁹ Such information included in the security-by-security database of the OeNB was not from the accounts of the State Office of Land Salzburg but from the counterpart (i.e. the lender).

⁶⁰ Electronic mail of 21 September 2011, provided to the Commission (Eurostat).

⁶¹ Electronic mail of 31 August 2012.

⁶² Introduction, point 1.5 of the Commission Staff Working Document accompanying this report.

96. In July 2009, the RH issued an audit report⁶³ making a comparative review of the financing and investment of the Federal Government and of several *Länder* and *Gemeinde*⁶⁴, focusing on each of the inspected entities, among which Land Salzburg. That audit report covered the period from 2002 to 2006, but some major developments in 2007 and 2008 were also taken into account.
97. Its Executive Summary reads that, “*Land Salzburg carried out derivative transactions with high volume and risk, without having been adequately informed, over the entire period, about the risks involved and the overall risks of its financing. Detailed written guidelines as well as ongoing risk analysis and comprehensive reviews of the entire portfolio were introduced only around five years after the start of this type of transactions. The realised gross income from derivative transactions was equal to EUR 210,38 million, of which EUR 65,04 million were transferred to the State budget.*”⁶⁵
98. In fact, the investment in financial derivatives was undertaken by the Budget Unit in the context of a global policy of Land Salzburg and all the relevant concerned institutions were informed that the Budget Unit was investing in such transactions^{6e}. It was also known that those investments were included in the *Voranschlagsunwirksamen Gebarung*.⁶⁶ Notwithstanding this, the Commission is not aware of efforts from any of the relevant institutions in Land Salzburg (Landtag, LRH, State Government, and State Office) to closely follow up on the recommendations of the RH and it has also concluded in this report that in fact the *Voranschlagsunwirksamen Gebarung* was not effectively monitored. Had Land Salzburg’s relevant institutions closely followed up on the recommendations of the RH to monitor the use of such financial instruments, the *Voranschlagsunwirksamen Gebarung* would have been the target of effective control, and consequently the misrepresentation of debt would most certainly have been avoided.
99. Finally, and taking into account partly the publicity of the reports from the RH, partly the fact that sizeable cross-currency swaps existed between OeBFA and Land Salzburg, as well as other *Länder*, the Commission is surprised to find that, for the years under analysis, no flows or stocks of financial derivatives were reported in national accounts

⁶³ Finanzierungsinstrumente der Gebietskörperschaften mit Schwerpunkt Land Salzburg, http://www.rechnungshof.gv.at/fileadmin/downloads/2009/berichte/teilberichte/salzburg/sbg_2009_03/Sbg_2009_3_2.pdf

⁶⁴ Local municipalities

⁶⁵Original German language version: *Das Land Salzburg führte Derivatengeschäfte mit hohem Volumen und Risiko durch, ohne über den gesamten Zeitraum über die damit verbundenen Risiken und die Gesamtrisiken seiner Finanzierungen ausreichend informiert gewesen zu sein. Ausführliche schriftliche Richtlinien sowie laufende Risikoanalysen und umfassende Bewertungen des gesamten Portfolios wurden erst rd. fünf Jahre nach Aufnahme der Geschäfte eingeführt. Das erzielte Bruttoergebnis aus Derivatengeschäften von 210,38 Mill. EUR wurde in Höhe von 65,04 Mill. EUR dem Landeshaushalt zugeführt.*

⁶⁶ See endnote *t*.

for the whole S.1312 sector (state government sector), even if OeBFA would most certainly have informed the statistical authorities about these cross-currency swaps.

2.4. Description of the events in the period between May 2012 and December 2012

100. According to the internal communications that the RH had access to and as confirmed by the Commission during its investigation in Austria between the 26 and the 28 of September 2016, the events unfolded as follows:

- According to the RH report published on 9 October 2013, the Director of the Financial Department informed the head of the Staff Department in May 2012 that the Head of the Budget Unit had acted against the State Office's policy and service instructions;
- On 17 July 2012, the *Finanzreferent* was informed of those facts, withdrew the powers of attorney of the Head of the Budget Unit for the conduction of transactions and cancelled some transactions^{ff}. In addition, from that day onwards, the Head of the Budget Unit took leave until 12 September 2012;
- On 23 August 2012, Land Salzburg sent its opinion on the follow-up report of the RH to the RH. None of those revealed facts⁶⁷ were mentioned in that opinion from Land Salzburg to the Austrian Federal Court of Auditors^{gg hh};
- On 1 September 2012, the *Finanzreferent* and the Director of the Financial Department hired a new employee⁶⁸ to investigate further the financial statements of Land Salzburg;
- In early October 2012, the Director of the Financial Department informed some employees of the Financial Department that the portfolio analysed by them was in fact just a part of the total portfolio, i.e. that a part of the portfolio had been concealedⁱⁱ;
- In the second half of October 2012, the *Finanzreferent* and the Director of the Financial Department jointly decided on the termination of foreign currency transactions and other transactions^{jj}. The new employee hired on 1 September 2012⁶⁹

⁶⁷ I.e., that the Head of the Budget Unit had acted against the State Office's policy and service instructions, that the powers of attorney of the Head of the Budget Unit had been withdrawn and that some transactions had been early terminated.

⁶⁸ That employee was a former employee of the Deutsche Bank who had arranged financial transactions between the Deutsche Bank and Land Salzburg since 2002.

⁶⁹ Page 34, of the report prepared by the RH in 2013, *Land Salzburg – Finanzielle Lage*, the original language version, "Der zuständige Finanzreferent Mag. David Brenner und der Leiter der Finanzabteilung vereinbarten am 15. Oktober 2012 die Auflösung der meisten Fremdwährungsgeschäfte und eines großen Teils der übrigen Geschäfte ohne Nachteil für den Rechnungsabschluss. Protokolle über diese Vereinbarung sowie über Gespräche mit dem Finanzbeirat konnten nicht vorgelegt werden. Der Vereinbarung lag keine schriftliche

was mandated to undertake such early cancellation of transactions and positions. Among others, financial derivative positions with the Deutsche Bank were cancelled, resulting in a loss of EUR 56 million for Land Salzburg⁷⁰;

- On 23 October 2012, the Director of the Financial Department reported to the Financial Advisory Board the existence of additional financial transactions that had not hitherto been mentioned in the portfolio report addressed to that board.
- On early November 2012, the Head of the Budget Unit denied having been involved in risky transactions on behalf of Land Salzburg when questioned by the *Finanzreferent*, the Director of the Financial Department and the Head of the LRH. She declared her non-involvement again before the *Landtag*^{kk};
- On 26 November 2012, the Head of the Budget Unit acknowledged to her immediate superiors to have hidden a book loss of EUR 340 million in financial investments and was consequently dismissed⁷¹;

101. On 6 December 2012, the *Finanzreferent* of Land Salzburg, the Director of the Financial Department and the Head of the LRH, announced in a press conference that “*we have been deceived*” (“*Wir sind getäuscht worden*”). In summary, they announced that Land Salzburg suffered a “*purely accounting loss*” of EUR 340 million in financial derivative investments, namely by means of currency and interest rate swap contracts. It was also made clear in the press conference that state and federal monitoring mechanisms had failed.⁷²

102. In the morning of the same day, i.e. 6 December 2012, the follow-up report was published by the RH⁷³ and presented in a press conference⁷⁴. Because relevant

Strategie zugrunde. Von Oktober bis Dezember 2012 beendete das Land rd. 300 Finanzgeschäfte (davon 245 Derivate) vor Ablauf ihrer Fälligkeit. Die Abwicklung und Entscheidung über die Auflösung der Einzelgeschäfte lag im Ermessen eines einzelnen Mitarbeiters."

⁷⁰ Pages 166-167, of the report prepared by the RH in 2013, *Land Salzburg – Finanzielle Lage*,

⁷¹ Page 67, of the report prepared by the RH in 2013, *Land Salzburg – Finanzielle Lage*

⁷² <http://www.salzburg.com/nachrichten/salzburg/politik/sn/artikel/finanzskandal-in-salzburg-340-mill-verlust-durch-spekulationen-38965/>

⁷³ *Finanzierungsinstrumente der Gebietskörperschaften in den Ländern Burgenland und Salzburg; Follow-up-Überprüfung*, <http://www.rechnungshof.gv.at/berichte/ansicht/detail/finanzierungsinstrumente-der-gebietskoerperschaften-in-den-laendern-burgenland-und-salzburg-follow-up-ueberpruefung-1.html>

⁷⁴ This follow-up report concluded that, "*The Land Salzburg implemented almost all the recommendations of the RH. However, it continued to deal with complex, risky derivative transactions to generate additional income. However, the risk positions were significantly reduced by the conclusion of additional hedging transactions.*" In the German version: "*Das Land Salzburg setzte fast alle Empfehlungen des RH um. Es schloss jedoch weiterhin komplexe - mit Risiko behaftete - Derivatengeschäfte ab, um dadurch zusätzliche Erträge zu erwirtschaften. Allerdings wurden durch den Abschluss zusätzlicher Sicherungsgeschäfte die Risikopositionen stark reduziert.*"

information had been concealed from the RH, the follow-up report was misleading as to the real state of affairs.

103. It appears therefore that from May to December 2012 (i.e., for more than 6 months) the State Government of Land Salzburg, which at that stage was at least partly informed of the facts, concealed relevant information that it was obliged to provide at least to the RH, the statistical authorities and possibly to other bodies. Instead, from the second half of October about 300 financial investments were terminated early by the administration and government of Land Salzburg⁷⁵, at the discretion of one member of the staff.
104. It was only on 22 January 2013 that the State Office of Land Salzburg and STAT officially discussed the issue of the existence of manipulations in the accounts of Land Salzburg.
105. The Commission concludes that the concealment of relevant information by the officials of the financial management area and the government of Land Salzburg to the RH between May 2012 and December 2012 was also the cause for the incorrect and incomplete conclusions of the RH 2012 follow-up report, which was ultimately published on 6 December 2012.

2.5. December 2012 to October 2013: the facts as recorded by STAT

106. According to internal STAT communications and to statements provided by the concerned entities to which the Commission was given access during its investigation in Austria between the 26 and the 28 of September 2016, it has been ascertained that:
- In the context of the press conference of Land Salzburg on 6 December 2012, STAT became aware of potential problems with the data in Land Salzburg^{ll};
 - During the Commission investigation STAT stated that, for the period between December 2012 and May 2013, no information was exchanged between Land Salzburg and STAT on the issue^{mmm};
 - From 10 December 2012, STAT started receiving questions by the BMF on the accounts of Land Salzburg, notably on its debt;
 - On 22 January 2013, the State Office of Land Salzburg and STAT exchanged some electronic mails. In one of these electronic mails, STAT states: "*For our part, we are very interested in the interim reports on the finances of Land Salzburg in order to get*

⁷⁵ Page 34, of the report prepared by the RH in 2013, Land Salzburg – Finanzielle Lage, in the original German language version, states: "*Von Oktober bis Dezember 2012 beendete das Land Salzburg rd. 300 Finanzgeschäfte (davon 245 Derivate) vor Ablauf der Fälligkeit ohne konkrete schriftliche Strategie.*"

a picture of the changes/revisions that have come to us, or to what misreporting and manipulations we have been exposed⁷⁶."

- On 30 January 2013, STAT proposed to have a meeting with the State Office of Land Salzburg, in STAT's premises, albeit stating that that meeting could be no earlier than on the first week of March 2013;
- On 31 January 2013, after having read in the press about the material use of financial derivatives in the Austrian *Länder*, Eurostat took the initiative to contact STAT. The issues discussed in that conversation concerned the generic accounting treatment of financial derivatives in national accounts. In that context, the *Länder* Lower Austria and Salzburg were mentioned by STAT as *Länder* using such financial instruments. In that conversation, STAT informed Eurostat that meetings with those *Länder* were being prepared to discuss general issues, including the use of financial derivatives. However, at no point during the conversation was there any mention of the alleged unlawful behaviour of Land Salzburg officials or of misreporting of operations (hidden bank accounts or debt) of Land Salzburg or the existence of previously unreported financial derivatives;
- On 5 March 2013, there was a bilateral meeting between STAT and the State Office of Land Salzburg in Vienna;
- On 27 March 2013⁷⁷, the State Office of Land Salzburg informed STAT that, following a report by an external independent private auditor, it had been ascertained that the consolidated liabilities of Land Salzburg amounted to EUR 3 507 million, although no breakdown of that amount could be provided. The Commission is unaware of any specific urgent and proportionate follow-up having taken place in order to ascertain the real amount and nature of these liabilities;
- In April 2013, Eurostat and STAT discussed, under the regular request for clarification, the April 2013 EDP notification regarding Austria, where again Eurostat took the initiative to enquire on the general recording of financial derivatives on the Austrian *Länder*. In its replies to Eurostat's questions, STAT once again did not mention the alleged unlawful behaviour of Land Salzburg officials or misreporting of operations. Furthermore, STAT wrote that it could not provide any quantitative information, but that it did not expect major revisions to the EDP debt data regarding the use of derivatives in the Austrian *Länder*.

⁷⁶ In the original German language version: "*Wir unsererseits waren sehr interessiert an den Zwischenberichten über die Finanzen des Landes Salzburg, um uns ein Bild zu machen von den Änderungen/Revisionen die auf uns zukommen, bzw. welchen Machinationen und Manipulationen wir da aufgesessen sind.*"

⁷⁷ Four days before the April 2013 EDP notification.

- On 7 May 2013 a meeting took place between STAT and the State Office of Land Salzburg. In that meeting, STAT recognized that there might be problems with the recording of derivatives and debt in Land Salzburgⁿⁿ. STAT and the State Office of Land Salzburg agreed that a full set of public accounts data for 2012 should be transmitted to STAT at the end of August 2013^{oo}
- In August 2013, Land Salzburg transmitted only flows (no stocks) to STAT^{pp};
- In September 2013, still in the absence of annual data, STAT used quarterly data provided by Land Salzburg to compile the ESA/EDP data^{qq};
- For the whole period between 6 December 2012 and 9 October 2013 there was no communication between the RH, which was already investigating the issue, and STAT^{rr};
- On 9 October 2013 the RH published, its report "*Land Salzburg - Finanzielle Lage*";
- On 10 October 2013, the issue is brought to the attention of Eurostat for the first time, i.e. ten months after the issue had been brought to the attention of STAT;
- On 11 October 2013, STAT sent its first comments to Eurostat on the RH report, published on 9 October 2013, on the financial situation of Land Salzburg;
- On 21 October 2013, Eurostat published its News Release on government deficit and debt, expressing a reservation on the quality of the data reported by Austria⁷⁸;
- On 31 March 2014, STAT reported the April 2014 EDP notification to Eurostat. The level of Land Salzburg's contribution to Maastricht debt, for 2012, was revised upwards by EUR 1 192 million to EUR 3 507 million, i.e., exactly the amount which had been signalled by the State Office of Land Salzburg to STAT on 27 March 2013;
- On 23 April 2014, Eurostat withdrew its reservation on the Austrian data.

2.5.1. Information of the Commission

107. The chronology of events shows that STAT informed the Commission (Eurostat) about the misreporting in Land Salzburg only on 10 October 2013. Nevertheless, it has been ascertained that STAT was gradually informed about those facts from 6 December

⁷⁸ "Eurostat is expressing a reservation on the quality of the data reported by Austria, due to uncertainties on the statistical impact of the conclusions of the Federal Audit Office's report on the Land Salzburg, published on 9 October 2013. The report revealed deficiencies with regard to financial management and to completeness of the public accounts of the Land Salzburg. The statistical implications of the audit for EDP data are being investigated by Statistics Austria in collaboration with Eurostat, in order to clarify the precise impacts on 2012 and also on preceding years. It is possible that this will lead to an upward revision of government debt of up to half a percent of GDP, with more minor revisions to the government deficit, based on the information available at this point."

2012 onwards. In particular, it was clear to STAT at least since 22 January 2013 that "misreporting and manipulations" had occurred in Land Salzburg.

108. Even if in Austria's observations of 25 January 2017 on the preliminary findings of the investigation STAT has argued that it informed Eurostat about the misrepresentation in Land Salzburg on 31 January 2013⁷⁹, the records prove that this statement is inaccurate. Firstly, such communication occurred at the initiative of Eurostat, and not by STAT pro-actively informing Eurostat. The records also show that the information shared by STAT contained no information or insight on the alleged unlawful behaviour of Land Salzburg officials or on the misreporting of operations. In fact, it simply followed up on the press conference by the RH of 6 December 2012 – not on the one by Land Salzburg on the same day – regarding the publication of the RH's follow-up review on the use of financial derivatives in the Austrian *Länder*, which for the reasons already explained contained no insight or information on the misrepresentation in Land Salzburg.
109. Moreover, on the basis of information provided by the State Office of Land Salzburg concerning the results of an independent external audit, it should have been clear to STAT, at least since 27 March 2013, that the level of debt of Land Salzburg could in fact be considerably larger than previously estimated by STAT. Given that STAT would, four days later, report data to Eurostat in the context of the April 2013 EDP notification, it is the opinion of the Commission that an immediate and urgent practical follow-up should have been undertaken by STAT after receiving that information from Land Salzburg. It appears that such steps were not taken. Furthermore, even if in such a short period it would not be possible to give the issue a comprehensive follow-up, since it may not have been absolutely clear to STAT what kind of financial instruments were included in this amount, it is the opinion of the Commission that, under the principle of due diligence, STAT should have informed Eurostat immediately after 27 March 2013 about the amount provided by the State Office of Land Salzburg to STAT.
110. Informing Eurostat could have served the purpose, at least, to bilaterally discuss how to proceed with that issue and whether, in the absence of more detailed information, either to use the quantitative information provided by Land Salzburg as a proxy for the necessary correction of the Maastricht debt or, on the other side, to lead Eurostat to express a reservation on Austrian data due to the uncertainty involved.
111. The argument of STAT that it had fully informed Eurostat at least from 31 January 2013 is inconsistent with its statement that it had not exchanged any information with Land Salzburg before May 2013. On the other side, STAT's statement that it had not exchanged any information with Land Salzburg before May 2013 is incompatible with the information it exchanged with the State Office of Land Salzburg, at least, on 22 January and 27 March 2013.

⁷⁹ Paragraph B.18 of the observations from STAT, Annex II of the accompanying Commission Staff Working Document.

112. Additionally, even when enquired, during the April 2013 EDP notification, about further information regarding the use of financial derivatives in the Austrian *Länder*, STAT decided not to share with Eurostat the quantitative information it had received on 27 March 2013 from the State Office of Land Salzburg.
113. Finally, even if STAT states that on 7 May 2013 it had recognized that there might be issues with the reporting of EDP debt from Land Salzburg, it again decided not to share that information with Eurostat – which ultimately only happened in October 2013.

3. ASSESSMENT OF FINDINGS

114. This report shows that severe irregularities took place in the compilation, control and reporting of financial, as well as non-financial, transactions in Land Salzburg over a significant period of time. Public accounting rules were not complied with, control was lacking, the four-eye principle was not respected, financial and non-financial transactions were not appropriately reported, recommendations from the RH were ignored, documentation was falsified, signatures were forged and misleading information was sent to the national statistical authorities as well as to the RH, leading to the misreporting of the financial accounts, and hence to the misreporting of the debt data for Austria at least from 2008.
115. The misreporting of financial transactions and the concealment of bank accounts started in 2003. The granting of powers, in 2002, to the Director of the Financial Department and to two employees of the Budget Unit, led to a situation where it was possible to conclude high-risk financial transactions and to open hundreds of bank accounts which were concealed in the accounting systems of Land Salzburg.
116. During the same period of time, the Internal Audit and the Accounting Unit in the State Office of Land Salzburg were exempted by decree or barred, respectively, from analysing the transactions of the Budget Unit and from analysing the recording of those transactions in the financial statements.
117. Similarly, between 2002 and 2012, neither the LRH nor the RH conducted any effective in-depth audit of the financial accounts of Land Salzburg. In particular, they did not audit the *voranschlagsunwirksame Gebarung* which, as shown in Chart 1 and in section 2.3.3., reached more than EUR 26 billion of inflows and outflows in 2011 and included *de facto* all the unreported transactions and stocks, while in principle they should have included only extra-budgetary flows and not Maastricht-relevant liabilities.
118. Those irregular practices were made public in 2012, following a press conference held on 6 December 2012 by the *Finanzreferent*, the Director of the Financial Department and the Head of the LRH of Land Salzburg. This report also shows that the facts could have been unveiled earlier, had relevant information been made fully available by the State Office of Land Salzburg to the monitoring, judicial and statistical authorities.
119. Furthermore, this report also demonstrates that the Commission (Eurostat) could and should have been informed by STAT several months earlier about those facts.

3.1. Conclusions regarding the main actors involved in the events described

120. The main actors involved in the events described in this report are the State Office and in particular its Budget Unit, the State Government, the Landtag and the LRH of Land Salzburg, the RH, the OeBFA, the OeNB and STAT. The representatives of all the entities interviewed have been helpful and fully cooperative with the Commission

investigation team, providing the Commission all requested information which was necessary for the investigation.

121. The State Office of Land Salzburg, which has under its responsibility, among others, the Internal Audit, the Accounting Unit and the Financial Department (notably the Budget Unit), should be considered as the main responsible for the fact that financial and non-financial accounts were misreported since, at least, 2008.
122. On the one side, the Internal Audit of the State Office of Land Salzburg failed to check the internal control procedures and the risk management of the Financial Department. On the other side, the Accounting Unit failed to control the bookkeeping records, both for the budgetary accounts and for the non-budgetary accounts.
123. The findings of the report demonstrate that the Financial Department, and notably the Budget Unit:
 - Ignored the recommendations of the RH⁸⁰, concerning the risky investments being undertaken;
 - Did not respect the four-eye principle in the course of its activities, namely concerning the opening of bank accounts and other financial positions, as well as in the context of the financial management of the *Landeswohnbaufonds*;
 - Forged signatures when entering into financial transactions;
 - Failed to follow basic accounting principles;
 - Falsified the minutes of the *Finanzbeirat* meetings sent to the RH in order to give a better impression of Land Salzburg's financial situation;
 - Falsified the financial statements sent to the RH in the context of the audits of the latter of the financial management of Land Salzburg;
 - Concealed bank accounts since, at least, 2003;
 - Incorrectly compiled the financial statements of Land Salzburg, notably by showing, in 2012, in the *Finanzschulden*, an amount of liabilities of EUR 874 million, whereas the actual amount was of EUR 3 507 million;
 - Incorrectly depicted the financial statements sent to the statistical authorities, leading to the concealment of EUR 1 192million in debt in 2012;

⁸⁰ *Finanzierungsinstrumente der Gebietskörperschaften in den Ländern Burgenland und Salzburg; Follow-up-Überprüfung* , <http://www.rechnungshof.gv.at/berichte/ansicht/detail/finanzierungsinstrumente-der-gebietskoerperschaften-in-den-laendern-burgenland-und-salzburg-follow-up-ueberpruefung-1.html>

- Provided false declarations to STAT, notably concerning the borrowing through the issuance of securities. Furthermore, it insisted with STAT that such financial positions should not be included in the debt of Land Salzburg;
- Manipulated Land Salzburg's accounts for several years, concealing and/or misreporting revenues, expenditures, financial transactions, financial positions and cash movements.

124. The role of the *Landtag* of Land Salzburg in the events described consisted in adopting article IV of the State Budget Law of 2006, which essentially gave the permission to the financial management of Land Salzburg to engage in high-risk financial transactions, where an economic advantage for the State could be expected. Furthermore, the *Landtag* did not appear to follow the recommendations regarding high-risk financial transactions made in 2009 by the RH, nor did it encourage the LRH to undertake in-depth audits of the accounts of Land Salzburg.

125. The role of the State Government, and more specifically that of the *Finanzreferenten*, consisted partly in granting powers of attorney to three employees of the Financial Department to engage in high-risk investments from 2002 onwards and partly in exempting the activities of the Budget Unit from being audited by the Internal Audit, in particular related to the internal accounting, public accounts and internal control procedures, and the Accounting Unit of Land Salzburg. Moreover, powers were granted to the Head of the Budget Unit to undertake financial transactions on behalf of the *Landeswohnbaufonds*, which meant that whenever that fund entered into transactions with the State Office, the same employee was acting on behalf of both entities without being monitored by other persons or entities. Those powers are to be considered as, possibly, the most important factor contributing to the development of the situation described in this report.

126. Furthermore, from May to December 2012, the State Government and the State Office of Land Salzburg were informed that irregularities in the financial management had occurred, and were internally investigating the issue. Nevertheless, those entities did not inform the RH, which at the time was concluding its follow-up on an audit report to Land Salzburg, or the judicial or the statistical authorities about those events and findings.

127. Additionally, during that period, the State Government of Land Salzburg decided to terminate hundreds of financial investments early, which had not previously been recorded in the accounts. In order to accomplish the early terminations, a former employee of Deutsche Bank was hired. That same person had for several years been the counterpart of the Budget Unit of Land Salzburg in the high-risk investments which were undertaken with the Deutsche Bank.

128. The LRH failed to effectively and efficiently audit the activities of the Financial Department and hence the accounts of Land Salzburg. Even if it has been argued that, at the time, the LRH did not have the necessary capacity to undertake in-depth analysis of

the accounts of Land Salzburg, it would have been possible to undertake some simple basic checks, notably a cross-check between information on lending provided by the OeBFA and the information published in the balance sheets of Land Salzburg. Moreover, it has been established in section 2.2.3 that the reports published by the LRH on the accounts of Land Salzburg, for the years 2008 and 2011, contained some incorrect statements.

129. After 31 August 2012, the RH failed to effectively follow up on the discrepancies it had found in the accounts of Land Salzburg as pointed out by STAT concerning the EUR 300 million in securities that were not reported in the balance sheets of Land Salzburg.
130. The OeNB failed to report financial derivatives to the Commission (Eurostat), in the transmission of the Austrian financial accounts⁸¹. Furthermore, its consolidation practices regarding the financial accounts were ineffective⁸².
131. The role of STAT in the events described concern both its responsibilities as the main Austrian statistical authority as well as its reporting duties to the Commission (Eurostat). Firstly, at least from 2010, STAT acknowledged the existence of discrepancies in the accounts of Land Salzburg, namely concerning the comparison of Land Salzburg's balance sheets with lending information from the OeBFA and with securities information from the security-by-security database provided by the OeNB. Even if STAT correctly implemented in the context of the EDP notifications the necessary changes to the data provided by the State Office of Land Salzburg, it is the opinion of the Commission that, under the principle of due diligence, other relevant Austrian entities, notably the BMF and the RH, should have been informed.
132. Secondly, and more importantly, even if STAT was fully informed, at least since 22 January 2013, that misreporting and manipulation had occurred in the accounts of Land Salzburg, it failed to immediately inform the Commission (Eurostat) of those facts. As a result, Eurostat approved without any reservation the figures covering years 2009 to 2012 provided in the context of the April 2013 EDP notification, although they were in fact incorrect.

⁸¹ In Austria's observations of 25 January 2017 on the preliminary findings of the investigation the OeNB states that it has no legal obligation to report data to Eurostat, either under European or national legislations. Nevertheless, the reporting of the Austrian ESA Table 27 to Eurostat was de facto undertaken by the OeNB until September 2014. Furthermore, all questions in the context of the verification of ESA Table 27 made by Eurostat were answered by the OeNB, showing that the OeNB had an effective and operational responsibility for that table.

⁸² See section 2.3.4.

4. CONCLUSIONS

133. On the basis of all the facts and reasoning described in this report, it can be concluded that the LRH and State Office and State Government of Land Salzburg, i.e. entities within the general government sector of the Republic of Austria, were seriously negligent in not ensuring appropriate compilation controls and reporting procedures. Thereby those entities facilitated the fact that the Budget Unit of the State Office of Land Salzburg could misrepresent and conceal financial transactions, leading to the misrepresentation of the actual data in the EDP notifications of 2012 and 2013 of Austria's debt data regarding 2008-2012⁸³ to Eurostat, i.e. after the entry into force of Regulation (EU) 1173/2011.
134. Although the conclusions regarding the main actors in section 3.1. above would indicate that the Budget Unit of the State Office of Land Salzburg had a clear intent to conceal and falsify information, the Commission does not find that those actions were undertaken with the specific intent of manipulating the EDP deficit and debt indicators presented to the Commission (Eurostat). Therefore the Commission considers that the behaviour of Budget Unit of the State Office of Land Salzburg amounts to serious negligence.
135. Finally, the report concludes that whereas the Commission (Eurostat) was only informed of this case on 10 October 2013, the Austrian statistical authorities were aware of the possibility of misrepresentation of the accounts of Land Salzburg since, at least, 6 December 2012. In addition, the report concludes that both Statistics Austria and the Austrian Central Bank were aware of sizeable inconsistencies⁸⁴ in the data reported by Land Salzburg, before the so-called 'financial scandal' became public at the end of 2012.
136. As a result, the data sent by Austria to Eurostat in the context of the EDP 2013 notification exercises were incomplete, insofar as significant amounts of liabilities were not reported, leading to the revision of the reported government Maastricht debt by EUR 1 192 million in the April 2014 EDP notification exercise, for the year 2012, corresponding to 0.4% of GDP.
137. Based on the findings in this report and regarding the behaviour of the authorities of the Member State in the period from 13 December 2011 until the launch of the investigation on 3 May 2016, the Commission has decided to adopt a recommendation to the Council to impose a fine on the Republic of Austria, as foreseen in Regulation (EU) No 1173/2011.

⁸³ Namely the aggregated number of reported years for the reporting in 2012 (for years 2008-2011) and in 2013 (for years 2009-2012), following the formula that data provided in year n concern years n-1, n-2, n-3 and n-4.

⁸⁴ The statistical authorities, according to the knowledge of the Commission, have never analysed if those inconsistencies were based on purely conceptual issues. In fact, the Commission has established that a material amount of such inconsistencies actually did not relate to such differences in concepts between Maastricht debt and national debt definitions.

ENDNOTES

^a For the video of that press conference see: <http://www.salzburg.com/nachrichten/salzburg/politik/sn/artikel/finanzskandal-in-salzburg-340-mill-verlust-durch-spekulationen-38965/>

^b In the meeting held between the Commission and STAT on 26 September 2016,

Commission: *"In April 2014 you notified an increase of debt of around Euro 1.2 billion, which means that STAT was estimating the debt of Land Salzburg at around Euro 2.3 billion. However, Land Salzburg was reporting in its balance sheet only around Euro 1.4 billion of debt. How could STAT estimate this without knowing the figures?"*

STAT: *"We had the information on the Rechtsträgerfinanzierung from OeBFA and we know that the Wohnbaufonds received a part of the amounts provided via the Rechtsträgerfinanzierung. We used the information provided by OeBFA and not the information directly provided by Land Salzburg."*

Commission: *"Do these figures include only the debt of Land Salzburg as an institutional unit or did they also include the debt of other units that compose the 'Salzburg State' in National Accounts?"*

STAT: *"The Euro 2.3 billion also included the debt of the Wohnbaufonds."*

Commission: *"Where is the Wohnbaufonds classified in national accounts? How are considered in national accounts the loans provided by OeBFA and passed through the State Office (core budget) to the Wohnbaufonds (extra-budgetary unit)"*

STAT: *"The Wohnbaufonds is classified in the government sector and the amounts provided via the Rechtsträgerfinanzierung are directly allocated to the Wohnbaufonds."*

STAT: *"The data provided by the reporting units are checked with the data coming from OeBFA and in case these data do not match we adjust it to reflect the OeBFA side."*

Commission: *"And for the years in question, 2002-2012, did STAT ever notice relevant discrepancies between the data reported by OeBFA and the data reported by Land Salzburg."*

STAT: *"Yes, always."*

^c On the meeting held between the Commission and STAT on 26 September 2016, when asked what the powers of STAT are regarding the accuracy and completeness of data reported by the entities, STAT replied that: *"There is the legal obligation to provide the requested data and STAT is compiling the national accounts data, amongst other things, on the basis of these data. The deadline for sending the data to STAT is the end of May and until mid of July it is possible to clarify open questions with the data providers or to update the data transmissions. If there are doubts concerning the data transmitted, it is possible to check with the entities and to use data of previous years. Until the 16th of September the reporting units can provide data updates and additional explanations. STAT has also the possibility to change the data, although it does not have the power to impose changes in data to the entities. (...)The Gebarungsstatistik (i.e. the public finance statistics) is an input to the compilation of national accounts data. The state governments can compile data on the basis of their rules/procedures but this does not have an impact on national accounts since the latter are compiled on the basis of ESA and are under the responsibility of STAT. The Länder can express their doubts on some compilation results which are also reflected in the discussions of the national stability pact but this does not affect the compilation done by STAT. "*

^d During the meetings with the State Office of Land Salzburg, the Commission enquired whether, it would be possible that the underreporting started even earlier than 2010. The State Office of Land Salzburg replied: *"We do not have this information since we were not able to reprocess the previous accounting statements. The Federal Court of Auditors has asked us to correct the previous accounting statements. However, from a practical point of view this is not possible (...)"* and therefore, *"(...) we cannot exclude that for years prior to 2010 liabilities were unreported."*

Furthermore, when asked as of when the hidden bank accounts of Land Salzburg were set up, the State Office of Land Salzburg replied: *"Since 2003."*

Finally, when asked whether the RH had found indication of these hidden bank accounts, the State Office of Land Salzburg replied that: "*Whereas [the Head of the Budget Unit] was likely to have provided all information requested concerning years 2007 and 2008 for the audit completed [by the RH] in 2009, this was not the case for the follow-up audit in 2011. For the latter audit [the Head of the Budget Unit] did not provide all information that was requested. Thus, it may be concluded that there was no hidden accounting before 2007.*"

^e During the meeting with the LRH, when asked to comment on the inclusion of such legal provision in the State Budget Law, the Head of the LRH argued that: "*For the state government of Salzburg the speculative part of the portfolio is now closed. [The Head of the Budget Unit] was responsible (...) for including article IV in the State Budget Law 2006. [The Head of the Budget Unit] wanted this and at that time the Landtag did whatever [the Head of the Budget Unit] wanted to do. The State Office of Land Salzburg also agreed with this. Due to this change it was possible to use the financial assets of the Landeswohnbaufonds for carrying out derivative transactions. [the Finanzreferent of that time] created the Versorgungs- und Unterstützungsfonds (VuF), primarily for tax purposes. It was possible to collect money in this fund and to generate income without paying taxes for this income. Nevertheless, such transactions had de facto started already in 2002.*"

^f When asked to comment on the extension of power conceded to the Head of the Budget Unit throughout the year, the State Office of Land Salzburg stated that: "*[The Head of the Budget Unit] had a high reputation in Austria. [The Head of the Budget Unit] was a member of the VR committee and was highly valued. Therefore, it had never been questioned why she had received such an amount of power.*"

^g When asked about the decision to let the Budget Unit not report to the Accounting Unit, the State Office of Land Salzburg stated that: "*In 2003 and 2004 there have been difficulties between the units 8/02 and 8/04 on the required details to be provided by unit 8/02 that were necessary for carrying out a proper accounting in the unit 8/04. The background of these difficulties was the establishment of a new extra-budgetary fund, the so called "VuF" (a pension provision fund) in 2003. Unit 8/04 asked for specific information on this new fund in order to correctly record the related transactions in the accounting system. The Finanzreferent took then a decision that the responsibility for this fund would be completely in the hands of unit 8/02 and unit 8/04 should not interfere with the VuF and should not ask any information on that. All accounting related issues should be carried out by unit 8/02 or as mandated by unit 8/02. There is an internal memo (Aktenvermerk) dated from 14 February 2008 stating that the four-eye principle was not being respected in this circumstance. It was clarified in this memo that the four-eye principle had to be respected in the future and that unit 8/04 – previously department 14 – is responsible for the monitoring of the payment execution. However, internal expenditures and revenues, i.e. payments between the core budget and the fund (Innenumsätze) were still exempted from the application of the four-eye principle. This memo corrected the previous memo dated from 2 February 2004. In 2002 the accounting unit of the Land Salzburg was an independent department. In the course of an organisational restructuring the department 14 was allocated to department 8 and received the status of a unit (8/04) within department 8. In fact, the set of accounts of VuF were not being recorded or monitored by the accounting unit between the years 2004 and 2008.*"

^h The State Office of Land Salzburg stated in the meeting with the Commission on 28 September 2016 that: "*The success of the VuF was very desired. The results of this fund made it possible to transfer a considerable amount to the budget each year.*"

ⁱ The State Office of Land Salzburg stated in the meeting with the Commission on 28 September 2016 that, "*The aforementioned memo which dates from 2004 was necessary since the operations had reached a certain dynamic, of short-term and fast transactions. For this kind of operations it was necessary to carry out quick decisions which made it necessary to take such a decision (the memo of 2004).*"

^j When in the meeting with the Commission on 28 September 2016 the former Director of the Accounting Department of the State Office of Land Salzburg (and Head of the LRH for years 2007-2012) was asked about his general concerns surrounding the swap operations he replied that, "*The first swap operations were probably carried out in 2003. The unit 8/04 wanted to reconstruct the related cash flows. This was, however, impossible, due to the complexity of these transactions and due to the lack of qualification of the staff that worked in unit 8/04 – it was very difficult to check these activities and extremely time consuming. The unit 8/02 complained to the hierarchy that the business processes would be blocked due to the questions asked by unit 8/04. There were stormy meetings with the Finanzreferent and the Director of the Financial Department. The Finanzreferent –*

(...) – thus decided that the success of the VuF was a priority and therefore it was considered vital that unit 8/02 could work efficiently. Hence, it was decided that unit 8/04 should not block the activities of unit 8/02 with questions. This and the new division of tasks between unit 8/02 and 8/04 was also put into writing in the aforementioned memo dated 2 February 2004."

The former Director of the Accounting Department further stated that: "Albeit trying to resist to such a situation, unit 8/04 was forced to accept that a separate accounting entity, i.e. the VuF, existed, which was excluded from the monitoring tasks of unit 8/04. In this separate accounting entity, investment operations were carried out and questions on these operations were regarded as undesirable. It was considered that the explanation of these operations by unit 8/02 was too time-consuming. I understand that there were a number of transactions which were considered as internal transactions. Unit 8/02 also carried out investment operations. However, when the decision was taken in 2004 that unit 8/04 should not examine these operations, we had to stop asking for more information on them."

^k According to the State Office of Land Salzburg, the essential bookkeeping activities were effectively directed by the Head of the Budget Unit and the staff in the accounting unit always carried out her orders, even if she was not formally the head of the Accounting Unit. Furthermore, it was explained that the Head of the Budget Unit was also able to work herself in the bookkeeping system.

^l When asked whether there had been any internal directive to exclude the Budget Unit from being audited by the Internal Audit, the State Office replied that, "(...) According to [its] knowledge, there was no specific directive stating that unit 8/02 did not have to be audited. In fact, the "Internal Audit" did not have the task to audit the whole State Office of Land Salzburg from 1999 onwards."

^m Excerpt of the introductory statement of the Head of the LRH during the meeting with the Commission on 27 September 2016,

"With the implementation of the "Landesrechnungshofgesetz", the LRH has been organized as an independent and supreme audit unit since 1993. The LRH follows the rule of the Law although the Landtag also reserves the right to ask for specific audits. As well, local government institutions can give hints to the LRH on specific issues for monitoring. The subjects of the audit which can be carried out by the LRH are defined in chapter 6 of the "Landesrechnungshofgesetz". Among others, the following main areas for audits are: the financial management and compliance ("Gebarung") of the state government of Salzburg and its funds, foundations, corporates or other entities; the recipients of public sponsorship and the financial management and compliance of the local governments with less than 10.000 inhabitants. The responsibility for local governments with 10000 and more inhabitants is with the RH. With respect to the "Gebarung", the audit of the LRH is focusing on whether compliance with the law is assured or on whether the figures are calculated correctly and/or on its economic efficiency and effectiveness. For entities in which the state government of Salzburg holds more than 25 percent of the equity, an audit is possible. As well, any institution or individual receiving public sponsorship is a potential target for monitoring. However, the LRH is free in its decision on whether the entity is to be audited or not. The LRH mentions in his reports the main findings, its suggestions and recommendations. A further review on whether the suggestions and recommendations have been implemented by the respective unit can be carried out. There is no possibility to enforce the implementation of suggestions and recommendations. The power of the LRH lies in the publicity of its reports. The LRH is independent and there is no reciprocal monitoring between the RH and LRH (see also article 127 (1) of the Austrian Constitutional Law which established that the LRH is not subordinated to the RH). The financial statements of the state government of Salzburg have not been subject to a clear audit competence until 1 April 2012. This means that the LRH was not obliged to audit but could decide to carry out audits under specific circumstances. Between 2005 and 2008 there was an initiative for carrying out voluntary audits since there were no clear rules for such a procedure. In 2009 the LRH started with the first self-initiated audit of the financial statements of the state government of Salzburg for the reporting year 2008. However, there was no clear audit procedure and [there was] a lack of legal regulations for this [kind of] audit, and in addition the available knowledge for carrying out an audit of financial statements was limited. The financial statements of 2009 and 2010 were audited within the same limited framework. The financial department itself was never subject to a detailed audit by the LRH in the period between 2002 and 2012. This was also a result of the coordination between the RH and LRH. The RH has the right to audit the state government of Salzburg and it has also the right to receive and audit the financial statements (see article 18 and 20 of the "Landesrechnungsgesetz" dated from 1930 and last amended on 30 August 2010). During all these years, [the Head of the Budget Unit] was, in substance, both trading and making the accounting and no one was

really checking what she was doing. In 2010 the LRH developed an audit procedure and discussions started with the Parliament to provide a legal basis for a mandatory audit. The 2011 Rechnungsabschluss was the first mandatory audit by the LRH on the accounts of Land Salzburg. There was coordination between RH and LRH. Basically, as the LRH knew that the RH was doing the audits to Land Salzburg, it did not do them."

ⁿ When asked what was audited by the LRH at the time of the events in question, the former Head of the LRH explained that: "The LRH had only a limited number of staff and resources. For the period 2008 to 2011, the "Rechnungsabschluss" was analysed by the LRH. The data are transmitted to the LRH at the end of March or at the beginning of April. The LRH had the obligation to provide a report to the Parliament within 4 weeks. We had two auditors which checked the data and after that we had to wait for the comments of the financial department. These two auditors have only four or five weeks to carry out their checks. This means that we can carry out only random checks; only checks between the years and that we have to concentrate on structural breaks. The Parliament knew that the analysis done by the LRH was not comparable with the work from accounting firms and that this analysis is not equivalent to a certificate. The LRH regulation does only allow carrying out audits and therefore we had to name as 'audits' these economic analyses. We were not able to analyse the entire portfolio of the state government of Salzburg. This was also part of the agreement with the R. in connection with the coordination of the audit projects."

^o The present Head of the LRH has explained that: "The point is that the LRH had a lack of know-how on how to audit such transactions at that time."

^p During the meeting with the State Office of Land Salzburg, the Commission asked the former Head of the LRH on the whether the conclusion drawn in the reports of the LRH for years 2008 to 2011, "The tests conducted by the LRH revealed that the accounting records and financial statements were duly made and complete. The cash balance is correct and proven by bank statements" meant that a cross-checking of bank statements was de facto done, stressing that such closing lines are commonly only added when an internal or external audit has been performed. To this question, the former Head of the LRH stated that: "We did not do this cross-checking."

^q During the meeting with the State Office the former Head of the LRH was also asked questions by Commission relating to his previous capacity as Director of the Accounting Department of the State Office of Land Salzburg. More concretely the Commission asked, why – given his experience in the financial management of Land Salzburg and his general concerns - he decided to make an economic analysis rather than an audit in the context of LRH's 2008-2011 audits of the financial management of Land Salzburg. The former Head of the LRH explained that: (...) in cooperation with the President of the Salzburg Landtag, it was decided to avoid discussion on less important details and that we should provide analyses that show the major developments surrounding the financial statements."

^r Asked during the Commission investigation who was the responsible person for the financial issues of the Landeswohnbaufonds, i.e. the person had effectively made the transactions and the accounting on behalf of, the Landeswohnbaufond, the State Office of Land Salzburg replied: "[the Head of the Budget Unit]"

^s Asked during the Commission investigation how it was possible, in practice, to comply with the four-eye principle in a unit with only three employees, the State Office of Land Salzburg replied that: "(...) the Director of department 8 [Financial Department] was also authorized to sign" and that "Of course the four-eye principle could not be assured. Furthermore, many times signatures were forged."

^t Asked during the Commission investigation whether hidden accounts had already been established in the years 2002 and 2003, the representative from the RH replied: "No information on hidden bank accounts was known in the two audits of the "Regional Funding Instruments" in the years 2009 and 2012. It was only during the audit, which culminated in the October 2013 report, that bank accounts were scrutinized."

The State Office of Land Salzburg supplemented the statement by the RH, explaining that: *"Everything was shown in the "Voranschlagsunwirksamen Gebarung" and the RH assumed that the swap and derivative transactions were linked with underlying transactions. In addition, [the Head of the Budget Unit] presented falsified minutes to the RH."*

^u Asked during the Commission investigation about the tasks of the *Finanzbeirat*, the State Office of Land Salzburg explained that: *"The Finanzbeirat had the task to report to the person in the state government responsible for financial affairs (i.e. the Finanzreferent)." And furthermore that: " The guidelines were signed by the "Finanzreferent" at the beginning of year 2006. Following that, [the Head of the Budget Unit] prepared the reports for the Finanzbeirat. However, the reports provided by [the Head of the Budget Unit] did not include all transactions; this misreporting to the Finanzbeirat started around the years 2005/06."*

Moreover, when asked to comment on how it could have been possible that the audit carried out by the RH in 2011/2012 found no incongruences in the financial statements, the State Office of Land Salzburg explained that: *"The indicators that had been sent to the RH by [the Head of the Budget Unit] were all wrong."*

^v When asked during the Commission investigation as of when the unreported bank accounts were set up, the State Office of Land Salzburg replied *"Since 2003."*

^w When asked during the Commission investigation what the *"Voranschlagsunwirksame Gebarung"* contains and why was that part of the *"Gebarung"* not checked, the LRH explained: *"In this part of the budget, normally, transition items are recorded. Nobody was suspicious that also balances were recorded in this part. Now, the "Voranschlagsunwirksame Gebarung" is intensively reviewed."*

^x When asked during the Commission investigation what was recorded in the hidden bank accounts, the State Office of Land Salzburg explained that: *"(...) Clearing accounts were in some instances used for the settlement of financial transactions, containing both outflows and inflows (...). For these bank accounts no information on the debt was available. This information was generated with the support of the banks involved. We sent letters to the banks to clarify the accounts. From the answers to these letters we could generate the stock of debt. (...)."*

^y When asked during the Commission investigation why the considerable movements in the *"Voranschlagsunwirksamen Gebarung"* had never been monitored, the State Office of Land Salzburg explained that: *"The pooling of tasks and the availability of personnel to check all this information resulted in [a situation of] "impermeability".*

The former Head of the Accounting Unit and of the LRH explained that: *"The accounting unit and the Regional Court of Auditors, then led by myself, indeed raised questions on the huge amounts recorded in the "Voranschlagsunwirksamen Gebarung". However, [the Head of the Budget Unit] explained that the amounts were related to interest rate swaps which were concluded. For example, if they concluded an interest rate swap for an amount of Euro 10 mn (fix in to variable) the amounts presented in the "Voranschlagsunwirksamen Gebarung" will sum up to Euro 20 mn (10mn for fix and 10 mn for variable) without any impact on the revenue and expenditure (cash flows)."*

^z Asked during the Commission investigation if the RH did not find any indication of the existence of hidden bank accounts, the State Office of Land Salzburg replied that *"Whereas [the Head of the Budget Unit] was likely to have provided all information requested concerning years 2007 and 2008 for the audit completed [by the RH] in 2009, this was not the case for the follow-up audit in 2011. For the latter audit [the Head of the Budget Unit] did not provide all information that was requested. (...)."*

^{aa} When asked during the Commission investigation if even the interest related to the unreported loans was not reported, the State Office of Land Salzburg explained that: *"The interest was not reported since for these loans a net accounting was carried out."*

^{bb} When asked during the Commission investigation if during the consolidation processes the OeNB used one raw data source and one output of that same raw data source, even if two raw data sources were available, the OeNB replied: "Yes"

^{cc} When asked during the Commission investigation what actions are undertaken and what information is exchanged with the LRH if the information regarding lending from the OeBFA is not identical to information reported by the Länder, the OeBFA replied: *"This information sent to the LRH is part of the works on the closing of accounts done by the LRH. In this sense, the cross-checking is the role of the LRH, and not the role of OeBFA, which means we do not cross-check these data. As well, we have never received any feedback from the LRH stating that there were discrepancies in the data."*

^{dd} When asked during the Commission investigation what kind of information the LRH received from the OeBFA and how that information was used, the representative of LRH explained that: *"OeBFA was receiving the financial statements from Land Salzburg so they should have cross-checked. (...)"*

^{ee} When asked whether [the Head of the Budget Unit] had conducted interest rate swaps, the former Head of the LRH and former Director of the Accounting Department replied that: *"Everybody knew that these complex swap transactions were being carried out, namely the courts of audit and the state parliament."*

^{ff} During the Commission investigation on 28 September 2016, the State Office of Land Salzburg explained: *"In July 2012 the Head of Department 8 [the Financial Department] investigated some financial positions and some transactions were cancelled."*

^{gg} When asked during the Commission investigation if the RH could provide information on on-going audits to STAT, the RH explained: *"The RH conducts its audits according to national and international standards. Regarding the process of the compilation of a report, at first each report is generated and discussed internally. Then the audited institutions get the chance to comment within 3 months on the suggestions the RH pointed out in his report. Those comments are acknowledged and displayed in the final reports and themselves again commented by the RH. This was also the case with the follow-up report of the RH concerning the Land Salzburg. The final report which was published on 6 December 2012 included the replies and comments of the Land Salzburg. The comments from Land Salzburg did not include anything that would point out to the issues that were later revealed, on the press conference by the State Office of Land Salzburg on the 6 December 2012. After the revelation of these issues, a new audit was launched by the RH and resulted in the RH report of October 2013."*

^{hh} When asked during the Commission investigation about the procedures followed by the RH between the finalisation of a report and its publication, the RH explained: *"The investigated institution gets the report on the same day it is published. The main stakeholders get the report a few days before."*

Furthermore, the LRH explained that: *"The whole procedure is tightly regulated. For example, the audited entity has three months to provide comments. The provisional report was sent to the "Amt der Salzburger Landesregierung" for comments before August 2012. There were no comments provided by "Amt der Salzburger Landesregierung", although they knew that there was an issue. Some persons did know about the issue but they decided not to inform the RH."*

ⁱⁱ During the Commission investigation on 28 September 2016,, the State Office of Land Salzburg stated that: *"It was not until October 2012 that [the Director of the Financial Department] informed us at a Finanzbeirat meeting that the portfolio which was being examined by us was in fact only a part of the total portfolio of Land Salzburg" and that "The indicators that had been sent to the Finanzbeirat by [the Head of the Budget Unit] were all wrong."*

^{jj} When asked during the Commission investigation why the issue of misreporting remained an internal one to State Office of Land Salzburg between May 2012 and 6 December 2012 and more specifically why RH, LRH and Statistics Austria were not informed, the State Office of Land Salzburg explained: "*[the Director of the Financial Department] did not intervene in the transactions that had been carried out by [the Head of the Budget Unit]. [the Director of the Financial Department] employed instead [a former employee of the Deutsche Bank] which had the necessary experience. It was only when [the former employee of the Deutsche Bank] gained an overview of the transactions - this happened in the second half of October 2012 – that certain problems became apparent. It was hence decided to find a solution to these problems.*"

^{kk} On the same question posed to the State Office of Land Salzburg, i.e. why the issue of misreporting remained an internal to the State Office of Land Salzburg between May 2012 and 6 December 2012 the former Head of the LRH stated that: "*As head of the LRH I did not receive any official information, although I heard some rumours. From September onwards [the Head of the Budget Unit] was sick and the State Office was looking for a new employee. On 1 September the State Office was able to recruit a new employee. In November 2012, [the Head of the Budget Unit] was asked [by the Finanzreferent and the Director of the Financial Department, in my presence] whether there were any risky transactions incurred by Land Salzburg and [the Head of the Budget Unit] answered negatively. [the Head of the Budget Unit] repeated this in the state parliament during the budgetary discussions.*"

^{ll} In an introductory statement to the meeting with the Commission on 26 September 2016 STAT said amongst others: "*(...) that after STAT became aware of potential problems with the data in the Land Salzburg (6 December 2012 press conference), there were major problems to meet the relevant persons in Land Salzburg to clarify the situation and to get the required data from the Land Salzburg*"

^{mm} When asked during the Commission investigation whether STAT brought up the press conference on 6 December 2012 in the electronic mails exchanged with Land Salzburg in the context of the April 2013 EDP notification, STAT explained: "*We did not mention anything about this in the emails during the first months of 2013. We got in contact with the Land Salzburg only after the April 2013 - Notification (...).*"

ⁿⁿ When asked during the Commission investigation when STAT first understood that there were irregularities in the data transmitted by Land Salzburg and how STAT was been informed about it, STAT explained: "*We read the press on 6 December 2012. In this context, we had a first meeting with representatives of the Land Salzburg in May 2013. From this we recognized that there might have been issues with the reporting of derivatives and EDP debt (reporting of loans). Finally, in October 2013, we identified that around Euro 2.1 bn of debt were not reported by the Land Salzburg in its balance sheet in the past. In this connection we also had a meeting – as you well know – with Eurostat. Before October 2013, Land Salzburg had not officially informed STAT and we did not receive updated data (corrections) from them. They provided only the quarterly debt data according to the existing reporting obligations without any further comments. The RH has also never reported anything to STAT.*"

^{oo} In the introductory statement to the meeting with the Commission on 26 September 2016 STAT stated amongst others: "*(...) the first meeting [with Land Salzburg] took place only on 7 May 2013. (...) During this meeting [the Head of the Financial Department] assured to STAT that the necessary data will be transmitted to STAT by August 2013.*"

^{pp} In the introductory statement to the meeting with the Commission on 26 September 2016 STAT said amongst others: "*(...), the Land Salzburg transmitted only flows (no stocks) in August 2013 to STAT. STAT used this information to compile the national stability pact reporting transition tables (6/7 September 2013). At that time the Land Salzburg had the right to comment on the "estimations" carried out for the Salzburg data. For this purpose the transition tables on deficit and debt were transmitted to Salzburg on 17 September 2013.*"

^{qq} During the meeting with STAT on 26 September 2016, the RH representative, who in July 2013 was an employee of STAT, stated: "*As final annual data on the closed accounts of the Land Salzburg for the year 2012 were not available for the calculation of ESA National Accounts, STAT used quarterly data to compile the National Accounts (...).*"

“ When asked during the Commission investigation whether there was a contact between STAT and the RH or the LRH before the report on Land Salzburg was published by the RH, STAT replied: *"There was no contact with the RH. During this time there was still no Memorandum of Understanding between STAT and the RH."*

Furthermore, the RH explained that: *"Issues and reports related to ongoing audits are not shared with third parties. There is no legal possibility for the RH to inform other persons or institutions in case of an ongoing audit."*