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5372/19

ACP 8
PTOM 5
FIN 42

'I/A' ITEM NOTE

From: ACP Working Party
To: Permanent Representatives Committee/Council
Subject: **EDF discharge procedure: financial year 2017**
Relations with the ACP States and the OCT - Discharge to be given to the Commission in respect of the financial management of the 8th, 9th, 10th and 11th European Development Funds (financial year 2017)

1. Article 11(7) of the Internal Agreement applicable to the 11th European Development Fund (EDF) states that the discharge for the financial management of the Fund shall be given by the European Parliament on the recommendation of the Council, which shall act by the qualified majority laid down in Article 8(3) of the Internal Agreement (see OJ L 210, 6.8.2013, p.1)¹.
2. The ACP Working Party examined the annual Report of the Court of Auditors on the European Development Funds for the financial year 2017, together with the Commission's replies to the Court's observations (see OJ C 357, 4.10.2018, p. 315), in the presence of a representative of the Court of Auditors.

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

3. At the end of its discussions, the Working Party:
 - agreed on the comments in [Annex I](#) regarding its examination of the Court's report;
 - instructed the Secretariat to draw up draft recommendations for a discharge, to be submitted to Coreper and the Council for adoption.

4. It is therefore suggested that, subject to confirmation by Coreper, the Council should:
 - endorse the comments by the [ACP Working Party](#) on the Court of Auditors Annual Report on the activities funded by the 8th, 9th, 10th and 11th European Development Funds (EDFs) for the financial year 2017, as set out in [Annex I](#);
 - adopt the recommendations regarding the discharge to be given by the European Parliament to the Commission in respect of the implementation of operations under the 8th, 9th, 10th and 11th EDFs for the financial year 2017, as contained in documents [5368/19](#), [5369/19](#), [5370/19](#) and [5371/19](#), drawn up by the Legal/Linguistic Experts;
 - arrange for the recommendations, accompanied by the comments in [Annex I](#), to be forwarded to the European Parliament and to approve the draft letter in [Annex II](#) to that effect.

**Comments by the ACP Working Party
on the Court of Auditors Annual Report¹
on the activities funded by the 8th, 9th, 10th and 11th
European Development Funds (EDFs) for the financial year 2017**

1. The Working Party welcomes the fact that, in the European Court of Auditors' opinion, the Commission's report on the financial management of the EDFs, established in accordance with Article 49 of the 11th EDF Financial Regulation, accurately presents financial information concerning the EDFs.
2. The Working Party notes the Court's conclusions that:
 - the EDFs' accounts for the financial year 2017 present fairly, in all material aspects, their financial position, the results of their operations, their cash flows and the changes in net assets;
 - the revenue of the EDFs was free from material error.
3. The Working Party is concerned, however, that the Court's Annual Report on EDF activities for the financial year 2017 shows that, despite numerous efforts undertaken by the Commission, the estimated level of error has significantly increased compared to the previous years. It urges therefore the Commission to continue working towards reaching the agreed target of 2 % error rate.

¹ OJ C 357, 4.10.2018, p. 315.

4. The Working Party is concerned that EDF payments underlying the accounts for the financial year 2017 are materially affected by error, with the estimated most likely error rate being 4,5 %. It also notes that the two categories of error accounting for more than 70 % of the estimated level of error are "expenditure not incurred" and "absence of essential supporting documents". The Working Party notices that 33 % of quantifiable errors occurred on final transactions which were subject to ex-ante checks and that in a number of cases the Commission had sufficient information to prevent, or to detect and correct, the error before accepting the expenditure.
5. The ACP Working Party further notes that transactions under the African Infrastructure Trust Fund (AITF) show quantifiable and non-quantifiable errors which are linked, on the one hand, to the use of estimations and, on the other hand, to a failure of certain ex-ante controls to detect ineligible costs before acceptance. The Working Party remains concerned at the Court's findings that should the Commission have used all the information at its disposal, it could have lowered the estimated level of error by 1,8 percentage points. Therefore, the Working Party expects the Commission to step up its efforts to prevent, detect and correct errors, pay more attention to ex-ante checks and take appropriate measures to address existing weaknesses.
6. The Working Party welcomes, along with the Court's findings, the efforts made by the Commission to reduce old open pre-financing and old outstanding commitments (RAL – reste à liquider), as well as the number of open expired contracts and the errors in the encoding of recoveries of unspent pre-financing. It notes with satisfaction that the Commission's target was largely exceeded with a considerable reduction in old pre-financing and old outstanding commitments. At the same time, it also notes that, as far as the reduction of old expired contracts is concerned, the set target was reached for the general budget, however, further actions are needed for the EDFs. In this respect, the Working Party urges the Commission to take the necessary measures.

7. The Working Party calls on the Commission to continue monitoring the ageing of the advance contributions made to trust funds and to with clarity reflect the results of such monitoring in its annual reports, including those for the trust funds. The Working Party takes note of the Court's recommendation No. 5 and calls for the Commission to consider its implementation.
8. The **ACP Working Party** expresses concerns that, similarly to the previous two years, the Court's report revealed cases where recoveries of unspent pre-financing were recorded as operational revenue. In this regard, the Working Party welcomes that the Commission issued detailed instructions to staff on the correct encoding of recovery orders and encourages it to make sure that the guidelines are fully implemented.
9. The Working Party welcomes the Commission's efforts to improve the quality of its own internal control system, notably by enhancing its 2015 Action Plan with measures targeting high-risk areas, and by adding to its 2017 Action Plan six new measures intended, for example, to reduce errors arising from programme estimates, amend certain contract templates and reflect changes in the new Financial Regulation. The Working Party acknowledges the satisfactory progress achieved in the implementation of the 2015 and 2016 Action Plans. It is nonetheless concerned about the Court's finding that the frequency of errors continue to point to weaknesses in the quality of ex-ante audits and expenditure verifications.
10. The Working Party urges the Commission to fully execute the 2017 Action Plan and awaits its assessment by the Court in the next year's annual report. Moreover, the Working Party looks forward to an update from the Commission on the implementation of this Action Plan at the end of the first half of 2019, including an update on the implementation of the recommendations in the Court's report from 2017.
11. The Working Party acknowledges the improvements achieved by the Commission through putting in place, in 2016, of a quality grid to assess the reliability of audit reports and welcomes the adoption, in March 2018, of the revised terms of reference (ToR) for expenditure verification intended to improve the performance of ex-ante checks. The Working Party encourages the Commission to sustain its efforts to ensure the efficiency of ex-ante checks.

12. The Working Party welcomes that the Commission, in its 2017 Residual Error Rate (RER) Study, estimated the RER to be within the 2 % materiality threshold for the second year in a row. Nevertheless, the Working Party notes that, in an unusual high number of cases, full reliance was placed on previous control work. It calls on the Commission to further improve the monitoring of the work carried out by the RER contractor in order to follow-up more closely the number of full reliance cases, thereby avoiding such a situation in the future.
13. The **ACP Working Party** notes that, in its 2017 Annual Activity Report (AAR), the Commission did not specify the limitations of the RER study. It is concerned about the fact that the changes in the approach of the 2017 RER study also affected the 2017 declaration of assurance which, this time, includes only grants under direct management and calls on the Commission to revert to the more prudent approach used in previous years.
14. In agreement with the Court, the Working Party acknowledges that improvements should be made in certain important areas, and supports the recommendations of the Court of Auditors. Areas of particular importance are:
 - closely monitoring the implementation of the RER study, particularly that the full reliance decisions are fully in line with the methodology and justified;
 - disclosing again in the AAR the limitations of the RER study;
 - taking decisive steps to de facto enforce the guidance on accepting expenditure to avoid excess clearings;
 - taking measures to ensure that only incurred costs are accepted as expenditure for AITF transactions.

15. As far as recommendation No. 6 is concerned, the Working Party underlines that discussions within the Council and its preparatory bodies in the context of the Multiannual Financial Framework 2021-2027, regarding the possible inclusion of the EDF into the general budget, should not be pre-empted.
16. While noting the Court's conclusions and recommendations (paragraphs 46 and 47 of the Report), the Working Party takes also note of the replies given by the Commission.
17. The ACP Working Party welcomes the fact that the Commission is implementing the Court's previous recommendations made in its Annual Report of 2014, noting however that the Court's review of progress in addressing these previous recommendations reveals that one recommendation is not yet fully implemented. The ACP Working Party therefore urges the Commission to fully apply the new RER methodology and manual in order to address the remaining issues raised by the Court.

DRAFT LETTER

To: President of the European Parliament

From: President of the Council

Sir,

I am forwarding under separate cover the Council recommendations of 12 February 2019 on the discharge to be given to the Commission in respect of the implementation of operations under the 8th¹, 9th², 10th³ and 11th⁴ European Development Fund for the financial year 2017 accompanied by the comments of the ACP Working Party⁵ on the Court of Auditors Annual Report on the activities funded by the 8th, 9th, 10th and 11th European Development Funds (EDFs) for the financial year 2017.

[Complimentary close].

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- 1 Doc. 5368/19 ACP 4 PTOM 1 FIN 38.
 - 2 Doc. 5369/19 ACP 5 PTOM 2 FIN 39.
 - 3 Doc. 5370/19 ACP 6 PTOM 3 FIN 40.
 - 4 Doc. 5371/19 ACP 7 PTOM 4 FIN 41.
 - 5 Doc. 5372/19 ACP 8 PTOM 5 FIN 42.