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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

on the follow-up to the discharge for the 2014 financial year (Summary)

{SWD(2016) 338 final}
{SWD(2016) 339 final}

REPORT ON THE FOLLOW-UP TO THE REQUESTS MADE BY THE EUROPEAN PARLIAMENT IN ITS DISCHARGE RESOLUTIONS AND THE COUNCIL IN ITS DISCHARGE RECOMMENDATION FOR THE FINANCIAL YEAR 2014¹

INTRODUCTION

The discharge for the financial year 2014 was marked by the alignment of the most involved European Institutions – European Parliament (EP), Council, European Court of Auditors (ECA), Commission - on the importance of focusing on the performance of the EU budget. In the discharge proceedings, a new balance was thus struck between issues relating to the results delivered by the EU budget and issues concerning the formal compliance with rules.

The Commission welcomes this new approach which is in line with the commitment made by the Juncker Commission, at the start of its mandate, to strengthen the performance culture in relation to the EU budget. The commitment was followed up in 2015 with the launch of the 'Budget Focused on Results' (BFOR) initiative which covers a broad range of activities, including simplification of rules, improving information on performance of policies and ensuring cost-effective controls.

In 2015, progress was made on the BFOR initiative in relation to inter alia developing a conceptual framework, reinforcing programme statements in the annual budget, and upgrading the Commission's Strategic Planning and Programming cycle. The work continues in 2016 with e.g. meetings of the expert group on performance based budgeting, a streamlining of reporting on both performance and compliance issues in the new Annual Management and Performance Report, and the review of the Financial Regulation.

Also the ECA stressed the need for a revised balance between performance and compliance issues, calling for a 'wholly new approach to investment and spending' when it published its Annual report concerning the 2014 financial year. It invited EU decision-makers, EU legislators and financial managers to ensure that EU funds are spent in line with strategic priorities and achieve the intended results.

These issues were discussed extensively during the discharge proceedings in the EP as well as in the Council.

In particular the EP's rapporteur for the discharge of the Commission, Mrs Dlabajová, emphasised the need to ensure "*continuity and innovation*" in the discharge. In addition to increasing the focus on performance issues, the rapporteur also reacted to the Commission's follow-up of requests made by the EP in past discharge proceedings. Vice-President Georgieva supported this approach and stated that: "*We should learn from the past to secure a better future, and discharge is fantastic in this regard*"².

¹ Pursuant to Article 319(3) of the Treaty on the Functioning of the European Union (TFEU) and Article 166 of the Financial Regulation. The discharge resolutions and the Council Recommendation are available on <http://www.europarl.europa.eu/committees/en/cont/discharge-2014.html>

² Statement made by Vice-President Georgieva during the plenary debate in the EP (27.4.2016).

In the letters from Vice-President Georgieva to the EP during the discharge proceedings³, evidence was given of the Commission's formal commitments to implement fully and timely a series of actions and measures related to the issues identified.

The present report takes into account these commitments whilst updating, where relevant, the situation by providing an overview of further actions taken up to now. It is accompanied by two Commission Staff Working Documents containing replies to 350 EP and 57 Council specific discharge requests.

The Commission agrees to start new actions on 100 requests (88 from the EP and 12 from the Council). It considers that for requests 272 (227 from the EP and 45 from the Council), the required action has already been taken or is on-going, though in some cases the results of the actions will need to be assessed. Finally, for reasons related to the existing legal and budgetary framework or its institutional role or prerogatives, the Commission cannot accept 35⁴ requests from the EP. A detailed justification is provided in the attached Commission Staff Working Document⁵.

1. COMMISSION COMMITMENTS WITH REGARD TO DISCHARGE PRIORITIES

During the discharge proceedings, the discharge rapporteur and other Members of the Budgetary Control Committee raised a number of issues which are reflected in requests made in the EP's discharge resolution.

Some of these issues were also raised during the discharge proceedings in the Council.

In the letters by Vice-President Georgieva, evidence was given of the Commission's formal commitment to implement fully and timely a series of actions and measures relating to these issues and in particular:

-How to reconcile long term political objectives with the Multi-annual Financial Framework (MFF). The Commission is firmly committed to seeking a financial programming with adequate budgetary means for longer term policy priorities, such as growth and jobs, while maintaining sufficient flexibility so as to be able to address new challenges with the support of the EP and the Council in their roles as budgetary and legislative authority. The mid-term review examines the functioning of the current MFF, and includes proposals to improve the delivery on EU priorities, including on its ability to respond to the major challenges facing the EU. This revision of the 2014-2020 MFF provides an opportunity for a discussion at political level on how best to balance budgetary means with political priorities.

-How to ensure a stronger link between Union level objectives, partnership agreements and operational programmes. The Commission is firmly committed to implement the legislative framework put in place by the EP and the Council in order to fulfil its reporting obligations with regard to the contribution of the European Structural and Investment Funds (ESI funds) to the achievement of the Union Strategy for smart, sustainable and inclusive growth.

³ Ares(2016)899463 (22.02.2016), ARES(2016)1254065 (11.03.2016)

⁴ See §§ 3, 15, 16, 34, 35, 39, 40, 46, 48, 75, 76, 79, 80, 83, 125, 142, 148, 150-152, 154, 156-158, 164, 176, 185, 195, 205, 233, 241, 282, 309, 335, 336 of the CSWD on the EP resolutions.

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-DG AGRI's reporting on the distribution of direct support to farmers. DG AGRI envisages developing reporting progressively over the next years to gauge the effects of the 2013 Common Agricultural Policy (CAP) reform. Such reporting would offer a solid basis for any future political decisions. The Commission committed to start reporting on the distribution of CAP support already in DG AGRI's 2015 Annual Activity Report.

-The approach for revisions of Gross National Income. The Commission has created two Task Forces in the field of revisions of Gross National Income balances. One Task Force was set up by the Directors of Macroeconomic Statistics and is focussing on Benchmark Revision Policy. The second was set up by the Committee on Monetary, Financial and Balance of Payments Statistics and is charged with looking into a harmonised European revision policy. The objective is to develop common European guidelines before the end of 2016.

-A long-term cash flow forecast for the EU budget. In its communication on the mid-term review of the MFF, the Commission has presented a payment forecast assessing the sustainability of the current ceilings and including the estimate of de-commitments and the evolution of RAL until the end of the current MFF.

-Review of the Code of Conduct of Commissioners. The Commission is committed to lead by example and to ensure that its Code is up to highest standard. As regards post mandate activities of the former Members, the Code of Conduct foresees, during a period of 18 months, both the obligation to notify envisaged activities and the prohibition of lobbying or advocacy for Members of the Commission on matters for which they have been responsible during their mandate. Furthermore, Article 245 al 2 of the TFEU stipulates that the obligations of integrity and discretion continue beyond their term of office.

-The European Schools' follow-up of recommendations made by the ECA. The Commission will continue to be proactive in supporting the European Schools, while respecting their full autonomy. The Commission will not hesitate to vote in the Board of Governors of the European Schools against the discharge to the Schools if it considers that actions proposed are insufficient to mitigate risks.

-Publication by the DGs concerned in their Annual Activity Reports on their contribution to the Country Specific Recommendations (CSRs) adopted in the European Semester. The DGs concerned will continue to report on their contribution to the European Semester CSRs in their Annual Activity Reports in the 2015 and consecutive exercises.

-Working arrangement between OLAF and its Supervisory Committee. The Commission presented its proposal to the co-legislators on 4 March 2016.

-Tobacco agreements (specific comments are provided under item 5.3 below).

-Asylum and migration. Commissioner Avramopoulos appeared before the EP budgetary control committee on 13 July 2016 presenting the state of play of the financing and implementation of the measures taken by the Union in this field with particular focus on the control and reporting systems.

The Commission has also followed up on the EP's specific request not to adopt the new framework for Commission expert groups until a meeting of First Vice-President Timmermans, the European Ombudsman, key members of the EP and civil society has taken place. The Commission confirms that the First Vice-President and his cabinet have been meeting with all relevant actors as referred to in the EP's resolution, in the preparation of the new rules, in different formats and on different occasions, and more meetings at political level have been proposed. The Commission therefore considers that it has fulfilled this request by the EP.

2. PERFORMANCE AS A SECOND PILLAR IN THE DISCHARGE

The EP and the Council both support the introduction of performance as a second pillar in the discharge, complementing the "traditional pillar" of compliance issues. This new approach is consequently reflected in the key requests made by the two institutions concerning the 2014 discharge.

The EP has put forward two main requests concerning respectively the reconciliation of the MFF and the political programming periods and a stronger link between Europe 2020 objectives and the partnership agreements and operational programmes.

In her letters earlier mentioned, Vice-President Georgieva underlined that the Commission is firmly committed to: a) seeking a financial programming with adequate budgetary means for longer term policy priorities; and b) implement the legislative framework put in place by the EP and the Council in order to improve reporting on the contribution of the ESI Funds to the achievement of the Union's strategy for smart, sustainable and inclusive growth.

Furthermore, the EP requests the Commission to make fuller use of the scope afforded by existing legislation with regard to the performance reserve. The Commission will indeed implement the possibilities offered by the legal basis and considers that the present legal framework already gives sufficient incentive to Member States to enhance performance. If further strengthening of the performance reserve rules is needed, it will be taken up in the preparation of the post-2020 period.

The EP calls on the Commission to improve its reporting on performance issues. The Commission has presented the new Annual Management and Performance Report for the 2015 EU Budget⁶ combining two former reports: the Annual Evaluation Report produced in accordance with Article 318 of the TFEU and the Synthesis Report required by Article 66 (9) of the Financial Regulation. Bringing together information on the performance and management of the EU budget, this report provides a comprehensive overview of how the EU budget supports the Union's political priorities and the role the Commission plays in fostering a culture of performance as well as in ensuring and promoting the highest standards of budgetary management. The report is an important contribution by the Commission to the annual budgetary discharge process.

"Focus, speed and results" are the guiding principles of a number of initiatives, which fall into four different areas as illustrated in the new Annual Management and Performance Report. This approach shows the Commission's commitment to streamline reporting on the performance of the budget.

The BFOR initiative strives for continuous progress in this area. Specific improvements were already introduced during 2015 in the Commission's Strategic Planning and Programming cycle as well as in the budgetary procedure. These changes enhance performance planning, monitoring and reporting for all programmes.

3. ADDRESSING THE LEVEL OF ERROR

The EP and the Council have made requests concerning compliance issues based on the ECA's findings set out in its 2014 annual report as well as information provided by the

⁶ COM(2016)446final

Commission in discharge-related reports such as the Synthesis Report of the Commission's management achievements in 2014, and the Communication on the Protection of the EU budget to end 2014.

In response to the request by both the EP and the Council to apply strictly Article 32(5) of the Financial Regulation, the Commission will carry out analyses of “areas of persistently high levels of errors” and report on the root causes and on measures taken to address them, while ensuring cost-effectiveness of controls.

In this respect, the Commission is committed to continue close coordination with the Member States and other entities entrusted with the implementation of the EU budget, to identify areas where concerted action is necessary or is considered likely to be beneficial. Preventive action such as providing guidance to Member States or suspending/interrupting funds will be taken when appropriate.

As requested by the EP and the Council, the Commission, in cooperation with Member States, will continue to use all information available to prevent, detect and correct possible errors. It is also committed to further simplify rules as part of the review of the Financial Regulation, and it will follow up on the simplification exercise for the CAP launched by Commission Hogan as well as the conclusions and recommendations from the High Level Group monitoring simplification for beneficiaries of ESI Funds.

The EP has requested the Commission to assess for each policy domain and for the Union budget as a whole, the level of error remaining after corrective measures, while taking into account the multi-annual nature of programmes. It has also requested the Commission to revise the method of calculating the corrective capacity in time for the 2015 discharge.

The Commission has followed up on both requests in its Annual Management and Performance Report for the 2015 EU budget by presenting its best estimate of the so-called "amount at risk at closure" for each policy area and for the budget as a whole. The amount at risk at closure is the Commission management's estimate for the level of error after all corrective measures have been implemented at the close of the programmes⁷ and is calculated on the basis of all relevant data and using professional judgement. It appropriately reflects the fact that the control cycle is multiannual and that further corrective measures will be implemented after errors have been identified. The intention is not to replace the assessment of the ECA but to provide a complementary view.

The EP has requested the Commission to work closely with Member States to guarantee comprehensive, exact and reliable data keeping in mind the goal of full implementation of the Single Audit approach.

The Commission carries out consistency checks on Member States' data such as control statistics for CAP spending, and the annual financial corrections statements for all Member States and operational programmes in the areas of Cohesion policy. In addition, through its annual risk assessment the Commission identifies targeted audit missions and follows up any weaknesses identified. The results of the audit work lead to corrections in the reporting from national authorities and improve the basis for the estimation of the level of error. More information on these issues are available in the Annual Activity Report of the relevant DGs.

⁷ For annual programmes, this refers to the moment in time in which all corrective controls have been implemented. This typically takes place several years after the payment, depending on the modalities of the programme.

For agricultural spending, from financial year 2015 Certification Bodies in Member States have to sample and re-verify the controls initially made by Paying Agencies. The Commission developed detailed guidelines in order to support and guide the Certification Bodies in this new role.

For Cohesion, during the implementation of the 2014-2020 programming period, the accuracy of the information on financial corrections will be covered by the audit authorities' annual opinion on the accounts.

4. PRESSURE ON THE BUDGET

The EP requests to assess all flexibility provisions of the MFF and propose measures for overcoming insufficient absorption capacity. As already mentioned, in its communication on the mid-term review of the MFF, the Commission has presented a payment forecast assessing the sustainability of the current ceilings and including the estimate of de-commitments and the evolution of RAL until the end of the current MFF.

Furthermore, the Commission is fully taking into account the ECA recommendations concerning capacity constraints in some Member States, especially in the area of ESI Funds.

As for the CAP, the EAFRD⁸ provides Member States with pre-financing for implementation of their 2014-2020 programmes. For the programming period 2014-2020, the Commission increased by one year the time period during which Member States have to implement budgetary commitments. Currently, the N+3 rule applies, which means that Member States have 4 years to implement EAFRD funds. This new rule will enhance utilisation of funds by Member States.

Concerning Cohesion Policy, the Commission took the initiative to tackle absorption problems in a flexible way, creating the Task Force for Better Implementation. This Task Force has agreed action plans, ensuring an exchange of experience and good practices. It has supported some Member States into looking at the situation of their programmes and into actively searching for solutions to some of the challenges faced, while continuing to ensure strict compliance with the applicable rules.

The Commission will be able to assess the full impact of the Task Force on Member States' use of the 2007-2013 budgetary allocations after the closure of all relevant programmes. For the 2014-2020 period, all national authorities are strongly encouraged to jump start programme implementation.

5. SPECIFIC ISSUES

5.1. GLOBAL EUROPE - EXTERNAL ASSISTANCE MANAGEMENT REPORTS (EAMR)

Several requests have been addressed to the Commission in relation to the EAMRs reports, such as monitoring system of ongoing projects and up-to-date report, corrective action concerning problems related to projects.

⁸ European Agricultural Fund for Rural Development.

The Commission points out that project assessment in the EAMRs is a snapshot of the situation of each project at the end of the year. Red and orange traffic lights highlight risks identified by project managers with regards to the implementation of the activities or the achievement of the objectives at the end of the year. This system alerts the hierarchy in Delegation and Headquarters, so that necessary corrective measures are taken. The actual impact of the identified difficulties can only be assessed by the end of the project. The financial impact of the difficulties and delay encountered during the implementation of the projects should be measured cautiously.

Following up on the EP's request to provide a report on the state of projects including the neighbourhood policy aid programmes, DG NEAR intends to introduce this assessment for 2016.

The EP also calls for the implementation of internal control procedures to ensure that pre-financing is cleared on the basis of actual incurred expenditure and not on the basis of legal commitments. In response to this request, the Commission has further clarified the relevant rules.

As from January 2016, EU Delegations and DEVCO operational services have to complete and update a "Monitoring and Evaluation Plan" with respect to the management of their portfolios, including key monitoring events and activities, on an annual basis for monitoring and on a multi-annual basis for evaluations. The planning should be based on a risk analysis carried out by the EU Delegation or the operational unit in the Headquarters concerning the overall portfolio of projects and programmes. Methodological guidance with respect to risk management has been provided in the 2012 Budget support guidelines. With respect to Project modality, the guidance is to be provided in the guidelines for Project and Programme Cycle Management.

In the enlargement and neighbourhood countries, a key priority continues to be the need to address the effects of the refugees and migration crisis. The Commission has increased funding and flexibility for this priority to allow a rapid and well-targeted response.

Moreover, in order to respond to the fast changing priorities, the Commission is also ensuring the ability to reallocate funds within Instrument for Pre-accession Assistance II to allow in 2016 the rapid funding of interventions to address the migration issue including a contribution to the Syria Trust Fund to support the creation of reception facilities for refugees in the Western Balkans.

Finally, the Commission is requested to provide the EP every year with a global assessment of the EAMRs and report in the Annual Activity Reports of DG DEVCO and DG NEAR on measures taken to redress the situation in the delegations with implementation problems.

Action plans for 22 DEVCO Delegations that achieve less than 60% of their Key Performance Indicators (KPI) in 2014 were transmitted officially to the EP on 5 November 2015. Furthermore, detailed analysis of KPI results for financial year 2015 is included in the Annual Activity Report of DG DEVCO.

As far as DG NEAR is concerned, EAMRs have been introduced in 2015. KPIs relating to project assessment will be introduced in the 2016 EAMRs and will be further analysed in the context of the 2016 Annual Activity Report.

5.2. OLAF

As regards the EP's requests concerning OLAF's implementation of the recommendations of its Supervisory Committee, OLAF points out that it has always followed up on the Supervisory Committee's recommendations. All recommendations issued by the Supervisory Committee have been carefully assessed and discussed across OLAF and implemented where possible. The replies of OLAF are publicly available on its website.

As regards the access of the Supervisory Committee to OLAF documents, the Commission considers that the Supervisory Committee should be given such access in line with the applicable legal framework. As there are differences in interpretation of the legal provisions by OLAF and the Supervisory Committee, the Legal Services of the EP, the Council and the Commission are working together to clarify the interpretation to be given to the provisions concerning the Supervisory Committee's access to OLAF's documents.

As regards the request for OLAF to draw up internal rules on whistleblowing, the Commission considers that appropriate measures are already in place. The Commission Guidelines on Whistleblowing⁹ apply to OLAF. They cover confidentiality, reporting procedures, protection of whistle-blowers, feedback to the whistle-blower and guidance and support to the whistle-blower. In addition to this, OLAF has adopted on 27 July 2015 a specific procedure in the context of EU staff members reporting in accordance with Articles 22a and 22b of the Staff Regulations. On this basis, OLAF's internal procedure (including confidentiality), protection against retaliation and the role of the ethics officer were clarified.

Finally, concerning the request that OLAF should provide in its annual report information on the type of investigations and results in all sectors, OLAF strives to ensure that the information in its report is relevant to the needs of readers and will consider ways to include the data requested in its following annual reports building on the evidence presented in the OLAF Report 2015 published on 31 May 2016.

5.3. TOBACCO AGREEMENTS

After the expiry of the agreement with Philip Morris International (PMI), the Commission will continue the effort to fight against illegal tobacco trade, by concentrating on cheap whites, strict law enforcement and strengthened international cooperation and implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products to the WHO Framework Convention on Tobacco Control (FCTC Protocol).

The EP calls for an action plan setting out new measures to address illicit tobacco trade ("cheap whites"). The Commission is aware of the growing problem of so-called 'cheap whites' on the illicit tobacco market in the EU. This issue also featured prominently in the Commission's 2013 Strategy Paper on Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products¹⁰. The Commission is due to present a report on the implementation of the 2013 Strategy later this year.

On the EP's call to bring forward a new additional regulation establishing an independent track-and-trace-system and applying provisions to raw cut tobacco, filters and papers used by the tobacco industry, the Commission considers that the focus should be, in particular, the implementation of the new Tobacco Products Directive and its provisions on tracking and

⁹ SEC(2012) 679.

¹⁰ COM(2013) 324 final.

tracing which will apply from May 2019 (for cigarettes and roll-your-own tobacco) and from May 2024 (for other tobacco products). The Commission is currently analysing ways, which are legally viable and practically feasible, to follow up the EPs request regarding the tracking and tracing of PMI tobacco products after the expiry of the PMI agreement.

Concerning the assessment of tobacco agreements, the Commissions recalls that the assessment of the PMI tobacco agreement was published on 24 February 2016¹¹ and transmitted to the EP.

Finally, as regards the implementation of Article 5.3 of the WHO FCTC, as well as the publication of the "assessment agreements" with tobacco companies and an impact assessment of the implementation of the WHO FCTC, the Commission points out that the EU and all Member States are parties to the WHO FCTC and implement it according to their respective competence areas. An impact assessment of the FCTC implementation is not foreseen.

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¹¹ SWD(2016) 44 final.