



Brussels, 10 January 2018
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5083/18

ACP 6
PTOM 5
FIN 17

'I/A' ITEM NOTE

From: ACP Working Party

To: Permanent Representatives Committee/Council

Subject: **EDF discharge procedure: financial year 2016**
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 2016)

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 2016, together with the Commission's replies to the Court's observations (see OJ C 322, 29.9.2017, p. 281), 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 to refer to Coreper and the Council 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:
 - 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 2016, as contained in documents 5078/18, 5079/18, 5080/18 and 5082/18, drawn up by the Legal/Linguistic Experts;
 - arrange for the recommendations 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
concerning the activities funded by the eighth, ninth, tenth and eleventh
European Development Funds (EDFs) for the financial year 2016**

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 revenue of the EDFs was free from material error;
 - the global commitments entered into by the EDFs were also free from material error.
3. The Working Party notes, however, that the Court's Annual Report concerning EDF activities for the financial year 2016 shows that the error rate has not decreased substantially compared to the previous year and that this error rate is still too high. The Working Party notes that this error rate is substantially higher than the one observed in Heading IV of the general budget, and encourages the Commission to continue working towards reaching the agreed target of 2% error rate.
4. The Working Party acknowledges, along with the Court's findings, the efforts made by the Commission to reduce old open prefinancing and old outstanding commitments (le RAL (le reste à liquider)), as well as the number of open expired contracts and the errors in the encoding of recoveries of unspent prefinancing. The Working Party considers, however, that further progress is needed, and encourages the Commission to continue to pursue its efforts in 2017.

¹ OJ C 322, 29.9.2017, p. 281.

5. The Working Party notes with concern that, regarding the payments, the Court estimated the most likely error rate to be 3,3 %, of which the errors relating to non-compliance with procurement rules and expenditure not incurred, account for more than 50%. The Working Party acknowledges that the procurement errors identified by the Court do not concern contracts directly managed by the Commission. As in the previous years, the Commission and its implementing partners committed more errors in transactions relating to programme estimates, grants and contribution agreements with international organisations than in other types of support. The Working Party notes also the specificity of the EDF, which excludes application of the principle of annularity, enshrined in General Financial Regulation. It also recalls that the expenditure under the EDF is delivered using a wide range of modalities implemented in 79 partner countries.

The Working Party remains concerned with the Court's findings that should the Commission have used all the information at its disposal, it could have lowered the error rate by 0.7 percentage points, while acknowledging the Commission's efforts given that in 2015 the relevant figure was 1.7 percentage points. Therefore, the Working Party calls on the Commission to continue its efforts to pay more attention to ex-ante checks and apply appropriate measures to address existing weaknesses.

6. The Working Party welcomes DG DEVCO's efforts to address the weaknesses and causes of errors, notably by enhancing its 2015 Action Plan with measures targeting two high-risk areas, and adding four new measures to its 2016 Action Plan. The Working Party notes, however, the only partial implementation of the 2015 Action Plan by the end of 2016, while taking note that the progress of the 2016 Action Plan will be assessed by the Court in its next year's annual report. It also notes that new Action Plan was adopted by DG DEVCO in July 2017, encourages its full implementation and awaits its assessment by the Court in the next year's annual report. In addition, 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 2018, including an update on the implementation of the recommendations in the Court's report from 2016.

7. The Working Party notes with satisfaction the measures undertaken by DG DEVCO to improve the quality of its internal control system by putting in place a quality grid to assess the reliability of checks, increasing the training and the awareness-raising, introducing new grant templates and compulsory risk assessment for Annual Audit Plans, as well as improved document management and procurement procedures. The Working party notes, however, that the critical revision of all the Terms of Reference (ToR) of the audits and verifications to obtain information allowing for a quality assessment has not been fully completed by the end of June 2017, as initially planned, and calls on DG DEVCO to complete it by the end of 2017.
8. The Working Party welcomes the Court's finding that for the 2016 Residual Error Rate (RER) Study DG DEVCO has put in place mitigating measures, which address all weaknesses reported in 2014, with the exception of the RER-specific estimation method. The Working Party moreover notes with satisfaction that for the first time in 2016, the study estimated the RER to be below 2%, and that this result is largely due to the measures taken by DG DEVCO to reinforce its internal control system.
9. The Working Party welcomes the improved risk assessment for payments under indirect management with beneficiary countries in the 2016 Annual Activity Report which is in line with the Court's recommendations.
10. 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; the Commission should demonstrate how this has been done in the context of the Annual Report of the Court of Auditors. Areas of particular importance are:
 - strengthening the monitoring of old open expired EDF contracts;
 - completing the revision of ToR for all DG DEVCO's audits and expenditure verifications by the end of 2017;
 - extending the actions in the 2017 action plan to also cover grants and programme estimates under indirect management;

- considering reduction of the extent of the RER substantive testing of individual low-risk budget support transactions and reallocation of the saved resources to increase the substantive testing of project-related transactions;
 - further improving the calculation of the 2017 corrective capacity.
11. While noting the Court's conclusions and recommendations in its latest report (paragraphs 37 to 39 of the Report), the Working Party takes also note of the replies given by the Commission.
12. The ACP Working Party welcomes the fact that the Commission is implementing the Court's previous recommendations made in its Annual Report in 2013. The Working Party notes with approval, that the Court's review of progress in addressing these previous recommendations reveals, that all recommendation are now fully complied with and thanks the Commission for these efforts.
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DRAFT LETTER

To: President of the European Parliament

From: President of the Council

Sir,

I am forwarding under separate cover the Council recommendations of 20 February 2018 on the discharge to be given to the Commission in respect of the implementation of operations under the Eighth¹, Ninth², Tenth³ and Eleventh⁴ European Development Fund for the financial year 2016.

[Complimentary close].

¹ Doc. 5078/18 ACP 2 PTOM 1 FIN 13.
² Doc. 5079/18 ACP 3 PTOM 2 FIN 14.
³ Doc. 5080/18 ACP 4 PTOM 3 FIN 15.
⁴ Doc. 5082/18 ACP 5 PTOM 4 FIN 16.