



Brussels, 29 January 2020
(OR. en)

5585/20

ACP 6
PTOM 5
FIN 48
PE-L 2

'I/A' ITEM NOTE

From: ACP Working Party
To: Permanent Representatives Committee/Council

Subject: **EDF discharge procedure: financial year 2018**
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 2018)

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 2018, together with the Commission's replies to the Court's observations (see OJ C 340, 8.10.2019, p. 269), 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;
 - agreed on the text of the draft recommendations for a discharge.

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 2018, 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 2018, as contained in documents 5324/20, 5325/20, 5327/20 and 5328/20 finalised 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 eighth, ninth, tenth and eleventh
European Development Funds (EDFs) for the financial year 2018**

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 2018 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 2018 shows that, despite numerous efforts undertaken by the Commission, the estimated level of error has significantly increased compared to the previous years. Work should continue towards reaching the agreed target of 2% error rate.

¹ OJ C 340, 8.10.2019, p. 269.

4. The Working Party is concerned that EDF payments underlying the accounts for the financial year 2018 are materially affected by error, with the estimated most likely error rate being 5.2%. It also notes that the categories of error "expenditure not incurred" and "absence of essential supporting documents" account for more than 60% of the estimated level of error, while this year also the category "serious failure to respect public procurement rules" has more than doubled from the previous year, rising to 27%. The Working Party notices that 23% 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 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 1.3 percentage points. Commission's efforts to prevent, detect and correct errors should be stepped up, more attention should be paid to ex-ante checks, and appropriate measures should be taken 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 also notes with satisfaction that, as far as the reduction of old expired contracts is concerned, the set target was reached for the general budget, and although the target was not met for the EDF, following the new procedure initiated in September 2017 to address this problem, the percentage improved compared with 2017.
7. 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 two new measures to its 2018 Action Plan reflecting the need to clarify and promote simplified cost options and the results-based financing introduced by the new Financial Regulation. In addition, a pre-existing measure clarifying grant procedures was reformulated, and another targeting pillar assessments by International Organisations was broken down into three separate actions.

8. The Working Party acknowledges the satisfactory progress achieved in the implementation of the 2016 and 2017 Action Plans. It is nonetheless concerned about the Court's finding that the frequency of errors continues to point to weaknesses in the quality of ex-ante audits and expenditure verifications. The Working Party will await the next year Court's Annual report and the assessment therein of the progress with the implementation of the Commission's 2018 Action Plan. The Working Party looks forward to an update from the Commission on the Action Plan's implementation at the end of the first half of 2020, including an update on the implementation of the recommendations in the Court's report from 2018.
9. The Working Party acknowledges the improvements achieved by the Commission through the adoption, in March 2018, of the revised terms of reference (ToR) for expenditure verification intended to improve the performance of ex-ante checks, and encourages the Commission to sustain its efforts to ensure the efficiency of ex-ante checks.
10. The Working Party welcomes that the Commission, in its 2018 Residual Error Rate (RER) Study, estimated the RER to be within the 2% materiality threshold for the third year in a row. The Working Party notes that the percentage of full-reliance on previous control work transactions has returned to the level in the 2016-study. It is however concerned that some limitations, methodology weaknesses, and calculation errors contributed to a lower residual error rate, which, according to the Court, does not reflect reality. The Working Party shares the Court's view that there is room for improving the level of consistency and assurance through improved RER methodology and guidance from the Commission.
11. The ACP Working Party notes that, in its 2018 Annual Activity Report (AAR), the Commission's declaration of assurance includes two reservations. The ACP Working Party is concerned that the narrow scope of the first reservation is not sufficiently justified. Moreover, the share of expenditure subject to reservation in the AAR has decreased sharply. As the RER study is one of the key elements in the Commission's risk assessment, it needs to be supported by sufficiently detailed guidance in order to provide a reliable basis for the reservation.

12. The Working Party welcomes the fact that in 2018 the Commission took several steps to improve the quality of the data for calculating its corrective capacity and to address the shortcomings identified in previous years, such as increased its monitoring and controls of recovery orders and made further efforts to raise awareness of how to encode them correctly by, for instance, including a specific instruction on the recovery context in the note on the 2018 closure exercise, as a result of which the Court did not identify any errors in its sample in this regard.
13. 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:
 - Take steps to reinforce the obligation on international organisations to forward to the European Court of Auditors, at its request, any document or information necessary to carry out its task as foreseen in the TFEU;
 - Improve the RER study's methodology and manual so that they give more comprehensive guidance on the issues we have identified in this report and therefore provide appropriate support for DG DEVCO's risk assessment for the reservations.
14. While noting the Court's conclusions and recommendations (paragraphs 38 and 41 of the Report), the Working Party takes also note of the replies given by the Commission.
15. The ACP Working Party welcomes the fact that the Commission is implementing the Court's previous recommendations made in its Annual Report of 2015, noting that the Court's review of progress in addressing these previous recommendations reveals that one recommendation even if not fully implemented, is implemented in most respects. The Commission needs to apply fully the Court's recommendation regarding the payments under indirect management with beneficiary countries in order to address the remaining issues raised by the Court.

16. The ACP Working Party takes note of the Court's observations on performance aspects of the selected transactions, which has found out cases where the items had been used effectively and contributed to the achievement of project objectives, but also cases where the efficiency and effectiveness of the action had been compromised.
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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 18 February 2020 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 2018 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 2018.

[Complimentary close].

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- 1 Doc. 5324/20 ACP 2 PTOM 1 FIN 21.
 - 2 Doc. 5325/20 ACP 3 PTOM 2 FIN 22.
 - 3 Doc. 5327/20 ACP 4 PTOM 3 FIN 23.
 - 4 Doc. 5328/20 ACP 5 PTOM 4 FIN 24.
 - 5 Doc. 5585/20 ACP 6 PTOM 5 FIN 48 PE-L 2.