



Brussels, 27 January 2023  
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5675/23

ACP 9  
FIN 76  
PTOM 5  
PE-L 1

#### 'I/A' ITEM NOTE

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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Subject: EDF discharge procedure: financial year 2021  
Council Recommendations on the discharge to be given to the Commission in respect of the implementation of operations under the 8th, 9th, 10th and 11th European Development Funds for the financial year 2021  
- Adoption

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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)<sup>1</sup>.
2. The ACP Working Party examined the Annual Report of the Court of Auditors on the European Development Funds for the financial year 2021, together with the Commission's replies to the Court's observations (see OJ C 391, 12.10.2022, p. 6), in the presence of a representative of the Court of Auditors.

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<sup>1</sup> 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 at its level on the comments in Annex I regarding its examination of the Court's report and 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 Council 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 2021, 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 2021, as set out, after finalisation of the texts by the legal/linguistic experts, in 5671/23, 5672/23, 5673/23 and 5674/23;
  - arrange for the recommendations, accompanied by the comments in Annex I, to be forwarded to the European Parliament and approve the draft letter in Annex II to that effect.

**Comments by the Council**  
**on the Court of Auditors Annual Report<sup>1</sup>**  
**on the activities funded by the 8th, 9th, 10th and 11th**  
**European Development Funds (EDFs) for the 2021 financial year**

1. The Council welcomes the fact that, in the opinion of the European Court of Auditors (ECA), the EDFs' accounts for the 2021 financial year present fairly, in all material respects, their financial position, the results of their operations, their cash flows and the changes in net assets, in accordance with the provisions of the Financial Regulation and the accounting rules adopted by the accounting officer.
2. The Council takes note of the ECA's conclusions that:
  - the revenue of the EDFs was not affected by a material level of error;
  - EDF payment transactions were affected by a material level of error.
3. The Council notes that the ECA's report on EDF activities for the 2021 financial year shows that the estimated level of error has increased by 0.8 percentage points compared with the error level estimated in 2020 and has not yet gone below the materiality threshold of 2 %.
4. The Council is concerned that EDF payments underlying the accounts for the 2021 financial year are materially affected by error, with the estimated level of error being 4.6 %. The Council welcomes the fact that the relative share of the error types 'absence of essential supporting documents' and 'expenditure not incurred' was lower in 2021 than in 2020. However, it notes with concern that the relative share of the error category 'serious failure to respect public procurement rules' went up considerably and that the error types 'ineligible expenditure' and 'absence of essential supporting documents' still account for almost 62 % of the estimated level of error.

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<sup>1</sup> OJ C 391, 12.10.2022, p. 6.

5. The Council takes note of the fact that the Commission and its implementing partners committed more errors in transactions relating to grants and to contribution and delegation agreements with beneficiary countries, international organisations and Member State agencies, with 42.4 % of examined transactions containing quantifiable errors, accounting for 81 % of the total estimated level of error.
6. The Council remains concerned by the ECA's findings that in a number of cases the Commission had sufficient information to prevent, or detect and correct, the error before accepting the expenditure, and that should the Commission have used all the information at its disposal, it could have lowered the estimated level of error by 2.4 percentage points. The Council is also concerned that, as in previous years, the frequency of errors points to weaknesses in the ex-ante checks and expenditure verification reports. The Council calls on the Commission to step up its efforts to prevent, detect and correct errors, pay more attention to ex-ante checks, and take measures to address existing weaknesses.
7. The Council takes note of the fact that two areas, namely budget support and multi-donor projects implemented by international organisation and subject to the 'notional approach', are less prone to errors.
8. The Council reiterates the importance of ensuring that the ECA has access to all documents needed for its work and agrees with the ECA's previous recommendations in this respect. The Council, while welcoming the efforts made so far, continues to call on the Commission to make sure that the related provisions of the contribution and delegation agreements with international organisations are duly implemented.
9. The Council welcomes the fact that the Commission, similarly to previous years, has adopted an action plan in 2021 to address weaknesses in the implementation of its internal control system, adding one new action, namely addressing the high-risk observations from the audit by the Commission's Internal Audit Service (IAS) on pillar assessment in the 'external action family' (DG BUDG, DG ECHO, DG INTPA, DG NEAR and FPI).

10. The Council welcomes the fact that the Commission, in its 2021 residual error rate (RER) study, estimated the RER to be below the 2 % materiality threshold for the sixth year in a row. However, it is concerned by the ECA's recurring finding that the RER study has limitations that may contribute to the underestimation of the RER, inter alia due to overreliance on the work of other auditors with no further testing, in particular in light of the fact that full reliance increased from 15 % of transactions in 2020 to 34 % of transactions in 2021. At the same time, the Council takes note of the Commission's replies in this regard.
11. The Council takes note of the absence of reservations on the regularity of underlying transactions for the third year in a row since the 2019 Annual Activity Report (AAR). However, it is concerned by the ECA's finding that this absence is unjustified and results partly from the limitations of the RER study. At the same time, the Council takes note of the Commission's efforts to improve its internal corrective capacity, including through trainings and awareness-raising activities on recoveries and accounting data quality. In this regard, the Council notes with satisfaction that the ECA could not identify errors in the sample of recoveries it had tested.
12. The Council welcomes the work undertaken by the Commission to enhance the quality of its own internal control system, in particular through the adoption of action plans and the continued implementation of the measures set out therein.
13. The Council acknowledges the satisfactory progress achieved in the implementation of the 2018 and 2019 action plans and the fact that seven of the nine actions identified were completed by April 2021. The Council takes note of the progress made in the implementation of the 2020 action plan, notably the completion of four actions by April 2022, and will await the ECA's next annual report and its assessment of the status of implementation of the Commission's action plans.
14. The Council welcomes the efforts made by the Commission to reduce old pre-financing, unspent commitments and the percentage of open expired contracts. It notes with satisfaction that, despite the difficulties related to the COVID-19 pandemic, the Commission reached its target of reducing old pre-financing and unspent commitments by 35 % compared to 2020 and keeping the proportion of open expired contracts in its portfolio below 15 %.

15. The Council notes with satisfaction the ECA's follow-up review finding that the Commission implemented one of the two recommendations from 2018 in most respects and one in some respects. The Council takes note of the progress achieved in the implementation of the recommendations from 2019 and 2020, and encourages the Commission to take further action to address the issues identified by the ECA.
16. The Council considers that improvements should be made in certain areas, and supports the ECA's recommendations that the Commission:
  - a) strengthen internal control to ensure that no contracts are signed without the existence of a valid legal basis (which the Commission has accepted),
  - b) take appropriate measures aimed at ensuring that any commitments or advance payments claimed as incurred costs by beneficiaries in their financial reports are deducted before carrying out payments or clearings (which the Commission has accepted).
17. While noting the ECA's conclusions and recommendations, the Council also takes note of the Commission's replies.
18. Finally, the Council notes with satisfaction that the United Kingdom's withdrawal from the European Union had no financial impact on the 2021 EDF accounts, which correctly reflect the state of the withdrawal process as at 31 December 2021.

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DRAFT LETTER

To: President of the European Parliament

from: President of the Council

Madam President,

I am forwarding under separate cover the Council recommendations of 14 March 2023 on the discharge to be given to the Commission in respect of the implementation of operations under the 8th<sup>1</sup>, 9th<sup>2</sup>, 10th<sup>3</sup> and 11th<sup>4</sup> European Development Funds for the financial year 2021 accompanied by the comments of the Council<sup>5</sup> 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 2021.

[Complimentary close].

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- 1 5671/23 ACP 5 FIN 72 PTOM 1.
  - 2 5672/23 ACP 6 FIN 73 PTOM 2.
  - 3 5673/23 ACP 7 FIN 74 PTOM 3.
  - 4 5674/23 ACP 8 FIN 75 PTOM 4.
  - 5 5675/23 ACP 9 FIN 76 PTOM 5 PE-L 1.