



Council of the
European Union

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NOTE

From:	Budget Committee
To:	Permanent Representatives Committee/Council
Subject:	Council recommendation on the discharge to be given to the Commission in respect of the implementation of the general budget of the European Union for the financial year 2022

- *Adoption*
- *Approval of a letter*

COUNCIL RECOMMENDATION
on the discharge to be given to the Commission
in respect of the implementation of the general budget
of the European Union
for the financial year 2022

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 319 thereof,

Having carried out the examination provided for in Article 319(1) TFEU,

Whereas:

(1) According to the revenue and expenditure account for the financial year 2022:

- revenue amounted toEUR 245 264 814 506.46
- expenditure disbursed from appropriations
amounted toEUR 239 157 196 294.08
- cancelled payment appropriations
carried over from year *n-1* amounted toEUR 80 187 685.37
- appropriations for payments carried over to year *n+1*
(including earmarked revenue) amounted toEUR 3 566 062 565.04
- EFTA payment appropriations carried over from year *n-1*
amounted toEUR 6 164 389.14
- the balance of exchange-rate differences amounted to-EUR 96 567 993.18
- the positive budget balance amounted toEUR 2 519 010 950.39

- (2) EUR 4 183 214 841.72 (98.58 %) of the EUR 4 243 645 566.31 in appropriations for payments carried over to year 2022 have been used;
- (3) The observations in the report by the Court of Auditors for the financial year 2022 call for certain comments by the Council, which are ANNEXED hereto;
- (4) The Council attaches importance to its comments being followed up and assumes that the Commission will implement all of the recommendations in full, without delay;
- (5) The Council has approved conclusions concerning special reports drawn up by the Court in 2022 and 2023 in the context of the discharge procedure¹;
- (6) Following the examination referred to above, implementation by the Commission of the budget for the financial year 2022, taken as a whole, on the basis of the observations made by the Court of Auditors, is such as to allow a discharge to be given in respect of such implementation,

HEREBY RECOMMENDS, in the light of these considerations, that the European Parliament grant discharge to the Commission in respect of the implementation of the budget of the European Union for the financial year 2022.

Done at Brussels,

For the Council

The President

¹ Docs. 7119/23, 7258/23, 7498/23, 8448/23, 8663/23, 9524/23, 10163/23, 11731/23, 12157/23, 14195/23, 14234/23, 15255/23 + COR 1 (Council conclusions on SR No 26/2022 have been integrated in the “Council conclusions on EU statistics”), 15227/23, 15575/23, 15676/23, 15733/23, 15744/23, 16525/23, 16527/23, 16529/23 and 16613/23.

INTRODUCTION

1. The Council welcomes the European Court of Auditors' annual report and Statement of Assurance on the implementation of the EU budget and the analysis of the audit findings and conclusions provided. The Council attaches great importance to the independent audit work carried out by the Court, as provided for in Article 287 TFEU, and specifically to the primary task of providing a Statement of Assurance on the reliability of the accounts and examining the legality and regularity of revenue and expenditure.
2. The Council takes note that, for the financial year 2022, the Court has returned to reporting on the performance of spending programmes under the EU budget as a chapter of the annual report and has started to report in a stand-alone review on the Commission's Annual Management and Performance Report (AMPR). On the other hand, the annual report includes expenditure related to the Recovery and Resilience Facility (RRF), which is also treated in a distinct chapter.
3. The Council calls on both the Court and the Commission to continue the assessment of the performance of the EU budget, which is a measure of the true value delivered to EU citizens and therefore an important element of the annual evaluation of the sound financial management of EU funds. Specifically, the Council calls on the Commission, where applicable, to increase the focus on result-based performance indicators that can be directly linked to the EU actions.
4. The Council welcomes the Court's finding that the EU accounts present a true and fair view of the EU's financial position and that the Court has issued a clean opinion on the reliability of the 2022 accounts. The Council also welcomes the fact that the revenue for 2022 was found to be legal, regular, and free from material error. However, the Council regrets that the estimated level of error reported by the Court in EU budget spending is increasing further away from the materiality threshold and that, for the fourth consecutive year, the Court has issued an adverse opinion on the legality and regularity of expenditure. The Council takes note that the Court has issued a qualified opinion on the 2022 RRF expenditure.

5. The Council acknowledges the findings of the Court, supports the vast majority of the Court's recommendations and invites the Commission and the other institutions to also take the relevant Council recommendations into account.
 6. Despite the repeated calls from the Council and the increased political importance of several expenditure headings, the Court once again did not present a level of error for each chapter, making no change in this respect compared to the previous reports related to the multiannual financial framework (MFF) 2014-2020. In this regard, the Council recognizes the importance of ensuring comparability between years within each policy area and again asks the Court to provide sufficiently representative error rates for all headings, irrespective of the size of expenditure.
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CHAPTER 1

THE STATEMENT OF ASSURANCE AND SUPPORTING INFORMATION

- 1.1. The Council regrets that the estimated level of error reported by the Court in 2022 has increased to 4.2 % from 3.0 %, further deviating from the materiality threshold of 2 %, and notes that a substantial and increased proportion of the expenditure audited by the Court, 66.0 % mainly reimbursement-based expenditure, is materially affected by error. Moreover, the Council regrets the increase of the estimated level of error in high-risk expenditure from 4.7 % in 2021 to 6.0 % in 2022. However, it notes that the risk at payment estimated by the Commission remains at 1.9 %, while the risk at closure, after taking into account the corrective capacity of the Commission, is estimated at 0.9 %.
- 1.2. The Council is concerned that, for the fourth year in a row, the Court has issued an adverse opinion on the legality and regularity of expenditure. The Council acknowledges the deterioration in the level of error in some expenditure headings and stresses that a low estimated level of error is key in preserving the EU citizens' trust in the European institutions.
- 1.3. The Council stresses that to achieve a reduction in error rates and ensure the effective and correct management of EU funds, simpler, more transparent and more predictable legislation and implementing measures should remain a top priority. The Council, therefore, calls on the Commission to identify and simplify unnecessarily complex rules and procedures, while maintaining the essential standards and requirements needed for accountability.
- 1.4. Although the Council recognizes that the Court and the Commission have different mandates and approaches in estimating errors, the Council is concerned about the degree of difference between the level of risk estimated by the Commission for certain headings, compared to the level of error estimated by the Court. Therefore, the Council calls on the Court and the Commission to engage in a dialogue on the assessment of errors, particularly on the typology and quantification. The Council recalls that the general objective of the control environment is to have legal and regular spending and to limit the amount of error.

- 1.5. The Council notes that the Court and the Commission have different roles in the annual and multiannual control processes, which could lead to different results. Also, considering that the spending programmes and related control systems, as well as the management cycles, cover multiple years, the Council acknowledges that the financial corrections and recoveries applied by the Commission result in bringing the level of error below materiality.
- 1.6. The Council recalls that the Court's estimated level of error is not a measure of fraud, inefficiency, or waste of funds per se, but of payments which were not made in accordance with the applicable rules and regulations. On the other hand, the Council supports the Court's recommendation to the Commission to plan and implement across the EU budget focused thematic audits on conflicts of interest for the 2021-2027 programmes, based on its own risk assessment and in view of the shortcomings identified.
- 1.7. The Council welcomes the clean opinion given by the Court on the reliability of the annual accounts of the European Union (hereinafter "the accounts") for the financial year 2022. The Council also notes with satisfaction the Court's statement that the accounts present fairly, in all material respects, the EU's financial position, as of 31 December 2022, and the results of its operations, its cash flow and the changes in its net assets for the year then ended, in accordance with the Financial Regulation and with accounting rules based on internationally accepted accounting standards for the public sector.
- 1.8. The Council also welcomes the fact that the revenue underlying the accounts for 2022 is legal and regular in all material respects, as in previous years.

1.9. The Council notes with satisfaction the work carried out by audit bodies in detecting errors and mismanagement of EU funds, as well as the continuous efforts and actions undertaken by the Commission and the Member States to implement the Court's recommendations.

However, the Council recognises the shortcomings identified by the Court in the work of some audit authorities. Based on the findings of the Court, the Council encourages the actors involved in the management and control of the EU budget implementation to further improve their work so that the Court could make better use of it in view of developments connected to the principle of cross reliance.

CHAPTER 2

BUDGETARY AND FINANCIAL MANAGEMENT

- 2.1. The Council takes note of the almost full budget implementation of the available commitments and payments in 2022. The Council notes that the absorption of the 2014-2020 European Structural Investment Funds has slowed down compared to the previous years.
- 2.2. The Council is concerned by the new record high for outstanding budgetary commitments in 2022, while taking note that the increase is partly due to the commitments related to the NextGenerationEU (NGEU) instrument. In this context, the Council supports the Court's recommendation addressed to the Commission to identify ways to help member states improve the use of EU funds, in particular of shared management funds under the Common Provisions Regulation, while respecting sound financial management
- 2.3. The Council is concerned about the assessment of the Court regarding the increased exposure of the EU budget as a result of borrowing undertaken for additional payment needs in response to multiple crises. Therefore, the Council urges the Commission to closely monitor this risk, to limit the issuance of bonds and bills to the legally mandated amounts and at minimum interest rates, and to keep Member States closely and thoroughly informed about its estimations.
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CHAPTER 3
GETTING RESULTS FROM THE EU BUDGET

- 3.1. The Council notes that, for 2022, the Court's assessment of the performance of the budget is limited to an overview of the results and key messages of its 2022 special reports on performance, including related information from the Commission, the European Parliament and the Council. In addition, the Court has assessed the implementation of the recommendations made in its 2019 report on the performance of the EU budget and in its special reports published in 2019.
- 3.2. The Council acknowledges the findings of the Court's audits and welcomes the first actions taken by the Commission in response to the recommendations of the Court's 2022 special reports.
- 3.3. While noting the Court's review of the AMPR and considering that the Court's performance assessment should not be at the expense of the work on the legality and regularity of transactions, the Council acknowledges the intention of the Court to perform performance assessments on the expenditure chapters of the budget and provide overall recommendations in the annual report, in addition to those triggered by the special reports.
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CHAPTER 4

REVENUE

- 4.1. The Council notes with satisfaction that the revenue part of the budget was not affected by material error in 2022 and that the examined revenue-related systems were assessed as being generally effective. However, some of the key internal controls of traditional own resources (TOR) in certain Member States, the management of TOR write-off cases, as well as the management of VAT reservations and TOR open points at the Commission were assessed as being partially effective, due to persistent weaknesses.
- 4.2. In this respect, the Council supports the Court's observation that risks in GNI data compilation were well covered overall by the Commission's verification but there was scope for increased prioritisation of its actions. The Council also notes the delay in the implementation of some actions in the Commission's Customs Action Plan that were contributing to reducing the customs gap.
- 4.3. Accordingly, the Council supports the Court's recommendations addressed to the Commission to improve the management of cases related to non-application of the VAT Directive and to conclude the reassessment of TOR write-off cases not subject to regulatory time limits. The Council also acknowledges the progress already made by the Commission on the implementation of these recommendations.
- 4.4. The Council encourages the Commission, in order to ensure predictability for Member States, to recalculate as soon as possible the final TOR losses attributable to the Member States resulting from the UK undervaluation judgment of 8 March 2022.
- 4.5. The Council also invites the Court to include a more substantial and proportionate analysis for the own resource based on non-recycled plastic packaging waste in its audit scope for the following years.
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CHAPTER 5
SINGLE MARKET, INNOVATION AND DIGITAL

- 5.1. The Council welcomes the fact that the estimated level of error reported by the Court decreased from 4.4 % in 2021 to 2.7 % in 2022, but regrets that it remains above the materiality threshold.
- 5.2. The Council notes that the research and innovation expenditure is most affected by error and regrets the persistence of error related to personnel costs. Consequently, the Council urges the Commission to continue its efforts to reach an error rate below the materiality threshold. The Council notes the Court's remark that a large part of the error rate is due to complex rules regarding personnel costs and that the calculation in some ways has become more complex under Horizon 2020. The Council invites the Commission to address this issue.
- 5.3. The Council acknowledges the Court's observations related to the introduction of the single lump sum funding for research grants and encourages both the Court and the Commission to monitor closely the impact of this simplification on the level of error. In that sense, the Council supports the Court's recommendation to the Commission to assess the appropriateness of using lump sum funded grants for high budget projects and to fix a maximum amount for such grants.
- 5.4. The Council also supports the Court's recommendations to the Commission to ensure that expert evaluations of the grants are properly documented and duly consider the relevant benchmarks, and to further specify the requirements defining proper implementation and the elements that will trigger payment. The Council acknowledges with satisfaction that the Commission has accepted these recommendations and encourages it to continuously review and clarify the relevant guidance in this sense.
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CHAPTER 6

COHESION, RESILIENCE AND VALUES

- 6.1. The Council regrets the increase of the estimated level of error reported by the Court for payments in the "Cohesion, resilience and values" policy area from 3.6 % in 2021, to 6.4 % in 2022, going further above the materiality threshold of 2 %.
- 6.2. The Council regrets that the Court still observes shortcomings in the work of some managing authorities, which do not always effectively prevent or detect irregularities in expenditure declared by beneficiaries. In particular, the proportion of expenditure covered by assurance packages with residual error rates of above 2 % has increased from 39 % in 2021 to 61 % in 2022, even though the number of assurance packages in the last two years' annual samples has remained almost the same. In this regard, recognising the efforts made by the audit authorities and the improvements achieved so far, the Council invites the Commission, where possible, to take further steps to help mitigate the high risk of error and ensure that audit authorities have appropriate methods in place to check the reliability of self-declarations.
- 6.3. While acknowledging the effort to simplify cohesion programmes, particularly for the 2021-2027 programming period, through an increased use of simplified cost options, the Council regrets that the main sources of error are still ineligible costs and projects. The Council therefore urges the Commission to continue to address recurrent errors and to disseminate good practices with a view to reduce the occurrence and impact of irregular spending.

- 6.4. The Council notes that the control and assurance framework for cohesion programmes have both an annual and a multiannual character. While the current rules are built around a system based on the Commission's acceptance of annual accounts, the operational programmes cover multiple years. As a result, the Commission, as manager of the EU budget, puts in place multiannual control strategies designed to prevent errors and, where this is not possible, to detect them and apply corrections before the closure of the programmes. In this respect, the Council calls on the Commission to carry out specific targeted checks in its 2014-2020 closure audits, to ensure that Member States have applied the necessary financial correction for errors detected in a given accounting year, which also affect expenditure in other accounting years. Furthermore, recognizing that the Commission and the Court play different roles in the control chain of the EU budget, which could lead to different estimations, the Council notes that the Commission has estimated the risk at payment for "Cohesion, resilience and values" to be 2.6 %, and the risk at closure, based on an estimation for future corrections, to be 1.3 %, below the materiality threshold.
- 6.5. The Council notes Commission's position, that there is no regulatory deadline to continue protecting the EU budget and that corrections can still occur many years after the end of the programming period or the closure of a programme.
- 6.6. The Council welcomes the fact that the audit authorities explicitly addressed the risk of fraud for 65 % of the audited operations in 2022 compared to 38 % in 2021. The Council encourages the Commission to continue its support to Member States and to specify minimum requirements for audit authorities to cover the risk of fraud.
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CHAPTER 7
NATURAL RESOURCES AND ENVIRONMENT

- 7.1. The Council notes that the estimated level of error reported by the Court for payments in the “Natural resources” policy area has increased to 2.2 %, from 1.8 % in 2021, and regrets that the error level passed above the materiality threshold. The Council also notes that the Commission reports a non-material risk at payment for the “Natural resources” policy area and that the risk at closure is estimated by the Commission at 0.35 %.
- 7.2. The Council welcomes the fact that the corrective measures applied by the Commission and the Member States reduced the estimated level of error by 0.9 percentage points, while noting that the level of error for this chapter could have been 1.3 percentage points lower had all available information been used. Thus, the Council encourages the Commission to continue and intensify its support to Member States in taking all necessary actions to prevent, detect and correct errors, while respecting an appropriate cost-benefit ratio.
- 7.3. The Council welcomes the fact that direct payments, which account for 66 % under the MFF heading “Natural resources”, were, as a whole, for the eighth year in a row free from material error.
- 7.4. The Council takes note that most of the quantified errors affected rural development and much of the estimated level of error is related to the provision of inaccurate information on areas or animals. The Council supports the Court’s recommendation to the Commission to continue monitoring how the eligible area is assessed in the Land Parcel Identification System.
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CHAPTER 8

MIGRATION AND BORDER MANAGEMENT, SECURITY AND DEFENCE

- 8.1. The Council notes that, as regards heading 4 (*Migration and Border Management*) and heading 5 (*Security and Defence*), the Court's audit was again not representative of the expenditure under these two headings, despite the Council's previous recommendations. Consequently, the Court did not estimate error rates for these headings. In view of the increased political focus on these policy areas and their growing budget, the Council reiterates its request to the Court to include a representative sample in its audit scope and to provide an error rate for these two headings in future years.
- 8.2. The Council welcomes the progress made by the visited national audit authorities in their preparations for the Asylum, Migration and Integration Fund (AMIF), the Instrument for Financial Assistance for Border Management and Visa Policy (BMVI) and the Internal Security Fund (ISF) for the 2021-2027 period. However, the Council also acknowledges that their audit strategy was still not approved at the time of the audit, which is a prerequisite for the submission of an "assurance package" to the Commission.
- 8.3. The Council supports the Court's recommendation addressed to the Commission to carry out better targeted ex-ante checks on the eligibility of expenditure for Union actions directly managed by DG HOME. When preparing its risk assessment, the Commission should bear in mind the limitations of the audit certificates supporting beneficiaries' payment claims, considering the particularly difficult context in which emergency operations are carried out.
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CHAPTER 9
NEIGHBOURHOOD AND THE WORLD

- 9.1. The Council regrets that, despite reiterating its previous recommendations, the Court's examination was once again not representative of the spending under this heading, and that, consequently, the Court did not provide an estimated level of error for this chapter. The Council therefore urges the Court to cover a representative sample in this high-risk area and to provide an error rate for this heading in the following years.
- 9.2. The Council emphasises the importance of having maximum transparency and measurability of the spending in the heading and, in that respect, welcomes and supports the four recommendations of the Court regarding the need to strengthen controls to prevent irregular alteration of proposals at the contracting stage when awarding grants on the basis of a call for proposals, to carry out risk assessments to ensure that pre-financing payments of between EUR 60 000 and EUR 300 000 are only made without a bank guarantee if the risk is assessed as low, to establish an appropriate timeframe so that expenditure verification reports issued by contractors for grants are available before processing payments or clearing expenditure, as well as to enhance controls to exclude recovery orders for unspent pre-financing from the corrective capacity calculation.
- 9.3. The Council notes that the Court, according to the TFEU, is entitled to receive complete, unlimited, and timely access to the documents necessary for the performance of its task. The Council therefore regrets that difficulties persist in the audit of international organisations, for which only limited access to documents was granted.

9.4 The Council acknowledges the limitations identified by the Court in the methodology applied to assess the error percentage for DG NEAR. DG NEAR makes use of an externally conducted study, known as the residual error rate (RER), to prepare key figures in its Annual Activity Report. The Council invites the Commission to follow the Court's recommendations to improve the RER study by DG NEAR.

CHAPTER 10
EUROPEAN PUBLIC ADMINISTRATION

- 10.1. The Council welcomes the fact that the administrative and related expenditure of the EU institutions remained, as in previous years, free from material error. The Council notes with satisfaction that the annual activity reports reviewed by the Court also did not identify material levels of error.
- 10.2. The Council regrets the Court's observation of weaknesses in the management of appropriations of the European Parliament's political groups and persisting non-compliance of its procurement procedures with the Financial Regulation. Emphasizing that these shortcomings may jeopardize the effective protection of the Union's financial interests, the Council endorses the Court's recommendation and urges the European Parliament to enhance its procedures, instructions, and control mechanisms to prevent similar errors and shortcomings in the future.
- 10.3. The Council acknowledges the Court's findings on deficiencies, specifically inadequate contract management and imperfect handling of staff members' personal files in the European External Action Service (EEAS). The Council calls on the EEAS to improve internal controls and procedures for managing contracts and family allowances.
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CHAPTER 11

RECOVERY AND RESILIENCE FACILITY

- 11.1. The Council, acknowledging the increase of the audit population compared to the first audit on the Recovery and Resilience Facility (RRF) in 2021, regrets that the Court has issued a qualified opinion on RRF expenditure in 2022, after a clean opinion last year. The Council takes note that the European Court of Auditor's audit scope is based on assessing the fulfilment of the milestones and targets, as defined in the Council Implementing Decision, as condition for payment.
- 11.2. The Council notes the Court's finding that 11 out of 13 examined payments were affected by quantitative findings, with six of them affected by material errors. Moreover, the Council raises concerns about the Court's finding that 15 out of the 281 milestones and targets were affected by regularity issues, either inadequately fulfilled or not in compliance with the eligibility conditions. The Council, while acknowledging the work already done in this respect and the need to ensure proportionality, invites the Commission to further clarify the payment procedures and the methodology employed in assessing the achievement of milestones and targets.
- 11.3. The Council acknowledges the novelty of the performance-based approach of the Recovery and Resilience Facility Instrument and is aware that further improvements are necessary, including in implementation. The Council calls on the Court to account for this performance-based approach in its audits and to consider the administrative burden for the Member States.
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