



Brussels, 5 February 2021
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REV 1

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PTOM 5
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PE-L 2

'I' ITEM NOTE

From: ACP Working Party
To: Permanent Representatives Committee (Part 2)
Subject: **EDF discharge procedure: financial year 2019**
Relations with the ACP States and the OCT - Council Recommendations regarding the 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 2019)
- Decision to use the written procedure for the adoption

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 2019, together with the Commission's replies to the Court's observations (see OJ C 377, 9.11.2020, p. 13), 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 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. In view of the above, the Permanent Representatives Committee is invited to:
- 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 2019, as set out in Annex I;
 - confirm its agreement to 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 2019, as contained in documents 5282/21, 5284/21, 5286/21 and 5289/21 finalised by the Legal/Linguistic experts;
 - decide, in accordance with the first subparagraph of Article 12(1) of the Council's Rules of Procedure and Article 1 of Council Decision 2020/430², as further extended by Council Decision 2021/26³, that the Council uses the written procedure for the adoption of the draft recommendations in documents 5282/21, 5284/21, 5286/21 and 5289/21, and for the endorsement of the comments of the ACP Working Party, as set out in Annex I to this note; and
 - arrange for the recommendations, once adopted by the Council, 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.

² Council Decision (EU) 2020/430 of 23 March 2020 on a temporary derogation from the Council's Rules of Procedure in view of the travel difficulties caused by the COVID-19 pandemic in the Union (OJ L 88 I, 24.3.2020, p. 1).

³ Council Decision (EU) 2021/26 of 12 January 2021 further extending the temporary derogation from the Council's Rules of Procedure introduced by Decision (EU) 2020/430, and extended by Decisions (EU) 2020/556, (EU) 2020/702, (EU) 2020/970, (EU) 2020/1253 and (EU) 2020/1659, in view of the travel difficulties caused by the COVID-19 pandemic in the Union (OJ L 11, 14.01.21, p. 19).

**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 2019**

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 39 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 2019 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 notes that the Court's Annual Report on EDF activities for the financial year 2019 shows that the estimated level of error has significantly decreased compared to the previous years, but has still not gone below the materiality threshold of 2 %.

¹ OJ C 377, 9.11.2020, p.13.

4. The Working Party is concerned that EDF payments underlying the accounts for the financial year 2019 are materially affected by error, with the estimated most likely error rate being 3,5 %. It notes that the categories of error "expenditure not incurred" and "serious failure to respect the public procurement rules" account for more than 65 % of the estimated level of error and that as in previous years, the Commission and its implementing partners committed more errors in transactions relating to programme estimates, grants, contribution agreements with IOs and delegation agreements with EU Member States' cooperation agencies than they did with other forms of support (38 % of those examined transactions were containing quantifiable errors, accounting for 71,7 % of the estimated level of error).
5. The Working Party remains concerned by the Court's findings that in a number of cases the Commission had sufficient information to prevent, or to 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 1.4 percentage points. The Working Party is also concerned that the frequency of errors continues to point to weaknesses in the ex-ante checks and expenditure verification reports. 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 notes the absence of reservations on the regularity of underlying transactions for the first time in the 2019 Annual Activity Report (AAR). It is however concerned by the Court's considerations that this absence is unjustified, as it is due to the limitations in the RER Study and the first time application of the "de minimis rule" which introduces a threshold to the financial reservations, while noting the Commission's observation that the RER Study is only one component of the Commission's internal control system and that it still reports on small amounts, even if it does not issue reservations on them.

7. The Working Party welcomes the fact that the Commission has nonetheless adopted an Action Plan to address weaknesses in the implementation of its internal control system, transferring 8 past reservations concerning the error rate and other high risk areas identified by the Annual Activity Report, as well as issues identified by the Court.
8. The Working Party welcomes the Commission's efforts to improve the quality of its own internal control system, notably with the continued implementation of the 13 measures in its 2018 Action Plan aimed at addressing areas of high risk, as well as the 9 measures in the 2019 Action Plan (eight carried over from previous years and one new added, aimed at improving the methodology and the manual for the RER's Study), to be evaluated in the context of the 2020 exercise.
9. The Working Party acknowledges the satisfactory progress achieved in the implementation of the 2017 and the continued implementation of the 2018 Action Plans, and will await next year's Annual report of the Court and the assessment therein of the progress, with the implementation of the Commission's 2019 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 2021, including an update on the implementation of the recommendations in the Court's report from 2019.
10. The Working Party welcomes, along with the Court's findings, the efforts made by the Commission to reduce old pre-financing and old unspent commitments (RAL – reste à liquider), as well as the number of expired contracts. It notes with satisfaction that the set target for the reduction of old expired contracts has been reached and the target for the other two reductions has been largely exceeded.

11. The Working Party welcomes the fact that the Commission in its 2019 Residual Error Rate (RER) Study estimated the RER to be below the 2 % materiality threshold for the fourth year in a row. It is however concerned by the Court's findings that the 2019 RER Study shows similar limitations as in 2018, e.g. incomplete checks on public procurement procedures and call for proposals, few on the spot checks, inconsistencies in calculation of estimations, over-reliance on previous control work, which have contributed to the underestimation of the RER. 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 manual, while noting the Commission's remark on the Study's scope and purpose.
12. The Working Party notes with satisfaction the Court's follow-up review finding that the five recommendations from 2016 for the EDFs have been fully implemented by the Commission, and takes note of the two Court's recommendations to the Commission based on this review and on its findings and conclusions for 2019.
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 to the Commission 1) to improve the RER study's methodology and manual so that they give more comprehensive guidance on the issues identified in the report (which the Commission has accepted), as well as 2) to issue reservations for all areas found to have a high level of risk, regardless of their share of total expenditure and their financial impact (which the Commission has not accepted). While noting the Court's conclusions and recommendations made in 2019, the Working Party also takes note of the replies given by the Commission.
14. The ACP Working Party takes note of the Court's observations on performance aspects of the selected transactions, which has found cases where the items had been used effectively and contributed to the achievement of project objectives, but also cases where the items were not being used as planned and the efficiency and effectiveness of the actions had been compromised.

DRAFT LETTER

To: President of the European Parliament

From: President of the Council

Sir,

I am forwarding under separate cover the Council recommendations of 16 February 2021 on the discharge to be given to the Commission in respect of the implementation of operations under the 8th⁵, 9th⁶, 10th⁷ and 11th⁸ European Development Fund for the financial year 2019 accompanied by the comments of the ACP Working Party⁹ 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 2019.

[Complimentary close].

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- ⁵ Doc. 5282/21 ACP 3 PTOM 1 FIN 28.
 - ⁶ Doc. 5284/21 ACP 4 PTOM 2 FIN 29.
 - ⁷ Doc. 5286/21 ACP 5 PTOM 3 FIN 30.
 - ⁸ Doc. 5289/21 ACP 6 PTOM 4 FIN 31.
 - ⁹ Doc. 5292/1/21 REV 1 ACP 7 PTOM 5 FIN 32 PE-L 2.