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(OR. en)

5894/24

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FIN 101
PTOM 4
PE-L 1

'I/A' ITEM NOTE

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

Subject: EDF discharge procedure: financial year 2022
Council Recommendations on the discharge to be given to the
Commission in respect of the implementation of operations under the 9th,
10th and 11th European Development Funds for the financial year 2022
- 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 2022, together with the Commission's replies to the Court's observations (see OJ C, C/2023/103, 4.10.2023), in the presence of a representative of the Court of Auditors.

¹ A similar provision is included in the Internal Agreements governing the 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 9th, 10th and 11th European Development Funds (EDFs) for the 2022 financial year, 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 9th, 10th and 11th EDFs for the financial year 2022, as set out, after finalisation of the texts by the legal/linguistic experts, in 5889/24, 5891/24 and 5892/24;
 - 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.
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Comments by the Council
on the Court of Auditors annual report¹
on the activities funded by the 9th, 10th and 11th
European Development Funds (EDFs) for the 2022 financial year

1. The Council welcomes the fact that, in the opinion of the European Court of Auditors (ECA), the EDFs' accounts for the 2022 financial year present fairly, in all material respects, their financial position, the results of their operations, their cash flows and the changes in their net assets, in accordance with the provisions of the EDF 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 with regret that, according to the ECA's report on EDF activities for the 2022 financial year, the estimated level of error has increased by 2.5 percentage points compared with the error level estimated in 2021, and is 5.1 percentage points above the materiality threshold of 2 %.
4. The Council is concerned that EDF payments underlying the accounts for the 2022 financial year are materially affected by error, with the estimated level of error being 7.1 %.

¹ OJ C, C/2023/103, 4.10.2023.

5. The Council welcomes the fact that the relative share of the error types ‘absence of essential supporting documents’ and ‘ineligible expenditure’ was lower in 2022 than in 2021. However, it notes with concern that the relative share of the error category ‘expenditure not incurred’ went up considerably, accounting for more than 50 % of the overall estimated level of error.
6. The Council takes note of the fact that, similarly to previous years, 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 46 % of examined transactions containing quantifiable errors, accounting for 86 % of the total estimated level of error.
7. The Council is concerned by the ECA’s finding 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 5.5 percentage points. The Council calls on the Commission to make better use of the information at its disposal and step up its efforts to prevent, detect and correct errors.
8. The Council takes note of the fact that two areas, namely budget support and multi-donor projects implemented by international organisations and subject to the ‘notional approach’, are less prone to errors.
9. The Council reiterates the importance of ensuring that the ECA has access to all documents needed for its work and regrets that, despite the efforts made by the Commission to improve the situation, the difficulties still persist. The Council underlines the importance of implementing the ECA’s previous recommendations in this respect.

10. 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.
11. The Council appreciates the fact that the Commission, similarly to previous years, adopted an action plan in 2022 to address the weaknesses in the implementation of its internal control system, adding four new actions, namely on (i) improving the follow-up to the findings of ECA reports and residual error rate (RER) studies; (ii) strengthening controls when drafting financing agreements for budget support operations; (iii) strengthening controls in respect of legal bases before signing contracts and (iv) reminding partners to fulfil their obligation to notify the Commission when counterparties are identified as being in exclusion situations. The Council encourages the Commission to pursue its efforts to fully implement all its action plans.
12. The Council acknowledges the progress made in the implementation of the 2021 action plan, notably the completion of four actions by April 2023, and will await the ECA's next annual report and its assessment of the implementation status of the Commission's action plans.
13. The Council welcomes the fact that the 2022 RER study, carried out by an external contractor on the basis of a methodology provided by the Commission, estimated the rate of errors that evaded all management checks to be below the 2 % materiality threshold for the seventh 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 an insufficiently clear methodology for extrapolating high-value items and to overreliance on the work of other auditors. At the same time, the Council takes note of the Commission's replies in this regard.

14. The Council takes note of the absence of reservations on the regularity of underlying transactions for the fourth 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. The Council also takes note of the Commission's efforts to improve its internal corrective capacity, including by performing targeted checks on recovery orders.
15. 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 the Commission reached, and even exceeded, its new, more ambitious targets of reducing old pre-financing and unspent commitments by 40 % compared to 2021 and keeping the proportion of open expired contracts in its portfolio below 13 %.
16. The Council takes note of the progress achieved in the implementation of the ECA's recommendations from 2019 and 2020, and encourages the Commission to take further action to address the issues identified by the ECA.
17. The Council considers that improvements should be made in certain areas, and supports the ECA's recommendations that the Commission:
 - a) check that accounting balances for closed EDFs are cleared in a timely manner (which the Commission has accepted),
 - b) check that pre-financing and invoices are cleared in a timely manner in the annual accounts (which the Commission has accepted),
 - c) take measures to improve EU delegations' control systems for the clearing of pre-financing (which the Commission has accepted),

- d) reiterate the obligation to comply with VAT rules and carry out appropriate checks (which the Commission has accepted),
 - e) strengthen *ex ante* controls before accepting expenditure (which the Commission has accepted),
 - f) make a thorough analysis and improve the RER methodology as well as verify its proper application (which the Commission has not accepted).
18. While noting the ECA's conclusions and recommendations, the Council also takes note of the Commission's replies.
19. The Council welcomes the fact that the ECA this time also assessed the achievement of performance indicators for projects that were either completed or close to completion, and calls on the Commission to do its utmost to ensure that EU funds are used effectively and contribute to the achievement of projects' objectives.
20. Finally, the Council notes with satisfaction that the United Kingdom's withdrawal from the European Union had no financial impact on the 2022 EDF accounts, which correctly reflect the state of the withdrawal process as at 31 December 2022.
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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 12 March 2024 on the discharge to be given to the Commission in respect of the implementation of operations under the 9th¹, 10th² and 11th³ European Development Funds for the financial year 2022 accompanied by the comments of the Council⁴ on the Court of Auditors Annual Report on the activities funded by the 9th, 10th and 11th European Development Funds (EDFs) for the 2022 financial year.

[Complimentary close].

¹ 5889/24 ACP 10 FIN 98 PTOM 1.
² 5891/24 ACP 11 FIN 99 PTOM 2.
³ 5892/24 ACP 12 FIN 100 PTOM 3.
⁴ 5894/24 ACP 13 FIN 101 PTOM 4 PE-L 1.