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# EXPLANATORY MEMORANDUM ON EUROPEAN UNION DOCUMENTS

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE FOLLOW-UP TO THE DISCHARGE FOR THE 2011 FINANCIAL YEAR (SUMMARY)**

**COMMISSION STAFF WORKING DOCUMENT ACCOMPANYING THE DOCUMENT REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND TO THE COUNCIL ON THE FOLLOW-UP TO 2011 DISCHARGE - REPLIES TO REQUESTS FROM THE EUROPEAN PARLIAMENT**

**COMMISSION STAFF WORKING DOCUMENT - ACCOMPANYING THE DOCUMENT REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND TO THE COUNCIL ON THE FOLLOW-UP TO 2011 DISCHARGE - REPLIES TO REQUESTS FROM THE COUNCIL**

Submitted by HM Treasury

### October 2013

## SUBJECT MATTER

1. This is the Commission's report to the European Parliament (EP) and the Council on the follow-up to the EP discharge resolutions and the Council Recommendation for the 2011 financial year, issued in accordance with Article 319(3) on the Treaty of the Functioning of the European Union (TFEU), Article 166 of the Financial Regulation (FR), and Article 119(5) of the European Development Funds (EDF) Financial Regulation.
2. The report sets out the actions the Commission has taken, intends to take, or is unable to follow up, in response to both the Council recommendations and the EP’s resolution on discharge for the 2011 EU Budget. It focuses on the four priority actions of “institutional accountability and financial nature” highlighted by the EP in the general discharge resolution for 2011.
3. The report is accompanied by two Commission Staff Working Documents that detail the Commission’s responses to the 387 requests from the EP and 87 from the Council. In total, the Commission: agreed to action 181 requests (143 from the EP and 38 from the Council); considers that required action has already been taken or is ongoing for 252 requests (205 from the EP and 47 from the Council), though in some cases the results of the actions will need to be assessed; and not accepted 41 requests (39 from the EP and 2 from the Council), with the reasons given relating to the existing legal and budgetary framework or its institutional role or prerogatives.

**Priority actions**

*Action 1: communication on the protection of the EU Budget*

1. As requested by the EP, the Commission issued a communication on the protection of the EU Budget in September 2013, which details the corrections and recoveries made in the preceding year, and provides cumulative information on those made in previous programmes.

*Action 2: relating to error rates in shared management*

1. The Commission states that it took a number of notable steps to improve the error rates in shared management. These included:

* further harmonisation, particularly in the area of Cohesion Funds, where DGs REGIO and EMPL now apply an aligned approach; and in Agriculture, where Regulation 883/2006 was amended in April 2013 to facilitate interruptions to Rural Development payments;
* actions focussed on simplification, where national eligibility rules are either too complex or not compliant with EU regulations;
* proposals to limit the effect of gold-plating[[1]](#footnote-1) in the next Multiannual Financial Framework (MFF) by requiring all Member State to reduce administrative burden for the beneficiaries;

* continued efforts to ensure strict compliance with eligibility requirements and the correct application of public procurement rules, through training and guidance to programme managing authorities;
* speeding up the audit and financial correction procedures, particularly to merge the different stages of the procedure leading to a financial correction. The Commission argues that this has been applied in the Cohesion Policy area since 2012 and is planned for other policy areas; and
* plans to evaluate and report by March 2014, on the progress made in the financial management of the different policy areas of the EU Budget in the annual activity reports (AARs) and the synthesis report for 2013,.

*Action 3: Evaluation Report and enhanced use of performance audits*

1. The Commission states that more progress and performance information will be used in the Evaluation Report, including the results of, and actions taken following, the various existing performance audits. To clearly define ‘EU-added value’, the Commission has tabled a concept which has been used as a basis for the proposal made for the next generation of programmes under the MFF. The aim is also for reporting in the AARs to focus on how resources have been used to achieve policy objectives and how these policies have generated EU-added value.
2. Concerning the EU 2020 flagship and other initiatives, the Commission states that its proposals for the new generation of programmes include elements aimed at delivering a stronger performance framework focussing on efficiency and effectiveness in reaching the priority objectives. The Commission has committed to reporting on progress in achieving the objectives of the financial programmes, which are designed to contribute to the achievement of the EU 2020 targets and the other programmes contributing to other EU objectives.

*Action 4: concerning revenues and traditional own resources*

1. The Commission states that it is providing assistance to certain Member States in increasing the effectiveness and efficiency of the collection of custom duties and VAT, and that it has provided an evaluation of the cost of postponing the full application of the Modernised Customs Code (MCC). It also sets out the multiple actions that it is taking to support Member States in their fight against tax fraud and tax evasion, in an action plan to fight tax fraud and tax evasion, accompanied by two recommendations[[2]](#footnote-2); and the Directive on the fight against fraud to the EU's financial interests by means of criminal law[[3]](#footnote-3).
2. On the issue of the impact of uncollected revenue, the Commission stresses that it has repeatedly raised recovery issues and held relevant Member States to account where non-recovery can be attributed to them.
3. The cooperation between the European Anti Fraud Office (OLAF) and the Structural Funds Directorate-Generals has been reinforced with their Anti-fraud Strategy document to this regard assessed twice a year. The Commission believes that this would help to reinforce fraud risk assessment, provide more guidance for Member States in fraud prevention and detection, and raise the level of fraud awareness in the Commission services and in the Member States.

**Horizontal and Specific Issues**

1. A number of other areas are highlighted in the report as horizontal and specific issues. Examples include:

* In relation to the EP’s recommendation that the Commission should give guidance to Member States to draft meaningful annual summaries, the Commission states that guidelines have been available since 2010 but argues that annual summaries have limited added-value as compared with annual control reports and audit opinions by audit authorities, as evidenced by the external study that was communicated to the EP in May 2011.
* In relation to the tobacco industry, the Commission considers that the legal framework applicable to all institutions, and the implementation provisions adopted by them, are a basis for dealing with all issues relating to the rules on conflict of interests and “revolving door” cases, which it proactively manages.
* In relation to the EP’s calls for full transparency concerning the application of fundamental rights during OLAF investigations, the Commission points out that assessing the possibility of breaches is a matter for the relevant courts, but that OLAF’s Director regularly reports on the findings of investigations carried out by OLAF to the institutions.

**MINISTERIAL RESPONSIBILITY**

1. Treasury Ministers are responsible for the Government’s policy on the EU budget and matters concerning financial control generally. Other Ministers are concerned with those parts of the budget relating to their own Departmental interests.

INTEREST OF DEVOLVED ADMINISTRATIONS

1. Financial management policy is a reserved matter under the UK's devolution settlements. The devolved administrations as managing authorities have an interest in how EU funds are managed and have thus been consulted in the preparation of this EM.

# LEGAL AND PROCEDURAL ISSUES

1. Legal basis

1. Articles 217 and 319(3) of the Treaty on the Functioning of the European Union, Article 106a of the Treaty Establishing the European Atomic Energy Community, Article 166 of Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council and Article 144(2) of Council Regulation (EC) No 215/2008.
2. Legislative procedure
3. Not applicable: this is not a proposal for legislation.
4. Voting procedure
5. Not applicable.
6. Impact on United Kingdom Law
7. None.
8. Application to Gibraltar
9. None.
10. Analysis of Fundamental Rights Compliance
11. Not applicable

**APPLICATION TO THE EUROPEAN ECONOMIC AREA**

1. Not applicable.

**SUBSIDIARITY**

1. The EU budget is a matter of exclusive EU competence.

**POLICY IMPLICATIONS**

1. The Government is a strong advocate of sound financial management and budget discipline in relation to EU budget expenditure, and notes that this report provides useful a summary of the actions taken by the Commission in response to the discharge recommendations of the 2011 EU budget.
2. In relation to improvements to interruptions procedures, the Government supports in principle, the amendments to Regulation 883/2006 to facilitate interruptions of rural development payments, as a means of promoting sound financial management.  It believes however that these amendments would not necessarily in themselves address the underlying problem of high error rates in scheme payments.  There is a continuing need for simplification of the regulations in such a way that policy objectives (e.g. environmental benefits) can be maximised and error rates in expenditure minimised.
3. In relation to actions concerning revenues in the UK, Her Majesty’s Revenue and Customs (HMRC) is working closely with UK trade bodies to assess the national impact of delay to the implementation of the MCC, with a primary focus being on the current timetable for the Union Customs Code implementation in 2015. With regards to the VAT gap identified in relation to Customs procedure 42 (CP42), the European Court of Auditors (ECA) produced a special report on the effectiveness of control across the EU of CP42 for imports in 2012. Overall, the ECA believes that these procedures are not yet effectively controlled across Member States, which is giving rise to VAT evasion and lost revenue. The UK is not relying on the 15 cases sampled as part of the ECA audit to assure compliance and tackle fraud - HMRC’s work plan for 2012 includes activities to test both strands of the CP42 framework: imports through the UK for despatch to another Member State and VAT due in the UK on imports through another Member State. Specialist fraud officers also review UK CP42 imports monthly, and exchange information with the other Member States to identify high risk cases, here or abroad, for intervention. In addition to this, and specifically in relation to potential evasion of Own Resources, the UK has initiated a special programme to raise expertise by creating a network of specialists to tackle civil evasion supported by framework penalties and sanctions aimed at reducing Own Resources fraud.

**REGULATORY IMPACT ASSESSMENT**

1. Not applicable.

**FINANCIAL IMPLICATIONS**

1. There are no direct financial implications from this report. However, the recommendations and the actions outlined by the Commission in response are aimed at improving the Union’s financial management, which should increase the effectiveness and efficiency of the EU budget.

**CONSULTATION**

1. Not applicable.

**TIMETABLE**

1. We currently have no timetable for a Council discussion on this document.

**NICKY MORGAN MP**

**ECONOMIC SECRETARY TO THE TREASURY**

1. The degree to which national rules render Union legislation on budget management unnecessarily complicated. [↑](#footnote-ref-1)
2. Commission recommendation of 6.12.2012 on aggressive tax planning (C(2012) 8806 final) and on measures intended to encourage third countries to apply minimum standards of good governance in tax matters (C(2012) 8805 final). [↑](#footnote-ref-2)
3. (COM(2012)363) [↑](#footnote-ref-3)