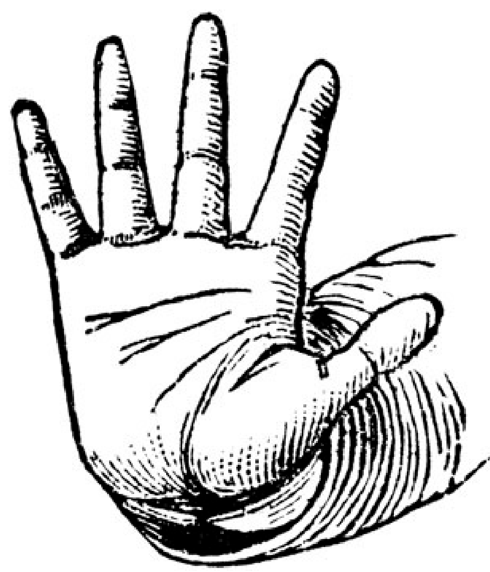
AN EXAMINATION OF THE DISCHARGE PROCEDURE

HOW THE EUROPEAN PARLIAMENT SCRUTINIZES THE EU BUDGET



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Purpose

The German EFDD delegation commissioned this study examining the discharge procedure, the way the European Parliament scrutinizes the EU budget to identify shortcomings and flaws in the discharge procedure and to identify possible improvements that would lead to potential cost savings and minimize political misuse of funds.

By examining the discharge procedure and scrutinizing the way public funds have been used the German EFDD delegation contributes to sound management of public finances and delivers on its mandate to safeguard taxpayers' money.

Methodology

The review will identify flaws in the discharge procedure and propose possible reforms by examining: the way the European Parliament examines the accounts, financial statements and the evaluation report referred to in Article 318 TFEU as well as the examination of the Court of Auditors report and any relevant replies of institutions or other special reports relating to the Discharge procedure.

The review will also compile relevant background information and compare the discharge procedure of the European Parliament to that of some EU Member States.

Definitions

To grant **discharge** means to relieve someone or something from responsibility. Within the EU context discharge is the final approval of the implementation of the budget for a specific year following the audit and the finalisation of the annual accounts. Discharge is granted *ex-post* and entails the formal closure of the related accounts for a given year.

To be **liable** for something means to be legally responsible for something. The basis for liability is a relation. The responsible party is liable for his or her actions to someone. Some EU Member States governments such as Finland and Sweden derive all public power from the citizenry based on basic or constitutional law, constitutional precedent or praxis. In these countries democratic rule is built on a mandate from the people to the parliament and from there to the government and the government agencies and departments. With this mandate follows a responsibility towards the client, at every level.[1] It is important to differentiate between political responsibility and judicial liability. Judicial liability commences when someone through actions or omission breaks the law and thus can be subject to reprisal. Political responsibility concerns elected representatives that cannot be subject to legal action. Political responsibility is exacted by the electorate on election day while judicial liability is subject to court proceedings.[2]

Introduction

Parliamentary oversight and accountability of the executive, including oversight of the expenditure of the executive, are among the core roles of parliaments in a democracy. Parliamentary access to documentation and insight into the expenditure of the executive are necessities of democratic accountability upon which the legitimacy of the expenditure rests.

Within the EU, financial accountability builds on various mechanisms, the most important of which is the so-called discharge procedure.

The discharge procedure is the last stage of the budgetary cycle and is one of three budget powers:[3]

- The Council and the European Parliament jointly exercise the power to **adopt the budget** as laid down in Articles 314-316 TFEU.
- The European Commission **implements the budget** - Article 317 TFEU.
- The Discharge Authority (the European Parliament on recommendation of the Council), exercises **budget control power** meaning that it oversees the implementation of the budget on the basis of the Court of Auditors reports – Article 319 TFEU.

A thorough examination of expenditures and a functional and easy to understand discharge procedure are essential in order for the EU budget to have legitimacy in the eyes of taxpayers that ultimately fund it.

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[1] Reglering av ansvar och ansvarsutkrävande - The Swedish Agency for Public Management

[2] ibid

[3] Council discharge by the European Parliament – Finding Solutions

How the EU budget is agreed upon

The budget of the European Union, referred to as the Multi-Annual Financial Framework or MFF, is proposed by the European Commission and must be adopted with unanimity by the Member States after obtaining the consent of the European parliament. The current MFF is the first to be adopted under the new provisions of the Treaty of Lisbon, according to which the Council, acting in accordance with a special legislative procedure, must unanimously adopt the MFF Regulation after having obtained the consent of Parliament.[4]

When there are differences between the positions of the European Parliament and the Council, they engage in a negotiation process known as the conciliation procedure. The specifics of the conciliation procedure are detailed in the Interinstitutional Agreement of 2013.[5]

Unlike national government budgets the MFF is a seven-year financial framework. The current MFF covers 2014-2020. Each annual budget is approved by both the European Parliament and the Council.[6] The European Parliament gave its final consent to the current MFF in November 2013.[7] Once the EU budget is adopted, the European Commission is responsible for its implementation (other institutions are in charge of their own administrative budgets).[8]

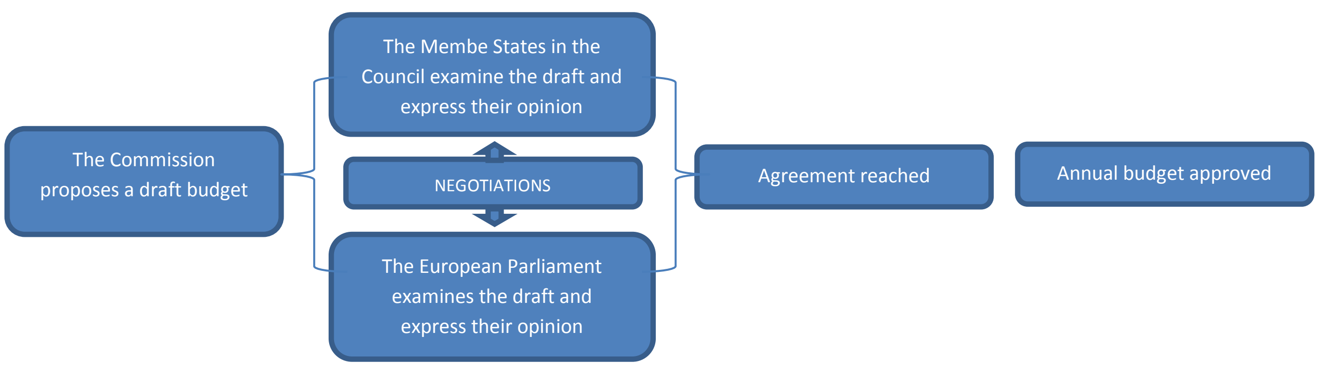

Figure 1: How the EU budget is agreed upon

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[4] *MFF Factsheet*, European Parliament

[5] Part II and Annex I Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management

[6] *EU Budget key features*, European Commission

[7] European Parliament legislative resolution of 19 November 2013

[8] *Discharge procedure: Questions and answers*, European Commission

Discharge of the EU budget

Legal basis

The EU treaties set out the way the budget procedure is to take place in Title 2 TFEU – Financial Provisions (Articles 310 -324). The specifics of the discharge procedure are laid down in articles 318 and 319 TFEU. Article 287 TFEU lays out the role of the Court of Auditors and the Financial Regulation[9] specifies details in articles 164-167.

While the treaties mention the Commission as the institution subject to discharge the Financial Regulation includes references to other entities: for example, Article 166 establishes an obligation to ensure that European Parliament observations linked to discharge decisions are followed up on, not only relating to the Commission, but also to the other institutions.

The following reports referenced in articles 287, 318 and 319 TFEU form the basis for Members of the European Parliament's discharge decision.

As of 2016 both "Synthesis of the Commission's management achievements" and "Article 318 Report"[10] are gathered in one single report called the **Annual Management and Performance Report.** It is supposed to provide an overview of the performance and management as well as how well the EU budget was protected from fraud and misuse. It sets out how the EU budget supports the political priorities of the EU and describes the results achieved and the role of the Commission in ensuring the highest standards of financial management.[11]

The Annual Reports by the Court of Auditors including the replies to the observations of the institutions under audit of the Court of Auditors. In its annual report the ECA provides a *Statement of Assurance* – known as the DAS – *déclaration d'assurance*. The DAS represents the formal opinion of the ECA on the reliability of the EU accounts and on the legality and regularity of the underlying transactions.

The **Annual Accounts of the European Union** contain financial information on the activities of the year, the assets and liabilities, the revenue and expenditure of the institutions, agencies and other bodies of the EU. They comprise the 'consolidated financial statements' covering, in particular, the balance sheet setting out the assets and

[9] Financial Regulation

[10] Article 318 evaluation report on the results achieved with the EU's finances

[11] *Overview factsheet*, European Commission Integrated Financial Reporting Package 2016

liabilities at the end of the year and the 'consolidated reports on the implementation of the budget' covering the revenue and expenditure for the year.

Follow-up
In accordance with Article 166 of the Financial Regulation the Commission and the other institutions "shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council." To do so, the Commission adopts a follow-up report each year which provides an overview of actions taken. Member States are obliged to cooperate with the Commission by informing them about measures taken to act on observations made, however, the Commission is not obliged to take this information into account when drawing up its follow-up report.[12]

The role of the European Parliament

The European Parliament is the only directly-elected EU-institution, therefore it is seen to more closely represent the interests of taxpayers in the EU. The European Parliament exercises a form of democratic oversight as part of the discharge procedure to make sure that the Commission and the other institutions deal properly with EU funds.

Article 319 of the EU treaties states: "The European Parliament, acting on a recommendation from the Council, shall give a discharge to the Commission in respect of the implementation of the budget."

Thus the European Parliament, on a recommendation from the Council of the European Union, decides whether to:

- **Grant the discharge**, meaning the Parliament grants the final approval of how the budget for a specific year has been implemented. If discharge is granted it also allows for the formal closure of the related accounts for a given year, or
- If the European Parliament **postpones the discharge**, it can ask the relevant institution or body to provide it with additional information before voting on a final decision later in the year, once
- The Parliament has **refused to grant a discharge.** This was in 1998, on financial year 1996. The refusal to grant discharge led to the establishment of a group of five independent experts whose *First report on Allegations of Fraud, Mismanagement and Nepotism in the Commission*[13] led to the resignation of the Santer Commission. The Commission subsequently sought to address the weaknesses identified by

[12] Financial Regulation Article 166 §2
[13] *First Report on Allegations of Fraud, Mismanagement and Nepotism in the Commission*, 1999

this group in a comprehensive reform which led to an overhaul of the Commission's internal control system.[14]

When granting the discharge, the Parliament is supposed to not only verify the correctness of spending (compliance) but it also has to ensure that there has been sound financial management[15] and achievement of objectives (performance).

The Framework Agreement on relations between the European Parliament and the European Commission specifies that:
"In connection with the annual discharge governed by Article 319 TFEU, the Commission shall forward all information necessary for supervising the implementation of the budget for the year in question, which the chair of the parliamentary committee responsible for the discharge procedure pursuant to Annex VII to Parliament's Rules of Procedure requests from it for that purpose. If new aspects come to light concerning previous years for which discharge has already been given, the Commission shall forward all the necessary information on the matter with a view to arriving at a solution acceptable to both sides."[16]

The Parliament makes its discharge decision after the Committee on Budgetary Control (CONT) has examined the financial accounts of the Commission and the submitted report on its activities for the year in question. The Parliament also takes into consideration the Court of Auditors' annual report and the responses of the Commission on specific questions that MEPs may have. The reports from the Court of Auditors and Commission contain information on:

- The reliability of the EU accounts
- Whether all revenue has been received and all expenditure was incurred in a legal and regular manner
- Whether financial management has been sound

The Budgetary Control Committee prepares individual discharge reports that are voted on later by the full plenary. The European Parliament votes individually on the discharge of every EU institution, each of which has its own independent section of the EU budget. The European Parliament also votes individually on the discharge of agencies, Joint Undertakings and the European Development Fund.[17] It is noteworthy that the euro crisis

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[14] *Discharge procedure: Questions and answers*, European Commission

[15] Article 30 of the Financial Regulation specifies that financial management is sound when it applies the principles of economy, efficiency and effectiveness.

[16] Framework Agreement on relations between the European Parliament and the European Commission

[17] ibid

rescue mechanisms and associated financial instruments are outside the EU's standard budget procedure and as such are not subject to the discharge procedure.[18]

In Committee the questioning of Commissioners in the discharge procedure consists of 90 minute hearings with the Commissioner and his or her staff (of up to 10). In general, written questions submitted ahead of the hearing followed by written answers are not expected. However, there may be written questions on matters which are technical or very specific, to allow for preparation of replies by the Commissioner. Written questions should be submitted to the Commission seven working days before the hearing and written answers will be provided by the Commission to the committee, at the latest, two working days before the meeting. The hearing commences by the European Court of Auditors introducing its findings as laid out in its annual and special reports. Following this the Commissioner is allowed to make a brief presentation of the Commission's replies to these findings. The Parliament Rapporteur then asks questions and the Commissioner and the Court replies followed by questions by other Members of the European Parliament to the Commissioner or the Court.
This first round of questions could then be followed by a second round of questions by the rapporteur and other Members, if time allows. Final comments are made by the Parliament's Rapporteur, the Court representative and the Commissioner or Chair.

Following the hearing supplementary documents and/or answers asked for during the hearing, should be provided to the Rapporteur within five working days, when possible.[19]

The Parliament may also make recommendations to the Commission on the execution of the budget. The Commission has to report, at the request of Parliament, on the measures taken in light of such observations and comments. The procedure ends in the granting, postponement or refusal of the discharge. In case the discharge decision is postponed, Article 164 of the Financial Regulation calls for the Commission to promptly take all measures necessary to remove the obstacles to granting discharge.

The Parliament deals in a similar manner with the approval of the accounts of other institutions, including its own administrative budget.[20]

Performance-based budgeting aims to improve the efficiency and effectiveness of public expenditure by linking the funding of public sector organizations to the results

[18] *EU Budgeting and Performance*, OECD JOURNAL ON BUDGETING, 2017/1, page 19

[19] *2016 Discharge - Practical arrangements with the Commission*, European Parliament

[20] About Parliament - Budgetary Powers

they deliver, making systematic use of performance information.[21] One important obligation related to performance budgeting results from the Financial Regulation (FR) applicable to the EU general budget. The FR contains principles and procedures for implementation and control of the EU budget. Article 30 of the regulation lays down the concept of sound financial management and the principles of economy, efficiency and effectiveness. It stipulates that:

- the EU's financial resources are to be used in accordance with the principle of efficiency, ensuring the best relationship between resources employed and results achieved, and effectiveness, ensuring the attainment of the specific objectives set and the achievement of the intended results;
- it is required that, for all sectors of activity covered by the budget, specific, measurable, achievable, relevant and time-bound objectives should be set and monitored by performance indicators; and
- in order to improve decision-making, all programmes and activities which entail significant spending are to undergo ex-ante and ex-post evaluations, and their results are to be disseminated to the European Parliament, the Council and spending administrative authorities.[22]

From the 2014 discharge onwards the European Parliament has included a number of observations regarding the performance of the budget. In its 2014 discharge report the European Parliament wrote:

"Underlines that in the past, the discharge procedure primarily verified the legality and regularity of financial transactions; believes, in the context of the Commission initiative 'An EU budget focused on results', that more emphasis should also be given in future, beyond the above verifications, to examining whether the results achieved by projects and programmes match the intended objectives;"

In its discharge report for Financial year 2016 – Section VIII the parliament expressed: *"support for the successful paradigm shift towards performance-based budgeting in the Commission's budget planning introduced by Vice-President Kristalina Georgieva in September 2015 as part of the "EU Budget Focused on Results" initiative".*[23]

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[21] M. Robinson & D. Last, *A basic model of performance-based budgeting*, IMF 2009

[22] Regulation 966/2012 on the financial rules applicable to the general budget of the Union

[23] REPORTon discharge in respect of the implementation of the general budget of the European Union for the financial year 2016, Section VIII – European Ombudsman

The Commission initiative aims to “change the spending culture by paying as much attention to funds' performance, efficiency and effectiveness as to their absorption and compliance with
financial rules.”[24] A European Parliament Research Service study found one of the keys to succeeding in the “paradigm shift” towards performance budgeting will be whether or not performance information actually can influence the budgeting process.[25]

Members of the European Parliament & the discharge procedure

MEPs or their political groups regularly threaten to hold discharge on an institution or agency they have a particular issue with. For example German Green MEP Sven Giegold threatened in 2018 that: “Until the nebulosity regarding Selmayr’s promotion has been clarified, the European Parliament must put the discharge of the Commission’s budget on hold.”[26] Despite Giegold’s threat MEP’s granted discharge to the Commission one month later.
MEPs sometimes postpone discharge in order to further question the EU agencies or institutions they suspect of wrongdoing. In 2012, then EPP rapporteur, Monica Macovei postponed the discharge to the European Environment Agency, the European Medicines Agency and the European Food and Safety Agency arguing that they need to make more savings and resolve alleged conflicts of interest. A majority of MEPs supported her findings that the average costs of the EFSA's 15-strong management board (€92,630, or €6,175 per member) were excessive and called for "drastic cuts".[27] Socialists supported the expenditure.[28]

Recommendations to improve scrutiny by the European Parliament

Parliament’s Budget Committee has expressed desire for enhanced performance information in the budget. Some parliamentary stakeholders cited in an OECD study on Budgeting and Performance in the EU[29] have expressed the view that while the reforms of recent years are welcome, further re-balancing is needed – for example through a greater degree of practical and operational discussion of performance metrics during the discharge procedure.

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[24] *Performance Budgeting – a means to improve EU spending*, European Parliamentary Research Service, 2018
[25] Ibid, p. 10
[26] https://www.theparliamentmagazine.eu/articles/news/meps-threaten-postpone-approval-commission-budget-amid-selmayr-row
[27] http://www.europarl.europa.eu/news/en/press-room/20120508IPR44653/ep-approves-accounts-for-lion-s-share-of-eu-spending-in-2010
[28] http://www.socialistsanddemocrats.eu/newsroom/sd-euro-mps-call-granting-discharge-all-eu-agencies#1
[29] Budgeting and Performance in the European Union, Public Governance Directorate, OECD - 2017

The OECD study further concluded that the Committee on Budgetary Control has made increasing use of the Performance Audits published by the Court of Auditors and that the Committee holds sessions with the Court on their Special Reports and invites other Standing Committees to participate in these sessions where they are related to their policy domain; however, the level of involvement elicited from other committees to date has been limited. This is regrettable as budget control is one of the primary functions of the elected Members of the European Parliament. Greater cooperation between the Budget Control Committee, the Budget Committee and the Standing Committees could mitigate the limited "windows of opportunity" for Parliament to engage in performance-related scrutiny with any degree of intensiveness or continuity.

One technique cited in the previously mentioned OECD study that has been used to generate wider parliamentary engagement in performance oversight has been to enhance the consultative role of the legislature, including sectoral committees, in establishing performance indicators.

In Sweden an informal working group of approximately ten civil servants from the Ministry of Finance and the Parliament's Finance Committee was set up in 2000 to improve performance information given to the Parliament. It met over a period of several years. When the group discussed specific budget areas, representatives from various line ministries and parliamentary sectoral committees also participated in the group, ensuring that there was broad engagement in the process. The group served as a catalyst, spreading good ideas to government and parliament and identifying the types of performance information most useful to parliament in its deliberations on the budget. The Parliament should also seek to make greater use of a wealth of information and reports relating to performance and results – ranging from the Programme Statements in the draft budget, to the new integrated Annual Management and Performance Report and the Court of Auditors Special Reports.

Lessons could also be learned from the House of Commons Scrutiny Unit which supports Select Committees in examining the expenditure and performance of government and the relationships between spending and delivery of outcomes. See the section on the Scrutiny Unit in the chapter "Discharge of the UK Budget" for more details.

The role of the Council

Discharge is granted by the European Parliament on a recommendation from the Council. The Council and Parliament legal services are locked in disagreement as to how exactly to interpret the functions of the Council and European Parliament. The deadlock is summarized in a European Parliament Study for the CONT Committee and stems from the Parliament using the discharge procedure to extend its oversight and power:

"The current disagreement largely stems from issues unrelated to discharge, and notably distrust over previous attempts to use its budgetary powers to secure political oversight in areas where the legal framework precludes it (ie CFSP, new economic governance)."[30]

According to the study cited above the European Parliament's legal service argues that Article 317 para 1 TFEU targets the operational budget of the EU, rather than the whole expenditure side of the EU budget as argued by the Council." The Council legal service is quoted arguing that: "Conceding to the EP's wish to issue separate discharges would open the door to individual responsibilities of all kinds of subjects with intervention in budget management (MS, third countries, or international organisations)."

The study also points out that the "EP's separate discharges are considered legal by the Council solely to the extent that they represent preparatory documents for the discharge decision on the Commission."[31]

Despite disagreements the European Parliament has agreed with the Council on the procedures for the annual discharge. These agreements are the:

- *Framework Agreement of 20 October 2010 on relations between the European Parliament and the European Commission*[32] and the:
- *Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making*[33].
- Rule 37 of the Rules of Procedure of the European Parliament for the 8th parliamentary term (January 2017) further specifies the cooperation between the European Parliament and the Commission and Council in regards to the legislative planning.

[30] *Council discharge by the European Parliament - Finding Solutions*, European Parliament Research Service
[31] ibid
[32] OJ L 304, 20.11.2010, p. 47
[33] OJ L 123, 12.5.2016, p. 1

Recommendations to improve scrutiny by the Council

The Council is strongly engaged on financial aspects of budget approval and control, but has little interest or resources allocated to the performance aspects.

Council stakeholders cited in an OECD study on Budgeting and performance in the EU emphasised the need for simplification and streamlining, cutting through the information overload and requested the Commission to provide an "executive summary" to form the basis for budgetary decision making. Recent developments in the structure of the Annual Management and Performance Report indicate a shift in this direction.

Further a *Statement of Goals of the EU Budget* and a corresponding *ex post* document, should be considered as a means of facilitating the Council in its task, as a co-equal arm of the Budgetary Authority, of holding the Commission and its agencies to account for the performance aspects (and not merely the financial aspects) of the EU budget.[34]

The role of the Court of Auditors

The Court of Auditors sets out to establish whether the European Commission has ensured the effective application of the relevant accounting rules and whether the consolidated final accounts give a true and fair view of the EU finances within the framework of the generally accepted accounting principles and methods.

The approach followed by the Court in the audit of the accounts of the European Communities follows standard financial audit methodology, i.e. the following basic elements:

- the evaluation of the central accounting system;
- checking of the functioning of the key accounting procedures;
- analytical check (consistency and reasonableness) on the main accounting data;
- analyses and reconciliations of accounts and/or balances;
- substantive tests on commitments, payments and certain balance sheet items.

An audit of the accounts

The opinion on the reliability of the accounts states whether the final consolidated accounts of the European Communities for a given year completely and accurately report

[34] *Performance Budgeting – a means to improve EU spending*, European Parliamentary Research Service, 2018 p. 34

the cash flows and financial results for that particular year and assets and liabilities at the year-end are properly registered in order to reflect faithfully the financial position.[35]

The annual accounts comprise the 'consolidated financial statements' covering, in particular, the balance sheet setting out the assets and liabilities at the end of the year and the 'consolidated reports on the implementation of the budget' covering the revenue and expenditure for the year.
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- substantive tests on commitments, payments and certain balance sheet items.

An audit of the legality and regularity of the underlying transactions

The objective is to gain sufficient evidence as to whether funds have been received and spent in conformity with contractual and legislative conditions and have been correctly and accurately calculated. In brief, this involves the determination of whether the transactions took place, whether the recipients/beneficiaries were eligible for the funds received, and whether the costs/quantities claimed were accurate and eligible. The resulting audit opinion consists of an overall conclusion covering all revenue and expenditure transactions. Payments are audited down to the level of the final beneficiaries.[37]

The Court's methodology is based on two principal sources of audit evidence:

- An examination of the operation of the supervisory and control systems applied in the collection and disbursement of European funds by Community Institutions, Member States and third countries; these systems are intended to ensure the legality and regularity of revenue and expenditure.

[35] *The DAS Methodology* – European Court of Auditors

[36] ibid

[37] *The DAS Methodology*, European Court of Auditors

- Sample checks of transactions relating to revenue and expenditure down to the level of the final beneficiary (also commonly referred to as substantive testing).

These principal sources can be complemented by two other sources:
- An analysis of the Annual Activity Reports and the declarations of the Commission's Directors-General and the procedures in drawing them up.
- An examination of the work of other auditors, defined as those that are independent of the Community's management and control process.

Finally these sources can be accompanied by other sources of audit evidence such as reports resulting from parliamentary inquiries, results of investigations by OLAF and evidence from previous audits.

The Court of Auditors also evaluates the functioning of supervisory and control systems based on five key control objectives[38]. These are key control objectives are:

1) **reality and measurement** – control systems should ensure that underlying operations exist and are accurately determined

2) **eligibility of underlying transactions**– control systems should ensure that various community eligibility criteria are met for the underlying transactions

3) c**ompliance with other regulatory requirements**– control systems should ensure that other (non-eligibility) criteria are met

4) **correctness of calculations** – control systems should ensure that calculations are correctly undertaken and

5) **completeness and accuracy of accounting** – control systems should ensure that all transactions are accounted for, and that they are not accounted for more than once and that transactions are recorded in the correct accounting period and for the right value.

[38] Ibid, p. 17

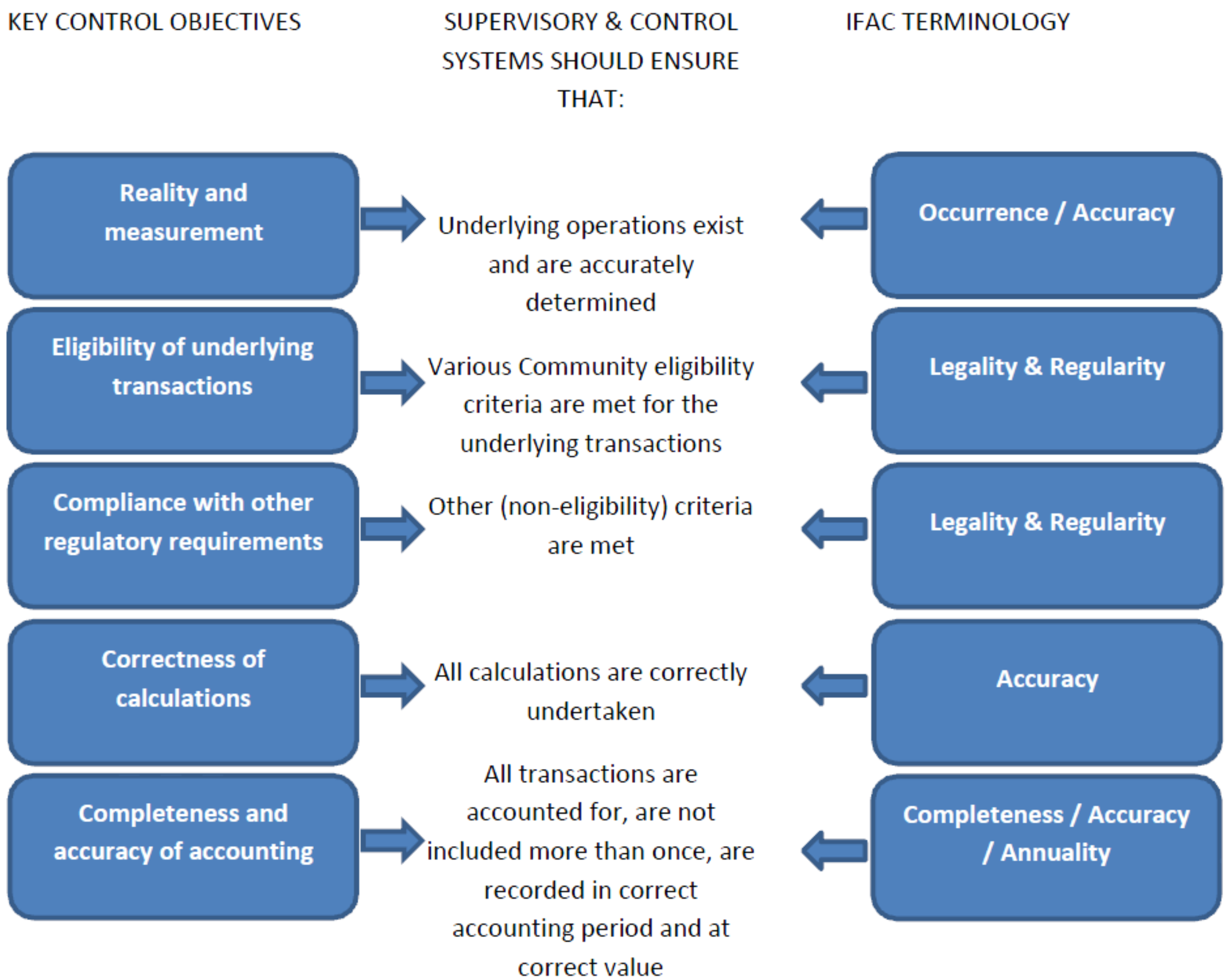

Figure 2 The five key control objectives of the Court of Auditors

The Court of Auditors classifies errors[39] as being either **quantifiable** or "**non-quantifiable.**

Quantifiable errors refers to errors which have a direct and measurable financial impact on the amount of the underlying transactions financed from the Community budget and which can, generally, be readily quantified.
Non-quantifiable errors describes errors which either do not have a direct financial impact on the amount of an underlying transaction or else where such an impact is very difficult to establish.

[39] Error meaning transactions (or parts thereof) and/ or actions linked to them which have not been carried out in accordance with the legal and regulatory provisions applicable.

The work of the court in forming its audit conclusions and opinion is summarized in the flowchart in Annex I.[40]

The previously cited OECD study on *Budgeting and Performance in the EU* notes that "performance auditing by the Court of Auditors is already advanced by international standards." But goes on to state that "despite the increased focus on performance audit over recent years, the Court of Auditors performance audits are not yet at a stage where they can be regarded as fully integrated within the EU framework of budgeting for results." The OECD study also goes on to note that:

1) "**the Court of Auditors is not yet in a position to furnish an opinion on the performance framework as a whole**" because the Annual reports' Chapter III addresses different areas of the performance framework every year.

2) " the Court of Auditors assessments of the performance of EU spending and management are distributed among various special reports", the OECD notes these reports are prepared on a stand-alone basis.

3) "the Court of Auditors does not scrutinise the full set of performance data produced by the European Commission each year." Meaning that only a sample of Directorate General Annual Activity Reports are reviewed annually and that performance figures included in the European Commission's Annual Management and Performance Report are not commented upon.

The OECD study thus recommended improved links between performance budgeting (a stated goal of the EU budget) and performance audits. For example, it recommends that "questions could be developed that address whether the performance indicators measure the right things or whether the performance measurement systems involved are capable of providing credible measured results."

Performance Budgeting in EU Member States

Sweden and France have implemented performance budgeting and both national audit offices perform annual reviews of performance indicators. The Swedish national audit office (Riksrevisionen) verifies that the data reported by agencies and departments for performance outputs and outcomes are supported by evidence. Riksrevisionen publishes about 30 performance audit reports per year that are submitted to Parliament, which in turn submits them to the Government for statements. The Government must report within four months which measures it has taken and which it intends to take. The

[40] *The DAS Methodology*, European Court of Auditors, p. 21

relevant parliamentary committee then considers the document, and the Riksdag thereafter makes a decision on the matter.[41]

In its final recommendation the OECD study on *Budgeting and Performance in the EU* noted that "there is scope for the Court of Auditors to draw upon international practices to maximise the relevance and impact of its audit activities related to the EU performance budgeting framework." Examining the Swedish and French experience of performance budgeting could benefit the EU taxpayer.

For example the OECD recommended that certain basic criteria regarding the quality of performance data could be more clearly specified and centralised: This would include issues such as the traceability of performance data and quality controls in the measurement of outcomes and/or impacts. These standards would be seen as necessary prerequisites for a move towards annual verification by the Court of Auditors of the relevance and accuracy of the key performance figures and headline targets reported in the AMPR.[42]

The Commission Anti-Fraud Strategy

The *Commission Anti-Fraud Strategy*, [43] originally launched in 2000 and re-launched in 2011 mandates the implementation of an action plan for the implementation of an anti-fraud strategy among recipients of EU grants. It also includes specific anti-fraud risk assessments and impact assessments establishing the key objectives relating to mitigation of identifiable weaknesses that are followed by an evaluation of the anti-fraud strategy and the action plan.

The anti-fraud strategy aims to: improve and update fraud prevention, detection and investigation techniques, recover a higher proportion of funds lost due to fraud and deter future fraud through penalties. It includes sector specific methodology and attempts to clarify and enforce the different responsibilities of the various stakeholders. The anti-fraud strategy should cover the whole expenditure cycle and ensure that anti-fraud measures are proportionate and cost effective.[44]

The Annual Reports on the protection of the EU's financial interests (PIF-Reports) give an overview of completed actions and activities undertaken by the Commission in the

[41] https://www.riksrevisionen.se/en/about-the-swedish-nao/results.html

[42] *Budgeting and Performance in the European Union*, Public Governance Directorate, OECD – 2017, p. 43

[43] Commission anti-fraud strategy in full (2011)

[44] FAQs about the 2011 anti-fraud strategy, Press release on 2011 anti-fraud strategy, Press Release: European Commission seeks tougher rules to protect taxpayers' money from fraud

fight against fraud.[45] An evaluation of the 2011 Strategy is being performed by OLAF as lead service.[46]

Changes affecting the next MFF 2021-2027

The Commission has proposed a controversial **Rule of Law mechanism**. What it calls "A major innovation in the proposed budget" that it claims "will strengthen [the] link between EU funding and the rule of law." The rule of law mechanism is purported "to protect the EU budget from financial risks linked to generalized deficiencies regarding the rule of law in the Member States."[47] Critics have described the mechanism as a political tool targeting conservative governments in Central and Eastern Europe.

According to the Commission "the new proposed tools would allow the Union to suspend, reduce or restrict access to EU funding in a manner proportionate to the nature, gravity and scope of the rule of law deficiencies." Such a decision would be proposed by the Commission and adopted by the Council through reverse qualified majority voting which means the Commission's proposal is deemed to be adopted by the Council unless it decides by qualified majority to reject the Commission's proposal."[48]

The proposed legal basis for the proposal for a regulation to create the proposed Rule of Law mechanism is Article 322 TFEU, that establishes financial management rules. As proposed the proposal would be adopted jointly by the European Parliament and the Council (qualified majority).

The PIF Directive and the European Public Prosecutor's Office

In 2017 the Council and Parliament adopted the PIF Directive[49]. It defines criminal offences, covers active and passive fraud, as well as the misuse of funds.
Minimum penalties are laid down for natural persons, and limitation periods are established that make it possible for the law to apply over a sufficient time to ensure that infringements can be addressed in an effective way.
The directive also introduces an obligation for the Member States, the Commission, the agencies and the Court of Auditors to cooperate.

[45] https://ec.europa.eu/anti-fraud/reports_en
[46] Commission Communication on the Updated Anti-Fraud Strategy
[47] https://ec.europa.eu/commission/sites/beta-political/files/budget-proposals-financial-management-rule-law-may2018_en.pdf
[48] Ibid
[49] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law

Finally, the directive lays down the legal basis for the powers of the European Prosecutor by defining its competences. The European Public Prosecutor's Office (EPPO) will be a decentralised prosecution office of the European Union with exclusive competence for investigating, prosecuting and bringing to judgment crimes against the EU budget. It will have uniform investigation powers throughout the Union based on and integrated into the national law systems of the Member States.

On 5 October 2017, the Parliament gave its content to the text agreed by the twenty Member States[50], which adopted the EPPO regulation on 12 October.

The EPPO will operate as one single office with a decentralised structure organised at two levels. The Central Office will be composed of the European Chief Prosecutor, the College (with one European Prosecutor per participating Member State), the Permanent Chambers, and the Administrative Director. The decentralised level will consist of the European Delegated Prosecutors located in the Member States and with a double role, acting on behalf of the EPPO and exercising functions as national prosecutors. In order to ensure effective coordination and a uniform approach throughout the EU, their work will be supervised by the central level.

The EPPO will investigate, prosecute and bring to judgment by national courts the perpetrators of, the "PIF offences" and "ancillary offences", inextricably linked to them. In line with the Parliament's request, its remit will cover cross-border VAT fraud (though only with a total damage of at least €10 million).

The EPPO is scheduled to be up and running by 2020, its director is scheduled for appointment in the beginning of 2019.[51]

[50] Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Germany, Greece, Spain, Finland, France, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovenia and Slovakia.
[51] http://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-european-public-prosecutor-s-office

Discharge in the private sector

In the private sector proposals to discharge directors of liability routinely appear on shareholder meetings' agendas in many European Union countries. For example in Germany at the annual general meeting the management board has to present the annual accounts to the shareholders, who then decide whether or not they pass a resolution discharging the management as well as the supervisory board[52]. Likewise in Sweden discharge decisions are mandated to take place at the annual general meeting of all Swedish public limited companies.[53]
The resolution on the discharge of the members of the Management Board and Advisory Board represents the shareholder's general approval of the management for the last year.

In Sweden auditors overwhelmingly endorse discharge, and rarely does the discharge decision raise questions or debate. At least 1/10 of shareholders at the annual general meeting have to vote against the resolution to grant discharge for it to fail. If the resolution passes, the general rule is that no action for damages can be initiated. Exceptions cover bankruptcy proceedings or situations when faulty or incomplete information has been presented to the annual general meeting prior to its discharge decision, if this is the case management can be held liable.[54]
A decision to grant discharge that is plagued by a formal or material error can be subject to an action for annulment like any other general meeting decision, by shareholders, the Management Board or individual members of the Management Board as well as the Director. Members of the Management Board and the Director cannot on material grounds challenge a decision to refuse to grant discharge. If a decision to grant discharge is subject to an action for annulment and rejected the effect is that the resolution to grant discharge never passed.

[52] s. 120(2) Aktiengesetz
[53] Aktiebolagslagen 2005:551
[54] Aktiebolagslagen 2005:551, 29:11, 7:11 & 29:10

Discharge in non-governmental organisations

The decision to grant discharge is mandatory, by praxis not statute, also for all NGO's with legal personalities in Sweden. Generally the decision to grant discharge is taken at the annual general meeting following the presentation of an audit report. Also for NGO's the decision by the members to grant discharge is an approval of the management's actions and budget implementation for the last year.[55] Decisions to not grant discharge are a way for the members to signal either their disapproval of the work of the Management Board, their suspicion that something illegal or incorrect has been done and that action for damages might be initiated or that there are remaining tasks the Management Board must undertake until they can be granted discharge. Praxis is that discharge decisions are tabled for the next meeting if sufficient action has been taken to address the issues identified by auditors or members.

In Sweden it is praxis that members of the Management Board of an NGO that are not granted discharge do not get re-nominated to the Management Board. Like in public limited companies a decision to grant discharge that was based on faulty information given to the annual general meeting can be annulled. Unless a serious crime has taken place a one year prescription time from the discovery of the faulty information is adhered to.

Discharge of municipal budgets (Sweden)

Municipal Councils in Sweden are relatively independent from central government compared to their continental European counterparts. Municipal Councils consist of 21 to 61 elected members and largely finance themselves by raising taxes locally. The municipal budget is legally mandated to fund childcare, schools, elderly care, social services, water supply, sewage, infrastructure and environmental issues as well as rescue and emergency services.[56]

Swedish Municipal Councils are held accountable by elections every fourth year, in which the electorate can give their representatives a continued mandate or choose not to do so, and by the annual discharge procedure in which the Municipal Council grants discharge to the Municipal Executive Board, Committees, Companies owned by the Municipality and other entities receiving funding from the Municipal Budget.

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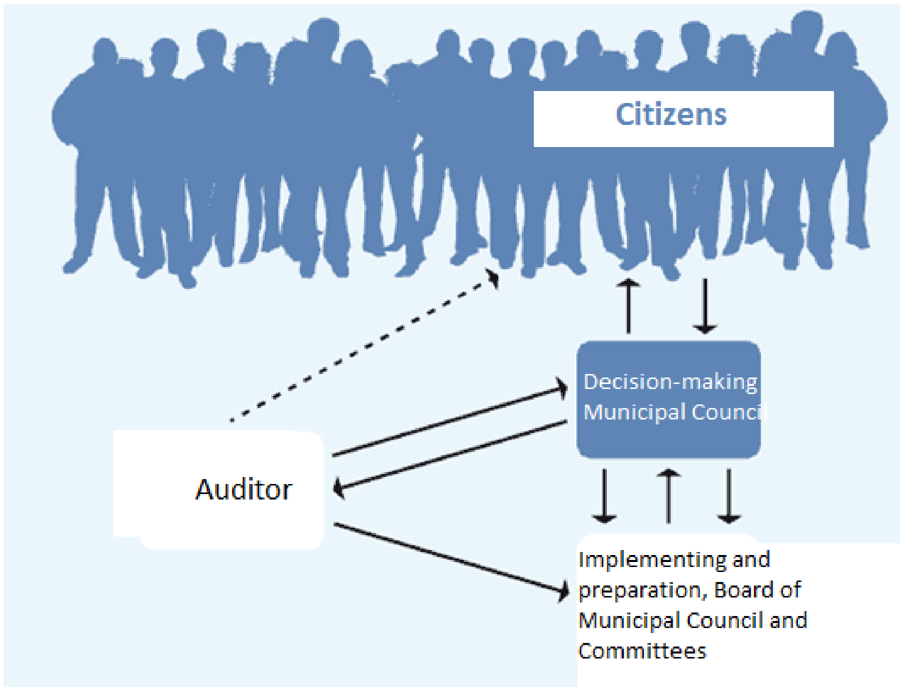
[55] https://forening.se/fortroendevalda/revisorerna/ansvarsfrihet/

[56] The Role of Municipalities – Swedish Association of Local Authorities and Regions



The Swedish Municipal Council as part of its discharge procedure can:[57]

- Make a motivated note even if auditors have not.
- Decide to recall members of the Municipal Council in positions of responsibility that they have not been granted discharge.
- Decide to start claims for damages against members in positions of responsibility that have not been granted discharge.

Swedish Municipal Councils grant discharge to the Municipal Executive Board and other entities in over 95% of discharge procedures, consenting with auditor's opinions. Auditors recommend to not grant discharge in less than one percent of cases. To receive a note by the auditor is considered a grave political signal, but nonetheless signals continued support for the Council.[58]

[57] *Discharge in Municipal Councils - Formal requirements and practicalities*, Swedish Association of Local Authorities and Regionss

[58] *Discharge in Municipal Councils* - Swedish Association of Local Authorities and Regions & https://skl.se/demokratiledningstyrning/revision/ansvarsprovning.384.html

Discharge of the 2016 EU budget

The Commission's Annual Reports to the Council and European Parliament

For the 2016 discharge the Commission produced the first *Integrated Financial Reporting Package*[59] consisting of "three reports on the implementation, performance, results, sound financial management and protection of the EU budget." These reports were the *2016 Annual Management and Performance Report*, the *Consolidated annual accounts of the European Union 2016* and the *Report on the follow-up to the discharge for the 2015 financial year*. The package also included five "factsheets", eerily similar to simplified press briefings.

The *2016 Annual Management and Performance Report* is littered with uplifting stories and statistics on the results of taxpayer's investments through the EU budget. For example: *"results from the 'Generation Found'-project, which is a project on education, implemented with UNICEF: 60 000 children benefit from educational material and 10 392 children benefit from psychosocial and social cohesion programmes. 2 081 education personnel were trained 7 950 Syrian educational personal received incentives"*

"The Commission and the newly established European Border and Coast Guard Agency worked towards an effective presence at sea: 174 500 people in 2016 in the Central Mediterranean alone were rescued."

"In 2016 the total contribution to the climate mainstreaming was estimated at 20.9 %."

The Commission's *2016 Annual Management and Performance Report* in **section one** (see Annex I for a snapshot of the report) attempts to summarise the EU budget performance based on "the latest available evidence on the results achieved with the EU budget up to end 2016." The Commission states that this reporting "draws on information from the Programme Statements that are part of the budget proposal for 2018, the 2016 Annual Activity Reports produced by Commission departments; and other sources such as evaluations and implementation reports on EU programmes."

The report provides implementation information on the progress of the 2014-2020 Multiannual Financial Framework programmes for each of the budget headings. This implementation information is constrained to information about how many millions or billions have been spent under the programme, accompanied by results in very simplified

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[59] Integrated Financial Reporting Package, European Commission

and public-relations friendly formats. Stock photos of what is supposed to be smiling grant recipients are inserted throughout the information. [60]

Section two of the Annual Management and Performance report entitled *Internal control and financial management achievements* describes the Commission's internal control, financial management and protection of the EU budget in 2016 (see Annex IV). The management assessment is complemented by a summary of the conclusions of the Internal Audit Service. On the basis of these elements, the Commission takes overall political responsibility for the management of the budget in Section 2.6.

The reporting on internal controls is based on the Annual Activity Reports of Commission departments, in which the internal control environment and related issues are described. Where problems were encountered in the course of the year the report describes how Commission departments tackled these challenges. Section 3 summarises information on the achievement of the internal control objectives (managing legality and regularity risks; the cost-effectiveness of controls; and anti-fraud strategies), the protection of the EU budget and the management assurance provided to the College.

For 2016, all Commission departments concluded that the internal control standards are effectively implemented and functioning.[61] However, almost half (22) of the Commission departments reported a need to improve effectiveness in specific standards such as Information and Communication, Process and Procedures followed by Staff Allocation and Mobility.

This assurance is based not only on management's own conclusions (which are based on statistical and non-statistical indicators about control results and corrections), but also cross-checked against opinions from independent parties (the Internal Audit Service's audit findings and limited conclusions, the European Court of Auditors' observations) and the conclusions of the work of the Audit Progress Committee.
The conclusion reached on the basis of the management assurance received from all departments and of the assurance obtained through internal audit work, enables the Commission, by adopting the report, to take overall political responsibility for the management of the 2016 EU budget.

Policy areas which are subject to less complex eligibility rules show lower levels of error, as illustrated by the error rate being significantly lower for schemes based on 'entitlement' regimes than for costs 'reimbursement' schemes. Therefore, simplification

[60] *Annual Management and Performance Report 2016*, European Commission, Part 2, p. 60
[61] Annual Management and Performance Report 2016, European Commission, Part 2, p. 69

represents the most effective way of reducing both the risk of errors as well as the cost and burden of control.[62]

All 49 Commission departments have assessed the cost-effectiveness and the efficiency of their control systems. By the end of 2015, 25 departments had reviewed their control systems; half had taken measures to improve cost-efficiency while the others concluded that no changes were needed. By the end of 2016 35/49 departments of the Commission had reviewed their control systems as part of the Commission Anti-Fraud Strategy initiative.

The **Internal Audit Service Assurance** can be found in the Annexes section to the *Annual Management and Performance report*. For fiscal year 2016 it concluded that:

"*95 % of the recommendations followed up during 2012-2016 had been effectively implemented by the auditees. Of the 413 recommendations still in progress (representing 23 % of the total number of accepted recommendations over the past five years), none is classified as critical and 170 as very important. Out of these 170 recommendations rated very important, 18 were overdue by more than six months at the end of 2016, representing 0.99 % of the total number of accepted recommendations of the past five years*."[63]

The annex section is also littered with statistical indicators attempting to track progress towards key objectives of the EU budget such as target statistics for the end of the Multi-Annual-Financial-Framework period, for example the targeted employment rate for the population aged between 20 and 64 for 2020 was 75%, currently it hovers around 72%.

Finally Annex nine provides a summary of the EU Trust Funds that are subject to an independent external audit. The Commission is to submit annual reports to the European Parliament on each of the following EU Trust Funds that have been established:[64]

- the EU Trust Fund for the Central African Republic: 'the BÊKOU EUTF' (EDF),
- the EU Regional Trust Fund in Response to the Syrian Crisis: 'the MADAD EUTF' (EU Budget),
- the European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa: 'the AFRICA EUTF' (EDF),

[62] Ibid p. 77
[63] Annex 5 to the Annual Management and Performance Report 2016, European Commission, p. 41
[64] The Annual reports on EUTF's are attached to the Annual Activity Reports of DG DEVCO and DG NEAR.

- the European Union Trust Fund for Colombia: 'the COLOMBIA EUTF' (EU Budget).

The Court of Auditors report

The Court of Auditors report found that 2016 expenditure by the Commission and executive agencies amounted to EUR 136.4 billion while revenue amounted to EUR 144.7 billion. For the first time since the Court of Auditors started providing a statement of assurance in 1994 the Court issued a *qualified opinion* on the legality and regularity of payments (rather than an *adverse opinion* which indicates widespread problems). A *clean opinion* would mean that the figures present a true and fair view and follow the rules of financial reporting.[65]

The Court of Auditors found that the estimated error rate for spending had decreased (3.1% in 2016 – down from 3.8 in 2015).

The Court of Auditors carried out performance audits to check "whether EU policies are actually effective" and "spending programmes deliver the best possible value for money." As part of its performance assessment the Court of Auditors found that only one third of 168 projects audited under the 'Economic, social and territorial cohesion' heading had a performance measurement system with output and result indicators linked to the objectives of the programme, and that 42% had no result indicators and/or targets. The Court of Auditors stated that "fraud is difficult to identify during standard audit procedures", but that the Court nonetheless found 11 instances of suspected fraud 2016 out of 1000 transactions audited. The Court reported all such cases to OLAF the European Union's Anti-Fraud Office which is charged with investigation and follow-up.[66]

The recommendation by the Council

The Council recommended granting discharge to the Commission and to all six executive agencies.

In regards to the discharge of the Commission's section of the budget, the Council noted among other things "the increasing financial exposure of the EU budget due to long-term liabilities, guarantees and legal obligations".

The Council also called for "the Commission to improve the transparency, simplicity and accountability of all the EU budgetary instruments". Regarding the performance of research and innovation projects the Council noted with concern: "that some projects

[65] Court of Auditors 2016 Annual Report - FAQ
[66] ibid

were affected by issues that detracted from their performance and that the Court observed increased difficulties in management and coordination in projects with a higher number of participants." [67]

In its comments to the decision to recommend granting discharge to the six executive agencies the Council noted a multitude of complaints and suggestions for improvement to the executive agencies such as: improving financial programming and monitoring in relation to audits, called for reductions in the level of commitments carried over to the following financial year to avoid an overestimation of budgetary needs, regretted findings of weak planning that had led to a cancellation of appropriations and finally called on agencies to stick to the budgetary principle of annuality.[68]

The European Parliament's discharge decision

On 26 March 2018, the Budget Control committee adopted its report[69], which proposed to grant discharge to the Commission and to all six executive agencies. In line with the ECA report for 2016, the Budget Control committee demanded a review of the young farmers and greening schemes for the next MFF.

It also requested that the Commission speed up the preparation of the Union accounts and compilation of information with a view to adopting the discharge decision the year after the budgetary year concerned, likewise it asked for faster delivery of payments under cohesion programmes in order to reduce the implementation period to two years.

The committee criticised the Court of Auditors for having considered €2.5 billion of 2016 disbursements on financial instruments to be outside the eligibility period. The committee concluded that **with a different approach, the ECA would most likely have found the error rate for cohesion to be considerably higher.**

On April 18th 2018, upon recommendation from the Budget Control committee, the European Parliament granted discharge to the Commission and all executive agencies, except for the Malta based European Asylum Support Office (EASO), for 2016. The Parliament voted on 53 discharge reports covering all EU institutions as well as agencies, Joint Undertakings and the European Development Fund.

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[67] 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 2016

[68] Council recommendations on the discharge to be given to the executive agencies in respect of the implementation of the budget for the financial year 2016

[69] Report on discharge in respect of the implementation of the general budget of the European Union for the financial year 2016, Section III Commission and executive agencies

EASO was found by the Court of Auditors to have disregarded tender and procurement procedures in the selection of multiple multi-million euro contracts. The audit found that" two of the five procurement procedures audited were irregular and had corresponding irregular payments representing 2,9 % of the total expenditure."[70]

The Parliament also denied discharge to the Council and European Council, as it has done the last seven years, for failing to submit the information Parliament considers necessary.[71]

Conclusions & recommendations

The annual EU budget of over 150 billion EURO per annum is subject to a wide variety of checks and control procedures. Some of these controls are internal, while others are external *ex-post* controls, part of the discharge procedure. This study condenses the most important aspects of budget scrutiny under the discharge procedure. It focuses on the roles of the Parliament, the Council and the Court of Auditors.

This study has found that the Parliament's Budget and Budget Control Committees have expressed a desire for enhanced performance information in the budget. While the reforms of recent years are welcome, further re-balancing towards performance is needed.

As budget control is one of the primary functions of the elected Members of the European Parliament the Parliament could also increase the level of involvement from committees that currently have little or no role in the discharge procedure.

It is recommended to increase cooperation between the Budget Control Committee, the Budget Committee and the Standing Committees as this could mitigate the limited windows of opportunity for Parliament to engage in performance-related scrutiny with any degree of intensiveness or continuity. One option that could increase parliamentary engagement in performance oversight could be to enhance the consultative role of the legislature, including sectoral committees, in establishing performance indicators for the annual budget and MFF.

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[70] European Parliament decision of 18 April 2018 on discharge in respect of the implementation of the budget of the European Asylum Support Office for the financial year 2016
[71] MEPs give a green light to the EU's 2016 budget management, European Parliament Press Release 18.4.2018

Another suggestion would be to establish an informal working group consisting of Commission civil servants dealing with budget issues and members of the Parliaments Budget or Budget Control Commitees.

The Parliament should also seek to make greater use of a wealth of information and reports relating to performance and results – ranging from the Programme Statements in the draft budget, to the new integrated Annual Management and Performance Report and the Court of Auditors Special Reports.

A special committee could be established on the model of the British House of Commons Scrutiny Unit which supports other committees in examining the expenditure and performance of government and the relationships between spending and delivery of outcomes.

With regards to the Council it is strongly engaged on financial aspects of budget approval and control, but currently has little interest or resources allocated to the performance aspects. A *Statement of Goals of the EU Budget* and a corresponding *ex-post* document, should be considered as a means of facilitating the Council and Parliament in their task of holding the Commission and its agencies to account for the performance aspects and not merely the financial aspects of the EU budget.

The Council has also indicated that it would welcome if budgeting and performance in the EU emphasised the need for simplification and streamlining, cutting through the information overload. Council stakeholders have opined that the Commission should provide an "executive summary" to form the basis for budgetary decision making. Recent developments in the structure of the *Annual Management and Performance Report* indicate a shift in this direction.

Annex I

Treaty on the Functioning of the European Union (TFEU)articles relating to the Discharge procedure

Article 318

"The Commission shall submit annually to the European Parliament and to the Council the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the Union.
The Commission shall also submit to the European Parliament and to the Council an evaluation report on the Union's finances based on the results achieved, in particular in relation to the indications given by the European Parliament and the Council pursuant to Article 319."

Article 319

1. The European Parliament, acting on a recommendation from the Council, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts, the financial statement and the evaluation report referred to in Article 318, the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, the statement of assurance referred to in Article 287(1), second subparagraph and any relevant special reports by the Court of Auditors.

2. Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.

3. The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council.

At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors.

Article 287

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union. It shall also examine the accounts of all revenue and expenditure of all bodies, offices or agencies set up by the Union in so far as the relevant constituent instrument does not preclude such examination.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the Official Journal of the European Union. This statement may be supplemented by specific assessments for each major area of Union activity.

2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Union.
The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.
These audits may be carried out before the closure of accounts for the financial year in question.

3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Union, on the premises of any body, office or agency which manages revenue or expenditure on behalf of the Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The other institutions of the Union, any bodies, offices or agencies managing revenue or expenditure on behalf of the Union, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

In respect of the European Investment Bank's activity in managing Union expenditure and revenue, the Court's rights of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of Union expenditure and revenue managed by the Bank.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions of the Union and shall be published, together with the replies of *these institutions to the observations of the Court of Auditors, in the Official Journal of the European Union.*

The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the Union.

It shall adopt its annual reports, special reports or opinions by a majority of its Members. However, it may establish internal chambers in order to adopt certain categories of reports or opinions under the conditions laid down by its Rules of Procedure.

It shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget.

The Court of Auditors shall draw up its Rules of Procedure. Those rules shall require the approval of the Council.

Annex II

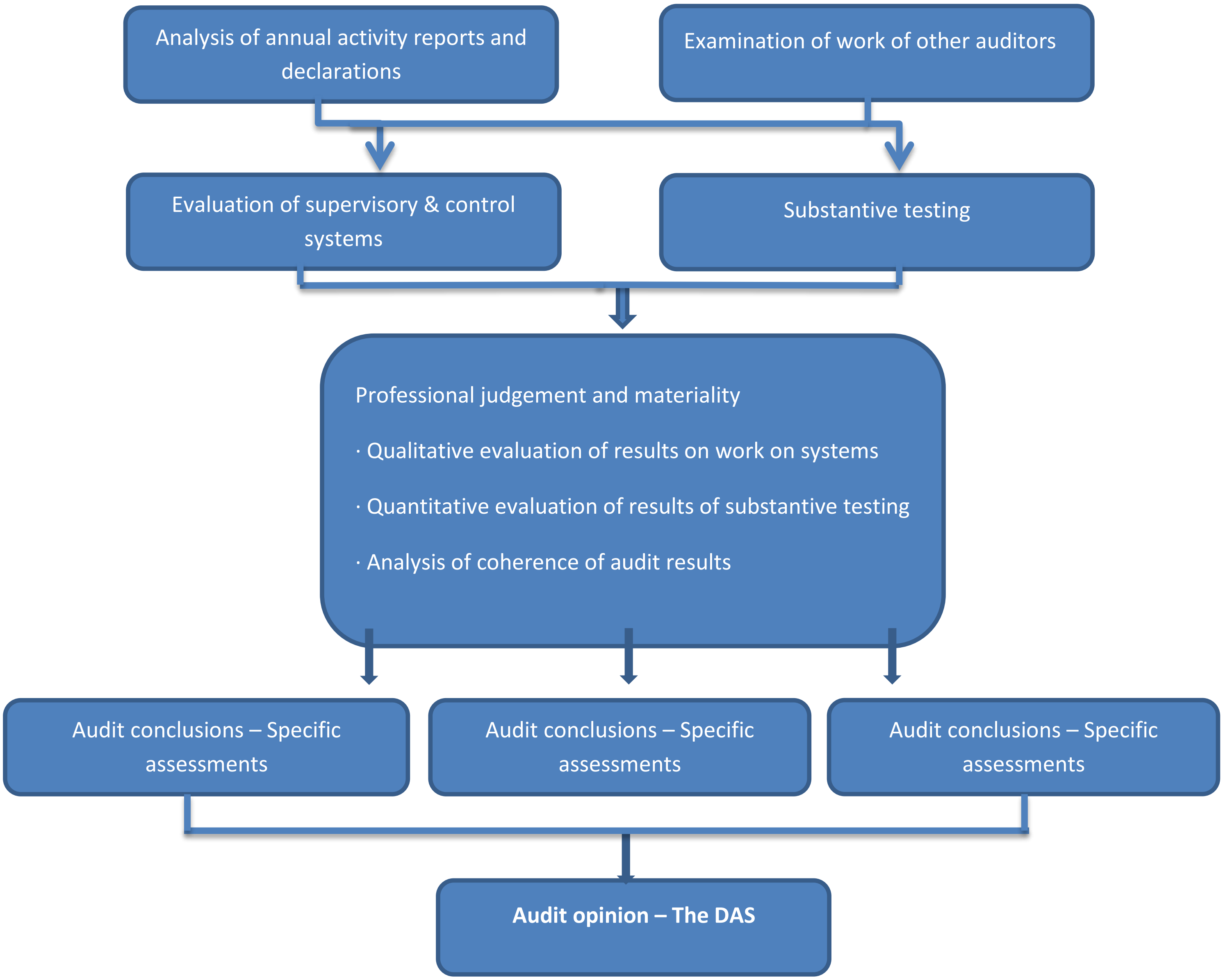
Figure 1 Snapshot from the Annual Management and Performance Report Section – All smiles

European Integration Fund

The contractor's study found that achievements were particularly strong in putting the common basic principles for immigrant policy in the EU into action and in the development and implementation of the integration process of newly arrived third country nationals in Member States. The Fund supported many projects aimed at providing direct services to immigrants, such as language courses and advisory services. In total, projects implemented in 2011-2013 reached at least two million third country nationals, equivalent to approximately 10 % of all the third country nationals in the EU at the time. In terms of impact, out of the 26 Member States, 18 identified a strong impact of the European Integration Fund on the development and improvement of the quality of introductory programmes, and observed an impact of the European Integration Fund in relation to enhancing language knowledge, supporting civic orientation and increasing knowledge of the receiving society. The European Integration Fund made an important contribution to the integration process of the third country nationals in the majority of Member States, as 22 out of 26 assessed that the European Integration Fund enabled the implementation of actions that could not otherwise have been funded from national resources, suggesting high EU added value.

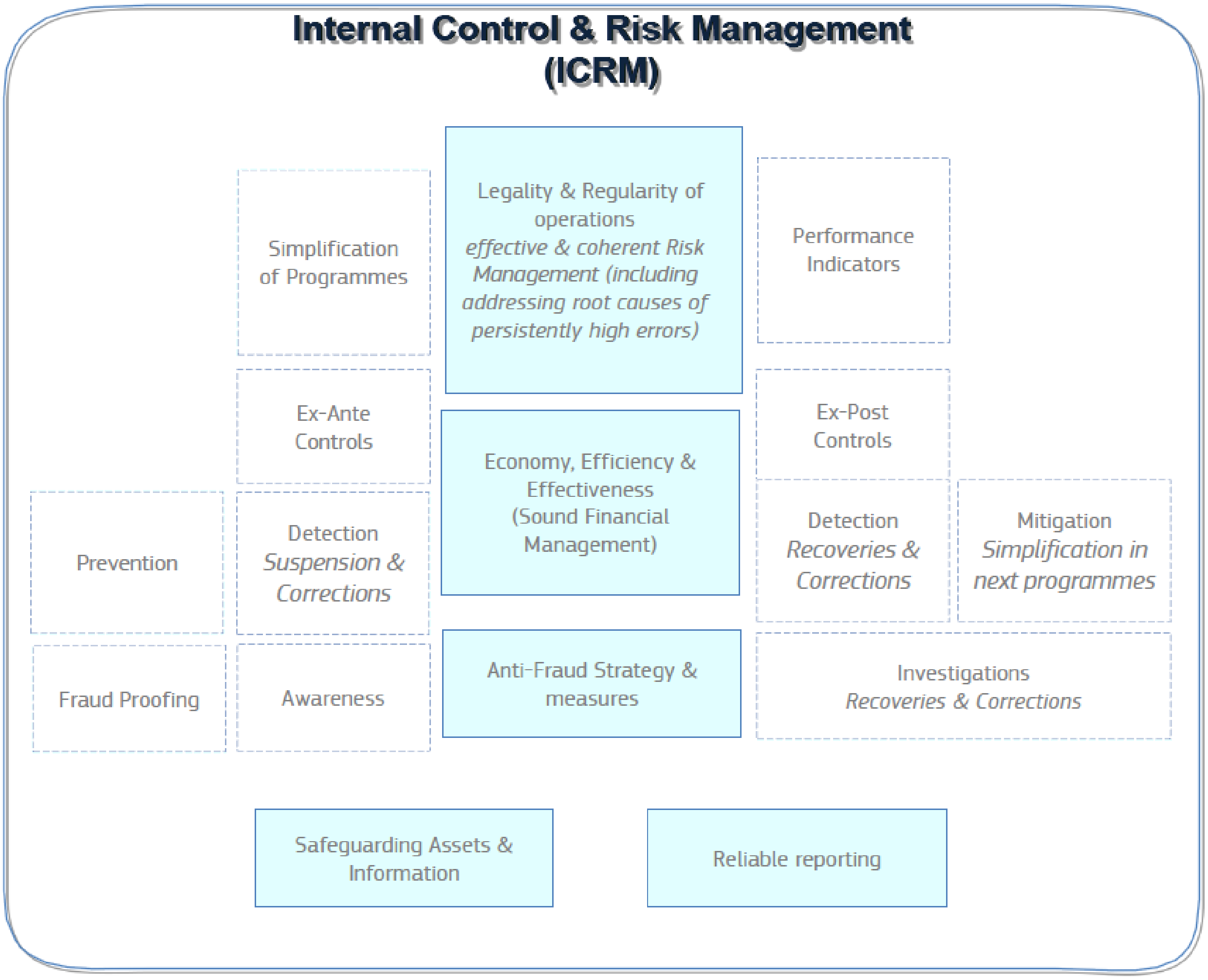
Annex III

Figure 2 How the Court of auditors reaches its audit conclusions



Annex IV

Internal Control & Risk Management at the Commission



References

Compendium on the main legal acts related to the rules of procedure, European Parliament

Practical information – Discharge 2016, European Parliament

Draft reports on 2016 Discharge - Decentralized Agencies, European Parliament

The Discharge Procedure, European Parliament Research Service

Council discharge by the European Parliament – Finding Solutions, European Parliament Research Service

Performance Budgeting – a means to improve EU spending, European Parliamentary Research Service, 2018

The DAS Methodology – European Court of Auditors

Results & Performance audit, Swedish National Audit Office

Budgeting and Performance in the European Union, Public Governance Directorate, OECD, 2017

Commission anti-fraud strategy in full, 2011

FAQs about the 2011 anti-fraud strategy

Press release on 2011 anti-fraud strategy

Press Release: *European Commission seeks tougher rules to protect taxpayers' money from fraud*

The Role of Municipalities – Swedish Association of Local Authorities and Regions

Discharge in Municipal Councils – Formal requirements and practicalities, Swedish Association of Local Authorities and Regionss

Discharge in Municipal Councils - Swedish Association of Local Authorities and Regions

The Budget and annual Finance Bill, House of Commons Library

Financial scrutiny uncovered, 3rd ed. July 2017.

Integrated Financial Reporting Package, European Commission

Annual Management and Performance Report 2016, European Commission

Court of Auditors 2016 Annual Report - FAQ

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 2016

Council recommendations on the discharge to be given to the executive agencies in respect of the implementation of the budget for the financial year 2016

Report on discharge in respect of the implementation of the general budget of the European Union for the financial year 2016, Section III Commission and executive agencies

European Parliament decision of 18 April 2018 on discharge in respect of the implementation of the budget of the European Asylum Support Office for the financial year 2016

MEPs give a green light to the EU's 2016 budget management, European Parliament Press Release 18.4.2018

http://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-european-public-prosecutor-s-office

https://forening.se/fortroendevalda/revisorerna/ansvarsfrihet/

https://skl.se/demokratiledningstyrning/revision/ansvarsprovning.384.html

Legal acts cited

Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law

s. 120(2) Aktiengesetz

Aktiebolagslagen 2005:551

Aktiebolagslagen 2005:551, 29:11, 7:11 & 29:10

Discharge of the United Kingdom budget

The process in brief

The UK Government must obtain Parliamentary approval of its annual spending plans, set out in documents known as Estimates of which each government department produces a Main Estimate, at the beginning of the year, and may also later in the year publish a Supplementary Estimate seeking modifications to its plans, similar to the amending budgets of the EU institutions. The Main Estimates are based on the spending limits set out in previous Spending Reviews as well as government forecasts for spending considered less predictable and outside of those spending limits programmes. Within each Estimate departments must include the total amounts of money for which approval is sought, and a list of what it is intended to be spent on. All Estimates must be approved by Parliament through Supply and Appropriation bills. (This Parliamentary approval process is sometimes known as "supply").[1]

At the end of each financial year, departments must each produce a consolidated Annual Report and Accounts, which sets out, for the department and all of its arm's length bodies, the spending in the financial year just ended and balance sheet position at year end (rather like a company's balance sheet and profit and loss account). The senior official in each department is designated its Accounting Officer and must personally approve the accounts which are also submitted to the National Audit Office for its opinion before being published. Annual Reports and Accounts should also set out strategic priorities and include updates on performance.[2]

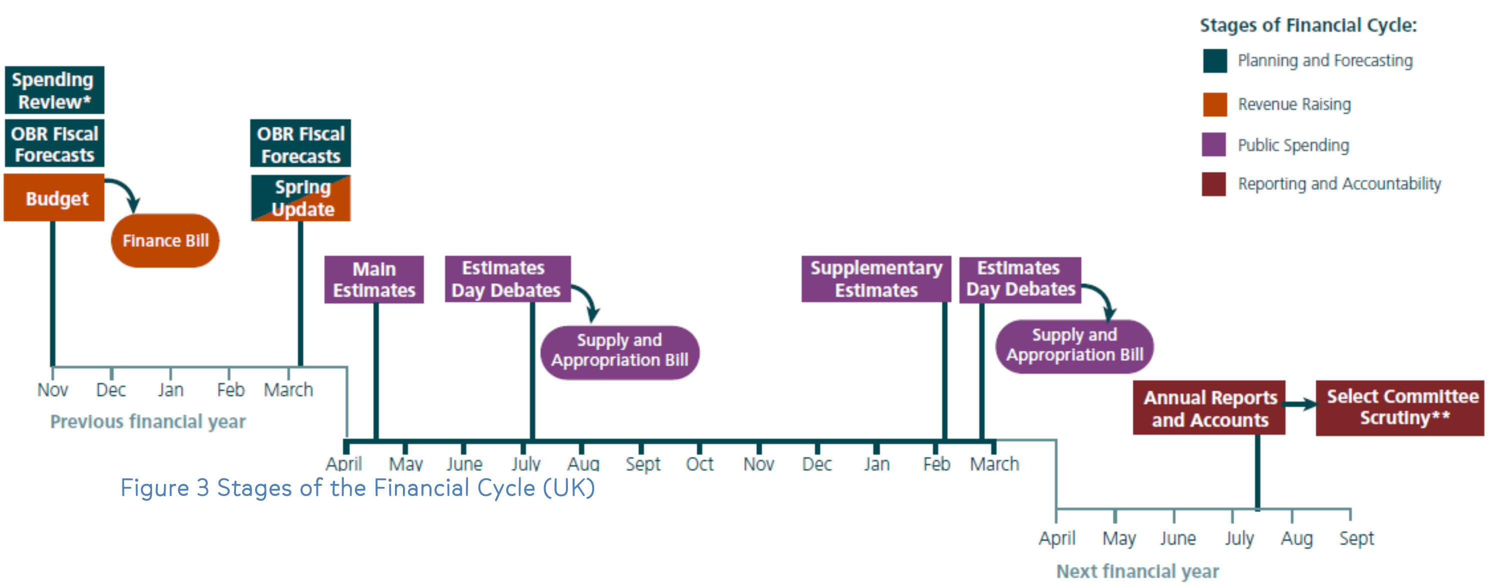


Figure 3 Stages of the Financial Cycle (UK)

Notes:
* Spending Review happens once every 3-4 years
** Select Committee Scrutiny of Departmental Annual Reports and Accounts may continue well into the financial year

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[1] The Budget and annual Finance Bill, House of Commons Library

[2] ibid

Departmental Select Committees

There are departmental select committees for each of the main Government spending departments. Their membership reflects the party proportions of the House. The House as a whole elects select committee Chairs based on party allocations. Members within each party select committee members. One of the core tasks of select committees is to examine the spending and performance of government departments. Committees conduct inquiries, leading to reports which often make recommendations to the departments. Recommendations often, directly or indirectly, relate to decisions on spending or taxation, which potentially have financial implications. Although departments do not have to implement the recommendations, reports often receive press coverage and are a crucial mechanism by which Parliament can influence Government and Government is held accountable to Parliament.

The Treasury Select Committee

The Treasury Committee is one of the departmental select committees, and has a particular role in scrutinising the work of the Treasury, HM Revenue and Customs, the Bank of England, the OBR, the Financial Conduct Authority and the Government's overall fiscal policies and management of the economy, including the Government's fiscal mandates, borrowing, taxation, Spending Reviews, Budgets and Spring Statements (previously Autumn Statements). The Committee usually conducts an inquiry and produces a report on each Spending Review. Other select committees will also look at the impacts of Spending Review decisions on their own particular department, whether through a specific inquiry, or as part of their other inquiries.

The Scrutiny Unit

The Scrutiny Unit was set up by the House in 2002 to assist the departmental select committees in their role of scrutiny, particularly in the areas of finance and draft legislation. It examines Supply Estimates and the publications reporting departmental financial performance and carries out pre-legislative scrutiny, assists committees in inquiries more generally, and responds to ad hoc requests from select committees for financial and legal expertise. The House of Commons Scrutiny Unit also provides briefings for each major department.

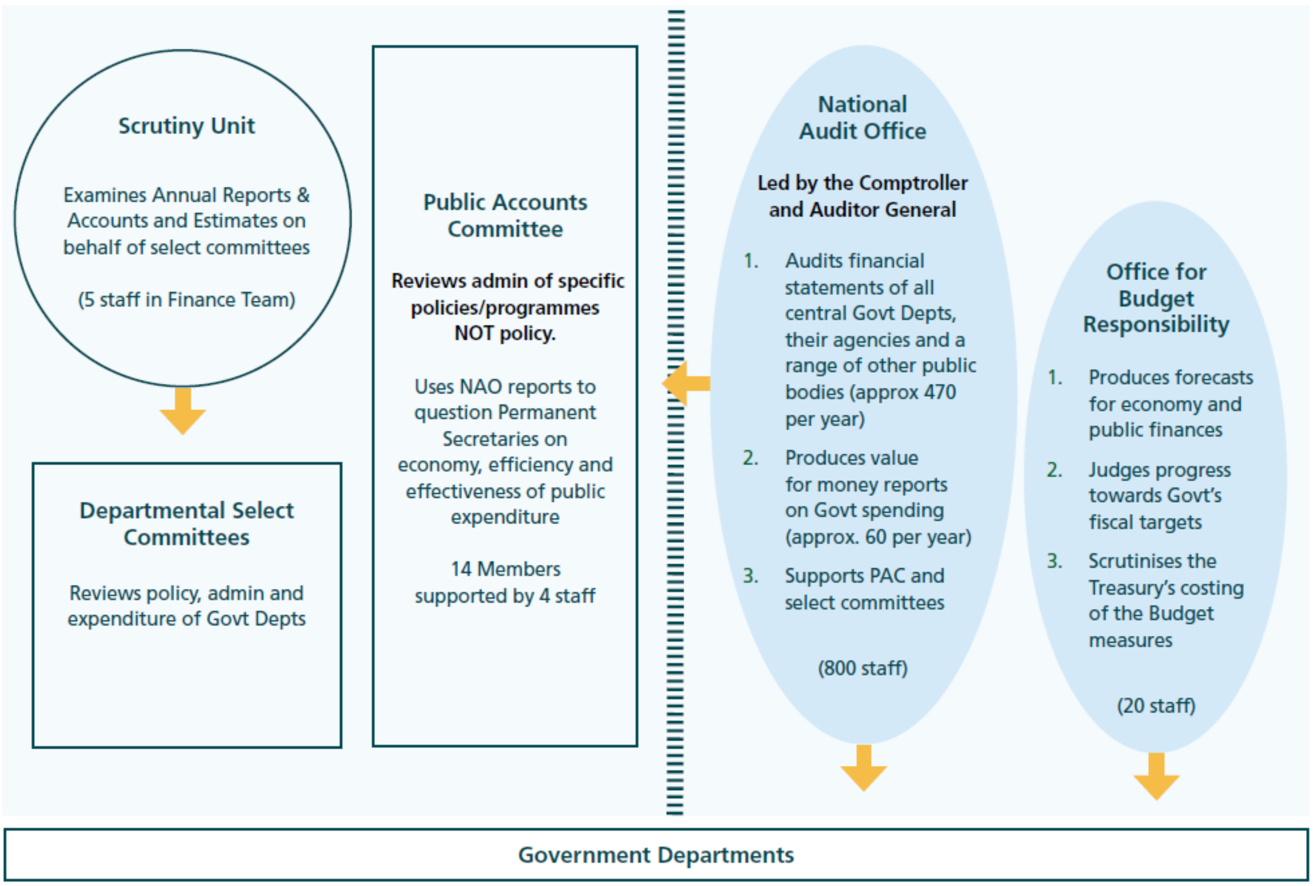
The National Audit Office

The NAO is headed by the Comptroller and Auditor General (C&AG). The C&AG, supported by the staff of the NAO, audits the accounts of all government departments. The C&AG also produces value for money studies each year on the economy, efficiency and effectiveness of public expenditure. Most NAO reports form the basis of PAC evidence sessions. Although most of the NAO's work is channelled through the PAC, it also provides ad hoc briefings and reports for departmental select committees when requested.

The Office for Budget Responsibility

The OBR was set up in 2010 as an independent fiscal watchdog, to produce forecasts for the economy and public finances, independently of the Treasury. The OBR also judges progress towards the Government's fiscal targets, assesses the long-term sustainability of the public finances and fiscal risks, and scrutinises the Treasury's costing of Budget measures.[3]

Figure 4 UK parliament scrutiny of financial management



[3] *Financial scrutiny uncovered*, 3rd ed. July 2017. Figure 3 is sourced from p. 7 of the booklet.

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For the German delegation in the EFDD group

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