RESOLUTION (EU) 2021/1547 OF THE EUROPEAN PARLIAMENT

of 29 April 2021

with observations forming an integral part of the decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2019, Section II – European Council and Council

THE EUROPEAN PARLIAMENT,

— having regard to its decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2019, Section II – European Council and Council,

— having regard to Rule 100 of and Annex V to its Rules of Procedure,

— having regard to the opinion of the Committee on Constitutional Affairs,

— having regard to the report of the Committee on Budgetary Control (A9-0056/2021),

A. Whereas in the context of the discharge procedure, the discharge authority wishes to stress the particular importance of further strengthening the democratic legitimacy of the Union institutions by improving transparency and accountability, and implementing the concept of performance-based budgeting and good governance of human resources;

1. Welcomes the fact that the Court of Auditors (the 'Court'), in its annual report for 2019 (the 'Court's report'), observed that no significant weaknesses had been identified in respect of the audited topics relating to human resources and procurement for the European Council and Council (the 'Council');

2. Notes with satisfaction that based on its audit work, the Court concluded that the payments as a whole for the year ended 31 December 2019, comprising administrative and other expenditure of the Council, were free from material error and that the examined supervisory and control systems were effective;

3. Regrets, as an general observation, that chapter 9 'Administration' of the Court's report has a rather limited scope and conclusions, notwithstanding the fact that the Multiannual Financial Framework Heading 5 'Administration' is considered low risk; requests that the audit work for that chapter be more focused on issues which are of high relevance or even of critical importance for the Council;

Budgetary and financial management

4. Observes that the Council's budget is mostly administrative with a large part of it being used for expenditure in relation to persons, buildings, furniture, equipment and miscellaneous running costs; regrets that the longstanding request to divide the budget of the European Council and the Council into a separate budget for each of the two institutions for transparency reasons and to improve accountability for both institutions has not been considered and urges the Council, as it has done repeatedly in previous discharge resolutions, to prepare separate budgets for the European Council and the Council for reasons of transparency and to improve accountability and expenditure efficiency for both institutions;

5. Notes that in 2019 the Council had an overall budget of EUR 581 895 459 (compared to EUR 572 854 377 in 2018 and EUR 561 576 000 in 2017), with a global implementation rate of 92,3 % (compared to 91,9 % in 2018 and 93,8 % in 2017); notes a descending budget increase amounting to EUR 9 million (compared to EUR 11,3 million in 2018 and EUR 16,5 million in 2017), equivalent to an increase of 1,6 % (compared to 2 % in 2018 and 3 % in 2017);

6. Recalls that appropriations carried over from 2018 to 2019 amounted to a total of EUR 56 599 584, equivalent to a carry-over rate of 10,7 %, coming mainly from categories such as computer systems (EUR 19,5 million), buildings (EUR 16,0 million) and interpretation (EUR 11,9 million); welcomes the fact that the implementation of carry-overs in 2019 amounted to payments in total of EUR 49 240 654 or 87,7 %, including for computer systems (EUR 18,7 million), for buildings (EUR 12,5 million) and for interpretation (EUR 10,4 million);

7. Recognises a slight reduction in the carry-over rate which amounted to 9,8 %, from 2019 to 2020 (as compared to a carry-over of 10,7 % from 2018 to 2019 and 11,5 % from 2017 to 2018); reminds the Council, however, that carry-overs are exceptions to the principle of annuality and should reflect actual needs; calls on the Council to strengthen its efforts to avoid budget over-estimates;

8. Congratulates the Council on the successful commitment and payment rate of 100 % for the budget line 'Delegations' travel expenses'; notes also the 100 % commitment rate for the budget lines 'Computer systems' and 'Information' but points to these budget lines' carry-over rate to 2020 of 35,4 % and 32,9 %, respectively;

9. Is informed that the number of 'institutional' and 'other' meetings amounted to 7 668 in 2019 (compared to 6 338 in 2010); notes that the total number of meetings organised in 2019 was 0,8 % (or 65 meetings) less than in 2018 because of the reduction in legislative activity in the second semester due to European elections and the election or appointment of new members in all the Union institutions;

10. Notes that, in line with the decrease in meeting activity and despite a 2 % increase in the i-slot price (EUR 10 higher than in 2018), interpretation costs decreased by 11 % (EUR 62,2 million compared to EUR 70 million in 2018) and that these costs covered 62 480 interpreter days, a 13 % decrease compared to 2018;

11. Notes that the number of legal acts published in the *Official Journal of the European Union* in 2019 amounted to 1 326 (compared to 1 210 in 2018, 1 130 in 2017 and 825 in 2010); agrees that the increase in the number of legal acts is mainly explained by the need to adopt as many legal acts as possible before the 2019 European elections;

12. Reminds the Council that conducting impact assessments is one of the key factors set out in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making and of the Council's promise to carry out impact assessments in relation to substantial amendments it makes to proposals from the Commission; regrets that the Council has so far not carried out impact assessments on any of its amendments;

Internal management, internal control, performance

13. Notes, in the context of modernisation, the steps taken by the Council to create a flatter management structure, through removing layers of hierarchy with the aim of improving communication, through making decision-making easier and through empowering staff by allowing greater ownership of files; notes the introduction of a well-tested HR IT tool (SYSPER) and other IT tools used for managing the mission lifecycle; appreciates these steps and invites the Council to continue such actions;

14. Acknowledges that an internal control framework is in place to provide reasonable assurance of achievement of objectives; welcomes the fact that in relation to 2019 neither misuse of funds nor irregularities have been mentioned in the control reports by the internal auditor or the Court, or in the opinions of the audit committee; notes further that all departments applied risk management by keeping risk registers containing information on identified risks, assessments thereof and selected risk treatment; notes that no critical risk levels were reported in 2019 and that no significant risks materialised; welcomes the fact that 93 % of the issued recommendations during the years 2016 to 2018 have been or are in the process of being implemented;

15. Welcomes the improvements in the Council's financial management and performance systems such as the launch of the integrated financial and activity planning project in October 2019 which will result in the integration of the annual and multiannual budget planning and the establishment of a link between financial planning and budget implementation at activities level;

16. Notes that in the context of improving the cash flow position, the average delay in payment of invoices was 19 days in 2019 with the maximum delay being 30 calendar days;

17. Recalls that key performance indicators are a generally acknowledged tool to measure achievements reached against objectives set; calls on the Council to provide a synthesis in its management reports of the major key performance indicators and the related results;

Human resources

18. Notes that the number of posts in the establishment plan for 2019 was fixed at 3 033 (compared to 3 031 posts in 2018 and 3 027 posts in 2017); welcomes the efforts to streamline the organisation by transforming 30 AST5 posts into 30 AD5 posts as part of the continuation of administrative modernisation; welcomes in general the process of administrative modernisation with the objective of enhancing the quality of the Council's organisation and the proper use of resources;

19. Asks the Council to report on the process of simplifying and improving HR procedures and all related actions such as the follow-up to the staff survey that took place in autumn of 2018, the enhancing of career opportunities for staff, the reinforcement of sharing experience and knowledge, the promotion of modern communication tools and sustaining the prevention of psychosocial risks; encourages the Council to complete the existing flexible working arrangements with a protection of the staff members' right to disconnect;

20. Welcomes the positive action programme of the general secretariat of the Council for trainees with disability which facilitates 4 to 6 paid traineeships a year to Union citizens with a recognised disability, as well as the reasonable accommodation policy of the Council which enables persons with disabilities to perform a job on an equal basis with others;

21. Calls on the Council to report on its gender action plan and the measures taken to ensure equal opportunities for persons with disabilities at the Council, the related procedures put in place and actions taken to achieve a balance between women and men at all hierarchical levels; calls further on the Council to provide information on the proportion of persons working with disabilities among its staff, as well as on geographical balance, and the measures that have been taken in order to ensure balance;

22. Recalls Parliament resolution of 17 December 2020 on the need for a dedicated Council configuration on gender equality, requesting ministers and secretaries of state in charge of gender equality to create a dedicated institutional forum to ensure stronger integration of gender equality into Union strategies and policy processes, coordination of all related policies, as well as harmonisation of the protection of women's rights and gender equality in the Union via an intersectional approach; underlines that such specific configuration would represent a key element in unlocking negotiations on the main files related to gender equality;

23. Calls on the Council to tackle gender and geographical imbalances in order to establish a proper representation of nationals from all Member States, including at management level;

Conflict of interest, harassment, whistleblowing

24. Regrets not having received more information about improvements to the Council's ethical culture and standards such as a dedicated website link presenting specific training on public ethics, a code of conduct applicable to all members of staff setting out the expectations regarding integrity and ethical values, and internal guidance on frequently-asked questions on ethical matters or procedures relating to whistleblowers' protection;

25. Is aware of the key role of the Council in nominations and appointments procedures for the Union institutions and bodies, in particular for the European Council, the Commission, the Court and the consultative Committees (the Committee of the Regions and the European Economic and Social Committees); strongly recommends a review of that role in the view of ethical principles adopted by the Union, including with respect to integrity and dignity; recalls the Court's statement that ethical conduct 'contributes to sounder financial management and increased public trust, which is indispensable if public policies are to succeed' and, in particular, that 'any unethical behaviour by staff and Members of the EU institutions attracts high levels of public interest and reduces trust in the EU'; considers it necessary therefore to avoid the appointment as members of Union institutions and bodies of candidates who represent a reputational risk for the Union as a whole, such as candidates with unethical behaviour confirmed by OLAF or with legal proceedings underway against them;

26. Expresses its grave concern over the Council's repeated appointments of candidates to become ECA Members against the adverse opinion on the candidate expressed in a rejection vote by the vast majority in Parliament's Plenary due to candidates' lack of sufficient competences and personal or political impartiality;

27. Is concerned at the absence of a chapter on an ethical framework on the official website of the Council consisting of rules to prevent, identify and avoid potential conflicts of interest; calls on the Council to align with other Union institutions in this respect such as with the Court of Justice of the European Union which has a website with a dedicated section on transparency; calls on the Council to present a plan to introduce such measures with clearly set deadlines;

28. Shares the Court's concern about the absence of a common EU ethical framework governing the work of Member States' representatives in the Council; in view of the Court's and the European Ombudsman's repeated requests to enhance the institution's ethics and transparency, emphasises the importance for the Council, including the Member States' representatives working in the Council, of harmonising ethics rules and enforcing already existing ethics rules; recalls the Council's obligation to deal with high-level conflicts of interest, revolving doors and lobby transparency rules;

29. Strongly reiterates its call on the Council to bring the code of conduct for the President of the European Council in line with those of Parliament and the Commission in order to have rules in place to approve activities related to Union legislation after the President of the European Council leaves his or her post;

30. Underlines the fact that the general secretariat of the Council sent a letter on 21 January 2020 to delegations providing information regarding the occupational activities of former senior officials of the general secretariat after leaving the service in line with the third and fourth paragraphs of Article 16 of the Staff Regulations of Officials of the European Union for 2019 and with the implementing rules;

31. Reiterates its deep concern with respect to the conflicts of interests of a number of Member State representatives involved in policy and budget decision-making processes; repeats Parliament's strong call on the Council to ensure that Member State representatives who stand to benefit directly from Union subsidies through the businesses they own do not participate in related policy or budgetary discussions and votes; requests the Council to provide Parliament with information on the necessary measures put in place to avoid conflict of interests;

Buildings

32. Welcomes the fact that the final payment of the amount due to the Belgian authorities for the Europa building project took place in 2019 as it was not possible to sign the related final act of sale in 2017; notes that the appropriations amounting to EUR 4,1 million carried over by decision from 2017 to 2018 were duly committed in 2018, but not paid, and were carried over to 2019 for payment;

33. Reiterates its concerns about the alarming information reported by the media regarding the construction of the new Europa building; calls on the Council to thoroughly research the main contractor and the entire chain of subcontractors (up to 12 according to the media), as well as the working conditions of the workers employed, and to provide Parliament's Committee on Budgetary Control with all its findings;

34. Welcomes the efforts by the Council to reduce its environmental footprint across its buildings, which have been registered under the European eco-management and audit scheme (EMAS) since 2016; welcomes the publishing of a detailed environmental statement in October 2020 based on 2019 data;

Digitalisation

35. Notes that in 2019 the Council's digital service department (SMART) delivered an extensive range of services to the Council and that significant investments were made in developing new tools, such as the translation management system, the briefings tool, the trilogue table editor for creating and managing trilogue tables, EDiT for collaborative drafting and editing of legislative texts, eAgenda, and other technical platforms;

36. Encourages the Council to use open-source technology in order to prevent vendor lock-in, to retain control over its own technical systems, to provide stronger safeguards for the privacy and data protection of the users, as well as to increase security and transparency for the public;

37. Encourages the Council to follow the recommendations of the European Data Protection Supervisor to renegotiate the inter-institutional licensing agreement and implementation contract, signed between the Union institutions and Microsoft in 2018, with the objective of achieving digital sovereignty, avoiding vendor lock-in and lack of control, and ensuring the protection of personal data;

Transparency

38. Notes the fact that the draft guidance for best practice for Council presidencies on the issue of sponsorship were sent on 29 June 2020 by the general secretariat of the Council to the delegations, following the Council's approval of the recommendation of the European Ombudsman (the 'Ombudsman') on guidance for Member States related to sponsorship and the regular reminders by Parliament's Committee on Budgetary Control; reiterates that conflicts of interest jeopardise the reputation of the Council and the Union as a whole;

39. Notes that the Member States are expected to finance their own Council presidencies and regrets that they resort to corporate sponsorship to cover some of their expenses; is highly concerned about the possible reputational damage that this practice might cause to the Council and the Union; urges that presidencies avoid resorting to corporate sponsorship to cover expenses and asks the Council, in that regard, to envisage the budgetisation of the presidencies;

40. Encourages the Council to advise the presidencies properly in establishing clear and transparent rules on sponsorship, paying particular attention to possible conflicts of interest in cases where the corporate sector has explicit interests in decisions made by the Council; calls on the Council to make progress with respect to the guidelines without delay, and in particular to reflect on the currently non-binding character of the guidance;

41. Recalls that the Ombudsman opened an investigation (OI/2/2017) on the transparency of the Council's legislative work in 2017 in order to allow citizens to more easily follow the legislative process of the Union; welcomes the recent positive reception by the Ombudsman of the new transparency steps taken by the Council, such as proactively publishing progress reports on negotiations on draft laws, which are fully in line with the proposals made by the Ombudsman as a result of her inquiries and the requests of the last discharge resolutions;

42. Recalls that the Parliament in its resolution of 17 January 2019 on the Ombudsman's strategic inquiry OI/2/2017 on the transparency of legislative discussions in the preparatory bodies of the Council of the EU overwhelmingly supported the Ombudsman's proposals on legislative transparency and demands that the Council further improves legislative transparency, particularly by recording and publishing member state positions and by making available more trilogue documents; urges the Council to step up its transparency efforts by, inter alia, publishing Council working documents in a machine-readable format; invites the Council to report on other measures taken in order to improve legislative transparency;

43. Draws attention to the Ombudsman's decision in case 1946/2018/KR where the Ombudsman requested the General Secretariat of the Council to keep a full record of any meetings held between lobbyists and the President of the European Council or members of his cabinet; strongly supports the Ombudsman's statement that members of the President's cabinet should only meet with, or attend events organised by, interest representatives that are registered in the transparency register; is concerned that this statement has gone unnoticed and calls for a reply to be given to the Ombudsman;

44. Is pleased that the three institutions, Parliament, Council and Commission, reiterated their common ambition of reaching an agreement on a tri-institutional transparency register to boost the transparency of interactions with interest representatives; congratulates the Council on the positive steps and further achievements under the German Presidency which led to a political agreement on a mandatory transparency register on 15 December 2020, and encourages all actors involved to sign the interinstitutional agreement that was approved by Parliament on 27 April 2021, so that the registry will become mandatory through the inclusion of the Council; urges the Council to expand the scope of the agreement in making it mandatory for lobbyists to register in order to meet with the ambassadors of the current and succeeding presidencies and their deputies in the Committee of the Permanent Representatives as well as with the Council's secretary-general and directors-general;

45. Notes that seven complaints were lodged with the Ombudsman and that one strategic inquiry took place, all concerning transparency; notes that out of the seven complaints, the Ombudsman in two cases considered that there had been cases of maladministration; notes that one case was closed, and two were considered not to entail maladministration while the remaining two complaints are still pending; notes that in the inquiry, which concerned the transparency of the bodies involved in preparing Eurogroup meetings, the Ombudsman found that the Council had taken steps to further improve its transparency policy and decided to close this strategic inquiry;

Communication

46. Agrees that improving the accessibility of the Council's website, which was part of the external audit recommendations in 2018, took priority in 2019; welcomes as one of the encouraging results the fact that the so-called 'policy pages', which offer background information about the major initiatives and legislation under discussion in the Council, constituted the fastest growing section of the website;

47. Welcomes the fact that the improvements resulted in a better web user experience, including for persons with disabilities as measured by the accessibility score which has risen from 47 % at the end of 2018 to 67 % in December 2019; notes that the remaining audit recommendations, which are primarily related to user experience and content creation standards, will be implemented in 2020; asks the Council to further report to the discharge authority on the results and achievements of the audit recommendations, particularly regarding access of persons with disabilities;

48. Notes that the Council's audio-visual broadcast infrastructure and production facilities were further improved in 2019 in order to increase efficiency in operations and make the infrastructure futureproof and more resilient to be able to handle the increasing volume of video coverage;

Council's role in appointing the European prosecutors to the European Public Prosecutor's Office (the 'EPPO')

49. Recalls that in 2019 and 2020 national pre-selection committees nominated candidates for evaluation and the European selection panel deliberated on the qualifications of the 22 European prosecutors to be appointed to the EPPO in 2020; recalls that according to Implementing Decision (EU) 2018/1696 ([1]), the European selection panel evaluates the candidates and provides the Council with a ranking which the Council shall take into consideration;

50. Recalls that Implementing Decision (EU) 2020/1117 ([2]) states that regarding the 'candidates nominated by Belgium, Bulgaria and Portugal, the Council did not follow the non-binding order of preference of the selection panel, on the basis of a different assessment of the merits of those candidates which was carried out in the relevant preparatory bodies of the Council';

51. Recalls that on 27 July 2020, Austria, Estonia, Luxembourg and the Netherlands published a statement highlighting that 'a competition between rankings of national selection panels and the ranking of the European selection panel must be avoided, at the risk of eroding the European component of the appointment procedure';

52. Regrets that Council did not reply properly to several parliamentary written questions between July and September 2020 asking it to explain why it decided not to follow the recommendations by the European selection panel and asking for elaborations on the assessment process for arriving at the decision not to follow the recommendations of the European selection panel;

53. Is very concerned about media revelations that the Portuguese government provided Council with wrongful information about the title and experience of the candidate ranked second by the European selection panel, thereby leading to his appointment as Portuguese European prosecutor;

54. Recalls that the European prosecutors must be independent and any suspicion of an intervention by a national government in favour of a candidate against the recommendation of the European selection panel would have a severe negative impact on the reputation, integrity and independence of the EPPO as an institution;

State of play in the refusal of discharge

55. Emphasises Parliament's prerogative to grant discharge pursuant to Article 319 of the Treaty of the Functioning of the European Union as well as the applicable provisions of the Financial Regulation and Parliament's Rules of Procedure in line with current interpretation and practice, namely, the power to grant discharge in order to maintain transparency and to ensure democratic accountability towards Union taxpayers;

56. Notes that over the course of almost twenty years Parliament has developed the practice of granting discharge to all Union institutions, bodies, offices and agencies;

([1]) Council Implementing Decision (EU) 2018/1696 of 13 July 2018 on the operating rules of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 282, 12.11.2018, p. 8).

([2]) Council Implementing Decision (EU) 2020/1117 of 27 July 2020 appointing the European Prosecutors of the European Public Prosecutor's Office (OJ L 244, 29.7.2020, p. 18).

57. Whereas the case-law of the Court of Justice of the European Union supports the right of taxpayers and the public to be kept informed about the use of public revenues;

58. Repeats that both openness and transparency in Union administration and the protection of the financial interests of the Union require an open and transparent discharge procedure where every Union institution is accountable for the budget it executes, according to Article 59 of the Financial Regulation;

59. Reiterates the need to improve cooperation between the institutions in the framework of the discharge procedure through a memorandum of understanding between Parliament, the Council and the Commission on the cooperation between Parliament and the Council during the annual discharge procedure;

60. Emphasises that, pursuant to Article 13 of the Treaty on European Union, each institution shall act within the limits of the powers conferred on it in the Treaties and in conformity with the procedures, conditions and objectives set out therein, and that the institutions are to practice mutual sincere cooperation;

61. Recalls the difficulties repeatedly encountered in the discharge procedures to date due to a lack of cooperation from the Council and recalls that Parliament refused to grant discharge to the secretary-general of the Council in relation to the financial years 2009 to 2019;

62. Stresses that the current situation, where Parliament can only check the reports of the Court and of the European Ombudsman as well as the information on the Council's website but does not receive written or oral answers from the Council during the annual discharge procedure, makes it impossible for Parliament to make an informed decision on granting discharge, and that this has a lasting negative effect on both institutions and discredits the procedure for political scrutiny of budget management;

63. Underlines the need to re-start negotiations with the Council with a view to reaching a mutually satisfactory agreement to finally overcome this situation of deadlock;

64. Repeats that a negotiating team on behalf of Parliament is in place and that a letter was sent by Parliament's Committee on Budgetary Control on 25 May 2020 to the secretary-general of the Council suggesting that negotiations commence;

65. Remains convinced that an agreement on this matter is possible and therefore calls on the Council to resume negotiations without undue delay in order to find a solution that respects the citizens' right to accountability;

66. Notes that the roles of the respective institutions in the discharge procedures should be distinguished from each other; emphasises that Parliament does not accept that the two institutions have an equivalent and reciprocal role in the discharge procedure;

67. In respect of the Council's specific role as an institution giving recommendations on the discharge procedure, reiterates its requests to the Council to give discharge recommendations with respect to the other Union institutions;

68. Recognises that the positive trend of this process was interrupted by the COVID-19-epidemic; notes with concern, however, that in autumn 2020 all attempts from Parliament's side to meet for an initial preliminary exchange with the Council failed;

69. Points out that as long as no negotiations are taking place between the parties, Parliament's view stands, and that negotiations between the parties are a precondition for resolving the issue;

70. Recalls the statements by Vice-President Věra Jourová and Commissioner Johannes Hahn in their hearings before Parliament in 2019 that they are willing to engage in this matter in order to help achieve more transparency on the implementation of the Council's budget; considers that the negotiations could be extended to include the Commission so as to ensure that Parliament is provided with the necessary information on how the Council is implementing its budget;

71. Notes that many communications and documents are only available in English; also notes that working meetings are held without the possibility of interpretation; requests that the Council respects the principles, rights and obligations laid down in the Charter of Fundamental Rights and Regulation No 1/1958, as well as in internal guidelines and decisions, such as the Code of Good Administrative Behaviour; calls therefore on the Council to provide the necessary human resources to ensure that multilingualism is respected, by increasing the number of staff responsible for translation and interpretation.