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COMMISSION STAFF WORKING DOCUMENT

Opinion of the Republic of Austria concerning the preliminary report on the findings of the investigation related to the manipulation of statistics in Austria as referred to in Regulation (EU) No 1173/2011 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area (Commission Decision of 3 May 2016)

Accompanying the document

Report from the Commission

on the investigation related to the manipulation of statistics in Austria as referred to in Regulation (EU) No 1173/2011 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area (Commission Decision of 3 May 2016)

{COM(2017) 94 final}

The preliminary findings of the investigation into the manipulation of statistics carried out in Austria in accordance with Regulation (EU) No 1173/2011¹ have been passed on to the Republic of Austria in accordance with Article 6 of the Commission Delegated Decision 2012/678/EU² on 20.12.2016 for a written opinion. The Commission asked the Republic of Austria to send the written opinion on the preliminary findings of the investigation by 19 January 2017. The Republic of Austria provided the following written opinion on 25 January 2017:

¹ Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area, OJ 306, 23.11.2011, p 1

² Commission Decision 2012/678/EU of 29 June 2012 on investigations and fines related to the manipulation of statistics as referred to in Regulation (EU) No 1173/2011; OJL 306, 6.11.2012, p 21.

OPINION PURSUANT TO ARTICLE 8 OF REGULATION (EU) NO 1173/2011 ON THE PRELIMINARY REPORT ON THE FINDINGS OF THE INVESTIGATION RELATED TO THE MANIPULATION OF STATISTICS IN AUSTRIA AS REFERRED TO IN REGULATION (EU) NO 1173/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE EFFECTIVE ENFORCEMENT OF BUDGETARY SURVEILLANCE IN THE EURO AREA (COMMISSION DECISION OF 3 MAY 2016)

Thank you for sending the preliminary report. The Republic of Austria wishes to express the following opinion on the preliminary report:

It should first of all be noted that Eurostat does not at present have any reservations regarding Austria's data under Regulation (EC) No 479/2009. The reason for this investigation is the perpetration of criminal actions by individuals who are facing court action.

The Land Salzburg reacted quickly and appropriately to the problems addressed in the report as soon as they were discovered. The Court of Audit has investigated the transactions in detail and the data concerning public debt for 2012 were revised on the basis of its report. Budget policy assessment of public debt for 2012 in the proceeding pending since 2009 regarding an excessive deficit for Austria would not have been different, even in view of the subsequent revision of the data. The public deficit for 2012 was actually revised slightly downwards (by 7 million euros) following the audit. As at the end of 2013, public debt was restored by Land Salzburg to the level it would have been at if the relevant transactions had not taken place. This also meant that the operation of the economic and monetary union was not placed at risk.

Regarding the facts set out in the preliminary report, it should be noted that legal analysis and judicial follow-up of the transactions in question in Austria have not yet been completed. Certain statements in the preliminary report should therefore be regarded as provisional.

In particular, examination by the Austrian criminal courts is still pending, despite its importance for determining the extent to which the misrepresentation of data under Article 8 of Regulation (EU) No 1173/2011 occurred by intent or as a result of gross negligence. The corresponding EU legislation cannot actually be interpreted to mean that the Member State in question is also obliged to exclude criminal behaviour.

It should also be noted regarding the seriousness of the infringement of Regulation (EU) No 1173/2011 that the additional public debts were offset by corresponding financial assets acquired as a result of the debts. This means that the debt of Land Salzburg, which amounted to 3.528 billion euros as at the end of 2012 according to current data and ESA 2010 was reduced to 2.208 billion euros by the end of 2013 by liquidating financial assets. It has since fallen further. (See: http://www.statistik.at/web_de/statistiken/wirtschaft/oeffentliche_finanzen_und_steuern/maastricht-indikatoren/oeffentlicher_schuldenstand/index.html)

This 1.320 billion euro reduction in the public debt of Land Salzburg from the end of 2012 to the end of 2013 exceeds the 1.192 billion euro underreporting of debts found by Statistik Austria for the end of 2012. The public deficit of Land Salzburg for 2012 was revised downwards by 7 million euros. This means that not only was the incompleteness of the DP data rectified, but also that the public debt of Land Salzburg was, within a year, returned to the level it would have been at if the transactions described in the preliminary report had not occurred.

This opinion comprises:

- a) a summary of the most important points on which there is disagreement with the statements in the preliminary report,
- b) notes and proposed revisions of individual sections of the preliminary report (Annex I) and
- c) opinions from the Salzburg State Office [*Amt der Salzburger Landesregierung*], the Court of Audit [*Rechnungshof*] (RH), the Austrian Federal Statistics Institute [*Bundesanstalt Statistik Österreich*] (Statistik Austria, STAT), the Austrian Central Bank *Oesterreichische Nationalbank* (OeNB) and the Austrian Federal Financing Agency [*Österreichische Bundesfinanzierungsagentur*] (OeBFA) in the text (Annex II).

1. Reply to the criticisms contained in the preliminary report

The following points are discussed individually in reply to the criticisms contained in the preliminary report:

- adequate and timely information supplied to Eurostat
- no encouragement of transactions by OeBFA
- extent and significance of data revisions with regard to public deficit and public debt for 2012
- no infringement of reporting or auditing obligations by OeNB/Eurostat misinterpretation of statements
- failure by the supervisory bodies to expose the faults defined as negligent behaviour
- no failure on the part of RH to reveal data discrepancies
- no gross negligence on the part of the Land Court of Audit or the Salzburg State Office

1.1. Adequate and timely information supplied to Eurostat

Eurostat's allegation, in the report, that information is not provided on time is rejected by the Austrian authorities.

The documentation of Statistik Austria shows that shortly after December 2012, namely on 31 January 2013, there was an exchange of information with Eurostat concerning the entry of financial derivatives, which was triggered by the transactions in Salzburg. Both authorities (Statistik Austria and Eurostat) therefore held approximately the same information following the exposure of the Salzburg financial scandal in December 2012. They subsequently exchanged information, as far as verifiable facts were concerned, up to the notification in April 2014.

The preliminary report explains in detail that the revision of data concerning the public debts of Land Salzburg took up a considerable amount of time and resources. As the report states, Statistik Austria uses the data recorded by the Court of Audit for the public debt of Land Salzburg for 2012. The Court of Audit published its report on 9 October 2013. Statistik Austria immediately informed Eurostat of the problems, but also pointed out that the concept of debt used by the Court of Audit does not necessarily also have to match the definition under Regulation (EC) No 479/2009 and that this still needed to be verified. Statistik Austria verified the results of the Court of Audit in the light

of the relevant statistical requirements and reported the data at the next data notification meeting on 31 March 2014 under Article 6 of Regulation (EC) No 479/2009. Paragraph one of that Article states that: *"1. Member States shall inform the Commission, as soon as it becomes available, of any major revision in their actual and planned government deficit and debt figures already reported"*.

The preliminary report states that the final revision of data in 2014 was as reported by Land Salzburg as early as 27 March 2013 and therefore suggests that a larger debt could have been submitted in the spring notification for 2013. It should not be forgotten, however, that according to Article 6(2) of Regulation (EC) No 479/2009 referred to above, major revisions of data already reported need to be properly documented: *"2. Major revisions in the actual deficit and debt figures already reported shall be properly documented."* Proper documentation by Statistik Austria was not possible at this time, since the report from the Court of Audit was not available and there was no proper documentation from other sources. According to paragraph 1 of Court of Audit report *Bund 2013/9 Land Salzburg – Finanzielle Lage* [Federal 2013/9 Land Salzburg - Financial Position], there were problems with documentation in December 2012, as the relevant documents were not always available following confiscation during criminal prosecution by the Austrian authorities. Nor were financial statements available for 2012 for Land Salzburg at the time when the notification was published, in autumn 2013. According to the STAT list of methodologies for the national accounts (as at March 2016, e.g. pages 48, 175, 193), these financial statements are used as a basis for the national accounts. Eurostat never found fault with this. The practice of including certified figures in the statistics, moreover, complies with and results from Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States, under Article 3 of which such national systems of public accounting must be subject to internal control and independent audits. This means that if certified figures are available, they should be used.

1.2. No encouragement of transactions by OeBFA

Page 37(3) of the preliminary report states that in the absence of monitoring mechanisms, the framework agreement between the OeBFA and the Laender would have had the effect of encouraging evasion of the clause prohibiting speculation in the case of Salzburg.

The response to such a claim might be that agreements are in principle concluded to comply with this clause. Both the OeBFA and Land Salzburg were subject to independent external monitoring. It was not economically appropriate or legally necessary to also give the OeBFA a right of inspection.

Even if the use of the OeBFA funds had been monitored by OeBFA, this would have been irrelevant for the purposes of the alleged encouragement of data manipulation, since under *Finanz-Verfassungsgesetz* [Financial Constitutional Law] 1948 - F-VG 1948) Original text: BGBl. [Federal Law Gazette] No 45/1948 as amended in BGBl. I No194/1999 (DFB), the Laender are obliged to deal with borrowing themselves and finance themselves on the market (*§ 14. Land legislation governs the raising of loans by the Laender, local authority associations and municipalities.*), nor is there any federal liability for the debts of the Laender. This means that each federal Land is responsible for its own debt, and so the points raised by the Commission are not essential conditions for preventing data manipulation.

There was therefore own borrowing by Land Salzburg amounting to about 1.7 billion euros, since the revised debt as at the end of 2012 totalled 3.509 billion euros, whereas the debts of Land Salzburg to the OeBFA only amounted to 1.83 billion euros as at the end of 2012 according to the Court of Audit report of October 2013 (page 145).

The framework agreement certainly had a positive effect on the representation of public debt during the period in question, since part at least of the (hidden) public debt of Land Salzburg was recorded correctly by the statistical authorities.

1.3 Extent and significance of data revisions with regard to government deficit and government debt for 2012

Page 40(1) of the preliminary report contains the following wording: *Thereby those entities facilitated the fact that (...) leading to the misrepresentation in 2012 and 2013 of Austria's deficit and debt data regarding 2008-2012 to Eurostat, i.e. after the entry into force of Regulation (EU) 1173/2011* (NB: it should be called 'the Regulation').

However it happened that the reporting by Land Salzburg complied neither with federal nor with EU regulations, this did not cause public deficits and debts to be understated in initial national reporting for 2012 and 2013.

The following data concerning public debt were reported to Eurostat:

Table 1: Government debt under ESA 95 in notifications to Eurostat under Regulation (EC) No 479/2009 in million euros

Notification of	30.03.2012	28.09.2012	29.03.2013	30.09.2013	09.04.2014
In 2012	235.000*	230.192	227.431	227.173	228.422
In 2013	-	-	234.987	235.000	233.303

* In the course of clarification with Eurostat, the value prior to publication by Eurostat was revised to 230.000, which was still well above the final value. Remark: From the autumn 2014 notification onwards, the data were to be reported in accordance with ESA 2010 and so were not compatible.

Table 1 shows that for the whole of 2012, Austria reported higher public debt for that year than was actually necessary after correction of the statistical problems through the 2014 March-DP-Notification. Austria also reported higher public debt figures for 2013 in 2013 than were finally actually necessary. The misrepresentation described in the preliminary report therefore applies solely to 2012 in 2013 for the purposes of the sanctions threatened in Article 8 of Regulation (EU) No 1173/2011.

Furthermore, Statistik Austria reduced the public deficit for 2012 by 7 million euros after having verified the data of Land Salzburg.

Table 2: Government deficit under ESA 95 in notifications to Eurostat under Regulation (EC) No 479/2009 in million euros

Notification of			29.03.2013	30.09.2013	09.04.2014
In 2012	9.228	9.625	7.684	7.818	7.866
In 2013	-	-	7.447	7.221	4.776

It should also be noted that the reports based on Article 3 of Regulation (EC) No 479/2009 are obligatory for four reporting years. Any amendments/revisions of data in relation to previous notifications must be made for the entire reporting period (2010 to 2012 were affected in the 2014 March-DP-Notification).

1.4 No infringement of reporting or auditing obligations by OeNB/Eurostat misinterpretation of statements

On page 37(4), OeNB is accused of having failed to report to the Commission (Eurostat). In actual fact, OeNB has no obligation to report to Eurostat for ESA purposes either under EU or national law.

Prior to publication in December 2012, OeNB had no knowledge of investments by Land Salzburg in financial derivatives, nor was it responsible for auditing the financial statements of the Laender. Nor can reporting securities worth 300 million euros be described as 'exposure', since the securities

were recorded by OeNB on a routine basis, reported to STAT and included in the calculation of public debt by STAT.

The finding by Eurostat that a number of statements by OeNB to representatives during the inspection were incorrect is itself incorrect and is based on misinterpretation of statements (see Annex II - Opinion of OeNB).

1.5 Failure by the supervisory bodies to expose the faults defined as negligence

On page 26, the failure by Land Salzburg to make the entries proposed by STAT and the fact that *"such a misuse of the accounts was not unveiled by any of the monitoring entities demonstrates more generally a negligent behaviour"* were generally described as "negligent behaviour".

This contradicts the results of the preliminary report (e.g. on p. 24), according to which the Court of Audit was obviously incorrectly or incompletely informed in its (horizontal) audit in 2012.

On page 37(2), the Court of Audit is accused of having failed to investigate data discrepancies in 2012. This is not actually the case, since the events in 2012 resulted in the much more extensive audit by the Court of Audit.

It should also be noted that differences between administrative data and data in accordance with ESA/EDP are not confined to a certain Land or municipality and do not indicate 'manipulation' or 'misreporting'. Regulation (EC) No 479/2009 permits the statistical authorities and Eurostat to revise administrative data without negligence being assumed as a result. The revisions are made as explained on pages 25 to 27 of the preliminary report. Differences between administrative data and data in accordance with ESA/EDP had been routinely reported to Eurostat since 2010 as far as the public deficit of individual Laender was concerned. Eurostat had therefore also been aware since September 2010 that there were differences between administrative data and data in accordance with ESA/EDP for Land Salzburg.

Last but not least, according to Regulation (EC) No 479/2009, liabilities arising from financial derivatives are expressly not part of public debt. The misrepresentation of financial derivatives does not necessarily lead to the conclusion that the public debt also needs to be revised.

It should therefore be concluded that the supervisory bodies are not guilty of 'negligence'.

1.6 No gross negligence on the part of the Land Court of Audit (LRH) or the Office of the Salzburg State Office

The preliminary report does not take due account of the fact that criminal law was broken and certain findings are based on incomplete information. The Internal Audit Department was not responsible for monitoring financial management and accounts for the entire Salzburg State Office. The 'four-eye' principle was actually applied in the Salzburg State Office, but it was not always acted upon, sometimes unlawfully. The fact that the principle existed finally led to the exposure of the corruption. There was an advisory board to monitor financial transactions, but it was unlawfully provided with incorrect information. There were external audits, but these, too, were unlawfully blocked. Last but not least, Land Salzburg did not actually derive any benefit from the incorrect reporting of data, but a huge financial loss. The scale of the hidden transactions then caused delays in correcting the data. Annexes I and II contain an extensive opinion and detailed remarks by the Salzburg State Office on the preliminary report.

Overall, it can be said with regard to the report that some assertions were made without being backed up with evidence or corresponding documents (... apparently greater liabilities ... allegedly not informed ... it appears that ... these misrepresentations have possibly ...). These assertions should either be backed up with conclusive evidence or omitted from the report.

2. Legislation passed as a result of the Salzburg financial scandal

- As long ago as February 2013, political agreement was reached on a general prohibition on speculation with public funds which entails criminal penalties and the remaining implementation steps are to be completed by the end of 2017. Land Salzburg gave its prohibition on speculation Land constitutional status as long ago as July 2013.
- BGBL. II No 313/2015 greatly improved the regulation of estimates and financial statements of the Laender and municipalities, following the recommendations of the Court of Audit in particular. The reform included an integrated accounting system comprising financial statements, balance sheets and profit and loss accounts based on IPSAS and following the model of the budgetary law reform and implementation of the principle of accrual-based accounting. The rules comply with Article 3 of Council Directive 2011/85/EU of 8 November

2011 on requirements for budgetary frameworks of the Member States. The public accounts of sub-national authorities are regulated in a way that is consistent with federal accounts.

- There was also agreement on binding upper limits on liability on the basis of harmonised data.
- The Austrian rules are therefore more comprehensive and promote budgetary discipline more stringently than the rules of the European Union.
- The federal procedure for lending to the Laender was restructured more rigorously and relaunched after the speculation by Land Salzburg became known, as a result of these cases. Additional corresponding information is now, as a result, obtained from the Laender (e.g. concerning the use of funds by the Laender) and if the provisions of agreements are infringed, it is possible to call in the loans granted to the Laender.

3. Summary of the disagreements with the preliminary report

- With regard to the misrepresentation of data, the preliminary report does not take account of the fact that the legal processing of apparently criminal actions in Austria has not yet been completed.
- The question of understatement of the public debt of Austria for 2008 and 2009 is irrelevant as far as any penalty is concerned, nor has it been specifically proven and in case of doubt it is covered by EU law (ESA revision policy). As explained above, not only had the misrepresentation of data come to an end by the end of 2013, the debt of Land Salzburg had been brought down to a level it would have been at if the misrepresentation had never occurred. The public deficit for 2012 was revised downwards.
- It is incorrect to claim that Eurostat was not informed until 10 months after the appearance of a suspicion.
- It is incorrect to claim that inconsistencies in the data from various sources could logically lead to the conclusion that data have been misrepresented or even that such data or information were known to the statistical authorities. It is correct to claim that since September 2010, Eurostat was aware of differences between administrative data and data in accordance with Regulation (EC) No 479/2009 for Land Salzburg.
- It is incorrect to claim that the Court of Audit failed to investigate discrepancies in the data. It is, however, correct that it immediately launched wide-ranging audit measures and significantly contributed to showing the actual asset and debt management.

ANNEX I

Remarks and proposed revisions of individual sections of the preliminary report

ANNEX II

Opinions from

a) the Salzburg State Office (*Amt der Landesregierung*),

b) the Court of Audit (*Rechnungshof*),

c) the Austrian Federal Statistics Institute (*Bundesanstalt Statistik Österreich*),

d) the Austrian Central Bank (*Oesterreichische Nationalbank*)

E) the Austrian Federal Financing Agency (*Österreichische Bundesfinanzierungsagentur*)

in full.

OPINION OF THE REPUBLIC OF AUSTRIA UNDER ARTICLE 8 OF REGULATION (EU) NO 1173/2011 ON THE PRELIMINARY REPORT ON THE FINDINGS OF THE INVESTIGATION RELATED TO THE MANIPULATION OF STATISTICS IN AUSTRIA AS REFERRED TO IN REGULATION (EU) NO 1173/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE EFFECTIVE ENFORCEMENT OF BUDGETARY SURVEILLANCE IN THE EURO AREA (COMMISSION DECISION OF 3 MAY 2016)

ANNEX I

Remarks and proposed amendments
to individual sections of the preliminary report

The following remarks and amendments are taken from the following documents:

- Opinion of Salzburg State Office (SBG, 18. 1. 2017 (see Annex II) including additional information from 19. 1. 2017)
- Opinion of the Court of Audit (RH, 18. 1. 2017 (see Annex II)
- Opinion of the Austrian Federal Statistics Institute (STAT, 16. 1. 2017 (see Annex II)
- Opinion of the Austrian Central Bank (OeNB, 11. 1. 2017 (see Annex II) including additional information from 17. 1. 2017)
- Opinion of the Austrian Federal Financing Agency (OeBFA, 12. 1. 2017 (see Annex II)
- Information from the Federal Ministry of Finance (BMF, 17. 1. 2017)

Preliminary remark: In the case of translation questions, the remarks and amendments refer to the German version.

SBG 1

The Internal Audit

SBG 1.1

Text according to preliminary report (p 3):

The report establishes that, from the year 2002, the executive and legislative powers in Land Salzburg respectively acted and legislated in a way that granted unlimited powers to the Financial Management Department of Land Salzburg, to enter and conclude high-risk financial transactions

with credit institutions, for unlimited time and unlimited amounts, while at the same time exempting that Department from being monitored by the Internal Audit Department of Land Salzburg.

Proposed amendment:

The report establishes that, from the year 2002, the executive and legislative powers in Land Salzburg respectively acted and legislated in a way that granted unlimited powers to the Financial Management Department of Land Salzburg, to enter and conclude high-risk financial transactions with credit institutions, for unlimited time and unlimited amounts. By decree, the Internal Audit Staff Unit of the Directorate of the Land Government Office (*Landesamtsdirektion*) has no responsibility for monitoring financial management and accounts, as this is already the responsibility of the federal and Land courts of auditors.

SBG 1.2

Text according to preliminary report (p 16):

Furthermore, the State Government appoints, subject to the approval of the Federal Government, the Landesamtsdirektor, who is the head of the State Office of Land Salzburg. The State Office of Land Salzburg is the administrative support of Land Salzburg and is divided into several departments, inter alia the Internal Audit (Interne Revision) and the Abteilung 8: Finanz- und Vermögensverwaltung (hereinafter, the Financial Department).

Proposed amendment:

Furthermore, the State Government appoints, subject to the approval of the Federal Government, the Landesamtsdirektor, who is the head of the State Office of Land Salzburg. The State Office of Land Salzburg is the administrative support of Land Salzburg and is divided into several departments, inter alia the Directorate of the Land Government Office (*Landesamtsdirektion*) and the Abteilung 8: Finanz- und Vermögensverwaltung (hereinafter, the Financial Department). Internal Audit was a Staff Unit of the *Landesamtsdirektion*.

SBG 1.3

Text according to preliminary report (p 20):

Moreover the Commission ascertains that the entire State Office of Land Salzburg, among which the Financial Department, was exempted from being monitored by the Internal Audit from 1999 onwards.

Proposed amendment:

Moreover, the Commission finds that by decree the Internal Audit Staff Unit of the *Landesamtsdirektion* had no responsibility for monitoring financial management and accounts for

the entire State Office, as this is already the responsibility of the federal Court of Audit and the Land Court of Audit.

SBG 1.4

Text according to preliminary report (p 21):

If the Internal Audit had not been barred from monitoring the Financial Department in 1999, it is likely that it would have been able to point out these failures of the internal control procedures.

Proposed amendment:

Omit this sentence (the Internal Audit was not barred from anything, but by decree was not responsible for auditing financial management and the accounts for the entire office).

SBG 1.5

Text according to preliminary report (p 35):

During the same period of time, the Internal Audit and the Accounting Unit in the State Office of Land Salzburg were barred from analysing the transactions of the Budget Unit and from analysing the recording of those transactions in the financial statements.

Proposed amendment:

During the same period of time, the Accounting Unit in the State Office of Land Salzburg was barred from analysing the transactions of the Budget Unit and from analysing the recording of those transactions in the financial statements and the Internal Audit was not responsible for this.

SBG 1.6

Text according to preliminary report (p 36):

The role of the State Government, and more specifically that of the Finanzreferenten, consisted partly in granting powers of attorney to three employees of the Financial Department to engage in high-risk investments from 2002 onwards and partly in exempting the activities of the Budget Unit from being audited by the Internal Audit and the Accounting Unit of Land Salzburg.

Proposed amendment:

The role of the State Government, and more specifically that of the Finanzreferenten, consisted partly in granting powers of attorney to three employees of the Financial Department to engage in high-risk investments from 2002 onwards and partly in exempting parts of the financial management activities of the Budget Unit from being audited by the Accounting Unit of Land

Salzburg. By decree, the Internal Audit was not responsible for auditing financial management for the entire office.

At other points, too, (e.g. P 38), incorrect designations such as *Direktion Interne Revision* (Internal Audit Department) should be corrected, since as pointed out, this is only a staff unit within the *Landesamtsdirektion*.

See also proposed rewording for SBG 9.

SBG 2

The four-eye principle and the accusation of gross negligence

Text according to preliminary report (p 22):

Hence, the Commission concludes that since, at least, 2002, Land Salzburg did not comply with the four-eye principle in the context of the financial management of Land Salzburg, in several occasions. This principle is paramount in ensuring sound financial management. The Commission considers that Land Salzburg's failure to comply with this principle constitutes serious negligence.

Proposed amendment (addition):

It should, however, be noted that there certainly is a four-eye principle laid down in the financial management guidelines. The Court of Audit makes the following statement in its report 'Land Salzburg - Financial Position' from 2013: " Certain elements of an ICS, such as observance of a four-eye principle or a division of functions between trading (front office) and processing (back office) in financial transactions were contained in the financial management guidelines for Land Salzburg, but were not always implemented in practice ...". It should not be forgotten that it was in fact the four-eye principle that finally led to exposure of the financial scandal.

The Commission concludes that since 2002 at least, Land Salzburg did not comply with the four-eye principle in the context of the financial management of Land Salzburg, on several occasions. This principle is paramount in ensuring sound financial management, however.

SBG 3

Debt of the Land

Text according to preliminary report (p 14):

..., the effective amount of underreporting and/or misreporting of debt in that year by Land Salzburg was de facto 0.9% of GDP in that year.

Proposed amendment (addition):

..., the effective amount of underreporting and/or misreporting of debt in that year by Land Salzburg was de facto 0.9% of GDP in that year.

If the debts assignable to the institutions not covered by the budget but assigned to Salzburg at Land level are added, Land Salzburg would also be more indebted for each of the years 2010 to 2012 in spite of the misreporting, which would bring about a corresponding reduction in the difference in relation to the value subsequently determined (2012) or estimated by Statistik Austria (2010 and 2011), which also includes entities already assignable to the Land but not included in the budget.

SBG 4**Accusation of concealing bank accounts****Text according to preliminary report (p 23):**

Based on the statements of the State Office of Land Salzburg, the Commission concludes that the Financial Department of the State Office of Land Salzburg started to conceal bank accounts under the voranschlagsunwirksame from 2003 onwards.

Proposed amendment:

Based on the statements of the State Office of Land Salzburg, the Commission concludes that the former unit head of the budget unit, who must be considered to be criminally liable for this, started to conceal bank accounts under the *voranschlagsunwirksame Gebarung* (extra-budgetary accounts) from 2003 onwards.

SBG 5**Accusation of failing to observe unspecified 'recommendations' of the Court of Audit****SBG 5.1****Text according to preliminary report (p 28):**

Notwithstanding this, the Commission is not aware of efforts from any of the institutions in Salzburg (Landtag, LRH, State Government, and State Office) to closely follow-up on the recommendations of the RH and it has also concluded in this report that in fact the voranschlagsunwirksamen Gebarung were not effectively followed.

Proposed amendment:

Notwithstanding this, the Commission concluded that the extra-budgetary accounts (*voranschlagsunwirksame Gebarung*) were not effectively followed.

SBG 5.2

Text according to preliminary report (p 35):

This report shows that severe irregularities took place in the compilation, control and reporting of financial, as well as non-financial, transactions in Land Salzburg over a significant period of time. Public accounting rules were not complied with, control was lacking, the four-eye principle was not respected, financial and non-financial transactions were not appropriately reported, recommendations from the RH were ignored, documentation was falsified, signatures were forged and misleading information was sent to the national statistical authorities as well as to the RH, leading to the misreporting of the financial accounts, and hence to the misreporting of the debt data for Austria at least from 2008.

Proposed amendment:

This report shows that severe irregularities took place in the compilation, control and reporting of financial, as well as non-financial, transactions in Land Salzburg over a significant period of time. Public accounting rules were not complied with, control was lacking, the four-eye principle was not respected, financial and non-financial transactions were not appropriately reported, documentation was falsified, signatures were forged and misleading information was sent to the national statistical authorities as well as to the RH, leading to the misreporting of the financial accounts, and hence to the misreporting of the debt data for Austria at least from 2008.

SBG 5.3

Text according to preliminary report (p 36):

Furthermore, the Landtag did not demonstrate any clear interest in the recommendations regarding high-risk financial transactions made in 2009 by the RH, nor did it encourage the LRH to undertake in-depth audits of the accounts of Land Salzburg.

Proposed amendment:

Furthermore, the Landtag did not encourage the LRH to undertake in-depth audits of the accounts of Land Salzburg with regard to the 'high-volume and high-risk derivatives transactions' mentioned by the RH.

See also two proposed wordings SBG 9.

SBG 6

Explanation of an apparent contradiction

Text according to preliminary report (p 29):

According to the RH report published on 9 October 2013, the Director of the Finance Department informed the head of the Staff Department in May 2012 that the Head of the Budget Unit had acted against the State Office's policy and service instructions. However, it should be noted that during the meeting on the 28 September 2016, this statement in the RH report was contradicted by the State Office claiming, on their side, that this event occurred in July 2012, rather than in May 2012.

Proposed amendment:

According to the RH report published on 9 October 2013, the Director of the Finance Department informed the head of the Staff Department in May 2012 that the Head of the Budget Unit had acted against the State Office's policy and service instructions, and was punished (warning). The matter therefore seemed to be closed and there was not at first any further suspicion. Not until 2012, when the then Head of the Budget Unit had once again attempted to act against the State Office's policy and service instructions, did an "idea that something had gone wrong" manifest itself.^{kk}.

SBG 7

Suspicion of incomplete coverage of financial transactions in monitoring

Text according to preliminary report (p 30):

.....

- *In October 2012, the Director of the Financial Department informed some employees of the Financial Department that the portfolio analysed by them was in fact just a part of the total portfolio, i.e. that a part of the portfolio had been concealed.*
- *In the second half of October 2012, the Finanzreferent and the Director of the Financial Department jointly decided on the termination of foreign currency transactions and other transactions. The new employee hired on 1 September 2012 was mandated to undertake such early cancellation of transactions and positions. Among others, financial derivative positions with the Deutsche Bank were cancelled, resulting in a loss of EUR 56 million for Land Salzburg.*
- *On 23 October 2012, the Director of the Financial Department reported to the Financial Advisory Board the existence of additional financial transactions that had not hitherto been mentioned in the portfolio report addressed to that board.*

Proposed amendment:

[Remark: omission of the second paragraph on page 30, because it concerns the same event as is mentioned in the fourth paragraph, with the following text:]

.....

- In the second half of October 2012, the Finanzreferent and the Director of the Financial Department jointly decided on the termination of foreign currency transactions and other transactions. The new employee hired on 1 September 2012 was mandated to undertake such early cancellation of transactions and positions. Among other things, financial derivative positions with the Deutsche Bank were cancelled, resulting in a loss of EUR 56 million for Land Salzburg.
- On 23 October 2012, the Director of the Financial Department reported to the Financial Advisory Board the existence of financial transactions that had not hitherto been mentioned in the portfolio report addressed to that board.

SBG 8

Accusation of withholding information

SBG 8.1

Text according to preliminary report (p 31):

It appears therefore that, from May to December 2012, during more than 6 months, the State Government of Land Salzburg, which at that stage was at least partly informed of the facts, concealed relevant information that it was obliged to provide at least to the RH, the statistical authorities and possibly to other bodies. Instead, from the second half of October about 300 financial investments were terminated early by the administration and government of Land Salzburg, at the discretion of one member of the staff.

It was only on 22 January 2013 that the State Office of Land Salzburg officially informed STAT on the issue of the existence of unrecorded liabilities.

The Commission concludes that the concealment of relevant information by the officials of the financial management area and the government of Land Salzburg to the RH was also the cause for the incorrect and incomplete conclusions of RH 2012 follow-up report, which were ultimately published on 6 December 2012.

Proposed amendment:

After the Head of the Budget Unit had been punished for a first misdemeanour in May 2012, the existence of actual serious deficiencies was not discovered until the end of October 2012, when it was found that there were numerous financial transactions that had not been mentioned in the portfolio report. The consequences of this finding have not yet been analysed. Even in November 2012, the then Head of the Budget Unit continued to deny having participated in risky transactions entered into for Land Salzburg. Not until 26 November 2012 did she admit having concealed a loss of approximately 340 million euros. This led to further intensive investigations, in the course of

which numerous forgeries of Financial Advisory Board (*Finanzbeirat*) minutes and signatures were revealed, resulting in dismissal without notice a few days later and the matter being brought to the attention of the public. That is why the RH, the statistics authorities and any other entities were not informed earlier. From the second half of October onwards, about 300 financial investments were closed prematurely, on the basis of the knowledge of a financial expert who had been hired. It was only on 22 January 2013 that the State Office of Land Salzburg officially informed STAT on the issue of the existence of unrecorded liabilities.

RH not being informed until 6 December 2012 resulted in incorrect and incomplete conclusions in the follow-up report of RH 2012 published on the same date.

SBG 8.2

Text according to preliminary report (p 35):

This report also shows that the facts could have been unveiled earlier, had relevant information been made fully available by the State Office of Land Salzburg to the monitoring, judicial and statistical authorities.

Proposed amendment:

This report also shows that the analysis of the consequences of the suspicion of the existence of serious deficiencies and the further intensive investigations made it impossible for the relevant information to be made fully available to the monitoring, judicial and statistical authorities at an earlier date.

SBG 8.3

Text according to preliminary report (p 36):

Nevertheless, those entities did not inform the RH, which at the time was concluding its follow-up on an audit report to Land Salzburg, or the judicial or the statistical authorities about these events and findings.

Proposed amendment:

Nevertheless, those entities did not inform the RH, which at the time was concluding its follow-up on an audit report to Land Salzburg, or the judicial or the statistical authorities about these events and findings, because analysis of the consequences of the suspicion of the existence of serious deficiencies and the further intensive investigations made it impossible for the relevant information to be made fully available to these authorities at an earlier date.

SBG 9

Attribution of behaviour, statements, etc to 'Land Salzburg', 'Amt der Landesregierung' (State Office), 'Budgetreferat' (Budget Unit), etc

Remark: For the sake of completeness and to avoid any misunderstanding, when the Investigation Committee refers in this report to 'Land Salzburg', 'Amt der Salzburger Landesregierung', 'Budgetreferat', etc, and it is (expressly or implicitly) stated that something has been replied, answered, explained, done, etc by 'Land Salzburg', 'Amt der Salzburger Landesregierung', 'Budgetreferat', it should be noted that according to our understanding, various **State officials** have stated something (as witnesses), (unlawfully) done something, etc. As we understand the legal position, such statements, behaviour, etc cannot be automatically attributed to 'Land Salzburg', 'Amt der Landesregierung', 'Budgetreferat', etc.

For example:

SBG 9.1

Text according to preliminary report (p 2):

By serious negligence, public accounting rules were not followed, control was lacking, financial and non-financial transactions were not appropriately reported, and recommendations from the Austrian Court of Audit were ignored. In addition documentation was intentionally falsified and misleading information was intentionally sent to the national statistical authorities as well as to the National Court of Audit (RH).

Proposed amendment:

By serious negligence, public accounting rules were not followed by the then Head of the Budget Unit, control was lacking and financial and non-financial transactions were not appropriately reported by the then Head of the Budget Unit. In addition documentation was intentionally falsified and misleading information was intentionally sent to the federal statistical authorities as well as to the National Court of Audit (RH) by her.

and:

SBG 9.2

Text according to preliminary report (p 26):

Furthermore, the fact the State Office of Land Salzburg did not take over the suggestion provided by STAT since, at least, 2010, on the correct recording practices and ...

Proposed amendment:

Furthermore, the fact that the then Head of the Budget Unit did not take over the suggestion provided by STAT since, at least, 2010, on the correct recording practices and ...

and:

SBG 9.3

Text according to preliminary report (p 26):

Even if STAT included these amounts in the Austrian Maastricht Debt in accordance with their consolidations practices, the absence of these amounts in the balance sheet of the State Office of Land Salzburg amounts to a case of false statement from the State Office of Land Salzburg to the Austrian statistical and monitoring entities.

Proposed amendment:

Even if STAT included these amounts in the Austrian Maastricht Debt in accordance with their consolidations practices, the absence of these amounts in the balance sheet of the State Office of Land Salzburg amounts to a case of false statement from the then Head of the Budget Unit to the Austrian statistical and monitoring entities.

and:

SBG 9.4

Text according to preliminary report (p 38):

The State Office of Land Salzburg, which has under its responsibility, among others, the Internal Audit Department, the Accounting Unit and the Financial Department (notably the Budget Unit), should be considered as the main responsible for the fact that financial and non-financial accounts were misreported since, at least, 2008.

On one side, the Internal Audit of the State Office of Land Salzburg failed to check the internal control procedures and the risk management of the Financial Department. On the other side, the Accounting Unit failed to control the bookkeeping records, both for the budgetary accounts and for the non-budgetary accounts.

The findings of the report demonstrate that the Financial Department, and notably the Budget Unit:

...

Proposed amendment:

The then Head of the Budget Unit carried out unlawful actions that resulted in accounts for financial and non-financial transactions being misreported since at least 2008.

On one hand, the Internal Audit of the State Office of Land Salzburg did not check the internal control procedures and the risk management of the Financial Department. On the other hand, the Accounting Unit did not control the bookkeeping records, both for the budgetary accounts and for the non-budgetary accounts.

The findings of the report demonstrate that the then Head of the Budget Unit: ...

Then: Deletion of the first sub-point (Ignoring recommendations of the RH), since it is not evident what exactly they might be)

and:

SBG 9.5

Text according to preliminary report (p 40):

Thereby those entities facilitated the fact that in the Budget Unit of the State Office of Land Salzburg could, intentionally, misrepresent and conceal financial transactions, leading to the misrepresentation in 2012 and 2013 of Austria's deficit and debt data regarding 2008-2012 to Eurostat, i.e. after the entry into force of Regulation (EU) 1173/2011.

Proposed amendment:

Thereby those entities facilitated the fact that the then Head of the Budget Unit of the State Office of Land Salzburg could, intentionally, misrepresent and conceal financial transactions, leading to the misrepresentation in 2012 and 2013 of Austria's deficit and debt data regarding 2008-2012 to Eurostat, i.e. after the entry into force of Regulation (EU) 1173/2011.

and:

in general, especially in the final notes:

SBG 9.6

Text according to preliminary report:

"The State Office of Land Salzburg declared: ..."

"Furthermore, ... the State Office of Land Salzburg replied ..."

"When asked ... the State Office of Land Salzburg replied ..." etc

Proposed amendment:

"The witness declared: ..."

"Furthermore, ... the witness replied ..."

"When asked ... the witness replied ..." etc

SBG 10

Verschuldensvorwurf gegen Landesrechnungshof und Amt der Sbg Landesregierung:

SBG 10.1

Text according to preliminary report (p 2):

On the basis of all the facts and reasoning described in this report, it can be concluded that the LRH and State Office and State Government of Land Salzburg, i.e. entities within the general government sector of the Republic of Austria, were seriously negligent in not ensuring appropriate compilation controls and reporting procedures.

Proposed amendment:

On the basis of all the facts and reasoning described in this report, it can be concluded that the LRH and State Office and State Government of Land Salzburg, i.e. entities within the general government sector of the Republic of Austria, did not ensure appropriate compilation controls and reporting procedures. It should also be noted, however, that the financial scandal was exposed not by an external entity but within the State Office itself and that until it was exposed, no-one had noticed anything serious, especially as information was withheld or misinformation was supplied (cf forgery of minutes) by the then Head of the Budget Unit.

SBG 10.2

Text according to preliminary report (p 40):

On the basis of all the facts and reasoning described in this report, it can be concluded that the LRH and State Office and State Government of Land Salzburg, i.e. entities within the general government sector of the Republic of Austria, were seriously negligent in not ensuring appropriate compilation controls and reporting procedures. ...

Proposed amendment:

On the basis of all the facts and reasoning described in this report, it can be concluded that the LRH and State Office of Land Salzburg, i.e. entities within the general government sector of the Republic of Austria, did not ensure appropriate compilation controls and reporting procedures. It should also be noted, however, that the financial scandal was exposed not by an external entity but within the State Office itself and that until it was exposed, no-one had noticed anything serious, especially as information was withheld or misinformation was supplied (cf forgery of minutes) by the then Head of the Budget Unit. ...

RH 1

Text according to preliminary report (point 2.3.4, p 27):

"Furthermore, on 10 October 2012, after receiving a table from STAT that showed the debt of Land Salzburg from 2011 onwards, as compiled by STAT (see Table 1, row 3), the RH requested further information on the EUR 1,050 million of debt of the 'funds', asking more specifically what funds STAT was referring to. STAT has explained to the RH that the EUR 1,050 million of debt referred to the loans from OeBFA on-lent to the Landeswohnbaufonds. Whereas, as explained above, these loans should be recorded in the balance sheet of Land Salzburg as the debt of Land Salzburg, the Commission has not received information on further correspondence exchanged between the two entities on this issue, i.e. the Commission is not aware that the RH, in face of this misuse of the accounts of Land Salzburg, further raised the issue either with STAT or the State Office of Land Salzburg.

Remark of RH concerning point 2.3.4, p 27:

The EC report places the enquiry by RH of 12 October 2012³ to Statistik Austria in the wrong context. The enquiry was solely for clarification of the report by Statistik Austria concerning the annual budget results under Article 11 of the 2011 Austrian Stability Pact⁴. These data are the basis for fulfilment of the function of assessor assigned to RH in the Stability Pact.

It is incorrect to claim that *"the RH, in face of this misuse of the accounts of Land Salzburg"* failed to mention this to Statistik Austria and the

Salzburg State Office. The enquiry by RH was not

in connection with an audit. RH was not then aware of the deficiencies in the internal monitoring system and accounts of the Land described in its later report on the financial position of Land Salzburg, certainly not to their full extent. There was therefore not at that time any reason to assume that the accounts or the figures from Statistik Austria were incorrect.

This paragraph of the preliminary report should be deleted without being replaced.

RH 2

Text according to preliminary report (point 2.3.5, pp 27 and 28):

"When enquired by the RH on the differences between the debt reported by Land Salzburg (Finanzschulden) and the table produced by STAT depicting the debt of each of the Länder, STAT

³ RH is only aware of one e-mail of 12 October 2012 with the relevant content, not as stated in the EC report of 10 October 2012.

⁴ The 2011 Stability Pact governed national budgetary co-ordination, medium-term budgetary orientation and the division of deficit ratios and penalty burdens up to 2014. The new 2012 Austrian Stability Pact was concluded in 2012 and is to apply for an indefinite period.

explained, to the RH that , among others the difference included EUR 300 million regarding securities "that we found nowhere in the Rechnungsabschluss". During the second half of 2012, the RH discussed the finding of its 2011 follow-up report of the financial management of Land Salzburg with the State Office of Land Salzburg. Ultimately this led to the publishing of a RH's report on 6 December 2012. However the extremely important issue concerning the misreporting of EUR 300 million of Maastricht relevant liabilities was not included in the RH report."

Remark of RH concerning point 2.3.5, pp 27 and 28:

The e-mail from RH of 29 August 2012 explaining a difference of 300 million euros between the Land's accounts and the data from Statistik Austria has been placed in completely the wrong context by the EC. The enquiry by e-mail from RH did not concern, as incorrectly stated, the follow-up check on the financing instruments of the Land, but the audit of 'Consolidation measures of the Laender of Upper Austria, Salzburg and Styria'. This audit finally culminated in the more extensive 'Land Salzburg - Financial Position' audit. The explanation of the difference of 300 million euros raised by RH could therefore not be included in the report on the follow-up audit of the financing instruments of the Land published on 6 December 2012.

This paragraph of the preliminary report should be deleted without being replaced.

RH 3

Text according to preliminary report (point 3, p 35, paras 6 and 7):

"Similarly, between 2002 and 2012, neither the LRH nor the RH conducted any effective in-depth audit of the financial accounts of Land Salzburg. In particular, they did not audit the voranschlagsunwirksame Gebarung which, as showed in Table 2, in section 2.3.3., reached more than EUR 26 billion of inflows and outflows in 2011 and included de facto all the unreported transactions and stocks, while in principle they should have included only extra-budgetary flows and not Maastricht-relevant liabilities. The main actors involved in the events described in this report are the State Office, the State Government, the Landtag and the LRH of Land Salzburg, the RH, OeBFA, OeNB and STAT. "

Remark of RH concerning point 3, p 35, paras 6 and 7:

RH carried out the following audits at Salzburg State Office during the period in question:

**Financing instruments of the subnational authorities
(Salzburg 2009/3)**

Audit

On-site audit 2008; Date of publication: 15 July 2009.

The horizontal audit covered the federal level, the Laender of Salzburg, Burgenland, Carinthia and Tyrol and the cities of Villach, Dornbirn and Wels.

Objectives and subject matter

Even at this stage, RH indicated a recorded value at risk of 178.20 million euros (End 2007). This value at risk amounted to 41% of financial debt, corresponding to just under 10% of the income of the budget (*Landesvoranschlag*) of Land Salzburg. Land Salzburg (*Land Salzburg*) therefore showed by far the highest value at risk of all the verified entities (including eight times the comparable value at risk at federal level).

Comment

In view of this particularly high value at risk and potential loss, RH chose Land Salzburg for a follow-up audit.

Follow-up-audit of financing instruments

(Salzburg 2012/9)

Audit

On-site audit 2011; Submission of audit results for an opinion

End May 2012: Date of publication: 6 December 2012

Objectives and subject matter

Salzburg expressed an opinion on them in August 2012 without informing RH that the financial manager responsible had admitted to having concealed book losses for many years. As became clear from the subsequent 'Land Salzburg - Financial Position' audit, minutes used extensively by RH in the follow-up audit had been forged or were entirely missing, which meant that its recommendations were based on items that had been manipulated.

Consolidation measures of the Laender of Upper Austria, Salzburg and Styria

(Salzburg 2014/3)

Audit

The audit commenced in July 2012 and was interrupted owing to performance of the 'Land Salzburg - Financial Position' audit from November 2012 to March 2013. The Consolidation Measures audit in the three Laender was subsequently continued from April to June 2013 and published in June 2014. In summer 2012, there was no-one for RH to contact in Salzburg. The audit team was informed that the financial manager had been on sick leave for a long time.

Objectives and subject matter

The audit was based on a cross-section of all the Laender. The objective was to determine the financial position and reveal any need for consolidation on the basis of medium-term financial planning.

Comment

During the investigations for the audit, Statistik Austria was requested to explain a difference of 300 million euros that was initially detected (see above). This sum was, however, only one aspect of the matters that came to the attention of the audit team in the accounts of the Land. The audit team encountered more and more unexplained accounting differences, including in connection with extra-budgetary accounts (*voranschlagsunwirksame Gebarung*). RH therefore interrupted the audit at the beginning of December 2012 in order to audit Land Salzburg in much greater depth ('Financial Position - Land Salzburg').

Land Salzburg – Financial Position (Salzburg 2013/7)

Audit

On-site audit from December 2012 to March 2013; Submission of audit results
Beginning of April 2013; Date of publication: 9 October 2013

Objectives and subject matter

The audit included assessment of financial transactions and the associated impact on the financial position of the Land, the Internal Monitoring System in relation to the statement of financial transactions, commercial relationships with credit institutions and the Republic of Austria, in particular with regard to derivative transactions, booking of financial transactions, risks arising from liabilities assumed and financial relationships with affiliates and the representation of risks in medium-term planning and accounts of the Land, especially with regard to the economic reality, transparency and completeness of accounts.

Comment

This means that in this audit, RH not only continued to investigate the difference of 300 million euros addressed in the Consolidation Measures audit in August 2013, but also took much more extensive audit measures. The report includes the total debt of the Land and detailed breakdowns of stocks and flows in extra-budgetary accounts [*voranschlagsunwirksamen Gebarung*].

In its risk-oriented audit approach, RH accordingly repeatedly audited the financial management of Land Salzburg during the period in question. If the EC is now including RH among "*the main actors involved in the events described in this report*", this runs counter to the facts and can in no way be concluded from the findings of the report. In view of the extensive audit activities of RH, which made a substantial contribution to clarifying the financial position of the Land, this statement is incorrect and is most emphatically rejected.

This paragraph of the preliminary report should be deleted without being replaced.

RH 4

Text according to preliminary report (point 3, p 37):

"During the year 2012, the RH failed to effectively follow up on the discrepancies it had found in the accounts of Land Salzburg as pointed out by STAT, namely concerning the mismatch of the lending from OeBFA to Land Salzburg and the EUR 300 million in securities that were not reported in the balance sheets of Land Salzburg."

Remark of RH concerning point 3, p 37:

The statement in the EC report, that RH had failed to investigate "*the mismatch of the lending from OeBFA to Land Salzburg and the EUR 300 million in securities that were not reported in the balance sheets of Land Salzburg*" runs counter to the facts. RH was not questioned or asked to supply documentation with regard to this matter. This would have resulted in objective determination of the facts of this case. The attempt to obtain an explanation for a sum of 300 million euros from Statistik Austria through the enquiry by email on 29 August 2012 was only one of the matters that came to the attention of the audit team in the Salzburg accounts during the audit of 'Consolidation measures of the Laender of Upper Austria, Salzburg and Styria'. Because the audit team was encountering more and more unexplainable accounting differences and there were no competent contact persons on site⁵, RH interrupted this audit at the beginning of December 2012 in order to conduct a much more extensive audit of Land Salzburg (see also the comments by RH concerning point 3 , p 35, paras 6 and 7):

The report on the 'Land Salzburg - Financial Position' audit included a statement of borrowings, assets and liabilities in the extra-budgetary accounts (*voranschlagsunwirksamen Gebarung*) and securities transactions. The audit results were handed to the Head of Government (*Landeshauptfrau*) of Land Salzburg by the Chief Auditor in person.

The audit activities by RH actually went far beyond the

⁵ RH was informed that the Financial Manager was absent because of sickness.

300 million euros referred to by the EC and led to a general statement of all securities transactions and borrowings. RH therefore did in no way fail to expose discrepancies, but made a significant contribution to clarifying and revealing the actual asset and debt management in the Land through its audit activities.

This paragraph of the preliminary report should be deleted without being replaced.

STAT 1

Text according to preliminary report (p 2): *The report contains a detailed description of the main reasons for the 1.2 billion euro revision in the government debt of Austria in 2014, relating to the years 2010-2012, ...*

Proposed amendment: The report contains a detailed description of the main reasons for the 1.2 billion euro, 0.9 billion euro and 0.5 billion euro revisions in the government debt of Austria in 2014, relating to the years 2012, 2011 and 2010 respectively, ...

STAT 2

Text according to preliminary report (p 3): *The misrepresentation of the government debt of Austria was, as of 2012, of EUR 1.2 billion.*

Proposed amendment: The misrepresentation of the government debt of Austria as at the end of 2012 was EUR 1.2 billion.

STAT 3

Text according to preliminary report (p 3): *Even if in the April 2014 EDP notification Maastricht Debt was revised for years 2010-2012, it appears that the misreporting of debt, as well as possibly deficit, may have started at least from 2008 onwards, and that the level of Maastricht debt presented by the Austrian statistical authorities for the years 2008 and 2009 is still underestimated.*

Remark: The Member States are obliged under the EDP Regulation to report data for the years n-4. Only data for the years 2010 to 2014 were therefore notifiable in the report of April 2014. Reporting changes in data for previous years is only obligatory under other EU regulations⁶.

Proposal 1 for amended wording: ... and that the level of **quarterly public debt** presented by the Austrian statistical authorities for the years 2008 and 2009 is still underestimated.

Proposal 2: Assertions that cannot be supported by the submission of documents ("... it appears that ...") and that relate to reporting years that are not relevant to the matter under investigation (such as the 2008 reporting year) should be eliminated from the report.

STAT 4

Text according to preliminary report (p 3): *Finally, the report concludes that whereas the Commission (Eurostat) was only informed of this case on the 10 October 2013, the Austrian statistical authorities were aware of the possibility of misrepresentation of the accounts of Land*

⁶ Council Regulation (EC) No 1222/2004 of 28 June 2004 concerning the compilation and transmission of data on the quarterly government debt and Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union.

Salzburg since, at least, the 6th of December 2012.

Remark: The “representation in the books” of a Land or municipality must be carried out in accordance with the Regulation on Budget and Closed Accounts of State and Local Governments (*Voranschlags- und Rechnungsabschlussverordnung*) (VRV) of the Federal Minister for Finance. STAT checks the suitability of the data sent by the Laender for the calculation of ESA and/or EDP data, not whether they are VRV-compliant in a particular case. The possibility of misrepresentation in the books of Land Salzburg might therefore not be known to STAT. On the other hand, problems with data were reported to the Commission (Eurostat) as early as the end of January 2013 and again at the time of the EDP notification in April 2013.

STAT 5

Text according to preliminary report (p 3): *Also, the report concludes that both Statistics Austria and the Austrian Central Bank were aware of sizeable inconsistencies in the data reported by Land Salzburg, before the so called 'financial scandal' became public at the end of 2012.*

Remark: Although the data sent under the Public Statistics Regulation (GebStat-VO)⁷ are the most important, they are not the sole basis for the calculation of ESA or EDP data. There is therefore a sometimes a significant difference between ‘Debts according to VRV’ and ‘EDP-Maastricht debt in all the Laender’. As far as STAT is aware, as at 30. 9. 2013, this difference amounted to 1.3 billion euros for Land Salzburg and 8.9 billion euros for all the Laender. Differences between VRV and ESA/EDP data are therefore not confined to a single Land.

Proposal for amended wording: The report also contains the conclusion that Statistik Austria had already been aware of **the need to supplement the data reported by Land Salzburg for the calculation of ESA and/or EDP data**, before the so-called financial scandal became public knowledge at the end of 2012.

STAT 6

Text according to preliminary report (p 3): *... serious deficiencies in the organisation of the data flows between public entities and the statistical authorities.*

Remark: STAT cannot understand this view of the Commission. The “data flows between public entities and STAT” **are clearly regulated in the Public Finance Statistics Regulation.**

⁷ Public Finance Statistics Regulation (*Gebarungsstatistik-Verordnung*); BGBl. II No 361/2002, BGBl. II Nr. 465/2004 and BGBl. II No 345/2014 (from 1 January 2014)

STAT 7

Text according to preliminary report (p 3): *... the central verification of accounting data by Member States at all levels of general government, and robust and effective supervisory and control systems at national level.*

Remark: Data transferred by the Laender under GebStat-VO should be VRV-compliant in principle. The task of STAT is to check the suitability of the data for the calculation of ESA and/or EDP data, not whether they are VRV-compliant in a particular case.

STAT 8

Text according to preliminary report (p 8): *On 10 March 2014, STAT provided the Commission (Eurostat) with the results of its internal analysis of the statistical implications of the RH findings and announced that, after the incorporation of the new Land Salzburg data, the general government debt of the years 2010, 2011 and 2012 would be revised upwards (+0.3pp of GDP in 2010, +0.3pp in 2011, +0.4pp in 2012).*

Proposed amendment: On 10 March 2014, STAT provided the Commission (Eurostat) ... (**+0.2** pp of GDP in 2010, +0.3 pp in 2011, +0.4 pp in 2012).

STAT 9

Text according to preliminary report (p 8): *After an examination of the facts by the Commission (Eurostat), it became clear that the case of unreported debt in the Land Salzburg was serious. The elements that led to this conclusion include, amongst other, the fact that the Court of Auditors had published findings indicating the existence of several and severe irregularities in the financial management of Land Salzburg, that as a result of these irregularities there was an incorrect reporting of debt figures for non-negligible amounts, on which the national statistical authorities were allegedly not informed during many years and finally, that the regional government in Land Salzburg, in exercising its legal powers, seemed to have facilitated the incorrect reporting of transactions.*

Consequently the Commission (Eurostat) assessed that a more thorough analysis of the facts occurred in Land Salzburg was needed.

Remark: This entire paragraph refers to the assessment by the Commission (Eurostat) before the more detailed analysis. STAT therefore proposes that this should be pointed out immediately in the first sentence, e.g. "After an examination of the facts, **the Commission (Eurostat) judged** that ..."

STAT 10

Text according to preliminary report (p 9, footnote 7): *OeBFA provides data and metadata to the statistical authorities to be used for the calculation of the interest accrual adjustment, data on federal government receipts and on the federal government debt.*

Proposed amendment: OeBFA provides data and metadata to the statistical authorities to be used for the calculation of the interest accrual adjustment, data on **federal** receipts and on the **federal** debt.

STAT 11

Text according to preliminary report (p 11): *The first row of the table reflects the financial debts (Finanzschulden) of Land Salzburg as reported in the balance sheets compiled by the State Office of Land Salzburg for the years 2002-2012. According to information from STAT, these 'Finanzschulden' should include both loans and government bonds, and are in this sense the relevant liabilities to be taken into account for the compilation of Maastricht Debt.*

Remark: On 11 October 2013, i.e. two days prior to publication of the report by the Court of Audit on the financial position of Land Salzburg, STAT informed Eurostat that the terms *Finanzschulden* (financial debts) and *Gesamtschulden* (total debts) are not identical with the term *Maastricht-Schuldenstand* (Maastricht debt)⁸. This would make it clear that the sum of 3.507 billion euros specified in the report by the Court of Audit could not be used to calculate the Maastricht debt without detailed research.

STAT 12

Text according to preliminary report (p 12): *For example, the estimation by STAT took into account a considerable part of the Voranschlagsunwirksame Erläge, i.e. cash transited through the accounts of Land Salzburg that is owed to a third entity,*

Remark: It has been noted that the extra-budgetary accounts (*voranschlagsunwirksame Gebarung*) (transfers) were not reported to Statistik Austria by any of the Laender. The additional sources of data were the balances of the *Wohnbaufonds* (residential construction fund) and other balances sheets of outsourced entities (*Landesfonds* (Land fund) and *Landeskammern* (Land chambers) and information from OeBFA and OeNB, which was used for validation and cross-checks.

⁸ This information was provided in connection with the Requests for clarification following the EDP notifications: "Financial debts amounting to 1.370 billion euros were recorded in the accounting system of the Land as at 31 December 2012. On the other hand, the total debts had a nominal value of 3.507 billion euros as at 31 December 2012." Neither 'Finanzschulden' nor 'Gesamtschulden' can be taken 1:1 as Maastricht debt."

STAT 13

Text according to preliminary report (p 13): *Furthermore, and after receiving information from the OeNB, STAT concluded that Land Salzburg had financed itself, in 2010, through the issuing of government securities amounting to EUR 300 million. Even if such an amount was nowhere visible in the balance sheets of Land Salzburg, STAT took the decision to follow the direct data source of the OeNB and to include these amounts in the debt of Land Salzburg.*

Remark: This is an example of the general approach of STAT to calculating ESA and EDP data, according to which the data sent in accordance with the Public Finance Statistics Regulation form **the most important but not the only basis for data**⁹. It is also noted that the information regarding the existence of a loan was checked using the ISIN number (securities number) in the portal of the Viennese Stock Exchange (*Wiener Börse*). Because the loan appeared on the Viennese Stock Exchange and the Thumbstone showing that it had been placed on the stock exchange was found on the Internet, the information from OeNB securities statistics had been confirmed by an independent third institution (Viennese Stock Exchange) and was used to calculate the debt.

STAT 14

Text according to preliminary report (p 13): *Even if STAT has the possibility to change the figures from the data sources when compiling national accounts, it does not have the power to oblige entities to amend the data reported*

Remark: Data transferred by the Laender under GebStat-VO should be VRV-compliant in principle. The task of STAT is to check the suitability of the data for the calculation of ESA and/or EDP data, not whether they are VRV-compliant in a particular case.

STAT 15

Text according to preliminary report (p 14): *It can be observed that data for the years prior to 2010 were not revised by the statistical authorities. In a letter sent by STAT to Eurostat on 28 March 2014 it was stated: "As one outcome of our bilateral meeting with officials from Land Salzburg it can be taken for sure that no additional resources will be dedicated to further clarify earlier years. That means that our estimates will remain unchanged". Notwithstanding this*

⁹ The half-yearly verification of the data sent by Laender and municipalities and the inclusion of other data sources has resulted in the adaptation of the standard allocation tables and/or the addition to them of Land-specific or municipality-specific allocations. STAT also uses other data sources to calculate ESA or EDP data, in particular financial management data sent from entities not included in the budget or statistics from other institutions (for calculation of the public debt, in particular the securities and banking statistics of the Austrian National Bank).

statement by STAT ...

Remarks:

a) In the period from October 2013 to March 2014, STAT **only received information for a revision of the data for 2012** from the Salzburg State Office. The ESA data for 2010 and 2011 were revised on the basis of various estimates. Because only data concerning the years 2010 to 2014 needed to be sent to the Commission (Eurostat) in connection with the EDP notification prior to 1 April 2014, no further data was processed for the years prior to 2010.

b) The statement quoted from the letter of 28 March 2014 only concerned the years 2010 and 2011¹⁰.

STAT 16

Text according to preliminary report (p 14): *Finally, row (6a) reflects the difference between the calculation of Land Salzburg's debt taking into account all data sources available in March 2014 (row (4)) and the debt effectively reported by Land Salzburg (row (1a)) for those years, under the Finanzschulden. This means that even if the reported impact of the revisions to the Austrian Maastricht debt amounted to only 0.4% of GDP in 2012, the effective amount of underreporting and/or misreporting of debt in that year by Land Salzburg was de facto 0.9% of GDP in that year.*

Remark: The investigation in question concerns the Austrian EDP report, not 'factual' results of financial management in Land Salzburg. **The finding** that the incorrect reporting of figures concerning the debts of Land Salzburg actually amounted to 0.9% each year **should therefore be omitted.**

STAT 17

Text according to preliminary report (p 25): *Firstly, it is the understanding of the Commission that the interest payable should have been revised by STAT at least also for years 2010 and 2011, along with the revisions undertaken to the debt (see Table 1).*

Remark: In the period from October 2013 to March 2014, STAT only received information for a

¹⁰ iii. Availability of information for years 2010-2011

Eurostat/Question: You state in the report that: 'The officials of Land Salzburg are not in a position to provide quantitative information for earlier years due to constraints in resources and lack of information available'.

Is it intended by the Land Salzburg to dedicate additional resources to the issue in the future or to take any efforts to obtain the information which is at present lacking? Or will the estimation of the data by Statistics Austria continue?

STAT/Answer: As one outcome of our bilateral meetings with officials from Land Salzburg it can be taken for sure that no additional resources will be dedicated to further clarify earlier years. That means, that our estimates will remain unchanged.

revision of the data for 2012 from the Salzburg State Office. This meant that only the year 2012 could be audited. Neither an audit (*Prüfung*) nor monitoring (*Kontrolle*) could be carried out for 2010 and 2011. STAT revised the data concerning public debt for 2010 and 2011 on the basis of various estimates (in particular retropolation of the data for 2012). Because the interest expenses relating to the deficit turned out to be lower after the audit of the data for 2012 than before it and in the absence of additional information for 2010 and 2011, there was no "Estimation of interest expenses on the basis of an estimate of public debt".

STAT 18

Text according to preliminary report (p 25): *Furthermore, it is the understanding of the Commission that, following the fact that it was ascertained that debt is underestimated for years prior to 2010, consequently interest payable is also underestimated, and therefore the Austrian government deficit for those years.*

Remark: Interest flows based on swap agreements and forward rate agreements were also included in the calculation of the public deficit¹¹. The interest flows are difference between expenditure and income and can therefore raise or lower the public deficit. In the audit of the data for 2012, it was found that some redemptions (not relevant to the deficit) also contained settlements on the basis of swap agreements, which needed to be recorded as deficit-reducing income. According to Table 2 (on page 24 of the preliminary report, penultimate line), this audit resulted in a **reduction** of 7 million euros in the public deficit for 2012. It is therefore not possible to automatically draw a conclusion regarding the impact on the Austrian government deficit. The assertion that the debts for 2010 were demonstrably underestimated must be proven by the Commission (Eurostat) or deleted if this is not possible.

STAT 19

Text according to preliminary report (p 25): *In a meeting held on 8 September 2010 between STAT and the Budget Unit of the State Office of Land Salzburg, STAT explained that all the funds lent by OeBFA should be reported under the Finanzschulden (as they are, de facto, debt of Land Salzburg in relation to OeBFA).*

Remark: The term 'Finanzschulden' (financial debts) is not identical with the term 'Maastricht-Schuldenstand' (Maastricht debt). Attention was drawn to the representation in the ESA at the

¹¹ Regulation (EC) No 2558/2001 of the European Parliament and of the Council of 3 December 2001 amending Council Regulation (EC) No 2223/96 as regards the reclassification of settlements under swaps arrangements and under forward rate agreements, supplement to Annex 5 to ESA 1995: Definition of government deficit for the purpose of the EDP (excessive deficit procedure).

meeting on 8 September 2010¹².

Proposal for amended wording: ... All the funds lent by OeBFA in the ESA and EDP statistics should be reported as loans by the federal government and borrowings by the Land.

STAT 20

Text according to preliminary report (p 26, footnote 33): "This follows from the email exchange of 27 September 2010 ..."

To be corrected (see footnote 13 on page 13): "This follows from the email exchange of 27 September **2012** ..."

STAT 21

Text according to preliminary report (p 26): *Furthermore, it should be stated that consolidation practices do not only involve using the most reliable data when realizing that a considerable discrepancy exists, as was done by STAT during these years. The best consolidation practices should also concern informing the relevant authorities of the existence of such discrepancies, given that misreporting in one item may imply misreporting in other items.*

Remark: As already pointed out more than once, the persons responsible for supplying data were continuously informed of consolidation processes and transfers to ESA. Discrepancies do not in any way imply misreporting. A general suspicion is therefore impermissible. A correction therefore needs to be made in the text of the report.

STAT 22

Text according to preliminary report (p 29): *Finally, it is important to mention that, for the years under analysis, no flows or stocks of financial derivatives were reported in national accounts for the whole S.1312 sector (state government sector). The Commission is aware that sizeable cross-currency swaps existed at least between Land Salzburg and OeBFA.*

Remark: The Commission was **aware since the end of January 2013 at the latest** that financial derivatives had been concluded in Land Salzburg that were not included in the Austrian ESA statistics. That is obtained from an internal record of a telephone conversation with the then

¹² The Financial Accounts in ESA 95, Consolidated/Unconsolidated: "Consolidated means that payment flows and stocks are reduced by the amounts that occur within the government sector. Unconsolidated means that the amounts of flows/stocks within the government sector continue to be included in the results. Typical flows/stocks that must be consolidated are loans to the Laender from the Austrian Federal Financing Agency (OeBFA). During consolidation, these loans are treated as lendings by the federal authorities and borrowings of the Land and as such, are not included in the results."

Eurostat Desk Officer (MW) on 31 January 2013.¹³ Furthermore, STAT informed the Commission (Eurostat) in connection with the usual enquiries regarding the EDP notification ("Request for clarification" in April 2013 of the initial researches regarding the topic of financial derivatives and that information from Salzburg would not be available before the end of September 2013 "due to the well-known reasons"¹⁴. In this information, it was also pointed out that STAT and OeNB had proposed including a separate representation of financial derivatives in the VRV¹⁵ to the Federal Ministry of Finance. It should therefore be added to the report that the Commission (Eurostat) had been informed about these circumstances since the end of January 2013.

Proposed amendment: "...in the national accounts for the entire sector S.1312 (**Laender subsector**)..."

STAT 23

Text according to preliminary report (p 31): *It was only on 22 January 2013 that the State Office of Land Salzburg officially informed STAT on the issue of the existence of unrecorded liabilities.*

Remarks:

a) The comments from STAT do not make it clear what additional information was made available by the Salzburg State Office on 22 January 2013 that had not already been known since the press conference on 6 December 2012. As long ago as 6 December 2012, the *Salzburger Nachrichten* contained the following words: The Deputy Head of the Land Financial Department is alleged to have speculated with public money and hidden the losses in the budget." (see also footnote 48 on page 31 of the preliminary report).

¹³ "Just had a fairly long discussion with MW (has read in the media about Salzburg, Linz and Lower Austria) and is surprised that there is nothing under F.34 in the EDPT3C and 3D. I told her that we were checking the data supplied to us in this regard with Salzburg and Lower Austria."

¹⁴ Quotation from the 'concluding remarks' by Eurostat of 16 April 2013:

Question by Eurostat: We understand that this issue has been explicitly addressed in your exchanges with the data providers and it has been confirmed that such transactions have not taken place in Austria in the EDP reference period. Otherwise, please explain to us whether, and if yes, on which grounds, it can be concluded that the transactions would not have any major impacts on the state government debt measurement.

Answer by STAT: To get more information on financial derivatives, already in 2009 STAT and OeNB made proposals to the MoF for additional break down in the state and local government budgets but didn't succeed these proposals being implemented in the National Regulation (VRV). Again this issue was presented by STAT to the responsible committee for developing the VRV in March 2013. In March 2013 we also contacted the states of Lower Austria, Burgenland and Salzburg and requested flow- and stock-data on financial derivatives but there was no answer so far (**in fact, in Salzburg closed accounts as such for the year 2012 will not be available before September 2013 due to the well-known reasons**).

¹⁵ Regulation on Budget and Closed Accounts of State and Local Governments (Voranschlags- und Rechnungsabschlussverordnung) (VRV) of the Federal Minister for Finance in agreement with the Court of Audit.

b) The comments by STAT concerning the contacts with the Salzburg State Office on 22 January 2013 show:

ba) Telecon with Mr (CM) at about 8.30 on 22 January 2013: He introduced himself as the new contact person for data transfers to STAT and wished to know whether there was a backlog of notifications to STAT.

bb) Detailed information to Mr (CM) concerning requirements with regard to content and technical details of notifications.

STAT was not informed on 22 January 2013 of the existence of unrecorded liabilities. A correction therefore needs to be made in the text of the report.

STAT 24

Text according to preliminary report (p 32): *On 22 January 2013, the State Office of Land Salzburg and STAT exchanged some emails. In one of these emails, STAT states: "For our part, we are very interested in the interim reports on the finances of Land Salzburg in order to get a picture of the changes/revisions that have come to us, or to what misreporting and manipulations we have been exposed."*

Remark: The actual wording of the e-mail is as follows: "For our part, we **would be** very interested in the interim reports on the finances of Land Salzburg in order to get a picture of the changes/revisions that have come to us, or to what misreporting and manipulations we have been exposed." This implies that on 22 January 2013, STAT was not in possession of any information that went further than what had been known since the press conference on 6 December 2012.

A correction therefore needs to be made in the text of the report.

Proposed amendment: In one of these emails, STAT states: "For our part, we **would be** very interested in the interim reports

STAT 25

Text according to preliminary report (p 32): *On 5 March 2013, there was a bilateral meeting between STAT and the State Office of Land Salzburg in Vienna;*

Remark: This meeting on 5 March 2013 in Vienna was attended by two representatives of the Salzburg State Office¹⁶ and a number of representatives of STAT. The participants from Salzburg were announced by Mr (CM).

Proposed amendment: On 5 March 2013, there was a bilateral meeting between STAT and the State Office of Land Salzburg in Vienna;

¹⁶ Mr (RO) and Mr (PS)

STAT 26

Text according to preliminary report (p 32): *On 27 March 2013, the State Office of Land Salzburg informed STAT that, following a report by an external independent private auditor, it had been ascertained that the consolidated liabilities of Land Salzburg amounted to EUR 3,507 million, although no breakdown of this amount could be provided. The Commission is not aware of any specific follow-up having taken place in order to ascertain the nature of such liabilities;*

Remarks:

a) Since on 27 March 2013 there was no breakdown of the sum of 3.507 billion euros, which related to only one reporting year, namely 2012, it could therefore not be excluded that liabilities from financial derivatives were also included in this sum. As early as 19 March 2013, STAT asked Land Salzburg for detailed information about financial derivatives. This was disclosed to the Commission (Eurostat) on 16 April 2013¹⁷.

A correction therefore needs to be made in the text of the report.

b) The claim that "The Commission is not aware of any specific follow-up having taken place in order to ascertain the nature of such liabilities;" is incomprehensible. On 19 March and 7 May 2013, there were discussions between Land Salzburg and Statistik Austria, preceded and followed by numerous contacts by e-mail. The discussions were held solely in order to make the representatives of Land Salzburg more aware of the data requirements and contents of the notifications. STAT does not produce statistics on the basis of a number in a Pdf document that not even the sender can explain exactly.

STAT 27

Text according to preliminary report (p 32): *On 7 May 2013 a meeting took place between STAT and the State Office of Land Salzburg. In this meeting, STAT recognized that there might be problems with the recording of derivatives and debt in Land Salzburg^{tt}. (the quotation according to footnote tt is actually (see p 49 of the preliminary report): "We read the press on 6 December 2012. In this context, we had a first meeting with representatives of the Land Salzburg in May 2013. From this we recognized that there might have been issues with the reporting of derivatives and EDP debt (reporting of loans)."*

Proposed amendment: In this meeting, STAT **realised** that there might be problems with the recording of derivatives and debt in Land Salzburg.

¹⁷ In March 2013 we also contacted the states of Lower Austria, Burgenland and Salzburg and requested flow- and stock-data on financial derivatives but there was no answer so far (in fact, in Salzburg closed accounts as such for the year 2012 will not be available before September 2013 due to the well-known reasons).

STAT 28

Text according to preliminary report (p 33): *In July 2013, still in the absence of annual data, STAT compiled the accounts of Land Salzburg on the basis of the quarterly data provided^{vv}; (the quotation according to footnote vv is actually (see p 49 of the preliminary report): During the meeting with STAT on 26 September 2016, the RH representative, who in July 2013 was an employee of STAT, stated: "As final annual data on the closed accounts of the Land Salzburg for the year 2012 were not available for the calculation of ESA National Accounts, STAT used quarterly data to compile the National Accounts (...)."*

Remarks:

- a)** STAT does not prepare any accounts for Land Salzburg, but ESA and EDP statistics.
- b)** The following passage is to be found on page 6 of the minutes of the meeting of the Commission with STAT on 26. 9. 2016: *Before October 2013, Land Salzburg had not officially informed STAT and we did not receive updated data (corrections) from them. They provided only the quarterly debt data according to the existing reporting obligations without any further comments.*

The wording must therefore be corrected.

Proposed amendment: In **September** 2013, still in the absence of annual data, STAT prepared **the ESA and EDP statistics** taking account of the quarterly data submitted by the Land Salzburg.

STAT 29

Text according to preliminary report (p 33): *On 10 October 2013, the issue is brought to the attention of Eurostat for the first time, i.e. ten months after the issue had been brought to the attention of STAT;*

Remark: The press conference in Salzburg on 6 December 2012 not only elicited a strong response from all German-language media inside and outside Austria, but was also reported internationally within and even outside of Europe. It is difficult to believe that the Commission (Eurostat) was unaware of it. The Commission (Eurostat) was obviously "made aware of these matters" by reporting in the media, as can be concluded by an enquiry on 31 January 2013 from the Eurostat Desk Officer (MW), who at that time was responsible for this area. It was aware since the end of January 2013 at the latest that financial derivatives had been concluded in Land Salzburg that were not included in the Austrian ESA statistics.

The wording must therefore be corrected.

Proposed amendment: On 11 October, STAT sent initial comments on the RH report 'Land Salzburg - Financial Position' to Eurostat¹⁸.

STAT 30

Text according to preliminary report (p 33): *On 31 March 2014, STAT reported the April 2014 EDP Notification to Eurostat. The level of Land Salzburg's contribution to Maastricht debt, for 2011, was revised upwards by EUR 3,507 million, i.e., exactly the amount which had been signalled by the State Office of Land Salzburg to STAT on the 27 March 2013;*

Remark: As can be seen from Table 1 of the preliminary report (p 15), the EDP notification of 31 March 2014 included a contribution from Land Salzburg including *Wohnbaufonds* amounting to

¹⁸ Comments on the Report of the Austrian Court of Audit (CoA) on Land Salzburg – Financial situation (published on 9 October 2013)

a) General:

STAT has neither been involved in nor informed on the auditing process of the Austrian Federal CoA about the financial situation in Land Salzburg. The report itself has been downloaded by STAT from the CoA-website on 9 October 2013. According to the usual "auditing procedures" the draft report has probably been transmitted to Land Salzburg already in June 2013 for comments.

b) Remarks on some details of the report:

- "300 bank accounts with a turnover in 2012 of 9.5 billion euros": The total inflows and outflows on all these bank accounts sum up to this amount, which refers to the transactions during the year ("im Jahr"). This must not be mixed with stocks of assets or liabilities.

"Financial debts amounting to 1.370 billion euros were recorded in the accounting system of the Land as at 31 December 2012. On the other hand, the total debts had a nominal value of 3.507 billion euros as at 31 December 2012." Neither 'Finanzschulden' nor 'Gesamtschulden' can be taken 1:1 as Maastricht debt." Statistics Austria has published on 30 September 2013 the Maastricht debt of S.1312 by state (for the years 2009 to 2012). The result for Land Salzburg is € 2.315 bn.

- The difference between "Buchhaltungssystem" and Maastricht debt originates from the inclusion of extrabudgetary units (for instance the "Wohnbaufonds"), information provided by the Austrian Treasury and comparison with data of the security by security database of OeNB. - On the other hand the difference between the result of CoA ("Gesamtschulden") and STAT data of about € 1.2 bn (0.4 as percentage of GDP) cannot be interpreted as "to be added 1.1 to the debt data notified on 30 September 2013 (for instance it could be the case that "Gesamtschulden" comprises financial derivatives as liabilities). STAT will urge the officials of Land Salzburg to provide detailed data necessary for a comprehensive evaluation as soon as possible.

- The chapter "Risikobetrachtung einzelner Geschäftskategorien" which deals with "swaps" gives no indication that there have been off-market swaps.

c) There are **no diverging results on the existence of financial derivatives** in the individual state government units when comparing the information which has been provided independently to STAT and OeNB.

d) The **current compilation procedure for financial accounts** implies the use of many indirect data sources. For example for deposits of the Sector S.1312 money and banking statistics is used or for securities other than shares (F.331 and F.332) the security by security data base of the OeNB is used. Therefore, all deposits of S.1312 with Austrian banks are recorded in financial accounts. Furthermore, security holdings of the Land Salzburg in custody of Austrian Banks are recorded in financial accounts. To ensure full coverage of securities other than shares, the OeNB reminded the Land Salzburg on the reporting obligation of security holdings in custody with foreign banks as laid down in the Foreign Exchange Act 2004 (this has been done along with the letter on the reporting obligation of financial derivatives).

3.172 billion euros for **2011**, while the EDP notification of 30 September 2013 included a sum of 2.293 billion euros. **The revision therefore amounted to 879 million euros.**

The wording must therefore be corrected.

Proposed amendment:

Variant A: On 31 March 2014, STAT reported the April 2014 EDP Notification to Eurostat. The level of Land Salzburg's contribution to Maastricht debt for 2011 was revised upwards by **879 million euros.**

If 2012 was meant, variant B should be included:

Variant B: On 31 March 2014, STAT reported the April 2014 EDP Notification to Eurostat. The level of Land Salzburg's contribution to Maastricht debt for **2012** was revised upwards by **1.191 billion euros.**

STAT 31

Text according to preliminary report (p 33): *STAT informed the Commission (Eurostat) about the misreporting in Land Salzburg only on the 10 October 2013. Nevertheless, it has been ascertained that STAT was gradually informed about these facts from 6 December 2012 onwards. Notably, it was clear to STAT, at least since the 22 January 2013, that "misreporting and manipulations" had occurred in Land Salzburg.*

Remarks:

a) On 29 January 2013, STAT informed all the federal Laender of the extent to which they had not yet met the requirements for the public finance statistics in connection with notifications to STAT and requested them to improve the quality of the notifications as quickly and fully as possible. The Federal Ministry of Finance was also informed of this situation on 29 January and requested "to help us with the improvement of the quality of the budget data sent to us". The Federal Ministry of Finance immediately replied that "an improvement in the quality of data at sub-national level is also very important to us".

b) *Falschberichterstattung* (Misreporting), at least in the area of *Finanzderivate* (financial derivatives) was obvious to Eurostat by 31 January 2013 at the latest. On the basis of this communication on 31 January 2013, STAT requested Land Salzburg to provide information about financial derivatives on 19 March 2013; the results of this investigation were reported to Eurostat on 16 April 2013. At the same time, Eurostat was also informed that final data for 2012 could not be expected from Land Salzburg before the end of 2013 "due to the well-known reasons".

c) On 9 October 2013 the RH published its report "Land Salzburg - Financial Position". Following a telephone conversation between STAT and the then Eurostat Desk Officer (MW) on 10 October

2013 concerning this report, STAT sent Eurostat its initial comments concerning this report on 11 October.

STAT 32

Text according to preliminary report (p 34): *Moreover, on the basis of information provided by the State Office of Land Salzburg concerning the results of an independent external audit, it should have been clear to STAT, at least since 27 March 2013, that the level of debt of Land Salzburg was in fact considerably larger than what had previously been estimated by STAT. Given that STAT would, four days later, report data to Eurostat in the context of the April 2013 EDP Notification, it is the opinion of the Commission that an immediate and urgent practical follow-up should have been undertaken by STAT after receiving this information from Land Salzburg. This appears not to have been the case. Furthermore, even if in such a short delay it would not be possible to give the issue a comprehensive follow-up, it is the opinion of the Commission that, under the principle of due diligence, STAT should have informed Eurostat immediately after 27 March 2013.*

Remark: Liabilities from financial derivatives are not part of public debt. It is the function of STAT to calculate public debt as defined in the EDP Regulation and report it in the EDP notifications for the years n-4 to n (namely the years 2009 to 2013 in the EDP notification of 31 March 2013). For the 'Result of the independent external audit' of 27 March 2013, which related to the end of 2012, it was not known to what extent liabilities from financial derivatives might be included, nor was there information concerning other years. A 'clear revision' of only one year without a secure basis of data for the EDP notifications is not normally accepted by Eurostat.

STAT 33

Text according to preliminary report (p 35): *These irregular practices were made public in 2012, following a press conference held on 6 December 2012 by the Finanzreferent, the Director of the Financial Department and the Head of the LRH of Land Salzburg. Furthermore, this report also demonstrates that the Commission (Eurostat) could and should have been informed by STAT several months earlier about these facts.*

Remark: The existence of irregular practices must have already been known to the Commission (Eurostat) owing to the widespread reporting in the media following the press conference on 6 December 2012. There was communication between STAT and Eurostat concerning the availability of data concerning financial derivatives in Land Salzburg on 31 January and 16 April 2013. **The wording must therefore be corrected.**

STAT 34

Text according to preliminary report (p 37): *Even if STAT correctly implemented in the context of the EDP notifications the necessary changes to the data provided by the State Office of Land Salzburg, it is the opinion of the Commission that other relevant Austrian entities, notably the BMF and the RH, should have been informed.*

Remark: There are no Austrian legal standards that oblige STAT to take such action. It should rather be assumed that these institutions were fully informed about these events, if only by the wide reporting in the media.

STAT 35

Text according to preliminary report (p 38): *Secondly, even if STAT was fully informed, at least since 22 January 2013, that misreporting and manipulation had occurred in the accounts of Land Salzburg, it failed to immediately inform the Commission (Eurostat) of these facts.*

Remarks:

a) On 22 January 2013, STAT had no knowledge of the extent of the revisions to be expected. STAT therefore immediately asked Land Salzburg for information¹⁹ and agreed on a meeting for the extensive exchange of information in early March 2013.

b) It can be assumed that on 22 January 2013, Eurostat had the same information about irregular practices in Land Salzburg as STAT itself owing to the media reporting following the press conference on 6 December 2012.

The wording of the report should therefore be amended accordingly.

STAT 36

Text according to preliminary report (p 40): *Finally, the report concludes that whereas the Commission (Eurostat) was only informed of this case on the 10 October 2013, the Austrian statistical authorities were aware of the possibility of misrepresentation of the accounts of Land Salzburg since, at least, the 6th of December 2012.*

Remark: Misreporting (*Falschberichterstattung*) - at least in the area of financial derivatives (*Finanzderivate*) became obvious to the Commission (Eurostat) on 31 January 2013 at the latest (see in particular remarks B.26 and B.28 above). The existence of a data problem associated with Land Salzburg also became obvious to the Commission (Eurostat) through the EDP notification in April 2013. **The wording of the report should therefore be amended accordingly.**

¹⁹ Email of 22 January 2013: "For our part, we would be very interested in the interim reports on the finances of Land Salzburg in order to get a picture of the changes/revisions that have come to us, or to what misreporting and manipulations we have been exposed."

STAT 37

Text according to preliminary report (p 40): *Also, the report concludes that both Statistics Austria and the Austrian Central Bank were aware of sizeable inconsistencies in the data reported by Land Salzburg, before the so-called 'financial scandal' became public at the end of 2012.*

Remark: Since this sentence is an exact repetition of the sentence on page 3 of the preliminary report, remark STAT 5 above also applies to it:

Remark: Although the data sent under the Public Statistics Regulation (GebStat-VO)²⁰ are the most important, they are not the sole basis for the calculation of ESA or EDP data. There is therefore a sometimes a significant difference between 'Debts according to VRV' and 'EDP-Maastricht debt in all the Laender'. As far as STAT is aware, as at 30. 9. 2013, this difference amounted to 1.3 billion euros for Land Salzburg and 8.9 billion euros for all the Laender. Differences between VRV and ESA/EDP data are therefore not confined to a single Land.

Proposal for amended wording: The report also contains the conclusion that Statistik Austria had already been aware of **the need to supplement the data reported by Land Salzburg for the calculation of ESA and/or EDP data**, before the so-called financial scandal became public knowledge at the end of 2012.

STAT 38

Text according to preliminary report (p 40): *As a result, the data sent by Austria to Eurostat in the context of the EDP 2013 Notifications exercises ...*

Proposed amendment (translation error): As a result, the data sent by Austria to Eurostat in the context of the EDP Notifications exercises **in** 2013 ...

STAT 39

Text according to preliminary report (p 40): *Based on the findings in this report regarding the behaviour of the authorities of the Member State in the period from 13 December 2011 until the launch of the investigation on 5 May 2016, the Commission may decide to adopt a recommendation to the Council to impose a fine on the Republic of Austria, as foreseen in Regulation (EU) No 1173/2011.*

Proposed amendment: ...**3.** May 2016 ...

²⁰ Public Finance Statistics Regulation (*Gebarungsstatistik-Verordnung*); BGBl. II No 361/2002, BGBl. II Nr. 465/2004 and BGBl. II No 345/2014 (from 1 January 2014)

STAT 40

Text according to preliminary report (p 49, end note vv): *During the meeting with STAT on 26 September 2016, the RH representative, who in July 2013 was an employee of STAT, stated: "As final annual data on the closed accounts of the Land Salzburg for the year 2012 were not available for the calculation of ESA National Accounts, STAT used quarterly data to compile the National Accounts (...)."*

To be corrected, translation error: the expression *für die Europäische Finanzaufsichtsbehörde* (for the European Financial Supervisory Authority) in the German version can be deleted, since it is already covered by *VGR* (national accounts).

OeNB 1

Accusation: "*The OeNB, although recognising that it was aware of the investments by Land Salzburg in financial derivatives, failed to report these to the Commission (Eurostat), in the transmission of the Austrian financial accounts.*" (page 37 of the report):

Under EU and Austrian law, OeNB does not have any obligation to report to the Commission (Eurostat) arising from the ESA transmission programme (Regulation (EU) No 549/2013). The accusation of having failed to report transactions is therefore meaningless. OeNB has not infringed any obligation.

Furthermore, the statement by OeNB at the meeting with Eurostat on 26 September 2016 that it was aware of financial derivatives (Meeting Report, reply to Question 8) only concerned the fact that we were made aware of possible derivative transactions of Land Salzburg by the corresponding press reports in December 2012. OeNB was not in possession of any data concerning this at that time (or previously).

OeNB 2

Accusation: "*Furthermore, its consolidation practices regarding the financial accounts were ineffective.*" (page 37 of the report):

The consolidation practices corresponded to the agreement concluded between OeNB and Statistik Austria. Furthermore, it is not the task of a statistical authority to check the accuracy of accounts of subnational authorities (this is the function of auditors or courts of audit), still less so if such an authority only has the status of service provider, as in the case of OeNB. During the meeting on 26 September 2016, it was also repeatedly emphasised that it had not been and was not the task of OeNB to audit accounts (cf Meeting Report, 5 f).

OeNB 3

Accusation: "*Moreover, the Commission concludes that some declarations of the OeNB officials during the meeting between the OeNB and the Commission on 26 September 2016 were not correct. OeNB stated that it had found nothing unusual in the accounts of Land Salzburg for the period between 2002 and 2012, but the Commission has proof that, in fact, the EUR 300 million in securities not reported in the accounts of Land Salzburg had been unveiled by OeNB in 2010. [...] both Statistics Austria and the Austrian Central Bank were aware of sizeable inconsistencies in the data reported by Land Salzburg, before the so called 'financial scandal' became public at the end of 2012.*" (p 40 of the report):

First of all, the representatives of OeNB did not say at this meeting that OeNB had not found anything unusual in the accounts of Land Salzburg, especially as auditing or monitoring such accounts was not the task of OeNB. The further conclusions of Eurostat that some of the statements of the OeNB representatives were incorrect are apparently based on the statement concerning financial derivatives already mentioned in point one (Meeting Report, reply to Question 8). This statement by OeNB was misinterpreted and can only be understood in the context mentioned in point one. Only in the course of the routine quarterly exchange of data for the entire government sector did OeNB send securities issuance data that it had collected and formally checked against the master data (including the 300 million euros in 2010 already referred to) to StatistikAustria, which included them in the Maastricht debt. This was therefore not an exposure, as supposed in the report. Nor was any plausibility check in relation to the accounts to be carried out by OeNB, as shown above, since OeNB was not responsible for this.

OeNB 4

Page 9, footnote 6 of the report:

"The OeNB is currently responsible for the compilation of financial accounts for all institutional sectors, with the exception of the government sector. In the past, however, OeNB was also compiling the financial accounts of the general government. In 2009, it was agreed between STAT and OeNB that the former should overtake the compilation of the Financial Accounts for the general government (S.13) after a transition period, with the view to use to a maximum possible extent direct data sources also for financial accounts compilation. Financial accounts for the general government, compiled by STAT, were transmitted to Eurostat for the first time in September 2014."

Replace by:

"The OeNB is currently responsible for the **preparation** of financial accounts for all institutional sectors, with the exception of the government sector. In the past, however, OeNB also **prepared** the financial accounts of the government sector for STAT. In 2009, it was agreed between STAT and OeNB that the former should take over the **preparation** of the Financial Accounts for the general government (p 13) after a transition period, with a view to using to the maximum possible extent direct data sources also for financial accounts **preparation**. Financial accounts for the general government, compiled by STAT, were transmitted to Eurostat for the first time in September 2014.

OeNB 5

Page 26 of the report:

"Likewise, OeNB, has informed the Commission that the compilation practices of OeNB, in the compilation of the financial accounts, involved comparing the raw data on lending received from OeBFA with the consolidated information as provided by STAT. Good practices for consolidation should involve the comparison of two independent sets of raw data, rather than the comparison of one set of raw data with an output resulting from those same data. In case of the latter, it is improbable that there will be inconsistencies as one dataset is derived from the other."

Replace by:

Likewise, OeNB has informed the Commission that the compilation practices (**laid down in the working agreement with STAT**) of OeNB, **acting as a service provider for STAT**, in the compilation of the financial accounts, involved comparing the raw data on lending received from OeBFA with the consolidated information as provided by STAT. Good practices for consolidation should involve the comparison of two independent sets of raw data, rather than the comparison of one set of raw data with an output resulting from those same data. In the latter case, it is improbable that there will be inconsistencies as one dataset is derived from the other.

OeNB 6

Page 27 of the report:

"In 2011, STAT was informed by OeNB that the State Office of Land Salzburg had borrowed money through the sale of bonds amounting to EUR 300 million in 2010. As discussed internally by STAT, these securities were not visible in the accounts of the State Office of Land Salzburg reported to STAT. Even if such an amount was not reported in the balance sheets of Land Salzburg (in any liability item), STAT took the decision to follow the direct data source of the OeNB and hence to include these in the debt of Land Salzburg."

Remark:

The securities issuance data collected by OeNB were sent to STAT in 2011 during the routine quarterly exchange of data. They also included issues by Land Salzburg in 2010 totalling 300 million euros. As discussed within STAT, these securities did not appear in the accounts of the Salzburg State Office reported to STAT. Even if such an amount was not reported in the balance sheets of Land Salzburg (in any liability item), STAT took the decision to follow the direct data source of the OeNB and hence to include these in the debt of Land Salzburg.

OeNB 7

Page 27, footnote 36 of the report:

Such information included in the security-by-security database of OeNB was coming from the counterpart (i.e. the lender) and not from the accounts of the State Office of Land Salzburg.

Replace by:

Such information included in the security-by-security database of OeNB **did not originate** from the accounts of the State Office of Land Salzburg.

OeNB 8

Page 28 of the report:

"Finally, whereas the above issue was unveiled by comparing the direct data sources of OeNB with the data provided by STAT, the OeNB has explained to the Commission that for the relevant years, i.e. the period between 2002 to 2012, it did not find anything unusual in the accounts of Land Salzburg, except regarding derivatives."

Remark: This paragraph, including the footnote, should be deleted and not replaced, because incorrect conclusions are being drawn out of context.

OeNB 9

Page 29 of the report:

"The fact that no stocks and transactions were reported regarding the Austrian state government sector for the period between 2002 and 2012 cannot be easily reconciled by the European Commission with the statement of OeNB, at the time the compiler of the Austrian financial accounts, that the only issue found unusual in the accounts of Land Salzburg was related to financial derivatives."

Remark: This sentence should be deleted and not replaced.

OeNB 10

Pages 35 and 36 of the report:

The main actors involved in the events described in this report are the State Office, the State Government, the Landtag and the LRH of Land Salzburg, the RH, OeBFA, OeNB and STAT. All the entities interviewed have been helpful and fully cooperative with the Commission investigation team, providing the Commission all requested information which was necessary for the investigation."

Remark: OeNB was not a main actor. This was also pointed out at the meeting with Eurostat.

OeNB 11

Page 37 of the report:

"The OeNB, although recognising that it was aware of the investments by Land Salzburg in financial derivatives, failed to report these to the Commission (Eurostat), in the transmission of the Austrian financial accounts. Furthermore, its consolidation practices regarding the financial accounts were ineffective. Moreover, the Commission concludes that some declarations of the OeNB officials during the meeting between the OeNB and the Commission on 26 September 2016 were not correct. OeNB stated that it had found nothing unusual in the accounts of Land Salzburg for the period between 2002 and 2012, but the Commission has proof that, in fact, the EUR 300 million in securities not reported in the accounts of Land Salzburg had been unveiled by OeNB in 2010."

Remarks:

a) The second sentence should be replaced by:

The consolidation practices laid down in the working agreement with STAT, which are described in the report, are ineffective.

b) The rest of the sentence should be deleted and not replaced, since the further conclusions of Eurostat that some statements of OeNB were incorrect are based on misinterpretations.

OeBFA 1

In general, it should be noted that the federal authorities, represented by OeBFA is the contracting party and therefore lender, not OeBFA (e.g. p 13: "debts of Land Salzburg to OeBFA" should be: "to the federal authorities", p 25: "Lending from OeBFA to Land Salzburg" should be: "Lending by the federal authorities"; "the funds lent by OeBFA" should be: "the funds lent by the federal authorities"; Page 26: " use of the lending from OeBFA" should be: "use of the lending from the federal authorities"; Page 27: "the loans from OeBFA on-lent to the Landeswohnbaufonds" should be: "the loans from the federal authorities on-lent to the Landeswohnbaufonds"; Page 29: "Cross-currency swaps between Land Salzburg and OeBFA" should be: "Cross-currency swaps between Land Salzburg and the federal authorities"; Page 37: "Beneficiaries of lending from OeBFA" and "framework agreement of OeBFA with the Länder" should read 'Federal authorities' instead of 'OeBFA'). Correction throughout the report is requested. Alternatively, the fact that OeBFA is acting in the name and for account of the federal authorities as laid down in Article 2(1) of the Federal Finance Act (*Bundesfinanzierungsgesetz*) could be stated in footnote 7.

OeBFA 2

Page 9, endnote 7: 2nd sentence clarification: This authority has been delegated to OeBFA under the Federal Finance Act. OeBFA is acting under this authority on behalf and in the name of the federal authorities".

OeBFA 3

P 13, third paragraph: The wording *Die Differenz (166 Mio. EUR) zur von STAT 2011 veranschlagten Schuldenhöhe (2,293 Mrd. EUR) erklärt sich in erster Linie aus den Unstimmigkeiten beim von der OeBFA an das Land Salzburg getätigten Weiterverleih zwischen den Meldungen der beiden Institutionen.* (The difference (EUR 166 million) to the amount of debt estimated by STAT in 2011 (2,293 million euro) is mainly explained by the inconsistencies in the lending from OeBFA to Land Salzburg as reported by the two institutions.) expresses the situation more clearly in German.

OeBFA 4

P 25, section 2.3.4, first paragraph: *The OeBFA has the delegated authority, amongst others, to take on loans on the capital market and to on-lend these funds to the Länder. "The amount of the loans was determined by the BMF."* The federal procedure for lending to the Laender was restructured more rigorously and relaunched after the speculation by Land Salzburg became known, as a result of these cases.

OeBFA 5

P 25, section 2.3.4, first paragraph: *"The upper limit of the loans to be conceded by OeBFA is the administrative deficit of the Länder."* This observation is incorrect. Cf point 3 of the record of the survey of 26 September 2016. It should be as follows: "The upper limit of the funds that the federal authorities can make available to the Laender through OeBFA is determined by the public deficit of the Laender, as laid down in the Austrian Stability Pact, plus repayments."

OeBFA 6

P 25, section 2.3.4, second paragraph: *"Nevertheless, since there is neither a legal obligation for the Länder to provide OeBFA with any information on the effective use of the money, nor for OeBFA to keep track of the use of these funds this obligation not to reinvest the funds appears to have had a cosmetic, i.e. a pro forma, character."*

The wording *"this obligation not to reinvest the funds appears to have had a cosmetic, i.e. a pro forma, character."* should be deleted, since it is incorrect and misleading. The agreements are in principle drawn up to observe this. OeBFA does not consider the obligation to have a "pro forma character". It is for the respective supervisory organs (e.g. *Landtag* (Land assembly) or LRH (Land Court of Audit) to verify observance of the agreements. OeBFA has no possibility of inspection.

P 26, final paragraph: *"The role of the LRH in the recording and use of the lending from OeBFA remains unclear to the Commission. On one side OeBFA has stated that the cross-checking of the information regarding these funds is the responsibility of the LRH, but on the other side the LRH has stated that this cross-checking is the responsibility of OeBFA."*

One of the responsibilities of the LRH is to monitor the recording and use of loans.

OeBFA 8

P 37, third paragraph: *"The framework agreement of OeBFA with the Länder laid down that the beneficiaries of lending from OeBFA ~~should~~ must not engage in speculative behaviour by means of the loans provided, but ~~did~~ does not contain any control mechanisms to ensure the compliance with that clause, apart from direct reporting by the Land. ~~As such, the framework agreement proved, in the case of Land Salzburg, to be an invitation to circumvent the said clause.~~"*

The last sentence should certainly be deleted, since it is subjective without any basis in fact. The agreements are in principle drawn up to observe this. A party to an agreement can never guarantee

observance of an agreement by the other party, but can only encourage this (e.g. by means of notice or contractual penalties) or verify non-observance (e.g. by obtaining corresponding information). When the speculation of Land Salzburg had become known at the end of 2012, the national processes associated with lending by the federal authorities to the Laender were immediately revised and made stricter. Additional corresponding information is now, as a result, obtained from the Laender (e.g. concerning the use of funds by the Laender) and if the provisions of agreements are infringed, it is possible to call in the loans granted to the Laender.

P 47, footnote gg *"When asked during the Commission investigation what actions are undertaken and what information is exchanged with the LRH if the information regarding lending from OeBFA is not identical to information reported by the Laender, OeBFA replied: "This information sent to the LRH is part of the works on the closing of accounts done by the LRH. In this sense, the cross-checking is the role of the LRH, and not the role of OeBFA, which means we do not cross-check these data. In addition, we have never received any feedback from the LRH stating that there were discrepancies in the data."*

The sentence *"This information sent to the LRH is part of the works on the closing of accounts done by the LRH.* is incorrect Cf also the record of the survey of 26 September 2016. It should instead read as follows, on the basis of point 14 of the record of the survey: "Since Land Accounts Statement 2013 (*Landesrechnungsabschluss 2013*), LRH (Salzburg) has used the instrument of 'Bankbriefe' (letter where the LRH asks OeBFA about the amounts of on-lending provided to Land Salzburg). OeBFA then provides LRH with this information. In this sense, the cross-checking is the role of the LRH, and not the role of OeBFA, which means we do not cross-check these data. In addition, we have never received any feedback from the LRH stating that there were discrepancies in the data."

OeBFA 10

P 47, footnote hh: *"When asked during the Commission investigation what kind of information the LRH received from OeBFA and how this information was used, the representative of LRH explained that: "OeBFA was receiving the financial statements from Land Salzburg so they should have cross-checked." (...)"*

OeBFA rejects this assertion by LRH. The internal records of OeBFA show that no accounts were received. Instead, it was not until February 2014 (i.e. after the events had become known) that the

Land Court of Audit for the first time requested a list of the loans granted to Land Salzburg in order to be able to match this information against the information for preparing the accounts in the Land.

BMF 1

The last sentence of page 7 is incorrect in the German version: *As a consequence, the Commission (Eurostat), in its Excessive Deficit Procedure (hereinafter EDP) news release of 21 October 2013 ...*;

The Excessive Deficit Procedure for Austria commenced on 30 November 2009 (and ended in 2014).

Probably the following is meant: "in connection with the publication of the ED data published in 21 October 2013 concerning public deficits and debts".

COMMENTS BY AUSTRIA PURSUANT TO ARTICLE 8 OF REGULATION (EU) NO 1173/2011 ON THE PRELIMINARY REPORT BY EUROSTAT OF 20 DECEMBER 2016 ON THE FINDINGS OF THE INVESTIGATION RELATED TO THE MANIPULATION OF STATISTICS IN AUSTRIA AS REFERRED TO IN REGULATION (EU) NO 1173/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE EFFECTIVE ENFORCEMENT OF BUDGETARY SURVEILLANCE IN THE EURO AREA (COMMISSION DECISION OF 3 MAY 2016)

ANNEX II

Opinions

- a) from the Salzburg State Office (Amt der Landesregierung)
 - b) the Court of Auditors
 - c) the Austrian Federal Statistics Institute [Bundesanstalt Statistik Österreich]
 - d) the Austrian Central Bank
 - e) the Austrian Federal Financing Agency [Österreichische Bundesfinanzierungsagentur]
- in the text



LAND SALZBURG

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Finanz- und
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(Financial and Asset
Management
Department)

Reference (please quote in correspondence)
208-ALL/82.084/ -2017

Date
18.01.2017

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Subject:
Decision C-2016-2633; Provisional results;
Opinion of Land Salzburg
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D
Dr [HP]
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Dear Sir,

Land Salzburg hereby submits the following opinion on the provisional findings of the investigation by the Commission (Eurostat).

A. General remarks:

1. In the light of the findings from a scandal which has been brought to light, outsiders are regularly given the distinct impression that there has been a fairly massive failure of the control bodies or mechanisms whose task is to prevent such a scandal. For a fair assessment, however, it seems essential to examine the situation *ex ante* rather than the situation *ex post*, i.e. the state of knowledge after the scandal broke. Two points in particular need to be examined:

- No institution is able to exercise complete supervision of the activities of its staff. Maintaining its operations sometimes requires certain compromises in organisational and operational structure which do not necessarily work in favour of close supervision. All staff must therefore be trusted to some extent to perform their activities legally and correctly. This will also regularly be the case because unlawful and wrongful conduct by staff raises the risk of disciplinary, civil (damages) and criminal (fine or detention) consequences.

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- The checks carried out, which as noted above can only be partial (e.g. sampling), can only achieve their desired effect if the control bodies involved have sufficiently strong suspicions which they can investigate in order to uncover more serious inadequacies or irregularities.

In this context, for example, repeated misconduct has come to light by employees in various enterprises (Enron, Societ  Generale, Lehman Brothers, etc.) who, one might say, have not acted with the care of a responsible businessperson. Austria too has in the recent past been affected by the threat of a massive bank failure (Hypo Alpe-Adria-Bank). From the supervisory board of such enterprises, which is supposed to supervise the management board's activities, via the statutory auditor to the State supervisory authorities (such as the Financial Market Authority for the banking sector), there is a dense network of control mechanisms in place, raising the question of how such scandals are even possible. Nevertheless, modern criminal law systems, in spite of all the control mechanisms in place, still make provision for particular criminal offences for balance sheet manipulation or false accounting, indicating that even the best control systems cannot prevent unlawful acts (causing damage to third parties).

The Salzburg financial scandal involved the concealment of unlawful behaviour, as shown by the fact that final judgment has been passed on the former head of the Budget Unit on numerous counts of signature forgery and misreporting of disaster losses. But the concealment of a large number of completed financial transactions from the ongoing monitoring, still to be dealt with in further criminal proceedings, which resulted in the Financial Advisory Board (*Finanzbeirat*), as the supervisory body appointed in accordance with the Directive, working on the basis of completely false risk figures in the portfolio for Land Salzburg, or the involvement of a large number of payment flows in so-called 'continuous financial management' without complying with the no-netting principle when offsetting in the Land budget, also fall into this category.

2. The State Office of Land Salzburg [*Amt der Salzburger Landesregierung*] has in the meantime restructured the Financial Department, and especially the Budget Unit, the Accounting Unit [*Landesbuchhaltung*] has been placed under the Directorate of the Land Government Office [*Landesamtsdirektion*] and there have been new appointments to senior positions. This has established the framework for consistent preparation of the financial case, e.g. a new budgetary law, new offsetting system, new organisation, etc. There have also been extensive negotiations with Land Salzburg to minimise the damage, and corresponding settlements have been reached.

B. On the individual 'provisional findings':

1. With regard to the comments on pp. 3 and 20, it should be noted that the Internal Audit section is only a small independent unit of the *Landesamtsdirektion* and by no means a separate department, as indicated in point 2.2 on p. 16. The relevant Decree 1.25, which, according to our information regarding the relevant passage, applied before 1999, laid down that: 'Checks on financial management and accounting, administrative checks and intra-service administrative and technical supervision are not the tasks of the Internal Audit section.' The exception for checks on financial management and accounting was based on the fact that, under the constitution, both the Federal and Land Courts of Audit (*Rechnungshof*) are responsible for financial management checks in the Land, and the Internal Audit section is therefore restricted to 'internal services'. This was in no way a 'special regulation' for the

Financial Department to prevent checks on its activity, but a general determination of responsibilities. For this reason it also seems plausible that, according to endnote 1, the Internal Audit section has received no mandate to review the entire financial management since 1999, as this is not one of its tasks as laid down in the Decree. However, as regards the responsibilities of the Internal Audit section (verification of the efficiency, effectiveness and economy of the administration while respecting legality; involvement in drawing up organisational rules and in organisational projects), the Financial Department, like every other department of the State Office, has been subject to audit by and cooperation with it. Since 2014, the Internal Audit section in Salzburg has also been entitled to carry out financial management audits or financial audits.

2. We do not understand why a prolonged failure by Land Salzburg to notice criminal behaviour by natural persons is termed 'gross negligence' on page 22 (point 2.3.1).

As the Commission's assessment determines whether and to what extent it will propose to the Council the imposition of a penalty, all factors exonerating Land Salzburg must also be taken into account in determining the Land's liability in the proceedings in question.

We reject the Commission's unreserved accusation by analogy that the Land has permitted gross negligence in its organisational structure, at least to the extent portrayed. This is particularly so because the case was uncovered not by external (audit) bodies but because of the structure in the Financial Department of the State Office itself at that time and, as a result, the review of the financial scandal and, in particular, the correct recording of the debt was carried out promptly in a spirit of cooperation together with the federal authorities.

3. In setting out the debt in accordance with Table 1 on p. 15 of the 'provisional findings', we note that lines 1 and 1a clearly contain only the debt for Land Salzburg according to the Land's clearance of accounts. The debts of extra-budgetary units are not included; it does not therefore relate to debts in accordance with ESA 2010. It should be noted that the determination of Maastricht debt for Land Salzburg (authority and extra-budgetary units) is exclusively the responsibility of Statistics Austria. Nor is the Land obliged to report the debts of extra-budgetary units, as these must forward the corresponding data to Statistics Austria themselves. If the debts to be attributed to the extra-budgetary units, which are added at Land level, were added, there would also be higher debt for each of the years 2010 to 2012 despite the misreporting, thus reducing the difference to the ex-post value (2012) or the value estimated by Statistics Austria (2010 and 2011), which includes the extra-budgetary units to be added to the Land.
4. Point 2.2.2 on p. 20 maintains that the Commission ascertained that the entire State Office of Land Salzburg, to which the Financial Department belonged, was exempted from monitoring by the Internal Audit section from 1999 onwards. As already noted in point 1 above, this is incorrect. The State Office, including the entire Financial Department (and thus also the Budget Unit), was naturally subject to audit by the Internal Audit section. Only the financial management audit sector itself was exempt from checks by the Internal Audit section. As already noted, the reason given for this by the *Landesamtsdirektion* was also that financial management was audited by both the Federal and Land Courts of Audit.
5. The comments under point 2.3.1 (pp. 21 and 22) list a number of infringements of the 'four eyes' principle. For a balanced representation, however, which is important in determining whether and, if so, to what extent there was negligence on the part of Land Salzburg, it

should be noted that there was naturally a 'four eyes' principle laid down, so that an impartial reader is not given the incorrect impression that there was none in practice. The *Rechnungshof* adds – despite all the criticism – in paragraph 13.1 (4) of its 2013 report entitled 'Land Salzburg — Financial situation': 'Some elements of an ICS, e.g. compliance with a 'four eyes' principle or a separation of functions between trade (front office) and the settlement (back office) of financial transactions, were set out in the financial management guidelines for Land Salzburg, but were not consistently implemented in practice ...'. It should be borne in mind that it was precisely the 'four eyes' principle that – albeit with a time lag – led to the discovery of the financial scandal, because it was only this principle that enabled an official in the Budget Unit to report to the head of Department a suspected infringement of directives and/or instructions, which then gave rise to further actions. The impression which can arise if the Commission merely lists a number of cases in which the 'four eyes' principle has not been respected without indicating the enforcing of that principle in the directives in force at the time, namely that there was more or less no 'four eyes' principle, is therefore incorrect.

6. Point 2.3.3 on p. 23 states that, based on the testimony of staff, the Commission concluded that the Financial Department of the State Office began in 2003 to conceal bank accounts under the *Voranschlagsunwirksame Gebarung* (extra-budgetary accounts). This is incorrect, because it gives the impression that a department acting officially on behalf of the Land committed an unlawful act. In fact, the head of the Budget Unit, who is facing criminal charges in this regard, committed unlawful acts without the knowledge of the head of department at that time.
7. In point 2.3.6 on p. 28 (Financial derivatives), the Commission states: 'Notwithstanding this, the Commission is not aware of efforts from any of the institutions in Salzburg (Landtag, LRH, State Government, and State Office) to closely follow-up on the recommendations of the RH and it has also concluded in this report that in fact the *Voranschlagsunwirksamen Gebarung* were not effectively followed.' However, the Commission does not mention in this context the specific recommendations of the *Rechnungshof*, compliance with which was not monitored.
8. On p. 29 it is stated that, according to the RH report published on 9 October 2013, the Director of the Finance Department informed the head of the Staff Department in May 2012 that the Head of the Budget Unit had acted against the State Office's policy and service instructions. From a statement in the preliminary report cited in endnote kk, the commission of inquiry finds a contradiction to the effect that this event occurred in July 2012, rather than in May 2012. This can be explained as follows: The then head of the Budget Unit had concluded an unauthorised financial transaction for the first time in May 2012, following which action was taken ending in the disciplinary measure of a 'warning'. The matter appeared to be closed, and there was no further suspicion that anything else might be wrong. Only in July 2012, when the then head of the Budget Unit again attempted to infringe directives and instructions, did the idea arise 'that something had gone wrong' (cf. statement in endnote kk). There is therefore no contradiction.
9. On p. 30, the second and fourth paragraphs should be combined, as they relate to the same event: The statement concerning the second paragraph, quoted in endnote oo, relates precisely to the Financial Advisory Board meeting on 23 October 2012, referred to in the fourth paragraph: At that time the head of the Financial Department had apologised to the two external experts on the Financial Advisory Board and explained with deep regret that the new financial expert operating in the Financial Department had found that, unfortunately, the

portfolio which the Financial Advisory Board had monitored represented only part of the overall portfolio of Land Salzburg.

10. Point 2.4 on p. 31 states that the Commission concludes from the events in 2012 set out above that 'the concealment of relevant information by the officials of the financial management area and the government of Land Salzburg to the RH was also the cause for the incorrect and incomplete conclusions of RH 2012 follow-up report, which were ultimately published on 6 December 2012'. It should be noted that the existence of actual shortcomings only came to light on 23 October 2012, when it was discovered that there were financial transactions which up to that date had not been mentioned in the portfolio report sent to the advisory board. The consequences of this finding had still to be analysed. The preliminary report quite correctly states on p. 30 that even in November 2012, 'the Head of the Budget Unit denied to have been involved in risky transactions on behalf of Land Salzburg'. It is extremely difficult for an employer of staff suspected of having acted unlawfully to disclose any information incriminating them, as the employer must then reckon on being held responsible (defamation, damage to reputation). Not until 26 November 2012 did the head of the Budget Unit admit to having concealed a loss of ca. EUR 340 million in financial investments. This led to further intensive investigations, which revealed a number of counterfeit Financial Advisory Board minutes and signatures from staff. The end result was that, a few days later, once the required legal steps had been prepared, dismissal without notice was announced (7 December 2012) and the matter was made public (press conference on 6 December 2012). It should be noted that this immediate dismissal was also deemed justified by the Labour Court, until the matter was put before the Supreme Court.

There was absolutely no intention that the *Rechnungshof* would, on the very morning of the day on which that press conference was held, and with no knowledge thereof, publish its conclusions in the follow-up report. On the contrary, as explicitly stated in point 32 on p. 15 of the minutes of the meeting held on 28 September 2016 in Salzburg, the then Director of the *Landesrechnungshof* had informed the president of the *Rechnungshof*, Dr [JM], on 6 December 2012, but did not try to telephone him until after the press conference.

In relation to the particular accusations of blame in the preliminary report against the State Office, it should be borne in mind that a number of highly qualified 'supervisory bodies', as set out in that report, had noticed no serious issues until the financial scandal came to light, particularly as information was withheld from them or incorrect information given (cf. forged minutes).

With regard to 'the concealment of relevant information', in relation to the subject of the investigation (misrepresentation of statistics concerning an incorrect debt and deficit situation) it should also be borne in mind that the removal of financial management from the competence of the head of the Budget Unit and her consequent dismissal meant a massive loss of knowledge and experience, and has caused enormous difficulties for the Budget Unit in terms of maintaining normal everyday operations. Things worsened considerably after the scandal became public because, in addition to the urgent day-to-day agendas, a large number of advisers, auditors (including those from the *Rechnungshof*), law enforcement agencies, etc. had to be supervised and supported on an ongoing basis by the Financial Department. This helps to explain why, in spite of all efforts, it unfortunately took a long time to correct the inaccurate data on the debt, due not least to the fact that there was no-one who could filter out which of the Land's liabilities should now be reported under 'Maastricht debt' and which should not. Also, the entire file management and financial management processes under the

previous head of the Budget Unit made it impossible to subsequently wind up previous accounting years.

For the sake of good order, and to avoid misunderstandings, it can be pointed out that, if the commission of inquiry's preliminary report mentions a 'meeting with the State Office of Land Salzburg' and it is mentioned that the State Office gave an answer or explanation, etc. (cf. in particular various quotations in the endnotes), then, as we understand it, various Land officials, who first had to be explicitly released by their employer, Land Salzburg, from their obligation of professional secrecy, have given statements as witnesses concerning their knowledge or perceptions, as is usually the case, for example, with witness statements in national court proceedings. They were not, however, statements by the State Office. This can in no way apply to persons who, owing to their positions at that time, were not working for the State Office, such as the then Director of the *Landesrechnungshof*. This is a body of the Salzburg *Landtag* and therefore of the legislature; the State Office is an auxiliary (bureaucratic) apparatus of the Land administration and of the *Landeshauptmann* (Governor) in indirect federal administration and is part of the executive (enforcement).

We would ask you to take the above into account.

For Land Salzburg:

For the Land Government:

Dr [SH]

Director of the State Office

Comments by the *Rechnungshof* for the joint opinion to the Permanent Representation of Austria to the European Union

1. Commission report, point 2.3.4, p. 27

'Furthermore, on 10 October 2012, after receiving a table from STAT that showed the debt of Land Salzburg from 2011 onwards, as compiled by STAT (see Table 1, row 3), the RH requested further information on the EUR 1,050 million of debt of the 'funds', asking more specifically what funds STAT was referring to. STAT has explained to the RH that the EUR 1.050 million of debt referred to the loans from OeBFA on-lent to the Landeswohnbaufonds. Whereas, as explained above, these loans should be recorded in the balance sheet of Land Salzburg as the debt of Land Salzburg, the Commission has not received information on further correspondence exchanged between the two entities on this issue, i.e. the Commission is not aware that the RH, in face of this misuse of the accounts of Land Salzburg, further raised the issue either with STAT or the State Office of Land Salzburg.'

Comment by the RH on point 2.3.4, p. 27:

The Commission report places the request from the RH of 12 October 2012²¹ to Statistics Austria in an incorrect context. The request was only intended to clarify the report from Statistics Austria concerning the annual budget results in accordance with Article 11 of the Austrian Stability Pact 2011.²² These data are the basis for the referee task assigned to the RH in the Stability Pact.

The wording whereby *'the RH, in face of this misuse of the accounts of Land Salzburg'* did not bring this up with Statistics Austria and the State Office is not appropriate. The request by the RH was not related to an audit. At this point, the RH was not yet aware of the shortcomings in the internal control system and the accounting system set out in its later report on the financial situation in Land Salzburg, and certainly not of their full extent. There was therefore no reason at that time to assume that the accounts or the figures from Statistics Austria would not be correct.

2. Commission report, point 2.3.5, pp. 27 and 28:

'When enquired by the RH on the differences between the debt reported by Land Salzburg (Finanzschulden) and the table produced by STAT depicting the debt of each of the Länder, STAT explained, to the RH that, among others the difference included EUR 300 million regarding securities "that we found nowhere in the Rechnungsabschluss".

During the second half of 2012, the RH discussed the finding of its 2011 follow-up report of the financial management of Land Salzburg with the State Office of Land Salzburg. Ultimately this led to the publishing of a RH's report on 6 December 2012. However the extremely important issue concerning the misreporting of EUR 300 million of Maastricht relevant liabilities was not included in the RH report.'

²¹ The RH is aware only of an e-mail of 12 October 2012 with the content referred to, not 10 October 2012 as set out in the Commission report.

²² The Stability Pact 2011 governed national budget coordination, medium-term budget guidelines and the allocation of deficit ratios and penalties until 2014. In 2012, a new Austrian Stability Pact 2012 was concluded, which is open-ended.

Comment by the RH on point 2.3.5, pp. 27 and 28:

The e-mail of 29 August 2012 from RH explaining a discrepancy of EUR 300 million between the Land accounts and the data from Statistics Austria is taken completely out of context. The e-mail request from RH did not, as is wrongly stated, relate to the follow-up audit of the Land's financial instruments but to the audit of 'consolidation measures for the Länder of Upper Austria, Salzburg and Steiermark'. This latter audit led finally to a further audit, 'Land Salzburg – Financial situation'. The explanation of the discrepancy of EUR 300 million queried by the RH could not therefore be contained in the report published on 6 December 2012 on the follow-up audit of the Land's financial instruments.

3. Commission report, point 3, p. 35, paragraphs 6 and 7:

'Similarly, between 2002 and 2012, neither the LRH nor the RH conducted any effective in-depth audit of the financial accounts of Land Salzburg. In particular, they did not audit the voranschlagsunwirksame Gebarung which, as showed in Table 2, in section 2.3.3., reached more than EUR 26 billion of inflows and outflows in 2011 and included de facto all the unreported transactions and stocks, while in principle they should have included only extra-budgetary flows and not Maastricht-relevant liabilities. The main actors involved in the events described in this report are the State Office, the State Government, the Landtag and the LRH of Land Salzburg, the RH, OeBFA, OeNB and STAT.'

Comment by the RH on point 3, p. 35, paragraphs 6 and 7:

During the period in question, the RH carried out the following audits at the State Office in Salzburg:

Audit	Objectives and subject matter	Comment
Financial instruments for local authorities		
<i>(Salzburg 2009/3)</i>		
<p>On-the-spot audit 2008; publication on 15 July 2009</p> <p>The horizontal audit included the federal government, the <i>Länder</i> of Salzburg, Burgenland, Carinthia and Tyrol and the towns of Villach, Dornbirn and Wels.</p>	<p>With regard to Salzburg, the RH already noted at this stage an identified value at risk of EUR 178.20 million (at the end of 2007). This value at risk amounted to 41 % of the financial debt or was almost 10 % of budget revenue for Land Salzburg. It therefore had by far the highest risk value of all bodies audited (e.g. eight times higher than the comparable risk level for the federal government).</p>	<p>Because of this particularly high risk and loss potential, the RH selected Land Salzburg for a follow-up audit.</p>
Follow-up audit of financial instruments		
<i>(Salzburg 2012/9)</i>		
<p>On-the-spot audit, end of 2011; transmission of audit results for opinion, end May 2012; publication on 6 December 2012</p>	<p>Salzburg gave its opinion in August 2012 without informing the RH that the competent financial manager had already admitted concealing accounting losses for many years.</p>	<p>As the subsequent audit 'Land Salzburg – Financial situation' showed, minutes on which the RH relied in the follow-up audit were falsified or missing completely, so that its recommendations were based on manipulated data.</p>

Consolidation measures for the Länder of Upper Austria, Salzburg and Steiermark (Salzburg 2014/3)		
<p>The audit began in July 2012, and was interrupted between November 2012 and March 2013 because of the 'Land Salzburg – Financial situation' audit.</p> <p>The audit of consolidation measures in the three Länder continued in the period from April to June 2013 and was published in June 2014.</p> <p>In the summer of 2012, no-one was available to provide information to the RH in Salzburg. The audit team was informed that the financial manager was on long-term sick leave.</p>	<p>The audit took a horizontal sample through all Länder. The aim was to ascertain the financial situation and, based on medium-term financial planning, identify any consolidation requirements.</p>	<p>During the surveys for this audit, Statistics Austria was asked to explain the initial finding of a discrepancy of EUR 300 million (see above). However, this amount was only a part of the anomalies identified by the audit team in the Land accounts. The team repeatedly came across unexplained accounting discrepancies, for instance in connection with <i>voranschlagsunwirksame Gebarung</i>. The RH therefore interrupted the audit in early December 2012 in order to carry out a separate audit of Land Salzburg in greater depth ('Land Salzburg – Financial situation').</p>
Land Salzburg – Financial situation (Salzburg 2013/7)		
<p>On-the-spot audit, December 2012 to March 2013; transmission of audit results, early April 2013; publication: 9 October 2013</p>	<p>The audit covered the assessment of financial transactions and the associated impact on the Land's financial situation, the internal control system in relation to the conclusion of financial transactions, business relations with credit institutions and the Republic of Austria, with particular regard to derivative transactions, accounting for financial transactions, the risks of assumed liabilities and financial links with holdings, and illustrating the risks in the Land's medium-term planning and accounting, with particular regard to economic reality, transparency and completeness.</p>	<p>With this audit, therefore, the RH not only looked further into the discrepancy of EUR 300 million noted in August 2012 during the audit of consolidation measures but applied much more comprehensive procedures.</p> <p>Among other things, the report contains the Land's total debt and detailed breakdowns of stocks and flows in <i>voranschlagsunwirksame Gebarung</i>.</p>

In accordance with its risk-based audit strategy, the RH repeatedly audited the financial management of Land Salzburg during the period in question, as set out in the table.

If the Commission now considers the RH one of *'the main actors involved in the events described in this report'*, this is not in line with the facts, nor can it be deduced in any way from the findings of the report. In the light of the extensive audit work by the RH, which played a significant part in revealing the Land's financial situation, this wording is incorrect and is strongly rejected.

4. Commission report, point 3, p. 37:

'During the year 2012, the RH failed to effectively follow up on the discrepancies it had found in the accounts of Land Salzburg as pointed out by STAT, namely concerning the mismatch of the lending from OeBFA to Land Salzburg and the EUR 300 million in securities that were not reported in the balance sheets of Land Salzburg.'

Comment by the RH on point 3, p. 37:

The statement in the Commission's report that the RH failed to effectively follow up on '*the discrepancies it had found in the accounts of Land Salzburg ..., namely concerning the mismatch of the lending from OeBFA to Land Salzburg and the EUR 300 million in securities that were not reported in the balance sheets of Land Salzburg*' does not correspond to the facts. The RH was not consulted on this issue nor asked for documents. This would have made it possible to establish the facts.

The e-mail request of 29 August 2012 to Statistics Austria seeking an explanation of the amount of EUR 300 million concerned only part of the anomalies identified by the audit team in the Land accounts during the audit of 'Consolidation measures for the Länder of Upper Austria, Salzburg and Steiermark'. As the audit team repeatedly came across unexplained accounting discrepancies, and there was nobody competent on the spot,²³ in early December 2012 the RH interrupted this audit in order to carry out a much more comprehensive audit of Land Salzburg (see also the comments of the RH on point 3, p. 35, paragraphs 6 and 7):

Among other things, the 'Land Salzburg — Financial situation' audit report set out borrowing, assets and liabilities in the *voranschlagsunwirksame Gebarung* and securities transactions at the time of the audit. The audit results were given to the Land Governor in person by the lead auditor at the end of March 2013.

The RH's procedures went far beyond the EUR 300 million referred to by the Commission and led to an overall presentation of securities transactions and borrowing. It therefore in no way failed to detect discrepancies; rather, its auditing made a significant contribution to clarifying the Land's actual asset and debt management.

5. General comment by the RH

In conclusion, the RH would point out that the accounting rules for the Länder and municipalities do not meet the requirements for modern and transparent accounting. It has therefore repeatedly emphasised the consequent shortcomings and risks. It is largely due to the ongoing audit and consulting work of the RH that new accounting rules for the Länder and municipalities came into force on 19 October 2015, providing for a balance sheet, profit and loss account and cash-flow statement.

²³ The RH was informed that the financial manager was absent on health grounds.

Opinion of the Austrian Federal Statistical Office of 16 January 2017

on the

Preliminary report of 20 December 2016 on the findings of the investigation related to the manipulation of statistics in Austria as referred to in Regulation (EU) No 1173/2011 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area (Commission Decision of 3 May 2016)

The opinion of the Austrian Federal Statistical Office (Statistics Austria) includes

- A) a general description of the links between clearance data from the Länder, data in accordance with the European System of Accounts (ESA) and notifications to the Commission (Eurostat) under the excessive deficit procedure (EDP)
- B) comments on the content of individual sections of the preliminary report of 20 December 2016 (with proposed amendments to the wording in individual cases)
- C) technical comments/proposed corrections.

In summary:

- Data transmitted from the Länder under the Order of the Federal Minister for Finance on management statistics in the public sector (*GebStat-VO*) should be primarily compliant with the VRV [Budgeting and Accounts Regulation].²⁴ The task of STAT is to verify that the transmitted data is suitable for the calculation of ESA/EDP data and not whether they are VRV-compliant in individual cases.
- In serious cases where the VRV systematically has insufficient detail for ESA/EDP data to be derived directly, STAT informs the competent bodies. In the version in force until financial year 2018, for example, the VRV makes no provision for reporting flows or stocks in financial derivatives. As early as 2008, STAT, together with the Austrian Central Bank, submitted to the VR Committee (Standing Committee on the Estimates and Accounts of Local Authorities) a proposal for such amendments to the VRV. The proposal was not incorporated in the VRV until 2015, and is to be applied by the Länder by the 2019 financial year.
- Differences between data according to the VRV and the ESA/EDP are not specific to a certain Land or municipality and not an indication of 'manipulation'.
- Notifications under the EDP Regulation were made mandatory in 2013 for the reference years 2009 to 2013, and in 2014 for the reference years 2010 to 2014. Under the EDP Regulation, therefore, in April 2014 any amendments to data for years

²⁴ *Voranschlags- und Rechnungsabschlussverordnung des Bundesministers für Finanzen* [Budgeting and Accounts Regulation, VRV] in agreement with the *Rechnungshof*.

prior to 2010 did not need to be notified to the Commission.

- Any amendments or revisions of data compared to previous EDP notifications are to be applied to the entire reporting period (and not just for one year).
- Liabilities from financial derivatives are not included in the government debt. An incorrect presentation of financial derivatives does not necessarily imply, therefore, that government debt also needs to be amended.
- Interest flows resulting from swaps arrangements and forward rate agreements are the difference between expenditure and revenue, and therefore increase or decrease the government deficit. Thus an increase in government debt resulting from swaps arrangements does not mean that the government deficit also increases.
- The press conference in Salzburg on 6 December 2016 had considerable impact²⁵ not only in all German-language media in and outside Austria, but was reported internationally in Europe and beyond. It is difficult to understand how the Commission (Eurostat) would not have been aware of it.
- The Commission (Eurostat) has in fact been aware since the end of January 2013 at the latest, through information from STAT, that financial derivatives had been concluded in Land Salzburg which had not been taken into account in the Austrian ESA statistics. There is further evidence²⁶ that the Commission (Eurostat) had been aware of data problems in Salzburg since the EDP notification in April 2013.
- The preliminary report also contains inconsistencies. On page 33, for instance, it is noted that the Maastricht debt contribution by Land Salzburg for 2011 has been revised upwards by EUR 3.507 bn. According to Table 1 on page 15, the correction was only EUR 879 million, which corresponds to the facts.
- A general finding from the report is that some allegations are made without evidence or corresponding documentation (... apparently higher liabilities ... apparently not

²⁵ A query in APA AOM Manager (Austria Presse Agentur Online Manager) found 327 APA reports containing the keywords 'Salzburg' and 'financial scandal'.

²⁶ Quotation from the concluding remarks by Eurostat of 16 April 2013 as part of the verification of the data notified on 31 March 2013:

Question by Eurostat: We understand that this issue has been explicitly addressed in your exchanges with the data providers and it has been confirmed that such transactions have not taken place in Austria in the EDP reference period. Otherwise, please explain to us whether, and if yes, on which grounds, it can be concluded that the transactions would not have any major impacts on the state government debt measurement.

Answer by STAT: To get more information on financial derivatives, already in 2009 STAT and OeNB made proposals to the MoF for additional break down in the state and local government budgets but didn't succeed these proposals being implemented in the National Regulation (VRV). Again, this issue was presented by STAT to the responsible committee for developing the VRV in March 2013. In March 2013 we also contacted the states of Lower Austria, Burgenland and Salzburg and requested flow- and stock-data on financial derivatives but there was no answer so far (in fact, in Salzburg closed accounts as such for the year 2012 will not be available before September 2013 due to the well-known reasons).'

informed ... appears that ... this falsification might have ...). These allegations should either be backed up with conclusive evidence or removed from the report.

A) General description of the links between clearance data from the Länder, data in accordance with the European System of Accounts (ESA)²⁷ and notifications to the Commission (Eurostat) under the excessive deficit procedure (EDP)²⁸

Aa) The form and structure of the Länder accounts are regulated by the Budgeting and Accounts Regulation (VRV²⁹). The VRV is issued by the **Federal Minister for Finance** in agreement with the **Rechnungshof**.

Ab) In the Order on management statistics (**GebStat-VO**³⁰) the Federal Minister for Finance, in agreement with the Chancellor, orders as follows:

§ 1. (1) The **Bundesanstalt Statistik Österreich** [Austrian Federal Statistics Institute, Statistics Austria] shall compile statistics on the performance of the public sector in application of the following European provisions:

1. Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community, OJ L 310, 30.11.1996, p. 1, as last amended by Commission Regulation (EC) No 113/2002, OJ L 21, 24.1.2002, p. 3.
2. Council Regulation (EC) No 479/2009 of 22 November 1993 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community, OJ L 145, 10.6.2009, p. 1, as amended by Regulation (EU) No 679/2010, OJ L 198, 30.7.2010, p. 1.

(2) Statistics Austria shall conduct surveys within the meaning of these regulations for the purpose of the statistics referred to in paragraph 1.

The GebStat-VO lays down that, in principle, all units classified in the general government sector in accordance with Regulation (EC) No 2223/96 are survey units. The Federal Government, the **Länder** and the municipalities shall forward data to Statistics Austria in an automated manner. **Prior to transmission, the data** shall be checked for formal errors (layout and coding) and for **compliance with accounting regulations** (*Kontenplanverordnung*, Federal

²⁷ For the statistics examined, ESA 95 is relevant: Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community (OJ L 310, 30.11.1996, p. 1) (ESA 95). Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union, OJ L 174, 26.6.2013, p. 1, (ESA 2010) is applicable from 1 September 2014.

²⁸ Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community, OJ L 145, 10.6.2009, p. 1.

²⁹ VRV 1997 (Federal Law Gazette 787/1996) applies for the financial years up to and including 2018.

³⁰ Federal Law Gazette II No 361/2002, Federal Law Gazette II No 465/2004 or Federal Law Gazette II No 345/2014 (from 1 January 2014).

Law Gazette No 507/1987, as amended, or the **Voranschlags- und Rechnungsabschlussverordnung 1997 [Budgeting and Accounts Regulation]**, Federal Law Gazette No 787/1996 as amended.

Summary 1: Data transmitted from the Länder under the *GebStat-VO* should be primarily VRV-compliant. The task of STAT is to verify that the transmitted data is suitable for the calculation of ESA/EDP data and not whether they are VRV-compliant in individual cases.

Ac) The main source for the **calculation of ESA/EDP data** is the data submitted to STAT pursuant to the GebStat-VO. The starting point for these calculations, as far as **data from the Länder and municipalities** are concerned, are the **standardised mapping tables** of positions according to the VRV using ESA characteristics. The semi-annual review of the data submitted by the Länder and municipalities and the taking into account of other data sources leads to the adaptation or supplementing of the standardised mapping tables with **Land- or municipality-specific classifications**. To calculate ESA or EDP data, STAT also takes into account **additional data sources**, particularly financial management data submitted by **extra-budgetary units** or **statistics from other institutions** (especially securities issues statistics and banking statistics from the Austrian Central Bank for calculating government debt). One result of all these stages of calculation are so-called **transition tables** per Land, each with one for government deficit and one for government debt.

Prior to the semi-annual notification to the Commission (Eurostat), both these Land-specific transition tables are sent to the individual Länder for comments or information, in order to **document the differences** between the VRV data submitted to STAT and the ESA/EDP data. Since September 2010 these differences, as far as **government deficit** is concerned, are **also forwarded to Eurostat** semi-annually, in the form of a supplementary table to EDP notification table 2B.

For the **EDP notification of 30 September 2012**, the following differences in the data according to VRV/EDP for government debt at the end of 2012 were documented by STAT:

- Länder, total (ESA term S.1312):
 - VRV: EUR 8.5 bn
 - EDP: EUR 17.4 bn
 - Difference: EUR 8.9 bn
- Land Salzburg:
 - VRV: EUR 1.0 bn
 - EDP: EUR 2.3 bn
 - Difference: EUR 1.3 bn

Summary 2: Differences between data according to the VRV³¹ and the ESA/EDP³² are not specific to a certain Land or municipality and not an indication of 'manipulation' or 'misreporting'.

Ad) In the version in force until financial year 2018, the VRV makes no provision for reporting flows or stocks in financial derivatives. As early as 2008, STAT, together with the Austrian Central Bank, submitted to the VR Committee (Standing Committee on the Estimates and Accounts of Local Authorities)³³ a proposal for such amendments to the VRV.³⁴ The proposal was not incorporated in the VRV until 2015.³⁵

Ae) Article 3 of the EDP Regulation³⁶ governs which data on government deficit and government debt the Member States have to forward to the Commission (Eurostat) twice a year³⁷. These are planned data for year n and actual data for years n- 1, n-2, n-3 and n-4.

Summary 3: Notifications under the EDP Regulation were mandatory in 2013 for the reference years 2009 to 2013, and in 2014 for the reference years 2010 to 2014. Under the EDP Regulation, therefore, in April 2014 any amendments to data for years prior to 2010 did not need to be notified to the Commission.

Summary 4: Any amendments or revisions of data compared to previous EDP notifications are to be applied to the entire reporting period (and not just for one year).

Af) Financial derivatives – government debt

The EDP Regulation³⁸ defines 'government debt' as the sum of currency and deposits (AF.2), securities other than shares, excluding financial derivatives (AF.33) and loans (AF.4), as defined in ESA 95.³⁹

Summary 5: Liabilities from financial derivatives are not included in government debt. An incorrect presentation of financial derivatives does not necessarily imply, therefore, that government debt also needs to be amended.

³¹ Regulation of the Federal Minister for Finance in agreement with the *Rechnungshof*.

³² EU Regulation; data for Austria are drawn up by STAT in accordance with the *Bundesstatistikgesetz* 2000 (Federal Statistics Act), Federal Law Gazette I No 163/1999, or the *GebStat-VO*.

³³ Standing Committee within the meaning of the Agreement of 28 June 1974 on the estimates and accounts of local authorities.

³⁴ Cf. invitation of 16 January 2009 to a meeting of the VR Committee on 2 February 2009.

³⁵ Federal Law Gazette II No 313/2015, to be applied by the Länder by the 2019 financial year.

³⁶ Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community, OJ L 145, 10.6.2009, p. 1.

³⁷ Before 1 April and before 1 October in year n.

³⁸ Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community, OJ L 145, 10.6.2009, p. 1.

³⁹ Financial instruments according to ESA 95; according to ESA 2010, government debt consists of liabilities of general government in currency and deposits (AF.2), debt securities (AF.3) and loans (AF. 4).

Ag) Interest flows resulting from swaps arrangements and forward rate agreements

An amendment to the ESA 95 Regulation⁴⁰ lays down that 'government deficit' is the balancing item 'net borrowing/net lending' of general government, including streams of interest payments resulting from swaps arrangements and forward rate agreements. This balancing item is codified as EDPB9. For this purpose, interest includes the abovementioned flows and is codified as EDPD41.

Summary 6: Interest flows resulting from swaps arrangements and forward rate agreements are the difference between expenditure and revenue, and therefore increase or decrease the government deficit. It may be the case, therefore, that swaps arrangements increase government debt (if swap liabilities are higher than swap assets), while government deficit is lower (if interest flows result in more revenue than expenditure).

⁴⁰ Regulation (EC) No 2558/2001 of the European Parliament and of the Council of 3 December 2001 amending Council Regulation (EC) No 2223/96 as regards the reclassification of settlements under swaps arrangements and under forward rate agreements supplementing Annex V to ESA 1995: definition of government deficit for the purpose of the EDP.

B) Comments on the content of individual sections of the preliminary report of 20 December 2016 (with proposed amendments to the wording in individual cases)

B.1

Text of the preliminary report (p. 3): *Even if in the April 2014 EDP notification Maastricht Debt was revised for years 2010-2012, it appears that the misreporting of debt, as well as possibly deficit, may have started at least from 2008 onwards, and that the level of Maastricht debt presented by the Austrian statistical authorities for the years 2008 and 2009 is still underestimated.*

Comment: According to the EDP Regulation, Member States are obliged to give notification of data for years n-4 to n. Under the April 2014 notification, therefore, only data for the years 2010 to 2014 were to be forwarded. The notification of amendments to data concerning previous years is compulsory only in respect of other EU regulations.⁴¹

Proposal 1 for an amended wording: ... and that the level of **quarterly government debt** presented by the Austrian statistical authorities for the years 2008 and 2009 is still underestimated.

Proposal 2: Allegations which cannot be supported by documentation – ‘it appears’ – and refer to reference years which are not relevant to the subject of the investigation (such as 2008) should be removed from the report.

B.2

Text of the preliminary report (p. 3): *Finally, the report concludes that whereas the Commission (Eurostat) was only informed of this case on the 10 October 2013, the Austrian statistical authorities were aware of the possibility of misrepresentation of the accounts of Land Salzburg since, at least, the 6th of December 2012.*

Comment: ‘Representation of the accounts’ of a Land or municipality is carried out in accordance with the Budgeting and Accounts Regulation (VRV) of the Federal Minister for Finance. STAT verifies that the data transmitted by the Länder is suitable for the calculation of ESA or EDP data and not whether they are VRV-compliant in individual cases (cf. Summary 1 under point Ab) above). Therefore STAT could not be aware of the possibility of misrepresentation of the accounts of Land Salzburg. In contrast, the Commission (Eurostat) had been informed of problems with the data at the end of January 2013 and, as part of the EDP notification, in April 2013 (see below).

B.3

Text of the preliminary report (p. 3): *Also, the report concludes that both Statistics Austria and the*

⁴¹ Council Regulation (EC) No 1222/2004 of 28 June 2004 concerning the compilation and transmission of data on the quarterly government debt and Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union.

Austrian Central Bank were aware of sizeable inconsistencies in the data reported by Land Salzburg, before the so called 'financial scandal' became public at the end of 2012.

Comment: The data transmitted pursuant to the GebStat-VO⁴² are the main, but not the only, source for the calculation of ESA/EDP data. There is therefore in all Länder a significant difference between 'debt according to VRV' and 'EDP Maastricht debt'. For 2012, as far as STAT was aware as at 30 September 2013, it was EUR 1.3 bn for Land Salzburg and EUR 8.9 bn for all Länder. Differences between data according to the VRV and the ESA/EDP are therefore not specific to a certain Land (summary 2 under point Ac) above).

Proposal for an amended wording: Also, the report concludes that both Statistics Austria and the Austrian Central Bank were already aware of **the need to supplement the data reported by Land Salzburg for calculating ESA or EDP data** before the so-called 'financial scandal' became public at the end of 2012.

B.4

Text of the preliminary report (p. 7): ... serious deficiencies in the organisation of the data flows between public entities and the statistical authority ...

Comment: STAT does not understand the Commission's assessment. The 'data flows between public entities and STAT' **are clearly defined in the Gebarungsstatistik-Verordnung.**

B.5

Text of the preliminary report (p. 7): ... the central verification of accounting data by Member States at all levels of general government, and robust and effective supervisory and control systems at national level.

Comment: Data transmitted from the Länder under the *GebStat-VO* should be primarily VRV-compliant data. The task of STAT is to verify that the transmitted data is suitable for the calculation of ESA/EDP data and not whether they are VRV-compliant in individual cases.

B.6

Text of the preliminary report (p. 8): After an examination of the facts by the Commission (Eurostat), it became clear that the case of unreported debt in the Land Salzburg was serious. The elements that led to this conclusion include, amongst other, the fact that the Court of Auditors had published findings indicating the existence of several and severe irregularities in the financial management of Land Salzburg, that as a result of these irregularities there was an incorrect reporting of debt figures for non-negligible amounts, on which the national statistical authorities were allegedly not informed during many years and finally, that the regional government in Land Salzburg, in exercising its legal powers, seemed to have facilitated the incorrect reporting of transactions. Consequently the Commission (Eurostat) assessed that a more thorough analysis of the facts occurred in Land Salzburg was needed.

Comment: This entire paragraph refers to the view of the Commission (Eurostat) prior to the more thorough analysis. STAT therefore proposes a reference in the first sentence to the fact

⁴² Gebarungsstatistik-Verordnung (Order on management statistics); Federal Law Gazette II No 361/2002, Federal Law Gazette II No 465/2004 or Federal Law Gazette II No 345/2014 (from 1 January 2014).

that e.g. 'After an examination of the facts, **the Commission (Eurostat) arrived at the assessment that ...**'

B.7

Text of the preliminary report (p. 8): *The first row of the table reflects the financial debts (Finanzschulden) of Land Salzburg as reported in the balance sheets compiled by the State Office of Land Salzburg for the years 2002-2012. According to information from STAT, these 'Finanzschulden' should include both loans and government bonds, and are in this sense the relevant liabilities to be taken into account for the compilation of Maastricht Debt.*

Comment: On 11 October 2013, i.e. two days after the publication of the report by the *Rechnungshof* on the financial situation of Land Salzburg, STAT informed Eurostat that the definitions of 'financial debts' (*Finanzschulden*) and 'total debts' (*Gesamtschulden*) used by the *Rechnungshof* were not identical to the term 'Maastricht debt'.⁴³ It was made clear that the amount of EUR 3.507 bn referred to in the *Rechnungshof* report could not be used for calculating the Maastricht debt without detailed research.

B.8

Text of the preliminary report (p. 12): *For example, the estimation by STAT took into account a considerable part of the Voranschlagsunwirksame Erläge, i.e. cash transited through the accounts of Land Salzburg that is owed to a third entity, ...*

Comment: It is stated that none of the Länder reported the *voranschlagsunwirksamen Erläge* (transfers) to Statistics Austria. The additional data sources were the balance sheets of the *Wohnbaufonds* and other balance sheets from hived-off units (Land fund and Land chamber) and information from the OeBFA and OeNB used for validation and cross-checks.

B.9

Text of the preliminary report (p. 13): *Furthermore, and after receiving information from the OeNB, STAT concluded that Land Salzburg had financed itself, in 2010, through the issuing of government securities amounting to EUR 300 million. Even if such an amount was nowhere visible in the balance sheets of Land Salzburg, STAT took the decision to follow the direct data source of the OeNB and to include these amounts in the debt of Land Salzburg.*

Comment: This is an example of STAT's general approach to the calculation of ESA/EDP data described above under point Ab), that the data provided in accordance with the *Gebarungstatistik-Verordnung* represent **the main, but not the only, data source.**⁴⁴ It is also

⁴³ This information was provided under the 'Requests for clarification' according to the EDP notifications: 'As at 31 December 2012, the Land accounting system had financial debts of EUR 1.370 bn. However, as at 31 December 2012 there were total debts with a nominal value of EUR 3.507 bn. Neither 'Finanzschulden' nor 'Gesamtschulden' can be taken 1:1 as Maastricht debt.'

⁴⁴ The semi-annual review of the data submitted by the Länder and municipalities and the taking into account of other data sources leads to the adaptation or supplementing of the standardised mapping tables with Land- or

stated that the information concerning the existence of a bond was verified on the Vienna Stock Exchange portal on the basis of the ISIN (securities identification number). As the bond appeared on the Vienna Stock Exchange, and the 'thumbstone' (proof of listing) was also found on the Internet, the information from the OeNB securities issues statistics was confirmed by an independent institution (Vienna Stock Exchange) and was then used to calculate the debt.

B.10

Text of the preliminary report (p. 13): *In case of discrepancies, STAT consistently chose to rely on the information provided by OeBFA.*

Comment: See comment B.9

B.11

Text of the preliminary report (p. 13): *Even if STAT has the possibility to change the figures from the data sources when compiling national accounts, it does not have the power to oblige entities to amend the data reported.*

Comment: cf. Summary 1 under point Ab) above.

B.12

Text of the preliminary report (p. 14): *It can be observed that data for the years prior to 2010 were not revised by the statistical authorities. In a letter sent by STAT to Eurostat on 28 March 2014 it was stated: "As one outcome of our bilateral meeting with officials from Land Salzburg it can be taken for sure that no additional resources will be dedicated to further clarify earlier years. That means that our estimates will remain unchanged. Notwithstanding this statement by STAT, ..."*

Comments:

a) Between October 2013 and March 2014, STAT received from the State Office **only information for a revision of the data for 2012**. A revision of ESA data for 2010 and 2011 was based on a range of estimates. Since, under the EDP notification, before 1 April 2014 only data for 2010-2014 were to be transmitted to the Commission (Eurostat), there has been no further processing of the years before 2010.

b) The statement quoted in the letter of 28 March 2014 referred exclusively to 2010 and 2011.⁴⁵

municipality-specific classifications. To calculate ESA or EDP data, STAT also takes into account additional data sources, particularly financial management data submitted by extra-budgetary units or statistics from other institutions (especially, for calculating government debt, securities issues statistics and banking statistics from the Austrian Central Bank).

⁴⁵ 'iii. Availability of information for years 2010-2011

Eurostat/Question: You state in the report that: 'The officials of Land Salzburg are not in a position to provide quantitative information for earlier years due to constraints in resources and lack of information available'. Is it intended by the Land Salzburg to dedicate additional resources to the issue in the future or to take any efforts to obtain the information which is at present lacking? Or will the estimation of the data by Statistics Austria continue?

STAT/Answer: As one outcome of our bilateral meetings with officials from Land Salzburg it can be taken for sure

B.13

Text of the preliminary report (p. 14): Finally, row (6a) reflects the difference between the calculation of Land Salzburg's debt taking into account all data sources available in March 2014 (row (4)) and the debt effectively reported by Land Salzburg (row (1a)) for those years, under the Finanzschulden. This means that even if the reported impact of the revisions to the Austrian Maastricht debt amounted to only 0.4% of GDP in 2012, the effective amount of underreporting and/or misreporting of debt in that year by Land Salzburg was de facto 0.9% of GDP in that year.

Comment: The investigation in question relates to the Austrian EDP notification and not to 'de facto' results of the financial management of Land Salzburg. The finding that the misreporting of debt figures for Land Salzburg in that year was de facto 0.9 % of GDP **should therefore be eliminated.**

B.14

Text of the preliminary report (p. 25): Firstly, it is the understanding of the Commission that the interest payable should have been revised by STAT at least also for years 2010 and 2011, along with the revisions undertaken to the debt (see Table 1).

Comment: Between October 2013 and March 2014, STAT received from the State Office only information for a revision of the data for 2012. Only 2012 could therefore be audited. For 2010 and 2011 neither an 'audit' nor a 'control' could be carried out. STAT revised the government debt data for 2010 and 2011 on the basis of various estimates (specifically retropolation of data for 2012). As the impact of interest payable on the deficit following the audit of data for 2012 was **less** than before the audit, and owing to the lack of supplementary information for 2010 and 2011, there was no estimate of interest payable based on an estimate of government debt (see also comment B.15).

B.15

Text of the preliminary report (p. 25): Furthermore, it is the understanding of the Commission that, following the fact that it was ascertained that debt is underestimated for years prior to 2010, consequently interest payable is also underestimated, and therefore the Austrian government deficit for those years.

Comment: To calculate government deficit, interest flows resulting from swaps arrangements and forward rate agreements are also taken into account.⁴⁶ These interest flows are the difference between expenditure and revenue, and may therefore increase or decrease the government deficit. The audit of data for 2012 found that some (non-deficit-relevant) repayments also contained settlements based on swaps arrangements, which are to be regarded as deficit-decreasing revenue. According to Table 2 (p. 24 of the preliminary report,

that no additional resources will be dedicated to further clarify earlier years. That means, that our estimates will remain unchanged.'

⁴⁶ Regulation (EC) No 2558/2001 of the European Parliament and of the Council of 3 December 2001 amending Council Regulation (EC) No 2223/96 as regards the reclassification of settlements under swaps arrangements and under forward rate agreements supplementing Annex V to ESA 1995: definition of government deficit for the purpose of the EDP.

penultimate line), this audit gave rise to a **reduction** of EUR 7 million in government deficit for 2012 (see also summary 6 under section Af) above). Consequently, no automatic conclusion can be drawn regarding the impact on the Austrian government deficit. The Commission (Eurostat) should produce evidence for the allegation that debts for the years prior to 2010 was underestimated or, if this is not possible, delete it.

B.16

Text of the preliminary report (p. 25): *In a meeting held on 8 September 2010 between STAT and the Budget Unit of the State Office of Land Salzburg, STAT explained that all the funds lent by OeBFA should be reported under the Finanzschulden (as they are, de facto, debt of Land Salzburg in relation to OeBFA).*

Comment: As already mentioned above under point B.7, the term 'debt' (*Finanzschulden*) is not identical to the term 'Maastricht debt'. At the meeting on 8 September 2010 there was reference to the description in the ESA.⁴⁷

Proposal for an amended wording: ... any funds lent by OeBFA should be noted in the ESA/EDP statistics as loans granted by the Federal Government and taken up by the Land.

B.17

Text of the preliminary report (p. 26): *Furthermore, it should be stated that consolidation practices do not only involve using the most reliable data when realizing that a considerable discrepancy exists, as was done by STAT during these years. The best consolidation practices should also concern informing the relevant authorities of the existence of such discrepancies, given that misreporting in one item may imply misreporting in other items.*

Comment: As already pointed out on several occasions, those responsible for data deliveries have been and are kept informed of consolidation procedures and transfers to ESA. Discrepancies do not automatically imply misreporting. General suspicion is therefore inadmissible. The text of the report should therefore be corrected.

B.18

Text of the preliminary report (p. 29): *Finally, it is important to mention that, for the years under analysis, no flows or stocks of financial derivatives were reported in national accounts for the whole S.1312 sector (state government sector). The Commission is aware that sizeable cross-currency swaps existed at least between Land Salzburg and OeBFA.*

Comment: The Commission has been aware **since the end of January 2013 at the latest** that financial derivatives had been concluded in Land Salzburg which had not been taken into account in the Austrian ESA statistics. This is set out in the internal minutes of a telephone

⁴⁷ The financial accounts in ESA 95, consolidated/non-consolidated: Consolidated meant that cash flows and stocks were reduced to those quantities which took place within the general government sector. Non-consolidated meant that the quantities of national flows/stocks were included in the results. Typical flows/stocks to be consolidated were loans to the Länder from the Austrian Federal Financing Agency (OeBFA). The consolidation process did not take these loans into account in the results as loans granted by the Federal Government and taken up by the Land.

conversation with the former Eurostat desk officer [MW] on 31 January 2013.⁴⁸ In addition, STAT informed the Commission (Eurostat) **in April 2013**, as part of the usual requests for clarification of the EDP notification, of the initial research into financial derivatives, and that information from Salzburg would not be available before the end of September 2013 'due to the well-known reasons'.⁴⁹ It pointed out that in 2009, it and the OeNB had already put a proposal to the Ministry of Finance to provide for a separate description of financial derivatives in the VRV.⁵⁰ The report should therefore also state that the Commission (Eurostat) had been informed of those circumstances since the end of January 2013.

B.19

Text of the preliminary report (p. 31): *It was only on 22 January 2013 that the State Office of Land Salzburg officially informed STAT on the issue of the existence of unrecorded liabilities.*

Comments:

a) From the notes by STAT it is not evident what additional information the State Office provided to STAT on 22 January 2013 that was not already known since the press conference on 6 December 2012. For instance, on 6 December 2012 the *Salzburger Nachrichten* stated: 'The deputy head of the Land finance department is alleged to have speculated with public funds and concealed the losses in the budget.' (see also footnote 48 on p. 31 of the preliminary report).

b) The notes by STAT concerning contacts with the State Office on 22 January 2013 show:

ba) Telephone conversation with [CM] on 22 January 2013 at approx. 8.30: He introduces himself as the new contact person for data transmissions to STAT and asks whether there is a backlog in data reports to STAT.

bb) Detailed information to [CM] on content requirements and technical details for data reports.

STAT was not informed on 22 January 2013 of the issue of the existence of unrecorded liabilities. The text of the report should therefore be corrected.

⁴⁸ 'Just had extended conversation with MW (had read in the media about Salzburg, Linz and Lower Austria), she is surprised there is nothing in EDPT3C and 3D under F.34. I told her we were working with Sbg and LA to check data deliveries to us in this regard.'

⁴⁹ Quotation from the concluding remarks by Eurostat of 16 April 2013:

'Question by Eurostat: We understand that this issue has been explicitly addressed in your exchanges with the data providers and it has been confirmed that such transactions have not taken place in Austria in the EDP reference period. Otherwise, please explain to us whether, and if yes, on which grounds, it can be concluded that the transactions would not have any major impacts on the state government debt measurement.

Answer by STAT: To get more information on financial derivatives, already in 2009 STAT and OeNB made proposals to the MoF for additional break down in the state and local government budgets but didn't succeed these proposals being implemented in the National Regulation (VRV). Again this issue was presented by STAT to the responsible committee for developing the VRV in March 2013. In March 2013 we also contacted the states of Lower Austria, Burgenland and Salzburg and requested flow- and stock-data on financial derivatives but there was no answer so far **(in fact, in Salzburg closed accounts as such for the year 2012 will not be available before September 2013 due to the well-known reasons).**'

⁵⁰ *Voranschlags- und Rechnungsabschlussverordnung des Bundesministers für Finanzen* [Budgeting and Accounts Regulation, VRV] in agreement with the *Rechnungshof*.

B.20

Text of the preliminary report (p. 32): *On 22 January 2013, the State Office of Land Salzburg and STAT exchanged some emails. In one of these emails, STAT states: 'For our part, we are very interested in the interim reports on the finances of Land Salzburg in order to get a picture of the changes/revisions that have come to us, or to what misreporting and manipulations we have been exposed.'*

Comment: The actual text in the e-mail reads: 'For our part, we **would be** very interested in the interim reports on the finances of Land Salzburg in order to get a picture of the changes/revisions that have come to us, or to what misreporting and manipulations we have been exposed.' The conclusion is that on 22 January 2013, STAT had no information other than that brought to light since the press conference on 6 December 2012. The text of the report should therefore be corrected.

B.21

Text of the preliminary report (p. 32): *On 5 March 2013, there was a bilateral meeting between STAT and the State Office of Land Salzburg in Vienna;*

Comment: Two representatives of the State Office⁵¹ and a number of STAT representatives took part in this meeting on 5 March 2013 in Vienna. The participants from Salzburg were announced by [CM] on 4 March 2013 (see also proposed correction C.8).

B.22

Text of the preliminary report (p. 32): *On 27 March 2013, the State Office of Land Salzburg informed STAT that, following a report by an external independent private auditor, it had been ascertained that the consolidated liabilities of Land Salzburg amounted to EUR 3,507 million, although no breakdown of this amount could be provided. The Commission is not aware of any specific follow-up having taken place in order to ascertain the nature of such liabilities.*

Comments:

a) Since no breakdown of the amount of EUR 3.507 bn (relating to only one reference year, 2012) had been presented on 27 March 2013, there is also a possibility that this amount also included liabilities arising from financial derivatives. STAT had already asked Land Salzburg on 19 March 2013 to provide detailed information on financial derivatives. Eurostat was informed of this on 16 April 2013⁵² (see also comment B.18). The text of the report should therefore be corrected.

b) We do not understand the statement that 'The Commission is not aware of any specific follow-up having taken place in order to ascertain the nature of such liabilities'. In 2013 there were discussions between Land Salzburg and Statistics Austria on 19 March and 7 May, with numerous e-mail contacts before and afterwards. The sole purpose of these discussions was

⁵¹ [RO] and [PS].

⁵² 'In March 2013 we also contacted the states of Lower Austria, Burgenland and Salzburg and requested flow- and stock-data on financial derivatives but there was no answer so far (in fact, in Salzburg closed accounts as such for the year 2012 will not be available before September 2013 due to the well-known reasons).'

to acquaint the representatives of Land Salzburg with the different data requirements and contents of the data reports. STAT does not draw up statistics on the basis of a number in a pdf document which even the sender cannot properly explain.

B.23

Text of the preliminary report (p. 32): *On 7 May 2013 a meeting took place between STAT and the State Office of Land Salzburg. In this meeting, STAT recognized that there might be problems with the recording of derivatives and debt in Land Salzburg.^{tt} (The quotation according to footnote tt is correct (see p. 49 of the preliminary report). We read it in the press on 6 December 2012. In this context, we had a first meeting with representatives of the Land Salzburg in May 2013. From this we recognized that there might have been issues with the reporting of derivatives and EDP debt (reporting of loans).*

Comment: The text should be corrected (see proposed correction C.9).

B.24

Text of the preliminary report (p. 33): *In July 2013, still in the absence of annual data, STAT compiled the accounts of Land Salzburg on the basis of the quarterly data provided.^{vv} (The quotation according to footnote vv is correct (see p. 49 of the preliminary report): During the meeting with STAT on 26 September 2016, the RH representative, who in July 2013 was an employee of STAT, stated: 'As final annual data on the closed accounts of the Land Salzburg for the year 2012 were not available for the calculation of ESA National Accounts, STAT used quarterly data to compile the National Accounts (...).'*

Comments:

- a) STAT does not compile the accounts of Land Salzburg, but ESA/EDP statistics.
- b) On p. 6 of the minutes of the discussion between the Commission and STAT on 26 September 2016 it is stated that: *Before October 2013, Land Salzburg had not officially informed STAT and we did not receive updated data (corrections) from them. They provided only the quarterly debt data according to the existing reporting obligations without any further comments.*

The text should therefore be corrected (see proposed correction C.10).

B.25

Text of the preliminary report (p. 33): *On 10 October 2013, the issue is brought to the attention of Eurostat for the first time, i.e. ten months after the issue had been brought to the attention of STAT.*

Comment: The press conference in Salzburg on 6 December 2016 had considerable impact not only in all German-language media in and outside Austria, but was reported internationally in Europe and beyond. It is difficult to understand how the Commission (Eurostat) would not have been aware of it. The issue was clearly 'brought to its attention' owing to the media reporting, as can be concluded from an enquiry to the former Eurostat desk officer [MW] on 31 January 2013 (see comment B.18). The Commission had been aware since the end of January 2013 at the latest that financial derivatives had been concluded in Land Salzburg which had not been taken into account in the Austrian ESA statistics.

The text should therefore be corrected (see proposed correction C.11).

B.26

Text of the preliminary report (p. 33): *On 31 March 2014, STAT reported the April 2014 EDP Notification to Eurostat. The level of Land Salzburg's contribution to Maastricht debt, for 2011, was revised upwards by EUR 3,507 million, i.e., exactly the amount which had been signalled by the State Office of Land Salzburg to STAT on the 27 March 2013.*

Comment: As shown in Table 1 of the preliminary report (p. 15), the EDP data report of 31 March 2014 contained an amount from Land Salzburg, including the *Wohnbaufonds*, for 2011 of EUR 3.172 bn, and the EDP data report of 30 September 2013 contained EUR 2.293 bn. **The correction therefore amounted to EUR 879 million** (see proposed correction C.12).

The text should therefore be corrected.

B.27

Text of the preliminary report (p. 33): *STAT informed the Commission (Eurostat) about the misreporting in Land Salzburg only on the 10 October 2013. Nevertheless, it has been ascertained that STAT was gradually informed about these facts from 6 December 2012 onwards. Notably, it was clear to STAT, at least since the 22 January 2013, that "misreporting and manipulations" had occurred in Land Salzburg.*

Comments:

- a) On 29 January 2013, STAT informed all Länder of the extent to which they had not yet complied with the requirements for financial management statistics in terms of data reports to STAT and asked them to improve the quality of data reporting as soon and as comprehensively as possible. The Federal Ministry of Finance was also informed of the situation on 29 January and was asked for its support in improving the quality of the fiscal data transmitted. The Ministry immediately replied that it also considered improving the quality of the data from sub-national levels to be essential.
- b) One instance of 'misreporting' (at least in the financial derivatives field) was known to Eurostat at the latest on 31 January 2013 (see comment B.25 above). On the basis of this communication on 31 January 2013, STAT requested information on financial derivatives from Land Salzburg on 19 March 2013; The results of this search were communicated to Eurostat on 16 April 2013 (see comments B.18 and B.22 above). The communication also pointed out that final data from Land Salzburg for 2012 were not expected before the end of September 2013 'due to the well-known reasons'.
- c) On 9 October 2013 the RH published its report 'Land Salzburg – Financial situation'. Following a phone conversation between STAT and the former Eurostat desk officer [MW] on 10 October 2013 concerning this report, on 11 October STAT sent initial comments on the report to Eurostat (see proposed correction C.11 below).

B.28

Text of the preliminary report (p. 34): *Moreover, on the basis of information provided by the State Office of Land Salzburg concerning the results of an independent external audit, it should have been clear to STAT, at*

least since 27 March 2013, that the level of debt of Land Salzburg was in fact considerably larger than what had previously been estimated by STAT. Given that STAT would, four days later, report data to Eurostat in the context of the April 2013 EDP Notification, it is the opinion of the Commission that an immediate and urgent practical follow-up should have been undertaken by STAT after receiving this information from Land Salzburg. This appears not to have been the case. Furthermore, even if in such a short delay it would not be possible to give the issue a comprehensive follow-up, it is the opinion of the Commission that, under the principle of due diligence, STAT should have informed Eurostat immediately after 27 March 2013.

Comments:

- a) Liabilities from financial derivatives are not included in government debt. STAT's task is to calculate government debt, as defined in the EDP Regulation, and report it in the course of EDP notifications for the years n-4 to n (for 2009 to 2013 in the specific case of the EDP notification of 31 March 2013). For the results of the 'independent external audit' of 27 March 2013, which related to the situation as at the end of 2012, it was not known to what extent any liabilities from financial derivatives were included, nor was there any information on other years. Eurostat does not usually accept a significant revision of only one year, with no evidence base under EDP notifications.
- b) Please see comments B.22 and B.26 above regarding 'immediate and urgent practical follow-up'.

B.29

Text of the preliminary report (p. 35): *These irregular practices were made public in 2012, following a press conference held on 6 December 2012 by the Finanzreferent, the Director of the Financial Department and the Head of the LRH of Land Salzburg. ... Furthermore, this report also demonstrates that the Commission (Eurostat) could and should have been informed by STAT several months earlier about these facts.*

Comment: Eurostat must have been aware of the existence of irregular practices from the wide media coverage following the press conference on 6 December 2012. There was communication between STAT and Eurostat regarding the availability of data on financial derivatives in Land Salzburg on 31 January and 16 April 2013 (see in particular comments B.18 and B.22 above).

The text should therefore be corrected.

B.30

Text of the preliminary report (p. 37): *Even if STAT correctly implemented in the context of the EDP notifications the necessary changes to the data provided by the State Office of Land Salzburg, it is the opinion of the Commission that other relevant Austrian entities, notably the BMF and the RH, should have been informed.*

Comment: There is no Austrian legislation requiring STAT to undertake such a procedure. Rather, there are reasons to believe that the institutions referred to were fully informed of events, if only through the wide media coverage.

B.31

Text of the preliminary report (p. 38): *Secondly, even if STAT was fully informed, at least since 22*

January 2013, that misreporting and manipulation had occurred in the accounts of Land Salzburg, it failed to immediately inform the Commission (Eurostat) of these facts.

Comments:

a) On 22 January 2013 STAT had absolutely no knowledge of the extent of the anticipated revisions. It therefore immediately asked Land Salzburg for information⁵³ (see comment B.19 above) and agreed on a meeting for a comprehensive exchange of information at the beginning of March 2013.

b) It can be assumed that, on 22 January 2013, Eurostat was as well informed of 'irregular practices' in Land Salzburg from the media reporting following the press conference on 6 December 2012 as STAT itself.

The text of the report should therefore be corrected accordingly.

B.32

Text of the preliminary report (p. 40): Finally, the report concludes that whereas the Commission (Eurostat) was only informed of this case on the 10 October 2013, the Austrian statistical authorities were aware of the possibility of misrepresentation of the accounts of Land Salzburg since, at least, the 6th of December 2012.

Comment: One instance of 'misreporting' (at least in the financial derivatives field) was known to Eurostat at the latest on 31 January 2013 (see in particular comments B.26 and B.28 above). Eurostat was clearly also aware in April 2013 of a data problem with Land Salzburg over EDP notification.

The text of the report should therefore be corrected accordingly.

B.33

Text of the preliminary report (p. 40): Also, the report concludes that both Statistics Austria and the Austrian Central Bank were aware of sizeable inconsistencies in the data reported by Land Salzburg before the so called 'financial scandal' became public in the end of 2012.

Comment: As this text is an exact repeat of the text on page 3 of the preliminary report, comment B.3 above also applies here:

Comment: The data transmitted pursuant to the GebStat-VO⁵⁴ are the main, but not the only, source for the calculation of ESA/EDP data. There is therefore in all Länder a significant difference between 'debt according to VRV' and 'EDP Maastricht debt'. For 2012, as far as STAT was aware as at 30 September 2013, it was EUR 1.3 bn for Land Salzburg and EUR 8.9 bn for all Länder. Differences between data according to the VRV and the ESA/EDP are therefore not specific to a certain Land (summary 2 under point Ac) above).

⁵³ E-mail of 22 January 2013: 'For our part, we would be very interested in the interim reports on the finances of Land Salzburg in order to get a picture of the changes/revisions that have come to us, or to what misreporting and manipulations we have been exposed.'

⁵⁴ Gebarungstatistik-Verordnung (Order on management statistics); Federal Law Gazette II No 361/2002, Federal Law Gazette II No 465/2004 or Federal Law Gazette II No 345/2014 (from 1 January 2014).

Proposal for an amended wording: Also, the report concludes that both Statistics Austria and the Austrian Central Bank were already aware of **the need to supplement the data reported by Land Salzburg for calculating ESA or EDP data** before the so-called 'financial scandal' became public at the end of 2012.

C) Technical comments/proposed corrections

C.1

Text of the preliminary report (p. 2): *The report contains a detailed description of the main reasons for the 1.2 billion euro revision in the government debt of Austria in 2014, relating to the years 2010-2012, ...*

Proposed correction: The report contains ... for the revision amounting to EUR 1.2 billion for 2012, EUR 0.9 bn for 2011 and EUR 0.5 bn for 2010, ...

C.2

Text of the preliminary report (p. 3): *The misrepresentation of the government debt of Austria was, as of 2012, of EUR 1.2 billion.*

Proposed correction: The misrepresentation of Austria's government debt as at the end of 2012 amounted to EUR 1.2 billion.

C.3

Text of the preliminary report (p. 8): *On 10 March 2014, STAT provided the Commission (Eurostat) with the results of its internal analysis of the statistical implications of the RH findings and announced that, after the incorporation of the new data for Land Salzburg, the general government debt of the years 2010, 2011 and 2012 would be revised upwards (+0.3pp of GDP in 2010, +0.3pp in 2011, +0.4pp in 2012).*

To be corrected: On 10 March 2014, STAT provided the Commission (Eurostat) ... **(+0.2** percentage points of GDP in 2010, +0.3 percentage points in 2011 and +0.4 percentage points in 2012).

C.4

Text of the preliminary report (p. 9, footnote 7): *OeBFA provides data and metadata to the statistical authorities to be used for the calculation of the interest accrual adjustment, data on federal government receipts and on the federal government debt.*

Proposed correction: OeBFA ... [no material change to EN version].

C.5

Text of the preliminary report (p. 26, footnote 33): *This follows from the email exchange of 27 September 2010 ...*

To be corrected (see footnote 13 on p. 13): This follows from the email exchange of 27 September **2012**.

C.6

Text of the preliminary report (p. 29): '... in national accounts for the whole S.1312 sector (state

government sector).’

To be corrected: ‘... in national accounts for the whole S.1312 sector (**sub-sector Länder**).’

C.7

Text of the preliminary report (p. 32): *In one of these emails, STAT states: ‘For our part, we are very interested in the interim reports on the finances of Land Salzburg in order to get a picture of the changes/revisions that have come to us, or to what misreporting and manipulations we have been exposed.’*

To be corrected: In one of these e-mails, STAT states: ‘For our part, we **would be** very interested in the interim reports ...

C.8

Text of the preliminary report (p. 32): *On 5 March 2013, there was a bilateral meeting between STAT and the State Office of Land Salzburg in Vienna.*

To be corrected: On 5 March 2013, there was a ~~bilateral~~ meeting between STAT and the State Office of Land Salzburg in Vienna.

C.9

Text of the preliminary report (p. 32): *In this meeting, STAT recognized that there might be problems with the recording of derivatives and debt in Land Salzburg.*

To be corrected: In this meeting, STAT **became aware** that there might be problems with the recording of derivatives and debt in Land Salzburg.

C.10

Text of the preliminary report (p. 33): *In July 2013, still in the absence of annual data, STAT compiled the accounts of Land Salzburg on the basis of the quarterly data provided.*

Proposed correction: In **September** 2013, still in the absence of annual data, STAT compiled **the ESA/EDP statistics, taking into account** the quarterly data provided by Land Salzburg.

C.11

Text of the preliminary report (p. 33): *On 10 October 2013, the issue is brought to the attention of Eurostat for the first time, i.e. ten months after the issue had been brought to the attention of STAT.*

Proposed correction: On 11 October, STAT sent initial comments on the RH report ‘Land Salzburg – Financial situation’ to Eurostat.⁵⁵

⁵⁵ ‘Comments on the Report of the Austrian Court of Audit (CoA) on Land Salzburg - Financial situation (published on 9 October 2013)

a) General:

STAT has neither been involved in nor informed on the auditing process of the Austrian Federal CoA about the financial situation in Land Salzburg. The report itself has been downloaded by STAT from the CoA-website on 9 October 2013. According to the usual "auditing procedures" the draft report has probably been transmitted to Land Salzburg already in June 2013 for comments.

b) Remarks on some details of the report:

- ‘300 bank accounts with a turnover in 2012 of EUR 9.5 bn’: The total inflows and outflows on all these bank accounts sum up to this amount, which refers to the transactions during the year ("im Jahr"). This must not be mixed with stocks of assets or liabilities.
- ‘As at 31 December 2012, the Land accounting system had financial debts of EUR 1.370 bn. However, as at

C.12

Text of the preliminary report (p. 33): On 31 March 2014, STAT reported the April 2014 EDP Notification to Eurostat. The level of Land Salzburg's contribution to Maastricht debt, for 2011, was revised upwards by EUR 3,507 million, i.e., exactly the amount which had been signalled by the State Office of Land Salzburg to STAT on the 27 March 2013.

To be corrected:

Variante A: On 31 March 2014, STAT reported the April 2014 EDP Notification to Eurostat. The level of Land Salzburg's contribution to Maastricht debt for 2011 was revised upwards by **EUR 879 million.**

If 2012 was meant, variant B would apply:

Variante B: On 31 March 2014, STAT reported the April 2014 EDP Notification to Eurostat. The level of Land Salzburg's contribution to Maastricht debt for **2012** was revised upwards by **EUR 1.191 bn.**

C.13

Text of the preliminary report (p. 40): Based on the findings in this report regarding the behaviour of the authorities of the Member State in the period from 13 December 2011 until the launch of the investigation on 5 May 2016, the Commission may decide to adopt a recommendation to the Council to impose a fine on the Republic of Austria, as foreseen in Regulation (EU) No 1173/2011.

To be corrected: ... **3** May 2016 ...

31 December 2012 there were total debts with a nominal value of EUR 3.507 bn.' Neither 'Finanzschulden' nor 'Gesamtschulden' can be taken 1:1 as Maastricht debt. Statistics Austria has published on 30 September 2013 the Maastricht debt of S.1312 by state (for the years 2009 to 2012). The result for Land Salzburg is € 2.315 bn.

- The difference between "Buchhaltungssystem" and Maastricht debt originates from the inclusion of extra-budgetary units (for instance the "Wohnbaufonds"), information provided by the Austrian Treasury and comparison with data of the security by security database of OeNB.
- On the other hand the difference between the result of CoA ("Gesamtschulden") and STAT data of about € 1.2 bn (0.4 as percentage of GDP) cannot be interpreted as "to be added 1.1 to the debt data notified on 30 September 2013 (for instance it could be the case that "Gesamtschulden" comprises financial derivatives as liabilities). STAT will urge the officials of Land Salzburg to provide detailed data necessary for a comprehensive evaluation as soon as possible.
- The chapter "Risikobetrachtung einzelner Geschäftskategorien" which deals with "swaps" gives no indication that there have been off-market swaps.

c) There are **no diverging results on the existence of financial derivatives** in the individual state government units when comparing the information which has been provided independently to STAT and OeNB.

d) The **current compilation procedure for financial accounts** implies the use of many indirect data sources. For example for deposits of the Sector S.1312 money and banking statistics is used or for securities other than shares (F.331 and F.332) the security by security data base of the OeNB is used. Therefore, all deposits of S.1312 with Austrian banks are recorded in financial accounts. Furthermore, security holdings of the Land Salzburg in custody of Austrian Banks are recorded in financial accounts. To ensure full coverage of securities other than shares, the OeNB reminded the Land Salzburg on the reporting obligation of security holdings in custody with foreign banks as laid down in the Foreign Exchange Act 2004 (this has been done along with the letter on the reporting obligation of financial derivatives).'

EXECUTIVE BOARD

Dr [KP]

Director-General, Austrian Federal Statistics Institute

[Bundesanstalt Statistik Österreich]

Guglgasse 13

1110 Vienna

Vienna, 11 January 2017

Subject: Opinion of the Austrian Central Bank on the preliminary report of 17 December 2016 on the results of the investigation in connection with Regulation (EU) No 1173/2011 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area (Commission Decision of 3 May 2016)

Dear Director-General,

The Austrian Central Bank rejects in the strongest possible terms the unjustified criticisms levelled against it in the Eurostat report of 17 December 2016 in connection with the Salzburg case, in which criminal proceedings are pending. The OeNB would therefore make the following comments on the relevant parts of the report:

1. Allegation: *‘The OeNB, although recognising that it was aware of the investments by Land Salzburg in financial derivatives, failed to report these to the Commission (Eurostat), in the transmission of the Austrian financial accounts (p. 37 of the report):*

Under EU and Austrian law, the OeNB is under no obligation to report to the Commission (Eurostat) under the ESA transmission programme (Regulation (EU) No 549/2013). The allegation that it failed to report transactions is therefore meaningless. The OeNB has not failed to meet an obligation.

Moreover, the statement by the OeNB at the meeting with Eurostat on 26 September 2016 that it was aware of financial derivatives (Meeting report, reply to question 8) referred exclusively to the fact that we were informed through the relevant press releases in December 2012 of possible derivative transactions by Land Salzburg. At (and before) that time, the OeNB had no relevant data available for the period in question.

2. Allegation: *‘Furthermore, its consolidation practices regarding the financial accounts were ineffective’ (p. 37 of the report):*

These consolidation practices were in line with the agreement between the OeNB and Statistics Austria. Moreover, it is not the task of a statistical authority, and certainly not if, as in the case of the OeNB, it only has a provider function, to verify the correctness of local authority accounts (this is the task of auditors or audit institutions). During the meeting on 26 September 2016 it was pointed out on several occasions that the verification of accounts was and is not the role of the OeNB (Meeting report, 5 f).

3. Allegation: *‘Moreover, the Commission concludes that some declarations of the OeNB officials during the meeting between the OeNB and the Commission on 26 September 2016 were not correct. OeNB stated that it had found nothing unusual in the accounts of Land Salzburg for the period between 2002 and 2012, but the Commission has proof that, in fact, the EUR 300 million in securities not reported in the accounts of Land Salzburg had been unveiled by OeNB in 2010.’* (p. 37 of the report) and: *‘[...] both Statistics Austria and the Austrian Central Bank were aware of sizeable inconsistencies in the data reported by Land Salzburg before the so called ‘financial scandal’ became public in the end of 2012.’* (p. 40 of the report):

Firstly, the OeNB representatives did not state at the meeting that the OeNB had found nothing unusual in the accounts of Land Salzburg, particularly as the auditing or inspection of these accounts was not the task of the OeNB. Eurostat’s broader conclusions that certain statements made by the OeNB representatives were incorrect are clearly based on the statement concerning financial derivatives already referred to in point 1 (Meeting report, reply to question 8). This statement by the OeNB has been misinterpreted and should be understood only in the context of point 1. In the course of the routine quarterly data exchange relating to the entire general government sector, the OeNB only transmitted to Statistics Austria the security issue data gathered by the OeNB and formally checked as regards the master data (including the EUR 300 million referred to in 2010) which are taken into account in the Maastricht debt. This was therefore in no way a discovery, as claimed in the report. Plausibility checks were also not carried out on the accounts by the OeNB – as already stated above – as it lacked the necessary competence.

We would ask you to attach this opinion to that of Statistics Austria.

Yours faithfully,

Austrian Central Bank

Executive Board



12.1.2017

Factual corrections to the:

'Preliminary report on the findings of the investigation related to the manipulation of statistics in Austria as referred to in Regulation (EU) No 1173/2011 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area (Commission Decision of 3 May 2016)' (Ref. Ares(2016)7070219 - 20/12/2016 EN)

1. One general point is that the Federal Government, represented by the OeBFA, is a contracting party and therefore the lender, not the OeBFA (e.g. p. 13: 'debts of Land Salzburg to the OeBFA' — correct: 'to the Federal Government', p. 25: 'Lending from OeBFA to Land Salzburg' — correct: 'Lending from the Federal Government'; 'funds lent by the OeBFA' — correct: 'funds lent by the Federal Government'; page 26: 'use of the lending from OeBFA': correct: 'use of the lending from the Federal Government'; page 27: 'the loans from OeBFA on-lent to the Landeswohnbaufonds': correct: 'funds lent by the Federal Government'; page 29: 'cross-currency swaps ... between Land Salzburg and OeBFA' — correct: 'cross-currency swaps ... between Land Salzburg and the Federal Government'; p. 37: 'beneficiaries of lending from OeBFA' or 'framework agreement of OeBFA with the Länder': in each case: 'the Federal Government' instead of 'OeBFA' is correct). We would ask you to make the corrections throughout the report. Alternatively, footnote 7 could refer to the OeBFA acting on behalf of the Federal Government, as laid down in § 2(1) of the Federal Financing Act (*Bundesfinanzierungsgesetz*).
2. **P. 13, third paragraph:** *The wording 'The difference (EUR 166 million) to the amount of debt estimated by STAT in 2011 (2,293 million euro) is mainly explained by the contradictions inconsistencies in the lending between the reports on the financing operations from OeBFA to Land Salzburg between the reports from both institutions.' expresses the issue more clearly.*
3. **p. 25, subchapter 2.3.4, second paragraph:** *'The OeBFA has the delegated authority, amongst others, to take on loans on the capital market and to on-lend these funds to the Länder. The amount of the loans is was [sic] determined by the BMF.'* After the speculation came to light, and as a consequence thereof, the national process for lending to the *Länder* was tightened up and restructured.
4. **p. 25, subchapter 2.3.4, second paragraph:** *'The upper limit of the loans to be conceded by OeBFA is the administrative deficit of the Länder.'* *This finding is incorrect. Please see the minutes of the interview of 26 September 2016, point 3. It should read: 'The upper limit of the funds that the Federal Government can make available to the Länder via the OeBFA consists of the government deficit of the Länder, as laid down in the Austrian Stability Pact, plus repayments.'*



5. **p. 25, subchapter 2.3.4, second paragraph:** 'Nevertheless, since there is neither a legal obligation for the Länder to provide OeBFA with any information on the effective use of the money, nor for OeBFA to keep track of the use of these funds this obligation not to reinvest the funds appears to have had a cosmetic, i.e. a pro forma, character.'

The words '*this obligation not to reinvest the funds appears to have had a cosmetic, i.e. a pro forma, character.*' should be deleted; this is incorrect and misleading. Agreements are basically set up in order to comply with them. The OeBFA does not see this as being a 'pro-forma character'. The respective supervisory bodies (e.g. Landtag or LRH) are responsible for verifying compliance with agreements. The OeBFA has no legal right of inspection.

6. **p. 26, final paragraph:** 'The role of the LRH in the recording and use of the lending from OeBFA remains unclear to the Commission. On one side OeBFA has stated that the cross-checking of the information regarding these funds is the responsibility of the LRH, but on the other side the LRH has stated that this cross-checking is the responsibility of OeBFA.'

The LRH is responsible for the recording and use of loans.

7. **p.37, third paragraph:** 'The framework agreement of OeBFA with the Länder laid down that the beneficiaries of lending from OeBFA should not engage in speculative behaviour by means of the loans provided, but ~~did does not~~ [sic] contain any control mechanisms to ensure compliance with that clause ~~other than direct reporting by the Land. As such, the framework agreement proved, in the case of Land Salzburg, to be an invitation to circumvent the said clause.~~'

The last sentence should in any case be deleted as it amounts to an assessment without any factual basis. Agreements are basically set up in order to comply with them. A contracting party can never ensure compliance with an agreement by the other party, but only seek to ensure it (e.g. through repayment or penalties), or verify non-compliance (e.g. by gathering the corresponding information). After the speculation by Land Salzburg came to light at the end of 2012, national processes in connection with the granting of loans to the Länder by the Federal Government were overhauled and tightened up. Additional corresponding information is now gathered from the Länder (e.g. on their use of the funds), and in the event of an infringement of the contract conditions there is a possibility of calling in the loans granted to them.

8. **p. 47, footnote gg:** 'When asked during the Commission investigation what actions are undertaken and what information is exchanged with the LRH if the information regarding lending from OeBFA is not identical to information reported by the Länder, OeBFA replied: "This information sent to the LRH is part of the works on the closing of accounts done by the LRH. In this sense, the cross-checking is the role of the LRH, and not the role of OeBFA, which means we do not cross-check these data.'



As well, we have never received any feedback from the LRH stating that there were discrepancies in the data.”

The sentence 'This information sent to the LRH is part of the works on the closing of accounts done by the LRH.' is incorrect. Please see also the minutes of the interview of 26 September 2016. It should instead read as follows, in line with point 14 of the minutes: 'Since the closing of the 2013 Land accounts, the LRH (Salzburg) has been using the instrument of 'Bankbriefe' (where the LRH asks OeBFA about the amounts of on-lending provided to Land Salzburg). The OeBFA then provides this information to the LRH. In this sense, the cross-checking is the role of the LRH, and not the role of OeBFA, which means we do not cross-check these data. Nor have we ever received any feedback from the LRH stating that there were discrepancies in the data.'

9. **p. 47 footnote hh:** 'When asked during the Commission investigation what kind of information the LRH received from OeBFA and how this information was used, the representative of LRH explained that: "OeBFA was receiving the financial statements from Land Salzburg so they should have cross-checked. (...)'"

The OeBFA rejects this allegation by the LRH. Its internal records show that no accounts were received. In fact, only in February 2014 (i.e. after the events had come to light) did the *Landesrechnungshof* receive from the OeBFA for the first time a list of loans to Land Salzburg in order to be able to match the information with that used by the Land to draw up the accounts.