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drafted pursuant to Article 276(3) of the EC Treaty and Article 180b of the
Euratom Treaty, Article 147 of the Financial Regulation and Article 119(5) of
the EDF Financial Regulation

Delegations will find attached Commission document COM(2009) 526 final.

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COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

on the follow-up to 2007 Discharge Decisions (Summary) - European Parliament Resolutions drafted pursuant to Article 276(3) of the EC Treaty and Article 180b of the Euratom Treaty, Article 147 of the Financial Regulation and Article 119(5) of the EDF Financial Regulation

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PREAMBLE

This is the Commission's report to the European Parliament (EP) on the follow-up to the discharge for the 2007 financial year¹, pursuant to Article 276(3) of the EC Treaty and Article 180b of the Euratom Treaty, Article 147 of the Financial Regulation and Article 119(5) of the EDF Financial Regulation. Due to translation and time constraints, this report is being published in all EU official languages in this summarised form. The full Commission replies to each specific Parliament request are available in a Commission staff working document² which is published in English, French and German. Both these follow-up reports relate to the Resolutions adopted by the European Parliament on 23 April 2009.

Each chapter³ of this summary report includes cross-references to the relevant points in the full Commission staff working document mentioned above. These references will help readers to find all requests (and the action planned or already taken by the Commission) relating to a given chapter or which are of particular interest to them in the staff working document.

In the discharge decisions for the general budget, the EDF and the agencies, the Commission has identified a total of 203 requests made to it by the European Parliament. For 99 of these the Commission agrees to take the action requested by Parliament. The Commission considers that for 96 requests the required action has already been taken or is ongoing, though in some cases the results of the actions will need to be assessed. Finally, for reasons related to the existing legal framework or its institutional prerogatives, the Commission cannot accept 8 requests⁴.

¹ 2007 General Budget Discharge, 2007 EDF Discharge, 2007 Agencies Discharge.

² Commission Staff Working Document, accompanying the Report from the Commission to the European Parliament on the follow-up to the 2007 Discharge Decisions.

³ Both the present summarised report and the full staff working document follow as closely as possible the structure of the resolutions containing the requests of the European Parliament.

⁴ See requests 7, 73, 93, 126, 134, 135, 167 and 182.

I - COMMISSION RESPONSES TO THE REQUESTS MADE BY THE EUROPEAN PARLIAMENT IN THE GENERAL BUDGET DISCHARGE RESOLUTION

This is a summary of the Commission's replies to the specific requests made by the European Parliament in its 2007 Discharge Resolutions. A first reaction on each item of the resolution was transmitted by Vice-President Kallas to the rapporteur and Chairman of the Committee on Budgetary Control committee on 15 May 2009.

A) HORIZONTAL ISSUES⁵

Statement of assurance (Commission staff working document, points 3-11)

Like the European Parliament, the Commission welcomes the Court of Auditors' unqualified opinion on the 2007 accounts. It will continue to improve the quality of its accounting data and accounts as recommended by the Court.

The Commission agrees that high error rates in underlying transactions are partly due to complex rules. It acknowledges that simplification has a role to play in improving the implementation of EU policies and reducing error rates, but points out that a certain degree of complexity in rules and eligibility criteria is unavoidable as these are often fixed in order to achieve desired policy objectives, and are the outcome of a complex legislative procedure. Improvements have been incorporated into the 2007-2013 legal bases. Further simplification measures for Structural Funds, such as the possibility to declare costs on the basis of flat rates, unit costs and lump sums, were decided in May 2009 in the light of the financial crisis. The impact of simplification is expected to become visible in the medium- to long-term. Moreover, the Commission is currently working to identify possible areas of further simplification in particular in the context of its preparatory work for the triennial revision of the Financial Regulation. It could focus in particular on grants, in particular eligibility rules; management methods, whose provisions have become increasingly complex and which are crucial to improve the efficiency and delivery of external aid in particular; and control measures. The degree of complexity of the eligibility rules has a direct link with the intensity and cost of controls required to gain reasonable assurance on the legality and regularity of transactions. If simplified eligibility rules are decided and effectively implemented (e.g. increased use of lumps-sums and flat rates, acceptance of the use of national eligibility rules in case of co-financing by Member States) the underlying transactions will be less prone to error, which will allow to perform less extensive controls (controls can be focussed on output rather than input) and ultimately reduce the cost of controls. The Commission is also working on the concept of tolerable risk of error, which seeks to identify the intensity of the controls which is most cost-effective, i.e. to provide an appropriate balance between costs and benefits (reduction in error rates). It will also study principles for further simplifying sectoral legislation for the next round of basic acts, those to come into force from 2014.

⁵ The issues raised by the European Parliament under its main conclusions are addressed below under the relevant points.

Budgetary management – financial corrections, amounts recovered and suspension of payments (Commission staff working document, points 12-13)

Changes were made to the ABAC financial system in 2008 to permit recoveries to be traced back to the specific errors or irregularities. This has allowed the Commission to present more complete and reliable recovery figures in the 2008 accounts. The Commission is also working to improve further the reliability and completeness of the data the Member States report on their financial corrections.

Furthermore, the Commission proceeds with financial corrections where necessary. In the framework of the Action plan of 19 February 2008 to strengthen the Commission's supervisory role in relation to shared management of structural actions, the Commission has taken steps to ensure that irregularities found in the implementation of the Structural Funds are dealt with as soon as they are detected and financial corrections are made promptly.

Annual summaries of audits and declarations available in the shared-management field, and national management declarations (Commission staff working document, points 14-18)

An evaluation of the annual summaries and their contribution to the assurance regarding the operation of Member States' control system is given in the Annual Activity Reports of the Directorates General concerned. Annual summaries can add value, particularly where they contain an analysis of problems or a statement of assurance, identify good practices and propose solutions. The Commission is continuing to work with Member States to improve the annual summaries. Compared to 2007, for 2008 all Member States respected the obligation set in Article 53b(3) of the Financial Regulation to provide an annual summary and complied or mostly complied with the minimum requirements. For 2008 the Commission issued new and better guidelines for the annual summaries under structural funds. It also welcomes the initiative by seven Member States to append an assurance statement to their annual summaries for 2008 as is suggested in the revised guidelines.

Together with the four national management declarations received for 2008, this brings to 11 the number of Member States providing some sort of national assurance. The Commission will also continue to support those Member States which provide voluntary national declarations on EU funds. To this end it is analysing those declarations and statements which have been provided, with the aim of defining the key aspects of format and scope which add value.

Control systems (Commission staff working document, points 19-33)

In recent years, the Commission has put significant efforts into improving its control systems, following recommendations made by the Court of Auditors and requests from the Discharge Authority. To address deficiencies brought up by its own audit work or by the external auditor, the Commission launched the action plan towards an integrated internal control framework (in 2006) and the action plan to strengthen the Commission's supervisory role for structural actions (in 2008). An impact report on the action plan towards an integrated internal control framework was adopted by the Commission in early 2009 (COM(2009) 43), reporting completion of the actions. A report on the action plan to strengthen the Commission's supervisory role for structural actions was also adopted at the same time (COM(209) 42). The Commission is, on a continuous basis, further improving its own control systems and those of its partners wherever it identifies weaknesses.

The Synthesis Report, which is drafted on the basis of the assurance given and reservations made in the Annual Activity Reports, assesses the Commission's management achievements in a given year. It instructs Commission services to take action to address the causes of reservations in their Annual Activity Reports and to monitor progress regularly.

The Commission believes that a tolerable risk approach can give a clear view of the appropriate balance between error rates and the cost of controls, thus promoting sound and efficient stewardship of EU funds. It presented a communication on this issue in December 2008 (COM(2008) 866), using structural funds and rural development as illustrative examples. The Commission will make concrete proposals for tolerable risk in the areas of research, energy and transport and rural development in the first half of 2010 and on external aid, development and enlargement and administrative expenditure in the latter half of 2010.

Transparency (Commission staff working document, points 34-40)

The Commission has set up the Financial Transparency System which provides complete, searchable and comparable data on beneficiaries of centrally managed funds. For shared management, a portal on the Europa site provides links to national websites set up by the Member States where information is provided, in accordance with the implementing rules and guidelines adopted.

Moreover, a high-level EP-Commission group agreed on 22 April to create a common register for interest representatives.

The Commission considers that the existing code of conduct for Members of the Commission already contains comprehensive and appropriate rules on responsibility and ethics. Nevertheless, reflexions about possible further improvements of the existing framework are ongoing.

Financial Regulation (Commission staff working document, point 41)

The Commission will present its proposal for the future Financial Regulation by May 2010, in accordance with the applicable provisions. As in the past, the future Financial Regulation will be discussed and negotiated in close cooperation with the Parliament and Council. In particular, if the Lisbon Treaty has entered into force, the future Financial Regulation will be co-decided by the European Parliament and the Council.

Anti-Fraud Office (OLAF) (Commission staff working document, points 42-46)

In compliance with the regulations in place OLAF has immediate access to any information held by the Commission required to conduct an investigation, including information contained in databases.

The second protocol to the Convention on the protection of financial interests entered into force on 19 May 2009. It has been ratified by most Member States and provides specifically for direct cooperation between the European Commission and the judicial authorities of the Member States in the protection of the Community's financial interests.

As regards third countries' beneficiaries, all future contracts will continue to stipulate that their national authorities must cooperate fully with OLAF.

The Commission is reviewing its disciplinary practice with a view to speeding up the procedure, e.g. by closer collaboration between OLAF and the Investigation and Disciplinary Office of the Commission (IDOC).

B) SECTORAL ISSUES

Own resources (Commission staff working document, point 47)

The Commission has taken the action requested concerning the use of GNI data including FISIM for calculating Community own resources. The Commission's "proposal for a Council Decision on the allocation of financial intermediation services indirectly measured (FISIM) for the establishment of the Gross National Income (GNI) used for the purposes of the European Communities' budget and its own resources" (COM(2009) 238 final, adopted on 26 May 2009) provides for the retroactive allocation of FISIM to GNI for own resources purposes from 1 January 2005.

Agriculture and Natural Resources (Commission staff working document, points 48-53)

The CAP Health Check agreement brings further simplification to the Single Payment Scheme (e.g. reducing the types of entitlements, possibility to merge entitlements) and more decoupling of payments (e.g. arable crops, seeds, hops, animal premia). In terms of administration further decoupling means better controllability and no need to verify the respect of specific sectoral criteria but only of the general SPS rules (i.e. no need to verify that the crop has indeed been produced).

The Commission will continue to monitor closely the IACS procedure in Greece. Greece has complied with its action plan and created a new, operational LPIS. The new system will be used by the Greek authorities for the first time during the 2009 claims procedure.

As regards rural development expenditure, where most errors occur, the management and control system for the expenditure under the newly created European Agricultural Fund for Rural Development (EAFRD) has been aligned with the EAGF guarantee system as of 2007 in accordance with Council Regulation 1290/2005. Thus, in the future, the widely recognised advantages of the EAGF system will also apply to rural development expenditure. Moreover, Member States are obliged to ensure that all rural development measures are verifiable and controllable, as well as to ensure the respect of eligibility rules. The Commission has also given extra guidance to Member States on how to implement agri-environmental measures.

Fisheries subsidies (Commission staff working document, points 54-57)

The 2002 reform of the Common Fisheries Policy (CFP) already made important progress towards sustainability, in particular by moving towards better integration of environmental concerns into fisheries management and by removing some of the financial support that contributed directly to overcapacity. The Green Paper on the reform of the CFP of April 2009 launched a public consultation which is ongoing and which deals in particular with the question of public financial support to fisheries that is in contravention of CFP objectives.

Cohesion (Commission staff working document, points 58-70)

The Commission has incorporated in its audit strategy for 2009-2011 all on-going actions of its action plan to strengthen the Commission's supervisory role for structural actions (such as completion of national remedial action plans, suspension and correction procedures). In the report on implementation (COM(2009) 42), the Commission showed that the action plan has produced effective results and has committed itself to report in early 2010 on the initial impact of the action plan.

The Commission's audit work is based on a comprehensive risk assessment, which is regularly updated. This takes into account several factors, including previous audit results and the level of financial corrections, and leads to more rigorous audit work in more risky areas and programmes. However, this information should be interpreted with care, and in particular the level of financial corrections for a Member State is not as such indicative of the level of risk involved.

The Commission has continued to work on simplifying the 2007-13 rules, in particular on the system for reporting irregularities and the possibility to declare costs on the basis of flat rates, unit costs or lump sums.

Internal policies, including research (Commission staff working document, point 1 and points 71-91)

In research, the Commission has devised a multiannual control strategy for the 6th Framework Programme (FP6). It is based on the detection and correction of any errors which could not be identified by desk checks before a payment was made. This is achieved by a significant increase in the number of ex-post audits and the recovery of overpaid amounts. This has already contributed to a reduction in error rates in recent years.

The 7th Framework Programme (FP7) has brought about further improvements and a number of important simplifications. The introduction of the participants guarantee fund has been instrumental in considerably reducing the number of ex-ante financial checks and the use of protective measures. It replaces the collective financial responsibility of the contractors as laid down in FP6. The Rules for Participation for FP7 (Art. 31) provide that average costs can be charged as long as they do not deviate significantly from actual costs.

Furthermore, the single registration facility for participants avoids repeated requests to beneficiaries and improves data quality and coherence in all grant management systems. Further improvements will be achieved by the gradual introduction of fully electronic exchange systems for the whole chain of proposal and grant management in the frame of the e-FP7 initiative.

The Commission's detailed replies to the European Parliament's requests in specific policy areas under internal policies are set out in the attached staff working document.

External actions, NGOs and Development (Commission staff working document, point 2 and points 92-111)

The Commission has introduced measures to reinforce the controls at the level of implementing organisations, in particular the new standard Terms of Reference for audits and the development of CRIS-Audit for their follow-up. Given their recent introduction the Commission expects the full benefits of such measures to become clearer in the future. Meanwhile the Commission continues its efforts to further improve its systems, in line with

the Court's recommendations. It plans to put in place measures such as the development of specific guidance to help implementing organisations manage EC funds better and comply with EC rules, thus reinforcing preventive measures.

Recent evaluations of the Commission's cooperation with partner countries through the UN, and of aid delivery through the EIB and the development banks, conclude that this gives added value and tangible results, in particular for the larger trust funds. In addition, participation in such initiatives enabled the Commission to intervene in politically sensitive areas, where it would otherwise have been impossible to deliver aid. The Commission was able to benefit from the field presence and expertise of its multilateral partners in terms of implementation. The Commission will continue to work closely with the UN to improve the performance of verification missions and to enhance the transparency and visibility of Community contributions to the UN. In this regard, the 6th Annual FAFA Working Group meeting, which took place in April 2009, has agreed on terms of reference (TOR) for verification missions. These have already been used successfully on a trial basis for the past year.

Since 2008, the Commission has published the names of all beneficiaries of external actions funding, in compliance with Article 30.3 of the Financial Regulation. This list is comprehensive, and therefore not limited to "NGOs", a generic term for which there is no commonly agreed legal definition. For contractual aspects of funding, the Commission identifies the eligibility of Non-State Actors (NSA) for EC funding on the basis of their own national legal framework.

The Commission's replies to other requests concerning external relations, humanitarian aid, development policy and external relations are set out in the attached staff working document under the points concerning external actions and under the European Development Funds.

Pre-accession strategy (Commission staff working document, points 112-120)

Upon their accession on 1 January 2007, a Co-operation and Verification Mechanism was set up for Bulgaria and Romania, to help remedy certain shortcomings in the areas of judicial reform, the fight against corruption and, for Bulgaria, organised crime and to monitor progress in these areas through periodical reports. The latest reports were adopted on 22 July 2009 and transmitted to the European Parliament (COM(2009) 401 final and COM(2009) 402 final).

As regards candidate and potential candidate countries, the fight against corruption and organised crime is a key priority of all the Accession and/or European Partnerships. The Commission has also made it an integral part of its strategy for the implementation of the instrument for pre-accession assistance (IPA). All Multi-annual Indicative Planning Documents for IPA (MIPDs) now include the fight against corruption as a priority. More practical initiatives are to be proposed and prepared in co-operation with OLAF.

Administrative expenditure (Commission staff working document, points 121-126)

The Commission's detailed replies to the European Parliament's requests concerning European Schools, staff issues and Community buildings are set out in the attached staff working document. Information on building programming has been made available in the Preliminary

Draft Budgets 2008, 2009 and 2010, and at the discussions of the transfers for 2009⁶, including on office space needs for the years to come.

Follow-up measures in the light of the discharge (Commission staff working document, point 127)

The Commission follows-up all discharge requests except where they are not in line with the existing legal framework or its institutional prerogatives. Pursuant to Article 276(3) of the EC Treaty and Article 147 of the Financial Regulation it reports each year to the European Parliament on the measures taken in the light of the Parliament's observations and comments in its discharge decisions.

C) SPECIAL REPORTS ISSUED BY THE COURT OF AUDITORS

In its discharge resolution, the European Parliament included requests to the Commission concerning a number of special reports published by the Court of Auditors in 2007 and 2008. The Commission's replies to these requests are set out in the Commission staff working document (points 128-169).

II – EUROPEAN DEVELOPMENT FUNDS

As regards budget support programmes, vigorous efforts are being made to improve the analysis of eligibility and enhance the clarity of Financing Agreements and payment decisions. The information relating to all budget support programmes approved in 2008 are presented in summarised form in the Annual Action Programmes of 2008⁷.

In order to meet the demand for even greater transparency in the treatment of budget support, the Commission will provide more in-depth coverage of budget support issues in future annual reports on the "European Community's Development and External Assistance Policies and their Implementation".

Ex-ante controls constitute a major part of EuropeAid's current control strategy, so that any errors detected during such controls can be corrected before final payments are approved. They include, wherever necessary and appropriate, audits or specific technical certification by independent experts, depending on the type of contract/operator, resulting in a high intensity of checks at the level of the implementing organisations, notably before final payment.

More detailed information on all requests related to the EDF is set out in the Commission staff working document (points 170-183).

III – REQUESTS IN THE RESOLUTIONS CONCERNING THE AGENCIES

As set out in the Common Statement of 10 March 2009, the inter-institutional Working Group on Regulatory Agencies will address a number of key issues put forward by the participating Institutions, including the role and position of the Agencies in the EU's institutional landscape, the creation, structure and operation of these agencies, together with funding,

⁶ Transfers DEC5 and DEC24.

⁷ See http://ec.europa.eu/europeaid/work/ap/aap/2008_en.htm

budgetary, supervision and management issues. At technical level, a list of specific issues has been identified and agreed upon. Work is currently ongoing within the Group and the Commission will undertake the necessary action depending on the outcome of these discussions.

The Commission's replies to European Parliament's requests on various general matters concerning the regulatory agencies and to requests addressed to it concerning individual agencies are set out in the Commission staff working document (points 184-203).

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