



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 3 February 2010**

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**ADDENDUM 1 TO NOTE**

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from : Budget Committee

to : Permanent Representatives Committee/Council

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Subject : Discharge to be given to the Commission in respect of the implementation of the budget for the financial year 2008  
- Draft Council recommendation

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**Draft**  
**COUNCIL RECOMMENDATION**  
**of**

**on the discharge to be given to the Commission**  
**in respect of the implementation of the general budget**  
**of the European Union**  
**for the financial year 2008**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 319 thereof,

Having carried out the examination provided for in TFEU Article 319(1),

Whereas:

(1) According to the budget outturn calculation in the revenue and expenditure account for the financial year 2008:

- revenue amounted to	EUR 121 584 382 284.55
- expenditure amounted to	EUR 115 549 972 381.55
- cancelled payment appropriations (including earmarked revenue) carried over from year <i>n-1</i> amounted to	EUR 187 895 817.94
- appropriations for payments carried over to year <i>n+1</i> amounted to	EUR 3 912 336 487.46
- EFTA payment appropriations carried over from year <i>n-1</i> amounted to	EUR 2 324 641.86
- the balance of exchange-rate differences amounted to	EUR 497 711 435.90
- the positive budget balance amounts to	EUR 1 809 933 155.72

(2) Cancelled payment appropriations for the financial year amount to EUR 1 782 153 884.83;

(3) EUR 994 555 498.12 (83%) of the EUR 1 192 715 675.21 in appropriations for payments carried over to year *n* have been used;

(4) The observations in the report by the Court of Auditors for the financial year 2008 call for certain comments by the Council, which are ANNEXED hereto;

(5) The Council attaches importance to its comments being followed-up and assumes that the Commission will implement all of the recommendations in full, without delay;

(6) The Council has adopted conclusions concerning special reports for 2008 and 2009, as set out in the addendum hereto;

- (7) Following the examination referred to above, implementation by the Commission of the budget for the financial year 2008 taken as a whole, on the basis of the observations made by the Court of Auditors, is such as to allow a discharge to be given in respect of such implementation;

HEREBY RECOMMENDS the European Parliament, in the light of these considerations, to give a discharge to the Commission in respect of the implementation of the budget of the European Union for the financial year 2008.

Done at Brussels,

For the Council  
The President

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## INTRODUCTION

1. The Council notes with satisfaction the positive trend over the recent years as regards an improved financial management of EU funds in an increased number of policy areas. However, it regrets that the Statement of Assurance (DAS) remains adverse for a significant part of the budget for the financial year 2008.

In this respect, it welcomes the notable improvements in the management and control of funds, showing evidence of the progress made towards the principal objective of achieving a positive DAS. The Council acknowledges that it would be unrealistic to obtain immediate effects of the remedial actions taken by the Commission and the Member States. It urges all responsible actors to continue to improve the financial management of EU funds.

2. The Council notes with satisfaction that the annual accounts of the European Union present, for the second consecutive year, fairly in all material respects the financial position of the EU as of 31 December 2008 and the results of their operations and cash flows for the year then ended.

The Council welcomes the unqualified audit opinion of the Court as regards the legality and regularity of the underlying transactions for "Revenue", commitments for all policy areas and payments for "Education and Citizenship" and "Administrative and other expenditure".

The Council is particularly satisfied with the improvements made in the area of "Agriculture and natural resources" for which the Court's opinion on the underlying payments was for the first time qualified only in respect of "Rural Development". However, it notes with dissatisfaction the qualified opinion for the area of "Economic and financial affairs".

The Council regrets that the Court's opinion for "Cohesion", "Research, energy and transport" and "External aid, development and enlargement" remained adverse, while noting that certain improvements have been identified in these policy areas, too.

The Council notes with satisfaction that the Court's report does not suggest any case of potential fraud.

3. As in the previous year, the Council stresses the continuing need for simplification of expenditure schemes. It continues to encourage the Commission to propose clear and simple rules and regulations whenever possible, both at the moment of setting-up new programmes and when revising existing regulations and programmes. Taking note of the improvements already achieved and expected through the streamlined legislation for the current programming period, it calls for further efforts in the preparation of programmes for the next multiannual financial framework.

However, the Council draws attention to the necessity to maintain an appropriate balance between simplifying eligibility rules and targeting expenditure towards intended objectives, while not undermining the level of assurance provided by improved controls.

4. The Council recalls that, following the Treaty on the Functioning of the European Union, the Commission shall implement the budget in cooperation with the Member States, in accordance with the provisions of the regulations made pursuant to Article 322 of the above mentioned Treaty, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall continue to cooperate with the Commission to ensure that appropriations are used in accordance with the principles of sound financial management.

In this respect, the Council recalls the key role of Member States in improving financial management and accountability of EU funds under shared management, in particular through sufficient and appropriate internal control systems under the relevant legislation.

5. The Council insists on the importance of further improving the efficiency, effectiveness and consistency of controls, in order to provide reasonable assurance of the sound financial management of funds by all parties involved.

Moreover, the Council is of the opinion that the control burden must remain proportionate to the benefits derived from controls undertaken at different levels. It asks the Commission to cooperate as closely as possible with the Member States' authorities so that best use is made of all available information.

6. The Council invites the Commission and the Court to promote better coordination between them on audits in order not to duplicate audit efforts. Moreover, they are invited to continue to cooperate, in full respect of their individual competences and independence, towards a common understanding of the legislation.
7. The Council emphasises the multiannual character of EU expenditure, which should be duly taken into account. In this context, a transparent and reliable correction and recovery mechanism forms part of an efficient control framework. Furthermore, it considers that the effectiveness of controls should also be assessed on a multiannual perspective.
8. The Council encourages the Commission to continue its work on the concept of tolerable risk of error, taking into consideration the balance between effectiveness and cost of controls, and looks forward to examining the Commission's proposals on this issue.

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## CHAPTER 1

### THE STATEMENT OF ASSURANCE AND SUPPORTING INFORMATION

#### 1. Reliability of the accounts

The Council welcomes the favourable opinion given by the Court on the reliability of the annual accounts of the European Union for the financial year 2008 drawn up in accordance with the provisions of the Financial Regulation of 25 June 2002 and the accounting rules adopted by the Commission's accounting officer. It notes with satisfaction the Court's statement that the accounts present fairly, in all material respects, the financial position of the EU as at 31 December 2008 and the results of their operations and cash flows for the year then ended. The Council encourages the Commission to assure that this high quality of EU accounts is maintained.

While valuing the Commission's efforts to improve the accounting control environment at the level of its Directorates-General which have contributed to a strengthening of the financial reporting framework and accounting systems, the Council asks the Commission to take further steps towards the closing of outstanding cross-cutting issues relating to interfaces between local financial management applications and the central accounting system, in order to minimise the risk to the reliability of the accounts, as well as towards the improvement of the quality of basic accounting data, notably regarding the correct application of "cut-off" principles during the closure procedure.

As regards the consolidated balance sheet as at 31 December 2008, the Council calls on the Commission to pay due attention to the remarks presented by the Court in order to improve the completeness and accuracy of the basic accounting data, notably on pre-financings and the recovery of undue payments. Furthermore, the Council stresses the need for a timely transfer of the assets of the EGNOS and Galileo programmes to the Commission's accounts.

## 2. **Legality and regularity of the underlying transactions**

The Council notes that, on the basis of its audit of supervisory and control systems and transactions, the Court was able to give non-adverse opinions on an increasing number of areas and to state marked improvements in other areas, while a significant share of spending still continues to be affected by a material level of error.

The Council appreciates the Court's unqualified opinion for "Revenue", commitments for all policy areas and payments for "Education and Citizenship" and "Administrative and other expenditure". The Council notes the Court's statement that supervisory and control systems for "Revenue" and "Administrative and other expenditure" function effectively and that the error range estimated by the Court for "Revenue", "Education and Citizenship" and "Administrative and other expenditure" lies below the 2% materiality threshold.

The Council is particularly satisfied with the improvements made in the area of "Agriculture and natural resources" for which the Court's opinion on the underlying payments was for the first time qualified only in respect of "Rural Development", although progress in the latter has been made since 2007. The Council welcomes the Court's statement that the estimated error range for this policy area taken as a whole lies below the 2% materiality threshold. The Council notes the Court's overall assessment that supervisory and control systems for this area are only partially effective, which also applies to "Economic and financial affairs" with an error range estimated between 2% and 5%.

The Council regrets that the Court's opinion for "Cohesion", "Research, energy and transport" and "External aid, development and enlargement" remained adverse, as the Court found that the supervisory and control systems were only partially effective and that the error range estimated by the Court was above 2%, thus exceeding the materiality threshold.

Regarding expenditure in the area of "Cohesion", the Council regrets the Court's finding that at least 11% of the total amount reimbursed to 2000-2006 Cohesion policy projects should not have been reimbursed. The Council recalls that irregularities in this policy area are almost entirely the result of eligibility errors and that irregularity does not mean fraud. The Council points out that correction mechanisms exist to recover reimbursements erroneously paid and that the corresponding funds are not lost. It asks the Commission to indicate in the annual accounts the volume of recoveries from previous years, including recoveries relating to funds under shared management, and the Court to comment on this in its Annual Report.

### **3. The Court's audit approach**

The Council takes note of the Court's audit model used for system evaluation and transaction testing, and of the Court's DAS methodology applied for the assessment of the audit findings.

The Council stresses the importance of providing more transparent and comparable information, by evaluating the degree of risk inherent to the different types of payments, concentrating audit efforts on interim and final payments rather than advances, and by taking into account the size of funds at stake in determining the audit populations and thereby the coverage of the individual specific assessments.

The Council takes note of the Court's reflections on its DAS approach, including a more proportionate and risk-based audit method, segregated information on advances and the treatment of major funds in the policy groups of "Agriculture and natural resources" and "Cohesion" subject to human resources constraints as well as a more balanced clustering of the smaller policy areas in the context of a multiannual rotation approach when defining the coverage of individual specific assessments (and thereby the chapters of the Annual Report).

The Council invites the Court and the Commission to intensify their coordination and to cooperate closer with national authorities, with the aim of making best possible use of the results of controls and audits carried out at national level, while respecting the individual competences and independence. Moreover, the Court is invited to take into account and, whenever possible, rely on the results of the work of national control, audit and certifying authorities.

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## CHAPTER 2

### COMMISSION INTERNAL CONTROL SYSTEM

The Council welcomes the progress made by the Commission in 2008 to improve its internal control and to address the weaknesses in the control and supervisory systems. It also notes with satisfaction the Court's opinion that the Commission's Synthesis Report gives a reliable picture of the budget implementation in different policy areas, that the revised internal control standards have a high level of implementation and that further progress has been identified in the Commission's supervisory and control system.

#### **1. Commission's Synthesis Report, Annual Activity Reports and Declarations by the Directors-General**

The Council notes with satisfaction the measures taken by the Commission to address the deficiencies reported on in the Commission's Synthesis Report, Annual Activity Reports (AARs) and Declarations by the Directors-General. It notes, in particular, the new guidance on clearer explanations for the reservations in the AARs, the re-inforcement of the peer review process and the guidelines for the services on conclusions to be drawn on the effectiveness of their internal control systems.

#### **2. Annual summaries of available audits and declarations**

The Council takes note of the transmission by all Member States of annual summaries at the appropriate national level of the available audits and declarations on time, in full compliance with the provisions of Article 53b(3) of the Financial Regulation and Article 42a of its Implementing Rules. It notes the Court's conclusion that the quality of these annual summaries has improved.

The Council recalls the Court's suggestion to the Commission to add value to the process of annual summaries by identifying common problems, possible solutions or best practices and using this information in its supervisory role.

### **3. Supervisory and control systems**

The Council acknowledges that the Commission has been able to demonstrate a consistently high degree of implementation of internal control standards in recent years and that the Commission considers that it has now implemented its "Action plan towards an Integrated Internal Control Framework".

However, the Council regrets that there is still no evidence that the actions undertaken to improve supervisory and control systems have been effective in mitigating the risk of error in the policy areas related to "Rural development", "Cohesion", "Research, energy and transport" and "External aid, development and enlargement".

The Council recalls that, in the context of assessing errors and taking corrective actions, due attention should be paid to the multiannuality of the programmes that are checked at the end of the programming period in addition to the controls made during that period.

The Council acknowledges that, as stated by the Commission, any simplification of the rules and all improvements to the Commission's controls will need time to have an effect on the reduction in the level of errors. In this context, it takes note of the "Action plan to strengthen the Commission's supervisory role under shared management of structural actions" and looks forward to the forthcoming report on the first impact of this Action plan.

The Council welcomes the measures taken by the Commission to provide training for staff involved in controls for the managing and certifying authorities of the Member States, enabling participants to give guidance and disseminate best practices. It notes the information given by the Commission regarding its cooperation with Member States on guidance relating to the Cohesion policy and to the consultation of the Member States through the management and technical committees. It believes that this work contributes to strengthening the capacities of the staff at all levels of control and invites the Commission to continue these efforts.

The Council notes that the Commission has enhanced its communication and cooperation with the Court by working closely with it when preparing guidance rules and procedures. It notes further that the Commission and the Court cooperate by discussing methodology and rules, notably common interpretations of the audit findings and the common understanding of rules. The Council takes note of the useful practice of organising tripartite meetings between the Court, the Commission and Member States to jointly examine beforehand the audit findings of the Court, and invites all actors to pursue actively this work.

While acknowledging the work done by the Commission towards common audit standards and reciprocal understanding and acceptance of results between the Commission and the Member States, the Council recalls that this must not mean that, as a result, there is an increase in administrative burden and control costs.

The Council also recalls that the controls and the assurance they provide should be improved by building on existing control structures and promoting simplification with a view of improving the cost-benefit ratio, based on the single audit model. As regards the simplification, the Council fully agrees with the recommendation of the Court that simplified eligibility conditions, control structures and procedures have to be prioritised in the context of future legislation.

The Council underlines the importance of ensuring that the supervisory and control systems address the risks effectively at all implementation levels and that in this regard the attention is primarily directed to those expenditure areas where a high level of errors is reported. Relating to the assessment of the costs and value of controls in different policy areas, it takes note of the Commission's intention to present concrete proposals on the tolerable risk of error relating to various policy areas.

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## CHAPTER 3

### BUDGETARY MANAGEMENT

The Council notes that the implementation level of the 2008 budget is similar to the spending rates in 2007. However, the Council expects the impact of amending budgets in the implementation rate to appear more clearly in order to give a more accurate picture. Moreover, transparency, consistency and comparability of the information on implementation and surplus should be improved by reconciling the figures mentioned in the different documents. The Council considers it appropriate to present all information needed to calculate different implementation rates throughout the whole budgetary procedure, from the draft budget presented by the Commission to the final authorised appropriations.

The Council reiterates that over-budgeting has to be avoided and insists that a realistic budgeting from the stage of the draft budget presented by the Commission onwards remains an essential element of good budgetary management. However, it shares the Court's statement that reducing appropriations for payments through amending budgets represents good financial management by adjusting to changes and reducing the budgetary surplus.

Concerning the 2000-2006 Structural Funds programmes, the Council welcomes the fact that the implementation of payment appropriations is higher than expected. However, it regrets that the implementation of payment appropriations for the 2007-2013 Cohesion programmes is lower than expected and that the initial payment appropriations were reduced by EUR 4.5 billion due to a delay in implementation.

The Council calls on the Commission to encourage Member States to transmit the remaining compliance assessment documents of the Management and Control Systems as soon as possible, as well as to pursue its efforts to achieve progress in the compliance assessment procedure.

The Council welcomes the improvement of the accuracy of Member States' expenditure forecasts in the area of Structural Funds, notably for the 2000-2006 period. It encourages the Commission and the Member States to continue their efforts concerning the 2007-2013 period, in order to reduce the over-estimation rate.

The Council notes with concern that the overall level of outstanding budgetary commitments (RAL) continues to increase. The highest proportion is related to the Cohesion area. Nevertheless, the Council notes that almost 80% of RAL are from 2007 and 2008 and therefore related to the current financial framework. Moreover, the high level of RAL for the Cohesion Fund, responsible for about two thirds of the total amount, is mainly due to the regulatory provisions for this fund for the 2000-2006 programming period ending the payments when the projects reach 80% of their budget, situation of the majority of projects.

The Council acknowledges that the "*n+2*" rule has imposed pressure for a timely liquidation of commitments.

## CHAPTER 4

### REVENUE

The Council welcomes the Court's conclusions that the Member States' declarations and payments of traditional own resources, as well as the VAT- and GNI-based contributions were free from material error. It also notes that the functioning of the supervisory and control systems was overall satisfactory.

#### 1. Traditional own resources

The Council notes with concern that the problems relating to the management of B-accounts persist.

Considering the complexity of most cases of post-clearance recovery of customs duties, as well as the fact that many B-accounts are often kept by local customs offices, the examinations regularly performed by the Commission and the guidelines issued in December 2007 are a useful response to the need to increase the awareness of using these accounts appropriately. Therefore, the Council encourages the Commission to continue its surveillance and guidance activities in order to ensure the correct establishment and recovery of duties taking into due consideration this complexity.

Moreover, the Council welcomes the fact that the Commission has selected Member States' control strategies for traditional own resources as a general inspection theme for 2009. This will allow, in particular, to verify the adoption of risk analysis in the formulation of the control programmes as well as the implementation of a balanced set of physical checks on imports and audits of operators based on post-clearance checks.

## **2. VAT-based own resources**

The Council notes that the number of long-outstanding reservations regarding the VAT own resources is still high. Stressing the importance of reservations as a tool for keeping any doubtful elements in macro-economic data open to correction for longer periods of time, it welcomes the initiative launched in 2008 by the Commission to improve the management of reservations and the meetings that are organised in this context.

Therefore, the Council encourages the Commission to continue its pro-active approach, which should result in significant progress in 2009, in order to speed up the lifting of VAT reservations.

## **3. GNI-based own resources**

The Council, welcoming the fact that a very considerable number of reservations related to GNI data were lifted in 2008 and 2009, encourages the Commission to continue its efforts to further improve the documentation of the checks that it performs on the reservations.

It notes with satisfaction that the Commission, following-up the remarks made by the Court in previous years, has carried out activities aimed at developing and sharing best practices between Member States and has set up, in April 2009, guidelines related to the implementation of the direct verification approach that it has started to apply to Member States' GNI inventories since 2007.

## CHAPTER 5

### AGRICULTURE AND NATURAL RESOURCES

The Council notes with great satisfaction that, for the first time, the overall error rate related to the transactions underlying the expenditure declared for this policy area, taken as a whole, is below the materiality threshold.

The Council considers that this result is partly the consequence of new legislative provisions, as well as of thorough and constant efforts made by the Member States and the Commission by improving their supervisory and control systems and providing more and better guidance.

As for rural development expenditure, the Council notes that, although it was found still affected by a higher incidence of errors than in the European Agricultural Guarantee Fund (EAGF), the error level has decreased with respect to previous years. The errors detected mainly affect the transactions' accuracy and, to a lesser extent, their eligibility, and were relatively small in financial terms.

Therefore, the Council encourages the Commission and the Member States to continue addressing the weaknesses of the systems, most of which the Court assessed as partially effective, so that the positive trend observed persists in the present and in future years.

#### **1. Effectiveness of systems related to regularity of transactions**

The Council notes with satisfaction that the Court reiterated its conclusion that the Integrated Administrative Control System (IACS) continues to prove generally effective in limiting the risk of error or irregular expenditure.

With a view to addressing specific deficiencies, particularly within the SPS and SAPS schemes, the Council considers that close cooperation between the Commission and the Member States is crucial. The reliability of databases and the correctness of administrative procedures will be enhanced mainly by providing implementing entities and beneficiaries with clear and simple guidelines, particularly in relation to eligibility conditions.

Moreover, the Council is of the opinion that a consistent interpretation of the rules in force and a coordinated approach between the Commission and the Court are key tools for improving the controls' effectiveness and, at the same time, maximising their efficiency.

With respect to the Court's observation related to the definition of farming activity, the Council takes note of the Commission's position, which considers that introducing further complicated rules and exceptions would result in even more complex and expensive controls, contrary to the spirit and the efforts of simplification.

As for the specific deficiencies detected by the Court in some of the audited paying agencies, the Council also expects good results from the implementation of the action plans set up by the Member States concerned.

## **2. Effectiveness of systems related to recoveries and financial corrections**

In order to follow-up and correct the errors detected, the Council fully agrees with the Commission on the importance of the conformity clearance and of the financial corrections imposed through this mechanism.

The Council stresses once again that effective and rapid recovery actions represent not only an indispensable instrument for the protection of the Union's financial interests, but also an additional incentive for Member States to improve their Management and Control Systems.

With respect to the method of calculating conformity adjustments, the Council asks the Commission to base the recoveries, to the maximum possible extent, on the actual amounts of the irregular payments subject to appropriate information being provided by Member States, reserving the application of flat-rate corrections to exceptional cases.

The Council takes note of the Court's intention to issue a special report on the clearance system in Agriculture.

### **3. Rural development**

The Council considers that the simplified rules and conditions set in the new regulatory framework for the 2007-2013 programming period, coupled with tighter and more effective controls, have resulted in a lower error rate for this policy area, which remains nonetheless an error-prone one, due in large part to the inherent complexity of rural development rules and conditions.

It acknowledges that good progress has been achieved in ensuring that all measures, including agri-environmental ones, are verifiable and controllable and that eligibility criteria are correctly applied.

Moreover, Council Regulation (EC) No. 1290/2005 foresees for the post-2007 period to align the management and control system for the expenditure under the EAFRD with the EAGF system, thus expanding the advantages of the latter to the rural development expenditure.

However, further efforts still need to be made and simplification remains a priority. Therefore, the Council welcomes the additional guidance that the Commission has been providing to Member States on how to implement agri-environmental measures, but keeps on calling for concrete, streamlined and practical tools to be supplied at the beneficiaries' level, such as user-friendly standard forms and timetables, in order to improve the common interpretation of rules, prevent errors and improve the effectiveness of the financial aid.

#### 4. Environment, Fisheries, Health and Consumer protection

The Council, while acknowledging the control strategy set up by the Commission in these areas, emphasises the importance of continuing to improve its functioning.

Thorough ex-post audits are essential for detecting errors and to provide a basis for all necessary financial corrections, but also to determine the origin of the most recurrent errors in order to tailor preventive measures.

In this respect, the Council welcomes the fact that the audit team's size in the Directorate-General for the Environment has recently been increased and that, as a consequence, the audit activity has improved since 2008.

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## CHAPTER 6

### COHESION

The Council, being aware that the Court's observations concentrate on the 2000-2006 programming period, representing approximately 68% of the expenditure, notes with great concern the Court's estimate that again in 2008 at least 11% of the total amount reimbursed to 2000-2006 Cohesion policy projects should not have been reimbursed. While noting the absence of potential fraud cases in the Court's report, the Council urges the Commission and the Member States to remedy this situation without delay.

However, the Council is aware that this error rate is due to systematic errors related to the 2000-2006 programming period and that the new 2007-2013 programming period, not yet audited by the Court because in 2008 there was still only a very low level of interim or final payments, is organised following new regulations.

It welcomes the fact that the Commission has already taken remedial measures, namely in 2008 the Action plan to strengthen the Commission's supervisory role in structural actions. The Commission had implemented 28 out of 37 actions at the end of 2008 and the entire impact of the Action plan can only be assessed when the 2007-2013 reimbursements will start being audited. Consequently it is necessary to wait for visible improvements during the new programming period. Nevertheless, the Council urges the Commission and the Member States to make quick adjustments as soon as problems become apparent, notably following on-the-spot audits.

#### **1. Spreading of information and simplification**

The Council notes the Court's findings that a major part of the estimated error rate is related to eligibility errors, such as conditions not met, failure to respect procurement rules and inclusion of non-reimbursable costs. The Council shares the Court's recommendation that the Commission should focus the guidance given to the Member States on this most frequent type of errors.

In this context, the Council welcomes the fact that the Commission performs its supervisory role not only through its audit activity, but also through programme negotiations, monitoring committees, meetings with managing and audit authorities, guidance and seminars. It encourages the Commission to continue its efforts. Exchange of best practices and spreading of information have to be developed or further improved, and single points of contact could be created to promote the uniform interpretation of the procedures.

The Council is also convinced that simplification should lead to reductions in the level of errors and the administrative burden. It welcomes the simplification measures recently introduced by the Commission in relation to the simplified cost options (flat rates and lump sums). Even if it is aware that further simplification is not an easy task, the Council encourages the Commission, in cooperation with the Member States, to make concrete proposals aiming at further simplification of procedures, and to continue its efforts notably concerning simplified cost calculations.

## **2. Supervisory and control systems**

The Council regrets the Court's conclusion that, concerning the 2000-2006 programming period, the Member States' systems for correcting errors found by national controls are in most cases only at least partially effective.

However, it welcomes the fact that, in regulations relating to the 2007-2013 programming period, control provisions are strengthened and the respective responsibilities of Commission and Member States are clarified. In this respect, it stresses the key role of Member States and Commission in improving financial management of EU funds under shared management under the relevant legislation. It expects that the establishment of an audit authority for each programme will be a source of improvement.

The Council regrets the shortcomings identified by the Court in the reporting of corrections by the Member States to the Commission. However, it notes that the system for reporting has been clarified and strengthened for the period 2007-2013 and that the Commission is maintaining its efforts to improve the reporting. The Council urges the Member States to continue their action and encourages the Commission to maintain its efforts in order to obtain reliable and complete information.

### **3. Financial corrections**

The Council notes with satisfaction the improvements achieved in the application of financial corrections and in the level of acceptance of these corrections by the Member States. However, it considers that the application of flat-rate corrections should be reserved to exceptional and duly justified cases.

The Council expects the Commission to maintain its efforts, in cooperation with Member States to further improve recovery procedures and reporting relating to the 2000-2006 programmes. However, the Council recalls that the final objective is not to increase the amount of corrections but to maximise the correct use of the funds.

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## CHAPTER 7

### RESEARCH, ENERGY AND TRANSPORT

The Council welcomes the Court's assessment that in recent years, in line with Council's recommendations, the Commission has reinforced its control systems and simplified the funding rules for research projects, and that these measures have contributed to a reduction in the level of error for these policy areas managed almost entirely by centralised direct management.

The Council invites the Commission to pursue its efforts to reduce complexity and to ensure a rigorous and cost-effective application of controls, in particular aiming at improving the reliability of audit certificates, and through effective implementation of its ex-post audit strategy, imposing penalties where appropriate, and making timely recoveries or adjustments in cases of undue reimbursement of claimed costs.

#### 1. Regularity of transactions

The Council regrets that a number of transactions audited by the Court were still affected by material errors. It is concerned that, according to the Court, most of the errors found were related to the reimbursement of ineligible costs in interim and final payments to research projects under the Sixth Framework Programme for research and technological development (FP6). The most common type of error remained the reimbursement of ineligible personnel and indirect costs.

The Council, however, notes with satisfaction that the advances and the interim payments audited under the Seventh Framework Programme for research and technological development (FP7) were free of errors.

It welcomes the fact that in line with the Council's recommendations on the discharge for 2006 and 2007, the Commission has taken corrective actions for the errors reported in the DAS for 2006, although the Court identified some delays, and that, concerning late payments, the Commission has considerably improved its performance in 2008 in making timely payments to beneficiaries.

## **2. Effectiveness of systems**

The Council welcomes the Court's findings that no specific weaknesses were identified in ex-ante desk checks of cost statements. The Council, however, takes note of the criticisms expressed by the Court concerning the correctness of FP6 audit certificates delivered by certifying auditors. It invites the Commission to continue to provide support and guidance to beneficiaries and certifying auditors, also in the context of FP7.

In the context of the preparation of the Eight Framework Programme for research and technological development (FP8), special attention should also be paid to work concerning the simplification of the funding rules, while securing the effectiveness of control systems.

Concerning the Commission's ex-post audit strategy, the Council welcomes the increase of the coverage of expenditure by ex-post audits, as requested by the Council and the Court, and of the number of completed audits. It stresses the need to ensure sufficient coordination within the Commission, especially concerning the follow-up of audit results.

Regarding recoveries and sanctions, the Council takes note of the low amount of recoveries initiated by the Commission, and that it has still not imposed any sanctions. It wishes to recall in this context the content of its recommendation on the discharge for 2007 where it called for a more effective use of the available sanction mechanisms, which should be used as an incentive for beneficiaries to improve the quality of their cost statements.

## CHAPTER 8

### EXTERNAL AID, DEVELOPMENT AND ENLARGEMENT

The Council regrets that the transactions relating to this policy area were still affected by a material level of error of legality and/or regularity and that the frequency of errors in the transactions was higher than in the previous financial year. The Council recognises, however, the serious work done by the Commission to improve the financial controls in this area that entails controls to be made all over the world.

The Council is aware that, due to the multiannual nature of the programmes, the errors detected during the course of the project can be remedied in a later year than the one under examination.

As regards the types of errors, the Council notes with dissatisfaction the eligibility errors in the transactions and the irregularities in the procurement procedures.

The Council, while welcoming the fact that the key internal controls made by the Commission were for all its components effective at DG AIDCO (EuropeAid) headquarter level, is disappointed that the overall assessment for all DG's in this policy area is that the supervisory and control systems are only partially effective, in particular regarding ex-post controls in DG RELEX.

The Council notes with concern the Court's statement that audit reports and supporting documents on projects implemented by UN agencies are difficult to receive and invites the Commission to continue to improve the relations between UN agencies and the EU in this respect.

## **1. Ex-ante and ex-post controls**

The Council notes that the checks made at headquarter level continue to be effective but regrets that this is not the case at delegation level, in particular regarding ineffective and insufficient controls, monitoring of and support to organisations at project implementation level and weaknesses in the verification of payment conditions for budget support. The Council invites the Commission to continue adopting measures to improve the effectiveness of the Commission's ex-ante control system for payments and contracts in DG AIDCO and DG RELEX. It also asks the Commission to continue to strengthen the support provided to the organisations implementing EU-funded projects and to monitor them more closely.

The Council notes the shortcomings relating to ex-post controls and weaknesses in the financial management and supervision of financial information of the projects in DG RELEX and invites the Commission to ensure that audits and ex-post controls are planned realistically and are followed up closely. The Council also recalls the importance of proper documentation and systematic analyses of the results of the audits and ex-post controls.

## **2. Management and supervision**

The Council notes that the management and supervision need to be improved at the level of DG AIDCO delegations and DG RELEX, since the Court found their functioning only partially effective. The Council also notes that the Commission has provided printed guidelines, maintained a EuropeAid website on financing and contracts, and organised training and on-the-spot advice for the delegation staff. It welcomes the assurance of the Commission that financial management support, monitoring and training can always be expanded and improved.

As regards the budget support payments, the Council recalls the weaknesses in the process of verifying the fulfilment of the payment conditions and counts on the Commission to continue promoting awareness of the need for a more structured and formal approach in the assessment of budget support payments and strengthening verification in this area.

### **3. External audits/closure audits**

The Council welcomes the improvements in the use of external audits in DG AIDCO's internal control framework and invites the Commission to pay special attention to its risk management process as a complement to the improvements already made in the audit methodology and other recent reforms.

The Council points out that weaknesses persist in the audit planning, in the audit module Common RELEX Information System (CRIS) and in the monitoring of the audit results. It notes that the Commission has engaged itself to improve audit planning in a realistic way. The Council welcomes the work already done to substantially revise the audit methodology, making use of audit planning, and the increase in the number of audits completed. It invites the Commission to pursue its efforts and expects that the recent compulsory use of CRIS, together with the system created to analyse the audit results, contribute efficiently to reducing the weaknesses.

### **4. Follow-up review of special report No. 5/2006 on the MEDA programme**

The Council notes that the Commission has not followed the Court's recommendations relating to the definition of strategic objectives and adequate performance indicators in view of an efficient impact assessment of the EU actions for the period as a whole and that it has delayed the final MEDA evaluation report. In this context, the Council welcomes the Commission's engagement to specify these indicators at the moment of formulation of a programme and to issue the report that had been delayed due to a late adoption of new MEDA financing decisions.

## CHAPTER 9

### EDUCATION AND CITIZENSHIP

The Council welcomes the clear progress made in the implementation of transactions in this policy area, as the Court's audit revealed that the underlying payments are free from material error. It notes that advance payments, which constitute the majority of payments audited and contain low risk, essentially lead to this positive result as the Court found that the interim and final payments remained affected by material error.

The Council regrets that the Court's assessment of selected supervisory and control systems in this policy area as a whole resulted in the conclusion that these systems are only partially effective in ensuring the regularity of payments, and calls on all stakeholders to continue to improve the control and supervisory systems. It considers that the multiplicity of funding schemes for various thematic areas and types of projects constitutes a challenge even for well functioning supervisory and control systems.

The Council notes with satisfaction the measures taken by the Commission to simplify the rules including the vast introduction of lump sum payments, which corresponds to the Council's recommendation on the discharge for 2007, and invites the Commission to pursue all possible actions of simplification.

The Council welcomes the measures taken by the Commission to ensure an efficient monitoring of payment times and the fact that ex-post audit results are now accessible for other DGs in the ABAC system and can thus increase the efficiency and effectiveness of audits.

It notes that the majority of the payments audited by the Court consists of advances with a limited conditionality and with a low risk of error and awaits the Court's reflection on this issue.

## 1. Indirect or shared management of multiannual programmes and Funds

The Council notes with satisfaction that the Commission enhanced the verification of the certification of the management structures carried out by national entities, which contribute to a higher level of reliability and added value of these declarations. It values a lot the more precise guidelines issued by the Commission and the organisation of specific meetings with the national authorities to this effect.

While welcoming the fact that the Commission has refined the control objectives by setting those for the primary controls in a specific guide constituting an integral part of the single agreement between the Commission and the national agencies and by updating the guidelines relating to secondary controls for national authorities, the Council invites the Commission to complete the latter by developing the guidance further and making it more prescriptive as recommended by the Court.

It notes with satisfaction the rating method used for the follow-up of corrective measures linked to precautionary measures and the fact that corrective measures are followed-up in the context of the assessment of the statement of assurance and the monitoring visits.

The Council believes that the level of error in the transactions has been reduced significantly by the provision of ex-post declarations on the correct use of resources and the reliability of systems and control procedures introduced in the legislation for the 2007-2013 period.

It recommends the Commission to involve itself in a closer supervision of the annual ex-post declarations process, with more thorough monitoring visits and direct verification if the controls described are adequate and fully applied.

## 2. Direct management of communication expenditure

The Council welcomes the fact that the Commission has reinforced the ex-ante control system by setting up an ex-ante and ex-post control unit and by drawing up an action plan to tighten up the top-level ex-ante controls and supervisions made by the authorising officers including the consistent use of adequate check lists.

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## CHAPTER 10

### ECONOMIC AND FINANCIAL AFFAIRS

The Council notes that, except for the payments made under the Sixth Framework Programme for research and technological development (FP6), the transactions in this policy area were free from material error. It also notes that, of the three supervisory and control systems examined by the Court, two were assessed as effective and one as only partially effective.

It notes with satisfaction that the Commission has taken significant measures in order to address errors and weaknesses affecting respectively the regularity of transactions and the effectiveness of systems, in line with the Council's recommendation on the discharge for 2007.

The Council welcomes in particular the simplifications introduced in the cost reimbursement system. It encourages the Commission to continue this approach, more particularly for the research programmes, also by intensifying actions aimed at informing beneficiaries and certifying auditors about recurrent errors, as well as guiding their correct application of the rules governing the eligibility of costs.

It also welcomes the fact that the Commission has reinforced its ex-post control strategy, based on systematic detection and correction of any errors which were not identified before issuing the payment. The Council emphasises that the thorough recovering of any amount overpaid to beneficiaries is an essential result expected from the common audit strategy put in place by the Commission.

However, the Council is concerned about the fact that for 2008 the Court found out that the audit certificates, mainly for projects financed under the FP6, were only partially reliable in assuring the legality and the regularity of cost declarations. While noting that actions have been taken to improve the quality of audit certificates for FP7, it insists on the importance of this instrument as a contribution to prevention and early correction of errors and encourages the Commission to increase its efforts for upgrading the certifying auditors' know-how and actively monitoring their performance.

## CHAPTER 11

### ADMINISTRATIVE AND OTHER EXPENDITURE

#### 1. Specific assessment in the context of the Statement of Assurance

The Council notes with satisfaction that in 2008 all institutions continued to operate satisfactorily the supervisory and control systems required by the Financial Regulation and that the sample of transactions underlying the accounts continued to be free from material error.

#### 2. Specific issues regarding administrative expenditure

The Council takes due note of the Court's observations concerning the budgeting of funds for the Secured European System for Automatic Messaging (SESAME). It will assess the situation in the context of the annual budgetary procedure.

The Council is concerned with the various problems identified by the Court in the functioning of the new Individual Rights Information System (IRIS) used to manage staff entitlements, including the calculation of salaries, implemented by the Office for Administration and Payment of Individual Entitlements (PMO). The Council asks the PMO to take all measures necessary to remedy these shortcomings, in order to avoid in the future the problems identified by the Court.

It also urges the PMO to correct the weaknesses identified by the Court in the controls implemented to ensure that calculations concerning the transfer of acquired pension rights are performed correctly, and that reimbursements are correctly recovered in the event of erroneous calculations. The PMO is requested to reinforce its internal controls in this field.

The Council invites the Commission to take duly into account the remarks made by the Court when assessing the workings of the pension scheme and fund for local staff at Commission delegations. The Council takes note of the Commission's statement according to which the Local Staff Provident Fund's assets are considered sufficient to cover the individual rights of local staff. The Council welcomes the presentation of a detailed actuarial study before the Commission adopts a legislative proposal concerning the future of the scheme and the fund.

The Council asks the Court of Justice to remedy the identified weaknesses in the internal control system concerning tendering procedures. The Court of Justice shall establish without delay enhanced rules concerning procurement procedures in order to help authorising services to organise tendering procedures and control the full respect of regulatory obligations, in conformity with the Financial Regulation.

### **3. European Union agencies<sup>1</sup>**

The Council notes with satisfaction that the Court issued unqualified opinions on the reliability of the accounts and on the legality and regularity of the underlying transactions for all except one of the agencies audited.

The Council appreciates that the Court found further improvements in the operational and budgetary management of the agencies, and that the remaining weaknesses, taken as a whole, were less serious than in previous years. While acknowledging that the follow-up of past observations is subject to a certain delay and that each agency's capacity to put recommendations in place depends considerably on its size and maturity, the Council is confident that continued improvements will show visible results in the coming years.

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<sup>1</sup> Decentralised agencies, executive agencies and joint undertakings are subject of specific recommendations recorded in separate documents (Docs. 5827/10 ADD 1, 5828/10 ADD 1 and 5829/10 ADD 1).

Nevertheless, the Council regrets that the Court identified, for the second time in a row, recurrent irregularities at the European Police College in respect of its budget implementation, as set out in the specific recommendation for discharge, and insists that the College resolve these problems without delay.

The Council recalls that the Court also identified weaknesses in a large number of other agencies, relating in particular to their procurement and recruitment procedures. Being aware that such weaknesses are most frequently observed during the start-up phase of new agencies, the Council calls on the Commission to intensify its assistance and support provided to agencies and to share its expertise with them to a larger extent.

The Council is particularly concerned about the recurrent over-budgeting of the agencies, combined with often unrealistic requests for additional staff, which result in high surpluses, carry-overs and cancellations of appropriations at the end of the financial year. It sees important needs for improvement in the agencies' programming of activities and expenses, and regrets that the relevant recommendations for previous years are only being implemented slowly. The Council invites the Commission and the agencies to apply activity-based budgeting and management systems wherever possible, and to extend multiannual programming concepts.

The Council insists on the need for a rigorous cash management of the agencies, combined with clear incentives for thorough budget planning and implementation. The Council asks the Commission to continue to take the agencies' unused appropriations into account when establishing the draft budget for 2011, with the aim of bringing down the agencies' annual surpluses. It also urges the Commission to carefully check, and if necessary revise, the agencies requests for funds and posts with the aim of presenting a realistic budget proposal corresponding to the agencies' real needs. The Council recalls the key role of Member States and Commission representatives in the agencies' Management Boards as regards supervision.

The Council looks forward to the Commission's report on the evaluation of agencies and is ready to address - in close cooperation with the European Parliament and the Commission - the issues identified, notably the agencies' difficulties in efficiency and in reporting on performance, but also the suboptimal stakeholder involvement and location arrangements. The Council also awaits with interest the progress expected on the items identified by the interinstitutional working group on agencies created in 2008.

#### **4. Follow-up to observations from past Annual Reports**

The Council recalls the importance of a uniform application of rules affecting the staff across the institutions, and most notably concerning the application of the multiplication factor applicable to salaries as defined in the Staff Regulations. As stated in its recommendation on the discharge for 2007, the Council urges all institutions to agree on a uniform approach to the application of the Staff Regulation, and to duly report back of the progress made in this respect.

It welcomes the Commission's commitment to present in spring 2010 a long-term estimate of EU pension expenditure as requested by the Council.

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