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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

on the follow-up to the discharge for the 2009 financial year (Summary)

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PREAMBLE

This is the Commission's report to the European Parliament (EP) and the Council on the follow-up to the discharge for the 2009 financial year¹, pursuant to Article 319(3) of the Treaty on the Functioning of the European Union, Article 147 of the Financial Regulation and Article 119(5) of the European Development Funds (EDF) Financial Regulation.

The report summarises the Commission replies to the key requests from the EP and the Council and is accompanied by two Commission Staff Working Documents (CSWD) which contain the Commission replies to each specific request from Parliament and Council (298 all in all). In the Commission staff working documents there is for each request a cross-reference to the relevant paragraph(s) in the documents from either the European Parliament or the Council.

In the EP discharge resolutions the Commission has identified a total of 213 requests addressed to it by the European Parliament². For 89 of these the Commission agrees to take the action requested by Parliament. The Commission considers that for 112 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 12 requests³.

The Commission has also identified 85 requests addressed to it by the Council in its recommendation to the Parliament⁴. For 43 of these the Commission agrees to take the action requested by the Council. The Commission considers that for 42 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. There are no requests that the Commission cannot accept for reasons related to the existing legal framework or its institutional prerogatives.

¹ 2009 General Budget Discharge, European Court of Auditors' Special Reports in the context of the Commission Discharge, EDF Discharge, Agencies Discharge.

² Document references P7_TA(2011)0194 and P7_TA(2011)0195, respectively available at the following Web addresses:
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0194+0+DOC+XML+V0//EN&language=EN#BKMD-87>

³ See requests 1, 18, 25, 71, 82, 86, 117, 156, 175, 179, 192 and 206.

⁴ Document references 5891/11 ADD 1 and 2, 5892/11 ADD 1, 5893/11 ADD 1, 5469/11 and 5894/11 ADD 1, published on
<http://www.europarl.europa.eu/activities/committees/editoDisplay.do?language=EN&id=2&body=CONT>

SUMMARY OF COMMISSION REPLIES TO THE REQUESTS MADE BY THE EUROPEAN PARLIAMENT AND THE COUNCIL IN THE 2009 DISCHARGE

1. PRIORITY ACTIONS

In its resolution, the Parliament specifically highlighted seven priority actions of institutional and organisational nature. These requests have been extensively discussed during the discharge procedure and the Commission had the opportunity to present its views in various exchanges with the Members of the budgetary control committee (CONT) and in particular with the rapporteur for the discharge 2009. During these discussions, evidence was given of the Commission's strong commitment vis-à-vis these concerns.

1.1. Reform of the current discharge procedure

The rules applicable to the discharge procedure, and in particular the time limits, are set out in the Financial Regulation (FR). The shortening of the whole procedure is part of the discussion on the current review of the Financial Regulation.

The Commission has already invited the Discharge Authority, the Council and the European Court of Auditors to set up a working group in order to elaborate on a comprehensive reform of the discharge procedure, aiming at a shorter timetable that leaves sufficient time for the institutions involved to prepare and present their respective contributions. A conference could be organised to discuss the conclusions of this working group.

1.2. National management declarations

To further reinforce Member States' accountability under Article 317 of the TFEU, the Commission included in its proposal for the triennial revision of the FR (Article 56) the requirement for the responsible bodies accredited in the Member States to provide annual management declarations covering all funds in shared management⁵, following an approach similar to that successfully applied in the agricultural sector.

Such management declarations would provide the Commission with substantial additional assurance as to the use of EU funds by Member States. In the Commission's view management declarations, audited by an independent auditor, are more appropriate to obtain assurance from Member States than the present national declarations, and would reinforce cooperation with Member States in the implementation of the budget.

After a reasonable period of implementation, the Commission will assess the added-value of these management declarations and could envisage proposing the political endorsement of the reporting and accountability process including the managerial declaration of assurance.

1.3. Completion of the Commission's governance structure

The College delegates budget implementation to the Directors-General and Heads of Service, who are responsible for the sound and efficient management of resources and for ensuring

⁵ A working document providing an analysis of the assurance process in shared management, an evaluation of the national declarations issued by four Member States and guidance on how to add value to this assurance process was sent to the Budgetary Control Committee in February 2011

effective control systems in their services. They report on the performance of their duties in the Annual Activity Reports (AAR), which include a signed declaration of assurance covering the legality and regularity of financial transactions. Assurance is obtained through the objective examination of evidence for the purpose of providing a thorough assessment of the effectiveness of risk management, control and governance processes. This examination is carried out by management, who monitor the functioning of the internal control systems on a continuous basis, and by internal and external auditors. The AAR is the main vehicle for Directors-General to document their accountability to the College.

The Commission considers that the management responsibility assigned to Directors-General should not be diluted by adding signatures of Commissioners or the President.

However, the standing instructions on the preparation of the AARs were updated so that the Director-General clearly confirms that the main elements of his/her report and assurance declaration, including the reservations envisaged, have been brought to the attention of his/her Commissioner. All Directors-General complied with these standing instructions in 2011 for the 2010 AARs.

Moreover, the Commissioners' attention has been drawn at the College meeting of 23 February 2011 on the importance of the dialogue between DGs and Commissioners on the draft AAR and reservations, in accordance with the standing instructions and the working arrangements on the relations between cabinets and services.

1.4. Systematic activation of interruption and suspension of payments

For the period 2007-2013 the Cohesion Funds operate within the framework set in Regulation 1083/2006⁶ which contains a legal basis (Article 91) for applying interruptions of payment deadlines at operational level for up to 6 months, decided by the Director-General, as a first step to the suspension of payments decided by the Commission (Article 92). Interruptions of payment deadlines are a more flexible instrument to have Member States to correct weaknesses, as they are immediate and do not require a formal decision by the College. The Commission has taken steps to ensure that this instrument is used more systematically, such as common guidelines used by DG EMPL, DG REGIO and many national Audit Authorities including key requirements to assess the effectiveness of the management and control systems in the Member States. The services have reported on all interruption/suspensions decisions in their AAR.

The systematic policy on interruption and suspension of payments has been illustrated in the examples brought to the Committee on Budgetary Control⁷, which clearly show that the sequence in the procedural and legal steps triggering interruptions and suspensions is followed systematically and without disruption by the Commission.

As regards transmitting copies of recovery letters and letters announcing financial corrections to the National Parliaments and the National Supreme Audit Institutions of the Member States

⁶ Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999

⁷ See memo sent on 02 May 2011 "DG REGIO memorandum on financial corrections and recoveries, interruptions and suspensions" and memo sent on 18 March 2011, annex 3 (list of interruptions / suspensions ERDF/CF and ESF)

concerned, the Commission considers that it is up to these bodies themselves to obtain the information from their national management and control authorities.

1.5. Improvement of corrective mechanisms

For a number of years already, financial corrections have been imposed when necessary, the quality of the Member States' data on financial corrections and recoveries has been improved and the Commission has made efforts to promote the use of best practices so to ensure an improved recovery mechanism at Member State and EU level.

The Commission services operating shared management report on financial corrections in their AARs since 2007 and provide a clear split by Member State, programming period and fund. Note N°6 to the accounts was equally complemented with the inclusion of detailed information on the implementation of financial corrections.

The Commission underlines that in the Cohesion domain all amounts which have been agreed upon by Member States as financial corrections will be implemented. In case the Commission does not have sufficient assurance that all corrections have been effectively implemented, it will suspend the closure process and request appropriate actions by the Member State.

Commission services are carrying out a specific audit inquiry on the Member States' systems for recoveries⁸, in order to gain assurance on the quality of data submitted in the annual statements on recoveries and withdrawals. The first results of this audit are expected to be reported in the AARs of 2011.

The Commission has transmitted to the Parliament's Committee detailed information on all decisions on interruptions, suspensions and financial corrections, and has satisfied all requests for information⁹.

Specifically as regards Agriculture, where undue payments are or can be identified as a result of the conformity clearance procedures, Member States are required to follow them up by recovery actions against the final beneficiaries. However, even where this is not possible because the financial corrections only relate to deficiencies in the Member States' management and control systems, financial corrections are an important means to improve these systems and, thus, to prevent or detect and recover irregular payments to final beneficiaries. The conformity clearance thereby contributes to the legality and regularity of the transactions at the level of the final beneficiaries. The current regulatory framework considers financial corrections as measures to restore the regularity of expenditures and to protect the EU budget. The possibility to interrupt payment deadlines and impose financial corrections also acts as an incentive for the Member State to improve the management and control systems and implement the necessary financial corrections themselves. The proposals for the next generation of programmes¹⁰ include proposals aiming at compelling Member States to recover financial corrections from final beneficiaries each time this is possible. In addition, it includes a new possibility for the Commission to cancel all or part of the EU budget contribution to a programme and effect recovery from Member States. The aim is to allow the Commission to exclude from EU funding any expenditure which is in breach of

⁸ Control missions started in September 2011

⁹ See footnote 7

¹⁰ Proposal for a Regulation of the European Parliament and Council laying down common provisions for all Structural Funds (COM(2011)615)

applicable Union and national law, including in relation to deficiencies in the management and control systems of Member States which have been detected either by the Commission or the European Court of Auditors.

1.6. Performance evaluator

The Commission will present, before the end of 2011 the first evaluation report under Article 318 of the TFEU. The Commission will use its established working methods for publishing and transmitting to the EP the report and notes that the Commission Internal Audit Service (IAS) exercises its own independent authority in programming its audit work.

1.7. Introduction of a new spending logic

As outlined in 'A Budget for Europe 2020'¹¹, the Commission will work with the legislative authority to ensure that the principles of simplification, sound financial management and accountability are fully integrated in future programming activity. In this context, the Commission has already proposed simplification measures in the proposed revision of the FR. The Commission will issue a dedicated Communication on simplification at the end of 2011 once all of its sector specific proposals have been tabled.

The Commission considers that obtaining an overall statement of assurance for each Multiannual Financial Framework would not add value to the existing annual governance structure under which a full and agreed accountability process for spending is already in place.

Ex-post controls aim at detecting and subsequently correcting errors that could not be identified at the time of the payment. For multi-annual programmes, the Commission monitors the resulting residual error rate after corrections, i.e. at the end of the control cycle. A number of Directorate-Generals, namely in the Research area, have defined their internal control objective multiannually, in terms of the residual error rate. Also, in Cohesion policy the Commission is foreseeing to perform an analysis of the residual error rate for the 2000-2006 ERDF programming period based on audits to be carried out in 2012 and report results thereafter.

2. OVERALL FINDINGS

2.1. Accounts

The Commission has put in place a robust accounting system that has for the last 3 years resulted in an unqualified opinion on the reliability of the accounts. The Commission continues to improve its methods, through actions such as the Accounting Quality project, so as to address the remarks of the Court and thus reduce the risk of mis-statements further.

The existence of negative net assets is a consequence of the application of accrual accounting to an institution that is funded by an annual budget. Liabilities (such as pension entitlements and amounts due under the EAGF) are recorded in the accounts, while, under the EU accounting rules, guarantees such as those given by Member States to meet these liabilities with appropriations in annual budgets, do not meet the definition of an asset and are therefore

¹¹ COM(2011) 500

not recorded in the accounts as such, rather they are disclosed in the notes to the accounts. EU accounting standards follow international standards. Departing from these standards would entail a qualification of the accounts by the Court.

A thorough analysis was done in 2004 as regards the possibility to create a pension fund and the current solution was finally chosen and imbedded in the Staff Regulations.

2.2. Legality and regularity

The Commission considers that the accountability of the Member States and the assurance they provide to the Commission have been strengthened in the current legislation, through the establishment of an ex-ante approval procedure of the management and control systems and the setting up of programme audit authorities. The current Structural Fund Regulations also provide the Commission with tools to perform its supervisory role in case Member States do not respect their obligations.

The Commission's proposal for the triennial revision of the FR includes a requirement for annual management declarations of assurance, accompanied by an independent audit opinion thereon. The audit body will apply international standards and a methodology agreed by the Commission, be subject to controls from the Commission, and to the scrutiny of the European Court of Auditors later on.

2.3. Member State responsibility and transparency

The Commission services provide in their AARs their assessment of the Member States' management and control systems and take into consideration the information provided by the Member States (including among others in the Annual Control Reports and the Annual Summaries) when issuing their management declarations. Under the existing legislation on access to documents, the decision to make Annual Summaries public lies however with the Member States concerned as they are the authors of these documents.

The AARs provide for 2010 extensive information per Member State, per policy area and programming period. The Commission sets up in the Synthesis Report the measures it considers necessary to resolve substantial weaknesses identified.

The cooperation between OLAF and the Structural Funds DGs has been reinforced¹² and the Strategy document at this regard is assessed twice a year. The objective is to reinforce fraud risk assessment, to provide more guidance for Member States in fraud prevention and detection and to raise the level of fraud awareness in the services and in the Member States.

2.4. Tolerable risk of error

In the framework of the preparation of the new sectoral legislation for the 2014-2020 period, the Commission will provide in the legislative financial statements a description of the control system set up, an estimation on the cost and benefits of controls and the expected risk of non-compliance with applicable rules.

¹² with the updated 'Joint Fraud Prevention Strategy' adopted in July 2010

The concept of tolerable risk of error is meant as a managerial tool to measure effectiveness of controls. The Commission does however pursue a zero-tolerance approach to all cases of mismanagement and fraud.

2.5. Commission's Internal Audit Service

As part of its audit programme for 2011, the IAS has developed its practice of carrying out a certain number of performance audits, focussing on the effectiveness, efficiency and economy of use of EU resources. The Commission agrees to invite the IAS to further develop these aspects in its future audit programmes

2.6. Single audit

The Commission's framework fulfils the requirement of the Court that there is 'a chain of control procedures, with each level having specific defined objectives which take into account the work of the others'. The structures in place aim at avoiding unnecessary duplication, and do not put into question the Court's role as external auditor, or the independence of other bodies outside the internal control framework such as SAIs reporting to national parliaments.

2.7. Transparency

The Commission considers that it is fulfilling the requirements of transparency as defined in Article 30 of the FR and the Court of Justice did not question the validity of the FR. The Commission will however analyse the related Court judgements¹³ and propose to the legislative authority the provisions considered necessary to maintain the requested level of transparency.

The Commission is of the opinion that the Synthesis Report is not the right instrument to report on the monitoring of the follow-up by Member States of their obligations to publish data on beneficiaries in a timely manner. Such follow-up would best be annexed to the DG's AARs.

2.8. Staff Regulations

In 2011, the Commission took note of a draft proposal amending the Staff Regulations that strikes a balance between the necessary drive for efficiency and the ability of the institutions to deliver their policies. This proposal complements the 2004 civil service reform.

These draft proposals provide the basis for discussions with staff representatives. A formal Commission proposal should be submitted to the Council and the Parliament before the end of 2011.

3. SPECIFIC FINDINGS

3.1. Agriculture and natural resources

The Commission considers that the reduction in the error rate in the domain of Agriculture can already be considered as a trend. In this sense, an error rate which over the recent years is

¹³ Cases C-92/09 and C-93/09

close to 2% confirms the overall positive assessment of previous years. The Commission will of course continue its efforts to reduce the error rate for agriculture expenditure below materiality, in particular by concentrating efforts in areas of expenditure with a higher incidence of errors, such as certain rural development measures.

The Commission is on a continuing basis working, together with Member States, on further improving the functioning of the Integrated Administration and Control System (IACS) and the reliability of the Land Parcel Identification System (LPIS) therein. As of claim year 2010, Member States are required to perform an annual quality assessment of the LPIS and to report on the results. Whilst 2010 was the first year of application, this exercise has proved useful for Member States as regards the identification of areas requiring attention. Any remaining weaknesses are followed up through conformity clearance procedures to protect the EU's financial interests.

In the framework of the reform of the common agricultural policy (CAP) post-2013 the Commission will continue its efforts to further reduce the administrative burden and simplify the policy¹⁴. The issue of the active farmer definition will also be looked into in this context.

For the DAS 2011 exercise, the Commission will propose tripartite meetings with the European Court of Auditors and national authorities also for the domain of Agriculture and natural resources, when they are expected to facilitate the handling of individual DAS cases.

3.2. Cohesion

Multiannual programmes in Cohesion are subject to different layers of controls, which take effect over a period of several years. An annual estimation of error, though, based on payments related to a given financial year, may therefore reveal higher figures, since not all layers of control have yet been effective. The Commission will continue to rigorously exercise its supervisory role by ensuring that Member States address the deficiencies detected in their management and control systems and also by applying interruptions and suspensions of payments, as well as financial corrections whenever necessary. The Commission is building on the annual audit opinions issued by the audit authorities and its own audit work. The Commission audits are focused on high risk programmes.

The AARs and figures provided to the European Parliament show that the majority of weaknesses are concentrated on few Member States. Following the recommendation of and after approval by the Commission, the Member States put in place national remedial action plans aiming at improving the effectiveness of systems and remedying the causes of low performance for the programmes and Member States concerned.

Regional policy has been particularly concerned by irregularities linked to incorrect application of public procurement rules. The Commission is taking action to overcome identified difficulties. Under the Single Market Act the Commission has undertaken to put forward proposals for revision of the Directives by 2012 and simplification will be one of the principal drivers. Stakeholders will have opportunity to contribute to this process.

For the 2007-2013 period the Commission has made a significant upfront investment in terms of guidance, training and support to the Member States. It will maintain its efforts in this

¹⁴ See detailed reply number 15 in the attached Commission Staff Working Document regarding Council recommendations

respect, and best practices are being exchanged. Technical assistance monies are also provided to Member States to develop their administrative capacity.

The Commission calls on the Member States to already demonstrate their commitment to improving accountability by reinforcing where necessary control measures, in particular as regards management verifications before certifying expenditure to the Commission and by following its guidance on annual summaries to make them a valuable additional source of assurance. While the legal base for the annual summaries does not require an overall assurance statement, the Commission encourages all Member States to follow the example of those that in 2010 included assurance statements.

The Commission has also detailed the measures taken in 2010-2011 for the detected high risk areas and programmes and envisaged for the future legal framework, in reply to the errors detected by the European Court of Auditors and by its own audits¹⁵.

3.3. Research, energy, transport, economic and financial affairs and education and citizenship

The provisions on the costs eligible for funding are complex and the audits revealed that differences of interpretation of these provisions caused most of the errors detected.

The impact of the proposed future simplification options will be felt mainly in the next Framework Programme (FP). Until such proposals are implemented, for FP7 the Commission has addressed the problems caused by complex eligibility rules by adopting a Decision on 24 January 2011¹⁶ on three measures for simplifying the implementation of the FP, also related to research funding for SMEs. The use of average personnel costs by beneficiaries has been facilitated within the existing legal framework. The simplification measures introduced are expected to further reduce the error rate.

Furthermore, the experience with ex-ante certification of cost methodologies will be taken into account in the preparation of the rules for the next funding programme.

The Commission has devised a control strategy aimed to ensure the legality and regularity of expenditure on a multiannual basis for the detection of any errors that could not be identified before making the payment. This is achieved by ex-post auditing and rigorously recovering any amount found to be overpaid to the audited beneficiaries, even for non-audited contracts whenever the extrapolation procedure is relevant and applicable. Further, the communication on the simplification of the recovery process in the framework of the implementation of the audit strategy adopted on 15 December 2009 will contribute to a better management of outstanding recoverable amounts and to clarify eligibility criteria for taxes or charges related to personnel costs, which gave rise to errors. Also, the Commission has evaluated the accountability and organisational structures of the community bodies set up to implement the FP7 in December 2010.

As regards education, the new Education Europe programme will also bring about a significant simplification through the elimination of sub-programmes, a reduction in the overall number of activities and an increased use of lump sums.

¹⁵ SEC(2011)1179 final, 6.10.2011

¹⁶ C(2011) 174 final, 24.1.2011

3.4. External aid, Development and Enlargement, including the European Development Funds

As regards enlargement, the Commission has addressed the Court's main observations concerning ex-ante controls and cooperates with (potential) candidate countries in order to improve management and control systems and to ensure that their practices are in conformity with Union standards. The Commission has compiled a coherent set of instructions providing guidance for the process of conferral of management.

The efforts of the Commission for providing assistance in institutional knowledge are going on. It can be considered that there is steady progress to address corruption, conflicts of interest and other bad practices but these must still be considered to be a problem. The legal framework has progressively been put in place and the renewed institutions and systems becoming operational. A culture of political accountability is emerging through recent judicial initiatives taken in the beneficiary countries.

Concerning humanitarian aid, the Commission is increasing the monitoring of the use of humanitarian procurement centres and has launched a working group on the assessment of humanitarian aid proposals in February 2011. It is harmonising and streamlining the documentation of the assessment process and conclusions will be validated and implemented as from 1 January 2012.

The methodology for ex-post controls has been completed by the Service for Foreign Policy Instruments (FPI) -successor of DG RELEX- for operational expenditure and will be further improved throughout 2011 based on experience gained.

Finally, the issue of environmental integration will be given a high priority.

As regards the European Development Fund, the Commission will continue to provide extensive reporting on the results achieved and problems encountered in the implementation of its budget support operations.

3.5. Comprehensive spending review

In the context of the preparation of the 2012 Budget, the Commission proceeded to an exhaustive examination of spending programmes to identify areas for redeployment. As a result, the Commission proposed substantial margins within the various expenditure ceilings in view of serving new political priorities.

3.6. Requests to the Commission concerning the agencies

The discussions within the Inter-Institutional Working Group on Agencies aim at improving agencies' efficiency and effectiveness overall and streamlining the general governance structure within the agencies and in relation with the EU institutions. Its work is expected to be finalised by the end of 2011. Concerning a possible merging of the College of European Police (CEPOL) with Europol, the Commission will present the outcome of its impact assessment in the course of 2012, in accordance with the principles agreed in the Working Group as regards considerations for merging.

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