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

on the follow-up to the discharge for the 2012 financial year (Summary)

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REPORT ON THE FOLLOW-UP TO THE REQUESTS MADE BY THE EUROPEAN PARLIAMENT IN ITS DISCHARGE RESOLUTIONS AND THE COUNCIL IN ITS DISCHARGE RECOMMENDATION FOR BUDGETARY YEAR 2012

PRELIMINARY COMMENTS

This is the Commission's report to the European Parliament (EP) and the Council on the follow-up to the EP discharge resolutions¹ and the Council Recommendation² for the 2012 financial year, pursuant to Article 319(3) of the Treaty on the Functioning of the European Union (TFEU), Article 166 of the Financial Regulation (FR) and Article 119(5) of the European Development Funds (EDF) Financial Regulation.

The report focusses on the binding commitments (BC) highlighted by the EP in its general discharge resolutions. It is accompanied by two Commission Staff Working Documents (CSWD) containing replies to 353 EP and 77 (79 in total, but 2 are addressed to the Court of Auditors) Council specific discharge observations (8 from EP) and requests.

The Commission agrees to start new actions on 142 requests (108 from the EP and 34 from the Council). It considers that for 240 requests (199 from the EP and 41 from the Council), the required action has already been taken or is on-going, though in some cases the results of the actions will need to be assessed. Finally, for reasons related to the existing legal and budgetary framework or its institutional role or prerogatives, the Commission cannot accept 40 requests (38 from the EP³ and 2 from the Council⁴). A detailed justification is provided in the two attached CSWD.

1. BINDING COMMITMENTS

In the general discharge resolution for 2012, the EP specifically highlights a large number of BC of legal, audit, institutional, accountability and financial nature. These requests have been extensively discussed during the discharge procedure, in particular with the rapporteur and the Members of the Budgetary Control Committee (CONT). In the letters by President Barroso (26.11.2013)⁵ and by Commissioner Šemeta (10.3.2014)⁶, evidence was given of the Commission's formal commitment to implement fully and timely a series of actions and measures related to the issues identified by these BC.

¹ 2012 General Budget Discharge, ECA' Special Reports in the context of the Commission Discharge, EDF Discharge, Agencies Discharge. Document references P7_TA(2014)0287, P7_TA-PROV(2014)0288), P7_TA-PROV(2014)0290 and P7_TA-PROV(2014)0299) respectively available at the following Web address:
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=20140403&secondRef=TOC&language=en>.

² Document references 5848/14, 5848/14 ADD1, 5850/14 and 5850/14 ADD 1 published on:
<http://www.europarl.europa.eu/committees/en/cont/publications.html?id=CONT00006#menuzone>.

³ Although some of these requests are mentioned partially or indirectly in other parts of the resolution. See §§ 6, 11, 15, 17, 20, 24, 46-49, 51, 53, 55, 59, 65, 67, 70, 73, 81, 88, 90, 117, 120, 128, 137-139, 141, 149, 176-180, 183, 205, 253, 258, 260-261, 264, 270, 272, 282, 302, 314, 318, 319, 323, 326-327, 332-333, 335, 343 of the CSWD on the EP resolutions.

⁴ See §§ 19, 22, 61, 77 of the CSWD on the Council Recommendation.

⁵ Ares(2013)3567754.

⁶ Ares(2014)654055.

The present communication takes into account the promises made in the two letters mentioned above whilst updating, where necessary, the situation as far as further actions have been taken so far.

1.1. Addressing problems raised in the DGs' Annual Activity Reports (AAR) reservations (§§ 25-26, 33, 39, 196, 223)

Concerning reservations expressed in the AARs of several DGs, the EP considers a priority that the Commission proves that it has taken the necessary measures to overcome the concerns relating to reservations which have been specifically endorsed by the EP. Moreover the EP intends to use the follow-up of the reservations as a budgetary control instrument to monitor these measures.

The Commission has already taken a series of fundamental measures as explained in the letters mentioned earlier, together with the formal engagement of the current College of Commissioners towards the last EP to take further action, which has indeed allowed the EP to grant discharge to the Commission.

The Commission reports the serious weaknesses identified in the execution of the EU budget through reservations in the AARs of the Commission's Directors-General and discloses the resulting risk for the EU budget. A reservation always goes hand in hand with a clear action plan to tackle the problem identified in the management of EU funds and, if the regulatory conditions are met, the Commission may interrupt or suspend the respective payments. The Commission follows up these reservations and the corresponding action plans by monitoring the progress of the underlying work to implement them. A reservation will be lifted only once the Commission has obtained reliable evidence that the weaknesses have been addressed through the implementation of appropriate actions by the Member State (MS), the adequate correction procedures have been launched, and the new system has proved its reliability in practice. AARs show in a transparent way how the Commission fulfils its responsibility with regard to ensuring the legality and regularity of shared management policies, at the level of individual MS and programmes (for Cohesion Policy) or paying agencies (PA) (for Agriculture). In addition, the Commission presents estimates of error rates and residual risks concerning PAs, measures or programmes and MS have an indication of the actual risk after the implementation of corrective actions. This is also an instrument which helps the discharge authority to assess the situation in more detail.

The Commission generally welcomes the EP's endorsement of the reservations expressed by the respective Directors-General of DG AGRI and REGIO. However, the EP's request to audit all operational programmes (OP) at least once in the course of the programming period is not in line with the single audit approach proposed by the ECA in 2004 and is conflicting with the EP's request to enhance cost-efficiency in the use of limited audit resources by targeting audits to high risk programmes.

1.2. Better definition and application of regulations and rules by Member States Authorities

→ In the area of shared management the EP requested detailed rules in the Common Provisions Regulation's (CPR) delegated act to provide for a definition of serious deficiencies and assessment of key requirements for management and control systems (§§ 56-4, 216, 223).

The Commission has adopted delegated acts governing areas under shared management under the new Multiannual Financial Framework (MFF) 2014-2020. The delegated act based on the CPR provides detailed rules to enable the mechanism of financial corrections (FC) to work effectively by defining clearly the criteria for determining "serious deficiencies" which trigger

the procedure for net financial corrections (NFC) (see Article 30 of Commission delegated regulation 480/2014 of 3 March 2014).

→The EP asked for the application of progressively increasing payment reductions and administrative sanctions where eligibility criteria have not been respected by the final beneficiary receiving direct payments or rural development support and recurrent Land Parcel Identification System LPIS shortcomings (§§44, 56-5).

The current regulatory framework already provides for a system of progressively increasing reductions and exclusions of payments when there is enough evidence that the persistence of the deficiencies (beneficiaries have not complied with the eligibility conditions) is increasing the financial risk to the EU budget.⁷ The Commission has proposed to maintain this system of reductions, refusals, withdrawals of payments and penalties at the level of final beneficiaries.⁸ MS should apply these provisions without prejudice to FC that the Commission may impose at the level of the MS.

→The EP asked for the suspension mechanism to be used as an ex-ante instrument for the protection of the EU budget (§§ 42, 56-6).

Article 41 of Regulation No 1306/2013 provides for a new suspension mechanism in the area of Agriculture which can be used as an ex-ante instrument to protect the EU budget from weaknesses in the control system of the MS. In the area of Agriculture, payments will be suspended in all cases where national remedial actions to address identified serious deficiencies are not carried out in a proper and timely manner.

1.3. Developing and implementing stronger control and audit strategies for the period 2014-2020

Concerning DG REGIO, the EP requested:

→an increase in the random sampling based audits by the Commission on the spot and the more systematic use of NFC (§§ 13, 38, 56-3).

The Commission carries out its own audits in a cost-effective manner directly at the level of the high risk managing authorities and intermediates bodies and beneficiaries. This issue is also addressed in the AAR, the Audit Strategy and the overview report of the audit enquiry "Bridging the assurance gap".

→submit a proposal on limiting if not banning replacement projects all together (§§ 15, 54, 56-13, 215).

This request calls for a review of the legislation adopted by the EP and the Council in December 2013 covering the period 2014-2020⁹. The significant change introduced for the 2014-2020 programming period is, under certain conditions, to remove the possibility for MS to avoid a net correction by accepting it and then having the right to re-use the corresponding amount. In the Commission's view the possibility for MS to re-place irregular projects identified by themselves before 15 February of year N+1, remains an important incentive for

⁷ Commission regulations EC N° 1122/2009 in the field of direct payments and EC N° 65/2011 for rural development.

⁸ Draft Commission Implementing Regulation laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament with regard to the Integrated Administration and Control System (IACS), rural development measures and cross compliance.

⁹ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013, OJ L 347 of 20.12.2013, p.320.

MS to detect and correct irregularities at their level. Therefore, no such proposal will be submitted before the new instruments' effectiveness has been assessed.

→Step up their first-level checks and render them more stringent (§ 46).

This request is addressed to MS and goes along the lines of the Commission initiatives and the ECA recommendations. The Commission constantly encourages the MS to strengthen their controls. The set of regulations adopted for the programming period 2014-2020 contains some provisions which should lead to improving the effectiveness of control checks at national level, including the introduction of NFC that aims at creating an incentive for MS to implement effective management and control systems, and the strengthened use of simplification, in particular concerning simplified cost options, which should result in a reduction of errors.

→Identify in the Communication on shared fund management the 3 MS with the highest error rates and FC (§ 53).

The Communication on the Protection of the EU budget adopted in September each year addresses the FC, whilst the error rates by MS are reported in the context of the AARs.

→Introduction of a template and recommendations for national management declarations (§§ 56-12, 60).

This matter has been addressed by the Interinstitutional Working Group launched on 16.12.2013 which has finalised its work by the end of June 2014. Its results will be sent to the EP, the Council, the European Court of Auditors (ECA) and the national Parliaments during the autumn 2014.

Concerning DG AGRI, and in particular on the shortcomings in LPIS systems, the EP requested:

→ action plans to be implemented promptly and in the event of failure to comply with the deadlines set in the action plans for proportionate NFC as part of the conformity procedure (§ 42).

The current procedure is to ask MS to draw up and implement an action plan when significant deficiencies have been identified in their LPIS. The implementation of such an action plan by the respective MS is closely monitored by DG AGRI and is subject to a reporting in DG AGRI's AAR. In addition, MS also have to assess, on an annual basis, the quality of their LPIS and adopt, where appropriate, remedial actions.

As regards the conformity procedure, any identified risk to the EU budget systematically triggers a NFC, to be applied proportionally to the risk to the EU budget. Any delay in implementing the necessary remedial action prolongs the duration of the identified risks of irregular payments and therefore triggers systematically a higher NFC for persistent deficiencies. The new legal framework¹⁰ also allows for the suspension of payments where the Commission concludes that the MS concerned is not in a position to implement the necessary remedial measures in accordance with an action plan based on clear progress indicators.

→ to offset the financial risk of errors detected in 2006 by the ECA in France and Portugal through net corrections (§31).

¹⁰ Regulation (EU) n°1306/2013 so called CAP Horizontal Regulation.

As reported in DG AGRI's 2013 AAR, the EU budget was protected via the conformity clearance procedures. As regards Portugal, the conformity clearance procedure ensured the claw back of over 100 million EUR in NFC for the claim years 2006 to 2008. For the subsequent claim years conformity clearance procedures are still on-going. In the case of France, no serious deficiencies which would have merited a reservation, an action plan or significant FC were detected prior to 2008. A number of significant FC have been proposed in respect of financial years 2008-2010 for which the clearance of accounts procedure is very advanced. Conformity procedures are also ongoing for the subsequent years.

→ comprehensive action plans for France and Portugal to be established among other the updating of their LPIS systems (§§ 44, 56-11, 192) and to report on the state of play of their implementation by 30 June 2014 (§43).

Comprehensive action plans have already been established: for Portugal, it was established in 2010 and completed in 2013, whilst for France, the updating and completion of the LPIS is expected to be fully completed for claim year 2016, once the eligible area of each single agricultural land will have been reassessed. In the meantime, NFC will protect the EU financial interest. This is closely monitored by the Commission and the financial risk is fully covered by the ongoing conformity clearance procedures (see above). DG AGRI has reported on the implementation of these action plans in its AAR 2013, published in June 2014.

→ a Commission's proposal to meet recurrent LPIS shortcomings by progressively increasing corrective penalties well beyond existing net and flat-rate corrections (§ 44).

A Commission proposal would require reopening a regulation that has just been adopted by the two co-legislators in the framework of the CAP reform. However, the increase in FC for recurrent violations of EU rules is already provided for in the Delegated Act on the CAP financial management and is applied in all cases where there is enough evidence that the persistence of the deficiencies is increasing the financial risk to the EU budget (see also point 1.2.).

→to resolve the problems occurring in PAs whose residual risk of error lies above the materiality threshold of 2% with special focus on France, Bulgaria, Romania, Portugal and Latvia (§41).

Under shared management, it is the MS that has to assume the primary responsibility for ensuring that actions financed by the budget are implemented correctly in accordance with the rules. The role of the Commission consists rather in an overall supervision by verifying the effective functioning of MS's management and control systems through conformity clearance procedures and applying NFC to protect the EU budget.

In its 2013 AAR, for PAs with an adjusted residual error rate between 2% and 5%, DG AGRI assessed whether the risk was sufficiently covered by mitigating factors and thus whether a financial reservation was necessary. This includes whether there is an on-going conformity clearance procedure covering the expenditure concerned and whether the necessary remedial actions have been implemented by the MS concerned. PAs with an adjusted residual error rate above 5% were automatically subject to a reservation. DG AGRI made 62 reservations: 11 at measure level for Market Measures, 20 (at PAs level) for direct payments, and 31 at PA level for rural development.

In addition, DG AGRI audit activities are driven by a central risk analysis covering all CAP expenditure in all MS, i.e. MS, measures and programmes affected by higher risks will be audited as a matter of priority.

→Conformity clearance procedure in standard cases to be completed in two years (§§ 40, 56-10, 158).

The Commission is, through the new legal framework of the CAP (the implementing act adopted on 6.8.2014), taking actions aiming at streamlining the whole procedure and limiting the risk of unnecessary delays. In particular, some steps of the existing contradictory procedure will be merged, deadlines for each step of the procedure are introduced for both Commission and MS, and if a MS does not send the required information in time the Commission will be able to proceed to the next step on the basis of the information available. The Commission will endeavour to limit the maximum duration of the whole conformity clearance procedure to the strict minimum necessary, while respecting the different stages of the conformity procedure (i.e. contradictory and conciliation) required by the relevant regulations; for standard cases the procedure will be accomplished in maximum two years.

Concerning DG REGIO, DG EMPL and DG AGRI, the EP requested:

→that the DGs concerned should build up a new and reinforced audit strategy to counter weaknesses found in some MS including an intensification of quality checks on MS audit and control reports and guidelines for audits by the Commission itself (to be presented as part of the 2013 discharge) (§§ 45, 49-50, 56-1-2).

The Commission confirms the development of the new and reinforced audit strategies for both Cohesion Policy and Agriculture described in detail in the letter of Commissioner Šemeta.

The "guidelines for audits" are understood as the Commission audit strategy for 2014-2020, which will shortly be communicated to the EP. DG REGIO has committed itself in the 2008 Action Plan that contradictory procedures related to FC have to be finalised within maximum 24 months after the audit. DG REGIO is meeting this objective.

DG EMPL's audit directorate has always allocated resources in terms of addressing the highest risk programmes and/or low performing MS in order to specifically address the issues at stake. It continuously monitors Audit Authorities' performance and reliability of the audit work. In this respect, it is worth noting that for three consecutive years, the error rate established in DG EMPL AAR is in line with the error rate determined by the ECA. Therefore, it can be concluded that the auditing and monitoring systems in place at DG EMPL function effectively.

DG AGRI adopted a new multi-annual audit strategy in March 2014. This audit strategy confirms the risk and system based approach, notably to achieve a better balance between the audit coverage of the risk and the geographical coverage. A rolling three-year audit programme applies as from July 2014. It will be reviewed periodically to take into account the implementation of the CAP reform and also the additional evidence that will be available from 2016 as a result of the new work of the certification bodies on legality and regularity. Key performance indicators on geographical coverage, expenditure coverage and risk coverage are included in the strategy. They will be monitored and reported upon in future AARs from AAR 2014.

→Monitor more frequently the certification process of the national audit authorities in the MS dealing with repeatedly high error rates and present a communication and legislative proposals to this end (§61).

As regards Structural and Cohesion Funds, the size of the error rate is not linked to the reliability of the audit authorities. High error rates can be reported by reliable as well as non-reliable audit authorities. The same holds true for low error rates. The Commission monitors all audit authorities and verifies in particular their independence (condition in the CPR) but audit authorities are not formally subject to a certification process under the CPR. There is no need for a legislative proposal.

In the area of Agriculture, as set out in the Financial Regulation (EU) No 966/2012 and Article 9 of the Regulation (EU) No 1306/2013, as from claim year 2014, the certification bodies will have to verify the results of on-the-spot checks by the PAs, based on a representative sample of transactions at final beneficiary level, and issue an opinion on the legality and regularity of expenditure declared to the Commission. DG AGRI will audit the reliability of this opinion of the certification bodies and use it to consolidate its assurance and fine tune the risk analysis.

→Apply Article 32(5) of the FR (§62).

The Commission indeed applies the provisions of the FR and refers to the design of the delivery system for the 2014-2020 programming period.

→Present a Communication on reduction of reporting requirements and control densities for MS that operate permanently with very low error rates (§63).

In the area of Cohesion policy, the Commission considers that the reliability of the reported error rates is as important as the reported error rate itself in order to evaluate the functioning of the systems and to decide where to focus the audit activity on.

Regarding Agriculture, whereas reporting requirements cannot be reduced, the call for reduction of control densities is already provided for: Art. 41 of the Implementing Act, adopted on 6.8.2014, detailing the rules already enshrined in Art. 59(5) of Regulation (EU) No 1306/2013, contains the cumulative conditions to be met for a reduction in the number of on-the-spot-controls.

Thus there is no need for a further legislative proposal or Commission Communication on this matter.

→Examine its internal shared management arrangements and make recommendations to the EP regarding the appointment of Union officials at the head of national payment, management and audit authorities in the MS with responsibility for the disbursement of Union funds (§65).

It is up to MS to appoint the heads of national authorities. The request would violate the principle of shared management and subsidiarity and interfere in the autonomy of national public administrations.

For Regional policy, a task force was already set up to help administrations in Greece and Portugal. DG REGIO also provides financial management and control training seminars on the 2014-2020 programming period to MS' authorities. Also underway are anti-fraud and anti-corruption seminars targeting certain MS in particular. Another initiative is the guidance on how to avoid the most common errors linked to public procurement.

As regards Agriculture, DG AGRI services regularly meet with representatives of the Learning Network of Directors of PAs and Coordination bodies to examine various technical aspects related to the management and control of CAP instruments. At the annual conference of the directors of the PAs, organized by DG AGRI, DG AGRI auditors inform of their own most common audit findings and present the findings of the Court of Auditors. Such presentations are also made on the occasion of similar biannual conferences organized by the Presidency. Moreover, DG AGRI's anti-fraud advisor regularly gives anti-fraud seminars at PAs. Moreover, as of 2014, DG AGRI has created a new unit specifically dedicated to providing MS with advice and support in the implementation of direct payment schemes.

→A registry should be established for all Union funds going to media in the MS from the structural funds or agricultural including rural development (§58) and to concentrate on those MS which are vulnerable or conspicuous in this respect (§ 59).

Under shared management, the Commission does not have information at project level. AARs already cover MS with high error levels including the reservations on MS' management and control systems and on certain OPs. On the basis of a thorough risk assessment carried out every year, the Commission targets the most risky management and audit authorities in order to perform its audits. In case of detected deficiencies which can also be communicated by the MS authorities, the Commission interrupts or suspends payments.

1.4. Further improving the Annual Activity Reports

The EP requested the Commission:

→to report the extent to which MSs' control statistics or audit reports have been examined, verified and validated (§47).

This is already done and disclosed in the AARs.

→to indicate how its own risk analyses have influenced the use of its own audit capacities and calls for more direct audits of random samples taken from national granting authorities and final beneficiaries (§48).

Although the majority of the audit reports of the MS are reliable, the Commission does not unquestionably rely on their results, but always assesses the risks before drawing a conclusion with regards to the level of assurance that can be drawn from them.

On the request for more audits, the Commission carries out its own audits directly at the level of the high risk managing authorities/intermediate bodies and beneficiaries. Almost all the 77 systems audits carried out since November 2010 until end 2013 have led to action plans and payment interruptions by DG REGIO. Between 2009 and 2013, DG EMPL has carried out 87 system audits focused on the riskiest OPs.

As regards Agriculture, each year the Commission opens around 250 audits on the effectiveness of the PAs' management and control systems, and carries out around 120 audit missions on the compliance with the EU rules. These audit activities are driven by a central risk analysis (i.e. more audits focus on MSs, measures and programmes affected by higher risks) covering all CAP expenditure in all MS.

The additional staff required for carrying out direct audits based on a random sample on a scale that would allow an extrapolation of the results would far exceed the staff that could be redeployed and/or freed by reducing the number of audits in MS with low error rates.

→to include information on reservations regarding risk to the Union budget and they should only be lifted when the weaknesses have been addressed through MS action, and AARs also to include error rates and residual risk estimates particularly when MS have carried out corrective actions (§ 56-8).

This issue is addressed under point 1.1.

→DG AGRI to develop its control strategy, re-engineer its risk assessments and ensure proper monitoring through key performance indicators whose disclosure in the AARs should be improved (§45).

This issue is addressed under point 1.3.

1.5. Taking the necessary protection measures

The EP requested:

→ to shorten the adversarial procedures preceding the imposition of NFC or interruptions of payments and submit a report before the 2013 discharge (§§ 51, 210).

DG REGIO has committed itself in the 2008 Action Plan that contradictory procedures related to FC have to be finalised within 24 months after the audit. REGIO is meeting this objective. This issue will be duly taken into account in the Delegated Acts. As regards interruptions of payments, no contradictory procedure applies.

For DG AGRI, a further acceleration of the conformity procedure notably by streamlining the contradictory phase (i.e. merging different steps, setting deadlines for both MS and EC, etc.) is envisaged in the draft implementing act. The procedure will be confined to maximum 2 years in standard cases (see also point 1.3.).

→the use of interruptions, suspensions, FC, and recoveries will be detailed in the next annual report on the protection of the Union budget, and specifically for structural and cohesion funds in the reports for 2016 onwards (§§ 52, 56-7);

The Communication will provide information on interruptions, suspensions, FC and recoveries. In addition, the Commission will include data on NFC which lead to assigned revenue for the EU budget and the results of MS' corrective work.

→a new horizontal report should be prepared on how new preventive and corrective tools are implemented under the MFF 2014-2020 (§§ 56-9).

A report will be prepared analysing how the new preventive and corrective tools are implemented under the MFF 2014-2020. In addition a gap assessment will compare the original Commission's proposal for the relevant legislation and the final outcome as amended by the legislative bodies, and will identify any related potential risks.

→Making better use of RAL and limiting the period covered by pre-financing (§ 56-14) ;

The pre-financing is a tool meant to provide the beneficiaries with a float and to enable them to run the projects they have committed to. If the period covered by pre-financing were to be shorter than the period of the project, then the beneficiary would sooner or later run out of resources and the project in question could eventually fail. Moreover, this approach implies modifying the recently adopted relevant regulations and amending each new individual agreement.

1.6. Other measures

→The EP requested to tackle the problem of 'frontmen' being used for the purpose of obtaining public contracts. Every stage of public procurement procedures is to be published on Internet (§ 64).

Measures have already been taken in this direction and namely concerning the electronic availability of all the relevant documents as from the beginning of the procedure, the ex-ante and ex-post publication and, once the contract is awarded, the obligation to disclose the name and addresses of subcontractors.

With regard to the Concessions Directive 2014/23, new rules contain the obligation to ensure free of charge and unrestricted access to all concessions documents on-line (since the moment of publication of concession notice or invitation to tender).

→The EP asked to reach binding bilateral agreements with MS which have attracted particular attention, along the lines of the European Semester (§56-15);

As mentioned in President Barroso and Commissioner Šemeta's letters, the Commission has committed to address weaknesses in MS. Commissioner Semeta's letter provides a comprehensive outline of instruments and actions put in place within the existing legal framework for the spending programmes under the new financial framework. Different

processes are put in place to report on Europe 2020 which is a common endeavour of MS and the Commission.

2. OLAF (§§ 284-296)

2.1. The Dalli case and related issues (§§ 284-287, 289-92, 296)

The EP raised several issues concerning this case and in particular related to information provided to the EP, accountability both by the Commission and OLAF, respect of the principle of innocence, legality of recordings, cooperation with the Judicial Authorities of MS and respect of fundamental rights.

The Commission would first like to point out that its President explained the situation to the Conference of Presidents in November 2012. The point was never scheduled for the plenary and the Commission has respected the principle of presumption of innocence at all times. Mr Dalli has contested the voluntary character and the lawfulness of his resignation, claiming damages before the General Court of the European Union in Case T-562/12, which is pending.

The Commission and OLAF are, as always, fully cooperating with the Judicial Authorities of the MS in these investigations. Both have duly replied to any request for information or assistance that they have received from the authorities.

On the issue related to lack of accountability, OLAF recalls that it has already extensively and repeatedly answered questions within the limits set out respectively in Article 8 of Regulation 1073/1999 and in Article 10 of Regulation 883/2013.

Regarding the legal analysis of the legality of recordings, OLAF has already informed CONT that, under Article 4 (3), second subparagraph, of Regulation (EC) No 1073/1999, it was entitled to obtain information pertinent to its investigations. OLAF considers that it has acted in accordance with applicable rules and regulations. A first version of a comprehensive internal study on the legality of recordings of private phone conversations by public authorities in the MS has been shared with OLAF's investigative staff, and is continuously being improved and updated.

As for the findings of the OLAF Supervisory Committee (OSC), OLAF points out that it has conducted its investigative activities while respecting all procedural requirements. The OSC did not identify any breaches of fundamental rights or procedural guarantees in its Activity Report in relation to persons concerned. Therefore the concerns raised are merely hypothetical.

Moreover, OLAF Guidelines to Staff on Investigative Procedures are intended to ensure that all investigations carried out by OLAF meet the highest professional standards and fully respect the procedural rights of the persons concerned.

Finally, on the request of information about the Clearing House meetings in 2012 and 2013, and due to the need to protect ongoing investigations, OLAF's independence and the presumption of innocence of the persons concerned, the Commission has to stress that information on the proceedings of this group has to remain limited. However, the Commission would assess any additional Framework request from the EP regarding the Clearing House meetings under the conditions of the Framework Agreement.

2.2 Other issues (§§ 288, 293-295)

The EP expressed concern on the financial indicators for opening an investigation, the follow-up measures taken on cases of suspected fraud, cases dismissed and referred back to the Commission in 2012-2013, surveys among OLAF staff and a request for a non-redacted version of a document on the misuse of EU funds.

OLAF's Investigation Policy Priorities (IPPs) in 2012 and 2013 included the following selection principles: proportionality, efficient use of investigative resources and subsidiarity/added value. These IPPs (2012, 2013) contained financial indicators. Such indicators were not conceived or used as an "exclusion criterion", but were used as one of several criteria to assess whether an investigation should be opened or not. The financial impact was never a "conditio sine qua non" for opening an investigation.

For 2014, the Director-General decided not to include financial indicators in the IPPs, considering that there has been, and to certain extent still is, a persistent misunderstanding on this matter amongst OLAF's stakeholders, and how difficult it is in most cases to assess the potential financial impact of a new case. OLAF intends to monitor whether not having explicit financial indicators available in the selection process leads to the opening of too many cases for the Office to handle. If so, the Director-General will give consideration to their possible reintroduction, in close consideration with OLAF's stakeholders and its Supervisory Committee.

When there is a suspicion of fraud, OLAF does not dismiss and refer back cases to the Commission services for them to investigate. OLAF is and remains the only body entitled to run administrative investigations in such cases. When OLAF receives information about suspected fraud from another Commission service, it decides on whether to open an investigation or to dismiss a case on the basis of the criteria set out in Article 5 (1) of Regulation 883/2013. OLAF informs the Commission service that sent the information of the decision to dismiss and of the reasons for the dismissal. In the rare instances when a case is dismissed under the principles of subsidiarity and proportionality, and might require investigation, the case is transmitted by OLAF to whichever authority is best placed to conduct the investigation, the competent national authorities, or disciplinary bodies.

Finally on the request for the non-redacted version of the above mentioned document, the Commission points out that in the written reply E-012041/2013 provided by the Commission on 28 January 2014 to the question from MEP Ingeborg Gräßle, it was specified that: *"As for the un-redacted version of Document D/000955, the Commission will assess any request from the EP under the conditions of the Framework Agreement between the Parliament and the Commission."* OLAF has not received any request from the EP under the above-mentioned Agreement so far.

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