



**COUNCIL OF
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"I/A" ITEM NOTE

From: Working Party on Structural Measures

To: Permanent Representatives Committee (Part 2)/Council

Subject: Draft Council conclusions on Special report No 16/2013: Taking stock of "single audit" and the Commission's reliance on the work of national audit authorities in Cohesion

1. On 20 December 2013, the General Secretariat of the Council received the Special Report No 16/2013 "Taking stock of "single audit" and the Commission's reliance on the work of national authorities in Cohesion"¹, adopted by the Court of Auditors at its meeting on 4 December 2013.
2. Pursuant to the rules laid down in the Council conclusions on improving the examination of special reports drawn up by the Court of Auditors², the Permanent Representatives Committee (Part II) at its meeting on 22 January 2014 instructed the Working Party on Structural Measures to examine this report according to the rules laid down in the abovementioned conclusions.

¹ OJ C 8, 11.1.2014, p. 6.

² Doc. 7515/00 FIN 127 + COR 1.

3. The Working Party on Structural Measures examined the Special Report on 14 March 2014 and an agreement on draft Council conclusions was reached on 9 May following a silence procedure.
 4. The Permanent Representatives Committee is therefore invited to recommend to the Council to adopt, as an "A" item, these draft Council conclusions as set out in the Annex to this document.
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Draft Council conclusions on Special Report No 16/2013

"Taking stock of 'single audit' and the Commission's reliance on the work of national audit authorities in Cohesion"

National Audit authorities provide assurance to the Commission regarding the effective functioning of the management systems and internal controls for Operational Programmes (OPs) (and, as a consequence, the legality and regularity of the expenditure certified). Their role and responsibilities have been reinforced compared to those of the ex post control authorities in the 2000–2006 programming period and their independence from the bodies managing the funds was an improvement. National control reports reinforced accountability and provided an incentive for managers of EU funds to assess and improve their internal control systems.

Member States were more vigilant during 2007-2013 since if they did not remedy any detected system failures or withdraw the irregular expenditure (which may be replaced by expenditure which is eligible), then the Commission itself could apply financial corrections, leading to a net reduction in EU funding for the OP.

The information provided by national audit authorities in their annual control reports, audit opinions and systems audit reports is one of the main sources underlying the Commission's assessment, for each OP, of the legality and regularity of EU spending. When preparing their annual activity reports, the responsible Commission General Directorates perform a detailed assessment of the work of national audit authorities, and in particular of the error rates reported by the audit authorities for each OP (or group of OPs). This information is examined against the Commission's own audit results and other information at the disposal of the Directorates.

THE COUNCIL OF THE EUROPEAN UNION,

- (1) WELCOMES the report from the European Court of Auditors and TAKES note of its conclusions.
- (2) WELCOMES the progress made by the Commission, but invites all actors to continue to improve and make use of the single audit system taking into account the findings of the Court.
- (3) WELCOMES the continuation of the single audit principle for the 2014-20 programming period and looks forward to the provisions of Article 148 of Regulation 1303/2013 applying to the ESI Funds concerned on a common basis in future programming periods.
- (4) ENCOURAGES the Commission to take further steps to reduce the administrative burden on auditees whilst maintaining sound financial management, including more effective coordination of the work of audit teams across different directorates general.
- (5) RECALLS that Cohesion policy is a shared competence of the Member States and the Commission. The Commission approves multi-annual Operational Programmes (OPs) on the basis of Member States' proposals for the 2007–13 programming period. For each OP, to which the Commission applies the Single audit status, the Commission checked that the Member States have set up robust internal controls and that these systems of management and control function effectively. Member States' internal controls provide reasonable assurance that errors in transactions underlying the accounts are either prevented or identified and corrected before the expenditure is certified to the Commission. Experience showed that Managing authorities are required by the regulation to carry out first-level checks on operations and the expenditure declared before the expenditure is certified by the certifying authority as legal and regular.

- (6) CONSIDERS "Single audit" as a good system of internal control and audit since it is based on the idea that each level of control builds on the preceding one. "Single audit" aims at preventing the duplication of control work and reducing the overall cost of control and audit activities at the level of the Member States and the Commission. It also aims at decreasing the administrative burden on auditees. The Commission (which holds ultimate responsibility for the implementation of the EU budget) is at the top of the "single audit" pyramid;
- (7) RECALLS that in 2012, for a significant part of the Cohesion budget, the Commission considered that OP internal controls were functioning effectively and that EU spending was legal and regular. The validated projected error rate and the residual error rate calculated by the Commission are the main indicators used for this purpose. Since 2011, OPs have in general been subject to a reservation if the management and control system has been assessed as partially or non-effective or if the residual error rate exceeded the Commission's 2 % materiality threshold. For programmes with a validated error rate above 5 % and a cumulative residual risk below 2 % no reservation is issued as a result of implemented financial corrections and if on the basis of professional judgement, the implementation of the action plan has been assessed as satisfactory (see paragraph 40 and Annex III);
- (8) HIGHLIGHTS that there are methodological differences in quantifying the impact of the audit findings, namely for public procurement, and that the error rates reported by national audit authorities do not relate to the same period as those published by the Court. As a result, these annual error rates are not directly comparable. Meanwhile, the residual error rates calculated by the Commission are of a multiannual nature and take account of all the financial corrections implemented at EU and national level. The Council emphasizes that the management of situations where the materiality level is exceeded shall be made more transparent and predictable. This could be facilitated, for instance, by publishing the Commission methodology of calculating cumulative residual risk;

- (9) NOTES that the Coordination Committee of the Funds' (COCOF) guidance notes serve as recommendations with practical examples and information, without being legally binding or limitative. All guidance notes include a legal disclaimer in this respect. The Council reaffirms that guidance should not have retroactive effect and should be developed in close consultation with the Member States. It is up to the Member States to decide whether and how COCOF guidance notes become legally binding at the national level. The Commission's guidance is generally accepted and taken into account by audit authorities in their work, despite its non-binding character. Through the Court's survey, more than 90 % of audit authorities indicated that they apply the COCOF guidance notes fully (or with some exceptions);
- (10) RECALLS that the formulation of any guidance notes shall take place in due time, in a unified manner, removing any inconsistencies across documents and eliminating the grounds for differing interpretations. In order to avoid duplicated work and delays, it is crucial that guidance notes shall not be applied retroactively;
- (11) NOTES that only half of the respondents of the Court's survey considered the extent to which Regulations set methodological requirements for audit authorities to be appropriate and stresses that such requirements shall be made more consistent;
- (12) WELCOMES that Member States have a close cooperation with the Commission. Council recalls that the regulations require the Commission and audit authorities to meet on a regular basis, and at least once a year, in order to examine the audit results, the annual control reports and audit opinions and exchange views on other issues relating to the management and control of OPs;
- (13) WELCOMES the extensive audit work done by the Commission through 269 audit missions over the years in order to assess the effectiveness of the audit authorities covering 96 % and 99 % of the respective allocations of ERDF/CF and ESF. Between 2009 and mid-2013, the Commission re-performance audit work on audit authorities showed that:

- out of 47 audit authorities audited, DG Regional and Urban Policy concluded that, at this stage, 38 audit authorities were reliable,
- out of 84 audit authorities, DG Employment Social Affairs and Inclusion concluded that 78 were reliable;

- (14) CONSIDERS that the Commission has reasonable assurance that audit authorities covering around 90 % of the funds allocations comply with Article 62 of Regulation (EC) n° 1083/2006 and this provides a reliable basis for the Commission's assurance and for applying the single audit concept. Those results are complemented by the Court's examinations of audit authorities over the last three years. For audit authorities found not to be yet fully effective, the Commission makes reservations and interrupts/suspends payments where necessary, and proposes detailed action plans to raise the audit work up to the required quality standards;
- (15) DRAWS attention to the fact that when the Commission has doubts as to the accuracy and reliability of the error rates reported by national audit authorities, it discloses in its annual activity report the reported error rates which are recalculated when sufficient information is available, or which are replaced by flat rates when they are considered unreliable.
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