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**accompanying the REPORT FROM THE COMMISSION TO THE COUNCIL on the
follow-up to 2007 discharge procedure**

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INTRODUCTION

This Commission Staff Working Document completes the Report from the Commission to the Council on the Follow-up to 2007 Discharge decisions {COM(2009) 682}. It presents in detail the answers to the 90 specific requests made by the Council in the comments accompanying its Recommendations on the 2007 Discharges.¹

¹ For each specific recommendation a reference is given to the relevant Council document. The references for recommendations 1 to 65 are all for Council document 5587/09 "Discharge to be given to the Commission in respect of the implementation of the budget for the financial year 2007".

Council Recommendation on the 2007 discharge

Introduction

1. The Council stresses the importance of further simplification of legislation without diluting the level of assurance provided by improved controls in order to continue to make progress towards achieving an unqualified DAS in all areas of the budget. In this context, the Council invites the Commission to make proposals aiming at simplification of the procedures including the general rules governing the programmes and specific rules concerning the particular characteristics of the programmes. (§ 2, page 5)

Commission's response:

The Commission has proposed measures to simplify some of the present rules and is exploring the scope for further simplifications, as explained in detail below.

The procedure for acceptance of the Commission proposals for further modifications to the 2007-2013 regulations to include provisions for flat rates and lump sums is now finalised for the Structural Funds. Furthermore, the amended Commission Regulation was adopted in September 2009. It introduces important simplifications in financial reporting, publicity and audit requirements. In addition, the Commission is working, with the assistance of external experts, to find areas of further simplification in the working methods for the period 2007-2013.

The 7th Framework Programme (FP7) in the Research area has brought about a number of important simplifications already. The introduction of the participants guarantee fund considerably reduced the numbers of ex-ante financial checks, the use of protective measures and the number of required audit certificates. The unique registration facility for participants avoids repeated requests to beneficiaries and improves data quality and coherence in all grant management systems. The project reporting was streamlined, including reduced data requirements, simplified reporting guides and longer reporting periods. Further improvements will be achieved by the gradual introduction of fully electronic exchange systems for the whole chain of proposal and grant management processes in the frame of the e-FP7 initiative.

The CAP Health Check agreement brings further simplification (e.g. reducing the types of entitlements, possibility to merge entitlements). The Commission has also taken action in several ways to improve the situation in rural development: The Council Regulation 1290/2005 gave way for the post 2007 period to align the management and control system for the expenditure under the newly created European Agricultural Fund for Rural Development (EAFRD) with the EAGF system. Thus, the advantages of the EAGF system that are largely recognized will also cover the rural development expenditure. In addition, the Commission issued in October 2009 a report with the reactions to the 39 simplification suggestions which Member States jointly submitted to the Commission in April. The working document provides information on the outcome of the assessment process and a state-of-play on the progress made since March 2009. The report will be discussed during the Agriculture Council in December.

The Commission will also consider the scope for introducing further simplification of eligibility rules in the triennial revision of the Financial Regulation which it will propose in 2010. It could focus in particular on grants, in particular eligibility rules; management methods, whose provisions have become increasingly complex and which are crucial to improve the efficiency and delivery of external aid in particular; and control measures. It will also study principles for further simplifying sectoral legislation for the next round of basic acts, those to come into force from 2014.

2. The Council awaits the presentation of the "Impact report on the Commission's Action plan towards an Integrated Internal Control Framework" introduced in 2006. The Council acknowledges that the Commission has been able to demonstrate a consistently high degree of implementation on internal control standards since 2004 and that by the end of 2007, it had implemented more than two thirds of the sub-actions in its "Action plan towards an Integrated Internal Control Framework". The Council welcomes the progress achieved through the action plan and looks forward to the impact report due by the beginning of February 2009. (§ 3, page 5 and § 3, 1st paragraph, page 11)

Commission's response:

An impact report on the action plan towards an integrated internal control framework was adopted by the Commission in early 2009 (COM(2009)43). As of year end 2008, 13 of the 16 original actions had been completed, whereas three could not be implemented or were taken forward in other ways. The report presented an assessment of the impact based on specific quantitative and qualitative indicators, action by action. It should be noted that the impact of all these actions must be assessed in a mid to long term perspective and that the impact of individual actions on error rates is difficult to isolate from the impact of other initiatives to improve control systems.

Chapter 1 - The Statement of Assurance (DAS) and supporting information

3. The Council encourages the Commission to assure that [the] high quality of Community accounts is maintained, [...] invites it to continue removing the weaknesses in the accounting system that still put at risk the quality of financial information and to continue improving the information in the notes in the accounts on the correction mechanisms concerning undue payments. As regards the consolidated balance sheet as at 31 December 2007 and the consolidated economic outturn account, 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. (§ 1, 1st-3rd paragraphs, page 7)

Commission's response:

The Commission always considers the remarks and recommendations of the Court so as to improve its financial systems and ultimately its accounts. With regard to the information on financial recoveries, a new IT tool was put in place during 2008 to improve the reliability and completeness of such information.

4. As regards the progress made towards an effective Community Internal Control Framework, the Council invites the Court and the Commission to continue to cooperate towards a common understanding on the probability of correction of payments within multiannual programmes during the programme period. (§ 3, 3rd paragraph, page 9)

Commission's response:

The Commission has stepped up its action to work to secure reliable information from Member States on financial corrections and recoveries they carry out. It has taken actions to ensure that Member States fulfil their obligations concerning the quality of reporting on recoveries and financial corrections. It has significantly increased the volume of financial corrections relating to 2000-2006 programmes and projects applied in 2008 for ERDF, ESF and Cohesion Fund – from 288 million EUR in 2007 to over 1,5 billion in 2008. The Commission has provided quarterly reports in 2008 on the implementation of the action plan to strengthen the Commission's supervisory role under shared management of structural actions (COM(2008) 97), including information on corrections and recoveries imposed by the Commission, and reported results of the Action Plan in January and October 2009, (COM(2009)42 and SEC(2009)1463).

Furthermore, the Commission's accounting system was revamped to allow, from 2008, full reporting on the correction of errors found by the Commission, including those relating to payments of earlier years. This information, retroactively encoded for all recoveries and adjustments to cost claims launched in 2008, has been reported in the 2008 accounts, presented in March 2009. This will allow, inter alia, the year in which an error occurred to be compared with the year of detection and will be a basis for assessing the effectiveness of multi-annual recovery systems.

Chapter 2 - Commission internal control system

5. As regards the Synthesis report of the Commission, the Council notes that the Commission itself acknowledges that further efforts are needed to resolve a number of weaknesses and therefore it encourages the Commission to take all the necessary remedial measures and strongly supports its enhanced efforts to address the remaining deficiencies effectively. The Council strongly encourages the Commission to continue to improve the annual activity reports, in particular regarding the identification of continuing weaknesses in the assessments provided in the reports of some DGs. (§1, 1st-2nd paragraphs, page 10)

Commission's response:

The Commission delivered on the commitments undertaken in the 2007 Synthesis Report. It took further steps to ensure that reports and declarations present a consistent assessment of supervisory and control systems, with clear explanations made of the reasons and control processes leading to the absence, presence or removal of reservations. For the first time, preliminary meetings between central services and operational departments took place prior to the formal peer-review process, in order to identify problematic issues at an early stage and offer guidance in a timely way. During the peer-review process, weaknesses identified were addressed at the appropriate level. Also, for the first time, Commission services were explicitly required to draw a conclusion on the effectiveness of their internal control systems in the annual activity reports. Almost all services included a specific conclusion on the overall effectiveness of their internal control system and where relevant identified actions to address weaknesses. These actions concern both Commission services and implementing partners (notably the Member States). In order to improve the quality of annual activity reports further, in the Synthesis Report 2008 the Commission has instructed the Secretariat-General and the Directorate-General for Budget to carry out an assessment of the factors affecting the quality of annual activity reports and to promote measures to improve their quality in time for the report on 2009 activities.

6. As regards annual summaries of available audits and declarations, the Council notes the Court's conclusion that the annual summaries do not yet provide a reliable assessment of the functioning and effectiveness of the supervisory and control systems. The Council joins the Court in encouraging the Commission to add value to the process by identifying common problems, possible solutions and best practices and using this information in its supervisory role. (§2, 2nd paragraph, page 11)

Commission's response:

The Commission is taking the requested action.

In the revised guidance note it issued for the 2008 Annual Summaries the Commission encouraged Member States to increase the added value of the summaries by analysing their systems, identifying common problems and solutions and describing best practices. It also recommended Member States to provide a statement of assurance on their systems. Some Member States followed these recommendations in their 2008 Summaries. As the analysis in the Directorates'

General Annual Activity Reports shows, while only a few attached statements of assurance, a considerable number provided some degree of analysis of their systems.

The Commission's departments use the information provided in the Summaries together with that from other sources in arriving at the assessments of the quality of Member States' systems for using EU funds which the Directorates General publish in their Annual Activity Reports.

The Commission has again revised the guidance note to Member States. In the updated note, the Commission simplifies the reporting by taking out some information already provided in other reports, it builds up the part on the overall analysis and explains the incentives for using this option. Despite the weak legal framework, the Commission will continue to encourage Member States to make a genuine contribution to building up its assurance on the effective functioning of systems.

7. The Council acknowledges that, as stated by the Commission, any simplification of the rules, and all improvements to the Commission's controls, will take time to have an effect on the prevention, detection and correction of errors. Nonetheless, it calls on the Commission to take all the necessary measures for a further improvement of control systems including all control levels and to ensure that the measures contained in the "Action plan on the Integrated Internal Control Framework" have a real impact on the supervisory and control systems. (§ 3, 1st paragraph, page 12)

Commission's response:

An impact report on the action plan towards an integrated internal control framework was adopted by the Commission in early 2009 (COM(2009)43). As of year end 2008, 13 of the 16 original actions had been completed whereas three could not be implemented or were taken forward in other ways. The report presented the assessment of the impact based on specific quantitative and qualitative indicators, action by action.

The Commission is also taking forward other actions to improve the supervisory and control systems, such as the action plan to strengthen the Commission's supervisory role under shared management of structural actions. A report (COM(2009)42) on the implementation of the structural funds action plan was adopted in early 2009. The Commission adopted in October 2009 a follow-up report on the actions carried out in 2009 and will publish a report on the first impact of the Action Plan at the beginning of 2010.

The Commission is continuing its efforts to improve the supervisory and control systems. The 2008 Annual Activity Reports of the Commission services contain action plans to improve the effectiveness of specific internal control systems.

8. The Council recalls the utmost importance of training for the staff involved in controls, at all levels, and it invites the Commission to implement all the appropriate measures in order to strengthen their capacities. (§ 3, 2nd paragraph, page 12)

Commission's response:

In the area of Cohesion policy, the Commission has invested considerably in providing guidance and training to Member States both for the 2000-2006 and 2007-2013 periods, for example on day-to-day checks by management bodies and supervision by certifying bodies.

The Commission has also organised training sessions in the area of internal control for Member States, including a seminar in June 2008 which was attended by over 500 delegates from Member States. The Commission will continue to work on improving the effectiveness of the first level controls on national and sub-national level. Following the seminar organised in 2008 for the managing and certifying authorities, the Directorates-General for Regional Policy, and for Employment, Social Affairs and Equal Opportunities organised in June 2009 a similar seminar aimed at training on implementation, but also audit and control issues specific to the managing and certifying authorities. The objective of the seminar was to train assigned individuals who will then go back to their Member State to train their colleagues ("train-the-trainer" seminar).

Within the Commission, an extensive training programme is delivered to staff involved in control activities. Advice on control issues is also available via the Central Financial Service of the Directorate-General for Budget.

9. The Council urges the Commission to work closely with the Court of Auditors and the Member States when establishing guidelines and various procedures for the implementation of programmes in order to achieve a common understanding of rules and procedures and a common approach for their implementation. The Council invites the Commission to intensify its communication and cooperation with the Court in order to promote common understanding of legal provisions and to avoid differences in interpretation between the two institutions particularly for the compilation of management and control reports. Such a dialogue is particularly important at the beginning of a programming period and could contribute to reducing the level of error. In addition, the Council encourages the Commission to share experience of best practice with regard to the correct implementation of legal provisions with and between Member States in order to prevent any misinterpretation. The Council considers that rules applying to a given programming period should not be applied retroactively to previous periods and also that the interpretation must be based on the logic and principles applicable to the respective programming period. (§ 3, 2nd-4th paragraphs, page 12)

Commission's response:

The Commission is taking the requested action.

The Commission works closely with the Member States and the Court of Auditors on the guidance it issues on the rules and procedures governing the use of Cohesion policy funding. It routinely consults Member States on guidance documents through the various management and technical committees. The Court is invited to attend such meetings as well. On important issues or new procedures the Commission seeks the Court's opinion specifically, as it is doing for example on the new provisions for simplified cost options such as flat rates. The

Commission also organises training events for Member States to help disseminate guidance and spread good practices. An example was the “Train the trainers” seminar, with various specialised workshops, which was held in Brussels on 9 June 2009.

The Commission and the Court of Auditors have put their cooperation on a permanent footing with so-called “inter-institutional colloquia” at which they discuss questions of mutual concern such as audit methodology and assessment and interpretation issues. Such colloquia are held on average twice a year. The most recent one took place on 26 March 2009.

Some of the issues discussed are prepared by joint working groups. Such a working group developed a harmonised systems assessment methodology, which lays down the criteria to be applied in arriving at opinions on the quality of systems in system audits. Member States' audit authorities have been encouraged to apply the same methodology. There is also a standing working group on interpretation questions. This attempts to resolve differences of interpretation that arise in the discussion of the audit findings underlying the Court's annual report. Topics currently being discussed include the provisions on taking account of revenue and overheads in the 2000-06 period. Since last year the DAS findings reported in its annual report have been discussed beforehand in tripartite meetings involving the Court, the Commission and the Member State.

The Commission endeavours always to judge actions by the standards applicable at the relevant time.

10. The Council invites all actors involved to work towards common audit standards and coordinating audits and reciprocal acceptance of results between Commission and Member States, based on the single audit model and bearing in mind the principles behind the contracts of confidence, within the current legislative framework and with due respect to the differences in the systems of Member States and the independence of their audit institutions, at all levels. (§ 3, 5th paragraph, page 12)

Commission's response:

The Commission is taking the requested action.

The legislation for Cohesion policy in the 2007-13 period has made progress in several areas towards common audit standards and procedures permitting reliance on the results of audit work done by the Member States. A standard audit methodology based on statistical sampling is laid down for their work, which can be adjusted to national circumstances and systems. The Member States have to issue an annual audit opinion based on this work and to report on the results in a standard format stating the error rate detected. The timing of the annual audit work and of the report on the results has been changed to allow the report to be taken into consideration in the Commission's assessments of Member States' systems in the Directorates' General Annual Activity Reports. Annual bilateral audit coordination meetings are continuing as in the 2000-06 period, but on the basis of more recent results arrived at by harmonised methods and with reference to the assessment of the compliance of the systems with regulatory requirements carried out at the beginning of programme implementation. In addition, there are

two technical meetings with the Member States' audit authorities every year to discuss general issues.

The key guidance documents for control and audit work are being collected into an Audit Reference Manual, the last chapter of which was presented to the Member States in May 2009.

These developments will allow the Commission to rely on Member States' audit work, in line with the single audit model, more readily than in the 2000-06 period. It will be able to concentrate its finite audit resources on high-risk areas, while applying the "contract of confidence" approach of reliance on national audit work to other Member States and programmes.

11. The Council recalls that the controls and the assurance they provide should be improved by building on existing control structures and promoting simplification with a view to improving the cost-benefit ratio and urges the Commission to assess the costs of control by area of expenditure. In addition, the Council reiterates the fact that it is essential that the whole process aimed at reducing the level of error should not necessarily mean that, as a result, there is an increase in administrative and control costs. (§ 3, 1st paragraph, page 13)

Commission's response:

The results from the study on the costs of controls in cohesion policy and rural development were incorporated in the methodology used in the Commission's communication to the European Parliament, the Council and the European Court of Auditors "Towards a common understanding of the concept of tolerable risk of error" (COM(2008) 866).

Further data-gathering will be needed to underlie firm proposals on tolerable risk. The nature of the work required and timing will vary according to the different policy areas and will be focused on expenditure governed by 2007-13 legislation. As the statistics on the costs of control from this programming period will become progressively available over the next two years, the Commission plans to provide analyses of the tolerable risk of error, for the different policy areas, progressively in the time period until the end of year 2012.

The Commission is well aware that the purpose of introducing the concept of a tolerable risk of error is not to increase control costs, but rather to define the cost effective level of control taking account of risk.

12. To achieve well functioning supervisory and control systems, the Council encourages the Commission to pursue its efforts to ensure that its supervisory and control systems address the risks effectively on all levels of implementation and mitigate the risk that the control systems in the Member States do not collect all unduly paid amounts. The Council takes note of the communication from the Commission to the European Parliament, the Council and the Court of Auditors "Towards a common understanding of the concept of tolerable risk of error" and considers it an element for a thorough discussion to be held with the European Parliament, the Commission, the Court of Auditors and all relevant actors, once the Council has defined its position. (§ 3, 2nd-3rd paragraphs, page 13)

Commission's response:

The Commission is continuing to take action to improve the supervisory and control systems in the area of Cohesion policy, following the action plan to strengthen the Commission's supervisory role under shared management of structural actions. A report (COM(2009) 42) on the implementation of the structural funds action plan was adopted in early 2009. The Commission adopted in October 2009 a follow-up report on the actions carried out in 2009 and will publish a report on the first impact of the Action Plan at the beginning of 2010. It is expected that the full impact of those actions on the error rates will become visible in the medium- to long-term.

Outside the 2008 structural funds action plan, the Commission is also continuing its efforts to improve the supervisory and control systems. The 2008 Annual Activity Reports of the Commission services contain action plans to improve the effectiveness of specific internal control systems. The new elements of simplifications introduced in the regulatory framework for the 2007-2013 period should also increase effectiveness and help reducing the number of errors in the implementation of the Structural Funds. Furthermore, the Structural Funds' Joint Audit Strategy aims at implementing the single audit principle as defined by the European Court of Auditors. This should contribute to an increase of the efficiency of the supervisory and control systems implemented by the Commission.

The Commission considers that a future introduction of the concept of a tolerable risk of error will provide a clear view on the cost-effectiveness of the overall control system, and is taking this forward in the light of the positive reaction in the 2007 Discharge resolution. The nature of the work required and timing will vary according to the different policy areas and their multi-annual execution: for Cohesion policy the aim will be to study 2010, the first year when the majority of expenditure will be governed by the strengthened control provisions in the 2007-13 legislation.

Chapter 3 - Budgetary Management

13. While recalling the joint declaration on Implementation of the Cohesion Policy adopted at the conciliation meeting on 21 November 2008, the Council calls on the Commission to make every effort to avoid delays in the examination of major projects and the management and control systems which could have an adverse impact on the future implementation of the budget. (2nd paragraph, page 14)

Commission's response:

The Commission is taking the requested action. DG REGIO has put in place well-defined procedures to perform the quality checks of major project applications within the time required by the General Regulation (1083/2006). It uses specific ICT tools to monitor the work flow in treating major projects submitted by the Member States.

The Commission examines the compliance assessment reports and opinions submitted by Member States, which are due within 12 months of programme approval, in order to confirm that the management and control systems set up by the Member States for the 2007-2013 programming period fully comply with regulatory requirements. Until the Commission has approved the assessment, it will not reimburse interim payment claims.

By the end of September 2009 the Commission had received compliance assessment reports from Member States covering 405 programmes, representing more than 93% of the total programmes. It had accepted the compliance assessments for 74% of the programmes received and rejected 19% which have to be re-submitted after correction by the Member States. The remainder have been interrupted or are still subject to examination. The conclusion is that the Commission guidance issued in 2007 has generally been followed. The reasons for rejection and interruption are related in particular to the failure to provide adequate information on certain mandatory key elements, and inconsistencies between the findings in the report of the compliance assessment body and the final opinion. Few cases have raised fundamental structural or capacity problems. The Commission is actively following up the cases, which have been rejected or not yet submitted, with national authorities in order to have them approved by the end of the year.

14. While noting that the budgetary surplus continues to decrease, the Council reiterates that a realistic and sufficient budgeting from the stage of the preliminary draft budget onwards, which limits to the largest extent possible the need to recourse to amending budgets to reduce appropriations for payments, remains an essential element of good budgetary management. (3rd paragraph, page 14)

Commission's response:

The Commission will take the requested action. For instance, the Commission, in order to achieve a realistic and sufficient budgeting, is yearly making a synthesis on the under-implementation in the context of the Budget Forecast alert procedure (Chapter "Lessons to be learned" of the Information note).

15. The Council notes that the accuracy of Member States' expenditure forecasts in the area of "Structural Funds" continues to improve and encourages the Commission and the Member States to cooperate closely in view of improving accuracy even further, thus making these forecasts a useful tool for budgeting purposes. (4th paragraph, page 14)

Commission's response:

The Commission is taking the requested action. It is continuing to analyse Member States' forecasts against the outturns, to report on the results in its annual report on budgetary execution of the Structural Funds, and to take up major discrepancies with the Member States concerned with a view to reducing the gaps.

16. Notwithstanding that 2007 is the first year of the new programming period, the Council notes with great concern that the overall level of outstanding budgetary commitments (RAL) continues to increase. The Council, nevertheless, notes with satisfaction a decrease of RAL for Structural Funds for the 2000-2006 programming period and calls on the Commission to continue with its efforts so as to avoid any delays in the closure of these programmes which could have a negative impact on the implementation of the approved programmes for the new programming period. (1st paragraph, page 15)

Commission's response:

The Commission is taking the requested action. It has done considerable work to prepare for closure of 2000-06 programmes. It issued guidelines on the closure of Structural Fund programmes in 2006 and for Cohesion Fund projects in 2008. In September 2008 it organized a large seminar "Towards a successful closure of 2000-06 programmes," which was attended by over 700 delegates from all Member States. It published answers to the numerous questions asked at the seminar about aspects of closure in January 2009. On 11 December 2009 a technical meeting with Member States' winding-up bodies is planned, with the specific subject of preparation for closure 2000-2006. The Directorates General concerned have also put in place their internal procedures in readiness for the surge of closure documentation which will occur in the autumn of 2010, following the extension of the eligibility period for 2000-06 programmes until June 2009 for many Member States.

17. As regards the analysis of the data referring to RAL, the Council shares the Court's view that further improvements are possible and, consequently, calls on the Commission to improve its report on budgetary and financial management. (1st paragraph, page 15)

Commission's response:

The Commission has taken the requested action. In the Report on budgetary and financial management 2008, the outstanding commitments (RAL) were analysed together with the cumulative implementation of the relevant Community programmes. The distinction of the RAL between the current and the previous financial programming periods was made, as recommended by the Court of Auditors.

18. The Council acknowledges that the "n+2" rule has had the intended effect of encouraging the timely liquidation of commitments. The Council notes the Court's observation on the risk concerning the legality and regularity of underlying transactions if the accelerated payment process to reduce outstanding commitments were to be achieved by applying less strict internal control procedures. Therefore, the Council calls on the Commission and the Member States to take full account of this risk. In this respect, the Council also calls on the Member States to give additional attention to ensuring timely liquidation of commitments in line with the relevant procedures foreseen by the legislation and without compromising the quality of control procedures. (2nd paragraph, page 15)

Commission's response:

The requested action has been taken. The Commission discourages Member States from declaring expenditure without carrying out the usual controls in order to avoid de-commitments under the n+2 rule. For example, in connection with projects included in programming retrospectively, the Commission continuously reminds Member States to ensure that projects fulfil the normal selection criteria, that the use of EU funding is publicised and that the projects are subject to the normal checks. Other means of avoiding automatic de-commitments under the n+2 rule, such as front-loading the payment of grants in the early years of projects, are also strictly regulated.

19. In respect of information on the implementation of the budget, the Council shares the Court's view that the figures mentioned in the different documents are not fully consistent and vary slightly. Consequently, it encourages the Commission to increase transparency, consistency and comparability of the information on implementation and surplus from now on by providing clear definitions and explanations of concepts and calculation methods used. The Council considers it appropriate to present all information needed to calculate different utilisation rates throughout the whole budgetary procedure, from the preliminary draft budget to the total authorised appropriations. (3rd paragraph, page 15)

Commission's response:

The Commission has taken the requested action. The implementation reporting of the annual accounts and the Report on budgetary and financial management is now standardised. Concepts like current (unused) reserve, carryovers, assigned revenue, other institutions are treated exactly in the same way.

Utilisation rates most often refer to final appropriations which are generally the most relevant for analysing the budgetary management. Nevertheless, the appropriations of the year (initial budget) are transparently presented in all Commission reports.

20. The Council acknowledges the substantial efforts made and the important improvements achieved by the Member States and the Commission in providing complete, accurate and timely information on financial corrections and recoveries. However, it notes the Court's observations on the remaining deficiencies in the overall information available. The Council shares the Court's opinion that the Commission's initiative to record complete data on recoveries in the central financial

and accounting system as from 2008 is a positive development. The Council encourages the Member States and the Commission to further improve, in line with the Court's recommendations, the completeness and accuracy of information with the aim of providing reliable evidence allowing the Court to assess the effectiveness of the multiannual correction mechanisms for EU spending. (*1st paragraph, page 16*)

Commission's response:

Changes have been made to the ABAC financial system in 2008 to allow the tracing of recoveries to specific errors or irregularities detected. This has allowed it to already present more complete and reliable recovery figures in the 2008 accounts. Thus the Commission will continue to include in the notes to the accounts its own financial corrections. The Commission commits itself to continue the efforts to improve the quality of information produced by the Member States on financial corrections, withdrawals and recoveries. This information is included in Annex to the annual report on the implementation of the Structural Funds. It will continue to report to the budgetary authority on this issue.

Furthermore, the Commission will pursue ongoing efforts and will not hesitate to proceed to financial corrections where necessary. Within the legal framework, the Commission has taken steps, under the Action plan of 19 February 2008 to strengthen its supervision of Member States in relation to shared management of structural actions, to ensure that irregularities found in the implementation of the Structural Funds are dealt with as soon as they are detected and financial corrections are applied promptly.

Chapter 4 - Revenue

21. As regards long-outstanding reservations in particular regarding the VAT own resources, the Council, while noting that the Commission has adopted an approach that categorises the reservations in a framework which allows priorities to be identified, encourages the Commission to continue its efforts towards an effective implementation, in cooperation with the Member States, in order to speed up its work on lifting VAT reservations. (§ 2, 1st paragraph, page 17)

Commission's response:

In their annual report the Court of Auditors specifically referred to 34 reservations which had been outstanding too long. Beginning in mid-2008 the Commission categorised all outstanding reservations according to risk criteria including those cases specifically mentioned. Management visits were introduced to progress the most critical items. As a result of this action 11 of those oldest reservations have been lifted. A further 10 are considered low-risk at present and will be pursued via the bi-annual control cycles or other ad-hoc contacts. Turning to the remainder of those specified cases; action is already underway with the relevant Member States with a view to finalising or significantly advancing the items for a further 6, and two more management reviews will be considered in early 2010 to deal with the remaining 7 items.

22. The Commission and the Member States should continue to make efforts in strengthening their supervisory and control systems, which the Court again found only partially effective, thus further reducing the error rates. The Council urges the full implementation of controls and checks under IACS in all Member States and calls on the Commission to thoroughly follow-up in the conformity clearance all the errors noted in its audits. Mechanisms ensuring effective and rapid recovery actions against beneficiaries having received irregular payments should also be reinforced. (*1st paragraph and § 1, 3rd paragraph, page 19*)

Commission's response:

The Commission has taken the requested action.

The Commission has taken action in the rural development area, where most of the errors appear (the EAGF part of agriculture expenditure has an error rate below materiality).

Member States are obliged to ensure that all rural development measures are verifiable and controllable. Member States must also make sure that the rules concerning eligibility are respected.

Council Regulation 1290/2005 provides for the-post 2007 period to align the management and control system for the expenditure under the newly created European Agricultural Fund for Rural Development (EAFRD) with the EAGF system. Thus, in the future, the advantages of the EAGF system that are largely recognized will also cover the rural development expenditure.

Regarding IACS Greece has now complied with its action plan and has created a new, operational LPIS. The new system will be used by the Greek authorities for the first time during the 2009 claims procedure. The Commission will continue to closely monitor the IACS procedure in Greece. Also, the ongoing conformity clearance procedures covering the financial risks resulting from deficiencies for the years 2006-2008 will continue. For the future, the Commission confirms it will apply appropriate measures proportionate to the eventual weaknesses.

Concerning recoveries, the new 50/50 rule enshrined in Article 32(5) of Council Regulation (EC) No 1290/2005 is a strong incentive for Member States to ensure an expeditious and effective recovery of irregular payments from the final beneficiaries.

However, where recovery from final beneficiaries is not possible because the problems identified only relate to deficiencies in the Member States' management and control systems the financial corrections imposed on Member States through the conformity clearance mechanism are an important incentive for Member States to improve these systems and, thus, to prevent or detect and recover irregular payments to final beneficiaries. The conformity clearance thereby also contributes to the legality and regularity of the transactions at the level of the final beneficiaries.

23. As regards rural development, the Council strongly calls for a simplification of complex rules and more precise definitions of eligibility criteria, especially for agri-environmental schemes, at Commission level first, but also at national level, in the context of the rural development plans. This effort should lead to the establishment of a set of verifiable indicators, keeping in mind the need to guarantee the substance of existing commitments. The transmission of more comprehensive and clear instructions and guidelines to all stakeholders, as well as the organisation of training actions are crucial in view of streamlining the application and harmonising the interpretation and the scope of the existing rules. (§ 2, 4th-5th paragraphs, page 20)

Commission's response:

The requested action has been taken in the rural development area, where most of the errors appear (the EAGF part of agriculture expenditure has an error rate below materiality).

- Member States are obliged to ensure that all rural development measures are verifiable and controllable. Member States must also make sure that the rules concerning eligibility are respected.

- These issues were discussed intensely between the Commission and the National Authorities before the rural development programmes for 2007-2013 were approved.

- The Commission has given extra guidance to Member States on how to implement agri-environment measures.

- Audit missions will take a closer look at the origin of higher error rates in agri-environmental measures.

- The higher error rates in rural development, in particular agri-environmental measures seem to be due to the complex nature of the policy rather than problems in the controls.

The Council Regulation 1290/2005 provides for the-post 2007 period to align the management and control system for the expenditure under the newly created European Agricultural Fund for Rural Development (EAFRD) with the EAGF system. Thus, the advantages of the EAGF system that are largely recognized will also cover the rural development expenditure.

24. As regards the Commission's clearance of accounts, the Council encourages the Commission to pursue its efforts in following up the application of the "50/50 rule" (specified in Article 32(5) of Regulation (EC) No. 1290/2005). In the context of the conformity clearance, the Council emphasises once again the importance of financial corrections which contribute considerably to safeguarding the Community's financial interests, acting also as an important incentive for Member States to improve their management and control systems. The Council joins the Court in noting the fact that in 2007 the certifying bodies' work was extended and that opinions on the paying agencies' Directors Statements of Assurance and on internal control procedures were required. It encourages the progress in the direction of improving the accountability

of paying agencies and increasing the transparency and ownership of the control results. (§ 3, page 21)

Commission's response:

The Commission welcomes the Council's support for the application of the 50/50 rule - and that it provides a strong incentive for Member States to ensure an expeditious and effective recovery of irregular payments from the final beneficiaries, and the support for conformity clearance as a tool to shielding the Community budget from expenditure that should not be charged to it.

The Commission furthermore welcomes the acknowledgment by the Council on the improvements in the accountability of Paying Agencies and the progress that has been made. In line with this development, DG AGRI reports in its Annual Activity Report for 2008 on the assessment of the declaration of assurance from the different Paying Agencies, and, where a Member State has accredited more than one Paying Agency, of the annual summaries from the coordinating bodies.

25. As regards the errors in the payments audited, which, in the case of "Environment", caused the Directorate-General for Environment to make a reservation in its Annual Activity Report, the Council emphasises the importance of prompt and thorough ex-post audits to detect ineligible expenditure and/or inadequate supporting documentation, in order to allow the necessary corrections. This applies particularly to projects financed through the LIFE instrument, although the situation matured and improved in 2007 with respect to the control systems and the alert mechanisms. (§ 4, 2nd paragraph, page 21)

Commission's response:

The requested actions have been taken. The Directorate General of Environment has increased the staff of its audit team and used a framework contract for external auditors. Subsequently the number of audit reports issued in 2008 has increased from 16 to 26 and the amount of payments audited from €10,6 millions to €31,5 millions compared to 2007. Those figures are confirmed by the results at 31/5/2009 with 15 reports and €13,9 millions of payments audited.

Chapter 6 - Cohesion

26. The Commission shall, together with improving its supervisory systems and providing guidance to the Member States, actively encourage and facilitate simplification which shall ultimately lead to reducing both the occurrence of errors and the administrative burden at all levels. The Council notes that further work has been considered regarding issues such as the use of a flat rate, partial closure and eligibility rules fixed at national level and expects to see their beneficial effects for future discharge procedures related to the new programming period. In this context, the Council welcomes the action taken regarding simplification in the framework of the 2008 recovery plan to reduce regulatory and administrative burdens, such as the clarification of provisions facilitating the launch of financial engineering instruments and the simplification in relation to broadening the use of flat rates and lump sum costs. The Council encourages the Commission, in close cooperation with Member States, to continue in this way and to explore new possibilities for simplification. (§ 1, pages 22-23)

Commission's response:

The Commission is taking the requested action.

A number of simplifications proposed by the Commission have already been introduced by amendment of the Council regulations (see Regulations 1341/2008 and 396 and 397/2009. These concern revenue-generating projects and, the use of flat rates and lump sums for certain outputs. Simplifications were also included in amendments to the Council regulations to allow quicker disbursement of Cohesion policy funds in response to the economic downturn (Regulation 284/2009) The Commission is about to propose a second batch of amendments to simplify application of the Council regulations, with regard inter alia to minimum operating periods for investments and partial closure. The Commission also amended its implementing regulation, for example to streamline the requirements on reporting irregularities and irrecoverable amounts, publicity and audit issues. The simplification proposals have emerged from a joint working group of Member State and Commission representatives. Where necessary, the Commission is issuing guidance on application of the simplified provisions, for example on flat rates and revenue-generating investments.

27. The Council urges all actors in the accountability chain to further intensify their efforts so that significant progress can be achieved and made visible in the short term. The Council invites them to make good use of all preventive and corrective measures available, while striking the balance between the need for controls and the administrative costs they entail. In this context, the Council recalls the joint declaration by the European Parliament, the Council and the Commission regarding the implementation of the Cohesion Policy and invites all the actors involved to do their utmost to fully comply with it. (3rd paragraph, page 22, and § 2, 1st-3rd paragraph, page 23)

Commission's response:

The Commission is taking the requested action.

The approach of the Commission to improve the effectiveness of the control system for Cohesion Policy continues to involve both preventive and corrective action. With regard to the 2000-06 programmes now about to be closed, the focus is on removing irregular expenditure through financial corrections and on the work of winding-up bodies to ensure that the residual risk of irregular expenditure in closed programmes is low. For the 2007-13 period the preventive phase is continuing with the completion of the compliance assessment procedure for the new programmes, the provision of guidance and training, and simplification of operating conditions. In the second half of 2009, the Commission carried out sample audits of the first expenditure of the new period. The results will be published in early 2010.

The cooperation between Member States and the Commission with regard to the new period programmes has been intensified compared with the past. The full range of activities being carried on to improve the situation is described in the report on the implementation of the Action Plan to strengthen the Commission's supervisory role in the shared management of structural actions expenditure (COM(2009) 42).

28. The Council regrets the Court's conclusion that the main objective of the Commission's supervision to ensure that Member States establish and operate control systems in compliance with underlying regulations is not yet achieved. Though acknowledging that in the majority of cases the audits have been adequately planned and carried out and the relevant corrections applied, it notes with concern that in a number of cases corrective action has been taken too late, thus reducing the effectiveness of the supervision procedure. In the Council's view, it is essential that the Commission's audit activity is effective and that the Commission puts in place an effective system to carry out its supervisory role. (§ 2, 4th-5th paragraphs, page 24)

Commission's response:

The Commission is taking the requested action. In most cases appropriate action to follow up the results of audits is taken in a reasonable time period. Under the Action Plan to strengthen its supervisory role, the Commission has taken action to speed up its procedures and reduce unnecessary delays in the application of payment suspensions and financial corrections following audits. This has been reflected in a large increase in the number of suspension decisions and in the volume of financial corrections resulting from the Commission's or the Court of Auditors' audit work in 2008 compared with 2007. Reference is made to the Commission's report on the implementation of the Action Plan (COM(2009) 42).

The Court's findings indicate that the Commission's supervision has not yet had the desired impact. Nevertheless, the assessment of the Member States' management and control systems in the 2007 report represented a significant improvement from the previous year's report.

29. The Commission should make, where appropriate, an effective use of the corrective instruments at its disposal, such as payment suspensions, financial corrections and recoveries. This would act as a deterrent and thus have an important positive impact on the legality and regularity of expenditure. The Council underlines that both reinforced controls at the Member State level and more effective supervision by the

Commission should respect the principle of proportionality of controls to the risks and the benefits from control in relation to the costs involved. (§3, 1st paragraph, page 25)

Commission's response:

The Commission is taking the requested action. The figures for suspensions and financial corrections in 2008 show a marked increase. In 2008 it took 10 formal payment suspension decisions, as against only one in 2007. The volume of financial corrections applied in 2008 as a result of the Commission's or the Court of Auditors' audit work also rose sharply to €1,587 million from €396 million in the previous year.

With regard to the proportionality of controls, reference is made to the Commission's communication "Towards a common understanding of the concept of tolerable risk of error" (COM(2008) 866), which puts forward a framework for setting the level of controls by reference to their costs and benefits.

Chapter 7 - Research, Energy and Transport

30. The Council stresses the importance of a substantial simplification of the legal framework which should be regarded as a general guidance principle for the new programming period. The Council calls on the Commission to use all possible opportunities to further simplify and clarify the rules for the calculation and reporting of costs, which should subsequently reduce the uncertainty about the eligibility of expenditure resulting from possible different interpretation of the often complex legal framework. Moreover, the Council stresses the need to use more extensively financing methods which are based on lump sums and on the achievement of results, wherever they are suitable. (§ 1, page 26)

Commission's response:

The Commission agrees to the general need for more profound simplifications and asks the legislator to support the adaptations to the legal basis (revision of the Financial Regulation, Framework programme participation rules) that would be necessary in this respect for the preparation of the 8th Framework Programme.

FP7 has brought about a number of important simplifications already. The introduction of the participants guarantee fund allowed to considerably reduce the numbers of ex-ante financial checking, the use of protective measures and replaced the collective financial responsibility of the contractors as laid down in FP6. The introduction of the Certification on the Methodology in FP7 contributes to the reduction of required certificates and will limit ex-post controls. Further improvements will be achieved by the gradual introduction of fully electronic exchange systems for the whole chain of proposal and grant management processes in the frame of the e-FP7 initiative.

As regards the more extensive use of lump sums and flat rates, a first tangible step was taken on 4 June 2007, when the Commission decided on lump sums for International Cooperation Partner Countries' beneficiaries. The Commission continues to work towards a simplification of the cost reimbursement system, gradually introducing the use of flat rates and lump-sums where appropriate (for example for subsistence and accommodation costs). Further steps would be taken after careful consideration of their likely consequences and with due regard to the principle of sound financial management.

31. The Council considers that controls need to be reinforced to identify any possible overstatement of eligible costs (with particular attention to personnel and indirect costs) as well as costs declared without justification or without adequate supporting evidence. It asks the Commission to continue its approach of an increased number of on-the-spot audits, targeted according to budgetary impact, aiming at a further reduction of the risk to legality and regularity and at the elimination of systematic errors. (§ 2, 1st paragraph, page 26)

Commission's response:

The Commission has devised a control strategy aimed to ensure the legality and regularity of the 6th Framework Programme on a multiannual basis. It is based on

the detection and correction of errors which could not be identified before making the payment. This is achieved by ex-post auditing and recovering amounts found to be overpaid to the audited beneficiaries, including for non-audited contracts where the same problems have been identified. The research DGs have recently elaborated the control strategy for FP7.

32. The Council underlines the importance of improving the quality and reliability of external audit certificates. It invites the Commission to provide additional support to beneficiaries and certifying auditors on the audit work to be performed, including the certification of the cost methodology. In parallel, the Council emphasises the necessity of a timely explanation of new methods and procedures and asks the Commission to provide regular information by all means to the relevant actors. Existing provisions need to be simplified as well and, together with the guidelines, they have to be properly understood through appropriate training in time. (§ 2, 1st-2nd paragraphs, page 27)

Commission's response:

The distinct feature of FP7 compared to FP6 is that the audit certification, both at the level of cost statements and at the level of the cost methodology certification process is based on compulsory certificate models, which are part of the FP7 model grant agreement. In the context of FP7, the Commission introduced agreed-upon-procedures on the basis of international audit and accounting standards. These procedures consist of a compulsory set of procedures to be performed by auditors involved in the certification process. Auditors are therefore not requested to provide an assurance opinion anymore but to perform a set of procedures in order to provide an independent report on factual findings, which will be the basis for the Commission to assess the eligibility of costs and/or the methodology. Moreover the Commission established in close collaboration with the European Federation of Accountants FAQ and FP7 guidance notes for the beneficiaries and auditors involved in the audit certification. While participating in conferences and workshops to raise awareness on the FP7 certification process, the Commission also launched in 2007 specific pages dedicated to audit and certification policy on CORDIS. FP7 prospective beneficiaries and certifying auditors can easily retrieve audit supporting documents and can get support through the enquiry service established to deal with requests on FP7 issues.

The Commission's information-approach is largely based on publication of guidance and information through CORDIS, the functioning of the "Research Enquiry Service" and the role of the National Contact Points. In view of the size of the RTD Framework Programme beneficiaries community (some 15.000 organisations), specific training for the beneficiaries cannot realistically be envisaged with the existing resources and structures.

33. The Council calls on the Commission to continue the implementation of the measures envisaged in the framework of the common audit strategy, aiming at a refinement of certification and risk evaluation methodologies, the harmonisation of procedures and a more effective cooperation between the different Commission services. (§ 2, 3rd paragraph, page 27)

Commission's response:

The research DGs are implementing the common audit strategy for FP6 in a coordinated way and have recently elaborated the common audit strategy for FP7.

34. The Council urges the Commission to ensure timely payments to beneficiaries. (§ 2, 4th paragraph, page 27)

Commission's response:

The Commission continues taking appropriate measures to comply with the Council's request related to delayed payments to beneficiaries and to comply with the time limits for expenditure operations set out in the Financial Regulation. The efforts made have increased the percentage of payments made on time. The issue is being monitored closely and receives the highest attention to ensure further improvement.

35. The Council invites the Commission to remedy the persisting shortcomings in the management information on audit results and their timely and effective implementation. It asks the Commission to improve the monitoring tools and the follow-up of detected errors, the supervision of corrective action and the recovery of amounts unduly paid to beneficiaries. In this context, the Council is also of the opinion that more effective use should be made of the available sanction mechanisms and that they should be used as an incentive for beneficiaries to improve the quality of their cost statements. (§ 3, 2nd-3rd paragraphs, page 27)

Commission's response:

Audit results are shared among research DGs through an internal Wiki site, which allows each DG to be informed of each other's audit results. Regular meetings among DGs are also held in order to implement the common audit strategy.

As far as the implementation of the audit results is concerned, research DGs have made structural changes to improve previous shortcomings, such as, for example, increasing the resources dedicated to the follow-up of audits.

Regarding sanction mechanisms, guidance for the claiming of liquidated damages from beneficiaries has been developed at the beginning of 2009 and is currently being implemented.

Chapter 8 - External aid, Development and Enlargement

36. The Council, while acknowledging the Commission's continuous efforts to mitigate the problems identified in this area, calls on it to continue the work done, to enhance its efforts as well as to take all the necessary measures to decrease the material level of error significantly. In this context, the Council is aware that, due to the multiannual nature of the programmes, the errors detected during the course of a project can be remedied in a year later than the one under examination. The Council considers that the Commission should enhance its audit strategy by ensuring a better coverage of operations at implementing organisations' level. (3rd paragraph, page 28)

Commission's response:

An in-depth cost/benefit analysis is needed in order to investigate possibilities for further reductions in the material level of error. The Commission will submit a report to Parliament and Council based on the findings of the tolerable risk/cost-effectiveness studies for external action and a review of the AIDCO control strategy will follow. As regards audit, EuropeAid's Annual Audit Plans (AAP) are the main pillars of the Commission's audit strategy for external operations. The methodology to establish the AAP underwent a major revision in 2008. This has resulted in a more coherent and transparent AAP 2009, giving a better insight into the composition of the portfolio of external aid contracts, audit coverage and other control measures. More improvements in the planning process including further guidance on audit coverage are being prepared and will become operational for the annual audit planning process 2010.

37. The Council encourages the Commission to continue to closely monitor the beneficiary countries' systems and welcomes the action plan set up by the Commission to ensure that improvements take place. (§ 1, 2nd paragraph, page 28)

Commission's response:

The Commission is taking the requested action. The measures taken by the implementing agencies following the action plans are closely monitored and audited to verify that they lead to the desired improvements.

38. Regarding budget support, the Council is fully aware of the necessity to strike a balance between the achievement of objectives and the need for most precise conditions for payments; however, the Council encourages the Commission to pursue its work to strengthen the indicators in order to carry out a more rigorous assessment and to provide a clear link between funding and performance, to achieve a more result oriented approach. (§ 1, 2nd paragraph, page 29)

Commission's response:

The Commission recognises the need to inject further discipline into the design and measurement of indicators in the budget support operations. General Budget Support Guidelines are currently being revised to improve the design and

assessment of eligibility conditions and specific results oriented indicators in order to achieve a more rigorous results orientated approach.

39. Regarding budget support, the Council stresses the need for additional training and urges the Commission to do its utmost to provide adequate support and expertise, in particular to all staff on the field in order to improve their performance and their capabilities. (§ 1, 3rd paragraph, page 29)

Commission's response:

In recent years the Commission has invested heavily in a solid training programme on Budget Support. In the 3 year period 2006-2008 54 budget support training courses have been delivered, reaching more than 1200 staff. Budget support training delivered in the field has increased from 7 available courses in 2006 to 14 in 2007 and 24 in 2008. This is in addition to HQ training where the average participation from Delegations is 40%. This training programme will be continued and where required be strengthened.

In addition a joint learning programme has been developed with other donors (within the context of the network Train4Dev) on Sector Wide approaches, and a total of 22 training sessions, in principle taking place overseas, has reached an additional 1000 staff from January 2006 to May 2009.

40. The Council notes with deep concern the recurrent weaknesses in the systems designed to ensure the legality and regularity of External actions expenditure at the level of project implementing organisations and asks the Commission to take the necessary steps to remedy this situation.

Although noting the efforts made by the Commission regarding the clarification of the terms of reference for audits, and in particular the tendering and public procurements, as well as the monitoring of the compliance with them, the eligibility of costs and the required documentation for the allocation of expenditure, the Council encourages the Commission to further enhance its action and urges it to provide for more training and support to project finance staff and to increase the active monitoring of their work by Commission's delegations. (§ 2, 1st-2nd paragraphs, page 29)

Commission's response:

The availability of standard terms of reference ('ToR') for financial and systems audits since 1st October 2007 is a major step forward in the process of obtaining better quality audits and ensuring the legality and regularity of transactions. Guidelines for Audit Task management became available in November 2008 and an advanced training module was developed and delivered (twice) in 2008. However EuropeAid's annual review of audit reports (which echo the findings of 2006 and 2007) confirm that the root causes for financial findings are weaknesses in the financial management and internal control systems of EC funds' beneficiaries. EuropeAid has examined the recommendations made by the external auditors and has started work on response measures which include the development of a Financial Management Toolkit for use by beneficiaries of EC external aid projects.

41. The Council invites the Commission to pursue and deepen its action to simplify and standardise partnership agreements and the related documentation; the Council expects to see the positive effects of these measures in the coming years. (§ 2, 1st paragraph, page 30)

Commission's response:

The requested action has been taken by the Commission. DG ECHO has already a long tradition of framework partnership agreements in order to implement efficient and effective Humanitarian Aid actions (Framework Partnership Agreement for contracts with ONGs and Financial and Administrative Framework Agreement for contracts with United Nations). The last framework contract has been launched from January 1st, 2008 and addresses the need to simplify and to increase the flexibility of the contractual instruments with our partners. The overall aim of the new FPA was to improve the implementation of humanitarian aid with a focus on results-driven approach. Moreover, and wherever possible, current rules and procedures were simplified. In that context, and to better take account of the diversity of DG ECHO partners and establish a more effective control environment as imposed by the Financial Regulation, the new FPA establishes two differentiated control mechanisms of the humanitarian actions: "Action related monitoring" ("A") and "Prior assessment of own Procedures" ("P") control mechanisms.

The appraisal of the control mechanism to be applied to FPA-agreements is decided by assessing three main domains, being the financial strength of the organisation, the internal control and risk management procedures and the procurement rules. An annual assessment of the partners is foreseen and may lead to a change in control mechanisms to be applied. When a partner is subject to the "P" control mechanism, it applies its own procurement procedures for DG ECHO funded actions. In addition, In the context of the new FPA, a whole program of training, guidelines and interpretative fact-sheets have been put in place as well for the operational desks and finance officers of the Commission as for our partners, in headquarter and in the field. This contractual and administrative framework evolved to a real spirit of partnership and strengthens the impact of the EC's efforts in humanitarian aid.

42. As regards the funds channelled through United Nations organisations, the Council insists on the need for a closer control by the Commission, to make sure that the implementation of EU funds is dealt with adequately and that there is a clear understanding by all actors of the rules and procedures of control to be carried out and of the standards to be met, in order to fully achieve the objectives of the EU policies and action. In this context, the Council regrets the impossibility for the Court to assess the full value of the verification missions carried out by the Commission in 2007 because of insufficient or untimely reporting. Nonetheless, the Council takes note of the positive evolution of the relationship between the Commission, the Court and the United Nations and welcomes the strengthened cooperation developed in 2008 between the three organisations and expects to see its beneficial effects reflected on the ground and in the future reports. (§ 2, 2nd-3rd paragraphs, page 30)

Commission's response:

The Terms of Reference for verification missions were agreed between the UN and the Commission in April 2009 and the Commission also believes that the efforts made to explain the operation of the verification clause in Contribution Agreements with the UN - including through training - will help to ensure that misunderstandings are avoided in UN country offices and delegations. The fact that at the time of drafting the 2007 DAS the majority of verification reports were not finalised is primarily linked to the cycle of the verification annual plan. As is the case for audits, the verification missions cycle from programming to the finalisation of the report do not fit the annual calendar. The Commission underlines that out of the 39 AIDCO planned UN verification missions for 2007, 37 reports have been finalised. All EuropeAid finalised verification mission reports were sent to the Court. As far as ECHO is concerned, all reports have been finalised for the 18 projects verified in 2007.

43. As far as the Enlargement policies are concerned, the Council regrets weaknesses detected in some implementing organisations, while taking note of the improvements made in the course of 2008 to redress the situation under the impulse of the Commission. The Council encourages the Commission to continue its monitoring and to closely follow up the evolution of this case. (§ 2, 4th paragraph, page 30)

Commission's response:

Further to a request of the Commission, the national authorities have taken action. The segregation of functions has meanwhile been implemented and staffing levels increased substantially. Constant monitoring and further follow-up of the systems remain key priorities for the Commission.

44. Regarding ex-post controls in the field of Enlargement policies, the Council shares the Court's view that the procedures should be speeded up and the delays in obtaining final replies on closure audits should be reduced. Therefore, the Council calls on the Commission to take all the appropriate measures and to provide all the necessary supports to partners in order to shorten the delays. (§ 2, 5th paragraph, page 30)

Commission's response:

The Commission is taking the requested action. The Commission however stresses that longer delays have to be occasionally accepted due to the complexity of the findings and as a consequence of the need of accuracy in the application of possible financial corrections.

45. The Council notes the improvements achieved in 2007 concerning the external audits at project level, although their quality is still not always sufficient, and encourages the Commission to pursue its efforts, to prevent the occurrence of such weaknesses, in particular for new contracts.

As for additional risk-based projects audits, the Council calls on the Commission to further develop procedures to derive full benefit from it. The Council invites the Commission to collect and analyse the results of the whole programme of audits to

control quality and to make best use of lessons learned. (§ 3, 1st-2nd paragraphs, page 31)

Commission's response:

EuropeAid's Annual Audit Plan (AAP) is based on an analysis of the composition of the entire population of external aid contracts and the use of top-down and bottom-up risk-analysis is an important element of the planning process. The Commission monitors the implementation of the AAPs and has carried out quality reviews of its EDF external audit reports since 2005. The follow-up to the main findings in these annual reports has led to significant improvements in the use of standard terms of reference for audits and the quality of audit reports. The quality review system is annually reviewed and it was significantly improved in 2008 and 2009 on the basis of lessons learned. Thus the quality of audits and audit reports is improving steadily.

46. The Council underlines the importance of field audits for all types of partners and notes that the Commission has increased them in 2007. The Council underlines the need to achieve a better balance between headquarter and on-the-spot audits of the implementing partners, for a better view of the reality of project expenditure. The Council encourages the Commission to pursue its efforts in this field, though keeping in mind the principle of proportionality. (§ 3, 3rd paragraph, page 31, and §4, 3rd paragraph, page 32)

Commission's response:

The requested action has been taken. In line with the requirements of the Financial Regulations, DG ECHO undertakes audits of partner organisations adhering to the FPA. The audit strategy is risk based which considers financial and operational strengths of the partners, the results of past audits, assessments and feedback received from ECHO staff. The strategy also ensures that all partners are audited over a 2 to 3 years cycle depending on whether the partner has been classified as having 'A' or 'P' control mechanisms. The audits themselves follow a 2-track approach: audits are performed both at DG ECHO partners' headquarters for finalised projects (at least once every three to four years and more frequently where higher risk is determined or the partner receives significant DG ECHO funds) and in the field for ongoing projects (determined by an assessment of risk and the past coverage of the partner concerned). Headquarters audits consist of two phases. Firstly, an analysis of partners' internal control systems and in particular the financial systems put in place to record and account for expenditures incurred on DG ECHO funded projects. Secondly, a control of expenditures against supporting documents for a sample of contracts. The level of transactions controlled is based on the results of the assessment of the internal control system. The results of the audits are used for the periodic assessments of the partners and for ensuring the eligibility of the funds claimed. The later may also lead to a recovery of funds due to the Commission.

The number of field audits had already been increased in 2007 from 20 in 2006 to 37 in 2007. For 2008, 47 field audits were initiated and 31 reports finalised. In 2009, 40 to 45 field audits are planned.

In addition to these financial audits which are carried out by external auditors, the monitoring of projects is also undertaken through DG ECHO which supervises projects and draw up regular reports (notably through a worldwide network of around 100 field experts continuously working for DG ECHO. These Humanitarian Aid specialists are permanently on the ground in order to facilitate and maximise the benefits of the humanitarian operations financed by the Commission).

Moreover, since 2007, each project is supposed to be visited at least once during its lifetime. In 2007 and 2008, 90% of projects were directly monitored in the field, the remaining 10% being projects where access, security and nature of project did not permit direct monitoring.

Therefore, audits have to be appreciated in the context of DG ECHO's overall control strategy which also includes the follow-up carried out by its headquarter staff and the analysis of the information provided by partners in their various reports. Indeed, the information which results from such controls is used by the external auditors when audits are carried out at partners' headquarters.

47. The Council notes the improvement achieved in the enlargement field regarding Extended Decentralise Implementation System (EDIS), thanks to the implementation by the Commission of a close monitoring, however, the Council shares the Court's view that the efforts at the level of national supervisory and control systems should continue under the close monitoring of the Commission. (§ 4, 1st paragraph, page 32)

Commission's response:

The Commission is taking the requested action. It will continue to closely monitor the beneficiary country systems, and actions plans have already been set up to ensure that improvements take place.

Chapter 9 - Education and Citizenship

48. The Council calls on the Commission to enhance the simplification of the often complicated legal framework by establishing clearer eligibility criteria and easier rules for the calculation of eligible expenditure, in particular personnel costs, in order to reduce the error rate and to improve the correctness of the declared cost. (2nd paragraph, page 33)

Commission's response:

The requested action has been taken. The design of the new programmes 2007-2013 has taken into account the Court of Auditors' recommendations of previous years to simplify the rules and to make extensive use of lump sum financing.

49. The Council welcomes the Commission's efforts in establishing an integrated audit system in the areas of education and culture as well as justice, freedom and security, with a strong link between national agencies and the Commission and an increased liability on the Member States' side. It invites the Commission to verify in further detail the certification of management structures carried out by national entities, with the intention of obtaining more reliability from the supervision by the Member States. Furthermore, it urges the Commission to make sure that the ex-ante and ex-post declarations of assurance by Member State entities in respect of their own financial management of Community expenditure constitute a real added value. (§ 1, 1st paragraph, page 33)

Commission's response:

The requested action has been taken. All ex-ante and ex-post declarations of assurance have been received and analysed and open qualifications have been followed-up systematically.

In addition more precise guidelines for the yearly declarations have been issued and specific meetings with the National Authorities have been organised in March and in November 2008. Both actions contribute to a higher level of reliability and to a real added value of the ex-post declarations.

50. The Council notes with satisfaction that progress has been achieved by an increased number of monitoring visits in Member States. This has enabled the Commission to check in a timely manner the description and effective operation of management and control procedures on the spot and to ensure the application of key internal control features. The Council encourages the Commission to move forward in this direction and to refine the control objectives. It stresses the importance of establishing exact criteria for the assessment procedure, to foresee precautionary measures, including financial corrections, in the contractual relationship with national agencies, to monitor systematically the progress made by the Member States and to follow up scrupulously the implementation of the necessary remedial actions. (§ 1, 1st-2nd paragraphs, page 34)

Commission's response:

The requested action has been taken. Control objectives for the primary controls are set in the "Guide for National Agencies" which is an integral part of the single agreement between the Commission and the National Agencies.

Control objectives for the secondary controls (to be performed by the National Authorities) are set in the Guidelines for National Authorities issued in 2007 and updated in March 2009.

An enhanced follow-up of corrective actions has been ensured by using a rating method; a clear link between the rating and the precautionary measures to take has been established and is effectively applied. Remedial actions are followed-up during the assessment of the declarations of assurance and during monitoring visits on the spot.

51. As regards communications expenditure, the Council asks the Commission to reinforce the ex-ante control system, by improving the rules and by increasing the general level of supervision, in order to achieve a higher effectiveness of the controls. In this context it notes with satisfaction the Commission's commitment to provide adequate check lists to be used consistently. (§ 2, 1st paragraph, page 34)

Commission's response:

The Commission has carried out the action required. An ex-ante and ex-post control unit was set up in November 2007 and an action plan was drawn up in DG COMM to tighten up the top-level ex ante controls and supervision carried out by the authorising officers by subdelegation. All the persons involved have already been provided with adequate check lists.

52. The Council recalls its recommendations for the Commission to ensure an efficient monitoring of payment times with the aim of reducing the delays in payments. (§ 3, 1st paragraph, page 34)

Commission's response:

The requested action has been implemented. During 2008, DG EAC has taken further measures to closely monitor the development of payment delays. The monthly reporting to management has been extended and includes both the average payment delays as well as an analysis of payments made within the different contractual time limits or exceeding those limits.

The regular follow-up of payment delays has resulted in a clear reduction of the average payment time (an average in 2007 of 38,80 days for procurement and 54,12 days for grants is down to a total average of 28,89 days in 2008).

53. The Council urges the Commission to complete as soon as possible the sharing of ex-post audit results with the aim of increasing the efficiency and effectiveness of audits. (§ 3, 2nd paragraph, page 34)

Commission's response:

The requested action has been taken. The results of audits launched from the beginning of 2008 are now inserted in ABAC tracking and therefore accessible for other DGs.

Chapter 10 - Economic and Financial Affairs

54. The Council underlines the importance of further simplifying and harmonising the cost calculation methodology and the rules for cost eligibility, particularly with regard to the eligibility period. In addition, the requirement to use actual cost figures and the need to provide supporting evidence to justify the claimed cost should be pointed out more clearly. These proposed measures are aimed at a further reduction of the error rate, but should not result in a reduced level of control if this cannot be clearly justified. (2nd and 3rd paragraphs, page 35)

Commission's response:

The Commission agrees to the general need for more profound simplifications and asks the legislator to support the adaptations to the legal basis (revision of the Financial regulation, Framework participation rules) that would be necessary in this respect for preparation of the 8th Framework Programme. FP7 has brought about a number of important simplifications already and the Commission continues to work towards a simplification of the cost reimbursement system, gradually introducing the use of flat rates and lump sums where appropriate. In this sense, the Commission has adopted a decision in March 2009 on the use of flat rates to cover subsistence and accommodation costs (related to travel for the implementation of a project) providing the possibility to do so is indicated in the work Programme. Further steps will be taken to inform beneficiaries and auditors about frequently committed errors.

55. The Council invites the Commission to further strengthen the ex-ante checks of the cost statements submitted by beneficiaries for interim and final payments of grants, taking into account cost benefit considerations, in order to support the identification of errors as regards not only accuracy but also eligibility and occurrence of the declared cost. (§ 1, 1st paragraph, page 35)

Commission's response:

The inherent complexity of the funding mechanisms provided by the applicable regulatory framework limits the scope of the desk reviews that can reasonably be made before reimbursement of expenditure. Therefore the Commission has significantly reinforced its ex post controls and put in place a common audit strategy. The research DGs have recently elaborated the control strategy for FP7.

56. The Council considers that it is essential to increase the number of on-the-spot audits and desk controls, with particular attention to areas of high risk or major budgetary impact, to improve the correctness of cost statements and to reduce the risk to legality and regularity of grants to beneficiaries. (§ 1, 2nd paragraph, page 35)

Commission's response:

The Commission has devised a control strategy aimed to ensure the legality and regularity of the 6th Framework Programme on a multiannual basis. It is focussed on the detection and correction of any errors which could not be identified before making the payment. This is achieved by ex-post auditing and thoroughly

recovering any amount found to be overpaid to the audited beneficiaries, even for non-audited contracts. The research DGs have recently elaborated the control strategy for FP7.

57. The Council suggests the Commission to look into possibilities of reducing the risk of double financing of the same cost by the general budget, as stipulated by the Financial Regulation. (§ 2, 1st paragraph, page 36)

Commission's response:

Commission proposals for the basic acts establishing grant funding indicate that financing of the action can only come from one Commission source (or in exceptional cases where funding from different sources are possible these can only be applied to specific different types of costs). The Financial Regulation (Art 78) also provides for the respect of sound financial management principles when legal commitments are made. In addition, the Commission's audit services and the Commission anti-fraud service (OLAF) are attentive to possible double financing and carry out investigations as appropriate.

58. The Council stresses the importance of increasing the quality and reliability of the audit certificates provided by the final beneficiaries, through detailed explanation of the cost methodology and support of the audit certification process to be performed. Furthermore, it recalls the importance of the independence of the certifying auditors. (§ 3, 1st paragraph, page 36)

Commission's response:

A number of actions have been taken to improve the quality of audit certificates for FP6, such as the issuing of guidance notes for the beneficiaries and certifying auditors, the creation of a task force for the handling of audit certificates, and by certifying auditors' participation in workshops and training courses. When significant errors in audit certificates are detected the certifying auditors are informed about the correct amounts and methodology. For FP7 the reliability of audit certificates is being improved by means of the use of 'agreed upon procedures', setting out in detail the audit work to be performed by the certifying auditors.

Chapter 11 - Administrative and other expenditure

59. The Council is seriously concerned about the lack of uniform application of rules affecting the staff across the institutions. Most notably, the Court's audit revealed significant differences in the application of the multiplication factor applicable to salaries as defined in the Staff Regulations. Such differences are not in line with the principle of equality of treatment for all staff since staff of some institutions may benefit from an advantage the others do not. This can also have a potentially non-negligible impact on the EU budget. Therefore, the Council encourages all the institutions to agree on a uniform approach to the application of the Staff Regulations, for example by means of common interinstitutional guidelines. Furthermore, the Council expects all the institutions to respect the rulings of the Court of Justice in this respect. (§ 1, 2nd paragraph, page 37)

Commission's response:

The Commission shares the Council's position and will actively support any initiative taken in this direction.

It goes without saying that the Commission respects the rulings of the Court of Justice in these matters.

60. The Council notes the Court's findings on the payments on carried over appropriations and urges all the institutions to comply strictly with the provisions on the principle of annuality as stipulated by the Financial Regulation. (§ 1, 4th paragraph, page 37)

Commission's response:

The Commission took immediate action end of 2008. It applies now fully the principle of annuality in the limits foreseen by the financial regulation.

Nonetheless, the Commission is analysing the possibility to introduce in the revised financial regulation an amendment allowing some appropriations linked to building costs to be carried over for more than one year, if necessary.

61. In respect of the Communities' pension liabilities, the Council recalls its conclusions on the discharge for the financial year 2006 and insists that the Commission provides an updated estimate of annual Communities' pension expenditure at least up to 2013 well before the preliminary draft budget for the financial year 2010. (§ 2, 1st paragraph, page 38)

Commission's response:

This kind of information is always included in the Preliminary Draft Budget (PDB) documents discussed with the budgetary authority.

An updated estimate of annual Communities' pension expenditure up to 2013 is included in Document V of the statement of estimates of the European Commission for the financial year 2010 (SEC(2009)610).

62. The Council also recalls its request for regular annual information on building needs as specified in the Council's conclusions on the Court's Special Report No. 2/2007 concerning the institutions' expenditure on buildings. This annual information should be made available by all the institutions each year before the presentation of the preliminary draft budget. (§ 2, 2nd paragraph, page 38)

Commission's response:

The Commission has already taken the requested action. Information on building needs is provided on two separate occasions: with the preliminary draft budget (PDB) and for each building project with significant financial implications.

As a standard part of the information provided with the PDB, the Commission gives all the details concerning the real estate situation (list of buildings including new and abandoned buildings, m², contracts, costs). Subsequently to the EP's resolution on the 2008 Draft budget, the Commission has forwarded to the budgetary authority the 2009-2011 planning in this area.

Pursuant to Article 179 (3) of the Financial Regulation, the Commission always informs the budgetary authority for all building projects with a significant financial implication for the budget and this information is given in advance of the legal commitment and contains an updated planning. Pursuant to Art. 263 of the Implementing Rules, the Commission informs at the same time the budgetary authority of its schedule for building projects.

63. The Council appreciates the increasing role played by the Commission in assisting and supervising the financial management of the agencies and encourages Commission and agencies to continue working together in this direction. It invites the Commission to further intensify its assistance to the agencies, in particular by sharing expertise and by providing access to existing accounting systems and framework contracts, with the aim of remedying the reported weaknesses. It stresses the importance of coordination and supervision by the Commission, in particular of the day to day management of funds attributed to the agencies. (§ 3, 2nd paragraph, page 39)

Commission's response:

The Commission provides wide-ranging assistance to agencies in several areas, particularly regarding budgetary (notably: annual budgetary procedure, including activity-based management, financial management and accounting) and administrative issues (for example: implementing provisions for the staff regulations and staff policy plan).

Moreover, the Commission has improved its co-operation with the agencies concerning the participation of its representatives in the Management Boards, Memoranda of Understanding and services provided.

In practice, agencies receive the same type of assistance than Commission services concerning budgetary and financial management issues, through the CFS Central Financial Service) helpdesk, the accounting services of the Commission, internet tools and training, to which they have already full access.

In particular, detailed guidance on procurement and other financial management issues is made available on a dedicated website.

Agencies also already have access to a number of framework contracts of the Commission, provided they are listed as potential contracting authorities in the tender documents - as for any independent entity (equivalent to an interinstitutional contract).

Finally, agencies are encouraged to sign a number of service-level agreements with all horizontal Commission Directorates-General for support services, notably those relating to buildings and security, IT systems (including ABAC where 22 out of 31 agencies are already using this central system, with 2 more scheduled to join by the end of 2009 and 5 more during 2010), general and language training, medical services etc.

The Commission undertook a review of the support it offers to agencies, which resulted in a document mapping all the services currently delivered by the Commission. This exercise had a twofold purpose: first, to ensure that agencies are aware of the full scope of services that the Commission offers; and second, to identify areas where assistance can be improved and rendered more efficient. This mapping exercise was done in close cooperation with the agencies via the TROIKA. The final document will be distributed to agencies soon. Further steps can be undertaken on that basis.

The Commission will take into account the results of the Interinstitutional Working Group in order to adjust its assistance further.

64. The Council welcomes the Commission's new approach to taking the agencies' unused appropriations into account when establishing the preliminary draft budget 2009, and considers it as a huge improvement. It urges the Commission to continue with this principle also in the coming budgetary procedures, with the aim of bringing down the agencies' annual surpluses. It urges the Commission as well to carefully check, and if necessary revise, the requirements of funds and posts as proposed by the agencies taking into account proven problems with implementation and recruitment with the aim of presenting a realistic budget proposal. (§ 3, 4th paragraph, page 39)

Commission's response:

The Commission has taken the requested action.

It has taken the Council's recommendation into account when preparing its 2010 PDB request, as explained in more detail in the dedicated PDB Working Document on agencies (section 2.1 decentralised agencies).

65. The Council has noted with interest the Commission's Communication on European agencies published in March 2008. The Council recalls its declaration of 17 July 2008 laying down the elements on which the evaluation of the agencies should be based. Moreover, the Council has committed itself to actively participate in the evaluation process initiated by the Commission and recalls in this respect the joint declaration regarding the creation of an Interinstitutional working group on agencies

adopted on 21 November 2008 which constitutes a good basis for the work to be carried out. The Council welcomes the decision that it will be attributed to independent external experts. It looks forward to the outcome of the evaluation and expects concrete proposals for improving the functioning and the transparency of the agencies. (§ 3, 3rd paragraph, page 40)

Commission's response:

The evaluation of EU decentralised agencies was launched in December 2008. The Terms of Reference take into account the declarations of the Council and the European Parliament. These institutions are involved in the evaluation process through the Reference Group. The results of the evaluation will be available by end 2009.

Special Report No. 6/2007 on the effectiveness of technical assistance in the context of capacity development

66. "The Council invites the Commission to: - inform the Council of progress made with the Strategy on Technical Cooperation;
- consider that local ownership involves the use of the partner countries' public financial management and procurement systems to the maximum extent possible; where use of those systems is not feasible, additional safeguards and measures should be established in ways that strengthen rather than undermine those systems;
 - examine how the participation of technical assistance experts from public institutions and local/regional organisations can be improved within the boundaries of existing public procurement procedures;
 - ensure that a capacity needs assessment, including an institutional capacity needs assessment, is properly carried out in the preparation of the programmes, the process being led to the greatest extent possible by the partner country. (*DOC 5587/09 ADD 2, Annex 1, § 11, page 4*)

Commission's response:

A report on the "State of progress on the implementation of the Reform on TC" was issued on the 30th of March 2009, and Guidelines on "Making Technical Cooperation more effective" on the 20th May 2009. An updated progress report was issued in October 2009.

Special Report No. 7/2007 on the control, inspection and sanction systems relating to the rules on conservation of Community fisheries resources

67. The Council notes that, in its replies, the Commission has indicated that many of the issues raised by the Court will be addressed in the revision of the Control Regulation planned for autumn 2008. The Council looks forward to receiving this Proposal and addressing those issues. The Council recalls that, in the context of better regulation and simplification, the rules of the CFP should be simple, enforceable and cost-effective. It invites the Commission to take this into account when preparing the above Proposal. (DOC 5587/09 ADD 2, Annex 2, §§ 10-11, page 5)

Commission's response:

The proposal for a Council regulation establishing a Community control system for ensuring compliance with the rules of the CFP (Control regulation) presented in November 2008, has been approved by Council on 19 October 2009 and will enter into force on 1 January 2010. The new Control regulation answers all the recommendations of the Court of Auditors and received broad support from the European Parliament, the Committee of the regions, and the European Economic and Social Committee. Moreover, in the light of the proposed reduction of administrative burden the reform has been fully supported by the High Level Group of Independent Stakeholders on Administrative Burdens.

The main elements of the new Control regulation are:

- The new Control regulation will make for uniformity in the implementation of control policy, while respecting and considering diversity and the specific characteristics of different fleets. Control and inspection will be focused where it is most effective, through an approach based on systematic risk analysis. Inspection procedures will be standardised and harmonised for all stages along the chain, including transport and marketing. Use of modern data-processing and communications technologies will be extended. Where possible, data processing will be automated, and subject to systematic and comprehensive cross-checking. The result will be a system which is more effectively targeted, more effective, and also less costly and burdensome to operate.

- The new Control regulation ensures the establishment of a genuine level-playing field for all operators and makes sure that those who break the rules no longer benefit from doing so. A point system for serious infringements will be introduced, which can lead to fishing licence being suspended, or even withdrawn, after a certain number of points has been accumulated. New, more effective systems for sharing control data will be introduced (including the establishment of national databases for serious infringements, and for inspection), and the mandate of the Community Fisheries Control Agency will be extended, to enable it to play its role more effectively.

- The new Control regulation will ensure that the Commission adheres to its core activity of controlling and verifying the implementation of the rules of the CFP by Member States, as it reinforces its capacity to intervene proportionately to the level of non-compliance by the Member States. Commission officials will be given

extended inspection powers, allowing them to carry out inspections on their own initiative without prior notification. The Commission's powers to close fisheries when quotas are exhausted are strengthened. In the same vein, the regulation extends the possibility for the Commission to proceed to deduction of future fishing opportunities, whenever those are overshot. This will convince national fishing industries that compliance with Common Fisheries Policy rules by their national administrations is also in their interest. The Commission will also be able to impose financial sanctions on Member States for poor management of their obligations under the Common Fisheries Policy, including withholding funding granted under the European Fisheries Fund or to support their control systems.

Special Report No. 9/2007 concerning "Evaluating the EU Research and Technological Development (RTD) framework programmes - could the Commission's approach be improved?"

68. The Council invites the Commission to pay utmost attention to the recommendations of the Special Report and in particular to: (a) ensure greater clarity in the intervention logic in the conception and implementation of framework programmes in the context of relevant Community decision making procedures, in particular at programme and project level, with coherent and better defined scientific and socio-economic objectives which should be specific, measurable, achievable, relevant and timed, and balanced performance indicators, whilst taking into account the specific nature of RTD activities. (*DOC 5587/09 ADD 2, Annex 3, § 9 (a), page 8*)

Commission's response:

Significant progress was made with the FP7 legislation (adopted by the European Parliament and the Council in 2006) which provides a more explicit intervention logic than for previous framework programmes. This is further reflected in the detail of the FP7 work programmes, which notably provide expected impact statements. The elaboration of future framework programmes, in particular in any Impact Assessments, will build on this progress in setting clear and robust objectives, supported by appropriate performance indicators.

69. The Council invites the Commission to pay utmost attention to the recommendations of the Special Report and in particular to: (b) establish a unified and coherent evaluation strategy across the relevant Commission services including the appropriate evaluation methodologies and techniques and, to this end, prepare a manual for the evaluation of framework programme activities, and in this context further develop the use of evaluation panels with the assistance of external experts with a view to ensuring the necessary level of independence. (*DOC 5587/09 ADD 2, Annex 3, § 9 (b), page 8*)

Commission's response:

The Commission has further developed its evaluation strategy for FP7 based on the proposals in the FP7 Impact Assessment. In particular, there have been new evaluation exercises (monitoring, FP6 ex post); a wider range of supporting evaluation studies (more than 30 for the FP6 ex post evaluation); new types of evaluation studies (network analysis, bibliometrics), stronger links with evaluation in the EU Member States (re-launch of the European RTD evaluation Network); and improved systems for routine collection of data (revision of the projects' reporting guidelines). This has been achieved through strengthened coordination between Commission services, such as the work which led to the FP6 ex post evaluation in 2008. The proposed manual for evaluation is one of the options under review following the recent completion of a study on tools and indicators for framework programme evaluation. The Commission remains very supportive of the role to be played by properly configured and independent panels of experts for evaluations, as was shown by the highly effective recent work carried out by the panel in charge of the FP6 ex post evaluation.

70. The Council invites the Commission to pay utmost attention to the recommendations of the Special Report and in particular to: (c) consider options for a more centralised evaluation and reinforced coordination between the relevant Commission services, including the possibility of establishing a joint evaluation office. (DOC 5587/09 ADD 2, Annex 3, § 9 (c), page 9)

Commission's response:

The Commission has previously stated and continues to hold the view that it does not consider it necessary to set up a joint evaluation office. It will continue to keep this issue under review including other means to enhance coordination both at the day to day and strategic levels.

71. The Council invites the Commission to pay utmost attention to the recommendations of the Special Report and in particular to: (d) optimise the collection, analysis and use of evaluation data in such a way to better measure the achievement of programme objectives in terms of outputs, outcomes and socio-economic impacts, whilst avoiding undue administrative burden for participants, and also maximising the usefulness of such data for decision making at European, national and regional level. (DOC 5587/09 ADD 2, Annex 3, § 9 (d), page 9)

Commission's response:

Significant improvements have been instituted under FP7 with new and streamlined means for gathering data systematically from projects on research outputs and outcomes. Such data will be available from projects on their completion, at which time it is expected to significantly enhance the potential for detailed analysis and evaluation work.

72. The Council invites the Commission to pay utmost attention to the recommendations of the Special Report and in particular to: (e) establish the type and scope of evaluation in particular to give greater attention to assessing long-term impact of past and present framework programmes with a particular emphasis on European competitiveness; ensure timely and sufficient information on the results to stakeholders with a view to taking future policy decisions. (DOC 5587/09 ADD 2, Annex 3, § 9 (e), page 9)

Commission's response:

Work is in progress to develop an evaluation study addressed specifically at assessing the long-term impacts of framework programme research. This is expected to be available in time for input to the design and preparation of FP8.

73. The Council invites the Commission to inform the Council and the European Parliament on the steps taken with regard to the recommendations of the Court of Auditors to improve the monitoring and evaluation of the framework programmes by end 2008, and to present the evaluation strategy for FP7 in a timely manner. (DOC 5587/09 ADD 2, Annex 3, § 10, page 9)

Commission's response:

A new system of FP monitoring was instituted in 2008 based predominantly on indicators, and replacing the previous panel-based monitoring system. Reports are published annually and are available at http://ec.europa.eu/research/evaluations/index_en.cfm?pg=fp7-monitoring. It is expected that this will ensure a more consistent and evolving picture of framework programme implementation and as such provide strong support to future FP evaluations.

74. The Council invites the Member States and the Commission, taking into account the political priority given to governance in the European Research Area, to strengthen their cooperation and the exchange of approaches and expertise concerning the evaluation of the impact of the national participation in the framework programmes and the national research and innovation programmes, for example by the "European RTD evaluation network", in order to promote more coherence among these impact studies of the Commission and the Member States. (DOC 5587/09 ADD 2, Annex 3, § 12, page 9)

Commission's response:

The European RTD Evaluation Network has been re-launched, including two representatives per country, and providing a major forum for discussions on research evaluation between the Member States, Associated States and the Commission. A new programme of joint work has been agreed which places research evaluation of the ERA at the top of the agenda.

Special Report No. 1/2008 concerning the procedures for the preliminary examination and evaluation of major investment projects for the 1994-1999 and 2000-2006 programming periods

75. The Council regrets the weaknesses identified by the Court of Auditors and agrees with the need to remedy the shortcomings in the preliminary examination procedures for major projects as identified by the Court of Auditors which shall ultimately contribute to increase the real added value of the approval process for major projects as implemented by the Commission;

The Council stresses the importance of improvements of the system, and welcomes the Commission's will to find solutions to problems identified by the Court and invites it to continue its increased efforts on the basis of the regulatory framework set up for the period 2007–2013. (*DOC 5587/09 ADD 2, Annex 4, §§ 6-7, page 10*)

Commission's response:

The Commission is taking the requested action. Given their individual size, major projects represent an important part of the regional policy interventions in the Member States. Therefore, the Commission considers that their specific assessment is of utmost importance. Under the 2007-2013 programming period, several improvements have been introduced that enable a better and harmonized assessment of major project applications submitted by the Member States:

- standardized application forms including detailed information on the projects are now systematically used by Member States;*
- the data concerning all major projects submitted are computerized, which facilitates consistent assessment and ongoing checks by the Commission services;*
- a team dedicated to the assessment of major project applications has been set up in the Directorate-General for Regional Policy to support the work of the geographical units;*
- the JASPERS instrument is now operational and its staff are involved in the preparation of major project applications on behalf of the Member States; and*

A framework contract has been signed with external consultants to provide specific technical assistance.

Special Report No. 2/2008 on Binding Tariff Information

76. The Council considers that the number of BTIs which needed to be invalidated, in comparison with the total BTIs issued over the period reviewed by the Court, is very low, and stresses that invalidation is a legitimate process related to BTIs and that the possible financial responsibility of Member States, if any, should be assessed with the utmost caution. (*DOC 5587/09 ADD 2, Annex 5, § 6, page 11*)

Commission's response:

The Commission will continue to carefully examine the issue of potential financial responsibility where it becomes aware of incorrectly issued BTI via its inspections, investigations and documentary controls.

77. The Council invites the Commission to further improve the BTI system and to monitor its implementation and application in the Member States. (*DOC 5587/09 ADD 2, Annex 5, § 7, page 11*)

Commission's response:

The Commission is taking the requested action. The draft of the Implementing Provisions of the Modernised Customs Code (IPMCC) concerning the BTI system was revised during the meeting with Member States' representatives in the BTI-Committee in September 2009. Further consultations of the IPMCC within the Commission are on-going and should be finalised with a vote in the Committee expected to take place in 2011.

78. The Council calls upon the Commission to have regard to the remaining recommendations of the Special Report. (DOC 5587/09 ADD 2, Annex 6, § 6, page 13)

Commission's response:

The Commission is taking the requested action. Already shortly after the adoption of the regulation in 2002, it published guidelines for applicant countries and explained in detail in what way it applies the provisions of the Regulation. In order to simplify the procedure and to help avoid delays in the submission of information, the Commission developed a standard application form as well as a detailed guidance note for applications. Following the report from the Court, these guidelines have been updated, warning applicant bodies of possible sources of delays, as suggested by the Court. Both the standard application form and the guidance note are available on a special "Solidarity Fund" site (on the InfoRegio website), which has equally been completely revised following the report from the Court of Auditors, and which now contains the direct contact points within the Commission. This will facilitate direct contact with the body preparing the request, as suggested by the Court.

Special Report No. 4/2008 concerning the implementation of milk quotas in the Member States which joined the European Union on 1 May 2004

79. The Council recognises that it is up to the Commission and the Member States to continue to ensure that appropriate corrective action is taken and that proper controls are carried out at the most opportune time. (*DOC 5587/09 ADD 2, Annex 7, § 4, page 14*)

Commission's response:

The requested action has been taken. The Commission services are continuously taking all necessary action to ensure the effective monitoring of the milk quota regime. During missions/bilateral contacts, Member States have been reminded that producer controls must be at least partially carried out in-year.

80. The Council underlines the importance for the Member States to take an active supervisory role in the decentralised agencies' governing bodies in order to improve good governance and sound financial management and to ensure the economic, efficient and effective implementation of European policies. This should also apply to the Commission when represented in those governing bodies. The Council asks the Commission to exercise, with due respect of the autonomy of the decentralised agencies, more effective supervision and monitoring on agencies in order to ensure in particular more transparency as regards staffing levels and recruitment, better planning of budgetary and financial management as well as an effective and efficient control and accountability framework. (DOC 5587/09 ADD 2, Annex 8, §§ 9-10, page 16-17)

Commission's response:

The Commission will continue to play an active role via its representatives on the agencies' Management Boards (when represented) with a view to contributing to the improvement of good governance and sound financial management.

The role of the three institutions (Commission, Parliament and Council) with regard to monitoring and supervision over agencies will be discussed within the inter-institutional working group. The Commission will try to improve its mechanisms in the light of the conclusions of those discussions.

81. The Council invites the Commission, while acknowledging the considerable efforts already made, to continue providing assistance to the agencies in the most appropriate form. In this context, the Council also underlines that particular attention should be paid to dissemination of best practices, proper application of procedures for awarding contracts and appropriate training for the members of agencies' governing bodies. It welcomes the commitment of the Commission in its communication "European agencies - The way forward" to undertake a review of its internal systems governing its relations with agencies, as well as the methodology for conducting impact assessment of agencies. (DOC 5587/09 ADD 2, Annex 8, § 11, page 17)

Commission's response:

The Commission fully supports the idea of best practice exchange allowing agencies to benefit from the experience gained by the Commission services, as well as from each other. Training on financial and administrative matters given by the respective Commission services is open to agency staff, often upon signing a Service Level Agreement. The Commission encourages participation in those trainings.

In the context of the review of the Commission's internal systems governing relations with agencies, the Commission has undertaken a set of initiatives meant to improve cooperation. Those concern the participation of the Commission representatives in the Management Boards, the scope of the Memoranda of

Understanding, a review of the services provided and guidelines on setting-up of new agencies.

In January 2009 the Commission adopted revised impact assessment guidelines. They should contribute to the better design and assessment of policy options involving the creation of new agencies, as well as the modification or closure of existing agencies. Agencies can also, of course, use the Commission guidelines when carrying out their own impact assessments.

82. The Council recalls its statement of 17 July 2008 in which it welcomed the commitment of the Commission as announced in its above-mentioned communication to launch a thorough evaluation of the regulatory agencies, by the end of 2009. It expects once again that this evaluation will provide to the budgetary authority adequate tools and means to assess, in the context of the allocation of the Community contribution during the annual budgetary procedure, the comparability of performance targets, administrative and operational expenditure, evolution of the staff (types and vacancy rate) and impact of the size of the agency. (DOC 5587/09 ADD 2, Annex 8, § 12, page 17)

Commission's response:

The results of the evaluation of the system of EU decentralised agencies are expected by end 2009. Once the evaluation is completed, the Commission will report to Council and Parliament on its findings, as announced in the March Communication on agencies of 2008.

The ongoing evaluation of the system of EU decentralised agencies is expected to improve the situation as regard the availability of comparable information across agencies with regard to performance and efficiency. The impact of agency's size and staff policy will also be taken into account in the evaluation.

Special Report No. 6/2008 "European Commission Rehabilitation Aid following the Tsunami and Hurricane Mitch"

83. While the Council regrets the significant delays in the implementation of rehabilitation aid following Hurricane Mitch, it notes with satisfaction the improvement in the Commission response to the Tsunami. This improvement concerns, in particular, the evaluation of needs in conjunction with the beneficiary entities, implementation times, and the usefulness and sustainability of the measures implemented. Progress remains to be made, however, in particular to ensure efficient monitoring of the implementation of aid and to strengthen the links between the humanitarian response, rehabilitation and development.

The Council emphasises the importance of continuing to learn lessons from past experience with a view to further improving Commission action in the area of post-disaster rehabilitation aid. (DOC 5587/09 ADD 2, Annex 9, §§ 2-3, page 18)

Commission's response:

The Commission agrees that progress remains to be made in ensuring a coherent transition between post disaster humanitarian response and longer term rehabilitation and development approaches. EuropeAid will re-launch the inter-services group working on Linking Relief Rehabilitation and Development in order to identify best practices and lessons learned notably on issues related to the comments of the European Court of Auditors.

84. The Council invites the Commission to continue to build on its approach adopted after the Tsunami, while improving it in the light of the Court's recommendations, so as to enable the rapid design of rehabilitation projects in conjunction with the beneficiaries in order to enhance ownership and sustainability. (DOC 5587/09 ADD 2, Annex 9, § 4, page 18)

Commission's response:

The Commission believes that its response to the tsunami has evolved to include more rapid design of rehabilitation projects and better coordination and consultation with beneficiary countries at national and local level. This was noted by the European Court of Auditors (Section III of the Executive Summary and paragraphs 17 to 22). The Commission also agrees on the need to build on this multi-donor coordinated approach and will endeavour to apply it whenever the preconditions exist.

85. The Council also emphasises that giving consideration to disaster prevention measures, in both the rehabilitation and development aid phases, is essential for the sustainability of the measures implemented. It reiterates its intention to adopt in 2008, on the basis of proposals to be presented by the Commission, an EU strategy to reduce the risk of disasters in developing countries. (DOC 5587/09 ADD 2, Annex 9, § 5, page 19)

Commission's response:

The Commission adopted a proposal for an EU strategy for disaster risk reduction (DRR) in developing countries in a package with a communication on disaster prevention (within the EU) on 23 February 2009. Council conclusions endorsing the Strategy were adopted on 18 May, requesting also an implementation plan. The following implementation priorities are to be addressed by the plan: Dialogue on DRR; Regional Action Plans on DRR; and Integration of DRR and support for key DRR investment. Linkages to climate change adaptation will be addressed under all the priorities as appropriate. The Commission is supporting efforts on reducing the risk of disasters in developing countries through sustainable rural development, activities linked to climate change and the sustainable development of natural resources (e.g. 40 millions devoted to Pakistan to strengthen sustainable rural development in the refugee affected and hosting areas in 2009).

European Development Funds

86. The Council invites the Commission to continue with its reform efforts and to remedy the shortcomings identified by the Court as regards the reliability of the accounts. (*Doc. 5047/09, ANNEX, page 6, 2nd indent*)

Commission's response:

The Commission has ordered a study from an independent audit group to check the validity of the method used. The conclusions of this study show that, in the vast majority of cases, the assumptions used to estimate the amount of invoices receivable are correct. However, the study recommends a different approach in a limited number of cases. The study findings have been sent to the Court and the Commission has undertaken to apply the recommendations in respect of the 2009 financial year.

87. The Council reiterates the importance of the fact that, in the procedures for granting budgetary support and before making transfers of funds, the Commission should ensure that the conditions of the Cotonou Agreement and of the financing agreements are met. In this respect, it welcomes the Commission intention of promoting more intense dialogue with Member States on BS, inter alia, by organising technical seminars in the near future. (*Doc. 5047/09, ANNEX, page 6, 3rd indent*)

Commission's response:

The Commission is fully in agreement on the need to adhere strictly to the conditions set out in the Cotonou Agreement and in Financing Agreements concerning budget support. Steps have also been taken to improve the structure and clarity of Financing Agreements under the 10th EDF approved from 2008. In addition, the Commission has indeed organised an ongoing programme of 4 technical seminars on budget support issues with EU Member States since 2007, the most recent of which concerned a dialogue on budget support for fragile states in February 2009.

88. The Council stresses the importance of being regularly informed on the Commission's evaluation of the effects of such measures, particularly as regards risk management, analysis of the internal control system, the audit of transactions and budget support. (*Doc. 5047/09, ANNEX, page 6, 4th indent*)

Commission's response:

The Commission agrees on the importance of regular information being made available on EDF matters. The Commission gives regular updates to EU Member States in the context of EDF committees e.g. a presentation of expected 2009 budgetary support disbursements on the occasion of the 25 March 2009 EDF Committee. The Commission's Annual Activity Reports for EuropeAid and DG Development, the European Development Funds Financial Management Report, the European Development Funds Financial Report and the Annual Report on the European Community's Development and External Assistance Policies and their

Implementation inform the European institutions and the wider public on these issues on an annual basis. Moreover, the Commission intends to provide more in-depth coverage of budget support issues in future annual reports on the 'European Community's Development and External Assistance Policies and their Implementation'. This should provide information on results, analysis and assessment of risk and will draw on available public finance management (PFM) diagnostics.

Requests concerning individual agencies

89. As regards the European Agency for Reconstruction, the Council supports the Court's recommendation concerning the handover of programmes from the Agency to the Commission, and calls on both entities to sign a Memorandum of Understanding, in order to formalise and facilitate the transfer of all programmes and items and to ensure that all items are reflected correctly on the Agency's accounts. In this context, the Council draws the attention to the fact that the accumulated surplus shown on the balance sheet at 31 December 2007 have also to be taken over and managed by the Commission at the end of the Agency's mandate. (DOC 5588/09 ADD 1, Annex 9, 4th-5th paragraphs, page 29)

Commission's response:

(a) how the unused budgetary appropriations will be implemented;

As the Agency has managed assistance programmes to be implemented over several years, at the end of each year there were naturally unused budgetary appropriations corresponding to the ongoing programmes. The unused budgetary appropriations shown in the Agency's balance sheet at 31 December 2007 have been implemented by the Agency during 2008 for the approved purpose, EC assistance to western Balkan countries. In line with the planned and approved schedules of implementation, therefore without any delays, at the closure of the Agency one year later, there were still some of these multi-annual programmes ongoing with some remaining funds to enable finishing the implementation of these programmes by the Commission Delegations.

(b) whether a memorandum of understanding covering all items in the Agency's balance sheet has been concluded between the Agency and the Commission, or how the Commission has otherwise ensured the completeness of the transfer of all files and items;

The question is not applicable for the balance sheet in question (31/12/2007) as the Agency continued in activity in 2008. For the items in the balance sheet of the Agency one year later, indeed a memorandum of understanding covering all items has been concluded between the Agency and the Commission.

(c) how the accumulated surplus of EUR 180 000 000 shown in the Agency's balance sheet at 31 December 2007 will be managed by the Commission.

The €180 million in the Balance Sheet of the EAR's final accounts 2007 have been managed by the Agency during 2008. The accounting designation of "surplus" corresponds to the open pre-financing at 31/12/2007. In simpler words, this means advance payments to contractors in the framework of the projects of assistance. The Agency transformed these advance payments into expenditure during 2008 once the services or supplies have been delivered.

90. As regards the European Global Navigation Satellite System (GNSS) Supervisory Authority, the Council invites the Authority and the Commission to do their utmost to ensure the transfer of all assets of the Galileo project to the Commission as soon as

possible, with due respect of all the financial provisions and procedures in force, and it expects substantial improvements of the Authority's accounts for 2009. (DOC 5588/09 ADD 1, Annex 20, 5th paragraph, page 63)

Commission's response:

The Commission is currently working together with the European Space Agency and the European GNSS Supervisory Authority (GSA) to ensure that assets from the EGNOS system and the relevant assets of the GSA are transferred to the Commission and properly recorded in the accounts. The transfer of the assets of the Galileo programme from ESA to the Commission is not foreseen to begin until the end of 2010. As the GSA is an independent body set up by Community law the Commission is not responsible for its accounts.