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REPORT FROM THE COMMISSION TO THE COUNCIL

on the follow-up to 2007 Discharge Decisions

(Summary) - Council Recommendations submitted pursuant to Article 276 of the EC Treaty, Article 180b of the Euratom Treaty, Article 147 of the Financial Regulation for the general budget and Article 119(5) of the EDF Financial Regulation

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PREAMBLE

As the Treaties and Financial Regulations require, the Commission has prepared Follow-up Reports to the 2007 discharges, which relate to the Council Recommendation of 10 February 2009 and the Resolutions voted by the European Parliament on 23 April 2009. The present Follow-Up Report deals with the requests made by the Council. A separate Follow-up Report deals with the requests made by Parliament.

The Commission has identified a total of 90 requests made by the Council to the Commission in the context of the 2007 discharge. The Commission considers that for 44 requests the required action has already been taken, though in some cases results of the actions will need to be examined. For another 46 requests the Commission agrees to take the action requested by the Council.

The summary Follow-up Reports, which are published in all EU official languages, are supplemented by Commission staff working documents giving detailed answers to each specific request. The replies indicate actions that the Commission intends to take or has already taken and also the requests that the Commission will not or is not able to follow up. Due to translation constraints the detailed staff working documents are published in English, French and German. Each chapter of the summary reports includes cross-references to the relevant points in the staff working documents.

I. COUNCIL RECOMMENDATION ON THE GENERAL BUDGET

A) Introduction (Commission staff working document, points 1-2)

The Commission agrees that simplification has a key role to play in reducing errors occurring in the implementation of EU policies. However, a certain degree of complexity in rules and eligibility criteria is unavoidable as these are often fixed in order to achieve desired policy objectives, and are the outcome of a complex legislative procedure. Improvements have been incorporated into the 2007-2013 legal bases. Further simplification measures for Structural Funds, such as the possibility to declare costs on the basis of flat rates, unit costs and lump sums, were decided in May 2009. The impact of simplification of eligibility rules on the rate of error is expected to become visible in the medium- to long-term. In the area of agriculture the Health Check, agreed upon in November 2008, has also brought further simplification to among other things the rules regarding entitlements. Moreover, 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 report will be discussed during the Agriculture Council in December 2009.

The Commission is currently working to identify possible areas of further simplification in the context of its preparatory work for the triennial revision of the Financial Regulation. 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.

The degree of complexity of the eligibility rules has a direct link with the intensity and cost of controls required to gain reasonable assurance on the legality and regularity of transactions. If simplified eligibility rules are decided and effectively implemented (e.g. increased use of lumps-sums and flat rates, acceptance of the use of national eligibility rules in case of co-financing by Member States) the underlying transactions will be less prone to error, which will allow to perform less extensive controls (controls can be focussed on output rather than input) and ultimately reduce the cost of controls.

B) Chapter 1 - The statement of assurance (DAS) and supporting information (Commission staff working document, points 3-4)

On the accounts, the Commission will, as always, take due account of the remarks and recommendations of the Court to improve its systems. 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 information on the correction of errors, including those relating to payments of earlier years. Under the Structural Funds action plan, the Commission has also stepped up action to ensure reliable information from Member States on financial corrections and recoveries they carry out for funds under shared management.

C) Chapter 2 - Commission Internal Control (Commission staff working document, points 5-12)

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 2008 Annual Activity Reports of the Commission services also contain action plans to improve the effectiveness of specific internal control systems. Delivering on commitments undertaken in the 2007 Synthesis Report, the Commission 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.

As regards funds managed by the Member States under shared management, the Commission will continue to work with Member States to add value to the Annual Summaries. For the financial year 2008, all Member States were able to comply with the legal obligations. Seven Member States¹ have followed the suggestion in the Commission guidance note to append a statement of assurance to the annual summaries for structural actions. Value added elements, such as this statement, can be considered useful in building up assurance on the effective functioning of systems. The Commission has again revised the guidance note, extending the part on the overall analysis and explaining the incentives to use this option.

The Commission considers that 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. As the statistics on the costs of control from this programming period will become 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 will make concrete proposals for tolerable risk in the areas of research, energy and transport and rural development in the first half of 2010 and on external aid, development and enlargement and administrative expenditure in the latter half of 2010.

D) Chapter 3 - Budgetary management (Commission staff working document, points 13-20)

The Commission continues striving towards realistic and sufficient budgeting already from the stage of the preliminary draft budget. This includes careful analysis of Member States' expenditure forecasts in order to improve their usefulness for budgeting purposes. In the Cohesion policy area, it is also examining the Member States' descriptions of their management and control systems for the 2007-2013 period, accompanied by a compliance assessment from an independent audit body, with the necessary rigour before interim payments can be made.

The Commission has further improved its reporting on implementation of Community programmes and outstanding commitments (RAL). More complete and reliable recovery figures have been presented in the 2008 accounts.

E) Chapter 4 - Revenue (Commission staff working document, point 21)

The Commission, working in close cooperation with Member States, recently introduced management visits to look at long-standing reservations regarding the VAT own resources. These targeted activities have already led to the lifting of several reservations, including some of the oldest.

F) Chapter 5 – Agriculture and Natural Resources (Commission staff working document, points 22-25)

¹ BG, CY, CZ, HU, LT, RO, SK.

In the area of rural development, Member States are obliged to ensure that all measures are verifiable and controllable as well as to making sure that rules for eligibility are respected. In addition, for the post-2007 period the management and control system for the expenditure has been aligned to the EAGF system of the first pillar of the CAP². Thus, the recognized advantages of the EAGF system will also cover the rural development expenditure.

Regarding IACS, Greece has 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.

Member States are required to recover from the final beneficiaries irregular payments identified. However, recovery from the final beneficiaries is often not possible because the problems identified relate to deficiencies in the Member States' management and control systems. In these cases, 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.

The Commission welcomes the Council's support for the application of the 50/50 rule, which 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 also welcomes the Council's acknowledgement of the improvements in the accountability of Paying Agencies and the progress made.

G) Chapter 6 - Cohesion (Commission staff working document, points 26-29)

Improving the effectiveness of the control system for Cohesion Policy continues through both preventive and corrective action. For the closure of the 2000-2006 programmes 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 2007-2013 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.

A number of simplifications have been introduced, e.g. concerning revenue-generating projects and the use of flat rates and lump sums for certain outputs. Further simplifications were introduced to allow quicker disbursement of Cohesion policy funds in response to the economic downturn (Regulation 284/2009). Where necessary, the Commission is issuing guidance on application of the simplified provisions, for example on flat rates and revenue-generating investments.

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 detection of significant deficiencies during audits. This has been reflected in a large increase in the number of suspension decisions and in the volume of financial corrections in 2008 compared to 2007.

² Council Regulation 1290/2005.

H) Chapter 7 - Research, Energy and Transport (Commission staff working document, points 30-35)

The Commission has devised a control and audit strategy aimed to ensure the legality and regularity of expenditure under the research Framework Programmes 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, including for non-audited contracts with the same beneficiaries where the same problems have been identified.

The seventh Framework Programme (FP7) has brought about a number of important simplifications. The introduction of the "participants guarantee fund" allowed a considerable reduction in the numbers of ex-ante financial checks and the use of protective measures. It replaces 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. The e-FP7 initiative will achieve the gradual introduction of fully electronic systems for the whole process of proposal and grant management. Measures have also been taken to reduce payment times.

The Commission agrees to the general need for more profound simplifications and asks the legislator to support the adaptations to the legal basis that would be necessary (revision of the Financial Regulation, Framework programme participation rules) for the preparation of the 8th Framework Programme (FP8).

I) Chapter 8 - External aid, Development and Enlargement (Commission staff working document, points 36-47)

The Commission has started further work on measures to support implementing organisations and beneficiaries of EC external aid projects in the management of EC funds, including through the development of a Financial Management Toolkit for use by beneficiaries of EC external aid projects. 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 availability of standard terms of reference for financial and systems audits since 1st October 2007 is a major step forward in the process of obtaining better quality audits. Guidelines for Audit Task management became available in November 2008 and an advanced training module was developed and delivered (twice) in 2008.

As regards budget support, guidelines are currently being revised to improve the design and assessment of eligibility conditions and of specific results oriented indicators in order to achieve a more rigorous results oriented approach.

For Enlargement, national authorities have implemented the required segregation of functions and staffing levels have increased substantially. Constant monitoring and further follow-up of the systems remain key priorities for the Commission. As regards the follow-up of closure audits, some 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.

J) Chapter 9 - Education and Citizenship (Commission staff working document, points 48-53)

The design of the new programmes 2007-2013 has taken into account the recommendations of previous years to simplify the rules and allows extensive use of lump sum financing.

All ex-ante and ex-post declarations of assurance from National Authorities have been received and analysed and open qualifications have been followed-up systematically. More precise guidelines for the yearly declarations were issued and specific meetings with the National Authorities organised.

The results of audits launched since the beginning of 2008 are entered into the ABAC tracking tool, which facilitates the sharing of audit results. Further measures to closely monitor and improve payments times have been taken.

The necessary steps have been taken to improve ex-ante control for communication expenditure, including the development of appropriate check-lists.

K) Chapter 10 - Economic and Financial Affairs (Commission staff working document, points 54-58)

Most observations and conclusions of the Court of Auditors in this area concerns the research framework programmes and are therefore covered by the Commission's control strategy aimed to ensure the legality and regularity of expenditure under the framework programmes on a multiannual basis, see above under chapter 7 for further details.

L) Chapter 11 - Administrative and other expenditure (Commission staff working document, points 59-65)

As requested by the Council, the Commission provides detailed information on the Communities' pension expenditure, building needs and the budgets of the agencies with the preliminary draft budget each year.

The Commission offers wide-ranging assistance to decentralised agencies in several areas, such as financial management, accounting and training, and agencies are encouraged to sign service-level agreements with the horizontal Commission Directorates-General for support services. The Commission will take into account the results of the Interinstitutional Working Group in order to adjust its assistance further. The Council and the European Parliament are also involved in the evaluation of EU decentralised agencies through the Reference Group. The results of the evaluation should be available by end 2009.

II. COURT OF AUDITORS' SPECIAL REPORTS (Commission staff working document, points 66-85)

The Council has made a number of requests to the Commission concerning special reports published by the Court of Auditors in 2007 and 2008. The Commission's replies to these requests are set out in the Commission staff working document (points 66-85).

III. EUROPEAN DEVELOPMENT FUNDS (Commission staff working document, points 86-88)

As regards the reliability of the EDF accounts, an independent study has shown that the assumptions underpinning the Commission's estimates of invoices to be received are correct in the vast majority of cases, but also recommends a different approach in a limited number of cases. The Commission will implement these recommendations for the 2009 accounting year.

As regards budget support, the Commission fully agrees on the need to adhere strictly to the conditions set out in the Cotonou Agreement and in Financing Agreements. In addition to the information already published regularly on EDF matters in general and budget support in particular, 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.

IV. REQUESTS CONCERNING INDIVIDUAL AGENCIES (Commission staff working document, points 89-90)

The Council has made requests to the Commission concerning handover of activities from the European Agency for Reconstruction and the GNSS Supervisory Authority to the Commission. The Commission's replies to these requests are set out in the Commission staff working document (points 89-90).

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