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from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
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Subject:	Annexes to the Communication from the Commission to the European Parliament, the Council and the Court of Auditors Synthesis of the Commission's management achievements in 2011

Delegations will find attached Commission document COM(2012) 281 final ANNEXES.

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EUROPEAN COMMISSION

Brussels, 6.6.2012
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Annexes to the

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COURT OF AUDITORS

Synthesis of the Commission's management achievements in 2011

Annex 1: Reservations 2007 – 2011[1]

Chapter — Revenue

DG		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007
BUDG	1	1. Reliability of the **Belgian clearance and accounting systems** for processing custom declarations								

Chapter — Agriculture and Natural Resources

DG		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007
AGRI	3	1. Serious deficiencies in the **IACS** in Portugal and Bulgaria. 2. **Rural development** expenditure. 3. Deficiencies in the supervision and control of **certified organic products**	1	1. Serious deficiencies in the **IACS** in Portugal, Bulgaria and Romania.	2	1. Serious deficiencies in the **IACS** in Bulgaria and Romania. 2. Expenditure for **rural development** measures under Axis 2 (improving the environment and the countryside) of the 2007-2013 programming period	2	1. Management and control system for **SAPARD in Bulgaria and Romania.** 2. Expenditure for **rural development** measures under Axis 2 (improving the environment and the countryside) of the 2007-2013 programming period.	2	1. Insufficient implementation of the IACS in Greece. 2. Exactitude of rural development control data of Member States giving a first indication of the error rate in this policy area.

[1] This table presents a summary of reservations; it is not intended to offer an exhaustive description of them. For details of the reservations, please consult the AAR of the relevant Commission department on http://ec.europa.eu/atwork/synthesis/aar/index_en.htm

DG		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007
CLIMA	1	1. Significant security weakness identified in the national registries of the EU Emissions Trading System (ETS).	1	1. Significant security weakness identified in the national registries of the EU Emissions Trading System (ETS).						
MARE (former FISH)	2	1. Management and control systems for one **FIFG operational programme in Germany**. 2. **European Fisheries Fund management** and control systems and investments on board: eligibility of expenditure.	1	1. Management and control systems for one **FIFG operational programme in Germany**.	2	1. Management and control systems for **FIFG operational programmes** in two Member States and specific measures in another three Member States. 2. Eligibility of payments made to Member States to compensate additional costs in the **marketing of certain fishery products from the Outermost Regions.**	1	Reservation on direct centralised management concerning the **eligibility of costs reimbursed for expenditure in the area of control and enforcement of the Common Fisheries Policy**, where the annual error rate detected by ex-post controls is higher than the 2% of the annual payments made for the MS programmes and on a multiannual basis represents more than 2% of sample payments.		
SANCO	1	1. High error-rate (10,4%) detected during on-the-spot controls of **the Food and Feed** activity.	0							
ENV	0		0		1	**Eligibility of expenditures** declared by beneficiaries of grants	0		1	**Eligibility of expenditures** declared by the beneficiaries of action grants

Chapter — Cohesion

DG		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007
REGIO	2	1. Reservation on ERDF/Cohesion Fund management and control systems for several programmes in the period **2007-2013** in Austria, Bulgaria, the Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Romania, Slovenia, Slovakia, Spain and the UK; for IPA management and control systems in the former Yugoslav Republic of Macedonia and European Territorial Copporation programmes and a programme for IPA/cross-border cooperation. 2. Reservation on ERDF/Cohesion Fund management and control systems for some programmes in the period **2000-2006** in Germany, Hungary, Ireland, Italy, Spain and for cross-border programmes.	2	1. Reservation on ERDF management and control systems for certain programmes in the period **2007-2013** in Bulgaria, Czech Republic, Germany, Greece, Italy, Latvia, Lithuania, Spain, Romania, United Kingdom, 13 European Territorial Cooperation programmes) and 6 IPA-Cross-borders programmes). 2. Reservation on ERDF management and control systems for certain programmes in the period **2000-2006** in Bulgaria, Germany, Hungary, Italy, Latvia, Lithuania, The Netherlands and concerning 9 Interreg programmes	2	1. Reservation on ERDF management and control systems for certain programmes in the period **2007-2013** in Germany, Italy, Spain, Bulgaria, 15 European Territorial Cooperation programmes 2. Reservation on ERDF management and control systems for certain programmes in the period **2000-2006** in Bulgaria, Italy, Germany, and UK and concerning 15 Interreg programmes	2	1. Reservation on **ERDF** management and control systems for the period **2000-2006** in certain programmes in: Belgium, Germany, Italy Spain and 21 Interreg programmes 2. Management and control system for the **road sector in Bulgaria** in 2008.	2	1. Reservation concerning the **ERDF management and control systems** for certain programmes in the period 2000-2006 in: the Czech Republic, Finland, Germany, Greece, Ireland, Italy, Luxembourg, Poland, Slovakia, Spain and 51 Interreg programmes. 2. Reservation concerning the management and control systems for the **Cohesion Fund (period 2000-2006)** in: Bulgaria, Czech Republic, Slovakia, Hungary and Poland.

DG		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007
EMPL	2	1. Management and control systems for identified operational programmes under ESF **2000-2006** in Germany, France, Italy and Spain. 2. Management and control systems in ESF in Belgium, the Czech Republic, Germany, Italy, Lavia, Lithuania, Roumania, Slovakia, Spain and the United Kingdom for certain programmes in the period **2007-2013** as well as for the former Yugoslav Republic of Macedonia IPA programme.	2	1. Management and control systems for identified operational programmes under ESF **2000-2006** in Germany, France, Italy and Spain. 2. Management and control systems in ESF in Austria, Belgium, Bulgaria, Germany, Finland, Hungary, Ireland, Italy, Sweden, Slovakia, Spain and the United Kingdom for certain programmes in the period **2007-2013**	2	1. Management and control systems for identified operational programmes under ESF **2000-2006** in Belgium, Germany, France, Italy and Spain. 2. Management and control systems in ESF in Belgium, Germany, Italy, Luxembourg, Romania and Spain; for certain programmes in the period **2007-2013**	1	Management and control systems for identified **ESF Operational Programmes** in Spain, United Kingdom, France, Italy, Poland, Belgium and Luxembourg (quantification: 41 million EUR, 0.6%)	1	Management and control systems for identified **ESF** Operational Programmes in - Spain, - United Kingdom, - France, - Italy, - Slovakia, - Portugal, - Belgium and - Luxembourg.

Chapter — External Aid, Development and Enlargement

DG		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007
ELARG	0		0		0		1	Potential irregularities in the management of **PHARE funds** under extended decentralised management by two **Bulgarian** Implementing Agencies (named).	1	Potential irregularities in the management of **PHARE funds** under extended decentralised management by the following Bulgarian Implementing Agencies: - Central Finance and Contract Unit (CFCU) - Ministry for Regional Development and Public Works (MRDPW).

DG		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007
DG RELEX	0		0		1	Lack of capacity to carry out adequate ex-post controls for CFSP and Stability Instrument	0		0	

Chapter — Research, Energy and Transport

DG		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007
RTD	2	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%) 2. Accuracy of cost claims under **FP7** (error rates above materiality threshold of 2%)	1	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%)	1	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%)	1	1. Rate of residual errors with regards to the accuracy of cost claims in **FP6**	1	Reservation concerning errors relating to the accuracy of the cost claims and their conformity with the provisions of the Fifth Research Framework Programme (FP5).

DG		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007
INFSO	1	1. Accuracy of cost claims under **FP7** (error rates above materiality threshold of 2%)	0		1	Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%)	1	Rate of residual errors with regards to the accuracy of cost claims in **FP6**	1	Rate of residual errors with regard to the accuracy of cost claims in **FP6** contracts.
ENTR	3	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%) 2. Accuracy of cost claims under **FP7** (error rates above materiality threshold of 2%) 3. Reservation concerning the reliability of the financial reporting by the **delegated body** about the implementation of actions under joint and centralised indirect management.	2	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%) 2. Reservation concerning the reliability of the financial reporting by the **delegated body** about the implementation of actions under joint and centralised indirect management.	2	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%) 2. Reservation concerning the reliability of the financial reporting by the **delegated body** about the implementation of the joint programme.	1	Rate of residual errors with regards to the accuracy of cost claims in **FP6**	2	1. Rate of residual errors with regard to the accuracy of cost claims in **FP6**. 2. Unsatisfactory functioning of the financing of **European Standardisation**
MOVE (former TREN)	2	1. Accuracy of cost claims under **FP6** (error rates above materiality	1	1. Accuracy of cost claims under **FP6** (error rates above materiality	1	Accuracy of cost claims under **FP6** (error rates above materiality	1	Rate of residual errors with regards to the accuracy of cost claims in	1	Rate of residual errors with regards to the accuracy of cost claims in

DG		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007
		threshold of 2%) 2. Accuracy of cost claims under **FP7** (error rates above materiality threshold of 2%)		threshold of 2%)		threshold of 2%)		**FP6.**		**FP6.**
ENER (former TREN)	2	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%) 2. Accuracy of cost claims under **FP7** (error rates above materiality threshold of 2%)	1	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%)						
REA	1	1. Accuracy of cost claims for funding Research for Space and Security themes of the Cooperation Specific Programme financed under **FP7** (error rates above materiality threshold of 2%)								

Chapter — Education and Citizenship

DG		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007

DG		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007
EAC	0		1	Too high error rate in **centralised direct management**, due to lack of justifying documents for cost claims, concerning projects from the previous generation of programmes	1	Too high error rate in **centralised direct management**, due to lack of justifying documents for cost claims, concerning projects from the previous generation of programmes	0		0	
EACEA	1	Accuracy of cost claims under **Life Long Learning (LLP) programme** (error rates above materiality threshold of 2%).	1	Accuracy of cost claims under **Culture and Youth programmes** (error rates above materiality threshold of 2%).	0		0		0	
HOME (former JLS)	2	1. Reputational damage due to new risks likely to further delay the completion of the Schengen Information System II (**SIS II)** project. 2. Financial risk corresponding to the residual error rate of 2,33% in the non audited population of grants in the programmes for **Security and safeguarding liberties**	2	1. Reputational damage due to new risks likely to further delay the completion of the Schengen Information System II **(SIS II)** project. 2. Reputational damage due to delays in the entry into operations of the VIS project.	2	1. Reputational damage due to delays in the completion of the Schengen Information System II (**SIS II)** project. 2. Reputational damage due to a delay in the completion of the **VIS** project.	1	Delays in the implementation of the Schengen Information System II (**SIS II**),	2	1. Faiblesse des systèmes de contrôle et de gestion du **Fonds européen pour les** Réfugiés en Italie, pour les périodes de programmation 2000-2004, et 2005-2007 2. Mise en œuvre incomplète des mécanismes de supervision de la Commission en gestion partagée pour le **Fonds européen pour les réfugiés 2005-2007**.
JUSTICE (former JLS)	0		0		1	Residual error rate in non-audited population of grants under programmes for **fundamental rights and citizenship**.	0		0	

DG		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007
COMM	1	Potential non-compliance with applicable legislation on **Intellectual Property Rights.**	1	Potential non-compliance with applicable legislation on **Intellectual Property Rights.**	1	potential non-compliance with applicable legislation on **Intellectual Property Rights.**	2	1. Reservation on the quality failings revealed by the controls. 2. Possible infringement of **Intellectual Rroperty Rights** by Commission departments.	1	**Ex-post control** system

Chapter — Economic and Financial Affairs

DG		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007
ECFIN	0		0		0		1	Possibility that new mitigating controls put in place following an ex-post control report on funds managed by an external body entrusted with **indirect centralized** management are not effective.	1	Possibility that additionality requirements are not sufficiently met.

Chapter — Administrative and other expenditure

DG		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007
DIGIT	0		0		0		0		1	Inadequacy of the **Data Centre building infrastructure** in Luxembourg.

Total

		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007
TOTAL	27		17		20		16		17	

Annex 2: Agencies

In line with the practice in most Member States, using agencies to deliver key implementing tasks (but not *any* policy-related activities) has become an established part of the way the European Union works.

A. Executive agencies

Executive agencies operate within a clear institutional framework, governed by a single legal base[2]. Their tasks must relate to the management of Community programmes or actions, they are set up for a limited period and they are always located at the place where the Commission and its services are located. The Commission's responsibility for executive agencies is clear: the Commission creates them (after prior information of the budgetary authority, a cost-benefit-analysis and based on the decision taken by the Regulatory Committee for the executive agencies), maintains 'real control' over their activity, and appoints the Director. Their Annual Activity Reports (AARs) are annexed to the AAR of their parent[3] Directorate(s) General[4]. The annual discharge in respect of implementation of operational appropriations is covered by the general discharge given to the Commission[5]. Together with this, the Director of the agency receives discharge from Parliament, acting on a recommendation of the Council, in respect of the agency's operating (i.e. administrative) budget. A standard Financial Regulation adopted by the Commission, governing the establishment and implementation of the operating budget of an executive agency, applies to all executive agencies.

There are currently six executive agencies:

– the Executive Agency for Competitiveness and Innovation (**EACI** – formerly known as IEEA);

– the Executive Agency for Health and Consumers (**EAHC** – formerly known as PHEA);

– the Education, Audiovisual and Culture Executive Agency (**EACEA**);

– the European Research Council Executive Agency (**ERCEA)**;

– the Research Executive Agency (**REA**);

– the Trans-European Transport Network Executive Agency (**TEN-TEA**).

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2 Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ L 11, 16.1.2003).

3 EACI (parent DGs: ENTR, ENV, ENER, MOVE); EAHC (parent DG: SANCO); EACEA (parent DGs: EAC, COMM, DEVCO); ERCEA (parent DG: RTD); REA (parent DGs: RTD, ENTR, EAC); TEN-TEA (parent DG: MOVE).

4 i.e. the Directorates General which have delegated the implementation of programmes (or parts of it) to the executive agency.

5 i.e. unlike the discharge process of the 'independent' Joint Technology Initiatives / Joint Undertakings, which is separate from the Commission's discharge.

No new executive agencies were created during the year. Their AAR reported that three of the executive agencies were fully compliant with all requirements of all the internal control standards, whereas three agencies had not yet fully implemented all the requirements of a few standards (this concerned four standards for two agencies and one standard for one agency) by the end of 2011. This was a notable improvement compared to 2010, when none of the executive agencies reported full compliance with all standards. **The central services encourage the agencies and their parent DGs to make further efforts in this area with a view to the agencies reaching full compliance within the near future.**

The importance of the executive agencies to the Commission can be seen by the fact that 90 % of DG MOVE's budget, 48 % of DG EAC's budget and 24 %[6] of DG RTD's budget is currently managed indirectly, in each of these cases involving two executive agencies. In view of this, the **Commission's supervisory arrangements over the executive agencies become even more important**. These are ensured by the Commission's representation on the Steering Committee, monitoring of the agency's set-up of its internal control system, the follow-up of audits carried out by various bodies, periodic coordination meetings between the agencies and their parent DGs as well as other measures.

The breakdown of staff actually employed on 31/12/2011 by the executive agencies was as follows:

	Temporary agents (officials seconded by the Commission and agents recruited by the agency)	**Contract agents**	***Total***	***Total Authorised under the EU budget***
EACI	33	123	*156*	*156*
EAHC	11	38	*49*	*50*
EACEA	102	309	*411*	*416*
ERCEA	97	253 [7]	*350*	*360*
REA	103	351	*454*	*468*
TEN-TEA	33	66	*99*	*99*
Total	*379*	*1140*	***1519***	***1549***

The executive agencies' high occupation rate of the posts authorised in 2011 (98 %) was noted. This demonstrates that most agencies (except for REA and ERCEA) reached "cruising speed" in 2011. Thus, the overall vacancy rate fell from 5 % in 2010 to 2 % in 2011.

6 Up to 33 % of FP7 budget is foreseen to be managed indirectly (via 2 EAs and 5 JUs).
7 This figure is relates to 245 contract agents and 8 seconded national experts.

A 2009 special report[8] by the European Court of Auditors examined the executive agencies. The report concludes that agencies provide better service delivery than the Commission (reduced contracting time, more rapid approval procedures, and shorter payment times) and also offer the advantages of simplified processes and increased external visibility for EU actions. The report confirms that externalisation to Executive Agencies has effectively resulted in cost-savings. **As part of its proposals for the 2014-2020 multiannual financial framework[9], the Commission proposes to make more extensive recourse to the existing executive agencies, in view of their service delivery and accessibility in the management of EU programmes.**

B. Regulatory agencies and joint undertakings

The 32 decentralised bodies are independent legal entities. 27 of these receive funds from the European Union budget and are therefore granted discharge by the European Parliament in individual discharge decisions. The remaining five do not receive EU funding and thus do not receive discharge by the European Parliament (two of these agencies[10] are fully self-financed, and three[11] are funded on an intergovernmental basis and financed directly by the participating Member States).

The Court of Auditors emitted a qualified opinion on the accounts of the ENIAC[12] Joint Undertaking and the European GNSS Agency.

The two agencies that had been given a qualified opinion by the European Court of Auditors on the legality and regularity of their underlying transactions in 2009 (the European Police College, CEPOL, and the European Medicines Agency, EMA), received a non-qualified opinion on their 2010 underlying transactions.

In May 2012, the European Parliament did grant discharge to the directors of all agencies for 2010, with the exception of the European Medicines Agency (EMA), the European Food Safety Authority (EFSA) and the European Environment Agency (EEA) for which the discharge decisions for the financial year 2010 were postponed for these three agencies.

In a Communication of March 2008 entitled *"EU agencies: the way forward"*[13] the Commission drew attention to the lack of a common vision on the role and functions of regulatory agencies. Further evaluation did point out that there is no single legal framework governing the establishment and closure of EU de-centralised agencies, and that alternatives to creating agencies were given limited attention until impact assessments came into practice. Furthermore, **a number of chosen location sites for the agencies were assessed as inefficient**. As regards agencies' effectiveness, the activities of the majority of agencies were considered coherent with their mandate, and in general there was clear evidence that agencies have achieved the planned outputs. Analysis indicated that that in order to operate efficiently

[8] Special report 13/2009: "Delegating implementing tasks to Executive Agencies: a successful option?"

[9] COM(2011)500, 29.6.2011, point 6.1.3.

[10] The Office for Harmonisation in the Internal Market (OHIM) and the Community Plant Variety Office (CPVO)

[11] The European Institute for Security Studies (ISS), the European Union Satellite Centre (EUSC) and the European Defence Agency (EDA).

[12] The European Joint Undertaking for the implementation of the Joint Technology Initiative on Nanoelectronics

[13] Communication from the Commission to the European Parliament and the Council: European Agencies – the way forward - COM(2008)135.

with regards to the administrative tasks, an agency needs to reach a certain critical size, somewhere between 50 and 100 staff. Finally, it was found that monitoring was not very well developed in terms of the use of quantifiable objectives and indicators.

The 2008 Communication has lead to the set up of an inter-institutional Working Group with a view to assessing the existing situation and in particular the coherence, effectiveness, accountability and transparency of these Agencies and find a common ground on how to improve their work. The technical and political work carried out since then has continued throughout 2011, with a view to reaching a common agreement on the way forward in 2012.

Annex 3: Report on negotiated procedures 2011

1. LEGAL BASIS

Article 54 of the Implementing Rules of the Financial Regulation requires authorising officers by delegation to record contracts concluded under negotiated procedures. Furthermore, the Commission is required to annex a report on negotiated procedures to the summary of the annual activity reports (AAR) referred to in Article 60.7 of the Financial Regulation.

2. METHODOLOGY

A distinction has been made between the 45 Directorates-general, services, offices and executive agencies which normally do not provide external aid, and those three Directorates-general (DEVCO, ELARG and FPI) which conclude procurement contracts in the area of external relations (different legal basis: Chapter 3 of Title IV of Part Two of the Financial Regulation) or award contracts on their own account, but outside of the territory of the European Union.

These three Directorates-general have special characteristics as regards data collection (decentralised services, …), the total number of contracts concluded, thresholds to be applied for the recording of negotiated procedures (€ 10 000), as well as the possibility to have recourse to negotiated procedures in the framework of the rapid reaction mechanism (extreme urgency). For these reasons, a separate approach has been used for procurement contracts of these three Directorates-general.

3. OVERALL RESULTS OF NEGOTIATED PROCEDURES RECORDED

3.1. The 45 Directorates-general, services or offices, excluding the three "external relations" Directorates-general

On the basis of the data received, the following statistics were registered: **104** negotiated procedures with a total value of € 300 million were processed out of a total of **727** procedures (negotiated, restricted or open) for contracts over € 60,000 with a total value of € 1983 million.

For the Commission, the average proportion of negotiated procedures in relation to all procedures amounts to **14.3%** in number (14.6% in 2010), which represents some **15.2%** of all procedures in value (8.6% in 2010).

An authorising service is considered to have concluded a "distinctly higher" proportion of negotiated procedures "than the average recorded for the Institution" if it exceeds the average proportion by 50%, or if the increase from one year to the next is over 10%. Thus, the reference threshold for this year is fixed at **21.5%** (21.9% in 2010).

Some 12 Directorates-general or services out of the 45 exceeded the reference threshold, and another 2 increased their number of negotiated procedures by more than 10% compared to the previous year. Among those 14 services, it should be noted that 6 Directorates-general concluded only one to four negotiated procedures, but because of the low number of procedures conducted by each of them (less than 8), the average was exceeded. In addition, 20 out of 45 Directorates-general have not used any negotiated procedure, including 7 services that awarded no contract at all.

The assessment of negotiated procedures compared with the previous year shows a slight decrease in the order of 0.3 percentage points in relative number and an increase of 6.5 percentage points in terms of relative value.

3.2. The three "external relations" Directorates-general

On the basis of the data received, the following statistics were registered: **179** negotiated procedures for a total value of contracts € 137 million were processed out of a total of **641** procedures for contracts over € 10 000 with a total value of about € 1002 million.

For the three "external relations" Directorates-general, the average proportion of negotiated procedures in relation to all procedures amounts to **27.9** % in number, which represents some 14% of all procedures in value terms. Only one Directorate-general exceeds the reference threshold of 42% (average + 50%).

If compared with previous years, these Directorates-general have registered an increase of 9 percentage points in number of negotiated procedures in relation to all procedures compared to the previous year.

4. ANALYSIS OF THE JUSTIFICATIONS AND CORRECTIVE MEASURES

The following categories of justifications have been presented by those Directorates-general who exceeded the thresholds:

- **Statistical deviations** due to the low number of contracts awarded under all procedures. Indeed 8 out of the 14 DGs over average have carried out less than 15 procurement procedures.

- **Objective situations of the economic activity sector**, where the number of operators may be very limited or even in a monopoly situation (for reasons of intellectual property, specific expertise, etc.) for instance in the nuclear area or for financial databases. Situations of technical captivity may also arise especially in the IT domain (proprietary software or maintenance of complex servers hosting critical information systems, etc).

- **Situations of emergency** that cannot be foreseen by the contracting authority, for instance on the impact of E. Coli attack on fruit and vegetable crops.

- **Similar services/works** as provided for in the initial tender specifications. Some services in charge of large inter-institutional procedures are faced with estimations of needs at the beginning of (usually framework) contracts that do not always match the consumption trend of the contract during its execution. The leading service must then use a negotiated procedure on behalf of all institutions party to the contract.

- **Unsuccessful open or restricted procedure**, leading to a negotiated procedure.

Besides it should be highlighted that the number of negotiated procedures in 2011 compared to 2010 has continued decreasing in absolute terms (from 125 to 104), and the overall number of procurement procedures has also carried on decreasing (from about 856 to 727), so this explains the relative stability in proportion of negotiated procedures compared to the total number of procedures. The increase in value from € 214 million to € 300 million remains quite below the level registered in 2009 (€578 million).

Several corrective measures have already been proposed or implemented by the Directorates-general concerned:

- Regular update of standard model documents and guidance documents.

- Training and improved inter-service communication. The Central Financial Service provides regular practical training sessions on procurement.

- Improvement of the system of evaluation of needs of Directorates-general/services and an improved programming of procurement procedures. The Commission' horizontal services will continue their active communication and consultation policy with the other DGs, institutions, agencies and other bodies along the following axes:
  - permanent exchange of information via regular meetings including with agencies;
  - ad-hoc surveys prior to the initiation of (inter-institutional) procurement procedures for the evaluation of needs;
  - a new approach is introduced for inter-institutional framework contracts, including semester consumption reports from each participating institution or agency, to improve procurement planning.

Annex 4: Summary of Waivers of recoveries of established amounts receivable in 2011

(Article 87.5 IR)

In accordance with Article 87(5) of the Implementing Rules, the Commission is required to report each year to the budgetary authority, in an annex to the summary of the Annual Activity Reports, on the waivers of recovery involving 100.000 € or more.

The following table shows the total amount and the number of waivers above 100.000 € per Directorate-General/Service for the EC budget and the European Development Fund for the financial year 2011.

EC budget:

Directorate-General/Service	Amount of waivers in €	Number of waivers
AGRI	692.398	2
COMP	18.854.917	5
DEVCO	1.552.627	5
EAC	916.333	5
EACEA	808.571	6
EMPL	384.000	1
ENV	304.644	1
INFSO	1.196.334	5
RTD	927.970	3
Total:	**25.637.794**	**33**

European Development Fund:

Directorate-General/Service	Amount of waivers in €	Number of waivers
EDF	1.019.551	3

Annex 5: Compliance with payment time-limits and suspension of time-limits

(Article 106.6 IR)

The **statutory time limits** for payments are laid down in the Implementing Rules of the Financial Regulation[14] (hereinafter IR), and exceptionally in sector-specific regulations. Under Article 106 IR, payments must be made within no more than 45 calendar days from the date on which an admissible payment request is registered or 30 calendar days for payments relating to service or supply contracts, save where the contract provides otherwise. Commission standard contracts are in line with the time limits provided for in the IR. However, for payments which, pursuant to the contract, grant agreement or decision, depend on the approval of a report or a certificate (i.e. the interim and/or final payment), the payment time starts running when the report or certificate in question has been approved[15]. Under Article 87 of the Regulation of the European Parliament and the Council laying down general provisions on the European Development Fund, the European Social Fund and the Cohesion Fund, a specific rule applies: payments have to be made within two months[16].

Following the revised Implementing Rules which entered into application on 1 May 2007, compliance with payment time limits was reported for the first time by the Services in the 2007 Annual Activity Reports[17].

In accordance with the applicable rules, the payment times reported in this annex have been calculated as follows:

- Where the payment is contingent upon the approval of a report, the time from approval of the report until payment;
- where no report is required, the time from reception of the payment request until payment.

The Commission's global average payment time has developed as follows over the last few years:

	2009	2010	2011
Global average payment time	26,1 days	25,8 days	25,7 days

The data shows that **the global average payment time of the Commission services has stabilised around 26 days during the last three years** (i.e. in 2009, 2010 and

14 Commission Regulation (EC) No 2342/2002 of 23 December 2002 (OJ L 357, 31.12.2002, p. 1) as last amended by Regulation (EC) No 478/2007 of 23 April 2007 (OJ L 111, 28.4.2007, p. 13).

15 Pursuant to Article 106(3) IR, the time allowed for approval may not exceed:
(a) 20 calendar days for straightforward contracts relating to the supply of goods and services;
(b) 45 calendar days for other contracts and grants agreements;
(c) 60 calendar days for contracts and grant agreements involving technical services or actions which are particularly complex to evaluate.

16 Regulation (EC) No 1083/2006 of the European Parliament and of the Council laying down general provisions on the European regional Development Fund, the European Social Fund and the Cohesion fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, 31.7.2006, p. 25).

17 Based on available data in ABAC as of end of the financial year 2007

2011). This stagnation comes after a significant drop in 2009, when the global average payment time fell from 34 days (in 2008) to 26 days (in 2009). On the one hand, it is encouraging to see that the considerable reduction in the global average payment time reached in 2009 has been consolidated, so that the payment time remains on a stable level. Nevertheless, **there is scope for reducing the global payment time further, and services are encouraged to take further action in this area.**
The table below provides the evolution of ***payments made after expiration of the statutory time limit ("late payments")*** during the three last years, based on data extracted from the ABAC accounting system:

	2009	**2010**	**2011**
Late payments in number	14,0 %	15,9 %	12,3 %
Late payments in value	6,8 %	6,0 %	7,3 %
Average number of overdue days[18]	39,2 days	34,2 days	42,3 days

Overall, the situation as regards late payments did not change significantly in 2011. In terms of the number of payments, late payments were further reduced (from around 16 % to around 12 %). However, in terms of their value there was an increase (from around 6 % to around 7 %). Also, the average number of overdue days rose again (from around 34 days in 2010 to around 42 days in 2011; slightly higher than the 39 days reported in 2009 but still lower than the 48 days reported in 2008). **The figures show the need for services to intensify their efforts towards meeting the statutory payment time for every payment.**

In its April **2009 Communication**[19], **the Commission announced its intention to reduce its payment times further beyond the statutory time limits**, setting the following ambitious **targets:**

– first pre-financing payments **within 20 days** from the signature date of the grant agreement, compared to the statutory time limit of 45 days;

– all other payments **within 30 days**, compared to the statutory time limit of 45 days.

In 2011 – the second full year of application of these targets – **only a slight improvement was noted; around 80 % of payments** (in terms of their number) **met the targets in 2011 compared to around 78 % in 2010.** The required efforts towards a further reduction in the global overall payment time, called for above, would of course also have a positive effect on compliance with these targets.

As regards ***interest paid for late payments*** (see figures in the table below) **the total amount paid by the Commission more than doubled in 2011** compared to 2010,

18 i.e. above the statutory time limit.

19 Communication: "Streamlining financial rules and accelerating budget implementation to help economic recovery", SEC(2009) 477 of 8.4.2009.

reaching the highest amount since the introduction in 2008 of automatic payment of interest for late payments[20]. This was the result of the rise in the number of days overdue and in the value of late payments.

	2009	2010	2011
Interest paid for late payments (rounded amounts)	808 000 €	810 000 €	1 734 000 €

The **causes of late payments** include inter alia the complexities of evaluating supporting documents, in particular the technical reports that in some cases require external expertise, difficulties at efficiently coordinating the financial and operational checks of payment requests, and issues with the management of payment suspensions.

The 2009 Communication establishing Commission-internal payment targets provided a clear incentive to services to reduce their payment times, in particular in 2009 when the global average payment time fell significantly; from 34 to 26 days.
In 2011, the global average payment time remained around 26 days; the same level as that reported in 2009 and 2010. Yet, there is scope for reducing it further. When setting up action plans in this area, services' should focus on further reducing late payments from their current level of 7 % of payments in terms of their value. The aim should be to meet the statutory payment time for every payment.

The minor improvement reported in 2011 as regards the compliance with the Commission-internal payment targets also points to the need to look for organisational improvements that would allow for a further reduction in payment times.

[20] i.e. no longer conditional upon the presentation of a request for payment (with the exception of amounts below 200 Euros).