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REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Member States' Replies to the Court of Auditors' 2012 Annual Report

{SWD(2014) 60 final}

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REPORT FROM THE COMMISSION

MEMBER STATES' REPLIES TO THE COURT OF AUDITORS' 2012 ANNUAL REPORT

EXECUTIVE SUMMARY

This report is an analysis of the Member States' replies to the European Court of Auditors' (the Court) annual report for budgetary year 2012 and fulfils the obligations defined in article162 (5) of the Financial Regulation.

The Court’s audit results showed that for 2012 the consolidated accounts presented the financial position of the Union fairly and that they were free from any material misstatements. However, for expensed payments the Court’s conclusion was that they were materially affected by error and the related control systems examined were partially effective for all expenditure areas except administrative expenditure, which was free from errors. For the budget as a whole, the most likely error rate had increased from 3,9% in 2011 to 4,8% in 2012. The Court identified that eligibility errors accounted for a significant proportion of the estimated overall error rate. Finally, the Court highlighted that shared management expenditure, which represents 80% of EU expenditure, contributed significantly to the estimated overall error rates and that many of the errors found could have been detected by better first-line controls at the level of the Member States.

This report analyses the replies provided by Member States under three main thematic headings – (1) Performance – Getting results from the EU budget (2) Eligibility and accuracy errors and (3) Improving controls and systems.

With regards to performance the Court criticized the existing performance measurement and reporting framework. Member States were therefore requested to reply to questions on performance measurement, evaluation and reporting for co-financed programmes. Twenty three Member States indicated that they use SMART objectives and RACER indicators; Member States also detailed various aspects of their national performance measurement processes. If the Member States' positive view is confirmed, it would allow the Commission to improve its global performance measurement and reporting on the basis of Member States’ data.

In the area of expensed payments, the Court identified recurrent eligibility errors with a financial impact concerning ineligible VAT in cost claims. In the area of Agriculture it also indicated that there were significant deficiencies related to three Land Parcel Identification Systems (LPIS) audited resulting in eligibility and accuracy errors. All Member States concerned indicated that they had made efforts to rectify VAT errors and to update and improve LPIS databases. The Court highlighted the positive impact of simplified cost options (SCOs) in the area of Employment and Cohesion and its opinion was shared by a majority of Member States. This is extremely important because the use of SCOs could be a key element in the prevention of errors in programmes under the new MFF.

In shared management the Commission applies the concept of single audit whenever possible, meaning that it may rely on audit and controls performed by national audit authorities, if they are proven to be reliable and if the management and control systems are fully effective. In its report, the Court referred to the risk of frequently unreliable information provided by the audit authorities (AAs). Ten Member States replied that they had no plans for improvements as they considered their AAs to be reliable. Member States all expressed overall satisfaction with the guidance on the treatment of errors provided and the seminars organised by the Commission in 2012 and 2013. The majority of Member States indicated that they were willing to establish effective and proportionate anti-fraud measures. Although, the Commission acknowledges the advantages of the single audit concept, it has to ensure the reliability of the data reported by the Member States and it therefore performs reviews and audits of the systems of national audit authorities and the national bodies responsible for the implementation of EU programmes.

REPORT FROM THE COMMISSION

MEMBER STATES' REPLIES TO THE COURT OF AUDITORS' 2012 ANNUAL REPORT

1. Scope of the Report

Article 162.5 of the Financial Regulation states that as soon as the Court has transmitted its annual report, the Commission shall inform the Member States concerned immediately of the details of that report which relate to management of the funds for which they are responsible. Member States should reply within sixty days and the Commission then transmits a summary of the replies to the Court of Auditors, the European Parliament and the Council before 28 February of the following year.

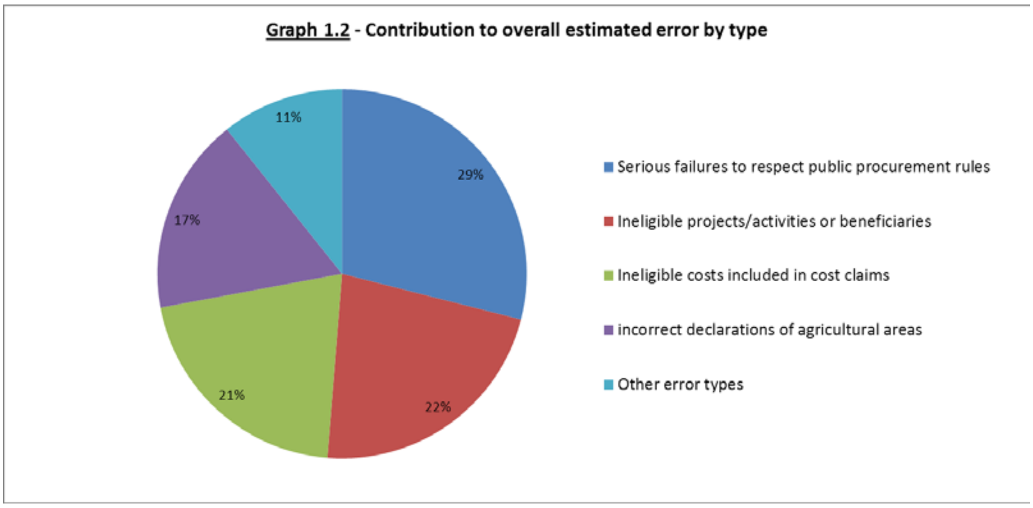
Following publication of the Court's annual report for the budgetary year 2012, the Commission duly informed Member States of details of the report. This information was presented in the form of a letter and three annexes to be completed by each Member State. Annex I was a questionnaire on the paragraphs referring to the individual Member States; Annex II was a questionnaire on audit findings which refer to each Member State and Annex III was a questionnaire on topical findings related to shared management for DAS 2012.

This report is an analysis of the Member States' replies under three main thematic headings – (1) Performance – Getting results from the EU budget (2) Eligibility and accuracy errors (3) Improving controls and systems, and is accompanied by a Staff Working Document (SWD) which comprises the Member States' replies to Annexes I and III.

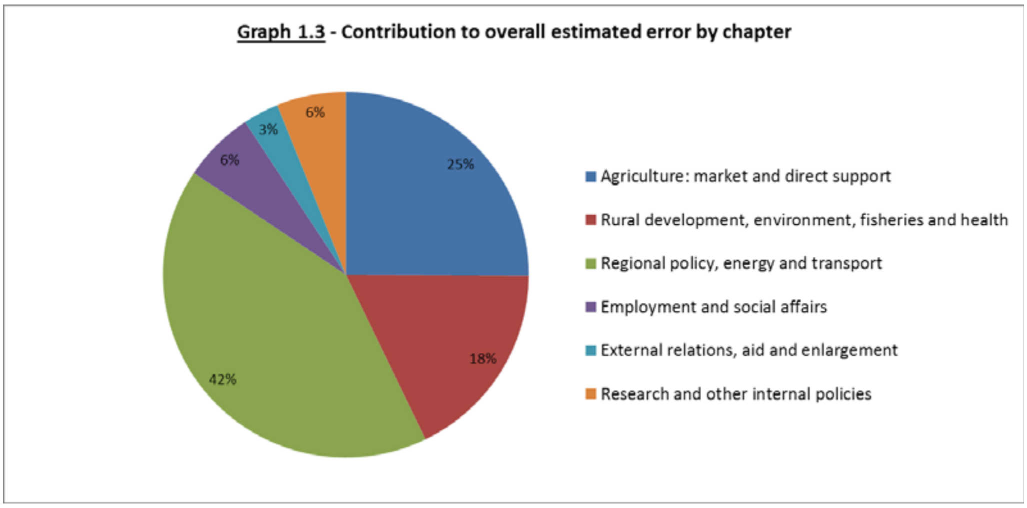
2 Key features of the ECA 2012 report

The Court’s audit results showed that for 2012 the consolidated accounts presented the financial position of the Union fairly and that they were free from any material misstatements. Commitments in all spending areas were also free of material error. However, for expensed payments the Court’s conclusion was that they were materially affected by error and the related control systems examined were generally partially effective. The Court also concluded that for 2012 there had been an increase in the most likely error rate for all policy areas. Consequently for the budget as a whole, the rate had also increased from 3,9% in 2011 to 4,8% in 2012.The most error prone spending areas were Rural development, environment, fisheries and health (Chapter 4) 7,9% and Regional policy, energy and transport (Chapter 5) 6,8%.

In terms of the types of errors which the Court identified in 2012, eligibility errors accounted for a significant proportion of the estimated overall error rate, followed by procurement errors. The graph below gives a breakdown of the contribution of each type of error to the overall estimated error rate.[1]



The Court also highlighted the fact that taken as a whole, it estimated that shared management expenditure contributed significantly to the estimated overall error rates. (see Graph 1.3 below).[2]



Finally, the Court noted that for a large proportion of transactions affected by errors in shared management, Member States' authorities had sufficient information available to have detected and prevented those errors.[3]

[1] ECA AR 2012 1.17
[2] Annex A of this report
[3] ECA AR 2012- 5.27, 6.12

3 Summary of the Member States' replies

3.1 PERFORMANCE-GETTING RESULTS FROM THE EU BUDGET

Since 2010, the Court has been reporting specifically on performance issues. In its 2012 report, the Court emphasized some of the main themes arising and the lessons that can be learned from its 2012 special reports. According to the Court "*performance is assessed on the basis of the sound financial management principles (economy, efficiency and effectiveness)"*. Its measurement is key throughout the public intervention process, covering inputs, outputs, results and impacts.[4] However, the Court also indicated, that "*for many areas of the EU budget the legislative framework is complex and there is a lack of focus on performance.*"[5]

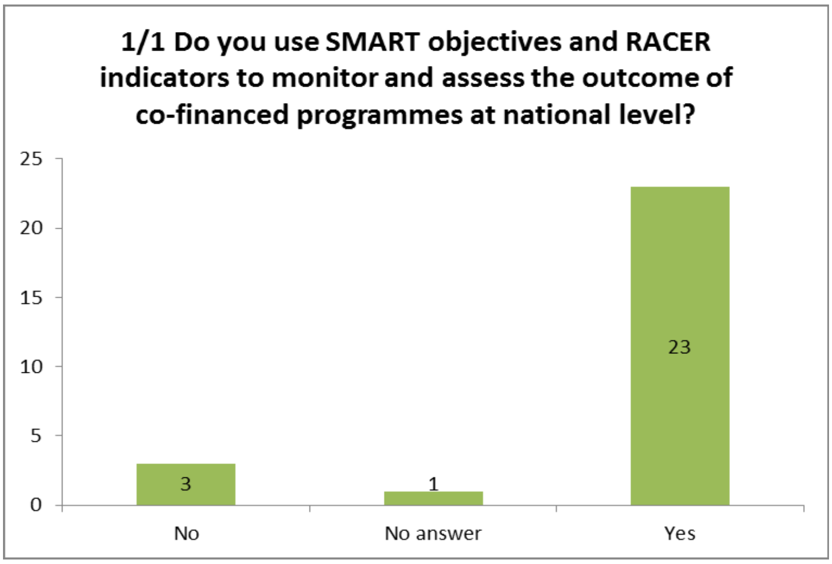
With regards to the results of the audit on performance the Court stated in its report that it "*focused on three themes which are important for obtaining the desired results and impacts of the next generation of spending programmes.*"[6] It focused, firstly, on SMART objectives and suitable indicators for programmes, secondly, on reliable and timely data on the performance of programmes and finally, on the sustainability of EU funded projects.

The same issues are also covered in the Court's special reports. For instance in its special report on integration of third-country nationals the Court "*concluded that although the Commission provided extensive guidance on indicators, four out of the five Member States showed significant weaknesses in the inclusion of SMART objectives in programmes, setting up appropriate IT collection systems and/or reporting on the achievement of targets. Consequently, the ability of Member States and the Commission to monitor and steer the programmes has been hampered.*"[7]

In the questionnaire (Annex III) sent to the Member States they were requested to reply to questions on performance measurement, evaluation and reporting. Member States had the opportunity to explain their national performance measurement systems for co-financed programmes.

In their replies to the question on objectives and indicators used for performance measurement, 23 Member States indicated that they use SMART objectives and RACER indicators (see graph below).

[4] ECA AR 2012 10.2
[5] ECA AR 2012 10.3
[6]ECA AR 2012 10.26
[7] ECA AR 2012 10.29



23 out of the 27 responding Member States also stated that they discuss the definition of objectives and indicators for co-financed programmes with their counterparts at the European Commission.

In their replies Member States detailed various aspects of their performance measurement processes for co-financed programmes. The answers focused on four main elements: a general process overview, performance monitoring, evaluation and reporting.

Member States gave a general overview and description of the process as well as the entities responsible. The replies described the monitoring, evaluation and reporting of indicators, most commonly in the Annual Implementation Reports. The procedure as a whole is mostly coordinated by the managing authorities or monitoring committees. However, in certain cases the evaluation and reporting is not systematically undertaken by the managing authorities. As stated by Estonia and Hungary respectively "*evaluations are usually carried out by external experts*"[8] and "*evaluation projects are outsourced, generally for half a year to a year.*"[9]

With regards to monitoring, the Member States described the indicators used. Austria, Cyprus, the Czech Republic and Poland indicated that they measured performance based on indicators which have been specified in the Operational Programmes (OP).[10] Bulgaria, Cyprus and the Czech Republic stated that, next to OP level indicators, they also used indicators defined at project level.[11] Bulgaria, the Czech Republic and Slovakia further detailed that they measured performance by specifying starting and target values, while Cyprus and Greece stated that they used economic, output and outcome indicators.[12] Denmark said that aside from indicators in the OPs or the specific projects, they also used supporting information from statistical sources, such as data from the Danish Statistical Office.[13]

[8] SWDp164
[9] SWDp189
[10] SWDp131,p152,p154,p239
[11] SWDp140,p152,p154
[12] SWDp140,p152,p264,p152,p185
[13] SWDp158

For measuring and evaluating the indicators the Member States used various methods. Six Member States stated that the indicators are monitored continuously or through ongoing assessment. It was also noted by Bulgaria and the Czech Republic that based on the starting and target values, the commitments and values achieved are compared.[14] Finally, evaluation studies, surveys and reviews are also being used for measurement as indicated for example by Hungary, Poland and Romania.[15]

With regards to reporting, the Member States focused on the form and timing of their reporting procedures. Reporting takes place most commonly on an annual basis through the Annual Implementation Report. Malta and Poland indicated that they also use bi-annual reports, while the Czech Republic stated that "*the outputs are regularly reported on in the Monthly monitoring report*".[16] Reports are also published on the web and communicated through sectorial networks to target publics as, for example, in Hungary, Spain and Portugal and/or discussed in public hearings as is the case in Slovenia.[17] Bulgaria stated that furthermore, they have developed an electronic system called SIBILA "*to assess the impact on the Bulgarian economy of the resources allocated from the Structural and Cohesion Funds.*"[18]

Austria underlined the importance of performance by stating that "*to ensure the operation of the directives and regulations, the supervision architecture must be constantly developed. That is why the ECA conducts performance audits (see Chapter 10 of the ECA Annual Report concerning the financial year 2012), which the ACA welcomes and affirms it will make greater use of.*"[19] In a similar vein Denmark noted that "*great importance is also attached to the chapter in the annual report on 'Getting results from the EU budget'. That chapter confirms that there is a continued need to focus on building a robust system for results-oriented reporting and impact measurement.*"[20]

In general the Member States' replies to these questions were very positive. The challenge for the Commission will be to improve its overall performance measurement and reporting on the basis of Member States' data.

3.2 ELIGIBILITY AND ACCURACY ERRORS

As mentioned previously, overall across the different policy groups, eligibility errors accounted for a significant proportion-more than two thirds- of the estimated error rate for the budget as a whole.[21] In Chapter 3 and 4[22] - of its annual report, the Court provided examples of such errors in various Member States. For instance in Chapter 3, eligibility and accuracy errors were identified in the context of LPIS. In Chapter 4 non-respect of eligibility requirements for investment projects was highlighted by the Court.

[14] SWDp140,p155
[15] SWDp186-7,p242,p263
[16] SWDp156
[17] SWDp191,p272,p258,p268
[18] SWDp147
[19] SWDp302
[20] SWDp303
[21] ECA AR 2012 – 1.17
[22] Chapter 3 - Agriculture, market and direct support and Chapter 4 - Rural development, environment, fisheries and health.

The Court also identified recurrent eligibility errors with a financial impact concerning ineligible VAT in France, Spain, Italy, Poland, Portugal and Romania. Each Member State concerned was asked whether paying agencies were familiar with the applicable legal basis when reimbursing VAT and each one responded in the affirmative.

For Chapter 3, the results of the Court's report indicated that there were significant deficiencies related to three LPIS audited[23] which resulted in eligibility and accuracy errors. Four countries-Spain, Austria, Portugal, UK (Northern Ireland)-were mentioned in the Court's report as having deficiencies in their LPIS databases[24] and each one indicated that efforts had been made to update and improve its respective LPIS databases. According to the Austrian authorities:

"The Austrian LPIS is updated properly and at regular intervals. Since 2009 and especially from 2012, great efforts have been made to improve the area of aerial photography."[25]

In addition, the authorities also stated that there will be a "*reorganisation of the procurement of images from 2013*" which will allow more regular and accurate photography.[26]

Spain gave an extensive account of how it is implementing means to address these deficiencies:

"*In response to the request made by the Commission to implement measures to correct these issues, in 2010 we drafted an Action Plan, incorporating the corrective measures that have been deemed necessary, as well as a specific timetable for their implementation.*

*The measures contained in this Plan are applied on the basis of a land parcel identification system, the LPIS, fully consolidated and operational, fruit of a high level of investment sustained over time, which is both transparent and of quality. The implementation of these measures therefore leads to an improvement in the quality of the existing system****."***

With reference to its situation, Portugal stated that" *the completion of the LPIS Action Plan in January 2013 will certainly help to reduce the impact of these cases*."[27]

The UK with specific reference to Northern Ireland, stated: *"the NI Authorities consider that the on-going work on the LPIS Improvement Project has reduced the risk to the Fund."*[28]

One other area in which the Court found serious cases of non-respect of eligibility requirements was investment projects in the area of rural development. Member States concerned were asked to provide an opinion on eligibility requirements for investment projects and the majority stated that eligibility requirements were too

[23] ECA AR 2012-3.22
[24] ECA AR 2012 Boxes 3.1 and 3.3
[25] SWDp130
[26] SWDp130
[27] SWDp50
[28] SWDp56

complex. Nonetheless, most respondents indicated that despite complex rules all measures were taken to ensure correct implementation. Poland for example stated:

"*the eligibility requirements for investment projects are relatively complex, and therefore their control is not easy. However, Poland makes all efforts to ensure that the control is carried out in a comprehensive manner, using all available tools.*"[29]

Lithuania also indicated that in its particular case "a *corrected payment request was submitted regarding the repayment into the European Agricultural Fund for Rural Development (EAFRD) of misused Fund finances."*[30]

Spain too asserted that it had made the necessary corrections and that "*the deficiencies detected in the audited case do not affect any other case, and the error is therefore not systematic in nature."*[31]

Similarly Italy stated that it had provided supplementary justifying information in its particular case and that "*paying agencies scrupulously apply the EU rules on the matter."*[32]

The Member States' positive replies concerning their actions and intentions are monitored by the Commission services in order to ensure that they are effective in mitigating the risks identified by the Court.

3.3 IMPROVING CONTROLS AND SYSTEMS

In the Court's 2012 report it highlighted the positive impact of simplified cost options (SCOs). Previously in 2006 the Court recommended that the Commission extend its use of lump sums and flat rate payments instead of reimbursing "real costs".

In the sample of transactions for the 2012 audit for Chapter 6, the Court did not detect any quantifiable or non- quantifiable errors related to the specific use of SCOs. The conclusion was therefore that projects whose costs are declared using SCOs are less error prone and therefore a more extensive use of SCOs would have a positive impact on the error rate.

Member States were questioned about whether they agreed with the Court's opinion on SCOs as defined above. All Member States replied to the question in the affirmative.

Member States were also requested to indicate whether they envisaged introducing SCOs and if they were already using SCOs, whether usage would be further extended. There was again unanimity among Member States with regard to the reply to this question. Luxembourg underlined the support which it provided to its beneficiaries at the start of the programme or project by stating:

"*The Managing Authority of the ESF has established a relatively simple presentation which is made available to applicants at the beginning of the procedure. The MA also actively supports beneficiaries who request assistance with matters related to*

[29] SWDp238
[30] SWDp78
[31] SWDp77
[32] SWDp201

budgetary management, thereby eliminating all likely causes of errors and simplifying administration for the beneficiary."[33]

Finally, Member States were requested to give an opinion on whether the Commission sufficiently and adequately promoted the use of SCOs. Nearly all 27 respondents stated that more could be done by the Commission. Germany and Hungary pointed to the fact that for the previous programming period, 2007-2013 the authorisation procedures and discussions were long and drawn out.[34] The UK also stated that "*active encouragement by the Commission at an earlier state in the 2007-2013 programming period would have been welcome.*"[35] Austria elaborated on this idea by stating that on the one hand the Commission had tried to promote the use of SCOs, but that on the other hand:

"*The past has shown, however, that the key factor for the successful use of SCOs by the Member State can be 100 % confident that when using SCOs the costs are accepted by the Commission and/or the audit authority. This is precisely where the main problem lay in the Structural Funds period 2007-13. Although the flat-rate schemes laid down in law offered a theoretically wide latitude in implementation, in practice a series of interpretations restricted this scope again and increased the risk for the implementing agencies that in the context of SCOs the costs charged would not be accepted by the Commission or the audit authority.*"[36]

Romania and Malta both called for "*more guidelines*" to be provided by the Commission and Romania stated further that "*from the standpoint of applying the provisions of the European regulations from 2014 to 2020 further appropriate guidelines and training would have been required.*"[37]

Cyprus and Latvia both detailed the type of assistance and guidance which the Commission could provide. Cyprus stated that there should be:

"*Increased use of workshops and seminars for exchanges of experience between Member States*"

while Latvia called for the dissemination of information and examples of:

"*best practice in the application of various types of simplified costs….information on specific areas in which these costs can be applied and standard methodology for specific areas and costs.*"[38]

Sweden supported the Court's recommendation that "*the Commission should continue with and develop ex ante approval of the flat rates developed within the framework of the simplified cost options*". According to Sweden in order to achieve this objective:

"*the Commission must set aside more resources for developing simplified cost options with a view to increasing support to the Member States with regard to the approval of flat rates. Cooperation must also be developed with the Commission's*

[33] SWDp208
[34] SWDp175,p186
[35] SWDp299
[36] SWDp130
[37] SWDp214,p263
[38] SWDp152,p203

auditors in order to clarify how the overall legal framework should be interpreted with regard to the simplified cost options. To that end, there must be an increase in the supply of information to and cooperation with the geographic desks in order to simplify the process of introducing the simplification measures into the Member States' operational programmes."[39]

The Member States' interest in expanding their use of SCOs is very important, as it is one of the key elements for reducing the risk of error in programmes under the new MFF.

On the subject of controls, the Court makes several references in Chapter 5, -Regional policy, energy and transport- and Chapter 6 –Employment and social affairs- of its report to the risk of frequently unreliable information provided by the audit authorities (AAs). As a result, the Court has recommended that "*the Commission should seek improvement in the work done by audit authorities and the quality and reliability of the information provided in ACRs and audit opinions."*[40]

Member States were requested to indicate whether they planned to introduce arrangements to improve the situation. A total of ten Member States replied that they had no plans for improvements as they considered their AAs to be reliable and in certain cases they had even received endorsement from the Commission. According to Portugal for example:

"The information provided in the ACRs and audit opinions is felt to be of good quality and sufficiently reliable."[41]

Cyprus underlined that "*the EU has expressed satisfaction with the level of annual audit reports of the Supervisory Authority."*[42]

Luxembourg stated that in addition to not having AAs which were part of the Court's audit sample for 2012, in general its reports were always "*accepted by the Commission*" and that "*the management systems in Luxembourg had a simple and transparent structure.*"[43]

Finally Ireland pointed out that:

"*The audit authority does not carry out specific risk assessment in relation to fraud. It is considered that the programme of management verifications (both desk checks and on-the-spot checks) is adequate to provide reasonable assurance that the risk of fraud is mitigated.*"[44]

The more popular measures which Member States requested with regard to improving the situation included more guidance and training from the Commission. Additionally, an improvement in the quality control measures within AAs was also cited by some Member States as being necessary. External evaluation and monitoring of AAs although somewhat less popular, were also deemed necessary for the AAs of some Member States.

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[39] SWDp296
[40] SWDECA AR 201 6.24
[41] SWDp256
[42] SWDp152
[43] SWDp208
[44] SWDp195

The Czech Republic provided in depth information on actions already being undertaken to address the Court's recommendation on AAs. It detailed its Action Plan (implemented in 2012) and the intention to improve management and control systems for Structural Funds, including centralisation of audit activities. It further underlined the establishment of a manual of audit activities and internal and external training being made available to staff. The Czechs concluded:

"*The above changes were communicated to the ECA by representatives of the audit authority (Ministry of Finance) in person. The Czech Republic has adopted all measures proposed by the Commission, intends to continue to communicate with the Commission services in order to increase the quality and reliability of information and would welcome further seminars organised by the Commission with a view to improving the work of the audit authority*."[45]

Finally, with regard to AAs, Member States all expressed overall satisfaction with the guidance on the treatment of errors provided and the seminars organised by the Commission in 2012 and 2013 and concluded that "*further guidance/training is always welcome*"[46]Among the initiatives cited as particularly useful and providing added value were the various seminars and guidelines on sampling in Italy, Latvia Slovenia, Slovakia and Greece.[47] Lithuania, Malta and Poland[48] all mentioned the usefulness of meetings and conferences organised by OLAF while Latvia and Bulgaria[49] highlighted the benefits of the Homologues Group meeting for Auditors. Germany noted positively that "*in addition to seminars, contact persons from the EC are readily available to provide detailed answers to individual questions.*"[50]

In order to further strengthen systems, the new legislative framework for the Cohesion Policy requires managing authorities to put in place effective and proportionate anti-fraud measures. When questioned about whether they carried out fraud risk assessment of their management and control systems, more than 60% of Member States replied that they did. In addition, a similar percentage of Member States indicated that they ensured effective and proportionate anti-fraud measures were in place to mitigate fraud risks. Finally, fewer Member States- just over 50%- reported that they had defined indicators showing the results of the controls aimed to detect and prevent fraud (see table below).

Answer	2/1 Does your Member State currently carry out a fraud risk assessment of its management and control systems?	2/2 If so, does your Member State subsequently ensure it has in place effective and proportionate anti-fraud measures to mitigate the fraud risks identified?	2/3 Does your Member State report indicators showing the results of the controls aimed to detect and prevent fraud?
N/A	0	6	0
No	7	0	9
No answer	3	3	4
Yes	17	18	14

In the area of shared management the Commission has to be able to rely on the systems and controls of Member States in its supervision of the EU budget. The

[45] SWDp155-156
[46] SWDp299
[47] SWDp201,p202,p267,p264,p185
[48] SWDp205, p214, p238
[49] SWDp202, p140
[50] SWDp175

Commission acknowledges the advantages of the single audit concept, but is aware of the risk signalled by the Court that unreliable data might be delivered by AAs. Therefore, it will continue to perform reviews and audits of the systems of national audit authorities and the national bodies in charge of the implementation of EU programmes.

4. CONCLUSION

The Court's 2012 annual report indicates that the focus still needs to be on reducing errors in the area of shared management. The Court noted that for the majority of transactions in shared management, Member States had sufficient information available to have detected and corrected errors. Further, the Court is also critical of the lack of efficiency of some AAs and has also indicated that the focus on performance is insufficient.

Member States in their replies this year have outlined in detail some of their efforts to address the Court's recommendations.

Measures such as the use of SCOs, actively supported by the Court, have already become an integral part of the financial management of programmes and projects in some Member States. Further, Member States have called on the Commission to support and encourage more widespread use of SCOs.

Many Member States do not share the Court's opinion on the lack of efficiency of AAs and some have highlighted the fact that in certain cases the Commission fully relies on the work of audit authorities (by granting Article 73 status)[51]. Nonetheless, there seems to be ongoing action at Member State level, with the assistance of the Commission, to contribute to the capacity building of AAs.

With regard to performance, Member States in their replies have indicated that they currently place great emphasis on performance issues and are committed to creating and promoting a performance oriented culture.

At the start of this new programming period, the efforts of Member States, in close cooperation with the Commission indicate that there are already several concrete measures in place. These measures will aim at further improvements and help promote and sustain sound financial management, thereby reducing the risks of error.

[51] Article 73 of Council Regulation No 1083/2006