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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:	ANNEX to the COMMUNICATION OF THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Application of net financial corrections on Member States for Agriculture and Cohesion Policy

Delegations will find attached document COM(2013) 934 final ANNEX 1.

Encl.: COM(2013) 934 final ANNEX 1



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ANNEX 1

ANNEX

to the

**COMMUNICATION OF THE COMMISSION TO THE EUROPEAN PARLIAMENT
AND THE COUNCIL**

**Application of net financial corrections on Member States
for Agriculture and Cohesion Policy**

The envisaged procedure for applying financial corrections for Common Agricultural Policy

1. Basic rules set in the Horizontal Regulation

Article 52, paragraphs 2 and 3, of the Horizontal Regulation will set the procedure for applying financial corrections:

Horizontal Regulation - Article 52 on the conformity procedure

...

2. The Commission shall assess the amounts to be excluded on the basis of the gravity of the non-conformity recorded. It shall take due account of the nature of the infringement and of the financial damage caused to the Union. It shall base the exclusion on the identification of amounts unduly spent and, where these cannot be identified with proportionate effort, may apply extrapolated or flat-rate corrections. Flat-rate corrections shall only be applied where, due to the nature of the case or because the Member State has not provided the Commission with the necessary information, it is not possible with proportionate effort to identify more precisely the financial damage caused to the Union.
3. Before the adoption of any decision to refuse financing, the findings from the Commission's inspection and the Member State's replies shall be notified in writing, following which the two parties shall attempt to reach agreement on the action to be taken. At that point in the procedure the Member States shall be given the opportunity to demonstrate that the actual extent of the non-compliance is less than in the Commission's assessment. If agreement is not reached, the Member State may request the opening of a procedure aimed at reconciling, within a period of four months, each party's position. A report of the outcome of the procedure shall be submitted to the Commission. The Commission shall take into account the recommendations in the report before deciding on any refusal of financing and shall give reasons if it decides not to follow those recommendations.

Article 53 of the same Regulation provides that the Commission shall be empowered to adopt delegated acts concerning the criteria and methodology for applying financial corrections.

2. Criteria and methodology for applying financial corrections

The Commission envisages that the following elements will be reflected in the delegated act:

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| a) The Commission shall take into account the information made available by the Member States within the conformity procedure, and the Member States are responsible for informing the Commission within the procedural deadlines. |
| b) Preference must be given to precise calculation; in cases where the data submitted by the Member State include all individual amounts which are ineligible because of the deficiency detected by the Commission, a precisely calculated financial correction will apply (punctual correction). |

<p>c) When it is not possible with proportionate effort, within the deadlines provided for by the Commission in the conformity clearance procedure, to identify and verify all individual cases potentially affected by the deficiency, Member States may submit to the Commission a calculation of the amount to be excluded from Union financing by extrapolating through statistical means the results of checks carried out on a representative sample of those cases.</p>
<p>d) To accept the calculation by the Member State, the Commission shall be in a position to assess the methods retained for precise calculating or extrapolating, to check the representativeness of the sample in case of extrapolation, to check the content and results of the calculation or extrapolation and to obtain sufficient and relevant audit evidence regarding the underlying data.</p>
<p>e) Flat rate corrections as a last, but unavoidable, resort: when the conditions for establishing the level of the correction by a precise calculation or an extrapolation are not met, the Commission shall apply flat-rate corrections.</p>
<p>f) The level of flat-rate correction shall be established by taking into consideration primarily the type of non-compliance which is identified. For this purpose weaknesses in applying controls shall be divided into two categories:</p> <ul style="list-style-type: none"> – key controls are those physical and administrative checks necessary to determine the eligibility of the aid and the relevant application of reductions and penalties; – ancillary controls are all other administrative operations required to correctly process claims.
<p>g) The following circumstances demonstrating a higher gravity of the deficiencies revealing a greater risk of loss for the Union budget will trigger a higher correction:</p> <ul style="list-style-type: none"> (i) one or more key controls are not applied or are applied so poorly or so infrequently that they are deemed ineffective in determining the eligibility of the claim or in preventing irregularities; (ii) several deficiencies are detected with respect to the same control system; (iii) the Member State's application of a control system is found to be absent or gravely deficient, and there is evidence of wide-spread irregularity and negligence in countering irregular or fraudulent practices; (iv) a correction has already been applied to that Member State for similar deficiencies in the same sector, subject to the examination by the Commission of any corrective or compensating measures already taken by the Member State.
<p>h) If the Member State presents certain objective elements, which do not fulfil the conditions for a precise or extrapolated calculation, but which demonstrate that the maximum loss for the fund is limited to a sum lower than what would derive from the application of a lower flat-rate than the one initially proposed by the Commission, then the Commission shall use the lower flat-rate.</p>

The precise description, for each CAP measure, of the key and ancillary controls (point f), and the level of flat rates to be applied for each situation resulting from the criteria described in f) and g), will be fixed in Commission guidelines that will ensure predictability and transparency for all those concerned. The new guidelines will be based on the existing ones (Document VI/5330/97,

adopted by the Commission on 23.12.1997), which are solidly established and have allowed the Commission to obtain positive rulings from the Court of Justice on most of the cases contested by the Member States. They will notably precise the methods to be used for calculated and extrapolated corrections and, for cases where calculation and extrapolation are not possible, the level of flat rate correction to be applied, from 2 % in cases of deficiency related to an ancillary control to 100 % in most serious cases.