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**REPLIES OF THE COMMISSION TO THE 2011 ANNUAL REPORT OF THE
EUROPEAN COURT OF AUDITORS**

CHAPTER 6 - "EMPLOYMENT AND SOCIAL AFFAIRS"

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INTRODUCTION

6.8. Although, as mentioned in paragraph 5.8, management and control systems for ESF, ERDF and CF are governed by common rules, in practice most ESF operational programmes have their own specific authorities and control systems.

6.10. The Commission has taken specific actions in order to mitigate the risks identified, which include in particular preventive and corrective measures, such as guidance, training, and interruptions of payments.

REGULARITY OF TRANSACTIONS

6.13. The most likely error rate estimated by the Court in 2011 is in line with the positive development in recent years. This is the result of improvements made by Member States in their management and control systems, the strict interruptions and suspensions policy applied by DG EMPL since 2008 and the positive impact of the simplification measures provided in the regulations for the current programming period.

As shown in table 1.3 of Chapter 1, the combined most likely error for Regional Policy, Transport, Energy and Employment and Social Affairs decreased considerably compared to 2010, from 7,7% to 5,1%.

6.14. Managing authorities are required to perform documentary checks on all claims submitted by beneficiaries, before certification of expenditure. However, on-the-spot verifications on operations may also intervene at a later stage of project implementation, after certification and up to closure, which explains why part of the errors in the Court's sample could not be detected. The impact of the control system in reducing error rates is usually only seen in subsequent years, after all layers of controls have been implemented.

6.15. The Commission is strictly following up these cases to ensure that appropriate action plans are implemented in the concerned systems in order to prevent errors prior to certification of expenditure in the future.

See also reply to paragraph 6.14.

Joint reply to paragraphs 6.16. and 6.17.:

The Commission will follow up all errors reported by the Court and will ensure that corrective measures are adopted by the Member States and, where necessary, financial corrections made.

6.18. The Commission will follow up all errors reported by the Court and ensure that corrective measures take place.

EFFECTIVENESS OF SYSTEMS

6.19. The Audit Authorities indeed play a central role in the assurance building process, as from the beginning of the programming period and set-up of systems. Thereafter, they report each year an

audit opinion on the functioning of management and control systems to the Commission, based on audits on management and control systems and on statistical samples of operations carried out in accordance with an audit strategy. For this reason the Commission is closely cooperating and coordinating with them, and has started reviewing their methodologies and audit results as early as 2009. This contributed to capacity building by providing advice, guidance and recommendations to Audit Authorities through the Commission's reperformance work. The regulation provides the Commission the possibility to rely on the work of an audit authority for its assurance under certain conditions (Article 73).

6.20. In 2011, DG EMPL carried out audits to review the work of 42 ESF Audit Authorities, including the AA of Sicily and Latvia. In this sample, 12 AA's were selected following a risk analysis, updated on an annual basis, and the other 30 were chosen at random. Based on its own audit work, DG EMPL concurs with the assessment of the 2 AA sampled by the Court.

6.25. Further to the Court's positive assessment of DG Employment's Annual Activity Report 2010, the Court made a recommendation with regard to risks related to Operational Programmes with an estimated error rate below 5%. In order to address these risks, DG EMPL has enhanced its methodology which now includes this category in the assessment of the potential reservations to be made. Therefore, the methodology applied in the 2011 AAR is stricter, in line with the Court's recommendation.

6.26. The Commission considers that the remaining risks referred to by the Court for the 2000-2006 programming period are being adequately covered during the on-going closure process. The Commission services have made a thorough assessment of the closure documents submitted by the Winding Up Bodies and have taken the necessary measures to address the issues identified, including the interruption of the closure process, the request of additional information, the performance of closure audits based on its risk assessment and eventually for some programmes the application of financial corrections.

Based on the above closure procedures, only once the residual error for each operational programme is considered to be below the 2% materiality threshold, the Commission proceeds with the final payment. Therefore, no quantification of the follow up reservations for the 2000-2006 programming period was made in DG EMPL's AAR since these had no impact on the final payments made in 2011.

CONCLUSIONS AND RECOMMENDATIONS

6.27. The Commission notes the low error rate in 2011 which confirms the positive development in recent years. This improvement has been achieved thanks to appropriate action taken by Member States, and an effective interruptions and suspensions policy applied by DG EMPL since 2008 coupled with a successful implementation of simplification measures.

The Commission intends to continue, in partnership with Member States, with its efforts to further improve on its performance as recommended by the Court.

6.28. The Commission underlines that the effectiveness and quality of the work of audit authorities differs by programme and Member State, as shown by the Court's assessment in paragraph 5.41 and by the results of the Commission's audit work. In accordance with article 73 of regulation 1083/2006, the Commission is as from June 2012 formally relying on the work of 9 audit authorities for ESF. The Commission will continue to review the work of the remaining audit authorities and to monitor the situation for programmes for which an article 73 letter was granted.

The Commission considers to have established robust procedures and guidance for the closure process, and considers that most Member States have carried out important and professional work to enable the closure of programmes and to increase assurance at closure. The Commission also considers to have made a comprehensive work at closure, analysing thoroughly all closure documents, carrying out additional audits and enquiries where necessary, which has led in many cases to additional financial corrections being applied at closure to address remaining risks.

6.29.

(a) The Commission has made considerable efforts to ensure strict compliance with eligibility requirements and the correct application of public procurement rules. Training and guidance have been provided on eligibility and public procurement rules. Moreover, when it identifies complex rules at programme level, the Commission makes recommendations to simplify the rules. It has also shared with Member States an analysis of the types of procurement errors detected by EU audits in cohesion policy during previous years and has launched an exercise to collect best practices and possible answers by Member States to remedy such errors and reduce their occurrence.

The application of public procurement rules is mostly relevant to ERDF and CF funding and has a limited impact on ESF funded projects.

Common reply to paragraph 6.27 b and c.

In the course of its extensive audit work, the Commission notified targeted recommendations to management and control authorities to remedy the identified weaknesses.

The Commission will continue to pursue a strict approach to interruptions and suspensions. As a result of this policy and efforts made by Member States a positive impact on the error rate in the Cohesion area can be observed (see Chapter 1 Table 1.3).

6.30. See joint reply to paragraphs 1.12-1.13.

Recommendation 1: The Commission has committed in 2010 to continue to monitor compliance with eligibility rules through its regular audit activity and the follow-up of all EU and national audits. Information on this is reported in the annual activity report of the Director General of DG EMPL. When necessary the Commission will continue to take corrective measures.

In terms of assessing national eligibility rules and seeking further ways of simplification, the Commission refers to the significant efforts already made in this regard as part of its targeted action plan on specific Member States where recurring issues have been identified. The Commission will continue to pursue these efforts with a special focus on tackling ineligible costs, overcharged staff costs and streamlining national rules.

Recommendation 2: The Commission will continue to draw Member States' attention to the critical importance of the recurring issues identified by the Court concerning management verifications.

Recommendation 3: The Commission took the commitment in 2010, to continue to timely interrupt or suspend payments, when necessary. This strict policy is again reflected in the 2011 Annual activity report of Director General of DG EMPL (see Commission reply to paragraph 6.29 c).

Recommendation 4: The Commission will continue to provide guidance and advice to audit authorities on a wide range of technical and regulatory issues. In this respect, DG REGIO and DG EMPL organised a seminar in June 2012, during which guidance on sampling was provided.

Recommendation 5: The ACRs are one of the main elements on which the Commission builds its assurance. As such, full account is taken of the information provided therein. Further guidance has been provided on the treatment of error rates for the ACR 2011.

As explained in DG EMPL's 2011 AAR, a thorough review of all ACRs is conducted every year; it constitutes the basis for the formulation of reservations in view of ensuring their reliability and consistency with the abovementioned guidance.

Recommendation 6: The Commission continues its efforts to provide advice, training and guidance to Member States so that this possibility offered by the regulations leads to real simplification for all stakeholders.

Some 70% of the OPs use at least one of the simplified cost options. Among the different options, flat rate for indirect costs and standard scale of unit costs are the most used.

REPLIES OF THE COMMISSION TO ANNEX 6.2

2009 - Cohesion

First §

The Commission has explained in the Staff Working Document (SEC(2011) 1179 dated 5.10.2011) the specific actions undertaken in order to mitigate the risks identified, which include in particular preventive and corrective measures, such as guidance, training, and interruptions of payments.

Second §

The Commission proposal for the 2014-2020 regulatory framework provides, within a logic of annual closure, that "where irregularities affecting annual accounts sent to the Commission are detected by the Commission or the Court, the resulting financial correction shall reduce support from funds to the operational programme". The proposal thereby limits the possibilities of withdrawal/replacement.

2008 – Cohesion

First §

The Commission has strengthened its supervisory role since the adoption of the 2008 Action Plan and continues to implement a strict policy of suspensions and interruptions of payments as soon as deficiencies are identified. Those persistent actions have improved the effective functioning of the management and control systems in Member States and the lower error rates reported by the Court for the DAS 2011 confirm this positive development.

As explained in the reply to paragraph 5.44, the Commission reliance on Audit Authorities is based on extensive audit work. The Commission welcomes the Court's assessment that it notified the Member States about the corrective action to be taken in all cases where specific weaknesses were identified (see paragraph 5.47). On the basis of this audit work, the Commission is as from July 2012 formally relying on the work of 13 audit authorities for ERDF/CF and 9 audit authorities for ESF.

Second §

An audit of the Member States' systems has been launched beginning 2011 with the objective to improve the reporting of national financial corrections to the Commission, and ensure completeness, accuracy and timeliness of reporting. The results showed improvements in MSs systems to apply financial corrections and report on them. Moreover, the multi-annual nature of the expenditure and control cycle allows financial corrections at various stages of implementation, including at closure where final checks are performed on the legality and regularity of expenditure and final corrections are made where necessary.