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REPLIES OF THE COMMISSION TO THE EUROPEAN COURT OF AUDITORS' ANNUAL REPORT 2012

CHAPTER 6 "EMPLOYMENT AND SOCIAL AFFAIRS"

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INTRODUCTION

6.8 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, simplification and a strict policy on interruptions and suspensions of payments, when necessary. The Commission is also addressing this risk by actively promoting the use of simplified cost options by the Member States (see the Commissions replies §§ 6.22 – 6.25).

REGULARITY OF TRANSACTIONS

6.10 The Commission refers to its reply to § 1.12 in which it explains the implications of a multi annual framework for the implementation of operational programmes. As a consequence of the operation of its internal control system, the Commission has implemented financial corrections and recoveries for an amount of €442 million in the policy area of Employment and Social Affairs in 2012 (see in particular also the situation of Romania described in the Commission's reply to §6.39 (a) and Box 1.2). The Commission notes the decrease in the frequency of errors detected by the Court in the policy area of Employment and Social Affairs in 2012 (35%) as compared to 2011 (40%).

6.11 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 yet by the management and control systems of Member States. The impact of these systems in reducing error rates is usually only seen in subsequent years, after all layers of controls have been implemented.

6.12 The Commission is strictly following up these cases to ensure that appropriate action plans are implemented by the Member States concerned in order to prevent errors prior to certification of expenditure in the future. Furthermore, being aware of the critical role of the management verifications and the need to improve them, DG EMPL has sent in November 2012 a note to all Managing Authorities drawing their attention to the need to further strengthen the reliability and thoroughness of the management verifications and announcing a thematic audit on management verifications, to be conducted in 2013 on 7 selected OPs in 6 Member States. This thematic audit is currently underway. Once finalized, the Commission will prepare an overview report summarising its results and lessons learned to be shared with all Member States.

6.14 The errors identified by the Court in Romania account for a substantial part of the overall error rate in the policy area of Employment and Social Affairs. Similar errors had been previously identified by the Commission. Therefore, a 25 % flat rate financial correction at OP level has been implemented by the Commission in the course of 2012. See reply to §6.39 (a) and to Box 1.2.

6.15 The Commission applies proportionate flat rate corrections in Cohesion policy, based on the COCOF guidelines, thereby protecting the EU budget taking into account the principle of proportionality and the nature and gravity of the irregularities identified.

These flat rate corrections are applied by the Commission and by national authorities when imposing financial corrections for infringements of public procurement rules, including when following up all public procurement errors reported by the Court.

6.16 The Commission will follow up all errors reported by the Court and will apply financial corrections where appropriate and legally possible. The Commission notes that in some cases national or regional rules applied to ESF funded expenditure are more demanding than those foreseen in the national legislation for similar expenditure nationally funded. Therefore, these additional requirements can be seen as an instance of gold plating, self-imposing unnecessary administrative burden and complexity to ESF funded expenditure.

6.17 The Commission will follow up all cases identified by the Court in order to implement the necessary financial corrections. However, the requirements mentioned in the example shown in Box 6.3 are another instance of gold plating, being entirely self-imposed by the national eligibility rules, which do not take into account that such a long maintenance period is often not feasible. In this particular case, following Commission recommendations, the requirements and management of employment aids have been substantially improved in 2012.

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

6.19 The Commission has actively worked since the introduction of the simplified cost options to progressively extend their use and considers that these efforts have already led to positive results. The Commission will continue to actively promote the use of simplified cost options.

6.22 The Commission considers that the Court's observation confirms the impact of its continuous efforts to encourage Member States to effectively implement simplified cost options since the beginning of the current programming period, which have been significantly strengthened through specific simplification seminars conducted since 2011, involving to date 17 Member States.

6.23 The Commission welcomes that the Court's audit work confirms the positive impact of simplified cost options in effectively reducing errors.

Besides reducing the administrative burden on beneficiaries, in particular smaller ones as it is often the case for ESF, one of the main reasons to implement simplified cost options is to further reduce the error rate in the Employment and Social Affairs policy area.

6.24 The Commission welcomes the Court's observation and support for the use of simplified cost options. The Commission considers it an encouragement for implementing its ambitious simplification action plan, which includes conducting simplification seminars in the large majority of Member States by the end of 2013.

6.25 The Commission's strict policy on interruptions and suspensions of payments mitigates the risk to the Community budget by stopping payments as soon as significant deficiencies are identified, often through its own audit work. Before resuming interim payments, the Commission requires the effective implementation of the necessary financial corrections and of the agreed action plan in order to prevent those deficiencies from reoccurring in the future. The Commission will follow up on the specific case identified by the Court in order to implement any additional financial corrections required.

6.26 As shown in the overview report on financial corrections implemented on the 2000-2006 programming period submitted to the European Parliament on 23 April 2013, DG EMPL has taken a prudent approach to closure, as reflected by the fact that at the date of the overview report, the closure process was still on-going for 61 ESF programmes and 5 closure audits were still planned for 2013. The overview report shows that, taking into account the financial corrections already implemented and the additional ones resulting from the closure of the remaining 61 ESF programmes, a total of €2.4 billion of financial corrections is estimated to be implemented for the ESF programmes. Taking the above into account, the Commission takes note of the 5 specific errors identified by the Court in one closed OP and will implement the necessary additional corrections.

6.27 The Commission agrees that the 2000-2006 closure is a complex process and involves certain risks arising from the sometimes not fully reliable closure documentation provided by the Member States for certain specific OPs. Therefore, DG EMPL has put in place the necessary measures to mitigate those risks, including significant financial corrections and 5 closure audits planned in 2013 (see also reply to §6.27). It should also be noted that, even after closure, the Commission can still implement financial corrections if new facts, such as those identified by the Court, arise. While acknowledging the above risks, the Commission emphasizes that the 2000-2006 closure process is still underway.

EFFECTIVENESS OF SYSTEMS

6.28 The Commission notes that the Audit Authorities 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 samples of operations carried out as a general rule in accordance with an audit strategy. For this reason the Commission is closely cooperating and coordinating with them, and started reviewing their methodologies and audit results as early as 2009. This has contributed to capacity building by providing advice, guidance and recommendations to Audit Authorities. The regulation provides the Commission with the possibility to rely on the work of an audit authority for its assurance under certain conditions (Article 73).

Common reply to paragraphs 6.29 and 6.30:

DG EMPL carried out audits to review the work of 84 ESF Audit Authorities at the end of 2012, including the Audit Authorities of the UK and Slovakia. The Commission's own assessment on these Audit Authorities is positive.

6.32 Before the Commission validates the rates reported by the AAs, it uses all audit procedures in place when doubts arise as to the accuracy and/or reliability of reported error rates: written and oral questions to AAs, fact-finding missions and/or analysis of additional information from the AAs, including individual audit results, if necessary. Based on this information, the error rates reported in the ACRs were adjusted in 18 (15.4%) of the ESF OPs. Furthermore, the reported error rates for 13 (11.1%) of the ESF OPs were considered as unreliable and therefore replaced by flat rates by the Commission.

6.33 The Commission considers that it has a thorough supervisory process in place in order to ensure the overall reliability of the ACRs for its own assurance process and to support the determination and quantification of the reservations made in its Annual Activity Report (see reply to §6.40 a).

6.35 The Commission considers that the fact that for 3 years in a row the Commission's own estimated error rate, as disclosed in DG EMPL's AAR, is in line with the Court's most likely error rate confirms the validity and reliability of its approach (see reply to §6.40 (a)). Furthermore, these results show that the Commission has in place a sound process in order to supervise the information provided by the AA in their ACRs.

As mentioned in its 2012 AAR (page 37) the Commission underlines that out of its 2012 interim payments only 19.7% were made to OPs with an error rate reported in the 2012 Annual Control Reports, submitted in December 2012, between 2% and 5% and only 9.8% to OPs with a reported error rate higher than 5%. This clearly reflects the strict interruptions and suspensions policy systematically implemented by DG EMPL as for the OP's with cumulative error rates (over the full period since 2007) above 2%, the Commission has imposed a corresponding financial correction or has implemented interruptions until such correction was done.

6.37 According to the Commission's standing instructions for the 2012 Annual Activity Report, a (quantified) reservation is required only if the cumulative financial risk is above 2%, which was not the case in any of the 5 OPs mentioned by the Court, since the necessary financial corrections had already been implemented by the time the Annual Activity Report was issued. Furthermore, appropriate action plans were in place in order to prevent these issues from re-occurring in the 5 OPs concerned. The Commission takes note of the Court's observation in order to provide fuller disclosure in this respect in future Annual Activity Reports.

6.38 The Commission has taken all the necessary measures under the Treaty and foreseen in the regulations to protect the EU budget. The Commission notes that, whilst it has done everything within its power and acted in full respect of the existing regulations within the same financial year audited by the Court, the 25% flat-rate correction applied to Romania has not been taken into account when determining the 2012 error rate. See replies to §6.39 (a) and to Box 1.2.

CONCLUSIONS AND RECOMMENDATIONS

6.39 (a) The Commission has in place a thorough process in order to support the assurance given in the AAR. The Commission considers that the fact that for 3 years in a row the Commission's own estimated error rate disclosed in DG EMPL's AAR is in line with the Court's most likely error rate confirms the validity and reliability of its approach. For 2012, DG EMPL's estimated error rate in its own AAR was within a range of 2.3% to 3.2%. The Commission notes that the errors in one single OP in Romania represent a substantial part of the most likely error established by the Court. The Commission emphasizes that, it has implemented in December 2012 a 25% flat rate correction on all expenditure certified by the Romanian authorities under this OP. The Commission notes that, whilst it has done everything within its power and acted in full respect of the existing regulations in order to protect the EU budget within the same financial year audited by the Court, the above flat rate correction has not been taken into account when determining the 2012 error rate. See reply to Box 1.2.

6.39 (b) The Commission considers that it has a thorough supervisory process in place in order to ensure the overall reliability of the work of the Audit Authorities for its own assurance. Based on its assessment, the Commission underlines that the effectiveness and compliance of audit authorities with the requirements may vary. 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 (for 10 Operational Programmes). The Commission will continue to review the work of audit authorities.

6.40 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, simplification and a strict policy on interruptions and suspensions of payments and financial corrections.

6.41 Based on its own assessment, the Commission considers that out of the 10 recommendations for 2009 and 2010, 2 should be considered as fully implemented and 5 as implemented in most respects. The Commission considers the remaining 3 recommendations "not applicable".

Recommendation 1

The Commission agrees on the importance of the "first level" checks conducted by the Member States and shares the view that these should be further strengthened. Therefore, it has given guidelines to Member States on the way Managing Authorities should define and implement their management verifications. Moreover, the Commission developed in 2009 comprehensive guidelines for the first level checks and a self-assessment tool for managing authorities. The Commission has disseminated to the Audit Authorities in 2011 checklists for the audit of management verifications, which can be used by the Managing Authorities as a benchmark. Beyond the above actions, being aware of the critical role of the management verifications, DG EMPL has sent in November 2012 a note to all Managing Authorities drawing their attention to the need to further strengthen the reliability and thoroughness of the management verifications and announcing a thematic audit on management verifications, to be conducted in 2013 on 7 selected OPs in 6 Member States. This thematic audit is currently underway. Once finalized, the Commission will prepare an overview report summarizing its results and lessons learned to be shared with all Member States.

Recommendation 2

The Commission fully shares the need to further simplify national eligibility rules and eliminate unnecessary complex rules, which have a detrimental impact in terms of the burden on beneficiaries and increased error rate. The Commission underlines that whilst a systematic assessment of all national eligibility rules is not feasible, any identified instances of "gold plating" have been addressed jointly with the Member States concerned (see reply to §6.18). The Commission is committed to present a report to the Discharge Authority on gold plating in ESF Operational Programmes in October 2013. The Commission will also continue encouraging and supporting national authorities in their simplification efforts. A series of seminars have been organized by DG EMPL in 2011-2013 to support the managing authorities in this effort (see also the Commission's reply to recommendation 3)

Recommendation 3

The Commission agrees with the Court on the importance of effectively implementing simplified cost options across all Member States. This is precisely why, besides introducing SCOs in the current regulatory framework, the Commission has very actively promoted their effective implementation in the 2007-2013 programming period, including simplification seminars conducted to date involving 17 Member States. The fact that currently 60% of the ESF OPs already use at least one of these options shows a reasonable success in this regard. For the 2014-2020 programming period, SCOs are further strengthened, including, among others, the possibility to use flat rates already enshrined in the regulations.

Recommendation 4

The Commission agrees with the importance of this issue. The work of the Audit Authorities as reflected in the ACRs is one of the main elements on which the Commission builds its assurance. Further guidance on the treatment of errors has been provided to the Audit Authorities in 2011 and numerous seminars have been organised by the Commission in 2012 in order to further improve the audit sampling methodology used in preparation of the ACRs.

ANNEX 6.2.

2010

Recommendation 3:

A systemic assessment of all national eligibility rules is not feasible. The Commission considers that the most effective way forward is through the active promotion of simplified cost options.

Recommendation 6:

The Commission reflected this recommendation in its proposals for 2014-2020.

2009

Recommendation 3:

The Commission strictly implements its supervisory role through, where appropriate, interruptions and suspensions of payments, and financial corrections.