



EUROPEAN COMMISSION

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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 2010**

**Annex 1: Reservations 2006 – 2010<sup>1</sup>**

**Chapter — Agriculture and Natural Resources**

DG		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007		Reservations 2006
<b>AGRI</b>	1	1. Serious deficiencies in IACS in Portugal, Bulgaria and Romania.	2	1. Expenditure for <b>rural development</b> measures under Axis 2 (improving the environment and the countryside) of the 2007-2013 programming period 2. Serious deficiencies in IACS in Bulgaria and Romania	2	1. Expenditure for <b>rural development</b> measures under Axis 2 (improving the environment and the countryside) of the 2007-2013 programming period. 2. Management and control system for SAPARD in <b>Bulgaria and Romania.</b>	2	1. Insufficient implementation of 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	1. Insufficient implementation of IACS in Greece
<b>CLIMA</b>	1	1. Significant security weakness identified in the national registries of the EU Emissions Trading System (ETS).								
<b>MARE (former FISH)</b>	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	1	Reservation on direct centralised management concerning the <b>eligibility of costs reimbursed for expenditure in the area of control and enforcement of the Common Fisheries Policy</b> , where the annual			0	

<sup>1</sup> 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](http://ec.europa.eu/atwork/synthesis/aar/index_en.htm)

DG		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007		Reservations 2006
				compensate additional costs in the marketing of certain fishery products from the Outermost Regions.		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.				
ENV	0		1	Eligibility of expenditures declared by beneficiaries of grants	0		1	Eligibility of expenditures declared by the beneficiaries of action grants	0	
SANCO	0		0		0		0	0	1	1. Insufficient assurance of business continuity of a critical activity

## Chapter — Cohesion

DG		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007		Reservations 2006
REGIO	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	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	2	1. Reservation on <b>ERDF</b> management and control systems for the period 2000-2006 in certain programmes in: BELGIUM, GERMANY, ITALY, SPAIN, + 21 INTERREG programmes 2. Management and control system for the road sector in <b>BULGARIA</b> in 2008	2	1. Reservation concerning the <b>ERDF management and control systems</b> for certain programmes in the period 2000-2006 in: CZECH REPUBLIC, FINLAND, GERMANY, GREECE, IRELAND, ITALY, LUXEMBOURG, POLAND, SLOVAKIA, SPAIN + 51 INTERREG programmes. 2. Reservation concerning the management and control systems for the	2	1. Reservation concerning the management and control systems for ERDF in United Kingdom - 2. Reservation concerning the management and control systems for ERDF in the INTERREG programmes (except IIB North West Europe and Azores, Canarias, Madeira)

DG		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007		Reservations 2006
		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		Interreg programmes				<b>COHESION FUND</b> (period 2000-2006) in: - Bulgaria, Czech Republic, Slovakia, Hungary and Poland.		
<b>EMPL</b>	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 <b>ESF Operational Programmes</b> in Spain, United Kingdom, France, Italy, Poland, Belgium and Luxembourg (quantification: 41 million EUR, 0.6%)	1	Management and control systems for identified <b>ESF Operational Programmes</b> in - Spain, - United Kingdom, - France, - Italy, - Slovakia, - Portugal, - Belgium and - Luxembourg.	1	1. Systèmes de gestion et de contrôles de programmes opérationnels du FSE en Espagne, en Ecosse (objectifs 2 et 3, UK), en Suède (objectif 3 en partie), en Slovaquie, en Slovénie, en Lettonie et dans les régions Calabre et Lazio (IT)

## Chapter — Research, Energy and Transport

DG		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007		Reservations 2006
<b>RTD</b>	1	Accuracy of cost claims under FP6 (error rates above materiality threshold of 2%)	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 <b>FP6</b>	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).	2	1. Accuracy of the cost claims and their conformity with the provisions of FP5 research contracts. 2. Absence of sufficient evidence to determine the residual level of persisting errors with regard to the accuracy of cost claims in FP6 contracts.
<b>INFSO</b>	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 <b>FP6</b>	1	Reservation concerning the rate of residual errors with regard to the accuracy of cost claims in Framework Programme 6 contracts.	3	1. Allocation of research personnel 2. Errors relating to the accuracy of cost claims and their compliance with the provisions of the research contracts, FP5 3. Absence of sufficient evidence to determine the residual level of persisting errors with regard to the accuracy of cost claims in Framework Programme 6 contracts
<b>ENTR</b> (see also below)	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	Rate of residual errors with regards to the accuracy of cost claims in <b>FP6</b>	1	Reservation concerning the rate of residual errors with regard to the accuracy of cost claims in FP6.	1	1. Errors relating to accuracy and eligibility of costs claims and their compliance with the provisions of the research contracts under FP 5

DG		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007		Reservations 2006
<b>MOVE (former TREN)</b>	1	Accuracy of cost claims under FP6 (error rates above materiality threshold of 2%)		Accuracy of cost claims under FP6 (error rates above materiality threshold of 2%)		Rate of residual errors with regards to the accuracy of cost claims in <b>FP6</b>		Erreurs concernant l'exactitude et l'éligibilité des déclarations de coûts et respect des termes des contrats du 5 <sup>e</sup> PCRD		1. Erreurs concernant l'exactitude et l'éligibilité des déclarations de coûts et respect des termes des contrats du 5e PCRD
<b>ENER (former TREN)</b>	1	1. Accuracy of cost claims under FP6 (error rates above materiality threshold of 2%)	1		1		1		1	

### Chapter — External Aid, Development and Enlargement

DG		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007		Reservations 2006
<b>ELARG</b>	0		0		1	Potential irregularities in the management of <b>PHARE funds</b> under extended decentralised management by two <b>Bulgarian</b> 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).	0	

DG		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007		Reservations 2006
DG RELEX	0		1	Lack of capacity to carry out adequate ex-post controls for CFSP and Stability Instrument	0		0		0	

#### Chapter — Education and Citizenship

DG		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007		Reservations 2006
EAC	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		1	1. Faiblesse des systèmes de contrôle constatées dans certaines Agences Nationales
EACEA	1	Too high error rate in centralised direct management for the Culture and Youth programmes, due to lack of justifying documents for cost claims	0		0		0		0	

DG		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007		Reservations 2006
<b>HOME (former JLS)</b>	2	1. Reputational damage due to new risks likely to further delay the completion of the 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 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.	1	1. Faiblesse des systèmes de contrôle et de gestion du Fonds européen pour les Réfugiés en Italie, pour la période de programmation 2000-2004
<b>JUSTICE (former JLS)</b>	0		1	Residual error rate in non-audited population of grants under programmes for fundamental rights and citizenship.	0		0		0	
<b>COMM</b>	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 property rights by Commission departments.	1	Ex-post control system	1	1. Ex-post control system



## Chapter — Economic and Financial Affairs

DG		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007		Reservations 2006
<b>ENTR</b> (see also above)	1	Reservation concerning the reliability of the financial reporting by the delegated body about the implementation of actions under joint and centralised indirect management.	1	Reservation concerning the reliability of the financial reporting by the delegated body about the implementation of the joint programme.	1		1	Unsatisfactory functioning of the financing of European Standardisation	1	Unsatisfactory functioning of the financing of European Standardisation
<b>ESTAT</b>	0		0		0		0		1	1. Absence de garantie sur la régularité des paiements effectués en 2006 dans le cadre des conventions de subvention signées avec trois Instituts nationaux de statistiques pour lesquels des manquements ont été constatés en 2006
<b>ECFIN</b>	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.	1	1. Possibility that additionality requirements are not sufficiently met

## Chapter — Administrative and other expenditure

DG		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007		Reservations 2006
<b>DIGIT</b>	0		0		0		1	Inadequacy of the Data Centre building infrastructure in Luxembourg.	1	1. Business continuity risks due to inadequacy of the data centres building infrastructure.
<b>IAS</b>	0		0		0		0		1	1. Audit of community bodies (regulatory agencies)

### Total

		Reservations 2010		Reservations 2009		Reservations 2008		Reservations 2007		Reservations 2006
<b>TOTAL</b>	<b>17</b>		<b>20</b>		<b>16</b>		<b>17</b>		<b>20</b>	

## **Annex 2: Executive Agencies, Regulatory Agencies and PPPs**

In line with practice in most Member States, using agencies to implement key tasks has become an established part of the way the European Union works.

**Executive agencies** operate within a clear institutional framework, governed by a single legal base<sup>2</sup>. 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 close to Commission headquarters. The Commission's responsibility for executive agencies is clear: the Commission creates them, maintains 'real control' over their activity, and appoints the Director. Their Annual Activity Reports are annexed to the report of their parent Directorate(s)-General. A standard Financial Regulation, governing the establishment and implementation of the budget, applies to all executive agencies. A revision of the working arrangements was agreed with the European Parliament in October 2007, with the aim to further facilitate inter-institutional cooperation in this field.

Six executive agencies exist:

- the Executive Agency for Competitiveness and Innovation Programme (**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**).

'All these executive agencies were operational in 2010 (no new executive agencies were created during the year).

Their Annual Activity Reports, which were attached to those of their parent DG3, reported that the executive agencies had not yet fully implemented between three and six internal control standards by the end of 2010. Five of the six executive agencies reported that further efforts were required in the area of business continuity, and four mentioned partial compliance with the document management requirements. Thus, the central services noted that the parent DGs need to closely monitor the agencies' further implementation of the control standards, with a view to reaching full compliance within the near future.

The importance of the executive agencies to the Commission can be seen by the fact that 45 % of DG EAC's budget is currently, and up to 33 % of DG RTD's FP7 budget is foreseen to be managed by one or more executive agencies. In view of this, the Commission's

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<sup>2</sup> 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).

<sup>3</sup> EACI (parent DGs: MOVE, ENTR, ENER, ENV); EAHC (parent DG: SANCO); EACEA (parent DGs: EAC, INFSO, AIDCO); ERCEA (parent DG: RTD); REA (parent DGs: ENTR, RTD); TEN-TEA (parent DG: MOVE).

supervisory arrangements over the executive agencies become 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 employed on 31/12/2010 by the executive agencies was as follows:

	<b>Temporary agents</b> (officials seconded by the Commission and agents recruited by the agency)	<b>Contractual agents</b>	<b>Seconded national experts</b>	<b>Total</b>
EACI	33	109	0	142
EAHC	10	34	0	44
EACEA	97	295	0	392
ERCEA	94	218	4	316
REA	99	309	0	408
TEN-TEA	31	62	0	93
<b>Total</b>	<b>364</b>	<b>1027</b>	<b>4</b>	<b>1395</b>

The Commission's '2007 screening report suggested that there were no strong candidates for a new executive agency<sup>4</sup>. If new needs appear, the starting point would be to explore the option of extending the scope of an existing executive agency to cover a new programme. Under the current circumstances, it is however unlikely that new executive agencies will be needed until the end of the current financial framework in 2013. The Commission has respected its 2007 commitment not to create any new executive agencies beyond those foreseen to cope with a doubling of the Research budget and some limited extensions of the mandate of existing executive agencies. No further extension of the mandate of the existing six executive agencies has occurred in 2010.

A 2009 special report<sup>5</sup> 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, shorter payment times) and also offer the advantages of simplified processes and increased external visibility for EU actions. The report also suggests that, despite these achievements the initiative to set up the executive agencies was mainly driven by constraints on employment within the Commission and the political will to save costs for the management of the programmes concerned. The report

<sup>4</sup> SEC(2007) 530 'Planning & optimising Commission human resources to serve EU priorities'.

<sup>5</sup> Special report 13/2009: 'Delegating implementing tasks to Executive Agencies: a successful option?'

confirms that externalisation to Executive Agencies has resulted in cost savings, which, however, are difficult to quantify due to a lack of reliable data for enabling a comparison with the ex-ante situation.

As a result of the efforts of a Commission-internal working group on executive agencies, in 2010 the central services issued a note<sup>6</sup> containing specific guidelines on the structure and content of the executive agencies' work programmes, including a template for the work programme and a limited number of suggested standard key performance indicators.

The **32 regulatory agencies** are independent legal entities. 27 of these agencies receive funds from the European Union budget and are therefore granted discharge by the European Parliament in individual discharge decisions. The remaining five agencies do not receive EU funding and thus do not receive discharge by the European Parliament (two of these agencies<sup>7</sup> are fully self-financed, and three<sup>8</sup> are funded on an intergovernmental basis and financed directly by the participating Member States). In 2010 the founding acts for 2 new agencies entered into force: BEREC (Body of European Regulators of Electronic Communications - Regulation 1211/2009) and EASO (Eur Asylum Support Office - Regulation 439/2010).

In a Communication of March 2008 entitled '*EU agencies: the way forward*'<sup>9</sup> the Commission drew attention to the lack of a common vision on the role and functions of regulatory agencies. It announced a moratorium on creating new agencies and a horizontal evaluation of regulatory agencies.

The evaluation was finalised in December 2009. It reported that there is no single legal framework governing the establishment and closure of EU de-centralised agencies, and that alternatives to creating agencies were paid 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 report concluded that the activities of the majority of agencies are coherent with their mandate, and that in general there was clear evidence that agencies have achieved the planned outputs. The evaluation further considered that in order to operate efficiently 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 also proposed to establish an inter-institutional working group to set ground rules to apply to all regulatory agencies. The inter-institutional Working Group was set up in March 2009 between the European Parliament, the Council of the European Union and the Commission with a view to assess 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 group was called to address a number of key issues put forward by the participating Institutions, including the role and position of the agencies in the EU's institutional landscape, their creation, structure and operation, as well as funding, budgetary, supervision and management issues.

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<sup>6</sup> Ref. Ares(2010) 140547 of 16 March 2010.

<sup>7</sup> The Office for Harmonisation in the Internal Market (OHIM) and the Community Plant Variety Office (CPVO).

<sup>8</sup> The European Institute for Security Studies (ISS), the European Union Satellite Centre (EUSC) and the European Defence Agency (EDA).

<sup>9</sup> Communication from the Commission to the European Parliament and the Council: European Agencies – the way forward - COM(2008)135.

Further to the kick-off meeting at political level held in Strasbourg on 10 March 2009, technical work started in spring 2009 and continued during 2010. Since the kick-off meeting held in March 2009, various meetings at political level have endorsed the work progressively carried out at technical level, bringing the analysis of the issues at stake to a deeper level. This is expected to continue throughout 2011, with a view to arriving at common agreement on the way forward in early 2012.

In March 2011, the European 'Parliament's Committee on Budgetary Control<sup>10</sup> adopted reports proposing a Parliament decision to grant all agencies discharge for 2009, with the exception of the European Police College (CEPOL) and the European Medicines Agency (EMA). The discharge decisions of these two agencies for the financial year 2009 were postponed.

This followed a qualified opinion by the European Court of Auditors with regard to the legality and regularity of CEPOL's underlying transactions in 2009, for the fourth successive year. The Court's opinion on CEPOL's accounts for 2009 was however better than the 2008 opinion.

Directorate-General for Home Affairs, being responsible for the grant contribution to CEPOL's running costs reported that despite Parliament's refusal to grant discharge for the financial year 2008, there were improvements to the situation in 2010. A new Director of the College was appointed and two important posts were filled; for the budget officer and the accounting officer. Also, following Commission recommendations, new financial rules, a new strategy and a scoreboard were adopted by the Management Board, with a view to improve the administration of the agency. Directorate-General for Home Affairs nevertheless maintained CEPOL as a 'reputational event' in its 2010 AAR.

As regards EMA, the European Court of Auditors for the first time issued a qualified opinion on the legality and regularity of the agency's underlying transactions in 2009. Parliament voiced concerns regarding the agency's management of procurement procedures and the procedures for managing conflicts of interests in relation to the agency's staff and experts. The agency is in the process of replying to the concerns.

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<sup>10</sup> At its meeting of 21 March 2011.

## **Annex 3: Report on negotiated procedures 2010**

### **1. LEGAL BASIS**

Article 54 of the Implementing Rules of the Financial Regulation requires AODs to record contracts concluded under negotiated procedures. Furthermore, the Commission is required to annex a report on negotiated procedures to the summary of the AAR.

### **2. METHODOLOGY**

A distinction has been made between the 46 Directorates-General, Services, Offices and Executive Agencies which normally do not provide external aid, and those three Directorates-General (EuropeAid, Enlargement and External Relations) which conclude procurement contracts in the area of external relations. These contracts are distinct because they are awarded on their own account (but outside of the territory of the European Union) or because they have a different legal basis (Chapter 3 of Title IV of Part Two of the Financial Regulation). A separate approach has been used for procurement contracts of these three Directorates-general considering they 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 (EUR 10 000), as well as the possibility to have recourse to negotiated procedures in the framework of the rapid reaction mechanism (extreme urgency).

### **3. OVERALL RESULTS OF NEGOTIATED PROCEDURES RECORDED**

#### **3.1. The 46 Directorates-General, Services or Offices, excluding the three ‘external relations’ Directorates-general**

On the basis of the data received, the following statistics were registered: **125** negotiated procedures with a total value of EUR 214 million were processed out of a total of **856** procedures (negotiated, restricted or open) for contracts over EUR 60,000 with a total value of EUR 2486 million.

For the Commission, the average proportion of negotiated procedures in relation to all procedures amounts to **14.6 %** in number (12 % in 2009), which represents some **8.6 %** of all procedures in value (24.4 % in 2009).

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 2010 was fixed at **21.9 %** (17.9 % in 2009).

Some 8 Directorates-general or services out of the 46 exceeded the reference threshold in 2010, and another 3 increased their number of negotiated procedures by more than 10% compared to last year. Among those 11 services, it should be noted that 4 Directorates-general concluded only one to four negotiated procedures, but because of the low number of contracts awarded by each of them, the average was exceeded. In addition, 19 out of 46 Directorates-general have not used any negotiated procedure, including 7 services that awarded no contracts at all.

The assessment of negotiated procedures compared with the previous year (2009) shows an increase in the order of 2.6 percentage points in relative number and a sharp decrease of 15.8 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: **136** negotiated procedures for a total value of contracts EUR 100 million were processed out of a total of **731** procedures for contracts over EUR 10 000 with a total value of about EUR 1368 million.

For the three ‘external relations’ Directorates-General, the average proportion of negotiated procedures in relation to all procedures amounts to **18.6** % in number, which represents some 7.3 % of all procedures in value terms. Only one Directorate-general exceeds the reference threshold of 27.9 % (average + 50%).

If compared with previous years, these Directorates-general have registered a decrease of **8.6 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 11 DGs over average have carried out fewer than 15 procurement procedures in 2010.
- **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. Situations of technical captivity may also arise especially in the IT domain (proprietary software or maintenance of complex servers hosting critical information systems, etc).
- **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 2010 compared to 2009 has decreased in absolute terms (from 143 to 125), but the overall number of procurement procedures has decreased further (from about 1200 to 850), so this explains the slight increase in relative terms. The decrease in value is quite steep (from EUR 578 million to EUR 214 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 provided 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;
- ad-hoc surveys prior to the initiation of (inter-institutional) procurement procedures for the evaluation of needs;

**Annex 4: Summary of Waivers of recoveries of established amounts receivable in 2010**

**(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 EUR 100.000 or more.

The following table shows the total amount and the number of waivers above EUR 100.000 per Directorate-General/Service for the EC budget and the European Development Fund for the financial year 2010.

**EC budget:**

<b>Directorate-General/Service</b>	<b>Amount of waivers (in EUR)</b>	<b>Number of waivers</b>
AIDCO	6.037.553	15
COMP	4.833.229	3
EACEA	875.742	5
ECHO	540.000	1
ELARG	2.159.762	1
EMPL	252.111	1
ENER	642.468	2
ENTR	300.000	1
ENV	132.897	1
INFSO	225.326	1
MOVE	148.123	1
RTD	257.339	2
<b>Total:</b>	<b>16.404.550</b>	<b>34</b>

**European Development Fund:**

<b>Directorate-General/Service</b>	<b>Amount of waivers (in EUR)</b>	<b>Number of waivers</b>
EDF	600.961	3

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

### **(Article 106.6 IR)**

Time limits for payments are laid down in the Implementing Rules of the Financial Regulation<sup>11</sup> (hereinafter IR), and exceptionally in sector-specific regulations. Under Article 106 IR, payments must be made within 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<sup>12</sup>. 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<sup>13</sup>.

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<sup>14</sup>.

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:

	<b>2008</b>	<b>2009</b>	<b>2010</b>
Global average payment time	34,0 days	26,1 days	25,8 days

The data shows that the Commission services have reduced their payment times significantly in the past few years, especially in 2009 when the global average

<sup>11</sup> 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).

<sup>12</sup> 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.

<sup>13</sup> 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).

<sup>14</sup> Based on available data in ABAC as of end of the financial year 2007.

payment time fell from 34 to 26 days. **In 2010, the global average payment time remained around 26 days, indicating that further efforts could still be made to reduce it.**

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:

	<b>2008</b>	<b>2009</b>	<b>2010</b>
Late payments in number	22,7 %	14,0 %	15,9 %
Late payments in value	14,0 %	6,8 %	6,0 %
Average number of overdue days <sup>15</sup>	47,5 days	39,2 days	34,2 days

The table shows that 2009 saw a significant drop in late payments compared to the statutory limit, both as regards their number and their value. Also, the average number of overdue days was reduced from 48 days in 2008 to 39 days in 2009. In 2010 **the positive trend continued overall**, with a further reduction in the value of late payments from 7 % to 6 % and a drop in the average number of overdue days from 39 to 34 days. **Improvements however slowed down in 2010** compared to 2009. There was also a slight increase in the number of late payments, although most late payments concerned comparably lower amounts.

In its April 2009 Communication<sup>16</sup>, 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 2010, the first full year of application of the targets, 22 % of payments (in terms of number) fell short of target. Nevertheless, it should not be forgotten that **close to 80 % of payments met the new targets**. Services' meeting of targets is expected to improve further next year.

As regards **interest paid for late payments** (see figures in the table below) the total amount paid by the Commission continued to increase in 2009, following a rise in 2008 due to the fact that as from 01/01/2008 payment of interest for late payments became automatic and, in principle<sup>17</sup>, no longer conditional upon the presentation of a request for payment. **In 2010, the total amount of late payment interests stabilised** as a result of the reduction in late payments.

<sup>15</sup> i.e. above the statutory time limit.

<sup>16</sup> Communication from Mrs Grybauskaitė: 'Streamlining financial rules and accelerating budget implementation to help economic recovery'; SEC(2009) 477 of 08/04/2009.

<sup>17</sup> With the exception of small amounts (below 200 euros in total).

	<b>2008</b>	<b>2009</b>	<b>2010</b>
Interest paid for late payments (rounded amounts)	EUR 576 000	EUR 808 000	EUR 810 000

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.

In conclusion, the 2009 Communication establishing Commission-internal payment targets has provided a clear incentive to services to reduce their payment times. This was particularly evidenced in 2009 when the global average payment time fell from 34 to 26 days.

**In 2010, the global average payment time remained at 26 days, indicating that further efforts could still be made to reduce it. The main focus should be to further reduce late payments from their current level of 6 % of payments in terms of value.**