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Annex to the

REPORT FROM THE COMMISSION TO THE COUNCIL

on the follow-up to 2006 Discharge procedure

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INTRODUCTION

This Working Document completes the Report from the Commission to the Council on the Follow-up to 2006 Discharge decisions {COM(2008)628 final}. It presents in detail the answers to the 66 specific recommendations made by the Council in the comments accompanying its Recommendations on the 2006 Discharges.¹

¹ For each specific recommendation a reference is given to the relevant Council document. The references for recommendations 1 to 48 are all for Council document 5842/08 "Discharge to be given to the Commission in respect of the implementation of the budget for the financial year 2006".

Council Recommendation on the 2006 discharge

Introduction

1. The Council emphasises the need for all actors involved in the various methods of implementation of the budget and at all levels of management of the EU expenditure to continue to do their best to improve the functioning of the supervisory and control systems and to continue to make progress towards achieving an unqualified DAS in all areas of the budget. It recalls the importance of continued work towards the achievement of an effective integrated internal control framework although being fully aware of the fact that potential results can be expected only in a reasonable time frame. The Council awaits the presentation of the final report of the Commission's Communication on an "action plan towards an integrated internal control framework" as a follow up of the Council conclusions of 8 November 2005. It will examine it in depth in its appropriate bodies, including relevant elements on the issue of residual risk and simplification. (§ 2, 2nd-3rd paragraphs, page 6)

Commission's response:

The Commission will be taking the recommended action.

The Commission presented in February 2008 a progress report on the Commission Action plan towards an integrated internal control framework (COM(2008) 110) and concluded that most of the "gaps" have been filled. Work will be completed in 2008 and the first impact report will be issued in early 2009.

2. The Council underlines the priority of improving the cost-benefit ratio of control structures and promoting simplification. The Council urges the Commission to take actions to ensure that rules are applied in a simplified and operational way through instructions and guidelines which are understandable and adequate to contribute to efficient implementation while avoiding complex rules and regulations as well as unnecessary administrative burdens. In this respect it calls on the Commission to report to the budgetary authority on a regular basis on the actions taken to improve the management of EU funds. (§ 7, page 8)

Commission's response:

The Commission will be taking the recommended action.

The Commission is completing the assessment of the costs of control in agriculture, the ERDF and direct centralised management. The results will form the basis of a Communication by the commission in autumn 2008 aimed at re-launching the inter-institutional discussion on tolerable risk.

As regards simplification little further change is expected under current legislation. For the 2007-2013 legislative round some elements intended to reduce errors were introduced in specific sectors, including rural development and structural actions. The Commission has clarified rules through guidelines on e.g. FP7, the implementing rules for Structural Funds 2007-2013, the Education Policy 2007. The Commission will continue to provide support and further guidance where necessary. It will also ensure that future legislative proposals include clear and straightforward rules.

Chapter 1 - The Statement of Assurance (DAS) and supporting information

3. As regards the reliability of the accounts, while noting the significant progress made, the Council invites the Commission to take into account the Courts observations relating to the cut-off procedures and the allocation and the documentation of the accounting data between the Directorate-General for Education and Culture and the executive agency. (§ 1, 2nd paragraph, page 9)

Commission's response:

The Commission has taken into account the observations of the Court whilst preparing its cut-off for 2007. With regard to the Directorate-General for Education and Culture, during 2007 the split between this Directorate-General and the Executive Agency has been made and the annual accounts for 2007 have been prepared separately. Concerning the documentation, manuals have been prepared both for the impact of accrual accounting in the day to day financial management (accounting manual) and for the year end cut-off procedures.

4. As regards the consolidated financial statements as at 31 December 2006, the Council reminds the Commission to pay due attention to the numerous general and specific remarks presented by the Court in order to improve the completeness and accuracy of the Community accounts. (§ 1, 3rd paragraph, page 9)

Commission's response:

The recommendation has been implemented. The Commission has taken due note of the accounting related remarks of the Court in its 2006 Annual Report whilst preparing the 2007 Community accounts.

5. The Council invites the Court and the Commission to cooperate in the contradictory procedure to find a common understanding on the probability of correction of payments within multiannual programmes during the programme period. (§ 4, 3rd paragraph, page 11)

Commission's response:

The Commission is stepping up its action to work to secure reliable information from Member States on financial corrections and recoveries they carry out. The Commission is providing quarterly reports on the implementation of the action plan to strengthen the Commission's supervisory role under shared management of structural actions (COM(2008) 97), including information on corrections and recoveries imposed by the Commission. It will provide an interim progress report on the action plan in October 2008 and a final report in January 2009. Furthermore, the Commission's accounting system is being revamped to allow, from 2008, full reporting on the correction of errors found by the Commission, including those relating to payments of earlier years. This information, to be retroactively encoded for all recoveries and adjustments to cost claims launched in 2008, will be reported in the 2008 accounts, presented in March 2009. This will allow, inter alia, the year in which an error occurred to be compared with the year

of detection and will be a basis for assessing the effectiveness of multi-annual recovery systems.

Chapter 2 - Commission internal control

6. The Council recalls that the controls and assurance required should be improved by building on existing control structures with a view to improving the cost-benefit ratio and promoting simplification and reiterates its request to the Commission to provide a report on the cost of control in the context of the presentation of the final report on the Communication of the Action plan for the integrated internal control framework. (1st paragraph, page 12)

Commission's response:

The Commission will be taking the recommended action.

The Commission is completing the assessment of the costs of control in Agriculture, ERDF and direct centralised management. The results will form the basis of a communication by the Commission in autumn 2008 aimed at relaunching the inter-institutional discussion on tolerable risk.

7. To achieve well functioning supervisory and control systems the Council invites the Commission to ensure that its supervisory and control systems address the risks effectively on all levels of implementation and mitigate the risk that the control systems in the Member States do not collect all undue amounts. Moreover, the Council asks the Commission to continue improving recovery mechanisms, to take remedial measures and to introduce appropriate indicators for management purposes and for follow-up of progress. (2nd paragraph, page 12)

Commission's response:

The Commission will be taking the recommended action.

The Commission will make all necessary efforts to demonstrate the effectiveness of its controls. Its accounting system is being extended to allow, from 2008, full reporting on the correction of errors by the Commission, including those relating to payments of earlier years, and to provide fuller information on the Commission's capacity to recover funds on a multi-annual basis.

Concerning Structural Funds the Commission is working to overcome the previous difficulties in collecting reliable information on financial corrections and recoveries. It is reporting on this on a quarterly basis. Figures on recoveries by Member States are also published in the Annual Report on implementation of the Structural Funds.

As far as agriculture is concerned, the Commission decisions imposing financial corrections on the Member States for expenditure not effected in compliance with Community law include references to the budget lines and financial years concerned.

8. The Council calls on the Commission to address the deficiencies of the internal control systems adequately and ensure their follow-up through reservations in the annual activity reports. The Council encourages the Commission to continue to

improve the annual activity reports, in particular regarding the identification of continuing weaknesses in the assessments provided in the reports of some DGs. (4th paragraph, page 12)

Commission's response:

The Commission will be taking the recommended action.

The Commission acknowledges that further efforts are needed to resolve a number of weaknesses, in particular those highlighted in the reservations of the delegated authorising officers, and in relation to budget areas that were not considered satisfactory by the Court of Auditors.

The Commission will take vigorous action to address the causes of reservations in the 2007 annual activity reports and will closely monitor progress.

9. The Council reminds the Commission of its request contained in its 2005 discharge recommendation to present an annual general report on recoveries from the financial year 2000 onwards, including amounts recovered by the Member States as well as the Commission and amounts of open entitlements by the end of each year. This first such report is expected by the Council before the end of September 2008. (1st paragraph, page 13)

Commission's response:

The Commission has included in the notes to the annual accounts of the European Communities for the financial year 2007 a new section about the recovery of undue payments following Commission correction decisions '6. Recovery of undue payments'. The objective of this section is to give an overview of the procedure in place for the recovery of undue payments and to present a best estimate of the total amount.

Information on recoveries was presented by way of the financial report of the EAGGF Guarantee Section and the 18th annual report on implementation of the Structural funds, and the notes to the final accounts 2006.

As the heterogeneous Commission aid schemes make it difficult to present a global picture of the recovery of expenses, the Commission is currently reviewing and revising its systems and procedures to ensure it has complete and reliable information.

10. The Council asks the Commission to clarify its approach as regards the financial corrections by budgetary area, their impact and amount differentiating between those concerning final beneficiaries and those relating to the Member States, in order to reach a common understanding on this issue. (2nd paragraph, page 13)

Commission's response:

The Commission is committed to providing reliable figures for financial corrections and recoveries, according to standard definitions. However, some of these requirements cannot under current legislation and reporting practices be

met. In particular this applies to information on when recoveries are made from beneficiaries.

Chapter 3 - Budgetary Management

11. The Council recalls that, to guarantee effective budgetary management, a realistic and sufficient budgeting is essential from the stage of the Preliminary Draft Budget onwards to set commitments and payments at the appropriate level, in order to reduce as much as possible the recourse to Amending Budgets which have unexpected financial impact on national budgets. The Council also recalls that budgetary management requires a realistic and appropriate budget by taking better account the expected profile of payments and in particular the Member States' ability to absorb the funds. In this context, it invites the Commission to ensure that the yearly relation between the level of commitments and payments remains coherent throughout the programming period. (2nd paragraph, page 14 and 1st paragraph, page 15)

Commission's response:

The Commission fully agrees with the importance of realistic budgeting and has taken the recommended action to ensure effective budgetary management throughout the programming period.

As regards the first year of the programming period, 2007 saw high rates of execution combined with relatively little adjustments by way of Amending Budgets - the seven amending budgets voted during the year resulted in an overall 0.167 billion euro decrease in commitment appropriations and a 1.65 billion euro decrease in payment appropriations. The PDB 2009 has been drawn up completely in accordance with these principles.

12. The Council notes with great concern that in 2006 the level of outstanding budgetary commitments has further increased, thus indicating a higher relative level in comparison to the corresponding point in the previous cycle of the Financial Perspective. Therefore, it invites the Commission to keep under close control the implementation of the new programmes in order to avoid increasing the level of outstanding commitments. (3rd paragraph, page 14)

Commission's response:

The recommended action has been taken.

Commitments are consistently budgeted higher than payments on account of the longer period for payments than commitments. As commitments are also increasing year on year, the level of outstanding commitments (RAL) will increase as well. The n+2/n+3 rule in Cohesion Policy however ensures that commitments are largely used up within 2-3 years.

13. Structural operations continue to represent the majority share of the increase of the outstanding commitments and of their absolute amount. The Council invites the Commission and the Member States to look for a sustainable solution based on a thorough analysis of the underlying reasons; moreover, it calls upon them to further their efforts to improve the implementation rate in this area, in order to avoid the risk

that subsequent closure of the current programmes will be delayed and impact on the start and implementation of the 2007-2013 programmes. (4th paragraph, page 14)

Commission's response:

The Commission has taken the recommended action.

The n+2 rule ensures that implementation proceeds at a sufficiently high rate. In-depth analyses of the operation of the n+2 rule were provided in the DG Budget's documents "Report on budgetary and financial management" (March 2007) and "Analysis of the budgetary implementation of the Structural Funds in 2006" (May 2007). These analyses are updated every year. Implementation rates for the 2000-2006 programme period were maintained in 2006 and 2007, whilst almost all new Operational programmes for the 2007-2013 were approved on time. The closure of 2000-2006 programmes is expected to go ahead as foreseen.

14. The Council welcomes the improved information contained in the Report on budgetary and financial management prepared by the Commission and encourages it to provide a more consistent level of information and more detailed analysis on lower than forecast spending for all principal budget areas. (2nd paragraph, page 15)

Commission's response:

The Commission has taken the recommended action and provided the requested information in the 2007 Report on Budgetary and Financial Management.

Chapter 4 - Revenue

15. The Council takes note of the activities undertaken by the Commission in respect of the 2005 discharge recommendation to provide a general analysis of the overall administration, management and control costs for the Member States and the Community of the traditional own resources and the VAT own resources systems. It welcomes the commitment of the Commission to provide a qualitative assessment of the administration, management and control of the traditional own resources and VAT own resources systems in due time. (2nd paragraph, page 16)

Commission's response:

This issue has been extensively discussed in the Advisory Committee on Own Resources (ACOR) on the basis of a working document prepared by the Commission. It was concluded that this assessment would be better provided in the wider context of the Budget review.

16. The Council takes note of the Court's findings on the recurrent problems affecting the B-accounts and reiterates its 2005 recommendation to the Commission to provide guidance on the current procedures in this area with a view to the agreed Community objective to reduce excessive bureaucratic burdens. (§ 1, 1st paragraph, page 16)

Commission's response:

The B account guidelines have been issued and were discussed in the December 2007 meeting of the Advisory Committee on Own Resources.

17. The Council remains concerned about the high number of reservations in particular regarding the VAT own resources and therefore calls on the Commission to continue its efforts, in cooperation with the Member States, for ensuring that reservations are lifted within reasonable timescales. In this context, the Council also invites the Commission to identify the reasons for these reservations in order to solve the problems, to provide a classification of them and, where possible, to quantify their impact. (§ 2, 2nd paragraph, page 16)

Commission's response:

The Commission plans a three-pronged approach. Reservations are to be categorised in a framework which will clearly identify priorities. When necessary contacts will be made with Member States designed solely to review and devise pathways to resolve outstanding reservations (one such review is already planned for 2008). Where Member States cannot show progress towards the lifting of reservations, the Commission will consider starting infringement procedures.

Chapter 5 - The Common Agricultural Policy

18. The Commission and the Member States should continue efforts in strengthening their management and control systems thus maintaining this positive trend towards reducing the error rates, which is notably linked to the introduction of the Single Payment Scheme (SPS). (1st-4th paragraphs, page 17, and 1st paragraph, page 18)

Commission's response:

The Commission has taken the recommended action. The European Court of Auditors' work shows that where properly applied, the Integrated Administration and Control System (IACS) is an effective control system to limit the risk of irregular expenditure (see in this respect point V in the Court's 2004 report, point 5.53 in the Court's 2005 report and point 5.65 in the Court's 2006 report).

The IACS currently covers some 84.5% of the EAGF-expenditure. The effects of the different reforms will further enhance this positive trend and will contribute to reducing the overall risk even further by extending this coverage to some 89% by 2010 and to some 92% by 2013.

19. As regards rural development the Council notes with concern the material incidence of errors, by both nature and amount, affecting the agri-environmental schemes and urges the Member States, in cooperation with the Commission, to step up their controls especially in respect of beneficiaries' compliance with the eligibility conditions. It invites the Commission and the Member States to simplify, where possible, the application of these conditions. (§ 2, page 18)

Commission's response:

The Commission has taken the recommended action. The Member States are now under the obligation to ensure that all rural development measures, including agri-environmental measures, are verifiable and controllable and that control arrangements at the level of the Member States provide reasonable assurance that eligibility criteria and other commitments are respected. The issue has been taken up also in the context of the rural development programming for the period 2007-2013. Eligibility conditions for agri-environmental measures were one of the most important issues discussed between the Commission and the National Authorities in the context of programme approval. Commitments for which the Member States were not able to explain how they could be verified and controlled were rejected or adjusted accordingly in the process of program approval.

Rules for agri-environmental measures in Community legislation are straightforward and clear. On the basis of the subsidiarity principle they can be designed by Member States to target certain environmental objectives as precisely as possible. Accordingly, Member States have designed specific agri-environmental measures to address certain environmental needs or to safeguard specific habitats which provide more complex commitments. Agri-environmental measures have a different character as other measures under the CAP as they oblige the farmer to enter into specific commitments to provide environmental services. By nature these

measures are more demanding as regards their implementation and control but their added value is widely recognized.

The Commission services have taken action to raise the awareness of Member States. A working document on agri-environmental commitments and their verifiability has been presented to Member States. The purpose of this working document is to provide guidelines and additional explanations for the implementation of agri-environment measures. In addition, the origin of higher error rates in agri-environmental measures will be further followed up by audit missions.

Based on detailed statistics from the Member States the Commission has found indications that agri-environmental measures are a source for higher errors in rural development. This higher rate seems to be due to the complexity of these measures rather weaknesses in control systems. For these reasons, the Commission considers that the tolerable risk of error could be set above 2%. However, both the objective of integrating environmental concerns in agriculture, and the added value of such measures are widely recognised.

The Commission will for the continuation of the discussion with the other institutions present a communication on the residual risk in Community programmes in autumn 2008, addressing the error rate in agri-environmental measures.

20. As regards clearance of accounts, in respect of the new clearance mechanism for irregularity cases and in particular the new "50/50 rule" specified in Article 32(5) of Regulation (EC) No. 1290/2005, the Council asks the Commission to monitor closely its functioning in order to ensure that the debts are properly charged to the Community. In the context of conformity clearance, the Council emphasises the importance of financial corrections which considerably contribute to safeguarding the financial interests of the European Union. (§ 3, page 18)

Commission's response:

The recommended action has been taken. The application of the 50/50 rule referred to in the recommendation is based on figures provided by Member States and certified by the certification bodies. The Commission is following-up the application of this rule by means of on-the-spot checks and desk audits, which may lead to financial corrections in case of non-compliant practices.

Chapter 6 - Structural Policies

21. As regards the functioning of the management and control systems, the Council urges all actors in the accountability chain to further intensify their efforts so that significant progress could be visible already in the short term. The Council shares the Court's view that the mitigation of high inherent risk requires both effective control systems in the Member States and effective supervision by the Commission. In this respect and taking into account the multi-annual nature of the control system, the Council calls on the Commission to work closely with the Member States at all stages in the control chain to improve this situation. The Council equally notes with great concern the Court's conclusion that the Commission maintains only moderately effective supervision. In the Council's view, it is essential that the Commission's audit activity is effective and that it puts in place an effective system to carry out its supervisory role especially since it is the Commission which is ultimately responsible for the regularity of Structural Policy expenditure, according to the Treaty. (*1st and 2nd paragraphs, page 20, and 1st paragraph, page 21*)

Commission's response:

The Commission is taking the recommended action. It is continuing to work closely with the Member States to improve management and control systems for structural actions expenditure. Recent actions include the issue of guidance on good practices in management verifications (COCOF 08/0020/02) and checks by certifying authorities (COCOF 08/0014/01) and a training seminar for 500 representatives of national managing and certifying authorities in June 2008. Further measures are set out in the Commission's Action Plan of 19 February 2008 to strengthen its supervisory role in this area (COM(2008) 97). The Commission also holds annual coordination meetings with national audit bodies, in addition to regular discussions of management and control issues with Member States in the structural actions management committee (COCOF) and ad hoc technical meetings. The Commission considers that its audit activity is already effective in bringing about improvements in management and control systems, for example through the implementation of remedial action plans, but is seeking to increase its impact by speeding up the adoption of decisions where appropriate to suspend payments or apply financial corrections.

22. The Council asks the Commission to provide regular updates of its guidance notes on best practices on the first level management checks, to target its audit efforts at the least effective or highest risk Managing Authorities and to monitor the implementation of relevant action plans already underway. (*3rd paragraph, page 20*)

Commission's response:

The recommended action has been taken. The Commission issued an update of the guidance note on best practices in management verifications in May 2008. It is targeting its audit work in 2008 on managing authorities identified as high risk and is monitoring the implementation of remedial action plans in certain Member States. These and other actions to improve management of structural actions expenditure are being monitored under the Action Plan of 19 February 2008.

23. The Council considers that the Commission shall, when improving its supervisory systems and providing guidance to the Member States, actively encourage and facilitate simplification which shall ultimately lead to reducing both the occurrence of errors and the administrative burden at all levels. The Council shares the Court's recommendation that the Commission should also actively encourage and facilitate the use of the simplification provided for in the new Structural Funds regulations. Further work should be considered regarding issues such as the use of a flat rate, partial closure and eligibility rules fixed at national level. (2nd paragraph, page 21)

Commission's response:

The Commission is taking the recommended action. The Commission's guidance, training and coordination activities all aim to simplify the day-to-day use of the funds by clarifying requirements and avoiding duplication of controls. The Commission is taking specific actions to encourage use of the provisions for flat rates and partial closure and to provide guidance on eligibility rules. These are set out in the Action Plan of 19 February 2008, actions 4.3 and 4.4.

24. The Council underlines that both reinforced controls at the Member State level and more effective supervision by the Commission should respect the principle of proportionality of controls to the risks and the benefits from control in relation to the costs involved. In this respect, the Council encourages the Commission to continue assessing the cost of controls in Structural Funds split between Member States and Community budget and to report to the Council on the results obtained. (4th paragraph, page 21)

Commission's response:

The Commission is taking the recommended action. The Commission is completing its analysis of the data on the cost of controlling ERDF expenditure in all Member States which was gathered up to March 2008. Together with data on control costs in agriculture and direct centralised management, the results will feed into a communication by the Commission in autumn 2008 on the costs of control which is aimed at re-launching the inter-institutional discussion on tolerable risk.

25. As regards financial corrections and recoveries in the Structural Funds, the Council considers that the application of suspension and correction mechanisms, whenever appropriate, acts as a deterrent and can thus have an important positive impact on the legality and regularity of expenditure. It stresses the importance that the Commission takes remedial actions as quickly as possible. The Council underlines the importance of complete, accurate and timely information on recoveries and financial corrections regarding Structural Policies expenditure and calls on the Member States and the Commission to improve the quality and consistency of such information. (§1, 1st paragraph, page 22)

Commission's response:

The Commission is taking the recommended action. As part of the Action Plan of 19 February 2008 on strengthening its supervisory role in structural actions, the Commission is taking steps to speed up the procedure leading up to decisions to

suspend payments and apply financial corrections. The Directorates General for Regional Policy and Employment have adapted their internal procedures accordingly. The Commission is now reporting on financial corrections and recoveries resulting from its own or the Court of Auditors' audit work in the structural actions area in its annual accounts and also on a quarterly basis. Figures on recoveries by Member States are also published in the Annual Report on implementation of the Structural Funds.

26. With a view to increasing the reliability and accuracy of cost claims and reducing the risk associated with this significant source of errors, the Council encourages the Commission to pursue its efforts to simplify and clarify the guidelines for calculation and reporting of costs, especially regarding average personnel costs and overheads, in order to have a better understanding of the rules by beneficiaries and operational departments within the Commission. (§ 1, 2nd paragraph, page 23)

Commission's response:

The recommended action has been taken.

For FP6, the Audit Strategy 2007-2010 includes a concrete action labelled 'Communication vis-à-vis grant beneficiaries: Communication, audit web design'.

The objective of this action is twofold:

i) to raise awareness amongst beneficiaries on the eligibility criteria for costs claimed for reimbursement and

ii) to create a dissuasive effect in terms of incorrect cost claims by pointing out their increased risk of being audited and the related potential consequences (incl. sanctions).

Furthermore, in the context of the extrapolation of audit results to non-audited contracts, the Commission is currently evaluating possibilities to allow contractors to demonstrate that significant deviations found at project level even out over all participations.

As regards FP7, the Commission raised awareness on the FP7 certification process in conferences and workshops. In addition, specific webpages dedicated to audit and certification policy were set up, on which beneficiaries can find information on the lessons to be learned from errors made in the past, on the scope and procedure of audits, documents to be submitted, period within which an audit can take place, etc. FP7 prospective beneficiaries can easily retrieve audit supporting documents and can get support through the enquiry service established to deal with requests on FP7 issues.

With regard to the content of guidelines for calculation and reporting of costs, especially for average personnel costs, art. II.14 of the model grant agreement states that "beneficiaries may opt to declare average personnel costs if based on a certified methodology approved by the Commission" and that "average personnel costs charged by a beneficiary having provided a certificate on the methodology are deemed not to significantly differ from actual personnel costs".

This approach is meant to change the focus on the methodology used by the beneficiaries and its compliance to contractual rules rather than to deviations at individual level.

27. The Council acknowledges the Commission's efforts in the development of a common, integrated and risk-based ex-post audit framework for research programmes, in particular regarding the Sixth Framework Programme. Being aware of the fact that significant improvements resulting from the revised audit strategy will only be available from 2007 onwards, the Council invites the Commission to continue to implement the new integrated internal control framework, in order to mitigate the risks to the legality and regularity of expenditure and to ensure that funds are exclusively used for the purposes intended. (§ 2, 3rd-4th paragraph, and 1st paragraph, page 23)

Commission's response:

The recommended action has been taken.

The principal risk to the legality and regularity of research expenditure is that beneficiaries overstate costs in their cost statements, and that this is not subsequently detected and corrected by the Commission. Many errors affecting legality and regularity can only be detected (and therefore corrected) by performing on-the-spot checks.

To address this problem, the Commission has shifted the focus of its control strategy towards detection and correction of errors ex-post, after the payment has been made. The Research DGs are implementing their FP6 audit strategy consisting of an increase in the number of audits, a new sampling strategy and the correction of systemic errors if they have been repeated by the same beneficiary in other, non-audited contracts.

The audit strategy will be implemented over a period of four years. Because of its multiannual nature, the effectiveness of the Research DG's control strategy can only be fully measured and assessed at the final stages in the life of the framework programme.

Furthermore, the Research DGs have agreed on materiality criteria to assess whether the control strategy yields satisfactory results.

28. The Council notes that the number of ex-post audits has been increased in 2006, after a significant reduction in the previous year. It also notes the reinforcement of the audit certificate system by establishing a comprehensive set of procedures and mandatory reports to be provided by certifying auditors and by the compulsory certification of the calculation method for average personnel costs for the beneficiaries who apply it in FP7 grants, in order to ensure that the beneficiaries' cost statements comply with the contractual provisions. While admitting that control arrangements need to be proportionate and realistically designed, the Council calls on the Commission to further increase the proportion of audited contracts substantially, in order to compensate for the remaining weaknesses of the supervisory and control systems. (§ 3, 1st and 2nd paragraphs, page 24)

Commission's response:

The recommended action has been taken.

In 2007, the Commission services together have developed a common multi-annual audit strategy for the FP6-expenditure, which implies an important increase in the number of audits to be carried out, focussing on multiple audits of the beneficiaries of the FP6-framework programme, a representative sample of the non-top-beneficiaries and a number of audits based on a risk assessment.

This audit strategy should lead to adequate coverage of the FP6-beneficiaries. The audit strategy is being implemented by all research DGs at this moment.

As foreseen in the strategy, the Research DGs have significantly increased their audit effort in 2007 and have met the target of completing 300 FP6 audits by the end of the year. A total of 375 FP6 and 307 FP5 audits were completed in 2007, bringing the overall total of completed FP audits up to 682.

29. The Council urges the Commission to continue to check the management and control systems of the national managing authorities for education and culture projects. (§ 3, 2nd paragraph, page 24)

Commission's response:

The Commission is taking the recommended action. DG EAC has adopted an integrated supervision strategy that includes, a.o., supervisory processes based, as far as the National agencies are concerned, on the "integrated control framework" approach (primary, secondary and supervisory controls).

Ex-ante declarations of assurance 2007-2013 issued by National Authorities have been screened before entering into a contractual relation with the National Agencies. Additionally, National Authorities will also issue by 30 April (for the first time in 2008) annual ex-post declarations of assurance concerning the use of funds during the previous year. Therefore, the operation of this system will be completely checked once the first annual cycle will be concluded, i.e. when the results of controls carried out on the annual reports of the National Agencies and of the Annual ex-post declaration of assurance covering 2007 are available. Guidelines for the yearly declaration have been issued in February 2008 and two meetings with the National authorities have been held in December 2007 and March 2008.

Follow-up of systems audits recommendations has been incorporated in the assessment process of the ex-ante declarations of assurance 2007-2013 issued by National Authorities and is constantly monitored.

As regards the checks of grant beneficiaries by the National agencies (primary controls) an harmonized approach across the different programmes and actions (including minimum percentages and minimum number of beneficiaries/projects to be checked for each decentralized action) has been developed and integrated in the contractual obligation of the National Agencies. Reporting formats to the Commission have been issued accordingly.

30. The Council encourages the Commission to pursue the establishment of clear instructions to the certifying entities, which specify eligibility criteria and accounting requirements as well as the scope and methodology of the certification audits. This

should contribute to improving the quality of audits, to bringing down the error rate and to preventing to a greater degree the declaration of ineligible expenditure as well as the reimbursement of overstated or unjustified costs. (§ 3, 3rd paragraph, page 24)

Commission's response:

The recommended action has been taken.

The Commission has responded to observed weaknesses in the audit certificates by improving support to certifying entities. The ex post audits provide assurance on the functioning of the audit certification process as well. As the Commission explained in a reply to the Court of Auditors' observations for the 2006 financial year, the results of the Commission's own on-the-spot audits indicate that the audit certification process had already contributed to an important reduction in error rates for FP6 in comparison with FP5.

The Commission regards audit certification as a management tool that acts to detect and correct errors before they affect the payment of EU research funds. The new format of audit certification and corresponding guidelines are available on the Commission's EU Research website (http://cordis.europa.eu/fp7/find-doc_en.html#guidance).

Building further on the experience with FP6 certification, for FP7, the audit certification process has been completely reworked:

1) The process is now based on compulsory "agreed upon procedures" reports, which consist of a compulsory set of procedures and a mandatory report to be provided by certifying auditors; a system inspired by international audit standards and for which practical guidance for beneficiaries and auditors is established in consultation with the Federation of European Accountants. These agreed-upon procedures have clarified and simplified rules for beneficiaries and their auditors, particularly in areas such as personnel costs that are usually the cause of the most significant errors,

2) there is now compulsory certification of the cost calculation methodology for average personnel costs, and

3) optional certification of both the personnel cost and indirect cost methodologies. These measures are designed to ensure, before payments are authorised, that beneficiaries' costing methodologies comply with the contractual provisions.

In the context of FP7, the Commission established guidance notes for the beneficiaries and auditors in close collaboration with the European Federation of Accountants.

In addition, a web-site dedicated to ex-post audits has been created and provided easily accessible information and guidance on cost eligibility and certification issues.

Moreover, in the context of FP7, the Commission launched in 2007 specific pages dedicated to audit and certification policy on CORDIS. These services focus notably on lessons learnt from FP6 as well as FP7 certification policy. FP7 prospective beneficiaries and certifying auditors can easily retrieve audit supporting documents and can get support through the enquiry service established to deal with requests on FP7 issues.

31. The Council shares the Court's concern about the shortcomings identified in the monitoring, analysis and follow-up of audit findings by the Commission's Directorates-General. It regrets that information on the results of their checks is still not systematically disseminated amongst all Internal Policies Directorates-General of the Commission. It stresses the importance of sharing the results of ex-ante desk reviews and ex-post financial audits and of reinforcing their implementation procedures, in order to increase the efficiency and effectiveness of audits. (§ 4, 4th paragraph, page 24)

Commission's response:

The Commission has taken the recommended action as regards ex-post financial audits.

In the research area planning is co-ordinated among the research DGs, and audit results on common contractors are shared. This sharing has been reinforced recently through a common extrapolation steering committee, which identifies all contracts/participations of each audited entity with each one of the DGs managing research expenditure and decides on extrapolation cases for all research DGs. The extrapolation of these audit results means that if systematic, material errors are identified in the audited contracts of a contractor, it is assumed that they also appear in the non-audited contracts of the same contractor. As a consequence, the contractor is invited to amend the cost statements of the non-audited contracts accordingly. This extrapolation procedure is part of the new audit strategy.

In parallel, initiatives have been taken to come to a more effective interoperability of the research DGs information systems through a specific Action Plan ("SAR"="Sharing of Audit Results") for that purpose. Since 2006 therefore, important steps in this regard have been taken.

DG EAC is also taking the recommended action as far as the sharing of results of ex-post financial audits is concerned. Staff has been trained to use the ABAC tool and has received access to the it. Audit information can now be input in the system, as it is required at Commission level.

As regards ex-ante desk reviews, the research DG's revise their check-lists on a regular basis to enhance the quality and the effectiveness of the ex ante desk reviews. However, the verification of cost claims by means of ex ante desk reviews is by definition very limited in scope and does normally not produce results that would justify systematic sharing among DG's. The Commission considers that it would therefore not be cost effective to establish an IT tool dedicated to that purpose.

With the introduction of audit certificates in FP6 the ex ante verification is significantly strengthened compared to previous framework programmes. On this basis, the Commission has further strengthened its approach on ex ante certification under FP7 with the introduction of agreed-upon-procedures certification. Nevertheless, on the spot verification of cost statements by means of audits remains a corner-stone of the assurance strategy allowing yielding substantive information on the errors. In consequence, the Commission has stepped up its ex post controls with the introduction of the FP6 audit strategy. The strategy includes a significant increase in the audit effort and measures to record the results of the controls and share them among all concerned parties within the several Research DGs. The Commission considers that these measures are an effective alternative to those recommended by the Court.

32. The Council is concerned about the persistent proportion of late payments by the Commission to beneficiaries, outside the stipulated deadlines. It stresses the need to comply with the time limits for expenditure operations set out in the Financial Regulation, and asks the Commission's Directorates-General to further enhance the monitoring of payment times and to reduce the delays in payments. (§ 5, 1st paragraph, page 25)

Commission's response:

The Commission is taking the appropriate measures to comply with Council's concern and the need to comply with the time limits for expenditure operations set out in the Financial Regulation. The efforts made have increased the percentage of payments made on time. The issue is being monitored closely and is receiving the highest attention to ensure further improvement.

Chapter 8 - External actions

33. The Council regrets the ongoing weaknesses which the Court found in the systems designed to ensure the legality and regularity of external actions expenditure at the level of project implementing organisations. The Council acknowledges the efforts made by the Commission regarding the clarification of the terms of reference for tendering and public procurement, the eligibility of costs and the required documentation for the allocation of expenditure. The Council takes note of the Commission's dedication to further strengthen the internal control systems and to simplify and standardise partnership agreements and it expects to see positive effects resulting from these measures in the coming years. (1st-3rd paragraphs, page 26)

Commission's response:

The Commission has taken a series of actions aimed at improving the systems designed to ensure the legality and regularity of external actions expenditures at the level of project implementing organisations: standard Terms of Reference for expenditure verifications for grants and fee-based service contracts (mandatory since February 2006), new standard Terms of Reference for financial and systems audits (mandatory since October 2007), annual consolidation of external audit results in a synthesis report aimed at identifying a typology of findings and identifying corrective actions, development of CRIS audit which would improve the reporting on audit results.

34. The Council expresses its concern about the stated incompleteness and inconsistency of the external audit information collected and submitted to the headquarters, the lack of systematic centralisation of the results, the poor sharing of audit outcomes and the lack of follow-up. It emphasises the importance of an overall coordination of the various control procedures in force, in order to streamline the audit activities, avoid unnecessary duplication and provide a reliable picture of the controls undertaken. The Council stresses the need for clear reporting requirements, standardised reporting tools, concise data definitions and appropriate information systems to record and summarise findings of audits. It emphasises the importance of linking the results of the audits to the corresponding project information and carrying out the desirable risk assessment analyses taking into account the different types of implementing organisations and funding methods. (4th paragraph, page 26, and 1st paragraph page 27)

Commission's response:

The recommended action has been taken. The Commission has already taken the necessary measures to improve the external audit process within AIDCO : CRIS audit has been redesigned allowing to improve and harmonise the reporting on audit results, and the annual synthesis report, which consolidates external audit results, aims at assessing the quality of audits and learning lessons to further improve the system.

35. The Council welcomes the Commission's willingness to review the balance of headquarter and on-the-spot audits of implementing partners, with the aim of

obtaining a better view of the reality of project expenditure. (2nd paragraph, page 27)

Commission's response:

The recommended action has been taken. The balance between headquarter and field audits has been reviewed and should be seen in the context of an overall control strategy. The number of field audits has increased to 37 in 2007 compared to 20 field audits performed in 2006.

Chapter 9 - Pre-accession strategy

36. The Council acknowledges the Commission's commitment to monitor closely the effective functioning of the national supervisory and control systems for expenditure under the pre-accession programmes. It regrets that many national supervisory systems still show weaknesses, but notes the progress reached and expects further improvements to take effect in the coming years. It invites the Member states concerned to bring the systems to a good standard of financial management, in order to provide adequate assurance of the correctness, regularity and eligibility of claims. Moreover, it encourages the Commission to remind national authorities about their obligation to submit final declarations within the stipulated deadlines. (3rd paragraph, page 28)

Commission's response:

The Commission continues to monitor closely the national supervisory and control systems, and where necessary, strongly encourages the beneficiary countries to take action to redress unsatisfactory situations.

Concerning the final declarations, the Commission does and will further do its utmost to obtain the final declarations within the period stipulated in the financing agreements and the final replies within the shortest possible period.

37. As regards the Sapard programme, the Council urges the Commission to further intensify its checks and their follow-up. It asks the Commission to insist on the accredited procedures and on the implementing and paying arrangements agreed with national authorities. (4th paragraph, page 28)

Commission's response:

The Commission has taken the recommended action. In 2007 four SAPARD programmes were closed, namely for Estonia, Hungary, Slovakia and Slovenia. In 2008, up to now the programmes of Poland and Lithuania have been closed. The closures have been made on the basis of the payment application for the final balance, the decision on the clearance of the accounts and the final implementation report.

Moreover, in 2007 the Commission carried out two conformity audit missions in Bulgaria and Romania for SAPARD and two desk audits on the basis of Certifying Body for Lithuania and Slovakia.

The Commission adopted a decision on 28 September 2007 on the clearance of the 2006 accounts of all Sapard Countries (with the exception of the Czech Republic where the Programme was closed in the financial year 2006).

Also in 2007, the Commission adopted a second clearance decision on 10 December 2007 relating to the expenditure chargeable to the Sapard by Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia during the period 2001-2006 and establishing the final balance to be paid or recovered.

38. As regards Twinning (follow-up of the Court's Special Report No. 6/2003), the Council invites the Commission to further simplify the procedures, set more realistic project scopes and objectives, monitor project achievements, share best practices and disseminate project results in a timely manner, with a view to ensuring the efficiency and sustainability of twinning project outputs. (2nd paragraph, page 29)

Commission's response:

The recommended action has been taken.

The Commission acknowledges the positive appraisal of its efforts to further improve twinning as a flexible and effective Institution Building instrument. In the course of the previous months it has stepped up efforts to streamline flexible twinning management through a new version of the twinning manual, referred to in the IPA Implementing Regulation, and through increased co-ordination with project managers in the Delegations (training efforts and launching of the Twinning News Bulletin).

Chapter 10 - Administrative expenditure

39. There are still some weaknesses in the institutions' supervisory and control systems. Most notably, the Council is concerned about the Court's findings of several cases of non-compliance with the general principle of competitive tendering set out in Article 89(2) of the Financial Regulation. Procurement management is a cornerstone of well-functioning and efficient administration and contributes significantly to the institutions' credibility. Therefore the Council emphasises that all the institutions are to comply strictly with the existing legal requirements in the field of public procurement. Specifically, the Council urges all the institutions to resort, whenever possible, to competitive tendering and to use the negotiated procedure only in duly substantiated circumstances and strictly within the limits set. (§ 1, 2nd and 3rd paragraphs, page 30)

Commission's response:

The recommendation is addressed to all institutions and, for the Commission, in particular to OIB and OIL. As mentioned in the Commission's reply to the Court's 2006 Annual Report, OIB and OIL have put in place specific control measures to improve procurement management. For real estate expenditure, negotiated procedures are allowed under art. 126(1)(h) of the Implementing Provisions.

40. The Council is concerned about the risk of potentially high increases in appropriations for pensions and the impact of such increases on the overall growth of administrative expenditure in the future. Therefore, it invites the Commission to provide each year well before the Preliminary Draft Budget an updated estimate of annual Communities' pension expenditure at least up to 2013. (§ 2, 4th paragraph, page 30)

Commission's response:

The Commission gave the figures and estimates as requested at the time of the PDB presentation in the Council's Budget Committee (10/6/2008) and further documents were transmitted on 13/6/2008. This will henceforth be part of the standard presentation.

In parallel, the Council's Staff Regulations Committee is discussing the report pursuant to art. 14.3 of Annex XII of the Staff Regulations.

41. There is still ample scope for improvement in agencies' programming, budgetary implementation, recruitment and reporting, in particular regarding the subsidies, assigned revenue and, procurement procedures. In this respect, the Council will attach the greatest importance to full implementation by the Commission of the requirements as agreed in the joint statement on Community agencies adopted on 18 April 2007 and the joint statements on decentralised agencies and executive agencies adopted on 13 July 2007. (§ 3, 1st paragraph, page 31)

Commission's response:

The recommendation is accepted. Following the joint statement of 13 July 2007, decentralised agencies are requested to provide detailed information, on an annual basis, to accompany their draft estimates for the coming budget year. This should include:

- an update of the staff policy plan, with an information on the number of permanent and temporary agent covered by the establishment plans and on external staff (contractual agents) for years n-1 and n+1;*
- the work programme of the agency and information on the content of their budget, detailing titles 1 and 2.*

42. While acknowledging the considerable efforts already made by the Commission, the Council invites the Commission to continue providing assistance to the agencies in the most appropriate form. (§ 3, 2nd paragraph, page 31)

Commission's response:

The Agencies are independent Community bodies which are fully responsible legally and financially for the management of their own resources. Within the limits of the resources available the Commission has supported and will continue to support the Agencies to enable them to make use of the knowledge, experience and advice of the Commission in the area of financial management.

The Commission's internal financial website is open to all Agencies. In addition, a common website Commission / regulatory Agencies has been recently launched, to establish a comprehensive, up-to-date library of information material relating to the Agencies, to promote an understanding of the common challenges faced by the Agencies working in the legislative framework of the EU and to continuously improve the way the Agencies function by learning from good approaches followed by other Agencies. Agencies are also able to pose questions on financial management to the Commission's financial Helpdesk and do so with increasing frequency (over 200 questions in 2007). They may also take advantage of advice provided on contracts and grants. Training provided to the Agencies on financial management is provided on a fee-paying basis.

All of these services to Agencies will continue to be provided. Every effort is made to ensure that the services are as effective, helpful and relevant as possible.

43. The Council encourages the Commission and the agencies to continue carrying out appropriate, when necessary external, evaluations in accordance with the provisions of the basic acts, particularly as regards resources, administrative and management structures, systems and practices and the interface between the agencies and the Commission and the Member States. (§ 3, 2nd paragraph, page 31)

Commission's response:

Recommendation accepted. The Commission has taken note of the need to ensure effective and regular evaluations of agencies. The document on evaluation of

agencies provided by the Commission to the budgetary authority in October 2007, showed that the requirement to carry out evaluations is well respected since all agencies were covered by recent evaluations, or planned ones with a reasonable time schedule.

The Commission is further analysing the agency system, including the evaluation system in place, through a currently ongoing meta-study of the evaluation findings from the individual agencies. In addition, in the new Communication to the European Parliament and the Council "European agencies - the way forward", the Commission foresees to undertake a horizontal evaluation of regulatory agencies, by 2009-2010, and to report to the European Parliament and the Council on the results.

44. The Council notes the agencies' persistently high vacancy rates and regrets the unrealistic proposals in the Preliminary Draft Budget. Therefore, it invites the Member States to intensify their supervisory role in agencies' boards in order to ensure that the principle of sound financial management is properly applied in all agencies and urges the Commission to scrutinise more carefully, and when appropriate revise, the agencies' proposals, particularly on funds and posts taking due account of the agencies' assigned revenue. (§ 3, 3rd paragraph, page 31)

Commission's response:

The Commission will take the recommended action.

Following the Joint Declaration of 13 July 2007, and in accordance with the general request for greater transparency in regard to the use of the surpluses of the decentralised agencies, the Commission has adopted a systematic approach for the calculation of the Community contribution to the decentralised agencies.

In the 2009 PDB, the total Community contribution to the decentralised agencies is composed of two sources of financing:

- amounts deriving from the 2007 surpluses, if applicable, and*
- appropriations to be charged to the Community budget for 2009 (i.e. amounts entered in PDB 2009)*

This means that the appropriations entered in PDB 2009 do not necessarily represent the total Community subsidy for the agency agreed to by the Commission as the surplus from 2007 will also be part of the Community contribution.

Accordingly, it has been possible to reduce the amount to be entered into the PDB compared to the previous amount entered into the financial programming in most cases. In other cases, it has been possible to face additional tasks for some agencies without increasing the appropriations to be charged into the budget compared to the previous financial programming.

45. The Council emphasises the importance of a rapid adoption of the revised framework Financial Regulation for decentralised agencies and the revised Financial Regulation for executive agencies. It is of paramount importance that the specific financial

regulations for each agency is revised accordingly so that the consistent application of sound financial management and related rules is assured throughout the agencies. (§ 3, 1st paragraph, page 32)

Commission's response:

The revision of the framework Financial Regulation for the regulatory agencies (Commission Regulation N° 652/2008) and the revision of the standard Financial Regulation for the executive agencies (Commission Regulation N° 651/2008) have been adopted by the Commission on July 9, 2008.

46. The Council takes note of a large number of outstanding reservations from the past Annual Reports and invites all the institutions concerned to take due account of these reservations and take all the necessary measures to act on the Court's recommendations at an earliest possible date (for the Commission this concerns the reimbursement of accommodation costs incurred on missions and the follow up of family allowances). (§ 4, 2nd paragraph, page 32)

Commission's response:

As regards the reimbursement of accommodation costs, the Commission services have finalised a new set of rules, currently in the process of being negotiated with the staff representation, and planned for adoption by the Commission by the end of 2008.

As regards the follow-up of family allowances, the development of IRIS, the new IT system that will greatly facilitate the control of the relevant data, proceeds as planned and will be operational, for this area, by the end of 2009, as already mentioned in the Commission's reply to the Court. Meanwhile, priority is given to the verification of the right to household allowances. As of May 2008, one member of staff is dedicated to this task in order to catch up the delays incurred in the verification process. At the same time, for the same persons, household allowances received from elsewhere are also checked and if necessary, the amounts are corrected retroactively. Other persons potentially receiving allowances from elsewhere, not recently controlled will follow.

Chapter 11 - Financial instruments and banking activities

47. The Council notes with concern the weaknesses found in the execution and monitoring procedures in respect of risk capital operations under the MEDA regulation, in the reporting by intermediaries and borrowers, and in the communication of relevant data by the EIB to the Commission. It shares the Court's opinion relating to the identified eligibility problems in technical assistance projects. Furthermore, it calls on the Commission to fully report to the budgetary authority on the measures financed under the MEDA regulation, and to provide sufficient and detailed information on progress achieved through the financial instruments, as suggested by the Court. Moreover, it asks the Commission to classify the various bank accounts for investments under mandated actions in a consistent manner. (2nd-4th paragraphs, page 33)

Commission's response:

The weaknesses identified by the Court of Auditors concern the past and have been corrected.

48. The Council encourages the Commission to finalise its renegotiation of its management convention with the EIB and, if not yet in place, to negotiate similar arrangements with other financial institutions involved in risk capital operations and interest rebates, as well as the framework agreement on technical assistance, with the aim of further strengthening its monitoring of mandated actions. The Council expects significant and visible improvements in the reporting, completeness and reliability of financial data. (5th paragraph, page 33)

Commission's response:

The management convention between the Commission and the European Investment Bank (EIB) is in the process of being renegotiated.

49. The Council emphasises that the Community transit system needs to balance the objectives of trade facilitation and security, while remaining user-friendly for both economic operators and customs administrations. (DOC 5842/08 ADD 2, Annex 1, 2nd paragraph, page 2)

Commission's response:

The recommended action has been taken. The Commission has proposed a regulation that develops the transit system further as recommended by the Council and introduces NCTS as the regular procedure also in the legal provisions. The regulation (modification of the Customs Code Implementing provisions, Reg. No 2454/93) is expected to enter into force in summer 2008.

50. The Council points out that a detailed operational agreement for the management of the New Computerised Transit System (NCTS), for critical situations affecting availability and business continuity, has been adopted in July 2006 and, in this context, and notes the Court's recommendation to the Commission to enhance its monitoring activities. (DOC 5842/08 ADD 2, Annex 1, 3rd paragraph, page 2)

Commission's response:

The recommended action has been taken. The Commission has enlarged its monitoring activities in this respect. The daily and weekly reports, produced by the Commission, include the analysis of the message flows with details on the availability of the systems and the business impact. All components of the trans-European systems (NCTS and ECS) are monitored, with information available for the National Administrations.

51. The Council takes note of the Court's recommendations to the Commission and to the Member States regarding the improved application of the legal transit provisions following the implementation of the 2001 reform of the transit system, notably to reinforce monitoring and inspections in Member States. (DOC 5842/08 ADD 2, Annex 1, 4th paragraph, page 2)

Commission's response:

During 2007 the Commission focussed its inspection on the adequacy of Member States customs control frameworks for controlling goods moving under the TIR arrangements. In the inspection programmes for subsequent years other aspects of the control framework, selected on the basis of risk analysis, will be examined.

52. The Council points to the risk management framework contained in Regulation (EC) No. 648/2005 and its implementing provisions and stresses that resources should primarily be deployed in those areas where the security and financial risks are particularly high. (DOC 5842/08 ADD 2, Annex 1, 5th paragraph, page 2)

Commission's response:

The Commission is taking the recommended action. The measures include: development of common risk criteria and standards for security and safety risk analysis at first points of entry into the Community; establishment of procedures between Commission and Member States for decisions about, and management of, areas for priority control actions; further development of existing and identification of new means of sharing risk information.

53. The Council considers that, on the basis of the assessment of its functioning by the Court, NCTS should be used as a model for other electronic custom systems, thus giving administrations and economic operators the advantage of building on existing knowledge and experience and having a better return on investments. (DOC 5842/08 ADD 2, Annex 1, 2nd paragraph, page 3)

Commission's response:

The recommended action has been taken. The Commission has developed the ECS and the ICS (export/import control system) largely on the basis of NCTS structure.

Special Report N° 1/2007 concerning the implementation of the mid-term process - structural funds 2000-2006

54. The Council shares most of the recommendations made by the Court of Auditors. It supports, in particular, the recommendation for simplification and streamlining of procedures and deadlines which would contribute to an even more efficient implementation of the cohesion policy. The Council believes that the above recommendation has already been reflected in the new procedures adopted for ongoing evaluation in 2007-2013. (DOC 5842/08 ADD 2, Annex 2, 3rd, 5th and 6th paragraphs, page 4)

Commission's response:

The recommended action has been taken. The regulations for the 2007-13 period have made the arrangements for evaluation during programme implementation more flexible and responsive by replacing the general requirement to carry out mid-term evaluations by a particular date with ongoing evaluation on a needs basis to assess the implementation of a programme and react to changes in its external environment, and removing the obligation to allocate a performance reserve at mid term.

55. The Council notes with interest the recommendation to further improve the monitoring system and ensure that appropriate indicators are monitored in the new programme period and acknowledges with satisfaction that the Commission will devote attention to this. (DOC 5842/08 ADD 2, Annex 2, 7th paragraph, page 4)

Commission's response:

The recommended action has been taken. The Commission has issued guidance on indicators in the new programme period (e.g. Working Document No 2 on indicators) and has ensured the adoption of core output and – particularly - result indicators in the new programmes in order to monitor their progress against the objectives set. It is working with Member States to help exchange good practices and support new initiatives in the area of indicators and monitoring.

56. The Council shares the Court's opinion on the automatic decommitment rule. It stresses that the budgetary allocations must take due account of general principles, rules and objectives set out in the appropriate legislation on the Funds. (DOC 5842/08 ADD 2, Annex 2, 1st paragraph, page 5)

Commission's response:

The recommended action has been taken. As well as being subject to automatic decommitment to help ensure that spending is maintained at a reasonable level, co-financed activities are required to promote EU policy priorities, including the Growth and Jobs agenda. EU-15 Member States have to meet specified targets for spending on the latter.

57. The Council regrets that weaknesses in inter-institutional cooperation, planning, financing and cost evaluation of the Institutions have resulted in short-term solutions and transitional accommodation which have led to significant financial losses.

The Council urges the Institutions to improve the planning and management of building projects by defining a coordinated multi-annual building policy framework and to give better and more regular information to the budgetary authority on the budgetary implications including prioritisation as well as the indicators and standards used, and to emphasise cost-efficiency in planning and management.

It invites the Institutions to enhance coordination, based on the principle of value for money, of the timetables and means used to estimate their needs while establishing a balance between renting and purchasing premises, and to respect, where possible and economically advantageous, the principle of the conclusion of long-term rental contracts with a purchase option in the form of an "acquisitive emphyteusis" that includes a final purchase price. The Council calls on the Institutions to develop appropriate methods for appraisal of their actual and short-term needs and to improve management information through defining common and clear indicators both for standard office accommodation for administrative staff and for specialist space and underlines the importance of continuing efficiently all the initiatives already taken in this field. The Council expects the Institutions to follow a cost-benefit approach when seeking to locate their services in order to avoid pushing up market prices and to create economies. (DOC 5842/08 ADD 2, Annex 3, 4th and 5th paragraphs, page 6, and 1st, 2nd and 5th paragraphs, page 7)

Commission's response:

The Commission has committed itself to improve the interinstitutional cooperation in this domain.

It participates in the two interinstitutional working groups set up, in Brussels the ILISWG - the Inter-institutional Logistics and Internal Services Working Group, and in Luxembourg the inter-institutional buildings working party which reports to the Heads of Administration in Luxembourg. Furthermore, when OIB and OIL were created in 2003, the potential for interinstitutional integration was explicitly mentioned, and the Commission has reconfirmed this potential in the 2009 APS communication.

The work programme of these groups contains the items mentioned in the recommendation: coordinated building policy (including the development of alternative sites in Brussels, at least for the Commission), common methodology for the appraisal of long- and short-term needs, total life cycle, ...

58. The Council requests that the Institutions submit all contracts relating to construction and, where appropriate, fitting-out to a competitive tender procedure fully implementing the Financial Regulation and the legislation relating to tendering procedures. It invites the Institutions to report and justify derogations from competitive tendering to the budgetary authority and, if the negotiation procedure is

applied in exceptional circumstances to determine the price on the basis of the construction cost while assuring that economic operators' margins remain reasonable and to scrutinise the market in the broadest possible way taking into account the advantages offered by the Protocol on the Privileges and Immunities of the European Community. (DOC 5842/08 ADD 2, Annex 3, 3rd paragraph, page 7)

Commission's response:

The Commission has taken the recommended action.

For CONSTRUCTION or RENOVATION projects the tendering procedures will be used in full compliance with the Directive.

For RENTING or PURCHASING existing buildings, the Commission applies the procedure foreseen for these operations in the Financial Regulations, including the information of the budgetary authority prior to contract signature. The Commission has recently adopted not only the principles of a new methodology for finding suitable buildings (COM(2007)501) but also the details of this new methodology (C(2008)2299 of 3.6.2008), based on a better market information, increased competition, greater transparency and improved cooperation between the services. This new methodology will be evaluated after three years and the Commission will share the results of this evaluation with the budgetary authority.

For FITTING-OUT WORKS in existing buildings, the situation is different. The Commission acquires its building completely fitted-out to its specifications under the responsibility of the owner (and therefore not subject to public procurement procedures). In doing so, the Commission avoids spending money on rent while the building is being fitted-out, and it also avoids taking the responsibility for these works. This is entirely in keeping with the rules in force.

As regards the request to make wide-spread use of competitive tendering and scrutinise the market in the broadest possible way, the Commission has first defined the principles of a new methodology in its communication COM(2007)501 on the housing policy. This (detailed) methodology itself was adopted by the Commission on 3.6.2008 (C(2008)2299) and is based on a better information of the market, increased competition, increased transparency of the procedure and better inter-service coordination.

Finally, as regards the Protocol on the Privileges and Immunities of the European Community (PPI), it is precisely in order to enjoy the fiscal advantages under the PPI that the Commission has resorted more often to usufruct rather than to traditional rent contracts, thereby ensuring savings to the EU budget.

59. The Council urges the Institutions to improve budgetary planning and the management of their debts and long term commitments taking into account the financial conditions offered by the European Investment Bank. (DOC 5842/08 ADD 2, Annex 3, 4th paragraph, page 7)

Commission's response:

In order to better quantify the "costs of ownership", OIB commissioned in 2007 a first patrimonial study from a specialised company. This study provides a structured approach for the necessary works to be carried out over time in order to ensure sound and efficient management of the Commission's property investments. A second study, on the buildings in usufruct, will be launched towards the end of 2008 - beginning of 2009. The results of these studies will be used to support the budget requests in this area and will be communicated to the competent committees.

According to FR art 14.2, the institutions cannot enter into borrowing operations, and real estate is not covered by the exception granted in FR art 46.1.4. Notwithstanding this limitation, the Commission has announced in its communication on building policy (COM(2007)501 §4.2) its intention to investigate possible financing schemes including cooperation with the EIB.

60. The Council invites the Commission to identify all required space for executive agencies and to define all aspects of its building policy and the respective role of the OIB1 and OIL2 and other relevant services in the Commission.

The Council urges the Institutions to evaluate together the Institutions' building policies everywhere and to explore with appropriate support from the OIB and OIL, based on their experience, new ways for improving interinstitutional cooperation including better coordination in using available facilities and in planning, by taking advantage of each other's good practices and initiatives, in particular in technical matters like contracts, supervision of projects and environmental issues. It invites the Institutions to consider to what extent the OIB and OIL can help with sharing experience and best practices with other Institutions with a view to exploring further possibilities of enhancing interinstitutional cooperation.

It recommends the creation by the Institutions of working groups on subjects needing interinstitutional cooperation and dialogue in particular the development of the "life cycle methodology" and to maintain good cooperation with the authorities of the host countries. (DOC 5842/08 ADD 2, Annex 3, 1st-3rd paragraphs, page 8)

Commission's response:

As regards the existing space needs of the executive agencies, these have been transmitted to the Council in the follow-up of the discussions on the Court's special report on building expenditure.

The Commission has defined its new building policy in the 2007 communication COM(2007)501. The results of a study to be launched will contribute to the definition of the various aspects of the building related to agencies (and other similar bodies) and of the role of OIB and OIL. For the time being, OIB and OIL act in the framework of special agreements.

As also stated elsewhere, the Commission is fully committed to inter-institutional co-operation in all fields, and has proven so in several instances (such as environmental and energy issues, planning, methodology for the estimation of

needs, best practices). This commitment is expressed through its participation in two inter-institutional working groups (in Brussels and in Luxembourg) and has been confirmed again in the new building policy adopted by the College in 2007 (COM(2007)501).

As regards the co-operation with the host countries and in the absence of site agreements, the Protocol on Privileges and Immunities (PPI) has filled the gaps in most areas, and co-operation arrangements have been set up in specific fields, e.g. in security, obviously linked to buildings. The recent Communication COM(2007)501 also aims at strengthening the cooperation with the host countries, which is not only of paramount importance but is in practice very cordial, good and fruitful. As regards the co-operation with Belgium, the Commission has extended this co-operation by setting up a Task Force (with subgroups if necessary), where Vice-President Kallas' office meets several times a year with the representatives of the Brussels Region. As regards the co-operation with the Grand Duchy of Luxembourg, the Heads of Administration in Luxembourg similarly meet with the Chairman of the "Fonds Urbain et d'Aménagement du Kirchberg" on a regular basis.

61. The Council calls on the Secretaries-General of the institutions to establish procedural arrangements aimed at providing the budgetary authority with regular information on building needs. This should include details of all current and future projects as well as the potential for further interinstitutional cooperation. It recommends that the Institutions include comprehensive reports based on common indicators, estimates and data in these presentations. This annual information should be made available each year before the presentation of the Preliminary Draft Budget, starting in 2008. (DOC 5842/08 ADD 2, Annex 3, 4th paragraph, page 8)

Commission's response:

The Commission presents each year, in the framework of the Preliminary Draft Budget, its needs in terms of office space and building surfaces for the years to come.

As regards inter-institutional co-operation, the Commission is ready to examine to what extent such an interinstitutional buildings policy can be established, and will do so in the two inter-institutional working groups in Brussels and Luxembourg.

The Commission's commitment to interinstitutional cooperation has been reiterated in the Annual Policy Strategy 2009 (COM(2008)72), where "... the Commission confirms that the structure of the three administrative offices is suited to their being turned into inter-institutional bodies and will examine possible options with a view to presenting appropriate proposals involving, where feasible, inter-institutional offices or other forms of cooperation, such as service level agreements."

However, embedding inter-institutional co-operation into appropriate structures is only possible if there is a firm commitment from all the Institutions. The Commission will raise the point when discussing an inter-institutional building policy in the working groups.

The Commission services (ADMIN, OIB, OIL and BUDG) are in the process of defining a common methodology in this area (including indicators). As soon as a common position is agreed, the Commission will be willing to discuss it with the other institutions.

**Special Report N° 3/2007 concerning the management of the European Refugee Fund
(2000-2004)**

The Council has made no specific recommendations to the Commission.

Commission's response:

No reply necessary.

Special Report N° 4/2007 on physical and substitution checks on export refund consignments

62. The Council acknowledges the need to improve certain procedures for checking export refund consignments. The Council welcomes the Commission's efforts to simplify the whole system of checks. The Council takes note of the Commission's intention to submit to the Council by the end of 2008 legislative proposals for improving the systems of checks, and the application of risk analyses in customs import and export procedures for goods. (*DOC 5842/08 ADD 2, Annex 5, 2nd-4th paragraphs, page 11*)

Commission's response:

The Commission has taken the recommended action for better control regimes in the following way:

-Regulation (EEC) No 386/90, on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts, has been amended by Council Regulation (EC) No 14/2008 of 17.12.2007.

-The new control methods, together with other legal recommendations that the Court has raised, have been translated into Commission Regulation N°159/2008 of 21 February 2008, amending Commission Regulations (EC) No 800/1999 and 2090/2002 as regards physical checks carried out when agricultural products qualifying for refunds are exported.

Special Report N° 5/2007 concerning the Commission's management of the CARDS programme

63. Highlighting the need for better coordination and efficient management of the Instrument for Pre-Accession Assistance (IPA), the Council welcomes the set of recommendations of the Court for implementation of this instrument. In this context, the Commission is invited to ensure that the strategic guidance for implementing the IPA should give sufficient attention to individual areas of intervention to ensure an appropriate focus of aid, a systematic approach to key areas and an appropriate basis for prioritising and selecting projects. Focus on rapid implementation of aid should be maintained, with attention to the ability of beneficiaries to fully absorb the assistance provided. An effective strategy for ensuring recipient country ownership should be established. Finally, best practice as well as monitoring and evaluation practices should be harmonised. Noting the responses of the Commission, the Council welcomes the fact that the Commission has taken and will continue to take the Court's recommendations fully into account in the context of IPA. It stresses the need for Member States to continue to be closely involved, in the context of IPA instruments, at an early stage in the programming phases. (DOC 5842/08 ADD 2, Annex 6, 1st-3rd paragraph, page 13)

Commission's response:

The Commission is taking the recommended action.

In this context, it recalls the commitments taken in the replies to the recommendations of special report on the CARDS management structures and systems.

- The strategic guidance under IPA is given by country specific multi-annual indicative planning documents (MIPD) and a multi-beneficiary MIPD. The country documents include a consolidated assessment of the challenges, needs and relative importance of the priorities for assistance, and the way this translates into strategic choices under each IPA component. A description of the major areas for intervention under each component, the results anticipated and indicative financial allocations are also provided in the MIPDs. This will allow the strategic part of the implementation to be significantly reinforced under IPA.

- Under IPA, the objective is to provide targeted and efficient assistance to all beneficiary countries. This is why despite the continuous focus on rapid implementation of aid, the IPA Commission regulation provides for a progressive path towards decentralisation.

Absorption capacity is one of the criteria for the allocation of funds to beneficiary countries within the Multi-annual Indicative Financial Framework (MIFF).

- Under IPA, much emphasis will be put on ownership of the whole implementation process by the beneficiary country.

Therefore, decentralised management is the objective whenever applicable. For this, specific structures and systems, which need to be put in place by the

beneficiary country, are required. Under IPA, stricter conditions and requirements are foreseen for the conferral of management powers by the Commission to the beneficiary country.

Finally, to ensure ownership from the national authorities, the national programmes are adopted by the Commission on the basis of project proposals submitted by the beneficiary countries.

- Concerning evaluation, the Commission has scheduled a review of the practices and has meanwhile provided for harmonised practices for the Delegations through the Guide on Self Evaluation including arrangements for disseminating results and lessons learned. This self evaluation at project level will complement the independent evaluation at programme level performed by the Unit in charge.

Finally, the close involvement of the Member States is secured by Articles 6, 14 and 20 of the IPA Regulation, in terms of their essential role in the framework of the IPA Committees and to ensure coherence, compatibility and coordination of the programmes and projects financed under the IPA regulation. At the last IPA Committee, held on June 20th 2008, the Commission and Member States agreed to work further on the exchange of information at an early stage of the IPA planning and programming process.

European Development Funds

64. The Council invites the Commission to continue with its reform efforts and to remedy the shortcomings identified by the Court as regards the reliability of the accounts. (*Doc. 5908/08, ANNEX, page 5, 4th indent*)

Commission's response:

The Commission is taking the recommended action. After the migration from OLAS to CRIS, accounting procedures, and specifically closures of accounts, will be automated. However, it should be emphasised that although closures are performed manually in OLAS, a large number of effective checks are carried out to avoid errors.

65. The Council reiterates the importance of the fact that, in the procedures for granting budgetary support and before making transfers of funds, the Commission should ensure that the conditions of the Cotonou Agreement and of the financing agreements are met. (*Doc. 5908/08, ANNEX, page 5, 5th indent*)

Commission's response:

The Commission agrees with the Council recommendation and confirms that, in the procedures for granting budgetary support and before making transfers of funds, it ensures that the conditions of the Cotonou Agreement and of the financing agreements are met.

66. The Council stresses the importance of being regularly informed on the Commission's evaluation of the effects of such measures, particularly as regards risk management, analysis of the internal control system and the audit of transactions. (*Doc. 5908/08, ANNEX, page 5, 6th indent*)

Commission's response:

This information has been included in the EuropeAid 2007 Annual Activity Report.