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COMMISSION STAFF WORKING PAPER

**accompanying the REPORT FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT and THE COUNCIL on the follow-up to 2008 discharge – Replies to
requests from the Council**

{COM(2010) 650}

TABLE OF CONTENTS

INTRODUCTION.....	1
COMMISSION STAFF WORKING PAPER accompanying the REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT and THE COUNCIL on the follow-up to 2008 discharge – Replies to requests from the Council	2
Introduction.....	3
Chapter 1 - The Statement of Assurance (DAS) and supporting information.....	6
Chapter 2 - Commission internal control system.....	8
Chapter 3 - Budgetary Management.....	10
Chapter 4 - Revenue	12
Chapter 5 - Agriculture and Natural Resources.....	13
Chapter 6 - Cohesion	18
Chapter 7 - Research, Energy and Transport.....	22
Chapter 8 - External aid, Development and Enlargement	25
Chapter 9 - Education and Citizenship	27
Chapter 10 - Economic and Financial Affairs	28
Chapter 11 - Administrative and other expenditure.....	30
Special Report No. 8/2008 "Is cross compliance an effective policy?"	32
Special Report No. 9/2008 "The effectiveness of EU support in the area of freedom, security and justice for Belarus, Moldova and Ukraine"	33
Special Report No. 10/2008 "EC development assistance to health services in Sub Saharan Africa".....	34
Special Report No. 11/2008 "The management of the European Union support for the public storage operations of cereals"	40
Special Report No. 12/2008 "Instrument for Structural Policies for Pre-accession (ISPA), 2000-2006"	41
Special Report No. 1/2009 "Banking measures in the Mediterranean area in the context of the MEDA programme and the previous protocols"	42
Special Report No. 2/2009 "The European Union's Public Health Programme (2003-2007): an effective way to improve health?"	43
Special Report No. 3/2009 "The effectiveness of Structural measures spending on waste water treatment for the 1994 1999 and 2000-2006 programme periods"	46

Special Report No. 4/2009 "The Commission's management of non-state actors' involvement in EC development cooperation"	48
Special Report No. 5/2009 "The Commission's Treasury Management"	51
Special Report No. 6/2009 "European Union food aid for deprived persons: an assessment of the objectives, the means and the methods employed"	53
Special Report No. 7/2009 "The management of the Galileo programme's development and validation phase"	54
Special Report No. 9/2009 "The efficiency and effectiveness of the personnel selection activities carried out by the European Personnel Selection Office"	55
Special Report No. 10/2009 "Information provision and promotion measures for agricultural products"	58
Special Report No. 11/2009 "The sustainability and the Commission's management of the LIFE-Nature projects"	59
Special Report No. 12/2009 "The effectiveness of the Commission's projects in the area of Justice and Home Affairs for the Western Balkans"	60
Special Report No. 13/2009 "Delegating implementing tasks to executive agencies: a successful option?"	62
Special Report No. 14/2009 "Have the management instruments applied to the market in milk and milk products achieved their main objectives?"	65
European Development Funds	66
Requests concerning individual agencies	67

INTRODUCTION

This Commission Staff Working Paper completes the Report from the Commission to the European Parliament and the Council on the Follow-up to 2008 Discharge {COM(2010) 650}. It presents in detail the answers to the 126 specific requests made by the Council in the comments accompanying its Recommendations on the 2008 Discharges.¹

¹ For each specific recommendation a reference is given to the relevant Council document. The references for recommendations 1 to 50 are all for Council document 5826/10 "Discharge to be given to the Commission in respect of the implementation of the budget for the financial year 2008"

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FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT and
THE COUNCIL on the follow-up to 2008 discharge – Replies to requests
from the Council**

Introduction

1. (Council Doc. 5826/10 ADD 1, § 1, 2nd paragraph, page 5, § 3, page 6, §§ 5 and 8, page 7 (and chapter 2, § 3, pages 13-15)) - The Council welcomes the notable improvements in the management and control of funds, showing evidence of the progress made towards the principal objective of achieving a positive DAS. It acknowledges that it would be unrealistic to obtain immediate effects of the remedial actions taken by the Commission and the Member States. The Council urges all responsible actors to continue to improve the financial management of EU funds.

The Council stresses the continuing need for simplification of expenditure schemes. It continues to encourage the Commission to propose clear and simple rules and regulations whenever possible, both at the moment of setting up new programmes and when revising existing regulations and programmes. Taking note of the improvements already achieved and expected through the streamlined legislation for the current programming period, it calls for further efforts in the preparation of programmes for the next multiannual financial framework.

However, the Council draws attention to the necessity to maintain an appropriate balance between simplifying eligibility rules and targeting expenditure towards intended objectives, while not undermining the level of assurance provided by improved controls.

The Council insists on the importance of further improving the efficiency, effectiveness and consistency of controls, in order to provide reasonable assurance of the sound financial management of funds by all parties involved.

Moreover, the Council is of the opinion that the control burden must remain proportionate to the benefits derived from controls undertaken at different levels. It asks the Commission to cooperate as closely as possible with the Member States' authorities so that best use is made of all available information.

The Council encourages the Commission to continue its work on the concept of tolerable risk of error, taking into consideration the balance between effectiveness and cost of controls, and looks forward to examining the Commission's proposals on this issue.

Commission's response:

The Commission fully supports and is vigorously pursuing the objectives sought by the Council, while recognising that simplifying rules, targeting expenditure and maintaining a high level of assurance are sometimes conflicting objectives that must be carefully balanced. The Commission has already laid the groundwork in its proposal for the triennial revision of the Financial regulation, which should enable rules to be better adapted to the needs of beneficiaries, and emphasise the importance of the output of programmes as well as the inputs through a wider use of simplified costs. By the end of 2010, the Commission will adopt a Communication examining possible ways forward in lightening the burden on small beneficiaries and assisting large beneficiaries in achieving a high level of legality and regularity and sound financial management.

The Commission Communication on tolerable risk on error (TRE) for Research, energy and transport and Rural development was adopted on 26 May 2010 ("More or less controls?: Striking the right balance between administrative costs of control and the risk of error"(COM(2010)261). The Commission will present TRE proposals for each major policy area: for Administrative expenditure before the end of 2010; for External aid, Development and Enlargement in the beginning of 2011 and progressively for the remaining sectors, including Cohesion, later in 2011.

Finally, the Commission is committed to continuing its continuous effort of improving its internal control systems, as it has already proven through the Action Plans of the past years.

2. (Council Doc. 5826/10 ADD 1, §6, page 7) - The Commission and the Court should promote better coordination between them on audits in order not to duplicate audit efforts. Moreover, they should continue to cooperate, in full respect of their individual competences and independence, towards a common understanding of the legislation.

Commission's response:

The Commission has taken the recommended action. It works closely with the Member States and the Court of Auditors on the guidance it issues on the rules and procedures governing the use of Cohesion policy funding. It routinely consults Member States on guidance documents through the various management and technical committees. The Court is invited to and does attend such meetings as well. On important issues or new procedures the Commission seeks the Court's opinion specifically, as it is doing for example on the new provisions for simplified cost options such as flat rates or on the evaluation of the audit enquiry performed on 2007-2013 expenditure by the Commission.

The Commission also organises training events for Member States to help disseminate guidance and spread good practices. An example was the "Train the trainers" seminar, with various specialised workshops in June 2009 or the technical meeting on closure requirements for the 2000-2006 period in December 2009 which was attended by representatives of winding-up bodies of all Member States.

The Commission and the Court of Auditors have put their cooperation on a permanent footing with so-called "inter-institutional colloquia" at which they discuss questions of mutual concern such as audit methodology and assessment and interpretation issues. Such colloquia are held on average twice a year. The most recent one took place on 14 January 2010. Some of the issues discussed are prepared by joint working groups. Such a working group developed a harmonised systems assessment methodology, which lays down the criteria to be applied in arriving at opinions on the quality of systems in system audits. Member States' audit authorities have been encouraged to apply the same methodology. There is also a standing working group on interpretation questions. This attempts to resolve differences of interpretation that arise in the discussion of the audit findings underlying the Court's annual report. Topics currently being discussed include the provisions on simplified cost options, the results of the closure audits for the 1994-

1999 period and public procurement issues. Since 2008 the DAS findings reported in the Court's annual report have been discussed beforehand in tripartite meetings involving the Court, the Commission and the Member States.

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

3. (Council Doc. 5826/10 ADD 1, §1, 1st and 2nd paragraph, page 8) - The Council encourages the Commission to assure that this high quality of EU accounts is maintained.

While valuing the Commission's efforts to improve the accounting control environment at the level of its Directorates-General which have contributed to a strengthening of the financial reporting framework and accounting systems, the Council asks the Commission to take further steps towards the closing of outstanding cross-cutting issues relating to interfaces between local financial management applications and the central accounting system, in order to minimise the risk to the reliability of the accounts, as well as towards the improvement of the quality of basic accounting data, notably regarding the correct application of "cut-off" principles during the closure procedure.

Commission's response:

The quality of the accounting data is being closely followed-up within the Commission. The existing local financial management applications are already subject to a validation process with a view to ensuring their consistency with the central accounting system. Also, the services of the Accounting Officer are continuously monitoring the application of "cut-off" principles throughout the Directorates General.

4. (Council Doc. 5826/10 ADD 1, §1, 3rd paragraph, page 8) - The Commission should improve the completeness and accuracy of the basic accounting data, notably on pre-financings and the recovery of undue payments. Furthermore, the Council stresses the need for a timely transfer of the assets of the EGNOS and Galileo programmes to the Commission's accounts.

Commission's response:

The Commission has continued with its accounting quality project which has improved the underlying accounting data used in preparing the 2009 accounts. More detailed information on the recovery of undue payments was also included in the 2009 accounts. The EGNOS assets were transferred to the Commission during 2009 and have therefore been included on the Commission's balance sheet at 31/12/2009. The transfer of the Galileo assets is not foreseen until 2012.

5. (Council Doc. 5826/10 ADD 1, §2, 5th paragraph, page 10) - The Commission should indicate in the annual accounts the volume of recoveries from previous years, including recoveries relating to funds under shared management.

Commission's response:

Extensive information on the recovery of undue expenses has been included in the 2009 annual accounts.

6. (Council Doc. 5826/10 ADD 1, §3, 4th paragraph, page 11) - The Court of Auditors and the Commission should intensify their coordination and cooperate closer with national authorities, with the aim of making best possible use of the results of controls and audits carried out at national level, while respecting the individual competences and independence.

Commission's response:

While fully respecting independence and national sovereignty, an enhanced cooperation with national authorities on audit and control of EU funds could further the single audit concept and the awareness at national level of the importance of sound financial management of EU funds. To promote the cooperation the Commission provides annual payment data to the national Supreme Audit Institutions (SAIs) and Finance Ministries and examine with these recipients, as well as other national audit bodies, how to further "add value" to the information provided and to the audit process more generally. The Commission furthermore encourages developing cooperation between Commission services and SAI or other national audit bodies to make best use of existing audit evidence and resources. The Commission proposal for the triennial revision of the Financial Regulation also lays down strengthened provisions on control and audit obligations of the Member States, as required by Article 317 of the Treaty on the functioning of the EU, which also includes a proposal for an involvement of national audit bodies.

Chapter 2 - Commission internal control system

7. (Council Doc. 5826/10 ADD 1, §2, 2nd paragraph, page 13) - The Council recalls the Court's suggestion to the Commission to add value to the process of annual summaries by identifying common problems, possible solutions or best practices and using this information in its supervisory role.

Commission's response:

The Commission is taking the requested action. It considers that annual summaries can be a means for improving accountability in shared management if its guidelines are followed by Member States.

The Commission has provided information on the annual summaries in its 2009 Report on the implementation of the Action Plan towards an integrated internal control framework (COM(2009)42) and in the Annual Activity Reports of the Directorates General.

The Commission revised its guidance on annual summaries and presented it to Member States in October and December 2009, taking into account recommendations of the study commissioned by the European Parliament, such as emphasizing the value-added elements and reducing redundant information.

Finally, while significant progress has been made, the Commission considers that the current added value of annual summaries is limited and that a stronger legal base is necessary to make further progress. The triennial revision of the Financial Regulation in 2010 could provide an opportunity for this.

For Agriculture the guideline regarding the establishment of the annual summaries is revised (for clarification purposes) on an annual basis in the light of the experiences of the previous exercise. Moreover, the guideline is further explained on the occasion of an annual conference with the directors of the paying agencies and the coordinating bodies. Since 2008 reporting year, Coordination Bodies in the Member States are required, in their annual summaries, to address cross cutting issues.

8. (Council Doc. 5826/10 ADD 1, §3, 5th paragraph, page 14) - The Council welcomes the measures taken by the Commission to provide training for staff involved in controls for the managing and certifying authorities of the Member States, enabling participants to give guidance and disseminate best practices. It believes that this work contributes to strengthening the capacities of the staff at all levels of control and invites the Commission to continue these efforts.

Commission's response:

The Commission is taking the requested action. It considers appropriate training for national authorities of utmost importance in the context of shared management of the structural funds. It, therefore, welcomes the positive reference of the Council. Since the beginning of the current programming period the Commission has provided regular and early training and guidance to the competent authorities

in the Member States. Specific training actions were also foreseen in the Commission Action Plan adopted in February 2008 (COM(2008)97) in that regard and are carried out on a regular basis.

9. (Council Doc. 5826/10 ADD 1, §3, 9th paragraph, page 15) - The Council underlines the importance of ensuring that the supervisory and control systems address the risks effectively at all implementation levels and that in this regard the attention is primarily directed to those expenditure areas where a high level of errors is reported.

Commission's response:

The Commission agrees that increasing the effectiveness of supervisory and control systems at all levels is a key prerequisite for further reducing error rates. The Commission has already taken determined action to improve its internal control systems over the last few years, notably through the Action Plan towards an integrated internal control framework (COM (2006) 9) and the Action Plan for structural actions (COM (2008) 97), which both have contributed to a significant overall strengthening of the supervisory and control systems (see the "impact reports" on the action plans; COM (2009) 43 and COM (2010) 52, respectively).

As a result of the action plans, Commission services have been motivated to look critically at their controls and supervision and to engage in a process of continuous improvement with a view to mitigating the risks better. This attitude is further reinforced by the two compulsory annual exercises, where each service identifies its main risks (within the framework of the Management Plan) and where it justifies the reasons underlying the financial assurance it provides (in the Annual Activity Report).

The Commission will continue to drive this improvement process, in particular in the expenditure areas still affected by a high error level. In fact, in response to a European Parliament request, it has committed to increase by 20% the expenditure share assessed as "green" by the Court of Auditors by 2014. To reach this ambitious objective, Commissioners Šemeta and Lewandowski have outlined the following priority actions (see their note of 2 March 2010), all of which should have an impact on the areas with high error rates; requiring annual management declarations of assurance from the managing bodies in Member States, introducing further simplification for grants by allowing simplified costs, providing better information on financial corrections and recoveries, and presenting concrete proposals for a tolerable level of error in all expenditure areas. The Commission is looking forward to a fruitful cooperation with the Legislative Authority in order to achieve progress on these proposals.

Chapter 3 - Budgetary Management

10. (Council Doc. 5826/10 ADD 1, 1st and 2nd paragraphs, page 16) - The Council notes that the implementation level of the 2008 budget is similar to the spending rates in 2007. However, the Council expects the impact of amending budgets in the implementation rate to appear more clearly in order to give a more accurate picture. Moreover, transparency, consistency and comparability of the information on implementation and surplus should be improved by reconciling the figures mentioned in the different documents. The Council considers it appropriate to present all information needed to calculate different implementation rates throughout the whole budgetary procedure, from the draft budget presented by the Commission to the final authorised appropriations.

The Council reiterates that over-budgeting has to be avoided and insists that a realistic budgeting from the stage of the draft budget presented by the Commission onwards remains an essential element of good budgetary management. However, it shares the Court's statement that reducing appropriations for payments through amending budgets represents good financial management by adjusting to changes and reducing the budgetary surplus.

Commission's response:

The Commission has taken the recommended action.

The comparison of implementation rates calculated from initial budget and from the final budget per Financial Framework Chapter has been transparently presented in the Report on budgetary and financial management 2009, pp. 23-24.

The end-year cut of payment appropriations in 2009 did not concern Cohesion contrary to previous years, which shows realistic budgeting in this important field.

As to the consistency and comparability of implementation reports and the surplus, it has to be noted that the surplus calculation cannot be read as a report on actual implementation. It is an accounting exercise with the sole objective of calculating the amount to be returned to the Member States (budget outturn) from appropriations which include all revenue and all expenditure, even third party appropriations. Therefore the calculation remains very technical requiring complicated explanations which the Commission already gives to the Budget authority in the context of the relevant amending budget.

11. (Council Doc. 5826/10 ADD 1, 4th paragraph, page 16) - The Council calls on the Commission to encourage Member States to transmit the remaining compliance assessment documents of the Management and Control Systems as soon as possible, as well as to pursue its efforts to achieve progress in the compliance assessment procedure.

Commission's response:

The Commission is taking the recommended action. As of 01/10/2010, it had accepted compliance assessment reports for 98,4% of the ERDF and 99,1% of the

ESF programmes. It had also accepted 99,7% of ERDF and 100% of ESF audit strategies. The exercise is therefore moving to its end and the Commission expects it to be concluded before the end of 2010.

12. (Council Doc. 5826/10 ADD 1, 5th paragraph, page 17) - The Council welcomes the improvement of the accuracy of Member States' expenditure forecasts in the area of Structural Funds, notably for the 2000-2006 period. It encourages the Commission and the Member States to continue their efforts concerning the 2007-2013 period, in order to reduce the over-estimation rate.

Commission's response:

The Commission is taking the requested action. For 2009, the overall forecasting overestimation was 12% for the 2007-2013 period. The situation varies widely from one Member State to another. The 12% overestimation is to be considered as an improvement as compared to the 2008 figure (27%). The Commission will continue its efforts to improve Member States' expenditure forecasts.

Chapter 4 - Revenue

13. (Council Doc. 5826/10 ADD 1, §1, 2nd paragraph, page 18) - Considering the complexity of most cases of post-clearance recovery of customs duties, as well as the fact that many B-accounts are often kept by local customs offices, the examinations regularly performed by the Commission and the guidelines issued in December 2007 are a useful response to the need to increase the awareness of using these accounts appropriately. Therefore, the Commission should continue its surveillance and guidance activities in order to ensure the correct establishment and recovery of duties taking into due consideration this complexity.

Commission's response:

Then Commission will continue to verify that Member States correctly maintain these accounts. Any weaknesses found will be addressed with the relevant Member States and any necessary guidance given. Where appropriate measures will be taken to recover any amounts of own resources or interest due.

14. (Council Doc. 5826/10 ADD 1, §2, 2nd paragraph, page 19) - The Commission should continue its pro-active approach aiming at managing long-standing reservations, which should result in significant progress in 2009, in order to speed up the lifting of VAT reservations.

Commission's response:

By the end of 2009 twelve of the thirty four long outstanding reservations had been lifted and action was underway to resolve at least a further four. Action was also taken to reduce the overall age of the reservation population: at the end of 2009 over 70% of the reservations in place had been set in either 2009 itself or during the preceding two years.

15. (Council Doc. 5826/10 ADD 1, §3, 1st paragraph, page 19) - The Council, welcoming the fact that a very considerable number of reservations related to GNI data were lifted in 2008 and 2009, encourages the Commission to continue its efforts to further improve the documentation of the checks that it performs on the reservations.

Commission's response:

The Commission is taking the requested action. The Commission is continuing its efforts to improve the documentation of the checks that it performs on the GNI reservations.

16. (Council Doc. 5826/10 ADD 1, 4th paragraph, page 20) - The Council encourages the Commission and the Member States to continue addressing the weaknesses of the systems, most of which the Court assessed as partially effective, so that the positive trend observed persists in the present and in future years.

Commission's response:

The Commission is taking the requested action.

The constant improvement of the IACS is confirmed by the results of the conformity audits which the Commission has carried out over the past years in all Member States but Luxembourg as well as by the low error rate indicated in the control statistics which it receives from Member States and which to a large extent are verified and validated by the certification bodies.

The Commission found that for claim year 2008, significant deficiencies existed in the IACS in Bulgaria and Romania. As a result these two Member States established action plans in 2009 which have been closely followed by the Commission. Since, however, the completion of these action plans is only foreseen for 2011 and there are already some delays in the implementation of the individual actions, the Director-General of DG AGRI made a reservation for the IACS in Bulgaria and Romania in his 2009 annual activity report, based on the reputational risk for the Commission.

Other Member States have deficiencies of a lesser nature in their IACS which do not render their systems ineffective but, rather, perfectible. Also these Member States have taken or are taking action to resolve their deficiencies.

All these deficiencies are followed up through conformity clearance procedures which ensure that the risk to the EU budget is adequately covered.

With regard to rural development supervisory and control systems, the weaknesses in Bulgaria and Romania are due to the deficiencies in the IACS, for which a reservation is included in the Directorate-General for Agriculture and Rural Development's Annual Activity Report for 2009.

The control systems for the other six Member States audited by the Commission in 2009 was found to be effective.

However, there is scope for improvement for the following items:

- Respect of general guidelines set out in the working document regarding agri-environment commitments and their verifiability, which notably provides that several control tools need to be used in combination.

- Continued efforts are required to provide simple and clear eligibility criteria and to inform beneficiaries about their obligations in a clear and unequivocal manner.

- Application of exhaustive administrative controls, in particular as regards agri-environmental measures.

- Improvement of quality of control reports to permit better traceability and clear conclusions of the controls carried out.

17. (Council Doc. 5826/10 ADD 1, § 1, 2nd & 3rd paragraphs, page 21) - With a view to addressing specific deficiencies, particularly within the SPS and SAPS schemes, the Council considers that close cooperation between the Commission and the Member States is crucial. The reliability of databases and the correctness of administrative procedures will be enhanced mainly by providing implementing entities and beneficiaries with clear and simple guidelines, particularly in relation to eligibility conditions.

Moreover, the Council is of the opinion that a consistent interpretation of the rules in force and a coordinated approach between the Commission and the Court are key tools for improving the controls' effectiveness and, at the same time, maximising their efficiency.

Commission's response:

The requested action has been taken.

The Commission is on a continuing basis cooperating with the Member States to improve the SPS and SAPS schemes. In relation to eligibility of areas for the schemes in question an extensive round of exchange of views between Member States and the Commission services has taken place during 4 meetings of the Management Committee for direct payments from December 2009 to March 2010. These exchanges of views based on current experiences covered and clarified various aspects related to the rules governing eligibility of areas for payment. Furthermore, the documents prepared by the Commission services in this context gave an overview of the legislation in force and provided in particular a state of play of the implementation in the Member States. This covered good practices and showed that the scope of the elements of the implementation which in some Member States are more challenging is limited. Possible remedies to more challenging elements were also discussed.

The Commission is in constant contact with both the Court and the Member States and, in this context, puts great emphasis on the need for a harmonised interpretation and application of the EU rules regarding the management and control of agricultural expenditure.

18. (Council Doc. 5826/10 ADD 1, §2, 3rd paragraph, page 22) - With respect to the method of calculating conformity adjustments, the Council asks the Commission to base the recoveries, to the maximum possible extent, on the actual amounts of the irregular payments subject to appropriate information being provided by Member States, reserving the application of flat-rate corrections to exceptional cases.

Commission's response:

The requested action has been taken.

Financial corrections are determined on the basis of the nature and gravity of the infringement and the financial damage caused to the EU. The amount is calculated on the basis of the loss actually caused or on the basis of an extrapolation. Where this is not possible, flat-rates are used which take account of the severity of the deficiencies in the national control systems in order to reflect the financial risk for the EU. As agricultural expenditure is implemented under shared management, the Member States are better placed than the Commission to assess and provide evidence of the real financial loss or risk for the EU budget. A more precise calculation of the financial loss for the EU budget therefore requires the active co-operation of the Member State concerned at all levels of the conformity clearance procedure because only the Member State has all the necessary information to make such a calculation. This is also reflected in the wording of the request itself.

It should be noted in this context that in December 2009, the Commission has set out to Member States the conditions under which it is prepared to limit the amount of any financial correction to the error rate found by the Member States in the transactions at final beneficiary level and reported in its control statistics for the aid scheme concerned. These conditions are part of a system by which Member States can, from 2010, reinforce the overall framework for gaining reasonable assurance on the legality and regularity of transactions at the level of final beneficiaries. To this end, the certification bodies should extend their work beyond the present requirements by fully reperforming, for a given expenditure population, a representative sample of transactions which the paying agency in question has checked on the spot. The work would cover the entire handling of the file, from receipt of the aid application to the calculation and execution of the final payment.

Since the reform of the system in 1996, a flat-rate was used in only 45% of all cases with a financial correction. If the last ten conformity decisions are taken, this percentage drops further to 37%. This demonstrates the Commission's continuous effort to limit the use of flat-rates as much as possible.

19. (Council Doc. 5826/10 ADD 1, § 3, 4th paragraph, page 22) - Further efforts still need to be made and simplification remains a priority.

Therefore, the Council welcomes the additional guidance that the Commission has been providing to Member States on how to implement agri-environmental measures, but keeps on calling for concrete, streamlined and practical tools to be supplied at the beneficiaries' level, such as user-friendly standard forms and timetables, in order to improve the common interpretation of rules, prevent errors and improve the effectiveness of the financial aid.

Commission's response:

The Commission is taking the requested action.

Rural development measures, and notably agri-environmental ones, are characterised by more demanding eligibility criteria compared to direct payment schemes. The resulting complexity is known and accepted as a condition to achieve

the overall objective of providing environmental benefits and public goods through these aid schemes.

Nevertheless, there is scope for some simplification of the agri-environmental measures. The Commission has taken several measures to simplify existing rules and to ensure effective and efficient implementation of the control rules in rural development. In particular Commission Regulation (EC) 1975/2006 has for the first time established a comprehensive and transparent legal control framework for rural development. Furthermore, the Commission has established in 2007 a final version of a guidance note providing guidelines and additional explanations for the implementation of agri-environmental measures. Best practices of controllability of agri-environmental measures are regularly discussed in the Rural Development Committee. Finally, the Commission has enhanced its audit activities in this area.

Commission Regulation (EC) 1975/2006 will be recast during 2010 in order to simplify and clarify certain rules. In addition, as part of DG AGRI 2010 annual audit work programme, a task force has been set up to follow up the high error rate reported by certain Member States in 2009 for rural development measures under axis 2.

However, it should be noted that rural development programmes are implemented under shared management and that the Community legislation only provides the general legal framework. It is up to the Member States to define the application procedures and tools to be used.

20. (Council Doc. 5826/10 ADD 1, § 4, 1st & 2nd paragraphs, page 23) - The Council emphasises the importance of continuing to improve the functioning of the control strategy of Environment, Fisheries, Health and Consumer protection.

Thorough ex-post audits are essential for detecting errors and to provide a basis for all necessary financial corrections, but also to determine the origin of the most recurrent errors in order to tailor preventive measures.

Commission's response:

DG ENV expects to reach its objective of more than 30 ex-post audit reports issued in 2010. On 30 June 2010 23 reports have already been issued. The ex-post methodology and audit plan will also be revised for 2011 in order to optimise controls.

DG MARE, given the various management modes it has to operate, has established a framework audit strategy for the programmes under shared management. This strategy reflects the overall objective to be achieved through a specific annual audit plan. The audit plan for 2010 foresees 14 audit assignments on the effective functioning of the management and control systems and the quality of the Compliance exercise. The result of this audit activity with the consolidation of the information obtained from other sources such as national audit reports, annual control reports and opinion, results from other Structural Funds DGs on common authorities, are forming a solid audit environment for preventing and detecting errors. As regards the expenditure under direct management, an annual audit plan

is established based on a risk analysis to adequately cover risks identified from previous years' audit activity. The audit plan for 2010 foresees 7 audit assignments covering the four main activities under direct management. Audit results of 2008 and 2009 allowed the DG to determine the origin of errors and to tackle them through specific actions plans with preventing and correcting measures implemented or being implemented.

As for DG SANCO, in 2010 27 projects should be audited representing more than 20% of the concerned operational expenditure and 5% of the number of transactions. These audits will be carried out partly by staff of DG SANCO and by an external audit company.

In addition, whenever necessary, DG SANCO will also organise ex ante controls.

Chapter 6 - Cohesion

21. (Council Doc. 5826/10 ADD 1, 1st & 3rd paragraphs of page 24) - The Council, being aware that again in 2008 at least 11% of the total amount reimbursed to 2000-2006 Cohesion policy projects should not have been reimbursed, urges the Commission and the Member States to remedy this situation without delay. The Council urges the Commission and the Member States to make quick adjustments as soon as problems become apparent, notably following on-the-spot audits.

Commission's response:

The Commission is taking the requested action. The error rate provided by the Court of Auditors on a yearly basis is the result of an extrapolation based on its audit work conducted on a sample of transactions covering all Member States and all the funds under the Cohesion policy chapter. It may not be directly translated in a financial amount to be reimbursed.

The Impact Report to the 2008 Action Plan (COM(2010)52) shows that the Commission has improved its supervisory role, focusing on a series of actions that will bring the error rate down in the middle and long term. The Commission knows the main types and concentration of errors and it is taking action to address them. The Commission's supervisory work is concentrated on areas and countries which present the most significant weaknesses. It is focusing its efforts on correcting errors from the 2000-2006 period as soon as they arise and in any event before closure. For the 2007-2013 period the Commission has focused on preventive action, such as the approval of the compliance assessments and the national audits strategies of the Member States. Audit results on the implementation 2007-2013 programmes show a clear decrease of the estimated error rate. The audit work of the Structural Funds DGs is outlined in the Joint Audit Strategy for structural actions.

22. (Council Doc. 5826/10 ADD 1, §1, 1st paragraph, page 24) - The Council notes the Court's findings that a major part of the estimated error rate is related to eligibility errors, such as conditions not met, failure to respect procurement rules and inclusion of non-reimbursable costs. The Council shares the Court's recommendation that the Commission should focus the guidance given to the Member States on this most frequent type of errors.

Commission's response:

The Commission is taking the requested action. It considers appropriate training for national authorities of utmost importance in the context of shared management of the structural funds. Since the beginning of the current programming period the Commission has provided regular and early training and guidance to the competent authorities in the Member States. Specific training actions were also foreseen in the Commission Action Plan adopted in February 2008 (COM(2008)97) in that regard and are carried out on a regular basis.

23. (Council Doc. 5826/10 ADD 1, §1, 2nd paragraph, page 25) - The Council welcomes the fact that the Commission performs its supervisory role not only

through its audit activity, but also through programme negotiations, monitoring committees, meetings with managing and audit authorities, guidance and seminars. It encourages the Commission to continue its efforts. Exchange of best practices and spreading of information have to be developed or further improved, and single points of contact could be created to promote the uniform interpretation of the procedures.

Commission's response:

The Commission is taking the requested action. It considers appropriate training for national authorities of utmost importance in the context of shared management of the structural funds. Since the beginning of the current programming period the Commission has provided regular and early training and guidance to the competent authorities in the Member States. Specific training actions were also foreseen in the Commission Action Plan adopted in February 2008 (COM(2008)97) in that regard and are carried out on a regular basis.

24. (Council Doc. 5826/10 ADD 1, § 1, 2nd paragraph of page 25) - The Council encourages the Commission, in cooperation with the Member States, to make concrete proposals aiming at further simplification of procedures, and to continue its efforts notably concerning simplified cost calculations.

Commission's response:

The Commission is taking the requested action. It fully agrees and has already taken steps in order to translate in concrete action this recommendation. In 2008, the Commission set up a Task Force at Commission level between DG REGIO and DG EMPL, with the aim to identify specific measures to be adopted at legislative and non-legislative level in order to facilitate the financial flows to beneficiaries and simplify the implementation of interventions, while ensuring the EU financial interests. This Task Force had several reflections and discussions with an Expert Group on Simplification, composed by national experts from managing authorities, certifying authorities and audit authorities in the Member States. Several of the proposals discussed within the Task Force and the Expert Group are reflected in the three modifications of the General regulation, the amendment of ESF and ERDF regulations as well as the amendment of the Commission's implementing regulation. For simplified costs, which have a clear added-value in terms of implementation and controls, the adoption of the Commission guidelines on 28 January 2010 is expected to facilitate Member States' use of these options. In parallel, the Commission services are providing their ex-ante assessment on national proposals for the calculation of indirect costs on a flat-rate basis, trainings and, if needed, assistance to national authorities.

Simplification of the regulatory framework comes to an end but the Commission will pursue this objective. After the last set of simplifying legislative measures was adopted by the Parliament in 2010, the Commission intends to pursue its simplification efforts by discussing with Member States on further simplification through practical working arrangements.

25. (Council Doc. 5826/10 ADD 1, §2, 2nd paragraph, page 25) - The Council stresses the key role of Member States and Commission in improving financial management of EU funds under shared management and under the relevant legislation.

Commission's response:

The Commission agrees to the statement of the Council and is taking the recommended action. Annual summaries can be a means for improving accountability in shared management if its guidelines are followed by Member States. The Commission revised its guidance on annual summaries and presented it to Member States in October and December 2009, taking into account recommendations of the study commissioned by the European Parliament, such as emphasizing the value-added elements and reducing redundant information. The triennial revision of the Financial Regulation in 2010 – on which the Parliament will be involved by Co-decision procedure - could provide an opportunity for this. Moreover, in accordance with the single audit model (in which each level of control builds on the preceding one), article 73 of the Regulation n°1083/2006 foresees an enhanced cooperation between the Commission and the audit authorities of the Member States.

The Commission is also taking steps to provide appropriate training for national authorities in the context of shared management of the structural funds. Since the beginning of the current programming period the Commission has provided regular and early training and guidance to the competent authorities in the Member States and will continue doing so.

26. (Council Doc. 5826/10 ADD 1, §2, 3rd paragraph, page 26) - The Council notes that the system for reporting has been clarified and strengthened for the period 2007-2013 and that the Commission is maintaining its efforts to improve the reporting. It urges the Member States to continue their action and encourages the Commission to maintain its efforts in order to obtain reliable and complete information.

Commission's response:

The Commission is taking the requested action. It considers that the data on financial corrections for 2009 submitted by the Member States to the Commission in the 1st half of 2010 are of better quality than in previous years. These data are published in the Commission's final annual accounts. In the framework of its 2008 Action Plan the Commission has carried out audits of Member States' systems for withdrawals and recoveries in 19 Member States. The remaining Member States will be audited in 2010.

For the 2007-2013 period, there is a standardised procedure for submission of recovery statements through the IT system SFC2007. The Commission expects that this reporting procedure will improve the quality of information at its disposal. Member States are also required to distinguish corrections deriving from their own controls and those from EU audits.

27. (Council Doc. 5826/10 ADD 1, §3, 2nd paragraph, page 26) - The Council expects the Commission to maintain its efforts, in cooperation with Member States to further improve recovery procedures and reporting relating to the 2000-2006 programmes. However, the Council recalls that the final objective is not to increase the amount of corrections but to maximise the correct use of the funds.

Commission's response:

The Commission is taking the requested action. It considers that the data on financial corrections for 2009 submitted by the Member States to the Commission in the 1st half of 2010 are of much better quality than in previous years. These data are published in the Commission's final annual accounts. In the framework of its 2008 Action Plan the Commission has carried out audits of Member States' systems for withdrawals and recoveries in 19 Member States. The remaining Member States will be audited in 2010.

28. (Council Doc. 5826/10 ADD 1, 2nd paragraph, page 27) - The Council invites the Commission to pursue its efforts to reduce complexity and to ensure a rigorous and cost-effective application of controls, in particular aiming at improving the reliability of audit certificates, and through effective implementation of its ex-post audit strategy, imposing penalties where appropriate, and making timely recoveries or adjustments in cases of undue reimbursement of claimed costs.

Commission's response:

The Commission has launched the Communication on simplifying the research framework programme (COM(2010)0187) to open a debate on a concrete set of proposals in order to reduce the complexity of rules as this is a major source of errors and ineligible costs claims. However, many of these proposals can only be implemented within the next framework programme.

The Commission adopted on 26 May 2010 a Communication to the other Institutions proposing a level of tolerable risk of error in research of between 2% and 5% (COM(2010)0261). This level is established taking into account the cost-effectiveness of the controls and an acceptable level of residual error justifiable in the light of these costs.

In order to improve the quality of the audit certificates in FP7 the Commission has taken remedial action. FP7 audit certification is based on "agreed upon procedures", which require the certifying auditor to perform pre-defined procedures and report on that basis factual findings. This approach should lead to a reduction in errors of interpretation of the eligibility rules by the auditors.

The coverage of expenditure by ex-post audits has continued to increase and the research DGs achieved the targeted number of audits for the year. The number of completed audits increased from 1 090 at the end of 2008 to 1 911 at the end of 2009.

The Commission considerably increased the recoveries of amounts due during 2009. Nevertheless, additional efforts will be undertaken in order to improve the timely implementation of audit results. The Communication on the simplification of the recovery process adopted on 15 December 2009 (SEC(2009)1720) provides measures in that sense in particular for cases of extrapolation.

The Commission took action during 2009 as regards imposing financial penalties. In this respect, by the end of 2009, the Commission had imposed penalties in 34 cases, amounting to €514 330.

29. (Council Doc. 5826/10 ADD 1, §2, 1st paragraph, page 28) - The Council invites the Commission to continue to provide support and guidance to beneficiaries and certifying auditors in the context of FP7.

Commission's response:

To further simplify the audit certification procedures, the Commission has reformed the audit certification system under FP7 with the introduction of :

(1) audit certification based on "agreed upon procedures" which consist of a compulsory set of procedures to be used by certifying auditors; auditors are no longer requested to provide an assurance opinion but to perform a set of procedures in order to provide an independent report on factual findings, which will be the basis for the Commission to assess the eligibility of costs and/or the methodology.

(2) optional cost calculation methodology certification for beneficiaries with multiple participations in order to prevent typical methodological errors. These measures are expected to ensure that, before payments are authorised, beneficiaries' costing methodologies better comply with the contractual provisions.

The Commission has implemented measures to reinforce the effectiveness of audit certificates by improving support to certifying entities participating in workshops and training courses, beneficiaries and operational services within the Commission. Exhaustive Guidance Notes for Auditors and Beneficiaries on certificates issued by external auditors are available on CORDIS and regularly updated with the feedback from users.

Finally, the Commission's information approach is largely based on publication of guidance and information through CORDIS, the functioning of the "Research Enquiry Service" and the role of National Contact points.

30. (Council Doc. 5826/10 ADD 1, §2, 2nd paragraph, page 28) - In the context of the preparation of the Eight Framework Programme for research and technological development (FP8), special attention should also be paid to work concerning the simplification of the funding rules, while securing the effectiveness of control systems.

Commission's response:

In particular in view of the next Research framework programme, the Commission has recently issued two Communications "Simplifying the Implementation of the Research Framework Programmes" (COM(2010)0187) and "More or less controls? Striking the right balance between the administrative costs of control and the risk of error" (COM(2010)0261).

In the first Communication, the Commission addresses (and open a debate on) the problems caused by complex eligibility and funding rules for grant beneficiaries.

In the later, the Commission proposes a level of tolerable risk of error in the research area between 2% and 5%. This level is established taking into account the cost-effectiveness of controls and an acceptable level of residual error justifiable in the light of these costs.

Detailed discussions will take place during the establishment of the legislative framework for FP8.

31. (Council Doc. 5826/10 ADD 1, §2, 3rd paragraph, page 28) - The Council stresses the need to ensure sufficient coordination within the Commission, especially concerning the follow-up of audit results.

Commission's response:

The audit reports' findings (issued either by the Commission services or by the Court of Auditors) are followed up by each DG. Their implementation from the audit report till the offsetting in the next payment to the same beneficiary (or till their recovery through a recovery order) is constantly monitored and reported.

Moreover, in case the beneficiary is re-selected for audit, the respective external auditors prepare the audit taking into account the results of previous audit reports.

The research family DGs have regular meetings on these issues co-ordinating questions of eligibility. A Wiki site where audit reports from all DG's of the Research family are up-loaded has been established to exchange information on individual audit results.

32. (Council Doc. 5826/10 ADD 1, §2, 4th paragraph, page 28) - The Council wishes to recall the content of its recommendation on the discharge for 2007 where it called for a more effective use of the available sanction mechanisms, which should be used as an incentive for beneficiaries to improve the quality of their cost statements.

Commission's response:

Further to the observations from the Court and the Council, the Commission took further action during 2009 and applied liquidated damages. By the end of 2009, the Commission had imposed penalties in 34 cases, amounting to €514 330.

Chapter 8 - External aid, Development and Enlargement

33. (Council Doc. 5826/10 ADD 1, 5th paragraph, page 29) - The Council notes with concern the Court's statement that audit reports and supporting documents on projects implemented by UN agencies are difficult to receive and invites the Commission to continue to improve the relations between UN agencies and the EU in this respect.

Commission's response:

The Commission fully supports the Court's requests to obtain necessary supporting evidence from UN organisations, and this principle is clearly stipulated in the FAFA. As soon as the Court informs it of difficulties encountered in this respect, the Commission does its best to ensure that its counterparts at the UN find a solution, and that the Court receives the information it needs. The adoption, in April 2009, of standard terms of reference for verification missions has improved the cooperation between UN agencies and the EU, and has helped to ensure that the UN co-operates more efficiently with the Court. The Commission continues to work to improve the system, and it agreed with the UN in April 2010 that additional information, including extracts from internal and external audit reports, could be made available on request.

34. (Council Doc. 5826/10 ADD 1, §1, 1st paragraph, page 30) - The Council invites the Commission to continue adopting measures to improve the effectiveness of the Commission's ex-ante control system for payments and contracts in DG AIDCO and DG RELEX.

Commission's response:

Both EuropeAid and DG RELEX will continue to improve their supervisory and control systems with regard to the Council's request and the Court's recommendations.

35. (Council Doc. 5826/10 ADD 1, §1, 1st paragraph, page 30) - The Council asks the Commission to continue to strengthen the support provided to the organisations implementing EU-funded projects and to monitor them more closely.

Commission's response:

The Commission is finalising a 'Financial Management Toolkit' for organisations implementing EU funded projects under EuropeAid's portfolio.

36. (Council Doc. 5826/10 ADD 1, §1, 2nd paragraph, page 30) - The Council notes the shortcomings relating to ex-post controls and weaknesses in the financial management and supervision of financial information of the projects in DG RELEX and invites the Commission to ensure that audits and ex-post controls are planned realistically and are followed up closely. The Council also recalls the importance of proper documentation and systematic analyses of the results of the audits and ex-post controls.

Commission's response:

The Commission already took measures in 2009 to address the recommendations of the Court of Auditors regarding ex post controls in DG Relex and the Court has recognised progress made in 2009. DG Relex has continued with a revision of its ex post control working methods and is fully aware of the needs for proper documentation, systematic analyses of results and for a follow-up of the respective reports.

37. (Council Doc. 5826/10 ADD 1, §2, 2nd paragraph, page 30) - As regards the budget support payments, the Council recalls the weaknesses in the process of verifying the fulfilment of the payment conditions and counts on the Commission to continue promoting awareness of the need for a more structured and formal approach in the assessment of budget support payments and strengthening verification in this area.

Commission's response:

The Commission has already taken some concrete steps in order to improve such an approach and is constantly engaging in improvements of its Budget Support modus operandi and will continue to do so. In particular, the Commission is updating and improving its Guidelines on Budget Support taking particular care in the issues pointed by Council.

38. (Council Doc. 5826/10 ADD 1, §3, 1st paragraph, page 31) - The Council welcomes the improvements in the use of external audits in DG AIDCO's internal control framework and invites the Commission to pay special attention to its risk management process as a complement to the improvements already made in the audit methodology and other recent reforms.

Commission's response:

EuropeAid's risk management methodology has been completely checked and reinitialised in 2010.

39. (Council Doc. 5826/10 ADD 1, §3, 2nd paragraph, page 31) - The Council points out that weaknesses persist in the audit planning, in the audit module Common RELEX Information System (CRIS) and in the monitoring of the audit results. It notes that the Commission has engaged itself to improve audit planning in a realistic way. The Council welcomes the work already done to substantially revise the audit methodology, making use of audit planning, and the increase in the number of audits completed. It invites the Commission to pursue its efforts and expects that the recent compulsory use of CRIS, together with the system created to analyse the audit results, contribute efficiently to reducing the weaknesses.

Commission's response:

EuropeAid has in the meantime implemented further significant improvements to the audit methodology and IT tools and welcomes the recognition of the Court of Auditors on the substantial progress made in particular in relation to audit planning for 2010.

Chapter 9 - Education and Citizenship

40. (Council Doc. 5826/10 ADD 1, 3rd paragraph, page 32) - The Council notes with satisfaction the measures taken by the Commission to simplify the rules including the vast introduction of lump sum payments, which corresponds to the Council's recommendation on the discharge for 2007, and invites the Commission to pursue all possible actions of simplification.

Commission's response:

The Commission actively explores and implements possible simplification actions and activities.

For instance, new electronic forms have been introduced in 2009/2010 for the Lifelong learning Programme with great simplification and precision enhancements.

As far as the Youth in Action programme is concerned, 82% of the funds allocated to Youth in Action will be managed on the basis of lumps sums and scales of unit cost in 2011; only a limited share of the programme will remain outside this funding approach, due to the very nature of the activities concerned (more experimental projects, partnerships...). It is estimated that all activities likely to be supported through lumps sums and scales of unit cost are now managed in this way.

41. (Council Doc. 5826/10 ADD 1, §1, 2nd paragraph, page 33) - While welcoming the fact that the Commission has refined the control objectives by setting those for the primary controls in a specific guide constituting an integral part of the single agreement between the Commission and the national agencies and by updating the guidelines relating to secondary controls for national authorities, the Council invites the Commission to complete the latter by developing the guidance further and making it more prescriptive as recommended by the Court.

Commission's response:

The Commission has taken the requested action. As a follow-up to the Court's recommendations, updated guidance was sent to the National Authorities on 18 December 2009.

42. (Council Doc. 5826/10 ADD 1, §1, 5th paragraph, page 33) - The Council recommends the Commission to involve itself in a closer supervision of the annual ex post declarations process, with more thorough monitoring visits and direct verification if the controls described are adequate and fully applied.

Commission's response:

In line with its Strategic Supervision Policy, DG EAC has already reinforced the on-the-spot visits that focus on the existence and implementation of management procedures and checks as described by Member States. The 2010 audit plan will continue in this perspective.

43. (Council Doc. 5826/10 ADD 1, 3rd paragraph, page 35) - The Council encourages the Commission to continue its approach, more particularly for the research programmes, by intensifying actions aimed at informing beneficiaries and certifying auditors about recurrent errors, as well as guiding their correct application of the rules governing the eligibility of costs.

Commission's response:

To further simplify the audit certification procedures, the Commission has reformed the audit certification system under FP7 with the introduction of :

(1) audit certification based on "agreed upon procedures" which consist of a compulsory set of procedures to be used by certifying auditors; auditors are no longer requested to provide an assurance opinion but to perform a set of procedures in order to provide an independent report on factual findings, which will be the basis for the Commission to assess the eligibility of costs and/or the methodology.

(2) optional cost calculation methodology certification for beneficiaries with multiple participations in order to prevent typical methodological errors. These measures are expected to ensure that, before payments are authorised, beneficiaries' costing methodologies better comply with the contractual provisions.

The Commission has implemented measures to reinforce the effectiveness of audit certificates by improving support to certifying entities participating in workshops and training courses, beneficiaries and operational services within the Commission. Exhaustive Guidance Notes for Auditors and Beneficiaries on certificates issued by external auditors are available on CORDIS and regularly updated with the feedback from users. Finally, the Commission's information approach is largely based on publication of guidance and information through CORDIS, the functioning of the "Research Enquiry Service" and the role of National Contact points.

44. (Council Doc. 5826/10 ADD 1, 5th paragraph, page 35) - While noting that actions have been taken to improve the quality of audit certificates for FP7, it insists on the importance of this instrument as a contribution to prevention and early correction of errors and encourages the Commission to increase its efforts for upgrading the certifying auditors' know-how and actively monitoring their performance.

Commission's response:

The Commission established in close collaboration with the European Federation of Accountants FAQ and FP7 guidance notes for the beneficiaries and auditors involved in the audit certification. While participating in conferences and workshops to raise awareness on the FP7 certification process, the Commission also 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.

The Commission's information-approach is largely based on publication of guidance and information through CORDIS, the functioning of the "Research Enquiry Service" and the role of the National Contact Points.

Chapter 11 - Administrative and other expenditure

45. (Council Doc. 5826/10 ADD 1, §2, 2nd paragraph, page 36) - The Council is concerned with the various problems identified by the Court in the functioning of the new Individual Rights Information System (IRIS) used to manage staff entitlements, including the calculation of salaries, implemented by the PMO. The PMO should take all measures necessary to remedy these shortcomings, in order to avoid in the future the problems identified by the Court.

Commission's response:

The Office for Administration and Payment of Individual Entitlements (PMO) has already started the tests of the redeveloped modules for the management of individual entitlements. The extensive test programme elaborated takes into account the lessons drawn from past experience.

46. (Council Doc. 5826/10 ADD 1, §2, 3rd paragraph, page 36) - The Council urges the PMO to correct the weaknesses identified by the Court in the controls implemented to ensure that calculations concerning the transfer of acquired pension rights are performed correctly, and that reimbursements are correctly recovered in the event of erroneous calculations. The PMO is requested to reinforce its internal controls in this field.

Commission's response:

The requested action has been taken. The Office for Administration and Payment of Individual Entitlements (PMO) has reinforced its internal control procedures to address the identified weaknesses.

47. (Council Doc. 5826/10 ADD 1, §2, 4th paragraph, page 37) - The Commission should take duly into account the remarks made by the Court of Auditors when assessing the workings of the pension scheme and fund for local staff at Commission delegations.

Commission's response:

The recommendation has been taken into consideration. The necessary modification of the Staff Regulation is part of the European External Action Service (EEAS) package and will be decided by the legislative authority.

48. (Council Doc. 5826/10 ADD 1, §3, 4th paragraph, page 38) - The Council recalls that the Court also identified weaknesses in a large number of other agencies, relating in particular to their procurement and recruitment procedures. Being aware that such weaknesses are most frequently observed during the start-up phase of new agencies, the Council calls on the Commission to intensify its assistance and support provided to agencies and to share its expertise with them to a larger extent.

Commission's response:

The Commission continuously provides wide-range assistance to agencies in several domains and particularly on budgetary, accounting, human resources, financial management, general management, and procurement, be it under a legal requirement or on a voluntary basis. Moreover, the agencies are encouraged to sign service level agreements with the Commission services for support services.

49. (Council Doc. 5826/10 ADD 1, §3, 5th paragraph, page 38) - The Commission and the agencies should apply activity-based budgeting and management systems wherever possible, and to extend multiannual programming concepts.

Commission's response:

The Commission and the executive agencies have already fully implemented those management systems' concepts.

Concerning the regulatory agencies, due to their legal acts, the Commission can not impose the implementation of any management systems. Nevertheless, this issue is being discussed within the interinstitutional working group on regulatory agencies that will finalise its works by the end of 2011.

50. (Council Doc. 5826/10 ADD 1, §3, 6th paragraph, page 38) - The Commission should continue to take the agencies' unused appropriations into account when establishing the draft budget for 2011, with the aim of bringing down the agencies' annual surpluses. The Commission should also carefully check, and if necessary revise, the agencies requests for funds and posts with the aim of presenting a realistic budget proposal corresponding to the agencies' real needs.

Commission's response:

The Commission has taken the recommended action.

Agency surpluses 2009 will be recovered as assigned revenue in 2010 and have been taken into account when calculating the EU contribution for 2011.

The draft budget 2011 has been established after a careful examination of agencies' requests for funds and human resources based on the analysis of the implementation in 2009 and the evolution of establishment plans.

This analysis is presented in the working document of the Draft Budget 2011 "Bodies set up by the Union and having legal personality [COM (2010) 300 – May 2010].

51. *(Council Doc. 5826/10 ADD 2, Annex 1, 4th paragraph, page 3)* - The Council invites both the Commission and the Member States to pursue their efforts towards this objective, bearing in mind the cost-benefit ratio, and in this context agrees that the effectiveness of cross compliance could be further improved.

Commission's response:

The Commission has taken the requested action.

After its introduction in the CAP, significant efforts have been made to simplify cross-compliance and to ease the functioning of the system. Three clear examples are the Commission Report on cross compliance in 2007, the Health Check in 2008 and the Simplification of the CAP in 2009. Each of these simplification steps led to amendments in the regulation on the implementation of the control and sanction system. The Health Check also led to the netting-out of non pertinent requirements. Moreover, working documents have been spread in order to clarify and facilitate the implementation of cross compliance in Member States, including in particular a guidance document on the clarification of on-farm requirements issued in 2009. Furthermore, later in 2010 the Commission has adopted on 30 September 2010 a legislative proposal modifying Regulation (EC) n° 73/2009 for further simplification of cross compliance by modifying the rules applicable to follow-up checks.

Special Report No. 9/2008 "The effectiveness of EU support in the area of freedom, security and justice for Belarus, Moldova and Ukraine"

52. *(Council Doc. 5826/10 ADD 2, Annex 2, 4th paragraph, page 4) - The Council calls upon the Commission to continue to further improve the effectiveness of EU support in the area of freedom, security and justice, with a special focus on coherence between the available financial instruments and initiatives, and on coordination between donors.*

Commission's response:

The Commission considers that this recommendation was implemented.

Co-operation in the area of freedom security and justice is of paramount importance in neighbouring countries. The Commission is paying particular attention to improve its effectiveness by strengthening the links between policy dialogue and co-operation, by more focused programming and better implementation. At policy level a wide network of sub-committees has been established and this allows continuous policy dialogue. At programming level, the recently concluded mid-term review had indentified the broad scope of co-operation, the specific objectives and the expected results. At implementation level new instruments (Comprehensive institution building programmes, twinning) allow mobilising the right type of expertise to support co-operation in this area.

Special Report No. 10/2008 "EC development assistance to health services in Sub Saharan Africa"

53. (Council Doc. 5826/10 ADD 2, Annex 3, §III, 2nd paragraph, page 8) - The Commission is invited to consider increasing its aid to the health sector during the tenth EDF mid-term review to support its commitment to the health MDGs;

Commission's response:

During the ongoing 10th EDF Mid-term review exercise, the Commission has given particular attention to the MDGs and to its support in this respect. It is considering how to best invite countries to give more attention to their record in terms of MDGs, starting with a reinforced attention to policy dialogue and quality of policies. Through direct increase of focal sector support (where health is a focal sector) or through general budget support, the Commission is working toward an increase of its assistance to the health sector, while fully respecting and strengthening ownership by partner countries and division of labour with other donors. In the health sector, such support will be guided by the policy framework adopted during 2010 on "the EU role in Global Health (Communication and Staff Working Documents 31/03, Council conclusions 10/05) which commits the Commission and also EU Member States to enhance the strengthening of health systems by adhering to the aid effectiveness commitments, and committing to the specific targets of two thirds of EU health aid through national programme-based approach, and 50% by using country systems.

54. (Council Doc. 5826/10 ADD 2, Annex 3, §III, 3rd paragraph, page 8) - The Commission is invited to continue improving the predictability of its funding provided through various instruments to enable countries to better secure the resources needed for their health sectors.

Commission's response:

The Commission launched MDG-Contracts in 8 countries (Burkina Faso, Ghana, Mali, Mozambique, Rwanda, Tanzania, Uganda, Zambia) during 2009, with total commitments amounting to €1,8bn or 50% of all GBS programmed during EDF10.

MDG-Contracts provide longer term (6 year), more predictable commitments of budget support that enable governments to plan their strategies and budgets to achieve the MDGs with greater certainty about future resource inflows.

Indicators for the monitoring of the MDG contracts are health and education related.

55. (Council Doc. 5826/10 ADD 2, Annex 3, §III, 4th paragraph, page 8) - The Commission is invited to take into account the Aid Effectiveness principles enshrined in the Paris Declaration and the AAA while respecting the EU Code of Conduct on Complementarity and Division of Labour.

Commission's response:

The Commission has been at the forefront of the aid effectiveness agenda since 2005 and has actively contributed with the Member States to the adoption of the Paris Declaration (2005) and the Accra Agenda for Action (2008). Since 2006, the EC has been applying the aid effectiveness principles to all its development assistance programmes with a specific emphasis on promoting division of labour among donors in order to reduce aid fragmentation.

56. (Council Doc. 5826/10 ADD 2, Annex 3, §III, 5th paragraph, page 8) - The Commission is invited to monitor the EU collective increased support to health, based where possible on existing mechanisms.

Commission's response:

Concerning specifically the EC assistance to the health services in Sub-Saharan Africa, the Commission has jointly designed the new health programmes with the partner countries with the main objectives of closely supporting the implementation of the national health policies, promoting national ownership. The Commission will monitor the EU collective increased support to health; in its effort, the Commission will depend on the cooperation with EU Member States.

57. (Council Doc. 5826/10 ADD 2, Annex 3, §III, 6th paragraph, page 8) - The Commission is invited to review how its assistance to the health sector is distributed to ensure it is primarily directed to its policy priority of health systems support.

Commission's response:

The Commission and the Member States have committed in the recently adopted Communication and Council Conclusions on the EU role in global health, to a greater support to health systems, as the basis of all its support to health and development. The main approach is by applying the aid effectiveness principles to the health sector (with clear commitments on 2/3 of support through national programme based approaches and 50% using country systems), and to refer to the global compact principles of the International Health Partnership (IHP). An evaluation which is being defined at present, and a project in monitoring EC/EU health support, will look at this distribution. Through its direct support to health as a focal or non sector (in 33 countries), indirect through the budget and MDG contracts, and through its dialogue at the IHP, the Global Fund and GAVI, the EC will continue to enhance the attention to health system support; the EC continues to widen its health support to comprehensive health plans. This will also require additional capacity in the assessment and in-depth dialogue at country level and provisions are being made towards that end.

58. (Council Doc. 5826/10 ADD 2, Annex 3, §III, 7th paragraph, page 8) - The Commission is invited to ensure that each delegation has adequate health expertise either in the delegation or through relying on the resources of other in-country partners (particularly the Member States), building on further consultations with the Member States and other global partners on a division of labour.

Commission's response:

In March 2009 the Commission took stock of the public health expertise at its delegations in Sub-Saharan Africa. At that time there were 13 public health specialists at 11 delegations.

1/ Of the ten delegations with health as a focal sector or with significant activities in the health sector nine had health expertise. Eleven of the 30 delegations which did not have health expertise drew, where necessary, on the expertise of the Member States and two of them drew on the UN agencies (WHO, Unicef).

2/ Of the 24 delegations providing General Budgetary Support (GBS), seven of them under "MDG contracts", five had public health expertise. The other delegations draw on the expertise of the Member States (e.g. the Memorandum of Understanding signed in December 2009 by the Delegation and the German Embassy in Tanzania) or collaborate with the national offices of the World Health Organisation (WHO) (11 EU delegations associated the WHO in the mid-term review of the 10th EDF).

The Commission, as part of its work on implementing the Communication on the EU role in Global Health, will continue working with EU Member States to progress on the division of labour and a shared use of the EU expertise in health.

59. (Council Doc. 5826/10 ADD 2, Annex 3, §III, 8th paragraph, page 8) - The Commission is invited to make more use of Sector Budget Support in the health sector and focus its General Budget Support more on improving health services; SBS should be aligned with national sector policies.

Commission's response:

The Sector Policy Support Programmes (SPSPs) are the tool used by the Commission to support implementation of a sectoral policy. As far as possible, Sector Budget Support (SBS) is the preferred means of implementing a SPSP. In order to maximise the impact of General Budget Support (GBS) on social sectors, including health systems, the Commission's aim is to strengthen the capacity of its services and coordinate policy discussions so that they can contribute more effectively to following up the implementation of these sectoral policies. It does this in line with the Code of Conduct on the complementarity and division of labour in the field of development. As is known, the financial assistance provided by a Budget Support cannot be assigned to a specific sector. It helps boost the tax revenue of the beneficiary country and thus its capacity to finance activities that it could not otherwise have undertaken without this support. The Commission establishes the procedures and objectives through dialogue and a performance framework. Disbursement of the variable tranches is in part linked to achievement of the objectives. The current updating of the "Guidelines on the Programming, Design and Management of General Budget Support" provides an opportunity to extend to sectoral policies a dialogue that is undoubtedly too much focused on indicators alone.

60. (Council Doc. 5826/10 ADD 2, Annex 3, §III, 9th paragraph, page 9) - The Commission is invited to continue to use projects, especially for support to policy

development and capacity building, pilot interventions and assistance to poorer regions, while ensuring they contribute to development of sustainable financing mechanisms for the whole health system.

Commission's response:

Projects (as approaches or means of implementing a SPSP) are often used by the Commission to deliver its development aid (Declaration of Paris, Accra agenda, International Health Partnership).

In addition, sectoral policies and the institutional capacity of the health sector can be developed by specific projects, or as part of sectoral approaches supported by the Commission through a SPSP (Sector Policy Support Programme) and implemented by a project, a common fund or Sector Budget Support. The Commission will continue to use projects where relevant with a specific attention to sustainability.

61. (Council Doc. 5826/10 ADD 2, Annex 3, §III, 10th paragraph, page 9) - The Commission is invited to seek to clarify its comparative advantages, inter alia increase health-related assistance to fragile states and post-crisis countries.

Commission's response:

The EC has programmed support to health in 34 Developing Countries in the present programming cycle: Afghanistan, Algeria, Angola, Burundi, Central African Republic, Chad, Congo-Brazzaville, DRC, East Timor, Ecuador, Egypt, Georgia, Guatemala, Haiti, Honduras, India, Ivory Coast, Lesotho, Liberia, Malawi, Morocco, Moldova, Myanmar, Nigeria, Mozambique, Philippines, South Africa, Swaziland, Syria, Ukraine, Vietnam, Yemen, Zambia and Zimbabwe. Out of these 34 Developing Countries, 16 are among the LDCs (Least Developed Countries).

62. (Council Doc. 5826/10 ADD 2, Annex 3, §III, 11th paragraph, page 9) - The Commission is invited to continue and strengthen, together with the Member States, efforts to support and build the institutional and technical capacity of the beneficiary countries in the preparation of Global Fund grant applications and in the implementation of Global Fund grant contracts, as well as to contribute to improved disbursement rates from the Global Fund and to ensure that it also effectively supports national health systems.

Commission's response:

In 2009 the Commission signed an Agreement with the WHO to contribute €2 million for the implementation by UNAIDS of the programme "Strengthening Country Capacity to Scale up towards Universal Access for HIV/AIDS Prevention, Care and Treatment through Enhanced Implementation of National AIDS Responses including Global Fund Grants". The Commission also prepared guidelines for the European Union delegations called "For a strengthening of the partnership on a local scale between the European Commission and the Global Fund to fight AIDS, Tuberculosis and Malaria." These guidelines were sent to all the delegations in June 2009.

63. (Council Doc. 5826/10 ADD 2, Annex 3, §III, 12th paragraph, page 9) - The Commission is invited to establish clearer guidance on when each instrument should be utilised and how they can best be used in combination.

Commission's response:

The guidelines on using the instruments to implement the Commission's development aid are currently being updated. The Budget Support guidelines are being revised for both general and sectoral budget support. DG Aidco is currently preparing PPCM (Programme and Project Cycle Management) guidelines which revise, update and reorganise all the guidelines in a single document. One of the aims of this exercise is to strengthen the links between programming and aspects relating to implementation.

64. (Council Doc. 5826/10 ADD 2, Annex 3, §III, 13th paragraph, page 9) - The Commission is invited to pursue its efforts jointly with partner countries and the donor community to contribute to the formulation of well defined health sector policies and common development oriented results frameworks in beneficiary countries.

Commission's response:

In most of the countries in which health is a focal sector of our cooperation and in those receiving General Budget Support (GBS), the delegations are involved in the periodical reviews which bring together the Government, national players and the donor community. These joint reviews are normally carried out annually in the various sectors, including health. They provide an opportunity for a political dialogue with the partner country, allow all the stakeholders to judge the performance of the sector and advance the sectoral policy framework. In countries receiving GBS the results of these joint reviews entered in the more general annual review on GBS.

65. (Council Doc. 5826/10 ADD 2, Annex 3, §III, 14th paragraph, page 9) - The Commission is invited to pay more attention to sexual and reproductive health and rights, while respecting the established EU positions and to achieve the goals and the objectives of and taking into account the Programme of action of ICPD, the Beijing Platform for action and internationally-agreed development goals including the MDGs. The Council notes the importance of increased accessibility to maternal health services, including in the fight against HIV/AIDS.

Commission's response:

The Commission has been very active on sexual and reproductive health and rights in international fora and in the development of the Communication on EU role in Global Health. On the financing issue, there is a persistent dilemma of combating fragmentation of funds for all the good reasons and ensuring that enough funding is flowing to sexual and reproductive health and rights. By having a systematic focus on health systems strengthening these limitations are increasingly being tackled.

Under the Investing in People Programme and the Global fund to fight AIDS, TB and Malaria more funds have become available to the linking/integration of maternal health and HIV/AIDS services. In 2009 the Commission has organised an international workshop in cooperation with the ACP Secretariat, UNFPA and IPPF to disseminate the results of a multi-year reproductive health and rights project implemented in 22 countries. As member of the Executive Committee of the Reproductive Health Supplies Coalition the Commission is supporting the universal availability of reproductive health supplies, especially contraceptives.

Under the human rights umbrella the Commission is speaking with a strong and consistent voice to promote the human rights of LGTB persons and to combat discrimination based on sexual orientation by combining political dialogue and cooperation programme supporting human rights and democracy.

Within the recently adopted Gender Action Plan the rights and protection of women and girls are an important component, including combating sexual and gender-based violence.

66. (Council Doc. 5826/10 ADD 2, Annex 3, §III, 16th paragraph, page 9) - The Council encourages the Commission to work on the answers to the conclusions of the report. It welcomes the fact that the Commission accepts the Court's recommendations in general and that it has already begun to take some measures to act on them, in particular the Council is pleased to see in the Commission responses that it will look at the sectoral allocations as part of the mid term review of the 10th EDF. The Council asks the Commission to provide the Council in 2010 with an update of the concrete steps that have been taken on the recommendations and conclusions of the report.

Commission's response:

The Commission has taken note of the recommendations made in the Court of Auditors' Special Report No 10/2008 (EC development assistance to health services in Sub-Saharan Africa). It recognises the utility of these recommendations and is implementing them as far as it is able.

The impact of the Mid-Term Review (MTR) of the 10th EDF on the allocations granted to the health sector will soon be known, once the MTR is completed. However, it must be pointed out that the MTR is not a new programming exercise, but an opportunity to make sure that the choices made when drawing up the Country Strategy Papers are still appropriate. It should also be pointed out that the use of EDF resources is determined on the basis of priorities established by the partner countries. It is not just the Commission that decides how these resources are to be allocated.

The Commission will submit to the Council, by the end of 2010, a report reviewing the implementation of the recommendations and conclusions in the Court of Auditors' Special Report No 10/2008 on EC development assistance to health services in Sub-Saharan Africa.

Special Report No. 11/2008 "The management of the European Union support for the public storage operations of cereals"

The Council has made no specific request to the Commission.

Commission's response:

No reply necessary.

Special Report No. 12/2008 "Instrument for Structural Policies for Pre-accession (ISPA), 2000-2006"

67. (Council Doc. 5826/10 ADD 2, Annex 5, 5th paragraph, page 13) - The Council recalls the great importance it attaches to the efficiency and effectiveness of the pre-accession aid. In this context, the Council takes note with particular interest of the recommendations made by the Court in order to avoid shortcomings in the future. It encourages the Commission to follow the recommendations of the Court and to take stock of the experience gained, not only with a view to the monitoring of the remaining ex-ISPA projects, but also to the implementation of the new pre-accession instrument IPA.

Commission's response:

The requested action has been taken. The satisfactory functioning of the decentralised implementation system is constantly monitored, in particular in relation to public procurement and implementation of projects. With regard to public procurement, the entire process is reviewed by the Commission Delegations. Audits and evaluations are carried out on a regular basis. On the spot visits are frequently organised to verify adequate progress of the projects. Roadmaps to waive ex-ante controls by Commission Delegations on public procurement have also been prepared. The achievement of the benchmarks included in the roadmaps will confirm the preparedness of the national institutions to assume full ownership for preparation and implementation of programmes and projects. This is relevant for both ISPA and IPA.

Special Report No. 1/2009 "Banking measures in the Mediterranean area in the context of the MEDA programme and the previous protocols"

68. (Council Doc. 5826/10 ADD 2, Annex 6, 5th paragraph, page 14) - The Council notes with satisfaction that several of the issues raised, were addressed in an adequate manner through the establishment of the ENPI. It nevertheless calls upon the Commission to continue to take due account of the recommendations contained in the report.

Commission's response:

The Commission continues indeed to take due account of the recommendations contained in the report. In particular, it has enhanced its monitoring of EIB's operations and has improved the information flow with EU delegations. A new Framework Agreement is currently being finalised with the EIB.

The level of coordination between the European Union, the EIB and other European multilateral and bilateral finance institutions has significantly increased since the creation of the Neighbourhood Investment Facility (NIF).

The Commission has led the way by encouraging co-operation among European Public Finance Institutions and promoting a harmonised approach towards the partner countries (e.g. in terms of procurement rules, single reporting, etc.). The NIF paves the way for the concrete implementation of donor coordination, division of labour and harmonisation of procedures.

Special Report No. 2/2009 "The European Union's Public Health Programme (2003-2007): an effective way to improve health?"

69. (Council Doc. 5826/10 ADD 2, Annex 7, 8th paragraph, page 16) - The Council invites the Member States and the Commission to assign clear targeted programme objectives that will be in proportion with budgetary means available.

Commission's response:

Results of the final evaluation of the first Health Programme and of the mid-term evaluation of the second Health Programme as well as recommendations following the ECA's Special report will be taken into account for the design and impact assessment of any successor Health Programme.

70. (Council Doc. 5826/10 ADD 2, Annex 7, 9th paragraph, page 16) - The Council invites the Member States and the Commission to ensure greater clarity in the intervention logic in the conception and implementation of the Health Programme, in particular at programme and project level, setting out coherent and better defined objectives which should be SMART, illustrating links between them and define process and performance indicators to measure their achievement.

Commission's response:

An explicit intervention logic, using coherent and better defined SMART objectives, illustrating links between them and defining process and performance indicators to measure their achievement, will be set out for any successor Health programme.

71. (Council Doc. 5826/10 ADD 2, Annex 7, 10th paragraph, page 16) - The Council invites the Member States and the Commission to ensure that there is a limited number of annual priorities focused on strategic topics and activities with European added value.

Commission's response:

The Commission is currently preparing the Annual Work Programme 2011 for Public Health with a view to concentrating action on a limited number of priorities and to focusing on their European Added Value.

72. (Council Doc. 5826/10 ADD 2, Annex 7, 11th paragraph, page 16) - The Council invites the Member States and the Commission to ensure participation of the Member States through the Health Programme Committee in setting the priorities and preparation of work plans as well as their implementation.

Commission's response:

Annual Work Programmes and Award decisions are systematically submitted to the Programme Committee.

73. (Council Doc. 5826/10 ADD 2, Annex 7, 12th paragraph, page 16) - The Council invites the Member States and the Commission to consider complementary cooperation mechanisms as a means of facilitating collaboration and the exchange of information throughout Europe with a view to complementing national programmes and activities.

Commission's response:

The mid-term evaluation of the Health Strategy 2008-2013 will (a.o.) focus on assessing how to improve and develop use of Open Method of Coordination in Health.

74. (Council Doc. 5826/10 ADD 2, Annex 7, 14th paragraph, page 16) - The Council invites the Commission to avoid any overlaps in projects portfolio and results of those projects and improve coordination between the different financial programmes managed by the different Commission's Directorate Generals.

Commission's response:

Inter Services Consultation has been reinforced in order to avoid overlaps in projects and improve coordination between the different financial programmes managed by the different Commission DG's.

75. (Council Doc. 5826/10 ADD 2, Annex 7, 15th paragraph, page 16) - The Council invites the Commission to keep projects objectives in line with programme objectives and "annual priorities" agreed in Annual Work Programme and set, wherever possible, quantified targets and process and performance indicators in order to facilitate monitoring of progress towards set objectives.

Commission's response:

The EAHC (Executive Agency for Health and Consumers) defines deliverables of projects and performance indicators when negotiating project contracts.

76. (Council Doc. 5826/10 ADD 2, Annex 7, 16th paragraph, page 16) - The Council invites the Commission to inform regularly the Council's Working Party on Public Health on the implementation of the programme.

Commission's response:

As provided for in the Health Programme decision, an annual implementation report of the Health Programme is sent to Council and Parliament.

77. (Council Doc. 5826/10 ADD 2, Annex 7, 17th paragraph, page 16) - The Council invites the Commission to facilitate the transition between the successive Health programmes and projects financed by those programmes, while taking into account evaluations made of the outcome of previous programmes.

Commission's response:

Results of the final evaluation of the first Health Programme and of the mid-term evaluation of the second Health Programme as well as recommendations following the ECA's Special report will be taken into account for the design and impact assessment of any successor Health Programme.

78. (Council Doc. 5826/10 ADD 2, Annex 7, 18th paragraph, page 16) - The Council invites the Commission to make sure that results of projects are widely publicly available and improve dissemination and use of those result among concerned stakeholders.

Commission's response:

Commission services and the EAHC (Executive Agency for Health and Consumers) are constantly improving their communication strategies in order to improve dissemination and use of results among stakeholders.

79. (Council Doc. 5826/10 ADD 2, Annex 7, 19th paragraph, page 16) - On the basis of this audit and its recommendation the Commission, in consultation with the Member States through the Health Programme Committee, should propose further improvement of the management of the current programme and its implementation.

Commission's response:

The Commission is currently preparing the Annual Work Programme 2011 for Public Health with a view to concentrating action on a limited number of priorities and to focusing on their European Added Value. This should be submitted to the Programme Committee in the third quarter of 2010.

Special Report No. 3/2009 "The effectiveness of Structural measures spending on waste water treatment for the 1994 1999 and 2000-2006 programme periods"

80. (Council Doc. 5826/10 ADD 2, Annex 8, 13th paragraph, page 20) - The Council invites the Commission to require that information allowing the setting of performance targets, in line with Community legislation, in such key areas as quality of water discharged, quality of receiving water bodies, volume of water to be treated and intended method of sludge disposal should be included in grant applications and systematically checked as part of the project appraisal process.

Commission's response:

With respect to quality of water discharged there are limit values clearly set out in Directive 91/271/EC which need to be respected.

With respect to quality of receiving water, plans and programmes under Directive 2000/60/EC, notified to the Commission by 22/3/2010, should include inter alia information on this, as the Commission has to assess them.

With respect to volume of waters to be treated, this is a standard precondition for every project.

Finally the method of sludge disposal is checked during the project appraisal process.

However the Commission would like to recall that, in line with Article 192 (4) of TFEU, it is the right and responsibility of Member States to finance and implement correctly the EU environmental legislation and policy.

81. (Council Doc. 5826/10 ADD 2, Annex 8, 14th paragraph, page 20) - The Council invites the Commission to encourage Member States to assess the achievement of the anticipated results at project level as set out in application for assistance.

Commission's response:

The Commission is taking the requested action. It intends to include this issue for information and discussion in the next meeting of the European Network of Environment Authorities (ENEA -the network of environmental and managing authorities of the EU 27 Member States) so that member States take the appropriate measures.

82. (Council Doc. 5826/10 ADD 2, Annex 8, 15th paragraph, page 20) - The Council invites the Commission to finalise the impact assessment on the need for a possible legislative initiative on phosphates content in detergents within the EU.

Commission's response:

The Commission has completed a comprehensive impact assessment of options and their costs and benefits of restricting the use of phosphates in detergents. A

revision of the detergents legislation is indicated. A legislative proposal is foreseen for the third quarter of 2010.

83. (Council Doc. 5826/10 ADD 2, Annex 8, 16th paragraph, page 20) - The Council invites the Commission to ensure that the financial sustainability of waste water collection and treatment projects is considered at the application approval stage and pertinent information such as proposed tariffs is given due consideration, taking also into account equity considerations.

Commission's response:

The Commission will not be taking the requested action. The reason for this is that Directive 2000/60/EC (Water Framework Directive) obliges Member States to ensure that, from 2010 on, the costs of water services are based on the cost recovery principle, thus ensuring financial sustainability. The Commission will scrutinise implementation by Member States.

84. (Council Doc. 5826/10 ADD 2, Annex 8, 17th paragraph, page 20) - The Council invites the Commission to inform the Council and the European Parliament on the steps taken with regard to the recommendations of the report by June 2010.

Commission's response:

The Commission will inform the Council and the European Parliament on the steps taken with regard to the recommendation on the framework of discharge follow-up report.

Special Report No. 4/2009 'The Commission's management of non-state actors' involvement in EC development cooperation'

85. (Council Doc. 5826/10 ADD 2, Annex 9, §V, 1st paragraph, page 24) - The Council invites the Commission to take further measures to strengthen the genuine involvement of NSAs in EC development cooperation and policy making processes and especially partner countries' NSAs, in line with existing instruments and guidelines.

Commission's response:

The Commission is taking the requested action and agrees with the principle that NSAs must be involved in the development cooperation process. However, this level of involvement varies according to the various legal bases considered. In the framework of the Cotonou Agreement, the need for consultations is agreed and legally binding both for the Commission and Partner-States. For DCI countries, the Commission applies an EU regulation: EU efforts to hold effective consultations with NSAs have to be matched by the willingness of national authorities to do the same.

Furthermore, in the Commission's view this should also be framed within new realities such as alignment to partner governments, and ownership. EC action in support of NSAs takes indeed into account the dual reality of supporting the right of initiative of Civil society organizations and the growing need for ensuring "alignment" with partner governments priorities.

The EC is currently discussing these issues with all relevant stakeholders in one of the working group of the "Structured Dialogue for an efficient partnership in development". More information is available on CISOCH:

https://webgate.ec.europa.eu/fpfis/mwikis/aidco/index.php/Structured_dialogue

86. (Council Doc. 5826/10 ADD 2, Annex 9, §V, 2nd paragraph, page 24) - The Council invites the Commission to provide more guidance to NSAs on its procedures, emphasising the need for predictable Calls for Proposals procedures or criteria to award "targeted projects", especially with regard to the financial rules.

Commission's response:

On guidance to NSAs on its procedure: Both at the level of HQ and EU Delegations, the European Commission organizes informative sessions for NSA upon specific request and/or in the framework of a Call for Proposal. Moreover a Civil Society Helpdesk (CISOCH) is centralizing all relevant information for NSA. An e-learning product tailor-made for NSA has been produced and is available on CISOCH.

On predictability of Call for Proposals: the EC is committed to improve the predictability and transparency related to the consultation process by elaborating, as often as possible, specific calendars and communication material to facilitate

the interaction with NSAs. Annual Work Programmes are available on Internet (including on CISOCH) but further improvement of predictability will be done.

On criteria to award "targeted projects": The Commission applies article 168 of the implementing modalities of the financial regulations.

87. (Council Doc. 5826/10 ADD 2, Annex 9, §V, 3rd paragraph, page 24) - The Council invites the Commission to take into account the experiences of the current project selection process and possible improvements resulting from the Mid-Term Review of the financial instruments for external actions when putting forward proposals on the review of the EC financial regulation.

Commission's response:

The European Commission has proposed a number of measures within the framework of the Financial Regulation triennial revision, namely in the area of grants management, aiming at rendering it simpler and easier to handle for both grant beneficiaries and contracting authorities alike.

88. (Council Doc. 5826/10 ADD 2, Annex 9, §V, 4th paragraph, page 24) - The Council invites the Commission to ensure, within the existing budgetary framework, that sufficient resources, guidance and expertise are available to EC delegations so as to be able to better manage the NSAs involvement in EC development cooperation.

Commission's response:

The Commission stresses that as far as NSAs are concerned, there is no one size fits all for training as the NSAs 'architecture' varies immensely between countries. Since 2004/05, EuropeAid has provided tailor-made upstream guidance during the instruction phase of NSAs programmes, and downstream during implementation. Delegations are also provided with operational guidance: (i) through its intranet where guidelines and good practices are posted; (ii) through regional seminars where knowledge about commitment in dialoguing with NSAs and exchanges with colleagues are enhanced and finally (iii) through studies.

In 2010 and 2011, in the framework of the 4 regional seminars of the Structured Dialogue, one specific day, addressing NSA involvement in EC cooperation, is devoted to interactions between EC Headquarters and EU Delegations. In total and by mid-2011, around 80 EUD staff (from 60 Delegations) will participate in these internal training & information sessions.

89. (Council Doc. 5826/10 ADD 2, Annex 9, §V, 5th paragraph, page 24) - The Council invites the Commission to develop a consistent strategy for capacity development of NSAs in all partner countries, in line with the Court's findings in Asian and Latin American countries.

Commission's response:

The Commission is taking the requested action. Regional and national strategies to support NSAs are carried out. Despite the fact that former ALA regulation did not

formally envisage capacity building support to NSAs, various studies and programmes are being carried out on this issue in both Latin America and Asia.

For example, several projects/programmes in Asia and Central Asia which are/ and will be implemented through non-governmental organisation have been adopted in 2007 and 2008. While their primary objective is to contribute to poverty eradication, improvement of access to social services and improvement of governance and rule of law, they support non-state actors in pursuance of these goals. This is the case notably in Afghanistan, China, Pakistan, Kyrgyzstan and Tajikistan.

90. (Council Doc. 5826/10 ADD 2, Annex 9, §V, 6th paragraph, page 25) - The Council invites the Commission to sustain its dialogue with NSAs on the implementation of cooperation programmes, including in the framework of the "Palermo Process".

Commission's response:

The "Structured Dialogue for an efficient partnership in development" (initiative following the "Palermo Process" but with a much wider scope) has been launched in March 2010 by Commissioner Piebalgs and is currently on-going. The final conference is due to take place in April/May 2011.

91. (Council Doc. 5826/10 ADD 2, Annex 9, §V, 7th paragraph, page 25) - The Council invites the Commission to report back to the Council on progress in meeting these recommendations by the end of 2010.

Commission's response:

The Commission is taking the requested action and will report back to the Council by the end of 2010. It will be an appropriate occasion to take-stock of the Structured Dialogue process.

Special Report No. 5/2009 "The Commission's Treasury Management"

92. (Council Doc. 5826/10 ADD 2, Annex 10, 11th paragraph, page 27) - The Commission should improve the documentation of its cash flow forecasting and reporting procedures.

Commission's response:

The requested action has been taken. A revised procedural document concerning the preparation of the cash flow reporting and forecast is available since March 2009.

93. (Council Doc. 5826/10 ADD 2, Annex 10, 12th paragraph, page 27) - The Commission should analyse the functioning of the present system of own resources accounts with the aim of reducing balances on these accounts during the second half of the year.

Commission's response:

The present system of own resources accounts, primarily designated to receive the own resources payments, is linked to the own resources system, as established by Council decision 2000/597/EC, Euratom and its implementing Council Regulation 1150/2000, that the Commission is bound to implement. The Council adopted in 2007 the new own resources decision 2007/436/EC, Euratom, and very recently a revision of Council Regulation 1150/2000, which do not introduce any significant changes in the system of own resources accounts and payments.

94. (Council Doc. 5826/10 ADD 2, Annex 10, 13th paragraph, page 27 and 14th paragraph, p. 28) - The Commission should put in place procedures which ensure coordination of its treasury management activities. This coordination should entail an exchange of information on risks and best practices regarding treasury and asset management activities, in particular to maximise efficiencies and minimise inadvertent exposure to risk.

Commission's response:

The requested action has been taken. Meetings are regularly held between their Directorates General for Economic and Financial Affairs (DG ECFIN) and for Budget (DG BUDG) with a view to sharing information on risks and exchanging experiences and best practices regarding treasury and asset management activities on a Commission-wide level.

95. (Council Doc. 5826/10 ADD 2, Annex 10, 14th paragraph, page 27) - DG BUDG should improve the documentation of its risk management and the scope of its performance measurement.

Commission's response:

The requested action has been taken. A consolidated risk management document for the Directorate-General for Budget treasury operations is available since September 2009.

The Commission considers that its system for performance measurement is adequate.

96. (Council Doc. 5826/10 ADD 2, Annex 10, 15th paragraph, page 27) - The Commission should as a matter of priority reach a conclusion in its search for an optimum solution for the treatment of provisionally collected fines.

Commission's response:

The requested action has been taken. A new system for the management of provisionally cashed fines, which addresses all concerns raised by the European Court of Auditors in its special report No 5/2009 on the Commission's treasury management, is in place since the beginning of 2010.

Special Report No. 6/2009 "European Union food aid for deprived persons: an assessment of the objectives, the means and the methods employed"

97. *(Council Doc. 5826/10 ADD 2, Annex 11, 4th paragraph, page 29)* - The Council appreciates the Commission's intention to examine the recommendation of the Court as regards the adaptation of the bartering arrangement and invites the Commission to take the actions it deems appropriate in this respect.

Commission's response:

The Commission is taking the requested action.

The Commission will examine the proposition of the Court as regards the adaptation of the bartering arrangements without nevertheless preventing the possibility to mobilise intervention stocks as this practice is at the core of the scheme. This will be done via the new implementing rules that the Commission will be able to adopt once the new EP and Council regulation is in place.

Special Report No. 7/2009 "The management of the Galileo programme's development and validation phase"

98. (Council Doc. 5826/10 ADD 2, Annex 12, 3rd paragraph, page 30) - Council notes the Commission's thorough and constructive response to the conclusions of the special report and notes that part of the measures suggested by the Court has already been taken by the Commission. The Council encourages the Commission to continue in this path in order to ensure a smooth and successful development of the European satellite navigation system.

Commission's response:

The Commission will continue ensuring a smooth and successful development of the European satellite navigation system.

The European Commission took over responsibility for managing the EGNOS and Galileo programmes on 25 July 2008 when Regulation 683/2008 entered into force. In December 2008 the Commission's services delegated budget implementation tasks for the Galileo satellite radio-navigation programme and the deployment of Galileo infrastructure to the European Space Agency (ESA). This was done through a delegation agreement.

This instrument, which is provided for in the Financial Regulation, was considered the best way to establish a framework for optimising cooperation between the Commission and the ESA, thereby contributing to the successful outcome of the project. It delegates budgetary implementation – while still requiring the Financial Regulation to be respected - and enables the ESA to manage the technical part of the two programmes effectively, while allowing the Commission to exercise its policy and control powers fully.

More specifically, the agreement covers procurement, project and technical management linked to the implementation of Galileo's Full Operational Capability (FOC). In particular it covers the deployment of Galileo infrastructure, which is based on the procurement of six main work packages (system support, ground mission segment, ground control segment, satellites, launch services and operation services) and the integration of the relevant deliverables into a single system. The estimated appropriations for these delegated tasks are €2.408 billion.

As part of the delegation agreement, three of the six contracts procuring Galileo's initial operational capability were awarded in early January 2010. This will allow the initial deployment and service provision of Europe's satellite navigation system in early 2014.

Moreover, the Commission will be in a position to inform Member States and Parliament of an update of the cost figures concerning the Galileo program through the mid term review to be adopted before end 2010.

Special Report No. 9/2009 "The efficiency and effectiveness of the personnel selection activities carried out by the European Personnel Selection Office"

99. (Council Doc. 5826/10 ADD 2, Annex 13, 5th paragraph, page 32) - The Council underlines the necessity to reduce substantially the duration of the selection process and takes note of EPSO's ongoing efforts on this issue. The Council underlines the need to strengthen cooperation between the Community institutions and EPSO. It is essential that the Institutions identify and communicate their strategic staffing needs to EPSO in a timely and consistent manner, in order to help the EU Institutions achieve their recruitment targets.

Commission's response:

This recommendation is accepted and is already being implemented. As part of the EPSO development programme approved by the Management Board in September 2008, it was decided to introduce 3-year strategic planning and, in this context, to draw up common rules for the institutions to present their needs, and the 2009-2011 strategic planning is currently being implemented (recommendation No 1 of the EDP). The institutions' needs for the next three years were actually received in March 2009. Focusing planning on strategic management of human resources needs is one of the pillars of the EDP.

100. (Council Doc. 5826/10 ADD 2, Annex 13, 6th paragraph, page 32) - The Council agrees that there is a need to professionalize Selection Boards and to use qualified assessors. The Council stresses the importance of Selection Boards not only being competent in the field but also having expertise in human resource management.

Commission's response:

This recommendation is accepted and is already being implemented by two actions included in EPSO's EDP (recommendations 14 and 15): as part of the introduction of assessment centres, the professionalism of the selection board members based on the concept of secondment of officials from the Institutions to the Office for a fixed period of up to 4 years, and the setting up of a pool of markers.

101. (Council Doc. 5826/10 ADD 2, Annex 13, 7th paragraph, page 32) - The Council acknowledges that EPSO's decision to make the pre-selection test available in all the EU languages will contribute towards securing for the institutions the services of officials of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States.

Commission's response:

This recommendation is accepted. At its meeting on 13 November 2008 the Management Board approved the Office's proposals for implementation in two stages: (1) the introduction from 2010 of tests in the candidates' main language, in specific monolingual competitions only, in order to test the database containing the new language versions of the questions, and (2) from 2011, general use of 23 languages for most admission tests (in particular verbal and numerical reasoning).

102. (Council Doc. 5826/10 ADD 2, Annex 13, 8th paragraph, page 33) - The Council underlines the need for an effective communication strategy in order to attract a sufficient number of qualified candidates. The measures identified for implementation should focus on relevant target groups and address the specific situation in each Member State. Attractiveness is also dependent on transparency in procedures, where accurate and clear notices of competition published in all the official languages play an important role.

Commission's response:

This recommendation is accepted and is already being implemented. Under the EDP and the new communication strategy, a revamped website has been in place since the beginning of March 2009. In addition, regular meetings and contacts are held on EPSO's initiative with the network of experts on selection and recruitment in the Member States, and the subject of making EU careers appealing to candidates is regularly discussed.

103. (Council Doc. 5826/10 ADD 2, Annex 13, 9th paragraph, page 33) - The Council stresses the need for transparency in relation to the financial implications of the new selection procedure to guarantee cost-effectiveness both now and in the longer term, and underlines that EPSO must have adequate funding in order to continue to implement the EDP successfully. It takes note of EPSO's commitment to carry out a benchmarking exercise of costs per successful candidate against other international organisations, and in that context to analyse the costs and benefits of the new system once introduced.

Commission's response:

This recommendation is accepted and is already being implemented. An analysis of the reference costs in order to compare the costs determined with those of national administrations will be carried out and the results should be available by the end of 2010.

The EDP is intended to impart added value to the selection process. As explained in the proposed budget for 2010, an even more highly professional selection service, which is the principal goal of the EDP, will yield a substantial return by attracting and selecting the right candidates to enable the institutions to achieve their major strategic objectives.

104. (Council Doc. 5826/10 ADD 2, Annex 13, 10th paragraph, page 33) - The Council highlights that successful candidates must furthermore be given clear, precise and practical information on the steps to follow between selection and potential recruitment.

Commission's response:

EPSO considers that the current system for handling reserve lists works well and that it has been considerably improved, in particular since the successful candidates have been able to verify their situation in real time.

In addition, EPSO is assisting the Institutions in giving successful candidates access to certain vacancy notices published. This will allow greater transparency and more equal treatment between successful candidates who are in Brussels and may have access to these notices and the other candidates.

105. (Council Doc. 5826/10 ADD 2, Annex 13, 11th paragraph, page 33) - The Council invites EPSO to periodically inform the Council about the further implementation of this Programme (EDP).

Commission's response:

EPSO is part of the Commission for administrative purposes and its Director, Mr Bearfield, reports on the progress made in the EDP to EPSO's Management Board, on which all the Institutions are represented.

If the Management Board agrees, the Director would be willing to inform the Council at its request.

Special Report No. 10/2009 "Information provision and promotion measures for agricultural products"

106. (Council Doc. 5826/10 ADD 2, annex 14, 3rd paragraph of page 34) - The Council appreciates the Commission's efforts to support Member States in their evaluation and selection of programme proposals in order to deliver measures that facilitate reaching the objectives of the policy; stresses the importance of improving ways to measure the effectiveness and impact of projects.

Commission's response:

The requested action has been taken.

Since 1999, the European Union has pursued an overall and coherent information and promotion policy for agricultural products and production methods and agricultural based food products. The information and promotion campaigns which it co-finances may take place either in the EU internal market or in non-EU countries. With a view to sound management and in an attempt to improve implementation of this policy, the Commission requested eight external evaluation reports between 2006 and 2008, the conclusions of which highlighted the positive impact of the promotion programmes for the four specific strategy objectives set out in the regulations.

107. (Council Doc. 5826/10 ADD 2, Annex 14, 5th paragraph, page 34) - The Council acknowledges that the improvements currently being made to the Commission's selection procedure should be continued and that the Member States should continue to increase their selectivity. The Council considers that this should be done without increasing the administrative burden and bearing in mind the ongoing objective of simplification of the CAP.

Commission's response:

The requested action has been taken.

The Commission has continued to improve the selection procedure by putting the emphasis on good evaluation methodology in each programme. A revised version of document AGRI/63454/2007 has been prepared by the Commission services and is for the sake of clarity and precision subdivided in two parts specifically intended for the preparation of programmes and their posterior evaluation.

Special Report No. 11/2009 "The sustainability and the Commission's management of the LIFE-Nature projects"

108. *(Council Doc. 5826/10 ADD 2, Annex 15, 18th paragraph, page 37)* - The Council calls upon the Commission to have regard to the recommendations of the special report in its forthcoming mid-term review evaluating the implementation of LIFE+, to be submitted before 30 September 2010 as required by Article 15 of Regulation (EC) No. 614/2007, including the complementarity of LIFE+ with other Community funds.

Commission's response:

The Commission is taking into account the Court's recommendations in its forthcoming mid-term review and in the related Commission Communication, including complementarity. The publication of the review is on schedule.

Special Report No. 12/2009 "The effectiveness of the Commission's projects in the area of Justice and Home Affairs for the Western Balkans"

109. (Council Doc. 5826/10 ADD 2, Annex 16, 8th paragraph, page 39) - The Council asks the Commission to improve sustainability by conducting, more systematically, a thorough needs analysis before investment projects are approved, including long term maintenance plans within project fiches.

Commission's response:

The Commission is addressing the issue of sustainability through project conditionalities and co-financing by the beneficiaries. Moreover, the needs are generally identified in the framework of the progress reports which include an assessment of the state of play in the area of JHA.

In order to enhance sustainability of projects, project fiches now include specific conditionality on infrastructure maintenance.

110. (Council Doc. 5826/10 ADD 2 Annex 16, 9th paragraph, page 39) - The Council asks the Commission to improve sustainability by complementing the delivery of assistance with commitments from the authorities in the recipient countries to ensure sustainable institutional change.

Commission's response:

In order to enhance sustainability and ownership of projects under IPA 2007 and 2008 programmes, project fiches include specific conditionality on infrastructure maintenance. Furthermore, the Commission embarked on a regional financial assistance project to improve monitoring in the JHA area of performance of authorities and financial assistance in March 2009.

111. (Council Doc. 5826/10 ADD 2, Annex 16, 10th paragraph, page 40) - The Council invites the Commission to better set objectives and use impact indicators to measure results of projects.

Commission's response:

The Commission now sets impact indicators which are part of the activity-based management cycle. They include the degree to which values related to freedom, security and justice are now respected in key third countries, including the countries in which the audit has been conducted; the values include the rule of law and respect for fundamental rights.

More generally, the Commission has learned from past experiences and now acts according to a formalised approach which sees the beneficiary in the driving seat of the assistance process, taking full responsibility for the anticipated objectives, methodologies and results.

112. (Council Doc. 5826/10 ADD 2, Annex 16, 11th paragraph, page 40) - The Council invites the Commission to actively contribute to improve donor coordination.

Commission's response:

In endeavouring to coordinate donors, the Commission maintains regular contacts for policy and financial assistance coordination with the Council of Europe, the Venice Commission, UN High Commissioner for Refugees, International Office of Migration, International Criminal Tribunal for the former Yugoslavia, and bilateral donors. Meetings are held regularly between the EC delegations and the Member States' Embassies for coordinating their bilateral financial assistance with that of the Community. The Commission organised conferences in autumn 2008 and in April 2009 with the main donors, aimed at improving donor coordination methodologies. The latest conference, has mainly focused on the practical aspects of coordination on the ground, and was held in October 2009.

On the ground, the Regional Cooperation Council took over during the first half of 2008 the role of the former Stability Pact as facilitator of regional donor cooperation in the JHA area and is organising conferences to this end. Donor cooperation meetings are also organised through regional initiatives.

Special Report No. 13/2009 "Delegating implementing tasks to executive agencies: a successful option?"

113. (Council Doc. 5826/10 ADD 2, Annex 17, 2nd paragraph, page 42) - The Council stresses the importance for the Commission to be able to delegate some of its tasks relating to the management of EU programmes to third parties, while fully complying with the principle of sound financial management and transparency, in order to contribute to a more efficient implementation of EU programmes and thereby decreasing administrative costs.

Commission's response:

The Commission already announced its intention not to create new executive agencies till the end of the current financial framework period. Moreover, it also intends to examine the possibility of extending to the existing agencies any eventual new responsibility for a new programme allocated to the Commission during the same period.

114. (Council Doc. 5826/10 ADD 2, Annex 17, 5th paragraph, page 42) - The Council regrets that the Commission's underestimation of the time needed to set-up a new agency and to recruit staff has led to recurrent over-budgeting and asks the Commission to put forward more accurate estimates in the future.

Commission's response:

The Commission takes every care to ensure the budget estimates it prepares are robust and reasonable taking full account of the expected start-up date of the agency, the probable pace of recruitment and the duration of the budgetary procedure. A delay in the satisfactory conclusion of the budget process may result in a delay in the start-up of the agency and, therefore, in the timing and pace of recruitment. A key step in this regard is the appointment of the Director of the agency, only after which the recruitment of agency personnel can start.

It appears that the improvements made in this area have led to the time needed to set-up a new agency having decreased between the first and last executive agencies in the research area.

115. (Council Doc. 5826/10 ADD 2, Annex 17, 6th paragraph, page 43) - The Council calls on the Commission to reconsider its procedures for identifying the potential for externalisation and for considering the establishment or the extension of executive agencies in order to ensure an efficient and effective management of EU programmes at lower costs in comparison to management by Commission's services.

Commission's response:

The Commission considers that the establishment of executive agencies has to be motivated by a favourable cost benefit analysis and by the added value they can bring to the implementation of EU programmes, when a clear separation between policy and implementing tasks can be made.

Moreover, the Commission already announced its intention not to set up additional executive agencies unless there are new Commission competencies up to 2013, and instead to make use of the possibility of extending the mandate of existing agencies.

116. (Council Doc. 5826/10 ADD 2, Annex 17, 7th paragraph, page 43) - The Council requests the Commission to continue improving the cost-benefit analyses accompanying the decisions to create executive agencies in order to allow them to contribute fully and effectively to the decision-making process and to take into account all relevant costs and benefits based on appropriate indicators and asks the Commission to put forward comprehensive comparative cost estimations between in-house management and externalisation, including those related to freed and frozen posts.

Commission's response:

The Commission has set up 6 executive agencies and has permanently enriched the analysis carried out with previous experiences. It has always focused on quantitative aspects, since these were the aspects the European Parliament and Member States have mostly focused on. However, also qualitative aspects were looked at as the CBAs have gradually become more comprehensive.

The Commission believes that the CBAs have continuously been improved and now include relevant and measurable costs. This will of course only be possible to verify the next time a new executive agency is established.

The cost-benefit analyses have informed the inter-institutional decision making process, as foreseen in Council Regulation 58/2003, Art. 3, and brought added value in order to form an opinion about different alternatives.

117. (Council Doc. 5826/10 ADD 2, Annex 17, 8th paragraph, page 43) - The Council calls on the Commission to guarantee that it avails itself of relevant, reliable workload and productivity data related to the implementation of the delegated tasks, both before and after externalisation, in order to be able to fully evaluate the benefits produced by the executive agencies.

Commission's response:

The Commission acknowledges that initial CBAs and financial statements did not always provide all possible workload and productivity indicators before externalisation and for the triennial evaluation pursuant to Article 25 of Council Regulation 58/2003. Improvements have been made in the more recent CBAs, and the Commission will in the future go deeper into the assessment of workload and productivity. This will of course only be possible to verify the next time a task is delegated to an executive agency.

118. (Council Doc. 5826/10 ADD 2, Annex 17, 10th paragraph, page 43) - The Council invites the Commission to make better use of the annual work programmes and to develop focused indicators.

Commission's response:

As regards timing, the adoption of the Executive Agencies' Annual Work Programmes should be speeded up through earlier adoption of the DGs' Financing Decisions. Instructions to this effect, as well as on the content of agency Work Programmes, were given to parent DGs and agencies in March 2010. At the same time, instructions were also given on performance indicators and a number of key performance indicators were defined for further use by parent DGs and agencies. The Commission expects these guidelines to be applied in the 2011 work programmes of the agencies.

119. (Council Doc. 5826/10 ADD 2, Annex 17, 11th paragraph, page 43) - While taking note of the progress made by the Commission to recruit extensively contractual agents, the Council invites it to continue reflecting upon measures to simplify the recruitment of executive agencies' staff adapted to tasks originating from results-oriented and targeted objectives.

Commission's response:

The simplification of the recruitment process introduced in the framework of the EPSO Development Programme will apply to institutions and agencies alike.

120. (Council Doc. 5826/10 ADD 2, Annex 17, 13th paragraph, page 43) - The Council invites the Commission to apply the success factors identified, e.g. simplified procedures, as elements for leading to better results in the executive agencies, to those programmes that continue to be managed by the Commission itself.

Commission's response:

The success of the executive agencies lies in: their capacity to recruit extensively contractual agents (up to 75%) with contracts of much longer duration than in the Commission; to target their recruitment to specific skills; and to specialise on recurrent executive tasks. These advantages are inherent to the concept of the executive agencies and can therefore not be reproduced within the Commission. Firstly, the Commission has to maintain the overall current balance of staff which includes predominantly permanent officials and may only employ contractual agents for maximum of 3 years. Secondly, in order for the Commission to focus on its strategic and policy tasks as an institution, the recruitment profile (more "generalist") has to be different from that of the executive agencies.

121. (Council Doc. 5826/10 ADD 2, Annex 17, 14th paragraph, page 43) - The Council asks the Commission to inform in good time about forthcoming external evaluations of executive agencies.

Commission's response:

The ex-post evaluations of executive agencies are included in the Commission's Forward Evaluation Plan, available on the following link:

http://ec.europa.eu/dgs/secretariat_general/evaluation/documents_en.htm

Special Report No. 14/2009 "Have the management instruments applied to the market in milk and milk products achieved their main objectives?"

The Council has made no specific request to the Commission.

Commission's response:

No reply necessary.

European Development Funds

122. (Council Doc. 5873/10, Annex, §3, 10th paragraph, page 5) - 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 and regularity of the transactions underlying the accounts.

Commission's response:

The Commission received an unqualified opinion from the Court of Auditors on the reliability of the EDF accounts. The Commission will endeavour to remedy any shortcomings identified, both for the reliability of the accounts and the legality and regularity of the underlying transactions.

123. (Council Doc. 5873/10, Annex, §3, 11th paragraph, page 5) - 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. In this respect, the Council notes that the Commission intends to continue promoting a more intense dialogue with Member States on budgetary support.

Commission's response:

All budget support operations are discussed at the EDF committee which gives a formal opinion on each proposal. In all ACP countries in which budget support is provided discussions on budget support operations take place between the Commission and EU Member States represented and significant issues related to budget support are discussed in a Commission/Member State working group on budget support. The Commission provides an annual report on budget support operations to Member States for discussion in the EDF committee.

124. (Council Doc. 5873/10, Annex, §3, 12th paragraph, page 6) - 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, the audit of transactions and budget support.

Commission's response:

EuropeAid provides an in-depth analysis of the performance of its assurance and internal control system in its Annual Activity Report which is publicly available. In addition an EDF specific Financial Management Report is submitted to Parliament and Council every year as required by the EDF Financial Regulation.

Requests concerning individual agencies

125. (Council Doc. 5827/10 ADD 1, Annex to Annex 9, 4th paragraph, page 29) - As regards the European Agency for Reconstruction, the Council takes note with dissatisfaction of the questionable financial management regarding five projects on cross-border cooperation for which the Evaluation Committee disagreed on several points with the assessors designated specifically for this task and invites the Commission to ensure that a similar mismanagement is avoided in the future.

Commission's response:

The Commission has taken note of this observation as the current structures for financial assistance ensure sound financial management.

Concerning the European Agency for Reconstruction, the Commission wishes to stress that it has been an efficient tool for the area it was designed for, thanks among others to its speed in delivery which was essential in the reconstruction phase in the region.

126. (Council Doc. 5828/10 ADD 1, Annex to Annex 2, 2nd paragraph, page 7) - As regards the Executive Agency for Competitiveness and Innovation, the Council notes that the Executive Agency's initial budget for 2008 was reduced by more than 22% later in the year following delays in the recruitment of staff and lower than expected forecasts for mission and building costs. It invites both the Executive Agency and the Commission to adopt a more realistic and effective approach when planning tasks, recruitment activities and expenditure.

Commission's response:

The year 2008 was the first full year following the extension of the tasks of the Agency. The initial budget was based on estimates of staff number and operating costs for 2008, and was in correspondence with the budgeted amount indicated in the financial statement (fiche financière) prepared at the time of the Agency's extension in May 2007.

During 2008, the Agency did not spend the full amount of the initial budget mainly due to the fact that it recruited staff according to the successive handover of the new tasks by the parent DGs. In order to allow the parent DGs to address the unspent funds to other operational activities, the Agency amended its budget in October 2008.

Meanwhile the Executive Agency has improved its budget planning and implementation monitoring. As for the 2010, the Agency plans to fully consume its budget appropriations.