

## 2014 Discharge to the Commission

### WRITTEN QUESTIONS TO THE EUROPEAN COURT OF AUDITORS

1. During the presentation of Chapter 6 - cohesion - the Court suggested (recommendations point 7) that "the Commission should further strengthen its control systems for audit authorities." Could the Court share its findings during the audits which led to this recommendation?

*The findings leading to this recommendation are contained under the sub-heading "Assessment of the Commission's supervision of audit authorities", in paragraphs 6.53 to 6.68.*

*In particular, paragraph 6.58 states that the Commission's assessment of annual control reports can only partly address that national authorities may under-report errors and/or over-report financial corrections. Paragraph 6.60 confirms these risks are not hypothetical since the Commission identified deficiencies requiring adjustments to the financial corrections reported in 7 of the 12 Member States visited.*

*Box 6.6 and paragraphs 6.65 to 6.68 describe the main findings detected in the sample of 139 OPs checked. These findings were not always identified by the Commission. Data on frequency and impact of these findings are also provided. We can briefly summarise these findings as follows:*

- a) Audit population not in line with expenditure declared (8 of the 139 OPs sampled)*
- b) Incorrect sampling methodology applied by the audit authority (11 of the 139 OPS sampled)*
- c) Incorrect extrapolation of errors when using sub-sampling (59 of 139 OPs sampled). This led to an understatement of the total error rate projected, but did not affect the audit opinion.*
- d) Inadequate checks on state aid done by audit authorities (42 of the 139 OPs sampled).*
- e) Actual disbursements to final recipients of financial instruments are generally not part of the audit scope of the audit authorities. Indeed, the Commission guidance requires audit authorities to include financial contributions from the OPs to funds implementing financial instruments rather than checking the actual disbursements. These checks refer to the financial year the contribution has been made while the main bulk of disbursements take generally place in the following years.*

2. The Court's Annual report underlines that ¾ of Structural funds projects achieved their policy goals entirely or in parts. In paragraph 6.81 the Court elaborates on the percentages of projects that reached their targets full, partially or not at all. However if one adds up the figures provided in the report there is a gap of 21 projects (11 %) which is not specified? Could the Court please provide us with more information about these cases? Could the Court specify the three cases where none of the objectives of the project were attained (para 6.82.)?

*The percentages in paragraph 81 need to be added with the 2 per cent mentioned in paragraph 6.82, the 7 per cent in paragraph 6.83 and the 4 per cent in paragraph 6.84, totalling all together 100 per cent.*

*Besides the example given in Box 6.7, the other two cases where none of the objectives were attained concerned two ERDF projects in the Czech Republic.*

3. The Court estimates that 6,1% of the EUR 43 billion transferred to Member States in 2014 via ERDF and Cohesion Fund projects should not have been paid out. Have EUR 2,7 billion been lost or fraudulently spent?

*The answer to this part of the question is already partly contained in the wording of question 5 below.*

*No. In the past, some commentators multiplied the total EU budget by the error rate and came up with a total for "money wasted". **This approach is simplistic and can be misleading.** In its testing, the ECA checks whether EU money has been spent on the purpose for which it was intended, whether the costs charged are calculated properly, and whether eligibility conditions have been met.*

*Some of the errors involve payments which did not meet eligibility conditions: for example, support given for research by a company classified as 'small or medium', even though it was wholly owned by a large company. Some involve breaches of procurement rules, such as awarding an additional construction contract for an airport directly to a company, without giving other potential tenderers a chance to make their bids at the best possible price.*

*In these cases, EU funds may still have had some positive impact and provided some benefit even though they did not fully respect the conditions related to their use. On the other hand, some legal and regular expenditure may still be wasteful, such as a motorway built without any regard to traffic needs.*

What is the level of fraud suspicion for regional policy? What measures do you believe it should be undertaken against?

*While not having a proper measure unit for the level of fraud suspicion for Chapter 6, we can say that, out of the 22 instances of suspected fraud which we forwarded to OLAF (paragraph 1.58), 12 concerned the economic, territorial and social cohesion.*

4. Why is the implementation of financial instruments in the 2007-2013 period so low? What measures do you think should be undertaken to improve implementation?

*Commissioner Creu gave useful explanations of the reasons for the low implementation of the financial instruments in the 2007-2013 programming period in the replies to the “Written questions to Commissioner Creu” sent on 3 December 2015 and notably to question 31 c. The measures to be undertaken to improve the implementation are outlined in the reply to question 31 b.*

*We advanced in our Special Report 2/2012 “Financial instruments for SMEs co-financed by the European Regional Development Fund” a number of weaknesses that later proved to play a significant role in the current low disbursement rates. Besides the three points mentioned by Commissioner Creu, the Special Report 2/2012 highlighted in paragraphs 85 to 93 the widespread significant delays in setting up and implementing the financial instruments for the 2007-2013 programming period.*

*A big share of initial contributions from the OPs to funds implementing financial instruments was made in late 2009 and 2010, reducing considerably the period in which these instruments could operate and making very difficult to take advantage of one of the main advantages of financial instruments as opposed to grants, namely the revolving effect. Table 2 summarises the main causes of these delays per Member State or region audited. These delays were less related to volatile financial circumstances than to administrative, legal, organisational or strategic reasons.*

5. The ECA states in the report that the level of error of the payments is not necessarily a measure of fraud, inefficiency or waste. It is an estimate of the money that should not have been paid out because it was not used in accordance with the applicable rules and regulations. At the same time the percentage of serious errors by Member States in the case of public procurement in EU funded programmes has doubled. Could you explain the difference between ‘serious errors’ and ‘fraud’? Could there be cases in which mismanagement has been classified as ‘serious error’ whereas in practice it may have been fraud?

*The Special Report 10/2015 on Public Procurement provides detailed information on the main sources of public procurement errors, their classification per fund or relevance and which Member states have been subject to how many infringement procedures initiated by the Commission. It also assesses the effectiveness of the actions taken by the Commission and the Member States to address the problem of public procurement errors in the cohesion area.*

*With regard to your statement that the percentage of serious errors by Member State has doubled, we are uncertain how you calculate this figure. In 2013, serious public procurement errors accounted for 45 per cent of all quantifiable errors in the regional policy area (paragraph 5.25 of the 2013 Annual Report) and 7 per cent of all quantifiable errors in the employment and social policy area (paragraph 6.20 of the 2013 Annual Report). In 2014, they accounted for 25 per cent of all quantified errors for the combined policy area economic, social and territorial cohesion (paragraph 6.33 of the 2014 Annual Report).*

*Our criteria for quantification of public procurement errors, including serious errors in public procurement, are described in the document “Non-compliance with the rules on public procurement – types of irregularities and basis for*

quantification.”<sup>1</sup> Unlike an error, fraud is an act of deliberate deception to gain a benefit (see page 11 of the “2014 EU Audit in brief” document. Yes, there could be cases in which mismanagement has been classified as ‘serious error’ whereas in practice it may have been fraud. But in all such instances where we have a suspicion that there could have been fraud, we forwarded the case concerned to OLAF, and this independently from and in addition to our classifying the case as serious error.

6. The expenditures of the Union budget under shared management seem to be guided by the principle "money seeks project". Do you agree that in the context of performance based budgeting it is of paramount importance that the EU added value of projects can be demonstrated?

*Yes, we agree that in the context of performance based budgeting it is of paramount importance that the EU added value of projects can be demonstrated.*

What is the definition of EU added value? What could be in the opinion of the ECA the precise criteria to measure this?

*Chapter 10 of the 2011 Annual Report contains a section describing the four principles underlying the concept of EU added value. We also stated that “expenditure programmes which do not add EU value are by definition unlikely to be an efficient and effective use of the EU taxpayer’s money” and give some examples where the existence of EU added value was at best questionable (Please see paragraphs 10.31 to 10.33 and Box 10.2 of the 2011 Annual Report).*

Does this include the criterion that the projects would not have been carried out by Member States without EU funding? If so, how could this be checked?

*Yes. Expenditure from the European Union budget within the Union must offer clear and visible benefits for the EU and for its citizens which could not be achieved by spending only at national, regional or local level, but could rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.*

*Without clear targets for expected results, it will continue to be difficult for the Commission to demonstrate that its expenditure achieves EU added value — and thus difficult to provide assurance that its spending is efficient and effective. Paragraph 10 of the Court’s Opinion No 7/2011 and paragraphs 8 and 151 of the Court’s Opinion No 1/2012 have referred to the Commission’s weaknesses in defining policy objectives in terms of results — what the EU funding is designed to achieve.*

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[http://www.eca.europa.eu/Lists/ECADocuments/Guideline\\_procurement/Quantification\\_of\\_public\\_procurement\\_errors.pdf](http://www.eca.europa.eu/Lists/ECADocuments/Guideline_procurement/Quantification_of_public_procurement_errors.pdf)