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**Annexes to the**  
**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN**  
**PARLIAMENT, THE COUNCIL AND THE COURT OF AUDITORS**

**Synthesis of the Commission's management achievements in 2013**

## Annex 1: Scope and amount at risk of the reservations

DG or EA	Reservation	Type	Scope		Amount at risk	
			ABB items concerned	under reservation	for the ABB items concerned	under reservation
DG AGRI	EAGF market measures for miscellaneous aid schemes in 9 Member States (ABB 05 02)	Financial	3 193.2	670.8	237.4	198.3
DG AGRI	EAGF direct support for paying agencies in 6 Member States (ABB 05 03)	Financial	41 658.3	18 997.5	973.9	652.2
DG AGRI	EAFRD expenditure for rural development measures for paying agencies in 19 Member States (ABB 05 04)	Financial	13 151.8	9 591.5	673.9	598.8
DG AGRI	IPARD pre-accession measures in 1 candidate country (ABB 05 05)	Financial	47.6	26.0	2.6	2.6
DG CLIMA	EU Registry Emissions Trading System (EU ETS) - significant security weaknesses remaining (ABB 07 12)	Reputational	-	-	-	-
DG MARE	European Fisheries Fund (EFF) management and control systems for 6 Member States (ABB 11 06)	Financial	566.4	91.3	10.8	7.6
DG HOME	<i>Solidarity (ABB 18 02) and Migration Flows (ABB 18 03)<sup>1</sup></i>	<i>(none)</i>	-	-	11.7	0.0
DG SANCO	Food and Feed area - animal disease eradication and monitoring programmes (ABB 17 04)	Financial	229.1	229.1	4.5	4.5
DG REGIO	2007-2013 ERDF/Cohesion Fund/IPA for operational programmes in 15 Member States, 5 European Territorial Cooperation programmes and 2 IPA programmes (ABB 13 03 -> 05; part 2007-2013)	Financial	43 392.8	5 636.0	1 152.7	440.2
DG REGIO	2000-2006 ERDF/Cohesion Fund management and control systems (ABB 13 03 -> 04; part 2000-2006)	Reputational	-	-	0.0 <sup>2</sup>	0.0
DG EMPL	2007-2013 ESF for operational programmes in 11 Member States (ABB 04 02; part 2007-2013)	Financial	13 763.8	2 159.4	330.3	123.2
DG EMPL	2000-2006 ESF for operational programmes in 4 Member States (ABB 04 02; part 2000-2006)	Reputational	-	-	0.0 <sup>3</sup>	0.0
DG DEVCO	All DEVCO activities and management cycles (overall; covering its EU general budget)	Financial	3 767.8	3 767.8	126.2	126.2
DG DEVCO	All DEVCO activities and management cycles (overall; covering the EDF budget)	Financial	2 963.0 <sup>4</sup>	2 963.0	99.3	99.3

<sup>1</sup> DG HOME funds implemented under shared management (65.93% of total funds; see AAR p. 39) amount to EUR 660 million, for which in 2013 no reservation was issued. They are included in the table to allow for an overall estimation of the amount at risk for shared management.

<sup>2</sup> No final payments affected in 2013

<sup>3</sup> No final payments affected in 2013

<sup>4</sup> This is the amount of EDF recorded in the accounts ("budget outturn" as per DEVCO AAR Annex 3B, p. 250), while the AAR of DG DEVCO includes EDF annual expenditure at EUR 3 054,7 million. The figure for the amount at risk has been adjusted accordingly.

DG or EA	Reservation	Type	Scope		Amount at risk	
			ABB items concerned	under reservation	for the ABB items concerned	under reservation
DG RTD	Research FP7 (ABB 08 02 -> 08 21; except 08 18; plus IMI JU)	Financial	3 664.4	3 664.4	107.5 <sup>5</sup>	107.5
DG CNECT	Research FP7 (ABB 09 04 -> 09 05)	Financial	1 533.0	1 533.0	31.8	31.8
DG ENTR	Research FP7 (ABB 02 04)	Financial	403.2	403.2	1.2	1.2
DG ENER	Research FP7 (ABB 32 06)	Financial	143.7	143.7	5.3	5.3
DG MOVE	Research FP7 (ABB 06 06)	Financial	65.3	65.3	0.8	0.8
REA	Research FP7 – Space & Security (ABB 02 04)	Financial	250.8	250.8	6.3	6.3
REA	Research FP7 – SMEs (ABB 08 13)	Financial	230.4	230.4	27.1	27.1
EACEA	Lifelong Learning Programme (LLP) (ABB 15 02 22)	Financial	124.4	124.4	3.7	3.7
DG HR	Possible fraud case in one European School (ABB 26 01 51)	Reputational	-	-	-	-
	<b>TOTAL (EU + EDF budgets) OF THOSE ACTIVITIES UNDER RESERVATION</b>		<b>129 149.0</b>	<b>50 547.6</b>	<b>3 807.0</b>	<b>2 436.6</b>

<sup>5</sup> Mid-value of the range reported by DG RTD (EUR 105.5 – 109.5 million)

**Annex 2:**  
**Definition of the amount at risk**

The Court of Auditors has expressed in its 2012 Annual Report the need for a more coherent approach for quantifying key elements of the reservations and, in particular, the amount at risk. Furthermore, the discharge authority has criticised the fact that the concept of amount at risk was not defined in the synthesis report. It is therefore necessary to define in a more prominent and less technical manner the various concepts used:

- **Scope** refers to the volume of expenditure for the reporting year. Unless specifically indicated, expenditure is measured in terms of payments made during the financial year by ABB budget item (at 4-digit level).
- **Error rate** is the best estimation by the authorising officer by delegation, taking into account all relevant information available and using professional judgement, of the value of the transactions which were not entirely in full conformity with the applicable regulatory and contractual provisions at the time the payment was made; expressed as a percentage of the total expenditure. The terms ex-ante and ex-post are used by reference to the time the payment is made.

"All relevant information available" notably includes control indicators and results from all controls implemented by the authorising officer as well as from audit reports. If the expenditure is directly managed by the Commission the estimation of the error rate largely rests on the results of ex-post audits or checks of a sample of payments. In case the authorising officer relies on Member States agencies or on other bodies for the management of EU funds (shared and indirect management), the authorising officer assesses the internal control systems implemented by these agencies and bodies to estimate the error rate for each of them.

- **Residual error rate** is the best estimation by the authorising officer by delegation, taking into account all relevant information available and using professional judgement, of the value of the expenditure which was not in full conformity with the applicable regulatory and contractual provision after all corrective measures have been implemented; expressed as a percentage of the total expenditure.

We refer to a **multi-annual residual error rate** when the estimation is made over several years, either cumulative for multi-annual programmes; or as a rolling average for annual programmes for which the control cycle, including ex-post controls aimed to detect and correct errors, exceeds a single year.

- **Amount at risk** is defined as the value of the fraction of the transactions which is estimated not to be in full conformity with the applicable regulatory and contractual requirements after application of all controls (corrective measures) intended to mitigate compliance risks.
- **Total amount at risk** is the total amount at risk of expenditure under reservation increased with the maximum amount at risk (2%) of the expenditure for which no reservation has been made because the error is estimated not to exceed the 2% materiality threshold.
- **Financial exposure** refers to the same concept as amount at risk but expressed as a percentage, i.e. the amount at risk over the scope.

### **Annex 3:** **Executive Agencies, Regulatory Agencies, and Joint Undertakings**

In line with practices in most Member States, using agencies to carry out predetermined key tasks<sup>6</sup> has become an established part of the way the European Union works.

While the Executive Agencies are an integral part of the Commission's overall discharge procedure<sup>7</sup>, the following are subject to a separate discharge procedure:

- Decentralised Agencies;
- Joint Undertakings which financial rules are based on Article 208 of the Financial Regulation (FR)<sup>8</sup>;
- Joint Undertakings operating under Article 209 FR which constituent acts<sup>9</sup> (by derogation to Article 209 FR) foresee separate discharge procedure.

#### **1. EXECUTIVE AGENCIES**

Executive Agencies (EAs) operate within a clear institutional framework, governed by a single legal basis<sup>10</sup>. Their tasks must relate to the management of Union programmes or actions, they are set up for a limited period and they are located at the place where the Commission and its services are located. The Commission's responsibility for executive agencies is clear: the Commission creates them (after prior information to the budgetary authority, including a cost-benefit-analysis, and subject to the positive opinion of the Committee for the executive agencies<sup>11</sup>), maintains a degree of control over their activity, and appoints the Director of the executive agency and Members of the Steering Committee. Their Annual Activity Reports (AARs) are annexed to the AAR(s) of their parent Directorate(s) General<sup>12</sup>.

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<sup>6</sup> These cannot be related to policy-making activities.

<sup>7</sup> For the operational budget they manage.

<sup>8</sup> Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

<sup>9</sup> Soon to be adopted.

<sup>10</sup> Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ L 11, 16.1.2003).

<sup>11</sup> Former regulatory procedure which is now the examination procedure with the requirement of a positive opinion in the Committee according to Article 13(1)(c) of Regulation 182/2011.

<sup>12</sup> i.e. those Directorates General which have delegated the implementation of programmes (or parts of it) to the executive agency: Per 31/12/2013 the parent DGs for EACI are DGs ENTR, ENV, ENER, MOVE; for EAHC it is DG SANCO; for EACEA these are DGs EAC, COMM, DEVCO; for ERCEA, it is DG RTD; for REA these are DGs RTD, ENTR, EAC; for TEN-T EA, it is DG MOVE. In 2014, the parent DGs change also for EACEA, EACI (which became EASME by then), EAHC (CHAFAEA by then), REA, TEN-T EA (INEA by then).

The Multiannual Financial Framework 2014-2020<sup>13</sup> foresees an important increase in the budget allocated to certain EU programmes. To manage these programmes efficiently and transparently the Commission envisaged a more extensive use, by more parent DGs, of the six existing executive agencies. With this in mind the mandates of the six existing executive agencies were expanded in December 2013 to cover the management of an increased share of the new spending programmes. The budgetary impact of this delegation was included in an Amending letter to the 2014 budget.

No new agencies were created in 2013, the six EU agencies in 2013 are:

- the Executive Agency for Competitiveness and Innovation (**EACI**);
- the Executive Agency for Health and Consumers (**EAHC**), located in Luxembourg;
- the Trans-European Transport Network Executive Agency (**TEN-T EA**);
- the Education, Audiovisual and Culture Executive Agency (**EACEA**);
- the European Research Council Executive Agency (**ERCEA**);
- the Research Executive Agency (**REA**).

The names of three executive agencies changed on 1<sup>st</sup> January 2014: EACI became the “Executive Agency for Small and Medium-sized Enterprises” (EASME), EAHC became “The Consumers, Health and Food Executive Agency” (CHAFEA) and TEN-TEA became “The Innovation and Networks Executive Agency” (INEA).

All executive agencies are located in Brussels, except for CHAFEA (Luxembourg).

The annual discharge in respect of implementation of operational (i.e. programmes) appropriations is covered by the general discharge given to the Commission<sup>14</sup>. The Director of each executive agency receives discharge from Parliament, in respect of the executive agency's operating budget.

All executive agencies are subject to a standard Financial Regulation adopted by the Commission, governing the establishment and implementation of their operating budget. These have important operational budgets to implement, the effectiveness of the Commission's supervision of the executive agencies is thus of great importance<sup>15</sup>. Their respective roles and responsibilities and notably the content of supervisory tasks of the Commission and the associated reporting obligations of the agencies are formalised in the six individual instruments of delegation and are further detailed in the Memoranda of Understanding signed between the director of each agency and the delegating partner DG(s). These obligations are enforced *inter alia* through the Commission's presence in Steering Committees and coordination meetings, the Commission's monitoring of internal control systems, budget implementation and the follow-up of audits.

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<sup>13</sup> Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the Multiannual Financial Framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

<sup>14</sup> Unlike the separate discharge process of (1) decentralised agencies, (2) Joint Undertakings operating under Article 208 FR and (3) Joint Undertakings which constituent acts foresee separate discharge (by derogation from Article 209).

<sup>15</sup> The 2012 synthesis report already confirmed that the declaration of assurance of the respective DGs, covers all resources assigned to its Directorates-General, irrespective of the management mode used and irrespective of whether the entrusted body is subject to a separate discharge decision (for its executive agencies, regulatory agencies and JU).

The executive agencies' high occupation rate of the authorised posts was maintained in 2013 at 97 %. The breakdown of staff employed on 31/12/2013 by the executive agencies was as follows:

	Temporary agents*	Contract agents	Total	Total Authorised under the EU budget
EACI	35	122	157	159
EAHC	11	38	49	50
EACEA	99	314	413	431
ERCEA	99	280 <sup>16</sup>	379	389
REA	138	407	545	558
TEN-TEA	32	66	98	100
<b>Total</b>	<b>414</b>	<b>1227</b>	<b>1641</b>	<b>1687</b>

\*Officials seconded by the Commission and agents recruited by the agency

The executive agencies must adopt the Commission's internal control system and report on its effective implementation in the AAR. In 2013, executive agencies did not report important difficulties in implementing the required controls. Only one agency (EACI) reported that one control standard (ICS 3, staff allocation and mobility) had not been effectively implemented yet. Given the upcoming transition phase for the extension of their activities, the executive agencies put emphasis on the standards related to organisation, processes and procedures (ICS 7 and ICS 8).

## 2. DECENTRALISED AGENCIES

The decentralised EU Agencies (also known as "traditional", or "regulatory" agencies) are bodies falling within the scope of Article 208 of the Financial Regulation or similar provisions foreseen by their constituent acts<sup>17</sup>, i.e. they are independent legal entities under European public law, distinct from the EU institutions (Council, Parliament, Commission, etc.) which receive (or are likely to receive) contribution charged to the EU budget.

There are currently 32 decentralised agencies operational in different EU countries: 23 are fully financed from the EU budget, 3 are partially financed by fees and charges, 3 agencies are self-financed, and 3 agencies are partly co-financed by national authorities on the basis of a funding key.

In what follows, the following agencies are not covered, because they do not meet all conditions set out in Article 208 of Financial Regulation:

- 2 fully self-financed agencies,
- 3 former second pillar agencies: EDA (European Defence Agency), EUSC (European Union Satellite Centre), ISS (European Institute for Security Studies),
- European Supply Agency (ESA) which is founded under the Euratom Treaty.

<sup>16</sup> This figure is made up of 270 contract agents and 10 seconded national experts.

<sup>17</sup> For instance, the Office for Harmonisation in the Internal Market and the Community Plant Variety Office.

On the other hand, the EIT (European Institute of Innovation and Technology) which is set up as a *sui generis* structure due mainly to its governance model. In terms of budgetary and financial arrangements, EIT follows largely the regime of decentralised agencies. It is financed from public (including from the EU budget) and private funds, and is subject to Article 208 of the Financial Regulation.

Decentralised agencies play an important role in implementing EU-policies, especially tasks of a technical, scientific, operational and/or regulatory nature. They also support cooperation between the EU and national governments in important policy areas, by pooling technical and specialist expertise from both the EU institutions and national authorities.

In July 2013 the Commission proposed the creation of two bodies which budgetary and financial provisions are similar to those foreseen for decentralised agencies: the Single Resolution Board and the European Public Prosecutor Office (EPPO).

The agencies have been established on a case-by-case basis over the years – to respond to emerging and specific needs – and thus they operate under somewhat diverse conditions. Following the reflection initiated by the Commission Communication *European Agencies: the way forward*, thorough inter-institutional discussions between the European Parliament, the Council and the Commission took place. That reflection resulted in July 2012 in endorsement of a Common Approach on decentralised agencies, notably with a view to addressing a series of governance issues in order to improve coherency, effectiveness and accountability of the agencies. The Common Approach has been translated into a dedicated Roadmap on which the Commission regularly informs the European Parliament and the Council. It has also been reflected in the revised Framework Financial Regulation<sup>18</sup> (detailed modifications are presented under point 2.2) to which Agencies' financial rules have already been aligned.

In December 2013, the Commission issued a progress report on the implementation of the common approach. The report shows what progress has already been achieved, in close cooperation and with the active contribution of agencies themselves. The implementation of the Roadmap will continue during 2014 and beyond, in accordance with the deliverables and deadlines set in this document. The Commission will report again on the state of play by the end of 2014<sup>19</sup>.

In order to complete this comprehensive approach towards decentralised agencies, the Commission adopted also in July 2013 a Communication<sup>20</sup> which sets out a programming of the staffing and subsidy levels of each decentralised agency under the new for 2014-2020, with a view to ensuring compatibility of agency resources with the constraints set in this regard by the new multiannual financial framework 2014-2020.

The Commission is willing to continue its assessment of the possibilities to merge some of the existing agencies, as well as to obtain further synergies from the sharing of services between the agencies themselves and from within the Commission, and to carefully look into the

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<sup>18</sup> Commission Delegated Regulation (EU) No 1271/2013 of 30.9.2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 348, 7.12.2013, p. 42).

<sup>19</sup> All related documents and reports can be found on [http://europa.eu/about-eu/agencies/overhaul/index\\_en.htm](http://europa.eu/about-eu/agencies/overhaul/index_en.htm).

<sup>20</sup> COM(2013) 519 of 10 July 2013 Communication from the Commission to the European Parliament and the Council on programming of human and financial resources for decentralised agencies 2014-2020.



matter of unnecessary spending due to distant and multiple sites of location. However, it has to be noted that the proposal for an European agency for law enforcement and training, by merging the European Police College (CEPOL) with Europol, has not received the necessary support.

Further to the joint statement agreed as part of the Conciliation on the 2014 budget, a new inter-institutional working group has been created to explore possible synergies and efficiency gains in order to find the way to pursue the 5% staff reduction over 5 years applicable to all EU institutions, agencies and bodies, as agreed in the new Interinstitutional Agreement. It is placed under the aegis of Parliament (COBU-CONT), Council and Commission, within the responsibilities of the Commissioner in charge of Budget and Financial Programming and the Commissioner for Inter-Institutional Relations and Administration.

## 2.1 Discharge

On 4 April 2014, 28 decentralised agencies, the EIT and the Euratom Supply Agency were granted discharge by the European Parliament<sup>21</sup>. The Parliament's Budgetary Control Committee postponed the "budget discharge" to the Riga-based electronic communications regulatory body BEREC. The most recently established EU-LISA was not subject to discharge yet.

Two decentralised agencies, the Office for Harmonisation in the Internal Market and the Community Plant Variety Office (which are self-financed) and three bodies that are funded on an intergovernmental basis directly by the participating Member States (the European Institute for Security Studies, the European Union Satellite Centre and the European Defence Agency) do not receive discharge from the European Parliament.

Nevertheless the Common Approach foresees that decentralised agencies that are self-financed should submit to the European Parliament, the Council and the Commission an annual report on the execution of their budget and take duly into account their requests and recommendations.

## 2.2 Revision of the Framework Financial Regulation (FFR)

In order to take into account the Joint statement and the adoption of the new general Financial Regulation, the Commission adopted a new Framework Financial Regulation for the decentralised agencies on 30 September 2013<sup>22</sup>. The aim was also to address recurrent problems encountered by agencies and by the Commission. This new Framework Financial Regulation introduces new elements concerning in particular the following issues:

- **Streamlining reporting obligations:** the revised FFR provides for a consolidated annual activity report which includes information on the implementation of the agency work programme, budget, staff policy plan, agencies' management and internal control systems<sup>23</sup>; it foresees earlier reporting and alignment of reporting practices and

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<sup>21</sup> While the ECA has issued a qualified opinion for EIT and a disclaimer of opinion for FRONTEX.

<sup>22</sup> Commission Delegated Regulation (EU) No 1271/2013 of 30.9.2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 348, 7.12.2013, p. 42)

<sup>23</sup> The report combines what was required by previous FFR by the Annual Activity Report, internal and external audit, and financial reporting

deadlines with those of the Commission (needs to be sent by 1 July each year to the Commission, the ECA, the EP and Council).

- **Streamlining programming obligations:** the revised FFR foresees one programming document consisting of annual and multi-annual components; it aligns the timetable for the annual and multi-annual programming with the budgetary procedure.
- **Clarification as regards additional tasks:** the revised FFR foresees explicit provisions setting out the conditions and rules as regards financing additional tasks through delegation agreements and ad hoc grants with the aim to increase transparency on funding of agencies and ensure compliance with FR principles on grants.
- **Clarification of the internal audit architecture** (the role of the IAS versus Internal Audit Capability (IAC)): the revised FFR foresees enhancement of work coordination, exchange of information and overall synergies between IACs and IAS; shared IACs between agencies in the same policy area where appropriate and the creation of IACs where this is cost-effective and proves to have a clear added value.
- **Financing of multi-annual projects:** the revised FFR provides for the possibility to break down commitments extending over several years into annual instalments where the basic act or sector specific act so provides or where they relate to administrative expenditure.
- **Horizontal functions/services:** the revised FFR provides for the possibility, where cost-efficiency might be gained, of sharing or transferring the services (in particular as regards accounting functionalities).

### 3. JOINT UNDERTAKINGS<sup>24</sup>

For the management of the Joint Technology Initiatives (JTI) in the Research & Innovation area, seven Joint Undertakings (JU) were created for executing the FP7 budget on behalf of Parent DGs RTD, CNECT and MOVE: i.e. ARTEMIS in the area of embedded computing systems, ENIAC in nano-electronics in the ICT domain, IMI in innovative medicines, Clean Sky in aeronautics, FCH in the area of fuel cells and hydrogen, SESAR in air traffic management (single European Sky), and F4E/ITER (Fusion for Energy) in energy research. These are separate and independent legal entities.

Four JUs (Clean Sky, IMI, FCH and SESAR) follow the bipartite model, involving the Commission and the relevant industry's representatives. The three others (ENIAC, ARTEMIS and F4E) follow the tripartite model, involving in addition the public sector representatives from the JTI member states (which may be different from the 28 EU MS).

In 2014, it is foreseen that two new JUs (Bio Based Industries JU (BBI) and SHIFT<sup>2</sup>RAIL JU) will start their activities, and that ARTEMIS and ENIAC will merge into one ECSEL JU (electronic components and systems joint undertaking). Clean Sky, IMI and FCH will be re-established and SESAR's mandate will be extended.

The 2013 Financial Regulation takes into account the experience with the setting up of the JTIs under FP7 and in particular their specific structure and the contribution of the industry. As a result, depending on the corresponding provisions in their constituent acts, PPP bodies may be assimilated as to their financial rules to agencies (Article 208 bodies - SESAR) or

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24 JUs are established on the basis of art. 187 TFEU (ex-Article 171 of the EC Treaty) which allows the Commission to set up Joint Undertakings for "the efficient execution of Community research, technological development and demonstration programmes".

adopt their financial rules in accordance with a Model Financial Regulation specifically applicable to PPP bodies (Article 209 bodies – future IMI2, Clean Sky2, FCH2, ECSEL, BBI and SHIFT<sup>2</sup>RAIL).

The Commission's supervisory arrangements over the JUs are ensured by the partner DGs monitoring the JU's set-up of its internal control system (when preparing for its budgetary autonomy), the delegation agreement concluded between each JU and the Commission and the Commission's representation on its governing Board (when having become autonomous). Partner DGs have to report in their own AAR on these supervision modalities and on the assessment of whether any serious control issue within the JU would affect their own (reputational and/or financial) assurance building process. For 2013, DG RTD in its AAR included the operational budget entrusted to the IMI JU into its reservation on the FP7 research grants programme.

The Court of Auditors concluded in December 2013 on the results from its 2012 annual audits of the European Research Joint Undertakings that all Joint Undertakings had produced reliable accounts but three of them (ENIAC, ARTEMIS and IMI), received a qualified ECA statement of assurance in respect of the legality and regularity of their underlying transactions of 2012. For some other JUs, there is room to improve procedures, in particular the implementation of the ex-post audit strategy and, in the case of F4E, cost control mechanisms.

On 4 April 2014, all joint undertakings were granted discharge by the European Parliament related to the implementation of the budget for the financial year 2012.

**Annex 4:**  
**Compliance with payment time limits**

(Article 111.5 RAP)

Since 2013, the **statutory time limits** for payments have been laid down in the Rules of Application of the Financial Regulation<sup>25</sup> (hereinafter RAP). There are also some exceptionally applied time limits which are detailed in sector-specific regulations. The entry into force of the new Financial Regulation and its rules of application brought with it changes to payment limits. The Commission's standard contracts have been redrafted to take on board the new regulatory requirements.

Article 92 of the Financial Regulation foresees that payments to creditors must be made within deadlines of 30, 60 or 90 days, depending on how demanding it is to test the deliverables against the contractual obligations. For contracts and grant agreements for which payment depends on the approval of a report or a certificate, the time limit for the purposes of the payment periods is no longer automatically suspended until the report or certificate in question has been approved.

The period of two months remains valid for payments under Article 87 of the Regulation of the European Parliament and the Council<sup>26</sup> laying down the general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund.

Compliance with payment time limits has been reported by the Services in their Annual Activity Reports since 2007<sup>27</sup>. In accordance with the applicable rules, the payment times reported in this annex have been calculated as follows:

For payments related to contracts and grant agreements signed before 2013 the time limits specified in the Financial Regulation of 2007 are applied.

- where the payment is contingent upon the approval of a report, the time from approval of the report until payment;
- where no approval report is required, the time from reception of the payment request until payment.

For payments related to contracts and grant agreements signed as from 2013, the Financial Regulation of 2013 is applied:

- where no report is required and where the payment is contingent upon the approval of a report, the time from reception of the payment request until payment.

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<sup>25</sup> Commission Delegated Regulation (EU) N° 1268/2012 of 29 October 2012 (OJ L 362, 31.12.2012, p.1).

<sup>26</sup> Regulation (EC) No 1083/2006 of the European Parliament and of the Council laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, 31.7.2006, p. 25).

<sup>27</sup> Based on available data in ABAC as of end of the financial year 2007.

*The Commission's global average payment time* is monitored by the Accounting Officer. It has evolved as follows in recent years:

	2011	2012	2013
Global average payment time	25.7 days	24.9 days	24.5 days

The data shows that the global average payment time of the Commission services is just below 25 days and it has steadily decreased in the last three years. This is a satisfactory trend but there is clearly scope for reducing payment times further. Thus services are encouraged to continue their efforts in this regard and to implement follow up measures whenever payment time problems are identified.

The table below illustrates the evolution of the “*late payments*” i.e. *payments made after expiry of the statutory time limit in recent years*. The data used has been extracted from the ABAC accounting system:

	2011	2012	2013
% of late payments in number	12.3 %	11.9 %	17.0 %
% of late payments in value	7.3 %	13.6 %	18.5 %
Average number of overdue days <sup>28</sup>	43.2	41.9	37.5

Regrettably, the number of late payments and the amounts associated with them have increased significantly in 2013. Since payment times did not become longer, this result is believed to be linked to the more stringent requirements associated with the new FR. Another reason is associated with the lack of payment appropriations which has adversely affected several DGs’ ability to pay on time. There is clearly a need for services to intensify their efforts to ensure that statutory payment time limits are met.

The new legal time limits introduced by the revised FR correspond to the previous target deadlines from Communication SEC(2009) 477 of 08/04/2009. Thus the reporting on compliance with “target” time limits is now substituted by the reports on the respect of statutory time limits.

Concerning the *interest paid for late payments*<sup>29</sup> (see figures in the table below) **the total amount paid by the Commission in 2013 is stable when compared to 2012**. The abnormally high amount of interest paid in 2011 was exceptional and due to late payments on to two litigation cases handled by one DG.

	2011	2012	2013
Interest paid for late payments	1 734 229.98 €	738 959.75 €	659 342.16 €

The **causes of late payments** include the complexities of evaluating the supporting documents that are a prerequisite for payment. This is particularly the case when the supporting documents are reports of a technical nature that sometimes have to be assessed by external experts. Other causes are associated with difficulties in coordinating the financial and operational checks of payment requests, and issues with the management of payment suspensions.

The 2009 Communication establishing Commission-internal payment targets provided a clear incentive to services to reduce their payment times. Significant improvements were noted in particular considering that from 2009 to 2011 the global average payment time fell from 34 to 26 days. However improvements in recent time have been less marked with current payment times fixed at around 25 days. There is scope for reducing payment times further especially

<sup>28</sup> i.e. above the statutory time limit.

<sup>29</sup> i.e. no longer conditional upon the presentation of a request for payment (with the exception of amounts below 200 euros).

since both volume and value of late payments rose substantially in 2013. When setting up action plans in this area, services' should focus on further reducing late payments from their current levels of 17% of payments in terms of their number, 18.5 % of their value. **The aim is to meet the statutory payment time for every payment.**

**Annex 5:**  
**Report on negotiated procedures 2013**

## **1. LEGAL BASIS**

Article 53 of the Rules of application of the Financial Regulation requires authorising officers by delegation to record contracts concluded under negotiated procedures. Furthermore, the Commission is required to annex a report on negotiated procedures to the summary of the AARs referred to in Article 66.9 of the Financial Regulation.

## **2. METHODOLOGY**

A distinction has been made between the 45 Directorates-general, services, offices and executive agencies which normally do not provide external aid, and those three Directorates-General (DEVCO, ELARG and FPI) which conclude procurement contracts in the area of external relations<sup>30</sup> or award contracts on their own account, but outside of the territory of the European Union.

These three Directorates-General have special characteristics as regards data collection (decentralised services, ...), the total number of contracts concluded, thresholds to be applied for the recording of negotiated procedures (€ 20 000), as well as the possibility to have recourse to negotiated procedures in the framework of the rapid reaction mechanism (extreme urgency). For these reasons, a separate approach has been used for procurement contracts of these three Directorates-General.

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

### **3.1. The 45 Directorates-general, services or offices, excluding the three "external relations" Directorates-general**

On the basis of the data received, the following statistics were registered: **103** negotiated procedures with a total value of € 204 million were processed out of a total of **733** procedures (negotiated, restricted or open) for contracts over EUR 60 000 with a total value of EUR 2517 million.

For the Commission, the average proportion of negotiated procedures in relation to all procedures amounts to **14.1%** in number (15.2% in 2012), which represents some **8.1%** of all procedures in value (13.2% in 2012).

An authorising service is considered to have concluded a "distinctly higher" proportion of negotiated procedures "than the average recorded for the Institution" if it exceeds the average proportion by 50%, or if the increase from one year to the next is over 10%. Thus, the reference threshold for this year is fixed at **21.1%** (22.9% in 2012).

Some 10 Directorates-General or services out of the 45 exceeded the reference threshold, and another 2 increased their number of negotiated procedures by more than 10% compared to the previous year. Among those 12 services, it should be noted that 6 Directorates-General

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<sup>30</sup> Different legal basis: Chapter 3 of Title IV of Part Two of the Financial Regulation

concluded only one to four negotiated procedures, but because of the low number of procedures conducted by each of them (up to 7), the average was exceeded. In addition, 17 out of 45 Directorates-General have not used any negotiated procedure, including 9 services that awarded no contract at all.

The assessment of negotiated procedures compared with the previous year shows a decrease in the order of **1.2** percentage points in terms of relative number and a decrease of **5.1** percentage points in terms of relative value.

### **3.2. The three "external relations" Directorates-General**

On the basis of the data received, the following statistics were registered: **149** negotiated procedures for a total value of contracts € 138 million were processed out of a total of **585** procedures for contracts over € 20 000 with a total value of about € 1151 million.

For the three "external relations" Directorates-General, the average proportion of negotiated procedures in relation to all procedures amounts to **25.5%** in number, which represents some 12% of all procedures in value terms. Only one Directorate-general exceeds the reference threshold of 38.2% (average + 50%).

If compared with previous years, these Directorates-General have registered a decrease of **1.4** percentage point in number of negotiated procedures in relation to all procedures compared to the previous year.

## **4. ANALYSIS OF THE JUSTIFICATIONS AND CORRECTIVE MEASURES**

The following categories of justifications have been presented by those Directorates-general who exceeded the thresholds:

- 1) **Statistical deviations** due to the low number of contracts awarded under all procedures. Indeed 10 out of the 12 DGs have carried out less than 15 procurement procedures as a whole.
- 2) **Objective situations of the economic activity sector**, where the number of operators may be very limited or even in a monopoly situation (for reasons of intellectual property, specific expertise, etc.) for instance in the scientific area or for financial databases. Situations of technical captivity may also arise especially in the IT domain (proprietary software or maintenance of complex servers hosting critical information systems, etc).
- 3) **Situations of emergency** that cannot be foreseen by the contracting authority, as is the case for the Stability Instrument.
- 4) **Similar services/works** as provided for in the initial tender specifications. Some services in charge of large inter-institutional procedures are faced with estimations of needs at the beginning of (usually framework) contracts that do not always match the consumption trend of the contract during its execution. The leading service must then use a negotiated procedure on behalf of all institutions party to the contract to increase the ceiling of the framework contract in question.
- 5) **Unsuccessful open or restricted procedure**, leading to a negotiated procedure.



Besides it should be highlighted that the number of negotiated procedures in 2013 compared to 2012 has decreased in absolute terms (from 111 to 103), while the overall number of procurement procedures has increased slightly (from 728 to 733).

Several corrective measures have already been implemented by the Directorates-General concerned:

- 1) Regular update of **standard model documents and guidance documents** on procurement.
- 2) **Training and improved inter-service communication**. The Central Financial Service provides regular practical training sessions on procurement.
- 3) **Improvement of the system of evaluation of needs** of Directorates-general/services and an **improved programming** of procurement procedures. The Commission's horizontal services will continue their active communication and consultation policy with the other DGs, institutions, agencies and other bodies along the following axes:
  - permanent exchange of information via regular meetings with user services and agencies in appropriate fora;
  - ad-hoc surveys prior to the initiation of (inter-institutional) procurement procedures for the evaluation of needs;
  - better estimate of needs of inter-institutional framework contracts and better monitoring with semester consumption reports from user services or agencies.

**Annex 6: Summary of Waivers of recoveries of established amounts receivable in 2013**

**(Article 91.5 RAP)**

In accordance with Article 91(5) of the Rules of Application, the Commission is required to report each year to the budgetary authority, in an annex to the summary of the Annual Activity Reports, on the waivers of recovery involving 100.000 € or more.

The following table shows the total amount and the number of waivers above 100.000 € per Directorate-General/Service for the EC budget and the European Development Fund for the financial year 2013.

**EC budget:**

<b>Directorate-General/Service</b>	<b>Amount of waivers in €</b>	<b>Number of waivers</b>
CNECT	894,999.98	5
DEVCO	606,831.82	4
EACEA	886,738.54	4
ECFIN	193,573.47	1
ECHO	987,318.73	2
EMPL	533,430.56	2
ENER	372,898.92	1
ENTR	143,067.18	1
ENV	1,335,026.43	3
FPI	138,989.59	1
MARE	160,927.97	1
MOVE	622,978.63	2
RTD	2,347,068.76	5
<b>Total:</b>	<b>9,223,850.58</b>	<b>32</b>

**European Development Fund:**

<b>Directorate-General/Service</b>	<b>Amount of waivers in €</b>	<b>Number of waivers</b>
EDF	839,249.25	3

**Guarantee Fund:**

<b>Directorate-General/Service</b>	<b>Amount of waivers in €</b>	<b>Number of waivers</b>
GF (RTD - FP7)	343,666.43	2