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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 2012

Annex 1: Reservations 2008 – 2012[1]

Chapter — Revenue

DG		Reservations 2012		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008
BUDG	1	1. Reliability of the **Belgian clearance and accounting systems** for processing custom declarations.	1	1. Reliability of the **Belgian clearance and accounting systems** for processing custom declarations						

Chapter — Agriculture: market and direct support

DG		Reservations 2012		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008
AGRI	1	1. Serious deficiencies in direct payments in Portugal, Bulgaria and France	1	1. Serious deficiencies in the **IACS** in Portugal and Bulgaria.	1	1. Serious deficiencies in the **IACS** in Portugal, Bulgaria and Romania.	1	1. Serious deficiencies in the **IACS** in Bulgaria and Romania.	1	1. Management and control system for **SAPARD in Bulgaria and Romania.**

[1] This table presents a summary of reservations; it is not intended to offer an exhaustive description of them. For details of the reservations, please consult the AAR of the relevant Commission department on http://ec.europa.eu/atwork/synthesis/aar/index_en.htm

Chapter — Rural development, environment and health

DG		Reservations 2012		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008
AGRI	2	1. **Rural development** expenditure. 2. Deficiencies in the supervision and control of **organic production.**	2	1. **Rural development** expenditure. 2. Deficiencies in the supervision and control of **organic production.**	0		1	1. Expenditure for **rural development** measures under Axis 2 (improving the environment and the countryside) of the 2007-2013 programming period	2	1. Expenditure for **rural development** measures under Axis 2 (improving the environment and the countryside) of the 2007-2013 programming period.
CLIMA	1	1. Significant security weakness identified in the national registries of the EU Emissions Trading System (ETS).	1	1. Significant security weakness identified in the national registries of the EU Emissions Trading System (ETS).	1	1. Significant security weakness identified in the national registries of the EU Emissions Trading System (ETS).				
MARE (former FISH)	2	1. Management and control systems for one **FIFG operational programme in Germany**. 2. Ineligibility of declarared expendidure concerning **European Fisheries Fund** in in Belgium, the Czech Republic, Estonia, France, Italy, Romania, Sweden, Spain and the UK.	2	1. Management and control systems for one **FIFG operational programme in Germany**. 2. **European Fisheries Fund management** and control systems and investments on board: eligibility of expenditure.	1	1. Management and control systems for one **FIFG operational programme in Germany**.	2	1. Management and control systems for **FIFG operational programmes** in two Member States and specific measures in another three Member States. 2. Eligibility of payments made to Member States to compensate additional costs in the **marketing of certain fishery products from the Outermost Regions.**	1	Reservation on direct centralised management concerning the **eligibility of costs reimbursed for expenditure in the area of control and enforcement of the Common Fisheries Policy**, where the annual error rate detected by ex-post controls is higher than the 2% of the annual payments made for the MS programmes and on a multiannual basis represents more than 2% of sample

DG		Reservations 2012		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008
										payments.
SANCO	1	1. Inaccuracies in cost claims under the animal disease eradiction and monitoring programmes in **the Food and Feed** activity.	1	1. High error-rate (10,4%) detected during on-the-spot controls of **the Food and Feed** activity.	0					
ENV	0		0		0		1	**Eligibility of expenditures** declared by beneficiaries of grants	0	

Chapter — Regional policy, Energy and transport

DG		Reservations 2012		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008
MOVE (former TREN)	2	1. Accuracy of cost claims under FP6 (error rates above materiality threshold of 2%) 2. Accuracy of cost claims under FP7 (error rates above materiality threshold of 2%)	2	**1. Accuracy of cost claims under FP6 (error rates above materiality threshold of 2%)** **2. Accuracy of cost claims under FP7 (error rates above materiality threshold of 2%)**	1	**1. Accuracy of cost claims under FP6 (error rates above materiality threshold of 2%)**	1	Accuracy of cost claims under FP6 (error rates above materiality threshold of 2%)	1	Rate of residual errors with regards to the accuracy of cost claims in FP6.
ENER (former TREN)	3	1. Accuracy of cost claims under FP6 (error rates above materiality threshold of 2%) 2. Accuracy of cost claims under FP7 (error rates above materiality threshold of 2%)	2	**1. Accuracy of cost claims under FP6 (error rates above materiality threshold of 2%)** **2. Accuracy of cost claims under FP7 (error rates above**	1	**1. Accuracy of cost claims under FP6 (error rates above materiality threshold of 2%)**				

DG		Reservations 2012		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008
		3. Beneficiaries of grants under the European Energy Programme for Recovery (EEPR) not respecting public procurement rules when subcontracting.		**materiality threshold of 2%)**						
REGIO	2	1. Reservation on ERDF/Cohesion Fund management and control systems for several programmes in the period 2007-2013 in Austra, Belgium, the Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Polan,d Romania, Slovakia, Spain and the UK; for eleven cross-border programmes and the European Territorial Cooperation programmes; and the Adriatic program for Pre-Accesion Assitance (IPA) 2. Reservation on ERDF/Cohesion Fund management and control systems for some programmes in the	2	**1. Reservation on ERDF/Cohesion Fund management and control systems for several programmes in the period 2007-2013 in Austria, Bulgaria, the Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Romania, Slovenia, Slovakia, Spain and the UK; for IPA management and control systems in the former Yugoslav Republic of Macedonia and European Territorial Copporation programmes and a programme for IPA/cross-border**	2	**1. Reservation on ERDF management and control systems for certain programmes in the period 2007-2013 in Bulgaria, Czech Republic, Germany, Greece, Italy, Latvia, Lithuania, Spain, Romania, United Kingdom, 13 European Territorial Cooperation programmes) and 6 IPA-Cross-borders programmes).** **2. Reservation on ERDF management and control systems for certain programmes in the period 2000-2006 in Bulgaria, Germany, Hungary, Italy, Latvia, Lithuania, The Netherlands and concerning 9 Interreg**	2	1. Reservation on ERDF management and control systems for certain programmes in the period 2007-2013 in Germany, Italy, Spain, Bulgaria, 15 European Territorial Cooperation programmes 2. Reservation on ERDF management and control systems for certain programmes in the period 2000-2006 in Bulgaria, Italy, Germany, and UK and concerning 15 Interreg programmes	2	1. Reservation on ERDF management and control systems for the period 2000-2006 in certain programmes in: Belgium, Germany, Italy Spain and 21 Interreg programmes 2. Management and control system for the road sector in Bulgaria in 2008.

DG		Reservations 2012		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008
		period 2000-2006 in Ireland, Italy and Spain and for Transport in Poland and Transport in Romania.		**cooperation.** **2. Reservation on ERDF/Cohesion Fund management and control systems for some programmes in the period 2000-2006 in Germany, Hungary, Ireland, Italy, Spain and for cross-border programmes.**		**programmes**				

Chapter — Employment and Social Affairs

DG		Reservations 2012		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008
EMPL	2	1. Management and control systems for identified operational programmes under ESF 2000-2006 in Germany, France, Italy and Spain. 2. Management and control systems in ESF in Belgium, the Czech Republic, France, Germany, Ireland, Italy, Poland, Roumania, Slovakia, Spain and the United Kingdom for certain programmes in the period 2007-2013 as well as the IPA	2	1. Management and control systems for identified operational programmes under ESF 2000-2006 in Germany, France, Italy and Spain. 2. Management and control systems in ESF in Belgium, the Czech Republic, Germany, Italy, Lavia, Lithuania, Roumania, Slovakia, Spain and the United Kingdom for certain programmes in the period 2007-2013 as well as for the former	2	1. Management and control systems for identified operational programmes under ESF 2000-2006 in Germany, France, Italy and Spain. 2. Management and control systems in ESF in Austria, Belgium, Bulgaria, Germany, Finland, Hungary, Ireland, Italy, Sweden, Slovakia, Spain and the United Kingdom for certain programmes in the period 2007-2013	2	1. Management and control systems for identified operational programmes under ESF 2000-2006 in Belgium, Germany, France, Italy and Spain. 2. Management and control systems in ESF in Belgium, Germany, Italy, Luxembourg, Romania and Spain; for certain programmes in the period 2007-2013	1	Management and control systems for identified ESF Operational Programmes in Spain, United Kingdom, France, Italy, Poland, Belgium and Luxembourg (quantification: 41 million EUR, 0.6%)

DG		Reservations 2012		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008
		programmes for the former Yugoslav Republic of Macedonia and for Turkey.		Yugoslav Republic of Macedonia IPA programme.						

Chapter — External relations, Development and Enlargement

DG		Reservations 2012		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008
DEVCO	1	High (estimated) residual error rate in closed transactions.	0		0		0		0	
ELARG	0		0		0		0		1	Potential irregularities in the management of **PHARE funds** under extended decentralised management by two **Bulgarian** Implementing Agencies (named).
FPI	1	Legal clarification required concerning a number of disbursmeents for Election Observation Missions.	0		0		0		0	
RELEX	0		0		0		1	Lack of capacity to carry out adequate ex-post controls for CFSP and Stability Instrument	0	

Chapter — Research and other internal policies

DG		Reservations 2012		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008
RTD	2	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%) 2. Accuracy of cost claims under **FP7** (error rates above materiality threshold of 2%)	2	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%) 2. Accuracy of cost claims under **FP7** (error rates above materiality threshold of 2%)	1	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%)	1	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%)	1	1. Rate of residual errors with regards to the accuracy of cost claims in **FP6**
CNECT (former INFSO)	1	1. Accuracy of cost claims under **FP7** (error rates above materiality threshold of 2%)	1	1. Accuracy of cost claims under **FP7** (error rates above materiality threshold of 2%)	0		1	Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%)	1	Rate of residual errors with regards to the accuracy of cost claims in **FP6**
ENTR	3	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%) 2. Accuracy of cost claims under **FP7** (error rates above materiality threshold of 2%) 3. Reservation concerning the reliability of the financial reporting by the **delegated body** about the implementation of actions under joint and centralised indirect	3	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%) 2. Accuracy of cost claims under **FP7** (error rates above materiality threshold of 2%) 3. Reservation concerning the reliability of the financial reporting by the **delegated body** about the implementation of actions under joint and centralised indirect	2	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%) 2. Reservation concerning the reliability of the financial reporting by the **delegated body** about the implementation of actions under joint and centralised indirect management.	2	1. Accuracy of cost claims under **FP6** (error rates above materiality threshold of 2%) 2. Reservation concerning the reliability of the financial reporting by the **delegated body** about the implementation of the joint programme.	1	Rate of residual errors with regards to the accuracy of cost claims in **FP6**

DG		Reservations 2012		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008
		management.		management.						
REA	2	1. Accuracy of cost claims for funding Research for "Space and Security" sub-activities financed under **FP7** (error rates above materiality threshold of 2%) 2. Accuracy of cost claims for funding Research for "SMEs" sub-activities financed under **FP7** (error rates above materiality threshold of 2%)	1	1. Accuracy of cost claims for funding Research for "Space and Security" sub-activities financed under **FP7** (error rates above materiality threshold of 2%)						
EAC	0		0		1	Too high error rate in **centralised direct management**, due to lack of justifying documents for cost claims, concerning projects from the previous generation of programmes	1	Too high error rate in **centralised direct management**, due to lack of justifying documents for cost claims, concerning projects from the previous generation of programmes	0	
EACEA	1	Accuracy of cost claims under **Life Long Learning (LLP) programme** (error rates above materiality threshold of 2%).	1	Accuracy of cost claims under **Life Long Learning (LLP) programme** (error rates above materiality threshold of 2%).	1	Accuracy of cost claims under **Culture and Youth programmes** (error rates above materiality threshold of 2%).	0		0	

DG		Reservations 2012		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008
HOME (former JLS)	1	1. Reputational damage due to new risks likely to further delay the completion of the Schengen Information System II (**SIS II)** project.	2	1. Reputational damage due to new risks likely to further delay the completion of the Schengen Information System II (**SIS II)** project. 2. Financial risk corresponding to the residual error rate of 2,33% in the non audited population of grants in the programmes for **Security and safeguarding liberties**	2	1. Reputational damage due to new risks likely to further delay the completion of the Schengen Information System II (**SIS II)** project. 2. Reputational damage due to delays in the entry into operations of the VIS project.	2	1. Reputational damage due to delays in the completion of the Schengen Information System II (**SIS II)** project. 2. Reputational damage due to a delay in the completion of the **VIS** project.	1	Delays in the implementation of the Schengen Information System II (**SIS II**),
JUSTICE (former JLS)	0		0		0		1	Residual error rate in non-audited population of grants under programmes for **fundamental rights and citizenship**.	0	
COMM	0		1	Potential non-compliance with applicable legislation on **Intellectual Property Rights.**	1	Potential non-compliance with applicable legislation on **Intellectual Property Rights.**	1	potential non-compliance with applicable legislation on **Intellectual Property Rights.**	2	1. Reservation on the quality failings revealed by the controls. 2. Possible infringement of **Intellectual Rroperty Rights** by Commission departments.

Chapter — Economic and Financial Affairs

DG		Reservations 2012		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008
ECFIN	0		0		0		0		1	Possibility that new mitigating controls put in place following an ex-post control report on funds managed by an external body entrusted with **indirect centralized** management are not effective.

Total

		Reservations 2012		Reservations 2011		Reservations 2010		Reservations 2009		Reservations 2008
TOTAL	**29**		**27**		**17**		**20**		**16**	

Annex 2:
Executive Agencies, Regulatory Agencies, and Joint Undertakings

In line with practices in most Member States, using agencies to implement predetermined key tasks[2] 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, the Regulatory Agencies as well as the Joint Undertakings are currently subject to separate *and individual discharge proceedings according to Article 185 of the old FR [3].*

Executive Agencies

Executive agencies (EAs) operate within a clear institutional framework, governed by a single legal basis[4]. Their tasks relate to the management of Union programmes or actions, they are set up for a limited period and they are always 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 based on a decision taken by the Committee for the executive agencies[5]), maintains a degree of control over their activity, and appoints the Director. Their Annual Activity Reports (AARs) are annexed to the AAR(s) of their parent Directorate(s) General[6]. Thus, the annual discharge in respect of implementation of operational (i.e. programmes) appropriations is covered by the general discharge given to the Commission[7]. Together with this, the Director of the executive agency receives discharge from Parliament, acting on a recommendation of the Council, in respect of the executive agency's operating (i.e. administrative) budget. All executive agencies are subject to a standard Financial Regulation adopted by the Commission, governing the establishment and implementation of the operating budget of an executive agency. A revision of the working arrangements was agreed in October 2007 with the European Parliament, with the aim to further facilitate inter-institutional cooperation in this field.
Six executive agencies exist and they were all operational in 2012. No new executive agencies were created during the year:

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2 These cannot be related to policy-making activities.

3 Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 248, 16.09.2002, p. 1. The new FR introduces in its Article 209 specific provisions on the public-private partnership bodies which are not subject to the same obligations as the decentralized agencies and other bodies covered by Article 208 FR

4 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).

5 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.

6 i.e. the Directorates General which have delegated the implementation of programmes (or parts of it) to the executive agency. EACI (parent DGs: ENTR, ENV, ENER, MOVE); EAHC (parent DG: SANCO); EACEA (parent DGs: EAC, COMM, DEVCO; associated: EMPL, FPI); ERCEA (parent DG: RTD); REA (parent DGs: RTD, ENTR, EAC); TEN-TEA (parent DG: MOVE).

7 Unlike the discharge process of the decentralised agencies and Joint Undertakings, which are separate from the Commission's discharge.

- the Executive Agency for Competitiveness and Innovation (**EACI** – formerly known as IEEA);
- the Executive Agency for Health and Consumers (**EAHC** – formerly known as PHEA) , which is the only one located in Luxembourg;
- the Education, Audiovisual and Culture Executive Agency (**EACEA**);
- the European Research Council Executive Agency (**ERCEA)**;
- the Research Executive Agency (**REA**);
- the Trans-European Transport Network Executive Agency (**TEN-T EA**).

The AARs of the executive agencies report also on the assessment on the functioning of the Internal Control System which the Head of Service has put in place to ensure sound management of his/her service with all control aspects, financial and non-financial. The 2012 AAR Standing Instructions were simplified. For the first time, services did not report on compliance with the internal control standards but only on the effectiveness of their control systems. Three executive agencies (EACEA, EACI, EAHC) reported that the standards were not yet fully implemented. Four standards were cited: ICS 3 (staff allocation and mobility), ICS 8 (Processes and Procedures); ICS 11 (Document Management) and ICS 12 (Information and Communication).

Given the importance executive agencies have gained over time in the implementation of EU programmes, their supervision by the Commission must be effective. This is ensured by the conclusion of Memoranda of Understanding between the Commission and the agencies, the Commission's presence in Steering Committees, monitoring of the set-up of agencies' internal control systems, the follow-up of audits, periodic coordination meetings between the agencies and their parent DGs as well as other measures. Parent DGs have to report in their own AAR Parts 2 on these supervision methods and in Part 3 on the assessment of whether any serious control issue within the Executive Agency would affect their own assurance building process, which was not the case for the 2012 AAR reporting.

The breakdown of staff employed on 31/12/2012 by the executive agencies was as follows:

	Temporary agents (officials seconded by the Commission and agents recruited by the agency)	**Contract agents**	***Total***	***Total Authorised under the EU budget***
EACI	37	119	*156*	*158*
EAHC	11	39	*50*	*50*
EACEA	99	307	*406*	*416*
ERCEA	97	284 [8]	*381*	*389*
REA	122	374	*496*	*513*
TEN-TEA	33	66	*99*	*99*
Total	*399*	*1189*	***1588***	***1625***

The executive agencies' high occupation rate of the authorised posts was maintained in 2012 at 98 %. Following a Commission report of April 2007[9] that covered also the human resources, the Commission issued a global self-commitment not to create new executive

[8] This figure is made up of 275 contract agents and 9 seconded national experts.
[9] SEC(2007) 530 "Planning & optimising Commission human resources to serve EU priorities".

agencies beyond those foreseen to cope with a doubling of the research budget and some limited extensions of existing mandates. Accordingly, no new executive agencies were created in 2012, although the mandates of two agencies, EACEA and EAHC, were extended and as from 2013 they will be dealing with additional activities[10] (see also below as regards the study serving as a basis for extension of the mandates of all agencies).

Following a 2009 special report by the European Court of Auditors[11] examining the executive agencies and the efforts of a Commission-internal working group on executive agencies, in 2010, the central services issued a note[12] containing specific guidelines on the structure and content of the executive agencies' work programmes, including a template for the work programme and suggestions for some standard key performance indicators. This is followed up as part of the assessment of the draft agency work programmes.

In the 2014-2020 Multiannual Financial Framework,[13] the Commission proposes to make more extensive use of existing executive agencies, in view of their capacity to deliver services effectively and to be visible in the management of EU programmes. The individual Commission proposals include detailed information about this intention.

To prepare for this additional delegation of programme management and in accordance with the requirements laid down in Regulation 58/2003, in June 2012, the Commission carried out a cost-benefit analysis of different scenarios for delegating the management of EU spending programmes to executive agencies. This study which covers all six executive agencies and all programmes proposed for delegation, will serve as basis for the upcoming Commission proposal for the extension of the mandates of all six executive agencies.

Regulatory Agencies

There are currently 37[14] decentralised agencies in different EU countries. The recently created agency is the EU Agency for large-scale IT systems that started operations on 1st December 2012.

All these agencies play an important role in implementing EU-policies, especially tasks of a technical, scientific, operational and/or regulatory nature. This enables the EU institutions, especially the Commission, to focus on policy-making. 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.

10 For EAHC - Commission implementing decision 2012/740/EU of 29/11/2012 and for EACEA – Commission implementing decision 2012/797/EU of 18/12/2012.

11 Special report 13/2009: "Delegating implementing tasks to Executive Agencies: a successful option?" The associated report concludes that agencies provide better service delivery than the Commission, offer the advantages of simplified processes and increased external visibility for EU actions. The report also confirms cost-savings, although these are difficult to quantify due to a lack of reliable data.

12 Ref. Ares(2010) 140547 of 16 March 2010.

13 COM(2011)500, 29.6.2011, point 6.1.3.

14 The 30 agencies having received parliamentary discharge for the implementation of the budget for the financial year 2011 which includes the Euratom Supply Agency under the separate Euratom Treaty and the European Institute of Innovation and Technology (body), added with the three intergovernmental agencies under the Common Security and Defence policy, the 2 newly created agencies (EASO and the EU agency for large-scale IT systems) and the 2 self-financed agencies. A list can be found at EUROPA - Agencies and other EU bodies - Decentralised agencies

The decentralised agencies are independent legal entities under European public law, distinct from the EU institutions (Council, European Parliament, Commission).

Because the agencies were set up on a case-by-case basis over the years, to respond to emerging and specific needs, they operate in somewhat diverse conditions. In 2012 the European Parliament, the Council and the Commission issued a Joint Statement endorsing a Common Approach on EU decentralised agencies. In July 2012, they issued a comprehensive set of guiding principles to make the agencies more coherent, effective and accountable[15]. This new framework was the result of analysis by an EU working group of the agencies' governance, functioning and supervision, based on a number of reports and studies[16], including a comprehensive external evaluation.

The main objectives for the implementation of the Common Approach is the achievement of more balanced governance, improved efficiency and accountability and greater coherence.

The Commission implements the Common Approach through the following mechanisms:

- a roadmap[17], serving as an inventory of all the initiatives to be taken by the Commission, as well as the agencies, the Council, Member States and the European Parliament,- modification of the agencies' constituent acts
- the adoption of legal proposals which will directly affect the agencies (for instance the revision of the Framework Financial Regulation for the decentralised agencies (FFR) - adoption foreseen for the end of 2013),
- the participation of Commission representatives in agencies' management boards.

On 17 April 2013, 30 agencies[18] receiving funds from the 2011 EU budget were granted discharge by the European Parliament. Five agencies do not receive EU funding and thus do not receive discharge by the European Parliament. Two of these agencies are fully self-financed, (the Office for Harmonisation in the Internal Market and the Community Plant Variety Office) and three are funded on an intergovernmental basis (the European Institute for Security Studies, the European Union Satellite Centre and the European Defence Agency) , financed directly by the participating Member States.

One agency that had been given a qualified opinion by the European Court of Auditors on the legality and regularity of their underlying transactions in 2010 (GNSS Agency), received a

15 http://europa.eu/agencies/documents/joint_statement_and_common_approach_2012_en.pdf

16 In a Communication of March 2008 entitled *"EU agencies: the way forward"*[16] the Commission drew attention to the lack of a common vision on the role and functions of regulatory agencies. It announced a moratorium on creating new agencies and a horizontal evaluation of regulatory agencies which was finalized in December 2009. Following the evaluation, the three institutions launched an inter-institutional working group (IIWG) chaired by the Commission, to discuss the governance and functioning of EU agencies which finally led to the adoption of the common Approach.

17 http://europa.eu/agencies/documents/2012-12-18_roadmap_on_the_follow_up_to_the_common_approach_on_eu_decentralised_agencies_en.pdf

18 Including the European Centre for Disease Prevention and Control which received a qualified opinion from the European court of auditors as regards the 2011 annual accounts and the European Environment Agency for which the committee on budgetary control proposed a postponement. The two newest agencies (European Asylum Support Office and the Agency for large-scale IT systems were not subject to the discharge resolution related to 2011 financial year.

19 http://eca.europa.eu/portal/pls/portal/docs/1/18686746.PDF.

non-qualified opinion on their 2011 underlying transactions. The Court of Auditors issued also a qualified opinion on related to the annual accounts for the financial year 2011 for the European Centre for Disease Prevention and Control (ECDC).

European Court of Auditors (ECA) published a special report 15/2012 "Management of conflict of interest in selected EU Agencies"[19] assessed and evaluated policies and procedures for the management of conflict of interest situations for four selected Agencies EASA, ECHA, EFSA and EMA.

The Court recommends that the Agencies improve their conflict of interest policies and procedures by, in particular, ensuring the consistency of the breach of trust policies and procedures, better management of the declaration of interest, addressing post–employment issues. Conflict of interest is one of the main issues addressed by the Roadmap implementing the Common Approach on EU decentralised agencies.

Joint Undertakings[20]

For the management of the Joint Technology Initiatives (JTI) in the Research and 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-EU single European Sky and F4E/ITER in energy research. These are separate and independent legal entities, subject to an individual discharge decision each as they are set up as bodies under Article 185 (old) FR. Two of those JUs, ENIAC and ARTEMIS; the ones linked to DG CNECT, do not only involve the Commission and the relevant industry's representatives, but also public sector representatives from the JTI members states (which are not necessarily the EU's 27 MS).

The Commission's supervisory arrangements over the JUs are ensured by monitoring the JU's set-up of its internal control system (when preparing for its budgetary autonomy), the 'General Agreement' between JU and Commission (on the governance set-up) and the Commission's representation on its governing Board (when having become autonomous). Parent DGs[21] have to report in their own AAR Parts 2 on these supervision modalities and in Part 3 on the assessment of whether any serious control issue within the JU would affect their own (reputational) assurance building process.

The ECA issued qualified opinions on some JU's 2011 accounts associated with:
- insufficient provision of assurance due to the non-functioning of the JU's ex-post control strategy (delegated to the JTI member states' national funding authorities): ARTEMIS;
- lack of assurance related to the JU's insufficient control data being available from its ex-post control strategy: ENIAC;
- relatively high FP7 detected error rates: IMI (6.8%), CS (6.2%), FCH ('significant').

20 JTIs are established on the basis of 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". Article 172 says that these Joint Undertakings can be implemented via a Council Regulation in agreement with Member States, on the basis of a proposal by the Commission.

21 The parent DG of an Agency is the Commission department responsible for the political domain in the frame of which an Agency is operating according to its basic act..

On 17 April 2013, all joint undertakings were granted discharge by the European Parliament related to the implementation of the budget for the financial year 2011.

In the context of preparing for the next programming period (MFF 2014-2020), on-going initiatives related to the JUs are:
– the preparation of a Model Financial Regulation for public-private partnership bodies in accordance with Article 209 of the new FR aiming at establishing financial rules which are more flexible and appropriate for this kind of bodies;
– the potential merger of existing JUs (ENIAC and ARTEMIS).

Annex 3: Report on negotiated procedures 2012

1. Legal basis

Article 53 of the Rules of application of the Financial Regulation requires authorising officers by delegation to record contracts concluded under the negotiated procedures of Articles 134 and 135 RAP. Furthermore, the Commission is required to annex a report on these negotiated procedures to the summary of the AARs referred to in Article 66.9 of the F R.

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 (different legal basis: Chapter 3 of Title IV of Part Two of the Financial Regulation) 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 (EUR 10 000), 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: **111** negotiated procedures with a total value of EUR 372 million were processed out of a total of **728** procedures (negotiated, restricted or open) for contracts over EUR 60,000 with a total value of EUR 2822 million.

For the Commission, the average proportion of negotiated procedures in relation to all procedures amounts to **15.2 %** in number (14.3 % in 2011), which represents some **13.2 %** of all procedures in value (15.2 % in 2011).

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 **22.9 %** (21.5 % in 2011).

Some 13 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 15 services, it should be noted that 7 Directorates-general concluded only one to four negotiated procedures, but because of the low number of procedures conducted by each of them (less than 8), the average was exceeded. In addition, 15 out of 45 Directorates-general have not used any negotiated procedure, including 5 services that awarded no contract at all.

The assessment of negotiated procedures compared with the previous year shows a slight increase in the order of 0.9 percentage points in terms of relative number and an increase of 6.6 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: **179** negotiated procedures for a total value of contracts EUR 154 million were processed out of a total of **666** procedures for contracts over EUR 10 000 with a total value of about EUR 870 million.

For the three "external relations" Directorates-general, the average proportion of negotiated procedures in relation to all procedures amounts to **26.9** % in number, which represents some 17.7 % of all procedures in value terms. Only one Directorate-general exceeds the reference threshold of 40.3 % (average + 50 %).

If compared with previous years, these Directorates-general have registered a decrease of 1 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:

- **Statistical deviations** due to the low number of contracts awarded under all procedures. Indeed 11 out of the 15 DGs over average have carried out less than 15 procurement procedures.

- **Objective situations of the economic activity sector**, where the number of operators may be very limited or even in a monopoly situation (for reasons of intellectual property, specific expertise, etc.) for instance in the nuclear or scientific area. Situations of technical captivity may also arise especially in the IT domain (proprietary software or maintenance of complex servers hosting critical information systems, etc).

- **Situations of emergency** that cannot be foreseen by the contracting authority, as is the case for the Stability Instrument.

- **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 extend the ceiling of the framework contract in question.

- **Unsuccessful open or restricted procedure**, leading to a negotiated procedure.

Besides it should be highlighted that the number of negotiated procedures in 2012 compared to 2011 has increased slightly in absolute terms (from 104 to 111), while the overall number of procurement procedures has remained stable (from 727 to 728), so this explains the relative increase in proportion of negotiated procedures compared to the total number of procedures. The increase in value from EUR 300 million to EUR 372 million remains quite below the level registered in 2009 (EUR 578 million).

Several corrective measures have already been proposed or implemented by the Directorates-general concerned:

- Regular update of **standard model documents and guidance documents** on procurement.

- **Training and improved inter-service communication**. The Central Financial Service provides regular practical training sessions on procurement.

- **Improvement of the system of evaluation of needs** of Directorates-general/services and an **improved programming** of procurement procedures. The Commission' horizontal services will continue their active communication and consultation policy with the other DGs, institutions, agencies and other bodies along the following axes:
  - permanent exchange of information 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;

<u>Annex 4:</u> <u>Summary of Waivers of recoveries of established amounts receivable in 2012 (Article 87.5 IR)</u>

In accordance with Article 87(5) of the Implementing Rules, the Commission is required to report each year to the budgetary authority, in an annex to the summary of the AARs, on the waivers of recovery involving EUR 100.000 or more.

The following table shows the total amount and the number of waivers above EUR 100.000 per Directorate-General/Service for the EC budget and the European Development Fund for the financial year 2012.

- **<u>EC budget:</u>**

Directorate-General/Service	**Amount of waivers in EUR**	**Number of waivers**
CNECT	1.011.193,29	3
DEVCO	914.719,77	2
EAC	151.273,00	1
EACEA	357.152,02	2
ECHO	584.571,51	1
ELARG	109.676,25	1
ENER	571.490,97	3
ENV	398.089,00	1
MARE	677.640,72	1
RTD	1.413.717,51	7
Total:	**6.189.524,04**	**22**

- **<u>European Development Fund:</u>**

Directorate-General/Service	**Amount of waivers in €**	**Number of waivers**
EDF	700.915,25	5

- **<u>Guarantee Fund:</u>**

Directorate-General/Service	**Amount of waivers in €**	**Number of waivers**
GF (FP7)	140.492,55	1

Annex 5: Compliance with payment time limits (Article 106.6 IR)

The **statutory time limits** for payments are still laid down in the Implementing Rules of the Financial Regulation[22] (hereinafter IR). Exceptionally, they are also laid down in sector-specific regulations. Under Article 106 IR, payments had to be made within no more than 45 calendar days from the date on which an admissible payment request is registered or 30 calendar days for payments relating to service or supply contracts, save where the contract provides otherwise.

Commission standard contracts are in line with the time limits provided for in the IR. However, for payments which, pursuant to the contract, grant agreement or decision, depend on the approval of a report or a certificate (i.e. the interim and/or final payment), the payment time starts running when the report or certificate in question has been approved[23]. Under Article 87 of the Regulation of the European Parliament and the Council laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, a specific rule applies: payments have to be made within two months[24].

Compliance with payment time limits has been reported by the Services in the AARs since 2007[25].

In accordance with the applicable rules, the payment times reported in this annex have been calculated as follows:

- where the payment is contingent upon the approval of a report, the time from approval of the report until payment;
- where no report is required, the time from reception of the payment request until payment.
- Since January 2013, the new Financial Regulation and its rules of application apply[26] with changes to the payment limits. Now 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 under which payment depends on the approval of a report or a certificate, the time limit for the purposes of the payment periods is not any more automatically suspended until the report or certificate in question has been approved. The specific delay of two months foreseen in the Article 87 of the Regulation of the European Parliament and the Council is still applicable.

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22 Commission Regulation (EC) No 2342/2002 of 23 December 2002 (OJ L 357, 31.12.2002, p. 1) as last amended by Regulation (EC) No 478/2007 of 23 April 2007 (OJ L 111, 28.4.2007, p. 13).

23 Pursuant to Article 106(3) IR, the time allowed for approval may not exceed:
(a) 20 calendar days for straightforward contracts relating to the supply of goods and services;
(b) 45 calendar days for other contracts and grants agreements;
(c) 60 calendar days for contracts and grant agreements involving technical services or actions which are particularly complex to evaluate.

24 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).

25 Based on available data in ABAC as of end of the financial year 2007.

26 Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25/10/2012 (OJ L 298,26.10.2012, p.1) and Commission delegated Regulation (EU) No 1268/2012 of 29/10/2012 (OJ L 362, 31.12.2012, p.1).

The Commission's global average payment time has developed as follows over the last few years:

	2010	2011	2012
Global average payment time	25,8 days	25,7 days	24,9 days

The data shows that **the global average payment time of the Commission services has stabilised over the last three years and slightly decreased in 2012 resulting in 25 days compared to about 26 days in the two preceding years.**

Nevertheless, **there is scope for reducing the global payment time further, and services are encouraged to take further action in this area.**

The table below provides the evolution of ***payments made after expiration of the statutory time limit ("late payments")*** during the three last years, based on data extracted from the ABAC accounting system:

	2010	2011	2012
Late payments in number	15,9 %	12,3 %	11,9 %
Late payments in value	6,0 %	7,3 %	13, 6%
Average number of overdue days[27]	34,2 days	43,2 days	41,9 days

While the number of late payments (12 %) stabilised in 2012 compared with last year, the average number of overdue days decreased with one day. However, late payments in terms of value have almost doubled. **The figures show the need for services to intensify their efforts towards meeting the statutory payment time for every payment.**

In its April **2009 Communication**[28], **the Commission announced its intention to reduce its payment times further beyond the statutory time limits**, setting ambitious **targets** which correspond now to the new legal time limit introduced by the revised FR.

The only remaining "target" time limit is 20 days for the first pre-financing payments.

In 2012 – the third full year of application of these targets – **a slight improvement was noted; around 80 % of payments** (in terms of their number) **met the targets in 2012, which is in line with the figure of 2011 (78 % in 2010).** The required efforts towards a further reduction in the global overall payment time, called for above, would of course also have a positive effect on compliance with the new legal deadlines.

As regards ***interest paid for late payments*** [29] (see figures in the table below) **the total amount paid by the Commission in 2012 has been dropping back around the level of 2010. 2011 was exceptional**, due to large amounts of interest paid related to two litigation cases in a DG.

	2010	2011	2012

27 i.e. above the statutory time limit.

28 Communication from Mrs Grybauskaite: "Streamlining financial rules and accelerating budget implementation to help economic recovery"; SEC(2009) 477 of 08/04/2009.

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

Interest paid for late payments (rounded amounts)	733.403 €	1.734.230 €	738 959,75 €

The **causes of late payments** include inter alia the complexities of evaluating supporting documents, in particular the technical reports that in some cases require external expertise, difficulties at efficiently coordinating the financial and operational checks of payment requests, and issues with the management of payment suspensions.

The 2009 Communication establishing Commission-internal payment targets provided a clear incentive to services to reduce their payment times, in particular in 2009 when the global average payment time fell significantly; from 34 to 26 days but it has not substantially changed ever since, with 26 days in 2010 and 2011 and 25 days in 2012. **Yet, there is scope for reducing it further especially since the value of late payments rose in 2012 remarkably. When setting up action plans in this area, services should focus on further reducing late payments from their current level of 14 % of payments in terms of their value. The aim should be to meet the statutory payment time for every payment.**
The minor improvement reported in 2012 as regards the compliance with the Commission-internal payment targets also points to the need to cut payment times further.