

Commission services reply to audit-related conclusions and recommendations on gold-plating

General remark: This table contains replies / proposed actions only for audit-related recommendations included in the report on gold-plating. It therefore complements the table presented to the HLG in November 2016.

	<i>Recommendations to the Commission for 2014-20 period</i>	<i>What actions would be required / proposed to implement this suggestion?</i>	<i>Comments on merit and feasibility</i>
	In the area of management and control		
1	<i>Auditors at EU and national levels, including the Court of Auditors, should detect redundant processes and procedures as part of their audits and suggest more effective solutions based on good practices</i>	<ul style="list-style-type: none"> ➤ Developing audit checklists and tools for the different phases in programme management cycle where gold-plating practices may be identified / simplification-benchmarking of certain processes (eligibility rules for project selection, public procurement rules, costs declaration, rules for payment modalities, control requirements, etc.); ➤ Developing a database of best / bad practices; ➤ Regularly and systematically disseminate audit conclusions to Member States (see action under recommendation n°1 in response to the HLG report on cross-cutting audit issues). 	<ul style="list-style-type: none"> ➤ Some simplification-related findings have already taken place: in its reply to DAS report, October 13, 2016, the Commission (OJ C 375/170) refers to cases in which national or regional rules applied to Cohesion Policy expenditure are more demanding than those foreseen in the EU. These additional requirements can be seen as an instance of unnecessary administrative burden and complexity imposed; the Commission also notes that three errors occurred because national rules were stricter or more complex than necessary (point 6.17); ➤ In short term, awareness can make some difference – but would still require additional work (identification of best practices would be on top of identification of weaknesses / lack of compliance, the basic objective of risk-based audits); ➤ systematic assessment of national eligibility rules and their possible gold-plating effects requires the involvement of Member States; establishment of national rules is their responsibility; ➤ EC audit will have limited opportunities to compare the alternative systems and hence identify what is redundant, while there are very few COM system audits and they are organised by geographical audit clusters.
2	<i>The knowledge of the Commission's auditors about different procedures in different countries should be used in a more effective way to indicate gold-plating in each</i>	<ul style="list-style-type: none"> ➤ Install a network-supported knowledge sharing platform for national and EU-experts, (a dedicated page of a IT-supported tool such as CIRCABC/REGIO WIKI) to collect and collate relevant information with a view to offering best 	<ul style="list-style-type: none"> ➤ Dissemination of good audit practices is already in place within the audit community (peer presentations during AAs technical meetings in Brussels or in the annual Homologues Group meeting); ➤ there is currently no repository for systemic collection of 'best

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	Member State and provide examples of good practice to those Member States.	<p>practice solutions to partners;</p> <ul style="list-style-type: none"> ➤ Provide analysis of audit findings and regularly and systematically disseminate audit conclusions to Member States (see action n°1 in response to the HLG report on cross-cutting audit issues); ➤ Periodically present good practices during meetings such as EGESIF or fund-specific meetings such as ESF TWG or the conferences with paying agencies of the CAP; ➤ Use seminars/workshops in MSs to present best practice from other MSs; ➤ Foster use of Peer2Peer technical assistance instrument to share best practices between Member States. 	<p>practice' or of any suitable information for sharing good practice (due to the limited number of EC risk-based system audits targeted to identification of bad practices);</p> <ul style="list-style-type: none"> ➤ possible solution: an ad hoc point on the agenda, for instance in a technical audit meeting, for a specific element of the system (e.g. fraud prevention, the way SME status is verified, etc.), with a short questionnaire to collect information on options used and benchmarking them in the context of burden it puts on authorities/beneficiaries; ➤ Creating a platform could be a feasible way to collect and disseminate information. However, it would be necessary to assess desire among MSs to have it and feed validated information into it and assess burden it would impose on COM (both financial and admin resources); ➤ It also should be feasible to have periodical presentations at EGESIF or other meetings to highlight good practices and exchange MS practices (as done in the ESF TWG) as well as at MS-specific seminars, based on Peer2Peer reviews and technical assistance.
3	The Commission's and the ECA auditors should take into account specificities of different implementation modes and mechanisms (grants, financial instruments, simplified costs, etc.) when formulating audit findings and recommendations.	<ul style="list-style-type: none"> ➤ Regularly update and circulate Q&A to MSs ➤ Will also be addressed by sharing best practises as indicated in points above 	<ul style="list-style-type: none"> ➤ Already done: audit findings and recommendations are specific to the context of the audit scope (e.g. under SCOs only the auditable aspects are looked at); ➤ On SCOs: see the relevant answer for SCO report. ➤ Use of Q&A to provide updates to MSs can be more rapid and flexible and Q&A replies could be developed.
4	With regard to ETC programmes, auditors should contribute to a systematic	<ul style="list-style-type: none"> ➤ As in the point above in relation to recommendation to identify redundant processes and dissemination of audit 	<ul style="list-style-type: none"> ➤ National auditors are in charge of auditing ETC programmes (group of auditors). Therefore it would be difficult to make a comparative analysis of rules and procedures applied; the

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	<i>comparative analysis of rules and procedures applied in each Member State involved. The synthesis of findings should on one hand be incorporated in the recommendations from the Commission towards Member States pointing out unnecessary regulatory or administrative burden. On the other hand the Commission should ensure the dissemination of identified good practices among Member States.</i>	<p>conclusions as per mainstream programmes;</p> <p>➤ Use INTERACT to disseminate audit results from mainstream / ETC specific.</p>	Commission seldomly performs system audits for ETC.
	On coherent/consistent interpretation		
8	<i>The auditors and other officials from the Commission (all DGs) as well as national auditors apply the same interpretation of rules and the same approach to all MSs and share regularly the information during EGESIF meetings or annual meetings with the Member States to bring preventive effects.</i>	<p>➤ The Commission services contribute to coherent and consistent interpretations of rules offering guidance and best practice support; however, in case of parallel national rules which are more demanding, the same interpretation may not be possible throughout Member States; this approach and its limits could be discussed on ad hoc basis as part of the agenda of EGESIF</p>	<p>➤ Key issues related to system weaknesses are fully shared between EC and national auditors in a "Common methodology for the assessment of management and control system"; the same interpretation of what is a system deficiency is therefore clear for all based on agreed criteria; Article 30 of the Delegated Regulation 480/2014 and Annex IV (tables 1 and 2) provide the legal basis for the "Criteria for determining serious deficiencies in the effective functioning of management and control systems";</p> <p>➤ The Commission decision on financial corrections to be applied to irregularities in the area of public procurement procedures provides instructions to the EC services and guidance for audit authorities on the applicable rules and interpretation, based on case law;</p> <p>➤ Another guidance exists on financial corrections for irregularities related to financial engineering instruments, and is shared with</p>

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			audit authorities as well.
9	<i>Amending Article 27(2) of the Commission Delegated Regulation 480/2014. At this moment the provision requires that any operation should respect the rules applicable as of the day of the audit which generates uncertainty about possible changes of rules. The HLG members propose to amend this provision so that the operations are required to respect the rules applicable as of the date of signing of the contract with the managing authority.</i>	<ul style="list-style-type: none"> ➤ Making a consistent use of specific non-retroactivity provision in guidelines to reassure MSs; ➤ See action under rec. n°1 in response to the HLG report on cross-cutting audit issues. 	<ul style="list-style-type: none"> ➤ ESIF DGs not convinced of the need for this amendment; ➤ Article 27(2)(a) does not define what is and what is not applicable. It was already explained to AAs and the EC auditors have no doubts about its interpretation. For the details of the interpretation see the reply to recommendation 6 of the HLG report on cross-cutting audit issues; that clarification was provided to AAs.
To address the different approaches to dealing with public procurement rules/State aid			
10	<i>Further support the Member States by creating a joint group consisting of DG Grow/DG COMP and the DGs of the ESI Funds on the interpretation of public procurement and State aid rules to ensure consistent advice and the uniform approach concerning application of financial corrections</i>	<ul style="list-style-type: none"> ➤ It may be preferable to put the item forward in the frame of an existing experts group on matters of public finances and procurement - expert groups should not be unnecessarily multiplied. In any case, creating a joined group of the said DGs and defining its mandate requires a cost/benefit analysis, taking account of alternative solutions using existing fora/committees (including State aid correspondents, procurement agencies, as well as representatives of the national 	<ul style="list-style-type: none"> ➤ It is not clear where there are problems with consistent application of financial corrections: different interpretations between MSs and the EC, or between auditors (national/EC) and auditees? The issue of public procurement offices in MSs applying methodologies / approaches different than those agreed among auditors (the Commission decision based on the case law, see reply to recommendation 8 above) poses indeed a problem, since AAs have to report breaches of applicable rules which the national expert body may not have identified as problematic (despite the case law); ➤ Public procurement and State aid are being discussed and auditors regularly put the topics on their common agendas; ➤ Implementation of this recommendation could increase the

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		management and audit authorities, etc.)	<p>number/length of guidelines;</p> <ul style="list-style-type: none"> ➤ Interpretative questions on relevant discrepancies between EU requirements and national corrective practices can usefully be discussed in a consultative expert group. It would allow sharing knowledge with national managing and audit authorities of the Member States concerned; ➤ Specific examples are needed before further follow-up.
Recommendations for the common action of the Commission and the Member States			
16	<i>The scope of the different levels and threshold of audits should be clearly defined and clarified in order to avoid multiple and disproportional controls on the same operation (extension of the proportional control with a single audit principle: for example, expanding the scope of Art. 148 CPR to all types of controls, including those conducted by the managing authorities, the certifying authorities, the Court of Auditors and raising the thresholds below which an operation is subject to only one audit). Amounts and risks should be the actual rationale behind multiple controls.</i>	<ul style="list-style-type: none"> ➤ Legislation-related – Commission services' answer provided in September ("no justification for further extending single audit principle", there are very few controls by the Commission and even less by the CoA, the potential duplication is rather anecdotal and very limited); ➤ Better communication on the rationale for management checks. 	<ul style="list-style-type: none"> ➤ Management checks are needed and serve a different purpose: they are the first defence line against errors. Audits are only coming <i>ex post</i> to test whether the first level did function. This could be organised in a different way (re-performance work of the management verification) and reflection needs to be done for post 2020; ➤ Another option to put all resources on audits (<i>ex post</i>) would require additional resources for the AAs and the agreement to carry out extrapolated financial corrections, even in the case of very high error rates (politically difficult to envisage); ➤ Raising the threshold below which an operation is subject to only one audit makes any sampling approach very difficult, and deprives AAs of a sound basis to draw up a valid opinion in accordance with Article 59(5) of the Financial Regulation and internationally accepted audit standards (Article 127 CPR). ➤ Risk to undermine the assurance process and Commission responsibility under the Treaty to bear responsibility for the implementation of the budget ➤ Controls by the Commission are already risk-based.
17	<i>Auditors at all levels should,</i>	<ul style="list-style-type: none"> ➤ Refocusing audit resources, with more 	<ul style="list-style-type: none"> ➤ Designation audit is intended to serve this preventive purpose.

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	<i>where possible, apply more preventive, ex-ante and proportional approach to audit with the main objective to improve the implementation and not to punish.</i>	<p>resources in the first years focused on system audits, at expense of other tasks, bearing in mind that it is not possible to modulate audit resources year by year;</p> <ul style="list-style-type: none"> ➤ Continue early preventive system audits (EPSA) for 2014-2020 based on a risk analysis; ➤ Continue reviewing the audit strategies of AAs to ensure that the main system requirements are reviewed early in the period. 	<p>We will need to assess if the preventive objective was achieved;</p> <ul style="list-style-type: none"> ➤ At the Commission level there is only a very limited scope for more audits of systems – the Commission has to prioritise based on risks, and as the result many programmes will never be checked by the Commission; ➤ High number of sub-systems (OPs, IBs) further draws resources; ➤ Irregular expenditure detected during audit needs to be corrected, there is no possibility to derogate from the regulation by auditors; ➤ Introduction of accounts system allows for more flexible approach before accounts are sent to the Commission – maybe a good practice example could be developed, but at this moment there is not yet enough practical experience. Follow up after first/second year of application of the new mechanism.
18	<i>The representatives of the Commission / auditors should prepare and on regular basis update a database of questions and answers of Member States, applicants or other bodies (Q/A) concerning the most problematic areas, e.g. public procurement, State aid, financial instruments and integrated approach etc. and share a summary of the main findings from audit missions among the Member States.</i>	<ul style="list-style-type: none"> ➤ Summarising regularly new interpretation at EGESIF; ➤ Sharing with Member States the audit findings as suggested under point 4. 	<ul style="list-style-type: none"> ➤ Feasible as regards presentation of EGESIF ➤ There is a substantial risk that it will create more problems than solve, because of follow-up questions/misunderstood interpretations etc. by MSs which at this moment not aware (for a good reason) of a given interpretation. It is contrary to the HLG recommendation not to create guidelines on the basis of a single MS request – as the MSs will <i>de facto</i> treat such information as guidelines of this type.