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ANNEX 1

ANNEX

to the

Commission report

**on the investigation into the manipulation of statistics in Spain as referred to in
Regulation (EU) No 1173/2011 of the European Parliament and of the Council on the
effective enforcement of budgetary surveillance in the euro area (Commission Decision
of 11 July 2014)**

{SWD(2015) 105 final}

COMMENTS ON THE PRELIMINARY FINDINGS OF THE INVESTIGATION INTO THE MANIPULATION OF STATISTICS IN SPAIN AS REFERRED TO IN REGULATION (EU) No 1173/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE EFFECTIVE ENFORCEMENT OF BUDGETARY SURVEILLANCE IN THE EURO AREA (INITIATED BY THE COMMISSION DECISION OF 11 JULY 2014)

The KINGDOM OF SPAIN, exercising the rights under Article 8(3) of Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November (hereinafter Regulation (EU) No 1173/2011) and Article 6 of Commission Delegated Decision 2012/678/EU, herewith presents its comments on the Commission's preliminary findings on the basis of the following

FACTS

The facts relevant for the purposes of this investigation are, in strictly chronological order, as follows¹:

1. On 13 December 2011, Regulation (EU) No 1173/2011 on the effective enforcement of budgetary surveillance in the euro zone entered into force.
2. On 30 January 2012 the Autonomous Communities audit offices (including the *Intervención General de la Generalidad Valenciana* (the Government Audit Office of the Autonomous Community of Valencia, hereinafter *IGGV*) sent their public accounts data to the *Intervención General de la Administración del Estado* (General State Audit Office, hereinafter *IGAE*) using the standard questionnaire provided for that purpose (this questionnaire was approved by the Autonomous Communities – hereinafter ACs – on 30 April 2012).
3. On 30 March 2012 Spain sent the first notification of the provisional EDP (excessive deficit procedure) data to Eurostat.
4. On 23 April 2012 Eurostat published the provisional data from Spain's first notification on the 2011 EDP.
5. At the same time, during the first quarter of 2012, Spain addressed the need to tackle the Spanish public administrations' commercial debt on which payment was pending by setting up, through the central administration, a special payment mechanism for suppliers, the salient characteristic of which was, for our purposes here, that the local administrations (ACs and local authorities) subscribed to this mechanism on a voluntary basis².
6. During the first few days of May 2012, the Ministry of Finance and Public Administration's analysis of the information provided in order to implement this mechanism revealed an irregularity in the recording of health expenditure in the Autonomous Community of Valencia.

As soon as the *IGAE* was apprised of this irregularity, it asked *IGGV* to confirm the information and informed the National Accounts Working Group.

7. The National Accounts Working Group agreed to notify Eurostat immediately and did so on 17 May 2012, offering to revise the provisional notification published in April.

¹ For greater clarity a timetable setting out the relevant factual events is attached as Annex I.

² The legal arrangements governing this mechanism are set out in Royal Decree-Law 4/2012 of 24 February specifying the information obligations and the procedures required to set up a financing mechanism for local governments to pay suppliers; and Royal Decree-Law 7/2012 of 9 March setting up a fund for financing payments to suppliers.

8. Eurostat conducted a “technical” visit to Spain on 24 May 2012 to establish what had happened in detail and said that it was not necessary to amend the provisional notification of April and that it would be sufficient to incorporate the data into the notification of October 2012. At this time Eurostat confirmed and validated the information sent by Spain on 17 May.
9. Eurostat conducted an “upstream” visit to Spain on 18 to 22 June 2012 during which it requested information on the process for preparing the EDP and made a series of recommendations.
10. All the information required and reviewed was incorporated into the document for the evaluation of the national reform programme and the stability programme for Spain for 2012 and in the “Council Recommendation with a view to bringing an end to the situation of an excessive government deficit in Spain” presented to the EU Council (*sic*) at the beginning of July 2012.
11. Eurostat conducted a second “upstream” visit to Spain from 11 to 14 September 2012, continuing the previous one.
12. On 26 November 2012 Commission Delegated Decision 2012/678/EU of 29 June (hereinafter Decision 2012/678/EU) on investigations and fines related to the manipulation of statistics entered into force.
13. On 21 December 2012 the Autonomous Community of Valencia Court of Auditors’ report for the year 2011 was published, in which the Court concluded that the expenditure of the Autonomous Community of Valencia for the year was correctly recorded.
14. On 2 February 2013 Eurostat published the “Report from the Commission to the European Parliament and the Council on the quality of fiscal data reported by the Member States in 2012” in which it was said that Eurostat did not question Spain’s data on the deficit for 2011.
15. Eurostat conducted an “ad hoc” visit on 26 and 27 September 2013 in order to obtain information supplementary to that obtained during previous visits.
16. On 7 March 2014, six months after conducting the last visit in Spain in September 2013, Eurostat published the “Report from the Commission to the European Parliament and the Council on the quality of fiscal data reported by the Member States in 2013” in which it did not question the data from Spain either;
17. Nor did the reports that Eurostat drew up for the Economic and Finance Committee in accordance with Regulation (EC) No 479/2009 for the years 2012 and 2013 question the data from Spain.
18. On 11 July 2014 the Commission adopted the decision to open a procedure for investigation of statistical manipulation in Spain.
19. The Kingdom of Spain did not agree with the investigation being opened and lodged an appeal with the General Court (Case T-676/14) on 22 September 2014, currently pending. The arguments presented therein must be taken into account in these submissions, together with any other comments emerging during the procedure.
20. On 3 March 2015 Eurostat published the “Report from the Commission to the European Parliament and the Council on the quality of fiscal data reported by the Member States in in 2014” which mentioned that an investigation procedure was underway but also stated – verbatim – “The Commission is not calling into question the current accuracy of EDP statistics in Spain”.

LEGAL BASIS

1. THE PRINCIPLE OF NON-RETROACTIVITY. ESTABLISHING THE TIME FRAME COVERED BY THE INVESTIGATION PROCEDURE

The Kingdom of Spain has insisted throughout the procedure on the need to establish properly the time frame for the Commission's analysis and investigation.

As stated in the Act of 10 December 2014, containing declarations by the representative of the *INE* (*Instituto Nacional de Estadística* – National Statistics Institute), Alfredo Cristóbal, prior to the questions raised by the Commission, the Kingdom of Spain's legal counsel requested that the investigation should cover only the period subsequent to the entry into force of Regulation (EU) No 1173/2011, i.e. 13 December 2011.

The investigation team responded that it considered it “to be within its mandate to reveal the full extent of the problem and therefore to investigate the entire period starting from 1988. However, it noted that it was aware of the issue of retroactivity and that it would take account of that principle if the European Commission recommended that the Council impose a fine”.

This statement must no doubt be understood as being compatible with the principle of non-retroactivity, a general principle of law which is one of the keystones of the rule of law, ranks higher than the body of law common to the European Union Member States and is the benchmark for any investigation procedure (whether or not any penalty is ultimately applied) that complies with the principle of legality. And it could only be compatible with such principles if it meant that – whilst the Commission needs to analyse a process which, in its view, started previously and must therefore extend its investigations to the period prior to 13 December 2011 (when the time frame for the investigation starts) in order to establish what has happened since – the knowledge of what occurred in that prior period must be purely instrumental in focusing the investigation on the relevant period (from 13 December 2011). The conclusions (even preliminary ones) to which the investigation team comes must be confined exclusively to the relevant period, although, in order to understand what happened after 13 December, investigations have been conducted (for purely instrumental purposes) on how the mechanisms governing the flow of information between the Spanish institutions functioned over a longer period.

In fact, merely reading the final conclusion of Eurostat's letter containing the preliminary findings is enough to show that the investigation did not comply with the only means of extending the time frame for the investigation that is compatible with the law and as a consequence, violates the principle of non-retroactivity. It states that “it may be concluded that the Autonomous Community of Valencia was guilty, at least, of grave negligence for its failure to record health costs and non-compliance of the accruals principle in the national accounts **for many years**. As a consequence, **for several years**, the data sent by Spain to Eurostat in the context of the EDP were not entirely correct”.

The Commission also establishes May 2012 as the final date for the recording errors, which is when it acknowledges (and it has been confirmed) that the State of Spain informed it of the error in recording healthcare expenditure in the Autonomous Community of Valencia; the Commission acknowledges this in, for example, its findings when it states that *IGGV* “Compiled General Accounts for the region (...) that, up to June 2012, did not refer explicitly to any unrecorded expenditures and provided only minimal information on the considerable amounts included in account 411”. From this it can be gathered that, since May 2012, when the problem was detected, the procedure has been correct, as indeed it has.

If the investigation period was therefore from 13 December 2011 to 17 May 2012 (the time at which the National Accounts Working Group communicated the error to Eurostat, offering to revise the notification published in April), we fail to see how the preliminary findings, which serve as a basis for drawing up the final conclusions, can possibly contain a recommendation for a fine by the Commission to the Council

referring to “many years” or “several years” when the period investigated which can serve as a basis for the decision to impose a penalty is less than one year.

It is particularly important to point out that the time frame for the conduct is a matter of fact and therefore must be set out clearly from the outset of the investigation in order not to undermine the right of defence. The Commission has not established the time frame with such clarity at any time, stating that it is aware of non-retroactivity but that it needs to review a longer period, and then going on, in its conclusions, to refer to a period of time which is not subject to examination because there was no legislation applicable at the time at which the facts took place.

It is not only the final conclusions but the entire letter which show that the conclusions are essentially based on periods prior to those which they are entitled to cover; only two fragments are given below by way of example:

1. In 1.1 (Background) in the fourth paragraph, it is said that “the AC of Valencia was identified as presenting significant irregularities, as unrecorded health expenditures had accumulated over 24 years”.
2. In the same conclusions when it is said that “the existence of unrecognised expenditure in the region dates back to year 1988”.

With all respect to the Commission and its investigation team, it must be understood that going from an investigation which ought to cover several months to one whose conclusions are based on events 24, 15 or 10 years ago constitutes a form of disproportionality which is prohibited by the Commission’s own Decision 2012/678/EU when it states that the “investigations undertaken should be proportionate so as not to go beyond what is necessary to establish the possible existence of manipulation of the relevant deficit and debt data.”. It is in any event unnecessary to go back to practices “many years ago” when the purpose is to establish what happened between 13 December 2011 and May 2012.

The Charter of Fundamental Rights of the European Union states in Article 49 on “Principles of legality and proportionality of criminal offences and penalties as follows”:

“No-one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.”

More specifically, Regulation (EU) No 1173/2011 indicates in recital 21 that “In order to avoid the retroactive application of the sanctions under the preventive part of the SGP provided for in this Regulation, they should apply only in respect of the relevant decisions adopted by the Council under Regulation (EC) No 1466/97 after the entry into force of this Regulation. Similarly, in order to avoid the retroactive application of the sanctions under the corrective part of the SGP provided for in this Regulation, they should apply only in respect of the relevant recommendations and decisions to correct an excessive government deficit adopted by the Council after the entry into force of this Regulation.”

The evidence and errors detected which serve as a basis for the preliminary findings virtually all took place at times previous to that on which the investigation should focus, which is clearly prohibited by the legislation reproduced above.

2. RESPECT OF THE KINGDOM OF SPAIN'S RIGHT OF DEFENCE

Article 8 of Regulation (EU) No 1173/2011 stipulates that “The Commission shall fully respect the rights of defence of the Member State concerned during the investigations.”

To that end it empowers the Commission to adopt “detailed rules of procedure aimed at guaranteeing the rights of defence, access to the file, legal representation, confidentiality and provisions as to timing and the collection of the fines referred to in paragraph 1”.

In compliance with the delegated powers, Decision 2012/678/EU states in recital 11 that “For the purposes of its defence, the Member State concerned should be duly notified of the opening of as well as of the results of the Commission investigations” (...) and goes on to say in the following recital that “The rights of defence and the principle of confidentiality should be respected in accordance with the general principles of law and the case-law of the Court of Justice of the European Union. In particular, the Member State concerned should have the right to be heard by the Commission during the investigations, as well as access to the file compiled by the Commission.”

As the delegated Decision did not enter into force until the end of November 2012, Eurostat could clearly not initiate a procedure of investigation against any Member State between December 2011 (date of entry into force of Regulation (EU) No 1173/2011) and November 2012 (entry into force of the delegated Decision), since a procedure offering the Member States sufficient guarantees had not yet been approved. The Commission acknowledges as much in the main body of the letter containing the preliminary findings although it mistakenly refers to 2011; it states (in point 1.2 of the letter) that “since November 2011, the Commission can launch an investigation if there are serious indications that a Member State (...) misrepresents deficit and debt data”.

Although these rights are enshrined in the applicable legislation and have to be complied with during the investigations carried out in Spain following the opening of the investigation procedure, the issue here is what has happened in Spain since notification by the statistical authorities in May 2012 of the revision of the figures up to the date when the procedure was initiated.

Apart from the normal visits for exchanges provided for in Regulation (EC) No 479/2009, Eurostat conducted three “technical”, “upstream” and “ad hoc” visits in 2012 and 2013 (24 May 2012, 18-22 June 2012, which continued on 11-14 September 2012, and 26-27 September 2013). In the light of subsequent events these visits could be deemed materially equivalent to an investigation of the Spanish authorities which at the time did not have sufficient legal cover.

At the time of the first visits there was no adequate legal basis for initiating an investigation. The situation is worse with regard to the visits in 2013 because there was already a procedure offering Member States guaranteed rights of defence and a methodological visit could have been made to Spain to conduct more investigations under the EDP. However, the Commission decided to continue making its investigations alongside the established procedure.

During these visits prior to the formal opening of the investigation procedure, the Commission had access to persons, institutions and documentation without the Spanish State being able to exercise its right of defence, as it was not informed of the real purpose of the visits. The statistical authorities collaborated with the Commission as they preferred to clarify the facts and show Eurostat that measures had already been taken, whereas if they had known that what happened in the “informal” visits was going to be used by the Commission as proof for opening a subsequent investigation, they could have availed themselves of their legal rights of defence, without disregarding the duty of collaboration with the European statistical authorities that the Kingdom of Spain demonstrated and continued to demonstrate during the formal (and

legal) investigation procedure, throughout which all the Spanish authorities were at the Commission's disposition.

Finally, a series of factual inaccuracies and errors have been observed, which have been incorporated into Annex II to the current document since not correcting them may also give rise to violations of the rights of defence throughout the procedure, which at this time can neither be foreseen nor specified. In any event, in order to clarify the facts as far as possible we would ask the Commission to incorporate the corrections requested into the said Annex II prior to its analysis.

3. INFRINGEMENT OF THE PRINCIPLE OF LEGALITY. PRACTICE FOR REVISING DATA. NON-EXISTENCE OF MANIPULATION OR MISREPRESENTATION OF STATISTICS. INFRINGEMENT OF ARTICLE 8(1) OF REGULATION (EU) No 1173/2011

Regulation (EC) No 479/2009 of the Council of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community (hereinafter Regulation (EC) No 479/2009), states in Article 6:

“1. Member States shall inform the Commission (Eurostat), as soon as it becomes available, of any major revision in their actual and planned government deficit and debt figures already reported.

2. Major revisions in the actual deficit and debt figures already reported must be properly documented. In any case, revisions which result in the reference values as specified in the Protocol on the excessive deficit procedure being exceeded, or revisions which mean that a Member State's data no longer exceed the reference values, shall be reported and properly documented”.

In turn, Article 8(1) of Regulation (EU) No 1173/2011 stipulates that “The Council, acting on a recommendation by the Commission, may decide to impose a fine on a Member State that intentionally or by serious negligence misrepresents deficit and debt data relevant for the application of Articles 121 or 126 TFEU, or for the application of the Protocol on the excessive deficit procedure annexed to the TEU and to the TFEU”.

Article 6 of Regulation (EC) No 479/2009 essentially provides for the option of communicating major reviews of the deficit and debt figures, even if they may involve the reference values specified by the EU Protocol being exceeded. And Article 8(1) of Regulation (EU) No 1173/2011 characterises and imposes penalties for conduct which comprises misrepresentation or manipulation of the relative statistical data in application of Articles 121 and 126 of the TFEU.

Finally, recital 9 of Decision 2012/678/EU is very explicit in stating that “In assessing what constitutes a misrepresentation of deficit and debt data within the meaning of Regulation (EU) No 1173/2011, incorrect implementation of ESA 95 accounting rules which is not the result of either intent or serious negligence shall not be considered as such. Further excluded from the application of this Decision should be revisions, including major revisions due to changes in methodology for all historical years that are clearly and adequately explained, insignificant mistakes and cases where a doubt has been expressed by the Member State concerned and clarification has been requested from the Commission (Eurostat) in accordance with Article 10 of Regulation (EC) No 479/2009.”

The Spanish authorities' activities during the time frame which, as is set out under Point 1, the investigation may legitimately cover, constitute a clearly and properly explained revision of the deficit and debt data and do not therefore comprise any type of manipulation or misrepresentation, and this is corroborated by the Commission's report on what took place from May 2012 onwards.

As we have said (under number 8), Eurostat conducted a “technical” visit to Spain on 24 May 2012 in order to establish what had happened in detail and said that there was no need to amend the April notification and that it was sufficient for the data to be incorporated into the October 2012 notification. During this visit, Eurostat confirmed and validated the information supplied by Spain. The report on this visit published by Eurostat on its website states the following:

“INE announced on 18 May 2012 an estimated increase of 0.4% of GDP of the 2011 government deficit for the Autonomous Communities, compared to what was reported to Eurostat on 30 March 2012. The special suppliers payment mechanism for the arrears of ACs and regional governments revealed higher unpaid bills than reported to Eurostat in the context of the April 2012 EDP notification.

The total amount of the unreported unpaid bills reported in 2012 amounts to about 4.5 billion euro. A major part of these unreported unpaid bills were attributed to the year 2011 and about 40 % of the expenditure occurred in 2010, or in the case of the Autonomous Community of Valencia, even before. The Spanish statistical authorities confirmed that no 2012 expenditure have been included in the 2011 deficit figure.

INE confirmed that the final updated data on the government deficit for the Autonomous Communities, as well as for the municipalities, as will be reported to Eurostat in the October EDP notification data, was expected to be available during the summer 2012. (Footnote: Note that the 2011 data to be reported in the October EDP notification will still be half-finalised and may be subject to further revisions.”

The Commission is referring here to updating and revising data, and estimates of increases but in no instance does it talk about any type of manipulation but rather about a process of revision in which provisional data are brought up to date until they are finalised in the notification produced in October of the year $t+4$, t being the reference year.

All the required information was incorporated into the documentation for the evaluation of the national reform programme and the stability programme for Spain for 2012 and in the “Council Recommendation with a view to bringing an end to the situation of an excessive government deficit in Spain” presented to the EU Council (*sic*) at the beginning of July 2012.

This means that the Commission accepted the revised data in May 2012, since it used the correct data to take EU decisions on economic matters, thereby complying with the objectives of European statistics (ex Article 338 TFEU). It is therefore clear that the operation was considered by the Spanish statistical authorities and by Eurostat as an ordinary revision under Articles 3 and 6 of Regulation (EC) No 479/2009 on the EDP. The EDP notification of October 2011 confirmed the figures reported in the May revision.

We would also like to return to another fact (number 14 of our initial account) which is that on 2 February 2013 Eurostat published the “Report from the Commission to the European Parliament and the Council on the quality of fiscal data reported by the Member States in 2012” in which it was stated that Eurostat did not question the 2011 deficit data from Spain.

It is worth reproducing here what is said the report, which again repeatedly refers to the revision of data without establishing any differences between the incidences that occurred in Spain and other countries:

“Revisions between the April 2012 and the October 2012 notifications were mainly due to source data updates, sector re-classification of units, the recording of interventions undertaken by government in the context of the financial crisis and methodological changes. As usual, debt was revised less than deficit between April and October.

The largest revisions in the deficit took place in Spain and Ireland. In Spain, the deficit was revised upwards between the April and October 2012 EDP notifications for years 2010 and 2011 due to the previously unrecorded unpaid bills related to health expenditure in the state and local government sub-sectors and due to the re-classification of capital injections by central government into three banks. In Ireland, the biggest revision took place for the year 2011, where the deficit was revised upwards due to a revised capital transfer element of injections into two banks.

Between April and October, there were noticeable revisions in GDP for Greece for the years 2010 and 2011 and for Luxembourg for the years 2008 and 2009.

As regards revisions undertaken within the notification period, most Member States revised their reporting after the first submission in October 2012. 35 revised submissions were sent by 23 countries, while in April 2012, 38 revised submissions were sent by 22 countries. Member States sent most of the revised submissions in response to comments, technical questions or remarks by Eurostat, and they concerned completeness of missing data, corrections of technical errors, internal inconsistencies, adjustments provided in the notification tables or the related questionnaire or inappropriate recording within tables.

In the April and October reporting, revised submissions within the notification period did not change substantially the deficit and debt levels originally reported by Member States, except in the October reporting, where the deficit figure was revised by -0.2 percentage points (pp) of GDP during the notification period for Ireland.”

The documentation stresses that the new data communicated by Spain to Eurostat are part of the natural and ordinary process of revision and updating of data and one of the causes of this need for revision is even included: “previously unrecorded unpaid bills related to health expenditure in the state and local government sub-sectors”. As a result the report acknowledges that it was customary for data to be revised under the EDP and in particular, Spain’s revision of the AC data was similar to the revisions made by other Member States (in fact, unlike in the case of other countries, no reservations were entered about the Spanish data). This means that the report acknowledges these operations as ordinary revisions which comply with the EDP Regulation.

Moreover, the preliminary findings on which we are presenting these comments characterise this activity as revision when they describe the background, perhaps not intentionally but in a highly revealing manner; it is therefore said in point 1.1 (Background), paragraphs four and five:

“(…) the revision to the expenditure reported by the Autonomous Community of Valencia (*Comunidad Valenciana*) for the April 2012 EDP notification, corresponding to the unpaid (mainly health) expenditure amounted to about 1.9 billion euro..

At the source of this revision was the fact that (...) the Spanish Government had introduced ... the Special Payment Mechanism (...) for the payment of regional and local government arrears” (...).

In conclusion, it can be said that the data which were sent in the April notification to Eurostat are not final in accordance with Article 3 of Regulation (EC) No 479/2009. As we have seen, Article 6 of that Regulation establishes that Member States shall inform the Commission (Eurostat), as soon as it becomes available, of any major revision in their actual and planned government deficit and debt figures already reported. The Member States are under an obligation to conduct these revisions.

In fact Eurostat has acknowledged for some time, without seeing it as anything out of the ordinary and without entering any type of reservation, that some States do not include real primary data from the regions but simply estimates in their April EDP notification.

Eurostat itself explains this as follows³: “It is important to note that Eurostat constantly refers to statistics and not to bookkeeping with regard to EDP data. EDP data are the result of statistical processes which are based on primary accounting data, sampling and estimation procedures. Therefore, as point estimates, they are by their very nature subject to uncertainty and revisions. The first notifications for a given year n (in April of year n+1 and October of year n+1, even sometimes April of year n+2) cannot be based on a complete set of final accounts of general government entities. Thus part of the data needs to be “estimated” at these stages”.

As mentioned above in the facts and the preliminary findings from Eurostat, Spain informed the Commission of the need to revise the data forwarded in the 2012 April notification and offered to revise the April notification. As a very short period of time had elapsed since the official forwarding, Eurostat, followed the rules of Regulation (EC) No 479/2009 and recommended that they be formally included in the October 2012 notification.

4. INFRINGEMENT OF THE PRINCIPLE OF LEGALITY, THE INFRINGEMENT DESCRIBED IN ARTICLE 8(1) OF REGULATION (EU) No 1173/2011 IS AN INFRINGEMENT CONTINGENT ON OUTCOME: THE FLAWED DATA FORWARDED NEED TO AFFECT THE PUBLIC DEFICIT AND DATA INFORMATION DRAWN UP OR USED BY THE COMMISSION IN EXERCISING ITS FUNCTIONS FOR AN INFRINGEMENT TO BE COMMITTED.

Even if forwarding of faulty or incomplete data in the provisional notification of April 2012 were not held to be compatible with the notion of revision we have posited above, we would draw attention to a second infringement of the principle of legality.

As we have seen, and reiterate here for the purposes of clarity, Article 8(1) of Regulation (EU) No 1173/2011 states “The Council, acting on a recommendation by the Commission, may decide to impose a fine on a Member State that intentionally or by serious negligence misrepresents deficit and debt data relevant for the application of Articles 121 or 126 TFEU, or for the application of the Protocol on the excessive deficit procedure annexed to the TEU and to the TFEU”.

The infringement described in Article 8(1) of Regulation (EU) No 1173/2011 can therefore be said to be an infringement of outcome which means that the data that are misrepresented in this case must be “relevant” for the application of Articles 121 or 126 TFEU; the English version of the Regulation talks about “data relevant for the application of Articles 121 or 126 TFEU” and in English “pertinent” is a synonym for “relevant” and this is probably the reason for the misplaced use of the word “pertinente” in the Spanish translation. In any event, the word “relevant” translated by “pertinente” refers to what is related to the matter at hand, i.e. what is important or significant. In this case it refers to the manipulation of data which are important or relevant to guarantee (or, as the case may be, impede) correct application of Articles 121 and 126 TFEU. In other words it must concern manipulation of data which may influence or affect proper exercise of the EU’s powers of supervision of the Member States’ economic policy (Article 121) and the powers of supervision of “the development of the budgetary situation and the stock of government debt in the Member States with a view to identifying gross errors”, which is of particular relevance in this case (Article 126).

Finally then, in order for the infringement under Article 8(1) of Regulation (EU) No 1173/2011, which is quoted many times, to be committed, it is vital for the misrepresentation of data to have an effect on economic oversight or excessive deficit policies. Not only do the preliminary findings not confirm this (since this is not mentioned at all) but what they do confirm is precisely that the incorrect data had

³ https://webgate.ec.europa.eu/fpfs/mwikis/gfs/index.php/Revisions_of_EDP_data

absolutely no relevance or importance (or “*pertinencia*” if we accept the literal translation of the Regulation) with regard to the exercise of EU powers, as we stated above.

Once again we must return to the “Report from the Commission to the European Parliament and the Council on the quality of fiscal data reported by the Member States in 2012” published on 2 February 2013 and, specifically, emphasise once again its conclusions on the reliability of data:

“Eurostat has been introducing amendments and/or reservations on the quality of reported data since the year 2006. For the first time, in October 2012, Eurostat has neither expressed reservations nor amended the data in the EDP notification. In addition, the two reservations expressed for Ireland, and the amendment to the data for the United Kingdom in April 2012, were all withdrawn in the October 2012 EDP notification.

Eurostat acknowledges overall improvements in the consistency and completeness of the reported data. Nevertheless, some issues persist, and Member States should step up efforts in order to improve the coverage and quality of the trade credits reported and the completeness of data on the sub-national government levels. Moreover, Eurostat is closely monitoring the system for the reporting by autonomous regions and the recording of interventions undertaken by government in the context of the financial crisis (bank recapitalisations).

Overall, Eurostat concludes that the progress on the quality of the reporting of fiscal data continued in 2012. In general, Member States have provided better information, both in EDP notification tables and in other relevant statistical returns”.

It is consistent with the part of the report that we quoted in Point 3, which stated that there had been no statistical manipulation of any type but merely an ordinary process of data revision, the report's conclusions highlight the reliability of the data, the improvement in the system with regard to previous years and emphasise that there was no need to formulate any reservations or amendment. This is also because the Spanish authorities, as we will have occasion to explain later on, were extremely diligent in speedily revising (on 17 May 2012) the provisional information of April 2012 as soon as they became aware of the error that was made in forwarding it, although the Commission did not request any amendment to the EDP (although the Spanish statistical authorities offered to amend it) and said that it was sufficient for the data to be corrected in the October notification, which is what was finally done. And the Commission acted in this way quite simply because the error only affected provisional data, which had to be confirmed by a subsequent notification, and there was no need for immediate amendment as long as the following notification included correctly entered data, because the Commission's supervisory powers, in the Commission's own view, were not being compromised. If it had been otherwise and the information could have been challenged, the Commission would have at least requested immediate amendment of the April notification.

In reality, since Spain informed Eurostat of these facts in May 2012, the Commission had the correct data from Spain in sufficient time for decisions on economic policy and the EDP protocol to be taken on the basis of the correct data without any detrimental effect at all.

It is not only this document which underpins the lack of importance or relevance but at least two others:

1. Proof of the absence of any real impact of these facts can be found firstly in the “Council Recommendation with a view to bringing an end to the situation of an excessive government deficit in Spain” presented to the EU Council (*sic*) on 9 July 2012, which made it clear that when the relevant measures were taken the revised information was already available. According to the report:

“The general government deficit reached 9.3% of GDP in 2010, down from 11.2% in 2009. The improvement in the budget balance was driven by both cuts in total expenditure and an increase in total revenues, mainly as a result of discretionary measures. In 2011, the deficit outturn was significantly worse than expected, 8.5% of GDP compared with a target of 6% of GDP. Spain informed Eurostat on 17 May 2012 that the 2011 general government deficit could be revised up by around 0.4% of GDP due to new information on some expenditure items of the autonomous regions which had not been included in the March 2012 EDP notification. Around two thirds of the 2011 budget deviation occurred at the regional level, while central government and social security recorded much smaller slippages. The budget deviation was mainly explained by weaker-than-expected revenues due to the materialisation of a less favourable Economic environment than foreseen in the 2011 Stability Programme and a less tax-rich grow composition, while expenditure overruns were limited.”

2. Likewise, the Commission’s working document on the evaluation of the national reform programme and the stability programme for Spain for 2012 accompanying the Council Recommendation on the national reform programme in 2012 for Spain, in which a Council opinion was issued on the stability programme in Spain for 2012-2015 (adopted on 6 July 2012), acknowledged that these data were already known: “The deficit of the public administrations increased to 8.5% of GDP in 2011 compared with the target of 6% of GDP. (Footnote: According to the most recent information, the official deficit figure of the public administrations in 2011 may still be revised)”.

That is to say that the EU Commission and Council, which are tasked with supervision, had these data since May 2012 and used them, simply as revised figures, for adopting decisions under Articles 121 and 126 TFEU.

Finally, we would add that relevance was not only not confirmed from a qualitative point of view (as we have just seen) but not from a quantitative point of view either. In fact the potential impact (bearing in mind that we are talking about a potential impact because there was never any real impact) of the data forwarded initially could not be described as “pertinent” or relevant since the accumulated effect notified in May 2012 after the revision was nearly 1.9 thousand million. However, what we need to know is not only the stock accumulated over time but the amount revised in each year, which was done following Eurostat’s instructions at that time. Of the 1.9 thousand million, only 0.9 thousand million were accounted for by the year 2011 (0.08% of the GDP in that year), the remainder being accrued in previous years in accordance with Eurostat’s own criteria at the time. Amongst other reasons, in statistics the homogeneity of a rate of flows, such as public deficit related to GDP, requires the numerator and the denominator to refer to the same year. Correct registration of these quantities over the last decade would not have led to a different diagnosis of the Spanish public accounts for the purposes of EDP rules in any case. This means that these quantities would never have exceeded the threshold of 3% of GDP and therefore would not have had any effect on the excessive deficit in any of the years mentioned. Obviously this is also true in relation to their non-existent impact on the public deficit of the euro zone and the European Union.

Finally, we would return once again to the “Report from the Commission to the European Parliament and the Council on the quality of fiscal data reported by the Member States in 2013”, to which we have already referred, which talks about other revisions of similar quantitative importance which did not give rise to any type of investigatory activity. The wording is as follows:

“Reservations on the quality of data: Eurostat expressed a reservation on the data reported in the October 2013 EDP notification in one Member State. Austria: Eurostat is expressing a reservation on the quality of the data reported by Austria, due to uncertainties on the statistical impact of the conclusions of the Federal Audit Office’s report on the Land Salzburg, published on 9 October 2013. The report revealed deficiencies with regard to financial management and to completeness of the public accounts of the Land Salzburg. The statistical implications of the audit for EDP data are being investigated by Statistics Austria in collaboration with Eurostat, in order to clarify the precise impacts on 2012 and also on preceding years.

It is possible that this will lead to an upward revision of government debt of up to half a per cent of GDP, with more minor revisions to the government deficit, based on the information available at this point.”

5. ALTERNATIVELY WITH REGARD TO THE TWO POINTS ABOVE. INFRINGEMENT OF THE PRINCIPLE OF LEGALITY AS REGARDS THE SUBJECTIVE ELEMENT: LACK OF GRAVE NEGLIGENCE, LET ALONE INTENTION, ON THE PART OF THE KINGDOM OF SPAIN.

So far we have demonstrated why the situation described in Article 8(1) of Regulation 1173/2011 did not arise in this case in objective terms, thus obviating the need to discuss the subjective aspects. This notwithstanding, we must point out, in claiming the right of defence to which this Member State is entitled, that the above-mentioned situation is governed by a system of subjective responsibility, which means that non-compliance is not sufficient grounds *per se* for laying charges and imposing penalties but must be the result of fraud or grave negligence.

The final conclusion of the Commission’s preliminary findings says that “the AC of Valencia was, at least, seriously negligent concerning the non-recording of health expenditures and the non-respect of the accrual principle in national accounts”.

First of all, we would point out that the Spanish State is in a position where it cannot defend itself because it does not know precisely what charge is being made, since the conclusions state that the conduct is attributed at least to grave negligence but do not rule out intention.

Moreover, and probably more importantly, the preliminary findings appear to highlight solely the activity of the Autonomous Communities’ institutions whose conduct is described in detail therein. However, they do not do justice to the diligence with which the national statistical authorities acted at all times. It is therefore difficult to see how an intentional or gravely negligent infringement is compatible with the fact that it was the statistical authorities who, on their own initiative, informed the Commission of the facts of the matter. As we highlighted in facts 6 and 7 of this letter, during the first days of May 2012, the Ministry of Finance and Public Administrations’ analysis of the information forwarded in application of the measure for paying suppliers revealed an irregularity in the recording of healthcare expenditure in the Autonomous Community of Valencia. As soon as it was aware of the irregularity the IGAE requested the IGGV to confirm the information and forward it to the National Accounts Working Group. The National Accounts Working Group agreed to notify Eurostat immediately and did so on 17 May 2012, offering to revise the notification published in April.

Through its institutions, Spain detected an error in communication which was brought to light on its own initiative and the statistical authorities informed the competent European institution with the result that, as we have seen above, there was no incidence at all or impact on the Commission’s supervisory powers. Not only did the authorities act with all due diligence but also as quickly as could be expected.

Moreover, before the investigation procedure was initiated, the national statistical institutions cooperated with absolute trustworthiness, transparency and willingness with the Commission in what was understood to be a series of visits to improve the technical system for data communication. As we have already said here, three visits were made to Spain, apart from the ordinary dialogue visits provided for by Regulation (EC) No 479/2009 which were called “technical”, “upstream” and “ad hoc” in 2012 and 2013 (24 May 2012, 18-22 June 2012, 11-14 September 2012 and 26-27 September 2013) in which again the cooperation offered was, in our view, totally incompatible with the notion of intention or grave negligence.

Likewise, since May 2012, again not as a consequence of any penalties being imposed or the start of the investigation formalities, but simply with the simple desire to improve the system, given the fact that an

error in the communication of data had been detected, improvements were made to the communication procedures which are set out in the letter of preliminary findings itself and which include the Organic Law on Budgetary Stability and Financial Sustainability, which is compulsory for all levels of Spanish administration (central, Autonomous Community and local levels), the Organic Law on the Independent Authority for Fiscal Responsibility, also compulsory throughout Spain, which institutionalised the existing national accounts working group, made up of the INE, the IGAE and the Bank of Spain under the name of “National Accounts Technical Committee” and various improvements at Autonomous Community level such as the setting up of a single entry point for recording invoices in each Community, setting up of interdepartmental committees in the Autonomous Communities to monitor rationalisation and austerity policies, the amendment of the “Council Accord of 27 June 2008” and “Decree 40/1992 of 16 March” of the Autonomous Community of Valencia, the amendments to the Law of Finances published in the Autonomous Community of Valencia in order to incorporate the instruments required and the procedures to guarantee compliance with the Law on Budgetary Stability and Sustainability, expressly including a system of responsibilities to be borne by those in charge of the various departments and entities in the event of non-compliance with the above legislation and principles, amongst other things.

The preliminary findings do not take account of the assessment by the Autonomous Community of Valencia’s Court of Auditors of the AC’s public accounts for the year 2011 which is the one which is supposed to be under investigation (published on 21 December 2012), but they do analyse the content of the audit office’s reports for years outside the time frame of this procedure. The report highlights the fact that real improvements have been made:

“The administration’s account for the year 2011 incorporates accounts 409 and 411 on the debit side of the balance sheet which essentially comprise the debt for healthcare for obligations not recorded (ONR) in the expenditure budget.

Although the ONRs were not taken into account in calculating the budget for the year (see section 6.1) they were included in calculating the deficit for 2011 for the purposes of the ESA 95 as set out in the 2012-2014 Economic Financial Rebalancing Plan of the Autonomous Community of Valencia (see section 6.5).

In 2012 the IGG started to prepare a manual of procedures for management and control of the *Generalitat* (Valencian Government) Administration. The documents approved in May 2012 included one on the “Register of pending operations in accounts 409 and 411 in application of the budget” which covered the procedures to be conducted for both expenditure management centres and for the IGG, for the recording in the accounts of the obligations stemming from goods and services actually received in respect of which a corresponding formal act of recognition and liquidation had not been enacted.

Decree 134/2012 of 7 September of the Council set up and governs the *Registro de Facturas* (Register of Invoices) of the *Generalitat* (*RFG*) and stipulated, amongst other things, that information had to be entered in the *RFG* as a prerequisite for the procedure for acknowledging the obligation and that entry triggered the start of calculating the deadline for payment under the terms of Law 3/2004.

These measures require a new system of control, supervision and accounting of all the invoices to be put in place which must provide evidence of actual supply of goods and services to the Administration of the *Generalitat*. The sound functioning of the *RFG* will be audited by the Court in subsequent years.”

The Member State knows at first hand and respects the hard work conducted by the investigation team but, in its defence, would point out that it sees a disconnect in terms of time frame and events, since the investigation appears to be focused on a few facts which are, admittedly, not entirely outside the scope of the procedure, but certainly marginal to it, and on some reports which emphasis the errors committed by the autonomous authorities of Valencia without taking into consideration the speed, diligence and

trustworthiness of the Kingdom of Spain prior to the investigation procedure and during it, when it was also at pains to offer maximum cooperation.

Furthermore it should be acknowledged that even in relation with the IGGV's activities not all the facts are reported. The preliminary findings thus state that "Concerning the information sent by the IGGV to IGAE in the SQ, no amounts for unpaid unrecorded bills were reported in the SQ sent to IGAE on the 30th of April 2012, while such amounts had already been transmitted to the National MoF in the invoices sent for the purposes of the SPM and in the adjustment plan provided to the CPFF and while IGGV had received by email such amounts from *Consejeria de Sanidad* already in February", which is true, but the findings fail to make it clear that the IGGV, after a request from the IGAE, did confirm these amounts and regularised them in the following dispatch as is mentioned in the 2011 report from the Court of Auditors of the Autonomous Community of Valencia.

In the light of the relevant facts mentioned and the previous legal grounds we would like to formulate the following conclusions:

CONCLUSIONS

Conclusion to Point 1. In compliance with Article 14, Regulation (EU) No 1173/2011 entered into force twenty days after its publication in the Official Journal of the European Union, that is to say on 13 December 2011.

However, the decision which is being contested mentions as key indicators for the conclusions of the investigation facts which sometimes go back as far as 1988. Extending the investigation retroactively without any time limit beyond 13 December 2011 is an act with no legal basis which contravenes the principles of legal certainty and non-retroactivity of the provisions for penalties and constitutes a disproportionate exercise of investigatory powers prohibited by the Commission itself in recital 6 of its delegated Decision of 29 June 2012.

The Commission's interpretation would enable the Commission to investigate the data sent by any Member State since their accession to the EU retroactively and without any limits.

The period under investigation should be restricted to the data included in the notifications from 2012 onwards and indeed the Commission only has investigatory powers from November of that year. As a result there is no legal basis for opening an investigation procedure for events prior to 13 December 2011. The investigation focused on data whose reference period started in 1988 (at which time there was not even any European legislation on EDP and national accounts) and extended to 2011, giving rise to conclusions which may be misleading as to the facts which are relevant for the investigation and infringing the principle of legality and non-retroactivity of legislation.

Conclusion to Point 2. The investigation was conducted over a period of three years in which Eurostat had access to persons and documents as a result of the "informal" visits without the guarantees established by the law and reused this information in the investigation procedure under Decision 2012/678/EU.

There are many inaccuracies in the findings which may lead to misinterpretations and may compromise the Kingdom of Spain's right of defence.

Conclusions to Point 3. The data communicated by the Spanish authorities from the month of May 2012 formed part of a normal data revision process which is provided for specifically in the EDP Regulation.

An interpretation which implies that any update or revision of data performed by a Member State may involve, at least potentially, an activity which may be investigated or penalised by the Commission under the EDP is not only contrary to the letter and spirit of Regulation (EU) No 1173/2011 and Decision 2012/678/EU but means, from a practical point of view, that the Member State's collaboration in improving the quality of its data by implementing revision policies is not only not valued but, on the contrary, in the case of Spain has entailed the opening of an investigation procedure and concomitant damage both to the letter and spirit and purpose of the legislative framework which applies.

The Kingdom of Spain's actions may not be considered to be a misrepresentation of data but revision thereof under the EDP which was provided for in law and is standard practice in the majority of countries, as the Eurostat reports on EDP demonstrates; there is also an assumption of non-misrepresentation defined explicitly in Decision 2012/678/EU.

Conclusion to Point 4. The infringement described in Article 8(1) of Regulation (EU) No 1173/2011 is an infringement of outcome which requires that the misrepresentation of data prevents proper exercise of the Commission's supervisory powers provided for in Articles 121 and 126 TFEU. Such an impact not only has not been demonstrated but, according to the documents issued by the Commission itself, has never existed. In brief therefore there has not been any real impact because these were provisional data the revision of which in May made it possible to use them for the purposes provided for by European legislation.

The EDP data are correct and have never been revised by Eurostat nor has a reservation been entered in that regard. This was acknowledged by Eurostat and the European Commission in the public notification on the opening of the investigation on 11 July 2014 in the following terms: "It is important to underline that Spanish data has always been published without reservation by Eurostat." Likewise, Commissioner Semeta reiterated this when responding to the following parliamentary question "Does the investigation initiated today mean that Spain's figures on debt and deficit are not reliable?"

"(...) This correction was reflected in the October 2012 EDP notification, and Spanish data has been published without reservation by Eurostat since then. All the expenditures that Eurostat was discussing with Spain have now been included into the general government data, and Spain has taken important steps to ensure that the reporting problems in the regions do not happen again (...)."

And more recently in the Commission to the Council and the European Parliament on the quality of fiscal data in 2015 in which it affirms that "The Commission is not calling into question the current accuracy of EDP statistics in Spain".

Neither can one conclude that the figures involved justify any suggestion of any impact in terms of quantity; of the 1.9 thousand million notified in May 2012, only 0.9 thousand million were accounted for by the year 2011 (0.08% of the GDP for the year in question), the rest having been accrued over previous years in accordance with Eurostat's own criterion of the time. It was primary information that was revised and involved a minimal percentage of less than 0.1% of GDP. By comparison, any statistical sampling operation with a sampling error of similar magnitude would be considered, in statistical terms, by the Member States or by Eurostat to be of a quality more than sufficient for use in national accounts and, by extension, in the EDP and other European economic policy areas.

Conclusion to Point 5. The preliminary findings deal exclusively with the conduct of the Autonomous Community of Valencia, describing its behaviour as negligent at least. However, they do not appear to have properly valued the conduct of the national statistical authorities which behaved with maximum diligence, commitment, trustworthiness and speed in informing the Commission immediately about the error which had been discovered and cooperating during the time prior to the investigation procedure, preventing the error from having real consequences on the European institutions' supervisory powers.

ANNEX I

| TIMETABLE OF THE RELEVANT EVENTS | | |
|----------------------------------|----------------|---|
| QUARTER | DATE | RELEVANT EVENTS |
| 4Q/2011 | 13/12/2011 | Regulation (EU) No 1173/2011 enters into force. |
| 1 ^b Q/2012 | 30/01/2012 | Provisional forwarding of first data from the ACs audit authorities to the IGAE. |
| | 30/03/2012 | Forwarding of the first data for the EDP notification from Spain to Eurostat. |
| 2 ^o Q/2012 | 23/04/2012 | Publication by Eurostat of Spain's provisional data for the 2011 EDP. |
| | Early May 2012 | <ul style="list-style-type: none"> – The existence of healthcare expenditure in Valencia not notified in the first quarter of 2012 comes to the notice of the IGAE. – The IGAE requests the IGGV to confirm this expenditure. – The IGAE informs the National Accounts Working Group, the information is revised and Eurostat is informed immediately. |
| | 17/05/2012 | Notification to Eurostat of the revision of the 2011 deficit data forwarded in the notification of 30 October and published 23 days previously. |
| | 24/05/2012 | “Technical” visit by Eurostat to Spain. |
| | 18-22/06/2012 | “Upstream” visit by Eurostat to Spain. |
| 3 ^o Q/2012 | 09/07/2012 | Publication of the Council Recommendations on Spain's deficit using the data from the revision of May 2012. |
| 4 ^o Q/2012 | 11-14/09/2012 | “Upstream” visit by Eurostat to Spain. |
| | 30/09/2012 | Forwarding by Spain to Eurostat of the notification for the October EDP, confirming the data revised in May 2012 and validation by Eurostat. |
| | 26/11/2012 | Entry into force of Delegated Decision 678/2012. |
| 1 ^o Q/2013 | 02/02/2013 | Validation of Spain's data in the Eurostat report on the quality of fiscal data notified by the Member States in 2012. |
| 2 ^o Q/2013 | | |
| 3 ^o Q/2013 | 26-27/09/2013 | “Ad hoc” visit by Eurostat to Spain. |
| 4 ^o Q/2013 | | |
| 1 ^o Q/2014 | 07/03/2014 | Validation of Spain's data in the Eurostat report on the quality of fiscal data notified by the Member States in 2013. |
| 2 ^o Q/2014 | | |
| 3 ^o Q/2014 | 11/07/2014 | Opening of an investigation procedure on manipulation of statistics in Spain in accordance with Regulation (EU) No 1173/2011 of the European Parliament and of the Council on the effect of enforcement of budgetary supervision in the euro zone. |
| | 22/09/2014 | Lodging of an appeal for annulment against the decision to open an investigation procedure on the manipulation of statistics in Spain (Case T-676/14). |
| 4 ^o Q/2014 | 10-11/12/2014 | Conducting of an inspection in Spain under Article 5 of Delegated Decision 678/2012. |
| 1 ^o Q/2015 | 19/02/2015 | Preliminary findings of the investigation. |
| | 05/03/2015 | Eurostat report on the quality of fiscal data notified by the Member States in 2014 in which the Commission provides information about the pending investigation procedure but acknowledging that it does not have any doubts about the reality of the data on Spain. |

ANNEX II

Errors and inaccuracies contained in the letter on preliminary findings

1. On page 6 where it is stated “since November 2011, the Commission carried out an investigation” should actually read “since November 2012, the Commission can launch an investigation” as this is the date of the entry into force of Delegated Decision 678/2012, governing the investigation procedure.

2. Table 1 on page 9 shows the specific responsibilities of the various institutions involved in the EDP for the ACs and how they interact but, while this is correctly described on pages 7-9, it is not the case in the table, which refers to the Technical Committee (which had not been created at that time) instead of the National Accounts Working Group and assigns it responsibility for compiling EDP data when it only handles methodological questions.

3. On page 12 and 13 where it is stated:

“Account 409 (currently 413) consists of expenditures:

- Not imputed in the budget of year T;
- For which the obligation to pay has been recognised (invoice received);
- To be imputed to the budget of year T+1;
- Impact the EDP deficit (B.9) of year T.

Account 411 consists of expenditures:

- Not imputed in the budget of year T;
- For which the obligation to pay has not been created, as the expenditure is not matured (the official invoice was not yet received);
- To be imputed to the budget of year T+1 once the invoice has been received, after the due date, and the obligation to pay is recognised;
- Impact the EDP deficit (B.9) of year T”.

It should, for a clearer understanding of how these accounts work, read as follows:

“Account 409 (currently 413) consists of expenditure not imputed in the budget of year T, for which the obligation to pay has been recognised (invoice received) and which is to be imputed to the budget of year T + 1. This expenditure affects the EDP deficit (B.9) of year T.

Account 411 contains expenditure not imputed to the budget of year T in respect of which an obligation to pay has not been created, as the expenditure has not matured (the official invoice has not yet been received); this should be imputed to the budget of the year T + 1 once the invoice has been received, after the due date, and the obligation to pay is recognised. This expenditure affects the EDP deficit (B.9) of year T”.

4. On page 12 on the penultimate line of footnote 12 “...the account 409 was not suitable” should read “...the account 411 was not suitable”.

5. On page 13 under the heading “Specific agreements of Government in 2007-2010” it is stated: “On the one hand, the new debt recognised after each agreement impacts the stock of debt of government as well as government deficit”. The reference to public debt should be deleted as it is not affected.

6. On page 13 it should have been clarified that “The audit office does not assess implementation of the national accounts principles” because these do not apply at Autonomous Community level but are the responsibility of the national statistical authorities. The same error is repeated in the title of section 4.3 which talks about “The workflow for the compilation of EDP data in the

Comunidad Valenciana where “EDP data” should be “public accounts data” in the Autonomous Community of Valencia.

7. On page 17 there is an error in the third paragraph which mentions the “general comptrollers of the regional audit offices” where reference should be made to the “general comptrollers of the ACs”.

8. Table 3 and the explanatory text on the page where it is found do not specify the units of measurement and are misleading because they include a column referring to 2011 without any clear mention that these are the provisional data from the April notification. All the previous columns refer to periods outside the remit of the investigation. In particular it is said in the explanation that the penultimate column “shows what would have been published by the IGGV if they would have followed past practices” which is a specious comment referring to supposed conduct which did not take place and on which grounds this Member State requests with all due respect that it be deleted.

9. In the final paragraph on page 23 there is an inaccuracy where it is stated that “The figures for unpaid bills, recorded in account 409 for the first time, were finally transmitted by IGGV to IGAE only at the end of June 2012”, as this was actually not done formally but it was confirmed by telephone in May 2012 for which reason the adverb “formally” should be included.

The following page refers repeatedly to the revision of June 2012 and forwarding of the data by the IGGV in June 2012, whereas in reality the agreement by telephone took place in May 2012.

10. Table 6 on page 29 contains information in the penultimate line not mentioned in any report from the Court of Auditors of the Autonomous Community of Valencia, namely 1 842.3 million euros of expenditure not recognised in 2011 (and which should therefore be deleted in its entirety). The correct information is that which appears in the last line which corresponds with the 2011 report from the Regional Court of Auditors.

11. On page 23, fifth paragraph, there is an error in the statement that “IGAE underlined that they had an obligation to cooperate with IGGV and that the Court of Auditors report (...)” since it is precisely the opposite which is correct and should read “The **IGAE** underlined that it needed the cooperation of the IGGV to draw up national accounts since the report from the Court of Auditors...”.

12. Table 8 on page 33 does not identify any units of measurement. In the final column on 2011 only the data for April 2012 are included without all the information from that year revised in May and confirmed in the October notification.

13. On page 38 of the Spanish original we do not understand what is meant by the term “*procedimiento de limpieza*” (in the English version the term is simply “procedure”).

14. On page 37 it is affirmed that “The irregularities in the AC of Valencian were in fact revealed to Eurostat only after INE had communicated the new revision of B.9 to Eurostat. Eurostat carried out a technical mission to Spain and it was only after this mission that a new recording procedure began in the AC of Valencia using the account 409 and reflecting the corresponding amounts in both the general account for the region and the SQ transmitted to IGAE”. This information is presented as if it were negative and without any time frame instead of clarifying that in May 2012 the INE informed Eurostat of the revision of B.9 (which cannot be identified as new since there was no other previous revision, only that referring to the April notification). The above paragraph is inaccurate as well because, as has been mentioned, the revision was carried

out by the national statistical authorities before Eurostat's technical mission to Spain in May 2012. That visit actually came as a consequence of the revision and did not, as might be assumed from a literal reading of this paragraph, cause it. It should therefore be deleted.