

HIGH LEVEL GROUP – Action Plan

Commission services reply to HLG conclusions and recommendations on cross-cutting audit issues

Recommendations to the Commission for 2014-20 period	What actions would be required to implement this suggestion?	Comments on merit and feasibility / actions already done and planned
<i>Strengthening the preventive role of audit</i>		
1 <i>strengthening the educational role of audit, in particular by identifying good practices in MSs and sharing them with others, not just audit authorities but also management bodies and beneficiaries, and facilitating peer-to-peer activities</i>	<ul style="list-style-type: none"> ➤ Collect examples of good practice through national and EC audits; ➤ Allow tool to register such practices (to be developed since information is not available in a structured way); ➤ Present good and bad practices identified in Member States in EGESIF and ESF TWG; request representatives from managing authorities/coordinating bodies to disseminate information to all programme authorities; ➤ Use the network of conferences with paying agencies of the CAP to share such practices 	<ul style="list-style-type: none"> - Already done through different channels; however, audit is about reporting by exception and therefore audit findings are about examples of bad practices / weaknesses / failures to comply with the rules; - For 2014-2020 further focus is put on identifying good practices through audit activities: <ul style="list-style-type: none"> • Request to EC auditors to report good practices in the Audit Enquiry Early Preventive System Audits (EPSA) and encouragement to audit authorities to identify such good practices in annual control reports / system audit reports, in particular use of SCOs, simplified procedures, organisation of systems in a way to reduce administrative burden on beneficiaries. • Good practices (including on management and control systems and audit activities) are shared within the audit community (EC audit services and audit authorities), with current reliance on audit authorities to disseminate information to managing authorities / coordination bodies; need to extend the diffusion to managing authorities in an efficient way (who are then responsible to communicate with the beneficiaries); • Proactively promote simplification at all levels, in particular concerning optimising the use of SCOs and JAPs, both with AAs and MA/IBs. • For EAFRD: <ul style="list-style-type: none"> - three times a year conferences with paying agencies of the CAP; - Regular training and exchange of practices through the European Network for Rural Development (ENRD).

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2	<p><i>strengthening the methodological role of audit, by encouraging national and EU auditors to be involved in the preparation of systems, and preventive audits focusing and identification of repetitive and redundant processes</i></p>		<ul style="list-style-type: none"> - For 2014-2020, the guidance notes on management and control systems were discussed with Member States as from 2013 and published in 2014 and 2015 in time for MS to prepare their systems, including for the designation process; - EC auditors were involved and consulted on specific aspects of the set-up of systems, providing independent consultancy services and feedback to geographical units / MSs. Moreover, as a general rule MSs decided to appoint the AAs as independent audit bodies for the designation process, therefore they have already a strong methodological involvement in the validation of the set-up of systems. Therefore national audit authorities were involved in the early stage of designing the management and control system. - Under the Common Agricultural Policy, paying agencies have to follow an accreditation process as regards the internal control systems; - The EC performs a review of designation packages on a risk basis and designs and carries out Early Preventive Systems Audits at an early stage of programme implementation (even sometimes when the first expenditure is ready to be declared but not yet declared to the EC) with a view to be preventive and immediately report possible weaknesses in implementation; - The EC audit checklists have been reviewed including the identification of gold plating practices; - Auditors, in particular at the AA level, are and will be more proactively involved in the promotion and support of simplification, in particular SCOs, and in the identification and mitigation of instances of gold plating resulting in recurring errors; - A standard typology of identified irregularities, shared between EC and MS auditors, has been discussed and shared between EC and national auditors and will allow for further shared analysis on the root causes of errors and common understanding with auditees on actions to be undertaken to avoid them.
3	<p><i>there should be more</i></p>	<p>➤ Actively promote the use of jointly agreed typology of errors with MS</p>	<ul style="list-style-type: none"> - There are at least three annual meetings of the Cohesion policy audit community (EC / audit authorities) where sessions of sharing audit

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	<p><i>sharing, both at EU and national setting, of audit results, frequent weaknesses detected and sharing experience on measures applied to address them in different programmes and MSs, including through creation a database of anonymised EU findings for most common mistakes accompanied also with measures of how effectively (in particular: minimising additional burden on beneficiaries and institutions) tackle them.</i></p>	<p>(audit community);</p> <ul style="list-style-type: none"> ➤ Propose to managing authorities the use of the common typology of errors and report it in the Annual Summary; ➤ Promote results of analysis and proposed actions to programme authorities: technical meetings of audit authorities; EGESIF; ESF TWG; conferences with paying agencies of the CAP. 	<p>methodologies and practical tools and sharing of results and expected actions take place;</p> <ul style="list-style-type: none"> - For the EAFRD a Communication on typologies of errors and mitigating actions was published in 2013, for Cohesion policy in 2011. This has been the basis for further targeted administrative capacity actions with all concerned MSs; - In 2016 the EC has developed, discussed and shared with audit authorities a joint typology of errors allowing an analysis of most frequent errors and actions to be taken to avoid them (see above). The initiative can be extended to the managing authorities (annual summary); - Seminars on error rates under the EAFRD are organised annually, involving managing authorities and paying agencies. Furthermore, the paying agency conference in Brussels every year is dedicated to sharing audit results.
4	<p><i>strengthening advisory function of audit, especially by providing the authorities involved in management of programmes with timely recommendations on how to improve the system and how to change the procedures.</i></p>	<ul style="list-style-type: none"> ➤ Continue strict monitoring of deadlines for timely sending of EC draft audit reports to MSs; ➤ Decouple the EC final audit report following contradictory procedure from follow-up phase and inform clearly auditee about this (to ensure more rapid final report); ➤ Encourage audit authorities to ensure robust contradictory procedures for their audits and timely feedback / reporting to auditees (system audits); ➤ Encourage auditees (managing / 	<ul style="list-style-type: none"> - See points 1 to 3 above, including EC early preventive system audits and request to audit authorities to set an audit strategy combining system audits on key requirements and audits of operations as from the first accounting year (first assurance packages expected in March 2017 but not for all programmes yet due to delays in implementation); - Internal deadlines of 3 months set for EC audits to present draft audit report to auditees in working language. Further steps of the procedure (final audit report, follow-up) depend on the timely and quality replies and contributions from auditees; - In case of serious deficiencies detected, feedback is given to MS within 3 to 6 weeks of the audit (warning/interruption letter); deadlines are fixed in regulation for interruption / (pre)suspension and financial correction procedures; Revised approach for 2014-2020 to take account

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		certifying authorities) in the different networks (EGESIF, ESF TWG, conferences with paying agencies of the CAP) on the need to provide timely and complete replies to auditors (ECA, EC, audit authorities) to clear facts and focus on required follow-up.	of annual accounts and retention of 10%, while keeping a rapid feedback mechanism towards Member State; - For EAFRD the work of the certification bodies (CBs) is also foreseen to report system weaknesses in an exact and timely way.
Ensuring quality of audit findings and improvement of audit procedures			
5	<i>improved quality checks are needed ensuring that audit findings are not based on assumptions which are insufficiently grounded, nor are based on guidelines which are not binding for MS, nor are retroactive, as even if the findings are dropped later they create uncertainty and disruptions in the system which extends far beyond the operation being audited; there should be systemic follow-up and conclusions drawn upon the analysis of findings which later proved to be unjustified;</i>	<ul style="list-style-type: none"> ➤ Apply timely, robust and sufficient contradictory procedures for audits, taking also account of the regulatory deadlines for audit opinions (for AAs) and for the financial corrections; ➤ Audit IT tools to be exploited to allow for analysis of findings dropped later (e.g. MAPAR tool for REGIO/EMPL; already done by some audit authorities (as part of their quality review) and encourage AAs to do it more systematically. 	<ul style="list-style-type: none"> - EC Audit Directorates and a significant number of AAs (and CBs) have been externally certified regarding their compliance with international audit standards (compliance with ISSAI 4100 for REGIO, EMPL and MARE). In this certification process, the external auditors could confirm that the EC auditors follow a proper system of quality review; - Indeed, EC audits go systematically through a strong quality review and supervision, including several levels within the audit unit / directorate and peer reviews and assessment of draft findings; - Audit authorities should similarly follow a quality review process. EC audits check this during the re-performance of the AA's audit work that confirmed already that such quality reviews are in place in several MSs and it has been recommended to other AAs to improve the process when necessary. The Guidance note on audit strategy establishes in point 3.1 that the AA's audit manual should provide among other elements the supervision, quality assurance and external review; - Some audit authorities have a system in place to analyse the ratio of preliminary findings dropped and the reasons for it, thus contributing to their internal quality review. This tool can be further promoted to all AAs and used as well by EC audits. - Financial corrections imposed by the Commission are based on solid audit findings disclosed in final audit reports, as confirmed by the Court of Justice for all cases brought to Court (41 cases brought to

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			<p>Court up to end 2015; 37 closed so far, including 28 confirmed on substance by the EUCJ and 9 annulled due to procedural issues but without conclusions on substance);</p> <ul style="list-style-type: none"> - Contradictory procedure allows MS the right of defense and their replies, when evidence-based, are taken into account; - For EAFRD a detailed list of the key and ancillary controls to be looked at during an audit has been drawn up after discussion with Member States
6	<i>in order to ensure effective non-retroactivity, audits should be carried out in accordance with the standard applicable at the time of signing of the contract with the managing authority and not at the date of the audit</i>	<ul style="list-style-type: none"> ➤ Repeat clarification in the annual control coordination meetings with AAs in 2017, following the concern expressed by the HLG 	<ul style="list-style-type: none"> - Article 27(2)(a) Delegated Act has no retroactivity effect. This was clearly mentioned to all AAs and there is no doubt about this interpretation by auditors. The purpose of the article is to ensure that the functionality, use and objective of the audited projects are assessed at the time of the audit against what is applicable at that time (the project may not yet be functional or in use at the time of the audit without this posing a problem).
7	<i>accelerating the timeframe for audit conclusions (which currently sometimes lasts even several years) by ensuring that all actors in the process, including the Commission, respect clear deadlines set both within the audit procedures, and in the various interrupting and warning letters. Only in the case of outside factors (e.g. a police investigation which needs to be</i>	<ul style="list-style-type: none"> ➤ Ensure that the audit procedures are timely finalised and only then the follow-up (with financial consequences, if applicable) can start (change already implemented in EC internal procedures) ➤ Timely MS replies providing the necessary evidence-based information for the EC to close the recommendation(s) are needed (see above, action in relation to 4) 	<ul style="list-style-type: none"> - See comments under recommendation 4 above. - For EC audits a draft report in the working language is requested within 3 months of the end of the mission, for communication to the Member State (translation follows); - Final audits are for 2014-2020 decoupled from the follow-up phase in the EC internal procedures and therefore the legal deadlines and timing can be better monitored and controlled; request in Council to introduce regulatory deadlines for EC audit reports, with request for safeguard clause in case of incomplete reply from MS; - In the case of interruptions/suspensions, potential delays are due to late or insufficient / incomplete replies by the national authorities (see ECA Special Report on Commission corrective capacity), and "ping-pong" correspondence between Commission and Member States; - Clear administrative deadlines have been introduced for the conformity

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	<i>concluded before final findings could be formulated) there is a reason for undetermined periods</i>		audits on EAFRD expenditure since 2015 (Regulation (EU) No 908/2014), complemented by internal deadlines.
8	<i>more effective use of contradictory procedure is needed with involvement of auditors not responsible for initial findings, and empowerment to take actual decisions in response to arguments presented during the hearing;</i>	<ul style="list-style-type: none"> ➤ Repeat the importance of sufficient and robust contradictory procedures to AAs in upcoming audit coordination meetings in 2017; ➤ encourage sharing of experience between AAs in that regard, taking account of the regulatory deadlines for AAs to deliver their annual audit opinion / control report. ➤ EC auditors to keep checking when carrying out re-performance work that appropriate contradictory procedures were followed by the AA. 	<ul style="list-style-type: none"> - The involvement of different Commission officials is already in place, including geographical desks in charge of implementation, legal or other experts (ex. financial instruments unit), the Deputy Director-General and the Director-General level, at different stages of the audit and contradictory procedure; - Audits follow a supervision cascade by auditors not in charge of the initial finding to ensure consistency and equal treatment, including consultation of expert units when necessary; - Audit reports and findings are signed by the Audit Director while the final position letter (which triggers the financial correction) is signed by the Director-General after consultation with the legal and implementing units. The same arrangements are foreseen for hearings which include other EC staff than auditors and Commission decisions which go through an inter-service process of validation, including by the EC Legal Service. No final decision can be taken in the hearing by EC staff / the Audit Director due to the corporate / inter-service process needed for any Commission decision; - In case of flat-rate corrections proposed, an ESIF inter-service board is consulted to ensure consistent approach; - For EAFRD a Conciliation Body has been in place for 20 years allowing Member States a further step to in the contradictory procedure with the Commission in accordance with Article 36 of Regulation (EU) No 908/2014.
9	<i>considering establishing where necessary at an appropriate level a body or</i>	<ul style="list-style-type: none"> ➤ See action under rec. 8 above 	<ul style="list-style-type: none"> - The Commission services consider that the current contradictory procedure already provides ample opportunities for providing additional evidence and legal arguments evaluated and discussed before finalisation of the procedures. For EAFRD see point 8;

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	<i>arbitrator to which it would be possible to appeal before a hearing or legal proceedings. This entity could then analyse findings, reaction, reasoning, or an interlocutory option if new circumstances are discovered etc. and could decide whether the findings are justified (as well as associated correction) or not</i>		- Member States are free to implement at national level an arbitration body for national audit reports and issues, but the Commission would carefully assess to ensure that audit authorities remain independent in their opinions and conclusions, in line with generally accepted internal standards.
10	<i>a regular exchange of experience and knowledge, not only among AAs, but also with the individual MSs and sharing the main conclusions from these discussions</i>		- Covered by action under recommendation n°1
11	<i>improved communication to make it clear that an audit finding does not mean a confirmed irregularity and an irregularity does not mean fraud.</i>	➤ REGIO/EMPL can agree to consider the practice from AGRI in all draft audit reports letters referring to preliminary findings (subject to confirmation with the final report).	- Highlighted in all audit reports/letters of findings (EAFRD); - The ECA has a clear disclaimer in their annual report but not in individual audit reports to auditees; - EC auditors cannot disclose in an audit report that any identified irregularity is not fraud. Only a specific investigation can confirm it. General communication to stakeholders (EP, Council), to the public (EC working papers or communications) or to citizens / media are clear on the distinction between irregularities and fraud, which can only be ascertained by a competent court.
	- interpretation and application of rules		

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12	<i>introducing a <u>transition period</u> giving sufficient time for adjusting national procedures before new methodological guidelines are fully enforced</i>	➤ Ensure to grant a transition period to adjust the national procedures to any new methodological procedure / guidance.	- Agreed, as it is normal practice to introduce a transition period.
13	<i>the Commission guidelines should not put into question the competence of the managing authorities to decide about financial corrections, without prejudice to the case law set by the Court of Justice.</i>		<ul style="list-style-type: none"> - Member States have, in the first instance, the responsibility to prevent, detect and correct irregularities. It is therefore indeed for the Member State to set-up the responsibilities between programme authorities; - It is the responsibility of the Commission to ensure that the EU budget is properly protected. Consistency in the supervisory approach of the Commission, through guidance or guidelines, gives to Member States an adequate level of predictability; - Guidelines on financial corrections may take the form of a Commission decision instructing the services (e.g. on public procurement irregularities), without prejudice to mitigating factors which need however to be reasoned by Member States authorities, in accordance with the EU caselaw.
14	<i>review and elimination of extra-legislative requirements imposed on some MSs e.g. by including them in programmes, which are not required from other MSs to <u>ensure equal treatment</u>;</i>		<ul style="list-style-type: none"> - The differences in programmes reflect specific needs, institutional environment and other factors which are not uniform in all regions and MSs. When formulating its position papers, the Commission made great effort to ensure equal treatment, but the agreed texts of the operational programmes are the result of negotiations in which MSs addressed the principles behind policy recommendations in a variety of ways. While it might have resulted in a different formulation of the conditions defining scope of support for different programmes, this difference might be balanced by other commitments on related issues, or be justified by existence of mechanisms outside of the ESI Fund implementation system which provide the same effect. - Programme authorities can initiate programme amendments, in particular where they consider some conditions included in the programme are not longer pertinent. However, as a general rule,

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			justification based solely on a difference in one isolated provision, which does not take into account other relevant factors, would not be sufficient
15	<i>certain definitions, in particular definition of innovation, could already be harmonised across different policy fields</i>		<ul style="list-style-type: none"> - Audit indeed requires to have clear and specific eligibility rules in place, including a clear definition of what is being assessed. At this stage of the programming period, a definition of innovation is best tackled within the national eligibility rules. The Commission can provide bilateral assistance where differences between different policy fields occur. However, we would like to avoid creating guidelines on the basis of problems in one Member State which may be misunderstood or create restriction for other Member States. This issue could be revisited in the context of legislation for post 2020.
- To increase proportionality			
16	<i>consistent application of the <u>single audit principle</u>, which should include the Court of Auditors, and avoiding overlapping controls, so the level above only controls the level below if they performed they work well; in this context, it would be desirable to raise the thresholds below which an operation is not subject to more than one audit</i>	<ul style="list-style-type: none"> ➤ Make further steps towards the single audit approach between EC/national audit levels and discuss with the Court of Auditors to ensure their new approach for 2018 onwards contributes to less administrative burden on beneficiaries. ➤ Fully use all existing possibilities under the 2014-2020 to reduce audit workload when systems and first level management checks function (as reflected in recent EC guidance on statistical sampling). For post 2020, further reflect on the possibility to rely further on first level management checks by paying agencies / managing authorities when there is evidence of good track-record. 	<ul style="list-style-type: none"> - The Commission has promoted a single audit approach between audit levels for many years, in line with Article 73 of the previous regulation (2007-2013, Article 148 of the CPR for 2014-2020); - The Single Audit Strategy for REGIO, EMPL and MARE foresees to focus the 2014-2020 audit activity on the work of the audit authorities (to continue to be able to rely on their work), thus avoiding parallel audits and duplication of work (unless re-performance at the level of beneficiaries, as foreseen in article 148 CPR, is needed); - In the same vein, the CAP audit strategy takes into account the new work of the certification bodies and the need for the Commission to progressively rebalance its own audits from paying agencies to certification bodies; - The European Court of Auditors has indicated its wish to participate in the single audit approach as from its 2018 audits; - Raising thresholds for Article 148 require further analysis for post 2020, after having applied these provisions for the current programming period.

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17	<i>confirmation of fulfilment of ex ante conditionalities and good quality of management and control systems should have a tangible, practical effect on requirements, reducing pressure on beneficiaries</i>		- To be assessed for post 2020
18	<i>application of internationally accepted audit standards;</i>	<ul style="list-style-type: none"> ➤ In place for EC audit services; ➤ Continue to verify that AAs follow IAAS through re-performance work 	<ul style="list-style-type: none"> - Accepted; it is already a regulatory requirement implemented by AAs/certification bodies and verified by the Commission when reviewing the work of AAs (Article 127(3) CPR, following Article 62(2) of Regulation 1083/2006 for the previous period; see also article 28(1) of Delegated Regulation 480/2014); Article 9 Regulation 1306/2013 for EAFRD); - EC Audit Directorates and a significant number of AAs/Certification Bodies have been externally certified regarding their compliance with international audit standards (REGIO, EMPL and MARE have been certified compliant with ISSAI 4100
19	<i>reviewing and making more proportional the thresholds for financial corrections in the case of mistakes and errors which do not constitute fraud; the penalties should be either a smaller percentage (or degressive with the size of the support) of a fixed fine, which is significant enough but does not put delivery at risk; in this regard the</i>	<ul style="list-style-type: none"> ➤ Update the decision of financial corrections for public procurement to align it to the 2014 directives and the different judgements issued since 2013, including a reflection on the levels of correction proposed against possible mitigating factors. ➤ Need for a common and fully harmonised "level playing field" of financial corrections between Member States, EC and ECA, in particular in relation to public procurement errors, especially when the single audit principle becomes the rule. 	<ul style="list-style-type: none"> - Instances of fraud should only be treated with 100% corrections; - Article 31 of Delegated Regulation 480/2014 fixes "criteria for applying flat rates or extrapolated financial corrections and criteria for determining the level of financial correction" for ESIF 2014-2020; - For CAP, financial corrections are preferably calculated on the basis of concrete undue amounts. If these cannot be calculated, a flat-rate correction reflecting the gravity of the deficiency is applied for the CAP. The rates are published in specific Guidelines discussed with Member States; - The same principle applies to Cohesion policy and EMFF in line with Art. 144 CPR, with financial corrections by the Commission based first on specific individual amounts, and through application of extrapolation or flat rates if not possible; - The Commission will review its guidelines on financial corrections

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	<i>Commission could be invited to review its decision on flat rate corrections for public procurement issues, and to ensure that only serious errors with evidenced impact on the services/works delivered bear financial corrections, and to further align the approach of the Commission and the Court of Auditors to avoid divergent messages to programme authorities and beneficiaries</i>		<p>based on the 2014 public procurement directives.</p> <ul style="list-style-type: none"> - The Commission will consider re-assessing the rates in use in preparation of the rules for the post-2020 period if there are reasons justified by new judgements and taking due account of mitigating factors.
20	<i>the Commission should refrain from overusing <u>suspensions and interruptions</u>, unless there are no other options and there is no other way to prevent irreversible damage and distinguishing between fraud and unintentional errors; such actions create uncertainty for beneficiaries, and as punitive corrective</i>	<ul style="list-style-type: none"> ➤ Finalise internal procedures with EC services to allow for a proportionate use of interruption and suspension procedures, taking account of the new features of the 2014-2020 regulations. 	<ul style="list-style-type: none"> - The general approach is to have a proportionate approach (also in relation to the effectiveness and compliance of management and control systems) but a case by case analysis is always required; - For 2014-2020; given the 10% retention and the possibility to adjust the accounts until their submission by 15 February of year n+1, a more balanced use of warning letters vs. interruptions and suspensions is agreed in order to leverage these improvements to the assurance framework; - The Commission intends to strictly apply procedures for (net) financial corrections when conditions set by articles 144 and 145 CPR are fulfilled.

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	<i>measures should be used as a last resort; 10 % retention on interim payments for 2014-2020 should be taken into account to a larger extent, as it contributes to protecting the EU budget before all controls are performed in view of annual accounts</i>		
21	<i>the definition of irregularity and the way it is applied needs to be reviewed; there must be a clear link to negative impact on EU budget (and not just speculative "could be" which is interpreted in a way which can cover almost any case) and it should be restricted to economic operators who are part of implementation system, without penalties for actions which are beyond public authorities control..</i>		<ul style="list-style-type: none"> - A revision of the definition requires a change of the regulation (CPR). The Commission is not willing to propose such a change for the time being since case law under public procurement, for example, clearly refers to the fact it is sufficient to consider that non-compliance with the directives could have an impact on competition (by definition impossible to demonstrate) to consider the breach and therefore the need for a financial correction (the level of which has to take account of mitigating factors); - The second part of the recommendation is unclear.
	- Other		
22	<i>mobility [...]between audit and implementation units</i>		<ul style="list-style-type: none"> - Mobility is an EC policy, more specifically in the case of DG REGIO and DG EMPL, including between audit and geographical desks;

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	<p><i>at the Commission level could be useful to gain mutual respect and understanding of different and challenging tasks and perspective; strong and timely contradictory procedures which would not just rubber-stamp initial audit findings, but would provide effective means for beneficiaries and MAs to justify their position are also very important</i></p>		<ul style="list-style-type: none"> - The contradictory procedures are very important to clarify the initial audit findings and to ensure that a financial correction is based on strong audit evidence. The Commission auditors (with involvement of geographical desks) discuss the audit findings with the MS authorities and only after that discussion has taken place in a sufficient way and all competent services have been consulted, will it launch the application of the financial corrections which goes through an interruption, suspension and financial correction committee chaired by the DG and with presence of legal, geographical and audit services of the DG; - Beneficiaries participate in the contradictory procedures at national level and possibly at EC / ECA level, when considered necessary. See reply to recommendation 8.