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**REPORT FROM THE COMMISSION TO THE EUROPEAN COURT OF
AUDITORS, THE COUNCIL AND THE EUROPEAN PARLIAMENT**

Member States' Replies to the European Court of Auditors' 2014 Annual Report

{SWD(2016) 48 final}

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REPORT FROM THE COMMISSION

MEMBER STATES' REPLIES TO THE COURT OF AUDITORS' 2014 ANNUAL REPORT

1. Scope of the Report

In accordance with article 162(5) of the Financial Regulation¹ following the publication of the Court's annual report for the budgetary year 2014, the Commission duly informed Member States of details of the report.

This information was presented in the form of a letter and three annexes to be completed by each Member State, as well as the accompanying guidelines on the preparation and presentation of replies to the questionnaires. Annex I was a questionnaire on the paragraphs referring to the individual Member States; annex II was a questionnaire on audit findings which refer to each Member State and annex III was a questionnaire on topical findings related to shared management for DAS 2014.

For this year's report, three main themes have been identified. They are as follows: (1) Measuring performance results (2) Types of quantifiable errors – infringements of state aid and public procurement rules (3) Sound financial management. The report is also accompanied by a Staff Working Document (SWD) which comprises Member States' replies to annexes I and III.

2 Key features of the ECA 2014 report

For the 2014 annual report, the Court has updated its audit approach and the structure of the report. The main change to its approach is the quantification of serious infringements of public procurement rules and the corresponding adjustment of 2013 and 2012 figures in order to ensure comparability of results.² The new structure of the report - chapters 5-9 - reflects the 2014-2020 Multiannual Financial Framework (MFF) headings.

The results of the Court's audit for 2014 stated that the accounts were not affected by material misstatements and therefore it issued a clean opinion on the reliability of the accounts³, as it has done since 2007. For expenditure, the Court found an estimated level of error for 2014 payments of 4,4 % close to the 2013 level of 4,5%.⁴ Apart from MFF heading 5 (Administration), expenditure for all remaining headings was affected by material error. For Competitiveness, Cohesion and Global Europe the estimated levels of error were 5,6%, 5,7% and 2,7% respectively, all representing an increase on equivalent results in 2013.⁵ However, for Natural Resources the estimated level of error was 3,6% a decrease on the equivalent results for 2013. Cohesion was the biggest contributor to the overall error rate followed by Natural

¹ Article 162(5): As soon as the Court has transmitted its annual report, the Commission shall inform the Member States concerned immediately of the details of that report which relate to management of the funds for which they are responsible. Member States should reply within sixty days and the Commission then transmits a summary of the replies to the Court of Auditors, the European Parliament and the Council before 28 February of the following year.

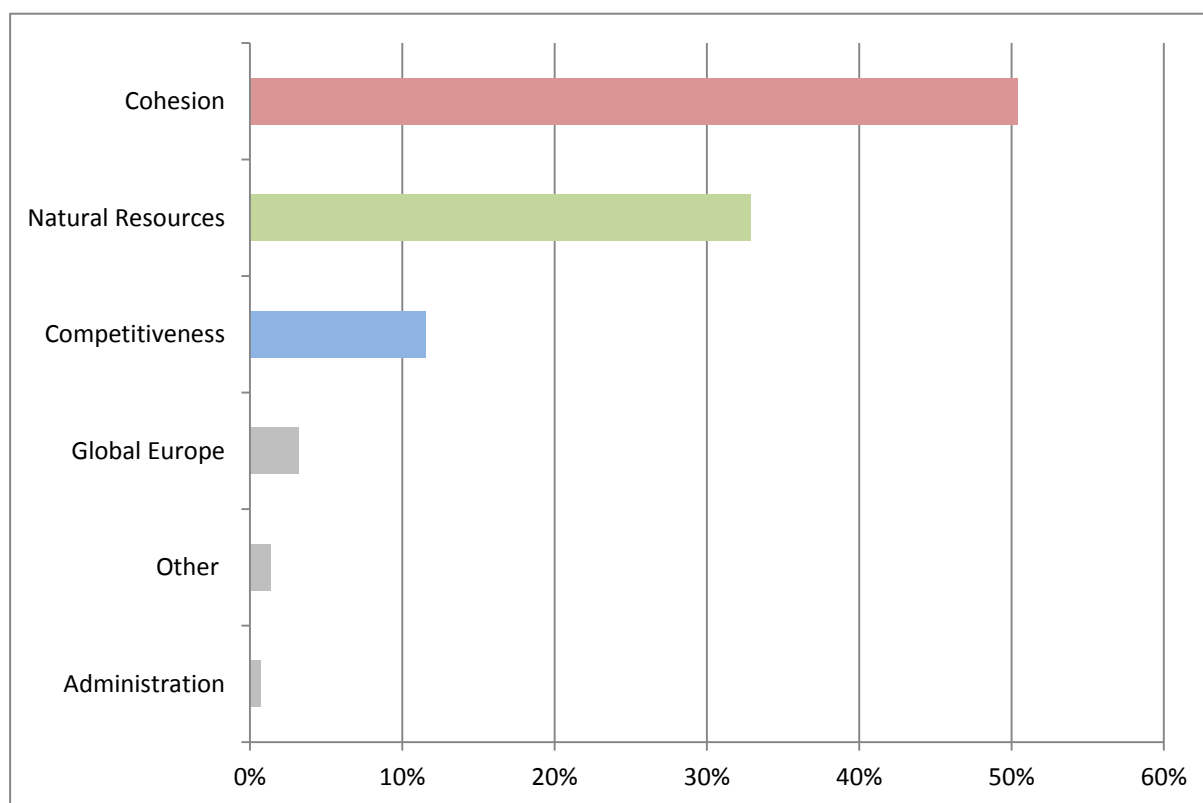
² ECA AR 2014 pp 20-21

³ ECA AR 2014 p15

⁴ ECA AR 2014 p 17

⁵ ECA AR 2014 pp 26-27

Resources, Competitiveness and Global Europe. The graph below shows the contribution to the 2014 overall estimated level of error by MFF heading.⁶

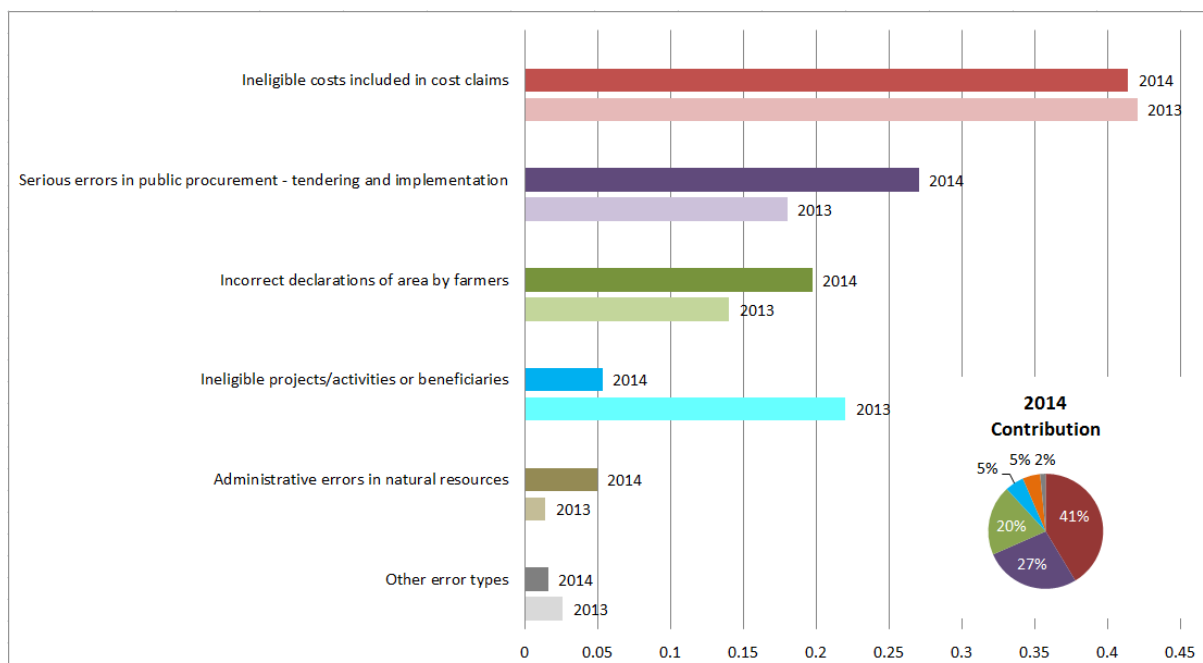


The Court's report also identified two types of expenditure programmes - entitlement programmes and cost reimbursement schemes - which involve distinct patterns of risk.⁷ According to the report, eligibility errors in cost reimbursement schemes dominate the errors detected for 2014. Errors in the cost reimbursement category include mostly serious infringements of public procurement rules during tendering and contract implementation. For entitlement programmes typical errors include over declarations by farmers and administrative errors affecting payments to farmers.⁸ The graph below shows the contribution to overall estimated error by type.

⁶ ECA AR 2014 p 22

⁷ ECA AR 2014 p 19

⁸ ECA AR pp 22-23



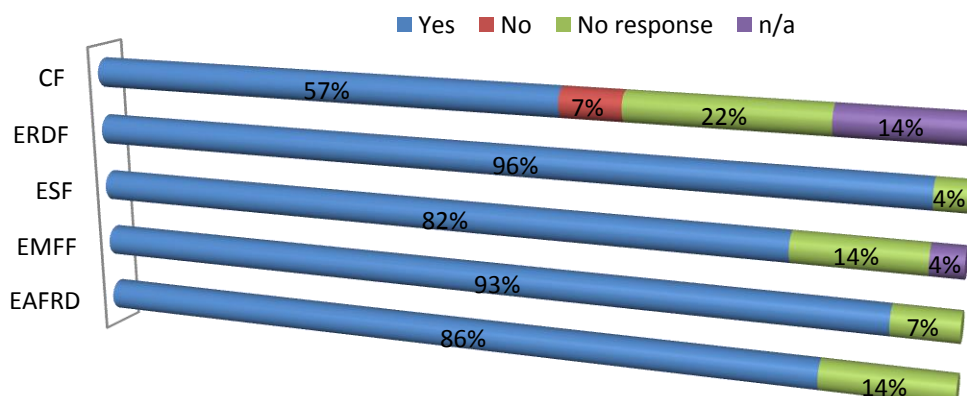
3 Summary of the Member States' replies

3.1 MEASURING PERFORMANCE RESULTS

In Chapter 3 of its annual report "Getting results from the EU budget",⁹ the Court analyses performance from the perspective of the Europe 2020 strategy and examines the performance features introduced with the new MFF 2014-2020. Member States were asked whether they were already using or planning to use the common indicators introduced for the five EU funds. For four of the funds (European Agricultural Fund for Development - EAFRD, European Maritime and Fisheries Fund - EMFF, European Social Fund - ESF, and the European Regional Development Fund - ERDF) the replies indicated that nearly all Member States were already using or planning to use common indicators. For the Cohesion Fund 57% of the Member States indicated that common indicators were being used and 14% stated that use of common indicators was not applicable. The table below gives details of the Member States' replies.

⁹ ECA AR p 83

Usage (in %- 100%=28 MS) of the 'Common indicators' in respective EU funds



With regard to the use of additional or complementary indicators, several Member States – France, Greece, Lithuania, Luxembourg, Spain and the UK¹⁰ - responded that they used programme specific or additional indicators often defined by the Managing Authorities and included in the performance framework of the operational programme. In some cases, common indicators are complemented by indicators at national level. For example, for the ERDF/CF/ESF Poland¹¹ uses:

"a raft of indicators applied at project level derived from the Common List of Key Indicators prepared by the Minister for Regional Development. The list comprises the common indicators at European level set in the fund regulations and the key indicators set at national level."

Portugal¹² underlined the fact that for the 2014-2020 period for operational programmes with similar goals, indicators to be used have been harmonised, and "in addition to the list of common Community indicators there is a list of harmonised national indicators".

Member States also provided lists or more detailed information on various programme specific indicators used for the different funds. Sweden¹³ stated that for the 9 programmes of the ERDF there are some thirty five output indicators and "some thirty performance indicators that are linked to investment priorities and specific objectives within the programmes". Denmark¹⁴ provided its list of impact, output and result indicators for the EAFRD, ESF, and EMFF. Slovakia¹⁵ itemised indicators drawn up by the Central Coordination Body and covering various programmes and also provided a list of indicators for European Structural and Investment Funds - ESI - funds.

Finally, Member States were asked whether they would be able to provide meaningful data on indicators available for use in the MFF mid-term review scheduled for 2017. Some Member States including Denmark, France and Greece¹⁶

¹⁰ SWD p 149, 159, 171, 175, 204, 207

¹¹ SWD p 180

¹² SWD p 186

¹³ SWD p 206

¹⁴ SWD p 144

¹⁵ SWD p 196

¹⁶ SWD p 144, 149, 159

reported that it would not be possible to provide meaningful data by 2017, largely because the implementation level for certain operational programmes would be too low and data would be insignificant. Greece¹⁷ stated that:

"Information on the achievement of the national targets of the 'Europe 2020' strategy will be available in the ESS¹⁸ Progress Report in 2017 (and in 2019). However, since the implementation of OPs will not have delivered before the report is submitted in 2017, no material data are expected to be available for the mid-term review of the MFF".

Portugal¹⁹ and Poland²⁰ both highlighted the fact that a comprehensive reporting system was in place ensuring quality reporting on a regular basis. Nonetheless, as pointed out by Poland²¹:

"it will not be possible to summarise the impact of EU funds in the 2014-20 financial perspective until sufficient progress has been made - 2017 will be too early a stage to produce summary conclusions."

Several other Member States, for example, Austria, Croatia, the Czech Republic, Ireland and Slovenia²² were certain that meaningful data could be provided by 2017 for programmes under some funds. The Czech Republic²³ reported that:

"it will be in a position to provide reliable data on the basis of the system established in the Czech Republic for reporting on stocktaking, progress and developments".

Croatia also stated that it would provide comprehensive data and that in addition:

"the results of evaluations can be used, which should contribute to improved and possible simplification of management and control systems".

3.2 TYPES OF QUANTIFIABLE ERRORS - INFRINGEMENTS OF STATE AID AND PUBLIC PROCUREMENT RULES

In the 2014 annual report, the Court stated that 14 ERDF/CF projects in eight Member States infringed the EU State Aid rules. According to the Court, the quantified errors for State Aid infringements make up approximately 1.5 percentage points of the estimated error for regional and urban policy.²⁴ Member States were requested to provide information on the infringements of State Aid rules and on any preventive measures undertaken.

The replies of the Member States indicated that in some cases, for example France, Latvia and Slovenia²⁵, there were no systemic issues or deficiencies related to State Aid rules in the remit of the ESI funds, although there may have been isolated cases of infringements. Bulgaria²⁶ highlighted two such cases of non-compliance, both identified during the course of audits. The first was in the Operational Programme 'Development of the Competitiveness of the Bulgarian Economy 2007–2013' and the second was in the management systems set up under the initiative 'Joint European Resources for Micro to Medium Enterprises' (JEREMIE). In both cases

¹⁷ SWD p 159

¹⁸ ESS – European Statistical System

¹⁹ SWD p 186

²⁰ SWD pp 180-181

²¹ SWD p 181

²² SWD p 107,122,130,164,201

²³ SWD p 130

²⁴ ECA AR 2014 p-182

²⁵ SWD p 152, 170, 203

²⁶ SWD pp120-121

the Audit Authority advised the managing authority and the financial intermediaries respectively on the appropriate course of corrective action.

Although systemic issues or deficiencies were seemingly not widespread, some Member States did report on preventive measures taken.

Hungary²⁷ stated that:

"in the case of calls for proposals and priority projects, the State Aid Monitoring Office operating within the Prime Minister's Office performs preliminary examination of compliance with State aid rules or, in the framework of first-level checks, it is checked by the intermediate bodies / managing authorities on the basis of the statements by tenderers."

France²⁸ highlighted the fact that the CGET²⁹ had undertaken a variety of actions in the context of 2014-2020 programming period including a national training programme and the creation of a network of regional experts specialising in State Aid rules.

Luxembourg and Slovenia³⁰ referred to checklists as a key part of their preventive measures, while Spain³¹ stated that in addition to checklists, a "risk assessment matrix" was also used.

The Court has updated the way it quantifies serious infringements of public procurement rules and procurement errors are a main source of error for Economic Social and Territorial Cohesion³². Member States were requested to provide information on nationally prescribed measures for assessing and quantifying non-compliance with procurement rules. Some Member States - Ireland, Latvia, Lithuania, The Netherlands, Poland and Slovenia³³ indicated that national legislation did exist and very often EU legislation was transposed or underpinned national legislation. In Lithuania³⁴, the Public Procurement Office takes overall responsibility for helping to ensure the proper implementation of the Operational Programme in accordance with the requirements of the EU regulations and prevents irregularities. Latvia³⁵ stated that:

"Procurements are conducted in accordance with national legislation which has been drawn up on the basis of/transposing the provisions of EU legislation."

Finally Ireland³⁶ stated that:

"Further, in relation to the question of oversights in the awarding of Government contracts, public procurement practices are subject to audit and scrutiny under the Comptroller and Auditor General (Amendment) Act 1993, and the Local Government Reform Act 2014, and Accounting Officers are accountable for expenditure incurred".

In its report, the Court highlighted cases in certain Member States of non-respect of procurement rules.³⁷ The Member States concerned were requested to provide

²⁷ SWD p 169

²⁸ SWD p 153

²⁹ CGET -Commissariat général à l'égalité des territoires

³⁰ SWD p 170 and p 203

³¹ SWD p 205

³² ECA AR p 176

³³ SWD p 165, 169, 172, 179, 183, 202-3

³⁴ SWD p 172

³⁵ SWD p 169

³⁶ SWD pp 165-166

³⁷ ECA AR p 240

information on the possible flaws and deficiencies in their respective internal control systems which could have led to these irregularities and to provide information on remedial measures taken. Bulgaria and France³⁸ pointed out that irregularities were due to the complex public procurement procedures and a lack of trained staff dealing with these procurement issues. Romania³⁹ reported that:

"the internal control systems in place in the area of public procurement at beneficiary level are fragmented, partly redundant and focus more on formal aspects related to process regularity, without assessing quality aspects objectively."

In order to remedy the situation it has put in place "the national strategy for public procurement for the period 2014-2020" which "provides for actions to ensure the regularity and quality of the public procurement process".

France, Poland and Spain⁴⁰ all mentioned that specific training programmes designed for staff dealing with procurement matters were a key measure for ensuring better management of procurement issues.

3.3 SOUND FINANCIAL MANAGEMENT

Member States continue their efforts to promote sound financial management through the extensive use of Simplified Cost Options (SCOs), improved management verifications and better reporting on financial instruments.

In Chapter 6⁴¹ the Court recommends that the Member States should make better use of the possibilities set out in the Common Provisions Regulation and ESF regulation for the 2014-2020 period concerning SCOs.

The majority of Member States, among them, Cyprus, Finland, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, and the UK⁴², reported that SCOs were being used in the 2014-2020 programming period across the funds, to the extent possible. Lithuania⁴³ stated that in 2015 the managing authority organised a conference -"Possibilities for applying a simplified procedure for paying expenditures in 2014-2020" to inform participants about:

"possibilities of applying a simplified procedure for paying expenditures and its benefits in the process of administering the EU structural funds."

Greece⁴⁴ pointed out that it was updating and training all operators in the use of SCOs while Poland⁴⁵ asserted that although provision was made for the use of SCOs "their use is optional and the final decision on this matter is taken by each Managing Authority."

Sweden⁴⁶ highlighted the fact that it had a simplification model for the ESF in place and that "the government is actively promoting simplification."

Finally Portugal⁴⁷ has set up a Simplification Centre at the Agency for Development and Cohesion (AD&C). Its aim is "to inform the MAs on relevant aspects in this area

³⁸ SWD p 116, 150,

³⁹ SWD p 191

⁴⁰ SWD pp 150-151, 181-182, , 205

⁴¹ ECA AR p 203

⁴² SWD p 129, 148, 153, 158, 163, 170, 174, 176, 209

⁴³ SWD pp 174-175

⁴⁴ SWD p 161

⁴⁵ SWD p 184

⁴⁶ SWD p 207

⁴⁷ SWD p 188

in order to promote the extensive use of simplified cost options in the different Cohesion Funds (ERDF, ESF and Cohesion Fund)".

As in previous years, for regional policy, employment and social affairs⁴⁸, the ECA reported that for a large part of the transactions affected by quantifiable errors, *sufficient information* was available for the Member State authorities to have prevented, detected and corrected the errors, before certifying the expenditure to the Commission. Member States were asked to provide information on whether they had established measures to improve management verifications and to enhance effectiveness of the checks carried out before certifying expenditure to the Commission.

Concerning some of the improvements in management verifications undertaken, Luxembourg⁴⁹ provided a list of measures under the ERDF and ESF which includes a new ex-post checklist, a guidance note, training and meetings aimed at building awareness of simplified cost options.

Portugal⁵⁰ made reference to the implementation of action plan in certain cases and reported further that the Certifying Authority, prior to the submission of payment requests to the European Commission carries out a series of checks. If there are doubts concerning:

"the legality and regularity of expenditure to be certified, the sums in question are deducted as a precautionary measure until the issues are resolved."

Spain⁵¹ too reported that action plans have been implemented and:

"improvements have been incorporated in procedures for selecting and validating reimbursement statements, improving checklists, reviewing procurement documents for various local entities and so on."

Cyprus⁵² reported that most errors existed

"mainly in construction contracts executed by local authorities and software development contracts executed by public universities and that the contracting authorities are referred to the Central Committee for Variations and Claims for examination of the amendment requests for such contracts, provision of guidance and opinion, as well as for mediation with the contractors involved for the resolution of disputes."

Concerning the quality of reporting on financial instruments, some Member States (for example Cyprus, Slovenia, and Sweden⁵³) responded that they had followed Commission guidelines, used the new templates and that in certain cases no improvements were required since the reporting quality was considered good.

Other Member States cited improvements made. In November 2015 France⁵⁴ set up a working group on financial instruments with the aim of following the progress of the instruments and ensuring the consolidation of information. Bulgaria⁵⁵ has put in place an extensive half yearly and annual reporting system for the financial instrument, JESSICA.

⁴⁸ ECA AR p 185 & 202

⁴⁹ SWD p 176

⁵⁰ SWD p 188

⁵¹ SWD p 203

⁵² SWD p 128

⁵³ SWD p 128, 202, 206,

⁵⁴ SWD p 150

⁵⁵ SWD p 115

4. CONCLUSION

The Commission has already pledged to implement an EU budget focused on results and this is in line with the "wholly new approach" to EU investment and spending which the Court has called for in its 2014 annual report.⁵⁶ One of the key features of this new approach is performance which is assessed on the basis of the sound financial management principles.⁵⁷

Member States' replies to the annexes demonstrated a continued commitment to sound financial management by actively promoting the use of SCOs, improving management verifications and reporting on financial instruments. According to many Member States, procurement issues are also being tackled by aligning national and EU legislation. In cases where weaknesses are found training programmes, increases in on-the-spot checks and recoveries of amounts, are among the measures undertaken to remedy deficiencies in public procurement as attested by the Czech Republic, Croatia, Belgium, Finland and Germany.⁵⁸

The replies from Member States this year also indicate that there is a growing awareness of the need to create an effective performance culture and to focus on results. Nearly all Member States reported using indicators - common and specific-across the funds, at national and regional level to measure performance. Nevertheless low implementation levels of programmes could mean that meaningful data on performance may not be provided in term for the 2017 MFF mid-term review. More meaningful data is likely to be available in line with performance frameworks of many programmes scheduled for 2018 or 2019. Latvia⁵⁹ sums up the situation in the following statement:

"the quantity of data on the results achieved may vary among different priority axes, depending on the fund in question, the fulfilment of *ex ante* conditions and the development of statutory legislation at national level."

In its concluding statement, Demark recapitulates the Member States' apparent overall commitment to performance and an EU budget focused on results in its closing statement⁶⁰:

"A vital aspect of satisfactory implementation of the EU budget is generating results and ensuring that these results support the overarching political objectives. It is therefore important to Denmark that focus remains on establishing the framework for a results-oriented system with greater focus on the results and impact of EU projects. We therefore take a positive view of the annual report's increased focus on this."

⁵⁶ ECA speech by President Caldeira to the CONT, Brussels 10/11/2015

⁵⁷ ECA AR p 84

⁵⁸ SWD p 55, p122-126, p 64

⁵⁹ SWD p 168

⁶⁰ SWD pp 211-212