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Follow-up recommendations to the Commission report on the protection of the EU's financial interest – fight against fraud, 2009

Accompanying the document

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND TO THE COUNCIL –

Protection of the financial interests-fight against fraud-Annual report 2010

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Follow-up recommendations to the Commission report on the protection of the EU's financial interests – fight against fraud, 2009

Summary

In the 2009 Report on the protection of the European Union's financial interests, the Commission made certain recommendations to the Member States. The Commission has followed up the implementation of these recommendations by the Member States as part of the 2010 reporting exercise. The complete answers of the Member States to the recommendations are included in the Third Accompanying Staff Working Document to this report.

The Commission and the Member States are also giving follow-up to the recommendations formulated by the European Parliament in its annual resolution on the protection of the EU financial interests.

Follow-up recommendations to the Commission report on the protection of the EU's financial interests-fight against fraud-year 2009

1. EXPENDITURE

Agriculture: Compliance by Member States has improved with the introduction of the internet-based reporting system (IMS – Irregularity Management System). The Commission called upon Finland, Austria and the Netherlands to improve compliance. Those Member States confirmed their commitment to report irregularities and their efforts to optimise the reporting process. Finland will have to complete studies regarding the use of submitted personal data in view of the impact on right and obligations of Finish citizens. Thereafter a new reporting practice will be adopted in 2011.

Cohesion policy: Spain and France have a very low suspected fraud rate, in particular in relation to their size and to the financial support received. Spain and France confirmed that their checks are strictly according to EU and national procedures.

Following the Commission's request to introduce and implement the new IMS reporting system (France, Sweden and Ireland), France informed the Commission that the new IMS reporting system will be fully implemented at the end of the year 2011. Sweden and Ireland confirmed its full implementation. However, in Ireland's case, preparations in the full implementation of IMS have in fact slowed down in the reporting period. The Commission invites once more Ireland and France to take the necessary steps to implement the IMS.

Pre-accession funds: The Czech Republic, Estonia, Lithuania and Slovenia confirmed the implementation of the new Pre-accession Assistance Module of IMS for the reporting of irregularities. Cyprus did not reply.

2. THE INTERNATIONAL DIMENSION OF THE PROTECTION OF THE EU'S FINANCIAL INTERESTS

Fight against international illicit tobacco traffic: The Commission invited Member States to continue efforts to make the negotiations on a protocol to eliminate illicit trade in tobacco procedures a success. Negotiations are ongoing.

Ratification process for protection of financial interests (PFI) instruments: the Commission called on the Czech Republic and Malta to ratify the convention on the Protection of the European communities' financial interests and its protocols. The Czech Republic made reference to the "Law on Criminal liability of legal persons", which is currently being updated. Malta ratified the Convention on 20.01.2011. Estonia will consider the ratification or the Protocol of 29 November 1996 on the interpretation by way of preliminary rulings by the Court of Justice of the European Communities in 2012.

Deployment of improved databases – Customs Files Identification Database (FIDE): Member States[1] not yet using the FIDE database were invited to do so to better coordinate their investigations. Although Member States recognise the value of the FIDE database, most of them have only partly been using it[2]. Possible technical or legal constraints, most of them should be solved in the very near future.

States recognise the value of the FIDE database, they have only partly been using it due to technical or legal constraints, most of which will be solved in the near future.

3. COOPERATION WITH MEMBER STATES CONCERNING ON-THE-SPOT-CHECKS

The addressed Member States[3] have not all provided the Commission with a national authority as a contact point, Spain and Luxembourg have different competent bodies for the specific areas.

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1 BE, BG, DE, EE, IE, EL, ES, FR, HU, MT, RO, SI, SK, FI, UK

2 Using FIDE: BG, MT, SI,
Partly using FIDE: EE, ES, SK, FI
Not yet using FIDE: BE, DE, IE, EL, FR, HU, RO, UK
No reply received: CZ, DK, IT, CY, LV, LT, LU, NL, AT, PL, PT, SE

All Member States were asked to report about administrative guidelines and/or instructions applied to give effect to:

Inclusion of a specific clause in model grant contracts: Member State's replies received[4] showed that, whenever the economic operator subject to on-the-spot checks is the beneficiary of an EU grant, specific provisions are foreseen to give information access to OLAF inspectors. Sometimes it is not specified whether this is included into grant contracts or whether Member States have in place merely statutory provision on assistances to be granted to OLAF by national authorities.

The signing of the OLAF report by a national inspector having participated in an OLAF on-the-spot check without undue delay, thus avoiding the risk of it being non-admissible or having lower evidentiary value in administrative or judicial proceedings, is implemented by all Member States that replied to this point.[5]

Concerning the active participation of national authorities in on-the-spot checks carried out by OLAF, Member States comply with this recommendation and expressed it being beneficial when national authorities are actively involved in the process[6].

4. MEASURES FOR SECURING THE RECOVERY OF IRREGULAR AMOUNTS

Member States were asked to report on the implementation of administration and legal instruments to secure the recovery of irregular payments included in contracts involving EU funds.

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3 DE, IE, UK

4 No reply received: DE, DK, FR, CY, HU, AT, FI, SE, UK
Partly answered: CZ, IT, LU,
Fully answered: BE, BG, EE, IE, EL, ES, MT, NL, LV, LT , PL PT, RO, SI, SK

5 No reply received: BE, DK, DE, IE, FR, CY, HU, AT, FI, SE
Partly answered: CZ, EE, ES, LU, LV, RO
Fully answered: BG, IT, LT, MT, NL, PL, PT, SI, SK, UK

6 No reply received: CZ, DK, DE, IE, FR, CY, HU, AT, PL, SI, FI, SE
Partly answered: BE, ES, IT, LU, SK
Fully answered: BG, EL, EE, LV, LT, MT, NL, PT, RO, UK

Most of the Member States[7] confirmed that national legislation provides for different legal instruments and guarantees for the recovery of irregular amounts. In order to receive the grants, beneficiaries are obliged to provide bank guarantees, promissory notes or insurances. Seizure of assets may be used in cases where debts are not paid.

Member States were also asked to report on the implementation of safeguard measures for recovering irregular amounts after final court ruling for suspected fraud cases. The majority of the Member States' replies show that the main safeguard measure taken in cases of irregularities or suspected fraud is the suspension of payments until the case is solved. This measure is often accompanied by other measures when the suspected fraud case has been confirmed such as seizure or confiscation of property[8].

1. EXPENDITURE

Agricultural expenditure

Compliance by Member States has improved with the introduction of the internet-based reporting system (IMS – Irregularity Management System), although some attention still needs to be paid to issues such as timely reporting, personal data and measures affected.

Therefore, the Commission calls upon Finland to improve compliance with regard to the reporting of personal data and on Austria / the Netherlands with regard to timely reporting and to report about these improvements by 15 February 2011

NL	Firstly, the Dutch authorities agree with your conclusion that the introduction of the IMS is one of the factors that has resulted in a general improvement in compliance by Member States. The Dutch authorities are committed to reporting irregularities to you as fully as possible and will continue their efforts to optimise the reporting process. A number of measures are currently being taken to make the reporting of irregularities timely, uniform, accurate and complete, such as amending and adapting the Irregularities Management Plan (Draaiboek Onregelmatigheden), tightening up prompt reporting procedures, stepping up coordination with persons concerned and increasing efforts in the field of monitoring and the management and control system. This should lead to the required prompt reporting.
AT	In 2009 only three notifications were submitted by the agricultural sector, two of which were submitted after the deadline for the relevant quarterly notification owing to a personnel shortage (for this reason the success rate for timely notification was only 33%). In 2010, however,

7 BE, BG, CZ, EE, IE, EL, ES, IT, LT, LU, HU, MT, NL, PL, PT, RO, SK, FI, SE, UK

8 EE, IT,LT,LU,MT, PT, SE.

	the notifications were submitted in complete accordance with the rules. Particular attention will be paid to this in the future too.
FI	The Agency for Rural Affairs has requested and received replies from the Commission concerning the use made of the personal data which has to be submitted in connnection with irregularity reporting. In view of the impact which data submission has on the rights and obligations of Finnish citizens, further studies are, however, required from the viewpoint of national data-protection legislation and a single national line of interpretation. Every effort will be made to ensure that these studies are completed and a new reporting practice is adopted during the spring of 2011.

Cohesion policy

However, higher suspected fraud rates may not necessarily mean that more fraudulent activity affecting the EU's financial interests is taking place in certain Member States. It is rather an indication that the anti-fraud systems in place are performing well (capable of detecting fraud and willing to report it), which always produces higher results. The Commission will further monitor these results and analyse the relationship between the anti-fraud systems in place and the suspected fraud rates reported.

Among the Member States with very low suspected fraud rates **Spain** and **France** stand out (especially in relation to their size and to the financial support received). In particular, those results could indicate either a lower fraud detection capability or the fact that a proportion of any detected fraud remains unreported.

Finally, data related to the Cohesion Fund remain too fragmented to provide a reliable picture. The Commission is working on the full deployment of IMS also for the Cohesion Fund and this is expected to improve the situation in the coming years. Member States which have not yet introduced the new reporting system are invited to deploy all the necessary efforts for its implementation. **The Commission calls especially upon France to use the IMS and on Sweden and Ireland to fully implement it and asks these Member States to report about the use/implementation by 15 February 2011.**

IE	Ireland confirms that the new IMS reporting system has been fully implemented. In relation to its use: All ESF and ERDF reporting will now be completed though the IMS reporting system.

	To date Ireland has not had any irregularities to report on the 2007-2013 funding round for ERDF.
ES	The follow-up document states that the fraud rate detected is very low, particularly in view of the volume of resources obtained. The document adds that this may indicate a low fraud detection capability. In this connection, Spain complies with the requirements concerning control of the Cohesion Fund by means of checks which are performed strictly in line with Community and national procedures and can be verified by the Commission. Consequently, it cannot be inferred that there are weaknesses in the control system simply because the level of fraud detected is low.
FR	**No reply received**
SE	Sweden has fully implemented the IMS.

Pre-accession funds

The Member States and Candidate countries are invited to report irregularities via the new Pre-accession Assistance Module of IMS. **The Commission asks in particular the Czech Republic, Estonia, Cyprus, Lithuania and Slovenia to report irregularities via the new Pre-accession Assistance Module of IMS and to report about their IMS use by 15 February 2011.**

CZ	Structural Funds and Cohesion Fund – Ministry of Finance of the Czech Republic as Central Contact point of AFCOS at present reports new and updated cases of irregularities via the 1681Module and the 1831 Module of IMS. Pre – accession funds – Ministry of Finance of the Czech Republic as the Central Contact point of AFCOS reports new cases of irregularities via the new Pre-accession Assistance Module of IMS, updated cases of irregularities are still we report in paper form.
EE	Estonia uses the Pre-accession Assistance Module of the IMS. We can enter into the IMS PAA module only new cases of irregularities or article 4 reports (zero notification). We have not detected new irregularities in 2010. We sent the updates of Phare cases started earlier in the 1st quarter and Sapard cases in the 2nd quarter. The 3rd quarter was the first possibility to use the IMS PAA module.
CY	**No reply received**

LT	In response to the Commission's request for notification of irregularities relating to pre-accession projects, we hereby inform you, via the IMS Pre-accession Assistance Module, that no new irregularities have been detected recently in Lithuania, while the notifications previously submitted to the Commission have not been uploaded into the IMS Pre-accession Assistance Module, so Lithuania cannot at present submit updated information on the irregularities. Once those earlier notifications of irregularities have been uploaded into the IMS Pre-accession Assistance Module, notifications will be submitted via that system.
SI	PAA irregularities are reported via IMS (first IMS reporting was in 3. Quarter of 2010, the older cases are all checked by us – BSO- AFCOS and transferred to IMS by OLAF-ISO).

2. THE INTERNATIONAL DIMENSION OF THE PROTECTION OF THE EU'S FINANCIAL INTERESTS

Fight against international illicit tobacco traffic

In 2009, the Commission continued to play a leading role in the negotiations on a protocol to eliminate illicit trade in tobacco products. This protocol is based on the WHO Framework Convention on Tobacco Control, an international treaty with currently 171 parties. The Commission (represented by OLAF and DG SANCO) has worked closely, and effectively, with the Member States and the Council, in the context of the Working Party on Customs Union (Legislation and Policy) to coordinate the position of the EU for these intergovernmental negotiations.

The Commission invites Member States to continue joint efforts to make these negotiations a success.

Ratification process for protection of financial interests (PFI) instruments

The Member States who have not yet ratified the PFI instruments are invited to proceed with the ratification without delay. Therefore, **by 15 February 2011 the Czech Republic and Malta should have ratified the Convention on the Protection of the European Communities' Financial Interests and its protocols and Estonia should have ratified the Protocol of 29 November 1996 on the interpretation, by way of preliminary rulings, by the CJEC of the Convention.**

CZ	The ratification process of the Convention on the Protection of the European Communities' Financial Interests and its protocol is in charge of the Ministry of Justice. The fundamental prerequisite for ratifying the Convention is adoption of the Act on criminal liability of legal persons. The Proposal of this Act was prepared by the Ministry of Justice and it was submitted to the Government of the Czech Republic. The

	Government of the Czech Republic decided to adopt this Proposal in February 2011 (The Government Decree No. 134/2011). The Chamber of Deputies of Parliament of the Czech Republic should be discuss the Proposal during first half of this year.
EE	The Ministry of Justice of Estonia will consider the ratification of the Protocol on the interpretation by way of preliminary rulings by the Court of Justice of the European Communities in 2012. However we would like to stress the fact that according to the TFEU all MS have this right in force in 2015.
LV	The Commission continued to play a leading role in the negotiations on a protocol to eliminate illicit trade in tobacco products. Latvia has participated in the negotiations on a protocol to eliminate illicit trade in tobacco products. As a law enforcement agency Customs Criminal Board of State Revenue Service of Republic of Latvia cooperates with the Commission represented by OLAF. The Customs Criminal Board has effectively participated in European and the world- wide Customs Operation SIROCCO organized and coordinated by OLAF and over the past year has actively cooperated with OLAF in the Customs Criminal Board's daily work.
MT	Malta has ratified the Convention on the Protection of the European Communities' Financial Interests and the First, Second and the ECJ Protocol. The Honourable Deputy Prime Minister of Malta and Minister of Foreign Affairs Dr Tonio Borg signed and sealed the Instrument of Ratification on 20th January 2011. In a letter dated 21st January 2011 Dr Tonio Borg informed Mr Pierre de Boissieu – Secretary General of the Council of the European Union, that Malta had fulfilled its internal ratification process in respect of the afore referred to Convention and Protocols; Dr Borg enclosed the Instrument of Ratification with this letter.

Deployment of improved databases — Customs Files Identification Database (FIDE)

Member States that are not yet using the FIDE database are invited to do so in order to better coordinate their investigations. **The Commission calls therefore on Belgium, Bulgaria, Germany, Estonia, Ireland, Greece, Spain, France, Hungary, Malta, Romania, Slovenia, Slovakia, Finland, the UK, to use the FIDE database and to report about the use by 15 February 2011.**

BE	The Customs and Excise General Administration does not currently use the FIDE database but is fully convinced of the extra efficiency it provides in combating customs fraud. It therefore welcomes the forthcoming changes in the EU regulatory framework which should remove the barriers which currently prevent the effective use of FIDE by the Belgian customs service. The above points are expanded on below.

	1. Regulatory and legislative framework - background The acronym FIDE (filing system for customs investigation cases, from the French Fichier d'Identification des Dossiers d'Enquêtes douanières) actually designates two separate databases. The two data filing systems are intended to provide the Member State or Commission department concerned with the references of ongoing or closed customs investigation files in cases where an infringement has been identified by the relevant department in another Member State. The first FIDE database, for which the Commission requires an operation report, was set up under Title V a of Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters , as amended by Council Regulation (EC) No 807/2003 of 14 April 2003 and Regulation (EC) No 766/2008 of the European Parliament and of the Council of 9 July 2008 . The objectives of this database are to assist in preventing operations that contravene the customs and agricultural legislation applicable to goods entering or leaving the Community customs territory and to facilitate and expedite their detection and prosecution. Under the pre-Lisbon Treaty institutional framework, this database was generally referred to as the '1st Pillar FIDE'. There is a second database, also known as FIDE, though it is legally distinct from the first. The objectives of the second database are to assist in preventing, investigating and prosecuting serious contraventions of national laws by increasing, through the rapid dissemination of information, the effectiveness of the cooperation and control procedures of the customs administrations of the Member States. The second FIDE database was set up under Titles V A, B and C of the Protocol amending, as regards the creation of a customs files identification database, the Convention on the use of information technology for customs purposes (the 'FIDE Protocol'). Under the pre-Lisbon Treaty institutional framework, this database was generally referred to as the '3rd Pillar FIDE'. On 27 November 2009 the Council of Ministers approved a preliminary draft law giving assent to the FIDE Protocol. Following the government's resignation, the preliminary draft law could not be submitted to the Head of State for signing with a view to its submission to the Senate. 2. Current non-use of the FIDE databases by the Customs and Excise General Administration

	The Customs and Excise General Administration must not only apply European and national legislation on a daily basis but also ensure consistency in the action it takes at the external borders of the EU and across national territory. The operational guidelines issued to its officers must therefore be integrated and coordinated. That is why my Administration has prioritised an approach designed to ensure a balanced use of the FIDE databases in the two legal environments referred to above (the Regulation 515/97 ex-1st Pillar and FIDE Protocol ex-3rd Pillar), all the more so because the two FIDE databases use a common technical architecture managed by the Commission. This desire for operational cohesion and optimal use of the technical infrastructure lies behind my Administration's decision not to use the ex-1st Pillar FIDE database while it was still unable to use the ex-3rd Pillar FIDE database at the same time owing to the failure to ratify the FIDE Protocol. 3. Changes to the regulatory framework Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes will replace the Convention on the use of information technology for customs purposes and its supplementary protocols, including the FIDE Protocol, with effect from 27 May 2011. The Council's Legal Service has stated that "the Decision will enter into force at the same time for all Member States on a date to be specified therein (i.e. 27 May 2011), and not first for a limited number of Member States, as may be the case for conventions and protocols thereto. The (FIDE) protocol will cease to be capable of having legal effect as from the date of entry into force of the Decision, making further ratifications thereof redundant and useless ". The Commission has also announced its intention to recast Regulation (EC) No 515/97 with a view to the replacement of the Regulation and the abovementioned Decision 2009/917/JHA by a single instrument in line with the Treaty on the Functioning of the European Union (Articles 33 and 325) . The above changes in the regulatory and legislative framework and the prospect of a single legal basis for the FIDE databases address the concerns of the Customs and Excise General Administration. These developments will allow my Administration's operational departments to use the databases in an integrated and optimal manner. 4. Conclusions The Customs and Excise General Administration is certain that the generalised use of the FIDE databases will considerably enhance the

	effectiveness of customs cooperation within the European Union. Until now the non-ratification of the FIDE Protocol and the desire for an integrated approach have nevertheless prevented it from making use of the databases to the extent it would have liked. The changes to the regulatory framework should eliminate these barriers and allow my Administration to make full use of the FIDE. My Administration has taken the necessary steps ahead of these changes to pave the way for its future use of the FIDE: • by playing an active role in the project group of the Council's Customs Cooperation Group charged with drafting a handbook on operational issues related to the FIDE . As soon as the aspects for which it is responsible have been finalised, the Commission must submit the handbook to the Regulation 515/97 Mutual Assistance Committee for approval. The publication of the handbook, which is common to both FIDE databases, represents a major step towards the integrated approach in operational guidelines which my Administration wishes to see; • by taking part in the 'Train the trainers – FIDE' courses organised by OLAF; • through regular meetings of an internal working party charged with preparing the administrative guidelines to be published for the use of the operational departments.
BG	The Customs Agency is the Bulgarian competent authority designated in compliance with Council Regulation (EC) No 515/97 as amended by Regulation (EC) No 766/2008 to make a search in the Customs Files Identification Database (FIDE). The information provided by the Customs Agency states that certain officials within the Central Customs Department have been granted access to FIDE. It is also stated that presently no need for a search in FIDE has been identified and for that reason no searches have been made. The module “Mutual Assistance Broker” is a part of the Customs Files Identification Database (FIDE). This module is designed especially for the use by the Financial Intelligence Units /FIUs/ of the EU Member States and only financial intelligence information is being exchanged in the cases where there is suspicion for money laundering. The Bulgarian FIU – Financial Intelligence Directorate within the State Agency “National Security” is in a process of introduction of the mentioned module and it is expected that the module will be fully operational by the end of February 2011. A number of officials of the Financial Intelligence Directorate within the State Agency “National Security” have been trained to use the module “Mutual Assistance Broker”.

	The European Parliament recommendation is taken into account – FIDE will be used in all cases where a need for a search in FIDE arises.
DE	Work on releasing the FIDE database for users in Germany is still ongoing. Data input is planned for summer 2011. It is highly desirable that the EU manual on use of the FIDE, Council document 12302/09, should be made available to the Member States in all language versions to facilitate Member States' development of the FIDE and enable Member States to use the FIDE uniformly and in accordance with the relevant legal provisions. Translation by the Council's General Secretariat is being held up because a question relating to cash controls has not yet been answered.
EE	The Estonian Tax and Customs Board is the administrator of the FIDE databank on behalf of the Republic of Estonia. Information on cases related to substantial violation of legal documents pertaining to the European Union customs or agricultural regulations as well as those under the jurisdiction of domestic customs authorities have been entered into the database as much as possible when conducting proceedings in respect of economic offences. The Tax and Customs Board has been conducting proceedings in recent years mostly related to the violation of domestic legal acts, when the offence had been committed for the purpose of personal gain and neither cross-border activities occurred nor foreign accomplices involved. However, the Tax and Customs Board keeps on monitoring the offences committed in 2009-2010 once again and on the occasion of cases that match the FIDE database criteria we shall enter them within the second quarter of 2011. We are also determined to continually direct the attention of our officers within the second quarter of 2011 to utilize the possibilities of the FIDE database capacity.
IE	The Council Decision 2009/917/JHA of 30 September 2009 replaced the Convention of 26 July 1995 on the use of information technology for customs purposes known as "the CIS Convention" - this required the cessation of the work which was underway to provide the primary legislation for its introduction. The Decision replaced the Convention and work is ongoing and is concentrated on providing a legal basis for the Decision (including the FIDE Protocol), which must be applied by national legislation in the Member States by 27 May 2011. In the meantime, Ireland continues to exchange information under the provisions of the CIS Convention and the absence of the FIDE database has not given rise to any significant problems.
EL	The Greek Financial & Economic Crime Unit (SDOE) welcomes the above invitation. Customs Control Division (D33) of the Ministry of Finance states out that our country has access in FIDE via AFIS PORTAL platform. It is

	intended to start using FIDE shortly by entering data in FIDE Database.
ES	Under Council Regulation No 515/97 (on mutual assistance between the administrative authorities of the Member States to ensure the correct application of the law on customs and agricultural matters) Member States may enter information on their investigation cases in this database, though this is not obligatory. Independently of this fact, the Spanish Tax Agency will study the European Commission's recommendation on the use of this database.
FR	Following confindetiality problems of the Mutual Assistance Broker, the DGDDI has decided to impose a moratorium on the use of all the applications of the portal AFIS (except MAB-dmail). The FIDE has not been effectively fed. Pending a new setup planned by OlAF for mid-2011, a doctrine encompassing all AFIS applications is currently in the developing process by the French Customs Authority.
HU	Regarding the usage of FIDE: database criminal and IT experts of the National Tax-and Customs Administration have been continuously working on the installation of the automatic data upload. Until now, due to several legal and later technical constraints, the installation has not been completed. Considering that the mentioned constraints have been overcome, our special criminal database "Robocop" application development work will commence in February 2011 and until the installation of the automatic data uploading the data of our criminal investigations of the period from the 4th of July 2008 will be assorted and converted into xml format and these will be recorded into FIDE by bulk information upload.
MT	The Malta Customs Department would like to point out that it has on many occasions accessed the FIDE database while seeking particular information relevant to its respective intelligence requisites. To date the Customs Department had no relevant information to input into the system.
RO	Procedures have been started to enable the Anti-Fraud Department, National Customs Authority, General Border Police Inspectorate and Paying and Intervention Agency for Agriculture to access the FIDE database
SI	Customs Administration of the Republic Slovenia is dealing with this reporting, they are responsible for and working on Fide. They have had internal training to implement activities.
SK	The Customs Criminal Office (Slovak Republic), as the customs office with investigative powers has the possibility of using customs files identification database- FIDE (the "database") by customs officers who are included in the Customs Criminal Office. The database provides access just at the local level, where it is only possible to see their own files. Besides this, the database provides verification of entities only if the audited entity's name is identical and consistent with previous entries. Otherwise, the database does not provide verification.

	Because of technical development of the database access for the Customs Criminal Office was on the test level. The database has to be used for writing data from investigations. In the Slovak Republic we know the differences between operative (operational) activities and investigation. Some contries such as the Germany and UK they only know the term investigation for these two activities . The Customs Criminal Office has operational files and investigation files too and it has not been determined in the negotiations, which files have to be entered to the database by the the Customs Criminal Office (Slovak Republic). After clarifying this issue, the Customs Criminal Office will use the database in accordance with the recommendation of the EC.
FI	Finnish Customs normally records information concerning serious offences in the FIDE system. Records have been input directly into the database by the district customs offices. Under Finnish law, tax-fraud offences cannot, however, be recorded in the database. In order for us to be able to provide better follow-up of the entries made in the FIDE system, it ought to be possible for the representative of the country concerned to retrieve from the system details of the incidents input into it by the country in question.
UK	The UK recognises the value of the FIDE and is actively pursuing plans to start implementing it. The UK plan to start entering data on suspicious cash movements to meet the Financial Action Task Force requirements, and is indeed finalising internal mechanisms for the wider use of FIDE.

3. COOPERATION WITH THE MEMBER STATES CONCERNING ON-THE-SPOT CHECKS

3.1 The designation of a national administrative and judicial authority with competences extended to the field of direct expenditure in all Member States is strongly recommended. **The Commission calls upon Germany, Spain and the UK to designate a contact point and to report the contact point details by 15 February 2011.**

DE	Contact point for coordination of financial control of EU funds: Bundesfinanzministerium, Referat E A 6, EU-Finanzkontrolle und Betrugsbekämpfung, Wilhelmstraße 97, 11016 Berlin [Federal Finance Ministry, Unit E A &, EU Financial Control and Fight against Fraud, Wilhelmstraße 97, 11016 Berlin]
ES	The document states that Spain, like Germany and the UK, must appoint an authority to act as a single contact point, with powers in the area of direct expenditure. There is currently no central unit in Spain in the field of direct expenditure (and no specific investigation service) but

	rather different competent bodies for the specific areas to which these expenses relate. Up to now there have been no serious drawbacks to this system in terms of guaranteeing that the funds received are used properly.
UK	The UK has previously supplied contacts to the Commission and provides a point of contact for each OLAF's visit. All audit reports are sent to the UK National Audit Office.

3.2 All Member States to report by 15 February 2011 about administrative guidelines and / or instructions applied to give effect to:

UK	The UK has guidance in place for the handling and reporting of fraud which covers the role of the Managing /Certifying /Audit Authorities and Regional Development Agency (RDA). Contact with OLAF has, to date, been ad hoc, with the Office typically getting in touch with whichever organisation they feel is best placed to help them. Similarly, the UK considers who is best placed to assist OLAF; on an ad hoc basis (eg it might be an Article 16 auditor in the Audit Authority, or an A13 official in an RDA, and so on).

3.2.1 The inclusion of a specific clause in model grant contracts

As a general rule, whenever the economic operator subject to an on-the-spot check is the beneficiary of an EU grant, the grant contract should include the obligation of the economic operator to give access to information to OLAF inspectors in order to facilitate the check.

BE	ERDF Flanders: the contract contains the following standard clause: Article 9: Obligation to provide information and the right to conduct checks The promoter is obliged to provide the following persons, on request, with information concerning the ERDF project supported and to allow them to inspect the project accounts: representatives of the competent EU authorities, the authorities concerned, the competent inspection services of those authorities, the programme secretariat, the managing authority, the certifying authority and the audit authority. The EU, the authorities concerned the competent inspection services of those authorities, the programme secretariat, the managing authority, the certifying authority and the audit authority, and the representatives thereof, shall have the right to carry out checks at the applicant's premises to ascertain that the contribution has been used correctly. To that end the applicant shall grant access and the right to make copies to the said authorities and their representatives.
BG	Concerning the inclusion of a specific clause in model grant contracts regarding the access to information to OLAF Bulgaria fully complies

	with that recommendation. The Bulgarian government has adopted a special decree /Council of Ministers Decree No 121 of 31 May 2007/ lying down the provisions for the award of grant contracts under the operational programmes co-financed by the Structural Funds and the Cohesion Fund of the European Union as well as under the PHARE Programme of the European Union. Art. 39, paragraph 2 of the mentioned decree stipulates that "each beneficiary under a project, financed by funds from the Operational Programmes, respectively under the PHARE Programme of the European Union, shall provide access upon request to the assets and information under the respective projects to inspecting national control bodies and to control bodies of the European Commission and the European Anti-Fraud Office". Furthermore paragraph 3 of art. 39 stipulates that "the beneficiaries shall ensure reflection of the duty under paragraph 2 in their contracts with the contractors under the projects". Also in accordance with art. 13, paragraph 1 of the Council of Ministers Decree No 18/04.02.2003 on the establishment of a Council for co-ordination in the fight against infringements affecting the financial interests of the European union (the Council) it is foreseen at national level that each beneficiary or contractor under projects financed by European Union funds, when requested, shall grant access to the assets and information under the corresponding projects to the national controlling bodies as well as the controlling bodies of the European Commission (EC) and the European Anti-Fraud Office (OLAF). In addition, paragraph 2 of the same article requires the Council Members /all the EU funding managing and controlling units in Bulgaria/ to ensure that the same obligation is stipulated in the grant contracts of the beneficiaries/contractors of EU funding. Furthermore paragraph 3 of art. 13 stipulates that the beneficiaries of EU funding shall ensure the insertion of the obligation of the persons under paragraph 1 in the contracts concluded within the framework of the projects funded with European Union funds. Pursuant to the signed contract/issued order for a grant, point 8 of the Guidelines of the minister of finance DNF № 5/21.10.2010 г. sets also as an obligation of the beneficiary to send to the Intermediate Body/ Managing Authority a written confirmation for the satisfaction of the following requirements: - the activities carried out during the project implementation have been duly documented and are available upon request of national and European control and audit bodies; - the related to the project implementation expenditure is duly accounted for in a an adequately established analytical coding at the beneficiary's accounting system and upon request the accounting system is available for checks by the national and European control and audit bodies. In conclusion, it could be assumed that the above mentioned requirements are already implemented in practice in Bulgaria as the General conditions of the grant contracts with all the beneficiaries of EU funds include clauses on the access of the European Commission

	representatives, as well as OLAF, to the offices and entire documentation and databases related to the financial and technical management and implementation of the respective EU funded projects. In addition to the stated above there are provisions in the Bulgarian legislation regulating the case of refusal by the economic operator to grant access to its premises to the controlling bodies of the European Commission. In this case the provisions of Chapter 3 'a' of the Law on the State Financial Inspection are applied. The inspectors of the State Financial Inspection Agency /PFIA/ cooperate with the control bodies of the EU Member States as well as with the OLAF inspectors by providing access to the premises of the economic operators, when the latter, being a beneficiary of an EU grant, denies access to premises and/or documentation necessary for the successful completion of the control. Chapter 3 'a' of the Law on the State Financial Inspection "Rendering assistance to the inspectors of the European commission for granting access to the premises and/or documentation for carrying out on-the-spot inspections and checks under Council regulation (EURATOM, EC) no 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European communities' financial interests against fraud and other irregularities", contains the grounds for providing assistance, the procedures for its practical implementation, the functions of the State Financial Inspection Agency bodies and etc. Such assistance can be rendered only when the refusal for providing access to the controllers of the European Commission to the premises and / or documentation for the performance of monitoring activities and on-the-spot checks, was made by specifically mentioned in Law on the State Financial Inspection subjects – "organizations and persons under art. 4, item 7 of Public Financial Inspection Act, beneficiary of an EU grant". In this sense State Financial Inspection Agency bodies do not have right to provide assistance to ensure access to the controllers of the European Commission to the premises and / or documentation of economic operators which do not correspond to this condition
CZ	Our contracts with beneficiaries already include a clause saying that the beneficiary is obliged to enable control and provide the necessary documents, information and assistance to all authorized subjects. Authorized subjects are the Ministry of Finance of the Czech Republic, the Supreme Audit Office, the European Committee and the European Court of Auditors. In case that OLAF would insist on additional information for grant contracts, competent department of the Ministry of Finance of the Czech Republic would request the responsible subjects.
DK	**No comments**
DE	**No reply received**

EE	In Estonia, the main national legal basis for implementing structural assistance is the Structural Assistance Act where it has been stated that an applicant is required to enable the inspection of the conformity of the applicant and application to the requirements, including on-the-spot visits of inspection (§ 22 p 8, 9). The same request is stated in each individual measure decree (ministerial decree) obligatory for each beneficiary to follow.
IE	Ireland has a Statutory Instrument 168/1998 in place which provides for the appointment of 'administrative inspectors' to assist the European Commission in carrying out on-the-spot checks on person/premises in receipt of EU Funds
EL	Special Service for Institutional Support (SSIS) / Ministry of Economy Competitiveness & Shipping, states out the following: According to national law 3614/2007 that regulates the National Strategic Reference Framework (2007 -2013 Programming Period), beneficiaries of co-financed actions are obliged to accept on-the-spot checks by the competent national and E.U. authorities and provide any relevant element that should be asked in this context. This obligation is also included in specific clause in the grant agreements via which co-financed actions are being awarded.
ES	In this regard, without prejudice to the powers of OLAF's own officials under Community rules, it should be remembered that the officials of the Public Accounts and Internal Financial Control Department of the State (IGAE) have prerogatives for carrying out this control. Where OLAF's officials require the participation of national officials in the control, these powers can be used. In any case, to avoid any uncertainty concerning the legality of the actions of the national officials, Spain is willing to analyse a joint action procedure which, under Spanish legislation, would allow Government Audit Office officials to use their genuine control powers in the framework of these Community checks. Thus, the 7th additional provision of the implementing regulations of the General Law on Subsidies, Royal Decree 887/2006 of 21 July 2006 gives the officials in charge of the financial control of EU aid the powers provided for in Articles 46 and 47 of the General Law on Subsidies. These powers are basically the following: • Free access to the documentation being checked, including IT programmes and files. • Free access to the business premises and other establishments or places in which the subsidised activity is carried on, or the opportunity to verify that the subsidised operations are actually carried out and their regularity. • Possession of a copy or original of the invoices, equivalent documents or documents issued in lieu of invoices, and of any other

	document relating to the operations in which there are indications that the aid was improperly obtained or used. • Free access to information in bank accounts at financial institutions into which the subsidies may have been paid or which have been used to make the funds available.
FR	**No reply received**
IT	In general, the grant contract will include the requirement that the economic operator facilitate the verification, monitoring and control activities of the competent EU officials
CY	**No reply received**
LV	Section 15 (2) point 4 of „Law On Management of European Union Structural Funds and the Cohesion Fund" determines that one of the duties of the final beneficiary is to provide information regarding implementation of the project of the EU fund and to ensure the representatives of the European Commission and institutions involved in the management of EU funds with access to the originals of all documents related to the implementation of the project of the EU fund, as well as to the place of implementation of the relevant project. Responsible institutions and Co-operation institutions include this obligation also in the grant contracts of EU funds project implementation.
LT	The model project financing and administration agreement, as approved by Order No 1K-066 of the Lithuanian Minister for Finance of 20 February 2008 (Official Gazette 2008, No 23-861; 2010, No 8-369), and the General Conditions for project financing and administration agreements impose an obligation on the aid beneficiary to provide the inspectors carrying out the on-the-spot check with all the information that they need regarding the project being co-financed with European Union (EU) funds (hereinafter 'the project').
LU	The ESF Management Authority supports this proposal.
HU	This question was answered by Hungary in the Questionnaire 2009.
MT	This is already the case in Malta. As an example, a Grant Agreement under the Cohesion Policy 2007 – 2013, includes the following clauses under Article 'Audit and Control':

	"The Beneficiary also accepts that the project may also be subject to Audits carried out by the Audit Authority (Internal Audit and Investigations Department), the European Commission or the European Court of Auditors or their representatives. ….. The Beneficiary grants the Managing Authority, the Certifying Authority, the Audit Authority, the National Audit Office, the European Commission and the European Court of Auditors as well as all the persons mandated by them and all other authorities or entities mentioned in the Manual of Procedures, the full right of access to ALL documents concerning the implementation of the project, its results and the use of the grant in accordance with the terms and conditions of the present agreement and those laid down in Council Regulation (EC) No. 1083/2006 and Commission Regulation (EC) No. 1828/2006."
NL	In the Netherlands, the customs authorities act as the central gateway for all checks in accordance with Regulation 2185/1996. If the matter concerns the area of customs or agriculture, national inspectors have access to all the information and documentation. If the matter relates to a different field, access to information and documentation is dependent on which is the competent inspection service. If the subject of investigation is not covered by an inspection service, the customs service will act as the inspectorate, on the understanding that in such cases it does so without having formal powers.
AT	**No reply received**
PL	An analysis of the current standard project funding contracts/decisions shows that they require the beneficiary to implement the project in accordance with national and Community law, Community rules and guidelines and to undergo checks on project implementation. Inspections are governed by national law, which states that beneficiaries are required to submit to checks on project implementation carried out, in the case of the Cohesion Policy, by the managing authority, the intermediate body, the implementing body, the certifying authority, the audit authority, representatives of the European Commission and other institutions authorised to carry out inspections on the basis of separate legislation. In addition, beneficiaries are required to provide these bodies and institutions with project implementation documentation, to ensure access to the land and premises where project implementation has taken or is taking place, to provide access to the IT system and to any computer documents concerning project management and to supply clarifications on project implementation.
PT	In addition to European Union authorities being assigned responsibility under Community legislation for financial inspections, as a rule EU grant contracts mention that EU inspectors may carry out checks on a beneficiary of Community funding.
RO	Grant contracts with beneficiaries of European funds require the beneficiary to consent to documentary or on the spot inspections by the European Commission throughout the contract period. Furthermore, under Emergency Government Order No 74/2009 and Emergency Government Order No 64/2009 on the financial management of the structural instruments and their use for the convergence objective,

	failure to comply with this obligation is subject to the penalty of refunding the financing received.
SI	An integral part of the Budget Supervision Office appointed as AFCOS is the Budgetary Inspection and the Audit Authority. According to the Public Finance Act economic operators are obliged to allow budgetary inspector a free access to premises, documents and persons and to deliver the required information, documents, reports and the use of IT. According to the national regulations recipients of European financial assistance must allow authorised officials of the Budget Supervision Office, auditors of the European Commission and the European Court of Auditors free access to all documentation, premises and personnel when conducting independent supervisory work on the use of European financial assistance.
SK	In the Slovak republic the the obligation of the economic operator to give access to information to OLAF inspectors is included in model grant contract.
FI	**No reply received**
SE	The beneficiary will receive information, together with the support decision that the managing authorities is entitled to carry out controls and to obtain the accounting and other documents of the support. The beneficiary also receives information that he is required to save all materials for a certain period after the final payment
UK	The inclusion of a specific clause in model grant contracts already applies in the UK, but the overarching point remains that this could be formally put into guidance but it is possible that it may already be implicitly covered by the wording of Section 15.1(a) of Chapter 3 of the User Manual on Funding Agreements, covering Audit requirements, which says that Grants Recipients should keep full and accurate accounts and documentary evidence, which they must permit the Regional Development Agencies and all persons authorised by them, to inspect and take copies.

3.2.2 The signing of the OLAF report by a national inspector having participated in an OLAF on-the-spot-check

It is essential that the national inspector participating in an OLAF on-the-spot check also signs the OLAF report without undue delay, thus avoiding the risk of it being non-admissible or having lower evidentiary value in administrative or judicial proceedings

BE	No example available
BG	Bulgaria fully complies with this recommendation.

	At the end of all the on-the-spot-checks carried out by OLAF on the territory of the Republic of Bulgaria the OLAF report has been signed by the representatives of all the national institutions which have been present in the course in the control.
CZ	The Czech Republic fully agree with this recommendation.
DK	No comments
DE	**No reply received**
EE	No comments
IE	See reply at 3.2.1
EL	SSIS states out that, according to Reg. 2185/96 (art.4 & 6), on-the-spot checks and inspections are conducted by the Commission and carried out on its authority and responsibility. If the Member State concerned so wishes, the on-the-spot checks and inspections may be carried out jointly by the Commission and the Member State's competent authorities. In that case, according to art.8, the national inspectors who took part in the operation shall be asked to countersign the report drawn up by the Commission inspectors. Following the above, it is perceived that there is a distinct differentiation between checks carried out jointly and those that national officials may participate in assistance to the operation. Given that Reg. 1083/2006 and 1828/2006 do not foresee joint checks and, therefore countersignature, national law 3614/2007 has not introduced any specific clause about that, as far as N.S.R.F. 2007 -2013 is concerned. On the other hand, since SDOE, in the context of its competences, usually participates in joint operations together with OLAF, it follows the general guidance that national auditors participating in OLAF's on-the-spot checks also sign the OLAF report, provided that the report is also issued in the native language of the m-s where the check has taken place, so that it is assured that the national auditor has an accurate knowledge of the content.
ES	The reasonable objective of this measure is to ensure that the control activities carried out can be assumed to be accurate since they are signed by a Spanish official. As in the previous section, Spain is willing to analyse a joint action procedure which, under Spanish legislation, would allow the Public Accounts and Internal Financial Control Department of the State (IGAE)officials to participate fully in the control measures, using all their powers and prerogatives under Spanish law. In particular, it should be pointed out that under the General Law on Subsidies the Government Audit Office officials are classified internally as public authorities. The records and reports issued by them therefore serve as evidence in both administrative and court proceedings.

FR	**No reply received**
IT	The operators who take part in OLAF's administrative controls will always sign the inspection reports;
CY	**No reply received**
LV	National authorities of Latvia have not participated in on-the-spot-checks carried out by OLAF in 2010. Taking into account that Council Regulation (Euratom, EC) No.2185/96 on the protection of the European Communities financial interests and Council Regulation (Euratom, EC) No.2988/95 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities is related to Latvia as the EU Member State, Latvia undertakes obligations to assist to OLAF investigators during the on-the-spot check, if any will be carried out, and to provide all the requisite help.
LT	The Manual of Procedures of the coordinating body (the Ministry of Finance) (signed by the Director of the Ministry of Finance's EU Cohesion Policy and Structural Assistance Coordination Department on 22 December 2009 (revised version of 21 February 2011) stipulates that representatives of the coordinating body who participate in OLAF on-the-spot checks must sign the OLAF report.
LU	The ESF Management Authority supports this proposal.
HU	This question was answered by Hungary in the Questionnaire 2009.
MT	The Internal Audit and Investigations Department (IAID) as Anti-Fraud Coordinating Service (Malta) has entered into an Administrative Co-operation Arrangement with OLAF way back in year 2003 which provides, amongst others, for cooperation between AFCOS (Malta) and OLAF during missions by OLAF in Malta. Moreover article 21 of the Internal Audit and Financial Investigations Act (Chapter 461 of the Laws of Malta) itself provides for joint audits and investigations concerning funds managed by Malta in terms of its international obligations (e.g. EU Funds), between IAID (AFCOS Malta) and the international organisation concerned (e.g. OLAF). In this ambit article 3 of the Administrative Co-operation Arrangement states that, 'AFCOS Malta will assist OLAF agents during their missions in Malta, in terms of article 21 of the Internal Audit and Financial Investigations Act, where necessary, and will ensure that on-the-spot checks can be effected as provided by the relevant (pre-accession instruments and) Community legislation'. Thus where a joint investigation is carried out between IAID and OLAF (i.e. the IAID is not merely in an observer capacity) the IAID will sign the ensuing

	report thereby assuming responsibility for the findings, recommendations and conclusions contained therein
NL	In this case, the same distinction must be drawn as in Question 1. If the matter concerns the area of customs or agriculture, the report will be signed directly by the national representative of the customs authority. If the matter relates to a different field, this is dependent on which is the competent inspection service. If the subject of investigation is not covered by an inspection service, the customs service will act as the inspectorate, on the understanding that in such cases it does so without having formal powers and cannot, therefore, sign as a formal authority either.
AT	**No reply received**
PL	This issue is governed under Polish law by the Tax Code, which states that any persons present at proceedings and participating in the inspection should sign the report on these proceedings, which must indicate which checks were carried out, when, where and by whom, who was present and in which capacity, what the findings were and how they were reached and what comments were recorded by those present. If any party refuses or fails to sign, this fact must itself be indicated in the report.
PT	The national inspector who takes part in an on-the-spot check can sign the report once he agrees with its contents and conclusions.
RO	In the event of a joint inspection by OLAF and the national inspection authorities, each inspection body must draw up and sign its own inspection report. The OLAF report constitutes admissible evidence, in the same way as any national inspection report, in both administrative and judicial proceedings, in accordance with Regulation (EC) No 1073/1999 of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office (OLAF).
SI	It is the practice that the representative of the Budget Supervision Office participating in an OLAF on-the-spot check signs the OLAF report.
SK	In compliance with the Slovak national legislation national inspectors participate in an OLAF on-the-spot checks and also sign the OLAF reports.
FI	**No reply received**
SE	**No reply received**
UK	Under current arrangements, described above, the most appropriate official is attached to the OLAF investigative team (eg it might be the lead A16 auditor for the region in which OLAF are investigating). In such circumstances, the lead official ("national inspector") will sign off

	OLAF's findings at the end of the investigation.

3.2.3 The active participation of national authorities in on-the-spot-checks carried out by OLAF

The active participation of national authorities on the ground can contribute greatly to the success of the operation. Therefore, national inspectors should be actively involved in the inspection, rather than participating as simple observers, which some national authorities chose in some OLAF cases as declared status during on-the-spot checks. The same level of assistance to OLAF inspectors should be ensured for shared management as for direct expenditure.

BE	Cooperation with OLAF in the check on Objective 2-Project Limburg 2000-2006 'Land van Ooit Tongeren'
BG	Bulgaria fully complies with this recommendation. Bulgaria has developed a mechanism for cooperation with OLAF with regard to the performance of on-the-spot controls on its territory. All the institutions responsible for the implementation or control of the project – subject to on-the-spot check – are involved in the control and render to the OLAF controllers all the necessary assistance for the successful completion of the control.
CZ	**No reply received**
DK	**No comments**
DE	**No reply received**
EE	The Estonian national inspectors (from the AFCOS Estonia and Tax & Customs Board) have participated in the OLAF on-the-spot-checks actively. We do agree to sign these documents that describe our joint actions. OLAF should always inform the national AFCOS' in case of problems (even doubts) or needs for help. Cooperation makes our relations stronger and leads to common understanding.
IE	**See reply at 3.2.1**
EL	Following what is stated in point 2) and in the context of national law 3614/2007, the participation of national officials who may assist OLAF's checks, consists in the provision of the documentation being asked by the Commission and the facilitation of its controlling task, in the context of its supervisory role within the shared management of the co-funded projects under NSRF 2007-2013.

	In addition to the above, NSRF M&CS Authorities state out that, according to art.4 – Reg.2185/1996, the realization of joint checks lies upon the determination of the m-s concerned. Therefore, the status under which a national official – representative of a national authority should participate in an OLAF's operation is to be determined by the m-s. SDOE, as stated previously, actively participates in on-the-spot-checks carried out by OLAF and evaluates this practice as necessary and potentially contributory to the success of the operation, provided that a deadline of at least 15 days is met regarding the substantial information of the national administrative authority on the actual data of the relevant file, so that there is enough time for the programming of the check and the implementation of the measures foreseen by national legislation, for the safeguarding of the proofing data of the body that is subject to the check.
ES	In line with the above (3.2.1 and 3.2.2), Spain has no objection to participating actively in OLAF's checks, within its powers and functions under Spanish law. An analysis will therefore be made of the conditions under which - always in accordance with national law - an active part can be played in all the control procedures
FR	**No reply received**
IT	Where requested, the national authorities will always participate actively in OLAF's on the spot inspections.
LV	National authorities of Latvia have not participated in on-the-spot-checks carried out by OLAF in 2010. If necessary, national authorities have the rights to request the OLAF to carry out on-the-spot checks and inspections, and using the rights conferred by the Council Regulation (Euratom, EC) No.2185/96 and Council Regulation (Euratom) No.2988/95, if necessary, the national

	authorities will implement checks within requirements contained in the regulations.
LT	Employees of the coordinating body and officials from the other competent authorities (e.g. LT AFCOS[9]) participate in OLAF on-the-spot checks. This is also specified in their job descriptions. Furthermore, the administrative rules provide for the implementing bodies to carry out scheduled checks on the basis of the annual plan drawn up and approved by them and to carry out unscheduled on-the-spot checks where there are concerns that the information provided by the project implementer is inaccurate, incomplete or misleading, or for other purposes established by the implementing bodies. When they draw up and approve the procedures for planning and carrying out on-the-spot checks on projects, they may provide for their inspectors to participate in OLAF inspections.
LU	The ESF Management Authority supports this proposal, although it is important to ensure that the authorities involved can at all times ensure their impartiality and respect equal treatment.
HU	This question was answered by Hungary in the Questionnaire 2009.
MT	As explained in point 2 under this section, article 21 of the Internal Audit and Financial Investigations Act (Chapter 461 of the Laws of Malta) provides for joint audits and investigations concerning funds managed by Malta in terms of its international obligations (e.g. EU Funds), between IAID (AFCOS Malta) and the international organisation concerned (e.g. OLAF). This is also in line with the provisions of the Administrative Co-operation Arrangement entered into between IAID (AFCOS Malta) and OLAF in year 2003. Thus the instruments are in place to allow both joint on-the-spot checks as well as joint investigations. It is up to OLAF to state a priori what the involvement of the IAID will entail.
NL	If the matter concerns the area of customs or agriculture, there will be an active contribution from the national representative of the customs authority. If the matter relates to a different field, this is dependent on which is the competent inspection service. If the subject of investigation is not covered by an inspection service, the customs service will act as the inspectorate, on the understanding that in such cases it does so without having formal powers and is therefore also unlikely to contribute actively.

[9] LT AFCOS – The Financial Crime Investigation Service under the Ministry of the Interior of the Republic of Lithuania.

AT	**No reply received**
PL	**No reply received**
PT	Previous experience has shown that with on-the-spot checks carried out in Portugal, inspectors from the Inspectorate General of Finance or representatives from other national authorities are actively involved in the process.
RO	In the case of OLAF inspections carried out in Romania, OLAF's collaboration with DLAF (Romanian AFCOS - Anti-Fraud Coordination Service) is carried out in two ways: - as a general rule, through join inspections on the spot, with active participation by DLAF; - through technical assistance provided to the OLAF inspectors by DLAF's representatives.
SI	**No reply received**
SK	The Slovak national inspectors are actively involved in the inspections and on-the-spot-checks carried out by OLAF.
FI	**No reply received**
SE	**No reply received**
UK	Under current arrangements, described above, the most appropriate official is attached to the OLAF investigative team (eg it might be the lead A16 auditor for the region in which OLAF are investigating). In such circumstances, the lead official ("national inspector") will sign off OLAF's findings at the end of the investigation.

4. MEASURES FOR SECURING THE RECOVERY OF IRREGULAR AMOUNTS

In order to secure the recovery of irregular amounts all Member States to report by 15 February 2011 on the implementation of administrative and legal instruments, such as:

4.1 Different types of guarantees, promissory notes, security deposits, personal or joint sureties, offsetting, bank bonds, mortgages or insurances, in contracts involving EU funds.

Member States' legislation should give priority to the enforceability of recovery orders, which has an important role in speeding up recovery procedures. To secure the recovery of irregular payments included in contracts involving EU funds, all Member States should provide for legal instruments, such as different types of guarantees, promissory notes, security deposits, personal or joint sureties, offsetting, bank bonds, mortgages or insurances, in the contracts.

BE	**No reply received**
BG	By the Council of Ministers Decree No 134 of 2010 a methodology for the determination of the financial corrections to be imposed to the expenditure under the operational programmes, co-financed by the EU Structural and Cohesion Funds, the Agricultural Fund for Rural Development and the European Fisheries Fund was approved. The purpose of the financial corrections is to restore the situation where 100 % of the costs approved for financing from the EU Structural instruments, European Agricultural Fund for Rural Development and European Fisheries Fund are in accordance with the applicable national and Community legislation in this area. The imposing of the financial corrections aims at the improvement of the controls as well as the reduction of the rate of irregularities. The methodology for imposing financial corrections has to be applied by all the EU funds spending and controlling government services responsible for the implementation and control of the programmes co-funded by the Structural and Cohesion Funds, the Agricultural Fund for Rural Development and the European Fisheries Fund. The National Revenue Agency is the "specialized government body responsible to the Minister of Finance for establishing, securing and collection of public receivables as well as private state receivables specified by law". The National Revenue Agency has functions with regard to the measures for recovering of illegally paid amounts under the EU funded programmes. In accordance with art. 12-15 of Instruction (DNF) 7/22.12.2010 of the Minister of Finance of Republic of Bulgaria "The government body is obliged in 10 days time from the determination of unduly paid or overpaid amounts, as well as funds illegally spent or received, to send invitation to the beneficiary for a voluntarily recovery" or/and "to deduct the illegally paid amounts, including the interest, if such is due, from the subsequent payment for which the beneficiary is entitled". Only in cases, in which the beneficiary does not recover the payments voluntarily in due course the government body notifies the National Revenue Agency for the need to initiate an enforced collection proceedings in line with the Bulgarian legislation, such as: "the receivables of the government bodies under the operational programmes, occurred on the base of an administrative act are state's public liabilities and are collected in line with the Tax and Insurance Code of Procedures", as far as "contract-based receivables are state's private liabilities and are

	collected by the National Revenue Agency in line with the Civil Code of Procedures.” In line with its powers, the National Revenue Agency undertakes necessary actions for the enforced collections of the listed liabilities, in compliance with the data, obtained after a thorough examination of the assets-status of the debtors. Accordingly, public enforcement officers from Collection Directorate and States Private Receivables cannot guarantee the enforced collection of the listed claims, as it is not known whether the debtor owns assets as of the date the files' submission to National Revenue Agency. In compliance with the quoted Instruction of the Minister of Finance "for written-off and reimbursement of unduly paid and overpaid amounts, as well as of illegally received or spent amounts from projects, co-financed by the Structural or Cohesion Funds of EU", the Government body is obliged to initiate effective systems for prevention, detecting and undertake specific actions towards irregularities, concerning the European funding as well as furnish information (up to 5 days from the date of written-off reimbursement or deduction of the amounts) and data capture in "Irregularities" module of the unified information system for monitoring and management of the EU Structural instruments in Bulgaria. In the Bulgarian national legislation various legal tools and mechanisms are foreseen for each of the mentioned above legal means for the recovery of unduly paid amounts. In each specific case it is assessed which of them in combination or separately to be applied. Additionally, in point 35 of the Guidelines of the minister of finance DNF № 4/26.07.2010 there is an explicit provision that the Managing authority is obliged to ensure adequate security of the advance payments granted to the beneficiaries. Usually in the special conditions of the grant contracts funded by the Structural Funds there is a requirement for the issuance of a promissory note equal to the amount of the advance payment in the cases where the beneficiary is not a budget entity and the amount of the grant is under 1 000 000 BGN. For the contracts over 1 000 000 BGN and advance payment up to 20% of the contract value the beneficiary is obliged to submit a bank guarantee equal to the amount of the advance payment. The bank guarantee is returned not earlier than the last certification of expenditure. Public procurement contracts stipulate analogous requirements for submitting bank guarantee or money deposit for participation in the procedure and for implementation of the contract. Also in the grant contracts concluded within the framework of the EU funded programmes there are rules determining the unallowable costs (unduly paid / or overpaid amounts as well as illegal / incorrectly received or incorrectly absorbed money). In such cases again the Head of the Managing Authority sends an invitation to the Beneficiary for a voluntary recovery of the amounts due. In the case where the Beneficiary does not recover the due amounts within the specified deadline for voluntary recovery, the Managing Authority notifies the respective administrative bodies about the necessity of taking actions for the compulsory collection of these amounts in accordance with the national legislation. Furthermore with regard to the Agricultural Fund for Rural Development in all the regulations governing the grant schemes under the Rural

	Development Programme 2007-2013 a special mechanism has been provided. In accordance with the mentioned mechanism if the beneficiary does not fulfill its statutory or contractual obligations or if the beneficiary has submitted a declaration with false/untrue content and/or artificially has established conditions for fulfilling the requirements for receiving payments in order to obtain a benefit contrary to the purposes of the Programme measures, the Paying Agency may request the return of the amounts already paid together with a statutory interest and/or to terminate all contracts concluded with that beneficiary. All the beneficiaries under the Rural Development Programme 2007-2013 are required to: - provide bank guarantees and/or promissory note; - conclusion and maintenance of valid property insurance. If the beneficiaries have not fulfilled these requirements, the Paying Agency may request the return of the amounts already paid together with a statutory interest and/or to terminate all contracts concluded with the beneficiaries. State Fund "Agriculture" is the entity making all the payments with regard to the agricultural funds in Bulgaria. The ordinances and rules, determining the conditions and order for granting financial aid under the schemes and measures implemented by State Fund "Agriculture" under EAFRD, EAGF, EFF, SAPARD Program envisage a number of tools for recovery of irregularly paid amounts such as bank guarantees, insurances of the assets, subject to funding and offsetting against future payments. In the cases of advance payment bank guarantee in favour of State Fund "Agriculture" is required in excess of 100% (depending on the specific measure) of the value of the advance payment. The term of the bank guarantee must cover the duration of the contract for granting of financial aid extended to 6 months (depending on the specific measure). Upon issuance of export licenses and advance fixing certificates (AGREX) for exports of agricultural and processed agricultural products to third countries and payment of export refunds the applicant is required to submit bank guarantee or cash guarantee in the bank account of State Fund "Agriculture". Term of validity of the bank guarantee is the validity of the license/ certificate claimed plus 13 months. Beneficiaries of the aid under all investment schemes must conclude and maintain valid insurance of the assets, subject to financing against all risks specified in the contract for granting of financial aid for the period from submission of the claim for payment until the expiration of the 5-year period after signing the contract for financial aid and are obliged to renew their insurance policies annually. The insurance contract should be concluded in favour of State Fund "Agriculture". Other legitimate tool for recovery of irregularly paid amounts is offsetting against future payments. Provided that the beneficiary has a registered debt and a future payment/ second project that is eligible for funding, the debt is offset against the future payment due.

	In the event of suspicion of fraud, detected before execution of payment, State Fund "Agriculture" suspends processing of the respective project as long as the case is clarified.
CZ	For recovery of irregular amounts we use financial corrections (before the very payment of the grant to a beneficiary) which are set up in the internal documentation – guidelines for corrections. After the payment of the grant to the beneficiary we use recovery payment for the confirmed irregularity. According to current legislation of the Czech Republic the Czech police authorities cannot be announced by revenue authorities about any suspicion of criminal acts injuring EU budgets. The reason is that revenue authorities are obligated by secrecy in this field towards the Czech Police Authorities. We would like to recommend to the Commission to require to the Czech revenue authorities to be obligated to announce information involving suspicion of injuring EU budgets to the Police of the Czech Republic and fully co-operate with the Czech Police in this matter.
DK	**No comments**
DE	**No reply received**
EE	The Estonian Structural Assistance Act states that in justified cases, the final beneficiary has the right to initiate the repayment of assistance at the request of the final recipient and demand a security, as necessary. It is also stated that interest shall be demanded from the remainder of the amount of assistance to be in the same currency as the assistance was initially paid. (§ 26, 27, 28)
IE	In Ireland legislation which could be used to recovery irregular amounts would be: The Criminal Justice (Theft and Fraud Offences) Act, 2001. The Proceeds of Crime Act, 1996. The Criminal Justice Act, 1994. The Criminal Justice (Theft and Fraud Offences) Act, 2001. Contains at Part 6 - the Convention on Protection of European Communities' Financial Interests, Section 42 – provides for an offence of Fraud affecting European Communities' financial interests. For a person who • "Commits in whole or in part any fraud affecting the European Communities' financial interests,

	• Participates in, instigates or attempts any such fraud, or • Obtains the benefit of, or derives any pecuniary advantage from, any such fraud, This person is guilty of an offence and is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both". Once a person is found to be guilty of an offence: - The Criminal Justice Act, 1994 Contains at section 9 – a provision for Confiscation: - "…requiring the person concerned to pay such sum as the court thinks fit". If a person is found not guilty of an offence there may also be the possibility to turn to: The Proceeds of Crime Act, 1996 Which contains provisions relating to the disposal and seizure of property.
EL	National legislation that regulates public procurement and award of public projects is in compliance with the E.U. regulatory framework and standards and foresees several of the above mentioned safeguarding instruments. This framework is also engaged in contracts involving projects co-financed by E.U. funds.
ES	Spanish legislation provides good guarantees with respect to legislative measures for recovering public funds unduly used. Our comments on the two recommendations made are as follows: Firstly, the General Law on Subsidies specifically regulates the financial liability arising from management of EU funds. In recent years this regulation has been made more flexible and effective. Specifically, Article 7 of this Law states as follows: "Article 7. Financial liability arising from management of EU funds. 1. The public authorities or their managing bodies or entities which, within their powers, manage and control financial aid granted under the European Agricultural Guarantee and Guidance Fund (Guidance and Guarantee Section), the European Regional Development Fund, the European Social Fund, or under any other Community fund, the Financial Instrument for Fisheries Guidance and the Cohesion Fund, shall

	assume the responsibilities deriving from these functions, including those arising from decisions of EU bodies, in particular as regards the financial clearance procedure and the enforcement of budgetary discipline by the European Commission. 2. The General State Administration bodies with competence to propose or coordinate payment of the aid granted under each fund or instrument, subject to a hearing with the bodies concerned mentioned in the previous paragraph, shall take the decisions concerning establishment of the above-mentioned financial responsibilities. These decisions shall be notified to the Ministry of Finance so that the necessary payments or financial compensations can be made to the bodies concerned or the necessary deductions applied. 3. The financial compensations resulting from the measures referred to in the previous paragraph shall be made by the Directorate-General for the Treasury and Financial Policy, which shall deduct the related amounts from future payment orders relating to the aforementioned EU funds and financial instruments in line with the nature of each fund or instrument and the procedures established by joint order of the Ministries of Economic Affairs and of Finance, subject to a report from the competent departments." The refundable amounts are classified as public revenue. In addition to the legal classification of this revenue in Community law, it enjoys all the prerogatives for collection laid down in national budgetary legislation. The legal and administrative measures concerning the recovery of these amounts include the following: The privileged nature of the credits. The Administration that holds the credit rights has certain prerogatives in the insolvency proceedings (e.g. right of abstention, right to conclude individual agreements) Enforced recovery procedure if the debt is not paid within the period for voluntary payment. Seizure of assets and rights if the debt is not paid in cash during the period for voluntary payment. In addition, under Article 35 of the General Law on Subsidies, once it has been decided to initiate the repayment procedure, as a precaution the grantor body can, at its own initiative or by a decision of the European Commission or a proposal of the Government Audit Office or the paying authority, suspend payment of amounts pending to the beneficiary or collaborating body. This amount should in no case exceed the amount specified in the proposal or decision to initiate the repayment procedure, plus any late-payment interest due. Lastly, the implementing regulation of the General Law on Subsidies regulates very strictly the guarantees to be provided when national aid is granted. Thus, if aid is to be refunded, the authorities shall order seizure of the guarantee (cash, public debt securities, guarantees or

	suretyship insurance policies). The General Deposit Fund, or the equivalent public fund or establishment pertaining to the Autonomous Community or local body, depending on the administration for which the surety is to take effect, will call in the guarantees at the request of the body competent to order recovery of the amounts advanced under the regulatory procedures. If the guarantee is not sufficient to meet the liabilities for which it was provided, the Administration shall continue the enforced recovery procedure and collect the difference in accordance with the recovery rules.
FR	**No reply received**
IT	Italy has used the following legal instruments to secure the recovery of irregular payments involving the EU budget: offsetting; general and special preferential right; mortgage; collateral; impoundment; suspension of payments under Act No 898/86; surety policy within the meaning of Act No 52/96; entry in the cause list, as per Legislative Decrees Nos 46/99 and 112/99; autonomous guarantee agreement; Act No 231/05.
CY	**No reply received**
LV	There are no specific direct legal instruments or measures in the contracts of EU funds project implementation to secure recovery of irregular payments. In the cases when there is need for recovery, it is made according to the national law and Cabinet regulations. The Chapter V "Procedures for

	Settling Disputes regarding Granted Financing of a European Union Fund" of *Law On Management European Union Structural Funds and the Cohesion Fund* provides that the decision regarding recovering of the granted financing shall be taken in accordance with the procedures specified in the *Administrative Procedure Law*, the *Civil Procedure Law* and the other regulatory enactments. The *Administrative Procedure Law* actually provides a faster process than according to *Civil Procedure Law*. Though regarding preconditions for compulsory execution of an Administrative Act directed towards monetary payment *Administrative Procedure Law* provides that administrative acts imposing a duty on the addressee to pay a specified monetary amount shall be executed on the basis of an execution order, applying the provisions of the *Civil Procedure Law* regarding recovery of monetary amounts. Accordingly, the *Civil Procedure Law* provides procedure for Securing Claims and *Criminal Procedure Law* provides procedure for ensuring of a solution to financial matters. Methods of claim securing in *Civil Procedure Law* are: - attachment of movable property, including monetary funds, of the defendant; - entering of a prohibitory endorsement in the register of the respective movable property or any other public register; - entering of an endorsement regarding the securing of a claim in the Land Register or Ship Register; - arrest of a ship; - enjoining the defendant from performing certain actions; - enjoining other persons from giving to the defendant or any other person monetary funds or other property of the defendant (the placing of attachment upon the movable property or monetary funds of the defendant which are in the possession of third parties); and - postponement of execution activities, including enjoining bailiffs from transferring money or property to a judgment creditor or debtor, or suspending of sale of property. The suspension of the sale of property is not allowed in matters where the subject-matter of the claim is money. *Cabinet Regulation No 740 "Procedures for Notification of Irregularities Detected in the Implementation of European Union Structural Funds and the Cohesion Fund, Taking of Administrative Decisions on Utilisation of the Financing Granted, and Recovering of Irregular Expenditure"* provides also such options as withheld from the current or next payment to the final beneficiary. In cases of state aid according to the Paragraph 2 of the Article 78 of the *Council Regulation No. 1083/2006 of 11 July 2006* laying down

	general provisions on the European Regional Development Fund, the European Social fund and Cohesion Fund and repealing Regulations (EC) No 1260/1999 and the Article 26 of the Cabinet Regulation No.1041 "Procedures by which resources in the State Budget are Budgeted for the Implementation of Projects Co-financed by European Union Funds, as well as procedures by which payments are made and the expenditure declaration is prepared" advances paid to the beneficiaries shall be subject to a guarantee provided by a bank or other financial institution established in a Member State. Accordingly bank guarantee issued to secure advanced payments can be seen as one of indirect recovery instrument for irregular payments. It is stated in most grant contracts that bank guarantee should be valid until the end of whole Project not only until advanced payment is covered with current payment, so it can be used as a recovery mean in case of irregularity. According with state rules and regulations of application and selection process each applicant along with EU project application form is obliged to provide personally signed written acknowledgment stating that applicant is informed and understands full spectrum of financial responsibility. As the beneficiaries in the EU funds activities, are mostly State or local government institutions, non-governmental organisations and public equivalent bodies, founded by government, and they are public persons there is no opportunity to include reinforcing commitment instruments in the standard agreement.
LT	(1) Do the aid agreements include provisions on various types of guarantees, sureties, compensation payments, warranties, collateralisation, property insurance, etc? In order to ensure that it is possible to trace the use of the EU funds and co-financing funds (hereinafter 'aid funds') allocated to the project, the project implementer must open a separate bank account for the project, into which all aid funds allocated to the project are to be transferred, and this account is to be indicated in the project financing and administration agreement concluded. The project financing and administration agreement may also provide for an advance (not exceeding 30% of the funding allocated to the project), which is to be used by public and private entities to implement the project, and include provisions on payment of that advance. For an advance to be paid, private entities must submit the advance payment request along with a guarantee or surety from a financial institution or insurance undertaking for the amount of the advance, while public entities must submit such a guarantee or surety if the amount of the advance is greater than EUR 14 481[10] (LTL 50 000). Where public entities are implementing projects funded from the European Social Fund, they must submit a guarantee or surety from a financial institution or insurance undertaking for the amount of the advance if that amount is greater than EUR 28 962 (LTL 100 000).

[10] EUR 1 = LTL 3.4528.

LU	Article 65(1) of the Law of 8 June 1999 on the State Budget, Accounts and Treasury provides for the establishment of recovery lists allowing the Treasury's public accountants to recover by any means at their disposal sums which have been improperly obtained. The ESF agreements provide for the return of the funds if the recipients' contractual obligations are not complied with.
HU	This question was answered by Hungary in the Questionnaire 2009.
MT	In all contracts awarded by the Department of Contracts, contractors will have to produce a performance guarantee. This will remain in place until a completion report is submitted by the contracting authority certifying that the obligations of the contractor have been carried out satisfactorily. Naturally once an irregularity of a fraudulent nature is identified after the release of the guarantee, recourse will be made to the relevant provisions of the Criminal Code as explained in part 2 of this section.
NL	For the ESF, all sums paid in error (advances made in excess) are recovered from the grant applicant. This procedure works well. In the payment of advances, particular account is taken of the grant applicants' cashflow requirements in order to prevent as far as possible advances being made in excess. ERDF In principle, irregular amounts are directly deducted when the beneficiary makes its next declaration. In addition, no relevant special legislation has been created, as the present legislation requires all sums to be recovered, where necessary through intervention of the courts.
AT	**No reply received**
PL	Pursuant to the Regulation of the Minister for Regional Development concerning expenditure in connection with the implementation of operational programmes, EU funding contracts/decisions provide for specific legal instruments and measures to ensure recovery of undue payments concerning EU funds. Instruments and measures currently take the following forms: blank promissory note with a promissory note declaration or endorsement; bank guarantee; insurance guarantee; notarised statement on voluntary submission to enforcement proceedings; pledging of movable property as security; assignment of rights to an insurance policy; registered pledge or pledge on rights; cash deposits; mortgage; surety. Recovery decisions are taken on the basis of the existing rules as laid down in the Public Finances Act; where funds are not recovered in spite of a decision having been issued, the decision-making body is required to implement the Enforcement Proceedings in Administration Act.
PT	Beneficiaries of EU grants are required to provide the guarantees which are laid down in the appropriate Community and national legislation.

RO	National legislation provides for such precautionary measures to speed up the recovery procedure, both at the pre-contract stage and during performance of the contract, by means of Government Emergency Order No 34/2006 on the award of public procurement contracts, contracts for the concession of public works and contracts for the concession of services, as amended; Government Emergency Order No 64/2009 on the financial management of the structural instruments and their use for the convergence objective, as amended; and Government Emergency Order No 74/2009 on the administration of non-refundable Community funds originating from the European Agricultural Guarantee Fund, the European Agricultural Fund for Rural Development and the European Fisheries Fund and of the funds allocated from the state budget, on the administration of non-refundable funds allocated by the European Community and funds allocated from the state budget for the collection and processing programme for the data necessary to develop the Common Fisheries Policy and the Fisheries Control, Inspection and Supervision Programme and amending Article 10 of Law 218/2005 on stimulating the absorption of SAPARD funds, the European Agricultural Fund for Rural Development, the European Fisheries Fund and the European Agricultural Guarantee Fund by transferring credit risk to the guarantee funds, and at the stage of recovery of budget debts, by means of Government Order No 79/2003 on the control and recovery of Community funds and related co-financing funds unduly used, as amended, and the Code of Fiscal Procedure.
SI	For securing the recovery of irregular payments included in contracts involving EU budget Slovenia uses the following specific legal instruments and measures (as stipulated in the Annex to the REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND TO THE COUNCIL – Implementation of the article 325 by the Member States 2009): • re-itemising of use to items that are not connected to State budget funds for cohesion policy; • re-itemising of commitments on the part of the budget user from items of the overall budget to items of the general margin; • withholding payments from cohesion policy funds until the intermediate body re-itemises use in line with the previous paragraph; • forfeiture of guarantee; As regards cohesion policy the system of payments to final beneficiaries in Slovenia is implemented in a way of prefinancing. It means that payments from the national budget are first provided to beneficiaries and reimbursement from the EU account to national budget is provided after that. Irregularities are mostly detected during first level control and are substracted from the amount to be paid out of national budget to the beneficiary. As regards agriculture area the Republic of Slovenia uses in the recovery procedures: - compensation (offsetting the debt and future payment) - enforcement of all outstanding debts through the Customs Administrations. If the beneficiary does not return the funds owed to the Agency

	for Agricultural Markets and Rural Development within the period, according to the rules (normally 30 days), Agency sends the document on beneficiary's debt to the Customs Administrations. The Customs Administration has the legal base for seizure of cash in the bank account.
SK	In our legislation different types of guarantees and measures are involved for securing the recovery of irregular amounts, namely: mortgages, installment agreement, set-offing, suspension of payments, execution of a decision (of judgement) etc.
FI	With regard to agricultural expenditure, the Agency for Rural Affairs states that in Finland a recovery decision is enforceable directly by law, hence there is no need to apply for a separate enforcement ruling. For collection purposes the Agency does not use collateral securities other than in connection with market support. Provisional measures have not been taken by the Agency, nor have they been resorted to during collection. The law does provide for provisional measures to be taken in certain situations. The Ministry of Employment and the Economy states that in national structural-fund programmes receiving ERDF and ESF assistance, project payments are made only after verification. Recovery is primarily ensured by suspending payments and deducting the amounts to be recovered from future payments. Both the administrative authority and the certifying authority monitor the administraive implementation of recoveries (including timetables) and the implementation of recovery orders. Implementation of corrective action and any coercive measures is provided for in the following items of national legislation: • Imposition of Taxes and Fees Act (706/2007) • Protection of the Collection of Taxes and Fees Act (395/1973) • Enforcement Code (705/2007) • Coercive Measures Act (450/1987) • Law on the execution of orders freezing property or evidence in the European Union (540/2005) • Structural Fund Act (1401/2006)
SE	The Swedish Board of Agriculture is able to settle a recovery of the support towards the payment of any support. This is apparent from the recovery decision. If a refund is not made possible, the requirement will go to Debt collection and then to the Enforcement Authority.
UK	Chapter 3 of the User Manual sets out the wording which RDAs must use in Funding Agreements. Section 8 covers provisions relating to fixed assets and major assets with clauses, which explicitly make clear to grant recipients that they must keep an inventory of ERDF or Single Budget purchased assets, not change the use of ERDF or Single Budget purchased assets or cease to use ERDF or Single Budget

	purchase assets, or dispose of ERDF or Single Budget purchased assets, or create any charges on the ERDF purchased assets without the prior written consent of the Agency.

4.2 Safeguard measures for suspected fraud cases (in the form of seizure of assets, suspension of payments, bank guarantees

As recovery rates are low, safeguard measures should be implemented for suspected fraud cases (in the form of seizure of assets, suspension of payments, bank guarantees, etc.) to make sure that recovery can still take place after the final court ruling

BE	**No reply received**
BG	Usually in the cases of suspected fraud or other irregularities payments to contractors or beneficiaries are suspended. If irregularities are identified the irregular amount is required for recovery and if not recovered by the contractor / beneficiary and the latter is not a budget entity the case is brought to the National Revenue Agency for compulsory collection. Usually the grant contracts under the EU funded programmes include a clause, which stipulates that if the Beneficiary does not observe any contractual obligation then the total amount of the grant or part of it should be reimbursed along with the legal interest rate accrued as of the contract termination date until the date of reimbursement of the full amount due. Usually the Managing Authorities have the possibility to suspend the payments under the grant contract until the case is resolved.
CZ	For recovery of irregular amounts we use financial corrections (before the very payment of the grant to a beneficiary) which are set up in the internal documentation – guidelines for corrections. After the payment of the grant to the beneficiary we use recovery payment for the confirmed irregularity. According to current legislation of the Czech Republic the Czech police authorities cannot be announced by revenue authorities about any suspicion of criminal acts injuring EU budgets. The reason is that revenue authorities are obligated by secrecy in this field towards the Czech Police Authorities. We would like to recommend to the Commission to require to the Czech revenue authorities to be obligated to announce information involving suspicion of injuring EU budgets to the Police of the Czech Republic and fully co-operate with the Czech Police in this matter.
DK	**No comments**
DE	**No reply received**
EE	In Estonia it is possible to suspend payments in cases where the beneficiary has an obligation to recover payments and has failed to do it

	(Structural Assistance Act § 23 (5)). In the Code of Criminal Procedure, where § 142 "Seizure of property" section 1 stipulates that the objective of seizure of property is to secure a civil action, confiscation, or fine to the extent of assets. "Seizure of property" means recording the property of a suspect, accused, convicted offender, civil defendant or third party or the property which is the object of money laundering or terrorist financing and preventing the transfer of the property.
IE	No reply received
EL	NSRF M&CS Authorities state out that certification system in Greece has, since its foundation, adopted as general – preventive practice the subtraction (out of the declarations of expenditure submitted to the Commission Services) of any ambiguous expenditure, regardless if it is about cases of suspected fraud or simple irregularity of any kind.
ES	**No reply received**
FR	**No reply received**
IT	Italy has used the following safeguard or precautionary measures following the discovery of suspected irregularities involving EU expenditure or revenue: • revocation and subrogation; • precautionary seizure and attachment, emergency measures; • injunctions; • expropriation of movable or immovable assets and garnishment; • confiscation; • impoundment; • mortgage; • request for a guarantee in regard to the presumed debtor; • right of retention of the goods subject to tax. In particular Italy, through the anti-fraud activities of Guardia di Finanza, has made seizures for amounts equal to € 97.000.000 in the year 2009 and € 213.000.000 in the year 2010".
CY	**No reply received**

LV	According to the standard agreement, when the fraud is detected before the payment is made to the final beneficiary, the Responsible/Co-operation Institution suspends the payment until the case is solved. In case all payments are already made, the procedure of recovery is initiated. The beneficiary is obliged to pay additional penal interest rate for every day of delayed recovery of irregular payments. In case non-eligible costs are discovered during the approval of the Progress Report, they will be automatically deducted from the total reported eligible costs. As the infringements of the public procurement regulations can indicate the fraud cases, the Procurement Monitoring Bureau informs the responsible institutions of the infringements detected in the examination of the procurement procedures. If the procurement is financed by European Union funds the Procurement Monitoring Bureau informs the Managing Authority, the Responsible or the Co-operation institution. The Procurement Monitoring Bureau also examines the procurement procedures on the request of the Corruption Prevention and Combating Bureau. See also reply to question 3.1.
LT	The procedure for investigating, identifying and eliminating irregularities in projects financed with EU Structural Fund resources on the basis of the Single Programming Document for Lithuania for 2004-06 is set out in the Rules for the administration and financing of Lithuanian Single Programming Document (SPD) measures for 2004-06 and projects financed under those measures, as approved by Order No 1K-033 of the Lithuanian Minister for Finance of 28 January 2004 (Official Gazette 2004, No 19-599; 2005 No 21-667). The procedure for investigating, identifying and eliminating irregularities in projects financed with Cohesion Fund resources for 2000-06 is set out in the Rules for the identification and elimination of irregularities in the use of EU financial aid and on the restrictions on access to EU financial aid, as approved by Order No 1K-307 of the Lithuanian Minister for Finance of 17 October 2005 (Official Gazette 2005, No 127-4588). The procedure for investigating, identifying and eliminating irregularities in projects financed with EU Structural aid for 2007-13 is set out in the Administrative Rules for Operational Programmes, as approved by Lithuanian Government Resolution No 1225 of 12 November 2008 (Official Gazette 2008, No 137-5429) (hereinafter 'the Rules for Operational Programmes'), and the Administrative Rules and Methodological Recommendations for the investigation of irregularities, as approved by Order No 1K-173 of the Lithuanian Minister for Finance of 29 May 2009 (Official Gazette 2009, No 67-2716). If it suspects that there is an irregularity and/or receives information from other authorities regarding a suspected irregularity, the implementing body launches an investigation in accordance with the procedure laid down in the Rules for Operational Programmes. The implementing body assesses the nature of the suspected irregularity and takes a decision on whether to suspend examination of the payment requests submitted by the project implementer and/or to ask the Ministry and/or other State authority responsible, within its area of

	competence, for the economic sectors co-financed from EU funds (hereinafter 'the Ministry and/or other State authority') to pay out or to pay only the portion of the funds that does not relate to the suspected irregularity (with the exception of the final payment request), where the suspected irregularity relates to project expenditure for the payment of which the project implementer has submitted payment requests to the implementing body, and/or, within its area of competence, asks the Ministry and/or other State authority to take action to suspend payment of funds in the EU Structural Funds Management Information System (SFMIS) or, if it has been authorised by the Ministry and/or other State authority to do so, takes action to suspend payment of funds in the SFMIS pending completion of the investigation. Where investigation of the suspected irregularity reveals a suspected criminal offence, LT AFCOS is informed thereof and, when investigating that criminal offence, asks for measures to be imposed to secure the claim (seizing property, freezing bank accounts, placing temporary restrictions on property rights and other measures laid down in the Criminal Code). When the investigation has been completed and an irregularity has been identified, the decision may be taken to terminate the project financing and administration agreement and demand repayment of the funds paid; to reduce project funding and/or demand repayment of part of the funds paid; or to deduct part of the funds paid from the payment requests submitted by the project implementer. Other decisions may also be taken. If the decision is taken to recover the funds paid, those funds are repaid in accordance with the procedure laid down by the Rules for the repayment into the Lithuanian State budget of financial support paid and/or used in breach of legislation, as approved by Lithuanian Government Resolution No 590 of 30 May 2005 (Official Gazette 2005, No 69-2469; 2010, No 33-1570). The repayment order specifies the deadline for repayment of the funds by the project implementer and the penalty for each day's delay in repaying the amount. The late-payment penalty is set by the Minister for Finance for each quarter on the basis of the weighted average of the annual interest rate for the Lithuanian State Treasury bills issued in litas by auction in the previous quarter. The penalty is set by increasing that interest rate by 10 percentage points. Where the amount owed is allowed to be repaid in instalments, the repayment order indicates the interest rate set by the Minister for Finance for each quarter on the basis of the weighted average of the annual interest rate for the Lithuanian State Treasury bills issued in litas by auction in the previous quarter. Interest is paid off first from the portion of the funds returned, and only then are other debts paid off in the order in which they were incurred (repayable amounts identified earlier are paid off first). Where the debt is being paid in instalments, the full amount must be repaid within nine months of the entry into force of the order. If the project implementer to whom the order was issued fails to repay the amount within the deadline specified in that order or repays only part of the amount, or if an insufficient amount has been deducted from the amount payable on the basis of the payment request submitted, or another payment request being submitted, by the project implementer or from other appropriations payable from the Lithuanian State budget, and the amount to be recovered (hereinafter 'the debt') is: 1. smaller than EUR 2 896 (LTL 10 000), or the project implementer is a body funded from the State budget, the administering body or the implementing body (where it manages the appropriations) must take all the measures provided for by law and/or by its internal manuals of

	procedure to ensure recovery of the amount; 2. greater than EUR 2 896 (LTL 10 000), and the project implementer is not a body funded from the State budget, the administering body or the implementing body (where it manages the appropriations) transfers its right to claim the amount not repaid by the project implementer to AB Turto bankas[11] under a subrogation agreement within 30 calendar days of the expiry of the repayment deadline set in the order. With the agreement of the administering body or the implementing body (where it manages the appropriations), Turto bankas may take possession of the assets belonging to the project implementer or third persons and sell them to cover the debt; extend the payment deadline (with the exception of illegal or unduly granted State aid, as laid down in Regulation (EC) No 659/1999); replace a monetary obligation by another obligation (with the exception of illegal or unduly granted State aid, as laid down in Regulation (EC) No 659/1999); initiate bankruptcy and/or restructuring proceedings against the project implementer, enter into a settlement agreement, take decisions on the project implementer's restructuring plan; carry out other creditor actions or take other decisions regarding the debt.
LU	The Financial Intelligence Unit of the public prosecutor's office at the Luxembourg District Court has the power to freeze accounts in cases of money laundering or the financing of terrorism in accordance with Article 5(3) of the amended Law of 12 November 2004 on the fight against money laundering and the financing of terrorism. The seizure of movable property and assets is governed mainly by Article 66 of the Code of Criminal Procedure (CICR), while seizure of immovable property is governed by Article 66(1) of the CICR. The protective management of the asset while it is frozen is governed by Article 67(2) of the CICR. Special confiscation is governed by Articles 31 et seq of the Penal Code. By virtue of Article 31 of the Penal Code, "Special confiscation shall apply: 1) to property comprising property of all kinds, whether tangible or intangible, movable or immovable, as well as legal acts or documents attesting to a title or right over a property, property constituting the direct or indirect object or product of an offence or constituting a pecuniary benefit of any kind derived from the offence, including revenue from such property;

[11] Turto bankas is a company operating on the basis of share capital which engages in the management, use and disposal of non-performing loans and other assets and takes on the risks and responsibilities involved and other activities laid down by law and these Statutes. Further information is available at: http://www.turtas.lt/en/.

	2) to property which has been used or has been intended for use in the commission of the offence, when the property belongs to the person sentenced; 3) to property which has been substituted for that referred to under paragraph 1, including revenue from the substituted property; 4) to property which belongs to the person sentenced and the monetary value of which corresponds to that of the property referred to under paragraph 1 above, if the latter cannot be found for the purposes of confiscation. Where the property belongs to the person injured by the offence it shall be returned to that person. The confiscated property shall also be awarded to the injured party where the court has declared it forfeit on the grounds that it constitutes property substituted for items belonging to the person injured by the offence or where it is of equivalent value within the meaning of the first paragraph of this Article. Any other third party claiming entitlement to the confiscated property may assert such a claim. In the case of claims recognised as legitimate and justified, the court shall rule on restitution. The court which ordered the confiscation shall remain competent to rule on requests for restitution, addressed to the public prosecutor's office or the court, and originating either with an injured party or with a third party who asserts a right over the confiscated property. The request must be submitted within two years with effect from the date on which the confiscation decision was enforced, otherwise it will be time-barred. The request shall also be debarred where the confiscated property has been transferred to the requesting State in implementation of an agreement appertaining to it between the two States or an arrangement between the Government of Luxembourg and the Government of the requesting State. The judgment ordering the confiscation of the property referred to under paragraph 1(2) of this Article shall, should it not be possible to implement this confiscation, impose a fine not exceeding the value of the item confiscated. This fine shall have the nature of a penalty." Article 32(1) of the Penal Code provides that in the case of money laundering and the financing of terrorism, the court must rule to confiscate the property referred to in points 1 and 3 of the first paragraph of Article 31 of the Penal Code, even in the event of acquittal, exemption from punishment, extinguishment or time-barring of the criminal proceedings, and even if this property does not belong to the person who committed the offence.

	ESF: At the start of an audit mission, the ESF Management Authority suspends payments for the duration of the audit to safeguard the financial interests of the European Commission and the Member State. In addition, as of 1 January 2011, all expenditure to be declared to the European Commission is subjected to an ex-ante control. The ESF Management Authority has never had substantial problems in relation to reimbursements up to this point.
HU	This question was answered by Hungary in the Questionnaire 2009.
MT	Article 23A of the Criminal Code (Chapter 9 of the Laws of Malta) provides that while proceedings are taking place in Court, the Court may freeze the property of the accused, provided that the offence is liable to the punishment of imprisonment or of detention for a term of more than one year. Then, once a Court passes judgement and the accused is found guilty, the Court shall in terms of Article 23B of the Criminal Code, in addition to any punishment to which the person convicted of a relevant offence may be sentenced and in addition to any penalty to which a body corporate may become liable, order the forfeiture in favour of the Government of the proceeds of the offence or of such property the value of which corresponds to the value of such proceeds.
NL	ESF Cases of suspected fraud are referred to the Social Intelligence and Investigation Service (SIOD). No further advances are paid to the grant applicant or the payment of further advances is made subject to additional requirements. In fact, this occurs rarely in ESF projects. ERDF Here too, in cases of possible fraud, the amounts required can be deducted when the next declarations are made, further payments will in any case be suspended and the existing legislation allows guarantees to be obtained through intervention of the courts.
AT	**No reply received**
PL	The national strategic reference framework coordinating authority takes the view that the current arrangements to ensure that projects co-financed by the EU under the Cohesion Policy are properly implemented and that amounts spent inappropriately are recovered are satisfactory and ensure that these amounts are recovered in practice. These arrangements include withholding payments pending investigation of the case, reducing/blocking a subsequent tranche of funding/refunds to offset amounts spent inappropriately, notifying the prosecutor's office, ordering the beneficiary to refund the amount and pay interest, issuing an administrative recovery decision and, if

	appropriate, proceeding with administrative enforcement.
PL	The body coordinating the national strategic reference framework takes the view that the current arrangements to ensure that projects co-financed by the EU are properly implemented and that amounts spent inappropriately are recovered are satisfactory and ensure that these amounts are recovered in practice. These arrangements include withholding payments pending investigation of the case, reducing/blocking a subsequent tranche of funding/refunds to offset amounts spent inappropriately, notifying the prosecutor's office, ordering the beneficiary to refund the amount and pay interest, issuing an administrative recovery decision and, if appropriate, proceeding with administrative enforcement.
PT	The Penal Code and the Code of Criminal Procedure, as well as Act No 5/2002 of 11 January 2002 laying down measures to tackle organised and economic/financial crime, contain legal provisions on the seizure and loss of criminal proceeds if there is a conviction, in particular, for crimes of corruption (active and passive), embezzlement, abuse of office, money laundering, criminal association, smuggling and counterfeiting of currency or securities treated as equivalent to currency.
RO	Under Article 129 of the Code of Fiscal Procedure and Article 163 of the Criminal Procedure Code, in the event of suspected fraud the safeguard measures for the subsequent recovery of the damages can be taken by the National Tax Administration Agency or the judicial bodies.
SI	Slovenia applies the practice of suspension of payments and bank guarantees.
SK	**No reply received**
FI	**No reply received**
SE	Provisional attachment In the Swedish legal system, "provisional attachment" is a tool that can be used in an early stage to secure a coming claim. If a person is reasonably suspected of an offence and if there is reasonable cause to anticipate that, by fleeing, removing property or otherwise, the person will evade the obligation which can be assumed will be placed upon him because of the offence to pay fines, the value of forfeited property, corporate fines, or other compensation to the community, or damages or any other compensation to an aggrieved person, the court may order provisional attachment of so much of the suspect's property that the claim may be assumed to be secured on execution. (Section 1 in Chapter 26 of the Swedish code of judicial procedure). The court issues orders for provisional attachment, however the investigation leader or the prosecutor may take moveable property into

	custody while awaiting the court's order of provisional attachment. Issues on provisional attachment may be entertained at the request of the investigation leader, the prosecutor, or the aggrieved person. Once the prosecution has been initiated, the court may also consider provisional attachment on its own motion. (Section 2 & 3 in Chapter 26 of the Swedish code of judicial procedure). Confiscation / Forfeiture In Swedish law, "confiscation" (or "forfeiture", which is the term used in the English translation of the Penal Code) is considered a special legal effect of crime (Penal Code, Chapter 1, Section 8) and is applied for proceeds of crime and instrumentalities used in or intended for use in criminal offences. Within the Swedish legal system, confiscation is thus always connected to a conviction for a criminal offence. Specific rules on forfeiture are found in Chapter 36 of the Penal Code and in special penal laws. Legislation that entered into force in July 2005 extended forfeiture provisions for crimes in the Penal Code to crimes in other special penal laws, under the condition that the penalty for the crime concerned is imprisonment for more than one year. Section 1 of Chapter 36 provides that the proceeds of a crime, the corresponding value, or anything a person has received as payment for costs incurred in conjunction with a crime (provided that such receipt constitutes a crime under the Penal Code) shall be declared forfeited unless this is manifestly unreasonable. Section 1a in Chapter 36 of the Penal Code provides that when it would be manifestly unreasonable to declare the proceeds of a crime forfeited, consideration shall be given inter alia, to whether there is reason to believe that liability to pay damages in consequence of the crime will be imposed or otherwise discharged. If an entrepreneur has profited from a crime committed in the course of business, the value thereof shall be declared forfeited, unless forfeiture is unreasonable (Chapter 36, Section 4). If proof of what is to be declared forfeited cannot easily be presented, the value may be estimated reasonably in view of the circumstances. Similar sets of rules concerning forfeiture of proceeds of crime are found in special penal laws. Property can be forfeited regardless of whether it is held or owned by a criminal defendant or by a third party, subject to the protection of the third party. This is regulated in Section 5 of Chapter 36 of the Penal Code, which states that forfeiture of property or its worth in consequence of crime may, unless otherwise stated, be exacted of: a) the offender or an accomplice in the crime; b) the person whose position was occupied by the offender or an accomplice; c) the person who profited from the crime or the entrepreneur described in Section 4; d) any person who after the crime acquired the property through the division of jointly held marital property, or through inheritance, will or gift, or who after the crime acquired the property in some other manner and, in so doing, knew or had reasonable grounds to suspect that the property was connected with the crime. Property may be forfeited if it belonged to or if it replaced property belonging to persons in categories a) to c).

	Any special right to property that has been declared forfeited remains if the special right is not also declared to be forfeited. As of 1 July 2008 Swedish legislation has been amended with regard to the possibilities to confiscate the proceeds of crime. The amendments aim at the implementation of article 3 of the Council Framework Decision of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property. As a result of the amendments it is possible, as regards serious crime in some cases, to confiscate not only the proceeds of a specific crime, but also the proceeds of non-specified criminal activities. For the relation between what is being confiscated and the criminal activities the standard of proof has been lessened in comparison with what is generally the case in criminal procedures.
UK	Once irregularities are found, no further payments are made. With suspected fraud, no further payments are made until investigations are concluded. Offsetting is however the preferred route for ensuring recovery as per the Regulations and UK finance manuals. Other tools will require changes to UK legislation in amending the security/ranking of EU debt.