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**ANNUAL REPORT 2000**

**PROTECTION OF THE COMMUNITIES' FINANCIAL INTERESTS  
AND THE FIGHT AGAINST FRAUD**

**(presented by the Commission)**

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## INTRODUCTION

Henceforth, the new article 280, paragraph 5 of the EC Treaty makes the Community and the Member States jointly responsible for the fight against fraud and other illegal activities detrimental to the Communities' financial interests. This annual report<sup>1</sup> consequently dedicates an important part to the measures taken by the Member States in this area.

Regarding the operational aspects of the fight against fraud<sup>2</sup>, these will be presented in a specific report for the period after June 2000 and published in the second half of 2001, so that the Commission will be able to refer to it in its own yearly report.

The Commission's 2000 annual report, which is the second on the new treaty base, therefore summarises in its first part the Community initiatives concerning protection of the financial interests (significant legislative developments including instruments coming under Title VI of the Amsterdam treaty and sectoral legislation). It reports in its second part on measures taken by the Member States in 1999-2000 and covers in a third and final part the statistical information communicated by the Member States, under the terms of sectoral regulations, on their activities in the fight against fraud in the main Community policies.

**A first part** covers the legislative and horizontal regulatory initiatives, and then the sectoral legislation. For the former, the report mentions in particular initiatives in 2000 to strengthen the penal judicial dimension, more particular those linked to the objective of establishing an area of freedom, security and justice. This part also covers the implementation of the White paper on reform in its aspects concerning the protection of financial interests. The operation of the Office, in its reporting activities and in its role amid the institutions, is raised specifically also to illustrate the manner in which it sets up vertical cooperation activities with the competent national authorities (article 280, paragraph 3 of the Treaty) and technical and operational assistance.

This part also covers some of the actions undertaken by the Community in partnership with the main actors in the protection of financial interests and the fight against fraud : concrete examples are given to illustrate what operational cooperation on the ground with the Member States and the accession candidate and third countries may be in aiming for effective and equivalent protection of the Union's finances against fraud and any other illegal activity.

**A second part** draws the consequences of the ratification of the Amsterdam Treaty and the implementation of the new article 280, paragraph 5 which provides also for the activity of the Member States to be reported. For the first time, the Commission report summarises the resources implemented in 1999 and 2000 by the Member States for the protection of the Communities' financial interests, on the basis of a concerted

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<sup>1</sup> The new mechanism was the subject of an overall presentation in the annual report on protecting the Communities' financial interests and the fight against fraud for 1999 (COM(2000) 718 final) adopted on 08.11.2000

<sup>2</sup> A first activity report by the European Anti-fraud office (1<sup>st</sup> June 1999-31<sup>st</sup> May 2000) was adopted on 23.05.2000. This report is published annually from the date of the establishment of the Office (1<sup>st</sup> June 1999).

working methodology. The Member States effectively assume, in practice, the responsibilities conferred on them by the Treaty.

**A third part** contains an analysis of the data gathered from the Member States resulting from the Community's investigation activity to identify the main trends in fraudulent activity or irregular practices as well as the overall results in terms of recovery and financial follow up. In this context it is important to recall that the detection and follow up of cases of fraud and other irregularities committed against the Communities' financial interests must be carried out by the Member States and the Commission in close cooperation.

The year 2000 marks a new development in the level of irregularities, including fraud established by the Member States or suspected by OLAF. The figures however must be interpreted in a cautious manner given the heterogeneous character of the data given by the Member States. After a period of stabilisation, the amounts involved are on the increase in several areas. Regarding EAGGF-Guarantee expenditure and traditional own resources (respectively, 474.5 million euros and 534,5 million euro, equivalent to 1,17% of EAGGF-Guarantee budget and 3,5% of the Community's Traditional own resources<sup>3</sup>), the doubling in the sums is explained in part by the impact of some very significant cases. In the area of the structural funds, where the amounts show a slight decrease (114.2 million euros, 0,45% of the budget concerned), the increase in the number of cases indicates the increased effectiveness of checks. The direct expenditure sector, with a total of 170 million euros and 148 cases (1,33% of the budget concerned), shows a strong increase (both in amounts and number), particularly for external policies : this reflects the priority accorded by the Office to this area of activity. Moreover, the observations concerning recovery by the Member States provide the opportunity to raise the mediocre development in the results and to present the initiatives under way and the ways towards a better follow up and greater efficiency in this activity.

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<sup>3</sup> The budgetary percentages as indicated refer to the sectoral budget concerned, for resources and for expenditure. The traditional own resources as indicated are the amounts paid by the Member States for 2000, minus the collection costs. Traditional own resources represented 15.3% of total resources in 2000.



# **Title I: The activities of the Community**

## **1. THE PROTECTION OF FINANCIAL INTERESTS: THE DEVELOPMENT OF THE HORIZONTAL LEGAL FRAMEWORK**

### **1.1. Legal instruments**

Following intensive legislative activity to protect financial interests and combat fraud in 1999, there were mainly initiatives in related matters in 2000.

There was indeed little change in the horizontal legislation, pending ratification of the main third-pillar instruments by the Member States.<sup>4</sup> On the other hand, the Commission adopted several new instruments to protect financial interests and combat fraud, corruption and other illegal activities, including economic and financial crime, directly or indirectly jeopardising those interests.

#### *1.1.1. Preventing money-laundering*

Community fraud often appears to be a precursor to money-laundering. Experience has shown that the money-gathering circuits that are detected are in reality shared with fraudulent activities linked to other forms of crime. To protect the Community's financial interests, the importance of mutual administrative cooperation information interchanges with national authorities with power to deal with suspect financial transactions has regularly been stressed. In this context, the Commission proposal for a Parliament and Council Directive<sup>5</sup> amending Directive 91/308/EEC of 10 June 1991 *on the prevention of the use of the financial system for the purposes of money-laundering* contained a specific provision allowing the Commission (OLAF) to cooperate and exchange information with the authorities of the Member States responsible for combating laundering in cases affecting the Community's financial interests.

A political agreement on the proposal has been reached in the Council, notably as regards the obligations of financial professionals and intermediaries and the definition of the concept of "criminal activity". In its common position of 30 November 2000, the Council had not accepted the original provision on cooperation with the Commission; however in its conclusions of 17 October 2000<sup>6</sup>, it declared that it was aware of the practical value of an information exchange mechanism and asked the Commission to present a new proposal.

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<sup>4</sup> [Convention on the protection of the European Communities' financial interests of 26 July 1995 and its protocols.](#)

<sup>5</sup> [COM\(1999\) 352 final, OJ C 177, 27.6.2000.](#)

<sup>6</sup> Conclusions of the Ecofin/JHA Council of 17.10.2000, notably point 9, part B.

### 1.1.2. *Currency counterfeiting*

Following its communication to the Council, the European Parliament and the European Central Bank of 22 July 1998 on the protection of the euro and the fight against counterfeiting,<sup>7</sup> the Commission presented a proposal for a Council Regulation on the *protection of the euro against counterfeiting* on 26 July 2000.<sup>8</sup>

The proposal covered:

- gathering and accessing technical data and the obligations to transmit false euro notes and coins for identification;
- the obligations of credit establishments and other establishments involved in exchanging different currencies;
- the establishment of an anti-counterfeiting unit in Europol, responsible in particular for managing an operational and strategic information system;
- the national centralisation of information relating to cases of counterfeiting and the reporting obligation via the Europol national unit (and the nature of the information covered);
- questions of cooperation and mutual assistance, including the establishment of an early warning system and cooperation with non-member countries.

The proposal was considered by the Council's Anti-fraud Working Party under the French Presidency, and a political agreement was then reached.<sup>9</sup> Although the Commission's proposed provisions on relations between national police authorities and Europol were not retained, Europol will give them its support on the ground in accordance with its general remit<sup>10</sup> and the Europol Convention.<sup>11</sup>

The purpose of the Regulation is to ensure that all activities are situated within a comprehensive and multidisciplinary approach reflecting the dimension of the single currency and the complementary roles of each institution or body and the Member States. Coordination is organised with the establishment of a steering group representing the various institutional

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<sup>7</sup> COM (1998) 474 final.

<sup>8</sup> See Commission annual report for 1999 on the protection of the Communities' financial interests and the fight against fraud: COM (2000) 718 final. Proposal: COM (2000) 492 final of 26.7.2000, OJ C 337E of 28.11.2000.

<sup>9</sup> ECOFIN Council, 12 February 2001. The Commission welcomed the fact the main components of its proposition were included in the draft Regulation on which that agreement was reached.

<sup>10</sup> Council Decision of 29 April 1999 extending Europol's mandate to the fight against currency counterfeiting and falsification of means of payment; OJ C 149, 28.5.1999.

<sup>11</sup> Council Act of 26 July 1995 drawing up the Convention on the basis of Article K.3 of the EU Treaty on the establishment of a European Police Office; OJ C 316, 27.11.1995.

partners (Commission, European Central Bank, Europol) and the continuation of work with national experts.

### 1.1.3. *Counterfeit goods and piracy*

On 30 November the Commission adopted a communication,<sup>12</sup> together with a plan of action, on the *Follow-up to the Green Paper on combating counterfeiting and piracy in the single market*,<sup>13</sup> in response to a Resolution passed by the European Parliament on 4 May. This Green Paper recalls that *economic crime* jeopardises intellectual property (industrial, agricultural and commercial counterfeiting, Community trade mark) and thereby engenders deflections of business in the internal market. It also affects the distribution of the tax effort made by the Member States via the “fourth resource”, which is based on national wealth accounts. The economic impact of goods counterfeiting cannot be underestimated.<sup>14</sup>

The action plan aims to supplement measures to check counterfeit and pirated goods at the Union’s external borders to meet the needs of the single market<sup>15</sup>, as well as measures taken to combat counterfeiting and piracy in relations with non-member countries and under multilateral agreements. In particular, provision is made for the Commission to consider in the medium term the value of establishing specific administrative cooperation mechanisms with the Member States, possibly based on those that exist in other areas, wherever Community interests are at stake.

### 1.1.4. *Public procurement*

In the particularly sensitive area of public procurement, the Commission wishes above all to reinforce preventive measures. It accordingly adopted a proposal for a Parliament and Council Directive on 30 August 2000<sup>16</sup> which contains, among other things, a compulsory mechanism for excluding tenderers who have been convicted of conspiracy, corruption or fraud against the Community’s financial interests, and an optional mechanism to exclude “untrustworthy” economic operators.

## 1.2. **Judicial instruments**

Many initiatives that came to fruition in 2000 for stronger legislative and judicial cooperation between the Member States in criminal matters will support the protection of the Community’s financial interests.

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<sup>12</sup> [COM\(2000\) 789](#).

<sup>13</sup> [COM\(1998\) 569](#).

<sup>14</sup> The estimated value of counterfeit goods seized by customs in 2000 exceeds 1,3 billion euro.

<sup>15</sup> [Council Regulation \(EC\) No 3295/94 of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods \(OJ L 341, 30.12.1994\)](#).

<sup>16</sup> [Proposal for a directive on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts \(COM \(2000\) 275 final, 30.8.2000\)](#).

1.2.1. *Proposal to establish the office of European Public Prosecutor for the protection of the Community's financial interests*

On 29 September 2000, as announced in its opinion of 26 January 2000 “Adapting the institutions to make a success of enlargement”, the Commission adopted a communication proposing the establishment of the office of European Public Prosecutor for the protection of the Community's financial interests.<sup>17</sup> The proposal is based on detailed preparatory work done by a group of experts in criminal law that had produced the more general proposal known as the *Corpus juris*.<sup>18</sup> With this proposal the Commission is reaffirming the political priority attached to the fight against fraud and thus meeting the concerns expressed by the European Parliament in its Resolution of 14 April 2000 on the Intergovernmental Conference.

The Commission proposes a new Article in the EC Treaty providing simply for a legal basis for the establishment of the European Public Prosecutor with powers strictly confined to the protection of the Community's financial interests as defined by Article 280. This reflects the philosophy of the Amsterdam Treaty which, for the first time, made the Community and the Member States jointly responsible for the protection of the Community's financial interests.

The Commission considers that establishing the European Public Prosecutor is necessary for the effective criminal-law protection of the Community's financial interests, for which it has a special responsibility under the Treaties. The establishment of the European Anti-fraud Office (OLAF) did indeed facilitate the detection of acts detrimental to the Community's financial interests throughout the Union. But prosecution in the criminal courts on the basis of OLAF's findings still encounters the ongoing limits to judicial cooperation between Member States.

The Prosecutor would be responsible for detecting and prosecuting violations of Community interests in the national courts, but would not supersede the national courts, particularly at the judgment stage. On the contrary, the aim is to help them do their job by presenting them with the facts detected across Union territory and thus removing the barriers raised by the fact that law enforcement is spread over fifteen – soon more – Member States, each with its own rules and procedures.

The Intergovernmental Conference did not adopt this proposal, so on 31 January 2001 the Commission announced<sup>19</sup> that it would prepare a Green Paper to relaunch the debate on its proposal to establish a European Public Prosecutor, in view of its reconsideration at the next IGC. The Commission still considers that, in the absence of a legal base, modification of the Treaty will be necessary.<sup>20</sup> As requested by the European Parliament, the White

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<sup>17</sup> COM (2000) 608.

<sup>18</sup> *Corpus juris introducing penal provisions for the protection of the financial interests of the European Union* (group chaired by Ms Delmas-Marty). Paris: Economica, 1997.

<sup>19</sup> Commission Work Programme for 2001 (COM (2001) 28).

<sup>20</sup> See Mrs Schreyer's intervention before the European Parliament, in reply to its Resolution of 14.03.2001 on the Commission's annual report for 1999.

Paper will especially deepen the Commission's reflections on the tasks and functioning of the public prosecutor with regard to the protection of the Community's financial interests. It is to be adopted before the end of 2001, in view of the Laeken European Council. In the course of 2002, consultations will be launched with interested parties on the largest possible basis.

### 1.2.2. *Judicial cooperation in penal matters*

The European Council that was held on 15 and 16 October 1999 in Tampere, at a special meeting devoted to the area of freedom, security and justice, called inter alia on the Council to adopt a legal instrument allowing for a *European judicial cooperation unit (Eurojust)* to be established by the end of 2001. The Commission contributed to the negotiations for the draft Council decision on Eurojust with a communication adopted on 22 November 2000 (COM (2000) 746 final). Here the Commission specifies that with regard to criminality affecting the Community's financial interests, it will be necessary to establish close cooperation between OLAF and Eurojust to ensure that each brings its value added, in accordance with its mission and its field of competence.

The Tampere European Council also addressed the question of mutual recognition as regards judicial cooperation, a question which had already been discussed at the Cardiff European Council, in 1998. On 26 July 2000, the Commission adopted a communication<sup>21</sup> calling for the adoption of an arrangement for mutual recognition of final judgments in criminal matters between the Member States of the European Union. The aim was to initiate detailed discussions, in an area where traditional judicial cooperation is characterised by the slow, complex and uncertain principle of the "request" (between non-obliged sovereign States)<sup>22</sup>. The communication proposes to find answers to a number of related questions (mutual recognition of judgments imposing fines in general, measures concerning the criminal record of a person, the forfeiture of rights, substitute sentences and judicial review, confiscation of assets after sequestration, for example).

## 1.3. **Crime prevention**

More generally, the Commission believes that the anti-fraud strategy should be supplemented by a general crime prevention approach. To this end, it adopted a communication on 29 November 2000 (COM(2000) 786 final) on crime prevention in the European Union, which proposes a European strategy consisting of developing crime prevention in European Union policies, improving familiarity with the phenomena of crime and networking all those active in prevention (public bodies, enforcement and judicial authorities, members of the business world and civil society).

The implementation of this strategy should, among other things, enjoy European Union financial support, for which the Commission proposes a

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<sup>21</sup> [Commission Communication of 26 July 2000 \(COM\(2000\) 495\)](#).

<sup>22</sup> This communication was supplemented by a Commission and Council work programme on mutual recognition, adopted in December 2000 (OJ C12 of 15.01.01).

Council Decision establishing a programme of encouragement, exchanges, training and cooperation in the field of crime prevention (Hippokrates).

## **2. PROTECTION OF THE COMMUNITY'S FINANCIAL INTERESTS: NOTEWORTHY DEVELOPMENTS IN THE SECTORAL FIELDS**

### **2.1. Customs duties and indirect taxation**

#### *2.1.1. Customs arrangements*

Customs transit is one of the pillars of integration in Europe and is of vital interest to European companies. It enables goods to move with temporary suspension of the duties and levies normally applicable to goods imported into the European Community or moving between the Community and its partners.<sup>23</sup> For the countries of Central and Eastern Europe, access to the common transit procedure plays a key role in their pre-accession strategy. In recent years the financial impact of frauds in the context of transit operations has meant considerable losses for the national budgets and Community.

To boost the reliability of transit procedures, the Customs Code was first amended to make transit operations secure (control of the end of the operations, procedures for recovery of the debt).<sup>24</sup> The reform as a whole aims to reduce both the risks attached to persons responsible for the transit operations (reliability criteria for giving operators the benefit of the simplified procedure) and the risks attached to goods moving under cover of a transit declaration, with suspension of duties and levies (amount of the guarantee must match the financial risk attached to goods).

The other aspect of this reform is the *computerisation of customs transit procedures*. The establishment of the European plan for a computerised network for the management and monitoring of movements of goods in transit is based on multinational administrative cooperation. The New Computerised Transit System (NCTS) was launched in May 2000 and will be extended gradually, both geographically and functionally, to all the Member States and to the countries which are contracting parties to the common transit convention of 20 May 1987.<sup>25</sup>

On 16 November 2000, an agreement was reached in the Council on a revision of the Customs Code<sup>26</sup> to facilitate computerisation of the customs

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<sup>23</sup> The European Free Trade Area and the Visegrad countries (Poland, Czech Republic, Slovakia, Hungary, in the framework of the Common Transit Convention) are currently concerned, as are the 64 countries that are currently parties to the TIR Convention.

<sup>24</sup> Parliament and Council Regulation (EC) No 955/1999 of 13 April 1999 amending Council Regulation (EEC) No 2913/92 with regard to the external transit procedure (OJ L 119, 7.5.1999), supplemented by amendments to the provisions implementing the Customs Code (Commission Regulation (EC) No 2787/2000 of 15 December 2000 - OJ L330 of 27.12.2000) and the Protocols to the Common Transit Convention (Decisions No 1/2000 of the EC-EFTA Joint Committees of 20 December 2000 - OJ L9, 12.1.2001).

<sup>25</sup> Germany, Spain, Italy, Switzerland, Norway, the Netherlands and the Czech Republic.

<sup>26</sup> Parliament and Council Regulation (EC) No 2700/2000 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 311 of 12.12.2000).

declaration and the modernisation of procedures (easing of customs operations with an economic impact). This amendment aims to better protect operators acting in good faith who import assets under a preferential scheme on the basis of a declaration of origin provided by the third country's authorities, by introducing safeguard measures against errors by these authorities which engender losses of benefits and corresponding customs debts. Good faith, however, cannot be invoked by an importer when the Commission has issued a warning regarding the sound application of such a preferential treatment to a beneficiary country. Such warning ensures that interested parties are advised against the risks of importing from such a country.<sup>27</sup>

### 2.1.2. *Indirect taxation*

Fraud in respect of VAT and excise duties primarily concerns the revenue of the national public treasures, but it also has an impact on the share of VAT which constitutes the Community's own resources, as defined by Article 2 of the own resources Decision. It also has a link with organised crime, which makes use of all available instruments (tax evasion, financial fraud, corruption and trafficking) to thwart fair economic competition. The level of serious VAT fraud in intra-Community trade is already high and rising (increasing number of "carrousel" cross-border frauds).

A report adopted on 28 January 2000<sup>28</sup> noted that Member States still had not adapted their value added tax (VAT) control systems to take account of the removal of tax controls at borders, more than six years after their removal. Following the recommendations issued by the anti-fraud subcommittee of the Commission and by the Council *ad hoc* working party on tax fraud, the Economic and Financial Affairs Council of 5 June 2000 invited the Member States to rationalise the information exchange system and adapt their control systems. It also asked the Commission to make proposals on the basis of the recommendations of the *ad hoc* group.

The Commission announced in its communication to the Council and to the Parliament that, in order to *improve the operation of the VAT system in the internal market*<sup>27</sup> it will propose a reinforcement of the current legislative provisions with regard to administrative cooperation and mutual assistance. This report also recommends that the Member States should develop risk analysis systems in order to target limited resources on the tax authorities. Within the framework of its powers, the Commission has encouraged initiatives from the Member States in this area, by financing exchanges of officials and seminars on risk analysis through the FISCALIS programme.

In relation to excise duties, following the recommendation of the high level group on tobacco and alcohol fraud, the Commission approved a feasibility

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<sup>27</sup> [Commission Communication to the Council and the European Parliament, 8.9.2000 \(COM\(2000\) 550 final\).](#)

<sup>28</sup> [Report on administrative cooperation in the field of indirect taxation VAT collection and control procedures - COM\(2000\) 28 final.](#)

study on the possibility of setting up a computerised system for the movement and control of goods subject to excise duties. Furthermore, work has been going on with the aim of improving the functioning of the previous information system put in place in December 1998.

## **2.2. Traditional own resources**

In 2000, a legislative initiative was taken in relation to the Communities' own resources: the publication of *Council Decision 2000/597/EC, EURATOM* of 29 September 2000 relating to the *system of traditional own resources*, which will take effect from 1.1.2002<sup>29</sup>). This decision, which will enter into force after ratification by all the Member States, allows the Member States to retain, as collection expenses, 25% of amounts recorded after 31.12.2000 (against 10 % before).

The entry into force of codifying Council Regulation (EC, EURATOM) n° 1150/2000 of 22 May 2000<sup>30</sup> is only a preliminary step in the framework of the ongoing work aiming to modify the implementing rules of the own resources Decision.

## **2.3. Agriculture**

### *2.3.1. The banana import rules*

Following the discovery of fraud in connection with the use of false banana import licences (see chapter on Cooperation and Partnership), the Commission adopted a regulation aiming to strengthen controls in this sector.<sup>31</sup> The new provisions aim to ensure that tariff quota schemes are properly applied, in particular through checks on the authenticity of licences on the basis of periodic cross checks carried out jointly by the customs authorities where the procedures for release for free circulation are carried and the competent authorities of the Member States where licences are issued. To this end, the regulation imposes obligations on customs authorities as regards keeping and passing on licences. The Commission will regularly transmit to customs authorities a list of operators registered under the banana import arrangements.

### *2.3.2. Decisions on clearance of accounts*

Within the framework of the common agricultural policy, the clearance of accounts procedure is a vital instrument for controlling expenditure and provides an incentive to reduce the number of irregularities by improving control and audit systems: it makes it possible to recover amounts paid without sufficient guarantee as to the legitimacy of the payments or the reliability of the relevant Member State's control and audit systems. In 2000,

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<sup>29</sup> With the exception of Articles 2(3) and 4, which will take effect from 1.1.2001.

<sup>30</sup> Regulation codifying the successive changes of Council Regulation (EEC, EURATOM) n° 1552/89 of 29 May 1989 (OJ L 130 of 3.05.2000).

<sup>31</sup> [Regulation \(EC\) No 1632/2000 of 25 July 2000 amending Regulation \(EC\) No 2362/98 laying down detailed rules for the application of Council Regulation \(EEC\) No 404/93 regarding imports of bananas into the Community.](#)



the Commission recovered from the Member States € 633.6 million unduly spent on 1996-1999 financing.<sup>32</sup> This involves funds recovered on grounds of inadequate control procedures or failure to comply with Community rules on agricultural expenditure (insufficient number of inspections, shortcomings in the risk analysis procedure, failure to comply with periods allowed for payment of aid etc.), including funds recovered as a result of inspections conducted by Commission departments.

The recovered amounts have been directly taken off the monthly advance payments made to Member States. The financial corrections made by the agricultural expenditure authorising officer concern all the Member States, but there are considerable differences between the amounts to be recovered.

#### **2.4. Structural measures**

On 12 July 2000, the Commission presented two proposals for Regulations as well as guidelines concerning, on the one hand, the *improvement of the financial management and control of Structural Funds expenditure* and, on the other hand, the application of *financial corrections* in the event of irregularities in the management of funds. These new initiatives were adopted pursuant to the general regulation on the Structural Funds which provides in general terms for decentralisation of the Funds and stronger financial management.<sup>33</sup>

The proposed detailed rules encourage the Member States and their regions to define the respective responsibilities of the various actors involved more clearly – at national and regional level – in the management and control of structural measures, and thus to reduce errors in the implementation of the funds. When irregularities occur and Member States do not carry out the necessary recovery measures, the Commission will be able to make financial corrections for the Member States by the procedure laid down by the new provisions<sup>34</sup>.

#### **2.5. Direct expenditure**

In a more specific area of direct expenditure, the Commission adopted a Communication on the *reform of the management of external aid* on 16 May. The document identifies a number of measures to strengthen financial management, the quality and speed of implementation of external aid projects, where expenditure has tripled in the last ten years and now accounts for 62 % of all programmes managed directly by the Commission. Several

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<sup>32</sup> [Conformity decisions of 1 March and 5 July 2000, in accordance with Article 7\(4\) of Council Regulation No 1258/1999 of 17 May 1999 relating to the financing of the common agricultural policy \(OJ L 160, 26.6.1999\), and Decisions of 14.02.2000 and 28.04.2000 \(OJ No L 57 of 2.3.2000 and No L 104 of 29.04.2000\).](#)

<sup>33</sup> [Council Regulation \(EC\) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds.](#)

<sup>34</sup> Procedures established by the guidelines defining the principles, the criteria and the indicative ceilings to be applied by Commission services for the determination of the financial corrections intended by article 39, paragraph 3 of Regulation (EC) N° 1260/1999 (adopted at the same time as the two implementing regulations).

measures should contribute to more effective management of what has become one of the most visible fields of action of the Union: the creation of a single body to implement projects, a high degree of decentralisation of management towards the Commission's external delegations and the authorities of recipient countries, the introduction of stricter completion periods (adaptation of the Financial Regulation), the elimination of old and dormant commitments and a clearer definition of responsibilities within the project cycle.

Acting on one of the central recommendations of the Communication, the Commission decided to set up EuropeAid from 1 January 2001 as the sole cooperation office responsible for implementation of all Commission external aid instruments<sup>35</sup>.

## **2.6. Intersectoral measures: recasting the Financial Regulation**

Independently of the White Paper on Reform<sup>36</sup>, but with the same objective of improving financial management, notably by simplifying and updating the rules, the Commission submitted on 17 October 2000 a *proposal for recasting the Financial Regulation*.<sup>37</sup> This proposal aims at unifying the basic principles and rules governing the budget and financial management and the more precise rules applicable to specific budgetary fields: public contracts and subsidies, accounting and financial statements, external action, EAGGF Guarantee Section, Structural Funds, research, administrative appropriations.

Pending the final adoption of the new Financial Regulation, certain transitional measures have already been implemented in 2000: in particular, audits and ex post controls have been decentralised.

## **2.7. Implementation of Commission reform**

On 1 March 2000, the Commission presented its overall strategy for internal administrative reform, together with an action plan<sup>35</sup>, taking as a starting point the two reports of the Committee of Independent Experts. One of the priorities of this White Paper concerns financial management and control in the departments, which was the first package of reforms implemented from 2000. In addition, the White Paper incorporates several measures to contribute to boosting the protection of the Community's financial interests.

Other measures appearing in this White Paper refer to the reform of disciplinary procedures and of warning procedures which allow for an improvement in the prevention and the sanctioning of fraud and the protection of the financial interests of the Community. The communications of the Commission on the reform of disciplinary procedures and on awareness-raising in relation to serious malfunctions, and the draft decision

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<sup>35</sup> [Decision of 29 November 2000.](#)

<sup>36</sup> [White Paper: Commission Reform, COM\(2000\) 200 final.](#)

<sup>37</sup> [Proposal for a Council Regulation \(EC, ECSC, Euratom\) laying down the Financial Regulation applicable to the general budget; COM \(2000\) 461 final.](#)

of the Commission on the creation of an investigations and disciplinary office are all part of this improvement.

### 2.7.1. *The improvement of financial management and control*

Several initiatives appearing in the Reform White Paper refer to the improvement of financial management and control: this involves in particular actions 78 to 83<sup>38</sup>, which represent a deep-seated restructuring of the system of management, audit and control: integration of controls into the management process and definition of minimum control standards, abolition of the “ex ante approval” of commitments and payments by the Financial Controller, increased responsibility to be borne by financial managers in the various Directorates-General under the supervision of a new internal audit service (IAS) and under the general monitoring of an Audit Monitoring Committee made up of three Commissioners as well as an external expert, and presided over by Mrs Schreyer.

*The new Commission approach to internal audit* was clarified by guidelines and charters on the three main pillars of the new system – internal audit structures, the IAS and the Audit Monitoring Committee.<sup>39</sup> A charter was added in December 2000, defining authorising officers’ powers and the new internal control rules.

In the context of focusing the Community administration on its core functions, which constitutes one of the priorities of this White Paper, the Commission adopted its Communication on the externalisation of Community programme management, as well as a proposal for a outline decision for a new type of implementation agency.<sup>40</sup> These new agencies should enable the Commission to carry out Community programmes with the requisite flexibility and specialisation while preserving responsibility for management and policy-making. They thus form the core component of the consistent and controlled externalisation strategy that the Commission committed itself to developing at the end of 1999 in order to correct malpractice in the form of uncontrolled use of certain technical assistance offices (BATs).<sup>41</sup>

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<sup>38</sup> Section XXVII – Management and financial control within the Directorates-General, Actions 78 to 83: minimum control standards, Separation of financial tasks and circuits, Evolution of the role of financial units inside the Directorates-General, Reinforcement of the control function of the Directorates-General, Declaration of the Director-General in his annual activity report, Sufficiency of personnel.

<sup>39</sup> Documents adopted on 31 October 2000.

<sup>40</sup> Communication from the Commission: Externalisation of the management of Community programmes including presentation of a framework regulation for a new type of executive agency; Proposal for a Council Regulation laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (COM (2000) 788 final, 13.12.2000).

<sup>41</sup> See the second report of the Independent Experts on the reform of the Commission, Analysis of current practices and proposals to remedy mismanagement, irregularities and fraud, in particular Chapter 2 on direct management, externalisation and BATs (Doc. 381655, 10.09.1999).

### 2.7.2. *The protection of the Community's financial interests in the White Paper*

The White Paper also contains several measures to boost the protection of the Community's financial interests: the point here is to fraud-proof legislation and financial management rules and procedures as far as possible and regulate cooperation between Commission departments and between them and the Member States more effectively. Actions 92 to 98<sup>42</sup> provide also for guidelines on *sound project management* to make officials and recipients aware of conduct during the programme and project cycle which can cause unintentional errors, conflicts of interests and irregularities.

The time-frame for implementing these actions is 2001, partly because of the time needed to set up the European Anti-fraud Office, with two exceptions: the optimisation of the early warning system and the improvement of the debt recovery procedure. The Reform White Paper called for the introduction on the long term of a central data base which would facilitate the management and the follow-up of contracts and grants attributed directly by the Commission, and for a mechanism making it compulsory to consult it before entering a commitment in the accounts. Given that the new system will only be set up in 2001, the Commission decided, during its meeting of 31 October 2000, to better define the responsibilities of the services involved and to increase participation by authorising departments.

As regards the *improvement of recovery procedures with regard to expenditure directly managed by the Commission*, a new initiative was also introduced in 2000. To increase both the recovery rate of funds wrongly paid out (which amounted to approximately 71% of outstanding amounts in 1999) and the speed of recovery, a Commission communication of 13 December 2000<sup>43</sup> proposes improving the distribution of tasks between authorising officers and accounting officers (greater responsibility of administrative departments for pursuing debtors), developing management tools and redefining the role of the various actors involved in recovery – authorising officers, accounting officers and the departments directly concerned (Directorate-General for Budgets, Internal Audit Service, Central Financial Service, Legal Service and – in cases of suspected fraud or irregularity – OLAF).

It is planned to give general responsibility to OLAF when a case calls for a criminal prosecution, so that OLAF can take the requisite action allowing the Commission to participate as a civil party in proceedings in appropriate cases.

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<sup>42</sup> Chapter XXX of the White Paper, Actions 92-98: Guidelines for good project management, Improvement of coordination between OLAF and other services, "Fraud-proofing" of legislation and contracts, Optimisation of the early warning system, More efficient recovery of unduly paid funds, Improved management of the Structural Funds, Improvement of the clearance of accounts procedure in the framework of the EAGGF.

<sup>43</sup> [Communication on the White Paper's Action 96: More efficient recovery of unduly paid funds.](#)

### **3. THE OPERATION OF OLAF**

#### **3.1. A new structure**

On 27 September 2000, the European Anti-fraud Office adopted a new transitional organisation chart. The primary objective of the new administrative structure is to ensure continuity in work started by the old UCLAF and prepare for reorganisation of the Office to adapt to the new tasks and policy guidelines set by the legislation of 1999. It substantially meets the challenges identified by the overall strategic approach for the protection of financial interests and fraud prevention,<sup>44</sup> adopted by the Commission on 28 June 2000.

The transitional structure of the Office comprises two directorates: a new directorate for investigations and operations and a second one for “investigations and operations”. The already existing “intelligence” unit has been completely modified and is attached directly to the Director general. The accent has been placed on the intelligence function, both as regards the focus of the operational strategy and with regard to assistance to Member States.

The new directorate for investigations and operations, which is based on two pools of investigators, which aims to be a flexible and effective work structure covering all support activities (internal and external coordination of investigations and operations). The horizontal Directorate for Policy, Legislation and Legal Affairs combines magistrates and other experts responsible for assistance with monitoring fraud cases with the national legal authorities and the preparation of cases in the Office itself. In addition to a service responsible for legislation and legal affairs within the Office’s sphere of jurisdiction, the directorate is in charge of general matters and inter-institutional relations as well as for fraud-proofing and administrative and financial follow-up.

In accordance with the overall strategic approach of the European Commission concerning the fight against fraud, the Office must adapt its structure, in particular to develop its knowledge of the economic and criminal environment (fraud mechanisms, structure of criminal networks). To this end, it must improve risk analysis and better use of operational information from Commission departments, the other Community institutions and bodies such as the Court of Auditors, the Central Bank, international authorities such as Europol, Interpol, the World Customs Organisation etc. and the national authorities. As thus organised the Office is to perform more effective data gathering and analysis functions to assist the Commission as a whole and operational departments in the Member States and in third countries and work out an operational strategy.

The new structure aims consequently to constitute a genuine platform of services in all the sectors of its competence by putting its know-how and multi-disciplinary experience at the disposal of all Commission departments

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[COM\(2000\) 358 final.](#)

which contribute to the protection of financial interests and of all the national organisations or authorities. The Director intends to coordinate and ensure consistency between the various tasks assumed by the Office – operational activities, strategic intelligence, improvement of the legislative framework and liaison with the national judicial and police authorities. The intelligence function, at the heart of this Community platform of services, will enable the Office to contribute to the organisation of close and regular cooperation between authorities responsible for protecting the financial interests of the Communities against fraud, money laundering, corruption and any other illegal activity. The new pool of magistrates for its part will work for a better criminal-law treatment at national level of serious, often organised, crime.

### **3.2. The power of investigation of the European Anti-fraud Office**

This is conferred by Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999, adopted on 25 May 1999 by Parliament and the Council, which provide that OLAF is to carry out within the institutions, bodies, offices and agencies set up by or on the basis of the treaties administrative investigations for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the European Community and to investigate serious matters relating to the discharge of professional duties. In accordance with Article 4 of the two Regulations, each institution, body, office and agency is to adopt the necessary provisions laying down the conditions and procedures for implementing the regulation.

The European Central Bank and the European Investment Bank, however, stated that they do not recognise the explicit power of OLAF to act within their institutions.<sup>45</sup> The need to give full effect to the anti-fraud rules was stressed by the Heads of State or Government. The Commission, while recognising that the implementation of Regulations (EC) No 1073/1999 and N° 1074/1999 must fully respect these two institutions' functional independence, considers that their decisions are not compatible with the Regulations of 25 May 1999<sup>46</sup>. It consequently decided on 12 January 2000 to bring an action in the European Court of Justice.

### **3.3. An overall anti-fraud strategy**

Following major legislative and organisational changes in 1999 and early 2000, the Commission approved a proposal aiming to consolidate the Union's anti-fraud policy on 29 June 2000. The *communication on an overall strategy for the fight against fraud and the protection of financial interests* describes the major challenges which must be taken up by the Community and the Member States.

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<sup>45</sup> [Decision of the European Central Bank of 7 October 1999 on fraud prevention \(OJ L291, 13.11.1999\)](#) and [Decision of the EIB Steering Committee, notified to the Commission on 16 November 1999 \(regarding its activities in relation to own resources\)](#).

<sup>46</sup> Action filed by the Commission on 14.01.2000 against the ECB and Action filed by the Commission on 19.01.2000 against the EIB (Cases C-11/00 and C-15/00, OJ C 122 of 29.04.2000).

The protection of financial interests is a matter for the entire Commission, as well as the other institutions and the Member States. The strategy stresses the need to combine prevention with the fight against fraud in order to guarantee effective and equivalent protection throughout the Community: this goes from the systematic incorporation of anti-fraud provisions in the Commission's legislative and political initiatives to reinforcing the legal instruments for detecting, controlling and punishing frauds. The development of a culture of cooperation between all the competent authorities requires changes in the structure of the OLAF so that it can give expertise and operational support to the national authorities and become a genuine multidisciplinary platform of services.

The fight against fraud in the institutions aims to make all Commission staff aware of the need for prevention and to make effective OLAF's independent power of internal investigation in all the Community institutions and bodies, as desired by the legislature. The fourth challenge refers to strengthening the criminal-law dimension, via close cooperation between the Commission and the Member States' judicial authorities to remove obstacles raised by the complexity of cases and problems of compatibility between national legal systems. The strategy was presented to the Economic and Financial Affairs Council on 17 July 2000 and to Parliament, which approved it.<sup>47</sup>

### **3.4. Reporting**

The Commission is required by Article 280(5) of the EC Treaty to report in its annual report on global measures taken to protect financial interests by itself and the Member States.<sup>48</sup> In addition, the European Anti-fraud Office is required to report regularly on its operational activities by Article 12(3) of Regulation No 1073/99. The first report of this kind, covering the period between 1 June 1999, when OLAF was set up, and 31 May 2000, was adopted on 23.5.2000: it analysed the Office's powers and procedures under the legislation and its operational activities in statistical and quantitative terms, and presented a series of questions likely to serve as a base for future guidelines. In order to balance its reporting activity during the year, the Office will adopt its report for 2000 during the second half of 2001.

The OLAF Supervisory Committee presented its first activity report, in accordance with Article 11(8) of Regulations Nos 1073 and 1074/99.<sup>49</sup> This report describes the establishment of the Supervisory Committee and the transition from the old Unit for the Coordination of Fraud Prevention to OLAF, and clarifies its relations with the Office. The Supervisory Committee also recommended improvements to procedures and monitoring techniques, in particular the assignment of magistrates to legal advice and support functions in relation to investigations.

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<sup>47</sup> [European Parliament Resolution of 13 December 2000.](#)

<sup>48</sup> [First Annual Report \(1999\) adopted on 8.11.2000 \(COM\(2000\) 718 final\).](#)

<sup>49</sup> [Activity report July 1999–July 2000 \(OJ C 360, 14.12.2000\), approved by the Council on 5.12.2000.](#)

#### **4. COOPERATION AND PARTNERSHIP**

Member States, in particular within the Advisory Committee on Fraud Prevention, wished the Commission Report to comprise some illustrations of cooperation with operational authorities. What follows therefore provides examples of what cooperation and partnership between national authorities for the protection of the Community's financial interests in various Community sectors can consist of, and of the potential value added by the Office's involvement.

##### **4.1. With the Member States**

###### *4.1.1. Cooperation with internal audit services in the field of traditional own resources*

In the field of the traditional own resources, the Commission, and more particularly the Directorate-General for Budgets, works to establish close links with internal audit services in the Member States in the framework of cooperation based on the principle of the Joint audit initiative. This operation has two clearly-stated objectives: to increase the Member States' responsibility in relation to their obligations to protect the Union's financial interests and to anticipate the necessary changes to control methods as the Union is enlarged.

Following an exchange of experience between the audit services of the Member States, the Commission set up an Audit Sub-group in the Advisory Committee on Traditional Own Resources to provide the necessary impetus for this form of partnership. The Commission is thus developing a new approach to cooperation with the Member States in the control of traditional own resources. It hopes that in the future it will be able to scrutinise their legislation for compatibility with Community legislation on the basis of independent controls carried out by the audit services of the participating Member States.

This new way of voluntary cooperating enables the Commission test another approach to controls: instead of controlling the Member States itself, it would leave these Member States' internal audit services to carry out their work on predefined topics and then check the national audit teams' findings.

A pilot action on external Community transit in the Netherlands, in partnership with the Commission, in November 2000 yielded very good results. Two new actions with Denmark and Austria will be tried out in 2001. The Commission is ready to start negotiations with other Member States with an internal audit system or another type of control system with the necessary level of independence, in order to include the greatest possible number of Member States in this initiative.

The Commission is convinced that this approach offers major potential and makes it possible to target controls more accurately while securing the credibility of the Member States' activities.



#### 4.1.2. *Operational cooperation*

##### 4.1.2.1. Illicit trafficking in products containing butter

Since October 1999 OLAF has been coordinating judicial investigations in Italy, France and Belgium concerning fraudulent trafficking in products declared as Italian serum butter and sold by companies belonging to a group closely linked to a Neapolitan criminal organisation. The Community interest lies in the fact that goods adulterated in Italy then sent on to France and Belgium were then exported as butter oil with payment of refunds or sold on the internal market as pastry butter with production aid. The investigation also provided an opportunity to examine these products in terms of their suitability for human consumption; no health hazards were detected.

At the beginning of 1999, the Naples Prosecution Service launched investigations into a group of companies used by the criminal organisation for its business and tax frauds. Following this investigation, several arrests were made for complicity in homicide and other criminal activities.

The Italian Magistrate then asked OLAF for assistance with the coordination of proceedings between the various Member States concerned. The subsequent investigations determined that an Italian company had sold a product presented as butter to companies in several Member States.

An information was laid in France and international letters rogatory were exchanged between national judicial authorities. In June 2000, these investigations led to simultaneous operations in Italy, France and Belgium with technical and operational support from OLAF. Searches carried out simultaneously in all three countries made it possible to seize significant quantities of adulterated butter and make a large number of arrests in Italy and France. It is established that between 1995 and 2000, approximately 35 200 tonnes of adulterated butter were sold, containing not only butter but non-dairy animal fats and vegetable and synthetic fats. These goods were acquired by several French, Belgian and German companies.

The investigations continues in the Member states concerned. Evidence was also gathered that the main impact of the traffic was the financial loss to the Community budget (which remains to be evaluated precisely). So far, the analyses conducted by the experts on the seized goods have not established any direct hazard for the consumers' health<sup>50</sup>.

##### 4.1.2.2. Illegal dollar banana imports in the Community under cover of false import licences

Within the framework of annual tariff quotas, banana imports from Latin and Central America covered by AGRIM import licences are eligible for a reduced customs duty rate (€75 instead of €680 per tonne). Making this specific arrangement secure consequently helps to enforce the Community's

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<sup>50</sup> See the Press notes of the Office, OLAF/07/2000 of 05.07.2000 and OLAF/10/2000 of 19.12.2000.

commercial policy and make certain aspects of its development policy work more effectively.

In the middle of 2000, at the Office's initiative, the Italian and Belgian authorities were informed of facts warranting administrative and criminal investigations into organisations responsible for establishing and using false licences for illegal banana imports in the Union.

Joint investigations by OLAF and the national authorities revealed that bananas were released for free movement with false AGRIM licences, mainly in Italian and Belgian ports. Subsequent investigations made it possible to identify similar operations in Spain, Greece, Germany and Portugal. Investigations are continuing to identify all the false licences.

It has been established so far that between the beginning of 1998 and the middle of 2000, at least 220 000 tonnes of bananas were imported with false licences. The amount of duties evaded is currently estimated at €164 million, but it could turn out to be considerably higher.

Following this detailed investigation, the Commission immediately adopted precise rules to strengthen controls of banana imports. These make it possible in particular to check the authenticity of licences (see Point 2.3.1).

#### 4.1.2.3. The fight against cigarette fraud

High-level cooperation between OLAF and the Member States is constant in the fight against cigarette fraud. This is one of the most serious problems affecting the Community's financial interests and the national budgets. OLAF gave its assistance to the national authorities responsible for investigations and the judicial consequences, in particular in order to target international cigarette smuggling and the organisers of this illegal activity. OLAF and Member States cooperated in particular on the preparation and implementation of several letters rogatory. OLAF also cooperated closely with the competent authorities of several non-member countries.

As regards specific cooperation projects, OLAF, having received information from Austrian customs, contacted the Greek authorities and found a lorry ready to leave the port of Patras with 4.3. million smuggled cigarettes. The cigarettes were seized and the driver arrested. Alerted by the Dutch authorities to a container of cigarettes seized in Rotterdam and of suspicions regarding another container bound for Portugal, OLAF informed the Portuguese authorities. They seized the container and identified four other containers at various locations in the country. A total of 39.9 million (counterfeited) cigarettes were seized.

On a proposal from OLAF, the judicial authorities at Genoa (Italy) produced a search warrant against a bonded warehouse involved in cigarette smuggling. In the presence of a representative of OLAF, the search conducted at the company made it possible to seize a number of T1 documents relating to consignments of cigarettes for African countries but cleared with false customs stamps. These searches also revealed a link with a US resident involved in international cigarette trafficking and the existence

of VAT fraud. This clearly illustrates the fact that criminals are often involved in several types of fraud and that their fraudulent operations are highly professional.

The Italian judicial authorities also informed OLAF of difficulties encountered in cooperation with the Swiss authorities, during their investigations into cigarette smuggling and money-laundering. OLAF has endeavoured to establish cooperation with the Swiss authorities. On the basis of administrative arrangements concluded with the Swiss Office of Integration in 1999, OLAF arranged ad hoc meetings with them and representatives of the Italian Prosecution Service in Rome. The arrest in Switzerland of several persons, including a judge and one of the principal organisers of cigarette smuggling towards the Community, is a direct result of the close liaison established between the relevant authorities.

In addition, in November 2000, the Commission commenced a civil action on behalf of the Community and several Member States against certain American cigarette manufacturers in the New York East District Court. This action, based on the active participation of criminal groups in smuggling, is for compensation for financial losses to the Community's own resources and an injunction to cease smuggling. So far, ten Member States decided to join this action, for they have a twofold interest in recovering excise duties and VAT on the cigarettes smuggled and in defending the interests of the European Community.

#### 4.1.2.4. Coordinating investigations in the Structural funds

In the context of seeking to improve the coordination of different Member State investigative authorities and an improved collaboration with OLAF in the undertaking of investigation of allegations of serious irregularity and fraud in the Member States in the area of Structural Funds, OLAF has assisted in the establishment and development in the United Kingdom of an Intergovernmental Fraud Response Liaison Group.

This group, created principally for the protection of both Member State and EC funds, comprises the senior members of the fraud investigation services of all key UK government departments.

Its principal purpose, and one encouraged by OLAF in the context of joint investigations under Regulation 2185/96, is to facilitate a unified and coordinated approach to investigations.

Following the first major investigation completed in October 1999 with the FRLG with the collaboration of investigators from 4 UK government fraud investigation services, the case was referred to the competent national judicial authorities. Financial recoveries are currently under way or are being enforced in respect of amounts irregularly obtained both from the European Social Funds (c. £ 4 M) and the Research and Technological Development budget of the Commission (c.£ 3 M).

In 2000 a second investigation was undertaken into allegations of serious irregularities in possible breaches of EC Public Procurement Regulations and

in the use of both ERDF and ESF monies (up to £ 15 M). The investigation, in the course of being finalised, involved the coordination of investigators from OLAF and 4 different competent investigative authorities in the UK.

## **4.2. Mutual assistance with the countries applying for accession**

### *4.2.1. Administrative cooperation*

With regard to aid for the restructuring of agriculture in the applicant countries of Central and Eastern Europe, the Commission, in June 2000, adopted the regulation on the financial management of the Special Accession Programme for Agriculture and Rural Development (SAPARD), which has an annual budgetary appropriation of €529 million until 2006.<sup>51</sup>

This regulation is based in particular on the principle that management is fully decentralised to the applicant countries' management authorities and that the procedure for EAGGF Guarantee Section accounts applies. It thus aims to ensure the rapid implementation of programmes, the proper use of appropriations and the effectiveness of SAPARD controls throughout the programme period (2000-06). It is also an element which encourages the preparation of the applicant countries for the management of Community aid after accession.

The adoption of this Regulation preceded the signature with the applicant countries of multiannual financing agreements, which comprise rules of financial control equivalent to those which apply within the framework of EAGGF Guarantee Section,<sup>52</sup> in particular the anti-fraud rules in the 'acquis communautaire', including the financial regulation.

### *4.2.2. Operational cooperation*

To set up an operational and multidisciplinary structure in Poland with the specific task of protecting financial interests, the general inspectorate of the Polish customs was allotted PHARE programme financing of €3.5 million in 1999. The conditions for implementing the project were therefore in place in good time: three experts from the Member States and an OLAF official were designated to assist the Polish authorities.

An administrative arrangement between OLAF and the general inspectorate of the Polish customs was negotiated to determine administrative and operational relations between the European experts and the Polish team. The project moved on to the operational phase in Warsaw on 1 January 2000.

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<sup>51</sup> [Commission Regulation \(EC\) No 2222/2000 of 7 June 2000 laying down financial rules for the application of Council Regulation \(EC\) No 1268/1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period: OJ L 253, 7.10.2000.](#)

<sup>52</sup> [Between November 2000 and March 2001, such conventions were signed with Bulgaria, Estonia, Latvia, Poland, the Czech Republic, Slovakia, Romania, Hungary, Slovenia and Lithuania, in accordance with Article \(9\) of the SAPARD Council Regulation N°1268/1999.](#)

### 4.3. Mutual assistance with non-member countries

Among several agreements on mutual assistance with various third countries<sup>53</sup>, the Commission wishes to draw attention to two recent developments which are particularly relevant as regards the fight against fraud and the protection of financial interests.

#### 4.3.1. *Draft cooperation agreement with Switzerland to fight against fraud and the other illegal activities to the detriment of the financial interests of the Communities, of the Member States and of Switzerland*

The conventions and protocols with Switzerland, including the 1997 protocol on mutual assistance in customs matters, have a limited impact, partly because of their restrictive interpretation in Swiss law. That creates problems of practical application for the purposes of assistance, in particular in cases of fraud involving substantial amounts and organised networks.

In 1997, this situation was criticised in the Report by Parliament's Committee of Inquiry into the Community transit procedure. Parliament recommended giving the Commission a mandate to negotiate an agreement on closer and more effective cooperation in relation to customs fraud and offences.

Exploratory discussions with the Swiss authorities resulted in a number of specific recommendations on measures to be taken to improve cooperation. These discussions were completed in December 1999, the two parties agreeing to prepare the negotiation of an agreement.

On 14 December 2000 the Council authorised the Commission to negotiate such an agreement with Switzerland, which should be concluded before the end of 2001. This agreement aims to strengthen cooperation against organised crime to the detriment of the financial interests of the Communities and Switzerland. Given the intensity of economic relations between the Communities and Switzerland, which will soon be further intensified on the basis of seven bilateral agreements concluded with Switzerland in 1999, cooperation must take into account the requirements as regards anti-fraud cooperation which already exist in the Union.<sup>54</sup>

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<sup>53</sup> The agreement with Marocco entered into force in March 2000 (OJ L 70 of 18.03.2000). In 2000, negotiations started on a similar agreement with Cyprus and Macedonia (FYROM) and it is envisaged to launch similar agreements with 14 other third countries or candidate countries.

<sup>54</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests: OJ L 312, 23.12.1995, p.1; 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: OJ L 292, 15.11. 1996, p.2; 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: OJ L 82, 22.3. 1997, p.1. Parliament and Council Regulation (EC) No 1073/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF): OJ L

#### 4.3.2. *Mutual administrative assistance in customs matters with Russia*

The European Union and the Russian Federation have established regular cooperation relations, in particular to combat fraud. Under the partnership and cooperation Agreement of 28.11.1997 between the Communities and the Member States on the one hand, and the Russian Federation on the other hand, the parties agreed a protocol concerning administrative mutual assistance for the proper application of Community customs legislation.

In 1999, OLAF was informed of problems encountered by Member States in the payment of Community export refunds, owing to the unreliability of the Russian customs import declarations. The mechanism of evidence of arrival at destination for agricultural products exported to Russia must be improved to avert the risk of financial losses both to the Community budget and to the Russian Federation's budget. As an indication, beef and veal exports to Russia during 2000 were 130 000 tonnes<sup>55</sup>, which represents an amount of refunds of approximately €65 million.

Given the major financial consequences, a prior information system between the Commission and the Russian customs authorities was set up to accelerate procedures and provide, after prior notification, electronic confirmation by the Russian authorities of the arrival of products and their release for the market. This is being done on an experimental basis for consignments of beef and pigmeat. It was envisaged that the centralising organisations of the Member States notify the Commission of any information on the movement of goods by road with the Federation of Russia via the prior information system. This mutual information mechanism was established on the basis of the existing partnership and cooperation Agreement.<sup>56</sup> It became functional on 1 February 2001 and will be reviewed at a later date in the light of experience.

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136, 31.5.1999, p.1; Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office: OJ L 136, 31.5.1999, p.8.

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This exclusively concerns exports to Russia eligible for refunds.

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Commission Regulation (EC) No 2584/2000 of 24 November 2000 establishing a system for the communication of information between central bodies designated by the Member States and OLAF (OJ L 298, 25.11.2000) and administrative arrangement between OLAF and the State Customs Committee of the Russian Federation of 5.7.2000.

## **Title II: Measures adopted by the Member States with a view to protecting the Community's financial interests (1 May 1999 - 31 December 2000)**

Unlike earlier annual Commission reports on the protection of the Community's financial interests, the implementation of the new Article 280(5) of the EC Treaty means that the Member States' activity in this field must also be reported. In comparison with earlier years, a new Title has therefore been added to the present report since 1999.

The new title – “Measures adopted by the Member States with a view to protecting the Community's financial interests” – describes the activity of the Member States (but without statistics) between 1 May 1999, when the Amsterdam Treaty came into force, and 31 December 2000.

To this end, between April and July 2000 the Commission and Member States, in accordance with Article 280(5), jointly drew up a questionnaire primarily covering national legislation and the organisation of inspections. All the Member States answered, first for 1999 (between 1 September and on 18 December 2000) and then for 2000 (between 15 February and 30 March 2001).

The Commission presented for discussion by the Member States the summary and compilation of the replies, first at the COCOLAF meeting on 11 January 2001 on the basis of the contributions for 1999, and then on 6 April 2001, when all the contributions of the Member States for 2000 had been incorporated.

Accordingly, the information supplied by the Member States in response to the questionnaire for 1999 and 2000 are summed up in this report as required by Article 280. These facts and contributions will be summarised in a working paper to come.

But it must be stressed that this report does not for the moment constitute a basis for assessing the implementation of Article 280 by the Member States, in particular with respect to the principles of assimilation and equivalence.

Such an appraisal could be performed only after:

- an analysis of all the laws, regulations and instructions in force, whenever adopted;
- a statistical analysis of the reality, i.e. controls of irregularities detected and the penalties imposed.

Looking beyond the questionnaire itself, this statistical analysis would require, on the basis of Article 280 EC, a harmonisation for statistical purposes of the concepts of control and penalty and annual notification of the Commission of the relevant data.

As matters stand, given the questionnaire adopted for 1999-2000, merely taking stock of the means implemented by the Member States over this period does not make it possible to make an assessment of their respective results in relation to the requirements of Article 280.

Several Member States (in particular Greece, Spain, Ireland, Italy, Austria, Portugal, Sweden and the United Kingdom) provided more or less detailed descriptions of the measures which were in place before the reference period. For the sake of a consistent presentation of the contributions, and despite the interest that this abundance of information, these descriptions were not included in this document, the principal objective of which had been agreed to be an assessment of new measures adopted between 1 June 1999–31 December 2000.

In addition, the Member States did not all have new measures to report in all the areas. This explains why they are not all mentioned every time in each part.



## 5. MAIN CHANGES ON THE LEGISLATIVE AND ADMINISTRATIVE LEVELS

The main area in which there were changes to legislation and administrative practice in the Member States in 1999-2000 was **checks and inspections**. This common factor deserves highlighting and matching with the Commission's desire to harmonise the arrangements governing checks and inspections in accordance with its plan of action 2001-02.

<b>5.1. Own resources</b>		
<p>The measures adopted or in preparation during the report period in relation to own resources focus primarily in one group of Member States (B, E, F, I, A) on changes to the rules for <b>checks and inspections</b> and in a second group on changes to the rules for <b>penalties</b> (DK, EL, S, UK).</p> <p>Two of these Member States (DK, F) changed their rules of criminal law. The Commission, which under its plan of action for 2001-2002 intends to reinforce the criminal-law dimension of the protection of the Community's financial interests, welcomes this.</p>		
<b>Member State</b>	<b>Measure</b>	<b>Date</b>
<b>B</b>	New legislation on the control of banks, insurance companies and the system for issuing securities: notification procedures for officials in the Public Prosecutor's Office and the Insurance Supervisory Body in cases of suspected fraud involving direct and indirect taxes.	25.06.1999
	Protocol of agreement between the Ministry of Justice and the Ministry of Finance to implement new notification procedures in cases of suspected fraud.	1999
	Extension of customs authorities' powers to cover a 12 nautical-mile zone adjoining Belgian territorial waters.	22.04.1999
<b>DK</b>	Amendment of the Criminal Code: harsher penalties in cases of serious VAT fraud, introduction of specific provisions on Community resources fraud.	2000
	Circular issued by the Ministry of Justice to police and public prosecution departments setting out the Commission Decision to set up the European Anti-Fraud Office.	28.12.1999
<b>D</b>	The legislation for combating fraud and irregularities in the field of traditional own resources is considered adequate.	
<b>EL</b>	Bill to amend the Greek Customs Code (penalties, recovery following international fraud under Article 280 EC).	1999/2001
	Instructions from the Ministry of Finance on irregularity reporting via AFIS (Regulation No 515/97).	1999
	Instructions from the Ministry of Finance on the management of Mutual Assistance fiches and investigations.	1999
<b>E</b>	Reinforcement of checks and inspections, notably through mutual assistance with Member States and non-member countries (General tax inspection plan 2000).	June 2000

	Instruction from the Customs and Excise Directorate on the EWS for transit (land-based departments).	March 2000
	Instruction from the Customs and Excise Directorate on risk analysis (powers of central unit/regional sections/bureaux).	
	The General Inspectorate of the public administration has established a national database on public grants and aids.	13.01.2000
<b>F</b>	Act to improve the effectiveness of criminal procedures: conferring powers on certain customs agents to carry out judicial inquiries.	23.06.1999
	Ministry of Justice circular explaining the provisions of the Act of 23 June 1999.	
<b>I</b>	Act No 526: extends the investigation and detention powers of the Guardia di Finanza to irregularities linked to the collection of own resources and Community financing in accordance with the principle of assimilation (Article 280 EC).	21.12.1999
	Note from the Ministry of Finance spelling out customs control procedures.	20.07.1999
<b>A</b>	Preparations are currently underway to transpose the Naples Convention, which increases the powers of the customs authorities, particularly in relation to monitoring.	
<b>P</b>	Decree-Law No 566/99:  ban on post-seizure sales of tobacco;  reinforcement of statutory excise guarantees (IEC) to limit movements of products under suspensory schemes;  imposition of tighter conditions for acquisition of IEC status;  prior notification system for movements of products subject to IEC;  system for sealing alcoholic beverages.	22.12.1999
<b>S</b>	Act No 2000:1225: new provisions concerning penalties for smuggling.	1.1.2001 (entry into force)
	Act No 2000:1281: new provisions concerning customs.	1.1.2001 (entry into force)
<b>UK</b>	Two new legislative measures have been developed:  Section 126 of the 1999 Finance Act, which allows interest to be charged on customs debts, in accordance with Regulation No 2913/92;  preparations for a civil penalty regime for customs duty evasion and other regulatory offences (to be implemented in 2001).	2000

## 5.2. Agricultural expenditure

Most Member States (B, D, DK, E, F, IRL, I, NL, FIN) have amended their provisions relating to checks and inspections of agricultural expenditure. In parallel with this, certain Member States (E, IRL, P, S) reorganised their **information** and risk detection facilities. In its plan of action the Commission envisages a review of the black-list scheme relating to EAGGF Guarantee Section expenditure.

It is noteworthy that two Member States (D, IRL) have adapted their procedures for clearing accounts. The Commission is looking at the question of charging interest on financial corrections (action 98 in the Reform White Paper).

Member State	Measure	Date
<b>B</b>	New legislation on agricultural expenditure:  establishing a warning system and administrative fines;  extending technical means available to Belgian officials to establish offences (observations made by air, at sea or on land);  extending the list of premises officials may access without authorisation of the person under investigation;  introducing the principle of access to all documents and electronic media and powers to seize goods and the means of production.	05.02.1999
<b>DK</b>	Amendment of customs legislation: stricter conditions for obtaining a deferment of payment of customs duty.	2000
	Modification of the procedure for approving customs documents certifying imports in a third country for the differentiated payment of export refunds (all documents are now checked and approved by a special team of experts).	
<b>D</b>	Procedures have been adapted to take account of the reform of the clearance of accounts.  New instructions have been issued by the Regional Funds and the Federal Ministry for Agriculture and Food regarding the treatment of applications for aid, payment, the conduct of administrative and on-the-spot checks, computer checks that controls have been carried out and the notification of irregularities.	1999
<b>EL</b>	Decree on administrative measures in the event of false declarations or fraud.	2000
	Order laying down additional measures in the tobacco sector (approval of firms, controls at time of payment, terms for withdrawal of approvals).	1999
	Circular setting out the methods of control, the obligations of agricultural development Directorates and the conditions for imposing penalties in relation to the production of olive oil and table olives.	2000
<b>E</b>	Act No 55/1999 on follow-up to checks and inspections (offsetting against future payments).	29.12.1999

	The General Inspectorate of the public administration has established a national database on public grants and aids.	13.01.2000
<b>F</b>	Draft legislation aimed at improving the controls on the transport of milk under Regulation No 536/93.	1999
<b>IRL</b>	Distribution by the Department of Agriculture, Food and Rural Development (DAFRD) of manuals and guidelines to Ministry staff:  Declaration of general policy on fraud: establishes the procedure where fraud is suspected;  Circular: Guidelines to prevent the risk of conflicts of interest;  Manual of procedures on the accreditation procedure (EAGGF Guarantee Section);  Manual of financial procedures: financial management and control of European and national funds.	December 1999  January 2000  April 2000  Oct/Nov 2000
	Adoption of a Programme on business risk management and guidelines for its implementation.	December 1999/2000
	High-level cooperation and representation between the DAFRD and the Department of Marine and Natural Resources (DMNR).	
<b>I</b>	Act No 526: extends the investigation powers of the Guardia di Finanza to irregularities linked to the collection of own resources and Community financing in accordance with the principle of assimilation (Article 280 EC)	21.12.1999
	Draft legislative decree on the system of penalties provided for by Regulation No 4045/89 (EAGGF Guarantee Section).	
	Finance Ministry Circular: innovative aspects of new rules concerning the agricultural export refunds scheme	28.06.1999
<b>NL</b>	Bill to amend the Accounts Act for the 8th time:  lists the control powers of the General Court of Auditors regarding the use made of Community grants (up to final beneficiary level);  establishes parallel powers for the Ministry regarding the search for information and the ordering of controls.	2000 (parliamentary review in 2001)
	Community grants control Bill to confer three corresponding categories of powers on the Ministry (right to be informed by the management body, right to give indications to the management body and right to recover from the management body).	2000 (Parliamentary review in 2001)
<b>P</b>	Decree-Law No 151/99: application of the principle of the black list in the field of export refunds, under Regulations Nos 1468/95 and 745/96 (conferment of powers, modus operandi).	10.05.1999  (publication)
	IGF manual standardising procedures for reporting irregularities under Regulation No 595/1991 (EAGGF Guarantee Section).	

	IFADAP circulars setting out the procedures for implementation of various aid schemes within the framework of the EAGGF, Service note No 26/96 relating to the treatment of irregular situations.	
<b>FIN</b>	Decree 75/2000, circulars and Decision by the Ministry of Agriculture and Forestry on controls on aids to surfaces cultivated and penalties.	1999, 2000
	Circulars issued by the Ministry of Agriculture and Forestry on controls on aids to stock-farming and penalties.	1999, 2000
	Circulars on the use of checklists for the examination of aid wholly or partly funded by the Community.	1999, 2000
	Circular on the processing of applications for income aids.	1999, 2000
	Instructions for executive agencies responsible for controls in relation to intervention measures (cereals, butter, skimmed-milk powder, school milk).	1999, 2000
<b>S</b>	Regulation SJVFS 1999/80: application of provisions relating to export premiums (including possibility of withdrawing approval in the event of supply of incorrect information).	1999
	Manual for reporting irregularities to OLAF under Regulation No 595/91.	1999/2000

### 5.3. Structural Funds and Cohesion Fund

The Member States' reform of their rules for checks and inspections is also the dominant topic regarding structural measures (DK, D, EL, F, IRL, I, NL, P, FIN, UK).

Two Member States (I, FIN) also refined their rules for **recovery**. The Commission wishes to launch a debate on the role of OLAF in the recovery of amounts fraudulently evaded (action 97 of the Reform White Paper).

Member State	Measure	Date
<b>B</b>	Following an independent audit of management and control systems for the administrative processing of ERDF files: control manual	
<b>DK</b>	Amendment of the legal basis for the management of structural programmes to adapt it to the new Community rules.	
	Statutory notice No 819 and Act No 254: amendment of the laws applying to the management of ERDF and ESF aid.	2000
	Adaptation of a number of administrative provisions on responsibilities, divisions of powers, accounts and financial control.	2000
	Introduction of the possibility of coordinating registers and gathering information for the control of FIFG management	
<b>D</b>	The Länder are currently modifying or adapting their management and control systems for the programming period 2000-06.	2000
	In the case of the ESF (managed by the Länder), several Ministries have defined their audit trails and monitor recipients at the stage where the projects are carried out (checks based on risk analysis).	1999
<b>EL</b>	Greece states that it has adopted its control and management systems to the audits under Regulation No 2064/97.	
	Act No 2741/1999 establishing checks and inspections as to legality by the Court of Auditors for supplies of goods >€1.4 million and the implementation of projects by all public bodies >€2.9 million.	1999
<b>E</b>	The General Inspectorate of the public administration has established a national database on public grants and aids.	13.01.2000
<b>F</b>	Ministry of Employment and Solidarity circular on the control of projects co-financed by the ESF.	1999
<b>IRL</b>	Statutory Instrument 123 (implementation of Article 12 of Regulation No 1164/1994 and Article 3 of Regulation No 2064/97): appointment and conferment of control powers regarding on-the-spot inspections of recipients of Structural Funds aid (ERDF and Cohesion Fund).	1999
	Circular issued by the EFS National Authority implementing Regulation No 2064/1997 (certifications and verifications, percentage control rate no less than 5%).	September 1999

	Secretariat guide to the supervision and control of Community finance issued by the Economic Infrastructure Operational Programme 1994-1999.	
	Various circulars, manuals and guidelines adopted by the Department of Agriculture, Food and Rural Development (DAFRD) (see part 1.2 above): these texts also apply to the EAGGF Guidance Section.	
<b>I</b>	Act No 526: extends the investigation and detention powers of the Guardia di Finanza to irregularities linked to the collection of own resources and Community financing in accordance with the principle of assimilation (Article 280 EC).	21.12.1999
	Act No 144: confers the power to recover unused ESF funds, interest and exchange-rate differences from administrative authorities responsible for implementation.	17.05.1999
	Various administrative provisions and regulations have been adopted to regulate the control of multi-regional operational programmes and Community initiatives within the ESF framework:  various circulars on implementing measures for training and apprenticeship projects;  Vade-mecum on the management and control of training activities;  General Note No 306: supervision of vocational training projects - centralisation of administrative and accounting controls.	1999/2000  09.11.2000  24.02.2000
<b>NL</b>	Two Bills concerning the control powers of the General Court of Auditors and control of Community grants (see 1.2 above).	2000 (Parliamentary examination in 2001)
	Conclusion of new protocols for decentralisation between the national authority and the relevant provinces and cities (management, control and supervision of the Structural Funds) in the context of the ERDF, the EAGGF Guidance Section and URBAN.	2000
	Development of a new system of management, control and supervision of the ESF.	2000 (finalisation in 2001)
<b>P</b>	Decree-Law No 173/99 confers on the Inspectorate-General of Finances (IGF) the power to establish summary reports on controls and to determine the validity of the request for the final payment of expenditure.	20.5.1999 (date of publication)
	Decree-Law No 54-A/2000 (amended by Law No 20/2000) to reinforce the national system of management, follow-up, evaluation and control within the framework of Community Support Framework III (CSF III) under Regulation (EC) No 1260/1999:  maintains the three-tier approach;  establishes new procedures for control of the implementation of the Structural Funds;	07.04.2000/  10.08.2000

	Decree-Law No 151/2000 confers on the new Ministry for Planning responsibility for general coordination of implementation of CSF III.	20.07.2000
	Regulations adopted within the framework of the EAGGF Guidance Section:  Decree-Law No 163-A/2000: general rules implementing operational projects and programmes in the fields of agriculture and rural development (including administrative penalties and seizure of taxpayer's assets);  Decree-Law No 224/2000: rules for the operational programme for fisheries (MARE) and the fisheries aspects of regional operational programmes (MARIS).	27.07.2000  09.09.2000
	Regulations to improve implementation of the ESF:  Decree-Law No 45/2000: sets up the European Social Fund Management Institute (IGFSE);  Decree-Regulation No 12-A/2000: amends the rules governing the management of the ESF and clarifies the obligations of bodies applying for financing;  Order No 799-B/2000: defines the circumstances in which financing may be modified or stopped;  Regulatory Ordinance 42-B/2000: determines the nature and maximum limit of expenditure considered eligible for co-financing by the ESF.	22.03.2000 15.09.2000 20.09.2000 20.09.2000
	The Directorate-General for Regional Development has produced a document to secure conformity and transparency of public procurement procedures in implementing the ERDF.	
	Council of Ministers Resolution No 27/2000: defining management structures of CSF III.	2000
	Creation of a monitoring centre coordinated by the IGF for the application of Regulation No 2064/97, responsible also for publishing the corresponding statements.	2000
	IFADAP circulars indicating the procedures for implementing various aid schemes within the framework of the EAGGF, Service Note No 26/96 relating to the treatment of irregular situations.	
<b>FIN</b>	Act No 329/1999 (amended by Act No 44/2000) on the financing of rural development (controls and recovery).	1999, 2000
	Structural Funds Act (No 1353/1999): responsibility of paying agencies for controls and performance, inspections of agencies and beneficiaries by the ministries.	1999
	Government decree on rural development (controls, monitoring, recovery).	2000
	Ministerial Decree on the procedure relating to rural development aids (including recovery procedures).	2000



	Checklists for processing aid applications under the Act on the financing of rural development (implementing structural programmes and funds).	1.12.2000, 22.12.2000
<b>S</b>	The National Administration for Business Development and the National Agriculture Administration have issued a series of administrative directives relating to aid paid by the Structural Funds (the ERDF and the EAGGF in particular).	1999/2000
	Regulation No 1999:1424 relating to the Community Structural Funds.	1999
	Manual for reporting irregularities to OLAF under Regulation No 1681/94.	
	Amendment of conditions for making grants (Regulation No 1994:1716) and the rules for application of the FIFG has begun.	2000 -
<b>UK</b>	Initiatives by the Department of Trade and Industry (DTI):  clarification of the definition of fraud, for use within the department;  additional guidance on the reporting of irregularities.	2000
	Guidance note by the Department of the Environment, Transport and the Regions (SETR) to all Government Offices in the regions, regarding the implementation of Regulation No 2064/97 (5 % checks on ERDF expenditure).	1999
	Conclusion of a protocol between the Department of Education and Employment (DfEE) and the Commission, providing assurances over the level of control in the framework of the ESF.	1999
	Control plan for Objective 5b, clarifying monitoring procedures and introducing in-depth checks, based on risk analysis.	1999

## 6. MAIN CHANGES IN THE ORGANISATION OF CONTROL SERVICES

In 1999 and 2000 the Member States made sometimes far-reaching changes to the organisation of their control services.

<b>6.1. Own resources</b>		
<p>Here there is a tendency to <b>centralise the fight against fraud</b> underlying all the highly varied patterns of development of the organisation of control services in the Member States. Most of the changes concern central government departments (B, DK, EL, E, IRL, I, NL, P, S, UK). Local developments tend to consist of reducing the number of districts (NL, FIN).</p>		
<b>Member State</b>	<b>Measure</b>	<b>Date</b>
<b>B</b>	Incorporation of the national centre for combating “carousel”-type VAT fraud (N.C.C.C.) into the administration de l’inspection spéciale des impôts (Special Tax Inspection Department).	1999
	Harmonisation of working methods as part of the Action Plan Customs 2000/2002: coordination of inspection activities at national level;  better interaction between the departments responsible for traditional inspections and fraud investigations.	1999
	Agreement between the Belgian Ministries of Justice and Finance on supervision of banks and insurance companies.	1999
	Proposals to strengthen cooperation between the customs authorities and the cellule de traitement des informations financières (Financial Information Processing Unit - CTIF).	1999
<b>DK</b>	Creation within the central customs and tax authority of an information centre on inspection, gathering, processing and disseminating information on economic crime.	
<b>D</b>	Under the Tax Code and the Customs Administration Act, customs officers continue to carry out criminal investigations and tax inspections (company inspections, audits, flying squad checks).	1999
	Community levies are treated in the same way as national taxation.  Evasion of customs duties and agricultural levies is treated as tax fraud under the Tax Code. Even where the offence is committed in another Member State, it can be prosecuted by investigative authorities.	
	Ministerial order on initial steps to centralise risk analysis.	28.01.1999
<b>EL</b>	Establishment of excise fraud investigation teams in customs offices.	January 2001
	Establishment of customs control services (internal and ex post controls and audit).	End of 2000

	Computerisation of almost all customs activities (integrated computer system for the Greek customs).	October 2000
	Setting up of a risk analysis department within Directorate 33 of the Greek Customs Inspectorate.	2000
<b>E</b>	Restructuring of central antifraud departments (National Information and Investigation Office) to increase the specialisation of officers working in this field.	1999
<b>IRL</b>	Establishment of a Customs National Freight Intelligence Unit to undertake the surveillance and identification of suspect maritime cargoes (risk analysis).	1999
<b>I</b>	Establishment of an antifraud unit (UCA) at the Ministry of Finance, with among other things a special risk analysis section.	1999
	Restructuring of the Guardia di Finanza: redeployment of available staff to dynamic departments.	1999
	Organisation of training seminars for Ministry of Finance staff responsible for the fight against fraud.	2000
<b>NL</b>	Establishment of district information departments (DIA) in customs districts: regional risk analysis.	
	Reduction of the number of districts from 9 to 7.	
	Restructuring of the tax information and investigation service (FIOD), incorporation of the economic control service (ECD) in the FIOD as a separate unit.	
	Establishment of a central excise service (CPA) in the national customs information centre (DIC) with control and investigation functions as a point of contact between customs and the FIOD.	1999
<b>A</b>	During the period in question most employees of the Austrian customs administration were engaged in traditional inspections in connection with the customs clearance of goods.  As the Austrian Government has decided to suspend the recruitment of civil servants, the numbers are falling slightly.	
<b>P</b>	Decree-Law No 360/99: restructures the Directorate-General for Customs and Excise.	16.02.1999
	Order No 705-A/2000: changes to the structures and powers of central and regional customs services, including antifraud services.	31.08.2000
	Decree-Regulation No 27/99: regulates the operation of the national internal system for control of financial administration (SCI).	12.11.1999
<b>FIN</b>	Reduction of number of districts (from 7 to 5) with no change in staff numbers.	1999
<b>S</b>	Reorganisation of the national customs administration to:  give priority to the fight against tobacco, alcohol and drug trafficking;  enhance the role of analysis for the control and collection of traditional own resources.	01.03.1999

<b>UK</b>	Concentration of all fraud investigations within one National Investigation Service (although some staff in local offices also undertake some investigative duties).	1999/2000
	Ongoing reorganisation within UK Customs and Excise (with effect from 1 April 2001): one group will control all anti-fraud activities within the department.	2000
	Multi-disciplinary co-ordination: customs accounting systems aimed at a whole trader approach to control and debt management.	

<b>6.2. Agricultural expenditure</b>		
The organisation of agricultural expenditure control services evolved in virtually all the Member States. The most radical organisational changes consisted either of full restructuring, done or in preparation, (E, F, P, UK), or more commonly of the establishment of new bodies (B, DK, EL, IRL, A, P, FIN).		
<b>Member State</b>	<b>Measure</b>	<b>Date</b>
<b>B</b>	Clarification of the powers of the three departments involved in scrutinising agricultural expenditure under EAGGF-Guarantee Section (the coordination unit and first inspection unit, both responsible to the Ministry of Finance, and the second inspection unit attached to the Ministry of Economic Affairs).	1999
	After a cooperation agreement was signed with the Belgian bureau d'intervention et de restitution (intervention and refund office - BIRB), an internal audit department was set up within the Economic Inspectorate.	1999
<b>DK</b>	Merger of the two paying agencies (attached to the European Affairs Directorate and the Structures Directorate within the Directorate for Food) to boost measures to combat fraud and to reduce the number of irregularities. Decision to set up a special EAGGF inspection and fraud office to provide general coordination.  The office is to carry out physical checks under Commission Regulation 2064/97 and coordinate cooperation between customs and tax authorities on the controls provided for by Council Regulation 4045/899.	01.04.2000
	Creation of a special expert team responsible for scrutinising all customs documents relating to refund operations.	
<b>D</b>	Internal audit departments, departments responsible for certification and the regional offices give priority to the performance and quality of on-the-spot checks carried out by technical departments.	1999
	International seminar organised by the Federal Ministry of Finance on the fight against fraud for the control bodies referred to in Regulation No 4045/89 (sample checks on quantities).	June 1999
	New approach to ex post checks.	June 1999
<b>EL</b>	Act No 2637/98, amended in 1999, establishes a body to certify accounts OPILOG (agricultural products), a paying agency OPEKEPE (EAGGF Guidance and Guarantee Sections) and an agricultural products certification and supervisory body OPEGEP.	2000
	Regional internal audit division set up under Regulation No 1663/95, issuing of export licences for fruit and vegetables.	2001
<b>E</b>	Restructuring of central antifraud departments (National Information and Investigation Office) to increase the specialisation of officers working in this field.	1999
	Reinforcement of staff on checks and inspections under Regulation No 4045/89.	

<b>F</b>	Restructuring of the ACOFA Inspectorate (one of the three departments responsible for carrying out ex post controls under Regulation (EC) No 4045/89).	1999
	Coordination of checks and inspections between customs and ACOFA inspection services; joint checks and inspections	
<b>IRL</b>	Establishment of an Internal Control Unit within the Department for Agriculture, Food and Rural Development (DAFRD) to implement agri-environmental and early retirement schemes.	December 2000
<b>I</b>	Refunds: designation of a liaison officer in the internal audit department of refund paying agencies at each regional branch of the Ministry of Finance.	
<b>NL</b>	The countryside department has been designated as paying agency for the purpose of rural development measures	2000
<b>A</b>	Establishment of a paying agency in the Agriculture Ministry for rural development measures (Agenda 2000).  Merger between this paying agency and the paying agency for wine (in existence since 1995) to exploit the potential for rationalisation and improve the effectiveness of the administration. The new agency's accounts will be certified by a new certification body.	Decembre 2000
<b>P</b>	Reinforcement of the Control department of the National Agricultural Intervention and Guarantee Institute (INGA)	1999
	Improvement of checks by the Inspectorate-General of Finances (IGF) under Regulation No 4045/89 (EAGGF Guarantee Section).	2000
	Restructuring of the IFADAP, covering both operational departments and the inspection department of the institute (DINS).	2000
	Establishment of four functional departments and a bank information unit in the DINS.	2000
	Decree-Regulation No 27/99: regulates the operation of the national internal system for control of financial administration (SCI).	12.11.1999
<b>FIN</b>	Fight against fraud and irregularities was strengthened by improving the cooperation between officials involved, by creating a post for coordination in the Ministry of Agriculture and Forestry	1999
<b>S</b>	Standardisation of procedures and controls in the unit responsible for grants on exports of agricultural commodities and processed agricultural products (unit came into existence as a result of a merger in 1998).	1999/2000
	Intensification of training activities in the controls unit of the Swedish Agriculture Council	
	Conferment of powers to conduct ex post checks on marketing aids (Regulation No 4045/89) on the National Agriculture Administration audit unit.	

<b>UK</b>	Preparation of merger between different paying agencies to form a single paying agency (with effect from 1 April 2001).	2000
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<b>6.3. Structural Funds and Cohesion Fund</b>		
<p>Most Member States (DK, D, EL, E, IRL, I, NL, A, P, FIN, UK) have either redefined or at least spelled out the respective powers and responsibilities of the various services responsible for checks and inspections in relation to structural measures. But some of these (EL, E, I, NL, A, P, FIN) have reorganised on a larger scale than the others.</p>		
<b>Member State</b>	<b>Measure</b>	<b>Date</b>
<b>B</b>	Use of an external audit office to meet the obligations deriving from Regulations Nos 2064/97 and 1260/99.	1999
	Administrative separation between the functions of case officer and local inspector	
<b>DK</b>	Reorganisation of the structures managing the ESF and ERDF as a result of cooperation agreements on financial control concluded with the Commission in April 1999.	1999/2000
	The manpower services department has developed a computerised system to improve the detection of fraud in connection with training (ESF).	2000
	Scrutiny of ESF and ERDF projects by an auditor.	
<b>D</b>	Reinforcement of internal controls in certain fields.	1999/2000
	Managers in some Länder have set up independent control groups responsible for on-the-spot checks, final approval and annual consultative meetings.	
<b>EL</b>	Act No 2860/2000: creation of a Financial Control Committee to supervise the managers, paying agencies and beneficiaries and make the final declaration of expenditure for the 2000-2006 Community Support Framework.	2000
<b>E</b>	Establishment of a special unit at the Ministry of Employment and Social Affairs responsible for ESF checks and inspections.	
	Reinforcement of staff on checks and inspections under Regulation No 2064/97 in the Inspectorates-General of the Autonomous Communities.	
<b>IRL</b>	<p>Designation of authorised agents to carry out checks and inspections of operations co-financed by the Structural Funds and the Cohesion Fund:</p> <p>establishment of a unit responsible for on-the-spot checks and inspections of beneficiaries of the ERDF and the Cohesion Fund, and a unit responsible for control within the framework of the ESF;</p> <p>two additional authorised agents attached to the internal audit department of the Department of Agriculture, Food and Rural Development (DAFRD), with specific responsibility for financial control of operations co-financed by the Structural Funds (implementation of Regulation No 2064/1997).</p>	<p>May/June 1999</p> <p>January 2000</p>
<b>I</b>	Ministerial decree No 4102: sets up an audit commission to issue the certification provided for by Regulation No 2064/1997 (balance of expenditure for multi-regional operational programmes).	20.07.2000



	Establishment of a Structures unit in the Ministry of Agriculture and Forests, responsible for technical and administrative controls and for organising ex post checks on samples within the framework of the EAGGF Guidance Section.	28.11.1999
	Circular No 1378: coordination between external departments of the Ministry of Employment for the purposes of traditional checks and inspections of training projects (ESF).	28.11.1999
	Draft study on control systems (ESF expenditure); experimental IT project (ARCA).	2000
	Ministry of the Treasury guidelines for the organisation of control systems.	
	Circular No 4373: defines the powers of the State Forestry Corps regarding management, payments, audits and disqualifications (rules implementing Regulation No 2080/1992).	04.10.2000
<b>NL</b>	Designation of the Ministry of Social Affairs and Employment as the body responsible for granting ESF aid.	End of 2000
	Forms of cooperation launched by the special investigation service of the Ministry of Social Affairs and Employment:  consultations with other investigation services during the implementation of the ESF;  criminal investigations opened in cooperation with the prosecution service.	2000
	Following shortcomings observed in mid-1998: review of administrative organisation for the implementation of URBAN, reinforcement of controls (5% of eligible expenditure, checks by the Ministry of the Interior accounting officer, internal audits).	1999
	Reorganisation of ESF management and control system to reduce the risk of fraud.	1999
	Measures organised by various Ministries aimed at improving the management, control and supervision of the Structural Funds, covering the period 2000-06.	20.12.2000 (parliamentary review in 2001)
<b>A</b>	Transfer of responsibility for horizontal and multi-disciplinary aspects of the financial control of Structural Funds from the Ministry of Finance to the Chancellery (from the start of the 2000– 2006 programming period).	2000
	Transfer of responsibility for central financial control of the ESF from the Federal Ministry of Labour, Health and Social Affairs to the Federal Ministry of Economic Affairs and Labour (BMWA).	01.04.2000

<b>P</b>	Decree-Law No 54-A/2000 (amended by Law No 20/2000) to reinforce the national system of management, follow-up, evaluation and control within the framework of Community Support Framework III (CSF III) under Regulation (EC) No 1260/1999:  maintains the three-tier approach;  establishes new procedures for control of the implementation of the Structural Funds;  confers on the Inspectorate-General of Finances (IGF) the power to supervise the entire system.	2000
	Decree-Regulation No 27/99: regulates the operation of the national internal system for control of financial administration (SCI).	12.11.1999
<b>FIN</b>	The powers and responsibilities of the national authorities responsible for managing Structural Funds were clarified and strengthened by new legislation	1999/2000
<b>S</b>	Reorganisation and adaptation of working methods of the Swedish Labour Market Office's (AMS) economic departments.	
	Manual concerning the organisation of controls in the EAGGF Guarantee Section.	
<b>UK</b>	Circulation, on a quarterly basis, of a list of all cases of irregularity by the Department of Trade and Industry (DTI), enabling all UK authorities to check the consistency of their records with the DTI's (following an audit by the European Court of Auditors).	2000
	Guide by the Department of Environment, Transport and the Regions (DETR) on monitoring of ERDF spending, following three audits of regional Government Offices.	1999
	Transfer of the responsibility for the day-to-day monitoring of ESF controls from the Department for Education and Employment (DfEE) to the regional Government Offices.	1999
	Establishment of a Fraud Sub-Committee within the DfEE to oversee the Department's response to fraud.	1999
	Creation of a cross-Government Fraud Response Liaison Group: co-ordination of investigations where more than one structural fund is involved.	1999

## 7. COOPERATION BETWEEN COMPETENT AUTHORITIES

Several measures taken during the report period helped with the attainment of the objective set by Article 280(3) of the EC Treaty of close and regular cooperation between the competent authorities of the Member States and between them and the Commission. These measures show that there is closer cooperation in relation to own resources than in any other area.

The Commission continues to treat cooperation as a central feature of its antifraud strategy. Its plan of action 2001-02 provides in particular for an upgrading of cooperation structures and for stronger action on intelligence gathering and analysis.

<b>7.1. Own resources</b>		
<p>The regular close cooperation between relevant authorities here is felt to be <b>explicitly satisfactory</b> by several Member States (B, EL, E, F, A, S).</p> <p>Several Member States would like the cooperation to go further and are willing to make extra efforts (IRL, NL, A, P, S, UK).</p>		
<b>Member State</b>	<b>Cooperation measures</b>	<b>Date</b>
<b>B</b>	The existing rules allow close and regular cooperation between the Member States and between them and the Commission.	
	The antifraud information system (AFIS) is a useful IT tool much appreciated by Belgium.	
	The Belgian VAT and Customs and Excise departments carried out a multilateral tax audit of two multinational firms. Civil servants from several Member States took part in the audit meetings.	1999
<b>EL</b>	Customs give priority to mutual assistance and cooperate fully in it, as they believe it to be most satisfactory (in particular in such vulnerable sectors as tobacco and fuels).	
	Customs cooperation agreements with Ukraine and Georgia.	1999/2000
	Multipartite agreement with the countries of south-east Europe for the fight against organised crime.	1999/2000
	Co-operation agreement between the Office to combat financial crime and its Russian counterpart.	1999/2000
	Customs Cooperation agreement with ex-Yugoslavia now being reviewed.	2001-
	Negotiations for a customs co-operation agreement with Turkey.	2001-
	Seminar on the fight against fraud in textiles (OLAF/Greece, other Member States).	2000
<b>E</b>	Spain feels that existing cooperation is satisfactory.	

<b>F</b>	<p>Cooperation between the Commission and the French customs authorities is generally satisfactory, in spite of one or two specific dysfunctions (failure to inform the customs authorities in advance, involving them in an inquiry too late, lack of coordination with several of the departments involved in carrying out an on-the-spot inspection or announcing that fraud was suspected without any legal certainty that the Community rules had been infringed).</p> <p>Cooperation is particularly extensive in the field of external investigations and the coordination of anti-fraud measures.</p> <p>Regular reports on cases of mutual assistance should be sent to the competent authorities in the Member States.</p>	
<b>IRL</b>	Cooperation efforts between the Irish customs and the corresponding departments in other Member States.	1999/2000
<b>NL</b>	Joint statement of intent by Dutch and UK customs to reinforce collaboration regarding information exchanges and the fight against fraud.	1999
	Project to establish a central point in the customs information centre (DIC) for contacts with OLAF for the tax administration.	1999
<b>A</b>	Austria considers that mutual assistance is operating efficiently and that cooperation is very good although, in certain cases, better co-ordination by OLAF would be desirable.	
	Customs 2000 activities need to be continued to attain a uniform and harmonious level of risk analysis.	
<b>P</b>	Intensification of coordination efforts between all controlling agencies and with OLAF and other Commission departments.	1999/2000
<b>FIN</b>	Operational cooperation agreements (customs/police/border police) extended to Estonia, Latvia and Lithuania.	2000
	Nordic cooperation procedures (network of customs and police correspondents dealing with drugs and organised crime, regular meetings).	End of 2000
	Administrative customs cooperation and assistance agreements with Poland, Ukraine and Slovakia (organised crime).	2000
	Intensive training on the common agricultural policy for Polish customs experts.	2000
	Agreement with Russian customs authorities on fraud prevention (beef and pork exports to Russia, rapprochement with OLAF data).	Early 2001
<b>S</b>	<p>The Department to combat economic crime is responsible nationally for:</p> <p>coordinating measures taken in Sweden to combat fraud, other irregularities and misuse of Community resources,</p> <p>liaison with OLAF.</p>	01.07.2000
	Establishment of relations with OLAF for reporting cases of fraud and irregularities, joint reflection on ways of further developing existing forms of cooperation.	

	Sweden states that the co-operation with OLAF and the other Member States under Regulation No 515/97 is good.	1999/2000
<b>UK</b>	<p>Close and regular co-operation exists between competent authorities, as illustrated by :</p> <p>the UK's deployment of customs and revenue liaison officers to work with the corresponding authorities in 8 other member states;</p> <p>the conclusion of bilateral Memoranda of Understanding with France, the Republic of Ireland and the Netherlands;</p> <p>Customs' co-ordinated approach to Mutual Assistance Requests (single point of contact).</p>	1999/2000
	Establishment of a customs intelligence team, in order to develop intelligence in all areas of commercial customs fraud and to serve as a liaison point for other European customs intelligence services.	2000

## 7.2. Agricultural expenditure

Judging by the Member States' replies, cooperation is less highly developed in matters of agricultural expenditure than in the foregoing area. But closer links were established between the Commission and certain Member States (EL, IRL, P S) during the report period.

Member State	Cooperation measures	Date
EL	Co-operation between national authorities and the Commission is felt to be very good.	
F	The French authorities have drawn OLAF's attention to the need to inform the competent national administrations so that the necessary interim measures can be taken.	
IRL	Joint investigations by OLAF, Department of Agriculture, Food and Rural Development (DAFRD) and the Department of Agriculture of Northern Ireland (DANI) - milk products (frontier regions).	1999/2000
	Cooperation efforts with DANI, auditors of the Certification authority, the Commission and the European Court of Auditors, concerning the EAGGF Guarantee Section.	
	Organisation of OLAF/DAFRD seminar on risk management and protection of direct payments from the Community.	October 2000
P	Intensification of coordination efforts between all controlling agencies and with OLAF and other Commission departments.	1999/2000
FIN	Fight against fraud and irregularities was strengthened: cooperation between officials, OLAF and the Russian authorities on verification of import documents (EAGGF Guarantee Section expenditure).	
	Cooperation with the Russian authorities on the verification of import documents, organisation of training sessions for customs officers and other Russian civil servants	

### 7.3. Structural Funds and Cohesion Fund

Although less highly developed than in matters relating to own resources, cooperation in the area of structural measures is relatively active in certain Member States (IRL, FIN, S, UK).

Member State	Cooperation measures	Date
<b>B</b>	Organisation of annual meetings with the Commission (covering three Structural Funds) to coordinate checks and inspections	
	Measures to grant ESF and cofinancing funds on an integrated basis	
<b>EL</b>	Cooperation between national and Commission departments responsible for checks and inspections, OLAF and the European Court of Auditors is felt to be satisfactory (protocols on periodic checks and inspections).	
	An investigation is in progress regarding questions where OLAF needs to be involved.	
<b>IRL</b>	Consolidation of cooperation with the Commission, the Department of Finance, management authorities and executive agencies.	1999/2000
	The DAFRD has organised seminars and exchanges with the applicant countries, twinning arrangements with Poland.	
<b>I</b>	The central department of the Ministry of Employment organised a meeting with representatives of OLAF, the Commission and Italian national and regional administrative authorities to clarify the scope of Regulation No 1681/94 (irregularities).  Italy then prepared a document simplifying the form to be used for reporting irregularities to OLAF.	1999
<b>P</b>	Intensification of coordination efforts between all checks and inspections agencies and with OLAF and other Commission departments (bilateral protocols between the Inspectorate-General of Finances and the Commission).	1999/2000
<b>FIN</b>	Joint training for Finnish civil servants in inspection services (Finnish authorities/Commission, OLAF).	October 1999
	Intensification of cooperation between authorities	1999/2000
	Rules and instructions concerning good reporting practice under Regulations (EC) Nos 595/91 and 1681/94 (rural development measures and agricultural expenditure) were updated and consolidated.	May 2000
	Control systems improved (databases)	
<b>S</b>	Establishment of relations with OLAF for reporting cases of fraud and irregularities, joint reflection on ways of further developing existing forms of cooperation.	
<b>UK</b>	The DfEE has worked closely with the Commission/OLAF (the Fraud Response Liaison Group includes in its membership a representative of OLAF).	

## 8. THE RECOVERY ISSUE

The Commission's questionnaire to the Member States for the report period dealt more specifically with the question of recovery. In particular the Commission asked the Member States about the priority attached to Community financial interests in the event of the debtor's default in the recovery context. In general terms (there exceptions), the Community's financial interests are on an equal footing with national interests in the event of the tax debtor's default, and Community claims are not treated as priority claims.

The following table shows the measures adopted by the Member States to improve recovery of own resources and wrongful payments, as well as providing some more general observations on the subject.

<b>8.1. Own resources</b>	
Three Member States report new measures regarding recovery (DK, I, UK).	
<b>Member State</b>	<b>Measures aimed at improving recovery of uncollected resources and wrongful payments</b>
<b>B</b>	<p>The Belgian General Customs and Excise Act provides for a right of precautionary enforcement, a privileged lien on the movable property of persons liable to pay customs or excise duties and a legal mortgage on all these persons' immovable property.</p> <p>In the event of enforced execution (seizure) against the assets of the judgment debtor or of voluntary payment pursuant to a court order, the order of priority of claims is import duties first, then excise duties second.</p> <p>Investigations carried out by the Belgian authorities have made it possible to recover substantial amounts.</p>
<b>DK</b>	<p>Generally speaking, in Denmark Community claims enjoy the same status as national claims in the event of recovery following an abuse.</p> <p>The Customs Credit (Access Conditions) Act (Act No 228) has been amended The national customs and tax authorities may now demand that firms wishing to join the customs credit scheme supply the central customs and tax administration with certain financial information and information on expected imports when registering for the scheme or changing their registration details.</p> <p>Similar rules have also been established for operators exporting dutiable goods.</p> <p>It is now also possible to deprive firms of their access to customs credit where there is reason to believe that there is a risk that customs import duties will not be paid.</p>
<b>EL</b>	<p>The legal basis for recovery is the combined provisions of the national Customs Code and Regulation No 2913/92 laying down the Community Customs Code, plus the Code of Public Revenue. National and Community interests are on an equal footing.</p>
<b>F</b>	<p>Section 379 of the French Customs Code establishes the same status for duties that constitute own resources and the national taxes levied on imports of goods. The Customs Administration has a preferential claim over all other creditors.</p>



<b>I</b>	<p>A major legislative reform was made in 1999 to improve the results of recovery and regulate relations with concessionnaires (Act No 337, Legislative Decrees Nos 46, 112 and 326, Joint Decree - Finance and Treasury - No 321, Ministerial Notes Nos 1584/VIII and 2488/VIII).</p> <p>In 2000, recovery procedures (direct taxes) were updated by various legislation, regulations and administrative provisions.</p>
<b>L</b>	<p>The Audit Department, which is responsible for carrying out external audits of economic operators, combats fraud involving traditional own resources is very effective. Recoveries of own resources by the Department total LUF 15 510 783 for 1999.</p> <p>The rate of recovery in the ten cases of fraud listed in the 1999 annual own resources report was 100 %.</p>
<b>NL</b>	<p>No measure has been taken to improve the recovery of own resources. But claims by the tax departments have priority status.</p>
<b>A</b>	<p>The current scheme for recovery of traditional own resources is insolvency with no priority ranking of creditors. There is therefore no priority for the recovery of public, including Community, claims.</p>
<b>S</b>	<p>The rate of collection of traditional own resources amounts to 99.92%.</p> <p>B resources are far less important than in other Member State.</p>
<b>UK</b>	<p>Interest charged on customs debts was introduced in April 2000.</p> <p>The Central Community Transit Office has reviewed its debt recovery procedures (speedier notification to traders and guarantors regarding undischarged transits).</p> <p>In early 2000 the recovery of customs debts was fully integrated into Customs arrangements for recovering other duties and taxes.</p> <p>Although customs duties and agricultural levies are non-preferential debts in the event of debtor default, the majority of debts are paid or otherwise secured either at the time or before they are incurred.</p>

<b>8.2. Agricultural expenditure</b>	
<p>Regarding the recovery of agricultural expenditure, ten Member States adopted new measures in the report period (B, DK, EL, F, IRL, I, A, P, FIN, UK).</p> <p>Three Member States state that there is a priority claims arrangement (EL, IRL, I).</p>	
<b>Member State</b>	<b>Measures aimed at improving recovery of uncollected resources and wrongful payments</b>
<b>B</b>	<p>The Belgian intervention and refund agency has adopted two noteworthy measures:</p> <p>a new computerised system (IRIS) will centralise on computer all the data concerning debtors and the near-automatic creation of a new debtor file where there is a refund problem;</p> <p>the agency has set up a debtors unit.</p>
<b>DK</b>	<p>Improvements regarding the management of the debtors account have resulted in no losses on recent claims, and most old claims have been recovered.</p> <p>The implementation of a new system for managing securities and, in parallel, for supporting exports has also helped to cut the risk of loss.</p>
<b>EL</b>	<p>Act No 2520/97, as amended in 1999, gives debts to the State priority; amounts concerned by irregularities in agriculture are returned after offsetting, plus interest at the rate determined by the law.</p>
<b>F</b>	<p>The Interministerial Coordinating Committee for Inspections (CICC-EAGGF Guarantee Section division) has stepped up its recovery activities on the basis of ex post inspections under Regulation No 4045/89. A database has been set up and is updated every quarter by the paying agencies.</p>
	<p>One of the obstacles to rapid recovery lies in the fact that recipients of aids wrongly paid are increasingly inclined to contest the decision in court.</p>
	<p>The principle of transferring the centralisation of reports under Regulation No 595/91 from the Directorate-General for Customs and Indirect Taxation to the CICC was adopted at the end of 1999.</p>
<b>IRL</b>	<p>In general terms, the same priority is given to the recovery of Community claims as to the recovery of national claims.</p> <p>In 2000 additional resources were set aside for the recovery of claims under the agri-environmental and early retirement schemes.</p> <p>The Headage/Premia programme makes provision for reducing future payments to a debtor on the basis of the debts incurred in connection with different Community schemes.</p>
<b>I</b>	<p>Italy's agricultural intervention agency (AIMA) enjoys a special legal status as paying agency.</p> <p>A Bill introduced by the Ministry of Finance would extend its privileges to other fields.</p> <p>In 1999, various recovery measures were adopted.</p>

<b>A</b>	<p>The Austrian agricultural expenditure payment agency, (AMA), has set up a unit specifically responsible for the recovery of outstanding claims.</p> <p>AMA is further empowered to offset amounts outstanding from a recipient against other amounts payable to the same recipient.</p> <p>As a result, 95% of all claims are recovered at low cost by offsetting within a year or two.</p>
<b>P</b>	<p>The National Agricultural Intervention and Guarantee Institute (INGA) has improved the computer system used for recoveries and adapted the recovery rules.</p> <p>More frequent use of the claims offsetting system has speeded up the recovery process.</p>
<b>FIN</b>	<p>Instructions for the recovery procedure updated, centralised database put into operation (especially for monitoring recoveries)</p>
<b>UK</b>	<p>High priority is given to recovery of agricultural expenditure (on the basis of revised instructions for 1999-2000).</p> <p>During 2000, the Ministry of Agriculture, Fisheries and Food reviewed all debts that had been outstanding for more than two years.</p>

<b>8.3. Structural Funds and Cohesion Fund</b>	
New measures relating to structural measures recovery were less frequent: they concern only four Member States (F, S, FIN, UK).	
<b>Member State</b>	<b>Measures aimed at improving recovery of uncollected resources and wrongful payments</b>
<b>DK</b>	Improvement of the management of debtors accounts (EAGGF-Guidance) thanks, in particular to the establishment of the new Directorate of Food, Fisheries and the Agri-food Industry.  The Danish labour market administration has increased the responsibility of regional authorities for European Social Fund grants.
<b>EL</b>	The procedure provided for by Joint Ministerial Order 2007892/461/27.5.98 relating to the recovery of amounts wrongly or illegally paid from national or European Union resources in the implementation of Community policies is commenced for all reported irregularities, irrespective of the amount.
<b>F</b>	Recoveries are regularly monitored by the Employment Ministry on the basis of inspection reports from regional inspectorates. In 1999, circular DGEFP 99/21 spelled out the procedure for recovery.
<b>IRL</b>	Ireland has not felt the need to improve the existing system for the recovery of amounts paid under structural measures.
<b>I</b>	Once the administrative act of self-protection has been taken, enforced recovery by the State-approved body of lawyers becomes possible.
<b>A</b>	As regards the ESF and ERDF, there are provisions whereby the departments empowered to authorise or pay grants may require the recipient to immediately repay the grant or suspend payment in certain clearly defined cases (including delays, obstacles or modifications to the project, failure to notify the documentary evidence asked for where a reminder has been issued, diversion of funds received and where it is impossible to check that the grant application is well-founded).  In addition to these procedures, some departments demand a supplementary guarantee specifically in the case of (ERDF) Community funds, with the result that recovery is guaranteed whatever happens.
<b>P</b>	In the EAGGF-Guidance Section, the IFADAP offsets claims to recover amounts wrongly paid to beneficiaries.
<b>S</b>	The manual of economic administration of the AMS has been updated.  The Swedish agriculture council has launched a project to increase the effectiveness of procedures to recover environmental aids wrongly paid.  Directives for the management of reimbursements and notification of irregularities in connection with FIFG aids are being drafted.
<b>FIN</b>	Recovery measures have been backed up by new legislative measures. Changes have been made to recovery and checks and inspections monitoring systems (2000).

<b>UK</b>	<p>Regarding the ERDF, the recovery of grants obtained wrongly or fraudulently is regarded as an absolute priority.</p> <p>The Department for Environment, Transport and the Regions (DETR) has made progress with the revision of its fraud/irregularity database and guidance notes issued to the Government Offices in the regions.</p> <p>Regarding the ESF, the Department for Education and Employment (DfEE) has established a scheme for detecting and recovering wrongful payments (possibility to block payment of new ESF grants until a debt has been settled, possibility to deduce the amount of the debt from payments still to be made), which has brought the recovery rate close to 100 %.</p> <p>The Department also acts at the request of the Community in accordance with the relevant legislation.</p>
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## 9. HIGHLIGHTS OF THE FIGHT AGAINST FRAUD

In general terms, the changes made in antifraud practices in the report period concern first and foremost the Member States' control techniques.

<b>9.1. Own resources</b>		
<p>In practice, the fight against fraud in relation to own resources in 1999-2000 was marked by the adoption or amendment of protocols or methods checks and inspections in several Member States (B, EL, E, I, FIN).</p> <p>Fraud information systems were also covered by new measures, some of them concerning computer systems, in four Member States (B, DK, EL, I). And certain Member States (EL, I, S) made special training efforts.</p>		
<b>Member State</b>	<b>Highlights</b>	<b>Date</b>
<b>B</b>	Belgium plans to set up inspection cycles as part of the strategic plan for 2000-2002 adopted by customs and excise in 1999, which should help to direct inspection visits more effectively towards fraud.	1999
	Customs and excise has set up a criminal analysis file (ACRIDA) in addition to the customs information system (a judicial file relating data on crime to other significant data).	1999
<b>DK</b>	<p>Initiatives by the committee to coordinate the fight against financial crime in the public sector:</p> <p>a project to strengthen cooperation and exchanges of information between the authorities responsible for combating financial crime. The proposals gave the same weight to financial crime involving the Union's own resources as to financial crime involving national taxes;</p> <p>the drafting of the information sheet "Who does this company belong to?" aimed specifically at identifying the owners of companies and the investigations to be conducted where public funds have been transferred to a company.</p>	<p>April 1999</p> <p>2000</p>
<b>EL</b>	Protocol of agreement with the association of chemical industries (diversion of drug precursors).	1999/2000
	Negotiations for a protocol of agreement with the association of customs agents.	2001-
	Preparation of protocols for co-operation against financial crime (Customs/Justice/Police).	2001-
	Training in relation to counterfeiting and utilisation of protocols of agreement.	2000

	Gradual implementation of integrated customs data system (OPST), including risk analysis in intelligence and investigation.	October 2000
<b>E</b>	Instruction on export refunds by the Customs and Excise Directorate/EAGGF-Section (Protocol for co-ordination of controls).	May 2000
<b>I</b>	Transposal into national legislation of innovatory aspects regarding transit (Regulation (EC) No 2787/2000 and EC/EFTA Decision No 1/2000 on common transit)	2000
	Internal customs audit: Establishment of a commission responsible for drafting audit manuals concerning traditional own resources.	1999
	External customs audit: Execution of audits of firms in favour of the project (experimental audits for the purposes of Decision No 210/97/EC).	1999
	Draft from the Guardia di Finanza to optimise the operations of its customs and own resources departments (under the Community "Customs 2000" programme).	November 1999
	Adaptation of the Guardia di Finanza's information systems to reinforce risk analysis (goods on arrival), intensify checks and inspections of international road traffic and improve checks and inspections on firms doing international business.	1999
	Trends:  gradual replacement of concomitant controls by ex post controls;  gradual use of IT systems to develop risk analysis;  better co-operation between civilian and military bodies.	
<b>FIN</b>	Finland recalls action taken on several fronts since 1995.	
	Common strategy on information technology (Customs 2000).	
	Strategy on quality of customs controls.	
	Renewal of white-collar crime customs prevention programme (co-operation between police, customs, revenue and recovery authorities).	2000
<b>S</b>	Organisation by the SLCE of training sessions and seminars on the fight against economic crime (for judges, the police and economists responsible for combating fraud).	Autumn 1999/spring 2000
	Sweden states that customs services have relatively advanced IT facilities (in comparison with the other Member States).	
<b>UK</b>	Sustained efforts to reform transit legislation in order to combat fraud (support of European-wide measures, preparation of national plans to improve compliance with Community Transit).	1999/2000
	Development of national legislation to create a customs civil penalty regime.	2000

## 9.2. Agricultural expenditure

The highlights in developments in practice relating to agriculture expenditure concern the review of checks and inspections methods, several Member States having modified their techniques (B, EL, F, IRL, S) or the rules governing internal cooperation between control services (DK, F, S, UK). Two Member States report that they increased the staff of these services (E, F).

There were also a significant number of training sessions devoted to the protection of agricultural expenditure (B, F, IRL, FIN, S).

And three Member States (F, P, UK) modified their information systems for the detection of irregularities.

Member State	Highlights	Date
<b>B</b>	Improvement of controls in the agricultural field with the aid of various instruments (inspection strategy and manual, special training for national inspectors, a new system for monitoring cases, improvements to the graphic encoding of agricultural holdings).	1999
	Experience shows that many of the irregularities committed by producers involve small sums only.	
<b>DK</b>	Amendment by the central customs and taxation authority and the Directorate of Food, Fisheries and the Agri-food Industry of the cooperation agreement concluded on inspections. Introduction of cooperation mechanisms to step up the fight against fraud and irregularities.	2000
<b>EL</b>	Decree on additional measures to control table olive oil production.	2000
	Practical measures for the management of EAGGF Guarantee Section payments (electronic monitoring of letters of guarantee and of wrongful payments).	1999
<b>E</b>	Increase in control staff (Inspectorates-General of Autonomous Communities, in particular).	
	Establishment of a national office.	
<b>F</b>	France has focused on developing group inspections selected on the basis of risk analysis, which is regularly remodelled, and on cross-checking data from various sources.	
	The aim is to carry out several on-the-spot checks and inspections at the same place.	



	<p>Improvements to the quantity and quality of the system for on-the-spot monitoring of direct aid:</p> <p>extension of the percentage of agricultural land monitored by remote sensing(40%). Introduction of computer-assisted photointerpretation;</p> <p>internal quality controls have been improved (harmonisation of the manuals of procedure, monitoring of internal performance and “re-performance”);</p> <p>a single control department has been set up in the body paying cereal aid and the number of management staff in the central and regional departments responsible for monitoring agricultural surfaces has been increased;</p> <p>training (Ministry of Agriculture, paying agencies).</p>	1999
	Regular examination of common market organisation controls based on the reports by the departments responsible for inspections.	1999
	Expansion of exchanges between the ACOFA inspection department and the customs service (information and reciprocal access for inspectors to training sessions, exchanges).	1999/2000
<b>IRL</b>	Audits carried out upstream and downstream in accordance with Community guidelines.	1999/2000
	Personnel exchange programme between DAFRD and DANL.	2000
	<p>New irregularity cases within the framework of Regulation No 595/91:</p> <p>66 cases in 1999.</p> <p>46 cases in 2000.</p>	
	Improvement to supervisory, control and administration procedures in connection with Headage/Premia.	2000
	Training schemes organised by the Irish Training Advisory Board.	2000
<b>NL</b>	Implementation of Article 20 of Regulation (EC) No 800/1999: exporters now asked for evidence of arrival at destination, whether refunds are or are not differentiated.	Since July 1999
<b>P</b>	Use of computerised systems for checking land use (olive- and vine-growing sectors).	1999
	Priority for physical checks on applicants before payment.	1999
<b>FIN</b>	Training of customs officers regarding checks and inspections on export aids (Regulation No 4045/89).	
<b>S</b>	Organisation by the SLCE and the Swedish Agriculture Council of training sessions and seminars on the fight against economic crime (for judges, the police and economists responsible for combating fraud) and specific training for desk officers and inspectors in the national agriculture administration.	Autumn 1999/spring 2000

	<p>Orientation of controls in the light of the objectives set for each type of aid:</p> <p>export aids: Sweden reports technical adaptations (electronic transmission of reports) so that controls are better monitored, with participation in several bilateral and European coordination meetings and tougher requirements regarding national controls, above and beyond Community obligations;</p> <p>direct aids to agriculture: close cooperation with the controls unit of the national agriculture administration and the 21 counties (evaluation of controls, training measures, preparation of instructions for counties).</p>	1999/ 2000
	Following shortcomings detected with the Russian customs authorities, Sweden decided to extend checks on formal legality of import licences to other countries.	
	Three firms were referred to SLCE for additional investigations in relation to export aids.	2000
	A new directive concerning ecological agriculture sets out to simplify and clarify the rules so as to reduce the risks of error and fraud.	2000
<b>UK</b>	Regular meetings of an inter-departmental group, chaired by the Ministry of Agriculture, Fisheries and Food, in order to discuss implementation of Regulation No 595/91 and to provide a co-ordinated approach to investigation work within the framework of the CAP.	
	Relaunch of the freephone fraud line by the Anti-Fraud Unit of the Intervention Board Executive Agency (IBEA).	December 1999
	The Intervention Board Executive Agency makes extensive use of risk assessment and information stored on its anti-fraud database to identify any areas or traders that might appear more susceptible to fraud.	

### 9.3. Structural Funds and Cohesion Fund

The main new measures introduced in antifraud practice regarding structural measures seek to promote cooperation between the various departments responsible for checks and inspections within the Member State (EL, IRL, NL, A, P, S).

Secondly, certain Member States highlighted training (DK, FIN, S, UK) or staffing (E).

Member State	Highlights	Date
<b>B</b>	Belgium points out that inspections by external auditors are based on risk analysis.	
<b>DK</b>	Revival of the interministerial committee (set up in 1996) to debate inspection and fraud issues related to Structural Funds resources.	
	Organisation of a seminar, jointly with OLAF, on the fight against fraud and other irregularities causing losses to the Community budget, particularly in connection with Structural Funds.	September 2000
<b>EL</b>	Controls are planned on a systematic basis, sample checks and inspections are based on risk analysis (notably at the execution stage so as to prevent or correct irregularities in real time).	
	The annual reports by the Director-General of the general State accounts office record confirmed irregularities and their authors.	
<b>E</b>	Increase in control staff (Inspectorates-General of Autonomous Communities, in particular).	
<b>IRL</b>	Audit agreements between the ESF Internal Audit Unit and other government departments and agencies under a general audit programme within the framework of the ESF (approved by the Commission in January 1999).	
	Series of audits by the Department of Environment and Local Government within the framework of the implementation of the Cohesion Fund.	June-December 1999
	The system in place in Ireland within the framework of the ERDF, the Cohesion Fund, the ESF and the EAGGF Guidance Section offer relatively satisfactory protection of the Community's financial interests.	
<b>I</b>	The central department of the Ministry of Employment prepared a paper defining the concept of administrative irregularity to be reported to the Commission under Regulation No 1681/1994. A general note on the subject is in the pipeline.	2000
	Proposal by the Employment Ministry for simplification of the form used to transmit data to OLAF (under Regulation (EC) No 1681/94)	
<b>NL</b>	New practices in ERDF: advances limited to 80% of the total grant, and accountant reports on final statement on a project.	
	Agreements between the special investigation service of the Ministry of Social Affairs and Employment and the police and relevant judicial bodies.	

<b>A</b>	Cooperation between the authorities responsible for financial control, representatives of the Länder and the Federal Court of Auditors is periodically ensured by the Federal Ministry of Finance and, since November 2000, by the Chancellery.	1999/ 2000
	With some minor shortcomings, the results of the inspections are considered to be highly satisfactory.	1999/2000
<b>FIN</b>	Training regularly given to authorities responsible for supervising and checking the use made of Structural Funds.	1999, 2000
	Database for employment and economic development Centres (project control system).	2000
<b>S</b>	Organisation by the SLCE of training sessions and seminars on the fight against economic crime (for judges, the police and economists responsible for combating fraud).	Autumn 1999  Spring 2000
	Organisation by the Swedish authorities of various training measures, and adoption of guidelines and structures for cooperation to harmonise and improve checks and inspections under Regulation No 2064/97.	May- September 1999
	Development of specific training for secretariats of decision-making groups involved in implementing measures under the EAGGF Guidance Section.	1999
	Close cooperation between the national agriculture administration and operational units and counties in connection with the EAGGF Guidance Section.	
	Reinforcement of cooperation between the various authorities managing structural measures (including Interreg), notably by sharing experience and through seminars.	
	Implementation of checks and inspections in connection with structural measures, in accordance with a plan agreed with the Commission and on the basis of a special training manual and module.	
	A common database for measures financed by the Structural Funds has been developed.	
	As regards the ESF, procedures for information exchanges between the various authorities involved could be improved.	
<b>UK</b>	The Department of Education and Employment (DfEE) has established a programme of internal audits as well as an information campaign aimed at heightening the awareness of staff involved in controls in the framework of the ESF.	

## **10. ADDITIONAL TEXTS ON PROTECTING THE COMMUNITY'S FINANCIAL INTERESTS**

### **10.1. Key elements and the state of ratification of the 1995 Convention and its Protocols**

As things stand, the Convention on the protection of the European Communities' financial interests of 26 July 1995 and the additional protocols signed in 1996 and 1997 (the PFI instruments), which were adopted under the Third Pillar of the Treaty on European Union, should in principle be the first important elements of a common base for the criminal protection of the Union's financial interests, as they deal with aspects of substantive criminal law and judicial cooperation in this field. The existence of harmonised definitions and penalties for certain offences under the various national criminal law systems and Member States' obligations to provide judicial assistance, to cooperate in matters of extradition and to transfer and centralise prosecutions - to list just a few of the important elements contained in the instruments - would considerably strengthen the protection of the Community's financial interests that are particularly at risk as a result of the fragmentary nature of the European criminal-law enforcement area.

The following table sets out the principal instruments contained in each of the instruments:

- 1. Convention on the protection of the European Communities' financial interests of 26 July 1995:<sup>57</sup>**
  - definition of Community fraud;
  - obligation of Member States to make it a punishable offence, to establish their powers on the basis of territoriality, to cooperate, to centralise prosecutions and to extradite;
  - obligation of Member States to make heads of companies criminally liable.
- 2. First Protocol of 27 September 1996:<sup>58</sup>**
  - definition of corruption affecting the EC's financial interests;
  - obligation of Member States to make it a punishable offence<sup>59</sup>.
- 3. Protocol of 29 November 1996 on the interpretation of the PFI Convention and its Protocols by the Court of Justice.<sup>60</sup>**
- 4. Second Protocol of 19 June 1997:<sup>61</sup>**
  - obligation of the Member States, with regard to the offences listed in the PFI instruments, to make money-laundering<sup>62</sup> an offence and to provide for the responsibility of legal persons;
  - obligation of Member States to seize and confiscate the instruments and proceeds of these offences;
  - rules on cooperation between the Commission and the Member States and on data protection.

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<sup>57</sup> Convention on the protection of the European Communities' financial interests of 26 July 1995 drawn up on the basis of Article K.3 of the Treaty on European Union (OJ C 316, 27.11.1995).

<sup>58</sup> Protocol of 27 September 1996 drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests (OJ C 313, 23.10.1996).

<sup>59</sup> The "Anti-corruption" Convention of 26 May 1997 takes over the substantial provisions of the First Protocol, but without limiting its scope of application to the protection of the Community's financial interests only (OJ C 195 of 25 June 1997).

<sup>60</sup> Protocol of 29 November 1996 drawn on the basis of Article K.3 of the Treaty on European Union on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests (OJ C 151, 20.5.1997).

<sup>61</sup> Second Protocol, drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests (OJ C 221, 19.7.1997).

<sup>62</sup> For a definition of money laundering, the Second Protocol refers to Directive 91/308/EC.

**Progress with ratifications  
notified to the Secretariat-General of the Council of the European Union at 22.02.2001**

	PFI Convention (26.7.1995)	1st Protocol (27.9.1996)	2nd Protocol (19.6.1997)	ECJ Protocol (29.11.1996)
B	not yet submitted to Parliament for ratification	not yet submitted to Parliament for ratification	not yet submitted to Parliament for ratification	not yet submitted to Parliament for ratification
DK	02.10.2000	02.10.2000	02.10.2000	02.10.2000
D	24.11.1998 <sup>63</sup>	24.11.1998	ratification not expected in the short term	Act adopted but ratification not notified
EL	26.07.2000	26.07.2000	26.07.2000	26.07.2000
E	20.01.2000	20.01.2000	20.01.2000	20.01.2000
F	04.08.2000	04.08.2000	04.08.2000	04.08.2000
IRL	ratification process underway	ratification process underway	ratification process underway	ratification process underway
I	Act adopted but ratification not notified	Act adopted but ratification not notified		Act adopted but ratification not notified
L	ratification process underway	ratification process underway	internal consultation underway	ratification process underway
NL	Act adopted but ratification not notified	ratification process underway	ratification process in motion	Act adopted but ratification not notified
A	21.5.1999	21.5.1999	ratification not expected before the end of 2002	21.5.1999
P	15.01.2001 <sup>64</sup>	15.01.2001	15.01.2001	15.01.2001

<sup>63</sup> The Act of 10 September 1998 on the protection of the European Community's financial interests entered into force on 22 September 1998.

<sup>64</sup> The ratification Act was adopted on 15.12.2000.

FIN	18.12.1998	18.12.1998	internal consultation underway	18.12.1998
S	10.6.1999	10.6.1999	internal consultation underway	10.6.1999
UK	11.10.1999	11.10.1999	11.10.1999	11.10.1999

*Source: Council of the European Union, Agreements Office*

*NB. The date of ratification may differ from the notification, which marks the entry into force in the Member State concerned.*



## 10.2. Measures adopted implementing the Convention and its Protocols

During the report period, 11 Member States (B, DK, EL, F, IRL, I, NL, A, FIN, S, UK) adopted or at least prepared measures for the implementation of the Convention of 26 July 1995 and its Protocols. The concept of **corruption** received for the special attention if some of them (B, DK, F, NL, S).

Two Member States adopted new legislative provisions to combat laundering (B, FIN), and a third amended its Criminal Code to boost measures against VAT fraud (DK). The Commission welcomes this as its plan of action 2001-02 envisages reinforcing cooperation in the fight against laundering and VAT fraud.

Member State	Measure	Date
<b>B</b>	<p>Amendment of the criminal law to strengthen the protection of the Community's financial interests:</p> <p>Act of 4 May 1999: establishment of the criminal liability of legal persons;</p> <p>Act of 10 February 1999: extends the prosecution of corruption to cases involving civil servants of a foreign country or serving in an international public-law organisation and introduces the notion of private corruption;</p> <p>Royal Decree of 28 December 1999 and Act of 22 April 1999 amending the Money Laundering Act of 11 January 1993: establishes an exception from professional secrecy in cases of suspected money laundering and extends the list of financial bodies required to notify suspected cases of money-laundering;</p> <p>Act of 7 May 1999 and Royal Decree of 6 May 1999: increasing the supervision of gaming.</p>	1999

<b>DK</b>	<p>Act No 228 made the following amendments to the Criminal Code:</p> <p>serious VAT fraud is subject to the same penalties as serious tax fraud (4 years imprisonment);</p> <p>the limitation period for VAT offences (failure to pay the tax or unauthorised collection) is increased from 5 to 10 years;</p> <p>foreign officials and officials working for international organisations guilty of active corruption face the same penalties as Danish officials committing the same offence;</p> <p>foreign officials working for international organisations guilty of passive corruption face the same penalties as Danish officials;</p> <p>a new general stand-alone provision in the Criminal Code makes fraud involving Community resources a criminal offence;</p> <p>the offence of receiving stolen goods has been introduced where the offence committed previously was active or passive corruption in the public sector or fraud involving Community resources;</p> <p>legal persons are now criminally liable in cases of active corruption in the public or private sector or in cases of fraud involving Community resources. The offence of receiving stolen goods has also been introduced for companies in cases of active corruption in the public or private sector or in cases of fraud involving Community resources.</p>	04.04.2000
	Acts Nos 349 and 281: increase the period of limitation for criminal liability from two to five years for offences committed in the fields of agriculture or fisheries.	May/June 1999
<b>EL</b>	Act No 2803/2000 ratifying the PFI Convention and the 3 related Protocols.	03.03.2000
<b>F</b>	Act No 200-595: adapts the French Criminal Code to the Dublin Protocol and the Convention on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union (making active and passive corruption involving officials and members of Community institutions, as well as officials of other Member States, a criminal offence).	30.06.2000
<b>IRL</b>	Criminal Justice (Theft and Fraud) Bill: will permit ratification of the Convention for the protection of the financial interests of the European Communities (1995) in 2001.	30.06.2000
<b>I</b>	Decree-Law No 507: decriminalises offences of smuggling involving amounts of less than €4 000, in accordance with the Convention (decriminalisation does not apply to foreign tobacco products).	31.12.1999
	<p>Act No 300 (Annex A):</p> <p>ratifies and implements the 1995 Convention, the first Protocol (1996) and the Protocol on the interpretation of the Convention by way of preliminary rulings by the Court of Justice of the European Communities;</p> <p>introduces the concept of receiving aids to the detriment of the State in the Criminal Code, lowers the threshold for criminal proceedings in respect of aids wrongfully received.</p>	29.09.2000

<b>NL</b>	Adaptation of the Dutch Criminal Code to meet the obligations under the Convention and the 1996 Protocols (definition of active and passive corruption, extension to international and foreign civil servants, introduction of a criminal provision regarding fraud involving Community subsidies).	1999
	Bill to make fraudulent conduct an offence.	2000
	Bill to amend the legislation on corruption (intentional use of grants for purposes contrary to their true purposes).	1999
<b>A</b>	Longer terms of imprisonment for smuggling and the evasion of taxes and duties.	
<b>S</b>	The Swedish parliament has passed legislative amendments to give effect to the requirements of the Convention and the protocols ratified:  introduction of an offence of diverting grants in the Criminal Code;  extension of liability for corruption offences to situations where the undue advantage is for the benefit of a person other than the person whose exercise of a function may be influenced by the act of corruption.	1 July 1999 (entry into force)
<b>UK</b>	Entry into force of Part I of the Criminal Justice Act 1993, enabling the UK to ratify the Convention and its Protocols.  The jurisdiction required by the first indent of Article 4(1) of the Convention was conferred by these provisions.	01.06.1999

## TITLE III: STATISTICS AND ANALYSES

### 11. FRAUDS AND IRREGULARITIES

As the Commission emphasised in its last report, the fight against fraud concerns any illegal act which has a negative impact on the budget of the European union; however, as the type of illegal act can vary enormously, it is useful to distinguish clearly between cases of “fraud” in terms of criminal law and cases of simple “irregularity”.<sup>65</sup> Whereas OLAF concentrates deliberately on the most serious cases, that is firstly cases of fraud, the Member States are required by the regulations applicable<sup>66</sup> to communicate to the Commission, in addition to cases of fraud, any other irregularity whose budgetary impact exceeds certain limits. This is the reason why the Commission called on the Member States to choose a more homogeneous approach in distinguishing between these two different categories.

At the present time, however, OLAF is not in a position to present two distinct snapshots in this report, in accordance with the wish expressed by the Council<sup>67</sup> for the phenomenon of fraud and other irregularities. The Member States transmit some information on matters which could constitute a fraud<sup>68</sup>. However practices differ in the Member States so that any such distinction would be arbitrary. For example, Germany and Italy are much more prepared to recognise the potentially criminal dimension of certain acts than other Member States.

The Office is conscious of the practical difficulties involved in distinguishing between ‘frauds’ and ‘irregularities’. Whereas a simple “irregularity” in a transaction may be detected by the administrative authorities on the basis of factual information gathered within a relatively short time-scale, the detection of the fraudulent (and therefore criminal)

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<sup>65</sup> “Irregularity shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure’ ( Council Regulation (EC, Euratom N°2988/95: OJ L 312, 1995).

Fraud: “affecting the European Communities’ financial interests shall consist of :

(a) in respect of expenditure, any intentional act or omission relating to :

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,
- non-disclosure of information in violation of a specific obligation, with the same effect,
- the misapplication of such funds for purposes other than those for which they were originally granted;

(b) in respect of revenue, any intentional act or omission relating to :

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,
- non-disclosure of information in violation of a specific obligation, with the same effect,
- misapplication of a legally obtained benefit, with the same effect. (Convention on the protection of the European Communities’ financial interests, OJ C 316 of 27.11.1995).

<sup>66</sup> Regulation No 1552/89 (traditional own resources); Regulation No 595/91 (EAGGF Guarantee Section); Regulation No 1681/94 (Structural Funds); Regulation No 1831/94 (Cohesion Fund).

<sup>67</sup> See conclusions of the Economic and Financial Affairs Council of 17.7.2000, item 7.

<sup>68</sup> The transmission of a case to the prosecutor indicates that a fraud or an irregularity may have been committed. So do certain types of irregularity or ways of committing the irregularity (use of falsified documents, fictive movements or transformation of goods, contraband, etc...)

nature of a transaction is only apparent following much longer procedures and taking account of the principle of the presumption of innocence. The true nature of serious cases will only be known therefore years later. This type of information is available from the judicial authorities, whereas information on the follow-up given to confirmed irregularities is collected and transmitted by the administrative authorities of the Member States. **Member States will henceforth have to ensure that, in accordance with their obligations, the circulation of such information is not impeded.**

In order to assist the Member States with this complex task, the Consultative Committee for the Coordination of the Fight against Fraud (COCOLAF) has created a working group and given it the task of producing guidelines in the near future. These guidelines should ensure a more homogeneous treatment of cases.

## 12. THE SITUATION IN 2000

### 12.1. The overall level of fraud and other irregularities

If the number of new cases and their budgetary impact are compared with previous years, the level of frauds and other irregularities detected or suspected in 2000 has increased. While the number of cases detected in the area of own resources declined slightly, this is compensated by an increase in the number of cases detected in the EAGGF Guarantee area and, even more so, in the area of structural actions. The audit and control systems put in place by the Member States in the area of structural measures has brought improved results and controls have been strengthened with the aim of closing a good number of programmes at an early stage. From now on, this area does not differ substantially from the other areas of the budget.

Regarding the amounts involved, a significant increase can be seen in all the areas of the budget.

In total, the Member States and OLAF have dealt in 2000 with 6915 new cases with an overall budgetary impact (confirmed or estimated) of 2030 millions of euros. (*For the cases communicated by the Member States, see annexes, 2, 4 and 5*).

### 12.2. Cases of fraud communicated by the Member States

In 2000, the Member States communicated 6587 cases on the basis of sectoral regulations<sup>69</sup>. These cases are split as follows in the different areas of the budget (*for the details see tables 1, 2 and 3*):

<i>Area of the budget</i>	<i>Number of cases</i>	<i>Amount (in 1000 €)</i>	<i>% of the sectoral budget<sup>70</sup></i>
Traditional Own Resources	2403	534 525	3.5 <sup>71</sup>

<sup>69</sup> See footnote 63.

<sup>70</sup> The budget as indicated is the sectoral budget (Traditional own resources, EAGGF-Guarantee expenditure, then Structural funds, including the Cohesion fund). The percentages therefore cannot be added.

<sup>71</sup> The percentage refers to the total amount of traditional own resources paid by the Member states for 2000, minus the collection costs..

EAGGF Guarantee	2967	474 562	1.17
Structural actions	1 217	114 227	0.45

### 12.3. Cases under investigation by OLAF

In addition to the cases communicated by the Member States, OLAF dealt in 2000 with 328 new cases, which fall, according to the provisional assessment of the Office, in their large majority into the category of criminal. In fact, as a general rule, it is the suspicion of fraud, which leads OLAF to open an inquiry: the sole exception is the area of direct expenditure as, in this area, OLAF is responsible for dealing with all irregularities. Of course, it will be for the national judicial bodies carrying out the investigation to determine the nature of the behaviour. Regarding the impact of these cases on the budget, this is a *provisional estimate* which, with the exception of the area of direct expenditure, must also be confirmed by the competent national bodies who must issue the recovery order to the persons concerned.

The files opened in 2000 are divided as follows:

<i>Area of the budget</i>	<i>Number of cases</i>	<i>Amount (in 1000 €)</i>	<i>% of the sectoral budget</i>
<b>Traditional own resources</b>	120	608,771	3.99
<b>EAGGF Guarantee</b>	21	102,025	0.25
<b>Structural actions</b>	39	25,051	0.10
<b>Direct expenditure:</b>			
• Internal policies	57	13,752	0.25
• External policies	91	156,622	2.99

## 13. TRENDS

In the last few years there was a tendency for the level of frauds and other detected irregularities to stabilise, but in 2000 there was once again a rather large rise in the number of detected cases and, especially, in the amounts concerned.

This also applies to the cases under investigation by OLAF. However, the real extent of the frauds detected by OLAF in cooperation with the competent services of the Member States is less easily attributable to a calendar year or a specific accounting period. The investigations of OLAF are carried out with the aim of establishing the facts and revealing gradually the real extent of the actions in question. Within the framework of the same investigation, there may be a conservative assessment of the budgetary impact based on the evidence (the “amounts established”) and an estimate of the probable budgetary impact based on an extrapolation of the facts. This applies in particular to complex cases, which involve organised economic crime such as cigarette smuggling, the case of the adulterated butter or the fraudulent banana imports.

## 13.1. The field of traditional own resources

### 13.1.1. Introduction

Regulation No 1150/00 delegates to the Member States the collection of traditional own resources, in particular import duties. Consequently, Member States are required to take all the measures necessary to fulfil their obligations with respect to the Community budget. Moreover, they have to inform the Commission of their inspection activities and their results.

The Member States transmit statistical information to the Commission in the following way:

- by means of the irregularity and fraud files, in accordance with *Article 6(5) of Regulation No 1150/00*, for cases where the amount is higher than € 10 000<sup>72</sup>;
- and also by means of their annual inspection reports, in accordance with *Article 17(3) of Regulation No 1150/00*. These reports show the activities and the results of inspections carried out at national level.

The Commission can thus have indicators in order to analyse the trends, which emerge as regards the fight against fraud and recovery in the Member States.

The Commission has adopted a new approach in drawing up its reports on protecting the financial interests for the reporting exercise *relating to year 2000*. With the aim of presenting to the budgetary Authority an overall assessment based on the factual elements gathered from the Member States, it considered it convenient to amalgamate the OLAF report – established under Article 280 of the Treaty – together with the report established under Article 17(3) of Regulation 1150/00 on own resources. A first step was taken in this direction in 1999, the 17(3) report featuring in the technical annex of the OLAF report. The 2000 report merges the two reports. However, the conditions in which they were prepared are not ideal.

In order to meet deadlines, Member States were invited to transmit their annual reports by the end of February 2001. But the data concerning inspection activity in 2000 by the Member States actually received by the Commission within this timetable is extremely compartmentalised and does not allow for any comparative analysis.

Moreover, information gathering has its price. Thus, the Commission considers that the conclusions which it can draw from the fraud and irregularity files communicated under Article 6(5) of Regulation N°1150/00 (amounts > €10 000) are not very different from those likely to be drawn from the information provided under Article 17(3) (all amounts). Accordingly, the results obtained as regards the fight against fraud and the recovery action by the Member States are analysed on the basis of the fraud files.

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The notion of fraud is not interpreted in a uniform way by the Member States. This is partly due to the fact that the Convention on the Protection of financial interests which defines the notion has not yet been ratified by all the national Parliaments. In some Member States, an infringement on Community regulations can be qualified as fraud after the final decision of a Court. Whereas in other Member States, operational services qualify this type of infringement themselves during the investigations. The Commission therefore recommends that only overall figures covering both frauds and other irregularities should be used for the sake of analysis.

### 13.1.2. Analysis of data communicated by the Member States

On the basis of the whole of the data collected in accordance with Article 6(5) of Regulation 1150/00, that is to say on the basis of 2403 cases of fraud and irregularities, the Commission has noted the following trends:

In raw data, the number of cases of fraud and irregularity in 2000 (cases > €10 000, see annex 1) shows an average drop of 4.5% in relation to 1999. Compared with the average number of communications over a period of four years, the number of cases communicated in 2000 shows a decrease of 2.95%.

Certain Member States were late updating their communications. Greece did not communicate any cases of frauds or irregularities for the whole of 2000.<sup>73</sup> This situation is difficult to accept. On the one hand, certain Member States do not fulfil their Community obligations; on the other hand, they deprive the Commission of information necessary for a reliable analysis of fraud developments. The Commission depends very much on the Member States for the information which it can have on frauds and irregularities. It lies therefore with the Member States to find ways of remedying this situation.

In view of the lack of data on **inspection activity in the Member States for 2000 (Annexes 1 and 2)**, the Commission is not in a position to provide an analysis for the year 2000, in terms of customs staff and the number of entries and the rate of checks.

With regard to the **amounts established (Annex 2 column 3)** as regards fraud and irregularities, the increase has been constant since 1998; the amount for 2000 is almost double the figure for 1998 and 1999. This increase is based in particular on the irregularities detected in imports of milk products from New Zealand.<sup>74</sup> This case concerns primarily the United Kingdom, and has a considerable financial impact on the amounts established by this Member State.

Leaving aside this case, the aggregated amounts increase from one year to another. This increase does not systematically mean an increase in the number of cases reported by each Member State. A significant rise in the amount established is seen mainly for France, Germany, Italy, the Netherlands and Spain. Finland and Sweden show for their part a considerable fall (for the latter, in parallel to a decrease in the number of cases communicated)..

#### Situation of recovery (cases > €10 000)

Amounts	1997	1998	1999	2000
Number of cases	€2 535	€2 452	€2 516	€2 403
Amounts established	327 668 781	224 415 874	243 773 815	534 524 713
Amounts recovered	€83 973 118	€77 205 219	€33 892 250	€74 033 638
% recovered amounts	25.63%	34.40%	34.41%	13.85%

\*Updated on 18.4.2001

<sup>73</sup> Greece notified 24 cases of fraud and irregularities but these cases were linked to previous years whereas they cover 2000. By reason of the late receipt of this notification, these cases have not been taken into account for the present report.

<sup>74</sup> This case was the subject of a special report by the Court of Auditors, No 4/98: OJ C 127 of 24.04.1998 and OJ C 191 of 18.06.1998.



The constant rise in the amount established is accompanied by a significant fall in the *average recovery rate* (column 8, Annex 2) between 1998 and 2000. The New Zealand case is concerned by this situation, the Commission indeed having decided to put off the recovery of 36% of the amounts pertaining to this case.

The national recovery rate fell in most Member States, except for Luxembourg (with a rate of 100% since 1997), Belgium, Ireland, Portugal and Sweden. The recovery rate shows great variations between Member States. However, even if the variation in the level of recovery from year to year were in itself interesting, the Commission would like to stress that this rate in itself is not an indicator of performance. This is because it is linked to a number of factors (national recovery procedures, procedures of appeal, whether administrative or judicial) which must be taken into account.

The Commission usually carries out **a breakdown of frauds and irregularities by customs arrangements, product and origin.**

As regards *frauds and irregularities established by customs arrangements*<sup>75</sup>, the global information drawn from the fraud forms confirms the trends observed on the impact of fraud in particular in free circulation with 79.8% of the cases and 93% of the amounts detected. Transit remains a sensitive fraud sector (with 11.3% of the cases). However in terms of amounts, the impact is less significant (1.2%) than amounts established for 1997-99. Fraud in other areas remains low. Fraud in free circulation<sup>76</sup> is concentrated on the *incorrect description of goods* (31.9% of the cases for 10.4% of the amount). In relation to previous years, one observes a clear upward variation in number of cases but a clear downward variation with regard to the amount. The number of *non-declarations* also shows a general, significant decrease.

As regards a *breakdown of cases of fraud and irregularities by types of goods*, milk products and cigarettes, in particular, as well as cars, clothing, and electrical equipment are particularly sensitive to fraud. This trend can be observed during the years 1998 to 2000. But the high figure for milk products causes a drop in the respective percentage of other goods.

*The breakdown of the cases of fraud and irregularities by origin* show that dairy products of New Zealand origin are at the top of the list of the 25 most commonly the subject of frauds. This was noted in 1998 and 1999, but amounts established in 2000 are on a steep rise. It is possible to observe a constant rise in the amounts for products originating from the USA and in the amounts and number of cases involving goods of Chinese origin.

However, there is a fundamental difference between these two countries. The irregularities in USA origin goods are mainly errors in tariff classifications; the detection of these errors results in high recovery rates. The observations covering the goods originating in China concern mainly the unjustified application of preferences or false declarations of origin and

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<sup>75</sup> The Commission noted, as far as the number of cases is concerned, a discrepancy between overall figures and the data regarding risk analysis by type of irregularity. This does not mean there is a greater number of cases for the established irregularities. The discrepancy originates in the fact that some Member States register more than one anomaly per case, which leads to double counting. The impact on the general trend is not significant. The Commission, however, draws the Member States' attention to the necessity of filling the fraud forms accurately.

<sup>76</sup> A detailed breakdown of fraud and irregularities established in free circulation brings to light the big share of the column Other irregularities: 42% of the cases, 75.4% of the established amount. Some fraud forms do not specify the irregularity concerned, a lack of detail which, as noted above, distorts the analysis.

recovery is often difficult. The cases of Japan and Singapore are similar to the USA cases. The four cases from Ecuador detected in 2000 cover imports of bananas into Belgium in breach of transit regulations.

### 13.1.3. Conclusion

This 2000 summary shows gaps with regard to the inspection activity of the Member States; moreover, it reveals the impact of the merger of the two reports, whose publication is not currently subject to the same imperatives. Lastly, the data used up to 1999 by the Directorate General for the Budget for the drawing-up of the report has changed. These factors required the Commission to be adaptable. The same adaptability is also awaited from the Member States.

The collection of various items of information from the Member States aims to improve the quality of the follow-up by the Commission of their inspection activity, in particular as regards recovery, and to enable it in addition to identify the difficulties which may be encountered in respecting their Community obligations.

But its objective is as much to assist the Member States to evaluate their own efforts in the field of traditional own resources. The Commission could already draw conclusions, with regard to the efforts which Member States will have quickly to make to improve the quality of the information communicated, implicit in relation to their Community obligations.

The Commission intends to continue its awareness-raising work with the Member States. This will be the subject of discussions within the Advisory Committee on the Communities' Traditional Own Resources at its next meeting or will be covered, depending on the case, in bilateral exchanges.

## 13.2. Agricultural expenditure (EAGGF Guarantee)

The number of frauds and other irregularities detected by the Member States in 2000 and their budgetary impact are up on the previous year (+10% and +104%, respectively). The considerable increase in the budgetary impact is due initially to two large-scale cases which were detected by Italy and which concern fraudulent activities over a period of several years.

The high budgetary impact of one of these two cases has the consequence that in 2000, export refunds no longer represent the *category of expenditure* most affected. The relative share of frauds and other irregularities concerning market support measures went up to 44%, while cases communicated in the category of export refunds accounted for 41% of the overall impact (reflecting hardly any percentage change in relation to the previous year). Expenditure for export refunds represented only 14% of the expenditure of EAGGF Guarantee and expenditure for the market support measures only 9% of expenditure. The relative impact of fraud cases and of irregularities was therefore particularly high in relation to market support. On the other hand, fraud and irregularities only to a much smaller degree affect direct aid, which is by far the easiest measure to control.

The relative incidence of cases of fraud and other irregularities in relation to the EAGGF Guarantee budget reached in 2000 a level markedly higher than in the previous years (1.17%, as against 0.74% and 0.73% in 1999 and 1998). The relative incidence is still particularly noteworthy in Italy, Germany and France (the principal recipient of financing

from the EAGGF Guarantee Section) having communicated a significantly higher rate of irregular expenditure than in the past.

The new cases opened by OLAF in 2000 concern firstly cereals, olive oil, and fruit and vegetables.

For the trends in numbers and amounts for cases communicated by the Member States, see Annex 9.

### **13.3. The field of structural measures**

In the field of expenditure of structural measures, the appreciable increase in the number of new cases detected by the Member States as well as in terms of the budgetary impact continues. In relation to the previous year, the number of cases communicated increased by 74%, whilst the overall budgetary impact of the cases communicated decreased by 5%. The number of cases recorded shows that the inspection systems of the Member States have become increasingly effective and that the transparency level has increased appreciably.

The cases communicated by the Member States concern primarily the Structural Funds (EAGGF Guidance Section, ESF, ERDF, FIFG). With regard to the expenditure of the Cohesion Fund (which amounts however to approximately €3 billion a year), the four Member States which benefit from this financing, only communicated 2 cases. In terms of the number of cases communicated, it is still the Social Fund which was the most affected in 2000, while in terms of amounts it is the Regional Fund which was the most affected.

Behind these overall figures are hidden situations which vary enormously between the Member States. France and the Netherlands, which in the past only communicated a very limited number of cases, communicated in 2000 the largest number of cases (which concern especially the Social Fund). On the other hand, in terms of amounts the cases communicated by Ireland differ greatly from the cases communicated by the other Member States, which is due to a very limited number of significant cases in the field of the Regional Fund. This reflects the phenomenon already known in other budgetary fields that detection – which is random in time – of certain important cases has a major impact on statistics for a calendar year while the financial impact will concern rather a previous period.

After the clear fall of the previous year, the number of new cases opened in 2000 by OLAF and dealt with in cooperation with the Member States again increased considerably. OLAF concentrated on projects financed by the Social Fund and the ERDF.

For the trend in the number and impact of cases communicated by the Member States see Annex 10.

### **13.4. Direct expenditure**

In the field of direct expenditure (which is managed by the Commission), OLAF opened, in 2000, 148 new cases whose overall budgetary impact is estimated at approximately €170 million, which represents an important increase in relation to the previous years. This reflects the will of OLAF to give greater priority to this field of the Community budget which, for years, has been the subject of substantial criticism from the Court of Auditors

and the European Parliament and where OLAF is the only body with the right to carry out investigations. Almost 60% of the new cases opened in 2000 concern “external policies”.<sup>77</sup> on average, the budgetary impact of these files is markedly higher than cases which concern “internal policies”.<sup>78</sup>

## 14. FINANCIAL FOLLOW-UP

Some progress was achieved but the actual rate of recovery of amounts involved in cases of fraud and other irregularities remains unsatisfactory.

### 14.1. Determining factors

The amounts seen in points 2 and 3 above and in the annexes serve to identify *the impact of fraud and irregularities* against the European Union in relation to the budget. However this must not be confused with *the real and definitive loss to the Community budget*. This is because

- The amounts shown include ‘*attempts discovered in time to prevent misappropriation*’. These are cases of frauds and other irregularities where the management and control systems put in place by the Member States and the Commission have made it possible for the Community budget not to suffer any real loss;
- A limited but nevertheless important part of the amounts shown is recovered or will be in the years to come. *The possibilities of recovery* depend on the concrete situation. The best conditions exist when the beneficiary (or the person responsible) has agreed to a guarantee or when there are ways of obtaining compensation. It goes without saying that recovery procedures must respect due process and procedures can be protracted till evaded entitlements or amounts unduly paid are recovered. It is therefore only after several years that the level of actual recovery is known (for more details, see above);
- Often *penalties*<sup>79</sup> must be added to amounts to be recovered. Community penalties accrue to the Community budget and offset part of the losses incurred in other cases;
- In the areas of own resources and indirect expenditure, whenever recovery fails through the negligence of the Member State concerned, the Commission may decide to *charge the Member State with the amounts to be recovered*.<sup>80</sup>

### 14.2. Recovery

Even though some progress is noticeable, the level of actual recovery of amounts due as a result of cases of fraud and other irregularities remains unsatisfactory and procedures of recovery engaged in the Member States are often too slow. As a result the Commission has

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<sup>77</sup> PHARE and TACIS, development assistance programmes etc.

<sup>78</sup> Financing of activities in the European Union, for example in the fields of research, environment, trans-European networks, training and culture.

<sup>79</sup> For example, in export refunds paid in advance, the amount to reimburse is automatically increased by 10%.

<sup>80</sup> See procedure in Article 17(2) of Regulation No 1150/2000, account-clearing procedure (Article 8(2) of Regulation No 1258/1999), also procedure of Regulation No 448/2001.

put in place a global recovery policy which will enable it to assess actions taken by the Member States and to take correcting measures when necessary.

#### 14.2.1. *Traditional own resources*

Member States are responsible for the effective collection of traditional own resources.<sup>81</sup> To this end, they are required to set up an appropriate infrastructure. The Union finances this. The Commission (Direction General for the Budget) supervises the way the Member States recover funds in accordance with Community law.

In the Member States, recovery action is dependent on diverse factors, in particular difficulties in identifying the debtor, slowness of administrative and judicial procedures for recovery and insufficient guarantees. In view of all these factors, the Commission put in place an overall follow-up strategy, which enables it to evaluate the actions of the Member States and to take corrective measures when required. The **mechanism for monitoring recovery** revolves around to three major main principles.

The number of recovery cases managed by the Member States is very high. On the basis of Article 6(5) of Regulation No 1150/2000 and by means of the OWNRES system, the Commission is informed each quarter of the cases of fraud and irregularity as well as of any updates, where the financial impact exceeds €10 000. To process such a mass of information, the Commission defined a **sample survey strategy**.

The first procedure (“Report A”), based on an overall statistical exploitation of fraud forms, gives an indication of the general aspects of the situation of recovery<sup>82</sup>. The second procedure (“Report B”) consists of following up to the clearance stage the recovery operations pertaining to a number of particularly significant and complex cases<sup>83</sup>. This monitoring of specific cases also aims to convince the Member States to strengthen their recovery actions. It can lead to the Member States taking on the financial responsibility through error or inaction, for not making available to the Community budget the traditional own resources<sup>84</sup>.

Under certain circumstances, it may not be possible to carry out recovery. The Member State in this case writes off the amount of the debt which could not be recovered. The **cases of write-off** (amounts > €10 000) are communicated to the Commission for examination. If the Member State showed all due diligence to obtain the recovery of the amount due, while respecting national and Community legislation, the exemption can be accepted. Otherwise, it is financially liable on the basis of Article 8 of Decision 94/728 and of Articles 2 and 17 of Regulation No 1150/00. Examining the diligence of the Member States constitutes a very effective action to convince the national administrations to take recovery more seriously.

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<sup>81</sup> See Decision 94/728 (OJ L 293 of 12.11.1994) on own resources and in particular its Article 8, which requires Member States to collect traditional own resources.

<sup>82</sup> A first report of this type was sent to the budgetary Authority in 1995. It is Report A 94, published on 6.09.1995 (COM(95) 398) and a second report amalgamating the A and B reports is planned for 2001.

<sup>83</sup> Two reports of the kind were elaborated. Report B94, published on 9 June 1997 (COM(97) 259 final), deals with 6 cases involving a total of 124 M € or so. Report B98, published on 21 April 1999 (COM(1999) 160 final) covers 9 cases for a total amount of approximately 136 M€.

<sup>84</sup> Moreover, specific monitoring outside the “sample survey” is ensured for cases which do not fit the conditions for inclusion in the B sample but nevertheless deserve greater attention for reasons of opportunity.

As regards application of Article 17(2) of Regulation N°1150/2000, writeoff cases communicated in 2000 were particularly numerous, in relation to previous years (57 cases over the period 1997-1999, 327 cases in 2000 – see Annex 3). This results mainly from one Member State which first challenged the Commission's interpretation of Article 17(2) procedure, then ultimately accepted its observations and notified 282 cases for the period 1994-1998. In 2000, 327 cases were thus communicated to the Commission and examined; the results are shown in Annex 3.

Member States have to ensure the collection of traditional own resources under the best conditions: with this *mandate of remunerated delegation (25%)*<sup>85</sup> and while meeting international standards of sound and effective management of public funds, any negligence on the part of the Member States which results in a loss of resources gives rise to **financial responsibility for their administrative errors**.

According to this approach, the Commission holds the administrations financially responsible for their own errors, for example in the event of limitation (provision) of an amount according to *Article 221(3) of the Code*, while all the elements allowing for this to be taken into account were well known, or in the event of an administrative error not detectable by the debtor (*Article 220(2)(b) of the Code*). Thus, administrations will be strongly motivated to act with all due diligence in the process of collection of duties. During the period 1999-2000, the Commission sent 65 Letters of Calls for Funds (LCF) representing an amount of approximately €46 million. The LCF were sent following a refusal to write off the amounts concerned.

The improvement in the effectiveness of recovery largely depends of course on the will of the Member States to act with all necessary diligence. For its part, the Commission concentrates on the actions, which it can carry out in order to improve the effectiveness of recovery in each of the main areas mentioned above, and has taken several initiatives for a **stricter monitoring policy**.

*An active reminder policy* with regard to requests for information from the Commission was set up; a greater synergy between the Commission departments, in particular OLAF and the Directorate-General for the Budget, is carried out in the management of the fraud files. Furthermore the 'Recovery 2000' report, to be published for the first time in the middle of 2001, will bring together samples A and B with the aim of describing the situation concerning recovery more comprehensively.

*Processing of write-off cases*. Firstly, it is advisable to recall that already on 4 July 1997, the Commission submitted a draft amendment of Regulation No 1552/89 (now Regulation No 1150/2000) to make more effective the current write-off procedure for irrecoverable amounts, setting in particular a deadline for the submission to the Commission of the cases withdrawn from the separate accounts. Discussions in the Council are not yet finished.

Regarding the practical treatment of individual cases, the Directorate-General for the Budget created an interdepartmental working group and also obtained the suitable computer equipment to allow it to manage a large number of files effectively.

In relation to financial liability, the Commission set in motion an infringement proceeding (under No A2000/2115) and sent the letter of formal notice on 19/7/2000. The reasoned

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<sup>85</sup>

On the basis of Article 8 of Decision 94/728/EC, Euratom (replaced by the Decision of 29 September 2000 once it is ratified).

opinion should come out in the near future. This procedure will serve as a “pilot case” to clarify whether the action of the Commission regarding the financial responsibility of a Member State for its own administrative errors is justified.

#### *14.2.2. EAGGF Guarantee Expenditure*

In the field of agricultural expenditure, OLAF continued the exercise of checking the state of recovery in particular in the cases already communicated several years ago and to identifying the amounts which prove to be irrecoverable or to justify, if necessary, the delay in effective recovery.

The problem of recovery in the field of EAGGF Guarantee remains still primarily a problem for one Member State (Italy) which accounts, alone, for three quarters of the overall balance still to be recovered. In large part, this problem is due to the length of the national<sup>86</sup> judicial procedures. Italy has not yet given the assistance necessary to find a solution to this problem.

*For the situation on recovery see Annex 6.*

#### *14.2.3. Structural measures*

In the field of structural measures, the financial follow-up is determined by the fact that the final decision on the balance to be recovered can be taken only at the time of the closure of the multi-annual operational programme (or of the Community initiative or the Single Programming Document). Member States which discover an irregularity during the period of implementation of the operational programme have the possibility of rectifying the financial situation at the latest at the time of the final payment (recovery of the undue amount already paid or reduction of a later payment) and of reallocating the appropriations released to another project where there has not been an irregularity.

The visibility of amounts yet to be recovered is limited by the fact that the Member states do not always communicate the follow-ups of irregularities in a systematic manner. Member States must now communicate annually to the Commission a breakdown of recoveries to be effected in order to facilitate financial follow-up.<sup>87</sup>

OLAF henceforth is systematically involved in the follow-up organised by the authorising departments of the Commission and takes part in the regular coordination meetings with the Member States. The new regulation<sup>88</sup> which introduced a type of “clearance of

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<sup>86</sup> Also see special report N° 11/2000 of the Court of Auditors which checked the recovery situation (and noted the length of the procedures) in the olive oil sector, which represents approximately a third of the balance to be recovered in the cases communicated by Italy.

<sup>87</sup> Article 8 of Commission Regulation 438/2001 of 2 March 2001.

<sup>88</sup> Commission Regulation N° 448/2001 of 2 March 2001 laying down the detailed rules for the application of Council Regulation (EC) No 1260/1999 with regard to the procedure for the implementation of financial corrections applicable to aid granted under the Structural Funds (OJ L 64, 6.3.2001).

accounts” will facilitate, in the future, charging to the Member State the amounts lost following as a result of negligence.

*For the situation on recovery see Annex 7.*



# **ANNEXES**

# ANNEX 1

## Traditional resources

### Number of cases of fraud and irregularity communicated by the Member States<sup>89</sup> to the Commission

#### Development over the period 1997- 2000

(updated on 18.04.2001)

Member States	1997 Cases	1997 Amounts in euro	1998 Cases	1998 Amounts in euro	1999 Cases	1999 Amounts in euro	2000 Cases	2000 Amounts in euro
AUSTRIA	75	8.578.947	149	7.807.165	86	4.277.866	73	6.222.115
BELGIUM	253	21.305.588	345	11.458.009	294	14.860.474	306	14.734.332
DENMARK	82	8.476.159	131	14.688.022	102	8.670.831	108	10.706.245
FINLAND	36	1.750.277	42	1.682.245	36	5.104.165	36	1.598.820
FRANCE	232	31.290.712	212	14.051.247	267	15.737.713	245	29.005.108
GERMANY	395	29.366.567	332	28.364.711	496	40.150.373	482	57.338.293
GREECE	14	4.088.938	7	312.760	14	440.627	0	0
IRELAND	54	3.856.185	63	2.276.201	40	7.048.580	37	1.822.792
ITALY	302	83.849.314	173	20.793.475	236	15.367.436	226	40.850.713
LUXEMBOURG	4	81.592	7	1.781.643	8	774.492	2	35.466
PORTUGAL	16	8.275.935	18	1.319.715	14	463.693	14	72.973
SPAIN	81	4.820.889	73	3.326.423	119	8.668.713	116	10.075.701
SWEDEN	45	3.218.794	97	8.808.356	65	8.863.380	17	1.312.296
NETHERLAND	466	32.225.013	304	8.813.119	205	8.718.006	245	11.264.044
UNITED KINGDOM	480	86.483.872	499	98.932.782	534	104.627.466	496	349.485.815
<b>TOTAL CASES</b>	<b>2.535</b>	<b>327.668.781</b>	<b>2.452</b>	<b>224.415.874</b>	<b>2.516</b>	<b>243.773.815</b>	<b>2.403</b>	<b>534.524.713</b>

<sup>89</sup> The communication by the Member States of cases of fraud and irregularity above €10000 is a Community obligation set out in article 6, paragraph 5 of regulation 1150/00 of 22.05.2000

## ANNEX 2

### Traditional resources Cases of fraud and irregularity communicated by the Member States in 2000 (Amounts in euros)

Member States	Cases communicated in 2000	Amounts established	Percentage established out of the total for the 15	Average amount per case	Amounts recovered for cases communicated in 2000	% recovery EUR-15 total	Crude rate of recovery <sup>90</sup>
(1)	(2)	(3)	(4)	(5) = (3) / (2)	(6)	(7)	(8) = (6) / (3)
B	306	14.734.332	2,8 %	48.151	2.640.659	3,6 %	17,92 %
DK	108	10.706.245	2,0 %	99.132	6.812.367	9,2 %	63,63 %
D	482	57.338.293	10,8 %	118.959	13.591.345	18,4 %	23,70 %
EL	-	-	0,0 %	-	-	0,0 %	0,00 %
E	116	10.075.701	1,9 %	86.859	3.217.347	4,3 %	31,93 %
F	245	29.005.108	5,4 %	118.388	6.575.009	8,9 %	22,67 %
IRL	37	1.822.792	0,3 %	49.265	1.463.235	2,0 %	80,27 %
I	226	40.850.713	7,6 %	180.755	493.394	0,7 %	1,21 %
L	2	35.466	0,0 %	17.733	35.466	0,0 %	100,00 %
NL	245	11.264.044	2,1 %	45.976	1.083.882	1,5 %	9,62 %
A	73	6.222.115	1,2 %	85.234	648.526	0,9 %	10,42 %
P	14	72.973	0,0 %	5.212	72.973	0,1 %	100,00 %
FIN	36	1.598.820	0,3 %	44.412	1.144.779	1,5 %	71,60 %
S	17	1.312.296	0,2 %	77.194	1.273.284	1,7 %	97,03 %
UK	496	349.485.815	65,4 %	704.608	34.981.372	47,2 %	10,01 %

<sup>90</sup> The rough rate of recovery is not a significant element. It varies according to both the national recovery procedures and the administrative and judicial appeal procedures.

# ANNEX 3

## Traditional Own Resources

### Write-off cases communicated by the Member States<sup>91</sup>

#### 1. Summary of write-off cases sent by the Member States in the period 1992-2000

##### Observations of the Commission on examining these cases

<i>Years</i>	<i>Total cas</i>	<i>Total Montant €</i>	<i>Cases acceptés</i>	<i>Exempt En €</i>	<i>Cases refusés</i>	<i>Amount En €</i>	<i>Cases autres*</i>	<i>Amount En €</i>
1992-1999	57	14.058.733,77	29	5.437.145,00	17	7.372.111,00	11	1.249.479,00
2000	327	42.650.455,00	80	6.484.838,00	139	6.193.345,00	108	29.972.272,00
General	384	56.709.188,77	109	11.921.983,00	156	13.565.456,00	119	31.221.751,00
%	100%	100%	28%	21%	41%	24%	31%	55%

\* The column other cases includes cases withdrawn or which came under old regulations where communication was not appropriate or requiring additional information from the Member States .

#### 2. Détail des cas de mise en non-valeur adressés par les Etats membres en 2000

##### Observations of the Commission on examining these cases

<i>Observations of the Commission</i>	<i>Number</i>	<i>% case</i>	<i>Breakdown by MS</i>	<i>Amount in €</i>	<i>% amount</i>
Cases accepted	80	25 %	1 case NL - 1 case Portugal 3 cases UK - 2 cases F 73 cas Allemagne	6.484.838	15 %
Cases refused	139	43 %	1 case NL - 1 case UK 137 cas Allemagne	6.193.345	14 %
Cases where information required	67	20 %	1 case UK 66 cas Allemagne	16.453.418	39 %
Not appropriate	41	12 %	41 cases Germany	13.518.854	32 %
Total cases transmitted	327 cas	100 %	5 Member States out of 15	€ 42.650.455	100 %

<sup>91</sup> Procedure set out in article 17 paragraph 2 of regulation n° 1150/00

## ANNEX 4

### EAGGF GUARANTEE

#### IRREGULARITIES COMMUNICATED BY THE MEMBER STATES UNDER REGULATION N°595/91 2000

<i>Member State</i>	<i>Number of cases</i>	<i>Amounts involved in 1.000 €</i>	<i>% of EAGGF expenditure</i>
<i>Belgium</i>	68	39.604	4,86
<i>Denmark</i>	34	538	0,04
<i>Germany</i>	940	61.393	1,22
<i>Greece</i>	49	15	0,00
<i>Spain</i>	651	28.445	0,52
<i>France</i>	261	15.480	0,41
<i>Ireland</i>	68	1.148	0,07
<i>Italy</i>	116	281.160	5,62
<i>Luxembourg</i>	0	0	0,00
<i>Netherlands</i>	98	10.203	1,14
<i>Austria</i>	52	528	0,14
<i>Portugal</i>	195	14.843	2,28
<i>Finland</i>	13	83	0,01
<i>Sweden</i>	29	664	0,18
<i>United Kingdom</i>	393	20.458	0,46
<b>Total</b>	<b>2.967</b>	<b>474.562</b>	<b>1,18</b>

The notion of "irregularity" under the regulation mentioned includes cases of "fraud". The qualification of an irregularity as "fraud", meaning criminal behaviour, can only be made following a penal procedure.

## ANNEX 5

### STRUCTURAL ACTIONS

#### IRREGULARITIES COMMUNICATED BY THE MEMBER STATES UNDER REGULATIONS N°1681/94 AND 1831/94

2000

<i>Member State</i>	<i>Number of cases</i>	<i>Implicated amounts (in 1.000 €)</i>	<i>% of budget</i>
B	0	0	0,00
Dk	12	296	0,24
D	107	17.277	0,46
EL	14	2.819	0,12
E	185	11.309	0,29
F	266	9.963	0,40
Irl	88	8.757	1,25
I	117	22.926	0,45
L	0	0	0,00
NL	223	23.736	4,98
A	44	1.363	0,52
P	50	3.493	0,16
FIN	13	359	0,07
S	19	1.272	0,55
UK	79	10.657	0,36
Total	1.217	114.227	0,45

The notion of "irregularity" under the regulations mentioned includes cases of "fraud". The qualification of a case as a fraud, meaning a criminal behaviour can only be made following a penal procedure.

## ANNEX 6

### EAGGF GUARANTEE SITUATION OF RECOVERY IN CASES COMMUNICATED UNDER REGULATION N° 595/91

(Amounts in 10.000 euros)

<i>Member State</i>	<i>To be recovered cases communicated &lt; 2000</i>	<i>To recover cases communicated in 2000</i>	<i>In Justice</i>	<i>Amounts "irrecoverable"</i>
B	23.937	38.896	17.764	25
DK	9.597	55	5.049	3.703
D	189.860	56.275	29.345	15.639
EL	70.886	11	39.836	86
E	130.171	25.629	48.339	20.196
F	52.872	12.358	33.430	2.127
IRL	4.949	833	0	243
I **	1.183.766	280.665	387.051	69.035
L	15	0	0	0
NL	31.409	10.123	8.095	2.261
A	4.010	171	0	0
P	20.924	14.240	18.790	1.282
FIN	19	3	0	0
S	164	92	0	0
UK	30.936	17.475	15.077	17.321
<b>TOTAL</b>	<b>1.753.515</b>	<b>456.826</b>	<b>602.776</b>	<b>131.918</b>

\* In the context of clearance of accounts, it will be decided if these amounts are on the Community budget or on the national budget

\*\* In most cases, Italy describes effective recovery as "not very likely"

## ANNEX 7

### STRUCTURAL ACTIONS

#### SITUATION OF THE RECOVERY IN THE CASES COMMUNICATED UNDER REGULATIONS N°1681/94 ABD 1831/94

<i>Member State</i>	<i>Total To recover 1994-1999</i>	<i>Total to recover 2000</i>
B	945	0
DK	331	127
D	40.314	12.389
EL	9.601	2.549
E	17.646	10.012
F	3.561	9.963
IRL	3.202	8.757
I	66.310	14.389
L	0	0
NL	1.064	16.173
A	0	1.363
P	37.281	2.553
FIN	260	336
S	999	171
UK	50.644	6.327
<b>TOTAL</b>	<b>232.158</b>	<b>85.109</b>

*N.B.: In as much as these amounts are actually recovered, they can be reallocated to finance other projects in a program which is still open.*



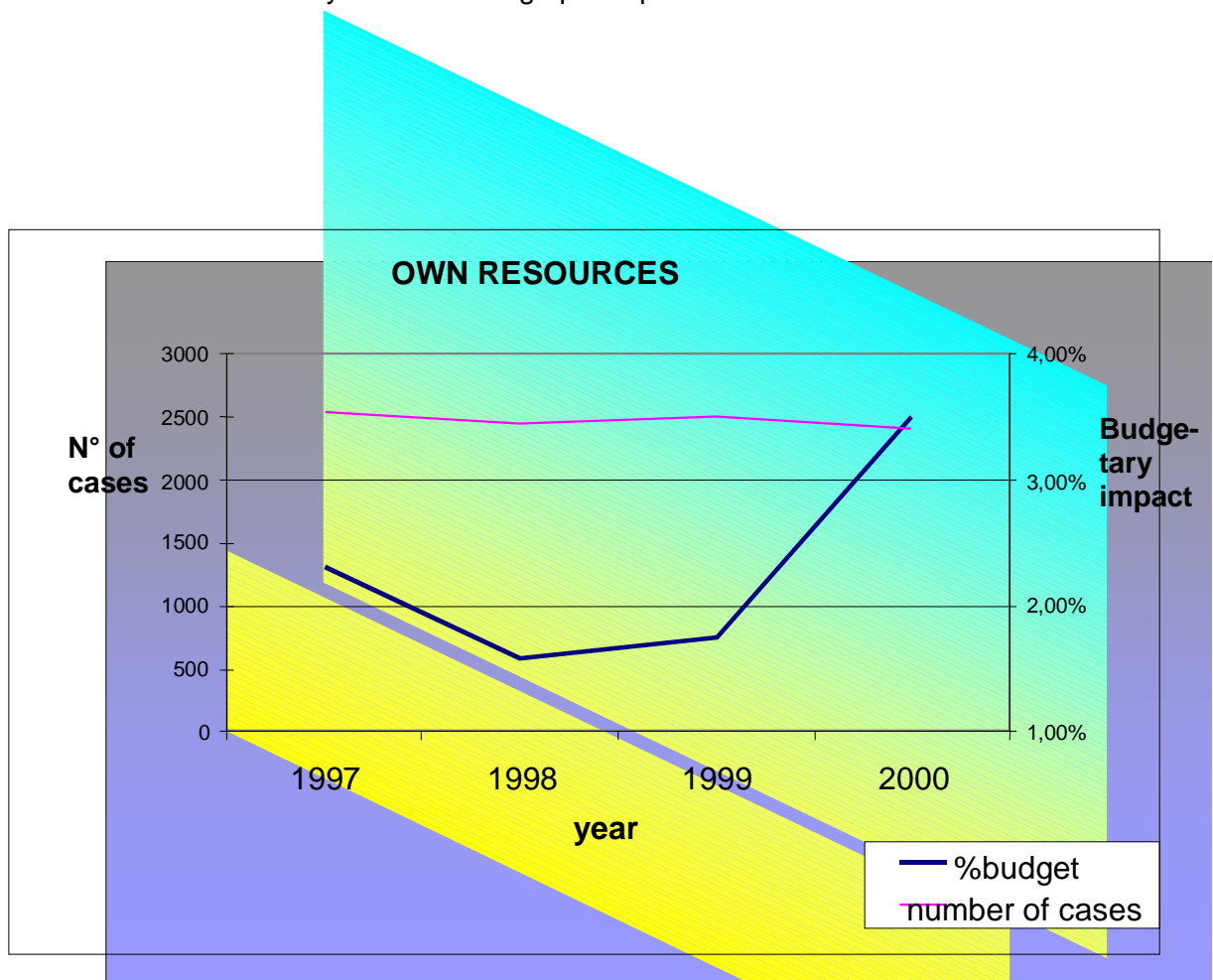
## ANNEX 8

### TRADITIONAL OWN RESOURCES

Irregularities communicated by the MS\*

<i>year</i>	<i>number of Cases</i>	<i>amount (x1000)</i>	<i>share of budget</i>	<i>budget concerned (x100)</i>
2000	2.403	534.525	3,50%	15.267.139
1999	2.516	243.774	1,76%	13.857.600
1998	2.452	224.416	1,59%	14.110.700
1997	2.535	327.669	2,31%	14.172.270

\* The notion "irregularity" includes cases of fraud. The classification as fraud, meaning criminal behaviour can only be made following a penal procedure



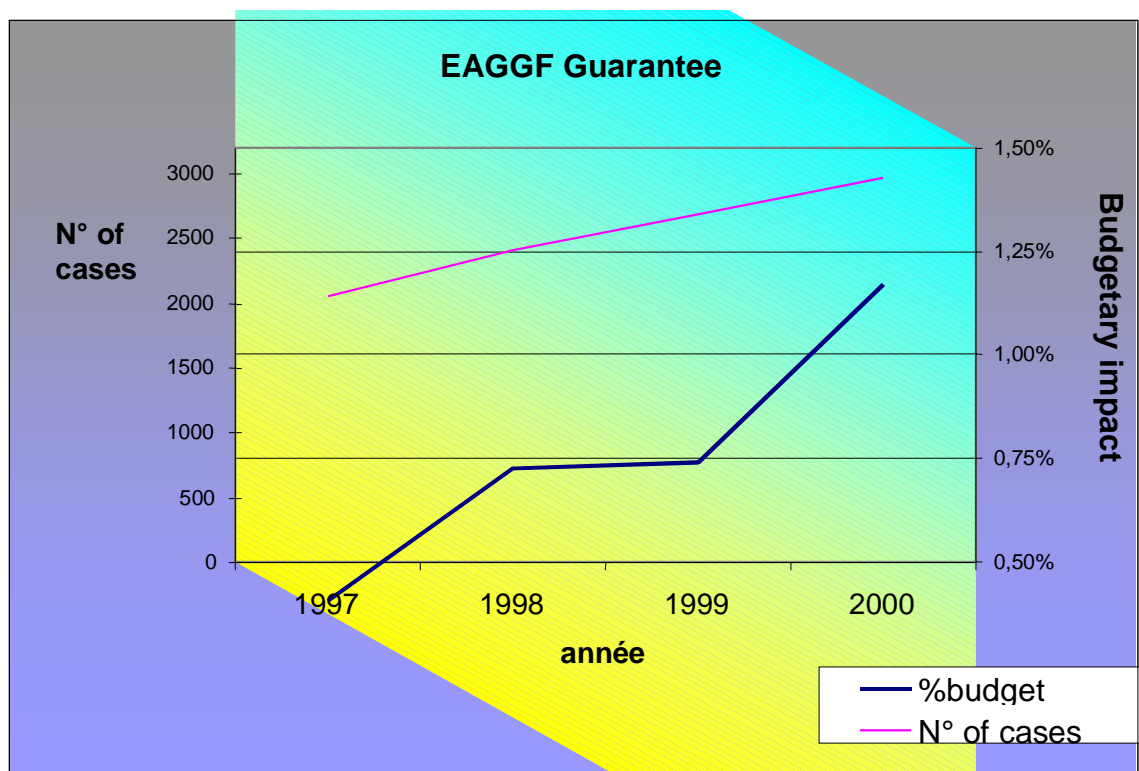
## ANNEX 9

### EAGGF-

Irregularities communicated by the MS\*

<i>année</i>	<i>nombre de cas</i>	<i>montants (x1000)</i>	<i>part du budget</i>	<i>budget concerné (x1000)</i>
2000	2.967	474.562	1,17%	40.437.400
1999	2.697	232.154	0,74%	39.540.800
1998	2.412	284.841	0,73%	39.132.500
1997	2.058	164.884	0,41%	40.423.000

\* The concept "irregularity" includes fraud. The qualification as fraud, meaning criminal behaviour, can only be made following a penal procedure



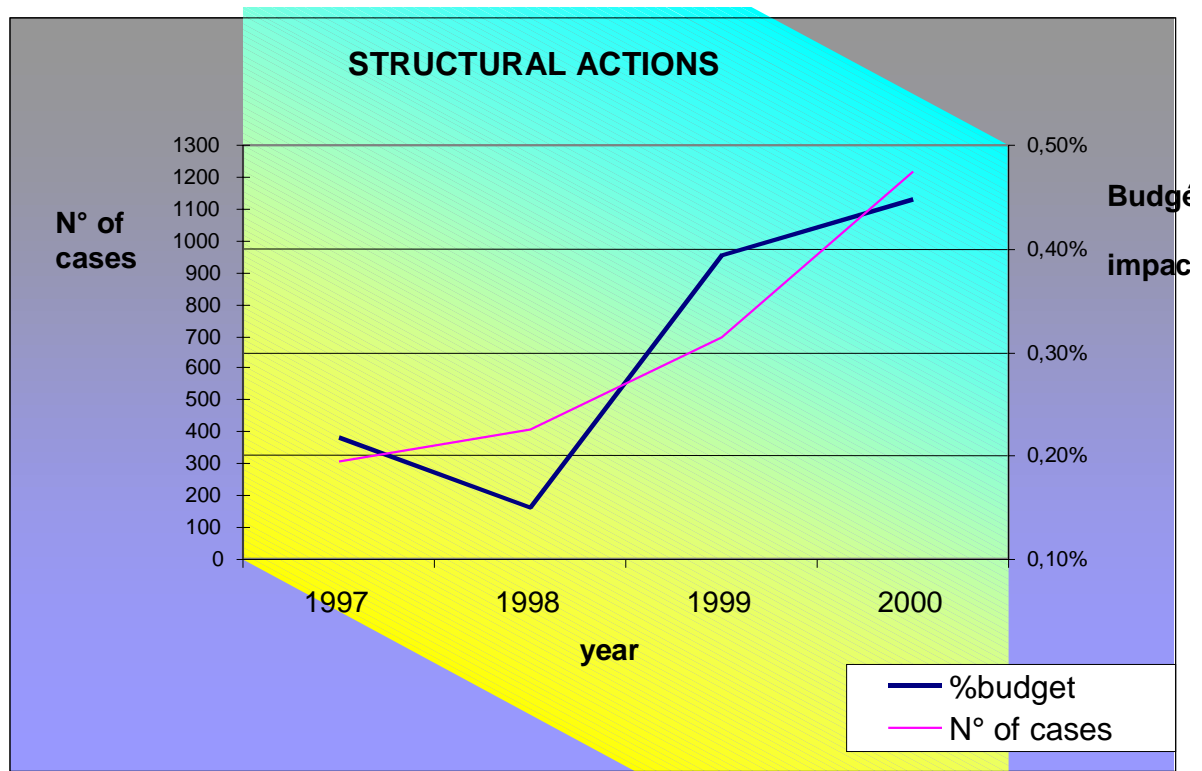
## ANNEX 10

### STRUCTURAL ACTIONS

Irrégularities communicated by the MS\*

<i>year</i>	<i>number of cases</i>	<i>amounts (x1000)</i>	<i>part of budget</i>	<i>amount concerned (x1000)</i>
2000	1.217	114.227	0,45%	25.556.00
1999	698	120.633	0,39%	30.658.45
1998	407	42.838	0,15%	28.365.99
1997	309	57.070	0,22%	26.304.90

\* The concept “irregularity” includes “fraud”. The classification of fraud, meaning criminal behaviour, can only be made following a criminal procedure.



## ANNEX 11

### DEPENSES DIRECTES

Suspensions de fraude et autres irrégularités investiguées par l'OLAF

<i>année</i>	<i>nombre de cas</i>	<i>montants (x1000)</i>	<i>part du budget</i>	<i>budget concerné (x1000)</i>
2000	148	170.374	1,33%	12.788.618
1999	107	73.300	0,87%	8.425.287
1998	24	11.000	0,09%	11.750.900
1997	41	18.000	0,17%	10.681.600

