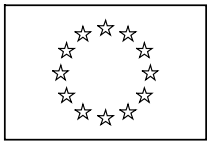

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION OF THE COMMISSION

Improving the recovery of Community entitlements arising from direct and shared management of Community expenditure

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ABSTRACT

Community expenditure per capita in constant prices has increased significantly between 1992 and 2002. New tasks have been conferred on the Commission, many involving the management of funds. Total Community financing over this period in 2002 prices amounts to around 800 billion Euro.

A part of this management of funds has been the recovery of entitlements by the Communities or by the Member States, in case of shared management of Community funds, following the settlement of advances or as a consequence of error, irregularities of form or of substance, and, in rare cases, of fraud.

The extent of open entitlements as of 30 June 2002 totalled just over 3,5 billion Euro, including entitlements from agricultural expenditure, structural funding and from miscellaneous items. The recovery of all Community entitlements regularly comes to between 80 and 90% of the amount due.

But the area is a difficult one and subject to misunderstanding, since the term recoveries used in the accounts covers four quite different matters:

(1) recoveries of amounts unduly paid by Member States to agricultural entities or to organisations involved in structural actions, either through formal errors or errors of substance, unintentional or, occasionally, deliberate,

(2) recoveries of fines levied by the Commission on organisations or Member States

(3) recoveries of own resources from Member States in the normal procedure of drawing down entitlements

(4) recoveries from beneficiaries of Community funding when the contract or grant agreement has not been fulfilled according to its terms

This Communication to the Parliament, the Council and the Court of Auditors, the Commission answers these institutions' demands to be provided with in-depth information on the progress made with regard to Action 96 of the White Paper on reform, concerning "*Better management of unduly paid funds"*.

This communication takes stock of progress since 2000 in the recovery of sums paid under direct and shared management of Community expenditure, which needed to be recovered as a consequence of settlement of advance payments, as well as errors, irregularities or, in few cases, fraud.

This communication leaves aside own resources and fines, which are governed by different sets of rules and do not result from the management of Community expenditure, even though they are also registered as Community entitlements in the accounts.

Under Community entitlements arising from direct management much has been done since 2000 in terms of preventive and curative measures, rationalisation and increase of resources involved in recovery within the horizontal services of the Commission. Further clarification as to the role of each actor, re-enforcement of establishment of Community entitlements and

recovery methods, transparent rules, both regulatory and internal, will be applicable from 01/01/2003 with the application of the new financial framework (new Financial Regulation, Implementing Rules and Internal Rules).

Under Community entitlements arising from shared management of Community funds (EAGGF-Guarantee and Structural Funds), Member States are responsible for claims towards final beneficiaries and for communicating the amounts concerned to the Commission. By virtue of the existing legislation the Commission has to follow the process of recovery conducted by the Member States on a case by case basis, and where appropriate according to the EAGGF Guarantee and the Structural Funds regulations, charge Member States with amounts non recovered. This follow up is a complex and burdensome process and accounts for delays in establishing Community entitlements as well as the existence of a specific backlog of cases to be investigated in the area of the EAGGF Guarantee. The Commission is setting up a temporary task force composed of specialists from OLAF and DG AGRI to deal with this backlog and is preparing a proposal to modify Article 8 of the Regulation 1258/1999 with a view to simplifying these procedures.

The Commission is confident that this new environment will ensure more efficient recovery of Community entitlements arising both from direct and shared management of Community funds.

1. INTRODUCTION

The constant increase in tasks conferred on the Commission, particularly in connection with the management of funds, has automatically drawn greater attention to the problem of amounts that need to be recovered by the Communities or by the Member States in the case of shared management of Community funds, following the settlement of advance payments or as a result of errors, irregularities or, in few cases, fraud[1].

...The Commission has undertaken a substantial administrative reform in response to this concern. In the Reform White Paper of March 2000, it laid down guidelines for the more effective management of expenditure and of the recovery of entitlements arising from direct and shared management of Community expenditure. This approach is one of this Commission's main contributions to the protection of the Community's financial interests.

The objective of reform in this sector was described in the action plan on the Commission's administrative reform of April 2000.

Measures must focus on how to make legislation and financial management rules and procedures as "watertight" as possible against errors, irregularities and fraud through better defined and more effective co-operation between Commission departments, and between the Commission and Member States.[2]

The White Paper set out a number of basic actions for the general support of the reform, such as the creation of the Internal Audit Service, the Central Financial Service, an information and training programme for the financial actors and a general overhaul of the financial rules. The White Paper also established four general fields of activity for the protection of financial interests.[3] Action 96 had the specific aim to achieve a more effective recovery of unduly paid funds.

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1 In this context '*errors*' refers to "*transactions which have been incorrectly entered in the accounts or which have not been carried out in accordance with the legal and regulatory provisions applicable to them*", as defined by the Court of Auditors for the purpose of its annual reports and the DAS, and regardless of any potential prejudice to the budget of the European Communities. '*Irregularity*' in accordance with Article 280 CE refers to incorrect application of rules, now coupled in the context of the protection of financial interests with an impact on the budget. Article 1, paragraph 2 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (*O J L 312 of 23* December 1995*) defines irregularity as "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*". Finally "*fraud"* as defined by Article 1 of the 1995 Convention on the protection of financial interests implies, in respect of revenue, an intentional act or omission having the effect of illegally diminishing the resources of the general budget of the European Communities (Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests (OJ C 316 of 27 November 1995)

2 Reforming the Commission, White Paper, Part II, COM(2000)200 final/2, 5 April 2000, V, XXX-Protecting the Communities' financial interests, pp. 69-70.

3 Action 92 "Guidelines for sound project management", Action 93 "Better co-ordination of interaction between OLAF and other services", Action 94 "Fraud "proofing" of legislation and contract management ", Action 95 "Optimisation of Early Warning System".

The communication to the Commission of 13 December 2000 on the recovery of unduly paid funds [4] fleshed out these guidelines by setting out a practical action plan for the recovery of established Community entitlements in the field of 'direct'[5] expenditure. It is now a case of gauging the extent to which this has been implemented, deciding on the next steps and, in accordance with the Commission's undertakings, supplement this action plan with new measures to ensure that all establishable debts in connection with both direct and shared management[6] of expenditure are established.

Improving the recovery of Community entitlements is obviously only one aspect of the reform of financial management which the Commission has undertaken to make expenditure operations as error/irregularity/fraud-proof as possible. The fundamental importance of measures being taken to **prevent** any undue payment well in advance should be emphasised in this connection,[7] although they do not fall within the scope of this communication.

In this perspective, it should be pointed out that the Commission implements the appropriations adopted by the budgetary authority for missions which intrinsically do not always allow the risk of undue payments to be completely removed. There are two main reasons for this. The first relates to the type of sectors concerned: the management model must take account of the risks inherent in these sectors and the ultimate objectives set by the legislator. This reservation is particularly true for development aid and the economic and social cohesion policy. The only protection conceivable, and one that is used by the Commission[8], is to use risk evaluation methods to try to reduce certain risks to a minimum, in particular by ascertaining the financial and operational capacity of every recipient of Community grants.[9] The second reason relates to the type of expenditure authorised. In particular, paying advances or granting pre-financing without quid pro quo at the time of payment constitutes a tangible risk. However, this is viewed by all as an essential tool for the achievement of certain measures adopted by the Community legislator. Thus this

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4 Communication of 13 December 2000 from Ms Schreyer to the Commission, "Action 96- More effective management of recovery of unduly paid funds", SEC(2000)2204/3, point 4 "Plan of action for more effective procedures".

5 Now called 'centralised direct' management in accordance with Article 53(2) of Council Regulation (EC, Euratom) N° 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248 of 16 September 2002) – hereafter referred to as 'direct' management. Recoveries by executive agencies within the management of Community programmes or projects delegated to them in accordance with Article 54(2)a) and 55 of Council Regulation (EC, Euratom) N° 1605/2002 enter within the scope of the present communication.

6 Or "decentralised" management of Community funds where budget implementation tasks are delegated to third countries in accordance with Article 53(3) of Council Regulation (EC, Euratom) N° 1605/2002, as is the case towards candidate countries under the SAPARD and ISPA programmes.

7 In particular through increased evaluation of all activities throughout the expenditure cycle (SEC(2000)1051 of 26/07/2000) and through fraud-proofing (COM(2001)630 of 25/10/2001) and the more general improvement of project management, including the adoption of internal control standards (SEC(2001)2037/4) and the harmonisation of contracts to achieve greater legal certainty for the Commission.

8 Comprising the systematic evaluation of expenditure, also in advance of any legislation (financial statement), the introduction of planning, programming and performance measurement, the extent of implementation and elements for future action, in particular the setting of objectives, multiannual programming, annual management plans, monitoring performance against targets, risk analysis and management (Standard 11 of these internal control standards), SEC(2000)2203.

9 Conditions laid down in Articles 171 et seq of the draft Regulation laying down detailed rules for the implementation of the new Financial Regulation adopted by the Commission on 24 July 2002.

principle has been upheld with the backing of all the Community institutions in the new Financial Regulation adopted unanimously by the Council on 25 June 2002.[10], albeit subject to two obligations. One concerns the obligation, in the cases provided for in the implementing rules, to require contractors or beneficiaries to lodge a guarantee in advance in order limit the financial risks connected with payment of pre-financing[11]. The other concerns the obligation to recover the interest yielded by pre-financing which remains the property of the Communities[12].

10 Article 81(1)(b)(i) of Regulation 1605/2002, OJ L 248 of 16/09/2002, pp. 1-41.

11 Articles 102 and 118 of the new Financial Regulation.

12 Articles 3-4 of the draft Regulation laying down detailed rules for the implementation of the new Financial Regulation adopted by the Commission on 24 July 2002 (COM(2002)402 final).

2. ANALYSIS OF THE CURRENT SITUATION

For accounting reasons, recovery orders established by the Commission have so far included all types of revenue without any further distinction. For the purpose of this communication therefore, own resources[13] and fines[14], which do not result from the management of Community expenditure, are irrelevant..

These two types of Community entitlements excepted, the overall amount of Community entitlements arising from the direct and shared management of Community funds outstanding at 30 June 2002 based on the main types of debt distinguished in the annual balance sheet of the Communities is as follows :

BUDGET 2002 : OPEN ENTITLEMENTS (Mio €)

EAGGF	2 263.05
Struc. Funds	407.57
Other	916.69

2.1 Accounting data at 30/06/2002

- **Figures**

As regards Community entitlements arising from the direct and shared management of Community expenditure, the Commission recovered € 2.461,44 Mio in 2001. The figure for the first six months of 2002 is € 755,27 Mio.

As requested by the Court of Auditors, the €2.263 billion recently recorded for EAGGF Guarantee section reflects amounts reported by the Member States as "to be recovered", but consists of sums actually awaiting recovery by the Member States which, if not recovered, will be charged either to the Community budget or to the budget of the Member State concerned (in the latter case only will the sums in questions have to be recovered for the Community budget). The Commission can do little if any thing to recover these amounts relating to overpayments by the 89 paying agencies in the European Union to beneficiaries, which are to be recovered by these agencies. Due to the fact that these claims are so old however, the Commission decided to enter them into the accounts, but will have to apply depreciating ratio to take account of the time elapsed since these amounts were initially declared by the paying agencies in the Member States.

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[13] Own resources (€ 45 460.06 Mio at 30/06/2002) are excluded from the schedules as they are less relevant for the purpose of this communication. Community entitlements in this field stem from regular monthly claims on Member States to make available own resources, and these claims are paid in time by national treasuries. Own resources are not governed by the Financial Regulation applicable to the general budget of the European Communities, but by Council Decision of 29 September 2000 on the system of the European Community's Own Resources (2000/597/EC, Euratom).

[14] Fines imposed by the Commission for infringements against the competition rules (€ 2 935.76 at 30/06/2002) are mentioned only as a memorandum item, as they give rise to provisional payments or the provision of a guarantee in the event of an appeal to a Community court.

The breakdown by due date is given in the following table (the analysis of the figures for the EAGGF Guarantee section is given in section 4.3).

BUDGET 2002 : OPEN ENTITLEMENTS* AND CASHING BY DUE DATE ON 30 JUNE 2002

in Mio Euro

	Fines**		Structural funds				Other			
Due date	Entitlement established	% Cashed in 2002	Entitlement established	Cashed in 2002	Outstanding	Cashed in 2002	Entitlement established	Cashed in 2002	Outstanding	Cashed in 2002
not due		N/A	19,45	-1,23	20,68	-6,33%	784,49	239,61	544,88	30,54%
< 1 year	2.010,36	N/A	381,22	61,5	319,72	16,13%	620,33	428,57	191,75	69,09%
1 to 2 years	190,68	N/A	9,19	2,1	7,08	22,89%	72,53	10,99	61,54	15,15%
2 to 3 years	51,81	N/A	24,18	0	24,18	-0,02%	11	0,61	10,4	5,51%
3 to 4 years	521,86	N/A	12,81	0,16	12,65	1,28%	34,69	9,57	25,12	27,59%
4 to 5 years	8,8	N/A	2,03	0,23	1,81	11,18%	15,12	0,53	14,6	3,50%
> 5 years	152,25	N/A	22,93	1,49	21,44	6,49%	69,54	1,15	68,39	1,65%
Total	**2.935,76**	**N/A**	**471,81**	**64,24**	**407,57**	**13,62%**	**1.607,72**	**691,03**	**916,69**	**42,98%**

* Open entitlements are either established in 2002 or still outstanding from previous years

**The amount of 2.935,76 Mio€ is composed of fines that are not due as yet and fines for which an appeal is pending before the Court of Justice of the EC. As far as the latter cases are concerned, fines are either provisionally paid or secured by bank guarantee.

- **Analysis**

The amount overdue at 30 June 2002 (that is to say debts actually due on that date) came to around:

– € 2.3 billion for the EAGGF Guarantee Section, bearing in mind the above reservation on depreciation to be applied and on the amount which is actually to be repaid to the Community budget;

– € 387 million for the Structural Funds,

– € 373 million for miscellaneous Community entitlements in connection with direct management.

In themselves, these figures do not reflect a problematic situation assuming that they show that amounts which have to be recovered are systematically established and provided that the amounts outstanding consist of new debt with old Community entitlements being regularly recovered. However this situation does not apply to the debts owed to the Communities : although the amount outstanding remains relatively stable from month to month despite the establishment of new debts, more detailed analysis by year of establishment reveals a sizeable percentage of old debts which have not been recovered.

For shared management the Communities' accounting data depict a situation which must be considered as provisional : the fact that the above figures have been recorded does not mean that the Communities will be able to demand repayment of the entire amount under the sectoral rules (see section 4.3 below for the EAGGF-Guarantee section).

The breakdown by age of **debts arising from direct management of Community funds** is examined below. This analysis (on the basis of the final column of the above table) shows that:

– some 88% of the amount overdue relate to Community entitlements established in year n;

– 3% relate to Community entitlements established in year n-1;

– 1% relate to Community entitlements established in year n-2;

– the remaining 8% relate to Community entitlements established more than three years earlier.

The oldest Community entitlements should attract most attention and be the target for improvement. The failure to recover these Community entitlements could mean that:

– the standard follow-up measures taken by the accounting officer have not been successful;

– the alternative recovery methods involving the offsetting of debts or calling in the guarantee were not possible or were not applied;

– the enforcement procedure under Article 256 EC has not been initiated;

– and where the enforcement procedure under Article 256 EC was not possible, the procedure for obtaining an enforcement order by legal action was unsuccessful or was not initiated by the competent Commission services.

There are a number of reasons why these recovery methods have not been successful or have not been fully applied. Some of the management failings can be explained up to now by a certain inappropriateness of the tools and procedures as well as, to a certain extent, by the need to increase awareness of these methods in the departments concerned. In any case, the extent to which the inherent length of the legal procedures initiated is responsible should not be underestimated.

The older the debt, the less likely it is to be recovered (change of address, insolvency of the debtor, time bar ruling out any legal action). The difficulties involved in recovering Community entitlements must therefore be clearly identified: **the diagnosis is positive as the recovery of properly established funds is relatively stable in percentage terms and comes to between 80 and 90% of the amount due**. Solutions still have to be found to clear the "burden of the past" consisting of old Community entitlements which have not been recovered.

These findings show that the Commission's efforts to recover established entitlements should give priority to the clearance of this "burden of the past" while keeping a careful eye on all debt to ensure than no new "burden of the past" of this type accumulates.

2.2. Problems which the accounting data cannot identify: non established Community entitlements

The accounting system can only reflect the recovery orders entered in the system – i.e. the established Community entitlements - and the way in which they are followed up. It is therefore extremely difficult, if not impossible, to quantify with any degree

of relevance the amount of establishable debts which have not been established or cannot be established yet.

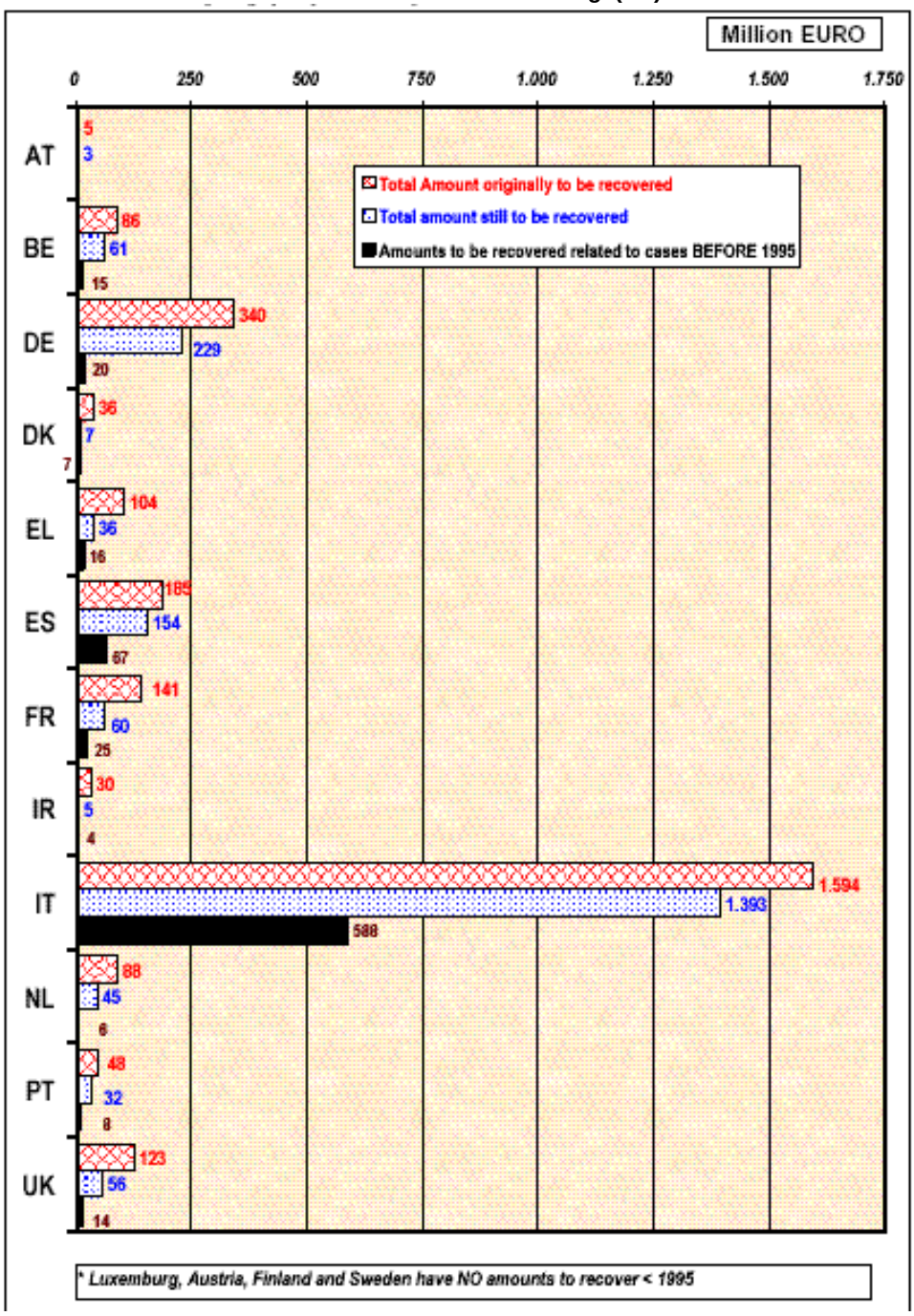
However, in the field of direct management, the horizontal departments have observed instances where establishment of amounts receivable has not been systematic (e.g. following closure of programmes or projects because of the poor implementation of earlier tranches of the programme or project).

In addition, some audits conducted by the Court of Auditors into the shared management of the EAGGF Guarantee Section have underlined that irregularities reported by the Member States were not followed up by the competent Commission services or that follow-up was late.[15] The amounts reported by the Member States under applicable legislation for shared management of EAGGF expenditure give a picture of the amounts still to be recovered or still to be charged to the Member State or the Community. This delay in the establishment of Community entitlements in the strict sense of the term is due in particular to the slowness of recovery procedures before some national courts (see table below). These amounts relate to entitlements vis-à-vis the final beneficiary, bearing in mind that any amounts recovered successfully have to be passed over to the EAGGF and that the Member States are responsible for the management of this type of expenditure under shared management.

This communication therefore intends to adopt new measures against this phenomenon of under-establishment in the field of direct expenditure and inadequacy of means to establish Community entitlements in the field of shared management of Community expenditure.

[15] European Court of Auditors, Annual report concerning the financial year 2000, report on the activities financed from the general budget, Chapter 2.

Amounts related to irregularities communicated as of 31/12/2001 under EAGGF Guarantee for the period 1970-2000 in accordance with Reg. (EC) 595/91



Nota bene : *the figures indicated for Italy are not strictly comparable with those reported for the other countries, and clearly overestimate the amount of irregularities. When detecting an irregularity, the Italian authorities calculate the total to be recovered on the basis of the overall amounts collected by the beneficiary over the whole of the period covered by the audit revealing the irregularity; it is only at the end of the criminal and/or formal administrative procedure that the judge establishes the exact amount involved in the irregularity and initiates recovery.*

3. IMPROVED RECOVERY OF ESTABLISHED COMMUNITY ENTITLEMENTS

This communication focuses on the recovery of Community entitlements resulting from the direct management of Community expenditure and from shared management with the Member States of expenditure under the EAGGF Guarantee Section and the Structural Funds.

In the latter cases the Community entitlement within the meaning of the Financial Regulation are limited to cases of irregularities or fraud of the economic operators in which the failure to recover the sums owed by these operators are the result of negligence on the part of the Member States, and where the Commission decides, in accordance with the sectoral rules applicable, that the financial consequences must be borne by the Member States. The debt to be recovered by the Communities is not established until the sectoral procedures have been completed.[16] The amounts concerned then give rise to the recovery of the Community funds from the Member States.

As the Communities have secure methods for recovering Community funds when the debtors are the Member States, the measures to be taken to improve recovery of established Community entitlements mainly focus on debts owed by debtors other than the Member States or Community entitlements arising from the direct management of Community expenditure.

3.1. Measures considered by the Commission on adoption of the action plan of 13 December 2000 concerning Community entitlements arising from direct expenditure and implemented on this basis

In December 2000 the Commission introduced an action plan to improve recovery of established Community entitlements arising from the direct management of expenditure, in particular old debts, by analysing the problems reported. These problems included the complexity of the cases concerned, the lack of co-ordination between the departments involved in recovery and certain shortcomings in applying the tools available. The length of legal actions brought before national and Community courts should also be mentioned in this connection.

The action plan adopted in December 2000 has focused future tasks on a number of measures to improve the overall management of cases of recovery and, as regards the burden of the past, to continue pursuing those cases which have not led to voluntary recovery.

A number of measures carried out to implement this action plan have helped improve recovery, both by preventing any accumulation of excessively old Community entitlements which become irrecoverable and reducing the "burden of the past".

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16 For EAGGF Guarantee, application of Article 8 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (OJ L 94, 28.04.1970, p.13); then, from the 2000 financial year, Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ L 160, 26.06.1999, p.103). For SAPARD, Articles 8, 13 and 14 of Section A of the annex to the multiannual financing agreement. For the Structural Funds, Article 24 of Regulation No 4253/1988 (as amended by Regulation No 2082/93) then Article 39 of Regulation No 1260/1999 from 2000; Article H of Annex II of Regulation No 1164/94 for the Cohesion Fund. For ISPA, Article 9 of Regulation No 1267/1994 and specific provisions of the financial protocol on decisions to grant assistance.

3.1.1. Preventive measures

Two measures have been implemented under the action plan to prevent any accumulation of excessively old debts which are likely to become irrecoverable

- *With respect to the traditional duties of the Accounting Officer*

The Accounting Officer had been asked to send reminders and letters of formal notice more systematically and more quickly. He was to be provided with refined tools to allow the issue of standardised, automatic reminders and letters of formal notice ("*dunning*") and the introduction of automatic early-warning and monitoring mechanisms, so that the Accounting Officer can perform his general co-ordinating function vis-à-vis the other actors and remind them of the measures to be taken.

This operation was completed in January 2002 by means of an ACCESS/BO solution developed from the budget *datawarehouse*. Reports can now also be produced by both the Budget Directorate-General and the other Directorates-General showing the age of the recovery orders issued by the DGs. Reliability improved considerably in 2001, even if some improvements still appear desirable[17].

Reporting measures now make it possible to gauge the extent of the recovery measures, which are to be undertaken in each Directorate-General (data now included in the annual report by the Directors-General) or, in some cases, to gauge shortcomings in connection with the establishment of Community entitlements.

- *With respect to the new duties of the Accounting Officer*

The Accounting Officer has been entrusted with the task of seeking relevant information on the financial situation of the debtors when authorising officers require help in this context and has ensured since the end of 2000 access to that the *Dun & Bradstreet* database for all Directorates-General.

3.1.2. Curative measures (reduction of old Community entitlements)

As regards the reduction of old Community entitlements in particular, the following measures set out in the action plan have been carried out without any change to the existing rules.

Given the complexity of the cases in which the debt could not be recovered, it was decided to step up consultation of the horizontal departments (DG BUDG, Legal Service, OLAF, Secretariat-General) to trace the address of a debtor, decide on the legal measures to be taken or, as the final solution when the debt is irrecoverable, to waive an established debt.

[17] In the case of the treatment of "partial reductions" for example, the link between the negative recovery order (cancellation of all or part of a recovery order which has already been issued) and the original recovery order (corresponding to the initial amount to be recovered) must still be guaranteed.

- Recovery of recoverable old Community entitlements

➢ *New tasks for OLAF*

In February 2002 OLAF set up a new unit (A5) for administrative, legislative and financial follow-up in the field of direct expenditure, in accordance with the action plan adopted in the December 2000 communication. This unit is responsible for the internal and external co-ordination of the follow-up of cases of fraud and irregularities involving direct expenditure which are the subject of OLAF investigations, in close collaboration with the authorising DGs and other interested services. Since it was set up in February 2002, it has received 57 cases from OLAF's Investigations Directorate for the administrative, legislative and financial follow-up. The unit ensures that the Commission actually brings a civil action in cases subject to criminal procedures relating to recovery. At the request of an authorising officer, OLAF can, as soon as the debtor goes missing, also undertake a search for his address. Such a search could extend to any other body having legal or financial links with the debtor third party.

➢ *Treatment of recovery within the Legal Service*

The Legal Service has introduced a centralised system for recovery cases to be assigned to and monitored by the team responsible for the substance in consultation with the Legal Service's Budget team where there are any doubts about questions of principle. A recovery officer is then appointed by the lead manager handling the case.

The procedure to be followed by the Directorates-General was set out in a memo to the Directors-General. A practical guide to recovery assigns responsibilities and gives a step-by-step explanation of the measures to be taken by the Legal Service officials, including those involving collaboration with the other Commission departments for the purposes of recovery.[18]

➢ *Role of the Central Financial Service (CFS)*

In the action plan adopted in December 2000, the Commission called on the CFS to draw up minimum guidelines for the organisation of channels and the management rules.

The *internal control standards* adopted by the Commission on 13 December 2000 (SEC(2000) 2203) and updated in 2001 (SEC(2001)2037/4) establish the norms applicable to the expenditure cycle and the recovery process by laying down the minimum requirements and control procedures to be maintained within each Directorate-General. Alongside these standards (which have been annexed to the internal rules on the implementation of the budget since 2001), the CFS produces a regularly updated manual describing the operational process of risk evaluation not only for the whole of the expenditure cycle but also, in the latest updating for 2002, in the field of recovery.[19]

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[18] Memo of 31 March 2001 (JUR(2001)15037) from Mr Rosas and Mr Dewost to the Directors-General: Debt recovery – Procedure for consulting the Legal Service, Annex 2.

[19] "Detailed risk assessment for operational processes – the Process Handbook".

Finally, recovery statistics have been included in the annual reports of the Directorates-General in 2001, providing a useful tool for gauging the progress made or still to be achieved in the field of recovery.

➢ *Study on the outsourcing of various recovery activities*

As recommended by the Commission in December 2000, this question was considered in the form of a cost/benefit analysis of outsourcing some of the recovery activities. However, the conclusions and recommendations of this study have not been finalised pending stabilisation of the new rules and the final report by the Internal Audit Service on recovery.

- **Recognising the fact that some Community entitlements are irrecoverable**

Following questions from departments,[20] recommendations by the discharge authority and the undertaking made in December 2000, the CFS laid down the conditions and procedures for waiving the recovery of **Community entitlements which have become irrecoverable** when all the necessary steps to recover them have been taken without success. This supplements the framework recently adopted for other cases where revision of established entitlements may prove necessary:

– *The guidelines on the application of the principle of proportionality to the waiving of debt recovery* were adopted by the Commission in November 2001[21] following the resolution of the discharge authority for the 1999 financial year[22]. In this decision, the Commission amended the internal rules on implementation of the 2001 budget by introducing the thresholds for the delegation of powers of budget implementation demanded by the discharge authority and adopting more transparent and more formal procedures and better defined and more binding criteria for waiving the recovery of established debts through application of the principle of proportionality. These thresholds were consolidated in the Commission's internal rules on implementation of the 2002 budget[23].

– *The internal rules on the implementation of the 2002* budget draw a more logical distinction between waiving recovery, cancellation and technical and accounting adjustments, allowing more satisfactory fine-tuning of the level of delegation or subdelegation in accordance with the degree of responsibility and risk in these three types of operation. This experiment, launched in autumn 2001 at the joint initiative of the Directorates-General for Financial Control and the Budget, allowing powers to be subdelegated for minor corrections (upwards and downwards) to all recovery orders where these constitute no more than technical and accounting adjustments, has simplified the very strict rules on delegation and subdelegation for the waiving of debts

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20 In its capacity of financial help desk, the CFS received and replied to 37 questions relating to recovery between February 2001 and July 2002, an average of just over two questions a month over this 18-month period.

21 SEC(2001)1857 final, 21/11/2001.

22 Point 9(1) of the Parliament Resolution containing observations forming an integral part of the discharge in respect of implementation of the general budget of the European Union for 1999 (Commission) (SEC(2000)537 –C5-0617/2000-2000/2155(DEC)).

23 C(2002)1305, 8.4.2002

adopted for the 2001 financial year. As it gave satisfaction, the experiment was rolled over[24] and extended in the internal rules for 2002 to make the quite logical distinction between waiving recovery of an amount which is actually due[25] and the actual cancellation of an unduly established debt[26].

3.2. Measures now being introduced following the action plan of 13 December 2000

The deadline for completing the whole of the December 2000 action plan had initially been fixed at 1 April 2001, but was then postponed to 30 June 2002 when the Commission updated the timetable for implementing the various measures of the White Paper in connection with action 96 on 21 December 2001.

Despite the measures and advances mentioned above, the timetable must be adjusted in line with a more realistic assessment of what can be achieved given the overall financial reform and the time needed to adopt and introduce the new rules.

The main improvements to the recovery of established Community entitlements as laid down in December 2000 depend on a concomitant update of the basic rules. However, the institutional timetable set by the Göteborg European Council fixed the end of 2002 for the adoption of the recast 1977 Financial Regulation and the resulting legal framework: at interinstitutional level, the Regulation laying down detailed rules for the implementation of certain provisions of the new Financial Regulation and, within the Commission, the revision and planned harmonisation of various provisions of the internal procedure relating to the recovery of Community entitlements. The same is true for the proposals amending the regulations on the Financial Regulation of the European Development Fund (EDF) or the Community agencies.

This new regulatory framework is now close to completion[27] and involves three series of amendments leading to a substantial improvement in the recovery of established Community entitlements arising from direct management and resolving the problem of shared management.

3.2.1. Enhancing the role of the authorising officer (decentralisation of the debit note)

In order to allow contacts between debtors and the authorising officer with a view to resolving the maximum number of cases by checking the justification of all Community entitlements recorded as "to be recovered" before the Accounting Officer proceeds with the recovery procedure, the Commission undertook in

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24 Article 12 of the internal rules for 2002.

25 Article 10 of the internal rules for 2002

26 Article 11 of the internal rules for 2002.

27 The new Financial Regulation unanimously adopted by the Council on 25 June 2002 and, in accordance with Article 187, is due to enter force on 1 January 2003 and the draft Commission Regulation laying down implementing provisions was adopted on 24 July 2002 (COM(2002)402 final). For the EDF, the Commission proposed the same principles in its draft Regulation of 11 June 2002 on the Financial Regulation applicable to the European Development Fund (COM(2002)290). For what are known as the traditional agencies (as opposed to the proposed executive agencies to carry out programmes), these principles are set out in the draft framework Financial Regulation of the agencies referred to at Article 185 of the new Financial Regulation adopted by the Commission on 17 July 2002 (COM(2002).403/2).

December 2000 to devolve from the Accounting Officer to the authorising officers the drafting and the dispatching of the "debit note" informing the debtor that a debt has been established against him.

This devolution is now provided for in the regulatory rules and should enter into force on 1 January 2003.[28] The Commission should formally adopt the revision and consolidation of the various internal provisions on debt recovery by this date.

3.2.2. Boosting enforced recovery methods

The revision of the rules has led to major changes.

- *Recovery by offsetting the debt*

In the field of direct expenditure, the Commission has made relatively little use of the principle of statutory set-off so far. As a matter of fact although this principle exists in all the Member States, the recent case law of the Court of First Instance[29] had cast doubts on the possibility of using this efficient procedure, under which the amount to be recovered from the debtor is deducted from any claim which this debtor may have on his creditor that is certain, of a fixed amount and due. However, the conclusions of Advocate General P. Léger on the appeal launched by the Commission in this case concludes against the latter judgement of the Tribunal and suggests to the Court of Justice to recognise the mechanism of setting-off as a general principle of Community law (Case C-87/01 P of 17 September 2002).

Besides, this principle is now explicitly recorded in the new Financial Regulation for use against "any" debtor.[30]

This very general formulation should allow Community entitlements to be recovered by offsetting in the case of "miscellaneous" debtors under direct management.

The impact of this new instrument cannot be quantified for the recovery of Community entitlements arising from direct management, but more systematic and efficient use of the offsetting mechanism will be facilitated by the ongoing optimisation of the early warning system.[31]

In the field of shared management, specific rules apply as laid down for expenditure financed for the Structural Funds (decision to reduce assistance and financial correction). Consequently where **the Member States are the Communities'debtors** whilst also having claims on the Communities, **this mechanism will help to recover outstanding debts**. This recovery operation should cover in particular the

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28 Article 71(1) and (2) of the new Financial Regulation and Article 75 of the draft Regulation laying down detailed rules for the implementation of the new Financial Regulation.

29 In its judgement of 14 December 2000 in case T-105/99, Conseil des communes et régions d'Europe (CCRE) v Commission, the Court of First Instance ruled out the offsetting of a debt on the grounds that the Commission should first have ascertained whether this course would not obstruct actual completion of the operation.

30 Article 73(1), subparagraph 2 of the new Financial Regulation reads as follows: "The accounting officer shall recover amounts by offsetting them against equivalent claims that the Communities have on any debtor who himself has a claim on the Communities that is certain, of a fixed amount and due."

31 Memorandum on "Optimisation of the early warning system, Action 95 of the administrative reform", SEC(2000)1811.

€408 million established at 30 June 2002 for the Structural Funds and yet to be recovered.

- *Recovery through enforcement of any guarantee lodged in advance*

This procedure is already used, but it should be made more effective as the new Financial Regulation increases the number of cases in which guarantees must or may be lodged in advance.[32]

- *Enforced recovery*

Making increased use of "simplified" enforcement in accordance with Article 256 of the EC Treaty was one of the basic recommendations set out in the memorandum of December 2000 on improving debt recovery failing voluntary payment by the debtor.

The principle is contained in Article 72(2) of the new Financial Regulation which allows an amount to be formally established as receivable from persons other than States by means of a decision which is enforceable within the meaning of Article 256 EC. Therefore, a recovery order not based on a formal decision taken in advance[33] may be formalised by a Commission decision with the power of an enforcement order.

It is also proposed to include this principle in the rules for the participation of undertakings, research centres and universities and for the implementation of the sixth framework programme for research, technological development and demonstration activities.[34]

If recovery is not enforceable on this basis, an enforceable title must be obtained by legal action before the competent courts.[35] The chances of obtaining recovery by means of this second solution should be enhanced with the forthcoming adoption of a Council Regulation creating a European enforcement order for uncontested claims.[36]

Use of this instrument for Community entitlements arising from direct management should facilitate the recovery of outstanding recovery orders.[37]

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32 In the 1977 Financial Regulation this obligation applies only to contracts (Article 64a) and is considered as an option for grants only in the grants vade-mecum. The range of guarantees to be provided is extended by Articles 98, 102 and 117 of the new Financial Regulation and the conditions in which the debt is due are beefed up for both contracts and grants (to limit the financial risks involved in pre-financing).

33 Particularly fines imposed by the Commission under the competition policy.

34 Article 12 of the Decision of the European Parliament and of the Council of 5 November 2002 concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the European Community framework programme 2000-2006.

35 Second solution set out in the rules (Article 81 of the draft Regulation laying down detailed rules for the implementation of the new Financial Regulation, adopted by the Commission on 24.7.2002).

36 Commission proposal of 18.4.2002 (COM(2002)159 final)

37 Subject to the outcome of the legal procedures to be initiated when Article 256 of the EC Treaty cannot be used.

3.2.3. Rationalisation of the writing-off of debts

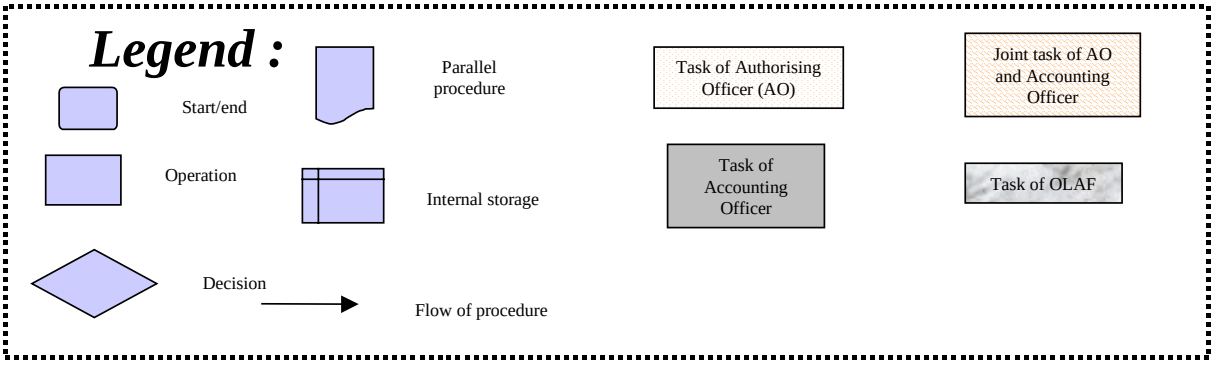
As regards the writing-off of established debts, which is a specific act of budget implementation affecting the Communities' assets, the new regulatory framework should incorporate and extend to all the other institutions the distinctions made to general satisfaction in the Commission's internal rules.[38] This differentiation and the establishment of criteria in the new rules will allow each institution to vary the level of delegation or subdelegation it intends to confer on its officials in line with the degree of responsibility and the risk of the different types of operation, even though the responsibility of the official exercising powers by delegation or subdelegation does not absolve the delegating authority from responsibility[39]. The different types of operation are:

– waiving a duly established debt (the widest margin of discretion), either for reasons of sound financial management (debt irrecoverable or the cost of recovery higher than the amount to be recovered) or for reasons of proportionality (in line with the criteria which are also set in the rules);

– cancellation of an unduly established debt (limited margin of discretion);

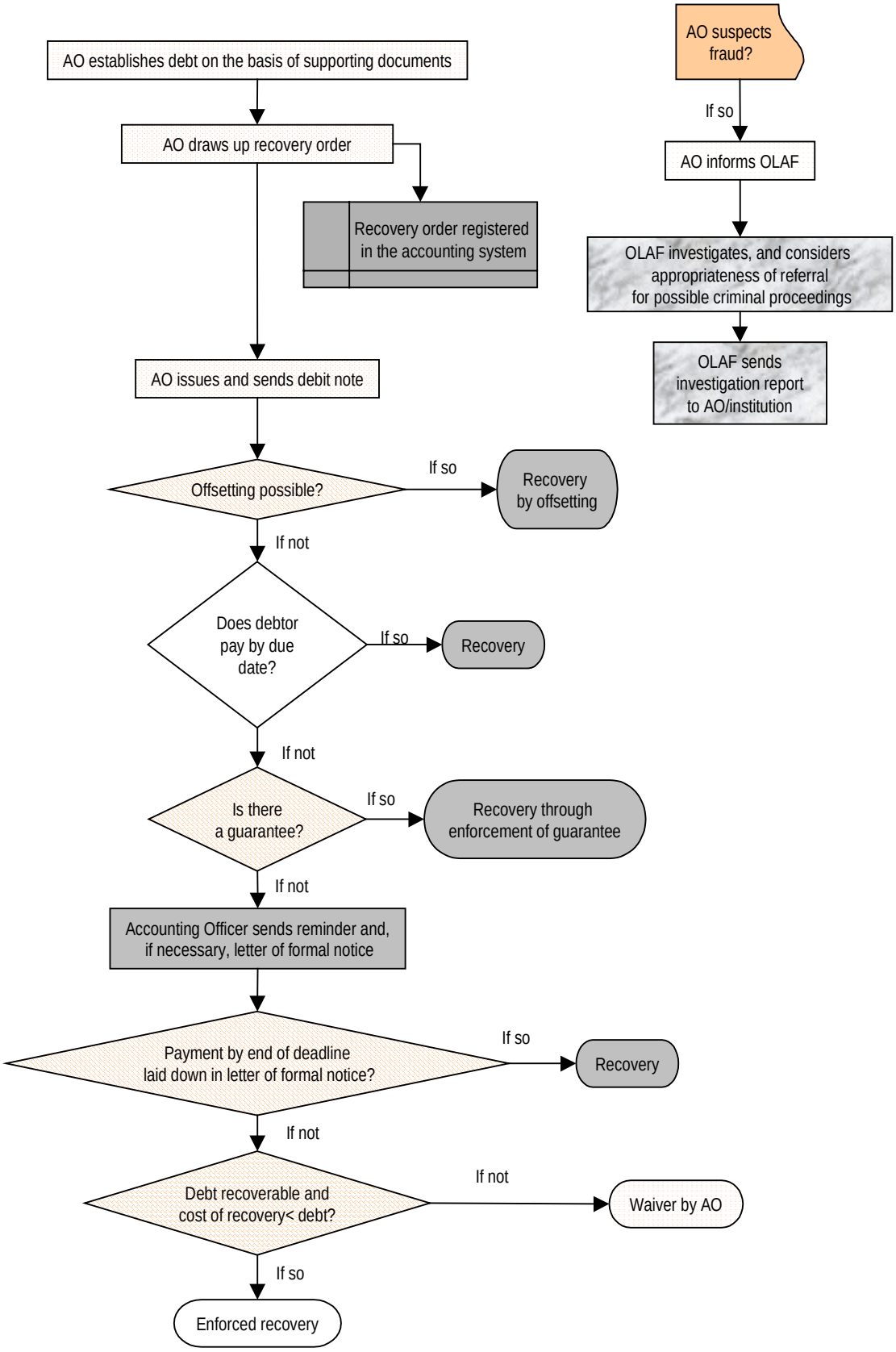
– technical and accounting adjustment (no margin of discretion since this results automatically from certain objective data).

These different stages are summarised below in the form of an abbreviated flowchart.



38 See point 3.1.1 above.

39 This principle, laid down in Article 21, paragraph 2 of the Staff Regulations ("An official in charge of any branch of the service shall be responsible to his superiors in respect of the authority conferred on him and for the carrying out of instructions given by him. The responsibility of his subordinates shall in no way release him from his own responsibility"), is expanded upon in Article 66(3) of the new Financial Regulation ("In the event of subdelegation, the authorising officer by delegation continues to be responsible for the effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by subdelegation").


AO establishes debt on the basis of supporting documents
AO draws up recovery order
Recovery order registered in the accounting system
AO issues and sends debit note
Offsetting possible?
If so
Recovery by offsetting
If not
Does debtor pay by due date?
If so
Recovery
If not
Is there a guarantee?
If so
Recovery through enforcement of guarantee
If not
Accounting Officer sends reminder and, if necessary, letter of formal notice
Payment by end of deadline laid down in letter of formal notice?
If so
Recovery
If not
Debt recoverable and cost of recovery< debt?
If not
Waiver by AO
If so
Enforced recovery
AO suspects fraud?
If so
AO informs OLAF
OLAF investigates, and considers appropriateness of referral for possible criminal proceedings
OLAF sends investigation report to AO/institution

3.2.4. Measures to be implemented to ensure full use of these new rules

Apart from the ongoing training measures, authorising officers are to be provided regularly with relevant indicators for analysis, particularly in the form of quarterly reports from the Accounting Officer to each authorising officer by delegation showing the age-based balance of recovery orders drawn up by his Directorate-General[40]. The authorising officers by delegation will use these as a basis for drawing up the decisions with the possibility of an enforcement order in accordance with Article 72 of the new Financial Regulation.

The Accounting Officer will also send an annual memo to the authorising officers responsible, drawing their attention to a list of Community entitlements which they have established and which they might consider waiving.

[40] All authorising officers by delegation can already carry out this type of reporting by means of the budgetary datawarehouse.

4. MEASURES TO ENSURE SYSTEMATIC ESTABLISHMENT OF COMMUNITY ENTITLEMENTS WITHIN A REASONABLE PERIOD

This aspect was not covered by the previous action plan adopted in December 2000. However, the Commission did state that further recommendations should be made about unestablished Community entitlements.

It has already been pointed out above that it is difficult to put forward any figures for "under-establishment", although the extent of this phenomenon can be gauged by existing indicators.

4.1. Systematic establishment of all "principal" entitlements

4.1.1 Retaining the overriding obligation in the new Financial Regulation

In the rules, the overriding obligation to establish any debt that is certain, of a fixed amount and due laid down in Article 28 of the 1977 Financial Regulation was taken over in Article 71(2) of the new Financial Regulation and the roles of the financial actors were clarified. The draft Commission Regulation laying down detailed rules for the implementation of the new Financial Regulation and, within the institution, the new consolidated internal procedure provisions should further clarify their role.

The Financial Regulation thus leaves no scope for any *de minimis* interpretation which would allow "small amounts" not to be established[41].

Instead, the obligation to establish debts has been extended to the interest yielded by pre-financing, which remains the property of the institution.[42]

4.1.2. Enhancing the obligation to forecast entitlements

The new rules still call for the entry of an estimate of amounts receivable for any measure or situation which may give rise to a Community entitlement. This is a sort of obligatory memorandum item for the use of the authorising officers, for which the Commission intends to specify the circumstances (*ex ante* checks to be made by the authorising officer,[43] details on when it is to be drawn up[44]). This instrument of

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41 No other interpretation is possible. Even assuming that the legislator had left this possibility open, only two hypotheses would be feasible. Either the de minimis rule would not be laid down officially, in which case its application would make way, if not for arbitrary assessment, then at least for a lack of uniformity in the application of Community law between departments in the same institution. Or, should such a de minimis rule be actually laid down officially, e.g. in order to ensure compliance with the principle of non-discrimination, debtors would then be able to use it and abuse it, undermining the force of law and compromising the Commission's efforts to administer public funds in accordance with the principle of sound financial management. In neither eventuality would the solution be acceptable.

42 Article 4 of the draft Regulation laying down detailed rules for the implementation of the new Financial Regulation adopted by the Commission on 24 July 2002.

43 Article 74 of the draft Commission Regulation laying down detailed rules for the implementation of the new Financial Regulation.

44 In particular Article 4 on the interest or equivalent benefits yielded by pre-financing, which remains the property of the Communities; Article 228 for the JRC. However the obligation to clear prefinancing on interim payments, which is linked to accrual accounting, will come gradually into application as a result of the transitional period foreseen by the new Financial Regulation (Article 181)

sound financial management should help curb failure to establish Community entitlements. However, where a debt is immediately certain, of a fixed amount and due, then it has to be established without prior establishing a forecast of revenue.

4.1.3. Reinforcing the accountability of Community officials and staff

Authorising officers are made more accountable as a result of the Commission's administrative reform. In their management plans 2004 authorising officers will consign key indicators for regular monitoring of financial management such as the evolution of outstanding commitments (*reste à liquider*) and in particular 'dormant commitments' as well as the number of recovery orders issued.

Furthermore, the obligation to establish any debt that is certain, of a fixed amount and due is also accompanied by a more stringent system of sanctions in the case of non-compliance.

Without calling into question the principle of the sole responsibility of each official under the Staff Regulations, the recast Financial Regulation provides (Article 66(1)) that the authorising officer *"shall be liable to payment of compensation ... where, through serious misconduct, he/she omits to draw up a document establishing a debt or if he/she neglects to issue a recovery order or is, without justification, late in issuing it"*.

Undoubtedly, the more the internal channels are streamlined to improve management in general and recovery in particular, and the more staff training is developed, the easier it will be to pin down those cases where failure to establish an entitlement constitutes negligence "which an average well-performing official would never commit" - the criterion adopted by the Commission for invoking financial liability in accordance with Article 22 of the Staff Regulations.[45]

4.2. Systematic establishment of default interest on principal debts

The Commission is bound to apply the same zero tolerance dictated by the principles of sound financial management, equality of treatment and non-discrimination between debtors owing default interest to the Communities. In accordance with the undertakings made by the Commission in December 2000, this interest must be systematically established if no payment has been made by the due date.

Moreover, under Directive 2000/35/EC, the statutory rate applicable (rate applied by the European Central Bank to its main refinancing operations, as published in the C series of the Official Journal of the European Communities on the first working day of the month in which the debt is due) should be increased by 1.5 percentage points to 7 percentage points for commercial transactions between the Communities and undertakings within the meaning of the above-mentioned directive and to 3.5 percentage points in all other cases.

This surcharge and actual application of the systematic establishment of default interest from the date due will, to some degree, deter late payment by debtors to the Communities and improve recovery of established Community entitlements.

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[45] "New orientations for the reform of personnel policy", 19.7.2001, point 5.4, pp. 17-18, http://www.cc.cec/home/admref/en/pdf/orientation_19072001_en.pdf.

The new consolidated internal procedure provisions on debt recovery to be adopted for entry into force from 1 January 2003 will have to spell out this principle.

Stricter application of the principles than in the past will obviously have practical consequences and involve costs, also in terms of resources; however, these costs should be largely offset by the benefits of systematically claiming the interest due.

4.3. Systematic establishment of Community entitlements arising from shared management in the EAGGF Guarantee sector

The rules on financing the common agricultural policy contain provisions for recovering funds unduly paid either through failures of the national authorities or as a result of fraud and irregularities committed by operators.

The legal framework is developed in Article 8(1) of Regulation (EC) N° 1258/1999 (ex 729/70) which provides that :

«*1. The Member States shall, in accordance with national provisions laid down by law, regulation or administrative action, take the necessary measures to ;*

a)satisfy themselves that transactions financed by the Fund are actually carried out and executed correctly ;

b) prevent and deal with irregularities ;

c)recover sums lost as a result of irregularities or negligence.

The Member States shall inform the Commission of the measures taken for those purposes and in particular of the state of the administrative and judicial procedures.

2. In the absence of total recovery, the financial consequences of irregularities or negligence shall be borne by the Community, with the exception of the consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States.

The sums recovered shall be paid to the accredited paying agencies and deducted by them from the expenditure financed by the Fund. The interest on sums recovered or paid late shall be paid into the Fund.

3. The Council, acting by a qualified majority on a proposal from the Commission, shall lay down general rules for the application of this Article ».

The implementing rules of Article 8(3) are to be found in Council Regulation (EEC) N° 595/91. In particular, Articles 3) and 5) of Regulation (EEC) N° 595/91 provide for communications to the Commission by the Member States of irregularities as well as their update. Article 5(2) provides that :

« *2. Where a Member State considers that an amount cannot be totally recovered, or cannot be expected to be totally recovered , it shall inform the Commission, in a special notification, of the amount not recovered and the reasons why the amount should, in its view, be borne by the Community or by the Member State.*

*This information must be sufficiently detailed to enable the Commission to decide who shall bear the financial consequences, in accordance with Article (2) of Regulation (EEC) N° 729/70» (*now 1258/1999).

In 1995, the follow-up of irregularities communicated by Member States under Regulation (EEC) N° 595/91 was entrusted to UCLAF, the tasks of which Commission service were subsequently taken up by OLAF. Based on the information received from the Member States, when the debts are considered to be irrecoverable, OLAF proposes to the Commission to charge them to the Community budget or to the Member State, the latter being charged only if they are deemed to have been negligent. The Member States are notified of the financial correction, which follows the normal clearance procedures (conciliation, formal decision, etc.).

The problem for shared management is not that of recovery since debts can always be offset as the debtors will always have payment orders in the pipeline for their monthly "advances"[46].

The problem is one of lack of establishment when no clearance decision is yet possible with regard to the cases reported by the Member States under the rules applicable.

4.3.1. Solutions proposed to clear the "burden of the past"

➢ *Analysis of the burden of the past*

- Period before 1995

From 1999 onwards, OLAF undertook a review of all the cases notified before 1995 by Member States. This exercise was undertaken for all Member States which reported cases, except Italy.

The examination by OLAF concerned mainly cases reported to it before 1995 but not yet recovered. It did however include a small number of cases reported after this date for which the Member States had reported that the amount was irrecoverable, in which case a clearance of accounts decision was possible immediately.

The dialogue stage, the updating of the figures and determination of the amounts to be covered by the national and/or Community budget has been completed for ten of the then (before 1995) twelve Member States, the only one missing being Italy[47].

At 30 June 1999, a total of €1 019 million was to be recovered from all the pre-1995 cases reported under Regulations (EEC) No 283/72 and (EEC) No 595/91. As a result of the dialogue with the Member States and the various updatings, this figure was down to €771 million at 31 December 2000.

Since August 2002, a "package" has been available for drawing up a formal clearance decision, given that all the Member States have agreed to the approach decided by the Commission.

OLAF has followed the clearance of accounts procedure. Letters with reference to Article 8 of Regulation (EC) N° 1663/95 have been written to all the relevant Member States, replies have been received and bilateral meetings held. After the

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46 These are actually payments, since they involve reimbursement of expenditure incurred.

47 No existing amounts relating to Luxembourg.

bilateral meetings and, sometimes after exchanges, OLAF and 10 Member States have reached a common position.

Consequently, this « package », amounting to 76 Million €, is to be included in one of the next clearance of accounts decisions.

- Period from 1995 on and case of Italy

There is still a considerable backlog. Analysing it requires an efficient working method and a substantial investment in terms of staff. Therefore the Commission has decided to set up a temporary task force to weed out outstanding cases for which no clearance decision can be drawn up at this stage, to be chaired at the appropriate level by OLAF with the assistance of DG AGRI.

Some of these outstanding amounts are the subject of legal procedures whose outcome is still uncertain (€353 million), while the amount declared irrecoverable by the Member States comes to €65 million.

The €1392 million recorded for Italy over the period 1970-2000 is certainly exaggerated, for the following reason: when they detect an irregularity, the Italian authorities calculate the total to be recovered on the basis of the overall amounts collected by the beneficiary over the whole of the period covered by the audit revealing the irregularity; it is only at the end of the criminal and/or formal administrative procedure that the judge establishes the exact amount involved in the irregularity and initiates recovery.

➢ *Overall appraisal of total figures*

Analysis of the figures produces the following findings with regard to cases reported for the period up to 31 December 2000:

– over the period 1970-2000, more than 22 000 cases involving a total of almost € 3 billion were reported as irregularities in the EAGGF Guarantee sector, of which € 2.780 billion are to be recovered from the various beneficiaries in the different Member States ;

– of this total, € 653 million were actually recovered and €46 million declared irrecoverable.

This leaves a balance of € 2.081 billion to be recovered at 31 December 2000 (7 698 cases), among which € 771 million for irregularities reported before 1995 (1 627 cases) and € 1 310 million (6 071 cases) for the period 1995-2000.

The likelihood of recovering the amounts outstanding will depend on the Member States' efforts to initiate effective and efficient recovery procedures. It should be noted in this connection that, while 46% of the cases reported before 1995 are subject to legal procedures, the percentage for the period after 1995 has fallen to only 15%.

Balance by Member State:

€ million	**pre-1995 cases**		**cases from 1995 on**		**total**	**Grand total**	
	total	**legal proc.**	**total**	**legal proc.**	**total**	**legal proc.**	
Italy	**588**	**269** (*46%)*	**804**	**132** (*16%)*	**1392**	**401**	(*29%)*
Germany	**20**	**8** (*40%)*	**208**	**14** *(7%)*	**228**	**22**	(*10%)*
Spain	**67**	**11** (*13%)*	**86**	**4** (*5%)*	**153**	**15**	(*10%)*
Others	**96**	**65** (*66%)*	**202**	**49** (*24%)*	**298**	**113**	(38%)
TOTAL	**771**	**353** (*46%)*	**1310**	**199** (*15%)*	**2081**	**584**	(28%)

4.3.2. Solution proposed to facilitate treatment of reported irregularities in future

Commission services will ensure a coherent treatment of the outstanding cases on the basis of concrete instructions how to interpret and apply the rules laid down in Article 8 of Regulation (EC) No 1258/1999, which will allow an acceleration of the decision-making process.

For cases of fraud and irregularities committed by operators, the Commission is currently studying a new system. In order to introduce this system, the Commission plans presenting to the Council a draft regulation amending Article 8 of Regulation (EC) No 1258/1999.

In this connection it is considering the idea that the new rules relating to the financial consequences of irregularities should be based on a pre-determined timetable. These rules would involve annual overall reports from Member States on the progress of their national recovery procedures. The resulting financial consequences for cases not settled by the time set in the above timetable laid down would, as a rule, be borne jointly by the Community budget and the budget of the Member State concerned. Such a system is based on the liability of the Member States and *ex post* control under the clearance of accounts procedure. This amendment of the present rules would greatly simplify and speed up the procedures.

The Commission is also considering whether such a system might also cover cases of irregularities committed before it entered into force.

Finally, once these new rules adopted, the Commission will reconsider the division of responsibilities of the services concerned in the spirit of reform which aims at enhancing the role of the authorising services.

5. CONCLUSIONS

The measures envisaged in December 2000 in the first communication on the recovery of amounts unduly paid from Community funds have already, without changes to the law, raised awareness in Commission departments, clarified roles, improved tools and increased incentives for operational departments.

The new regulatory framework, which will come into force on 1 January 2003, sets up appropriate legal instruments to enable more systematic establishment and recovery of Community entitlements (particularly as regards interest yielded by funds which are Commission property), in particular, where voluntary payment does not occur, by means of more systematic withholding of guarantees and more systematic use of offsetting and enforcement orders.

The new provisions on writing off irrecoverable Community entitlements will provide the regulatory basis to carry out this operation prudently, thanks to specific, clear-cut criteria and transparent procedures.

The Commission has instructed its directors-general and heads of service to allocate the necessary resources to implementing the above measures, and to report back on this issue in their annual activity reports. As regards the backlog of uncertain actual Community entitlements in the area of the EAGGF-Guarantee section (outstanding pending recovery and/or a decision on charging), a temporary mobilisation of staff for handling these cases should allow to speed up the decision whether to charge the Member State concerned or the Community under the clearance of accounts procedures. To improve the management of complex cases of this kind in the future, the Commission intends to present a proposal to amend Regulation No 1258/1999.

The Commission is confident that the new awareness of the priority now being accorded to recovery and the new resources being made available will improve the management of Community expenditure and Community entitlements over the coming years.