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**PROTECTION OF COMMUNITY  
FINANCIAL INTERESTS**

**FIGHT AGAINST FRAUD**  
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Österreich	06605845	Ireland	1800553295
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Espaná	900993295	Nederland	060224595
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## INTRODUCTION

The Commission's 8th annual report on the protection of the Community's financial interests provides an overview of all activities in the fight against fraud. This 1996 report also gives a brief outline of the path followed since this strategy was put in place in 1994 as well as the perspectives and priorities to be followed in the future.

Important results have been achieved both at the level of investigations and in legislation.

The annual budget of the European Community for 1996 amounts to 82 billion ECU. It is financed from the Community's own resources, principally VAT which amounts to 39.8 billion ECU (49 % of resources), as well as customs duties and agricultural levies paid on goods entering the Community from non-member countries amounting to 13.6 billion ECU (18 %).

The structure of budgetary expenditure is characterized in large part by appropriations intended to support Community policies. A little less than half of expenditure goes to agriculture, and almost one third for structural policies. About 15 % is spent on research and development, consumer protection, the environment or aid to non-member countries. This latter part is managed by the Commission.

In the area of traditional own resources (customs duties and agricultural levies) fraud represents 787 million ECU or 5.8 % of the revenue collected in 1996 by the Member States for the Community. This amount covers an estimated 2000 cases. The percentage of fraud and irregularities is up from 3.6 % in 1995 in this area of revenue.

In the area of expenditure, Member States carry out more than 80 % of the Community budget outlay, notably in the common agricultural policy and structural policies. In this area, the overall level of irregularities stands at 498 million ECU which is 0.7% of the total. This reflects an estimated 2400 cases. Also here, there is evidence of a modest increase from 0.6 % in 1995. With regard to expenditure directly managed by the Commission, fraud amounts to 16 million ECU which represents 0.1% of the payments made in this area, as compared to 0.3 % of expenditure in 1995.

The overall figure for irregularities detected by the Member States and the Commission in 1996 totals 1.3 billion ECU (irregularities affecting income and expenditure). By comparison the figure for 1995 was 1.1 billion ECU.

In the agricultural area, the evolution of Community policy towards a greater use of direct aid paid to farmers and a reduction in market intervention has led to an increase in the number of cases but a relative stability in the amounts.

In the structural policies, the setting up in 1996 of detailed procedures for the communication of frauds and irregularities resulted in a significant increase in the number of cases in comparison with 1995. There was also a fourfold increase in the amounts involved. Moreover, for structural policies, the misappropriation of subsidies involves both the Community contribution but also national cofinancing. Consequently fraud has a negative impact on Member States' budgets.

Frauds concerning own resources affect indirectly the European taxpayer. This is because any loss of earnings must be compensated from the fourth resource<sup>1</sup> which is based on Member States' GNP and financed by taxpayers.

Frauds affecting the Community's budget also have a direct impact on national budgets. In 1996, cigarette smuggling mainly in the transit regime totalled 800 million ECU (customs duties, excise, VAT). Only 25% of this amount represent customs duties due to the European Community. The remaining 75% is borne by national budgets. For alcohol, intracommunity smuggling (disappearance of cargoes) caused a loss of national tax receipts of 450 million ECU in 1996. The losses for smuggling involving these two products alone amount to more than one billion ECU to national budgets. This represents the equivalent of all frauds against the Community budget detected in 1995.

The figures must however be interpreted with caution. A higher figure may be due to an improvement in the rate of detection rather than an increase in the number of irregularities. An increase could result from more intense anti-fraud investigations in certain targeted areas. It could also be due to the occurrence of a few spectacular cases in a particular year.

Two or three per cent of the cases are important and represent more than two-thirds of the money involved. The presumption of the involvement of organized crime is obvious. It is clear that some Community subsidies never reach the sectors in question and are misappropriated for the benefit of organized crime. Likewise, the Union and the Member States' commercial policies are compromised by organized smuggling.

The figures provided by the Member States do not give a full picture of fraud. Criminal organizations split up their tasks. This makes a national appreciation of their criminal action difficult. Complex operations mix legal and underground activities and they rarely allow the criminal structure, the "issuer" of instructions, to surface.

These criminal organizations are not hindered by borders. They organize "carousels", mount financial operations and multiply advantages by covering their tracks, especially by the use of "honourable" businesses involved in the market (warehouses, manufacturers, processors, transporters, wholesalers). They launder their business profits via "brass-plate" companies which use banking networks spread over several financial bases in many countries within and outside the Community. The use of such methods allows a series of obstacles to be set up which make the work of the national inspector or judge almost impossible.

Transnational frauds necessitate the cross-checking of information and subsequent launch of operations which is most usefully done at the Community level. The creation of "task groups" in sensitive sectors, with contact points in the Member States, allows a better assessment of the risks and of the threats posed by organized crime. Privileged access to intelligence, full use of all investigative competencies and targeted action on the ground are essential to counter the actions of organized financial crime

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<sup>1</sup> Reminder the three other budgetary resources are agricultural levies, customs duties (which constitute traditional own resources) and VAT.

Thus organized fraud requires countermeasures at the appropriate level to protect both the European taxpayer, the professions who are beneficiaries of the policies and other recipients of Community funds.

Progress made both at legislative level and in gaining knowledge on the ground will lead in future to a more effective fight against fraud. Looking at the overall problem, it remains clear that even if the accent must be put on the operational effort, prevention remains a strong point in the protection of public finances. It is an essential prerequisite for the protection of the Communities' financial interests.<sup>2</sup>

The more recent improvements in the common legal framework are essentially:

- *the horizontal regulation concerning the protection of the Communities' financial interests, covering administrative checks, measures and penalties, adopted on 8 December 1995,*
- *the regulation concerning on the spot checks and inspections in the Member States carried out by officials of the Commission for the purpose of detecting frauds and irregularities, adopted on 11 November 1996;*
- *the convention concerning penal protection of the Communities' financial interests, signed on 26 July 1995, and its first protocol on the fight against corruption, signed on 27 September 1996. These two texts must however be ratified by national parliaments and effectively transposed into national legislation before they take effect.*

The horizontal regulation defines very broadly the concept of irregularity. This concept covers both simple omission due to error or negligence which is likely to have a harmful effect on the Communities' budget and intentional and deliberate acts which correspond for their part to the more restrictive concept of fraud as defined in the penal convention. The investigations presented in the second part of the report refer to cases in which the Commission participated. They only involve irregularities of particular interest at Community level whose intentional or deliberate nature has not yet necessarily been demonstrated. These irregularities cannot therefore all be considered as cases of fraud in the penal sense of the term. This also applies to the data featured in the statistical part of the report.

On the ground, the results achieved by the Community teams (in particular the task-groups) have been beneficial to both Community and national finances. The fraud "free-phone" received approximately 4000 calls in 1996, of which 42 resulted in enquiries.

The fight against fraud to the detriment of the Community budget is primarily the responsibility of the Member States, they alone have the necessary means, through their financial policing authorities, to fight against fraud. Nevertheless, it is essential for the Commission to play its full part in co-ordinating and intervening on the ground in the areas where it is able to provide an added value in particular areas such as transnational frauds and large financial crimes.

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<sup>2</sup> In addition to the SLM 200 operation (see Chapter 1 from page 5) whose guidelines aim clearly for strengthening the prevention aspect, in the customs area for example, prevention constitutes also a guideline of the Custom 2000 programme which has just been adopted by the Council and the European Parliament. See Chapter 5.3.2, page 40.

A renewed effort has been made in the recovery of defrauded amounts notably in the EAGGF-guarantee section. In cases dating back to before 1993, almost one third of the amounts have now been settled. Much remains however to be done to improve recovery further in a collaborative effort between the Commission and Member States. It must be clear that irregularities and frauds affecting the Community budget cannot be fully appreciated in terms of losses to the taxpayer in so far as detection is improving and recovery procedures are carried out effectively.



## 1. ANTI-FRAUD STRATEGY - PROGRESS AND PROSPECTS

The Commission responded to the completion of the single market and the entry into operation of the Union Treaty by devising a new strategy to combat fraud in 1994.<sup>3</sup> Now that the strategy has been in operation for the three years, and given that the Intergovernmental Conference due to be completed in Amsterdam has the fight against fraud on its agenda, the time has come for taking stock, focusing on the key issues:

- *how best to detect fraud and combat large-scale financial crime?*
- *how best to monitor the Community's financial interests and protect the European taxpayer?*
- *how best to adapt the legislative framework for the fight against fraud and large-scale financial crime?*
- *how best to secure effective deterrence and equivalent enforcement?*

Advantage must be taken of achievements to date to meet new challenges, particularly the Union enlargement. The objectives all converge on the four major strategic axes adopted in 1994:

- *presence on the ground,*
- *closer cooperation with the Member States,*
- *improvement of Community legislation,*
- *convergence of Member States' criminal law enforcement systems*

Experience on the ground has revealed a growing number of major cases, concentrated on certain sectors that are particularly vulnerable to fraud. At both Community and national levels, the situation on the ground must be improved. Recovery of sums evaded or fraudulently enjoyed must also be strengthened. The financial monitoring of cases detected must be tightened up, and the quality of Community legislation, its deterrent measures and administrative and criminal penalties for fraudsters will have to be extended to all sectors.

The success of such a strategy depends also on prevention. The Commission has introduced new internal procedures for the fraud-proofing at all stages of the legislative and decision-making processes.<sup>4</sup> But a prevention strategy will be successful only if the Member States equally commit themselves. All these tasks fit into the SEM 2000 project<sup>5</sup> for the improved financial management of the Union's expenditure.

The results achieved since 1994 demonstrate the relevance of the integrated approach to the phenomenon of Community fraud

This integrated approach to fraud fighting sets a benchmark for combating major crime in the Union, integrating all the components of a comprehensive tactic (presence on the ground, improved "intelligence" and analysis, stronger partnership with and involvement of all relevant actors, tougher Community legislative framework, harmonization of criminal laws). The Community approach has been one of partnership, both with judicial

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<sup>3</sup> COM(94)92 final

<sup>4</sup> SEC(96)1802

<sup>5</sup> Sound and Efficient Management

authorities specializing in combating financial crime and with the traditional enforcement authorities (police forces of various kinds, customs, revenue authorities, business supervisory authorities, courts and so on).

The Dublin European Council called for a comparable global strategy for combating international organized crime in general.

## 1.1 Practical achievements: how best to detect fraud?

### 1.1.1 *Managing the Commission's operational tasks*

UCLAF is the Commission's central operational anti-fraud unit. It was set up in 1988 and has since 1994 been developing on the basis of the present anti-fraud strategy. With the addition of more resources in 1995 it was restructured to some extent. In 1996 UCLAF performed more than 300 inquiry missions.

The comprehensive approach led the Commission to the organization of UCLAF on a multidisciplinary basis (combining financial, police, customs, judicial and tax expertise). Changes to the Commission's internal organization allowed the attainment of this interdisciplinary ambition in both legislative and operational terms.<sup>6</sup>

The effective protection of the European taxpayer's money depends on familiarity with the actual reality and an accurate analysis of the complex and ever-changing phenomenon of fraud and its Union dimension. With precise knowledge of events and risks on the ground, it is possible to adjust the response of the Community institutions to the challenge.

The new Regulation concerning on-the-spot checks and inspections carried out by the Commission<sup>7</sup> which entered into force on 1 January 1997, reflects this new knowledge. Its objective is to protect the Community's financial interests and detect irregularities in all areas of Union activity. For the first time, the Commission is empowered to operate on the same terms regarding both revenue and expenditure. Partnership with the Member States is placed on a solid footing with the detailed provisions as to what the Commission may do, having regard to the subsidiarity principle. The Commission may conduct on-the-spot checks:

- *for the detection of serious or transnational irregularities or irregularities that may involve economic operators acting in several Member States,*
- *where, for the detection of irregularities, the situation in a Member State requires on-the-spot checks and inspections to be strengthened in a particular case in order to improve the effectiveness of the protection of financial interests and so to ensure an equivalent level of protection within the Community;*
- *at the request of the Member State concerned*

The Regulation also stipulates:

- *conditions of access to information documentation, premises, land, means of transport or other areas used by economic operators for business purposes,*

<sup>6</sup> See 1994 and 1995 reports

<sup>7</sup> Chapter 6 1, p 43

- *the duty of economic operators to facilitate checks by the Commission,*
- *the terms on which national authorities are to give assistance,*
- *the duty of national authorities to give the Commission such assistance as it may require*

Finally, the Regulation establishes a close link between on-the-spot administrative checks and the criminal law treatment of fraud cases, by providing that the reports prepared by UCLAF agents constitute admissible evidence in judicial proceedings.

*This new regulation, which is in line with the anti-fraud strategy defended by the Commission since 1994, gives the Commission new responsibilities in that it is required to monitor and support action by the national enforcement and prosecuting authorities*

#### *1.1.2 Support and guidance for operational anti-fraud activities*

The fact that Community fraud tends to be well organized and have a transnational dimension<sup>8</sup> means that multidisciplinary and multinational investigation teams are needed. The task groups that have been set up to provide a support and operational capacity that focuses investigations on the most vulnerable sectors meet that very need. They are joint Commission and Member State operations and are organized flexibly around contact points to meet the threat from organized crime.

There will be a growing need for these task forces' work to exploit better the results of the Commission's intelligence-gathering and to use more systematically a Union-wide operational mobility, combining expertise from various member states so as to counter effectively the threats posed by international organized financial crime.

Some of the Member States have already set up specialized departments to combat fraud against the Community budget (Italy and France, in particular) or built up a special relationship with the Commission to that end (Belgium and Spain).<sup>9</sup>

There is also a partnership between the Commission and the other institutions. The important role of the budgetary authority (Parliament and Council) hardly needs reiterating. The Commission (UCLAF) has now entered into a specific agreement with the Court of Auditors under which it has launched a series of specific investigations on the basis of information supplied by the Court.

There is obviously a need for more action on the ground. Technical and operational intelligence has to be gathered so that the phenomenon of financial crime can be better understood and the rate of detection of fraud and irregularities improved. The Commission is now building up its intelligence data base which will be permanently available to the investigation teams of UCLAF and the national authorities. This is the first time that such a facility is operational at European level. The whole range of activities is now covered by law defining the obligations of the Commission and the Member States regarding fraud and irregularity reporting.<sup>10</sup> This wide range of

<sup>8</sup> See Chapter 3 I, from p 22

<sup>9</sup> See 1995 report, pp 44-46

<sup>10</sup> Council Regulation (EEC, Euratom) No 1552/89 as regards own resources (OJ L 155, 7 6 1989), Council Regulation (EEC) No 395/91 as regards the EAGGF Guarantee Section (OJ L 67, 14 3 1991), Council Regulation (EEC) No 4253/88 as regards the structural policies (OJ L 374, 31 12 1988) and Commission Regulation (EEC) No 1831/94 as regards reporting procedures

information sources provides the appropriate transparency needed for financial, administrative and judicial monitoring of cases and for operational investigations. Intelligence-gathering also provides the means for constant updating on the fraud phenomenon, its shifting patterns and trends and the risks to Europe's public finances, both for the Member States and the Communities.

*In this context the Commission, with support from the Joint Research Centre, is seeking to establish, a fully-fledged intelligence-gathering and analysis centre<sup>11</sup> It also plans to establish close links between UCLAF and EUROPOL<sup>12</sup>*

Measures have been taken to establish an information exchange scheme, chiefly in the customs field:

- *the Early Warning System between customs offices of departure and destination for sensitive goods (customs transit operations);<sup>13</sup>*
- *computerized data interchange between Member States' customs investigation departments,<sup>14</sup>*
- *the introduction of anti-fraud clauses in association agreements with non-member countries (standard protocol on customs cooperation)<sup>15</sup>, particularly with countries applying for accession, given the development of fraud and the involvement of international crime rings often based outside the Community*

### *1.1.3 Judicial cooperation on the ground*

Fraud is often transnational. The enforcement agencies, however, operate according to 15 sets of procedures and in dispersed order whereas the fraudsters themselves can operate in real time using their international networks of contacts, often helped by recent developments in computer and communications technology. The procedures in place today simply cannot cope with the new criminal networks. Assistance from the Commission, with its experts in criminal law and procedure, and the information exchange between its departments and the judicial authorities of Member States constitute the beginnings of a solution, which in this area inevitably demands coordination at the Union level (criminal interface).

Mr. Klaus Hänsch, President of the European Parliament, addressed the interparliamentary conference on fraud, organized on the initiative of its Committee on budgetary control, on 23 and 24 April 1996. He reiterated Parliament's call for "A European Law Enforcement Area" with clear, limited objectives reflecting the specific responsibilities of the institutions regarding the protection of the European taxpayer's money. The Parliament's request led to the Commission study of a "*Corpus Juris*"

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(OJ L 191, 27.7.1994), Council Regulation (EC) 1164/94 (Article 12) establishing the Cohesion Fund (OJ L 130, 25.5.1994) and Commission Regulation (EC) No 1831/94 as regards reporting procedures (OJ L 191, 27.7.1994), Council Regulation (EC) No 1468/81 as regards reporting procedures for mutual assistance in customs and agriculture (OJ L 144, 2.6.1981)

<sup>11</sup> As called for by Parliament in the Recommendations of its temporary committee of enquiry on transit arrangements (Final Report and Recommendations, doc. PE 220 895/def). See also Chapter 5.3.1.2, p. 40

<sup>12</sup> Convention of 26.07.1995 setting up a European police office, OJ C 316 of 27.11.1995

<sup>13</sup> See Chapter 2.4.1.1, p. 15

<sup>14</sup> SCENT, see Chapter 5.5.1 (Mutual administrative assistance), p. 42

<sup>15</sup> Protocol concerning mutual administrative assistance in customs matters

containing criminal law provisions for the protection of the Union's financial interests.<sup>16</sup> In the first half of 1997 the European Parliament is planning a series of initiatives to launch a great debate on the theme of the European Law Enforcement Area.<sup>17</sup>

### 1.2 Development of financial monitoring: how best to protect the Community's taxpayers?

Hitherto the division of responsibilities between the various managing and authorizing departments in the Commission and the lack of a unique legal framework for reporting by the national authorities has hampered an efficient and systematic financial monitoring at Community level. The adoption of new Regulations on irregularity reporting and the implementation of the recommendations of the Personal Representatives Group (PRG) in the SEM 2000 exercise<sup>18</sup> will improve both transparency and coordination between all those involved in recovering lost funds. The mutual obligations as regards transparency between the Commission and the Member States should enable both to exercise their financial responsibilities for traditional own resources as well as for expenditure.

The Commission and the Member States will then both be better placed to monitor the discharge of their obligations and ascertain their financial responsibilities. If necessary, legislative proposals for measures to secure more effective and more uniform recovery of amounts wrongly received or evaded could be envisaged.

Recovery is a fundamental obligation, and is the logical sequel to investigative work. It is also one of the parameters of the success of the fight against fraud. Recovery puts things right: the European taxpayer will find it hard to understand that a fraudster might be allowed to keep his ill-gotten gains while losses are sustained by the public revenue.

The Member States are henceforth subject to a general obligation not only to report irregularities in all sectors but also to assume their full responsibilities on the recovery of sums.

#### • Regarding own resources

*The amendment to Council Regulation (EEC, Euratom) No 1552/89 now provides for the permanent updating of statements of recoveries sent in by Member States in cases of fraud or irregularity. The Commission<sup>19</sup> should be kept constantly up to date with the own resources recovery situation and thus be able to call for the measures which it feels are necessary in order to make up inadequacies in national*

<sup>16</sup> A high-level group of academics recently laid a report and conclusions before the Commission

<sup>17</sup> The hypothesis is also put forward by a group of seven European judges all thoroughly versed in matters relating to international financial crime. They argue that the instruments currently available (in particular mutual assistance in criminal matters) are wholly out of proportion to the scale of the problem (*"La Justice ou le Chaos. L'appel de Genève"* interview with Denis Robert. Paris Stock, October 1996)

<sup>18</sup> The Commission proposed appointing a Personal Representatives Group of the Member States, and the proposal was accepted by the Madrid European Council in December 1995. The Member States have demonstrated their willingness to assume their share of the responsibility in the effort to improve the financial management of the Union and its components. Several Members of the European Parliament and the Court of Auditors have entered the debate. The Group's remit is to submit advisory recommendations. It met six times in 1996 and presented its initial conclusions to the Dublin European Council in December, these were approved virtually *in toto*. Recommendations entailing legislative action will be subject to consultation by the Structural Fund Committees (which include delegations from the Member States and the Commission) in 1997

<sup>19</sup> Which had been waiting for this improvement to the irregularity reporting arrangements ever since it presented its proposal on 11 December 1992

action. It intends to propose further amendments to Regulation No 1552/89 to clarify the provisions governing recovery and the responsibilities of the Member States.

The Commission has introduced a system of sample monitoring of certain fraud and irregularity cases relating to traditional own resources involving particularly large amounts<sup>20</sup> which in all account for more than three quarters of the amounts at stake in the cases reported by the Member States under Regulation No 1552/89<sup>21</sup>

- *EAGGF Guarantee Section*

The clearance of accounts procedure has been reinforced and made more transparent following clarification of the internal machinery. Therefore the reality and regularity of operations financed by the Funds are more effectively protected. Amounts involved in fraud and irregularity cases are now taken into account and more effectively followed up. In this way, the clearance procedure leads to the adaptation of national control mechanisms in such a way that more effective prevention is ensured. The Commission has also made provision for the introduction of specific accounts in agriculture, like those introduced for own resources, where amounts to be recovered will be recorded.

- *Structural measures*

The Commission and the Member States have together conducted an in-depth study of misinterpretations and divergent interpretations of the criteria for charging expenditure to Community financing programmes.

According to Council Regulation (EEC) No 4253/88, the Member States' obligation both to report irregularity cases and recover the amounts involved is clearly established. But there is still a need to specify when Member States which have met their fundamental obligations may use the sums recovered for reallocation to projects where there are no irregularities.

It has been found essential to clarify the responsibilities and obligations of the Member States and improve the state of knowledge about them, regarding all stages of assigning, managing and checking structural funds; the fact that front-line responsibility for checks lies with the Member States has to be borne in mind. This was the thinking behind the Commission decision to prepare a Regulation implementing Article 23(1) of Council Regulation (EEC) No 4253/88, laying down conditions for checks to be carried out by Member States.

The question remains of what measures ought to be taken where a Member State fails to discharge its obligations. The December 1995 Madrid European Council requested that the clearance of accounts principle that is familiar in agriculture be extended to other sectors. The Commission will specify the terms on which it will apply net and possibly flat-rate corrections, making full use of the possibilities offered by Articles 23 and 24 of Council Regulation (EEC) No 4253/88.

The effect of these provisions cannot be measured yet. There is the further difficulty that many of the Member States' recovery procedures will be compromised by redress procedures and slow administrative and judicial procedures. Decisions for recovery of amounts due in transnational cases is all the more delicate.

Measures to repair losses are still not adequately addressed. A more thorough evaluation of legislation to improve recovery and fraud-proofing in the most vulnerable areas, together with a truly dissuasive set of enforcement provisions is required.

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<sup>20</sup> For the sampling method (B 94 sample), see 1994 report, p. See also Chapter 2.5.1, p. 18.

<sup>21</sup> See Chapter 5.1, p. 37.

### 1.3 Improving the Community legislation: how best to adapt the decision-making machinery and legal framework to improve prevention?

Further upstream financial management on preventive lines and more fraud-proof legislation needs to accompany the control and penalty instruments that are being established. The principles emerging from the comparative analysis of national provisions for the application of Article 209a of the EC Treaty laid before the European Council must be observed.<sup>22</sup>

- The comparative analysis stressed that combating fraud must be accompanied by effective prevention aspects. In 1996 the Commission accordingly adopted internal measures with the aim of monitoring more closely the fraud-proofing of legislation and of decisions that have direct or indirect financial implications. This took place in the context of the SEM 2000 programme.

Fraud-proofing is to apply both to existing instruments and to new proposals.<sup>23</sup> The SEM 2000 Personal Representatives Group has emphasized that these efforts will be fruitless in the absence of greater vigilance by the Council and Parliament in the legislative decision-making procedure. Amendments that might make fraud or irregularities possible or easier must be avoided especially at the final compromise stage. This will rank high among the Commission's policy concerns before its final opinion on the adoption of any legal text.

- The general object is towards simplifying and rationalising decision-making procedures, monitoring management and disbursement procedures, and making them more transparent so as to the number of potential sources of misuse of funds, of opacity and consequently of irregularities. These efforts are also extended to the Member States.

There are other PRG recommendations that have an impact in terms of irregularity and fraud prevention. For example:

- *improvement of the management of Union policies as such, in particular where management is delegated to the Member States,*
- *continuation of efforts to improve checks and inspections (audits) made by the Commission, the Court of Auditors and the Member States*
- More particularly in the customs area, the customs 2000 programme shall lead to actions which should bring an end to the current inadequacies in the management of the Customs union.

These actions consist of:

- *improving the applicability and correct application of legislation*
- *developing as an essential element in customs policy strong relations with non-member countries*

<sup>22</sup> COM(92)556 final. See 1995 report, pp 35 et seq

<sup>23</sup> *Ex ante* scrutiny of instruments prior to presentation of the proposal to the Council *ex post* scrutiny of existing instruments where experience has revealed a degree of vulnerability to fraud

#### 1.4 Tougher penalties: how to improve deterrence?

Reimbursement of sums, the first of the measures to be taken to protect public funds, cannot be considered a penalty. It merely restores an equitable situation in relation to the taxpayer by making the person or firm at fault bear the cost of their fraud or irregularity. These reparatory measures are not of a punitive nature and must be accompanied by administrative and/or criminal penalties of demonstrable dissuasive effect.

Moreover, if the objective of equivalent protection of the Community's finances in all Member States is to be attained and the existence of areas with weaker enforcement to be avoided, there must be a comparable level of penalty provisions throughout the Union.

Council Regulation (EC, Euratom) No 2988/95 on the protection of the Community's financial interests establishes a single framework for Community administrative penalties, reflecting the measures applied in agriculture. The review of the situation in customs now in progress is expected to permit a more uniform system of administrative penalties to be established there too. The outcome of the additional work on the situation regarding implementation of EC Article 209A will build on the comparative analysis requested by the Council and the European Parliament and provide guidelines for the Commission's initiatives in all expenditure sectors.<sup>24</sup>

Alongside this work on administrative penalties, the Commission has been looking into the compatibility of the penalties available in the criminal law of the Member States. The degree of divergence is considerable.

The Commission accordingly proposed action under Title VI of the Treaty on European Union for the approximation of the Member States' criminal laws. Important progress was made with the signing of the Convention on the criminal protection of the Community's financial interests in 1995 and the First Protocol on corruption in 1996. These instruments foresee a criminalisation of fraud against the EU's budget throughout the Union. The national Parliaments have yet to ratify these instruments before they can take effect. Then, with the creation of a common and effective criminal offence of fraud, effective judicial cooperation will become possible, as will the imposition of penalties commensurate among Member States.

On this basis, and following the Regulation on on-the-spot checks and inspections (Commission findings being admissible evidence in criminal proceedings), the additional Protocol to the Convention on the criminal protection of the Community's financial interests now being negotiated<sup>25</sup> will provide a legal basis for Commission assistance in securing a uniform processing of criminal cases throughout the Community

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<sup>24</sup> See footnote no 22, page 11

<sup>25</sup> See Chapter 6.2.2, p 46



## 2. STATISTICS AND ANALYSES<sup>26</sup>

The purpose of this chapter is to present a detailed analysis of the data in the Commission's possession in order to establish a factual basis for assessing the scale of the phenomenon and drawing conclusions for future activities.

### 2.1 The situation in 1996

In the field of *traditional own resources*, the Member States and the Commission detected around 2 060 cases of fraud and irregularities in 1996, involving around ECU 787 million. The number of cases was down on the previous year, but their impact on the budget was greater (see Table 1). The figures are based on the results of investigations by UCLAF in cooperation with the Member States, on the reports sent in by Member States for the first half of 1996 and on the extrapolation of these reports for the second half of 1996. Under Council Regulation (EEC, Euratom) No 1552/89, which was still in force in 1996, Member States were required to submit reports only twice a year. The Regulation has now been amended so that, from 1997, Member States will have to submit reports every quarter (cases detected and updates). The Commission will therefore be able to monitor the situation more closely and report on the figures for the whole year.<sup>27</sup>

The number of cases detected by the Member States and the Commission in connection with *EAGGF Guarantee Section expenditure* was up on the previous year, as was their budgetary impact. Over 2 000 cases were detected in 1996, involving ECU 346 million (Table 2).

The increase on 1995 was even greater where *expenditure on structural operations* was concerned. In 1996 the Member States and the Commission detected 385 cases, which had an impact on the budget of ECU 150 million (Table 3).

Finally, the Commission detected 42 cases, involving ECU 16 million, in connection with *direct expenditure* (Table 4).<sup>28</sup>

### 2.2 Trends

#### 2.2.1 *Traditional own resources*

The number of cases detected in 1996 was slightly down on 1994 and 1995, but the financial impact continued to increase. The average financial impact of cases reported by the Member States who are responsible in the first instance for the collection of traditional own resources (around ECU 140 000 in 1996 compared with ECU 130 000 in 1995) was again much lower than that of cases investigated by the Commission in cooperation with the Member States (up from ECU 1.6 million in 1995 to ECU 2.3 million in 1996). This reflects the fact that the Commission concentrates its efforts on major cases of organized crime involving cross-border networks smuggling "sensitive products", i.e. those subject to high duties and taxes, such as cigarettes.

<sup>26</sup> All tables and charts are set out in the Annex.

<sup>27</sup> See Chapter 5.1, p. 37.

<sup>28</sup> "Direct expenditure" refers to sums paid out to beneficiaries under contracts managed and audited directly by the Commission (for example in research, energy, the environment, etc.) It does not give rise to any legal obligations for Member States.

Fraud involving traditional own resources (which account for around 17% of budget revenue) is proportionally much higher than that involving expenditure on structural operations and the EAGGF Guarantee Section (which represent more than 80% of total budget expenditure) (Table 5).

### 2.2.2 Expenditure

There has been a significant increase in the number of cases detected in the area of EAGGF Guarantee Section expenditure. The overall budgetary impact of such cases is up on 1995, but still lower than its 1994 level. This confirms that Member States are becoming more and more effective when it comes to detection and reflects the impact of measures to reform the common agricultural policy. It also shows that a small number of very serious cases (such as in the cereals sector in 1994) can greatly influence the figures.

The biggest increase in the number of cases notified by the Member States (up by 50%) and in the overall budgetary impact (more than double that in 1995) is in the area of the structural policies. It is worth bearing in mind that the present system of notifications has only been in force since 1994 and that the Commission department in charge began operational activities on the ground the same year.

### 2.3 Sources of information

*Formal notifications by Member States* on the basis of sectoral rules are still an important source of information on cases of fraud and irregularities. In 1996 a total of 1 950 cases of irregularities were reported in the field of traditional own resources and 2 241 cases in indirect expenditure (EAGGF Guarantee Section and structural operations). Notifications by Member States account for only half of the overall budgetary impact of the frauds and irregularities detected in 1996. This reflects the fact that major cases, particularly those involving organized crime, extend beyond the scope of action by individual Member States and that the Commission is often the only body able to identify and determine their impact and to coordinate investigations into complex cross-border frauds.

Commission Regulation (EC) No 745/96 implementing Council Regulation (EC) No 1469/95 establishing a "black list" did not enter into force until 1 July 1996. As a result, the Commission received very few reports in this field in 1996. The full effects of the new Regulation should be felt from 1997, i.e. after the technical implementing rules have been adopted, the Member States have adapted their organizational structures and the Commission has set up a computerized system to store and process data.

Once again the freephone numbers were a useful source of additional information. Nearly 4 000 calls were received in 1996 - about the same number as in 1995. 42 of these calls led to detailed investigations, mainly in the field of traditional own resources and structural operations.

## 2.4 Sector-by-sector analysis

### 2.4.1 Traditional own resources

#### 2.4.1.1 Transit arrangements

The Commission has drawn attention to the worrying state of affairs concerning the transit arrangements on many occasions.<sup>29</sup> In 1996 this area was investigated by the European Parliament's first committee of inquiry set up under Article 138c of the EC Treaty. Transit was also given priority by the Commission and the Member States.<sup>30</sup> At the end of May a new early warning system for sensitive products became operational, making it easier to monitor transactions and take rapid action on the ground.<sup>31</sup>

There has been a spectacular increase in the exchange of information on transit operations involving sensitive products. Since the new computer links became operational, nearly 30 000 messages have been exchanged regarding individual consignments. With the help of these messages, potentially fraudulent operations can be monitored in real time. In 1996 intelligence of this kind was used to dismantle networks responsible for removing sensitive agricultural products from the transit arrangements.

More effective controls by the Member States on the transport of sensitive products under cover of T1 documents and the tightening of the rules on the security lodged for such products have had a positive effect in preventing fraud in the transit context. The Commission had carried out on the spot controls in 1994 and 1995 under article 18(2) and 18(3) of Council regulation (EEC, Euratom) No. 1552/89 and called on the member States to make the necessary adjustments. This control activity continued in 1996. In 1996 the number of cases reported by Member States of goods removed from the transit arrangements was much lower than during the period 1990-95. However, more and more consignments entering the Community are now accompanied by a false description of goods.

#### 2.4.1.2 Preferential arrangements

In 1996 operational activities and analyses also focused on another type of fraud, namely fraud affecting the financial interests of the European Union and undermining its commercial policy. This category accounts for the majority of non-transit cases which have an impact on traditional own resources and are investigated by the Commission in cooperation with the Member States. The overall budgetary impact, which is included in the total figure for fraud on the revenue side, is around ECU 200 million for cases detected in 1996. The sectors most affected are textiles, fisheries and electronics.

Preferential certificates issued by the non-member countries qualifying for these arrangements often turn out to be inapplicable because of shortcomings on the part of the issuing bodies or because these bodies have been misled by their exporters. The Commission is therefore considering ways of defining more clearly the obligations on

<sup>29</sup> See 1995 Report

<sup>30</sup> See Chapter 5 3 1 2, p 40 and 1995 Report

<sup>31</sup> Sensitive products are products which are highly taxed on import into the Community or attract particularly high refunds on export to a non-member country.

Community importers who present certificates in order to receive preferential treatment and on the bodies issuing certificates in non-member countries.<sup>32</sup>

## 2.4.2 Expenditure

### 2.4.2.1 EAGGF Guarantee Section

The irregularities notified by the Member States in this field account for 96% of all cases detected. Their financial impact represents 60% of the total financial impact of cases detected by the Member States and the Commission. Many of the investigations conducted by the Commission in cooperation with the national authorities deal with sophisticated cases involving criminal organizations that are active in more than one Member State. Consequently, the budgetary impact of fraud detected as a result of investigations cannot be attributed to a single Member State. Caution must therefore be exercised in interpreting and analysing figures on the scale of fraud detected in individual Member States (see Table 6 for the breakdown by Member State).

Although EAGGF Guarantee Section expenditure has remained fairly stable over the last few years, there have been very marked changes in the breakdown by sector and by Member State, reflecting the impact of the CAP reform, with a tendency to favour direct aid to farmers in line with movements on the world market. It is interesting to compare these trends in expenditure with the trends in the irregularities detected.

The proportion of EAGGF Guarantee Section expenditure allotted to what we might call market support<sup>33</sup> fell from 44% in 1992 to 22% in 1996. The percentage spent on export refunds also dropped, from 27% in 1992 to 13% in 1996. The proportion spent on aid to farmers,<sup>34</sup> on the other hand, increased from 29% in 1992 to 57% in 1996.

The impact of irregularities involving export refunds (where the amounts at stake correspond to 0.8% of expenditure, on the basis of cases reported by the Member States, or 2% if cases investigated by the Commission are included) and market support (where the respective figures are 1.5% and 2.2%) is significantly higher than that of irregularities involving aid to farmers (where only 0.05% of expenditure is at stake). Although the number of irregularities committed by farmers is high (722 of the 1 944 cases reported in connection with the EAGGF Guarantee Section in 1996), they have relatively little budgetary impact (on average, ECU 15 000 per case, compared with an average of ECU 90 000 in cases involving export refunds or ECU 220 000 in cases involving market support measures).

In 1996 the sectors most affected by irregularities, in terms of the sums involved, were cereals, beef, oils and fats (olive oil), fruit and vegetables, and milk and milk products (see Tables 6 and 7). These findings confirm the trends observed over the period 1992-96, except for fruit and vegetables. They are also consistent with the relatively high levels of EAGGF Guarantee Section expenditure in the sectors concerned. However, a comparison between EAGGF guarantee expenditure in the four sectors most affected

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<sup>32</sup> See Chapter 5.3.3, p. 41

<sup>33</sup> Intervention measures and miscellaneous premiums, for example

<sup>34</sup> Production premiums and premiums for abandoning production, for example

(broken down by Member State) and the irregularities reported reveals that in some years the impact of irregularities can vary considerably from one Member State to another.

#### 2.4.2.2 Structural operations

In 1996 the number of cases of irregularity reported by the Member States - and the amounts involved - increased sharply as compared with previous years, as Member States gradually implemented the relevant legislation, although some Member States are only partly meeting their obligations under the rules. It should be noted that cases reported as irregularities do not necessarily involve fraud, for which intentional has to be demonstrated.

The number of investigations launched by the Commission in conjunction with the Member States was slightly down on 1995 (from 112 cases to 88), but the amounts at stake quadrupled (from ECU 23 million to ECU 88 million), reflecting the growing effectiveness of procedures introduced by the Member States and the fact that the Commission concentrates its investigations on major cases.

Most of the cases notified concerned the European Social Fund (ESF), but those relating to the Regional Fund (ERDF) had a greater financial impact.

The most frequent types of irregularity (50% of cases) concerned expenditure where invalid documents were presented or supporting documents were missing. For the remainder, 11% of cases of irregularity concern non-compliance with other regulatory or contractual obligations, 10% the non-completion of the project concerned, the balance concerning other irregularities such as the irregular completion of the action or its non-completion. Such irregularities, which are often unrelated to actual operations, should not be considered as minor, as they may sometimes conceal a more serious phenomenon.

Ordinary sampling checks by Member States, either on the basis of documents or on the spot are an effective means of detecting and preventing irregularities (85% of cases reported).

#### 2.4.2.3 Direct expenditure

Investigations have been launched in all areas of Commission policy which are implemented through direct expenditure: culture and audiovisual media, energy, research, environment, internal market, industry, tourism, cooperation with the countries of Central and Eastern Europe (PHARE), the independent States of the former Soviet Union (TACIS), the Mediterranean countries (MED) and the countries of Latin America and Asia, and the EDF. In some of the areas investigated, the Commission has used the financial management data uncovered by the Court of Auditors in the course of its external audits.

Various types of fraud and irregularity have been detected (diversion of funds, favouritism in the award of contracts or granting of subsidies, failure to provide co-financing, manifest overinvoicing, schemes involving the whole chain of persons responsible for managing contracts or programmes). On a number of occasions, investigations in these fields, where the Commission has sole responsibility for financial

management, have led to cases being referred to national courts and prosecuting authorities.

## 2.5 Recovery

### 2.5.1 *Traditional own resources*

The Commission has already expressed its concern at the unsatisfactory situation regarding recovery in this field, and there was no improvement in 1996. The full effects of recent initiatives, most notably the amendment of Council Regulation (EEC, Euratom) No 1552/89 and the introduction of a computerized system for sending reports to the Commission, will not be felt until 1997, when they should help improve financial follow-up.<sup>35</sup>

Although Member States must report to the Commission cases of irregularities they have detected involving more than ECU 10 000<sup>36</sup> and enter the entitlements still to be recovered in a separate account referred to in article 6 of regulation in question, the Commission has found major and inexplicable discrepancies in practically all the Member States between the amounts reported in connection with irregularities and the annual summary statement of established entitlements.<sup>37</sup>

At present the Commission does not have full and reliable figures on the recovery of entitlements at stake in irregularities notified by the Member States for 1996 - or for previous years. This situation should be improved by the implementation of the new provisions of Council Regulation (EEC, Euratom) No. 1552/89 providing for quarterly updates of the recovery situation. However, it does monitor the situation regarding the recovery of traditional own resources on the basis of samples, which provide an indication of the progress made with recovery. The fraud cases selected in sample B1994 (all of which had a major budgetary impact and involved more than one Member State) may be considered as representative of the difficulties encountered in recovery. Out of a total of ECU 124 million at stake in cases reported under the mutual assistance arrangements up to 1993,<sup>38</sup> ECU 2.6 million (2%) had been paid back into the Community budget, ECU 3.7 million (3%) was the subject of legal proceedings (the debtors having lodged appeals against payment notices) and the recovery of ECU 70.5 million (57%) was pending. As for the remaining 38%, the Commission has insufficient information to make any comment.

### 2.5.2 *EAGGF Guarantee Section*

The recovery situation here has improved on previous years. At the Commission's request, Member States have reviewed the financial position in all cases notified before 1993 where the likelihood of recovery could be assessed. It emerged that 29% of entitlements initially reported had been either recovered, irrecoverable or put in charge of Member States while ECU 549 million had still to be recovered in 1 588 cases remaining

<sup>35</sup> See point 2.4.1.1, p 15

<sup>36</sup> Article 6(4) of Council Regulation (EEC, Euratom) No 1552/89

<sup>37</sup> Article 7 of Council Regulation (EEC, Euratom) No 1552/89

<sup>38</sup> Council Regulation (EEC) No 1468/81, OJ L 144, 26 1981

open. Legal proceedings were under way in 400 cases involving a total of ECU 264 million (34% of the amount initially reported) (Table 8). As for the remaining ECU 257 million, a decision still has to be taken on whether the cost should be met from the Community budget or by the Member State concerned.

To improve transparency regarding amounts still to be recovered in cases of irregularities, the Commission is considering the possibility of introducing a separate account for entitlements under the EAGGF Guarantee Section, similar to the one already in use for traditional own resources. This initiative is in line with the objectives of the account-clearing operations: in particular, it will provide a clearer picture of the accounts of paying agencies. The new account will improve the effectiveness of the checks carried out by the Commission and the Court of Auditors.

### 2.5.3 Structural policies

The recovery situation is very different in this area. Under Article 23 of Council Regulation (EEC) No 4253/88, Member States must recover amounts involved in irregularities, which they may then re-allocate to other projects not affected by irregularities and meeting the criteria laid down in the Community support framework, provided that they apply the procedure set out in Article 24 of the same Regulation. However, funds can be reallocated in this way only if the Member State has notified the irregularity in accordance with the rules laid down in Commission Regulation (EC) No 1681/94. By the end of 1996, ECU 23 million had been recovered out of a total of ECU 113 million initially reported (see Table 9). Cases involving over ECU 13 million were still before the courts.<sup>39</sup>

## 3. INVESTIGATIONS

The figures for the irregularities detected by the Commission reflect the intensity of the investigations now being conducted in the field. This is the result of closer cooperation between the Commission and the authorities of the Member States. The fight against fraud in the field, the main objective of the antifraud strategy, is becoming more intense. Whether it be in the field of fraud itself or subsequently on the administrative and judicial level, full-scale, sincere and confident cooperation between the competent bodies in the Member States and the Commission's antifraud structure is absolutely essential.

The Commission's operational activities focus on large-scale organized international fraud. A few significant examples are depicted in the first section of this chapter.

As early as 1995, the Commission had revealed the existence of organized crime syndicates in fields covered by European policies.<sup>40</sup> At its meeting in Dublin in December 1996, the European Council stressed its absolute determination to combat organized crime and the need for a coordinated and coherent approach at Union level.<sup>41</sup>

<sup>39</sup> Information supplied by the Member States

<sup>40</sup> See 1995 Report

<sup>41</sup> The European Council, meeting in Dublin in December 1996, decided to set up a high-level group whose task it would be to draw up a comprehensive action programme for combating organized crime

The action taken by the Commission to protect the Community's financial interests has demonstrated the effectiveness of such an approach.

Less than 5% of all the cases detected are dealt with by the Commission in close collaboration with the investigation authorities in the Member States. On an aggregate basis (revenue and expenditure), these cases account for more than half of the amounts involved. It is in the field of traditional own resources that the added input provided by the Commission proves particularly effective and "productive".

The involvement of criminal syndicates in fraud in the cigarettes, alcohol and agro-food sectors (where international criminal networks are used for the organization of illicit operations and subsequent money laundering) has now been clearly established.

Organized financial crime generally extends beyond national borders. The criminal syndicates operating in the financial area conceal their activities using traditional commercial structures, ordinary economic circuits and a whole chain of more or less fictitious intermediaries. The most sensitive sectors (i.e. those where checks are difficult to carry out, potential gains are very high and risks low) are the prime target.

The operational response to this type of organized crime demands great expertise. It is for this reason that UCLAF, together with the investigation authorities in the Member States, has set up task groups or "intervention forces" to combat in a more targeted manner these phenomena. For example, in addition to the "Cigarettes" Task Force set up in 1994<sup>42</sup> to counteract cigarette smuggling by organized gangs, two task forces have been set up in the olive oil and alcohol sectors as provided for in the Commission's work programme. The experience of recent years has shown the olive-oil sector to be particularly susceptible to fraud (whether organized or not) of every type,<sup>43</sup> perpetrated in most cases by international crime syndicates using a system of multi-stage invoicing via a variety of "front" companies and enjoying profitable tax evasion into the bargain. Where alcohol is concerned, experience in the field has shown that illicit operations, many of which are international, are also in the hands of organized crime. The creation of a specific task group was therefore indispensable.

These task groups involve the Commission and the national departments directly responsible in these various sectors. They centralize the information gathered, particularly on organized syndicates, so that the operational departments of the Member States directly concerned can gain access to it and coordinate their activities more closely. The aims are also to refine and target controls more effectively, thus deterring attempts at organized crime, and to coordinate investigations begun by one or more Member States or the Commission. Generally speaking, the exchange of information through this formal framework helps investigations to progress and above all serves to alert the national administrative departments responsible for controls.

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<sup>42</sup> See also 1995 Report, point 1.14

<sup>43</sup> Straightforward smuggling, false declaration of quantities, importation with forged T2L certificates (documents certifying Community status of a product), importation of nut oil under various names for subsequent blending with olive oil (leading to profitable increase in volume of olive oil and undue receipt of refunds or consumption aid), fraud during inward processing operations, undue receipt of export refunds (for oils which do not leave or are reimported to Community territory for seed oils exported as olive oil, for sweetened oils, for oils in respect of which such aid has already been paid)



In the very specific sectors of cigarettes and alcohol, the frauds committed affect not only the Community's financial interests but also, and above all, national financial interests in terms of the excise duties and VAT lost. Some fraudulent arrangements target solely the VAT system; they involve the issue of forged export and import declarations, the abuse of the intra-Community VAT system and the creation of "cardboard" companies which vanish as soon as transactions are completed or "letter box" companies which exist solely by virtue of a fictitious address. These procedures make it possible to purchase goods free of VAT and to resell them with VAT, without paying the taxes charged on resale over to the tax authorities.

The second section of the chapter deals with cases of fraud committed in the context of the Union's external trade policy.

The Union has concluded a number of preferential agreements with third countries concerning certain products meeting specific conditions (relating particularly to manufacture and marketing). These agreements are by their very nature susceptible to fraud. Such fraud may involve non-compliance with certain rules governing products eligible for preferential treatment or the inappropriate application of the preferential status to products not originating in the signatory third countries. Experience has shown that exporters and importers may be involved, actively or not, wittingly or circumstantially, in operations to avoid payment of the duties normally demanded or to circumvent other trade policy measures. At the same time, the public authorities of the third countries concerned could be implicated purely by dint of their failure to abide by their obligations. This tendency was confirmed moreover in 1996.

In a third section, two examples are given of national investigations in the field of the financing of the CAP (Common Agricultural Policy). These cases involved only one Member State, considerable sums and sophisticated practices, although they were not the work of international networks. The existence of such practices clearly demonstrates the need to continue improving the effectiveness and reliability of control systems at national level.

The last two sections of the chapter are devoted to structural measures and direct expenditure. These two fields account for 50% of expenditure under the Community budget. The risks of irregularity and fraud in these fields vary considerably: risks at the project-beneficiary selection stage (favouritism, "back-scratching", corruption, deflection), at the contract-award stage, at the implementation or service-performance stage (including total or partial non-performance), at the invoicing stage or in the different financial arrangements.

In all these fields, it is a fact that the investigations can only be brought to a successful conclusion with the full cooperation of all the national authorities, including the judicial authorities, who alone have the power of prosecuting and penalising the guilty parties. In cases of international fraud, the establishment within UCLAF of a prosecution interface, consisting of experts in criminal law who would afford assistance and advice and coordinate files in liaison with the national judicial authorities, will be an essential component of the Community's arsenal against large-scale organized crime.<sup>44</sup>

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<sup>44</sup> See Chapter 1.1.3, p. 8.

### 3.1 Organized large-scale international fraud

#### 3.1.1. International smuggling of cigarettes and alcohol

In 1996 the smuggling of cigarettes for the purpose of fraudulent sales in the Community again emerged as the chief activity of crime syndicates. In that year, some ECU 800 million<sup>45</sup> was avoided in customs duty, VAT and excise (including ECU 200 million to the detriment of the Community budget). Even if certain Member States (Italy, Spain, Germany) have been the main markets, the phenomenon is spreading throughout the Community and affects not only the Union's financial interests (although the financial impact is borne chiefly by the Member States) but also the credibility of the European Union. These fraudulent imports are the work of highly organized criminal networks, who use the large Community ports for the transit of enormous quantities of cigarettes and rely on the large volume of transactions to mask their illegal activities, and are carried out by giving a false description of the goods<sup>46</sup> or by specifying false final destinations outside the EEC.

Information at the Commission's disposal shows that criminal organizations are indeed behind numerous fraudulent operations involving cigarettes which physically enter the Community, especially through the northern European ports (but also across the land borders with central and eastern Europe and Switzerland) and are then placed on the European market, particularly in southern Europe. These criminal networks possess impressive organizational skills and can call on substantial resources and facilities as well as a structure which links various national territories both within and outside the Community. One characteristic of these organizations, the internal structures of which are very difficult to discern, is the use, for the purpose of their fraudulent activities (particularly the laundering of the resultant capital) of numerous companies with head offices in Switzerland, Liechtenstein, Cyprus, the Caribbean and certain European territories with a special status, to name but a few. The organizations involved in such fraud are in most cases formally established outside the Community but have a chain of partner and front companies inside the Union which use a network of customs and tax warehouses. These warehouses play a fundamental role in fraud cases, sometimes simply by storing the goods until such time as a customs department discontinues a surveillance operation but sometimes also through more "active" behaviour such as changing, disguising or removing the markings on packaging.

The degree of sophistication involved in fraud was underlined by the European Parliament's Committee of Inquiry on the Community transit system.<sup>47</sup>

Since the introduction of the early warning system<sup>48</sup> and the entry into force on 1 February 1996 of the prohibition on recourse to the 100% comprehensive security covering transport by road of certain sensitive goods, including cigarettes, the fraudsters have resorted to other ways and means of organising their smuggling operations. Since

<sup>45</sup> The Commission can neither confirm nor refute the far higher figure put forward by the tobacco industry.

<sup>46</sup> One investigation concerned the disappearance of containers declared as containing toys whereas in fact they were full of cigarettes.

<sup>47</sup> See Chapter 5.3.1.2, p. 40.

<sup>48</sup> See Chapter 2.4.1.1, p. 15.

then, cigarettes have been systematically dispatched from customs warehouses based in the Benelux ports under the Community transit regime. At the ports in question, they have been loaded aboard ships bound for West Africa. The cigarettes have never reached the African continent but have been unloaded in international waters off the coasts of Spain and Portugal onto specially adapted high-speed boats. They have then been smuggled into the said Member States and sold there.

In order to counteract such practices, the Commission, together with the "Cigarettes" Task Group, mounted "Operation Columbus", involving all the Member States affected by this traffic. In the course of 1996, it was established that some twenty cargoes of contraband cigarettes, ostensibly bound for Africa (false declaration), had been shipped from the Benelux. The vessels were carrying more than 220 000 cartons (more than 2.2 billion cigarettes) destined for the Spanish black market. For 1996, the loss in terms of customs duty, VAT and excise is estimated at ECU 175 million. Operation Columbus continues in close collaboration with the national authorities concerned<sup>49</sup> and in January 1997 resulted for the first time in the seizure of several vessels at sea by the Spanish authorities in collaboration with their French and Belgian counterparts.

Another important route through which criminal networks organized their cigarette-smuggling operations towards the Italian market was the Federal Republic of Yugoslavia. The structures used in order to direct the cigarettes toward Community territory were already up and running during the period of international sanctions.

The Commission and the main Member States concerned organized a Community visit to the Federal Republic of Yugoslavia to check the final destination of more than 200 consignments of cigarettes, most of which had been dispatched under the transit system from approved customs warehouses in the Community and in Switzerland and had Serbia and Montenegro as their declared destination. The checks carried out with the full collaboration of the local authorities revealed that around 335 000 cartons (i.e. more than 3.3 billion cigarettes) had been smuggled back into Community territory within a period of less than six months, thus resulting in the loss to the tax authorities of some ECU 330 million in customs duties, excise and VAT.

The information gathered shows that these cigarettes were shipped under customs surveillance from or via the Community territory to a third country purely in order to be smuggled back from that third country into the Community for subsequent sale on the internal black market.

- On several occasions the Commission has been informed by Member States of a new upsurge in alcohol smuggling. In some cases, these may be fictitious exports of ethyl alcohol or alcoholic beverages with Central or Eastern European countries (CEEC) as the declared destination. In other cases, there may have been false descriptions of goods on importation into the Community. These phenomena concern most of the Member States as well as several countries bordering on the Community. They have an impact both on the Community's own resources and on those of the Member States. The financial impact

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<sup>49</sup> In particular the SVA (Spanish Customs Surveillance Authority) and the DNEI (French National Customs Investigation Directorate).

is considerable, especially in terms of national revenue: a lorryload of alcohol represents some ECU 500 000 in excise duty.

### 3.1.2. VAT fraud

- In one case which involved most of the Member States (Denmark, Belgium, France, Germany, Italy, Netherlands, United Kingdom, Portugal, Spain), computer components were purchased under the intra-Community VAT system by a particular company from a firm established in another Member State, the products being delivered free of VAT. The purchaser did not declare this purchase in his own Member State and therefore did not pay the VAT due. In turn, he delivered the products to another company in the same Member State, making out a "VAT included" invoice. He pocketed the VAT thus paid by the purchasers and vanished whereas, under the rules of the system, the final purchaser was entitled to recover the amount of the tax paid. Although such consecutive sales are in fact subject to VAT, the upshot of this fraud is that the national treasuries fail to collect any net amount. For a single Member State, the VAT at stake is estimated at between ECU 100 and 150 million (part of which accrues to the Community budget as VAT own resources).

- Another case concerns imports of silver into the Community from Switzerland, followed by consecutive deliveries within Community territory and fictitious export declarations. The consequences of this fraud are the same, i.e. non-payment to the national authorities of VAT which is due on the basis of the invoices for consecutive and fictitious purchases and sales but which has been collected by letter-box companies (which have then quickly evaporated). To date, the cooperation between the Commission and the Member States (UK, Italy, Germany, France, Ireland, Spain, Austria, Belgium, Netherlands) has resulted in the impounding of some consignments and a custodial sentence for one of the perpetrators. The VAT involved amounted to some ECU 60 million.

### 3.1.3. Olive oil exports

An increase in the number of olive oil exports destined for various countries (USA, Canada, South Africa) was observed at the end of 1995. After detailed checks and controls, it emerged that the containers were being sent from Greece via Belgium and the UK. In connivance with the consignors in Greece, Belgian and British operators collected the export refunds. In order to outsmart the customs inspectors, only two or three rows of genuine olive oil cartons were placed at the entry to the container, the remainder being made up of various seed oils not qualifying for refunds.

On the British side, fraud has been proved regarding the export of some thirty containers with a financial impact of ECU 400 000. The investigations carried out in Belgium to date have revealed fraudulent practices in the case of some twenty containers destined for the USA and Russia, with an estimated financial impact of ECU 180 000. Judicial proceedings are under way in Belgium and the UK and investigations are continuing in order to break up the criminal organization operating on the territory of several Member States purely in order to misappropriate export refunds.

*This type of organized international fraud highlights once again the need to perform selective and thorough physical checks in the case of export and import operations. In addition to the straightforward checking of weights and measures, it is extremely important to take samples directly from inside the*

containers and, if necessary, to commission analyses by specialised laboratories, particularly as regards the density of the goods.

#### 3.1.4. Beef exports to Bulgaria

The investigations currently being carried out by the Belgian customs authorities into the illicit use of hormones have shown the same criminal organization to have been behind a beef import/export fraud (high-quality products replaced in transit by ordinary or inedible products). The beef and edible offal in question came from non-approved establishments (United States, Canada, Australia and China). On arrival in the Community,<sup>50</sup> the meat and offal were stored in a customs warehouse pending export to Bulgaria under the TIR regime<sup>51</sup> or under a T1 document (Community transit).

In actual fact, the customer in Bulgaria, who was the final consignee of the goods, had ordered low quality offal and not "high-quality" goods (edible meats and offal). After illegally entering Community territory, the meats and offal, which had originated in the USA, Canada and Australia, were replaced by offal of considerably poorer quality and sold fraudulently on the internal market by avoiding customs control. The Belgian authorities have begun a corruption investigation in respect of a customs official suspected of facilitating this conspiracy.

In May 1996, UCLAF organized a Community visit to Bulgaria in order to ascertain the nature of the goods declared on import to the Sofia customs authorities. Interviews also had to be held with senior staff of the Bulgarian companies, who were the only people able to supply details regarding the number of people and financial sums involved. The results of this very productive visit were conveyed to the Belgian customs, enabling them to make headway in their investigations as to the precise circumstances of the substitution.

Furthermore, it was discovered that the high-quality beef, which now passed as Community produce, was sold to a French company, which then exported it and collected the refunds (the third country of destination being Russia). Since this meat was likewise substituted for other products, the refunds were unduly paid. The Belgian judicial inquiries are still in progress.

*These practices have two different types of consequences. The first is of a financial nature: the agricultural levies have to be collected (more than a million ecus) and the refunds have to be paid back. The second relates to health: most of the imported offal, coming from non-approved export establishments in third countries, contains hormones which are prohibited in Europe.*

#### 3.1.5. Unlawful removal of meat from the Community transit procedure

An organized criminal network abused various customs procedures in order to take undue advantage of the various benefits they offered.

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<sup>50</sup> The Commission performs on-the-spot inspections and issue certificates of approval to establishments in third countries exporting meat to the Community. Health certificates naming the final consignee are required to accompany any consignment of meat destined for the Community.

<sup>51</sup> International road transport procedure as defined in the TIR Convention of 1975.

• A communication from the Court of Auditors alerted the Commission to the fact that poultrymeat originating in China, Brazil and Thailand was entering Germany under the Community transit procedure. The transit documents (T1) gave the final destination as Morocco and Spain, with Irun and Las Palmas (Canaries) as the offices of destination. In fact, most consignments were removed from the transit procedure in Germany and delivered to German customers. The customs documents were endorsed by means of forged stamps from the Irun and Las Palmas customs offices. Other such consignments were sold to Spanish companies. In response to a request from the German customs authorities for mutual assistance, the Dutch customs authorities discovered that in the Netherlands, eighteen other consignments of poultrymeat had been removed from the transit procedure using the same technique involving forged stamps from Algeciras, Irun and Las Palmas. The poultrymeat was disposed of fraudulently on the German, Dutch and Spanish markets. The overall financial impact of this fraud is estimated at ECU 6 million.

This sophisticated international fraud was organized by criminal networks using companies based in Andorra, Switzerland and Gibraltar.

• Another file concerns both Community beef declared at export as ships' supplies<sup>52</sup> and beef from third countries stored under customs control in the Community (exempt from duty), also intended for ships' supplies. The investigation revealed that the meat, which came from companies based in the UK, Denmark and Germany, had been purchased by a Spanish company for the ostensible purpose of sale to ships' suppliers via an intermediary established in the Netherlands. The transit documents which accompanied the goods and permitted them to circulate were cleared by means of forged Spanish customs stamps. The meat was most certainly sold on the domestic market. The financial impact of the consignments identified as fraudulent can be estimated at more than a million ecus in terms of the own resources avoided (Community transit procedure applied to goods coming from and going to third countries). As regards the Community meats in intervention, the Member States hold about ECU 5 million in securities lodged under this procedure, money which will have to be recovered at the expense of the operators responsible for the fraud.

#### 3.1.6. Fictitious exports of wine to third countries<sup>53</sup>

Investigations concerning a Mafia organization specializing in fraudulent exports of wine to the eastern European countries continued in 1996 with the full collaboration of the Guardia di Finanza and resulted in the break-up of the organization.

During a visit to Romania, two ships with a cargo of Italian wine exported to that third country were discovered to have been unloaded illegally in the port of Constanta. Forged documents certifying clearance for home use on Romanian territory were presented to the Italian payment agency so that export refunds could be obtained. Proceedings for the recovery of the amounts paid (around one million ecus) have been instituted against the exporting companies, who will also be prosecuted in court.

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<sup>52</sup> This Community meat was "intervention stock", i.e. it was sold at reduced prices for the purposes of exportation or, in the case in point, for ships' supplies, which is considered equivalent to exportation

<sup>53</sup> See 1995 Report (point 1.11)

A visit to Slovenia revealed that some ECU 1.2 million had been unduly paid to an Italian company, the wine having been imported only temporarily into Slovenia under a procedure whereby goods may be imported into that country free of customs duty on condition that they are re-exported within one year. The wine was re-exported to other third countries in compliance with that condition and forged documents were presented in Italy in order to collect the refunds, which are only payable if the goods have really been disposed of in the country of destination, i.e. Slovenia.

The director of one of these companies was placed in custody. The Public Prosecutor's Office charged him with the criminal offences of issuing forged documents and fraud against the Community budget and informed UCLAF that a warrant had been issued for the arrest of another company director.

### **3.2 Major frauds in the field of commercial policies (industrial products, fishery products and textiles)**

#### **3.2.1. Industrial products: satellite receivers from the Philippines**

Following information from the German authorities on the risk that false declarations of preferential origin might accompany the import of satellite receivers from the Philippines, the other Member States were asked to investigate these operations. Initial information indicated that the quantities imported were rising all the time and that certain components of these devices (an important factor for obtaining preferential treatment) could not have been manufactured in the Philippines, contrary to claims by the operators. On-the-spot investigations established that over 460 000 satellite receivers, with an estimated market value of ECU 28 million (ECU 3 million in customs duties have to be recovered from the importers), had been exported to several Member States under the GSP without meeting the relevant criteria. It was also established that some at least of the importers were aware before importing the goods that the finished products were not eligible for preferential treatment. It was also proved that the Philippine authorities had failed to fulfil their obligations under the administrative cooperation procedure both before and during the Community team's on-the-spot investigations, thus preventing the fraud being stopped.

*A large number of frauds whereby certificates of preferential origin (A Forms) were improperly issued in order to evade payment of both ordinary customs duty and anti-dumping duties could not be cleared up in 1996 because some exporting third countries refused to receive the administrative cooperation missions who were to carry out on-the-spot investigations. It should be noted that, in the GSP framework, the Commission has significant means at its disposal to react to non-cooperation on the part of non-member beneficiary countries. It can in fact open an investigation with a view to total or partial withdrawal from the GSP of countries who fail in their administrative cooperation obligations. Such an investigation cannot however be opened on the basis of a complaint from a Member State or third party.*

#### **3.2.2. Fishery products**

- Canned tuna imported from Costa Rica

A Commission study of the tuna industry in Central America revealed a marked contrast between the small capacity of the local fleets and the volume of canned tuna imported from Costa Rica into the Community. With the agreement of the Costa Rican authorities, an administrative cooperation mission, made up of representatives of UCLAF and the Member States involved (Italy and Portugal), went to that country to verify the origin the

these products. Over 10 000 tonnes of tuna with a market value of ECU 28 million were under investigation. The amount of duty avoided (ECU 7 million) is currently being recovered from the Community importers. The local authorities provided all the cooperation necessary for the success of the operation. The most serious questions concerned the nationality of the fishing vessels supplying the manufacturers of the canned tuna in question. It soon became clear that Costa Rica did not itself have sufficient commercial fishing capacity.

Joint enquiries showed that most of the tuna landed in Costa Rica had indeed been caught by vessels of other nationalities. These catches had been used for the production of the canned tuna under investigation, which proved not to be eligible for preferential treatment. Several hundred "A forms" issued by the local authorities had been presented in the Community (Italy, Portugal and Spain) so that the tuna could be imported tax-free. Costa Rica acknowledged that these documents were invalid.

- Canned tuna imported from Turkey

A bilateral agreement between the European Union and Turkey authorizes the duty-free importation of canned tuna into Community territory, on the express condition that these products meet certain criteria, particularly with regard to the origin of the fish used in the manufacture of canned tuna. In June 1996 Commission representatives, accompanied by delegations from the Member States (Dutch, German, Italian and British customs), went to Turkey on an administrative cooperation mission to verify the authenticity of several hundred preferential origin certificates issued by the Turkish authorities on the export of these goods. Investigations seemed to indicate, firstly, that tuna catches by the Turkish fleet were insignificant and, secondly, that the species of tuna imported into Turkey in large quantities were clearly intended for the manufacture of canned tuna.

On the basis of their enquiries in Turkey, the team was able to establish that the canned tuna exported to the Community had been obtained from tuna of non-Turkish origin, to which had occasionally been added minuscule amounts of tuna of Turkish origin when the finished product was exported. By making false declarations as to the origin (Turkish or Community) of the raw materials, the exporters were able to obtain ATR 1 certificates from the Turkish authorities so that the tuna could be imported into the Community free of customs duty. The mission also found that several importers were aware that the canned tuna was not entitled to duty-free entry. A number of them played an active role in the organization of the fraud by themselves providing tuna of foreign origin to Turkish canneries. The quantity concerned is estimated at approximately 23 000 tonnes. Some ECU 18 million in customs duties will have to be recovered from importers based in Belgium, Germany, Italy, the Netherlands and the United Kingdom, the countries where the goods were sold.

### 3.2.3. Textiles

- Textiles from Cambodia

In March 1996, a Community administrative cooperation mission identified, with the cooperation of the Cambodian authorities, approximately 1 500 false certificates of preferential origin (A forms). These certificates related to over 23 million items of clothing imported into the Community free of duty between 1992 and 1996. In addition, a further 1 700 certificates of origin (A forms), relating to over 16 million items, were



wrongly issued by the Cambodian authorities for consignments of textile goods which did not meet the GSP criteria because the threads and fabrics used in their manufacture did not originate in Cambodia. These raw materials had in fact been imported into Cambodia from other Asian countries. The customs duties involved are of the order of ECU 15 million.

- Textiles from Bangladesh

In November and December 1996 an administrative cooperation mission (Commission/7 Member States) went to Bangladesh to look into problems encountered by the local administration in applying the GSP. These problems were not new. This time several hundred suspect certificates (A forms) accompanying textiles imported into the Community had been identified as false by the Bangladesh authorities.

In addition, approximately 14 000 other certificates collected by the authorities of the Member States concerned were subjected to detailed checks to establish firstly whether or not they were authentic and secondly whether they were justified under the GSP rules relating to the goods concerned. The investigation, conducted in collaboration with the competent local authorities, concluded that these difficulties, and the problems concerning the authenticity of the textiles certificates issued by the Bangladesh authorities, had been considerably understated. The investigations carried out involve approximately sixty textiles manufacturers in Bangladesh. They have established that most of the certificates in question had been issued by the authorities on the basis of false information supplied by these exporters, the products having been proved to be of non-Bangladesh origin according to the GSP rules.

The Bangladesh authorities have accepted the Community missions' conclusions but have been slow to take the necessary action. The own resources involved so far amount to almost ECU 60 million and could reach ECU 100 million. In common with a number of other less-developed countries, such as Laos, Cambodia, Nepal and the Maldives, Bangladesh has requested the application of derogations to the rule of origin under the GSP.

*Investigations into these frauds or irregularities can sometimes be very long and complicated. Moreover, the mass of information and documents needed to establish the facts with accuracy are often scattered over different locations, often far removed from Community territory.*

*The application of the preferential trade regimes by some non-member countries and their exporters does not always run smoothly. A growing number of administrative cooperation missions are therefore organized each year. 1996 was no exception, and these missions mostly involved South East Asian countries. It should be noted, however, that most cases of non-compliance with rules of origin concern less developed countries who encounter the greatest difficulties, given their industrial capacity, in complying with these rules and find themselves deprived de facto of the GSP benefit in the textiles sector. This is what lies behind their requests for derogation.*

### 3.3 National frauds in the agricultural sector

#### 3.3.1. Olive oil/Fraud involving aid to consumption

Following an inspection carried out by the Greek Customs Directorate for the Prevention of Economic Crime it was found that a company manufacturing five-litre metal drums for packaging olive oil had produced vast numbers of false invoices for its customers. In return it received 10% of the invoiced amount and the full amount of VAT. In all,

10.5 million drums had been fictitiously invoiced to 26 olive oil packaging companies between 1992 and 1994.

The purchase invoices for the packaging of olive oil and for the oil itself are two vital documents for claiming consumption aid. The companies involved were thus able to obtain something in the region of ECU 21 million for oil which had never been packaged. Criminal proceedings are in progress.

### 3.3.2. Pre-financing of export refunds for durum-wheat meal in Spain

Following inspections carried out in Spain into companies which had received pre-financing of export refunds for durum wheat meal in 1995, a number of frauds were uncovered involving the quantities of durum wheat declared.<sup>54</sup> The accounts of all the Spanish companies receiving this type of pre-financing in 1993 and 1994 were examined. The results of these inspections showed that the fraudulent activities uncovered in 1995 were not new. Subsequent investigations revealed that one Spanish group had improperly obtained approximately ECU 26.5 million.

The fraud consisted essentially in declaring the stocks held in the warehouse (for processing into meal prior to final export) as being very much higher they actually were on the day of the declaration. Physical checks could not be carried out several years after the event. The fraud was identified by examining the documents relating to purchases, transport, storage and processing. In some cases the wheat declared under customs control had never been purchased from any supplier. Some declarations, accepted by the Spanish paying agency, were clearly incomplete as regards information on the storage sites. This procedure, based on false declarations, enabled the Spanish group in question to obtain financing which it then used to purchase raw materials for exports.

## 3.4 **Fraud in the field of the structural policies**

### 3.4.1. The European Social Fund (ESF)

- Vocational training courses in Spain/Artificial inflation of costs

In 1996 alleged cases of fraud involving vocational training courses cofinanced by the ESF and run by the INEM,<sup>55</sup> were brought to the attention of the Commission.

The results of the national authorities' investigations<sup>56</sup>, obtained by the Commission, reveal a variety of irregularities, including non-completion of courses, unjustified expenditure, fictitious expenditure, overfinancing, and incomplete or incorrect accounts. Several recovery procedures have already begun. The Public Prosecutor's Office has ordered a judicial enquiry into the case of fraud discovered in Madrid. Additional checks which the Spanish authorities are to carry out in other regions of Spain at the request of the Commission will make it possible to measure the extent of the irregularities.

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<sup>54</sup> See 1995 Report

<sup>55</sup> Instituto Nacional de Empleo

<sup>56</sup> The reports on national checks are communicated to the Commission in accordance with article 23(1) of Council regulation 4253/88.

- Vocational training courses in Italy/Dummy companies

A judicial enquiry carried out in Italy into vocational training courses financed by the ESF between 1990 and 1993 led to the remand in custody of two regional civil servants charged with misappropriation of public funds and attempted misappropriation of public funds.

The enquiry revealed that sums of money had been secretly paid to two civil servants in return for favours in the exercise of their duties. According to the preliminary results of the enquiry, the scheme was based on the creation, as and when required, of consultancy firms linked to one of the two regional civil servants; course organizers were then "obliged" to employ these companies to draw up their programme of expenditure, in order to avoid problems at a later stage when the other regional civil servant involved carried out an inspection. This led to an increase in the costs presented to the Region, since the commissions paid to the two officials were passed on in the invoices drawn up by the dummy companies for "services rendered" to the organizers.

*The Commission has taken the protective measures necessary for protection of its financial interests, that is suspension of the payments to the region concerned*

- Training courses in the United Kingdom/Fictitious expenditure

Examination of the annual accounts of a training establishment in London showed that the grant applications submitted were far in excess of the expenditure certified by the auditors when the annual balance sheet was drawn up. The discrepancy, over ECU 1.3 million between 1989 and 1994 (ESF amount : about ECU 570 000), was the result of fictitious expenditure. Because of the extent of this type of financing, all the applications submitted for the period were examined. It emerged that most of the expenses claimed were unjustified in view of the absence of supporting documents.

Together with the United Kingdom,<sup>57</sup> the Commission is examining the financial impact of this case.

### 3.4.2. The European Regional Development Fund (ERDF)/Embezzlement (RENAVAL-France)<sup>58</sup>

Financing for the conversion of shipbuilding areas in the Provence-Alpes-Côte d'Azur region, already affected in 1995 by the discovery of corruption as once again the subject of criminal proceedings against certain councillors.

Moreover, on-the-spot examination of administrative documents covering all the planned operations revealed a widespread failure to follow the rules applicable to public contracts, either out of ignorance (representing total public financing of ECU 4.1 million) or negligence or deliberate intent (representing over ECU 14 million in operations financed). These findings led the Commission to carry out a systematic comparison of the administrative and judicial procedures in progress with the aim of deciding, once the

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<sup>57</sup> Under Council Regulation (EEC) No 4253/88 (Article 24)

<sup>58</sup> See 1995 Report.

final report on the implementation of the programme had been received, what legal and financial steps to take in the light of the additional costs incurred.

### 3.4.3. Fisheries policy

By decisions of 13 July 1992 and 5 July 1993, the Commission granted Community aid of ECU 5.9 million to three projects under which a French fishing-vessel owner, together with partners based in a non-member country with which the Community enjoys good relations, was to set up companies (joint ventures<sup>59</sup>) with a view to supplying primarily the Community market. These decisions were followed, on the creation of these joint ventures in 1993 and 1994, by the payment of an advance corresponding to 80% of the Community aid (i.e. almost ECU 4.8 million), granted in addition to national aid which had already been paid in full (almost ECU 1.2 million). The request for payment of the balance (20%), made on the basis of an activity report, triggered an inspection into the use made of the grants already received. This inspection, carried out on the shipowner's premises, revealed that three of the five fishing vessels, which were intended to operate outside Community waters over several years (their catches being sold on the Community market), had been sold in 1996, in one case before the vessel had even left the French port. This discovery will lead to the necessary recovery measures. In December 1996 a preliminary procedure for the recovery of ECU 2.6 million was initiated by the Commission against a company owning two vessels.

## 3.5 Fraud in the area of direct expenditure

### 3.5.1. Research

- Hydroelectricity in Ireland/Forged supporting documents

An initial contract for a programme of research into hydroelectricity was concluded between the Commission and an Irish company in May 1991. Two further contracts followed. The sums involved amounted to ECU 9.2 million, of which the Community contribution was ECU 3.9 million. On-the-spot checks carried out by the Commission in May and June 1996 at the company's registered offices in Dublin and at the offices of a sub-contractor in Sweden revealed that the company had artificially inflated its applications for funding, using forged supporting documents.

The evidence was damning. The company had no expertise or even experience in the field of scientific research. Its initial application was based on the record of another company. It had not complied with national legislation and the accounts which it presented contained irregularities, all of which led the Commission to refer the case to the Irish police.

- Renewable energy project in Germany/Misappropriation of aid

In 1995 the Commission launched enquiries into the JOULE I and II / APAS-RENA research programmes.<sup>60</sup> One of the investigations, carried out in Germany, revealed that a

<sup>59</sup> Council Regulation (EEC) No 4028/86 on Community measures to improve and adapt structures in the fisheries and aquaculture sector (OJ L 376, 31.12.86), Article 21, and Commission Regulation (EEC) No 1955/88 laying down rules for the application of the above Regulation as regards joint ventures in the fisheries sector (OJ L 171, 04.07.1988)

<sup>60</sup> See 1995 Report, p (point 5.1.2)

German company had been involved in a number of research contracts and, in this capacity, had received substantial sums from the Commission. It had then gone bankrupt and been unable to honour its contractual obligations.

The following irregularities were discovered: false declarations of expenses, inflated by salary bills and payments for outside services that were never performed; payments received from the Commission on the basis of false statements of costs; payments received in the form of advances but used to pay off debts that were unrelated to the research; advances received in the capacity of coordinator but not passed on to the other contractors. The competent judicial authorities in Germany have since brought criminal charges against the company's directors for violating the terms of the bankruptcy and misappropriating subsidies. Orders have been issued for the recovery of the payments made to the company (approximately ECU 2.1 million). The full amount may never be recovered, given the insufficient assets available, but the criminal proceedings currently under way should result in partial recovery from the defendant's personal estate.

### 3.5.2. External relations

- Humanitarian operations in former Yugoslavia

An audit was carried out on a French non-governmental organization which had been awarded seven humanitarian aid contracts in former Yugoslavia worth a total of ECU 1.2 million. Out of these seven contracts three arise in the 1993 budgetary exercise and four in the 1994 exercise.

The auditors found that financial records and supporting documents were completely lacking and that funds had been misappropriated by the treasurer. Steps to recover the money were taken immediately. An approach to the French judicial authorities revealed the existence of a preliminary investigation based on information received, which voiced doubts about the management of the NGO and the honesty of its treasurer. UCLAF's investigations, in conjunction with the French police, resulted in the audit and management files being handed to the criminal prosecution authorities in June 1996.

- Decentralized cooperation Programmes<sup>61</sup> in the Mediterranean (1992-1995)

Checks carried out by the Court of Auditors revealed irregularities in the management of the decentralized cooperation in the Mediterranean programmes as a whole. The main irregularities involving the networks were the absence of accounts and/or supporting documents. The Court also found that the Commission had delegated the management and administration of the programmes to an outside body without issuing an invitation to tender. The Court's investigations of this body revealed a conflict of interests: two of the four members of its board of directors were also directors of the technical assistance offices commissioned to monitor the programmes. These offices prepared the dossiers for the Commission-chaired committee responsible for the preselection of proposals, and thus directly influenced the award of the technical assistance contracts. Two technical assistance offices had been awarded contracts under this procedure to carry out projects involving sums of ECU 270 000 and 405 000 respectively, without any open competition or selection procedure.

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<sup>61</sup> Programmes to help establish networks between Mediterranean partners in the areas financed

*On the basis of the preliminary report of the Court of Auditors, the Commission immediately blocked (in October 1995) the decentralized cooperation programmes under way in the Mediterranean. It took, moreover, the following measures: settlement of all the contracts concerned with the different technical assistance offices, conduct of three audits by the Financial controller (DG XX), issue of orders for recovery recommended in the Financial Controller's reports, conduct of investigations by UCLAF, opening of a general financial audit of the networks, redefinition of the management system in the future (Commission decisions dating from July 1996 and January 1997)*

### 3.5.3. European Development Fund/Attempted misappropriation of funds

Cameroon is receiving large amounts of financial aid for its structural adjustment programme. In connection with this, bank accounts have been opened with the national office of the Bank of Central African States and a number of commercial banks. These accounts operate on the principle of joint management, which means that operations must be authorized by two signatures - that of the head of the Commission delegation and that of the Minister of State for Economics and Finance (the national authorizing officer for the EDF) or his authorized proxy (the Director-General of the Caisse Autonome d'Amortissement).

Transfer orders bearing forged signatures were issued for a total of ECU 4.16 million. Eight arrests were made by the Cameroon police. Thanks to the vigilance of the banks and swift action by the officials of the Commission delegation, financial loss was prevented by blocking the payments. A team led by the Commission carried out on-the-spot investigations which led to the introduction of measures aimed at making the procedures more secure.

## 4. PARTNERSHIP WITH THE MEMBER STATES

In the implementation of its policy on combating financial crime the Commission has developed contacts with the national authorities and departments specializing in combating business and financial crime. This new type of privileged relationship has also inspired some of the Member States to take major initiatives for the specific protection of the Community's financial interests. The Commission is keen to highlight the most significant and exemplary of these initiatives, as they are the practical illustration of the integrated, comprehensive approach to the phenomena of fraud and financial crime to the detriment of the European taxpayer.

Training schemes are now being run with all the national departments responsible for combating fraud (investigators, magistrates, prosecution services and judges).

Dialogue with the Member States is not limited to this type of action. It is regular, either through bilateral meetings with the competent authorities, or in the institutional framework which the advisory committee for coordination of fraud prevention (COCOLAF) represents as well as, for questions more particularly concerned with indirect taxes (VAT), the anti-fraud sub-committee (SCAF), whose activities were relaunched at the Commission's initiative.

The Anti-fraud Sub-Committee (SCAF) which is jointly chaired by UCLAF and DG XXI was reorganized in May 1996 with the aim of broadening its activities. Its main task is to collate, examine and evaluate the experience of Member States with regard to recent trends in tax avoidance or evasion and to propose countermeasures. It also examines

frauds which may be of interest at Community level and promotes more effective cooperation between national services in transnational fraud cases.<sup>62</sup>

#### **4.1 Organization of the Member States for the protection of the Community's financial interests**

France has set up a Community fraud coordination body called ICLAF. This is a high-level body that is to coordinate action by all national authorities responsible for administrative checks on Community funds. It represents for the Commission a privileged counterpart. The customs and criminal investigation police are reorganizing to better meet the political constraint of penalizing major financial crime more heavily. The Central Directorate of the Judicial Police has set up a "Community fraud" squad comprising officials specialised in combating financial crime which will deal with Community fraud networks and will centralize national information touching on the judicial treatment of these cases.<sup>63</sup> The Directorate-General of Customs and Indirect Taxes, for its part, has proposed the establishment of a body of "judicial customs officers". This plan, which is particularly aimed at Community fraud, is in line with the avenues to be explored contained in the comparative analysis carried out by the Commission on measures taken by Member States for implementation of EC Article 209<sup>64</sup>.

Ireland has also announced the establishment of a specialist bureau.<sup>65</sup> This will be an operational unit staffed from the police, customs and the revenue authorities.

In Italy, apart from establishing a special Community fraud unit, the Guardia di Finanza has pursued and intensified its cooperation with the Commission for the protection of the Community's financial interests. A Technical Protocol of Agreement was signed in Rome on 4 October 1996 between the General Command of the Guardia di Finanza and UCLAF to give the first formal expression to the very close operational cooperation already existing between the two bodies.

In Germany, the Minister for Justice officially informed the judicial authorities of the Länder in a letter dated 21 June 1996 of the possibility of cooperating with the Commission in the framework of EC Article 209A.

Other Member States are also considering establishing or reinforcing their capacity to combat fraud and large-scale organized financial crime, which also affect Community interests.

#### **4.2 Training**

Numerous general training schemes have already been set up to raise the national authorities' awareness of their responsibilities for preventing and punishing fraud against

<sup>62</sup> The major point in SCAF's current programme is conducting research with the aim of creating a typology of VAT fraud. 500 cases will be analyzed in 1997.

<sup>63</sup> The creation of this operational squad shows clearly the need to consolidate cooperation and exchange of information with UCLAF, upstream from actual judicial action.

<sup>64</sup> See footnote no 22, page 11.

<sup>65</sup> Criminal Assets Bureau (CAB)

the Community budget. General basic schemes have been run in all the Member States. Lately the Commission has been focusing more on targeted schemes for specialist departments managing and checking Community funds that transit through national authorities and for judicial authorities (judges, prosecutors, criminal investigation police), whose cooperation is vital for the success of anti-fraud activities in the field.<sup>66</sup>

To enhance its training support capacity, the Commission has endeavoured to make use of the possibilities for giving financial support to Member States applying for it, on the basis of a programme for the improvement of national anti-fraud staff's expertise.

In 1996 the Member States, with the Commission, organized the following events,<sup>67</sup> mostly lasting two days:<sup>68</sup>

COUNTRY	AUDIENCE	TOPICS
IRELAND	Customs inspectors	Agricultural fraud
	Customs inspectors	Cigarette smuggling
	Inspectors/administrators	Cohesion Fund irregularities
PORTUGAL	Prosecutors and judges	European Social Fund irregularities
	Tax inspectorate	Fraud against the Community budget
	Inspectors/administrators	Cohesion Fund irregularities
AUSTRIA	Customs, police and prosecution service	Introduction to problems of Community fraud
GREECE	Inspectors/administrators	Cohesion Fund irregularities
UNITED KINGDOM	Customs inspectors	Fiscal fraud
FRANCE	Customs inspectors	Transit fraud
	Criminal investigation police	Financial crime
POLAND	Prosecutors, judges, police, customs inspectors	Community fraud and cooperation
GERMANY	Police inspectors	Community fraud and cooperation
SWEDEN	Inspectors/administrators	Structural Fund irregularities

## 5. IMPROVING THE PROTECTION OF THE COMMUNITY'S FINANCIAL INTERESTS IN EACH SECTOR

This chapter is devoted to significant developments in sectoral rules which have had a positive impact on the fight against fraud, and to the development of fraud prevention in other sectors, such as VAT, transit procedures and preferential arrangements.

With respect to amendments to Community legislation, the main developments have been the strengthening of Regulation (EEC, Euratom) No 1552/89 on own resources and, in agriculture, the "black list" Regulation. The measures pertaining to customs transit

<sup>66</sup> The Commission's programme has given priority to departments in the new and applicant Member States

<sup>67</sup> Events organized in Brussels are not included in the table

<sup>68</sup> In the field of customs and indirect taxation the Commission also organized a number of briefing seminars on preferential origin rules in non-member countries (Cambodia, Laos and others) eligible for Community tariff preferences, in particular those qualifying for generalized preferences (GSP)



systems that have been adopted come under the reform plan announced in 1995.<sup>69</sup> These provisions are part of a series of measures outlined in the Commission's work programme on fraud prevention.

### 5.1 Own resources

- On 8 July 1996 the Council adopted Regulation (Euratom, EC) No 1355/96<sup>70</sup> of 8 July 1996 amending Regulation (EEC, Euratom) No 1552/89 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources. One of the amendments made is to improve the arrangements whereby the Member States report to the Commission cases of fraud and irregularities involving own resources.<sup>71</sup> The Regulation specifies precisely what information should be communicated to the Commission and also stipulates that this information should be updated regularly. More detailed, standard information will therefore facilitate financial monitoring of cases of fraud and irregularities by the Commission, as in the case of the regulations that currently apply to expenditure.<sup>72</sup> The Commission has to use this information to compile an annual report for Parliament and the Council, containing information on cases of fraud and irregularities and on the control measures employed by the authorities in the Member States.

- In 1996 the Commission stepped up its coordination of measures taken by Member States with respect to VAT. The "SCENT taxation" system of exchanging information has been improved<sup>73</sup> and UCLAF has supported several transnational operational measures in the sphere of fraud prevention. From the legal angle, however, Member States have different interpretations of whether such measures could be carried out systematically. It has also been proved that there are grey areas at the Community level, where commercial transactions are made up of transnational components, meaning that national administrations do not have enough legal or judicial remedies at their disposal. Experience of inspections and controls carried out in the fields of both VAT and traditional own resources (for which the Community has administrative competence) has shown that it would be appropriate to introduce consistent central coordination in future. A lot still remains to be done in an area that constitutes a major source of revenue for the Member States and also provides almost half of the European Union's annual budget revenue: ECU 45 billion paid by the national treasuries to the Community budget each year.

### 5.2 Agriculture

As the Commission announced in its work programme, it adopted Commission Regulation (EC) No 745/96<sup>74</sup> laying down detailed rules for the application of Council

<sup>69</sup> Commission communication of 29 March 1995 on fraud in the transit procedure, solutions foreseen and perspectives for the future, COM(95) 108 final

<sup>70</sup> OJ L 175, 13 7 1996

<sup>71</sup> See the 1995 report (Chapter 2, Section 1) and the 1994 report (Chapter 1, Section 1)

<sup>72</sup> Council Regulation (EEC) No 595/91 (EAGGF Guarantee Section), Commission Regulation (EC) No 1681/94 (Structural Funds) and Commission Regulation (EC) No 1831/94 (Cohesion Fund)

<sup>73</sup> System for exchanging information on indirect taxation via the SCENT network, see Chapter 2.4, p. 42

<sup>74</sup> OJ L 102, 25.4.1996.

Regulation (EC) No 1469/95<sup>75</sup> on measures to be taken with regard to certain beneficiaries of operations financed by the Guarantee Section of the EAGGF (the "black list"). This is the first time that Community law has made provision for a list of dishonest operators to be used by the competent national authorities, to help them take the necessary preventive measures. Application of this Regulation is still at an early stage. The Member States have appointed an authority to receive information and send it on to the Commission (SCENT network). The Commission will centralize this information and make sure that it is passed on to the other national authorities with due respect for data protection requirements. It is essential that high-quality information be exchanged quickly, since the operators in question can move from one Member State to another as soon as they find out that administrative proceedings are being initiated.

### 5.3 Transit procedures and customs initiatives

#### 5.3.1 *Transit procedures*<sup>76</sup>

##### 5.3.1.1 Follow-up to the Commission communication of 29 March 1995

With the growth in trade and the removal of internal borders there was a need to adapt procedures governing the movement of goods within the Community to this new reality. The difficulties stem from the fact that the integrated single market dynamic exists side-by-side with national controls which are seen as the main safeguard. Fraud involving transit procedures, which in fact affects more than just Community interests, has flourished in these conditions.

Further to its communication of 29 March 1995, which highlighted the development of fraud in the transit system, the Commission adopted on 3 April 1996 a communication on the emergency measures taken and those still to be taken and put in place a transit task force.<sup>77</sup> On 9 October 1996 it presented a communication on the future of transit systems<sup>78</sup> which contains an in-depth analysis of the overall system and its context as well as an evaluation of each of the proposals aimed at improving or reforming it. On this basis, six months of consultation were carried out with the various parties involved (national authorities including non-member countries involved in the common transit procedures;<sup>79</sup> professional associations representing economic operators); these consultations will culminate in the "Euro-transit 1997" conference in Brussels in February 1997. Information from the Member States, which are in charge of overseeing the system and which alone have the information concerning its management, shows that Community transit procedures and common transit procedures involve around 18 million operations per year, with a total tax volume of ECU 450 billion, in a system that is almost exclusively paper based and manual. Sensitive goods that are subject to national excise

<sup>75</sup> OJ L 145, 29 6 1995.

<sup>76</sup> See the 1994 report (Chapter 1, Section 5) and the 1995 report (Chapter 2, Section 3)

<sup>77</sup> SEC(96) 290 final "Commission action to counter transit fraud".

<sup>78</sup> COM(96) 477 final "To coordinate the work of the interdepartmental working party, the Directorate-General for Customs and Indirect Taxation has set up a special task force whose mandate is to study all movement of goods procedures, such as customs transit, in order to draw up some proposals for global reform

<sup>79</sup> The common transit procedure extends the Community transit procedure to members of the European Free Trade Area (EFTA): Iceland, Norway, Switzerland and Liechtenstein

duties, such as cigarettes, alcohol and other sensitive agricultural products, remain the preferred target of tax evaders. The challenge is always the same: to ensure that the goods have arrived at their declared destination and that all the customs and tax provisions have been complied with. At least ECU 200 million is estimated to be lost to the Community budget due to transit fraud each year, while the amounts of national taxes lost to fraud are even greater.<sup>80</sup>

The measures announced in the Commission communication in 1995 were developed as follows in 1996:

. adoption of Commission Regulation (EC) No 482/96<sup>81</sup> which allows for binding itineraries to be laid down, any change of an office of destination to be prohibited and criteria to be laid down for access to the comprehensive guarantee, a temporary prohibition of the use of the comprehensive guarantee for certain goods and the specific obligations concerning the carriage of sensitive goods;

. adoption of Council Regulation (EC) No 2153/96<sup>82</sup> fixing the level of the comprehensive guarantee at 100%, except in specified cases.<sup>83</sup>

Computerization of the transit procedures<sup>84</sup> continues to mobilize the Commission, the EU Member States, EFTA members and the Visegrad countries, common transit partners.<sup>85</sup>

The computerized system is set to come into operation in 1998. It is important to remember that only effective provision of both human resources (teams in charge of national projects) and financial resources will allow the system to be developed within the planned timescale. The computerization process has been divided into three phases. The first, running until the end of the March 1997, involves the definition of the system's technical and functional specifications. The second (December 1996-June 1998) entails the construction of the system itself (specifications, software, computer systems and connections). It will be introduced in a limited number of offices in parallel with the current paper system for between four and six months. The third and final phase (from June 1998 onwards) will concentrate on extending the network and the infrastructure to all customs offices authorized for transit procedures.<sup>86</sup>

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<sup>80</sup> The European Parliament puts the annual loss of VAT receipts at around ECU 700 million

<sup>81</sup> OJ L 70, 20.3.1996 This Regulation amends Commission Regulation (EEC) No 2454/93 (OJ L 253, 11.10.1993) laying down provisions for the implementation of the Community Customs Code

<sup>82</sup> OJ L 289, 12.11.1996

<sup>83</sup> The entry into force of the prohibition of the use of the comprehensive guarantee for cigarettes and alcohol transported by road in 1996 led to a shift in the method of transport used for these products towards air and sea transport. This was due to the fact that the prohibition of the use of the comprehensive guarantee is not compulsory if the goods are transported by sea or by air

<sup>84</sup> See the 1995 report

<sup>85</sup> Poland, Hungary, Slovakia and the Czech Republic

<sup>86</sup> The changeover will be carried out in "pilot" countries first of all then extended to all other countries

### 5.3.1.2 The European Parliament's temporary committee of inquiry

The Commission cooperated closely and on an active basis with the European Parliament's temporary committee of inquiry in 1996,<sup>87</sup> with participation taking the shape of several oral presentations and written contributions. The committee of inquiry's final report will be published during the second quarter of 1997.<sup>88</sup>

The committee of inquiry heard national customs officers explain some aspects and mechanisms of detected cases of fraud involving the application of transit procedures (common transit procedure, Community transit procedure, TIR).

Apart from the fact that the critical problems involved in applying these procedures are jeopardizing the credibility of both the single market and the customs administrations, the European Parliament has demonstrated through these hearings that there is a need to establish a common law enforcement area,<sup>89</sup> particularly in serious fraud cases involving organized criminal networks. According to Parliament, although legal cooperation may well exist in theory there is hardly any evidence of it in practice because structures in the Member States differ so widely. A major obstacle is the lack of standards of evidence, which prevents Member States from accepting evidence gathered in other EU members. The European Parliament's work has revealed the major differences between the administrative and legal systems in force in the Member States. These differences are exploited by the cunning of criminals, who manage to develop increasingly sophisticated systems of fraud through dummy companies and have all the tools of the counterfeiting trade at its disposal (forged declarations, false documents and stamps, etc.).

The Commission is continuing its own analyses and will produce a final report in May 1997 consisting of a communication on reform of transit procedures and an action plan containing the necessary measures to respond to the identified shortcomings. This report takes into account the recommendations of Parliament's temporary committee of inquiry.

### 5.3.2 The Customs 2000 programme

On 19 December 1996 Parliament and the Council adopted an action programme for customs in the Community (Customs 2000),<sup>90</sup> which develops and amplifies the pilot scheme started in 1994.<sup>91</sup> The objective of this programme, which refers specifically to the fight against fraud in Article 8, is, by enhancing openness in customs action and cooperation between the Member States' customs administrations, to improve the overall effectiveness of customs action and the uniformity of controls at the external Community borders. At present the way in which controls are carried out and regulations applied may differ from one customs office to another in the Community for the entry of

<sup>87</sup> Committee of inquiry set up on the basis of a decision on 13.12.1995. See Chapter 3, Section 1 of the 1995 annual report "The fight against fraud".

<sup>88</sup> Issues of particular interest to the committee of inquiry include the extension of the common transit procedures to the Visegrad countries (from 1 July 1996), collection of customs duties, including the difficult question of the financial responsibility incurred by operators who have stood surety, and measures to be taken in the case of transit by sea.

<sup>89</sup> See Chapter 1.1.3, p. 8.

<sup>90</sup> Decision No 210/97/EC; OJ L 33, 4.2.1997.

<sup>91</sup> See the 1995 report.

identical goods brought by the same method of transport. Moreover, infringements are not subject to equivalent penalties in all Member States. The Customs 2000 programme is designed to harmonize all that, including the working and control methods of Union customs officers.

### 5.3.3 Preferential arrangements

The Commission has tightened up the rules on administrative cooperation between beneficiary countries under the generalized system of preferences (GSP), an autonomous Community arrangement, and the Community as the preference donor.<sup>92</sup> The new provisions, which came into force on 1 January 1997, clarify the arrangements for Community participation in enquiries conducted by the competent authorities in beneficiary countries with a view to obtaining information about the real origin of products exported under cover of GSP certificates of origin. On a practical level, the Commission has set up a computerized system for the transmission to Member States' customs administrations of the stamps used to authenticate certificates of origin. By ensuring that information moves more swiftly and that specimens of stamps are easier to identify, this computerized system is a major factor in enhancing the effectiveness of the control of certificates of origin and movement certificates. Finally, as has already been done for transit, the Commission has undertaken to prepare a communication to Parliament and the Council on the disturbing situation as regards the application of preferential arrangements.

### 5.4 Direct expenditure

An interdepartmental working party was set up by the Commission at the start of 1996 to clarify the problems connected with Community financial participation in research and technological development (RTD) action with a view to the preparation of the fifth framework programme, which is to run from 1999.<sup>93</sup> Being designed to tighten the Community's financial rules, this initiative is fully consistent with the Commission's anti-fraud strategy. The working party's aim is, to find solutions to the problems connected with costs, audit and penalties applicable in the event of irregularities in the field of RTD. In the new framework programme it is planned to propose that the Community financial contribution to research and technological development activities be granted on the basis of a set of rules which refer to the Community rules. Administrative penalties could therefore be applied in the event of irregularities. The legal instrument must not only lay down the procedures for executing recovery orders and the powers of control over beneficiaries and third parties, but also determine the Community sanctions to be applied in the event of irregularities. RTD, an area which involves a large volume of budgetary resources, would thus have a level of protection equivalent to that which exists for indirect expenditure administered by Member States. At the same time it must serve as an example for the establishment of the same type of protection standard for other areas of direct spending.

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<sup>92</sup> Commission Regulation (EEC) No 12/97 of 18 December 1996 (OJ L 9, 13 I 1997) amending Commission Regulation (EEC) No 2454/93, in particular Articles 93, 93a and 94

<sup>93</sup> The working party has produced an interim report, the final report being expected some time in 1997. It will be submitted for Commission approval and will be incorporated in the proposal for the fifth framework programme

## 5.5 Mutual administrative and technical assistance

### 5.5.1 At Community level

The proposal for a Council regulation on mutual assistance in the areas of customs and agriculture, which the Commission tabled in 1992,<sup>94</sup> was still pending before the Council and Parliament at the end of 1996.<sup>95</sup> One of the benefits of this regulation will be to provide a legal basis for the establishment of a CIS database to contain the information exchanged by Member States through the SCENT network.<sup>96</sup>

### 5.5.2 Between the Community and non-member countries

In its relations with certain non-member countries (GSP, ACP, partner countries under textiles agreements, the Community provides technical assistance with the aim of helping the competent authorities in these countries to apply the provisions of the agreements and the trade arrangements.<sup>97</sup> The Community must also tighten up the application of these arrangements when goods enter the Community.

Since 1991 the Commission has also been organizing specific technical assistance and training missions under the PHARE and TACIS programmes, mainly through Eurodouane (a consortium of the fifteen Union Member States and the EFTA countries). These actions cover all customs activities, including certain measures within the field of the fight against fraud.<sup>98</sup>

Agreements with clauses on mutual administrative assistance in the customs field have been or are being concluded with fifty or so non-member countries. These clauses provide a basis for obtaining information and documentary evidence about suspect transactions. This is information which is not available in the Community and which is essential for proving that fraud has been committed. The information can also be about persons responsible for organizing commercial transactions which have subsequently given rise to irregularities in the Community. A number of agreements came into force in 1996,<sup>99</sup> customs cooperation and mutual assistance agreements were initialled<sup>100</sup> and agreements containing a protocol on mutual administrative assistance were signed.<sup>101</sup>

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<sup>94</sup> See the 1994 report (Chapter 1, Section 4) and the 1995 report (Chapter 2, Section 1)

<sup>95</sup> As the institutions were unable to come to a consensus on the legal basis, the Council launched the procedure for implementing the regulation, which was finally adopted on 13 March 1997 (Council Regulation (EC) No 515/97, OJ L 82, 22.3.1997)

<sup>96</sup> System for a Customs Enforcement Network, computerized CIS (Customs Information System) module

<sup>97</sup> The Commission has also supplied technical aid to the Chinese authorities responsible for the application of the bilateral textiles agreement concerning the classification of the products concerned (which determines the application of quantitative restrictions)

<sup>98</sup> Detection and customs control equipment (in particular for the control of precursors) has also been supplied to the PHARI countries in order to increase the possibilities of applying their own customs regulations. See the 1995 report)

<sup>99</sup> Customs Union with Turkey, interim agreements with Israel, Ukraine, Russia and Moldova (although the latter has not completed the formalities required for applying provisions on mutual assistance)

<sup>100</sup> With South Korea and the United States

<sup>101</sup> With Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Morocco, Uzbekistan, Slovenia and the Faeroes

The Council adopted directives for the negotiation of agreements on mutual administrative assistance, or containing a protocol on the subject, with a number of countries.<sup>102</sup> Steps will have to be taken in 1997 to strengthen cooperation, with specific reference to the protection of financial interests, with certain non-member countries, in particular with a view to enlargement.

## 6. NEW HORIZONTAL LEGISLATION TO PROTECT THE FINANCIAL INTERESTS

Following its general strategy and the progress made on the legislative front in 1995,<sup>103</sup> the Commission continued work on the protection of the Community's financial interests by fleshing out its concept of operational partnership with the Member States. The Council Regulation of 11 November concerning on-the-spot checks and inspections carried out by the Commission<sup>104</sup> meets this objective.

With the dynamic process launched by the Regulation on the protection of the Community's financial interests<sup>105</sup> the legislator continued the extension of the system of administrative penalties in agriculture.<sup>106</sup> This gives practical expression to the possibility of ordering penalties for the protection of the Community's financial interests in conformity with the orientations of the general regulation.

The Convention signed on 26 July 1996 under Title VI of the Treaty on European Union started the movement towards harmonization of national legal instruments for the criminal-law protection of the Community's financial interests. Work done in 1996, and in particular the signing of the Protocol governing corruption of officials, took matters a stage further. But the Council did not manage to adopt a further Protocol. Even so, the Dublin European Council in December asserted its determination to fight against international organized crime, with a view specifically to boosting action to protect the Community's financial interests. It confirmed the importance of the Convention and its Protocols and urged the Member States to complete the ratification procedures as soon as possible.

### 6.1 The Regulation concerning on-the-spot checks

The Madrid European Council expressly called for the adoption of the Regulation concerning on-the-spot checks and inspections carried out by the Commission in order to

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<sup>102</sup> Switzerland, Albania and Algeria. In addition to these countries, negotiations for the conclusion of an agreement containing such provisions are continuing with South Africa, Canada, Egypt, Jordan and Lebanon. The negotiations with Mexico are suspended for the time being and those with Japan and Hong Kong have resumed. Ratification procedures are still in progress for the agreement signed in 1995 with Morocco and Tunisia. The agreements signed with the Mercosur countries (Argentina, Brazil, Paraguay and Uruguay) and Chile have also to be completed. Finally, the Commission has requested a mandate to negotiate a Euro-Mediterranean-type agreement with Syria.

<sup>103</sup> See 1995 Report, Chapter I.

<sup>104</sup> Part of the additional general provisions provided for by Article 10 of Council Regulation (L.C) No 2988/95.

<sup>105</sup> Council Regulation (EC) No 2988/95 (OJ L 312, 23.12.1995).

<sup>106</sup> Notably Commission Regulation (EC) No 887/96 laying down implementing rules for the system of consumption aid for olive oil (OJ L 119, 16.5.1996).

protect the European Communities' financial interests<sup>107</sup> by the end of June. The Ecofin Council reached a consensus in June, and Parliament approved the proposal on 24 October following a fresh request from the Council.<sup>108</sup> The Regulation represents valuable progress in the fight against fraud and improves the resources available to the Commission for preventing and combating large-scale financial crime.

#### *6.1.1 The scope of the Regulation*

The Regulation is intended to be applied in all the areas of activity of the European Communities. It provides the Commission with a new autonomous legal base for conducting specific anti-fraud investigations through direct inquiries at operators. The provisions amplify the existing rules, as revised by the sectoral regulations, for the organization of the traditional checks on the application of Community law.

The framework within which the Commission is empowered to operate has been clearly defined, and the Member States' fundamental responsibilities in the matter remain intact. Checks and inspections conducted on the spot under this Regulation are directed towards the very precise objective of detecting fraud and irregularities in all areas of Community activity.<sup>109</sup> It follows from the subsidiarity principle that the Commission can conduct checks and inspections only where it is the best placed to provide something extra. That is when there is a serious, complex, sophisticated transnational irregularity or in special cases where, as the Madrid European Council put it, it is necessary to secure a 'level of protection' of the Community's financial interests that is 'equivalent' throughout the Community.

#### *6.1.2 Carrying out checks and inspections*

On-the-spot checks and inspections are to be carried out by the Commission, 'where there are reasons to think that irregularities may have been committed',<sup>110</sup> in order to obtain the evidence needed for proceedings. To underpin the partnership concept and secure all requisite assistance, also in urgent cases, there is express provision for the Commission to notify the relevant Member States in advance and for national authorities to be involved in the Commission's checks and inspections. Efficient work is not possible without the sound close cooperation called for by Article 209a of the EC Treaty. The Regulation determines the status of the Commission's agents empowered to conduct checks and inspections. And provision is made for technical assistance from specialist firms.

In addition to economic operators receiving money from the Community budget or owing money to it (expenditure and revenue sides), on-the-spot checks and inspections may also be carried out on other operators (suppliers, carriers, insurers, etc.) so that no material information resources are neglected.<sup>111</sup> This all makes evidence easier to

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<sup>107</sup> Council Regulation (EC) No 2185/96 (OJ L 292, 15 11.1996)

<sup>108</sup> Parliament's opinions are recorded in OJ C 166 (10 6 1996) and C 347 (18 11 1996)

<sup>109</sup> Except VAT and areas without impact on the Union budget. The Commission's initial proposal extended to VAT

<sup>110</sup> Article 5.

<sup>111</sup> Business-secrecy and data-protection rules apply to information gathered by the Commission



compile. The Commission's agents are entitled to have access to all information and documentation, to take samples and to enter business premises, in the same way as national inspectors. If need be they may seek assistance from the authorities of the Member State.

### *6.1.3 The follow-up*

The Commission is required to inform the Member States of the results of its on the spot checks and inspections. A fundamental innovation is that the reports of the Commission's inspectors are to be admissible as evidence in administrative or judicial proceedings in the relevant Member State.

They will have the same value as reports made by national inspectors. The results of the work done by the Commission inspectors will thus help to secure the recovery of amounts due and facilitate proceedings for the imposition of penalties that are 'effective, proportionate and dissuasive'.<sup>112</sup>

## **6.2 Activities under Title VI of the Union Treaty**

At the end of 1995 there was a commitment to amplify the Convention on the protection of the Community's financial interests. Two Protocols were up for discussion. One concerned corruption of or by national or Community officials actually or potentially damaging the Community's financial interests. The second was for specific rules on judicial cooperation and the conduct of negotiations in the event of multinational or transnational fraud. The Madrid European Council in December 1995 asked that work on the two Protocols be completed.

### *6.2.1 First Protocol - corruption of officials*

The corruption activities of organized crime are sometimes exercised in the event of fraud against the financial interests of the Communities. They are generally transnational and may involve national or Community officials. The first Protocol to the Convention, relating to corruption to the detriment of the Communities' financial interests, was signed by the Ministers of Justice, at the initiative of the Spanish Council Presidency, in close cooperation with the Commission, on 27 September.<sup>113</sup> It extends to offences committed by Members of the Commission, Parliament, the Court of Justice and the Court of Auditors in the exercise of their functions, for in each Member State they are to be treated in the same way as Government Ministers, elected members of the parliamentary chambers, members of the highest courts and members of the Court of Auditors.

Corruption may, of course also be committed outside the context of fraud against the Community Budget. Accordingly the Italian Presidency, pursuing the initiative launched by the Spanish Presidency, sought to extend the text to all acts of corruption. Agreement still has to be reached on a text that would combat corruption comprehensively and not just in the context of protection of the Community's financial interests.

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<sup>112</sup> Case 68/88 [1990] ECR 2965 (judgment given on 21 September 1989)

<sup>113</sup> OJ C 313, 25.10.1996.

On 29 November, incidentally, a Protocol was signed at the Council meeting (Justice) determining the role of the Court of Justice in the protection of the Community's financial interests and the Customs Information System.<sup>114</sup> The Member States can provide in their domestic law, in such form as they may choose, for references to the Court for preliminary rulings interpreting the Convention. The question of the Court's jurisdiction is the sole outstanding question on the corruption Protocol.

#### 6.2.2 *The Protocol on the criminal-law protection of financial interests*

The Commission presented the Council with a proposal for a second Protocol to the Convention on 19 January.<sup>115</sup> It incorporates certain components that were left out of the Convention itself to facilitate agreement within the time allowed by the European Council. The aim of the Commission's initial proposal was to tackle difficulties encountered in everyday practice, particularly such questions as the criminal liability of bodies corporate, laundering the fruits of fraud against the Community budget, mutual recognition of evidence, judicial cooperation and centralization of prosecutions.<sup>116</sup> The Commission considered it essential to cover these questions in order to fully protect the Community's financial interests.

This Protocol would usefully amplify the Convention and, in conjunction with the checks and inspections Regulation, would set up a coherent general framework in which the results of administrative investigations were coupled with the provisions governing prosecutions.

The discussions on these matters have not been easy. The Commission has had to waive its original ambitions for the Protocol. But a number of its components - liability of bodies corporate, laundering and Commission assistance in investigations carried out by national judicial authorities in the areas of the fight against fraud, laundering and corruption - have been agreed on, and the Council should be able to conclude during the Dutch Presidency in 1997. The points withdrawn from the original proposal are still before the Council, and the Commission believes they should appear in a further Protocol to satisfy the request by the Madrid European Council that work to complete the Convention be continued, particularly to establish instruments for judicial cooperation for the protection of the Community's financial interests.

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<sup>114</sup> For CIS purposes, the Court is given jurisdiction to give preliminary rulings on the interpretation of the Convention on the use of data-processing systems in customs matters. Another Protocol, following the same model as the financial interests protocol, on the interpretation of the Europol Convention by the Court of Justice by way of preliminary rulings was signed on 23.7.1996 (OJ C 259, 9.10.1996)

<sup>115</sup> COM(95)693 final; OJ C 83, 20.3.1996

<sup>116</sup> See 1993 report, pp

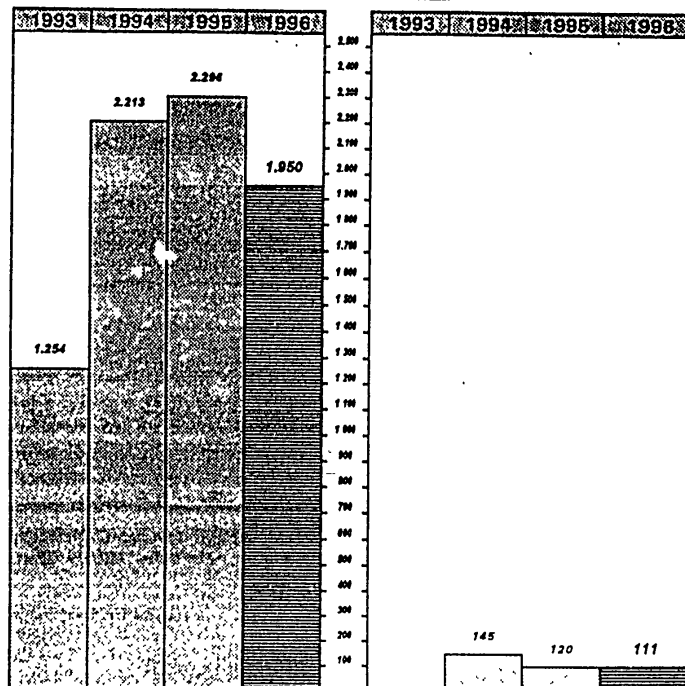
TABLE 1

# TRADITIONAL OWN RESOURCES 1993 - 1996

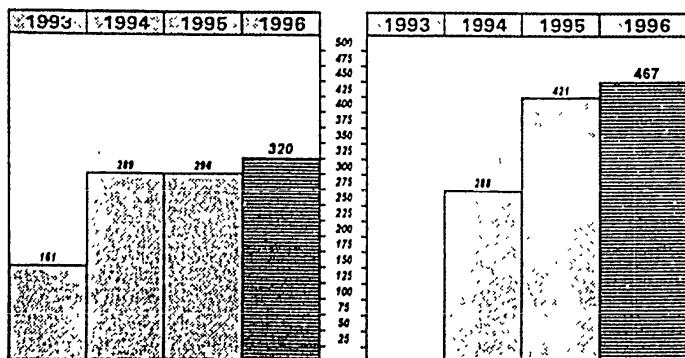
IRREGULARITIES FORMALLY  
COMMUNICATED\* by  
MEMBER STATES

INQUIRIES carried out by  
the COMMISSION together  
with MEMBER STATES

NUMBER of CASES



AMOUNTS in MILLIONS of ECU



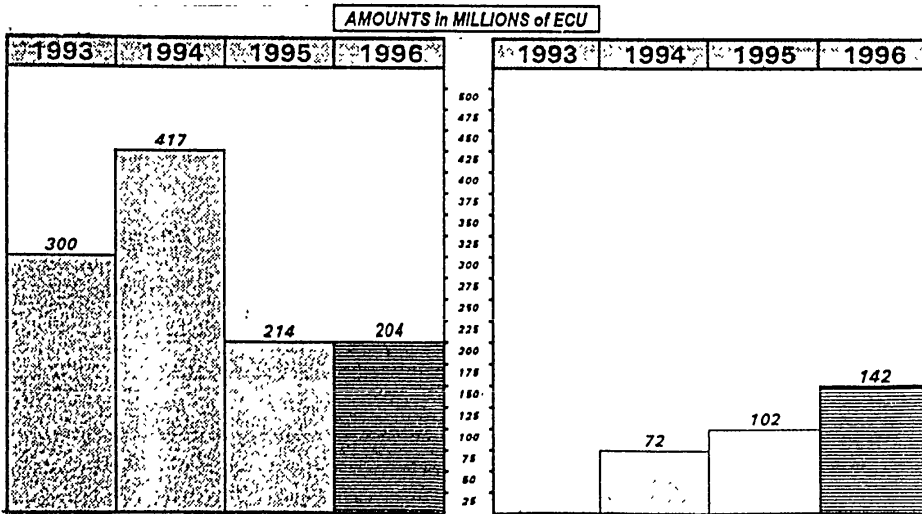
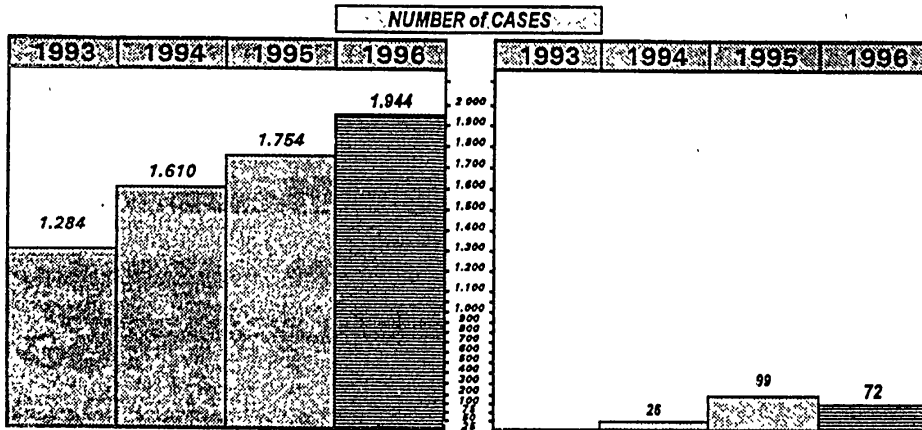
(\* under Regulation (EEC) 1552/89 ; including estimate for the second half year 1996.

# EAGGF-GUARANTEE

## 1993 - 1996

IRREGULARITIES FORMALLY  
COMMUNICATED\* by  
MEMBER STATES

INQUIRIES carried out by  
the COMMISSION together  
with MEMBER STATES



\* under Regulation (EEC) 595/91

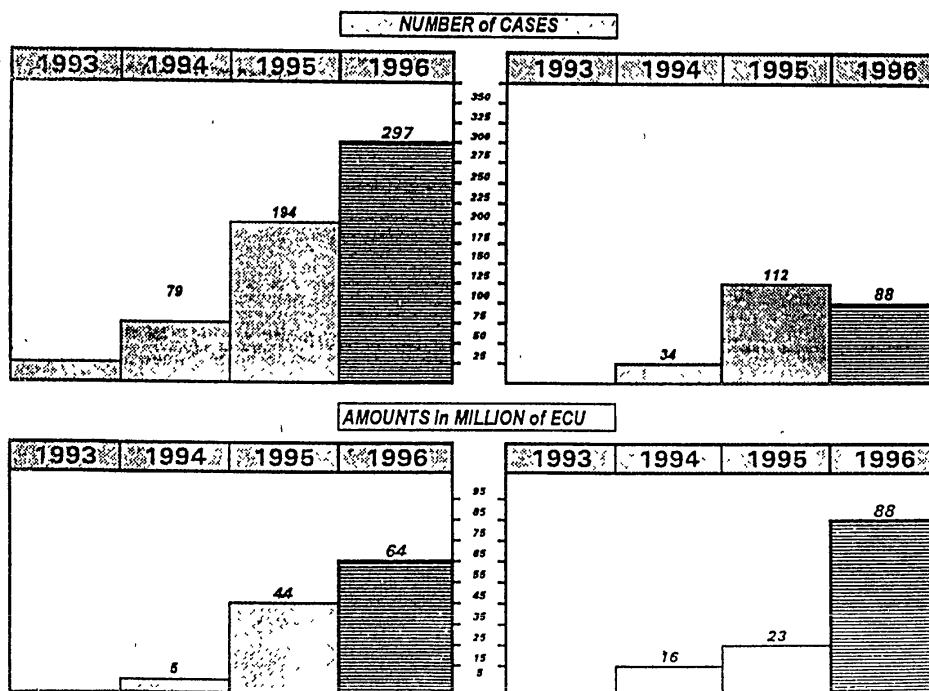
TABLE 3

# STRUCTURAL ACTIONS

## 1993 - 1996

IRREGULARITIES FORMALLY  
COMMUNICATED \* by  
MEMBER STATES

INQUIRIES carried out by  
the COMMISSION together  
with MEMBER STATES



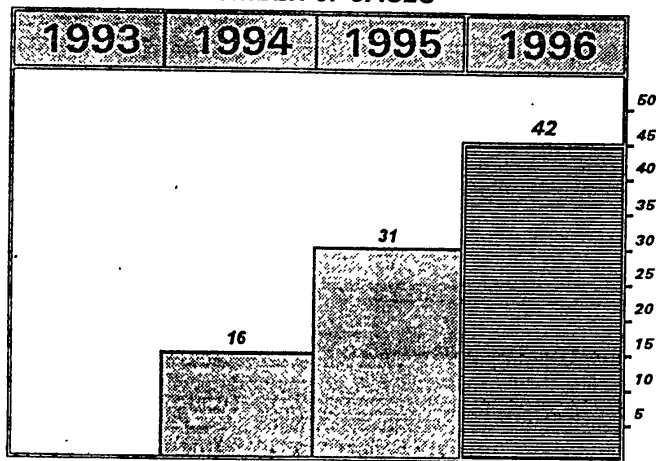
(\* ) Cases formally communicated by Member States under the regulations (EEC) 1681/94 and 1831/94 (excluding cases communicated by Italy and the Netherlands for the 4th. quarter of 1996)

TABLE 4

# DIRECT EXPENDITURE 1993 -1996

Inquiries carried out by the Commission with the assistance of Member States' services.

NUMBER of CASES



AMOUNTS in MILLIONS of ECU

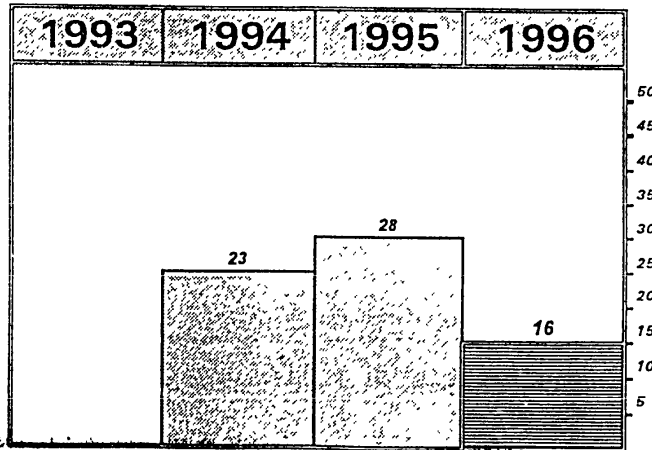


Table 5

**GLOBAL IMPACT of IRREGULARITIES  
communicated / detected in 1996 - in relation to  
the COMMUNITY BUDGET for 1996**

<b>Additional Own Resources made available in 1996</b>	<b>3 584 Million ECU</b>	
Irregularities communicated by Member States	<b>320 Million ECU</b>	<b>2,38%</b>
Irregularities detected by the Commission services in cooperation with Member States	<b>467 Million ECU</b>	<b>3,44%</b>
<b>Global impact of irregularities</b>	<b>787 Million ECU</b>	<b>5,80%</b>

<b>Expenditure concerning Structural Actions in 1996</b>	<b>24 320 Million ECU</b>	
Irregularities communicated by Member States	<b>64 Million ECU</b>	<b>0,26%</b>
Irregularities detected by the Commission services in cooperation with Member States	<b>88 Million ECU</b>	<b>0,36%</b>
<b>Global impact of Irregularities</b>	<b>152 Million ECU</b>	<b>0,62%</b>

<b>Agricultural Expenditure in 1996 concerning EAGGF Guarantee measures</b>	<b>42 799 Million ECU</b>	
Irregularities communicated by Member States	<b>204 Million ECU</b>	<b>0,48%</b>
Irregularities detected by the Commission services in cooperation with Member States	<b>142 Million ECU</b>	<b>0,33%</b>
<b>Global impact of irregularities</b>	<b>345 Million ECU</b>	<b>0,80%</b>

*General remark : the irregularities detected / communicated in 1996 often relate to previous budgetary year*

TABLE 6

**EAGGF - GUARANTEE  
IRREGULARITIES COMMUNICATED IN 1996**

Regulation (EEC) 595/91	NUMBER of CASES			AMOUNTS in ECU (rate of December 1996)		
	NOTIFIED	CLOSED	OPEN	NOTIFIED	RECOVERED	TO BE RECOVERED
BELGIUM	22	10	12	2.439.279	20.803	2.418.476
DANMARK	40	32	8	553.498	516.270	37.228
GERMANY	479	218	261	25.504.762	4.247.835	21.256.927
GREECE	196	176	20	1.361.106	56.403	1.304.703
SPAIN	122	11	111	16.487.337	203.633	16.283.704
FRANCE	76	21	55	5.096.471	340.798	4.755.673
IRELAND	30	23	7	7.383.760	6.579.153	804.607
ITALY	476	102	374	123.503.793	1.548.069	121.955.724
NETHERLANDS	128	69	59	10.130.519	1.103.747	9.026.772
AUSTRIA	14	14	0	0	0	0
PORTUGAL	53	6	47	7.045.267	106.328	6.938.939
FINLAND	5	5	0	106.969	106.969	0
SWEDEN	58	57	1	21.390	12.506	8.884
UNITED KINGDOM	245	135	110	4.157.736	1.561.884	2.595.852
<b>TOTAL</b>	<b>1.944</b>	<b>879</b>	<b>1.065</b>	<b>203.791.887</b>	<b>16.404.398</b>	<b>187.387.489</b>

N.B. Luxemburg communicated that no irregularity > 4.000 ECU has been detected.



# EAGGF-GUARANTEE IRREGULARITIES COMMUNICATED IN 1996

SECTOR	BE			DK			DE			EL			ES			FR			IR			
	cases	A	B	cases	A	B	cases	A	B	cases	A	B	cases	A	B	cases	A	B	cases	A	B	
MONETARY COMPENSATING AMOUNTS																						
TEXTILES/FIBRES																						
OTHER AGRICULTURAL SECTORS																						
EGGS and POULTRY	1	18	0	1	5	0		11	0		12	0										
FISHERY PRODUCTS																						
SPECIAL URGENCY AIDS																						
SHEEP and GOATS																						
VARIOUS SECTORS																						
PORK BEAT																						
SUGAR	1	32	32	1	21	7	19	836	127													
FOOD AND																						
DRESSED FOODSTUFF																						
NON-ANNEKEE PRODUCTS	1	301	301	1	120	0	50	1,718	1,253	1	5	5	10	2,303	2,289	6	110	92				
OTHER EAGGF-GUARANTEE MEASURE	3	0	0	11	13	2	119	1,397	1,253													
WINE																						
FRUITS																						
TABACCO	1	0	0																			
BEEFMEAT	5	1,507	1,507	3	8	127	12,722	11,728														
MILK	7	152	147	7	47	0	61	5,631	4,953													
OLIVE OIL	1	0	0																			
CEREALS	7	431	431	7	210	0	52	2,834	1,867	1	205	205	1	0	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>22</b>	<b>2 439</b>	<b>2 418</b>	<b>40</b>	<b>551</b>	<b>37</b>	<b>479</b>	<b>29 505</b>	<b>21 253</b>	<b>106</b>	<b>1 281</b>	<b>1 265</b>	<b>122</b>	<b>18 488</b>	<b>18 728</b>	<b>78</b>	<b>8 096</b>	<b>4 755</b>	<b>30</b>	<b>17 313</b>	<b>16 800</b>	<b>800</b>

Case A is amount notified  
Case B is amount to be recovered

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SECTOR	IT			NL			OS			PO			SI			SV			UK			
	cases	A	B	cases	A	B	cases	A	B	cases	A	B	cases	A	B	cases	A	B	cases	A	B	
MONETARY COMPENSATING AMOUNTS																						
TEXTILES/FIBRES																						
OTHER AGRICULTURAL SECTORS																						
EGGS and POULTRY	1	0	0	1	5	0				1	22	22										
FISHERY PRODUCTS																						
SPECIAL URGENCY AIDS																						
SHEEP and GOATS																						
VARIOUS SECTORS																						
PORK BEAT																						
SUGAR																						
FOOD AND																						
DRESSED FOODSTUFF																						
NON-ANNEKEE PRODUCTS	4	652	652	2	28	0	1	0	0													
OTHER EAGGF-GUARANTEE MEASURE	710	4 088	4 077	1	7	0	1	0	0													
WINE	31	4 400	3 656							11	2 818	2 818										
FRUITS	10	8 800	8 800	11	63	38				2	182	182										
TABACCO	88	18 720	18 963																			
BEEFMEAT	1	25	25	1	1 096	1 096	12	0	0													
MILK	8	2 248	2 248	39	4 462	4 126				1	40	40										
OLIVE OIL	85	28 259	28 215							2	88	88										
CEREALS	15	55 284	55 254	17	2 996	2 740				20	814	728	1	24	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>476</b>	<b>123 504</b>	<b>121 956</b>	<b>178</b>	<b>10 131</b>	<b>9 027</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>63</b>	<b>7 044</b>	<b>6 038</b>	<b>0</b>	<b>107</b>	<b>15</b>	<b>0</b>	<b>68</b>	<b>10 221</b>	<b>7 000</b>	<b>2 431</b>	<b>4 188</b>	<b>2 585</b>

SECTOR	TOTAL	OS	SV	UK
MONETARY COMPENSATING AMOUNTS				
TEXTILES/FIBRES				
OTHER AGRICULTURAL SECTORS				
EGGS and POULTRY	22	1	1	1
FISHERY PRODUCTS				
SPECIAL URGENCY AIDS				
SHEEP and GOATS				
VARIOUS SECTORS				
PORK BEAT				
SUGAR	22	1	1	1
FOOD AND				
DRESSED FOODSTUFF				
NON-ANNEKEE PRODUCTS	4	1	1	1
OTHER EAGGF-GUARANTEE MEASURE	710	1	1	1
WINE	31	11	11	11
FRUITS	10	2	2	2
TABACCO	88			
BEEFMEAT	1			
MILK	8			
OLIVE OIL	85			
CEREALS	15	20	20	20
<b>TOTAL</b>	<b>476</b>	<b>63</b>	<b>68</b>	<b>68</b>

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TABLE 8

## EAGGF-GUARANTEE

RECOVERY SITUATION regarding IRREGULARITIES  
communicated BEFORE 1993 - Regulation (EEC) 595/91

Member State	NUMBER OF CASES							
	total notified	total recovered	borne * by EAGGF-Guarantee	borne * by Member state	still to be recovered	whereof in COURT	request by M-S to declare as "irrecoverable"	Balance
	1	2	3	4	5=(1-3+4)	6	7	8=(5+7)
BELGIQUE	155	116	7		32	2	6	24
DANMARK	409	300	89	1	19	7	9	3
DEUTSCHLAND	1.753	1.434	94	5	220	92	52	76
ELLAS	92	54			38		0	38
ESPANA	204	141			63	23	0	40
FRANCE	884	785	40	2	77	18	11	48
IRELAND	149	114	1	2	32	15	14	3
ITALIA	1.145	271			874	237	0	637
NEDERLAND	662	624	2	1	35	1	9	25
PORTUGAL	80	66			14	1	5	8
UNITED KINGDOM	1.345	1.158	66	17	104	4	87	13
<b>TOTAL</b>	<b>6.878</b>	<b>5.043</b>	<b>299</b>	<b>28</b>	<b>1.508</b>	<b>400</b>	<b>193</b>	<b>915</b>
	100%	73%	4%	0%	22%			
					100%	27%	13%	67%

Member State	AMOUNTS X 1.000 ECU (rate of December 1999)							
	total notified	total recovered	borne * by EAGGF-Guarantee	borne * by Member state	still to be recovered	whereof in COURT	request by M-S to declare as "irrecoverable"	Balance
	1	2	3	4	5=(1-3+4)	6	7	8=(5+7)
BELGIQUE	15.462	3.720	6.300		5.442	2.071	999	2.372
DANMARK	22.053	8.600	1.347	2	12.104	10.711	1.281	112
DEUTSCHLAND	151.260	39.245	53.295	28.207	30.513	12.937	10.368	7.208
ELLAS	1.849	1.078			771			771
ESPANA	5.437	1.625			3.812	706	0	3.106
FRANCE	33.699	19.643	1.109	13	12.934	7.176	949	4.809
IRELAND	13.590	5.195	17	23	8.355	2.727	4.688	940
ITALIA	462.689	21.709			440.980	225.841	0	215.139
NEDERLAND	31.940	18.208	36	224	13.472	1.295	162	12.015
PORTUGAL	4.856	742			4.114	184	3.596	334
UNITED KINGDOM	34.432	14.125	2.806	1.459	16.042	23	6.160	9.859
<b>TOTAL</b>	<b>777.268</b>	<b>133.892</b>	<b>64.910</b>	<b>29.928</b>	<b>548.539</b>	<b>263.671</b>	<b>28.203</b>	<b>256.665</b>
	100%	17%	8%	4%	71%			
					100%	44%	5%	47%

\*irrecoverable: formal decision in the clearance of account procedure under regulation (EEC) 729/70

TABLE 9

## STRUCTURAL ACTIONS

1994 - 1996

REGULATION (EEC) 1681/94

	cases	AMOUNTS in ECU		
		notified	recovered	to be recovered
BELGIUM	-	-	-	-
DANMARK	1	8.717	0	8.717
GERMANY	6	157.949	16.164	141.785
GREECE	41	2.939.576	844.441	2.095.135
SPAIN	10	329.254	12.137	317.117
FRANCE	2	82.798	72.148	10.650
IRELAND	-	-	-	-
ITALY	10	1.454.432	0	1.454.432
LUXEMBURG	0	0	0	0
NETHERLANDS	0	0	0	0
PORTUGAL	8	429.782	237.548	192.234
UNITED KINGDOM	1	81.884	0	81.884
<b>Total 1994</b>	<b>79</b>	<b>5.277.225</b>	<b>1.182.438</b>	<b>4.094.787</b>

1995	cases	notified	recovered	to be recovered
BELGIUM	-	0	0	0
DANMARK	0	0	0	0
GERMANY	21	12.438.851	242.872	12.195.979
GREECE	58	2.517.817	1.495.088	1.022.719
SPAIN	46	19.700.341	7.931.171	11.769.170
FRANCE	0	0	0	0
IRELAND	0	0	0	0
ITALY	5	4.583.426	0	4.583.426
LUXEMBURG	0	0	0	0
NETHERLANDS	13	0	0	0
PORTUGAL	44	2.573.254	278.364	2.294.890
UNITED KINGDOM	7	1.759.366	561.822	1.197.544
<b>Total 1995</b>	<b>184</b>	<b>43.573.065</b>	<b>10.510.327</b>	<b>33.062.738</b>

1996	cases	notified	recovered	to be recovered
AUSTRIA	0	0	0	0
BELGIUM	6	264.380	59.715	204.665
DANMARK	1	104.936	0	104.936
GERMANY	52	14.935.572	921.992	14.013.580
GREECE	23	1.701.942	529.944	1.171.998
SPAIN	34	3.182.165	767.561	2.414.604
FINLAND	0	0	0	0
FRANCE	30	1.271.486	226.806	1.044.680
IRELAND	9	97.921	93.971	3.950
ITALY	42	24.405.863	6.525.728	17.880.135
LUXEMBURG	0	0	0	0
NETHERLANDS	0	0	0	0
PORTUGAL	87	10.779.078	925.102	9.853.976
SWEDEN	7	20.869	20.869	0
UNITED KINGDOM	6	7.112.658	1.334.152	5.778.506
<b>Total 1996</b>	<b>297</b>	<b>63.677.070</b>	<b>11.405.840</b>	<b>52.271.230</b>

	cases	notified	recovered	to be recovered
<b>TOTAL</b>	<b>570</b>	<b>112.964.800</b>	<b>23.098.605</b>	<b>89.866.195</b>

(including cases communicated by Italy and the Netherlands for the 4th. quarter of 1996)  
 (-) no communication from MS  
 (0) communication stating "no cases" or "no amount involved".

## GLOSSARY

<b>EEC:</b>	European Economic Community
<b>EC:</b>	European Community (name used since entry into force of the Treaty on European Union)
<b>SEM 2000:</b>	Sound and Efficient Management - Commission programme for improving the management of Community finances by the year 2000
<b>UCLAF:</b>	Unit for the Coordination of Fraud Prevention (Directorate within the Commission's Secretariat-General)
<b>OJ:</b>	Official Journal of the European Communities (OJ L: L series, OJ C: C series)
<b>TIR:</b>	Transport International Routier
<b>COCOLAF:</b>	French acronym for Advisory committee for the coordination of fraud prevention
<b>SCAF:</b>	French acronym for Anti-fraud Sub Committee
<b>SCENT:</b>	System for a Customs Enforcement Network
<b>CIS:</b>	Customs Information System
<b>EWS:</b>	Early Warning System
<b>VAT:</b>	Value Added Tax
<b>GSP:</b>	Generalized System of Preferences
<b>ESF:</b>	European Social Fund
<b>ERDF:</b>	European Regional Development Fund
<b>CSF:</b>	Community Support Framework
<b>EDF:</b>	European Development Fund
<b>CAP:</b>	Common Agricultural Policy
<b>EAGGF:</b>	European Agricultural Guidance and Guarantee Fund (Guarantee Section: EAGGF - Guarantee, Guidance Section: EAGGF - Guidance)
<b>PRG:</b>	Personal Representatives Group (under SEM 2000 programme)
<b>RTD:</b>	Research and technological development
<b>PHARE:</b>	Programme of Community aid for central and eastern European countries
<b>TACIS:</b>	Programme of technical assistance to the Independent States of the former Soviet Union and Mongolia
<b>ECSC:</b>	European Coal and Steel Community
<b>NGO:</b>	Non-governmental organization