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**PROTECTING THE COMMUNITY'S
FINANCIAL INTERESTS**

**THE FIGHT AGAINST FRAUD
ANNUAL REPORT 1995**

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INTRODUCTION

1995 was particularly notable for the substantial progress achieved at legislative level with the adoption of two basic texts, one concerning checks and administrative penalties (a horizontal regulation) and the other on penal protection of Community finances (a convention). In the operational area, the investigations undertaken at the Commission's initiative with the national authorities show more and more clearly that the Commission can provide an added value in combatting fraud on the ground.

This momentum results from the anti-fraud strategy put in place in 1994 which focuses on four priority areas:

- reinforcing the presence on the ground;
- exploiting intelligence and strengthening the partnership between the Commission and the Member States;
- improving the Community legislative framework;
- securing greater compatibility between national legislations with regard to punitive measures to deter fraud on a scale commensurate with the problem to be tackled.

In addition, valuable progress was made in all these areas in 1995.

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Following the proposals¹ on legal protection for the Community's financial interests presented by the Commission in 1994 and considered in the first part of the report, the Council adopted a Regulation to establish a consistent and effective system of penalties to punish those responsible for fraud once it is detected and deter such activity in the future, and signed an international Convention which, for the first time, introduced a common definition of the concept of irregularity and fraud.

These texts aim for a better protection of the Community's financial interests, the principle contained in article 209a of the EC treaty, and are a response to the frequently expressed public concern to see fraud and waste of Community funds put down with the greatest severity, and constitute a vital legal basis for the development of future work in that field. The on-the-spot inspection arrangements and the penalty systems applied by the Commission and the Member States must be improved and strengthened accordingly.

Although substantial progress has been made in the legislative field, experience has shown, from the Commission's point of view, that the legal means contained in the treaty are not sufficient given the amounts involved and the degree of protection required for a budget of the size of the Union. This is why the Commission considered that their reinforcement, at the time of the Inter-Governmental Conference (IGC), was necessary.

¹ The Cannes European Council of 26-27 June 1995 and the Madrid European Council of 15-16 December 1995 emphasized in particular topics related to the protection of the Community's financial interests and the fight against fraud in the Community.

It has therefore taken the initiatives required to include the question on the agenda of the IGC which begins in March 1996.

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.

This "post-operational" stage is just as vital. The closing chapters of the report give an analysis of the data compiled in the field and in carrying out the procedures, which makes it possible to map out trends in large-scale fraud and distinguish which sectors are the most affected, so that the Community framework in which the financial provisions are decided on can be adapted accordingly.

The major trends are clear : the number of fraud cases detected is still rising (+/- 15%) while the total amount involved is tending to stabilize. Half this total concerns investigations in hand under Commission coordination, in close cooperation with the Member States. The number of these investigations is increasing. The scale of the amounts at stake illustrates how the launching of in-depth inquiries in cooperation with specialized departments in the Member States as soon as fraud is suspected can reveal the existence of networks, often criminal, operating with highly sophisticated techniques. A rapid administrative and judicial operational response is vital if all prospects of recovering sums diverted or evaded are to be preserved.

In statistical terms, on the side of expenses administered by the Member States (agricultural expenditure and structural policies), the fraud detected in 1995 is represented by a global amount of in the region of 383 million ECU, that is 0.6% of the finance allocated. Concerning direct expenditure, managed by the services of the Commission (contracts concluded with beneficiaries in the Member States), this amount is in the region of 28 million ECU, that is 0.3% of benefits paid.

On the income side, fraud amounts to in the region of 735 million ECU (in the area of Traditional Own Resources), that is 3.6% of the income collectable under this heading in 1995. This amount represents the duties and taxes evaded, principally during commercial operations (trade) between non-Member countries and the Community. The Member States are the principal financial losers. In effect, balance (of income and expenditure) is one of the fundamental principles of the Community budget, which implies that each loss in the matter of Customs duties and agricultural levies, for example, is made up by the increase of direct contributions of Member States under the heading of the 'Fourth Resource', founded on the GNP of Member States, known still as the 'balancing income'.

Globally and schematically, it is possible to point out that fraud on the Community budget, cases known, recognised, that is to say prosecuted or under investigation, do not go beyond 1.4% of the Community budget. The Member States have shown that the

system of detection functions ; the Commission, for its part, has largely devoted itself, with the participation of specialised national services, to the triggering off of detailed enquiries from the first stages of suspicion of irregularity or

The Commission is continuing to develop its partnership with the Member States. With their assistance it has embarked on a wide-ranging exercise to make the management of Community appropriations more efficient. The initiative, which goes by the name SEM 2000 (standing for Sound and Efficient Management), encompasses three stages, of which the first two involved the Commission improving the standard of its own financial management. The last stage aims to bring about improvements in the management of Community resources by the Member States and will lead to greater transparency on the one hand and greater security on the other for the benefit of taxpayers. This new stage is being conducted in the same spirit of partnership as were the anti-fraud activities proper, even if it goes beyond the confines of the fight against fraud. It will in any event have a definite impact on the policy for preventing and fighting fraud. Therefore, analysis of legislation, mentioned in chapter 8 of this report, forms a major part of the SEM 2000 initiative.

In this context, the important work done by the Member States in producing their reports on national measures to combat waste and misappropriation of Community resources deserves special mention. The Commission carried out a comparative analysis of the reports which clearly brings out the problems and questions which have to be dealt with by joint action. At the same time, again using the Member States' reports, it reviewed the application of the "assimilation" principle set out in the new Article 209a of the EC Treaty. A comparative summary paper was submitted to the Council which, in taking note of it, called on the institutions and the Member States to press on with their efforts in the fields in question, in particular by striving to establish an equivalent level of protection for the Community's financial interests throughout the Community.

In 1995 the Commission also restructured its fraud prevention department (SG/UCLAF - Unit for the coordination of fraud prevention) by regrouping its anti-fraud activities into this operational and multi-disciplinary structure² to enable it to fulfil its role independent of the services with authorizing responsibilities and to achieve the global, integrated approach defined for the protection of the Community's financial interests.

² Decision of 16 February 1995 - See SEC (95) 249, Commission Communication of 10 February 1995 on the organization of fraud prevention within the Commission.

CHAPTER 1: PROGRESS ON THE HORIZONTAL LEGAL INSTRUMENT IN 1995 (FIRST PILLAR AND TITLE VI)

Section 1: INTRODUCTION AND ASSESSMENT

One of the most important events in 1995 was the completion of the work begun in 1994 on legislation to protect the Community's financial interests. This work also laid the foundations for the Commission's new proposals. The combination of the Commission's efforts and political will at the highest level, produced some very real and practical results.³

The Commission worked on the premise that, as well as bolstering the preventive aspects of the checks and other measures designed to protect the Community's financial interests, it also needed to devise a set of uniform administrative and criminal penalties.

* A first layer of protection was needed in the form of Community administrative penalties.

There were already penalties for irregularities concerning the common agricultural policy but these had to be extended to other areas to ensure uniform protection across the Union. This could only be done through Community law. Accordingly, the Commission proposed a horizontal Community instrument establishing a special legal framework for Community administrative sanctions covering every section of the Community budget.

A framework regulation on the protection of the Community's financial instruments was duly adopted by the Council on 18 December 1995 (Regulation (EC, Euratom) No 2988/95).⁴

This Regulation is the product of the Commission's first set of legislative initiatives relating to the first pillar. The general horizontal legal framework which it provides for confirms the Community administrative penalty, in accordance with the case law of the Court of Justice of the European Communities, as a key element in the systems developed to protect the Community's financial interests.⁵

The initial proposal for the Regulation on the protection of the Community's financial interests, presented by the Commission in July 1994, contained general rules for Community measures and controls as well as Community administrative

³ A Commission proposal (Draft Treaty for the common rules on the protection under criminal law of the Community's financial instruments) has been before the Council since 1976. See Chapter 1, Section 6 of the 1994 Annual Report on the Fight Against Fraud (COM(95) 98).

⁴ OJ L 312, 23.12.1995

⁵ The Commission, in close cooperation with the Member States, conducted a comparative study into the way irregularities concerning the application of the common customs code are punished. On the basis of the findings, which are now being analysed, the Commission will decide whether legislation is required, on the basis of Regulation No 2988/95, for example, to protect the Community's financial interests.

sanctions.⁶ For the sake of expediency, the Council opted, at this stage, for Community administrative penalties and general control measures in order to be sure of achieving political results in the first half of 1995. "On-the-spot checks and controls", it was decided, were to be provided for in a separate Community legal instrument.⁷

However, with the exception of VAT, which the Council excluded from the scope of the Regulation, the comprehensive, horizontal approach the Commission favoured in its proposal has largely been retained. The Regulation applies to all expenditure and all traditional own resources.

The Community has opted unequivocally for the horizontal approach, which is now a distinctive feature of legislative initiatives in the fight against fraud. It makes for a far more consistent legal framework for measures to protect the Community's financial interests. It has also created a certain momentum, as the Council demonstrated when it asked the Commission to put forward proposals for Community administrative penalties covering all sections of the Community budget.

The Regulation is the first Community instrument containing a broad definition of what constitutes an irregularity - a definition which has been lacking for some years.

* A second layer of protection is required in the form of national criminal penalties.

These are the only types of penalties which, by their exemplary and transparent nature, provide effective, dissuasive and proportionate protection against the most serious of offences in accordance with European case law. The Commission has therefore presented a proposal aimed at reducing the inconsistencies between the laws on fraud in the various Member States.⁸ Such discrepancies provide a breeding ground for international fraud, which can easily develop into large-scale financial crime and even organized crime.

On 26 July 1995, the Council, acting on a Commission initiative, adopted a Convention on the protection of the European Communities' financial interests with the intention of improving the compatibility of national criminal laws.⁹ The Convention aims to achieve this by formulating a common definition of fraud and of other serious offences which damage the Community's financial interests. This constitutes a major step forwards for the Union; fraud affecting the Community budget is to be made into a specific criminal offence, with appropriate penalties, in each of the Member States.

⁶ OJ C 216, 6.8.1994. See Chapter 1, Section 6 of the 1994 Annual Report on the Fight Against Fraud.

⁷ See Article 10 of Council Regulation (EC, Euratom) No 2988/95

⁸ The features which makes the various systems incompatible were highlighted in a study carried out by a group of researchers, led by Professor Delmas-Marty in 1993. See the 1993 Annual Report on the Fight Against Fraud (COM(94) 94 final)

⁹ OJ C 316, 27.11.1995, p. 48

The Commission based its proposal for the Convention on Article K.3 of the Treaty on European Union (Title VI of the Union Treaty – cooperation in the fields of justice and home affairs).¹⁰ This approach is without prejudice to the Community's powers and does not prevent it from acting within the scope of the first pillar – which Parliament feels is the preferred option with regard to the Community budget.

In terms of the quantity and quality of the work which the institutions put into it, the Convention can be seen as an important milestone. It marks the completion of the first stage in accordance with the conclusions of the European Council of Cannes and, at the same time, calls for further action.¹¹ It illustrates the special problems involved in protecting the Community's financial interests and, in so doing, promotes the creation of tailor-made cooperation structures in the field of criminal justice.

- * The negotiation of these two instruments highlighted the difficulty linked to adopting legislation on the basis of Article 235 and of Title VI. Given the problem of the relationship between the EC treaty and Title VI of the TEU on questions concerned with the fight against fraud, the Commission intends to suggest the introduction of a more operational legal base for the protection of the Community's financial interests.

Section 2: FIRST-PILLAR ACTIVITIES - IMPROVING THE COMMUNITY'S LEGISLATIVE FRAMEWORK

1. Regulation on the protection of the Community's financial interests

The adoption of Council Regulation (EC, Euratom) No 2988/95 on the protection of the Community's financial interests was an important step forwards in the process of improving the Community's legal framework and tailoring it to the requirements of its overall anti-fraud strategy - a process which the Commission began in 1994.

As far as penalties are concerned, the comprehensive, horizontal approach finally prevailed. This was the approach favoured by the Commission in the proposal it advanced in July 1994.

A twin-track approach was adopted to the question of on-the-spot controls and checks. For the main traditional checks carried out by the Member States, some general obligations were set out;¹² the task of harmonizing checks to ensure a comparable level of stringency across the Community was then left to sectoral Community legislation or even national legislation. For the checks carried out by the Commission, the Regulation does lay down certain rules,¹³ though some more detailed provisions concerning

¹⁰ Proposal for a Council Act establishing the Convention, OJ C 216, 6.8.1994.

¹¹ The second recital is quite explicit on this matter, calling for "another legal instrument" to complement the first "in such a way as to improve the effectiveness of protection under criminal law of the European Communities' financial interests.

¹² Article 8 of the Regulation.

¹³ Article 9 of the Regulation

procedures were removed from the initial Commission proposal and will appear instead in a separate instrument for which the Commission will put forward a proposal to the Council at a later date.¹⁴

The main achievement of the Regulation is that it creates a basic legal framework for the formulation of uniform Community administrative penalties with the same force throughout the European Union. The penalties can be set for fraud relating to any area of Community policy where they are required and for which there is a legal basis.

The Regulation is entirely in keeping with the Commission's approach to administrative penalties in relation to agricultural policy, which the Court of Justice has always upheld, e.g. in 1992¹⁵ and, more recently, in 1995.¹⁶

These basic ground rules, preserving the *acquis communautaire*, were the subject of heated debate at the very highest level within the Council before eventually receiving unanimous support from the Member States. This result gives the Commission the go-ahead to maintain the existing policy with respect to agriculture and to extend Community administrative penalties to other areas.

The Regulation confirms the effectiveness of the system of penalties already in place for the common agricultural policy and draws on the impetus provided by the Council's call for the introduction of Community administrative penalties in areas other than agriculture.

In practical terms, the Regulation is the first piece of Community legislation to give a broad definition of conduct which prejudices proper application of Community financial legislation. It also establishes the concept of "abuse of rights", describes the measures and penalties available and identifies the people who can be held liable.

All of the above apply to irregularities affecting all sections of the Community budget. The introduction of the concept of abuse of rights fills a major gap in Community law. From now on, those attempting to obtain benefits contrary to the objectives of the relevant Community legislation may have their entitlement to subsidies or exemption from customs duties withdrawn.

The Regulation provides for a limitation period of four years for the imposition of penalties. This is a compromise solution balancing the need to protect the Community's financial interests effectively and the principle of legal certainty. The four-year limitation period in no way affects the rules governing the financial management of the Community's revenue and expenditure as it applies only to penalties and not to debt-recovery.

Another of the Regulation's main features is its list of penalties, with specific provision for fines, other financial penalties and other types of penalties that the Commission has traditionally imposed in the past.

¹⁴ Article 10 of the Regulation

¹⁵ Case 240/90 *Germany v Commission of the European Communities*[1992] ECR I-5383 (judgment given on 27 October 1992).

¹⁶ Case C 104/94 *Cereal Italia Srl* (judgment given on 12 October 1995)

The relationship between national criminal-law procedures and Community administrative law is made explicit. A good balance, which respects the principle of proportionality, has been found. The principle of the primacy of Community law is left intact and the Regulation ensures that financial penalties are fair, whether they are provided for by Community law or national criminal law. The *acquis communautaire* is preserved in that administrative financial penalties relating to agricultural matters are expressly excluded from the suspension arrangements. With regard to other matters, the suspension mechanism comes into operation only when criminal proceedings are initiated; it is not triggered by proceedings initiated by the administrative authorities with a view to imposing national penalties or by out-of-court settlements.

Owing to the very tight schedule set by the European Council, much hard work was done at the beginning of 1995, with Parliament examining the proposal and drafting amendments in accordance with the consultation procedure. Parliament delivered its opinion on the Commission proposal on 15 March 1995.¹⁷ In view of the link between the provisions on administrative penalties and criminal law, and the importance of providing for a special mechanism in the section on on-the-spot Commission checks, the Presidency felt the need to finalize agreement on a joint approach. This involved making a certain number of amendments to the initial proposal on which Parliament was to be consulted again. This agreement was reached on 29 June 1995. Parliament duly issued a second opinion when the Council negotiations were over.¹⁸

The Council finally adopted the Regulation on 18 December 1995 after it had discussed Parliament's amendments. As a result of the political views expressed, particularly within the *ad hoc* group of the Budget Committee, the Council did not accept Parliament's amendments. The Commission, however, took account of the amendments, most of which have been incorporated into the new proposal on on-the-spot checks.

2. The proposal for a Regulation concerning on-the-spot checks and inspections

The Commission proposal¹⁹ is a response to the Council's call for a separate draft regulation concerning on-the-spot checks and inspections.

The Commission did not opt for harmonization or amendment of the existing sector-based Community provisions granting powers to Commission inspectors. Instead, it chose a horizontal approach more specifically geared towards combating fraud and detecting irregularities, leaving the existing sector-based legislation on checks and inspections untouched.

The proposal gives a clear definition of what constitutes an on-the-spot inspection and establishes who can be checked. It also lays down rules governing the powers and duties of Commission inspectors and, lastly, it contains provisions aimed at bolstering the legal force of the inspectors' findings.

¹⁷ Resolution of 15 March 1995, OJ C 89, 10.4.1995

¹⁸ Resolution of 30 November 1995., OJ C 339, 18.12.1995.

¹⁹ Proposal adopted on 20 December 1995 (COM(95) 690 final)

The Regulation provides a legal basis for checks and inspections aimed at detecting fraud. It is not concerned with checks carried out by the Commission services to ensure that Community regulations are being properly implemented by the Member States.

If adopted, the Regulation will make it significantly easier to set up and carry out inspections concerned specifically with combating fraud. It will be particularly valuable in cases of major complex or cross-border frauds where the extent to which one Member State can act is limited.

The Commission's desire to work closely with the Member States in combating fraud is the cornerstone of the new horizontal approach, which relies on full cooperation between the Commission and the Member States with regard to on-the-spot checks and inspections.

To summarize, the Regulation will complement and rationalize existing arrangements, introducing greater clarity and uniformity and enhancing their effectiveness.

It will also place partnership between the Member States and the Commission on a more official footing. It is designed to achieve the aim spelled out in the second paragraph of Article 209a of the EC Treaty regarding the assistance the Commission is required to give the Member States with the task of protecting the Communities' financial interests.²⁰

Lastly, the Regulation goes a long way towards establishing some kind of methodology for anti-fraud inspections. It is intended to meet the requirements laid down by the Madrid European Council, held on 15 and 16 December 1995, which stressed the need for a regulation to be adopted as soon as possible, before June 1996.

Section 3: TITLE VI ACTIVITIES - MAKING THE VARIOUS NATIONAL LAWS MORE COMPATIBLE WITH ONE ANOTHER.

1. The Convention

As part of the new anti-fraud strategy it adopted in 1994, the Commission also presented a proposal for a Council Act²¹ establishing a Convention relating to the criminal-law aspects of the protection of the Communities' financial interests, on the basis of Article K.3(2) under Title VI of the Treaty on European Union.

Parliament recommended an approach based on the first pillar for measures aimed at protecting the Community budget. While the Commission did not necessarily disagree, it preferred for the sake of expediency and for reasons connected with the scope of the proposed measures, to use the intergovernmental procedures associated with Title VI. These procedures are even more familiar to central administrations of Justice Ministries, which are becoming more aware of the issues surrounding protection of the Communities' financial interests and the obligations on the Member States and the institutions. In opting for the intergovernmental approach, the Commission enhanced the credibility of the new

²⁰ See also Chapter 4, single section, point 3, page 36.

²¹ OJ C 216, 6.8.1994

Maastricht provisions without giving the impression that the Community pillar was inadequate.

The resolution adopted by the Council on 1 December 1994 identified the issues most urgently requiring attention if legislation protecting the Community's financial interests through national criminal law is to be passed as quickly as possible.²²

In view of the difficulties the negotiators encountered with the third pillar, the Council of 9 and 10 March 1995 decided to limit the scope of the instrument. It would set out only to provide a definition of fraud and settle the criminal liability of the people involved, the penalties and jurisdiction. The Cannes European Council, held in June 1995, was able to reach an agreement on the matter and, on 26 July 1995, an act establishing the Convention for the protection of the Communities' financial interests was signed. Other instruments supplementing the Convention were to be passed as soon as possible.²³

The Convention as adopted by the Council does not contain all the elements in the Commission's initial proposal.²⁴ However, it goes a long way towards ensuring a uniform level of protection throughout the Community, in accordance with the express wishes of the Madrid European Council. The adoption of a common definition of fraud, combined with provisions requiring the Member States to incorporate the definition into their own body of criminal law brings the Community much closer to its objective of an equivalent level of protection in all Member States.

The Convention marks a major step forwards in the campaign to protect the Community's financial interests; every Member State is now required to punish fraud with appropriate criminal penalties. It also does much to approximate in a specific area the Member States' criminal-law provisions, which is an appropriate response to the problem of financial crime, particularly international fraud.

The most important, and undoubtedly the most conspicuous change for the better is the adoption of a definition of fraud affecting both revenue and expenditure in the Community budget. The idea of creating a specific offence – the Commission's preferred solution – was rejected in favour of new offences based on the definition contained in the Convention. The Member States can choose whether to create a specific offence of fraud against the Community's financial interests or to make it an offence under the laws criminalizing fraud in general. The Convention also requires Member States to make serious fraud involving more than ECU 50 000 an extraditable offence, punishable by imprisonment.

The Convention confirms that persons with the power to take decisions within a business should be made criminally liable, albeit in accordance with the principles defined in national law. It also lays down very basic rules for judicial cooperation in cases where

²² OJ C 355, 14.12.1994, see also Chapter 1, Section 6.2 and Chapter 2, Section 3 of the 1994 Annual Report on the Fight Against Fraud (notably judicial cooperation, laundering, responsibility of legal persons, corruption).

²³ The supplement took the form of the Protocol described at point 2 of this Section. See also the second recital of the Council Act establishing the Convention (OJ C 316, 27.11.1995, p.45).

²⁴ See Chapter 1, Section 6.2 of the 1994 Annual Report on the Fight Against Fraud.

the Community's financial interests are at stake. These include rules on centralization of the prosecution and on the *aut dedere aut judicare* (extradite or prosecute) principle.

The Convention gives the Court of Justice the jurisdiction provided for by Article K.3(2)(c) of the Treaty on European Union. The minimalist approach taken by the Member States is not the approach sketched out by the Commission in its initial proposal and does not give the Court the power to decide on all the questions of interpretation concerning the Community budget which the Convention is sure to raise. The Commission feels that this situation must be rectified by conferring jurisdiction on the Court of Justice.

Detailed procedures are laid down for the transposition into national criminal law of the obligations imposed by the Convention on the Member States, which are required to inform the Commission of the relevant provisions. The Commission is given the task of monitoring and assessing the transposal measures²⁵ and reporting to the Council on the progress made in incorporating the Convention into national criminal law.

Failure to ratify and transpose the Convention swiftly would effectively wipe out the progress made so far, make the agreement reached by the heads of state and government redundant and disable the instruments associated with Title VI.

2. Additional Protocol to the Convention on the protection of the European Communities' financial interests (second instrument) - on judicial cooperation

The Commission proposal of 20 December 1995 for a Protocol to the Convention on the protection of the European Communities' interests²⁶ is another of the Commission's initiatives currently in the Council's hands. The Protocol was drafted at the request of the Madrid European Council, echoing an earlier demand, in the actual Council Act establishing the Convention, for an instrument to supplement it.

The Commission proposal contained certain elements which had figured in the original proposal from June 1994 but which had not been included in the final version of the Convention signed on 26 July 1995 for reasons connected with the timetable set by the Council. The purpose of the proposal for the Protocol is to lay down rules for judicial cooperation and joint investigations into cases of suspected multi- or transnational fraud. In practical terms, the intention is to flesh out the principle of centralization of procedures, laid down in the Convention. The proposal also attempts to put into practice the Council Resolution of 1 December 1994 which was concerned in particular with money laundering²⁷ and the liability of legal persons.

Since the form of the instrument supplementing the Convention was not specified, the Commission opted for a protocol.

²⁵ See the Commission's anti-fraud work programme for 1996, doc COM (96) 17 final.

²⁶ COM(95) 693 final. Document published in OJ C 83, 20.3.1996.

²⁷ See Chapter 1, Section 6.3.2 of the 1994 Annual Report on the Fight Against Fraud.

From the legal point of view, the Protocol has the same status and binding force as the Convention since it will be adopted by the same procedures, i.e. those provided for by Title VI of the Treaty on European Union and notably ratification by national parliaments.

As far as content is concerned, the Protocol complements the Convention by providing:

- an appropriate legal response (liability of legal persons and appropriate penalties, definition of laundering of profits from fraud affecting the Community budget and creation of a specific offence);
- the procedural aspects, to enhance the effectiveness of national instruments at Union level (judicial cooperation, centralization of procedures and establishment of a common register of prosecutions).

The criminal liability of legal persons is an issue of fundamental importance and the Commission does not underestimate the problems associated with it. The principle is not an established legal concept in all Member States, though most of them are familiar with the idea under another guise. The introduction of the concept is a major legal innovation, aimed at ensuring that businesses and other organizations involved in defrauding the Community can be prosecuted. It will also ensure that it is not only the senior management or less important people who feel the full force of the law while the company or organization continues to operate without being penalized for actions which can be attributed to its organizational structure and which it has unlawfully benefited from.

The Protocol also requires that the Member States make laundering the proceeds of fraud a criminal offence and contains provisions which address the issue of judicial cooperation and procedural questions. The experience gathered by the national inspectorates and the inadequacy of existing laws²⁸ would indicate that there is an urgent need for legislation to deal with the problems which are now arising (connected with the special nature of the Community budget and the rise in financial crime etc.)

The Convention merely set out a few basic principles for judicial cooperation, which the Protocol now amplifies with more detailed rules. In cases of international fraud or a complex web of interrelated fraud, the Protocol provides for centralization of the prosecution by conferring priority jurisdiction on a principal authority on the basis of objective criteria. The rules on mutual assistance and judicial cooperation enable the legal authorities to contact one another and to submit direct requests for mutual assistance to one another, making the procedure far more simple and putting the second paragraph of Article 209a of the EC Treaty into practice. Unlike the Convention, the Protocol also confers on the Court of Justice the power to give preliminary rulings on matters for interpretation.

²⁸ Many of the national reports produced in connection with the assessment of implementation of Article 209a of the EC Chapter (see Chapter 4, single section, page 33) mentioned the need for effective judicial cooperation. Current arrangements are based on international legislation dating back to the 1950s, when Europe had no common policies or shared resources, and financial crime was carried out by individuals or gangs, not organized networks capable of maintaining an outward appearance of legality, as today.

Given that the Council Act establishing the Convention called for an instrument complementing it to be adopted as soon as possible, the Italian Presidency made the drawing up of the Protocol one of its priorities for 1996. The Commission is doing its best to facilitate the process as the proposal goes through the specialized bodies within the Council.

3. Protocol on corruption amongst officials

Corruption was one of the points dealt with in the Council resolution (Justice) of 1 December 1994. A draft Treaty, drawn up by the Commission, was sent to the Council on 10 August 1976 but discussions have never got off the ground.

In view of the speed with which the Spanish Presidency presented its own proposal in June 1995,²⁹ the Commission refrained from putting forward yet another one to avoid a plethora of proposals and measures all dealing with corruption. Instead, it preferred to retain the existing draft treaty and make an active contribution to the preparatory work in the Council on the basis of its own studies into the matter. In so doing, it hoped to ensure that the problem of corruption affecting the Community's financial interests was given due attention without falling into the trap of focusing the text exclusively on corruption amongst Community officials and forgetting about corruption amongst national civil servants.

Thanks to the work done in the Council, the Madrid European Council, held on 15 and 16 December 1995, was able to reach a consensus which is apparent from the conclusions it drew. This certainly represents a step forward. The main aim of the instrument is to fill in the gaps in existing criminal law on corruption (acts and omission) having a link with protection of the Community's financial interests which, by their nature, are international and may involve both Community and national officials.

The purpose of the Protocol is to make up for the shortcomings of the Member States' domestic legislation by assimilating officials of the European Community to national officials under criminal law, while taking account of the immunity conferred by the Protocol on the Privileges and Immunities of the Communities. The principle of assimilation was laid down in the 1976 proposal for a draft treaty, from which the current definition of a "European official", as it appears in the Council draft, was also taken, with a few changes.

The Protocol provides for an offence covering both acts and omissions in the interests of a rapprochement of the various concepts found in the Member States' legislation. Members of Community institutions will be assimilated to their political counterparts at national level rather than to officials, as they are under the criminal law of certain Member States.

The authorities in a Member State may claim jurisdiction for criminal cases involving European officials employed by a Community institution established on its territory. The rules on the jurisdiction of the Court of Justice follow the minimalist approach taken by the Council as regards the Convention.

²⁹ Spain is very eager to address this issue, which it considers to be of central importance.

It is expected that the Protocol will be adopted in the first half of 1996 when Parliament has been consulted, a process started by the Spanish Presidency in December 1995. In accordance with Article K.6 of the Treaty on European Union, Parliament must be consulted on the principal aspects of the Council's activities covered by Title VI.

Section 4: DEVELOPMENTS CONCERNING ORGANIZED FINANCIAL CRIME

The Council signed the Convention on the protection of the European Communities' financial interests on 26 July 1995 and, in so doing, signalled that the fight was on against the organized criminal networks that are often behind multinational or transnational fraud against Community resources spanning several countries.

This approach is a response to the hard facts on the ground and reflects the experience of the Commission and the specialized national departments with the investigations they have conducted.³⁰

This experience is also shared by several Member States. The national reports submitted by the Member States concerning implementation of Article 209a of the EC Treaty, as requested by the Council, revealed that certain national authorities, particularly in France, Denmark and Italy, were well aware of the involvement of organized criminal networks in setting up scams to defraud the Community budget.³¹

The basic issues are clear: organized crime has gone international, jeopardizing not only the security of individual Member States but also the protection of common interests which cannot be safeguarded by isolated action on the part of national anti-fraud units. Moreover, criminal networks actually thrive on the differences between the criminal justice systems in different countries and the discrepancies between the penalties applied in the Member States. This means that to protect the common good and safeguard financial interests, there is a need not only to bring the criminal law systems of the Member States closer together to agree on a definition of the offence of "fraud against the Community", but also to adopt legal instruments that facilitate judicial cooperation between Member States and discourage judicial self-sufficiency in favour of Community solidarity. In this way more uniform levels of protection and prevention could be achieved.³²

The tools which the Member States have at their disposal for judicial cooperation on cross-border financial crime are no longer up to the task. Financial crime has become increasingly international, because it is easier to get away with undetected. It takes an enormous amount of time and effort to gather together sufficient evidence to crack known

³⁰ See the 1994 annual report on the fight against fraud, Chapter 5, Section 1 regarding cross-border fraud.

³¹ Member States also sent the Council various contributions, which were used to draw up a report on organized crime in the European Union. The Italian Presidency has undertaken to pursue the issues raised in the report and will soon produce a report on financial crime covering 1995.

³² See conclusions of the inquiry on meat carousel in the annual report for 1994, chapter 5, section 1.2.2.

crime networks. Hence the need for a Community-level approach to ensure the requisite cooperation and coordination.

The criminal organizations involved often have considerable means at their disposal. Their financial power in particular is used for the purposes of corruption to circumvent international legislation. This is particularly the case with the Community transit arrangements, where the regulations should be strengthened, especially as regards sensitive products,³³ to prevent the evasion of customs duties and levies, which make up a considerable portion of the Communities' traditional own resources.³⁴ This also affects national budgets to a considerable extent.

To a certain extent, these practices entailed little risk for the perpetrators, since the organization of the criminal networks involved is tight and mechanical and the financial gain is out of all proportion to any legal penalties that may be incurred. The more astute villains have used, and continue to use, sophisticated systems to escape prosecution, for example by using companies that often seem to operate within the law, but are actually set up as fronts in areas where crime prevention is more lax.

Nowadays economic and financial systems are geared up for speed and efficiency in international trade³⁵ and could obviously not do without this flexibility. However, when the rules are being abused for criminal purposes, the response needs to be equally speedy and efficient.

Financial interests cannot be protected by using instruments that date from the 1950s, when European integration did not have common policies covered by a single budget and when trade and financial flows were a fraction of what they are today.³⁶

³³ See Chapter 2, Section 3 on customs, page 23, and Chapter 6, Section 1, point 1.14, on cigarette smuggling, page 58.

³⁴ This type of fraud is particularly common and varied, ranging from cigarette smuggling (see Chapter 6, Section 1, point 1.14, page 58 to shipping carousels involving alcohol and agricultural products and anti-dumping duty fraud (see Chapter 6, Section 1, page 49 and Section 3, page 67). In terms of revenue, 2% of the fraud cases discovered account for 66% of the amounts at stake; on the expenditure side, 8% of the cases account for 74% of the amounts at stake. These figures lend further support to the Commission's belief that fraud against the Community is not a question of petty pilfering, but of large-scale organized financial crime.

³⁵ For example, the international SWIFT network can transfer funds between banks in many countries in a matter of seconds.

³⁶ As regards judicial assistance and cooperation between the Member States, although the 1959 Strasbourg convention is adequate for dealing with certain types of one-off crimes, it is quite unsuitable for dealing with international economic crime, let alone protecting the financial interest of the European Communities.

CHAPTER 2: DEVELOPMENTS IN THE REGULATORY FRAMEWORK IN 1995

This chapter is intended to give an account of developments in Community legislation in 1995 aimed at simplifying the regulatory framework and making legislative provisions with financial impact as fraud-resistant as possible.

There were considerable developments in agriculture and customs, for example in the transit procedure. In the area of structural policies, significant progress was achieved in 1994 with the tightening up of sectoral regulations and the adoption of Regulations (EC) Nos 1681/94 and 1831/94 on irregularities and the recovery of sums wrongly paid under the Structural Funds and the Cohesion Fund. The Commission has been working hard on putting the finishing touches on the implementation of these regulations, which are still applied in different ways from one Member State to another.³⁷

Section 1: OWN RESOURCES

The Commission proposal to amend Council Regulation (EEC, EURATOM) No 1552/89 implementing Council Decision 88/376/EEC, EURATOM on the system of the Communities' own resources³⁸ has yet to be formally adopted by the Council.

The proposal aims to improve the reporting procedure, under which the Member States provide the Commission with information on cases of fraud and irregularities they have uncovered, by increasing both the level of detail of information submitted and the frequency of submission of reports, in line with what is already in force in the area of expenditure. The Commission will then be better placed to keep tabs on the recovery of amounts involved in fraud and irregularities.

On 17 November 1995 the Council agreed on a common position on the amendments to be adopted, and this was presented to the European Parliament under the conciliation procedure.

Agreement was reached under this procedure, which means that the regulation should be adopted sometime in the first semester of 1996.

Section 2: AGRICULTURE

One of the main objectives of the prevention side of the anti-fraud strategy adopted by the Commission in March 1994 was to review and improve agricultural legislation containing financial provisions.³⁹ Following on from its 1995 work programme,⁴⁰ the Commission has continued to pursue these aims with the following results:

³⁷ For example, by organizing training for the relevant staff from the national authorities. See Chapter 5, Section 1, page 41.

³⁸ See the annual report on the fight against fraud for 1994, Chapter 1, Section 1.

³⁹ The Commission's Anti-Fraud Strategy, Work Programme for 1994, COM(94) 92 final.

⁴⁰ Commission's Work Programme for 1995, Section 6.4, COM(95) 26 final.

- Council Regulation (EEC) No 4045/89,⁴¹ which concerns scrutiny by Member States of transactions financed by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund, needed further tightening up with specific provisions in the following areas:
 - strengthening of mutual assistance procedures between Member States (under Article 7 of the Regulation referred to above): discussions are under way in Commission working groups on a proposal for a regulation and on joint courses of action when commercial documents are inadequate or come from companies based outside the Community;
 - standardization of documents and reports submitted by Member States with a view to harmonizing scrutiny: on 19 December 1995 the Commission adopted Regulation (EC) No 2992/95⁴² amending Regulation (EEC) No 1863/90⁴³ laying down detailed rules for the application of Council Regulation (EEC) No 4045/89;
- The Commission further tightened up the implementing provisions for Council Regulation (EEC) No 386/90⁴⁴ as regards physical checks at the time of export of agricultural products receiving refunds. This regulation was amended by Council Regulation (EC) No 163/94.⁴⁵
 - Commission Regulation (EC) No 3122/94⁴⁶ lays down the criteria to be used by the Member States in applying risk analysis techniques to devising fraud prevention strategies for agricultural products receiving refunds. It came into force on 1 January 1995.
 - Commission Regulation (EC) No 2221/95⁴⁷ covers physical checks and the selection of samples to be analysed at the time of export of agricultural products qualifying for refunds. It came into force on 1 January 1996.
- As regards Community agricultural products exported to non-member countries with export refunds, the Commission is currently undertaking a full consolidation of Commission Regulation (EEC) No 3665/87.⁴⁸ The work will be completed in 1996 and will incorporate the results of work carried out previously.

⁴¹ OJ L 388, 30.12.1989. Subsequently amended by Council Regulation No 3094/94 (OJ L 24, 29.01.1994) and Council Regulation No 3235/94 (OJ L 338, 28.12.1994). See the annual report on the fight against fraud for 1994.

⁴² OJ L 312, 23.12.1995.

⁴³ OJ L 170, 3.7.1990.

⁴⁴ OJ L 42, 16.2.1990.

⁴⁵ OJ L 24, 29.1.1994.

⁴⁶ OJ L 330, 21.12.1994.

⁴⁷ OJ L 224, 21.9.1995.

⁴⁸ OJ L 351, 14.12.1987.

- Commission Regulation (EC) No 2949/94⁴⁹ amends Article 11. It came into force on 1 April 1995 and lays down a system of fines and penalties applicable on the basis of amounts wrongly paid.
- Commission Regulation (EC) No 2955/94⁵⁰ amends Articles 18 and 44 as regards the approval of specialized international control and supervisory agencies authorized to issue certificates of arrival and release for consumption in non-member countries. This regulation came into force on 1 January 1995 and states that the power to grant approval lies with the Member States.

At the same time the adoption of this regulation also made it possible to lay down criteria for approval procedures that may be used by the Member States. It was also stipulated that an up-to-date list of the agencies approved by the Member States would be periodically published in the C series of the Official Journal of the European Communities.

- The Commission also set about revising Article 15 to counter the diversion of agricultural products which have been exported from the Community (with payment of refunds) and subsequently reintroduced, having been processed and having qualified for reduced import duties, on the basis of preferential agreements concluded with the non-member countries concerned (overseas countries and territories and ACP countries). The revised text makes the exporter liable for repayment of any refund wrongly paid out for the products.
- Commission Regulation (EC) No 1384/95⁵¹ amending Regulation (EEC) No 3665/87 concerns differentiated refunds, in particular the introduction of a system of penalties for changing the destination where the actual rate of refund is less than the rate fixed in advance. This is to avoid any irregular advance fixing of the destination to obtain higher rates of refund.
- Council Regulation (EC) No 1469/95⁵² provides for measures to be taken with regard to certain beneficiaries of operations financed by the Guarantee Section of the EAGGF who present a risk of non-reliability (the "blacklist" regulation). It is now possible to compile a list of traders, whether individuals or companies, who have been ill intentioned or particularly negligent. The Member States may impose tighter controls on these traders or other measures, which may go as far as suspension of payments or temporary exclusion from them.

The Commission proposal for detailed provisions implementing this regulation is currently being adopted.

⁴⁹ Amending Regulation (EEC) No 3665/87 as regards the recovery of amounts wrongly paid and sanctions (OJ L 310, 3.12.1994).

⁵⁰ Amending Regulation (EEC) No 3665/87 (OJ L 312, 6.12.1994).

⁵¹ OJ L 134, 20.6.1995.

⁵² OJ L 145, 29.6.1995.

- As regards the Community co-financing arrangements for stepping up controls by Member States, the Commission has drawn up a report on the state of play as regards implementation of the current arrangements with a view to formulating new proposals to resolve the shortcomings of the previous regulation.⁵³ A draft has already been produced and should be adopted by the Council in 1996. It provides for control operations in the Member States to be co-financed on the basis of cost-effectiveness studies on each of the projects the Member States are to submit to the Commission each year.

Section 3: CUSTOMS

1. Customs transit arrangements

On 29 March 1995 the Commission adopted a communication on fraud involving the transit procedure.⁵⁴ The objectives of the communication include making traders who work with the system, and in particular those who stand as guarantors for the principal, more aware of the sort of risks they should avoid taking in the course of their work, since the Commission is in any circumstances unable to authorize postponement of the payment of customs debts. Not only is there is no legal provision for this, but the Commission is actually duty-bound to protect the Community's own resources.

The Commission communication puts forward specific measures to tighten control procedures and to improve and computerize transit procedures.

Rather than describing once again the fraud methods used or the particular types of fraud,⁵⁵ this section is intended to report in detail on the state of play as regards the measures put forward in this important Commission communication.

Procedures:

Action was taken on several of the measures in 1995.

- Changes to the provisions guaranteeing Community transit and common transit operations⁵⁶ for sensitive goods.⁵⁷

All transit operations must be covered by a guarantee required to cover the amount of the customs duties and other taxes which would be payable in the event of the T document not being discharged. There are three types of guarantee under the Community and common transit arrangements: comprehensive, flat-rate and single-operation. The comprehensive guarantee is the most flexible arrangement for traders, since it is good for a series of operations by the same principal over a given period. The amount of the guarantee is calculated on the basis of criteria

⁵³ Council Regulation (EEC) No 307/91, OJ L 37, 9.2.1991.

⁵⁴ COM(95) 108 final.

⁵⁵ See the annual report on the fight against fraud for 1994, Chapter 1, Section 5.

⁵⁶ The common transit procedure is an extension of the Community transit arrangements to cover the countries of the European Free Trade Area (EFTA) under a convention signed in 1987.

⁵⁷ Cigarettes, agricultural products, butter, milk powder. alcohol, sugar, meat and textiles.

laid down in the regulations and it covers only a very small portion of the customs duties (and other taxes) due on the operations.

Under Article 360 of Commission Regulation (EEC) No 2454/93,⁵⁸ Member States may request the agreement of the Commission to the temporary prohibition of the use of the comprehensive guarantee for operations involving products where there is an exceptionally high risk of fraud.

To date the Commission has issued two decisions on prohibiting the use of the comprehensive guarantee:⁵⁹ one at the request of Spain for the transportation of cigarettes and one at the request of Germany for the transportation of certain agricultural products (live cattle, frozen beef and veal, milk, cream, butter, cheese, bananas, alcoholic beverages and other products containing alcohol, sugar, rye and wheat).

Stricter eligibility criteria for traders to use comprehensive guarantees were also approved by the Customs Code Committee (transit section) and incorporated into the regulations at the beginning of 1996.

The provisions governing the flat-rate guarantee (calculated in multiples of ECU 7 000⁶⁰) were altered to increase the guarantee for products where the risk is greater to 100 % of the duties and taxes concerned for products for which the prohibition of the use of the comprehensive guarantee applies.

- Accelerated discharge procedure for sensitive goods (Community and common transit and TIR⁶¹).

This procedure was devised as an administrative arrangement (whereby a copy of the transit document can be sent to the office of departure on the same day that the goods are presented at the office of destination). These provisions have also been integrated into the regulations.

For the TIR system Resolution No 49 of 3 March 1995⁶² introduced accelerated discharge procedures by fax, which came into effect on 1 September.

- Measures concerning transportation, travelling time (Community transit and TIR) and mandatory routing (TIR).

These measures concern the transport of goods: as a rule, traders are free to choose any route to reach the office of destination. They may even change the

⁵⁸ OJ L 253, 11.10.1993. This regulation lays down certain implementing provisions for Council Regulation (EEC) No 2913/92 setting up the Community customs code (OJ L 302, 19.10.1992).

⁵⁹ Commission Decision No 95/521/EC of 28.11.1995 at the request of Spain (which came into force on 1.4.1996), OJ L 299, 12.12.1995, and Commission Decision No 96/37/EC of 20.12.1995 at the request of Germany (which came into force on 1.3.1996), OJ L 10, 13.1.1996.

⁶⁰ Article 367 of Commission Regulation (EEC) No 2454/93.

⁶¹ The TIR system, which was laid down in a 1975 convention, governs the international carriage of goods by road.

⁶² Council Decision No 95/285/EC of 24.7.1995 adopting this resolution, OJ L 181, 1.8.1995.

office of destination, for example in the event of resale to a different consignee. The only obligation is to present the goods together with the transit document at the office of destination. But now offices of departure are entitled to impose mandatory routes and may also prohibit changing the office of destination for operations involving sensitive goods.

For the TIR system Resolution No 49 referred to above also allows time limits and compulsory routes to be imposed in the case of sensitive goods (measures that take effect immediately). A further measure involves excluding traders from using the TIR system if they repeatedly commit serious irregularities (Article 38 of the convention).

Certain other measures were not able to be taken in 1995. They include :

- Adopting, in the framework of the common transit arrangements, of different provisions adopted at Community level concerning guarantees. The adoption of this measure requires a consensus amongst the contracting parties. This was not possible in 1995 as Switzerland refused to adopt the banning of the use of the comprehensive guarantee for the transport of cigarettes.
- Calculation of the comprehensive guarantee on the basis of 100% (instead of 30% at present) of the duties and taxes at stake with the amount per guarantee certificate limited.
- Establishment of the obligation on the part of the customs office of departure to set a stricter time limit for presentation of the "T" document at the office of destination.
- Establishment of the financial liability of persons other than the principal, in particular the transporter.
- Establishment of the obligation to lodge a guarantee for goods in transit transported by sea.
- Establishment of the obligation to present proof of the Community status of goods transported by sea.

Early Warning System

A further important measure involves the implementation of an advance notification system for sensitive goods (operations under the Community transit, common transit and TIR arrangements). The office of departure notifies the office of destination immediately that goods have been placed under a particular scheme. This gives offices of destination the time to investigate the stated consignees. This means that they immediately know when goods have not been presented and can notify the office of departure accordingly.

In the case of the TIR arrangements, an advance notification system has been in operation since 1 July 1994.

The Commission is carrying out significant improvements to the system, with the aim of speeding up further the submission of information.

Computerization of the transit system

The Commission, the Member States and the EFTA countries embarked on computerization of the system with three objectives in mind :

- to make the transit procedures work more effectively and efficiently for Customs services;
- to improve prevention and detection of fraud;
- to make transit operations more fluid, safer and quicker for economic operators;

As stated in the Commission communication, national and community investment costs are estimated at respectively ECU 13 million and ECU 10 million over five years. Although it is obvious that computerization will not totally wipe out fraud, it is safe to assume that the cost of the project will soon be recouped.

Task Force

The Commission has set up a Community Transit Task Force to monitor closely the implementation of the reinforcements and improvements to the system on the basis of the comprehensive analysis of the system already carried out.

2. The Customs 2000 project

On 4 April 1995 the Commission adopted a proposal for a European Parliament and Council decision⁶³ adopting a Community customs action programme, to run from 1 January 1996 to 31 December 2000, to develop and expand on the pilot operation launched in 1994.⁶⁴ The programme, called Customs 2000, is designed to improve openness in the application of Community customs law and cooperation between customs authorities in the Member States so as to improve the overall performance of customs procedures and make controls at the Union's external borders more uniform.

The programme must ensure that trade can flow as smoothly as possible in the internal market, as well as improving the recovery of duties and providing greater protection of the Community's financial interests.

This is to be achieved through operations to combat customs fraud, as part of the Commission's overall anti-fraud policy, focusing on the following areas:

- taking maximum advantage of existing legislative provisions and, where necessary, amending them;
- improving the collection and exploitation of information at Community level, making the fullest use of information technology and increasing the use of computer systems by customs departments;
- eliminating obstacles that impede swift action and effective cooperation by customs investigators, particularly as regards their investigative powers;
- ensuring that effective penalties are applied;

⁶³ COM(95) 119 final.

⁶⁴ See the annual report on the fight against fraud for 1994, Chapter 1, Section 4.

- conducting and expanding coordinated operations, in particular Community investigation and inspection visits to non-member countries;
- developing cooperation with non-member countries, in particular the associated countries of Central and Eastern Europe, and with the relevant international organizations and professional circles;
- ensuring that irregularities are followed up.

3. Chemical substances frequently used for the illicit manufacture of narcotics ("precursors")

Arrangements for Community action on the control of precursors is covered by Council Regulation (EEC) No 3677/90.⁶⁵ The Commission has made sure that the practical measures needed to implement this regulation have also been extended to the new Member States. It is also planning to organize training courses on how to use the Community PREXCO⁶⁶ database.

Community action in this area has been on the increase.⁶⁷ Under the mutual assistance arrangements in 1995 the Commission notified the Member States of 36 cases, compared with 7 in 1994

On 24 September the Commission was given a negotiating brief by the Council to discuss the implementation of precursor control agreements with the 34 member countries of the Organization of American States. On this basis negotiations were immediately launched with the five member countries of the Andean Pact.⁶⁸ The negotiations were rapidly completed, which meant that the Community was able to adopt and sign the agreements on 18 December 1995.

Section 4: ADMINISTRATIVE COOPERATION

The Commission continued to follow up its contacts with the other Community institutions regarding its 1992 proposal for a regulation on mutual assistance in the areas of customs and agriculture. The proposal improves on and updates the corresponding provisions of Council Regulation (EEC) No 1469/81⁶⁹ and provides a legal basis for the setting up of a database to hold the information exchanged under the CIS (customs information system) in cases where primary responsibility lies with the Community.⁷⁰

⁶⁵ OJ L 357, 20.12.1990. Under Article 7 of this regulation, the provisions of Regulation (EEC) No 1468/81 on mutual assistance between Member States in the areas of customs and agriculture apply here *mutatis mutandis*.

⁶⁶ Precursor Exportation Control

⁶⁷ On 1 June 1995 responsibility for operations in this area was transferred from DG XXI (customs and indirect taxation) to the Secretariat-General's fraud prevention unit, UCLAF.

⁶⁸ Bolivia, Colombia, Ecuador, Peru and Venezuela.

⁶⁹ OJ L 144, 2.6.1981.

⁷⁰ See the annual report on the fight against fraud for 1994, Chapter 1, Section 4. and Chapter 2, Section 1.2.3.

Concerning the Customs Information System, the Member States have adopted, in the Title VI context, the convention on the use of information systems in the field of customs and reached an agreement on the provisional application of this convention between some of the Member States. The convention still has to be ratified in the Member States and the central database which will be the nucleus of the project will not be created until the new mutual assistance regulation is in force.⁷¹

A common position on the regulation was adopted by the Council in December 1994 and transmitted to the European Parliament in July 1995. The latter has not yet taken a position on the text.

At intergovernmental level, a convention drawn up on the basis of Article K.3 of the Treaty on European Union on the use of information technology for customs purposes was signed on 26 July 1995.⁷² Among other things, the convention provides the legal basis for including in a database information to help in combating illicit trafficking in narcotics and other restricted products. The database is to be set up following adoption of the regulation repealing Regulation (EEC) No 1468/81 governing the areas of Community responsibility.

Since the extension of the network to include the new Member States, there are now 323 SCENT/CIS⁷³ terminals installed at departments designated by the Member States at administrative headquarters and at large ports and airports. As a computerized tool the network may be used for data on both Community and non-Community matters.

⁷¹ See Chapter 1, section 4 of the 1994 Annual Report on the Fight Against Fraud.

⁷² OJ C 316, 27.11.1995, p.33.

⁷³ CIS is a component of SCENT (System customs enforcement network).

CHAPTER 3: THE OTHER INSTITUTIONS

Each of the other Community institutions, in its particular sphere, has continued to develop its own ideas or activities, aiming, like the Commission, to achieve the sort of progress in the fight against fraud which Europe's citizens and taxpayers wish to see.

The importance of relentlessly pursuing the fight against fraud has been emphasized at the highest political level. Member States in particular are being urged to act, but the Community institutions must also respond. Responsibility for achieving results in this field does not, therefore, rest with the Commission alone. Seen in this light, the development of effective cooperation between the institutions is an important element which more than justifies the decision to devote a separate chapter of this report to the anti-fraud activities of the European Parliament, the Council and the Court of Auditors in 1995.

Section 1: THE EUROPEAN PARLIAMENT

The European Parliament is responsible for monitoring the use of Community funds. In its capacity of budgetary authority, Parliament discharges this institutional responsibility to the full, acting through the intermediary of its Committee on Budgetary Control and bolstered by its democratic legitimacy. It is primarily through the work of this Committee that Parliament closely follows all matters relating to the fight against fraud and the protection of the Community's financial interests, taking specific initiatives in these areas whenever it sees fit.

In addition to its normal activity of questioning the European institutions and monitoring the budget, and as a way of introducing the appropriate political dimension into its action, Parliament organized a public hearing on the fight against fraud in the European Union budget,⁷⁴ as it had done in 1993. This tackled three themes: corruption and organized crime involving the European Union budget, recovery of misappropriated funds, and the legal protection of the European Union's financial interests - legislation, investigation and prosecution procedures.

Parliament also exercised the new power of inquiry conferred on it by the Treaty on European Union, using it for the first time in connection with the fight against fraud and, particularly, the Community transit procedures, a subject which Parliament had already worked on and discussed, notably in its Committee on Budgetary Control. A temporary committee of inquiry to examine the critical state of transit procedures was set up by a decision adopted on 13 December 1995. This is the first such committee to be set up by Parliament on the basis of Article 138(c) of the EC Treaty. It has 17 members and will report to Parliament within 12 months of the publication of the decision.⁷⁵

Finally, the European Parliament has announced an inter-parliamentary conference (to which members of national parliaments will be invited), organized on the initiative of its President and dealing with fraud affecting the European Communities' budget, to be held on 23 and 24 April 1996, to coincide with the IGC.

⁷⁴ On 29 and 30 May 1995.

⁷⁵ It was published in OJ C 7, 12.1.1996.

Section 2: THE COUNCIL

The Council achieved some particularly gratifying results as regards the protection of the Community's financial interests in 1995. The demands made by the Essen European Council in December 1994 were at least partly met. The national reports and the Commission's comparative study (presented in Madrid⁷⁶) and the adoption of legislation (in Cannes and Madrid) represent the first step towards establishing the legal foundations essential to the effective protection of Community finances.

Firstly, the Regulation on the protection of the Community's financial interests was adopted on the basis of the Commission's proposal for legislation on checks and Community administrative measures and penalties in all areas of the budget.⁷⁷ The Council will continue its efforts to introduce legislation on checks to complement this provision. The Madrid European Council called for this aspect to be dealt with as soon as possible, and in any event by the end of the first half of 1996.⁷⁸

Secondly, once its working parties and coordinating committees had examined the Commission's Title VI proposals,⁷⁹ the Council adopted a convention for the protection under criminal law of the Community's financial interests on 26 July 1995.⁸⁰

Because of the strategic importance of the political message to be conveyed to Europe's citizens, it proved impossible to conclude the debate on the draft convention on the protection of the Community's financial interests in the time envisaged by the Council and the Commission. A supplementary protocol is currently under discussion, which would harmonize penalties for corruption among national and European officials and staff of Community and national institutions and agencies.

Thirdly, the Council will continue to examine and analyse the national reports on the application of Article 209(a) of the EC Treaty and on the measures taken to combat waste and the misuse of Community financial resources. The summary prepared by the Commission at its request is an interim report which will serve as a basis for continued analysis, drawing on the Council's conclusions.

⁷⁶ See Chapter 4, single section, page 33.

⁷⁷ See Chapter 1, section 2, point 1, page 10.

⁷⁸ The Council has delegated work on this topic to its Budget Committee (see 1994 annual report on The Fight Against Fraud, chapter 4, section 3). This specialist body has been prominent since the introduction of the Commission's annual anti-fraud report in preparing the political impetus articulated by the Council in specific conclusions which have been instrumental in securing substantial progress in 1995.

⁷⁹ See the chapter and section of the 1994 annual report on The Fight Against Fraud referred to above. The working party on criminal law and Community law was particularly active in 1995, producing significant practical results.

⁸⁰ See Chapter 1, section 3, page 13.

The Madrid European Council accordingly concluded that over and above the principle of assimilation embodied in the first paragraph of Article 209a of the EC Treaty,⁸¹ it is the duty of both Member States and the Community institutions to ensure an equivalent level of protection of Community finances throughout the Union.

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The need for continued efforts to equip the Community with effective means of protecting its finances and ensuring effective penalties for serious financial fraud was strongly emphasized at the Madrid European Council, and indeed the subject of fraud and the protection of the Community's financial interests merited a section of its own in the final conclusions.

Section 3: THE COURT OF AUDITORS

In the course of carrying out its traditional tasks of examining the legality and regularity of revenue and expenditure and ensuring sound financial management by the Communities, the Court of Auditors, the body responsible for auditing the Communities' finances, has had ample opportunity to reflect on the problem of fraud in the Community budget.

In its annual report on the 1994 budget,⁸² the Court defined its role in this area, reiterating that prime responsibility for the prevention, detection and investigation of fraud rested with the authorities which manage and supervise the implementation of the Communities' financial policies.

Cooperation with the Commission is particularly important in this respect, for the Commission has to achieve the highest possible degree of transparency in all its expenditure and revenue operations and at the same time lay down clear and precise rules on the specific subject of fraud prevention and the exchange of information between the specialized departments of the two institutions.

Procedures to strengthen co-operation between the Court of Auditors and the Commission are currently being studied.

Section 4: THE COURT OF JUSTICE

The Court of Justice of the European Communities has always had a vital part to play in the area of protecting the Community budget. The importance of that role has recently been made fully evident with the handing down of a number of decisive judgments.

The judgment of 21 September 1989⁸³ laid the foundations for Member States' obligations towards the Community budget, which are now set out in the first and second paragraphs of Article 209a of the EC Treaty, i.e. the principle that they must take the same measures

⁸¹ See Chapter 4, single section, point 2, page 34.

⁸² OJ C 303, 14.11.1995.

⁸³ Case 68/88 *Yugoslav maize*.

to counter fraud affecting the financial interests of the Community as they take in relation to their own financial interests, with details of how they should work together to this end. These principles have since been confirmed by the Court in the judgment given on 14 July 1994 in *Milchwerke Köln/ Wuppertal v HZA Köln/Rheinau*.⁸⁴

In other cases referred to in this report,⁸⁵ particularly in Chapter 1, the Court gave detailed judgments on the lawfulness of Community administrative penalties imposed in the area of the common agricultural policy and recognized the Commission's power to impose such penalties in its implementing legislation (judgments of 27 October 1992⁸⁶ and 12 October 1995).⁸⁷ These judgments confirmed the Commission's power to impose penalties including the temporary exclusion of an operator from entitlement under an aid arrangement and payment of an amount greater than the amounts wrongly received or evaded.⁸⁸

Judicial review is indeed central to the issue and must be confirmed by the Title VI instruments relating to the protection of the Community's financial interests under criminal law.

Although Article 8 of the Convention of 26 July 1995 on the protection of the European Communities' financial interests confers contentious jurisdiction on the Court and allows the Commission to refer matters to it (in relation to Articles 1 and 10 of the Convention), the question of competence to give preliminary rulings remains in abeyance.⁸⁹ The Commission attached to its proposal for an additional protocol to the Convention on the protection of the European Communities' financial interests⁹⁰ an Article 17 providing, among other things, for jurisdiction to give preliminary rulings on the interpretation of the protocol. The Council's working party on the Court of Justice responsible for these matters is at present negotiating on the question of the Court's jurisdiction to give preliminary rulings under the Europol convention. The Commission's view is that at the very least any result of these negotiations must be extended to the Convention on the protection of the European Communities' financial interests, given the pivotal role assigned to the Court in specifying the obligations borne by the Member States in relation to combating fraud.

⁸⁴ Case C-352/92.

⁸⁵ See also the 1992 report on the fight against fraud, Title I, Section 2.8.

⁸⁶ Case 240/90.

⁸⁷ Case 104/94.

⁸⁸ Article 5 of Council Regulation (EC, Euratom) No 2988/95 on the protection of the European Communities' financial interests).

⁸⁹ When the convention was signed, several of the delegations tabled declarations whereby ratification at a late date would be subject to the conferring on the Court of Justice of powers to give preliminary rulings on the Europol and CIS conventions and the convention on protection for the financial interests of the Community.

⁹⁰ See Chapter 1, Section 3, point 2, page 15.

CHAPTER 4: THE MEMBER STATES

The inclusion of Member States' anti-fraud activities in the Commission's annual report is a natural development designed to strengthen the partnership between national authorities, which carry out considerable field work, and the Commission, which is bound by its responsibility for the budget to monitor the proper use of Community funds.⁹¹

The fight against fraud is primarily the responsibility of the Member States but it is a matter of concern to everyone. There were several developments in 1995 concerning the separation of responsibilities, which led to concrete action at the highest political level. Between the Essen European Council in December 1994 and the Madrid European Council in December 1995, fifteen national reports on measures taken to combat wastefulness and the misuse of Community funds were produced. This is the subject of the first section of this chapter.

Single section: NATIONAL REPORTS ON THE MISUSE OF COMMUNITY RESOURCES - APPLICATION OF ARTICLE 209a

In its conclusions of 11 July 1994 the Council (Ecofin) asked the Commission to report on Member States' implementation of Article 209a of the EC Treaty by the end of 1995 at the latest.⁹²

The Essen European Council (9 and 10 December 1994) called on the Member States to submit reports on the measures they were implementing to combat wastefulness and the misuse of Community resources.

The Cannes European Council (26 and 27 June 1995) took note of the Member States' reports and requested the Commission to prepare a comparative summary, which was presented at the Madrid Council (15 and 16 December 1995).

1. Methods used

The comparative summary, based on the national reports, takes stock of progress in implementing Article 209a of the EC Treaty on protection of the Community's financial interests and does a round-up of the measures taken by the Member States to combat the misuse of Community resources.

To ensure that the national reports followed a standard pattern so that a proper comparison of the national systems could be made, the Commission devised a general layout for the reports as requested by the Council and this was approved by the Council

⁹¹ It should not be forgotten that around 80% of Community budget expenditure passes through national treasury departments.

⁹² OJ C 292, 20.10.1994.

(Ecofin) on 20 February 1995. By and large the Member States adhered to the proposed layout. Even so there were considerable differences between the reports, since some Member States tended to stress recent developments in their legal set-up or regulations, while others concentrated more on the organization of their inspection departments.

Overall, despite the short deadlines, the efforts made by those who compiled the national reports enabled the Commission to produce the required summary and report.⁹³ To satisfy the Council's request, the Commission also set out the avenues to be explored with a view to devising operations to step up the fight against fraud and wastefulness, so as to ensure that the Community's financial interests are properly protected.

2. Implementation of the first paragraph of Article 209a of the EC Treaty: state of play

The first paragraph of Article 209a of the EC Treaty reads: *'Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests'*. This is known as the 'assimilation principle'.

This writes into the Treaty the rule enunciated by the Court of Justice in Case C-68/88 [1989] ECR 2965 (judgment given on 21.9.1989), specifying the scope of the first paragraph of Article 5. The national reports reveal that the Member States apply Article 5 of the EC Treaty, as interpreted by the Court, in conjunction with Article 209a of the Treaty. Most of them accordingly cover both the measures they have taken to treat fraud against the Community's interests in the same way as fraud against their own financial interests and the effectiveness of their systems of penalties for infringements of Community law.

2.1 Legal instruments

Preventive measures received little attention. The Member States tended to have separate systems of penalties for revenue (covered by tax and customs law) and expenditure (with minor variations depending on the category).

- In the case of revenue the extent to which the system of penalties has been assimilated can be assessed by comparing the system which the Member States apply to Community revenue (traditional own resources) and the system they apply to their own revenue (VAT, excise duties);
- In the case of expenditure certain Member States have a specific offence of fraud involving subsidies, which also covers Community financing.

The comparison revealed discrepancies between the systems applied to revenue and expenditure regarding the effectiveness of the legal measures taken. This means that the objective for certain Member States should be to tighten up the level of protection.

Two things are immediately clear:

⁹³ See the summary report entitled "Comparative Analysis" and the recapitulative document, COM(95)556 final.

- the comparative analysis revealed that only part of the necessary data had been collected, which means that additional information is needed, particularly as regards prevention;
- the difference between the approaches taken to revenue and expenditure raises the problem of the consistency and effectiveness of operations, since it fails to reflect the fact that the techniques of organized financial crime vary according to the area of activity, but are broadly similar as between revenue and expenditure.

2.2 Administrative organization

Departmental organization as described in the national reports shows that special structures capable of dealing with own resources as a whole either already exist or are being set up. As regards the monitoring of agricultural expenditure, the national payment agencies are basically designed to achieve the quantitative targets set by Community rules. There is a predominance of independent arrangements for trade-related measures (export refunds) as there is for revenue controls (note in particular the role of special bodies and of the national audit bodies).

The Structural Funds are subject to control procedures applied by the authorities responsible for implementing the Community programmes, in particular at local level.

The summary analysis shows that most of the agencies are experienced and that the effectiveness of their controls has been proven at the level of national finances (customs duties, taxation). More generally, the public accounting rules that protect national finances in all the Member States are also applied to Community expenditure, most of which is channelled through the national budgets. However, there is a lower level of protection of the Community's interests than in the case of revenue. Since the controls are the responsibility of the management agencies, which are unfamiliar with techniques for combating large-scale fraud, they tend to be of the traditional audit and account checking kind and are, therefore, not necessarily the most effective way of detecting large-scale embezzlement and organized crime.

One way of significantly increasing the level of protection of Community resources would be to have special anti-fraud controls carried out by specialists at national level grouped into structures with far-reaching powers of investigation and working independently of the management agencies.

2.3 Results

Only half of the reports provided actual figures relating to the inspections carried out and the administrative and legal action taken.

In any case, the figures given need to be approached with some caution. This is a sensitive area, and all sorts of interpretations are conceivable: it may be that statistical notification methods have improved (which is a good thing in itself), or that the anti-fraud departments have been more active, or that fraud itself has been on the upsurge. This is doubtless why few Member states provided detailed statistics or offered analyses or commentaries in a directly usable form. There was no identification of risk areas and the sort of data in a standardized form that would need to be examined to arrive at proper Community-wide typologies was unfortunately not provided.

The national reports do not provide enough information to assess the level of assimilation of recovery procedures for misappropriated funds.⁹⁴ In all but a few cases, there is no mention of instruments relating primarily to public creditors (including Community ones). There is no description of the procedures and no mention of the links between finance departments and investigation departments.

Furthermore, for the purposes of cross-border operations there should be greater use of the opportunities offered by mutual assistance in the areas of customs and agriculture.

3. Implementation of the second paragraph of Article 209a of the EC Treaty: state of play

The second paragraph of Article 209a of the EC Treaty, which is intended to step up cooperation, reads as follows: 'Without prejudice to other provisions of this Treaty, Member States shall coordinate their action aimed at protecting the financial interests of the Community against fraud. To this end they shall organize, with the help of the Commission, close and regular cooperation between the competent departments of their administrations.'

This new provision supplements the duties laid down in the first paragraph of the same article. It is intended to create the necessary conditions for stepping up the fight against organized crime targeted at Community finances. This will require the introduction of close and regular cooperation arrangements between the departments involved. With this particular end in mind the Commission set up COCOLAF, the Advisory Committee for the Coordination of Fraud Prevention.⁹⁵

- The information provided by the Member States shows that considerable use is made of non-Community administrative cooperation and assistance instruments. These instruments are designed to protect national finances, but more structured cooperation arrangements are needed to achieve the level of protection required for Community finances under Article 209a of the EC Treaty and to resolve the difficulties currently encountered (particularly as regards the time taken to reply).
- The implementation of more comprehensive cooperation on enforcement to tackle cross-border fraud committed by organized crime rings is a particular aim of Article 209a of the EC Treaty. The discrepancies between the Member States' judicial arrangements that showed up in the reports are a serious risk and highlight the need for direct and prompt cooperation.

Some of the reports also mention police cooperation, without making a clear distinction between it and judicial cooperation. The value of administrative cooperation in this area right from the initial investigation stage is made clear (information exchange between the Member States and with the Commission). Some very practical suggestions are also put forward on stepping up enforcement cooperation, such as the possibility of conferring comparable powers on national investigators.

⁹⁴ See Chapter 6, section 4, page 74.

⁹⁵ See Chapter 5, section 2, page 43.

- The national reports make it clear that, although the Community instruments for administrative cooperation and mutual assistance are not totally neglected, their full potential is not exploited. Some of the reports even referred to certain difficulties that can slow down investigations and enforcement proceedings, such as administrative, legal and technical differences which hamper the movement of information between Member States.

4. Avenues to be explored

There are many, but it has not proved possible to achieve the initial aim of this exercise, which was to discover whether there was a correlation between the measures and means intended to protect national finances and those intended to protect the Community's financial interests. It was not possible to produce a proper comparative analysis of the results of the fight against national and Community fraud owing to a lack of sufficiently detailed data.

So although the principle of "assimilation" was clearly demonstrated, it is trickier to draw any conclusions on exactly how far this has progressed in the Union. Analysis of the arrangements in place (instruments, organization) reveals that by and large Community revenue is better protected than Community expenditure and that on the expenditure side agricultural expenditure appears to be scrutinized more closely than expenditure under the Structural Funds.

Be that as it may, as our inquiries and analyses currently stand, there are insufficient grounds for concluding that there is 100% equivalence. In addition, protection of financial interests differs according to the Member State. There needs to be ongoing evaluation of the practical steps taken to ensure that the Community's financial management is really transparent and that its financial interests are protected beyond any doubt. This leads to the thought that the principle of assimilation must be completed by the concept of equivalent protection throughout the Community.

With this in mind, the Commission has put a series of avenues to be explored at the end of each descriptive section in the summary report to the Council.

- One set of considerations concerns the assimilation principle. Apart from the problems inherent in having one approach for protecting revenue and another different one for monitoring the proper use of expenditure, there is a need to adopt measures that are up to the job. This means measures that are effective and that deter crime rings specializing in financial crime. The same applies to prevention, which it was not possible to analyse sufficiently on the basis of the national reports.

This realization points to the need for a clear policy of administrative penalties in the area of expenditure. Penalties of this type already exist at national level. Obviously they are independent, but they could be added to the Community administrative penalties that are provided for, in the area of agriculture for example. The horizontal Commission regulation adopted by the Council lays down

a legal basis that should serve as a reference framework, for example, for introducing effective penalties on the expenditure side generally.⁹⁶

In the same vein, the transposal into national legislation of the convention on the protection of the Community's financial interests should provide the legal basis the Member States need to create a specific offence of fraud against the Community budget.⁹⁷ In this context, it makes sense for companies that enjoy the benefit of Community funds to incur the penalties in the event of fraud.

There should be greater equivalence of penalties between the Member States, so as to avoid creating areas of lighter enforcement and deflecting business towards the "softer" Member States.

- A second set of considerations concerns the organization of national inspection and anti-fraud departments. Specialist investigation services should obtain the necessary powers to carry out their tasks in an increasingly difficult context. Moreover, the development of multidisciplinary structures with wide-ranging investigative powers should be highlighted. There are numerous examples: Belgium's OCDEFO (Central Office for the Prevention of Organized Economic and Financial Crime) consists of operational staff specializing in customs and taxation as well as prosecution staff and police officers. Italy's *Guardia di Finanza* is also on its way to becoming a key instrument of a policy laid down at the highest level by the Interministerial Committee for the Prevention of Community Fraud.⁹⁸

This list is far from exhaustive, but these examples serve to show that there is an interesting trend which is significant in that it takes account of the special nature of Community fraud prevention work (lengthy large-scale investigations that require the services of experts in different fields).

- A third set of considerations concerns the results of anti-fraud work. Reducing the risk of fraud involves extracting the maximum benefit from intelligence gathered in the field. For example, the national reports showed that the Member States had become aware that fraud was no respecter of national boundaries and had taken measures accordingly.

Fraud involves such a vast amount of information that more detailed knowledge of the results of anti-fraud work is needed right from the initial investigation stage to recovery and the ordering of penalties.

This means that national practices should be made more similar at Community level. The same applies to controls, which should be made comparable throughout

⁹⁶ See Chapter 1, section 2, page 10.

⁹⁷ See Chapter 1, section 3, page 13.

⁹⁸ This Committee was set up, in the spirit of Article 209a of the EC Treaty and answers to the Prime Minister's own department for the coordination of Community policies, to which the operational unit of the *Guardia di Finanza* established by Decree of the Prime Minister dated 11 June 1994 is attached.

the Community, recovery rules, administrative penalties and the rules governing their imposition.

Several of the national reports reveal the enduring desire for simpler Community regulations. The Commission feels the same way, and the action it is taking on this subject is designed to ensure that fraud is not facilitated by excessively complex regulations.

- The last set of considerations concerns cooperation arrangements. A number of the national reports acknowledge the need to develop them. This may provide scope for solving the problems mentioned in connection with the operation of the mutual assistance mechanisms.

There is also a need to improve the operational links between the various departments responsible for prosecuting the perpetrators of serious and complex fraud, for example by building up personal contacts and exchanges of officials.

As regards cooperation at the enforcement stage, the information provided in the national reports reveals just how urgent it is for the national authorities to have effective arrangements to meet the need to protect the Union's finances: this will involve more fluid information exchanges between the national enforcement authorities and the relevant Commission departments, increasing the means and powers available to fraud investigators and, in the area of criminal law, taking the measures needed to implement the Convention on the protection by the criminal law of the Community's financial interests as quickly as possible.

In the same vein, emphasis was placed on the need to adapt the information systems for the Community mutual assistance mechanisms. Certain cooperation arrangements put forward by the reports should be explored and built on (such as action to be taken on cross-checking of goods in free circulation).

Mutual assistance on recovering debts owed to the Community needs to be made more efficient, regardless of which budget area is affected.

The Advisory Committee for the Coordination of Fraud Prevention meets regularly to assess the strengths and weaknesses of the arrangements and plan any necessary alterations.

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The analysis carried out by the Commission is the first stage in an ambitious programme to tackle fraud simultaneously from all sides, encompassing all aspects of anti-fraud activity including prevention, enforcement and administrative and judicial cooperation. Maximum use must be made of both the national and Community intelligence set-ups, in line with the actual risks and circumstances encountered. Operations devised at the highest political level become credible only when concrete progress is made in all areas relating to the protection of the Community's financial interests.

The next stages in the programme will involve putting these new initiatives into effect and progress will be reported on at forthcoming European Council meetings.

As stressed by the Madrid European Council, Community finances cannot be effectively protected unless the policies implemented are supervised in a comparable way throughout the Community. Both the institutions and the Member States are working towards this end.

CHAPTER 5: COOPERATION AND PARTNERSHIP

As in previous years, this Chapter describes the fraud prevention seminars held by the Commission, either on its own initiative or at the request of the Member States. In addition to these seminars, contacts with the specialist departments at national level may take the form of bilateral meetings or consultations within the appropriate institutional framework, namely the Advisory Committee for the Coordination of Fraud Prevention. In 1995 this Committee organized its work so as to provide an overall view of fraud prevention policy.

The Member States, for their part, are continuing to adapt their specialized departments to the interdisciplinary and multisectoral dimension of Community fraud. Contacts with the Commission are on an ever-larger scale and initiatives have been launched in various areas. Some examples are given in this Chapter (see Section 3 below).

Section 1: SEMINARS AND EXCHANGES OF OFFICIALS

Since SG/UCLAF was set up in 1988, a large number of general seminars have been held to spread awareness of the coordinated action taken by this Unit and the Commission's other specialist departments. These seminars have dealt with a wide range of topics which have now been brought to the attention of almost all the departments concerned in the Member States.

It was essential to ensure that working methods (inspections and investigations in the field) were adapted to the Community dimension of fraud. Just as the economic context is constantly changing, so too are the fraud mechanisms employed. Initially, therefore, the aim of the general seminars held by the Commission was to acquaint the competent officials with the characteristic features of transnational Community fraud.

These general seminars (other than those held for the new Member States) were followed in 1995 by special-subject seminars. In accordance with its work programme, the Commission continued to hold special training courses for the officials responsible at national level for the prevention of fraud against the Community budget.

- In 1995 general training courses were held for officials from the new Member States: in Brussels two awareness-raising seminars were held for a small number of senior officials (for Swedish, Finnish and Austrian officials); seminars were also held in the Member States for larger groups of officials (in Finland and in Sweden).⁹⁹

The officials concerned belonged to the tax inspectorates, customs, audit offices, police and judicial authorities.

- Another of the Commission's priorities is to provide specialist training for departments and bodies engaged in the fight against economic and financial crime,

⁹⁹ A seminar will be held in Austria in the first quarter of 1996.

including prosecution and other legal action (on-the-spot intervention teams, administrative and legal authorities, etc.).

To this end, special training courses were held in Brussels in 1995: for senior officials in the Danish police; for inspectors in the ECD (a branch of the Dutch Ministry of Economic Affairs); for inspectors in Italy's Guardia di Finanza. Five seminars were held in the Member States: in Portugal, a seminar on the Structural Funds¹⁰⁰ for officials of the IGAT (the Inspectorate-General for the National Administration); in Cologne (Germany), a seminar for prosecutors dealing with economic crimes, including fraud to the detriment of the Community finances; in Barcelona (Spain), a seminar on the Cohesion Fund; in Deauville (France), a seminar for members of the Police Judiciaire (criminal investigation department); and in Athens (Greece), a seminar for officials responsible for management, surveillance and the prosecution of irregularities in the field of the structural policies.

By holding these different types of training courses the Commission hopes to develop direct and fruitful cooperation with the national bodies concerned.¹⁰¹ Direct contact between Community officials and those responsible for day-to-day fraud prevention is seen by the Commission as a way of ensuring mutual understanding and trust. A similar aim is pursued by the "workshops",¹⁰² where preparations are made for enquiries or multisectoral investigations.

As part of the grander pre-membership strategy, the Community is also holding information seminars and meetings in the countries of Central and Eastern Europe and is thus establishing contact with economic enforcement officials, with whom it will soon be cooperating on the prosecution of fraud. The first such information seminar, which dealt with operational cooperation and the exchange of data, was held in Brussels on 10 and 11 July 1995 and was attended by eight customs inspectors from the Czech Republic (with whom the Commission had already worked on certain special investigations).

In line with its policy since 1994, the seminars which the Commission plans to hold in the near future will be on a smaller scale (the most effective format) and will take a more specialized approach.

Lastly, fourteen seminars were held in 1995 under the Matthaëus programme (a Community action programme for the training of customs officials organized by DG XXI), seven of which were particularly concerned with the prevention of customs fraud. Similarly, eleven seminars were held under the Matthaëus Tax programme.¹⁰³ Three were held specially for the officials responsible for VAT and excise duties in the three new

¹⁰⁰ In 1996 particular attention will be given to training in this particular area and in that of the Cohesion Fund.

¹⁰¹ See Section 3 of this Chapter.

¹⁰² These working groups, which study specific cases, provide an excellent opportunity to exchange views on the problems encountered and the solutions to be applied. Generally speaking, these solutions involve closer judicial cooperation or call for resources which may or may not be available (it may be recommended that the Commission define new legal bases).

¹⁰³ The purpose of this programme is to improve administrative cooperation and develop mutual understanding as Member States implement the single market in the field of indirect taxation. Control measures to prevent fraud are essential in this area.

Member States and dealt with the Community rules governing these matters. Officials from the Member States explained the operation of the single market and shared their know-how by outlining their control systems and mechanisms.

These Mattheus and Mattheus Tax programmes also lead to exchanges of officials between the Customs administrations of the Member States (390 in 1995) and between the administrations responsible for fiscal questions (118 officials in 1995). There were also sixty exchanges between Member States under a scheme to develop audit methods for the scrutiny of company accounts.

Section 2: THE ADVISORY COMMITTEE FOR THE COORDINATION OF FRAUD PREVENTION

The activities of the Advisory Committee expanded considerably in 1995. Drawing on the experience gained in 1994,¹⁰⁴ the Commission, which chairs the Committee, and the delegations from the Member States continued their deliberations on various subjects relating to the protection of the Community's financial interests, with special reference to the Commission's anti-fraud programme for 1995 and its 1994 annual report.

In 1995 the Committee held three plenary meetings: on 1 February, on 31 May and 1 June (two days) and on 4 October.

The usefulness of the Committee's work was emphasized by the Council in its conclusions of 19 June and 27 November 1995 on the fight against fraud, particularly as regards the monitoring of the Commission's anti-fraud programme, the scrutiny of the 1994 annual report, and the follow-up to the national reports and the Commission's comparative analysis of the aspects covered by the EC Treaty.¹⁰⁵

In addition to the scrutiny of the abovementioned reports, the Committee's meetings were mainly concerned with the development of legal and operational means of achieving more effective fraud prevention. The Committee provided a forum where Member States could obtain information direct from Commission staff.

Wide-ranging discussions were held on matters relating to the regular flow of information between Member States and between the specialized national departments and the Commission (UCLAF) (particularly as regards the notification of irregularities discovered by the Member States in the field of the Structural Funds and the Cohesion Fund).

The nature and tasks of the various sectoral committees dealing with fraud prevention were confirmed. The bodies dealing with each specific area are thus the Committee for Mutual Assistance, the Advisory Committee on Own Resources (ACOR) and the Standing Committee on Administrative Cooperation in the field of Indirect Taxes.

These Committees may comprise subcommittees or "technical" working parties, which are attended by experts from the Member States and by representatives of the Commission departments whose activities have repercussions on fraud prevention.

¹⁰⁴ The Advisory Committee was set up by a Commission decision of 23 February 1994. See the annual report on the fight against fraud for 1994, cited above.

¹⁰⁵ See Chapter 4, single section, page 33.

Mention may be made of the SCENT/CIS Working Party (which answers to the Committee for Mutual Assistance), the sub-group on irregularities in the agricultural sector, the various working parties on data processing and accounts, the ACOR sub-group on recovery and the anti-fraud sub-group of the Standing Committee on Administrative Cooperation in the field of Indirect Taxes.

Section 3: PARTNERSHIP WITH SPECIALIST DEPARTMENTS IN THE MEMBER STATES

The Commission's annual report for 1994 mentioned the contacts established between the UCLAF and certain specialized bodies in the Member States. These contacts, which are frequently informal, form part of the overall policy pursued by the Commission under its fraud prevention programme.

Know-how is exchanged at meetings where the emphasis is placed on operational aspects (directly measurable in terms of results) of the fraud investigations conducted under the partnership arrangements. Training courses, special-subject seminars and similar events also provide opportunities which the Commission earnestly and discreetly endeavours to exploit.

The contacts established in 1995 were constructive and positive, the Commission having cooperated throughout the year with each of the national departments responsible for the detection, prosecution and prevention of fraud committed in the Member States to the detriment of the Community budget. These were primarily the customs departments concerned with frauds involving complex transactions in the trade in products requiring a significant degree of co-ordination which is carried out using procedures well established at Union level. They also included the financial control departments coming under the Ministries for Economic and Financial Affairs (such as the Inspection Générale des Finances in France and the IGAE¹⁰⁶ in Spain), the national inspectorates for various sectors (including the social sector) and criminal investigation departments in cases requiring prosecution in the courts (national police and gendarmerie), e.g. organized financial crime.

One example is the Belgian OCDEFO (Central Office for the fight against Economic and Financial Crime).¹⁰⁷ This body works under the auspices of the Ministry of Justice. Investigators are placed at its disposal by the Belgian gendarmerie, the Belgian CID and the Comité Supérieur de Contrôle. Since each of these bodies has its own traditions and its own approach, the aim is (in the words of the report) to place new police methods and a spirit of enterprise at the disposal of law enforcement.

The OCDEFO carries out operational enquiries in those areas of the Community budget which are directly affected by large-scale fraud. It also investigates money laundering, serious tax offences, stock-exchange offences and serious social fraud.

¹⁰⁶ Intervención General de la Administración del Estado.

¹⁰⁷ OCDEFO published its first report, which covered 1994, in November 1995.

To the same end Italy's Guardia di Finanza has set up a special unit for the prevention of Community fraud.¹⁰⁸ It aims to provide an appropriate response to the need to implement the first paragraph of Article 209a of the EC Treaty, which is concerned with equivalent protection of the Community's financial interests.

The Guardia di Finanza is a multidisciplinary body which deals with market intervention as well as own resources and the Structural Funds. It has all the necessary means for carrying out exhaustive controls in all parts of Italy.

The Italian Government intends this special unit to be responsible chiefly for the centralized management of control operations targeting offences against the EC budget. Since the essential purpose of the unit is to pursue a long-term objective, the ongoing nature of its work must be emphasized.

In Spain the Guardia Civil has the task of protecting and monitoring the State's tax interests and is responsible for taking the necessary steps to prevent any type of smuggling on land or sea.

Combining its roles of administrative police force and criminal investigation department, the Guardia Civil has the capacity to carry out all sorts of investigations, from simple administrative enquiries to the prosecution and prevention of elaborate offences perpetrated by transnational criminal organizations.

Section 4: MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS BETWEEN THE COMMUNITY AND NON-MEMBER COUNTRIES

In line with the briefs obtained from the Council for the negotiation of agreements containing protocols on mutual assistance in the customs field, the Commission held further talks with several non-member countries with a view to strengthening the Community's arrangements for the prevention of customs fraud.

In 1995 agreements containing such protocols were initialled or signed with Tunisia (signed on 17 July), Morocco (initialled on 16 November), Israel (initialled on 20 November and interim agreement signed on 18 December), Slovenia (signed on 17 July 1995) and the Trans-Caucasian republics (Armenia, Azerbaijan, Georgia, signed on 15 and 19 December 1995).

Pending the entry into force of the agreements signed with most of the CIS countries, interim agreements on mutual administrative assistance on customs matters falling within the Community's sphere of competence were signed with Belarus (June), Kyrgyzstan (9 February), Moldova (2 October), Russia (17 July) and Ukraine (1 June).

On 1 January 1995 the free trade agreements signed with the Baltic States in 1994 came into force. Moreover, the Europe Agreements signed with the Czech Republic, Slovakia, Romania and Bulgaria entered into force on 1 February 1995, thus extending mutual assistance beyond the confines of the Community.

¹⁰⁸ Known as the "Nucleo Speciale per la repressione delle frodi comunitarie".

Negotiations continued with the Faroes, Jordan, Egypt, Lebanon, South Africa, the United States, Canada and South-Korea.

Lastly, the European Parliament approved the conclusion of an agreement on customs union between the Community and Turkey. This agreement, which also includes a protocol on mutual assistance, entered into force on 1 January 1996.

CHAPTER 6: INVESTIGATIONS

The need for protection for the Community's financial interests becomes clearer with events on the ground every year that passes. The range of forms of delinquent conduct is such that two different types of fraud can be distinguished.

The first is fraud (or irregularity) which could be described as individual forms of conduct by economic operators seeking to use their competitive position on international markets to boost their market share to the maximum, often interpreting the rules in ways that are at the limit of what is lawful. Such cases may often be national in scale, in which case the Commission's operational task is to support the Member States in their inspection and investigation work by giving them the added benefit of its experience of the methods in force at the Community level, depending on the cases involved and any difficulties which arise.

Then comes conduct which is deliberately fraudulent in intent and organized in a thoroughly businesslike way. There are criminal aspects to this type of fraud which need to be looked at in the broad sense. Such fraud is committed either by individuals who, because of the very nature of their activities, intentionally organize their activities in ways commonly described as major financial crime or organized crime and whose ability to mobilize substantial resources, particularly money, is far from negligible. There is also a transnational aspect to it, and there may well be a congeries of individual offences committed in several Member States (the multinational aspect) but linked to each other with a single, probably covert, decision-maker behind them. These can have a devastating effect on the credit of the Community, its institution and the Member States.

The Commission's job here is to take unmistakable and vigorous action against this nuisance, in collaboration with the Member States' investigation services. It has accordingly decided to reorganize its internal structure so that a single, independent and specialized department is responsible for providing the requisite support to national authorities that do not have this type of structure. Investigating and detecting fraud is not, of course, an end in itself. The need is for tougher enforcement measures against major crime and for equivalent criminal penalties in all Member States for serious fraud against the Community budget; the scale and complexity of the problem demand an immediate response that will be have the maximum deterrent effect. That is why, in the context of the Council's work,¹⁰⁹ the Commission's paramount wish is that the Member States should reach agreement on implementing an appropriate penal policy. As soon as an investigation strays beyond national frontiers, the Member States' scope for action is limited, procedures are lengthy, not to say never-ending, and the grounds for the Commission to act become abundantly obvious, especially when it comes to the target it has set itself of successfully establishing effective legal cooperation between the national authorities responsible for investigating cases.

The fact is that fraud on this scale is invariably transnational. The higher the financial stakes, the more sophisticated the methods applied. The networks behind it exploit the smallest loopholes to take advantage of ongoing developments and adjust efficiently by

¹⁰⁹ See Chapter 1, Section 4, page 18.

setting up the requisite structures and establishing circuits for the exchange of information and money in and sometimes even outside the territory of the European Union.

The difficulties facing the Member States and the Commission are innumerable and have to do with the peculiarities of this type of organized financial crime as it hides behind an appearance of legality to conceal its main objective, which is to loot the Community's coffers. It seeks to exploit to the full the weaknesses generated by the combined operation of Community rules and the national legislation governing their application, in order to attack sectors identified as vulnerable and more difficult to monitor where the potential gains are very high compared with the risks, which are still only minor in the absence of a proper penal response.

One of the main areas under attack is that of Community transit, where, when fraud is detected, the application of the guarantee system to the principal is still not widespread enough.¹¹⁰

Organized crime is also active in other types of fraud against the Community budget, particularly fraud involving the origin and value of products exported from certain third countries to the Community, and the preference arrangements.

Inspections carried out on the spot show that fraud by some operators in these areas involves several Member States and entails making identical resources available over a single period. The defence systems some of these operators set up also presuppose a high degree of preparation and collusion between suppliers in third countries and importers.

In some cases, evidence has come to light that there are organizations, generally based outside the Community, which have accomplices in several countries and are capable of supplying certificates of origin that are either false, or genuine but drawn up in the names of front companies; these can be used by buyers in the Community to have goods released for free circulation without having to pay the normal customs or anti-dumping duties on them.

In other cases, the initiative in carrying out the fraud has come from within the Community itself. For instance, European companies, fully aware of the circumstances, have non-originating raw materials delivered to assembly or processing firms and import the finished products under certificates of preferential origin which they know full well have been wrongly obtained.

In both such cases, the true origin of the goods is, at least on the surface, "laundered" away by completing the customs formalities. The consignees can market the goods in the Community through the lawful distribution channels without having to run the risks or face the extra costs associated with illicit selling.

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¹¹⁰ See Chapter 2, Section 3, point 1, page 23.

This chapter is, logically enough, structured to take account of these findings. As the rise in the number of transnational fraud cases discovered has shadowed the development in import-export dealings between the Community countries and with third countries, it is reasonable to group all the sectors concerned under one heading which identifies these particular cases.

The statistics speak for themselves:

- Of 12 000 cases notified by the Member States between 1991 and 1995 and affecting traditional own resources and expenditure financed by the EAGGF Guarantee Section, 120 (or 1% of the total) by themselves account for more than 50% of the total budgetary impact. It has also emerged that 3% of the total number of cases notified by the Member States involve individual amounts of more than ECU 1 million, which represents altogether more than two thirds of the overall sum notified (in evaded duties and expenditure diverted or unduly received).
- Of the 273 cases under investigation co-ordinated by the Commission, 20% involved sums of more than ECU 100 000, and in half of them the amounts involved were more than ECU 1 million.

Fraud cases involving organized crime are few and far between, but their effect on the budget is considerable. The Commission therefore focuses particular efforts on such cases because it is in these areas, where fraud is being organized from one or more countries, where there is greatest need of active support from the Community.

The illustrative character, financial impact and variety of the investigations reported in this chapter are a sign of the need for both the national and Community anti-fraud agencies to keep up the alert on all fronts.

Section 1: MAJOR ORGANIZED TRANSNATIONAL FRAUD CASES

This section describes a number of inquiries which have involved the carrying out of a considerable number of on-the-spot controls in partnership with the Member States. In some of them, carried out in 1995, a large number of investigations were made on the spot in partnership with the Member States. They brought to light major fraudulent practices involving milk products, cereals and rice, olive oil, beef, tobacco, sugar and wine products. A specific paragraph is devoted to cigarette smuggling (a matter being dealt with by a special task force in the Commission), the European Social Fund (structural policies) and tourism (direct expenditure).

The inquiries mentioned in this section have sometimes lead to missions of enquiry spread out over several years.¹¹¹ The departments responsible in the Member States, working in conjunction with the Commission, made great efforts to detect fraud rings. Major fraud circuits have been brought to light, many of them operated by organized crime networks. These are complex transnational or multinational frauds involving a

¹¹¹ Indeed, certain cases have been mentioned for the first time in the earlier annual reports, in particular those of 1993 and 1994.

number of Member States and certain non-member countries. The response has been to establish close cooperation between the departments concerned in Member States and the authorities in the non-member countries.

1.1 Refined sugar¹¹²

It was established that 1 375 tonnes of C sugar, which were removed from export procedures to Eastern Europe and never actually left Italian territory, were used for domestic wine production. The same investigation further revealed that some 1 243 tonnes of non-C sugar were later used for sweetening wine.

Of the 65 people accused of smuggling, irregular use of sugar in wine production, tax offences and forgery, 38 were remanded in custody.

The Asti Public Prosecutor's Office informed the Commission of the progress of judicial proceedings in Italy in this case in 1995.

The Italian authorities still have to ascertain whether other offences were committed resulting in losses for the Community budget.

1.2 Exports of cheese, meat and milk products¹¹³

These products were diverted to Greece although they were declared for export to Jordan, Bulgaria and Lebanon with payment of refunds.

Investigations revealed that the fraud was the work of organized financial crime professionals using networks of companies in Denmark, Germany, Cyprus and Greece, whose names changed regularly but whose role was always the same: to claim to be exporting outside the Community with payment of refunds.

The firms operated through various supply channels and also used different means and methods of transport to escape detection.

Forged certificates for release for consumption in non-member countries were produced in support of the applications for export refunds from the Community. In reality the customs documents declaring that the products had reached their destination were forgeries, as the products were reexported to the Community and released for free circulation in Greece.

Investigations are continuing in the Member States concerned, as other companies involved in the scheme have been identified. An administrative cooperation mission went to Bulgaria to collect further evidence.

Criminal proceedings have been initiated against four people, one in Denmark, one in Germany and two in Greece.

¹¹² See the annual reports on the fight against fraud for 1993, Chapter 4, Section 1.1, and for 1994, Chapter 5, Section 2.2.1.

¹¹³ See the annual report on the fight against fraud for 1994, Chapter 5, Section 1.1.4.

Steps have been taken to recover ECU 5 million in wrongly paid refunds from suppliers, and the customs duties and agricultural levies evaded in Greece since 1989 total around ECU 9 million.

1.3 Imports of milk powder and butter into the Community¹¹⁴

- During inquiries carried out in the Community in 1991 and 1992 concerning the removal from the Community transit arrangement of some 200 consignments of milk powder being carried from Belgium to Spain under cover of customs documents drawn up in Antwerp, Spanish investigators undertook checks at Spanish companies exporting milk powder in order to determine where the products were coming from.

They found that certain companies were purchasing milk powder, via intermediaries, from a firm claiming to be importing a chemical product declared to be coming from the Czech and Slovak Republics.

In the course of administrative cooperation missions in the Czech and Slovak Republics in 1994 and 1995 under the protocol on mutual assistance, it was found that 30 consignments of milk powder (720 tonnes) and some 200 consignments of frozen butter (5 000 tonnes) exported from these countries in 1992, 1993 and 1994 had been covered by a false declaration of product in Spain.

The products falsely declared were respectively milk powder and frozen butter.

The agricultural levies evaded in Spain are estimated at around ECU 15.7 million.

- During an administrative cooperation mission in Austria in 1994 it was found that large quantities of butter and milk powder originating in Eastern Europe were being processed in Austria (under the inward processing arrangements). This processing involved adding a minimum percentage (less than 1%) of prepared culture mediums (micro-organisms) to the raw material, enabling them to be imported into the Community under a customs heading carrying no import duties.

The goods were then exported to the Community, where they were released for free circulation (in Italy, Germany and Spain) under tariff headings for which no agricultural levy was applied. When the goods were cleared through customs, the operators presented genuine tariff papers issued by the German authorities on the basis of erroneous information. Tests carried out *ex post* showed that the tariff classification requested was not the right one. Over 20 000 tonnes of milk powder and over 6 000 tonnes of butter were wrongly declared in this way.

The duty evaded comes to over ECU 66 million.

¹¹⁴ See the annual report on the fight against fraud for 1994, Chapter 5, Section 1.1.1.

1.4 Removal of milk powder and butter from the Community transit arrangements¹¹⁵

The investigations into the Spanish companies were initiated at the request of the Commission following the discovery of purchases of milk powder outside the usual marketing channels.

In December 1995 the Spanish authorities questioned four members of an organized gang making up a network of European companies irregularly bringing milk powder into Spain from Estonia.

The firms involved diverted from the Community external transit arrangements to the internal market 650 tonnes of milk powder originating in Estonia and intended for Morocco. Included in this smuggling network were two Spanish companies based in Vic and Montornes del Valles whose officers were charged with offences. Additional investigations by specialized departments in the Member State concerned are continuing to determine what role was played by certain Dutch, French and German companies.

The investigations already completed in Germany, the Netherlands and Spain suggest that the cost to the Community is around ECU 650 000.

The Spanish authorities are investigating other similar fraudulent operations involving an estimated ECU 1 million. These inquiries are being coordinated by the Commission, which is also helping with the preparation of criminal proceedings.

1.5 Removal of sugar from the Community transit or TIR arrangements¹¹⁶

In June 1994 the German authorities informed the Commission about a case of fraud involving the dispatch of sugar originating in the Czech Republic and Poland to non-member countries (Morocco and Angola) in transit through the Community. The goods, which were carried by Czech and Polish haulage companies under the TIR convention, were supposed to have left the Community in Spain or Portugal.

In actual fact the goods remained in Spain and Portugal, after customs documents with forged stamps were presented.

As the sugar was not exported out of the Community, the customs duties suspended under the transit arrangements became payable. A total of 19 000 tonnes of sugar, covered by some 950 TIR carnets, was exported in this way from Poland and the Czech Republic by some 150 different haulage companies. The Spanish and Portuguese authorities confirmed that the fraud had taken place, in that the sugar dispatched was not presented at the customs offices concerned.

The financial impact is some ECU 9 million.

Judicial proceedings are in progress in the countries concerned both in the Community and elsewhere.

¹¹⁵ See the annual report on the fight against fraud for 1994, Chapter 5, Section 1.1.1.

¹¹⁶ See the annual report on the fight against fraud for 1994, Chapter 5, Section 1.1.3.

1.6 Meat carousel¹¹⁷

This operation involved imports of live cattle from Eastern Europe to Italy under the inward processing arrangements followed by re-exports of low-quality cuts and offal to Malta.

After being stored in Malta the goods were brought back into the Community. The investigations which the Italian authorities, in collaboration with the Commission, have now completed reveal that when the containers from Malta and bound for Eastern Europe were passing through Italy the contents were removed and were then exported with refunds, along with other products from the internal market, to various non-member countries.

The financial impact of this matter was finally put at ECU 18.5 million in evaded levies and ECU 24 million in wrongly paid export refunds.

Working jointly with the Italian authorities, the Commission sent a mission to Gabon, the main destination for the diverted products, which were systematically declared for export as "pieces of meat from the hindquarters of adult male bovine animals". Evidence was found on the spot that most of the products reaching their destination were low-quality cuts from the front quarters of the animal. The refund papers were discharged only because the Gabonese entries for home use carried the general description "beef".

In a number of cases it was shown that the Gabonese import declaration carried a clear description of the real nature of the meat. In those cases the exporter got an agency of an international security company to replace this compromising original by an import certificate describing the goods simply as "chilled beef". Examination of the business and transport papers which it ought to have carried out before making out the certificate would have enabled it to describe the goods in accordance with the reality.

Criminal charges have been brought against 119 people for conspiracy, fraud against the Community budget, smuggling, tax evasion, forgery and corruption.

42 people have already been convicted and assets worth around ECU 30 million have been confiscated.

Because of the seriousness of the case the Commission and the Italian State have both asked the judge directing the preliminary investigation in Turin to join a civil action to the criminal proceedings.

1.7 Imports of butter-based food products¹¹⁸

Investigations continued in 1995 in this case involving imports of butter-based food products originating in Hungary and the Czech Republic. The products were declared as "sauce" (or liquid butter) when imported into Italy and San Marino, with the result that the duties due were not paid.

¹¹⁷ See the annual report on the fight against fraud for 1994, Chapter 5, Section 2.2.2.

¹¹⁸ See the annual report on the fight against fraud for 1994, Chapter 5, Section 1.1.2.

Criminal charges have been brought against the importer in Italy. The San Marino authorities are responsible for recovering the arrears on the products imported into San Marino. The recovery procedure is still in progress in respect of the duty owed.

It was established that the goods were processed in part into butteroil and re-exported from the Community with payment of refunds. Although butteroil does qualify for refunds, the amount may under no circumstances exceed the amount of import levies paid. All the destinations of the consignments to the Community have been traced. The Member States have been asked to recover the difference between refunds paid and import levies charged. The amounts have not yet been determined.

The Italian authorities' investigations have further revealed that the same network was behind the irregular imports of 4 000 tonnes of Hungarian butter, declared as a cocoa-based preparation to evade customs duties and agricultural levies. This product was then sold, mainly in France, as Italian butter.

Investigations are continuing in France and Italy with a view to determining the ultimate destination of these products and the exact amount of the wrongly paid refunds.

Organized crime networks were found to be involved in all these cases. As more than one Member State was concerned, it was soon apparent that administrative action at national level alone would not put an end to the fraud. Judicial cooperation between Member States is more necessary than ever, if only to implement concerted action, the only effective way of bringing the perpetrators to justice.

1.8 Removal of Czech butter from the Community transit arrangements

This case concerns the irregular removal from the Community transit procedure (document T1) in Italy of butter originating in the Czech Republic and being carried from Denmark to non-member countries (Egypt, Hungary, Slovenia, etc.) without payment of customs duties.

The Italian authorities seized three consignments of butter being carried by lorry from Denmark; the destination shown on the transport documents was clearly forged. It has not yet been possible to identify with certainty the consignor and intermediaries involved, but it has been established that a Swiss resident placed most of the orders, which were sent from the Czech Republic via Denmark to non-member countries and then invoiced to front companies in the Bahamas, the Virgin Islands or Switzerland.

The investigations coordinated by the Commission following this initial discovery further demonstrated that between 31 March 1994 and 27 September 1995, 46 of the 91 consignments which transited through Denmark and were declared as being re-exported to non-member countries were covered by forged declarations of unloading.

Most of the customs offices through which the goods were leaving the Community were in Italy (Trieste, Naples, etc.). The customs documents were discharged by means of forged stamps. The goods were then illegally brought back into the Community without the customs duties and agricultural levies being paid.

The investigations are continuing to determine whether export refunds were also paid on this butter.

The investigations launched by the Commission probably put a stop to this traffic. However, since 27 September 1995, three new consignments of Czech butter bound for Portugal (again under the Community transit arrangements) have attracted the attention of the Swedish authorities in Malmö. Two of these consignments were illegally unloaded and the third was seized by the Portuguese authorities (on the basis of information supplied by the Commission).

Large amounts of customs duties and agricultural levies are involved. On over 2 700 tonnes of butter they will come to some ECU 6 million.

The person behind this fraud is also suspected of being responsible for other illegal consignments of butter and sugar from the United Kingdom and the Netherlands which were discovered in the past by Italian investigators.

This case shows how quickly criminal organizations can adapt, once they have seen that customs officers in some Member States have their eyes open for consignments of this kind, and then find other ways of concealing their illicit trade (e.g. by operating via Denmark and Sweden).

1.9 Removal of beef from the Community transit arrangements

During the investigations on the diversion of refined sugar,¹¹⁹ it was found that a number of containers of beef from Argentina were unloaded in Rotterdam and placed under the external Community transit arrangements (T1 documents) for carriage to Croatia. The customs documents were discharged in Nice, France, where a local transit agent issued new transit documents which were then discharged by means of forged Italian customs stamps. The beef was released onto the Italian market without payment of customs duties.

The customs investigations into this transit agent revealed that there had been many other similar operations with consignments unloaded in the French port of Le Havre. When it entered the Community, the beef belonged to two British companies which sold it to Italian and German customers, who claimed to have bought it in good faith on the internal market.

The investigations in Italy showed that this was not entirely true.

Some 700 tonnes of beef was involved and the duty evaded totalled around ECU 3 million.

Judicial proceedings are in progress in France and Italy.

¹¹⁹ See the annual report on the fight against fraud for 1993, Chapter 4, Section 1.1.

1.10 Removal of bananas from the Community transit arrangements

Bananas from South America were unloaded in various northern ports in the Community. They were placed under the Community transit arrangements for carriage by road to non-member countries. This operation is covered by T1 documents (all taxes and duties being suspended).

On the basis of information supplied by the Belgian and German customs, investigations, coordinated by the Commission, were carried out by specialized departments in these two countries. They brought to light a major operation involving the irregular introduction of bananas into Italy without payment of customs duties and agricultural levies.

The Italian authorities discovered in particular that a total of 290 consignments of bananas from South America had been smuggled into Italy. That represents some ECU 15 million in evaded duties.

Eight suspected smugglers were arrested and charged with forging customs documents. Their personal assets have been seized.

Additional enquiries are in progress to determine whether consignments of the same type have also been sent to other Member States.

1.11 Fictitious exports of wine to non-member countries

A close watch was kept on two ships suspected of being involved in fictitious exports of wine to non-member countries. Inquiries by Commission departments in Italy, France, Greece and Slovenia brought the following irregularities to light:

- Some of the wine carried by these ships was exported by French, Italian and Greek firms with payment of export refunds. These consignments were intended for Croatia, Slovenia, Bosnia and Romania but were not placed on the market at destination. They were placed under a special customs arrangement, similar to inward processing, referred to on the documents presented as proof that it had been released onto the local market;
- another part of the consignment was never unloaded but diverted to Switzerland, for which no export refund is payable. In this case forged evidence of entry for home use was presented so that refunds were paid;
- the remainder of the wine turned out to be a substitute product which did not satisfy the quality requirements to be eligible for refunds.

The Italian and Greek authorities have started judicial proceedings against the firms involved. The Commission is collaborating with the judicial authorities examining the cases.

Joint action by the Commission and the Member States has produced the following results:

- ECU 2 million was recovered for fictitious exports of wine (which failed to reach its destination);

- ECU 1.8 million was not paid as the paying agencies had been alerted to the fraud;
- recovery procedures are in progress for refunds totalling ECU 3 million.

Further inquiries are being made.

1.12 European Social Fund: FLATHUS programme

The inquiry initiated by the Commission in November 1994 in the new German Länder focused on the transnational part of the FLATHUS programme.¹²⁰

Inquiries, which continued in 1995, into a vocational training programme for young workers in the new Land of Thüringen revealed irregularities. Community funds were being diverted by the head of a Danish training institute with the complicity of a German national official.

The investigations have so far brought to light two fraudulent practices:

1. Before 1993 the head of the institute in question had secured exclusive rights over most of the transnational training operations. Subsequently he had obliged subcontractors (in France, Ireland and the United Kingdom), by means of a second contract, to pay part of the agreed amount either to a bank account in Luxembourg in his own name or to a subsidiary of a German technical assistance association in Belgium.
2. From 1993 onwards fictitious invoices were issued for services allegedly performed for the programme.

Cooperation and coordination of inquiries between the Commission and the national administrative and judicial authorities gave rise to suspicions that ESF subsidies were being used irregularly. After conducting searches the German judicial authorities obtained hard evidence and a German official was arrested.

Inquiries are still in progress in the Member States concerned.

1.13 Tourism¹²¹ (direct expenditure)

After the matter was referred to the Belgian and French authorities in 1994, the Commission sent the results of the inquiries to the Greek authorities on 13 March 1995 under the second paragraph of Article 209a of the EC Treaty.

Research and inquiries into all aspects of tourism policy since it was set up in 1989 have required constant coordination by anti-fraud departments and the active assistance of judicial departments in the Member States concerned.

¹²⁰ FLATHUS: Fördermaßnahmen des Landes Thüringen mit Unterstützung des Europäischen Sozialfonds (Programme for the promotion of the Land Thüringen with support from the European Social Fund).

¹²¹ See the annual report on the fight against fraud for 1994, Chapter 5, Section 5.4.

The procedures set in motion in Belgium and France revealed, in addition to the diversions of Community funds detected in 1994, large secret payments to members of Commission staff in return for the award of grants. The necessary investigations were conducted on Commission premises in Brussels, the Commission's immunity from legal proceedings, the inviolability of its documents, buildings and archives and its right to business confidentiality were waived.

On the basis of the findings in France and Belgium five people were taken into custody (two Commission officials and three recipients of grants).

On the basis of the internal audit of the authorizing departments, the Commission began disciplinary proceedings against the head of unit managing the policy in question and a temporary staff member. The head of unit was removed from his post on 22 June 1995 and the temporary staff member was dismissed on 28 July 1995.

At the same time orders were issued for the recovery of ECU 1.4 million from 15 recipients on the basis of initial controls.

The specific features of fraud organized both inside and outside the Commission require the continuation of close collaboration between the Commission's anti-fraud coordination departments and the authorities of the Member States in order to provide evidence of responsibilities.

Closer judicial cooperation in this new area should make it possible to bring all those involved in such types of fraud before the Courts.

1.14 Cigarette smuggling

Task Forces¹²² are being set up to combat fraud in particularly sensitive areas. This is because many complex and highly elaborate fraud networks have been found to be operating in specific sectors with the result that missions are constantly being sent out, notably to non-member countries. Task forces are a reflection of the Commission's determination, under its strategic work programme, to develop operational cooperation between Member States and with non-member countries and to assign a maximum of resources to tackling major cases of fraud which frequently have a substantial financial impact on the Community budget.

The Commission set up a first task force (or task group) in 1994 to combat cigarette smuggling, as perpetrated by organized gangs.¹²³ This group is made up of officials from the Commission and representatives of investigation departments in Member States.

The role and essential task of this group is to work out an overall strategy, to assess the information available, to circulate it within the group so that it can be processed and

¹²² These are made up of experts from the Member States and the Commission in a particularly sensitive area of trade. Their role is to share information common to a number of fraud files. They are to be distinguished from ad hoc groups of investigators (Commission and Member States) handling a specific case and internal Commission task forces (TAFI, transit, tax evasion, etc.).

¹²³ See the annual report on the fight against fraud for 1994, Chapter 4, Section 3.1.1.

exploited by the departments directly concerned, which can then select, coordinate and become involved in correctly targeted international operations.

Within this framework a homogeneous strategy has been set up, to apply at Community level and based on administrative, operational and technical cooperation. This illustrates the response to the fact that the 'other side' is an organization operating not just Community-wide but sometimes even world-wide. Combating fraud of this kind demands an organized, structured response constructed on an ad hoc basis to correspond to the case in hand.

A number of operations mounted jointly with the Member States, involving international investigations, have led to the identification and discovery of a number of major smuggling routes, in particular involving transport and illegal trade in cigarettes in the southern Member States.

Some of these operations are in progress; an important feature is investigations on the ground in which the Task Group is fully involved alongside the Member States and which have led to the dismantling of large smuggling networks and the identification of the associated administrative networks.

Investigations coordinated by the Commission in Denmark, Portugal and Spain identified a stock of 92 million cigarettes illegally diverted during the transit procedure from Denmark to Portugal. The procedure was discharged by means of forged stamps intended as proof that the cigarettes had been through Portuguese customs. The customs duties evaded total some ECU 15 million¹²⁴. Recovery procedures are in progress.

Similar investigations uncovered a stock of some 102 million cigarettes (with ECU 13 million in evaded duty) which had been diverted from Finland and Sweden to Spain. The duty is in the process of being recovered.

Judicial investigations are being conducted in Spain and Portugal with a view to indicting the main offenders.

Other investigations into the fraudulent reimportation into the Community of cigarettes initially bound for non-member countries were carried out in Austria, Germany, the Netherlands, Greece and Italy. These were part of wider operations designed to breach the UN embargo on former Yugoslavia. Some 120 million cigarettes were seized in Germany, Italy and the Netherlands. Two aircraft suspected of being used to circumvent the UN sanctions were seized by the Dutch authorities.

The information compiled in the course of these inquiries is directly connected with the result of investigations being conducted at the same time in another Member State where 130 million cigarettes have been seized and those responsible for this smuggling, which involves over a billion cigarettes and lost resources of around ECU 100 million, are being prosecuted.

Other inquiries are being coordinated by the Commission, in particular in France, Spain, Ireland and the United Kingdom (100 million cigarettes seized and around ECU 10

¹²⁴ All the amounts quoted on this case also include an estimate of the national resources involved.

million in resources lost); another case has been uncovered in Spain (450 million cigarettes and ECU 45 million in lost revenue).

Additional inquiries are in progress in Portugal after 76 lorry-loads of cigarettes bound for Eastern Europe failed to turn up at the exit customs offices in Germany, the procedure having been discharged by forged German customs stamps (the duties involved come to around ECU 76 million). A further seven lorries bound for Switzerland likewise failed to reach their destination (amounts involved: around ECU 7 million). Eight containers belonging to the same organization were seized in Portugal.

The Commission is showing that by conducting and coordinating such operations through the Task Group it can reasonably hope to secure all guarantees of long-term results, as the information compiled at various levels reveals the *modus operandi* of the criminal organization thus helping to identify the authors and put them out of action.

Similarly the determination to take administrative and judicial action is designed to produce a significant improvement in cooperation with the authorities in non-member countries. This determination is now beginning to bear fruit.

Clearly it is indispensable for cooperation between Member States and the Commission to be legitimized not only in practice but also by unequivocal legislative instruments giving the Commission the power to add value both at the investigation stage and at the prosecution stage. It is high time that the judicial cooperation instruments conceived in a different environment and now visibly obsolete be replaced by something more appropriate.¹²⁵

Section 2: MAJOR FRAUDS RELATING TO ORIGIN AND PREFERENTIAL AGREEMENTS¹²⁶

The measures and privileges accorded in the framework of targeted commercial policies which are subject to misappropriation mainly concern the preferential agreements but also anti-dumping duties and textile agreements (quantitative limits).

Frauds committed in these different sectors are increasingly complex and often involve several of these provisions at the same time. The inquiries presented in this section represent typical examples of the complexity of these frauds not only in their financial aspect where the consequences for the Community budget in cases of evaded customs duties can be very weighty but also in their economic implications in cases of misappropriations which distort the conditions laid down in the commercial policies defined between the Community and non-member countries.

¹²⁵ See Chapter 1, section 4, beginning at page 18.

¹²⁶ Preferential schemes include the autonomous GSP (Generalized System of Preferences) and all concessionary schemes set up by agreements with non-member countries.

2.1 Industrial goods

2.1.1 Computer diskettes - Macao

In May 1995 representatives from the Commission and two Member States took part in an administrative cooperation mission to Macao to check the origin of more than 200 million diskettes imported from there since July 1993.

On-the-spot investigations revealed that the diskettes had been exported from Macao under cover of certificates of non-preferential origin,¹²⁷ although they could not have been assembled there. The diskettes must have been imported from China under a false description and re-exported from Macao. This trade had continued right up until the arrival of the mission in Macao and involved a total of some 126.6 million diskettes.

The other 73.9 million diskettes had been produced locally, but production consisted merely of assembling semi-finished products supplied by Chinese factories (the same factories which supplied the re-exported diskettes), using Japanese, Korean and American components.

In these circumstances, anti-dumping duties applicable to diskettes of Chinese origin will have to be paid on all these goods, falsely declared to be of Macao origin. The amount of own resources at stake runs to ECU 18.7 million for the period from July 1993 to April 1995.

2.1.2 Computer diskettes - Thailand

In March 1995 a Community delegation, consisting of representatives from the Commission and the two Member States chiefly concerned, carried out an administrative cooperation mission to determine the origin of more than 50 million diskettes imported from Thailand since August 1993.

Initial investigations revealed that around 5.4 million diskettes, declared as originating in Thailand, but actually shipped from Hong Kong, had been imported using false certificates of non-preferential Thai origin. Evidence gathered in subsequent investigations showed that these goods, which were not sent from Thailand, had been manufactured in China and re-exported via Hong Kong. They should therefore have been subject to anti-dumping duties applicable to diskettes of Chinese origin.

On-the-spot inquiries also revealed that nearly 44.8 million diskettes which had actually been exported from Thailand under cover of certificates of preferential origin issued by the relevant authorities were not eligible for preferential treatment, either because they had previously been imported into Thailand (24.1 million units), or because of the value of the imported components used in assembly in Thailand (20.7 million units).

¹²⁷ Certificates of preferential origin are issued by the authorities of the exporting country so that goods can be imported into the Community at a reduced (or zero) rate of customs duty. These certificates are binding on the customs authorities at the office of entry into the Community. These certificates are presented to the Community customs authorities (offices of entry), to obtain the benefits of the preferential system. Certificates of non-preferential origin are also issued by the authorities of the exporting country, to define the origin of goods for whatever purpose may be required.

In view of the assembly conditions in Thailand and the origin of the components used to assemble finished products re-exported from Thailand, customs duties will also be applied to the diskettes imported into the Community under cover of certificates of preferential origin.

The amount of own resources evaded comprises ECU 617 000 in customs duties for 44.8 million diskettes and ECU 4 170 000 in anti-dumping duties for imports totalling 50.2 million diskettes.

A few months after the mission, the Thai authorities acknowledged that the certificates of preferential origin had been wrongly issued. It may therefore be possible to recover the customs duties evaded using false descriptions of preferential origin, but recovery of the anti-dumping duties which are economically of greater significance than the abuse of preferences accorded requires additional investigations to be carried out to determine the real (non-preferential) origin of the goods.

2.1.3 Bicycles from Vietnam

In April 1995 a Community delegation, consisting of representatives from the Commission and the Member States chiefly concerned, undertook an administrative cooperation mission to check the origin of 523 241 bicycles exported from Vietnam using certificates of preferential origin since April 1992.

The bicycles had been assembled in Vietnam using imported components supplied by a Hong Kong firm, which also exported Chinese bicycles to the Community. Despite facing a number of difficulties - the importer in Vietnam tried to prevent access to stocks of components and documents - the mission was able to prove that all the materials had been imported from China and Hong Kong and that the certificates of preferential origin issued for these products since 1992 were incorrect.

The amount of customs duties evaded runs to ECU 6.85 million. In view of the circumstances in which the products were finally assembled, anti-dumping duties totalling ECU 9.78 million may be payable.

At the end of the mission, the Vietnamese authorities, which afforded the Community mission all the assistance it required, acknowledged that the certificates of preferential origin had been wrongly issued. They have now put a stop to these practices.

The Commission has identified exports of this kind to France (the principal Member State involved), the United Kingdom, Belgium, Germany and Denmark.

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This information was established following inquiries carried out in non-member countries jointly by the member States and the Commission. The latter is committed to carrying out inquiries of this kind because, without results or findings on the ground, no concrete result is possible. In this regard, it should be noted that other missions planned for 1995, at the Commission's initiative or at the request of Member States, had to be postponed because of a lack of cooperation on the part of the non-member countries concerned,

namely Indonesia and Malaysia (computer diskettes) and the Philippines (satellite broadcasting receivers).

Since these delays may jeopardize the subsequent establishment of the own resources entitlements at stake, the Commission has urged all the Member States concerned to take guarantee measures.

In addition to false declarations of origin, it has been established that frauds aimed at evading payment of anti-dumping duties were committed by groups or linked companies by means of false declarations of value, covered by false documents or invoices issued by companies established in tax havens.

The Commission has notified the Member States, under Council Regulation (EEC) No 1468/81 (mutual administrative assistance), of certain findings which gave rise to the establishment in 1995 of import and antidumping duties evaded by means of false declarations affecting the tariff classification, origin or value of goods.

On the basis of this information alone, the Member States have established that duties amounting to an overall figure of ECU 5.7 million were evaded, including ECU 3.85 million of anti-dumping duties, resulting from false declarations of the value of potassium imports.

It is worth stressing that formal transmission of information to the Commission by the Member States is vital for its monitoring of the results of investigations and recovery of own resources.¹²⁸

2.2 Textiles

2.2.1 Honduras

Doubts arose as to the true origin of tee-shirts imported into the Community which were declared as originating in Honduras. A Community administrative cooperation mission went to Honduras in May 1995 to work with the local authorities on checking the validity of more than 1 200 certificates of preferential origin apparently issued in Honduras and submitted since 1991 on import into the Community (particularly in the Netherlands and, to a lesser extent, Germany and Belgium).

It was found that 1 188 of these certificates were entirely false and that the imported goods in question had never been on Honduran territory, but had in fact been loaded in various Asian ports (particularly in China) and shipped direct to the Community.

Another 52 certificates had actually been issued by the Honduras authorities, but for products which had not been manufactured there under the terms of the GSP (General System of Preferences) rules of origin.

All the certificates concerned have therefore been cancelled by the Honduran authorities. The amount of duties evaded comes to more than ECU 2 million, relating to more than 12 million items of clothing.

¹²⁸ See 1994 Report, Chapter 1, Section 1 and Chapter 6, Section 3.1.

Armed with this information, the Member States concerned can now initiate proceedings to recover the duties evaded.

Investigations are continuing into the true origin of the goods which were not manufactured in Honduras in order to charge the quantities concerned (more than 10 million items, mainly tee-shirts) to the quotas of the country of actual origin (probably China).

2.2.2 Nepal

In July 1995 the Commission organized an administrative cooperation mission to Nepal to work with the relevant Nepalese authorities on checking the validity of more than 500 GSP certificates of origin supposedly issued there, which were submitted on the import of textile goods into the Community.

The investigation revealed that 45 of these certificates of origin, concerning more than 10 million items, had been falsified. The goods covered by these certificates had never been on Nepalese territory, but had been imported into the Community direct from the Far East. Inquiries continue to establish the true origin of the goods described on the false certificates and to obtain economic compensation with regard to the non-member countries concerned (situated in the Far East).

It was also established that 153 other certificates of origin had been wrongly issued for products manufactured in Nepal in breach of the Community's GSP rules of origin. Although the manufacturers, who also exported the goods in question, had made written statements on the matter, the Nepalese authorities had not deemed it necessary to cancel the offending certificates. They were therefore formally requested in writing to check once more the validity of the certificates and inform the Commission of their findings, within the prescribed time-limit. In the Commission's view, the only possible outcome is that the certificates be declared invalid.

Serious doubts have arisen as to the legality of a further 285 certificates of origin. They have been sent to the Nepalese authorities for *ex post* checks.

The amount of own resources at stake in connection with the fake or wrongly issued certificates comes to ECU 2 million.

2.2.3 Laos

A Community delegation to Laos in November 1995, made up of representatives from the Commission and five Member States (France, Germany, Denmark, the Netherlands and the United Kingdom) found that 300 certificates of origin presented on the import into the Community of around 4 million items of clothing had been forged: they had not been issued by the Laos authorities. At the same time, 2 700 other certificates of preferential origin (concerning 22 million items) had been wrongly issued for goods which did not meet the criteria applicable under the GSP.

The delegation's findings were endorsed by the Laos authorities, which confirmed in writing that all the goods inspected were ineligible for preferential treatment on import into the Community. The certificates of origin were either fake or issued in error.

However, as a less-developed country, Laos may ask for a derogation from the Community's GSP rules of origin. The authorities have therefore requested permission to continue to use fabrics imported from other Asian countries for manufacture.

The Member States concerned now have the necessary information at their disposal to pursue investigations into Community importers and recover the customs duties involved. The amount of own resources at stake comes to nearly ECU 7 million.

However, further investigations will be necessary to identify the true origin of the products imported into the Community using the false certificates (about 4 million items) so as to obtain a charge on the quantitative limits of this country.

2.2.4. Textiles from China¹²⁹

Consultations were held with China in 1995 with a view to charging certain quantities of textiles imported illegally between 1990 and 1993 to the quantitative limits applicable under its textiles agreement with the Community.

Investigations had confirmed that the goods in question were of Chinese origin. They had been imported into the Community either as contraband (evading the transit arrangements) or as goods supposedly originating in other countries.

China has agreed that 13 778 000 items may be charged to its quantitative limits for 1995. This quantity corresponds to about 20% of the Chinese quota for the year 1995, for the category "textile 4" (tee-shirts etc...).

2.2.5. Textile goods from the United Arab Emirates (UAE)¹³⁰

Investigations have covered a number of different cases and circuits.

In January 1995 Commission representatives visited the UAE to work out new methods of cooperation for identifying the true origin, as opposed to the declared origin, of a large number of consignments of textile goods from the UAE to the Community.

In July the Commission sent the UAE authorities, as agreed, a list supplied by the Member States concerned so that the UAE could launch the appropriate preliminary investigations. This list contains details of more than 1 300 consignments covering around 80 million products, including tee-shirts corresponding approximately to the quota for China for 1995 or to 150% of the quota for India for the same year. However, by October on-the-spot investigations had hardly begun and no findings were yet available. The Commission therefore reminded the UAE authorities of their obligations in this respect.

On the basis of negotiating briefs approved by the Council, Commission representatives held discussions with the UAE authorities in Abu Dhabi in October 1995 on the conclusion of a bilateral agreement on trade in textile goods, which would, among other

¹²⁹ See 1994 Report, Chapter 5, Section 3.2.1.

¹³⁰ See 1994 Report, Chapter 5, Section 3.2.1.

things, establish a system for inspecting exports of textiles from the UAE (licences, etc.). The agreement was initialled on 11 November 1995.

2.3 Fishery products

2.3.1 Salt cod from Iceland

A Community delegation, consisting of representatives from the Commission and the Member State concerned, visited Iceland in April 1995 as part of an administrative cooperation mission to check the preferential origin of consignments of salt cod.

The investigations revealed that several local firms had used fish originating in Russia in the manufacture of products which were then exported to the Community, contrary to the agreement between the Community and Iceland on preferential tariff treatment. The own resources at stake amount to ECU 1 million.

Other firms importing salt cod from Russia had obviously learned lessons from the investigations into the "shrimps" case,¹³¹ as they had re-exported the finished products manufactured using ingredients not originating in Iceland to non-member countries only, thereby justifying the certificates issued for the products exported to the Community.

The Icelandic authorities have declared the inapplicable certificates of preferential origin invalid and have launched recovery proceedings against the importers concerned.

2.3.2 Canned tuna from Ecuador

Following Community missions to Ecuador in March and October 1994 the five Member States concerned have begun proceedings to recover the customs duties evaded, totalling ECU 11 million.

After the investigations in Ecuador, a Community mission visited the United States to gather evidence that importers in three Member States were fully aware that they were carrying out illegal imports.

¹³¹ See 1992 Report.

These Community missions in non-member countries are organized either at the request of one or more Member States or at the Commission's initiative (the Commission handles relations with such countries). The aim is to seek for all evidence that may help ascertain whether exported goods are in a lawful position as regards origin and then gather evidence to determine the scope of the fraud and the damage it has caused.

Clearly this is the first stage, still upstream of the heavy burden of investigation work needed to provide an assurance that the rules of origin and the various preference schemes are being properly applied and to prove what diversions are taking place.

In any event, where there is failure to abide by the terms of preferential arrangements established by agreements or on an autonomous basis, the Member State will obviously have to proceed to recover amounts due by way of Community revenue.

Moreover, on the basis of findings and reports of Community missions, the national authorities will have to pursue inquiries to ascertain whether the fraud was intentional and come to the proper conclusions as regards penalties, especially in cases of fraud within the definitions of the Convention for the protection of the Community's financial interests that must be referred to the criminal courts.

The Commission will do all that is necessary in 1996 to act in response to the current situation and will propose a political initiative in the form of a communication concerning preferential schemes as has been done for transit arrangements.

Section 3: OTHER FRAUDS IN AGRICULTURE

This section covers a selection of inquiries affecting a large variety of measures (export refunds, various types of production aid), showing that investigations are being carried out into a growing number of sectors. Some of these cases have been found to reflect errors of interpretation of Community rules, but in others there has been deliberately fraudulent intent, the methods used in such cases revealing sophisticated fraud mechanisms.

3.1 Exports of sugar to Sweden

In August 1995 the Swedish authorities reported a case of possible commercial speculation involving sugar, which had taken place just before Sweden's accession to the European Union.¹³²

A Swedish company, whose main line of business is not trading in sugar, stocked around 25 000 tonnes of sugar in two warehouses.

Inquiries in Sweden revealed that 22 000 tonnes of this sugar, which had been exported from Germany and France to Sweden in the last two months of 1994, were re-exported in 1995 to Germany and Greece.

Some ECU 6.5 million was paid in export refunds in Germany, Belgium and France.

Further investigations are in progress in a number of Member States to determine whether the export refunds paid were not claimed a second time after the sugar was reimported into the Community.

3.2 Imports of rice into Sweden (taxation of surplus stocks)

An inquiry was conducted in Sweden concerning the possible taxation of surplus rice stocks when Sweden joined the European Union.

Trade statistics supplied by the Swedish authorities showed an increase in rice imports of around 73 000 tonnes in 1994 in relation to average annual imports from 1991 to 1993.

Five firms were inspected and were found to have large stocks of rice. All five explained that the price of rice per kilo was likely to double in the event of Sweden joining the European Union, hence the increase in their imports (between October and December 1994), the main purpose being to satisfy demand on the domestic market before the price increase.

Commission departments asked the Swedish authorities to examine surplus stocks over the three preceding years on a case-by-case basis along with all accounting and commercial documents available, in particular documents relating to stockkeeping and invoicing (purchases and sales).

3.3 Imports and re-exports of olive oil (Italy and Austria)

The Commission received information about imports into Italy of 1 091 tonnes of virgin olive oil, originating in Tunisia, and exported direct to Austria on 29 December 1994.

This quantity was therefore imported into Austria before its accession to the European Union and was thus taxable as surplus stock.

¹³² Within the framework of Commission Regulation (EC) No 3108/94 on transitional measures to be adopted on account of the accession of Austria, Sweden and Finland in respect of trade in agricultural products (OJ L 328, 20.12.1994).

The Commission's inquiries revealed that 802 440 kg of olive oil had been re-exported from Austria to Italy.

At the Commission's request the Austrian authorities levied a tax of ECU 846 537 on the surplus stock. As the Austrian exporter is now bankrupt, there are doubts about whether this tax will be recovered.

As regards the 802 440 kg of olive oil reimported into Italy, the Commission asked the Italian authorities to ensure, in accordance with the rules applying in such cases, that no application for consumption aid was made.

Investigations in Italy revealed that this aid had in fact been granted. The Italian authorities have taken all the appropriate measures to recover the amount paid.

The lesson to be learned from these three cases concerning Sweden and Austria is that only systematic physical checks conducted by the local authorities under the existing rules are capable of detecting irregularities in transactions of this kind (import/export of "temporarily sensitive" products).

3.4 Imports of frozen beef tongue originating in Argentina

Inquiries in France, Italy and Portugal revealed that at least 450 tonnes of frozen beef tongue originating in Argentina was imported into the Community between September 1993 and December 1994. This meat was accompanied by forged health certificates. When the copies of the authentic certificates archived by the relevant departments in Argentina were examined, it was found that the destination of the meat, which did not qualify for entry into the Community, was Angola, via Lisbon (17 containers).

Because of health restrictions on imports of offal originating in various countries in South America, fraud of this kind poses a real threat for animal health (spread of foot and mouth disease). The financial risk is also substantial since, in the event of infection, the Member States and the Community will have to bear the cost of combating the disease.

The matter has been referred to the Portuguese judicial authorities.

3.5 Exports of Swiss Emmental

Emmental, gruyère and Sbrinz cheese are entitled to a reduced level of duty on import into the Community, provided the minimum price rule is respected. Producers of these Swiss cheeses must go through the USF (Swiss Cheese Union) to obtain the guaranteed price (on the Swiss market) and a document certifying that the minimum price is respected (IMA.1) for the purposes of export to the Community. For years, however, large quantities of Emmental cheese have been exported to companies in France, Germany and Italy; the USF has been certifying that prices charged by the exporting companies were below the minimum price. But the USF has then been refunding direct to the Community importers part of the selling price corresponding to the difference between the Community market price and the price charged by the exporters. Hence the minimum import price was no longer applied.

The Commission sent a mission to Berne in May 1995 with the agreement of the Swiss Federal Authorities.

The initial findings enabled the Italian authorities to begin investigations of the main importers in Italy. The present indications are that at least ECU 13 million in customs duties have been evaded.

Similar inquiries are currently nearing completion in Germany and France. The German customs have sent the files on four importers in Konstanz to the judicial authorities. The duties evaded in this specific case are estimated at ECU 1.2 million. French customs, for their part, have informed four other importers that procedures have been set in motion for the recovery of some ECU 3.9 million.

3.6 Advance financing of export refunds for meal

A team of inspectors went to Spain to visit firms which received this type of advance financing in 1995. The stocks of durum wheat and meal were checked against the quantities declared for advance financing by operators with due allowance for exports in the meantime.

Two of the three firms inspected were found to have been involved in fraud. In the first the "missing" quantity was 17 719 tonnes of durum wheat, and for the second 28 998 tonnes of durum wheat and 616 tonnes of meal were missing.

These quantities were totally unrelated to what was declared for advance financing and also to the storage capacity on site.

The inadequacy of the physical controls by national authorities enabled certain unscrupulous operators to make false declarations and thus receive undue advance payments (around ECU 1.49 million) and also to distort the rules of competition in their favour.

<p>These facts confirm the Commission's view that in a case of this type where the amount of aid involved is directly linked to the quantity of products, it is essential that physical checks be carried out to avert any attempt at fraud.</p>
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3.7 Exports of rice from the United Kingdom to Sweden

The British authorities informed the Commission of a case of fraud involving a quantity of rice exported to Sweden under the inward processing arrangements.

It had been declared as "unmilled rice", whereas after sampling and testing it was found to be broken rice (a product of inferior quality to what had been declared).

These exports¹³³ were by a British subsidiary of a Dutch company. Incorrect declarations had been made allowing an equivalent quantity of rice to be imported from non-member countries (under the same customs references) without payment of customs duties.

¹³³ A system of export ahead of inward processing arrangements.

The financial loss to the Community is around ECU 5 million (traditional own resources).

The Commission is coordinating the procedures for recovering the evaded revenue (Netherlands and United Kingdom).

3.8 Olive oil

The Commission collaborated with the public prosecutor's office at the court of Vasto in Italy in a case concerning the sweetening of olive oil which adversely affected the Community budget.

The fraud began in 1990 after a Roman trading and export company took over an olive oil producing company.

The scheme is as follows: the production company has stocks of olive oil, olive-residue oil and seed oil.¹³⁴ It sells seed oil to other companies in return for the purchase of olive oil. In actual fact no products are transferred, but fictitious purchase and sales invoices are issued (false transport documents are also produced and false invoices are issued by transport companies involved in the fraud ring).

The main protagonists admitted that the oil sold was never pure (mixtures of olive oil, olive-residue oil, seed oil and palm oil) and thus did not qualify for payment of the refunds received for the exports by the parent company.

The cost to the Community was a total of ECU 2 million, ECU 1.3 million in consumption aid and ECU 0.7 million in wrongly paid export refunds.

Recovery procedures are now in progress.

Four people have been convicted.

3.9 Diversion of butter and milk powder

This case concerns the export, with refunds, of butter and milk powder from the United Kingdom, allegedly to Poland but in fact to Spain.

The suspected fraudsters guaranteed the exporter the goods at the prices in force for non-member countries. The exporter was given forged Polish import documents to support the application for export refunds.

It is estimated that around 150 lorry-loads were diverted between October 1993 and May 1994, corresponding to a total of some ECU 3.3 million in wrongly paid refunds. The products were probably sold in Spain below the market price and for a substantial profit.

¹³⁴ Olive-residue oil is obtained by chemical processes from organic matter (or waste) remaining after olives (the fruit) have been pressed. Seed oil is a generic term (soya oil, sunflower oil, etc.). The largest refunds are paid on exports of olive oil (they are very small for olive-residue oil).

In June 1994 seven people were arrested. Six of them are to appear in court early in 1996. The inquiries coordinated by the Commission were carried out in Spain, Poland and Germany and evidence was collected in response to a request for judicial assistance.

The wrongly paid refunds were recovered.

3.10 Imports of beef at a reduced rate of duty

Under the GATT¹³⁵ the Community adopts an annual Community reduced-rate tariff quota. To qualify for this facility operators must present a GATT import licence to the Community customs office of import. These licences may be transferred within the limits of the overall quantities authorized.

Investigations had to be conducted in various Member States into fraudulent imports of frozen beef from outside the Community accompanied by fake GATT certificates (showing the Spanish Ministry of Foreign Trade as the issuer).

Judicial investigations in Italy into cases of forgery, conspiracy, smuggling and obtaining by deception revealed that a criminal organization had sold 46 fake GATT certificates covering goods exceeding by over 55% the total quota awarded to Spain, where the beef was imported.

The Community lost some ECU 5.4 million in own resources. Three people are in custody in Italy and an international arrest warrant was executed in Spain on an Argentinian national suspected of masterminding the sale of the forged certificates.

3.11 Stocks of tobacco in Italy and Greece

On the basis of information received by the Commission, inquiries into tobacco intervention stocks in Italy and Greece were made in late 1995.

The question of the eligibility and classification of certain lots in stock in Greece had been raised. This concerned around 11% of total stocks worth an estimated ECU 9 million.

The Commission finally decided to withdraw this proportion from sale.

3.12 Sugar quotas in the United Kingdom

On the basis of information sent in by the British authorities, an inquiry was conducted in the United Kingdom into commercial operations concerning the system of sugar quotas for the 1992/93 sugar year. It was found that a large number of irregularities had taken place concerning the application of the sugar market rules,¹³⁶ with a serious financial impact on the Community budget.

¹³⁵ General Agreement on Tariffs and Trade, which was replaced in 1995 by the World Trade Organization.

¹³⁶ Council Regulation (EEC) No 1785/81: OJ L 177, 1.7.1981.

Initial findings are that some 16 500 tonnes of sugar were declared for export on the basis of forged licences.¹³⁷ The monetary compensatory amounts (MCA) were claimed and obtained (ECU 500 000). The financial consequences for failure to comply with the provisions governing C sugar are being established.

The inquiries are continuing, in particular into storage costs for 1992/93 and other years. The latest information suggests that the false declaration of sugar stocks for the year in question will have resulted in around ECU 2 million in aid being wrongly paid to the operator.

3.13 Aid for casein production in the Netherlands

On the basis of information received, the Commission began inquiries into aid for the production of casein in the Netherlands. Following initial investigations an irregularity concerning some ECU 3 million was established for failure to comply with the specific procedures for the processing of certain types of caseinate as laid down in the Community rules.¹³⁸

This financial correction will be applied in the clearance of accounts procedure.

Other developments are expected on the basis of the results of the inquiries, notably into the use of certain chemicals in the manufacture of caseinate and the application of the rules concerned.¹³⁹

3.14 Sales of milk outside the quotas in the United Kingdom

This case received wide press coverage in the United Kingdom and was investigated jointly by the Commission and the UK authorities. The initial findings reveal that milk outside the quotas, on which no supplementary levy was therefore paid,¹⁴⁰ was sold in North West England.

A number of people appeared in court and were fined.

The UK authorities currently estimate the financial impact at around ECU 1.5 million. Recovery procedures will be set in motion.

Inquiries are continuing, notably in Northern Ireland, into manipulations concerning the fat content of milk delivered (1994/95 marketing year), the main result being that the supplementary levy was unduly reduced. The inquiries must also determine whether or not there was a failure to declare certain consignments under the quota regulations.

The national authorities have started specific procedures for failure to comply with the fat content for the products delivered. The Commission expects to have the findings of this inquiry in 1996.

¹³⁷ Licences for sugar intended for export to the world market without payment of refunds.

¹³⁸ Council Regulation (EEC) No 2921/90: OJ L 279, 11.10.1990.

¹³⁹ Council Regulation (EEC) No 2921/90 cited above; Council Directive 83/417/EEC: OJ L 237, 26.8.1983.

¹⁴⁰ Council Regulation (EEC) No 3950/92: OJ L 405, 31.12.1992.

3.15 Skimmed milk powder in Italy and the Netherlands

Following production of a report by the Dutch authorities the Commission began an inquiry into a case concerning compound animal feed containing milk powder. This product, which was manufactured in Italy, was destroyed in the Netherlands. Around 1 200 tonnes, for which a Community subsidy would appear to have been paid, was destroyed on the instructions of a Dutch subsidiary of the Italian company which received the Community premium.

The Community rules¹⁴¹ provide that payment of aid is dependent on the actual incorporation of milk powder in the feed preparation and also on the feeding of the product to the animals in question; there is thus an obligation for the feed to be consumed. This was clearly not the case here as the products were declared to be unfit for animal consumption in the Netherlands. The aid wrongly paid must therefore be recovered from the manufacturer concerned.

In the early stages of the inquiry it became clear that there were serious problems with controls to be undertaken in the Member States concerned.

The Commission is expecting this case to be tied up in the first half of 1996.

Section 4: OTHER FRAUDS IN RELATION TO STRUCTURAL POLICIES

4.1 European Social Fund (ESF)

Most of the structural policies cases currently under investigation by the Commission concern the ESF.

4.1.1 As part of an operation to settle old ESF cases, the Commission sent a mission to Portugal in March 1995 to inspect vocational training courses presented by a promoter, involving considerable sums of money.

The inspection revealed large-scale, fraudulent over-invoicing of services rendered by subcontractors (non-existent accounting documents, etc.), punishable under Portuguese criminal law. The prosecuting authorities (Círculo Judicial de Anadia) have ordered a judicial inquiry.

4.1.2 In another major judicial inquiry, now before the courts in Lisbon, a trade union federation and some of its leaders and subcontractors have been indicted for diverting Community and national subsidies worth ECU 1.5 million (cases dating from 1988 and 1989).

The fraudsters had presented artificially inflated expenditure and failed to organize training courses. The Commission has decided to join a civil claim to the criminal proceedings.

¹⁴¹ Commission Regulation (EEC) No 1725/79: OJ L 199, 26.7.1979.

Since the same promoter is involved in the first and second Community Support Frameworks,¹⁴² the Commission has carried out on-the-spot inspections to ensure that the measures it presented have been implemented in accordance with the applicable rules.

- 4.1.3 An investigation was launched into the activities of a British firm in connection with technical assistance in the social field. The Commission suspected that the contract was being misapplied. Inspections revealed that supporting documents in respect of costs incurred were missing and that certain operations had been paid for twice. The contract is worth ECU 1.73 million.

4.2 European Regional Development Fund (ERDF)

- 4.2.1 On scrutinizing the administration of the French *département* of Var in 1994-95, the Provence-Alpes-Côte d'Azur regional audit body discovered over-invoicing involving more than ECU 5 million in connection with the supply of equipment to encourage technical innovation (ERDF co-financing totalling ECU 38 million under the Renaval programme for the conversion of shipbuilding areas from 1990 to 1993).

The judicial inquiries currently in progress suggest that local councillors received under-the-counter payments totalling at least ECU 0.5 to 1 million in exchange for falsifying public contracts.

Further research by the investigating departments should reveal whether the practices followed in this *département* are widespread or constitute an isolated case.

- 4.2.2 Irregularities in the Liège district in Belgium, relating to the Objective 2 (1992-93), Resider¹⁴³ (1990-92) and Konver¹⁴⁴ (1993) programmes were detected in 1995 following inspection missions by the Commission in April and August 1994 and by the European Court of Auditors in November 1994.

Following these inspections, the Commission suspended all financial support for the project in question pending final conclusions on the case, in accordance with Article 24(1) of Council Regulation (EEC) No 4253/88,¹⁴⁵ proposing that a significant amount be recovered and several million ECU be decommitted, and asking the Member State concerned to submit its comments. Implementation is under way.

¹⁴² Community Support Frameworks are drawn up by the Commission in consultation with the Member State and regions concerned, defining priorities for action, the financial resources required and the various forms of intervention.

¹⁴³ Conversion of steel-making areas.

¹⁴⁴ Diversification of regions dependent on military activities.

¹⁴⁵ OJ L 374, 13.12.1988, as amended by Council Regulation (EEC) No 2082/93 (OJ L 193, 13.7.1993).

Section 5: OTHER FRAUD IN RELATION TO DIRECT EXPENDITURE

Operational activities in this field, which covers expenditure managed and audited directly by the Commission, were stepped up in 1995.

Investigations have covered a significant number of cases in all sectors of activity.

5.1 Research

5.1.1 Acting on the basis of remarks by the Court of Auditors in a sectoral letter to the Member of the Commission responsible for information and telecommunications technologies, the Commission inspected a group of firms in Belgium and the United Kingdom which received funds allocated under the RACE programme.¹⁴⁶

It was found that the main beneficiary had systematically produced false statements of expenditure, inflated by an estimated ECU 500 000, in some cases using invoices for fictitious services. The firms' directors had also deliberately carried out legal, accounting and financial operations designed to create the illusion of co-financing which did not in fact exist.

The Commission terminated contracts still in progress as quickly as possible, drew up appropriate recovery orders and referred the matter to the competent legal authorities in Belgium so that criminal proceedings could be brought against the perpetrators of the fraud.

5.1.2 A systematic anti-fraud investigation was launched as a result of an analysis of the JOULE I and II/APAS-RENA programmes¹⁴⁷ and a critical examination of their administration by the authorizing departments. The initial results of inspections in Germany confirm the existence of irregularities and suggest that fraud has indeed been committed in this sector, bearing out the findings of the administering departments.

5.2 Energy

Following an investigation by the prosecuting authorities in Oristano (Sardinia), a request has been made for six persons to be committed for trial on charges of diverting aid granted by the Commission and the Sardinian regional authorities for the construction of a new, innovative wind-power plant costing an estimated ECU 1.25 million.

The firms involved had in fact converted an existing plant and used the funds for purposes other than those specified in the contract.

¹⁴⁶ RACE - "Research and development programme in advanced communication technologies for Europe".

¹⁴⁷ JOULE - "Joint opportunities for unconventional or long-term energy supply".

5.3 European Development Fund (EDF)

The Commission and the Senegal Ministry of Finance discovered that large amounts of aid had been diverted from their proper purpose which was to help small businesses in the Saint Louis region boost their activity and create jobs. Initial estimates put the amount involved at between ECU 2 and 4 million.

In the legal proceedings currently under way in Senegal a consultant is accused of diverting some of the funds for his own personal profit.

5.4 Environment/Medspa programme (Italy)¹⁴⁸

It has proved impossible to implement the payment order drawn up in 1994 against the Italian firm which benefited from a Medspa project, because of the machinations of the firm's directors. The Commission is considering the possibility of referring the matter to the Italian police with a view to criminal proceedings against those responsible.

¹⁴⁸ See 1994 Report, Chapter 5, Section 5.1.

CHAPTER 7 : STATISTICS AND ANALYSES

The objective of intelligence gathering is to collect the maximum amount of relevant information, to combine all accessible sources of information and to give a structured form to available information. The purpose of this is to detect as many cases of fraud as possible and follow such cases up in administrative, financial and criminal terms (enforcement). The exercise might culminate in amendments to existing Community legislation or the drawing up of future legislation (prevention).

The Commission's first source of information is to be found in the reports received from Member States under the sectoral rules in force.¹⁴⁹

Another very important source is the exchange of information in the framework of mutual administrative assistance.¹⁵⁰

The freephone number set up in November 1994 is another important source.¹⁵¹ During its first twelve months of operation,¹⁵² the Commission received more than 4 000 calls. Around two hundred of these led to further investigations being carried out. Some of the calls prompted a formal enquiry involving amounts of more than ECU 30 million. In others, the information received was used by the Commission to cross-check information from other sources. Likewise, access to different databases, both Community and international, and in particular international trade databases, allows this type of cross-checking to be carried out, suspicious transactions to be detected and on-the-spot investigations to be better targeted.

The Commission is currently developing an integrated information system which will take account of these different information sources. This system is based on a new version of the IRENE database, which merges two previously separate databases: "IRENE" (for cases of fraud reported by the Member States) and "pre-IRENE" (for cases under joint investigation by the Commission and the Member States). Furthermore, this new database will set up a direct link with "Mutual administrative assistance" messages, where these refer to cases with an impact on the Community budget.

The new database (IRENE 95) will not be a mere database recording information on fraud cases but a management tool. Analysis of the data will facilitate the identification of risk factors that make fraud against the Community budget possible or easier.

Section 1 : THE SITUATION IN 1995

In 1995 the Member States and the Commission detected more than 4.750 cases in all of the different budget areas combined. The sums involved came to more than ECU 1.100

¹⁴⁹ Council Regulations (EEC) Nos 1552/89 (own resources), 595/91 (EAGGF Guarantee Section) and 4253/88 (Structural Funds).

¹⁵⁰ Council Regulation (EEC) No 1468/81.

¹⁵¹ Numbers are listed country by country in the Annex.

¹⁵² Initially limited to twelve Member States. The new Member States have since been connected. See also Chapter 2, Section 2.4 of the 1994 Annual Report on the Fight Against Fraud.

million. This represents a significant increase in the number of cases but a more modest increase in the budgetary impact of those cases (see Table 1).

These figures include, on the one hand, the cases formally notified by the Member States in the framework of their regulatory obligations, and on the other hand, the cases initiated by the Commission and cases dealt with in cooperation with the Member States. The second category of cases includes the cases which arise from an exchange of information between the investigative services of the Member States and the Commission or from coordination in the framework of "mutual assistance". The number of cases in this latter category continues to increase and these enquiries represent more and more significant sums (in 1995 more than 50 % of the budgetary value of irregularities, see Table 2).

The figures in Tables 1 and 2 concerning cases notified by the Member States in the area of traditional own resources only have been extrapolated for the whole year in order to allow a uniform overview of the general situation. This extrapolation is based on the figures notified for the first half year as well as those indications already available for the second half year. Regulation (EEC, EURATOM) no 1552/89, at present, only requires the Member States to notify cases once per half year and therefore the statistics for the second semester of 1995 are not yet finalised. For the first half year only, the Member States notified 1.146 cases with a budgetary impact of ECU 132 million (see Table 3).

In the realm of EAGGF Guarantee Section expenditure (see Table 4) the Member States have notified 1.754 cases with a budgetary impact of ECU 214 million. This amount is significantly less than previous years. On the other hand the budgetary impact of the cases dealt with by the Commission in cooperation with the Member States has continued to increase significantly. If one includes these cases the budgetary impact rises to ECU 316 million.

The biggest increase in terms of the numbers and amounts involved is in relation to structural measures (see Table 5). Although the number of cases notified by the Member States remains low it has increased significantly in comparison with notifications made in the past due to the recent putting in place of the Commission regulations in this area. This explains also the high number of cases in comparison with 1994 which the Commission has obtained knowledge of through other information sources. The total amount involved is ECU 67 million, of which ECU 23 million relates to enquiries initiated by the Commission.

A significant increase can also be noticed in the number of cases in the area of direct expenditure (see Table 6). In this area there are no cases notified by the Member States as this is expenditure managed by the Commission.

For the first three budgetary areas mentioned above Table 7 gives a division of the cases notified by the Member States and those dealt with by the Commission by sub-area. This allows a better evaluation of the incidence of irregularities in these areas.

The number of cases notified and the amounts concerned naturally vary greatly from Member State to Member State (see Table 8). Given that the amount of traditional own resources that has to be collected by each Member State varies greatly as a function of its position in relation to the Community's external trade, and that there are significant differences between the expenditure on the Community budget between individual Member States, it is necessary to examine the figures for the number of cases uncovered

and their budgetary impact in the context of the relative position of each Member State with regard to own resources and expenditure.

On average and taking all sectors together, a case of fraud or irregularity notified by a Member State involves an amount of approximately ECU 130.000. Only 1,5 % of notified cases involve more than ECU 1 million. The average budgetary impact of cases under investigation by the Commission, on the other hand, is ECU 1,6 million. This reflects a deliberate choice by the Commission to concentrate its efforts on combatting organised or sophisticated fraud. Such fraud, the origin of which is often characterised by the participation of persons or firms operating from one or many countries is difficult for the Member States to identify without the active support which can only be given at the Community level.

Section 2 : TRENDS

Whereas in previous years the number of irregularity and fraud cases, and their budgetary implications rose steadily, in 1995 there was a certain stabilisation of the total amount involved. The number of cases uncovered increased nonetheless by about 15 % compared to 1994 while the amounts remained practically identical. At the same time the Community budget grew by nearly 9 %.

The evolution within the four important budget areas identified in Section 1 is very different. The amounts involved in the EAGGF Guarantee expenditure area have gone down while the amounts involved in traditional own resources have increased significantly. Nevertheless prudence is necessary in drawing conclusions in relation to trends based only on variations between one year and another. A very limited number of highly spectacular cases uncovered during any given year can have a major impact on the global figures for that year. The date of detection, and communication of an important and complex case of irregularity is always uncertain. For example 1994 was remarkable for the number of very important cases in the EAGGF-Guarantee expenditure area (7 cases among the 1.610 notified by the Member States represented more than ECU 200 million or half of the total amount).

Another marked change is the number of cases (and notably the budgetary impact of those cases) which were dealt with by the Commission, in cooperation with the Member States, which has increased significantly. Principally this reflects progress achieved in operational activity through the concentration of the efforts of the specialised services of the Member States and of the Commission on the most important and sensitive cases identified through more efficient and better targetted controls. This is encouraging, even though overall in this area, the position remains unsatisfactory.

For the first time, in 1995 the notifications in the area of EAGGF Guarantee expenditure show a considerable reduction in the amounts involved compared to 1994. This could be the first reflection of the reform of the Common Agricultural Policy (CAP). It is in fact necessary to consider the general evolution of the EAGGF Guarantee expenditure in 1995, in particular in two sectors in which high levels of irregularity were recorded in 1994 (export refunds for cereals and consumption aid for olive oil) where expenditure was reduced sharply in 1995. Expenditure on export refunds (all products combined) went from ECU 8.159 million in 1994 to ECU 7.802 million in 1995. Olive oil consumption aid went from ECU 613 million in 1994 to ECU 263 million in 1995. On the other hand,

direct aid (including set-aside) went from ECU 10.552 million in 1994 to ECU 13.506 million in 1995. The next report covering the year 1996 should confirm this trend.

The budgetary impact of irregularities uncovered by the Member States or the Commission in the area of traditional own resources continues, however, to rise. This is due for the main part to the results of greater efforts by the investigation services of the Member States and the Commission, achieved through a better targetting of sectors at high risk (products subject to high levels of taxes and excise duties or high import duties). Customs duties on industrial products remain the most affected. Whereas in 1994 there were more cases involving customs duties than those involving agricultural levies (45 % against 30 %), the proportion was inverted in 1995 in favour of the latter (39 % against 30 %). For the amounts involved evaded customs duties represented nearly 54 % of the total in 1995 against only 39 % in 1994 (see Table 7). This reflects in the first instance the growing number of cases of fraudulent importation of cigarettes detected. The Task Force which has been created by the Commission with the services of the Member States has allowed the identification of irregularities with considerable budgetary impact (see Table 9).

In the area of structural actions, the number of cases uncovered and their budgetary impact has also grown. This is due, in the first instance, to the entry into force of detailed provisions for the notification by Member States as well as the putting in place of appropriate investigation structures with the Commission. The number of cases notified is highest in the ESF but the EDRF expenditure concerned is the most significant (56 % of the total budgetary impact) which reflects the greater financial importance of this fund.

Section 3 : TRANSIT

In March 1995 the Commission addressed a Communication to the European Parliament and the Council in which it set out a realistic picture of the situation in the transit area, noted the shortcomings of the current system and identified short-term and long-term solutions.¹⁵³

The loss of own resources and other charges during the period 1990 to 1995 was estimated to be at least ECU 975 million for the Community and the Member States. The loss of own resources alone was estimated to be ECU 409 million on the basis of cases notified by the Member States either in conformity with Regulation (EEC, EURATOM) no. 1552/89 or in the framework of Regulation (EEC) no. 1468/81 on mutual assistance.

Cigarettes are the product that is by far the most concerned by cases of irregularity and fraud in the transit area (in the period 1990 to 1995 the cases involving these products represented 47 % of the amounts involved). Next come milk products, live animals and meat (see Table 10). Given the very high rates of taxes and excise duties applicable (or import duties due on such goods) these products are considered as "sensitive". The Member States and the Commission have put in place a computerised system to allow the rapid exchange of information in these cases (early warning system¹⁵⁴) under an administrative agreement.

¹⁵³ See chapter 2, section 3, point 1, page 23.

¹⁵⁴ See chapter 2, section 3, point 1, page 25.

Section 4 : RECOVERY

The situation regarding recovery in the areas of traditional own resources and EAGGF Guarantee remains unsatisfactory. This is of particular concern in that this is an area where the Member States have an interest which is at least as important as that of the Community to see an improvement in the situation as regards its impact on the budget.

The problems are significant, notably the slowness of internal administrative procedures in the Member States and the high percentage of cases in which the economic operators concerned contest recovery decisions before national courts. Moreover the figures set out in Table 11 to 13 may underestimate the real efforts of the Member States to the extent that the latter do not systematically notify the Commission of amounts recovered, in particular in the area of traditional own resources. The United Kingdom, in particular, supplied figures showing that the recovery rate for traditional own resources (see table 11) is clearly higher than the figure arrived at using data from the computer base. These figures, which are provided each quarter on a global basis, do not enable the updating of individual cases which represent the basis used for the production of statistics on recovery of traditional own resources. The adoption of the new regulation on this subject in 1996 should resolve this problem.

The recovery of customs duties is a particularly difficult area. Indeed questions are invariably asked, as to the reasons why a customs debt has arisen and the way in which responsibilities in carrying through the recovery process are determined. In order to tackle these difficulties the Commission has put in place a specific measure to allow decisions to be taken more quickly in this area, and above all within the time limits needed to avoid recovery being legally barred. An interservice working group has been charged with the examination of contentious dossiers, with bringing together all the necessary elements and with presenting the appropriate conclusions.

To judge the effectiveness of the procedures set up by the member States, the situation needs to be looked at with a degree of detachment. It would thus seem more proper to analyse the situation as regards recovery of the amounts involved by taking the cases notified in the years prior to the period covered by the annual review. Tables 11 to 13 therefore describe the position with respect to cases notified between 1992 and 1994 in detail and sum up the overall situation as regards older cases.

In 1995, there were still a very large number of old cases pending (in some cases they went back as far as the 1970s). On 31 December 1995, in the area of the EAGGF Guarantee Section alone, 1.169 cases notified in 1991 or earlier were still open; legal proceedings were under way in 419 cases. Two Member States (Italy and Germany) brought more than 90 % of all legal proceedings. As announced at the 20 October 1995 meeting of the committee of the Irregularities and Mutual Assistance Group, the Commission, working with the Member States, will do its best to find a way of closing the older cases on which no progress is likely to be made and on which a decision as to whether the amount at issue is irrecoverable or chargeable to the Member State needs to be taken.

While there exists in the area of EAGGF Guarantee the possibility to hold a Member State responsible for any negligence in the recovery of amounts concerned by irregularities and to charge the amounts that ought to, and could have been, recovered to

the Member State involved (in a procedure known as the "clearance of accounts") this possibility is not explicitly provided for at this stage in the other budgetary areas. The worrying situation which exists in the area of traditional own resources makes all the more important the reflection on the extension of the principles of the clearance of accounts procedure to the other budgetary areas as advocated by the Madrid European Council in December 1995.

Section 5 : ANALYSING LEGISLATION

As part of its "sound financial management" initiative, the Commission took a number of decisions designed to ensure that any new legislative initiative with substantial budgetary implications is subjected to prior examination as to any fraud risk it might involve and to any measures which will guarantee effective protection of the Community's financial interests. In the IIIrd phase of this exercise, which is being carried out together with the Member States, the question has been put in the same spirit, as to how to avoid the situation where changes to Commission proposals which arise during Council negotiations could increase the risk of fraud.

Furthermore, on the basis of available data concerning cases of irregularity detected in the past, the Commission will each year draw up a list of rules to be reviewed from the point of view of providing more effective protection for the Community's financial interests. This work should reinforce the partnership that is indispensable in this area to achieve a more systematic use of acquired experience.

Priority will be given to rules which :

- have substantial budgetary implications such that non-compliance will confer added benefits on the economic operators concerned;
- are highly complex and difficult to supervise;
- have been identified in Court of Auditors reports or the Irene and pre-Irene data bases as being especially vulnerable to fraud.

In this context and following the findings established in 1995, the Commission proposes to examine, inter alia, the rules on time limits applied to securities in the customs code, import duties and export refunds in the beef and veal sector, the staffing of the Community wine sector supervisory corps,¹⁵⁵ the olive oil production aid system and articles 23 and 24 of Regulation (EEC) No 4253/88.

The Commission is also studying, in partnership with the Member States and in the context of the IIIrd phase of SEM 2000, other improvements which could contribute to a reduction in the risk of irregularities. They involve, for example, the question of a clearer definition of the eligibility criteria for expenditure in the area of Structural Funds and the audit and control systems put in place for indirect expenditure managed by the Member States.

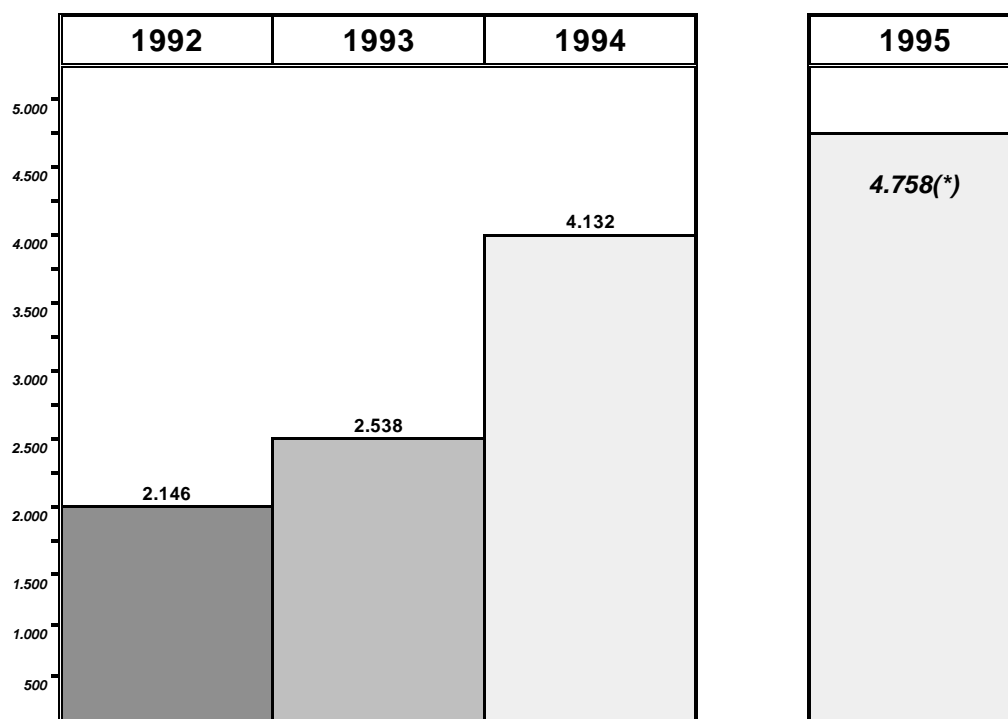
¹⁵⁵ Council Regulation (EEC) No 2048/89, OJ L 202, 14.07.1989.

ALL SECTORS

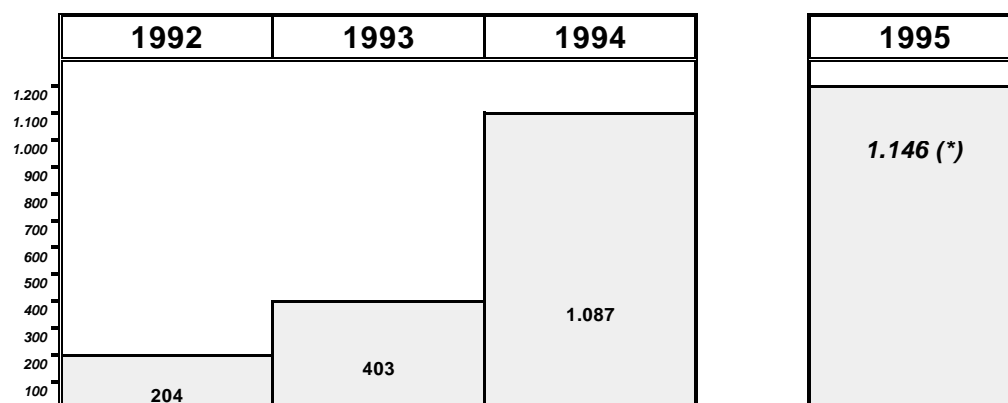
1992 - 1995

TOTAL IMPACT of IRREGULARITIES
formally communicated by Member States
and carried out by the Commission
together with Member States

NUMBER of CASES



AMOUNTS in MILLIONS of ECU



(*) Own Resources : including estimation for the second half of 1995.

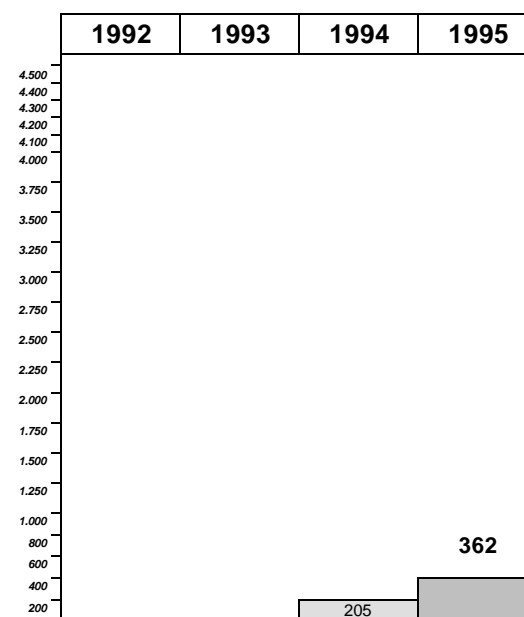
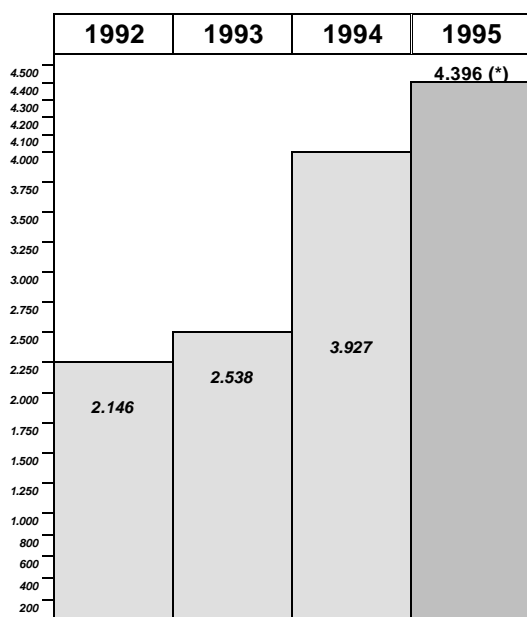
ALL SECTORS

1992 - 1995

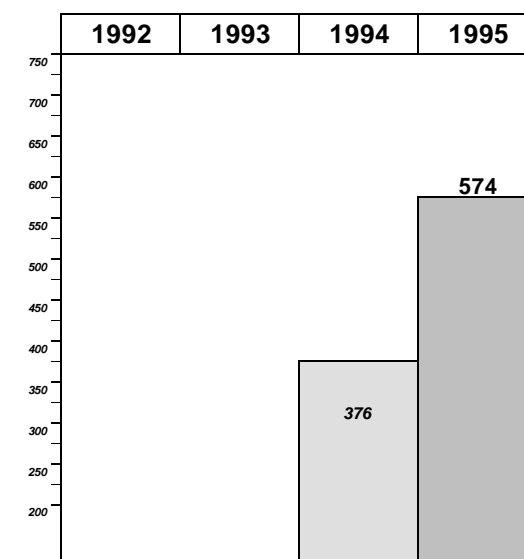
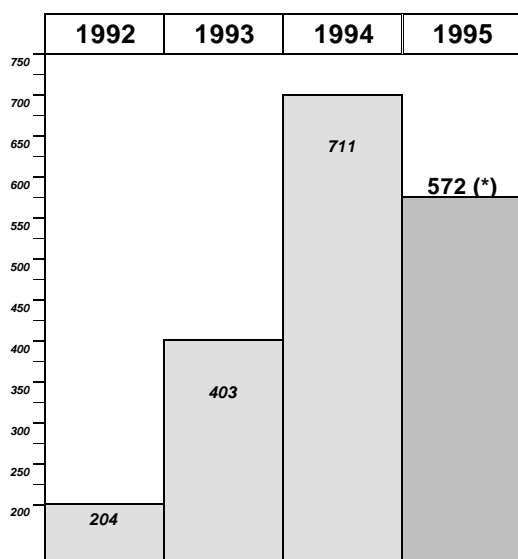
1. IRREGULARITIES FORMALLY COMMUNICATED (#) by MEMBER STATES

2. INQUIRIES carried out by the COMMISSION together with MEMBER STATES

NUMBER of CASES



AMOUNTS in MILLIONS of ECU



Cases detected and communicated formally by the Member States on the basis of the regulations in force during the year indicated in the sectors Traditional Own Resources, EAGGF-Guarantee and Structural Actions.

Inquiries by the Commission- in cooperation with the specialized services of the Member states - which allowed an irregularity to be identified and its financial impact to be evaluated during the year indicated.

(*) Own Resources : including estimation for the second half of 1995.

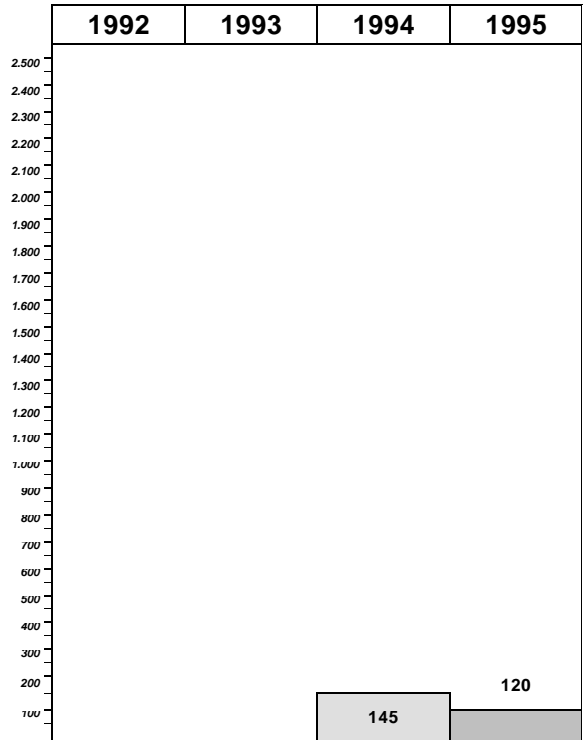
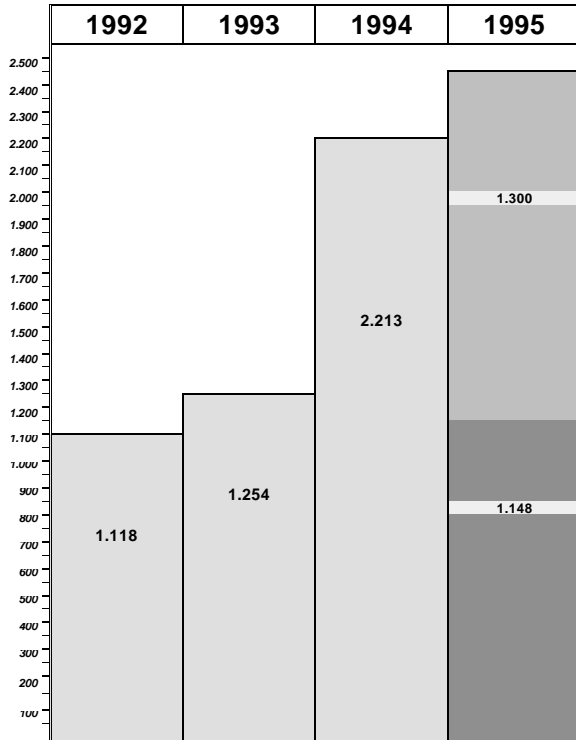
TRADITIONAL OWN RESOURCES

1992 - 1995

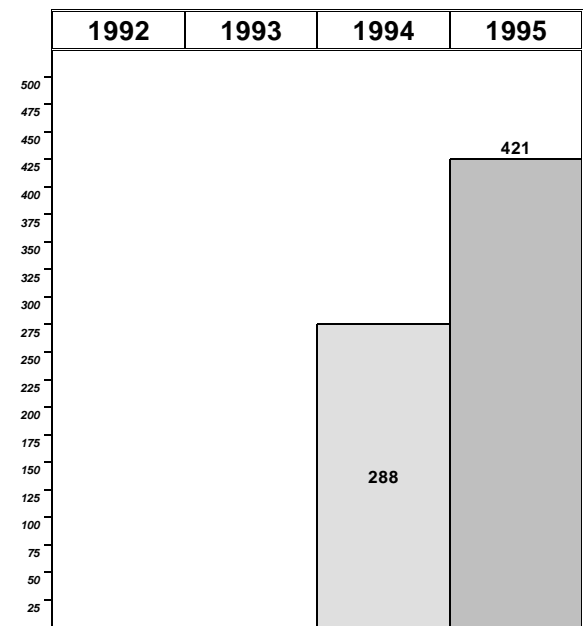
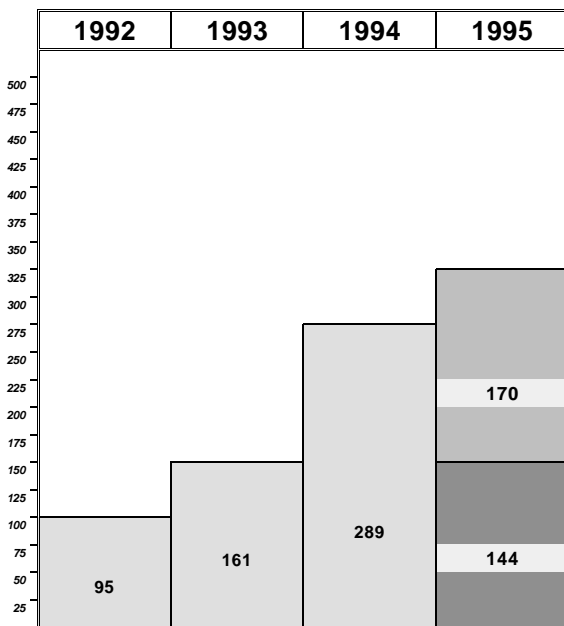
1. IRREGULARITIES FORMALLY COMMUNICATED (#) by MEMBER STATES

2. INQUIRIES carried out by the COMMISSION together with MEMBER STATES

NUMBER of CASES



AMOUNTS in MILLIONS of ECU



(#) on the basis of Regulation (CEE) 1552/89

communications for the first half of 1995

estimation for the second half of 1995

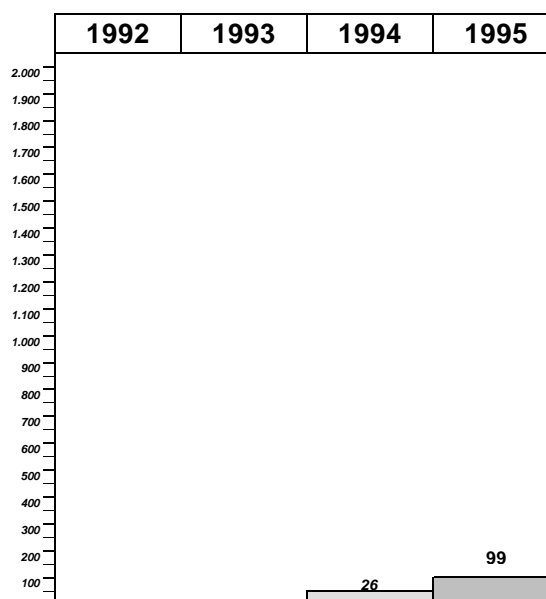
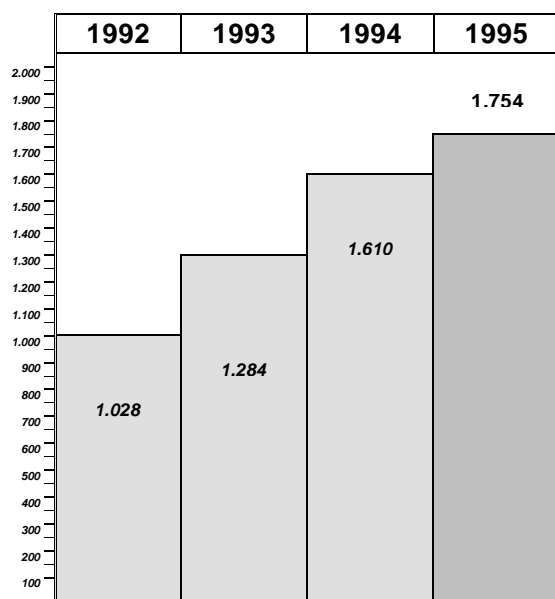
EAGGF - GUARANTEE

1992 - 1995

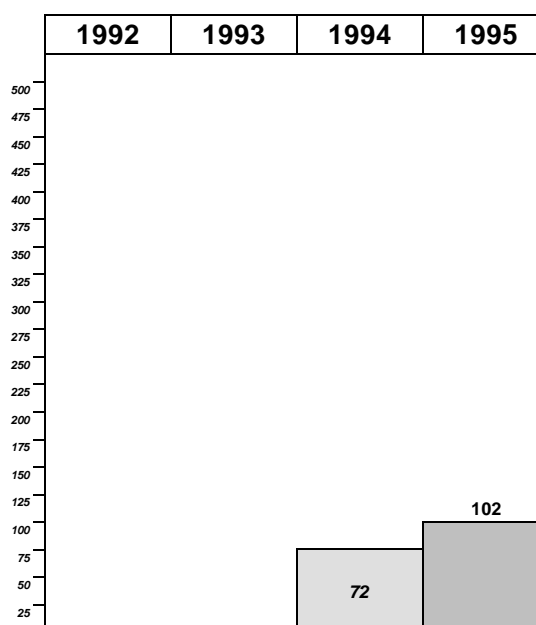
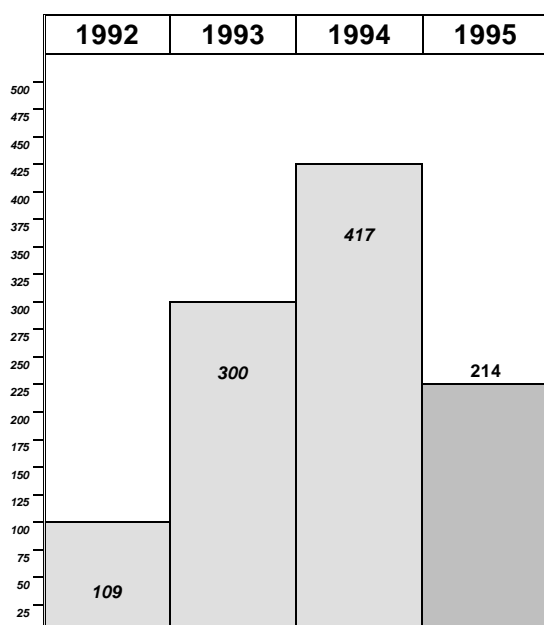
1. IRREGULARITIES FORMALLY COMMUNICATED (#) by MEMBER STATES

2. INQUIRIES HELD by the COMMISSION together with MEMBER STATES

NUMBER of CASES



AMOUNTS in MILLIONS of ECU



(#) based on Regulation (EEC) 595/91

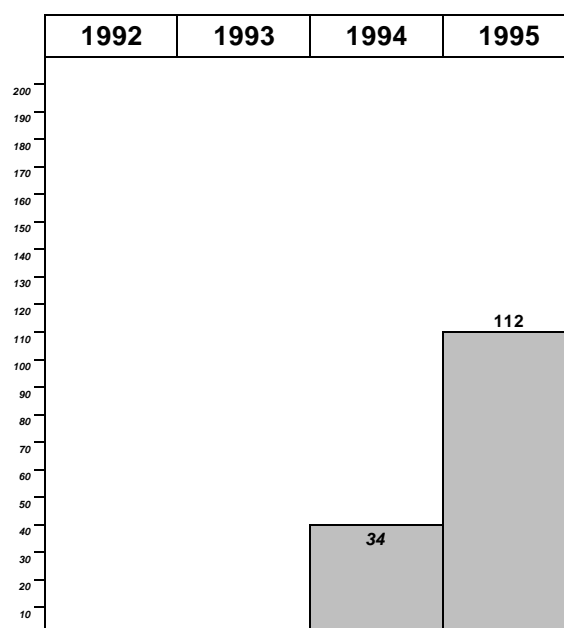
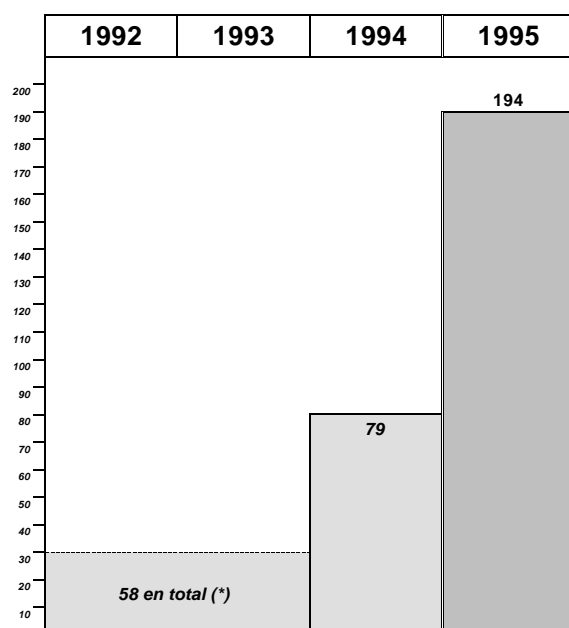
STRUCTURAL ACTIONS

1992 - 1995

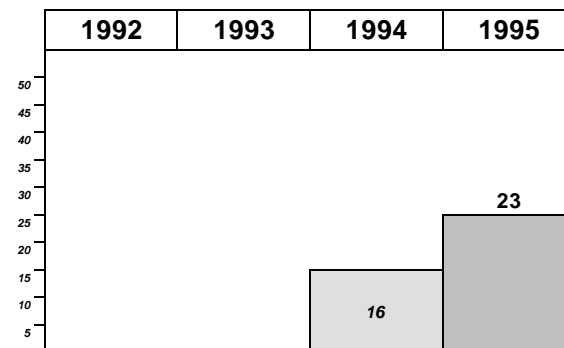
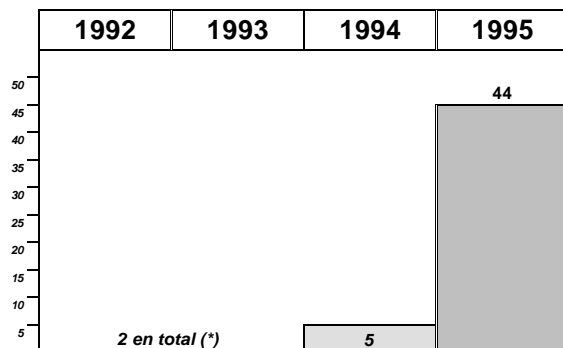
1. IRREGULARITIES FORMALLY COMMUNICATED (#) by MEMBER STATES

2. INQUIRIES carried out by the COMMISSION together with MEMBER STATES

NUMBER of CASES



AMOUNTS in MILLIONS of ECU



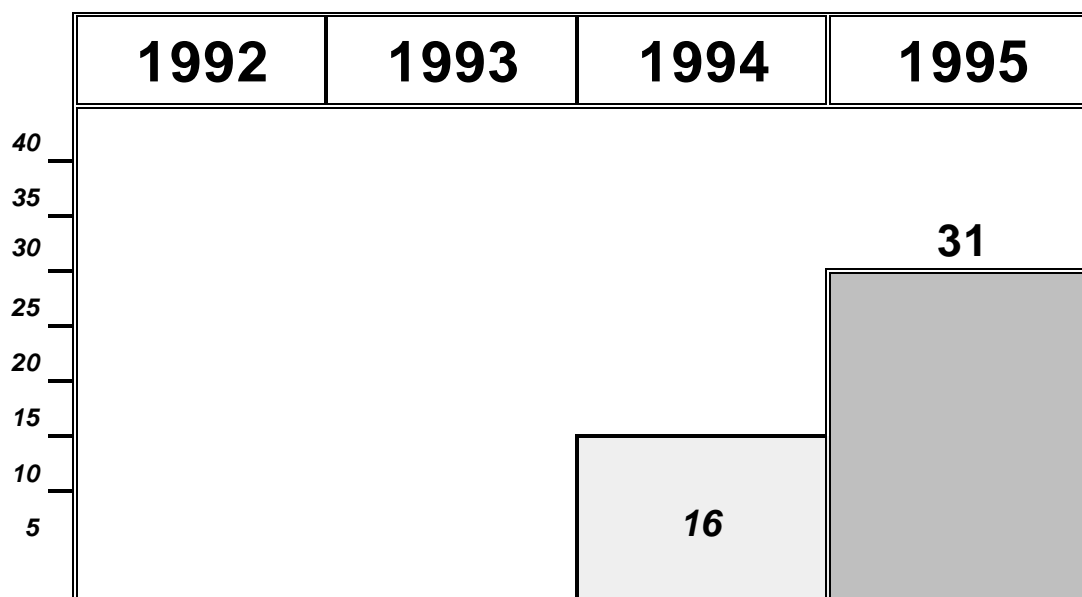
(*) before regulation (EEC) 1681/94 and 1831/94 came into force.

Cases formally communicated by Member States based on regulations (EEC) 1681/94 and 1831/94

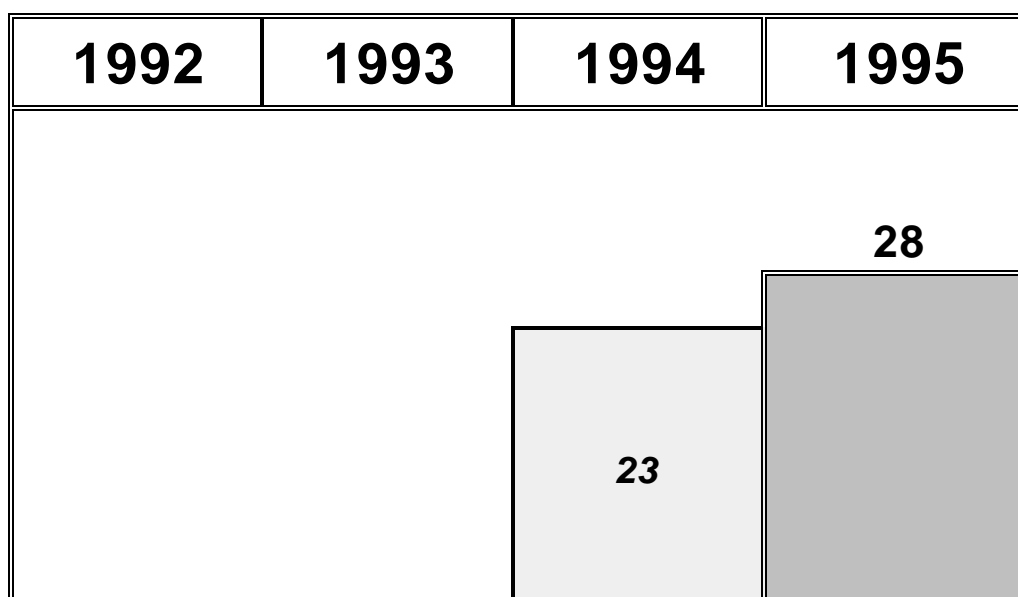
DIRECT EXPENDITURE (*)

INQUIRIES carried out by the COMMISSION (**)

NUMBER of CASES



AMOUNTS in MILLIONS of ECU



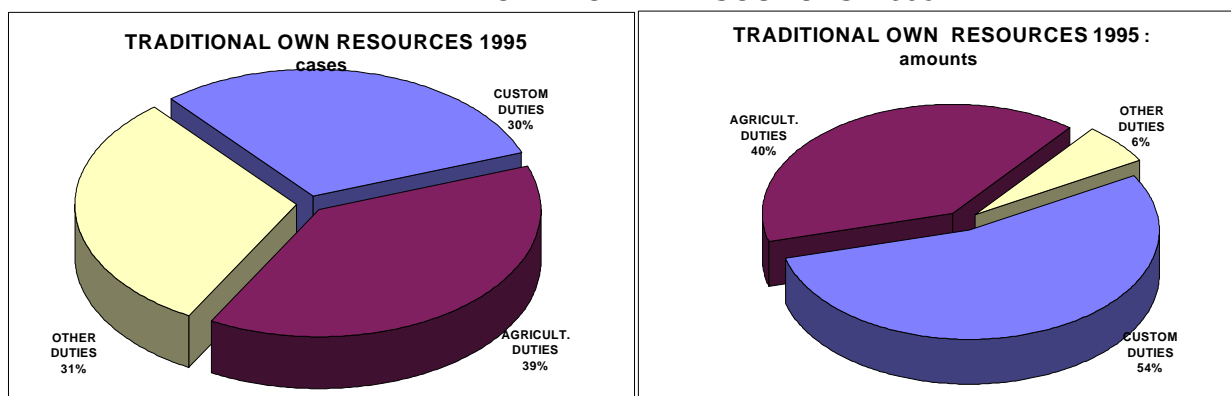
(*) see CHAPTER 6, section 5

(**) with the assistance of Member States' services.

DISTRIBUTION of the irregularities revealed in 1995

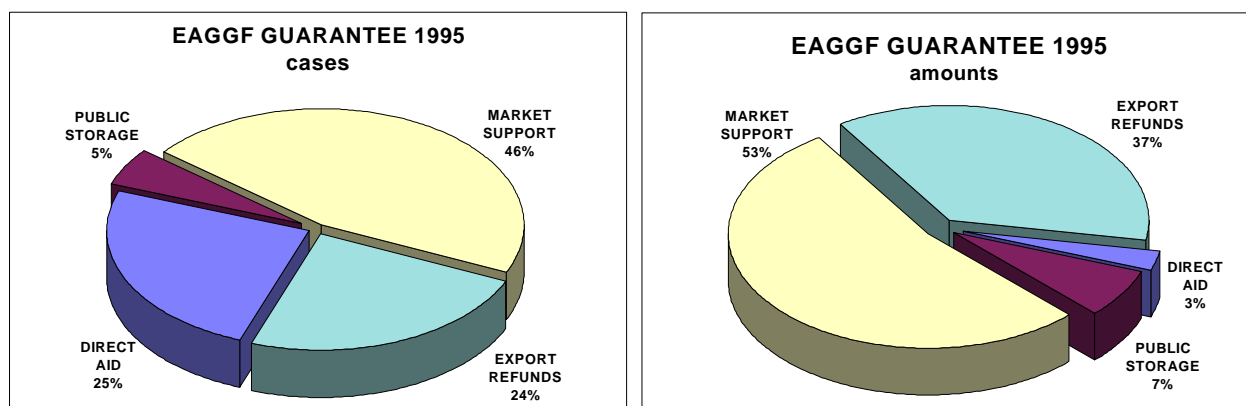
Irregularities communicated officially by Member States and inquiries carried out by the Commission together with Member states.

TRADITIONAL OWN RESOURCES 1995



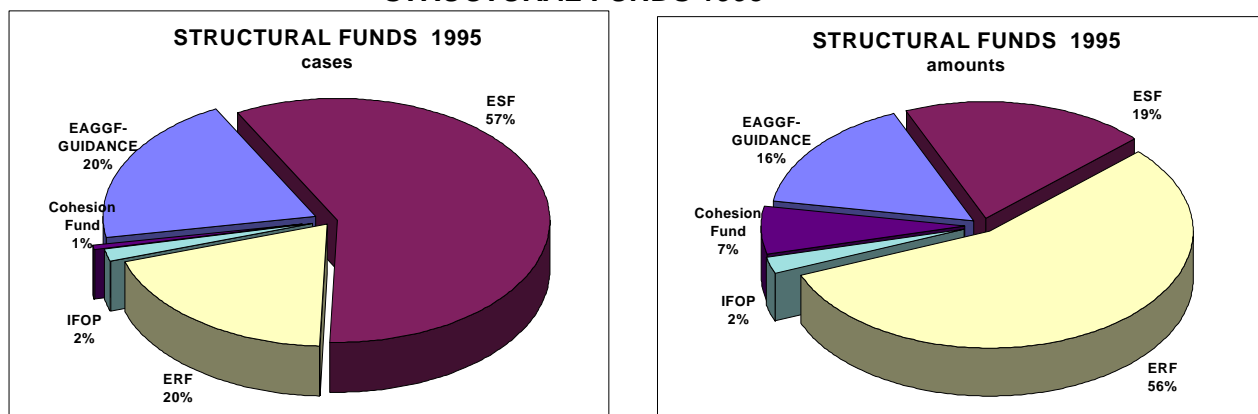
subdivision of the figures in table 3

EAGGF - GUARANTEE 1995



subdivision of the figures in table 4

STRUCTURAL FUNDS 1995



subdivision of the figures in table 5

TABLE 8

ALL SECTORS

IRREGULARITIES communicated officially by Member States in 1995

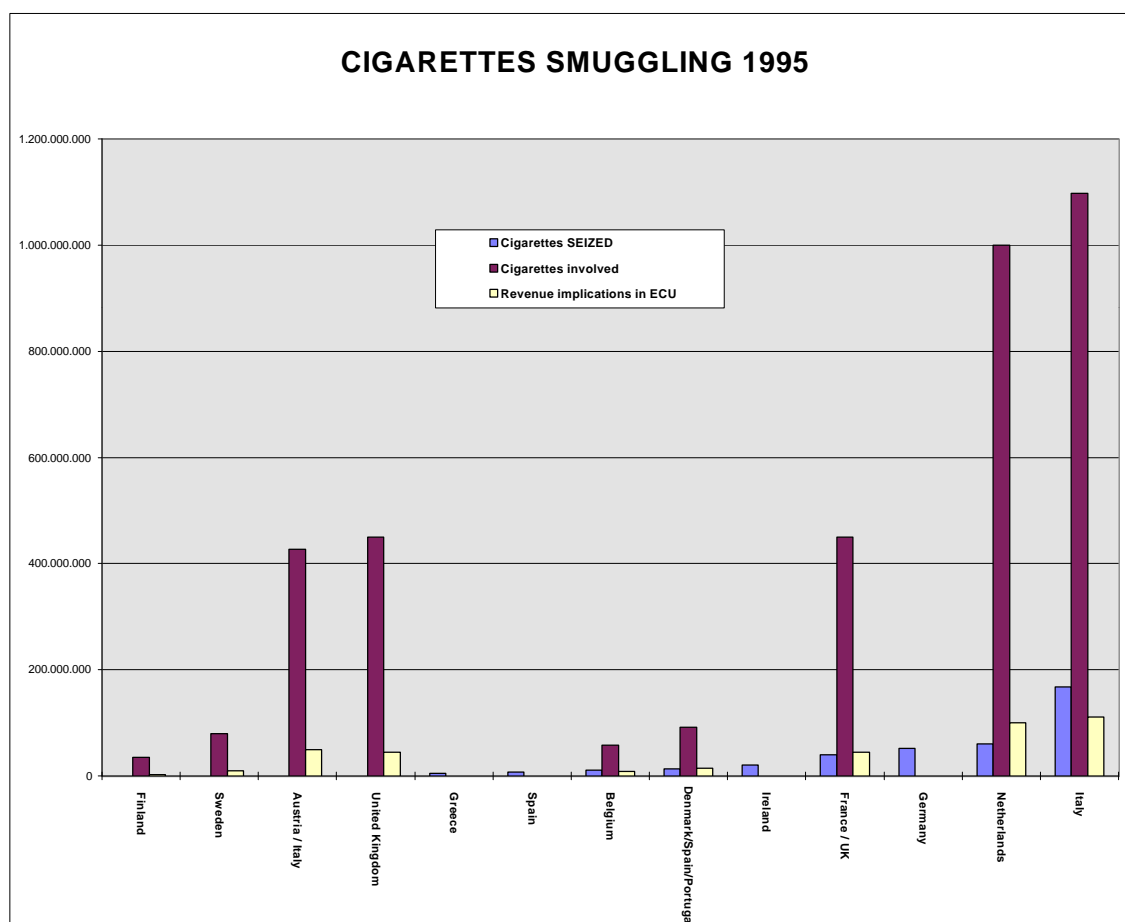
<i>Amounts x 1.000 ECU</i>	TRADITIONAL (*) OWN RESOURCES		EXPENDITURES EAGGF - GUARANTEE		EXPENDITURES STRUCTURAL ACTIONS		TOTAL IRREGULARITIES COMMUNICATED		
	CASES communicated	AMOUNTS communicated	CASES communicated	AMOUNTS communicated	CASES communicated	AMOUNTS communicated	CASES communicated	AMOUNTS communicated	
	BELGIQUE	54	22.419	35	1.613		0	89	
DANMARK	8	1.213	39	3.524		0	47	4.737	DK
DEUTSCHLAND	558	39.548	349	69.228	21	12.691	928	121.467	DE
ELLAS	9	1.603	151	10.838	58	2.597	218	15.038	GR
ESPANA	22	3.342	116	17.681	46	20.149	184	41.172	ES
FRANCE	121	28.754	65	3.769		0	186	32.523	FR
IRELAND	15	613	20	214		0	35	827	IE
ITALIA	73	22.123	416	82.716	5	4.443	494	109.282	IT
LUXEMBOURG	0	0	0	0		0	0	0	LU
NEDERLAND	110	11.600	154	9.679	13	0	277	21.279	NL
ÖSTERREICH	2	33	10	381		0	12	414	AT
PORTUGAL	18	2.103	132	7.247	44	2.576	194	11.926	PT
SUOMI / FINLAND	1	25	0	0		0	1	25	FI
SVERIGE	2	38	48	67		0	50	105	SE
UNITED KINGDOM	155	10.456	219	7.148	7	1.960	381	19.564	GB
TOTAL	1.148	143.870	1.754	214.106	194	44.416	3.096	402.392	

(*) ONLY FIRST 6 MONTHS of 1995

" TASK GROUP CIGARETTES " CIGARETTES SMUGGLING 1995

Member State	Cigarettes SEIZED	Cigarettes involved	REVENUE implications (+)
			for MEMBER STATES and OWN RESSOURCES in ECU
FINLAND		35.000.000	3.000.000
SWEDEN		80.000.000	10.000.000
AUSTRIA / ITALY		426.650.000	50.000.000
UNITED KINGDOM		450.000.000	45.000.000
GREECE	4.650.000		
SPAIN	6.750.000		
BELGIUM	11.450.000	57.350.000	8.888.665
DENMARK / SPAIN/ PORTUGAL	13.000.000	92.000.000	15.000.000
IRELAND	20.000.000		
FRANCE / UK	40.000.000	450.000.000	45.000.000
GERMANY	51.540.000		
NETHERLANDS	60.000.000	1.000.000.000	100.000.000
ITALY	167.534.600	1.097.810.000	110.580.000
EU Total	374.924.600	3.688.810.000	387.468.665

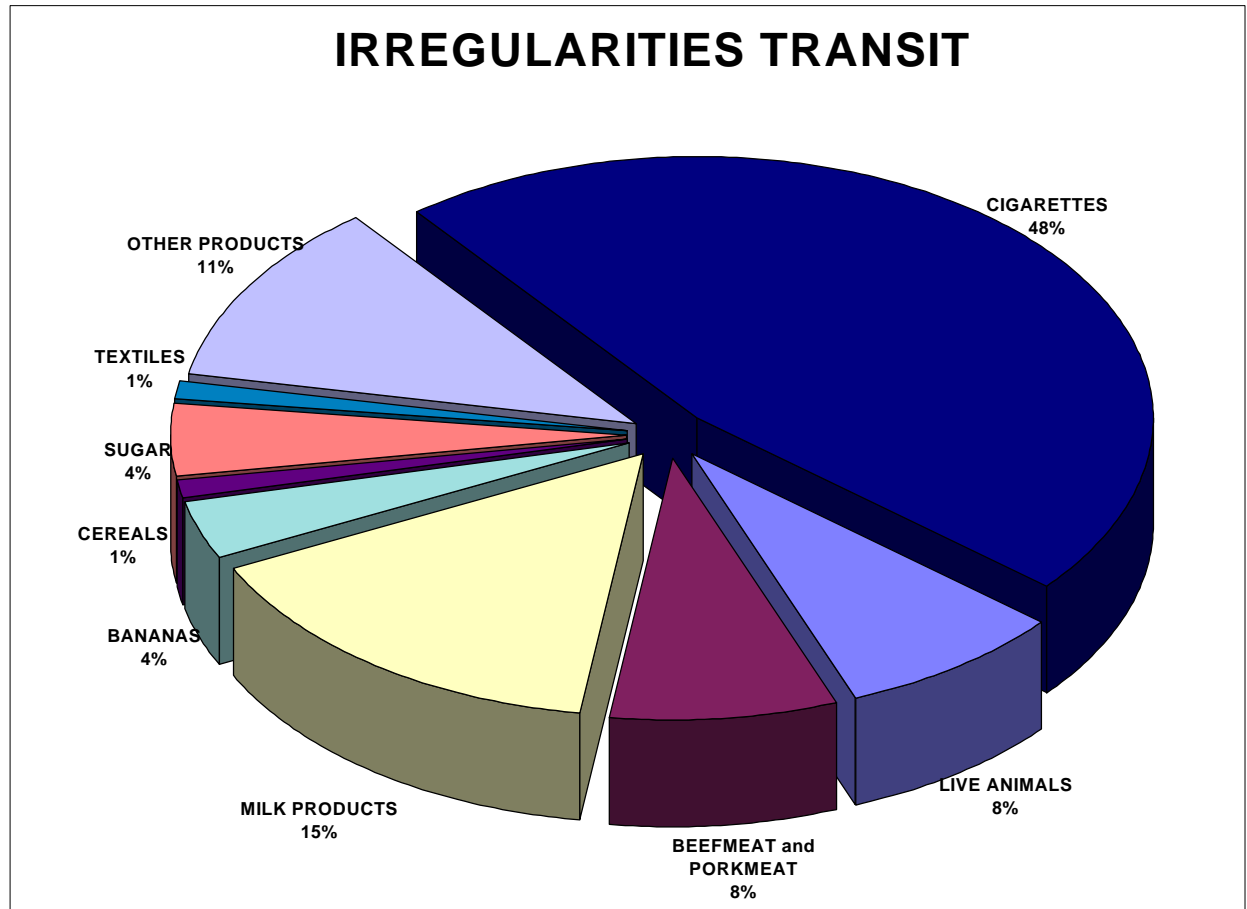
(+) *ESTIMATED AMOUNTS*



IRREGULARITIES concerning TRANSIT from 1990 until 1995 included (*).

AMOUNTS concerning TRADITIONAL OWN RESOURCES

<i>PRODUCT</i>	<i>MILLION ECU</i>
LIVE ANIMALS beef / pork / sheep	33
BEEFMEAT and PORKMEAT	33
MILK PRODUCTS butter/cheese/milkpowder	63
BANANAS	15
CEREALS	5
SUGAR	18
TEXTILES	5
OTHER PRODUCTS	46
CIGARETTES	191
TOTAL	409



(*) Irregularities communicated under regulation (EEC) 1552/89 and 1468/81

RECOVERY Situation on 31-12-1995

TRADITIONAL OWN RESOURCES

Regulation (EEC) 1552/89

Situation as to cases(*)
notified PRIOR to 1992

Situation as to cases(*) notified in 1992+1993+1994

AMOUNTS X 1.000 ECU	AMOUNT still TO BE RECOVERED ⁽⁺⁺⁺⁾				AMOUNT notified ^(**)	recovered effectively	AMOUNT still TO BE RECOVERED ⁽⁺⁺⁺⁾			
	in TOTAL	PENDING IN COURT	% of the amount notified	in TOTAL			PENDING IN COURT	% of the amount notified		
	1	2	3	4 = 2 / 1	5	6	7 = 5 - 6	8	9 = 7 / 5	
BELGIQUE	8.593	3.606	134	42%	97.943	6.555	91.388	50.624	93%	BE
DANMARK	3.476	2.017	0	58%	7.005	2.952	4.053	204	58%	DK
DEUTSCHLAND	122.737	118.716	65.730	97%	127.985	6.075	121.910	24.685	95%	DE
ELLAS	1.336	1.336	819	100%	2.162	0	2.162	2.037	100%	GR
ESPAÑA	2.410	1.647	260	68%	13.267	1.615	11.652	2.803	88%	ES
FRANCE	27.564	21.010	55	76%	80.895	957	79.938	452	99%	FR
IRELAND	270	93	0	34%	12.038	6.118	5.920	0	49%	IE
ITALIA	4.186	4.186	3.719	100%	98.620	639	97.981	92.991	99%	IT
LUXEMBOURG	41	41	0	100%	89	46	43	0	48%	LU
NEDERLAND (+)	6.030	5.612	2.676	93%	9.323	125	9.198	5.090	99%	NL
ÖSTERREICH	#				#					AT
PORTUGAL	699	322	202	46%	2.716	677	2.039	1.172	75%	PT
FINLAND / SUOMI	#				#					FI
SVERIGE	#				#					SE
UNITED KINGDOM (++)	24.228	18.175	0	75%	72.606	2.260	70.346	658	97%	GB
TOTAL	201.570	176.761	73.595	88%	524.649	28.019	496.630	180.716	95%	

(*) Cases officially communicated to the Commission

(**) Amounts as originally notified or corrected at a later stage

(+)

The Netherlands declared in 1995 the recovery of ca. 58 Million ECU in cases from 1993 and 1994 involving cigarettes for which no fraud files were produced.

(++)

The United Kingdom informed the Commission that the recovery rate is higher than that arrived at on the basis of its own fraud records which have not yet been updated.

(+++)

The recovery rates are quoted under restriction. Until the regulation has been amended - it is to be adopted in near future - member states are not obliged to inform the Commission about the recovery of the amounts notified

= not applicable

RECOVERY Situation on 31-12-1995

EAGGF-GUARANTEE

Regulation (EEC) 595/91

Situation as to cases()
notified PRIOR to 1992*

AMOUNTS X 1.000 ECU	AMOUNT	AMOUNT still TO BE RECOVERED (+++)		
	notified (**)	in TOTAL	PENDING IN COURT	% of the amount notified
	1	2	3	4 = 2 / 1
BELGIQUE	14.570	4.510	2.550	31%
DANMARK	23.252	13.258	11.011	57%
DEUTSCHLAND	155.868	30.510	23.543	20%
ELLAS	784	253	0	32%
ESPANA	2.486	1.242	0	50%
FRANCE	29.248	10.696	8.891	37%
IRELAND	13.945	7.316	2.228	52%
ITALIA	409.108	393.283	149.210	96%
LUXEMBOURG	0	0	0	
NEDERLAND	27.980	16.607	3.471	59%
ÖSTERREICH	#			
PORTUGAL	1.146	496	0	43%
SUOMI / FINLAND	#			
SVERIGE	#			
UNITED KINGDOM	24.042	11.196	492	47%
TOTAL	702.429	489.367	201.396	70%

Situation as to cases() notified in 1992+1993+1994*

AMOUNT	recovered	AMOUNT still TO BE RECOVERED (+++)				
		in TOTAL	PENDING IN COURT	% of the amount notified		
notified (**)	effectively	5	6	7 = 5 - 6	8	9 = 7 / 5
16.593	990	15.603	43	94%	BE	
9.101	4.829	4.272	1.029	47%	DK	
62.150	9.949	52.201	2.951	84%	DE	
82.914	56.409	26.505	0	32%	GR	
79.607	1.951	77.656	212	98%	ES	
49.404	14.877	34.527	6.474	70%	FR	
2.992	1.870	1.122	0	38%	IE	
460.606	90.063	370.543	114.445	80%	IT	
0	0	0	0		LU	
17.204	9.684	7.520	0	44%	NL	
#					AT	
14.327	1.153	13.174	2.187	92%	PT	
#					FI	
#					SE	
22.405	10.524	11.881	189	53%	GB	
817.303	202.299	615.004	127.530	75%		

(*) Cases officially communicated to the Commission
(**) Amounts as originally notified or corrected at a later stage

= not applicable

RECOVERY SITUATION on 31-12-1995

STRUCTURAL FUNDS*Situation as to cases notified PRIOR to 1992*

AMOUNTS X 1.000 ECU	AMOUNT notified (*)	AMOUNT still to be recovered	PENDING IN COURT
	A		B
BELGIQUE	0	0	0
DANMARK	13	13	0
DEUTSCHLAND	19	12	0
ELLAS	111	35	0
ESPANA	72	60	0
FRANCE	945	945	944
IRELAND	58	23	0
ITALIA	0	0	0
LUXEMBOURG	0	0	0
NEDERLAND	562	444	45
ÖSTERREICH	#	#	#
PORTUGAL	0	0	0
SUOMI	#	#	#
SVERIGE	#	#	#
UNITED KINGDOM	420	356	79
TOTAL	2.200	1.888	1.068

Situation as to cases notified in 1992 + 1993 + 1994

amount notified (*)	recovered effectively	AMOUNT still to be recovered	% of the amount originally notified	
1	2	4 = (1-2-3)	5 = 4 / 1	
0	0	0		BE
105	73	32	30%	DK
239	29	210	88%	DE
2874	72	2802	97%	GR
397	12	385	97%	ES
0	0	0		FR
0	0	0		IE
1477	0	1477	100%	IT
0	0	0		LU
0	0	0		NL
#	#			AT
430	238	192	45%	PT
#	#			FI
#	#			SE
72	0	72	100%	GB
5.594	424	5.170	92%	

(*) original amount to be recovered after correction(s)

= not applicable

CHAPTER 8: ANTI-FRAUD APPROPRIATIONS

Section 1: IMPLEMENTATION OF THE 1995 BUDGET

The budgetary authority adopted ECU 132.618 million in anti-fraud (commitment) appropriations for 1995. The appropriations available after transfers¹⁵⁶ totalled ECU 88.233 million.

This figure does not include the appropriations at heading B5.800 (Cooperation in the field of justice and home affairs) which were used in 1995 to finance projects put forward by the Member States under Title VI of the Union Treaty.

Much of this is to go to national government departments under the Community's various support and technical assistance policies. Some of the policies are strictly defined in rules governing individual sectors, particularly in agriculture, while others are more flexibly defined by way of the granting of subsidies to support monitoring and investigative work by the specialist departments in the Member States. All of them have to comply with the Commission's self-imposed requirement for sound financial management.

Details of how the 1995 appropriations were used are given in Table 14.

Section 2: 1996 APPROPRIATIONS

The budgetary authority adopted appropriations of ECU 92.165 million for 1996 (including the amounts entered in the reserve).¹⁵⁷ The volume of appropriations is down on 1995, especially as regards Part B of the budget.

The decline is partly the result of the evolution of heading B1.360 (ECU 29 million at the heading, ECU 15 million in reserve), as 1995 was, except in the new Member States, the last year of operation of certain cofinancing programmes provided for by Regulations (EEC) Nos 307/91 (reinforcement of controls over certain areas of EAGGF Guarantee Section expenditure) and 3508/92 (integrated management and accounting system).

Article B2.150 is a new heading. It regroups the distinct antifraud appropriations for the structural policies (headings B2-101, B2-111, B2-121 and B2-131).

The establishment of a new Title B5.9 (Measures to combat fraud) and an Article B5-910 (General measures to combat fraud) in the budget subsection for Consumer protection, internal market, industry and trans-European networks was called for by the European Parliament. They cover expenditure incurred by the Commission in technical support by SG/UCLAF to the Member States in agriculture and traditional own resources and

¹⁵⁶ Internal transfers submitted to the budgetary authority.

¹⁵⁷ These amounts cannot yet be used but they are expected to become usable in the course of the year (after establishment of antifraud budgets).

expenditure generated by the checks carried out by the Unit to prevent undue payments and losses of revenue from own resources.¹⁵⁸

Tables 15 and 16 give a detailed breakdown of antifraud appropriations for 1996.

¹⁵⁸ In 1995 this expenditure was covered by Article B2-519.

Table 14

IMPLEMENTATION OF APPROPRIATIONS, 1995

BUDGET HEADING	TITLE	MEASURES FINANCED	APPROPRIATIONS AVAILABLE AFTER TRANSFERS	APPROPRIATIONS COMMITTED	PERCENT-AGE USED
A-2554	Conferences, congresses and meetings in connection with the activities of the associations of European lawyers for the protection of the financial interests of the Community	Seminars, meetings and training schemes in the Member States	260.000	259.605	99,9
A-3530	Unit to coordinate action against fraud	- Meetings, symposiums, investigations - Data bases - Information	200.000	199.999 85.615 24.834 90.000	100
A-3531	Controls, studies, analyses in connection with the fight against fraud	- Reg. (EEC) No 4045/89 - Legal seminars and studies - Customs, VAT seminars - Investigations and missions - Other seminars - Report on combating fraud - Analyses - Data processing and data bases - Grants - Conciliation body (EAGGF) - SCENT	3.308.000	3.244.018 470.000 112.904 90.000 414.800 516.246 31.000 9.598 718.120 418.000 438.350 25.000	98
A-3532	Fraud suppression in the textile sector (TAFI)	- Seminars, investigations - Grant - Cofinancing of a research unit - Textile booklets	800.000	740.000 188.799 200.000 300.000 51.201	93
TOTAL TO BE CARRIED OVER			4.568.000	4.443.622	

BUDGET HEADING	TITLE	MEASURES FINANCED	APPROPRIATIONS AVAILABLE AFTER TRANSFERS	APPROPRIATIONS COMMITTED	PERCENT-AGE USED
CARRYOVER			4.568.000	4.443.622	
A-355	European documentation, coordination and study network to control cross-border crime and fraud	Establishment of a foundation in Dutch law (legal structure of the network) involving 5 countries: D, I, GR, L, NL	400.000	62.500	16
B1-360	Measures to combat fraud affecting the European Agricultural Guidance and Guarantee Fund, Guarantee Section	- Reg. (EEC) No 307/91 & Reg. (EC) No 3235/94 - Reg. (EC) No 165/94 (remote sensing) - Reg. (EEC) No 3508/92 (SIGC) & Reg. (EC) No 3235/94	65.000.000	62.060.000 10.000.000 8.700.000 43.360.000	95.5
B2-101	Measures to combat fraud affecting the European Agricultural Guidance and Guarantee Fund, Guidance Section	Grants	200.000(*)	10.000	5
B2-111	Measures to combat fraud affecting the Financial Instrument for Fisheries Guidance		50.000(*)	-	-
B2-121	Measures to combat fraud affecting the European Regional Development Fund	Grants	300.000(*)	30.000	10
B2-131	Measures to combat fraud affecting the European Social Fund	Grants	200.000(*)	19.000	9.5
TOTAL TO BE CARRIED OVER			70.718.000	66.625.122	

(*) The corresponding appropriations were entered in reserve B0-40 with a token entry against each heading. The transfer of these appropriations to their headings was subject to a decision by the budgetary authority, on the basis of a report by the Commission (SG/UCLAF). The decision was taken in July 1995; as the appropriations were made available late, it was therefore not possible to make the best use of them in 1995.

BUDGET HEADING	TITLE	MEASURES FINANCED	APPROPRIATIONS AVAILABLE AFTER TRANSFERS	APPROPRIATIONS COMMITTED	PERCENT-AGE USED
CARRYOVER			70.718.000	66.625.122	
B2-5110	Inspection in agriculture	- Inspection and analyses - Olive oil agencies	12.715.000	12.668.864 168.864 12.500.000	99,6
B2-519	Campaign against fraud in agriculture	- Studies, analyses, inspection - Grants - Consultant's fees	1.650.000(*)	764.387 149.387 590.000 25.000	46,4
B5-3051	Matthaeus and Matthaeus Tax programmes (vocational training for customs officials and indirect taxation officials)	- Matthaeus - Matthaeus Tax	3.000.000	3.000.000 2.290.570 709 430	100
B6-910	Actions to combat fraud in the area of research (shared-cost)		50.000	42.000	84
B7-530	Measures to combat fraud in the cooperation sector		100.000	-	-
TOTAL TO BE CARRIED OVER			88.233.000	83.100.373	94,2

(*) The corresponding appropriations were entered in reserve B0-40 with a token entry against each heading. The transfer of these appropriations to this heading was subject to a decision by the budgetary authority, on the basis of a report by the Commission (SG/UCLAF). The decision was taken in July 1995; as the appropriations were made available late, it was therefore not possible to make the best use of them in 1995.

ANTI-FRAUD APPROPRIATIONS, 1996 BUDGET

ITEM	TITLE	AMOUNT (in ECU)
A-2554	Conferences, congresses and meetings in connection with the activities of the associations of European Lawyers for the protection of the financial interests of the Community	290 000
A-3530	Unit to coordination action against fraud	200 000
A-3531	Controls, studies, analysis in connection with the fight against fraud	4 000 000
A-3532	Combating fraud in the textile sector (TAF1)	800 000
A-355	European documentation, coordination and study network to control cross-border crime and fraud	350 000 ¹
B1-360	Monitoring and preventive measures concerning the European Agricultural Guidance and Guarantee Fund, Guarantee Section	29 000 000 ²
B2-150	Action against fraud in the field of structural action	750 000
B2-301	Measures to combat fraud affecting the Cohesion Fund	300 000
B2-511	Inspection in agriculture	15 500 000 ³
B5-3051	Matthaeus and Matthaeus Tax programmes (vocational training for customs officials and indirect taxation officials)	3 200 000
B5-910	General measures to combat fraud	4 175 000
B6-910	Actions to combat fraud in the areas of research (shared-cost)	50 000
B7-650	Measures to combat fraud in the cooperation sector	50 000

¹ These appropriations are all entered against Chapter A0.10 of the budget (reserve, Part A of the budget).

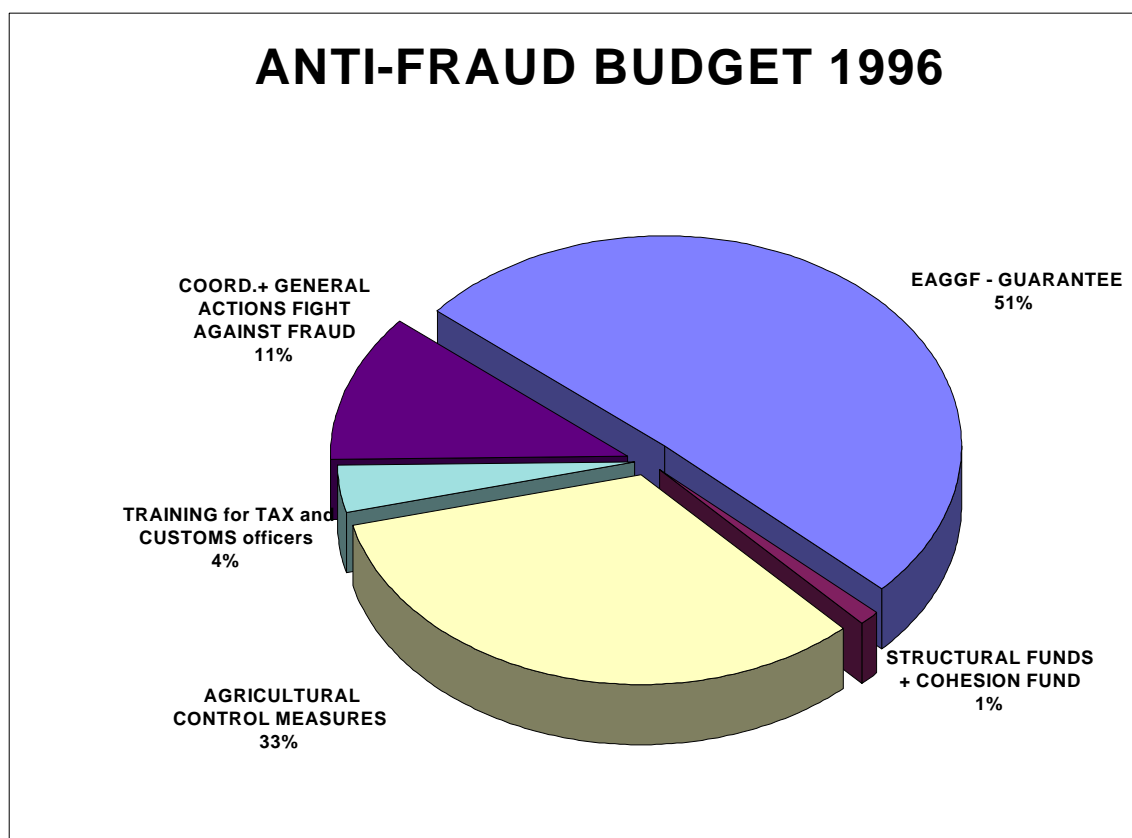
² An appropriation of ECU 15 million has been entered in reserve B0-40.

³ An appropriation of ECU 13 million has been entered in reserve B0-40.

ANTI-FRAUD BUDGET 1996

Subdivision by domaines

<i>Domaine</i>	<i>budget post</i>	MILLIONS of ECU
1. EAGGF - GUARANTEE	B1-360	44,00
2. STRUCTURAL FUNDS + COHESION FUND	B2-150 / B2-301	1,05
3. AGRICULTURAL CONTROL MEASURES	B2-511	28,50
4. TRAINING for TAX and CUSTOMS officers	B5-3051	3,20
5. COORDINATION and GENERAL ACTIONS for FIGHT AGAINST FRAUD	A2554 / A-353 / A-355 + B-910 / B6-910 / B7-650	9,92
	TOTAL	86,67



ANNEX: FREEPHONE NUMBERS IN THE MEMBER STATES

Austria	06605845
Belgium	080012426
Denmark	80018495
Finland	0800112595
France	05917295
Germany	0130820595
Greece	008003212595
Ireland	1800553295
Italy	16788495
Luxembourg	08003595
Netherlands	060224595
Portugal	0505329595
Spain	900993295
Sweden	020791695
United Kingdom	0800963595

GLOSSARY

- EEC :** European Economic Community
- EC :** European Community (term used since the entry into force of the treaty on European Union)
- IGC :** Intergovernmental Conference
- SEM 2000:** Commission programme to improve by the year 2000 the management of Community appropriations (Sound and Efficient Management)
- SG/UCLAF or UCLAF :** Unité de Coordination de la Lutte AntiFraude (Directorate featuring in the Staff organisation of the Commission's Secretariat General) - in English, Unit for the Coordination of fraud prevention
- OJ :** Official Journal of the European Communities (OJ L: series L, OJ C: series C)
- TIR :** Transport International Routier - in English: International Road Transport
- SCENT :** System for a Customs Enforcement NeTwork
- CIS :** Customs Information System
- VAT :** Value Added Tax
- COCOLAF:** COmité COnsultatif pour la coordination dans le domaine de la Lutte AntiFraude (French acronym), in English: Advisory committee for the coordination of fraud prevention
- TAFI :** Textile Antifraud Initiative
- GSP :** Generalized system of preferences
- GATT :** General Agreement on Tariffs and Trade
- ESF :** European Social Fund
- ERDF :** European Regional Development Fund
- CSF :** Community support framework
- EDF :** European Development Fund
- IRENE:** IRregularités, ENquêtes, Exploitation - irregularities, investigations, exploitation
- EAGGF:** European Guarantee and Guidance Fund (guarantee section: EAGGF-Guarantee, guidance section: EAGGF-Guidance)
- FIFG:** Financial Instrument for Fisheries Guidance