



COMMISSION OF THE EUROPEAN COMMUNITY

Brussels, 4.12.2003  
COM (2003) 445 final/2

**CORRIGENDUM**

New footnotes 92 and 93 and changes to the endnote 108.

**Concerns the 11 linguistic versions.**

Translation of footnotes 26 and 48

Changes to footnote 4, insertion of footnote 35 and deletion of endnote 114.

**Concerns EN only.**

**COMMISSION REPORT**

**PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITY  
AND FIGHT AGAINST FRAUD**

**- ANNUAL REPORT 2002 -**

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## Introduction

The EC treaty calls on the Commission, in cooperation with the Member States, to transmit each year to the European Parliament and to the Council a report on the measures taken to implement its Article 280. To illustrate the principle of shared responsibility of the Member States and the Commission for the protection of the Community's financial interests, the report, as last year, presents this action from three aspects: Community initiatives, measures taken by the Member States, the results of the operational action taken by the Member States and by the Commission to detect the attacks on financial interests and to fight against fraud. The Commission is more particularly responsible for designing the policy of protection of financial interests and presenting to this end political and legislative initiatives.

**The first part of the report** follows the logic of the Overall Anti-Fraud Strategy 2000-2005<sup>1</sup> but focuses on the outstanding facts in this activity during 2002. In this part, one year before accession, the Commission wished to emphasise the efforts undertaken to integrate the candidate countries in this approach. Moreover, the more specific elements provided by the Member States this year help highlight the importance of a good organisation of different levels of checks and controls, including investigations for the specific purposes of the fight against fraud. The presentation is punctuated with some exemplary cases.

Moreover, the report provides a full and detailed summary of the measures planned for 2002 in the 2001-2003 Action Plan<sup>2</sup> which is annexed: the summary table thus gives the essential elements in terms of responsibility, timetable and follow-up to appreciate the state of progress of this programme. As for 2004-2005, the Commission will prepare a new Action Plan on the basis of the Overall Strategic Approach 2000-2005 which will of course take into account the recommendations made in the Report on the Evaluation of the activities of the European Anti-Fraud Office<sup>3</sup>, the opinion of the Supervisory Committee and the guidelines defined by the other institutions.

**Part II of the Commission report** covers specifically the measures taken by the Member States to implement Article 280. This presentation includes certain information communicated by the Member States on their control activity and its results<sup>4</sup>. It reports on their efforts to coordinate their inspection and investigation services from the threefold angle of the monitoring of operations, audit of systems and anti-fraud investigations.

**Part III of the Commission report** presents the statistical data concerning the level of frauds and other irregularities as well as the results in terms of recovery and of action by the Member States and the Commission departments.

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<sup>1</sup> For an overall strategic approach of protection of financial interests and the fight against fraud (COM (2002) 358 final of 28.06.2000).

<sup>2</sup> See the Action Plan 2001-2003 on the protection of financial interests (COM (2001) 254 final of 15.05.2001) on the implementation of the overall strategy for 2001-2005.

<sup>3</sup> Evaluation Report of the activities of the European Anti-Fraud Office, under Article 15 of Regulations (EC) N°1073/99 of the European Parliament and the Council and (EURATOM) N°1074/99 of the Council (COM(2003) 153 of 02.04.2003).

<sup>4</sup> Specifically, the Member States' annual reports provided by Article 17(3) of Council Regulation N°1150/2000 of the Council of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of own resources (OJ L130 of 31.05.2000).

These results are analysed from the point of view of the detection of frauds and other irregularities, as they are communicated by the national administrations in accordance with the obligations provided for by the sectoral regulations. Given the incomplete and not very homogeneous nature of the data transmitted last year, the Commission first gives an account of the progress achieved in the electronic communication of data. Subsequently, the Commission endeavours to carry out a first analysis of the irregularities communicated, according to a budgetary (income/expenditure) and sectoral approach which reflects the major Community policies.

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As a general rule, the 2002 report shows the interlinking of the responsibility between the different actors and the convergence in the different levels (Community and national). The information provided by the Member States<sup>5</sup> allows for better reporting on the activity of the different services involved in the protection of financial interests. The analysis carried out by the Commission shows that risks are better covered, especially from the point of view of checks and controls, whether they be controls of the regularity of operations, audit of systems, investigations and prosecutions. The coherence that it notes between the various functions, including specific action against fraud, in line with the four axes of the Strategic Approach, appears at both the Community level (Title I) and the national (Title II). Title III throws further light, on the basis of frauds and other irregularities notified by the Member States, on the control and investigation systems, their adaptation to the risks and their results from the point of view of recovery. The presentation therefore consolidates the complementarity logic recommended by the Overall Strategic Approach of the fight against fraud, which makes it possible for the Commission, in addition to the action proper of the Member States, to implement the means at the disposal of the Community.

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<sup>5</sup> On the basis of this information, alignments are possible with some findings highlighted in the report on the implementation of former Article 209 A of the EC Treaty (see comparative analysis of the reports supplied by the Member States on national measures taken to combat wastefulness and the misuse of Community resources (COM (95) 556 of 13 November 1995) and its supplement on inspections and administrative penalties (SEC (2000) 843 final of 24.05.2000).

## **TITLE I – THE ACTIVITIES OF THE COMMUNITY FOR THE PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITY AND THE FIGHT AGAINST FRAUD: MAJOR DEVELOPMENTS IN 2002**

The Commission established its general political objectives as regards protection of the financial interests of the Community in an Overall Strategic Approach adopted on 28 June 2000<sup>6</sup> for the period 2001-2005. It reports on them regularly, in particular in this report. The approach includes Community initiatives in this area, including actions involving Title VI of the Treaty on European Union, in particular when they are related to the protection of the Community's financial interests. The objective is to develop a legislative and regulatory framework for the protection of financial interests adapted to all European policies, which allows for cooperation and the partnership with those working on the ground inside and outside the Union. Some audit or investigation cases illustrate the reality of the fight against financial crime on the ground to prevent, detect but also to penalise those responsible and repair the financial damages where it is possible.

The 2002 execution of the measures planned in the Action Plan 2001-2003 is presented in detail in the annex to Title I. The development that follows highlights some major developments in the 2002 action of the Commission, following the four themes of the Overall Strategic Approach as well as certain horizontal themes such as the overall organisation of protection of financial interests from the aspects of detection, checks and sanctions (financial, administrative and judicial follow up)<sup>7</sup>. Particular attention is focused on the final preparations for accession by the candidate countries.

### **1. AN OVERALL AND COHERENT ANTI-FRAUD POLICY**

#### **1.1. Associating the applicant countries with a prevention policy and the fight against fraud**

By regrouping financial control, sound financial management, the protection of the Community's financial interests and the fight against fraud in one specific chapter of the acquis (Chapter 28 – "Financial Control"), the Commission emphasises the importance which it accords to these countries managing their budget in accordance with sound financial management.

In its strategy document of 9 October 2002 entitled "Towards the enlarged Union" and presented at the same time as its regular reports on the progress achieved by each applicant country on the route to accession, the Commission once again stressed that any Community financing was dependent on compliance with all the conditions ensuring a

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<sup>6</sup> COM (2000) 358 final of 28.06.2000.

<sup>7</sup> Thanks to the useful elements provided this year by the Member States on the organisation of their checks and the coordination of their services. See Title II, point 8 of the report and its Annex, points 3 and 4, in particular.

sound management of Community funds<sup>8</sup>. That involves not only complete alignment with the Community legislative 'acquis', but also - perhaps more importantly - the existence of sufficient institutional guarantees.

Indeed, the strategy document stipulates that applicant countries have to strengthen their administrative structures and capacities to be in a position to ensure the protection of the financial interests of the Community from the second half of 2003.

The Commission's support activities within this framework were situated mainly at two levels. Part of the Commission's support was focused on the encouragement of the applicant countries to develop upstream sound financial management for protection of the Community's financial interests, by following a control and audit model, applicable not only to Community funds but also to income and national expenditure. Other activities were specifically aimed at strengthening the protection these interests and the fight against fraud in the applicant countries. The progress achieved in these two, closely linked fields, was the subject of a sustained follow-up by the Commission under Chapter 28 of the 'acquis', and of regular reporting to the Parliament and the Council. It should be noted that the protection of the Community's financial interests is fully taken into account in the other chapters of the "acquis"<sup>9</sup> where this proves necessary. In this report, the Commission will however restrict itself to highlighting the actions undertaken in the specific chapter on Financial control (Chapter 28).

#### *1.1.1. Control of the pre-accession instruments (PHARE, SAPARD and ISPA)<sup>10</sup>*

Over the last ten years, as relations with the accession states strengthened, the Community's assistance changed in nature and increased in extent. By the late 1990s, PHARE<sup>11</sup> was exclusively targeted at the accession process, particularly in the fields of Institution Building and alignment with the acquis. This was accompanied by increasingly rigorous financial management systems. In a dynamic decade of transition, the accession states transformed themselves into emerging market economies. The Community's annual assistance in 2000 doubled but it also brought about both the additional instruments of SAPARD & ISPA, and more demanding management and control requirements, accompanying the candidate countries' increasing responsibilities in this respect.

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<sup>8</sup> Also see item 43 of the Resolution of the European Parliament on the 2001 annual report concerning the Protection of financial interests adopted on 13 March 2003.

<sup>9</sup> The Commission also followed the progress achieved on protection of financial interests or in linked areas in other chapters of the acquis, in particular chapters 24 (cooperation in justice and home affairs), 25 (Customs Union) and 29 (financial and budgetary provisions). Regarding traditional own resources for example, the Commission carried out actions on chapter 29, aimed at ensuring that administrative and accounting systems in the ten accession countries meet the Community requirements in the area.

<sup>10</sup> The PHARE programme, set up in 1989 to help Poland and Hungary, now covers the ten candidate countries of central and Eastern Europe and contributes some 11 billion dollars in co financing for technical assistance, investment support, strengthening of public institutions and administrations and the promotion of economic and social cohesion. SAPARD (Special pre-accession programme for agriculture and rural development) aims to help candidate countries deal with the problems of the structural adjustment in their agricultural sectors and rural areas, as well as in the implementation of the Community acquis concerning the CAP (Common Agricultural Policy) and related legislation.

<sup>11</sup> The PHARE programme encompasses the 10 candidate countries of central and Eastern Europe: Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia and Romania. Malta and Cyprus benefit from a specific financial instrument installed by Regulation (EC) 555/2000 of 13 March 2000 on the implementation of operations in the framework of the pre-accession strategy for the Republic of Cyprus and the Republic of Malta, (OJ L 068 , 16/3/2000).

As regards PHARE, management (DIS) has already been decentralised for several years, and the transition towards an extended implementation system (EDIS) is underway. Under EDIS, the Commission can waive the current requirement for ex ante approval of the tendering and contracting of projects.

The rate of progress varies substantially in the different countries. The eight acceding states from central and Eastern Europe should be making applications for their implementation agencies in late 2003 and early 2004. Cyprus and Malta should be granted full waiver of ex-ante control in 2003. The obligation to complete the transition to fully decentralised management for PHARE by the date of accession is stipulated in a clause in the Accession Treaty.

In order to ensure a high degree of complementarity and monitoring of the functioning of EDIS, the capacity for delegation will be maintained in each new Member State for up to one year after accession.

SAPARD is the first EU external aid programme to be implemented in a fully decentralised manner. This means that once the SAPARD Agency receives the Conferral Decision from the Commission, it becomes responsible for calls for grant applications, for project selection, for grant approval, for contracts with beneficiaries, for treasury and debt management, for payments, for keeping accounts, and for ex-post controls. On the basis of national accreditation, the National Fund approves the management and control systems implemented according to the criteria of the Multi-Annual Financing Agreement. The National Authorising Officer as Head of the National Fund bears the full financial responsibilities and liabilities for Community funds. The Commission inspectors carry out audits to determine, on a basis of reasonable assurance, that the system will work as planned. If the outcome of the audit is positive, a draft decision is made granting a Conferral of Management to the SAPARD Agency, the National Fund and the measures requested in the National Accreditation Act.

In 2001 and 2002, the Directorate General for Agriculture granted provisional Conferral to all eight SAPARD Agencies<sup>12</sup> in the acceding countries as well as to Bulgaria and Romania.

Subsequently, the Commission departments will carry out Clearance of Accounts audits on the accounts and the conformity of expenditure, and make financial corrections as necessary.

The Commission has been stringent in its requirements concerning SAPARD, in order to ensure that, after accession, there will be reasonable assurance that European Agriculture funds are properly managed.

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<sup>12</sup> Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovak Republic and Slovenia in respect of the functions and criteria as stipulated in the Council Regulations 1258/1999, 1266/1999 and 1268/1999 and Commission Regulation 2222/2000. The Conferral audit ascertained that the national procedures are in compliance with the Multi-annual Financing Agreement and in particular that

- the accounts are accurate, complete and timely,
- the segregation of duties is implemented,
- there are written procedures for each function and operation and that there are written agreements with delegated Bodies carrying out control functions,
- the Spared Agency and the National Fund have a full audit trail for every item entered into account
- The computer system is fully protected and controlled.



In general, better awareness of modern sound financial management within the candidate countries can be seen and new methodologies have been introduced. With the completion of the Conferral of the management of SAPARD aid, acceding countries have achieved the basic conditions that will allow them to take full responsibility for the implementation of EU agricultural funds.

Steady progress has also been made as far as ISPA is concerned. The principal requirements for both financial management and control and the treatment of irregularities follow closely those applicable to the Cohesion and Structural Funds. The key elements relate to internal financial controls which ensure the accuracy of declared expenditure, adequate internal audit capability, a sufficient audit trail and appropriate treatment of irregularities. The setting up of satisfactory systems for ISPA is therefore a significant step in the preparation for future management of the Cohesion Fund and Structural Funds. This is given a further dimension by the procedure envisaged for the candidate countries to move towards EDIS for ISPA. The granting of a conferral of EDIS is subject to a prior inspection whereby the Commission ensures compliance with specific conditions and criteria which relate principally to sound financial management and control.

In 2002, the Commission completed the audit work started the previous year by carrying out a second cycle of systems audits in the ISPA countries to assess the adequacy of the systems established for management of ISPA funds and their compliance with Community requirements. By following up on previous audits and completing the coverage of the implementing bodies and systems, the Commission ensured that the candidate countries were fully aware of the standards applicable for managing Community funds and it was verified that the key elements of the management and control systems were in place. When it was recognised that these were deficiencies, within a deadline, recommendations were made for their correction.

One candidate country submitted its formal application for EDIS at the end of 2002. A significant number of other countries should complete their preparations for EDIS in 2003.

The Commission will also give a high priority to Financial Control in its November 2003 Inspection Reports and in the Evaluation Report on the implementation of commitments necessary for programming the structural funds. This will pay particular attention to the progress made in financial management and control in the context of the Action Plans, with a view to accelerating corrective action where required.

#### *1.1.2. Development of a general financial control and audit capacity (“Public Internal Financial Control – PIFC”)*

The Commission’s interest in financial control and audit in the candidate countries goes beyond the control of the pre-accession instruments. Indeed, in application of the principle of equivalent protection of national and Community funds, the Commission has actively encouraged candidate countries in developing a general financial control and audit capacity that can guarantee sound financial management in the public sector, regardless of whether Community or national funds are at stake.

The request for assistance in this area originally emanated from the applicant countries, which asked for guidance on the development of effective internal control structures

within the framework of their transition towards modern economic and financial policies.

Being interested directly in the establishment of sound financial management by the applicant countries before and after accession, the Commission has in this framework developed a modern internal control approach (*Public Internal Financial Control - PIFC*), based on the experience acquired within and outside the Union. This approach includes three basic concepts: the managerial responsibility for sound financial management of national budgetary funds, the development of internal audit capacities, and the establishment of a centralised body, responsible for the development and harmonisation of the organisation and the methodologies of control and audit systems.

These principles of PIFC broadly coincide with the principles applicable to the sound financial management of Community funds.

The Commission also gave its support to the establishment of appropriate services, in particular the internal audit services within all the ministries and services for the centralised harmonisation of internal control throughout the public sector.

Applicant countries obtained at the same time more targeted support from national experts under "Twinning" conventions, or from specialised agencies.

All these efforts resulted in uniform strategies, policies and legislation on internal control in the applicant countries. Although applicant countries have made different degrees of progress, the governments concerned were generally very supportive of the internal control model suggested by the Commission.

The legislation concerned being largely in place in the majority of the applicant countries, attention henceforth was moved from the analysis and development of legislation towards training and the implementing measures.

### *1.1.3. The reinforcement of the protection of the EC's financial interests and the fight against fraud in the applicant countries*

In accordance with the commitments entered into during the negotiations, and in close consultation with the Commission, applicant countries considerably intensified their efforts in 2002 to set up effective anti-fraud coordination services (*Anti-Fraud coordination service*, or AFCOS), required to coordinate the legislative, administrative and operational activities linked with the protection of the financial interests of the Community.

By the end of 2002, such coordination services were established in eleven applicant countries, Estonia, Lithuania, Cyprus and Slovenia having defined such structures in 2002.<sup>13</sup> In the other applicant countries, where services of this type already existed before, the activities carried out in 2002 primarily aimed to make the anti-fraud coordination services completely operational. This implied, in particular, a more precise definition of the AFCOS' operating procedures and the relations between the AFCOS and other institutions and bodies involved in the protection of the financial interests of the Community, as well as between the AFCOS and the European Anti-Fraud Office. In addition, the physical operational framework of the AFCOS was strengthened, training

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<sup>13</sup> Bulgaria adopted a decision on this subject in January 2003.

activities were carried out and staff was recruited. These measures all contributed to a reinforcement of the candidate countries' administrative capacity to react swiftly to possible indications of irregularities and suspected fraud. By making their anti-fraud structures more effective, the candidate countries were thus in a position to demonstrate their commitment to the protection of Community funds.

In order to enable the authorities of the applicant countries to exchange their first experiences concerning the creation and the operation of their anti-fraud coordination services, a first stage was passed with the organisation of regular meetings bringing together representatives from the candidate countries' AFCOS' and OLAF were organised. A first meeting of this type took place in Brussels on 7 and 8 October 2002. In addition to their intelligence and investigation services, the candidate countries' prosecution services were also invited to attend. This meeting was followed by two parallel working sessions involving on the one hand prosecutors from the applicant countries and magistrates from the "magistrates, judicial advice and follow-up" unit of the Office and, on the other hand, representatives of the candidate countries' AFCOS', investigators from the Office and members of the intelligence services. Further such meetings took place thereafter.

These meetings represent a useful forum to exchange information and experiences and to follow the efforts made by the applicant countries to strengthen their administrative structures with a view to protecting the financial interests of the Community.

Such activities as well as other forms of cooperation between OLAF and the candidate countries will receive in future aid under a specific programme, the multi-country "anti-fraud" PHARE<sup>14</sup> programme adopted on 16 May 2002. This programme provides for multi-annual assistance (a total of 15 million euros) in three principal fields: the creation of anti-fraud structures, the installation of communication networks and databases and the strengthening of the operational know-how of the anti-fraud coordination structures and of the police and prosecution authorities with whom they cooperate. The implementation of the programme started in 2003<sup>15</sup>.

At operational level, the Office has, in specific cases, been cooperating for some time already with the applicant countries' authorities as the following case illustrates.

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<sup>14</sup> Multi-country PHARE concerning the fight against fraud affecting the financial interests of the Community (PH/2002/1412).

<sup>15</sup> Outside the framework of the PHARE Multi-country anti-fraud Programme, PHARE support in the past, present and future in the fields of Justice and Home Affairs, Customs and Borders, has a direct bearing on increasing overall capacity in the fight against fraud.

### Fraud by a consulting company - External aid to applicant countries

In July 2002, in accordance with Article 3 of Regulation No 1073/99, the European Anti-Fraud Office (OLAF) launched an external investigation on the basis of information received from the Community delegation in Croatia. The information showed the possibility of double invoicing by a German firm within the framework of financing a consulting company as regards harmonisation of national law with Community law. The financial impact is estimated at approximately euros 110,000, mainly on PHARE and OBNOVA financing. The Office found evidence of an irregularity connected with projects managed by the German firm in Slovakia, the Czech Republic and Croatia. These irregularities included overcharging and double invoicing. The Office also alerted the Czech prosecutor and the Czech police proceeded to a search of the offices, seizing computers, data and several thousand documents. The evidence collected by the Office was presented to the Prosecutor General in Berlin. An arrest warrant was issued. The German authorities arrested a suspect, the court case being due to take place in 2003.

The Community delegation brought to an end the project in Croatia due to the lack of results in August 2002, shortly after the beginning of the investigation.

The projects in the Czech Republic and Slovakia were completed to the satisfaction of the Czech and Slovak authorities, under the arrangements for decentralised management of Community funds.

Since then the Commission has taken action to suspend payment to the Czech authorities of an amount equivalent to all outstanding funds in two ongoing projects by the same German firm in the Czech Republic, to protect the Community's financial interest, pending outcome of the Berlin Court case.

In order to facilitate the communication on irregularities, as envisaged by the pre-accession instruments (PHARE, ISPA, SAPARD) and Community legislation, the Office undertook to equip the administrations of the applicant countries with terminals of the AFIS anti-fraud information system<sup>16</sup>. Fifteen terminals of this type are currently in operation, covering ten applicant countries. At the same time, guidance was provided on the communication of irregularities under the pre-accession instruments, in order to ensure a clear understanding of the procedures which should be applied.

## **1.2. Strengthening the legal instruments for detection, control and sanctions**

An effective policy of protection of financial interests is achieved through the mobilisation of all the authorities concerned at Community and national level. The management of 80 % of the Community funds is decentralised. The collection of the own resources of the Community is the responsibility of the Member States<sup>17</sup>. In addition, the Commission departments manage a part of the budget directly while guaranteeing the sound financial management of the system.

The development which follows shows how the overall system of control, follow-up and sanctions set up at the level of the Member States and the Community aims to guarantee that the different levels of responsibility work in a complementary way, while respecting the principles of effectiveness and equivalence of the protection of the financial interests on the territory of the European Union. This echoes the presentation made this year by the Member States, in Title II of the report, of the organisation of their checks and the coordination of their departments involved in the protection of financial interests and

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<sup>16</sup> On AFIS, see also point 2.1.

<sup>17</sup> See Part II of the report where the latter give an account of the organisation of their services in managing funds, checking they were appropriately used, collecting duties and recovering the amounts received without justification and lost income.

certain analyses presented in Title III concerning the notification of frauds and other irregularities.

### *1.2.1. Detection and control*

As regards controls, as is shown in part II of the report, the Member States first contribute to the protection of the financial interests by a broad monitoring of operations (customs, transactions, programmes or plans) and a systematic checking of the regularity of procedures. This approach is supplemented by systems audit strategies and control of the use of funds. Finally, on the basis of suspicions of fraud, administrations detect the irregular facts or behaviour which can lead to bringing individual responsibilities into question at administrative or penal level. Title III (point 11.3 in particular) in this regard, enables it to be seen, on the basis of the communications from the Member States of frauds and other irregularities, that in certain sectors, the overall control system selected by a Member State influences recovery (size of the payments suspended before closure of programmes, share of recoveries a posteriori). Suggestions are also made (point 11.2 in particular) to adapt the control and investigation strategies to the type of risk (cases with significant amounts, sectors or products with a high risk of irregularity).

At Community level, checks for the protection of financial interests are structured in a similar way. The checks on the regularity and sound application of applicable legislation are carried out, in coordination with the Member States, by the authorising Directorates-General, also responsible for checks on the use of funds and the systems audits provided for by the various sectoral regulations, with the national administrations. The partnership is often very detailed, as it appears below. In the event of problems, the Commission has to take the appropriate measures.

#### Development of the Joint Audit Arrangement in traditional own resources

Under the Joint Audit Arrangement, the Commission and the internal audit services of certain Member States, cooperate in the field of traditional own resources, to facilitate the exchange of experience, expertise and techniques as regards internal audit. According to this approach, the internal audit service of the Member State concerned carries out the check in accordance with an appropriate module<sup>18</sup> covering the preselected customs and/or accounting field. Once it has completed its work, it sends its report at the same time to the national administration and the Commission. The latter examines the results of the audit work carried out and checks the working papers and the methodology used. The Commission then draws up its own report. Possible anomalies - specific or structural - are the subject of a budgetary regularisation under standard conditions. If the analysis of the systems were to make it possible to qualify an anomaly as structural, the Commission will be informed of the measures proposed by the Member State with a view to mitigating the underlying weaknesses of the system. The Commission and the Member States, in particular Denmark, Austria and the Netherlands who are the pioneers, found a substantial benefit to carrying out controls within the framework of such an approach. Seven checks have already been carried out with these Member States in this connection, including three in 2002.

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<sup>18</sup> The following modules are currently available: Free circulation, including A accounts (external transit (T1 and TIR), warehousing, generalised preferential schemes, inward processing, separate accounts.

#### Audit missions in the Structural Funds

Thus, as seen from the data provided by the Member States as regards control staff<sup>19</sup>, the national systems of detection, communication and follow-up of irregularities show certain weaknesses. Improvement in this field was identified as a priority<sup>20</sup> and the Commission committed itself, within the framework of the discharge procedure of 2000, to carry out audits covering the application of Regulation 1681/94 for the Structural Funds, and Regulation 1831/94 for the cohesion fund. These audits cover, in particular, 1) the checking of the national irregularity notification systems for the Structural Funds and the cohesion fund, and 2) the application of Article 8 of Regulation 438/2001 and of Article 3 of Regulation 448/2001, concerning respectively the accounting of the recoverable amounts and the financial correction procedures.

The conclusions and recommendations of these audits, carried out between November 2002 and January 2003, will be notified to all the Member States for what concerns them as well as to the European Parliament, the Council and the Court of Auditors in 2003.

Different types of control are involved in the protection of the Community's financial interests and coordination between the different responsible services is essential. Thus, anomalies detected in a routine control or at the time of an audit can lead to a more detailed investigation on the operators' individual responsibility. This last type of action which has the purpose of detecting facts or irregular acts liable to lead to administrative or criminal proceedings is the responsibility of the European Anti-Fraud Office<sup>21</sup>. The following investigation illustrates this complementarity of checks:

#### Case concerning fraud in the fisheries sector

During 2002, information reached OLAF concerning the non-observance by a company of transformation of the minimum price to be paid to the fish producers for the marketing year 2000/2001 in Greece. Within the framework of an external investigation on the basis of (EC) Regulation N°1258/99 regarding the Common agricultural policy and of (EC) Regulation N°2185/96, the Office carried out checks on the spot at certain economic operators and verified information. Irregularities concerned in fact at least 8 cooperatives. In January 2003, the investigation report estimated the amount to be recovered at 1,472,033 euros. The Greek judicial authorities were alerted and opened an investigation. As it does as a general rule, the Office, in association with the Directorate General Agriculture, sent, in February 2003, its recommendations to the Greek Ministry of Agriculture. A judicial and administrative follow-up was put in place.

The different approaches to controls described above are complementary but, as it emerges from Title II of the report, the very limited share (8% on average, all sectors included) of manpower assigned at national levels to such anti-fraud controls (investigation services of the ministries, police and judicial authorities) may indicate that insufficient account has been taken of the criminal law dimension of serious acts prejudicial to Community public finance. In this context, OLAF endeavours, in accordance with the principle of subsidiarity, to encourage cooperation with the national authorities and to structure its own investigative capacities, where the action of the Member States seems less effective. It has been assigned its own administrative powers of investigation by the legislator and, although the investigations targeted at operators

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<sup>19</sup> See Title II of the report

<sup>20</sup> See the White Paper on the reform (Action 97) and the Commission Communication on 7 August 2001 on this subject (Doc. C (2001) 2517 concerning the improvement of the financial follow-up and control of the Structural Funds). See also Item 1.2.2 of the 2001-2003 Action Plan.

<sup>21</sup> See the progress report on the activities of the European Anti-Fraud office (OLAF) previously mentioned (COM (2003) 153 of 27.3.2003), in particular point 1.1.2

and companies<sup>22</sup> remain difficult to organise on the ground<sup>23</sup>, it has the capacity to establish direct links with the police and judicial authorities.

### 1.2.2. *Ensuring more efficient financial follow-up and reinforcing sanctions*

The Commission is required to follow the procedures for recovery of Community funds unduly received in the Member States and to give an account of them in the annual revenue and expenditure account<sup>24</sup>. Under this chapter, significant measures on recovery more adopted in 2002. Moreover, the important effort carried out by the Commission since 2000 to renew the rules of financial management within the institutions led in 2002 to the adoption of the new financial regulation<sup>25</sup>.

#### 1.2.2.1. Improving effectiveness and clarifying responsibilities in the field of the decentralised management of Community funds

From the financial point of view, it is for the Member States or the non-member countries to carry out the recovery from the final beneficiaries and to pay the amounts concerned to the Commission (see Title III for the statistics by area). This concerns funds unduly paid under Community policies implemented in a decentralised manner (EAGGF-Guarantee, Structural Funds, external aid). Under the terms of existing legislation, the Commission is required for its part to follow the procedures for recovery carried out by the Member States in this framework, and, if necessary, to apply the clearance procedures<sup>26</sup>. The slowness of these procedures and the accumulation of Community debts are a subject of concern both for the Commission, the Court of Auditors and for the Budgetary Authority, in particular the European Parliament which raises it regularly in its resolutions on the protection of financial interests<sup>27</sup>.

Within the framework of the implementation of the White Paper on internal administrative reform, the Commission committed itself to improving the effectiveness

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<sup>22</sup> The sectoral dispersal of legal bases applicable for on the spot checks and inspections, mentioned in Article 9 of Regulation (EC, Euratom) n° 2988/95 leads the Commission to envisage, as a complement to the inquiries proper of OLAF (see previous footnote), in 2003 to follow up the 2001-2003 Action Plan (Item 1.2.2) and propose a Council Regulation. Without affecting existing mechanisms, this regulation would create a single new base for antifraud investigations conducted by the national investigation services upon OLAF's request and would facilitate an effective and harmonised follow up of the results of the investigations, in particular regarding the rules of confidentiality and of data protection. See the progress report on the activities of OLAF previously mentioned, recommendation n°3, under item 1.1.2.

<sup>23</sup> In particular checks on the spot envisaged by Regulation (EC) n° 2185/96, the Community anti-fraud missions in third countries under Regulation (EC) n° 515/97. See the evaluation report under Article 15, recommendation n°3. In order to reinforce OLAF's own investigation powers, the Commission considers extending this framework to direct expenditure.

<sup>24</sup> In compliance with the Financial Regulation, the Commission produces for the 1<sup>st</sup> May the consolidated annual revenue and expenditure account of the preceding year.

<sup>25</sup> New financial Regulation: Regulation (EC, EURATOM) N°1605/2002 of the Council applicable to the General Budget of the European Community (OJ L248 of 16.9.2002); new implementing arrangements: Regulation (EC, EURATOM) N°2342/2002 of the Commission establishing the implementing provisions of the (EC, EURATOM) Regulation N°1605/2002 of the Council Regulation (OJ L357 of 31.12.2002).

<sup>26</sup> On 30 June 2002, for the period 1972-2000, the Community debts related to the regularisation of advance payments or following mistakes, formal or substantial irregularities, and more rarely, frauds, exceeded 3 billion euros: 2,3 billion euro for EAGFF-Guarantee, 387 million euro for the Structural funds and 373 million euro for direct expenditure (see COM (2002) 671, page 3)

<sup>27</sup> Items 6 to 8 of the resolution on the Commission's 2001 annual report of 13 March 2003.

of recovery<sup>28</sup> by clarifying the responsibilities of the different actors. In its communication of 3 December 2002<sup>29</sup> which aims in particular to clear the arrears of amounts linked with irregularities awaiting to be recovered in the EAGGF Guarantee Section, the Commission announced the setting up of a temporary “recovery” task force, to allow the latter to complete the clearance of cases prior to 1999. The results of the work of this cell will be presented in the 2003 report.

#### 1.2.2.2. Simplifying the direct management of Community funds and strengthening sanctions

With regard to Community debts arising from direct management by the Commission, the new financial framework<sup>30</sup> applicable from 1 January 2003, and the implementation by the Commission of its role, implements the principle of the separation of functions (authorising officer, delegated authorising officer, accountant, auditor, anti-fraud investigator). Moreover, it improves the establishment of Community debts and recovery methods (by compensation, by using preliminary guarantees, by distraint).

With regard to sanctions, the new financial regulation<sup>31</sup> stipulates henceforth that unreliable operators providing misleading or fraudulent information shall be excluded from participating in a market and any future procedure for a certain period<sup>32</sup>. Moreover, candidates and subcontractors, either in a conflict of interests situation or guilty of making a false statement in the tendering procedure shall be excluded from participation in this market. The information concerning them will be captured in a centralised database, also accessible to the other European institutions. The same exclusion provisions shall apply to subsidy recipients. This is linked to a proposal for a directive concerning national procedures for the award of public supply contracts, currently being examined by the European Parliament and the Council<sup>33</sup>.

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<sup>28</sup> Communication from Mrs Schreyer to the Commission on Action 96 of the White Paper (Doc.COM (2000) 200 final/2 of 05.04.2000 "More effective management of funds unduly received" on 13 December 2000 – SEC (2000)2204/3. See also Item 1.2.2 of the Action Plan 2001-2003 quoted above.

<sup>29</sup> COM (2002) 671 final of 3.12.2002.

<sup>30</sup> See above the references to the new financial Regulation and the detailed rules for implementation and new internal procedure provisions concerning the recovery of the debts born from direct management and the recovery of fines, flat-rate sums and penalties under the treaties. In addition, so as to fulfil its duties regarding the financial follow-up of files gone into criminal procedures, the Commission asked its services (OLAF/Legal Service) to prepare a draft decision authorising the member of the Commission in charge of the fight against fraud to act on behalf of the Commission before the jurisdictions of the Member States or of third countries in criminal procedures concerning the Community's protection of financial interests.

<sup>31</sup> In particular Articles 93-95 and 113.

<sup>32</sup> In the event of serious fault in professional matters, in the event of judgement for fraud, corruption, participation in a criminal organisation or any other illegal activity undermining the financial interests of the Community, or where they are declared for serious breach of implementation for non-observance of their contractual obligations following an award for a contract or the granting of a subsidy financed from the Community budget.

<sup>33</sup> A proposal for a Directive COM (2000) 275 final of 10.5.2000 concerning the coordination of procedures for the award of public supply contracts, public service contracts and public work contracts (OJ C 29 E of 30.1.2001). One of the objectives of the new directive is to compel the authorities to exclude non reliable operators. The Council and Parliament judged that the implementation of Article 46 of the proposal for a Directive does not require the setting up of a system of exchange of information.



## 2. COOPERATE WITH THE MEMBER STATES AND NON-MEMBER COUNTRIES

The EC treaty, in Article 280(3), stipulates that Member States shall organise close and regular cooperation among themselves, with the help of the Commission<sup>34</sup>. The Commission assumes its responsibility in particular by providing assistance in the field of intelligence as well as in the operational field.

This involves the effective cooperation with the national authorities whenever the Commission asks the Member States to start an investigation on the basis of the information available to it. In accordance with the priority identified by the Overall Strategic Approach under the heading “Community service Platform”, the Commission has throughout 2002 deployed its efforts to strengthen partnership in the framework of external investigations<sup>35</sup>. The results of such partnerships are illustrated by a few significant actions below.

### 2.1. Cooperation with the competent authorities in the fight against certain forms of criminality

#### 2.1.1. *Joint civil action before the American courts (cigarette fraud)*

The Member States and the Community have common interests: this reality on the ground is extremely well illustrated by the fight against cigarette smuggling which affects in particular customs duties, excise duties and VAT receipts, VAT being both a national income and own resource of the Community.

The European Commission, supported by ten Member States<sup>36</sup>, is carrying out in the United States judicial proceedings against cigarette manufacturers whom it accuses of taking part in a cigarette smuggling system on the territory of the European Union. This has resulted, amongst other damages, in very significant losses for Community and national finances during at least the last ten years. This case is of a considerable order of magnitude and illustrates the will to cooperate of both the Community and the Member States, which go well beyond ordinary litigation. The civil action concerns a massive international smuggling and money-laundering scheme involving very considerable amounts. It is important to underline that the cigarette smuggling is linked to other serious forms of organised crime, in particular drug-trafficking and the related money-laundering. What starts as drug trafficking proceeds, therefore ends up as smuggled cigarettes in the EU and other countries, with the proceeds from this activity being transferred subsequently into the countries of origin of the firms.

These civil lawsuits in the United States complement the strenuous efforts undertaken by the Commission and all of the Member States effectively to control tobacco smuggling and money laundering. These efforts have met some notable successes on the whole. However, cigarette smuggling and money laundering remain major problems, and in

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<sup>34</sup> Of course, this cooperation concerns the Member States with the whole array of the means at their disposal, including their repression apparatus. This is the reason why, the Commission and the law maker have granted OLAF the necessary powers to be the interlocutor of the law enforcing and judicial authorities.

<sup>35</sup> Notwithstanding this cooperation, as it is recalled in the « Article 15 » report, the Commission and the European Anti-Fraud Office, in compliance with the principles of subsidiarity and proportionality laid down in the treaty and secondary legislation, assume their own responsibility by exercising the powers conferred by the European legislator as regards autonomous investigations, in accordance with Article 3(1) of Regulation N° 1073/199921. For these investigations the Office has the direct responsibility for the financial, administrative and judicial follow-up (see point 1.2.2.2 above).

<sup>36</sup> Belgium, Germany, Greece, Spain, France, Italy, Luxemburg, the Netherlands, Portugal and Finland.

particular a major drain on the EC and Member States' public finances. The EC and the Member States have determined that the remedy to this problem requires attacking it at source.

The civil lawsuits were filed in the United States because the defendants are US companies suspected of having organised from smuggling the United States, in contravention of US law. The US jurisdiction constitutes therefore the adequate forum for an appeal introduced on the basis of the Racketeer Influenced and Corrupt Organizations Act (RICO), which is an important tool in fighting organised crime. In addition, the US jurisdiction provides the opportunity to obtain court-ordered injunctive relief, which could be an efficient tool for preventing this type of crime.

A first civil action carried out in November 2000 against cigarette manufacturers Philip Morris, R.J. Reynolds and Japan Tobacco before the "United States District Court - Eastern District" of New York was rejected for procedural error. The action was relaunched in August 2001 with the ten Member States acting as co-applicants. On 19 February 2002, the court rejected the allegations based on smuggling, a decision which is currently under appeal. The Commission introduced however a new case against RJ Reynolds for money laundering, this option having been preserved by the American judge.

In addition, on 15 January 2003<sup>37</sup>, the Court of First Instance rejected the complaints made by the three cigarette manufacturers Philip Morris, R.J. Reynolds and Japan Tobacco which aimed to have the civil action rejected on the grounds of the lack of competence of the European Commission to bring a case before American jurisdiction. Eight countries of the EU supported the Commission in this procedure, with the support of the European Parliament<sup>38</sup>. The applicants made an appeal.

The Commission wishes to emphasise that these conclusions strengthen the determination of the Community, to fight fraud where it harms the financial interests of the Union.

#### 2.1.2. *Cooperation against certain forms of criminality prejudicial to the interests of the Community*

Among the key-sectors identified in the Overall Strategic Approach, the Commission mentioned the need to improve the fight against organised crime, in particular transnational crime affecting Community interests linked to the fight against fraud or corruption. In certain very specific fields where a Community policy or basic legislation already exists, in particular as regards protection of the euro or the fight against piracy and counterfeiting<sup>39</sup> the experience gained on the ground can be put to use to strengthen cooperation with the Member States, and to adapt the regulatory framework if necessary.

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<sup>37</sup> Judgement of the Court of First Instance "*Philip Morris, Reynolds and Japan Tobacco v Commission*" in linked cases T-377/00, T-379/00, T-380/00, T-260/01 and T-272/01.

<sup>38</sup> Spain, France, Italy, Portugal, Finland, Germany, Greece and the Netherlands.

<sup>39</sup> EC Regulations N°3295/94 and N°1367/95 (OJ L of 30.12.1994 and OJ L 133 of 17.6.1995) Green Paper on the fight against counterfeiting and piracy in the internal market - COM (1998) 569 final.

- The legislative framework<sup>40</sup> being in place to protect the euro against counterfeiting, the Commission has set up transnational and multi-disciplinary exchange, assistance and training projects<sup>41</sup>. During 2002, seven projects were implemented under this Pericles programme, involving the representatives of OLAF, the European Central Bank and Europol. The protection of coins is the subject of a specific Community action entrusted to the European Technical and Scientific Centre, managed by two agents of the Commission (OLAF) one of whom is located at the Paris Mint. In 2002, initiatives were taken for the analysis of counterfeit coins, the authentication of euro coins and the establishment of a database relating to the materials used.
- Industrial and Commercial counterfeiting, and more generally, economic crime against intellectual property, contribute to sustaining the underground economy, often by smuggling circuits which cause losses of own resources for the Community. This development calls for an improvement and strengthening of the existing mechanism making it possible, to ensure the safety and protection of the consumer, the respect of the rights of intellectual property holders, as well as the financial interests of the Community.

In 2002, the Commission prepared two new legal instruments which it proposed in January 2003: a proposal for a Regulation<sup>42</sup> which aims to extend intellectual property to new products, to facilitate the approaches by the holders of rights with the customs authorities and to simplify the action of the competent authorities of the Member States in the event of suspicion of counterfeiting linked with goods from third countries; a proposal for a Directive<sup>43</sup> which is intended to harmonise in the national legislation of the European Union instruments enabling intellectual property rights to be respected and to define a framework for the exchange of information between the competent national authorities. The proposal would guarantee identical conditions to the owners of rights in the EU would strengthen measures against offenders and would act as a deterrent to counterfeiters and pirates.

## 2.2. Cooperation with non-member countries

Since 1998, the Commission has endeavoured with the Council bodies to remove obstacles to the fight against economic and financial criminality at international level and, in particular the Swiss Confederation. It recognised in particular the usefulness of broadening into other fields such as tax<sup>44</sup> and direct expenditure, the mechanisms for administrative cooperation established in the protocol of 1997 on mutual assistance in

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<sup>40</sup> Regulations N°1338/01 and 1339/01 of the Council, and Council Decision which constitutes the legislative base 1st and 3rd pillars allowing for the cooperation of all the institutional actors concerned (ECB, Europol, the Commission/OLAF), the central offices and the competent authorities of the Member States as well as third countries. The list of competent authorities was published in July 2002 (OJ C 173 of 19.7.2002, 2002 C 178/06).

<sup>41</sup> Decision of the Council of 17/12/2001 drawing up an action programme on exchange, assistance and training for the protection of the euro against counterfeiting (Decision 2001/923/EC, OJ L of 21.12.2001)

<sup>42</sup> Proposal for a Council Regulation on the intervention of the customs authorities with regard to goods suspected of contravening certain intellectual property rights as well as the measures to be taken with regard to goods contravening certain intellectual property rights (Doc. COM (2003) 20 final of 20.01.2003.

<sup>43</sup> Proposal for a Directive of the European Parliament and of the Council concerning the measures and procedures aimed at ensuring the respect of intellectual property rights (Doc. COM (2003) 46 (01) of 30 January 2003).

<sup>44</sup> See Commission Communication to the Council on the report concerning the negotiations with countries on the taxation of savings (SEC (2002) 1287 final of 27.11.2002).

customs matters<sup>45</sup>. Moreover, judicial cooperation, in particular in the fight against tax and customs fraud and laundering of the products of such fraud suffered from gaps. Obstacles persisted with regard to requests for access to documents from Swiss economic operators and recipients of Community funds.

In its resolution of 13 March 2003 on the protection of the Community's financial interests and the fight against fraud – 2001 annual report, the European Parliament expresses its concern at the lack of progress in the anti-fraud negotiations with Switzerland in 2002. In fact, significant progress has not yet been made on a series of key questions. For the Commission, the future agreement should lead to a qualitative improvement in the cooperation on the basis of European Union standards in the area of administrative assistance, judicial assistance and the fight against laundering. The Commission reaffirms its attachment to the aim set by the Council in the mandate given on 14 December 2000 and intends to conclude the negotiations with Switzerland in 2003

Cooperation with non-member countries is also developing through operational and in particular Community investigation missions carried out under Articles 19 and 20 of Regulation N°515/97. There follows a notable example of this operational cooperation.

#### Investigation –Electricity Company in Kosovo

At the end of April 2002, the European Anti-Fraud Office was alerted by the mission of the United Nations in Kosovo (UNMIK) of a suspicion of fraud and decided to open an external investigation in accordance with Article 5, Paragraph 1 of Regulation (EC) n° 1073/1999.

Following information obtained from Kosovo, it was established that the European funds concerned (roughly 4.2 million USD, approximately 4 million euros) had been transferred to a bank in Gibraltar. Another attempt by the principal suspect to transfer the funds from Gibraltar to Belize was thwarted by the bank.

The Attorney General of Gibraltar, at the request of OLAF, was able to obtain from the Supreme Court, the freezing of the bank accounts concerned. In August 2002, OLAF was able to ensure the return to the budget of Kosovo of the full amount which had been misappropriated. It launched a procedure to ensure the repayment of the balance and to have access to the bank account details. In July 2002, the Office transferred to the German judicial authorities all information and documents that it was able to obtain on suspected fraud, during its investigation. In December 2002, the principal suspect, a former employee of the United Nations in Kosovo appeared before the German prosecutor's office in Bochum and was taken into custody. The German court decided that it was competent to try the case ("rational personal") and sentenced the accused in June 2003 to three and a half years in prison for the misappropriation of the funds intended for the KEK.

Despite the complexity of the international relations which had to be put in place, this inquiry was successfully concluded within a short timeframe thanks to the collaboration of the German, Gibraltar, Kosovo and Serbian authorities. The participation of the judicial authorities in Germany and Gibraltar was a key in the production of evidence of the offence, as well as the contacts established with the United Nations in New York.

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<sup>45</sup> Agreement in the form of exchange of letters between the European Economic Community and the Swiss Confederation – Joint Declaration (OJ L 169 of 27.06.1997 p. 0077 – 0084).

### 3. AN INTER-INSTITUTIONAL STEP TO PREVENT AND FIGHT AGAINST CORRUPTION

#### 3.1. The interinstitutional framework

Since May 1999, the Community has had a legal framework to fight inside the institutions, bodies and agencies against fraud, corruption and any other illegal activity undermining the financial interests of the European Community and to guarantee the safety of Community interests against irregular behaviour<sup>46</sup>. In 2002, this legal framework has led to several disputes<sup>47</sup> which provided useful information on the consistency of the interinstitutional framework of internal investigations<sup>48</sup>: this applies without exception to all the institutions, bodies and agencies set up by the EC and Euratom treaties or by the Council, whatever their prerogatives, to the members or the institutions whether or not they are covered by the staff regulations and whether or not they are subject to disciplinary control. It emerges in particular from recent case law that the “Community’s financial interests” mentioned in article 280 of the EC Treaty include not only the income and expenditure which come under the Community budget but also from the budget of other bodies or agencies set up by the EC Treaty, such as the ECB and the EIB<sup>49</sup> and as well as all the funds and resources managed by the Community institutions, bodies and agencies, whatever their origin.

It follows moreover from the progressive setting up of this framework that the internal investigation function for the purposes of protecting Community interests cannot be interpreted as an attack on the autonomy of management of the various bodies, who decide in particular on the appropriate follow-up action to be taken apart from any penal follow up. In its judgement of 10 July 2003, the court recalls the guarantees aimed at ensuring the strict independence of OLAF, the latter’s subjection to respect fully Community law, the clear demarcation between the subject of its powers and its means of action and the diverse specific rules to which their conduct is subject.

The question also arose in connection with the bodies set up within the framework of the 3rd pillar: Europol, which is in theory financed exclusively by the Member States and whose staff have their own staff regulations is not concerned; Eurojust on the other hand

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<sup>46</sup> Adoption on 25 May 1999 of Regulation (EC) N° 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) N° 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) giving the latter the responsibility to investigate serious matters, relating to the discharge of professional duties liable to constitute a breach of the obligations of the officials and other servants of the Community, liable to lead to disciplinary and, where appropriate, criminal proceedings and to inquire into any possible breach of the similar obligations on the part of members of the institutions and bodies, heads of offices and agencies or members of staff of the institutions, bodies, offices and agencies not subject to the staff regulations. Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Community concerning internal investigations by the European Anti-Fraud Office (OLAF) – Commission Decision N° 1999/352/EC, ECSC, EURATOM of 28 April 1999 .

<sup>47</sup> As a result of the request for dismissal introduced by 71 deputies of the European Parliament, the Court considered that the decision of this institution as a general application measure which applies to all the members of the European Parliament, notwithstanding their statutory prerogatives (Judgement of 26 February 2002 of the Court of First Instance in the T-17/00 case (Rothley and 70 other members of the European Parliament).

<sup>48</sup> See the judgement of the CFI referred to above and conclusions of the Advocate General on 3 October 2002 in connection with cases C11-00 Commission/ECB and C15-00 Commission/EIB.

<sup>49</sup> Judgement of the Court of Justice of 10 July 2003 in cases C-11/00, Commission v ECB and C-15/00, Commission v EIB, declaring void the decision of 7.10.1999 taken by the European Central Bank and the decision of 10.11.1999 by the European Investment Bank.

will be in a very major part financed by the Community budget and will have a secretariat made up of officials subject to the staff regulations of the Community civil service. This is why Article 38(4) of the Council Decision<sup>50</sup> makes it possible for the European Anti-Fraud Office to carry out internal investigations within Eurojust<sup>51</sup>.

### 3.2. Disciplinary and specialised authorities

Each institution, body or agency has its own disciplinary authorities, sometimes with a responsibility to carry out internal investigations. In February 2002, the Commission for its part created an Investigation and Discipline Office instructed to conduct administrative investigations<sup>52</sup> and to prepare disciplinary proceedings. On the other hand, for anything referring to serious facts or the Community's financial interests, on the basis of its expertise in penal matters and the field of economic and financial criminality, OLAF is informed first of all.

In addition, the new financial regulation<sup>53</sup> of 25 June 2002 provided for the setting up by each institution of a specialised body, independent at functional level, which decides on the possible existence of financial irregularities and their consequences. The opinion which these bodies are required to give does not prejudice the competence of the responsible authorities as regards fraud and corruption. The overall setting up of the internal inspection mechanism could be the subject of protocols intended to avoid any overlapping of responsibilities.

#### Internal investigation concerning a delegation of the Commission.

Cases of internal corruption often involve the improper application of the procedures for the granting of public supply contracts.

The European Office for the fight against fraud opened an investigation regarding a Commission employee working in a delegation in Zagreb, in Croatia, who was suspected of corruption. The allegation was that the offers for the purchase of computer equipment and services had been systematically doctored. This would have led to the conclusion of contracts with companies with whom two employees had relations. In the follow up to the recommendations made by OLAF in its investigations report addressed to the departments in September 2002, the Commission is preparing recovery orders for the double invoicing and opened disciplinary measures against one of its agents.

The internal investigations are in general opened on the basis of information provided by members of staff of the institutions<sup>54</sup> or even on the basis of information acquired during an external investigation. All information concerning officials, servants, heads or members of institutions, bodies and agencies is evaluated by the European Anti-Fraud

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<sup>50</sup> Council decision n° 2002/187/JHA of 28 February 2002, setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63 of 6.3.2002).

<sup>51</sup> To take account of the sensitive activities of Eurojust as regards investigations and proceedings, the Council Decision excludes access from OLAF to any information held or created within the framework of these activities.

<sup>52</sup> See Article 2 of the Commission Decision of 19 February 2002 (C (2002) 540). Article 5 paragraph 2 of this same decision clarifies the division of responsibilities in the field of internal administrative investigations.

<sup>53</sup> Article 66 paragraph 4 of Regulation (EC, EURATOM) n° 1605/2002 of the Council of 25 June 2002 on the financial Regulation applicable to the European Community budget (OJ L 248 of 16.09.2002).

<sup>54</sup> In accordance with Article 4 of the model decision annexed to the interinstitutional agreement of 25 May 1999.

Office. Since the Commission decision of April 2002<sup>55</sup>, the servant or official who supplied in good faith, information to the European Anti-Fraud Office, may request from the institution, protection against any inequitable or discriminatory treatment.

#### **4. THE STRENGTHENING OF THE CRIMINAL LAW DIMENSION**

The strengthening of the criminal law dimension in the field of illegal activities undermining the Community's financial interests calls for initiatives from the Commission targeted at the specific nature and needs of the fight against these forms of criminality against Europe. In addition, the creation of an area of freedom, security and justice, in accordance with the requests of the October 1999 Tampere Council involves a strengthening of cooperation between the Member States, and between the different bodies responsible for judicial and police cooperation.

Some remarkable progress has been made in this area in 2002, in particular in the ratification of Convention instruments, on the debate on the project for a European Public Prosecutor and in judicial cooperation in criminal law.

##### **4.1. Penal sanctions in the field of the protection of financial interests**

###### **4.1.1. *The ratification of the conventions on the Protection of the financial interests of the European Community and some of its protocols***

In the field of the protection of financial interests in general an important stage was reached with the entry into force on 17 October 2002, following their ratification by all the Member States, of the Convention on "Protection of Financial Interests"<sup>56</sup>, of its first protocol<sup>57</sup>, as well as the protocol of 29 November 1996 relating to the competence of the Court of Justice. These ratifications are detailed in title II of the report. Under the terms of this Convention and of its first protocol, the Member States are required in particular to incorporate the penal definition of fraud and corruption (active and passive) harmful to the Community's financial interests, into their national law and to envisage criminal liability for the heads of companies for these offences. This does not prejudice the jurisdiction of the Commission, under the terms of Article 280 of the EC Treaty, or its capacity to make proposals with a view to strengthening the criminal law dimension. The Commission has at present to examine the way in which the Member States conformed to their obligation as regards the criminalisation of fraud and corruption (as well as money laundering after the ratification of the second protocol), and to present the result of this analysis.

The second protocol<sup>58</sup> dating from 1997, on the other hand, has not yet entered into force, in the absence of ratification by all the Member States, in spite of the call from the

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<sup>55</sup> Commission Decision of 4 April 2002 concerning conduct to be taken in cases of suspicion of serious acts (doc. C (2002) 845).

<sup>56</sup> Convention drawn up on the basis of article K3 of the Treaty on European Union, relating to the protection of the financial interests of the European Community – OJ C 316 of 27.11.1995.

<sup>57</sup> Protocol of the Convention on the protection of the financial interests of the European Community – OJ C 313 of 23.10.1996.

<sup>58</sup> Second protocol of the Convention on the protection of the financial interests of the European Community concerning the laundering of the proceeds of fraudulent acts prejudicial to the Community's financial interests, the liability of legal persons, the confiscation of goods and cooperation with the Commission – OJC 221 of 19.07.1997.

Council in its conclusions of 8 November 2002<sup>59</sup>. This new delay is prejudicial to the effectiveness of the action at Community level in the area of money laundering and technical and operational cooperation between the prosecution authorities and with the Commission (OLAF). The specific nature of this close and regular cooperation does not prejudge the necessary coordination by the Commission (OLAF) with the competent authorities in the fight against criminality.

Given the urgency to give full effect to cooperation between the Member States and the Commission, such as it arises moreover from Article 280(3) of the EC treaty<sup>60</sup> and from secondary legislation, the Commission maintains in any event its proposal for a Directive related to the protection of the Community's financial interests<sup>61</sup>, which it regards as the most appropriate means to ensure an effective and proportionate application of Community law. Enjoying the support of the European Parliament and the Court of Auditors, the proposal for a directive would moreover enable in fact the Community, once it was adopted, to carry out its responsibilities as regards checks.<sup>62</sup>

#### 4.1.2. *Green Paper on the criminal law protection of the Community's financial interests and the creation of a European Public Prosecutor.*

The requirement to prosecute in a more effective way the authors of criminality undermining the Community's financial interests, a fortiori in the framework of an enlarged Europe, led the Commission to propose the creation of a European Public Prosecutor, in order to remedy the splintering of the area of criminal law in this field<sup>63</sup>. The Commission adopted a Green Paper on a European Public Prosecutor on 12 December 2001<sup>64</sup>, and organised a wide-ranging debate throughout 2002 on this topic with all the interested parties: national Parliaments and governments, Community institutions and bodies, professions connected with criminal trials, experts and academics, concerned non governmental organisations. The Commission then organised, on 16 and 17 September 2002, a public hearing with the representatives of the interested parties.

In the main, reactions are for the most part favourable to the principle of the creation of a European Public Prosecutor but the governmental authorities on this point retaining overall a low profile in relation to the European Parliament<sup>65</sup>, the Supervisory Committee and the Court of Auditors or in relation to the experts and representatives of civil society. Many insist that the Commission proposal should be refined to meet at the

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<sup>59</sup> Item 10 of the conclusions of the Economic and Financial Affairs Council of 8 November 2002 on the protection of financial interests and the fight against fraud (document 13244 FINAL 409)

<sup>60</sup> As stated in Article 1(2) of regulation 1073/99, Article 2(2) of the Commission Decision n°1999/352/CE, EURATOM as well as Council regulation 2185/96 (Article 4).

<sup>61</sup> JOCE C240E on 28.08.2001

<sup>62</sup> This same analysis is the basis of a proposal for a directive for the criminal law protection of the environment based on article 175 of the EC Treaty on which the Court of Justice will have to give its view soon and thus clarify the question of responsibilities in the area of criminal law in the treaties.

<sup>63</sup> COM (2000)34 complementary Contribution of the Commission to the Intergovernmental Conference on institutional reforms – the criminal law protection of the Community's financial interests: a European Public Prosecutor, 29.9.2000, COM (2000)608. A proposal for inserting a new article 280 b of the EC Treaty was not taken up the Nice European Council.

<sup>64</sup> The European Council in its conclusions of Laeken, on 14 and 15 December 2001 asked the Council to examine this Green Paper quickly, taking into account the diversity of the legal systems and traditions.

<sup>65</sup> See in particular points 59 to 62 of the resolution of the European Parliament of 13.02.2003 concerning the protection of financial interests – Annual report 2001.



same time the criteria of effectiveness and full respect of basic rights. A part of the opinion favourable to the project defends in addition the idea of placing at Community level the function of the review of the European prosecutor's acts.

The Green Paper has therefore fulfilled its aim and, in line with its proposal to the 2000 Intergovernmental Conference (IGC), the Commission submitted to the Convention on the Future of Europe a substantial contribution and participated actively in the work. Within the Convention, some governments considered that the responsibilities of a European Public Prosecutor should be broader than the Commission proposal, other governments reiterated their opposition to the creation of a Public Prosecutor. The draft Treaty establishing a Constitution includes a proposal which enables the Council unanimously to establish a "European Public Prosecutor's Office", responsible both for combating offences affecting the Union's interests and serious cross border criminality. The Commission welcomes this possibility, while regretting the weakness of the proposal.

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

In accordance with the requests of the October 1999 Tampere Council, the adoption of a European area of freedom, security and justice involves a strengthening of cooperation between the Member States, in particular by the alignment of criminal law<sup>66</sup> and the application of the principle of mutual recognition. Progress in this area, in 2002, in particular the framework decision concerning the European arrest warrant<sup>67</sup>, intended to replace the extradition procedures between Member States will have a positive impact for protection of financial interests.

Moreover, the progressive adoption of a European area of freedom, security and justice strengthens the need for the partnership between the bodies set up within the framework of the "third pillar" (title VI of the treaty on the EU) and the Community bodies responsible for the protection of financial interests. In particular, cooperation between judicial cooperation and police bodies (responsible as regards international organised criminality) reached a new stage in 2002, following the extension of the mandate of Europol and the creation of Eurojust decided by the Council.

In annex to the Council decision of 6 December 2001, extending the mandate of Europol to all serious forms of international criminality listed in the annexe of the Europol Convention<sup>68</sup>, the Council had called for the negotiation of an agreement between Europol and the Commission to take account of the competencies of OLAF and the Commission. The negotiations<sup>69</sup> pursued in 2002, ended on 18 February 2003 with the signing of an administrative cooperation arrangement. This arrangement places the general framework for cooperation in the fields of respective jurisdiction, in particular as

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<sup>66</sup> Communication from the Commission to the Council and to the European Parliament on the creation of an area of freedom, security and justice in the European Union – COM (final 2001)628.

<sup>67</sup> Framework decision of the Council of 13.06.2002 relating to the European arrest warrant and the surrender procedures between Member States - 2002/584/JAI - OJ L 190 of 18.07.2002.

<sup>68</sup> OJ C362 of 18.12.2001.

<sup>69</sup> Negotiations begun in early 2001 with the adoption of Regulation (EC) 1338/2001 of the Council of 28 June 2001 concerning the protection of the euro against counterfeiting. In this area, the Commission report (COM(2001) 77 final of 13.12.2001) establishes that all the Member States did not manage to comply with in particular Article 6 of the Council Framework decision of 29.05.2000 (2000/383/JHA-OJL 140 of 14.06.2000). This Article provides for each Member State to ensure that conduct deemed to be offences of counterfeiting are punishable by effective, proportionate and dissuasive criminal penalties.

regards consultation, mutual assistance and exchange of information for areas where a common interest exists, except for the exchange of personal data. Moreover, the administrative arrangement stipulates that, in the field of its operational activities where its independence applies, OLAF can conclude arrangements with Europol directly to specify the practical cooperation methods.

In addition, as a result of the creation of Eurojust by decision of the Council of 28 February 2002, work progressed in order to ensure the synergy between the respective competencies of Eurojust and OLAF to encourage the exchange of operational information between these two bodies. One should in particular specify the articulation between the "close and regular cooperation" defined in Article 280-3 of the EC treaty (between the competent authorities and with the Commission) and cooperation between the national authorities organised via the Eurojust members, within the framework of the 3rd pillar<sup>70</sup>. The memorandum of understanding negotiated in 2002 and signed by the Office and Eurojust on 14 April 2003, envisages close coordination between the unit of magistrates of OLAF and Eurojust members.

In accordance with the Action Plan of the Commission for 2001-2003 on the fight against fraud<sup>71</sup>, 2002 therefore marked a step forward in the definition of the practical methods of cooperation between bodies which have the aim of becoming privileged interlocutors, from the point of view of the respect of the principles laid down in Article 280 of the EC treaty. This represents of course only a first stage in the process which should lead to a coherent, transparent and legible system at the level of all the European bodies involved in the fight against transnational criminality and in particular, for the protection of financial interests, towards the establishment in the treaty of a European public prosecutor.

## **5. FOLLOW UP OF THE ACTION PLAN 2001-2003**

The Commission presents here a progress report on the implementation of the 2001-2003 Action Plan on the protection of the Community's financial interests<sup>72</sup>. It aims to highlight the achievement of actions planned for 2002 in compliance with the achievement of the main objectives decided in the overall strategic approach of June 2000 and given the necessary adaptations of the Commission timetable and work programme.

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<sup>70</sup> The Council Decision indicates in its recital 8 that "the Eurojust competencies are without prejudice to the competencies of the Community as regards protection of financial interests". The Commission made a statement, annexed to the Council Decision, according to which "the protection of the Community's financial interests is a responsibility shared between the Community and the Member States and in this connection, it is important to stress that at the level of the treaties, Article 280 of the EC treaty constitutes the specific legal basis to lead the cooperation projects with the competent national authorities (Article 280,3 EC) or to take the measures necessary to prevent and fight fraud and any other illegal activity undermining the Community's financial interests (Article 280 (4) EC). It is in particular within this framework that the close and regular cooperation between the European Anti-Fraud Office (OLAF) and the national prosecution authorities on the one hand and between the Commission (OLAF) and Eurojust on the other should be guaranteed. "

<sup>71</sup> Commission communication of 15 May 2001, Protection of the financial interests of the Community. Fraud prevention. Action plan for 2001-2003 (COM(2001)254 final), para. 2.1.2.

<sup>72</sup> COM (2001) 254 final of 15.5.2001.

The table in the annex<sup>73</sup> shows the relevant elements in terms of compliance with the provisional timetable, the departments responsible as well as the identification of legal or administrative instruments. The link is made each time with the initiatives in the Action Plan and when information is supplied on the follow up beyond the year 2002.

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The table does not include actions where no initiative or follow up is planned for 2002. Regarding the columns in the table:

- the first two columns recall the objective and action featuring in the Action Plan adopted in May 2001;
- the third column identifies the lead directorate general
- the fourth column indicates if and how the objective was achieved; the follow up elements make it possible to go beyond the strictly annual period of the table
- the fifth column provides, where appropriate, a summary explanation of the conditions for implementation and the impact of the initiative.

## **TITLE II – IMPLEMENTATION OF ARTICLE 280 BY THE MEMBER STATES IN 2002 - Measures taken to protect the Community’s financial interests-**

In accordance with Article 280 of the EC Treaty, the Commission’s Annual Report also presents the efforts made by the Member States over the previous year to combat fraud and other illegal activities affecting the financial interests of the Community.

Unlike previous years, the Member States’ also replies to the different items of the questionnaire are set out in an annex to the Report. They can thus be consulted by those wishing to have a complete picture of the action taken by Member States over the previous twelve months to protect the Community’s financial interests in each of the sectors covered. This Title of the Report will therefore be limited to an overview of the main developments notified by the Member States.

The Commission has based this overview on the Member States’ replies to a questionnaire (“Article 280 questionnaire”) that has been adapted in the light of experience while preserving the necessary continuity with previous years. This will make it easier to keep track of Member States’ efforts to combat fraud in recent years.

The overview begins with a snapshot of the main legislative, regulatory and administrative developments in the Member States contributing to the protection of the Community’s financial interests against fraud and irregularities. A separate paragraph is devoted to each of the three main areas of Community resources and expenditure (traditional own resources, agricultural spending and structural measures).

As in previous years, the second section (point 7) deals with implementation of the Convention on the protection of the Community’s financial interests and its protocols. The state of ratification of these “third pillar” instruments is, however, limited to the Second Protocol since the process of ratifying the Convention itself and its other protocols was completed in 2002 by those Member States which had not yet done so.

The third and fourth sections (points 8 and 9) relate in turn to the organisation of controls, in terms of staffing levels, in the three sectors concerned (own resources, agricultural expenditure and structural measures) and interdepartmental coordination within each Member State. The aim is to give an initial picture of the system for the protection of the Community’s financial interests set in place by each Member State. The Commission has endeavoured to analyse the figures communicated by Member States for this part of the Report.

The fact that the annual report is drawn up on an annual basis and follows a horizontal, multisectoral approach means that it is difficult to assess in depth all aspects of the protection of the Community’s financial interests by the

Member States.<sup>74</sup> The Commission is therefore considering the possibility of adopting a more focused, multiannual approach in future.

## **6. TEXTS CONTRIBUTING TO THE IMPLEMENTATION OF ARTICLE 280 OF THE EC TREATY - PRINCIPAL LEGISLATIVE, REGULATORY AND ADMINISTRATIVE DEVELOPMENTS**

The new measures contributing to the implementation of Article 280 of the Treaty reported by Member States in response to the Article 280 questionnaire for 2002 are of various types: new legislative measures, institutional changes, adoption of texts interpreting the Community legislation on the protection of financial interests, and introduction of new IT systems.

Clearly, the impact in the Member States of these different measures on the degree of protection of the Community's financial interests is not the same.

The most salient developments in 2002 reported by the Member States are summarised below by area of activity (own resources, agricultural expenditure, structural measures). The summary is not exhaustive.

A complete list of all the new measures contributing to the implementation of Article 280 of the Treaty in 2002 is still provided for consultation (Tables 1.1., 1.2. and 1.3.).

As pointed out by several Member States in their replies to the questionnaire, the lack of any new measures in 2002 is not a basis for drawing general conclusions on the degree of protection of Community's financial interests in the Member State concerned; on the contrary, it can reflect more intensive legislative or regulatory activity in previous years.

### **6.1. Own resources**

Table 1.1. sets out by Member State the new legislative, regulatory and administrative developments which occurred in 2002 in the own resources field.

One of the most significant developments in the area of own resources was the amendment of Denmark's Customs Act enabling the Danish customs and tax authorities to seize any amount of cash exceeding €15,000.

In France, following the entry into force in December 2001 of the new Article 28-1 of the Code of Criminal Procedure authorising certain customs officers to conduct judicial investigations, in particular into fraud affecting the Community's financial interests, new arrangements were adopted in 2002 in order to enable such officers to

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<sup>74</sup> Parliament has on two occasions stressed that the list of new national measures should be accompanied by a Commission analysis pinpointing any weaknesses in the protection of the Community's financial interests (Parliament resolution of 13 March 2003 on the protection of the Community's financial interests and the fight against fraud – annual report 2001; Parliament resolution of 29 November 2001 on the Commission annual report 2000 on the protection of the Community's financial interests and the fight against fraud and on the Commission communication on protecting the Community's financial interests, Fight against fraud, Action plan for 2001-2003).

operate as part of an independent service, thereby increasing the resources made available to the judicial authorities in the economic and financial field.

In Italy the Customs Agency issued a circular introducing new procedures for the computerised management of the separate accounts for own resources.

The UK authorities report that their customs administration played an active part, together with the authorities of the other Member States, in the working party on the draft mutual assistance convention drawn up under the auspices of the World Customs Organisation with the aim of modernising and revising the Nairobi Multilateral Convention on mutual assistance. The proposed new convention will help the international customs authorities to apply more effective controls and will have a positive impact on tax checks and the fight against fraud in trade between the EU and third countries.

In Belgium new legislation on bankruptcies was adopted which will prevent shell companies being used, by facilitating preparation of the statement of affairs, determination of the causes and circumstances of the bankruptcy and establishment of the *de facto* or *de jure* liability of directors who have engaged in serious and organised tax evasion.

The Irish authorities report the adoption in March 2002 of the CIS (Customs Information System) and Naples 2 Conventions and of related instruments. Ireland has thus been able to implement the agreement on the provisional application of the CIS Convention since 1 June 2002.

## **6.2. Agricultural expenditure**

There were several significant new developments in 2002 in the field of agricultural expenditure.

The Austrian authorities report that the number of payment agencies was reduced in 2002 from three to two through the transfer, from 16 October onwards, of the tasks of the payment agency for rural development (Agriculture Ministry) to Agrarmarkt Austria (AMA). The aim of this change is to concentrate the money flows, administrative procedures and notification systems, to standardise and unify the audit system, to improve technical expertise, efficiency and funds recovery, and to concentrate and standardise certification of the clearance of accounts by the payment agency.

In Greece controls and penalties were strengthened as regards rural development measures in particular. A ministerial order provides for penalties in the event of breaches of the Community and national rules, in the form of financial corrections covering all or part of the Community funding, together with initiation of the procedure for recovering amounts unduly paid and exclusion of the body concerned in cases of serious irregularities.

Among the other interesting developments of a horizontal nature, mention can be made of the strengthening in Spain of the body responsible for coordinating controls and penalties in the field of the common agricultural policy and the introduction in Italy of procedures for imposing penalties under Regulation No 4045/89.

All the new measures adopted by the Member States in the field of agricultural expenditure can be consulted in the Annex (Table 1.2.). The concrete application of these new measures will be the subject of a follow up action.

### **6.3. Structural measures**

Special Report No 10/2001<sup>75</sup> of the Court of Auditors pinpointed certain weaknesses in the national systems for detecting, reporting and following up irregularities concerning the Structural Funds. In the light of the Special Report, the new legislative, regulatory and administrative measures taken by the Member States in 2002 with regard to the Structural Funds deserve special attention.

Among the significant developments observed in 2002, mention can be made of the entry into force in the Netherlands of two acts that have a major impact on the protection of the Community's financial interests. One is the EC Grants Monitoring Act, which governs the right to recover funds, powers of appointment and the right to be informed. It applies among other things to the Structural Funds. A report on the use of EU grants from May to December 2002 inclusive will be submitted to the Dutch Parliament in the autumn of 2003. The decentralised management bodies covered by the Act are to provide government departments with details of the EU grants they have received. The second piece of legislation, the Government Accounts Act (Eighth Amendment), confers powers on the Dutch General Government Audit Office with regard to monitoring the use of EU aid down to the final beneficiary.<sup>76</sup>

In Finland the regional development legislation was reviewed and overhauled. Like the previous legislation, the new rules contain provisions governing the granting of funds, payment, monitoring, control, action taken on any irregularities and the criteria for recovery. The province of the Åland Islands reports that it has adopted a new Act on the protection of financial interests which introduces criminal penalties for offences against public finances irrespective of the origin (provincial, national or Community) of the funds.

The Greek authorities undertook a wide-ranging overhaul of the procedure for recovering amounts unduly or illegally paid under Community programmes, which started in 2002, with a view to establishing a national system for financial corrections in accordance with Commission Regulation No 438/2001.

In Portugal a Decree-Law was adopted which applies to the Cohesion Fund, as an integral part of Community Support Framework (CSF) III, the same financial control standards as those in force for the Structural Funds. Given the large amounts at stake in Cohesion Fund operations in Portugal, the Portuguese authorities take the view that the adoption of legislation establishing the framework in which they operate and the bodies responsible for monitoring them constitutes a major step forward in applying the essential measures for safeguarding the Community's financial interests.

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<sup>75</sup> Special Report No 10/2001 concerning the financial control of the Structural Funds, Commission Regulations (EC) Nos 2064/97 and 1681/94 (OJ C 314, 8.11.2001).

<sup>76</sup> For further details on the EC Grants Monitoring Act and the Government Accounts Act (Eighth Amendment), see the Dutch contribution to the Annual Reports 2000 and 2001 on the implementation of Article 280 of the EC Treaty.

The procedures for monitoring and inspecting projects were also tightened in the United Kingdom, with special reference to spending financed by the European Social Fund.

A full list of the new measures taken by the Member States with a view to implementing Article 280 in the field of structural policies is given in the Annex (Table 1.3.).

## **7. TEXTS CONTRIBUTING TO THE IMPLEMENTATION OF THE CONVENTION ON THE PROTECTION OF THE COMMUNITY'S FINANCIAL INTERESTS**

The year was marked by the ratification by the last Member States which had yet to do so of the Convention on the protection of the European Community's financial interests,<sup>77</sup> of the First Protocol,<sup>78</sup> which defines active and passive corruption, and of the Protocol of 29 November 1996 concerning the interpretation of the Convention by the Court of Justice.<sup>79</sup> This enabled these three "third pillar" instruments to enter into force on 17 October 2002.

The Member States' criminal law now has to include harmonised definitions of and penalties for fraud and active and passive corruption affecting the Community's financial interests. Criminal-law cooperation between the Member States in matters of jurisdiction, mutual judicial assistance, extradition and the transfer and centralisation of prosecutions is furthermore reinforced.

On the other hand, the Second Protocol,<sup>80</sup> signed on 19 June 1997, containing provisions on money laundering, the liability of legal persons, confiscation of the instruments and proceeds of infringements and vertical cooperation with the Commission (OLAF) still has to be ratified by Italy, Luxembourg and Austria.<sup>81</sup>

Table 2.1. in the Annex shows in greater detail the state of progress with ratification of the Second Protocol. It indicates the date on which the Member State notified the Council of ratification.

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<sup>77</sup> Convention, drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Community's financial interests, signed in Brussels on 26 July 1995 (OJ C 316, 27.11.1995). Ratification of the Convention by Belgium was notified on 12 March 2002, by Ireland on 3 June 2002 and by Italy on 19 July 2002. The Belgian authorities state that the Act of 17 February 2002 giving assent to the Convention and its three Protocols was published in the Official Gazette on 15 May 2002 and has entered into force.

<sup>78</sup> Protocol, drawn up on the basis of Article K.3 of the Treaty on European Union, to the Convention on the protection of the European Community's financial interests, signed in Dublin on 27 September 1996 (OJ C 313, 23.10.1996). Ratification of the Protocol by Belgium was notified on 12 March 2002, by Ireland on 3 June 2002, by Italy on 19 July 2002 and by the Netherlands on 28 March 2002.

<sup>79</sup> Protocol, drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Community of the Convention on the protection of the European Community's financial interests, signed in Brussels on 29 November 1996 (OJ C 151, 20.5.1997). Ratification of the Convention by Belgium was notified on 12 March 2002, by Ireland on 3 June 2002 and by Italy on 19 July 2002.

<sup>80</sup> Second Protocol, drawn up on the basis of Article K.3 of the Treaty on European Union, to the Convention on the protection of the European Community's financial interests – Joint Declaration on Article 13(2) – Commission Declaration on Article 7 (OJ C 221, 19.7.1997).

<sup>81</sup> Ratification by Germany and Finland was completed in 2003.



The implementation of all four agreements by the Member States is the subject of Table 2.2., which lists the new steps taken in 2002 with a view to transposing the 1995 Convention and its Protocols and any aspects or provisions not yet covered by national measures and any difficulties encountered.

Progress in transposing the Convention and its Protocols was achieved notably in Germany, the Netherlands, Portugal and Finland.

Other Member States report that the transposal of these instruments was largely completed before 2002.

## **8. ORGANISATION OF DEPARTMENTS RESPONSIBLE FOR PROTECTING THE COMMUNITY'S FINANCIAL INTERESTS**

Protection of the Community's financial interests is largely based on the primary responsibility of the Member States, which have the task of managing more than 80% of expenditure and of collecting all the traditional own resources. The different types of control provided for by sectoral regulations involve a wide range of actors and staff at various levels of the national administration (payment agencies, management authorities, central and decentralised national services, local authority services).

These controls contribute to the protection of Community financial interests where Member States are required to ensure both effective action and action that is equivalent to that which they undertake to defend their own interests.

They consist of what are known as regularity controls, required by the sectoral regulations, and controls that are more targeted on the fight against fraud, as required by Article 280 of the EC Treaty.

Regularity controls comprise documentary checks, sometimes called "first-level" or *ex ante/a priori* checks, aimed at assessing compliance with procedures and the criteria determined by regulation for the granting of financing or of advantages.

They also include *ex post/a posteriori* checks (after payment of the funds, for example) the aim of which is to check that the work has really been done, that the financed projects exist or that the control system is reliable. These checks are often based on a risk analysis, as required by the Community rules for a number of sectors.<sup>82</sup>

In addition, Member States are required to take more targeted measures to combat fraud. These controls (anti-fraud investigations) are conducted on the basis of suspected fraud established by different authorities, depending on the Member

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<sup>82</sup> See, for example, Commission Regulation (EC) No 3122/94 of 20 December 1994 laying down criteria for risk analysis as regards agricultural products receiving refunds (OJ L 330, 21.12.1994); Commission Regulation (EC) No 2064/97 of 15 October 1997 establishing detailed arrangements for the implementation of Council Regulation (EEC) No 4253/88 as regards the financial control by Member States of operations co-financed by the Structural Funds (OJ L 290, 23.10.1997); Regulations (EC) 1260/99 and 438/2001.

States: customs, police, financial administration, judicial authorities at an advanced stage.

Since the organisation of departments is the Member States' sole responsibility, they were asked to describe their control activities in functional terms according to the above classification. This starts from the sector controlled rather than the organisational entity to which the staff concerned are assigned.

Tables 3.1., 3.2. and 3.3. in the Annex set out the Member States' estimates of the staff numbers assigned in 2002 to each type of control (*ex ante*, *ex post* and anti-fraud) in the three sectors covered (traditional own resources, agricultural expenditure and structural measures). To arrive at comparable data, the types of information sought and the control concepts were spelled out as clearly as possible. In the last two columns of each table, the staff numbers assigned to control in the Member States are given alongside the amount of expenditure or resources checked. These data will enable Member States to make an initial assessment of their efforts to afford effective and equivalent protection to the Community's financial interests and assign them the same status as their own, as required by Article 280 of the Treaty.

However, since they are estimates, based on possibly divergent interpretations of the underlying control and staff definitions, the data should be interpreted with caution and used for guidance only. The principal interest is to identify some major trends, which should be refined with the Member States within the framework of a structured dialogue.

It can be seen from the tables that, in all the Member States and all the areas covered, the vast majority of human resources were assigned in 2002 to *ex ante* checks (*ex ante* checks: 81%; *ex post* checks: 11%; anti-fraud investigations: 8%).

This tends to show that, generally, priority was given to supervision and prior verification mechanisms that come into play, in the case of revenue, when customs declarations are presented and, in the case of expenditure, when requests for finance are vetted.

From a quantitative standpoint, checks on the use of funds or on project implementation (*ex post/a posteriori* checks) usually require fewer resources since they are carried out on the basis of programming, sampling techniques or risk targeting.

As far as staff numbers assigned to anti-fraud investigations are concerned, account has to be taken of the fact that the inspectors responsible for them often cover several sectors (in Greece, for example, this is the case with the unit for prosecuting economic offences) and that some Member States have included in their figures officials with powers to conduct judicial investigations.

Overall, the Member States assigned more staff to traditional own resources (50,467) than to the other two sectors (agricultural expenditure: 16,240; structural measures: 6,769).

The amount to be checked per member of staff was highest in the case of the Structural Funds (€3.10 million per staff member; agricultural expenditure:

€2.56 million; own resources: €0.29 million).<sup>83</sup> This result appears to confirm the findings of the comparative analysis carried out in 1995 and 1998 on the implementation of Article 209a (280 since Amsterdam) of the Treaty.<sup>84</sup>

The data are commented on below by budget area.

Although these data show how the control approach varies from one Member State to another, they fall far short of providing a genuine qualitative assessment, which would require a more detailed examination of the control instruments and methods used by each Member State.

## 8.1. Traditional own resources

In this area:

- *ex ante* checks correspond to the supervision and control by the customs authorities required by Article 4(13) and Article 4(14) respectively of the Community Customs Code, as well as to the documentary checks and inspections of goods required by Article 68 of the Code, with the exception of checks on export refunds for agricultural products;
- *ex post* checks are those required by Article 4 (14) and Article 78 of the Community Customs Code;
- anti-fraud investigations are the investigations conducted in the event of suspected irregularities, including those carried out where appropriate by the investigation and prosecution departments.

In the field of traditional own resources, most of the staff numbers appear to be employed on *ex ante* checks in most Member States (for all the Member States, *ex ante* checks: 80.4%; *ex post* checks: 9.8%; anti-fraud investigations: 9.8%). Nevertheless, there is little uniformity between the Member States as regards the allocation of staff between the three types of control (*ex ante* and *ex post* checks and anti-fraud investigations).

As shown in Table 3.1. in the Annex, two Member States (Denmark and the United Kingdom) assigned more staff to *ex post* than to *ex ante* checks.

One Member State (Spain) devoted more human resources to anti-fraud investigations (43.4%) than to each of the other two types of control.

The figures appear to indicate that the Member States are implementing different control strategies based to a greater or lesser extent on one or other methodology.

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<sup>83</sup> These figures are based on contributions to the budget and operational expenditure by each Member State in 2001.

<sup>84</sup> Protection of the Community's financial interests - Synthesis document of the comparative analysis of the reports supplied by the Member States on national measures taken to combat wastefulness and the misuse of Community resources (COM(95) 556 final); Supplement on controls and administrative penalties (1998).

It should, however, be pointed out that some Member States had difficulties in producing a breakdown by type of control, while others stress that their inspectors cover several sectors, which makes it impossible to carry out more detailed analyses, e.g. of the amount to be checked per member of staff.

This amount varied between €0.05 million and €2.51 million. For all the Member States taken together, the figure was around €0.29 million. In the case of Denmark and to a lesser extent Belgium and the United Kingdom, the figure was much higher.

Additional information provided by the annual reports submitted by the Member States pursuant to Article 17(3) of Regulation No 1150/2000

Under Article 17(3) of Regulation (EC, Euratom) No 1150/2000,<sup>85</sup> the Member States are also required to transmit statistics on staff numbers assigned to the customs departments at national level.

These reports enable the data submitted by the Member States in reply to the Article 280 questionnaire to be supplemented. However, in absolute terms, the figures communicated in reply to the Article 280 questionnaire are lower than those transmitted by the Member States under Regulation No 1150/2000. The difference springs quite naturally from the fact that the scope of the Article 280 questionnaire is limited to specific areas of control, whereas the summary reports contain more general data.<sup>86</sup>

On the basis of the summary reports for 2002,<sup>87</sup> the total number of customs officials was 89,566. In comparison with 2001, this represents a reduction of 2.00%; a fairly widespread decline can be observed, the exceptions being Greece, Spain, Luxembourg, Finland and Sweden.

The number of staff assigned to *ex post* checks, according to the annual reports submitted under Regulation No 1150/2000, totalled 14,184 in 2002, an increase of 9% on 2001. None of the increases observed are significant, except in the case of two Member States: in Ireland the number rose from 43 to 99 between 2001 and 2002<sup>88</sup>. The figures for the United Kingdom (919 officials) also differ greatly from those given for the previous year (101 officials) owing to an internal reorganisation of the customs service and the tax administration.

Data transmitted in application of Article 17, paragraph 3 also give a general image of activity in terms of the number of accepted declarations and the number of declarations submitted to a posteriori controls. Both the global number of accepted

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<sup>85</sup> Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Community's own resources (OJ L 130, 31.5.2000).

<sup>86</sup> The data communicated under Regulation No 1150/2000 comprise controls on export refunds for agricultural products; in the Article 280 questionnaire, these were included under the heading 'Agricultural expenditure'. Furthermore, the Article 280 questionnaire was strictly limited to inspection staff.

<sup>87</sup> In the absence of any reply from Portugal, the Commission used the figures communicated by this Member State in 2001.

<sup>88</sup> The actual number of staff involved in post clearance checks at National level remains unchanged from the 2001 level. The increase in the number listed from the 2001 figure is due to the inclusion of staff carrying out warehouse controls etc who were not previously included in such figures.

declarations and the global number of controlled declarations have increased. These numbers have shown a constant increase since 1999. Member States have accepted 114,74,680 declarations for the year 2002, corresponding to an increase of 5.85% compared to 2001. In addition, national customs services controlled 7,943,620 declarations in 2002, corresponding to an increase of 2.4% as compared to 2001. A certain number of Member States have witnessed significant decreases in the percentage of controlled declarations, while the number of accepted declarations has increased. Member States will be invited to provide more detailed information in the framework of the Advisory Committee on Own Resources.

## 8.2. Agricultural expenditure

In this area, the checks carried out by Member States are as follows:

- *a priori* checks correspond to the physical checks and the documentary checks on payment requests carried out by the customs authorities and the payment agencies. They include checks on export refunds, checks on aid for the internal market and checks as part of interventions for regulating agricultural markets;
- *a posteriori* checks are the on-the-spot inspections on undertakings provided for by Regulation No 4045/89;
- anti-fraud investigations are the investigations conducted in the event of suspected irregularities.

In this area too, the staff numbers assigned to *ex ante* checks in the Member States in 2002 greatly exceeded those assigned to both other types of control (for all the Member States, *ex ante* checks: 88%; *ex post* checks: 7.5%; anti-fraud investigations: 4.5%), but practice appeared to be more uniform from one Member State to another, something which can be partly explained by the nature of the obligations laid down by regulation.

As regards *ex ante* and *ex post* checks in particular, the control obligations and methods of risk analysis are laid down more precisely by the Community rules (scrutiny of 5% of expenditure required by Regulations Nos 4045/89 and 386/90, for example). This appears to confirm the findings of the comparative analysis of the implementation of Article 209a,<sup>89</sup> which identified a correlation between, on the one hand, the definition of common rules for management, control and sanctions and, on the other, the equivalence of the control systems.

As can be seen from Table 3.2. in the Annex, anti-fraud investigations were the category of control to which most Member States assigned the least staff (less than 10% in the case of ten Member States). Three Member States were an exception to this, however (Italy: 28.9%; Austria: 12.1%; Finland: 19.3%). One Member State was unable to estimate staff numbers involved in this activity and stressed that it is mandatory under its legislation to report suspicions of fraud to the public prosecutor's office.

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<sup>89</sup> See general introduction at point 3.

It can be concluded on the basis of these figures that in the sector of agricultural expenditure, as in the field of own resources, the protection of the Community's financial interests appeared to rely above all on *ex ante* checks. Moreover, the agricultural expenditure audit departments protect the financial interests of the European Union in the framework of the clearance of accounts by their *ex post* checks on the management and control systems applied in the Member States.

### 8.3. Structural measures

In this area:

- *ex ante* checks are the checks and verifications carried out on projects or operations at different levels (management bodies, payment agencies, decentralised or intermediate authorities, final beneficiaries) to ensure the accuracy, regularity and eligibility of applications for Community assistance<sup>90</sup>;
- *ex post* checks are the on-the-spot inspections and verifications carried out by staff independent from the management and payment departments<sup>91</sup>;
- anti-fraud investigations are all the investigations carried out following suspicions of fraud.

In the area of structural measures, most of the Member States' inspection staff (68%) were likewise assigned to *ex ante* checks, although the differences with *ex post* checks (27.9%) were less marked than in the other sectors. This is in line with the conclusions of the comparative analysis of the implementation of Article 209a of the Treaty, which found that the concept of control adopted by the Member States in the field of structural measures tended to be that of external control.

Table 3.3. in the Annex shows that three Member States (Greece, Spain and Portugal<sup>92</sup>) allocated more human resources to *ex post* than to *ex ante* checks in 2002.

Relatively few resources (4.1%) were assigned to anti-fraud investigations. Three Member States indicated that anti-fraud investigations were included in the data on the other types of control.

Overall, the staff numbers assigned by the Member States to this sector, for all types of control taken together, were small (6 769) compared with total control personnel in the areas of own resources (50 467) and agricultural expenditure (16 240).

This cannot be explained by the share of the budget to be controlled since the level of control, expressed in terms of the share of the budget to be controlled per staff member, was higher than for the other two sectors.

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<sup>90</sup> See Annex to Title II, point 3.3.

<sup>91</sup> See Annex to Title II, point 3.3.

<sup>92</sup> Complementary information for Portugal: see the notes in the table under under point 3.3 of the Annex to Title II.

An explanation could possibly be sought in the nature of the expenditure to be controlled (relatively large projects compared with agricultural spending), which calls for a different control strategy, as well as in the difficulties encountered by Member States in collecting details of staff numbers from all the bodies involved at the different levels of the national administration, which is heavily decentralised in this area.

This appears to be confirmed by the low rate of response to the question concerning the number of officials, including in the criminal prosecution departments, responsible for anti-fraud investigations in this area: only seven Member States were able to provide the data requested.

As regards the amount to be checked per member of staff, most Member States were close to the figure of €3.10 million for all the Member States taken together, the exceptions being Greece (€6.15 million), Spain (€5.00 million) and Portugal (€10.88 million)<sup>93</sup>.

In the light of the Court of Auditors' Special Report No 10/2001 and given the greater decentralisation of control responsibilities towards the Member States since 2001, it nevertheless seems that the level of risk in this area should be considered as high, and that the organisation of the fight against fraud should be particularly effective in order, wherever possible, to compensate for the shortcomings of upstream controls.

## **9. COORDINATION BETWEEN DEPARTMENTS WITHIN THE MEMBER STATES**

Effective action by the Member States to combat fraud and irregularities requires close coordination between the different departments responsible for the control of Community resources and expenditure.

It can be seen from the Member States' contributions that, in some cases, new horizontal measures were taken in 2002 in order to strengthen coordination and information exchange between the different departments involved in the protection of financial interests. Sweden reports that it has set up a board under the authority of the Economic Crimes Bureau with the main task of improving cooperation between the departments directly or indirectly responsible for protecting the Community's financial interests.

Most of the coordination and information exchange mechanisms reported by the Member States operate, however, at sectoral level (traditional own resources, agricultural expenditure, structural measures).

Tables 4.1., 4.2. and 4.3. in the Annex list by sector the new measures taken by Member States in 2002 with a view to organising such coordination.

These comprise measures to coordinate controls and investigations carried out by different bodies (in order to avoid duplication or indeed lack of action in specific cases), measures to exchange information between the different departments

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<sup>93</sup>

For these latter two Member States, see the notes to the table under point 3.3 of the Annex to Title II.

responsible for controls and investigations (administrative authorities, police, customs, judicial authorities, etc.) and measures enabling the administrative authorities to report cases of suspected fraud to the judicial authorities.



## TITLE III – STATISTICS AND ANALYSES

### 10. THE SITUATION IN 2002

#### 10.1. Introduction

The Community legislation defines the conditions for the notification of frauds and other irregularities by the Member States with a view to protecting the Community's financial interests in all areas of activity<sup>94</sup>. The Member States are obliged to inform the Commission of all irregularities with an impact above €1,000 (€10,000 for traditional own resources) and of the various stages in the procedure for recovering the amounts involved.

The distinction between irregularities and frauds is due to the fact that frauds<sup>95</sup> are acts which a judge alone is authorised to determine the criminal nature following judicial proceedings. In this context, as long as the judicial procedure has not come to an end, the Commission is informed of irregularities, some of which give rise to suspicions of fraud. It is clear that the quality of the information, and in particular, the speed with which the Member States notify cases as well as the accuracy of their data and the fact that it involves a centralised management system, impact on the overall statistical image of irregularities (sometimes fraudulent) which may appear in the management of Community funds. It has to be recognised that the reliability of the communication system suffers from these different difficulties.

The practices of the national administrations still vary despite the efforts made at harmonisation. The data communicated by the Member States is often incomplete, in particular a number of cases do not include any mention of the amounts or of references to the identification of the products concerned. Also the distinction between "frauds" and other irregularities remains due to the fact that the Member States do not always have the same view of criminal risk. Consequently, communications refrain, in a not insignificant proportion, from identifying the case as a fraud or a simple irregularity.

Therefore, the figures which are presented here must be handled with great caution. It would in particular be inappropriate to draw simple conclusions on the level of frauds in this or that part of the Union or on the efficiency of the services which contribute to the protection of financial interests. The Commission is working in close cooperation with the Member States to improve the notification system for

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<sup>94</sup> See in particular Article 3(1) of Council Regulation (EEC) No 595/91 of 4 March 1991 (OJ L 67, 14.3.1997), Commission Regulation (EC) No 1681/94 of 11 July 1994 (and No 1831/94 of 26 July 1994 (OJ L 191, 27.7.1994) for expenditure, and Article 6(5) of Council Regulation (EC, Euratom) No 1150/2000 for traditional own resources.

<sup>95</sup> See the definition in Article 1 of the Convention on the protection of the Community's financial interests of 26 July 1995 (OJ No 316 of 27.11.1995), entered into force on 17 October 2002.

irregularities, in particular to clarify the concepts of “fraud” and “irregularity”<sup>96</sup>. The Commission is also endeavouring to make progress with the recovery procedures for old cases and to clear the important backlog of debts which exists in certain fields (see point 12.2 below).

It must be noted in addition that the results of the notifications from the candidate countries did not justify a specific development at this stage. This is not surprising, given that the management of Community funds has been delegated to these countries only recently. The Commission however ensures that the conditions necessary for the notification of irregularities are met in the perspective of these countries’ membership.

## **10.2. Cases notified by the Member States**

In general, the number of frauds and other irregularities as notified for the year 2002 is on the rise: after a fall in 2001, the figure rises by 13.1% in own resources (see Annex 1), 36 % in agriculture (see Annex 3); in structural actions, the number of cases more than quadrupled, a trend which ties in with the closure of programmes for the period 1994-1999 (see Annex 5). The number of detected cases in direct expenditure is also on the rise (+21%, see Annex 6).

In all areas except direct expenditure, amounts are also on the increase, which is in line with average term trends: respectively by 35.8% and by 41% in traditional own resources (see Annex 1) and in agriculture (see Annex 3). In the field of structural actions, the total amount has tripled, which is in line with the increase in the number of cases (see Annexes 4 and 5). In direct expenditure (Annex 6) the total amount is stable.

It is to be reminded that the financial impact of frauds and other irregularities is below 1% of the budget concerned, with the exception of structural actions due to the closing schedule mentioned above.

### *10.2.1. Traditional own resources (see Annex 1)*

Article 6(5) of Regulation N° 1150/2000 requires Member States to inform the Commission, via the OWNRES system, of cases of fraud and irregularity where the amount involved is greater than €10,000. This information enables the Commission to describe trends in this area:

#### **10.2.1.1. Number of cases of fraud and irregularity**

In all, for the period 1989-2002– on the basis of the data available on 06.06.2003 - the OWNRES system contains 30,184 notifications (16,666 master records and 13,518 updates).

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<sup>96</sup> The Commission opened a dialogue with the representatives of the Member States to clarify basic concepts and to convince all the Member States that the communication of irregularities in no way prejudices the outcome of criminal judicial proceedings. A working document concerning the practical modalities for the communication of irregularities was established. Discussions are continuing in the Advisory Committee on the Coordination of Fraud Prevention.

In 2002 alone, the Member States reported 2,119 cases, as against the 1,873 cases notified in 2001, an increase of 13.1%. As the number of cases reported between 1997 and 2001 tended to fall year on year, this rise reverses the trend.

In comparison with 2001, the increase in the number of cases is particularly marked in Belgium (+63.5%), Denmark (+40.3%), Greece (+136.4%), Italy (+48.5%) and Sweden (+88.9%). However, the number of cases reported by the Netherlands and the United Kingdom fell significantly, by 15.6% and 35.4% respectively.

#### 10.2.1.2. The amounts established rose by 35.8% in comparison with 2001.

The notifications received in 2002 involved duties established totalling €24,544,459, a rise of 35.8% compared to 2001. This increase confirms the overall upward trend in amounts established since 1998, apart from the exceptionally high figure in 2000 that was due to the *New Zealand Milk Products* case. Recoveries totalled €8,562,638 in 2002, 24.82% of the amount established compared with 21.46% the previous year.

Analysis of the amounts established revealed that in some Member States the amount grows irrespective of any rise or fall in the number of cases. In comparison with 2001 the increase in the amount established is particularly striking in Belgium (+253.4%), Germany (+324.5%), the Netherlands (+465.4%) and Ireland (+79.4%). By contrast, the amounts established fell in Finland (-75.1%), Greece (-97.5%), Italy (-56.7%), Spain (-61.7%) and the United Kingdom (-52.3%).

By comparing the information contained in the reported submitted in 2002 with the data for 2001 it was possible to come up with some explanations for these major fluctuations. In Belgium, 26 of the 484 cases involved imports of bananas from the USA under false AGRIM certificates, and there were 62 cases of cigarette smuggling. There was also one case of irregularities involving anti-dumping duty in connection with imported silicon. The increase in the figure established by Germany was in part due to 28 cases of irregularities involving sugar. The amount established by Greece fell in comparison with 2001 because the previous year, Greece had reported two cases concerning beef and veal involving approximately €6,2 million.

In 2001, Finland had reported a large figure relating to imports of petroleum derivatives; in 2002, there was no such discovery. The increase in the amount established in Ireland stems from two cases, worth about €0.622 million, of cars imported from the USA. In 2002, Italy reported 100 cases of smuggled cigarettes. The amount established fell sharply by comparison with 2001, when Italy had reported 22 cases of irregularities in connection with bananas involving approximately €78,2 millions. The rise in amounts established in the Netherlands derives from 19 cases of cigarette smuggling worth €50,03 millions.

In Spain the amount established fell in comparison with the previous year because in 2002 Spain had reported 12 cases of irregularities relating to aeroplanes involving €17,85 million. In Sweden the number of cases increased, but the amount of duties involved remained small. As regards the United Kingdom, even after comparing the data for 2001, there appears to be no specific reason that explains the overall fall in the number of cases and amount established. It is possible that there was less activity

in 2002. In any case, the Member State will be invited to explain the situation at the next meeting of the Advisory Committee on Own Resources.

#### 10.2.2. Agricultural expenditure (Annexes 2 and 3)

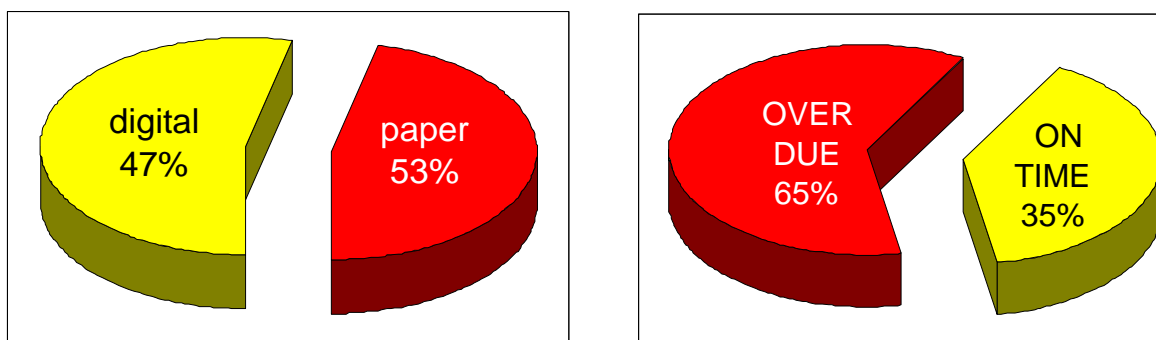
In 2002, Member States reported 3,285 irregularities under Regulation (EEC) N° 595/91 against 2,415 irregularities in 2001. This is an increase of more than 36%. The total amount affected in 2002 was about €198 million as against about €140 million in 2001, an increase of more than 41%. All the irregularities notified for this sector only correspond however to 0.46% of the agricultural budget. Moreover, the average amount per irregularity has decreased since 1994. Annex 2 gives an overview per Member State of the number of irregularities, the amounts affected and the percentage of the EAGGF expenditure.

In 2001, training was given to staff of all Member States to ensure that 2002 would be the first year in which all communications of irregularities under Regulation (EEC) N° 595/91 were forwarded to OLAF in digital format rather than on paper. Unfortunately, not all Member States are yet using the digital format. At the end of 2002, three Member States (Germany, Greece and Spain) were still using paper format. Among these three, Germany and Spain are responsible for more than 52% (1,709 communications) of the total number of communications.

Another problem is the very late communication of irregularities. Over 2,147 communications were communicated past the deadline<sup>97</sup>. The digital format, however, should make it easier to communicate on time.

Chart 10.1 below illustrates how the communications were sent:

**Chart 10.1: Irregularities communicated by Member States**

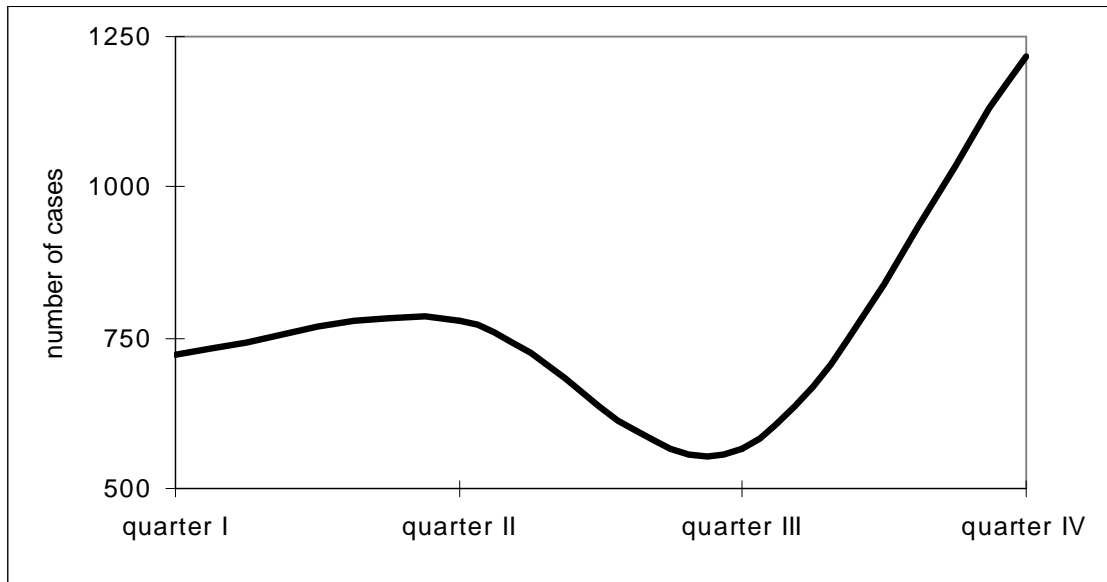


There is, as stated in the 2001 Annual Report, no certainty that the total number of communications received represents the total of frauds and irregularities detected by Member States. One reason for this is the fact that some Member States did not send communications in each quarter but only in one or two quarters. Another reason is the fact that some Member States already reported irregularities for the year 2003 in

<sup>97</sup> Irregularities have to be reported within 2 months following the end of each quarter (Art. 3 and Art. 5 Reg. 595/91)

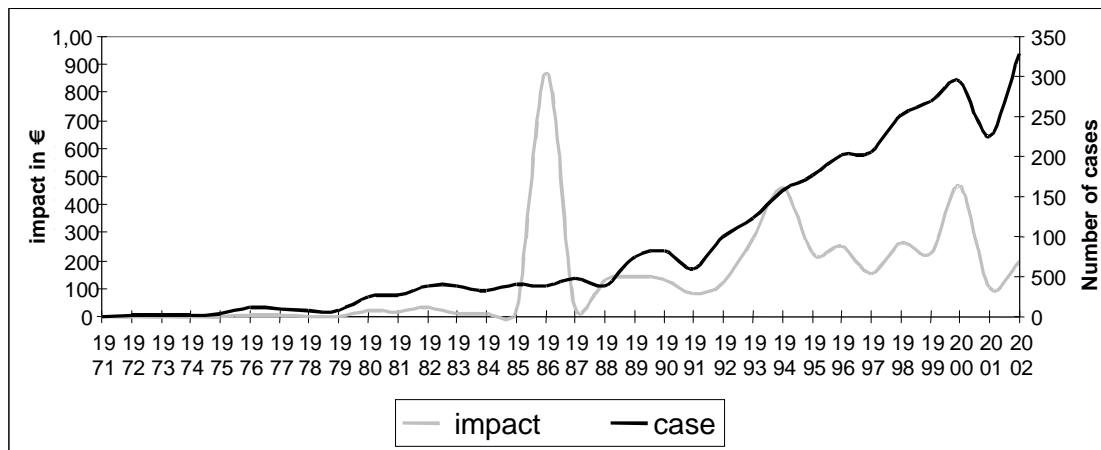
the first two months of the year 2003. In this period, irregularities from the last quarter of the previous year are normally reported, therefore it is likely that these communications relate to irregularities of 2002. It must also be taken into account that not all communications for the 4<sup>th</sup> quarter 2002 (deadline 28 February 2003) were sent and received on time. OLAF received from Spain and Germany respectively 300 and 250 communications concerning 2002 in April 2003. History shows that some Member States still report cases 6 months past the deadline. Chart 10.2. gives an idea how the communications were sent throughout the year.

**Chart 10.2: Irregularities communicated by Member States in the year 2002**



The 2001 Annual Report stated that there could be a break in the trend of a steady and significant increase in the number of cases over recent years. The figures for 2002 show that the trend of a steady and significant increase in the number of cases is still there. The total cases reported for 2002 are 3,285. These 3,285 cases alone amount to ± €198 million compared to ± €140 million in 2001, that is an increase of 870 cases and close to 60 million euros. Striking is the fact that the average amount per irregularity is decreasing since 1994. In chart 10.3., the total number of cases per year and the total amount per year are shown. Annex 3 gives an overview over the years 1998-2002.

**Chart 10.3: Irregularities communicated by Member States period 1971 – 2002**



The highest number of communications in 2002 was from Spain, Germany and France. In monetary terms, Italy was the Member State that reported the highest level of fraud and irregularities, i.e. almost €80 million, followed by Spain with a reported amount of more than €9 million. Spain and Italy account for more than 70% of the total amount of fraud and irregularities. The amounts reported by Germany, France, Ireland and the United Kingdom are low. Whilst these four Member States have a relatively high number of cases the amount affected is relatively low. In Annex 2 an overview is given per Member State.

**Chart 10.4: Link between total amount and average amount**

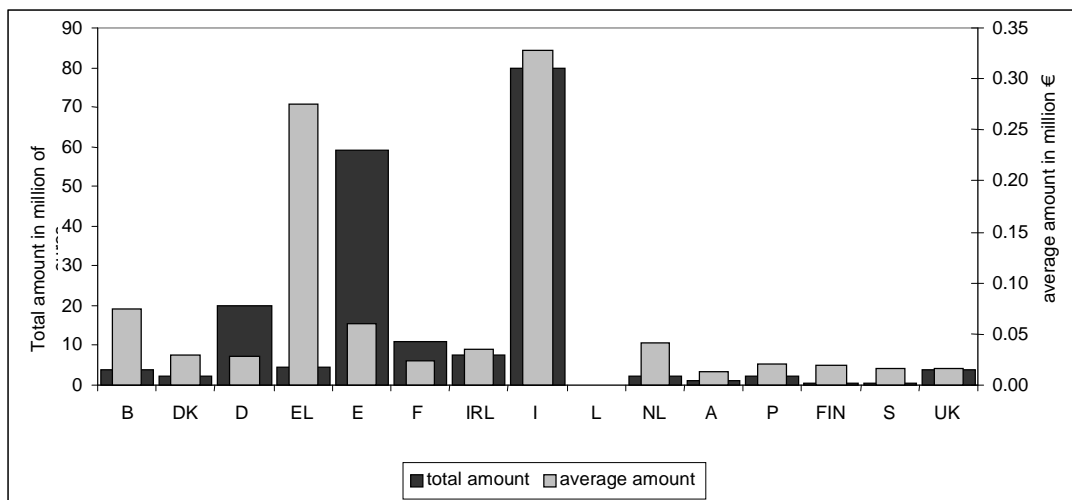


Chart 10.4. gives an impression of the relation between the total amount of the irregularities per Member State and the average amount per irregularity by Member State. Almost all Member States have a comparable relation between the total amount and the average amount per case. Striking are however the results for Greece and Spain. Spain reports a large number of cases with a relatively low amount involved. The opposite is true for Greece: the average amount per case is extremely

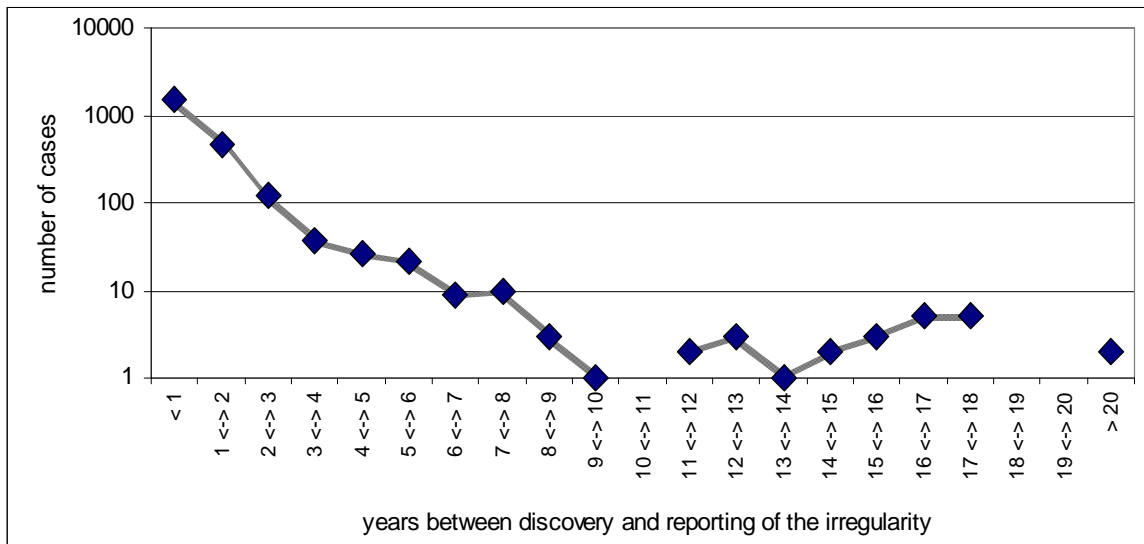
high compared with the total amount involved. An analysis of the nominal data “type of irregularity”, and the modus operandi will give a clearer view on these cases.

Member States should report the year of expenditure in their communications. However, only in 26.7% of cases do Member States actually report the year of expenditure. A point of concern is that Member States report a relatively high number of cases, i.e. 25.3%, in which the irregularity or fraud took place 5 or more years ago.

In addition, Member States also report the date of discovery of the irregularity and the date it was reported to OLAF. Chart 10.5. shows an overview of the lapse (in years) between the discovery and the reporting of the irregularity. In two cases the irregularities were discovered more than 20 years ago but only now reported to OLAF. Both cases were qualified as “fraud” and the total amount involved was over €4 million. The other cases, which were reported 10 years or more after discovery, were either qualified as “fraud” or were not qualified. The total amount involved was almost €13 million.

Almost 90% of irregularities are notified within 2 years following their discovery.

**Chart 10.5: Years between the discovery and the reporting of the irregularity**



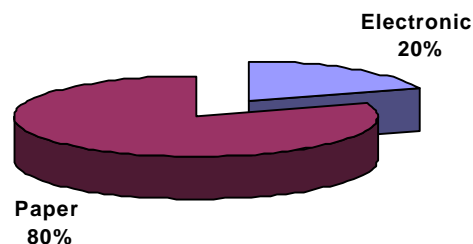
The very late reporting of a case could implicate that not all necessary actions were taken by a Member State to limit or to reduce the financial impact of an irregularity. This could be the case when for instance a Member State starts their administrative or judicial procedures at the same time as the reporting time. This could also have consequences concerning the recovery possibilities, the “diligence” of a Member State and the Clearance of Accounts procedure.

### 10.2.3. Structural measures (Annexes 4 and 5)

For what concerns structural measures, Member States are due to report cases of irregularities under Article 3 of Regulations N° 1681/94<sup>98</sup> and 1831/94<sup>99</sup> within two months from the end of each quarter. Under Article 5 of the same Regulations they have to submit updates of the cases communicated.

The year 2002 has been, in many aspects, a very particular one:

**Chart 10.6: Communications received under Regulations No 1681/94 and 1831/94**



Firstly, some Member States started reporting cases of irregularity in electronic format.

For the moment, administrations from only 4 countries (Netherlands, Finland, Portugal and Sweden) reported cases digitally. Chart 10.6 provides a quantification of the cases received in electronic format, 98% of which came from the Netherlands.

Secondly, but most important, as the programming period 1994-1999 draws to its closure the number of cases of irregularities reported has dramatically increased from 1,194 of 2001 to 4,656 of last year. Also the amounts affected reported increased from €216 million to over €614 million. Annexes 4 and 5 show respectively the breakdown of communications per Member State and the general trend of new cases reported per year.

Also in 2002, as in 2001, the majority of cases communicated by Member State concerned Structural Funds (EAGGF Guidance Section, ESF, ERDF, FIGG). With regard to the Cohesion Fund (which amounts to approximately €3 billion a year), out of the four beneficiary Member States (Greece, Spain, Ireland and Portugal), only Spain did not report any case of fraud/irregularity. However only four cases were communicated to OLAF involving almost €10 million and the irregularities were either detected before the final payment or the amounts were fully recovered.

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<sup>98</sup> Regulation 1681/94 applies to the Structural Funds, that is to say European Regional Development Fund (ERDF), European Social Fund (ESF), European Agriculture Guidance and Guarantee Fund (EAGGF) – Section Guidance and Financial Instrument for Fishery Guidance (FIGG).

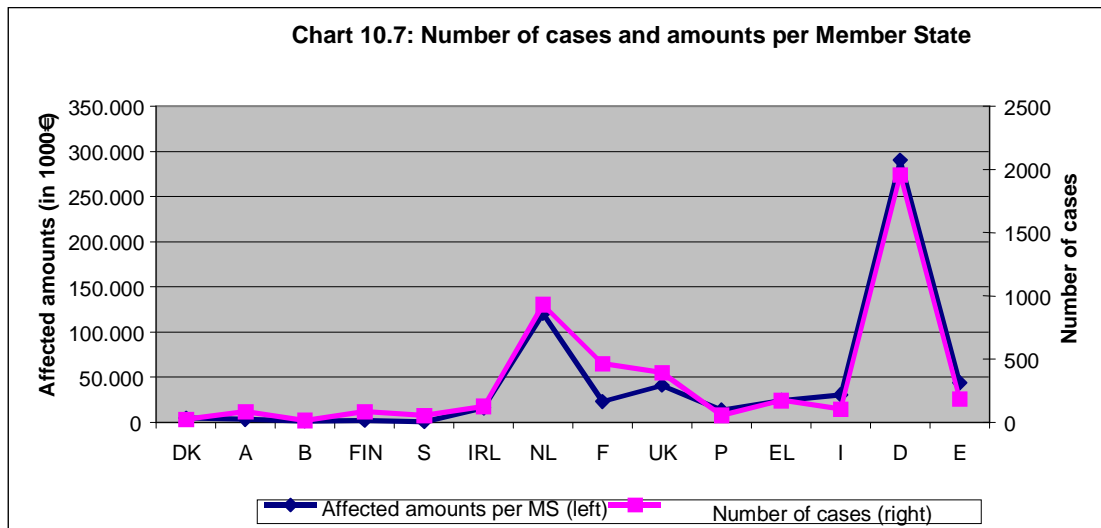
<sup>99</sup> Regulation 1831/94 applies to the Cohesion Fund.



From the total number of cases communicated, the European Regional Development Fund (ERDF) was the most affected in 2002, both in terms of cases reported (2,716) and of amounts affected (over €403 million).

The analysis of patterns across Member States in the previous year was confirmed in 2002 for the European Social Fund (ESF) as the Netherlands communicated the highest number of cases. Germany turned out to be the country having reported the highest number of cases in general, especially concerning the ERDF. In fact, Germany and the Netherlands alone reported more than half of the total both in terms of number of cases and in amounts.

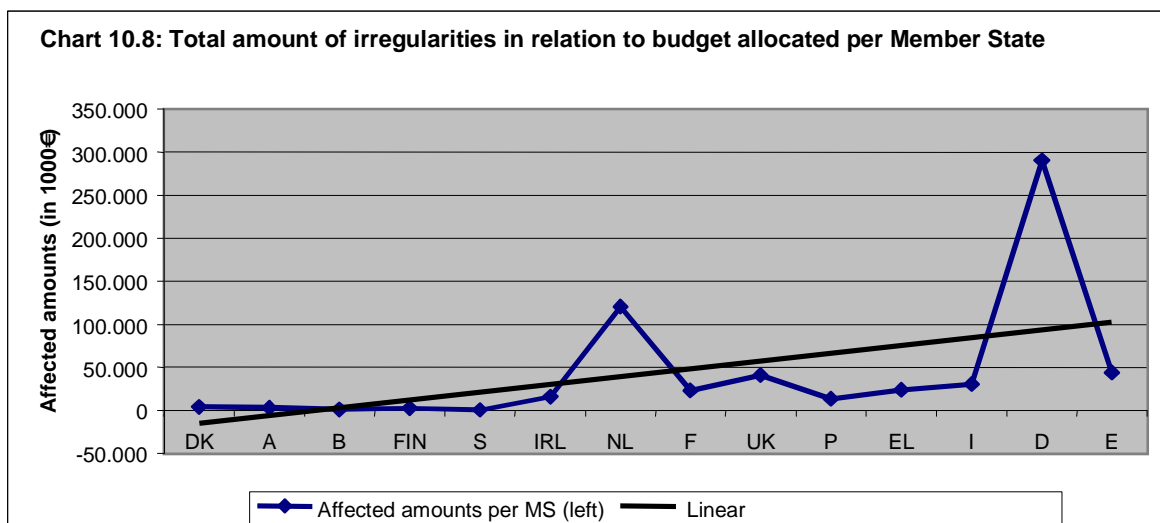
Charts 10.7 and 10.8 help highlighting some interesting aspects of the communications from the different Member States.



It should be noted that Member States have been ordered according to the budget allocated from the Structural Funds, Denmark being the one with the lowest amount and Spain the one with the highest<sup>100</sup>. The darker line (the one with rhombus markers) shows the amounts affected by irregularities reported by each Member State, while the lighter one (with square markers) reflects the number of cases communicated. Chart 10.7 highlights that, apart from two relevant exceptions (Germany and the Netherlands), there is a clear link between the budget allocated to each Member State and the irregularities communicated.

Such link is even more evident in chart 10.8 where only the total irregular amounts per Member State are shown and the linear trend (dark straight line) stresses it. If Germany and the Netherlands are taken out of the chart, the dependence of the two variables would be even more evident.

<sup>100</sup> Luxembourg has not been taken into account given the fact that it reported no irregularities. Figures are those related to the programming period 2000-2006



### 10.3. Cases under investigation by OLAF

It must be born in mind that more detail of OLAF's activity is given in the annual Activity report provided under Regulation N°1073/99.

In 2002, OLAF dealt with 415 new cases, as compared with 381 in 2001. Activity therefore is regularly on the rise and is broken down below by budget area.

Budget area	2001	New cases in 2002
<b>Traditional own resources</b>	<b>74</b>	<b>155</b>
<b>EAGGF TOTAL</b>	<b>105</b>	<b>36</b>
- <i>Agricultural trade/export subsidies</i>	70	22
- <i>Subsidy and aid</i>	35	14
<b>Structural actions</b>	<b>66</b>	<b>38</b>
<b>Direct expenditure</b>	<b>103</b>	<b>136</b>
<i>Internal policies</i>	37	39
<i>External policies</i>	66	97
<b>Internal cases</b>	<b>33</b>	<b>50</b>
<b>Total</b>	<b>381</b>	<b>415</b>

The second table presents data related to cases that were closed in 2002 and their budgetary impact, reflecting phases of the activity for each budget area. It shows steady increase of activity, not so much as regards the number of cases as from the point of view of amounts. Ongoing investigations are not presented in this table.

Budget area	Number of cases closed 2001	Number of cases closed 2002	2001	2002
			<i>(Amount in million of euros)</i>	
<b>Traditional own resources</b>	<b>98</b>	<b>168</b>	<b>276,15</b>	<b>464,90</b>
<b>EAGGF TOTAL</b>	<b>364</b>	<b>50</b>	<b>198,50</b>	<b>218,70</b>
- <i>Agricultural trade/export subsidies</i>	281	28	19,00	65,00
- <i>Subsidy and aid</i>	83	22	8,50	153,70
<b>Structural actions</b>	<b>66</b>	<b>270</b>	<b>47,50</b>	<b>211,00</b>
<b>Direct expenditure</b>	<b>122</b>	<b>128</b>	<b>21,60</b>	<b>28,90</b>
<i>Internal policies (expenditures)</i>	52	57	13,90	17,40
<i>External policies</i>	70	71	7,70	11,50
<b>Internal cases</b>	<b>13</b>	<b>36</b>	<b>20,80</b>	<b>13,72</b>
<b>Total</b>	<b>663</b>	<b>652</b>	<b>564,60</b>	<b>937,22</b>

### 10.3.1. *Traditional own resources*

In the field of traditional own resources 155 new investigations were opened, compared with 74 in 2001. These new cases concern mainly frauds on anti-dumping duties of Asian origin (China and South-East Asia). 168 cases were closed in 2002, 98 in 2001, with a budgetary impact of approximately €464.9 million: this amount includes €375.90 million in agricultural and in the sugar sector €29 million for customs duties on the cigarettes, combustible products and alcohol.

The investigations currently under way in the field of anti-dumping duties cover much higher amounts (approximately €60 million for two cases concerning imports of television sets and recordable CDs). OLAF increased its efforts in this field, taking into account not only the financial interests of the European Union but also the economic interests which the tariff measures protect, in particular the situation of the Community's industry.

### 10.3.2. *Agriculture*

In the field of agriculture expenditure, 36 new cases were opened in 2002 (14 for agricultural subsidies and 22 for direct aid) compared with 105 in 2001 and investigations in the field were still under way at the end of the reporting period.

50 cases were officially closed, representing a financial impact of €208.7 million (including €153.7 million for direct aid). In this field in 2002, OLAF paid close attention to the problems raised by the long term set aside programme in Greece. This work is now completed and OLAF forwarded its final report to the Greek judicial and administrative authorities, in order that they ensure properly the follow up of the judicial and financial actions of recovery against the companies and persons involved. The financial impact is at least €3.4 million and could reach €20 million.

In July 2002, OLAF closed a case concerning the export, by a Belgian operator of tinned meat products, unduly declared for export, involving refund during the period from 1996 to 2001. The Belgian authorities launched a recovery procedure for an amount of €7 million. The Belgian company is a subsidiary of a Netherlands meat

marketing group, for which a similar fraud mechanism had been noted in the Netherlands and which had also been the subject of follow up measures.

### *10.3.3. Structural funds*

In 2002 the Structural Funds sector opened 38 new investigations compared with 66 in 2001 broken down as follows: 42% ESF, 38% ERDF, 16% EAGGF – Guidance and 4% FIGG. In particular, priority was given to serious or transnational cases that may have had a significant impact on Community interests. During the same period 270 investigations (compared with 66 in 2001) were closed, a particular effort having been made to clear the ongoing cases.

The fraudulent mechanisms detected at the time of these investigations concern in particular false invoices, false statements of expenditure connected with the absence of supporting documents. Efforts were made to improve cooperation with national authorities, particularly in relation to spot checks. In the same vein, close cooperation has been developed with the Commission departments involved.

### *10.3.4. Direct expenditure (Annex 6)*

The direct expenditure and external aid sector is managed exclusively by the Commission. The activity in this field increases, despite the decreasing share of these policies from the general budget of the Community (less than 0.5% since 2001). This is explained by the aim of the Commission of ensuring effective protection in a field where it is a direct administrative authority and where OLAF is, in general, the only investigative body. In 2002, 136 new investigations were opened (compared with 103 in 2001) including 97 in the field of external aid. During the same period, 128 files were closed (122 in 2001) with an impact of approximately €28.9 million.

Consequently, the budgetary impact mentioned in this report relates only to the cases that closed in 2002, given that these figures do not give a complete picture of the overall fight against fraud against the budget. Moreover, it can often be the case that the incidence is not connected to the EU budget *stricto sensu*, but also have consequences for national budgets or budgets of separate institutions.

### *10.3.5. Internal investigations*

Internal investigations cover of course all the sectors of Community activity and they remain a priority activity of OLAF.

In 2002, 50 new investigations were opened, compared with 33 in 2001. 36 cases were closed compared with 13 in 2001, which indicates an increase in the activity which is linked with better cooperation between the European institutions. The budgetary impact of €13.72 million, a slight reduction in relation to the previous financial year (€20.87 million) has no link with the objective sought which is not mainly financial.

## **11. SPECIFIC ANALYSIS: TRENDS**

### **11.1. Traditional own resources**

Notification of cases of fraud and irregularities under Article 6(5) of Regulation N° 1150/2000 revealed the following tendencies:

*11.1.1. The breakdown of frauds and irregularities by customs procedure and the typology of cases of fraud and irregularity confirm the importance of fraud in the area of goods put into free circulation.*

2002 figures (69.37% of the cases and 51.59% of the amounts detected) confirm the leading place of cases involving goods put into free circulation but also show a downward trend: with regard to the number of cases, the fall is 4.04% in relation to 2001 and 10.29% in relation to 2000; regarding the amounts, the fall is 34.9% in relation to 2001 and 41.1% in relation to 2000. The detailed breakdown of frauds and irregularities detected by type of fraud for goods put into free circulation makes it possible to observe the high share - and slightly higher in number of cases as well as in amounts - of undeclared goods.

On the other hand, the impact of transit fraud (number of cases: + 4.78% in relation to 2001 - amounts detected: + 16.06% in relation to 2001) is higher. A slight increase is also to be noted in fraud in customs warehousing (+ 1.95% in relation to 2001). The heading other procedures is also on the increase; the globalisation of information under this heading, already demonstrated in previous years, distorts the analysis.

*11.1.2. The breakdown of cases of fraud and irregularity by type of goods and origin confirms the impact, in particular, of fraud involving cigarettes.*

Examination of the 25 most important types of goods involved in fraud cases reveals the same picture as in previous years: in terms of numbers of cases and amounts established, fraud involving cigarettes and bananas accounts for the largest share and is growing. The figures for 2002 also highlight a significant trend of fraud involving sugar and aluminium. Examination of the 25 most common places of origin reveals that products of USA and Chinese origin are still top of the list, and are moving farther ahead of products of Japanese origin. The number of cases recorded under the headings unspecified or unknown remains high, which to some extent undermines the analysis of impact by origin.

*11.1.3. Improving the reporting of cases of fraud and irregularity*

The notifications by the Member States of cases of fraud and irregularity do not always reflect the true picture. Experience shows that there needs to be real improvement in both the quantity and quality of the information supplied. To encourage the communication of increasingly precise and up-to-date information that reflects both the customs and budgetary reality, the Commission is redoubling its efforts regarding the gathering and analysis of data sent in by the Member States. To this end the Commission has adopted a twin-track strategy:

#### 11.1.3.1. Comparison of amounts entered in the separate account and cases reported under Article 6(5) of Regulation N° 1150/2000.

In March 2002, the Commission asked the Member States to draw up a full list of the amounts entered in their separate accounts at 31 December 2001.

While awaiting the final results, the Commission conducted a preliminary analysis based on the first replies it received in an attempt to find out whether it was possible to establish a link between the amounts entered in the separate account and the cases reported using the OWNRES software. This initial study showed that the methods used by the Member States to generate the two kinds of data made it impossible in many cases to establish a link between them. It was equally true that the proportion of cases where such links could be established varied considerably from one Member State to another. This situation was partly due to differing interpretations of fraud and irregularity which led some Member States to adopt a third category (neither fraud nor irregularity) and not report the amounts concerned. The Commission points out that under Article 6(5) amounts over €10 000 entered in the separate account must be reported.

Analysis of the replies from the other Member States is underway and should make it possible to refine the initial conclusions and outline the key reasons for this state of affairs. The objective is to propose technical and operational solutions at national and/or Community level. This question will be examined at the next meeting of the Advisory Committee on Own Resources in July 2003, with a view to proposing technical and operational solutions at national and/or Community level. The Commission will take the measures necessary to ensure that the reporting of cases of fraud and irregularity in 2003 takes account of these comments.

#### 11.1.3.2. Development of a more effective tool for transmitting data to improve the quality of communications.

A number of anomalies and other transmission problems have highlighted the difficulties faced by the Commission and the Member States in managing the data on fraud and irregularity using the OWNRES software. After registering and examining the needs of the users (the Member States and the Commission), the Commission departments concerned have set about installing a more reliable and user-friendly application on the web to make the necessary improvements regarding the methods of transmission and the quality of information. This application will replace the current communication tool, which has proved to be too expensive and inefficient.

The application will not need to be specially installed. The Member States can enter and update reports of fraud and irregularity in real time and the data will be stored immediately. Member States will be able to modify entries at any time. There will be a system to enable encrypted data to be transmitted securely. The system should be put into operation in September 2003, following a presentation seminar organised by the Commission for the Member States.

### 11.2. **Agricultural expenditure (EAGGF-Guarantee)**

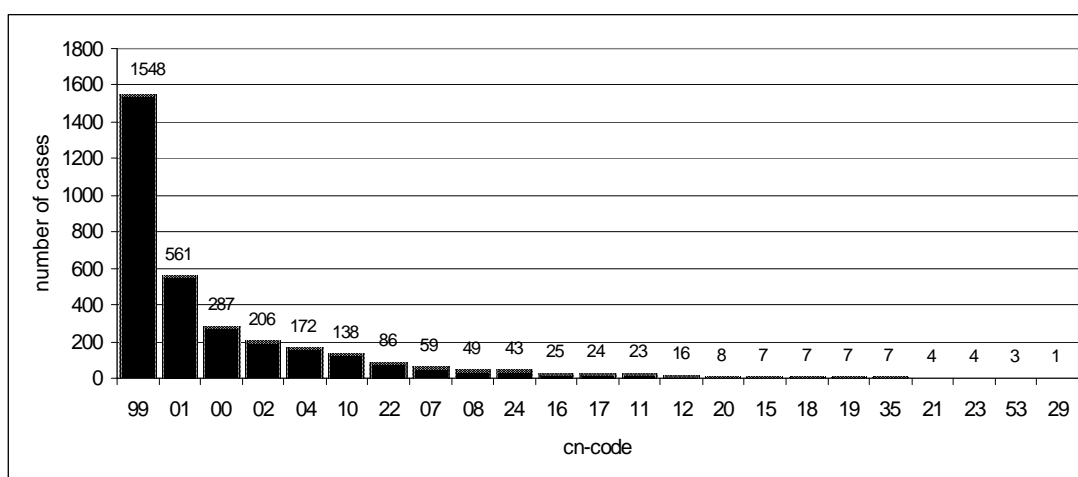
By the end of April 2003, OLAF had received 3,285 cases for 2002. As mentioned above, not all cases that occurred during 2002 have been communicated yet. Until all

communications for 2002 are received by OLAF, it is impossible to give a full picture of the situation. Nevertheless, a number of conclusions can, however, be drawn.

### Products involved

The following charts represent figures concerning the products that were involved in fraud and irregularities. Chart 11.1. gives an overview of how often a certain product was involved in an irregularity. The selection is based on the first 2 characters of the Combined Nomenclature (CN-code). In annex 10, an overview is given of these CN-codes. The largest number of reported irregularities, i.e. 1,548 cases, has the code 99, which stands for “unknown”. This means that Member States are unable to identify the products in more than 47% of the irregularities. This is remarkable especially when it concerns export declarations as the CN-code is clearly stated. In second place comes code 01, which concerns live animals. Member States reported 561 irregularities with a total amount of €6.2 million. Code 00, which stands for “not applicable” concerns irregularities linked to direct aid, for instance the rural environment protection scheme with a total amount involved of almost €4.4 million. The following chart gives an overview of the products involved and the number of irregularities.

**Chart 11.1: Reported cases and the products or goods involved**



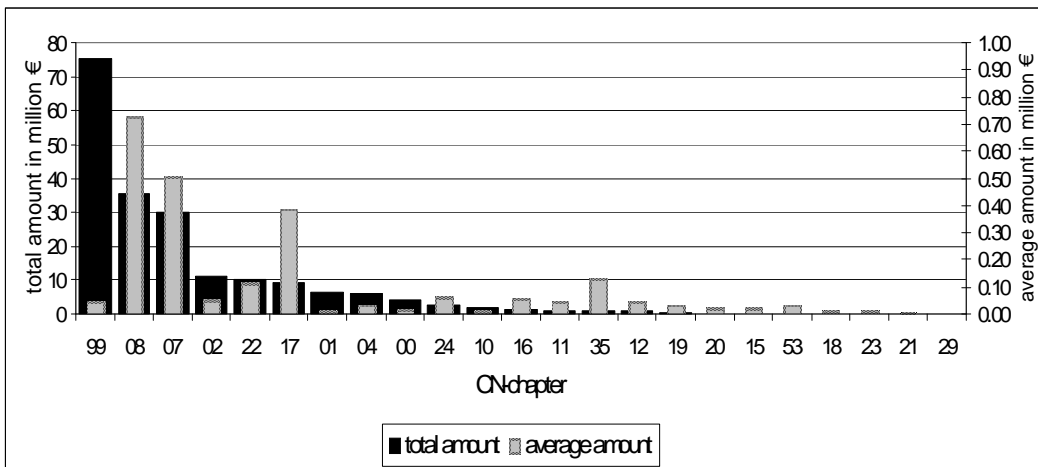
It is more useful, however, to look at the amounts involved. Analysis on the basis of the amounts can help identifying the areas and sectors with higher risks and, more important, help to develop a control and/or investigation strategy so that the limited sources of manpower can be better used.

In chart 11.2., an overview is given of the products in which the highest total amount as well as the average amount per product are reported<sup>101</sup>.

<sup>101</sup>

In charts 11.1 and 11.2, the CN Code is used to give an overview of the manner in which a product is involved in an irregularity. The top 12 categories are the following:  
 - Code 00: Not Applicable

**Chart 11.2: Total amount and average amount per case**



The highest total amount was found in the irregularities in which the Member States reported an “unknown” for the product. The total amount was ± €75 million. The average amount, that is the amount per irregularity, however, was relatively low at about €48.750. This shows that reporting an “unknown” does not help to identify the irregularities and, looking at a higher goal, does not help to improve the fight against fraud. The information has no added value.

Where Member States have reported a product, the highest total amount as well as the highest average amount was reported for “edible fruit and nuts, peel of citrus fruits or melons” (code 08). France, Greece, Italy and Portugal reported irregularities in this area. In ± 61% of these cases the irregularity has been qualified as “fraud”. The total amount involved was ± €35.8 million and the average amount per case was ± €730,000.

Second “best“ in this chart of irregularities is code 07, “edible vegetables and certain roots and tubers”. Five Member States reported irregularities: Germany, France, United Kingdom, Italy and the Netherlands. The total amount involved was ± €30 million and the average amount per case was ± €500,000. In ± 34% of these cases the irregularity was qualified as “fraud”.

Also worthy of mention is code 17, “sugars and sugar confectionery”. The total amount of the reported irregularities may not be as high but the average amount per irregularity, however, is relatively high. Germany, Denmark, Spain, France,

- 
- Code 01: Live animals
  - Code 02: Meat and Edible Meat Offal
  - Code 04: Dairy Produce
  - Code 07: Edible Vegetables
  - Code 08: Edible Fruit and Nuts
  - Code 10: Cereals
  - Code 16: Preparations of Meat
  - Code 17: Sugars and Sugar Confectionery
  - Code 22: Beverages, Spirits and Vinegar
  - Code 24: Tobacco
  - Code 99: Unknown or Non Described Product



Great Britain, the Netherlands and Portugal reported irregularities. The average amount per irregularity was  $\pm$  €90,000. None of these cases were qualified as “fraud”. These cases were either qualified as an “irregularity” ( $\pm$  37%) or did not receive a qualification.

The graph also highlights irregularities in which a relatively low average amount is reported. To have an insight in the areas and/or sectors where relatively low amounts are involved could also help in the process of setting priorities concerning controls and investigations. These irregularities concern the following products:

- Code 21: Miscellaneous edible preparations
- Code 18: Cocoa and cocoa preparations
- Code 01: Live animals
- Code 23: Residues and waste from the food industries; prepared animal fodder
- Code 10: Cereals

The average amount per case is less than €15,000.

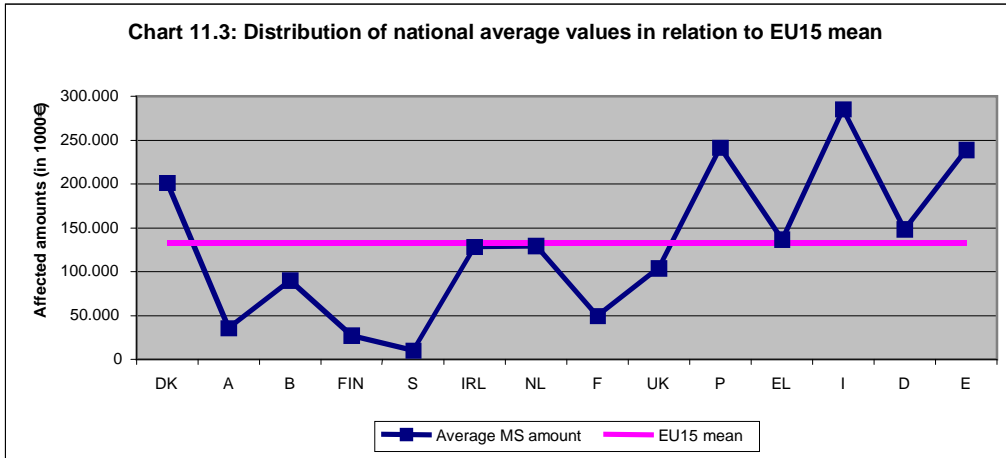
### **11.3. Structural measures**

In paragraph 10.2.3 it was stated that Member States’ behaviour in the reporting of irregularities is not consistent. The following analysis tries to give some explanation to that statement.

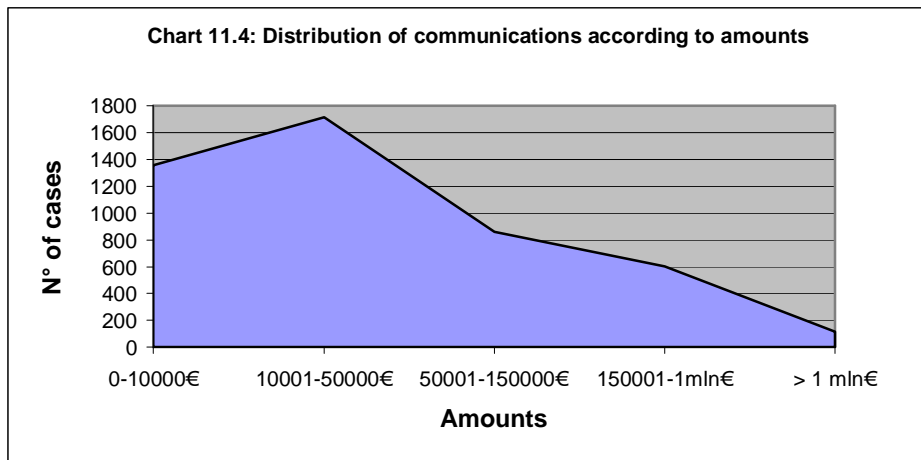
Chart 11.3<sup>102</sup> shows the average amount of the irregularities in each Member State and how they are distributed in relation to the overall mean (straight horizontal line). It is quite striking to note the significant differences between Member States and especially the “distance” between the highest average value (Italy, €85,006) and the smallest (Sweden, €10,063).

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<sup>102</sup> Member States are listed in order according to the budget allocated from the Structural Funds (programming period 2000-2006), being Denmark the one with the lowest amount and Spain the one with the highest. Luxemburg has not been taken into account given the fact that it reported no irregularities.



Furthermore, in chart 11.4, communications have been divided into five classes according to the amount affected by irregularities (€4,000 to 10,000; €10,001 to 50,000; €50,001 to 150,000; €150,001 to 1 million; over €1 million). The largest number of cases communicated relates to amounts between €4,000 and €50,000 (first two classes in the chart) and accounts for 66% of the total number of cases reported to OLAF.



It should be stressed that Sweden (the country with the lowest average value) did not report any cases involving amounts higher than €150,000. For Finland and Austria (second and third lowest average amount) reported, respectively, only the 2% and 3% of cases involves amounts higher than €150,000. On the contrary, 39% of the cases from Denmark and 26% of the cases communicated by Italy are above €150,000, followed by Germany (19%), United Kingdom (17%), the Netherlands (16%) and Spain (15%).

Also the types of irregularity reported differ among Member States. Italy and Germany (to a lesser extent) communicated several cases of “falsification” (of documents, supporting documents, requests for aid, accounts)<sup>103</sup>. Despite the high

<sup>103</sup> As reported by the Italian authorities, 70% of the cases involving amounts between €150,000 and €1 million involved “falsifications”. 55% of the cases involving amounts higher than €1 million were the result of the same problem.

amounts reported, no other Member State, have encountered the same situation, with almost insignificant exceptions in Spain, Portugal (1 case each) and the United Kingdom (3 cases).

Table 11.5 illustrates some figures concerning the most frequent types of irregularities together with an indicative implicated amount and the indicative average amount:

<b>Codes</b>	<b>Type of irregularity</b>	<b>Frequency (alone)</b>	<b>Frequency (with other codes)</b>	<b>Indicative implicated amount</b>	<b>Indicative average amount</b>
102	Incorrect accounts	95	134	17,596,993	76,842
210	Missing or incomplete supporting document	253	258	49,069,034	96,025
211	Incorrect supporting documents	69	170	28,224,792	118,095
325	Not eligible expenditure	643	255	97,444,689	108,513
405	Irregular termination	254	10	39,807,292	150,785
601	Failure to respect deadlines	193	47	57,140,024	238,083
612	Failure to respect other regulation/contract conditions	135	26	16,251,750	100,942
811	Action not completed	401	52	95,924,525	210,268
831	Over financing	75	62	12,906,923	94,211
999	Other irregularities	1074	45	147,258,390	131,598
	Falsifications <sup>104</sup>	55	27	18,374,684	224,081

It must be noted that due to the reporting method a single case may contain more than one type of irregularity. Therefore it has been specified how many times the type of irregularity has been communicated alone and how many times together with other codes. The implicated amount shown as “indicative” sums up all the values related to that specified code, distorting the real total results.<sup>105</sup>

The exact total amounts are those reported in annex 4.

It is important to underline that the most frequent types of irregularity are the same as in the year 2001.

As with last year, it should be stressed that the «999 – other irregularities» code has a great impact on the overall evaluation. Under this code the irregularities that do not fit any other possible description provided for by the communication system are reported.

However, their weight on the total has decreased since last year (23% in 2002 compared to 28% of 2001 concerning frequency and 23% against 35% for the

<sup>104</sup> The category “falsifications” refers to different specific types of irregularity and has been reported in this way because many times reference has been made to it in the text. The types of irregularity included in this category are the following: falsified accounts, false or falsified documents, false or falsified request for aid, false or falsified supporting documents, false or falsified certificates.

<sup>105</sup> Therefore the ‘total’ row has been omitted. The values expressed under “indicative implicated amount” and “indicative average amount” columns are only “virtual”.

amounts). Nevertheless, the availability of more precise information in this field would certainly aid interpretation of the statistics concerned.

Finally, it should also be stressed that in relation to the most frequent type of irregularity («325 – no eligible expenditure») the Netherlands reported the highest number of cases (205 of the 613 in the column “Frequency (alone)”) and Austria (0), Belgium (0) and Italy (1) communicated the lowest. The United Kingdom used the generic code «999» most frequently (125 on 420), while Italy and Finland used it in only 2 cases.

Overall, the quality of the information communicated by the Member States improved this year in comparison with previous years. However, more effort could be made in terms of consistency and respect of the time limits fixed by sectoral regulations for the transmission of the communications to OLAF. This situation should further improve with the adoption of the electronic system of transmission by more Member States.

## **12. FINANCIAL MONITORING**

The Commission is responsible for monitoring the recovery by the Member States of amounts unduly paid and lost resources. The year 2002 is in line with preceding years. However, to the exception of agriculture where the Commission is already implementing specific measures, the amounts recovered in 2002 amounted to approximately one fourth of the new amounts concerned by fraud and other irregularities in the area of traditional own resources and that of direct expenditure, and almost 40% in structural actions. Given the lengthy procedures, especially judiciary procedures at national level, and taking into account that total amounts to be recovered are much lower than 1% of the sectoral budget, this result is rather encouraging. The Commission however is not satisfied with it and expects improvements to result from the revision of management and control methods as well as from efforts targeting the burden of the past.

### **12.1. Traditional own resources (Annex 7)**

Article 8 of Decision 2000/597/EC, Euratom delegates the collection of traditional own resources to the Member States.<sup>106</sup> The Commission monitors the way in which the Member States perform this task to ensure the amounts are recovered in accordance with Community legislation on customs and financial matters<sup>107</sup>. To this end, the Commission has developed an overall monitoring strategy that allows it to evaluate action taken by the Member States and take remedial measures where necessary.<sup>108</sup>

There are three main principles in this strategy: a sample survey of the ongoing processing of cases, the write-off procedure for amounts of own resources above

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<sup>106</sup> Council Decision 2000/597/EC, Euratom of 29.9.2000 (OJ L 253, 7.10.2000).

<sup>107</sup> The Community Customs Code, Decision 94/728/EEC and Regulation (EC, Euratom) N° 1150/2000.

<sup>108</sup> For details of the strategy see the reporter on the protection of financial interests and the fight against fraud for 2000.

€10,000 that are considered irrecoverable and application of the principle of financial responsibility for certain errors made by national administrations.

#### 12.1.1. *Sample survey*

In view of the very large number of reports of cases of fraud and irregularity (hereinafter fraud reports and mutual assistance forms), to help it monitor recovery the Commission set up a system for analysing the data known as the *B Sample*, which involves a detailed examination of certain especially difficult cases reported in the context of mutual assistance.

The aim of the procedure is to monitor recovery operations in a certain number of representative cases until final clearance. Two reports of this type, B94 and B98, have been produced.<sup>109</sup> A third such report was supposed to appear in 2001, but the original sample had to be changed as four cases of irregularities regarding origin no longer needing processing, following a the ruling of the Court of First Instance on Turkish TV sets<sup>110</sup>. A new sample was subsequently selected but this required additional information to be gathered. The third report, report B2003, should appear at the end of 2003.

#### 12.1.2. *The write-off procedure*

The Member States take the necessary measures to make available traditional own resources, except in cases where recovery proves impossible for reasons not attributable to the Member State concerned. Write-off cases (amount >10,000 €) are reported to the Commission for examination. Where the Member State demonstrated due diligence when attempting to recover the amount, the amount can be written off. Where this is not the case, the Member State is held responsible under Article 8 of Decision 2000/597 and Articles 2 and 17 of Regulation No 1150/2000. Examining the diligence of the Member States is a highly effective way of convincing national administrations to take recovery very seriously, as they can be held financially liable in the event of non-recovery. Analysis of cases under Article 17(2) also provides the Commission with an opportunity to make observations on the establishment of own resources, the way in which the separate account is kept and whether national legislation complies with Community law.

In 2002, seven Member States (Germany, Spain, Italy, Ireland, United Kingdom, Netherlands and Portugal) submitted 87 requests for amounts to be written off to the Commission under Article 17(2) of Regulation N° 1150/2000 for a total of €103,018,053.43. In all, however, 88 cases were examined. The results, in financial terms, of the review of the 88 cases (11 from Germany, 7 from Spain, 35 from Italy, 1 from Ireland, 6 from the United Kingdom, 27 from the Netherlands and 1 from Portugal) are as follows:

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<sup>109</sup> Commission reports on the recovery of traditional own resources in cases of fraud and irregularities (Sample B 94, COM(97) 259 final, 9.6.1997, and Sample B98, COM (1999) 160 final 21 April 1999).

<sup>110</sup> Joined cases T-186/97, T-187/97, T-190/97 à T-192/97, T-210/97, T-211/97, T-216/97 to T-218/97, T-279/97, T-280/97, T-293/97 and T-147/99, *Kaufring AG et al. v Commission*, 2001 [ECR] II – 01337.

<i>Commission position</i>	<i>Number of cases</i>	<i>% cases</i>	<i>Amount in €</i>	<i>%</i>
Exemption granted	30	34.10	12,556,341.20	22.45
Supplementary info	18	20.45	5,602,022.24	10.02
Inappropriate <sup>111</sup>	30	34.10	35,279,189.81	63.08
Refusal	10	11.35	2,491,791.54	4.45
<b>Total</b>	<b>88 cases</b>	<b>100 %</b>	<b>€5,929,344.79</b>	<b>100 %</b>

For the year 2002, at 10 April 2003, 52 cases had already been referred (15 from the Netherlands, 20 from Spain, 1 from Ireland, 6 for Austria, 10 for the UK) for a total amount of €2,658,845.11.

### 12.1.3. *Application of the principle of financial responsibility*

#### 12.1.3.1. The financial responsibility of the Member States for their administrative errors

The Own Resources Decision requires the Member States to take all possible measures to collect traditional own resources. As this responsibility is remunerated (25%) and to ensure the sound and efficient management of public funds, Member States are financially liable for any lack of diligence on the part of the Member States that results in a loss of resources. This approach means that the Commission holds the administrations financially responsible for their own errors.<sup>112</sup>

In 2002, four Member States (the United Kingdom, France, Austria and Italy) made available to the Community budget own resources that they had been unable to recover from the debtors owing to errors made by their own administrations. The total amount transferred by the four Member States came to €7,471,501. Other Member States, while understanding the principle of financial responsibility, are continuing to submit counter arguments. To resolve this question of different interpretations of Community law, the Commission brought a test case regarding financial responsibility before the Court of Justice on 8 November 2002 (Case C-329/02).

In all, 27 cases were opened in 2002. At the end of 2002, there were 114 cases open, involving in principle €0,861,860 as against €0,933,636 in 2001. The slight drop in the amount is mainly due to the fact that the new cases of financial responsibility opened in 2002 were offset by the stripping out of the amounts involved in the Turkish televisions case and the withdrawal of a file.

#### 12.1.3.2. External financial responsibility

Moreover, throughout 2002, the Commission has continued to develop the external aspect of the principle financial responsibility with a view to increasing the liability

<sup>111</sup> When the conditions for application of Article 17 of the above-mentioned Regulation are not met.

<sup>112</sup> These cases are identified on the basis of Articles 220(2)(b) (administrative errors that could not be reasonably detected), 221(3) (statute-barring as a result of inactivity on the part of the customs service), Articles 869 and 889 of the rules implementing the Community Customs Code or where the customs service has failed to comply with the Community Customs Code and thereby created legitimate expectations on the part of the operator.

of partners to international trade agreements that the Union has concluded or will conclude with non-member countries. Progress is still slow owing to the attitude of Member States and certain non-member countries. Following discussions in the Council between the Commission and the Member States, on 6 June 2002, the Member States finally agreed that the financial liability clause should be included in the directions for negotiation with Albania and the ACP countries. The wording was established subject to the outcome of horizontal discussions that the Commission undertook to begin with the Member States and that took place in the Council's Customs Union Group on 31 January and 10 March 2003. Bearing in mind the results of these discussions, which were extremely fruitful from a technical point of view but did not cover the political dimension as expected by most of the Member States, the Commission is considering ways of making the best progress on this matter.

## **12.2. (EAGGF Guarantee Section): Expenditure**

In 2002, Member States communicated, pursuant to Regulation 595/91, 3,285 irregularities for a total amount of €198,079,000 (see Annex 2).

The situation as regards recovery in 2002 (see Annex 8) is presented as follows:

- the overall sum to be recovered was €2,177,477,000, for the communications prior to 2002;
- to this amount, €171,579,000 were added relative to the communications received during 2002;
- the amounts relating to the cases for which a legal procedure is current account for overall approximately €738,466,000, with regard to the period prior to 2002;
- finally in the same period, the amounts declared irrecoverable pursuant to Article 5, par. 2 of Regulation 595/91, and which are waiting for a formal decision within the framework of the procedure of auditing of accounts, were €149,798 000.

On 3 December 2002, the Commission adopted a second communication on "the improvement of the recovery of the debts of the Community resulting from direct management and from the shared management of Community expenditure" [COM (2002) 671 final].

With regard to the EAGGF Guarantee sector, the Commission concluded that an important arrear still exists concerning the information on the recovery of the amounts unduly paid, with regard to the cases of irregularities communicated by the Member States under Regulation 595/91. In order to clarify the situation and to prepare formal decisions on the financial consequences<sup>113</sup>, the Commission decided to create a Task force on "Recovery" (hereafter mentioned "TFR").

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<sup>113</sup> In accordance with Article 8(2) of Regulation 729/70.

The Task Force, which is a joint action of OLAF and of DG AGRI, will examine all the cases of irregularities related to the EAGGF-Guarantee communicated by the Member States for 1995, 1996, 1997 and 1998 and for which the final recovery situation of the unduly paid amounts has not yet been notified.

Except for Italy, the communications for the years previous to 1995 have already been the subject of a previous review which began in 1999; the final conclusions are currently examined within the framework of the procedure of auditing of accounts. For Italy, the Task Force will also examine all the EAGGF Guarantee cases communicated for the years prior to 1995, to clarify the real situation of the recovery of the amounts unduly paid.

The Task Force will prepare formal decisions on the financial consequences for all the communications from all the Member States done before 1999. These formal decisions on each Member State will be taken separately within the framework of the procedure of Auditing of Accounts<sup>114</sup>.

### **12.3. Structural measures (Annex 9)**

In 2002, Member States communicated pursuant to Regulations 1681/94 (financing of the structural policies) and 1831/94 (financing of the Cohesion Fund) 4,656 cases of irregularities for an overall amount of €14,094,000 (see annex 4).

The situation as regards recovery in 2002 (see annex 9) is presented as follows:

- an amount of €337,656,000 remains to be recovered concerning the communications of irregularities, pursuant to Regulations 1681/84 and 1831/84, received before 2002;
- to this amount, €368,287,000 were added relating to the communications received during 2002.

In the field of the Structural Funds, i.e. measures part-financed under multi-annual programmes, the crucial phase with regard to the financial follow-up are that of the closure of the intervention in question. As regards the 1994-1999 programming period, the closure of the programmes has started, the deadline for the presentation of the balance being on 31 March 2003. A considerable number of cases which were communicated under Article 3 of Regulation 1681/94 have normally to be the subject of a discharge except for the actions suspended for legal reasons. The Commission will finish the exercise of closure in 2003. The results of the closure are already apparent under the communications of 2002. Almost 40% of the amounts affected by the irregularities were the subject of recovery; for the majority of cases, by means of withdrawing the amount of the request from the balance submitted to the Commission.

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<sup>114</sup> As provided for by Regulations 729/70 and 1258/1999 (which apply to the expenditure carried out as from 1 January 2000), as Commission Regulation 1663/95 establishing the detailed rules for the application of Regulation 729/70 with regard to the procedure of auditing of the EAGGF Guarantee accounts.



The new Regulation 448/2001 makes it an obligation for the Member States to notify the Commission, once a year, of the balance of pending recoveries. This facilitates the financial follow-up and the charging to the Member States of the amounts lost because of their negligence.

#### **12.4. Direct expenditure (including external aid)**

The direct expenditure sector of the budget is managed mainly by the Commission and the European Office for the fight against fraud has special responsibility in this area. In cases of direct expenditure, fraud and irregularity investigated by OLAF where it is not considered appropriate to launch criminal proceedings, the Office ensures that important elements arising either during the course of investigations or from the final investigation reports are communicated to the authorising Directorate General (DG) for the expenditure in question so that appropriate safeguard measures and/or recovery action may be initiated in a timely manner. OLAF also supports the authorising DG throughout the financial follow-up and recovery process with the provision of advice and additional explanations as necessary.

Where, however, OLAF's investigations lead it to believe that further criminal action should be taken in a case or where criminal proceedings are already in progress, it ensures that the necessary steps are taken for the Commission to bring such action (or equivalent measures under the law of the country concerned) with a view to securing the recovery of unduly paid funds.

In this area, 50 direct expenditure fraud/irregularity cases<sup>115</sup> were referred to the Follow-up unit in OLAF during the reporting period. Most cases are still ongoing because of protracted legal proceedings, some of a criminal nature. In the reporting period, 6 cases were closed; of which (only) 3 cases had a financial impact ('financial follow up')<sup>116</sup>. The total of actual financial recoveries in the reporting period amounted to €3,485,222. Many of the fraud/irregularity cases in question involved (as has been the situation in 2001) unauthorised expenditure, false or inflated claims for payment of expenses, or the non-delivery/fictitious delivery of contracted projects, goods or services.

As regards the investigations conducted on all EU policies by the European Office for the fight against fraud, attention must be drawn to the fact that the figures do not take account of cases which required no financial follow up upon closure. Hence the differences in case numbers and financial impact between the present figures and those shown above regarding the investigations by the Office.

The data, extracted from the internal database (Case management system) are periodically reviewed and updated.

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<sup>115</sup> 26 cases external aid; 19 cases direct expenditure and 5 cases Anti-Corruption.  
<sup>116</sup> Of the latter in 2 cases nearly everything has been recovered (€5.832,00).

## **STATISTICAL ANNEXES**

**ANNEX 1**  
**Traditional own resources**  
*(updated 06 June 2003)*

**Number of cases of fraud and irregularity reported by the Member States<sup>117</sup> 1998 – 2002** *(Amounts in euros)*

Member States	1998 Cases	1998 Amounts established	1999 Cases	1999 Amounts established	2000 Cases	2000 Amounts established	2001 Cases	2001 Amounts established	2002 Cases	2002 Amounts established	D % Cases 2001-2002	D % Amounts 2001-2002
<b>Belgium</b>	345	8 428 400	294	10 262 848	306	7 890 138	296	8 067 110	484	28 512 202	63,5%	253,4%
<b>Denmark</b>	127	12 728 705	102	8 373 297	106	9 417 388	67	5 043 982	94	5 869 957	40,3%	16,4%
<b>Germany</b>	332	31 302 491	496	45 980 735	491	60 768 581	364	25 743 627	372	109 272 731	2,2%	324,5%
<b>Greece</b>	12	302 256	14	437 308	0	0	11	6 752 905	26	167 594	136,4%	- 97,5%
<b>Spain</b>	73	3 845 653	119	8 157 274	116	8 534 724	134	29 705 373	121	11 368 398	- 9,7%	- 61,7%
<b>France</b>	221	18 324 016	268	24 447 596	253	29 987 111	217	17 267 564	199	25 666 442	- 8,3%	48,6%
<b>Ireland</b>	64	2 247 954	40	7 830 492	37	1 855 105	34	1 381 900	36	2 479 009	5,9%	79,4%
<b>Italy</b>	174	17 937 254	293	15 058 257	227	39 770 402	206	98 557 975	306	42 720 132	48,5%	- 56,7%
<b>Luxembourg</b>	5	1 577 693	5	417 184	2	35 620	0	0	0	0	N/A	N/A
<b>Netherlands</b>	303	9 852 694	205	8 530 166	264	17 679 935	205	12 192 585	173	68 937 482	- 15,6%	465,4%
<b>Austria</b>	159	8 090 594	116	11 213 033	93	6 544 668	101	17 341 792	119	19 553 727	17,8%	12,8%
<b>Portugal</b>	17	1 304 203	14	526 374	19	1 293 330	11	1 489 355	15	2 004 205	36,4%	34,6%
<b>Finland</b>	42	1 673 757	36	5 104 165	36	1 598 820	20	3 140 752	18	782 783	- 10,0%	- 75,1%
<b>Sweden</b>	97	8 157 054	65	4 879 518	17	1 084 527	18	2 550 351	34	2 599 246	88,9%	1,9%
<b>United Kingdom</b>	499	99 552 879	534	104 419 824	496	330 805 155	189	9 673 612	122	4 610 551	- 35,4%	- 52,3%
<b>TOTAL</b>	<b>2 470</b>	<b>225 325 603</b>	<b>2 601</b>	<b>255 638 071</b>	<b>2 463</b>	<b>517 265 504</b>	<b>1 873</b>	<b>238 908 883</b>	<b>2 119</b>	<b>324 544 459</b>	<b>13,1%</b>	<b>35,8%</b>

<sup>117</sup> Member States must notify cases of fraud and irregularity where the amounts exceed €10 000 in accordance with a Community obligation laid down in Article 6(5) of Regulation n° 1150/2000 of 22 May 2000.

## ANNEX 2

update 07/05/2003

### EAGGF GUARANTEE

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

2002

(amounts in €1.000)

<i>Member States</i>	<i>Number of cases</i>	<i>Amounts</i>	<i>% of EAGGF expenditure</i>
B	49	3,686	0.39
DK	84	2,436	0.20
D	712	19,795	0.29
EL	17	4,668	0.18
E	997	59,272	1.00
F	451	10,809	0.11
IRL	212	7,528	0.44
I	244	79,916	1.41
L	0	0	0.00
NL	58	2,358	0.21
A	80	1,002	0.09
P	109	2,309	0.31
FIN	20	367	0.04
S	18	289	0.04
UK	234	3,645	0.11
<b>TOTAL</b>	<b>3,285</b>	<b>198,079</b>	<b>0.46</b>

### ANNEX 3

(update 07/05/2003)

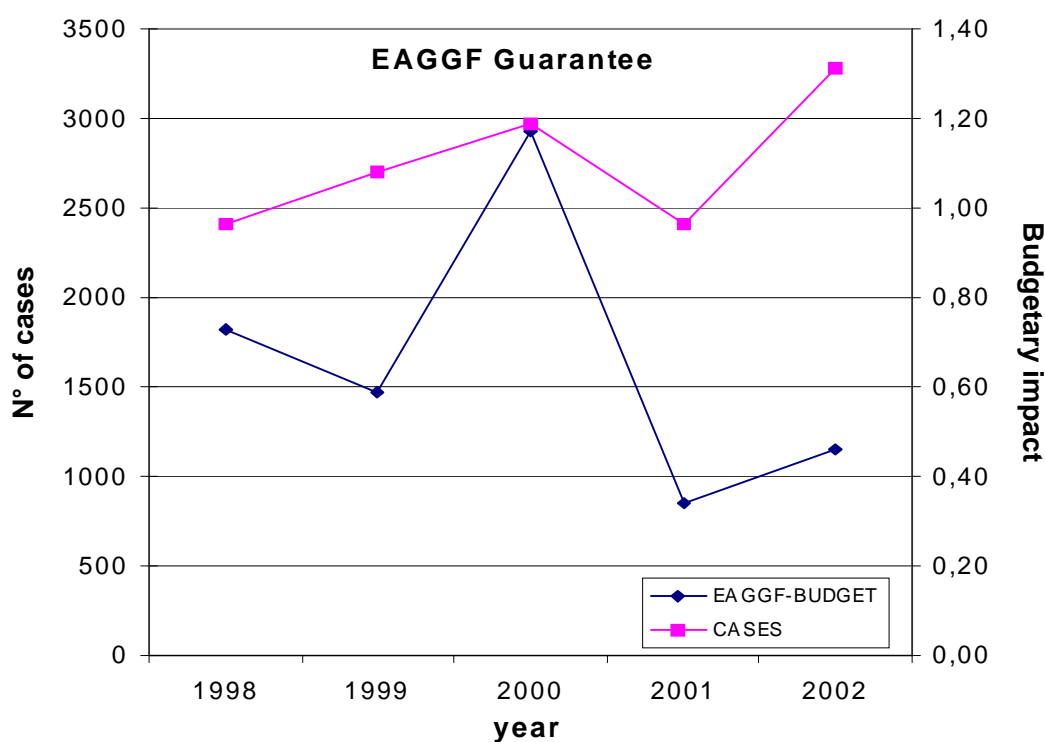
#### EAGGF GUARANTEE

#### IRREGULARITIES COMMUNICATED BY THE MEMBER STATES

YEARS 1998 – 2002

YEAR	CASES	AMOUNT	% OF BUDGET	EAGGF-BUDGET
2002	3,285	198,079	0.46	42,781,898
2001	2,415	140,685	0.34	41,866,940
2000	2,967	474,562	1.17	40,437,400
1999	2,697	232,154	0.59	39,540,800
1998	2,412	284,841	0.73	39,132,500

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



**ANNEX 4**

**STRUCTURAL ACTIONS**

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

**2002**

*Update 01/07/2003*

<b>Member State</b>	<b>Number of cases</b>	<b>Implicated amounts (in 1.000 €)</b>
<b>B</b>	<b>14</b>	<b>1,257</b>
<b>DK</b>	<b>22</b>	<b>4,424</b>
<b>D</b>	<b>1,958</b>	<b>290,370</b>
<b>EL*</b>	<b>176</b>	<b>23,951</b>
<b>E</b>	<b>183</b>	<b>43,737</b>
<b>F</b>	<b>463</b>	<b>22,897</b>
<b>IRL*</b>	<b>126</b>	<b>16,046</b>
<b>I</b>	<b>107</b>	<b>30,496</b>
<b>L</b>	<b>0</b>	<b>0</b>
<b>NL</b>	<b>932</b>	<b>120,552</b>
<b>A</b>	<b>87</b>	<b>3,107</b>
<b>P**</b>	<b>58</b>	<b>13,524</b>
<b>FIN</b>	<b>82</b>	<b>2,248</b>
<b>S</b>	<b>54</b>	<b>545</b>
<b>UK</b>	<b>394</b>	<b>40,940</b>
<b>Total</b>	<b>4,656</b>	<b>614,094</b>

*\* It includes 1 communication concerning the Cohesion Fund\*\* It includes 2 communications concerning the Cohesion Fund*

## ANNEX 5

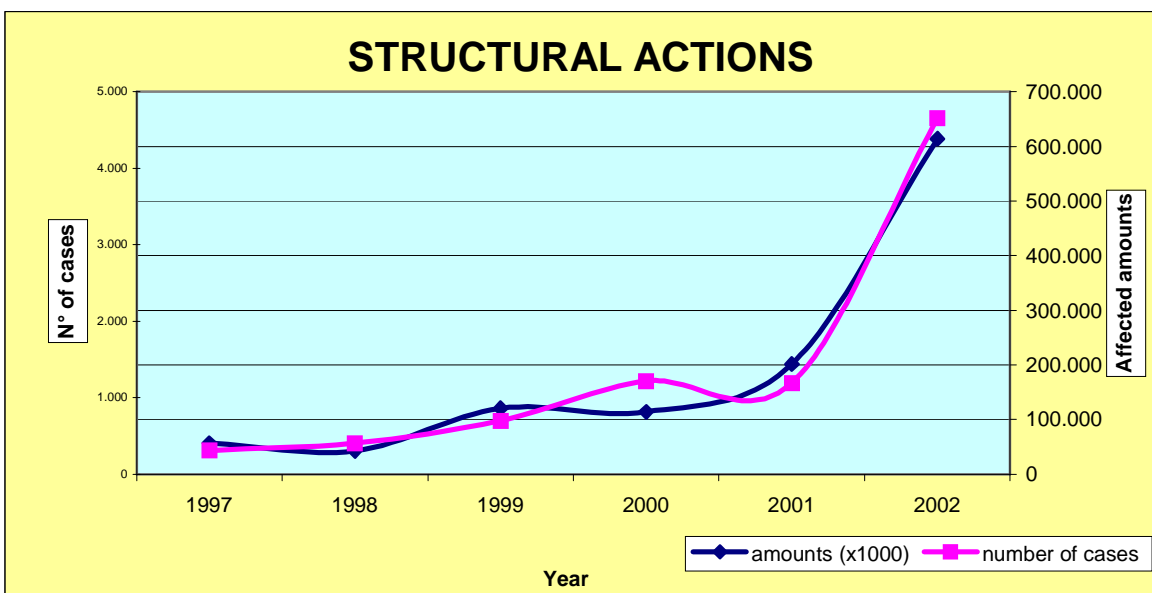
### STRUCTURAL ACTIONS

#### TREND OF THE IRREGULARITIES\* COMMUNICATED BY THE MEMBER STATES UNDER REGULATIONS 1681/94 AND 1831/94 AND THEIR IMPACT ON THE BUDGET

1997- 2002

Year	Number of cases	Amounts (x1000)	Part of budget	Total budget (x 1000)
2002	4,656	614,094	2.01%	30,556,348
2001	1,194	201,549	0.68%	29,829,680
2000	1,217	114,227	0.45%	25,556,000
1999	698	120,633	0.39%	30,654,450
1998	407	42,838	0.15%	28,365,990
1997	309	57,070	0.22%	26,304,900

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



## ANNEX 6

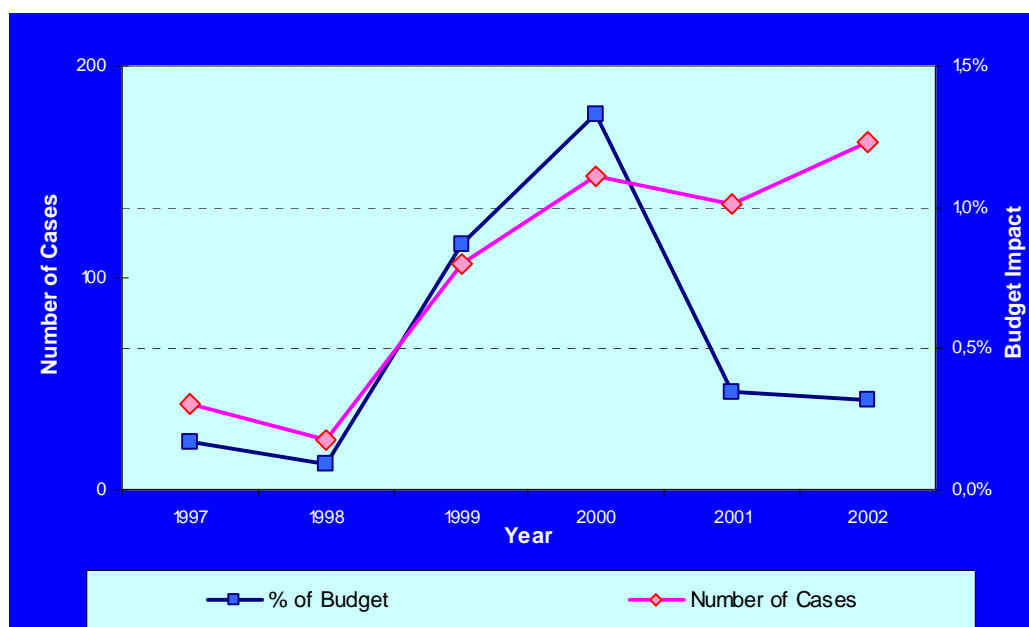
### DIRECT EXPENDITURE

Suspected Fraud and other irregularities investigated by OLAF (1)

Year	Number of Cases	Amounts (x1000 €)	% of Budget	Total Sectoral Budget (x1000 €)
2002	164	42 605	0,32%	13 434 546 (2)
2001	135	42 548	0,35%	12 299 409
2000	148	170 374	1,33%	12 788 618
1999	107	73 300	0,87%	8 425 287
1998	24	11 000	0,09%	11 750 900
1997	41	18 000	0,17%	10 681 600

(1) Since 2001 the figures do not include all cases investigated, but only those that were closed in that period.

(2) Payments appropriations 2002 - General Budget of the European Union for financial year 2002.





**ANNEX 7**  
**Traditional own resources**  
*(updated 6 June 2003)*

**Cases of fraud and irregularity reported by Member States for 2002** *(Amounts in euros)*

Member States	Number of cases notified for 2002	Amounts established	Cases as a % of EUR-15 total	Average amount per case	Amounts recovered in cases notified for 2002
(1)	(2)	(3)	(4)	(5) = (3) / (2)	(6)
<b>Belgium</b>	484	28 512 202	8.8 %	58 910	2 739 915
<b>Denmark</b>	94	5 869 957	1.8 %	62 446	4 919 918
<b>Germany</b>	372	109 272 731	33.7 %	293 744	50 033 346
<b>Greece</b>	26	167 594	0.1 %	6 446	0
<b>Spain</b>	121	11 368 398	3.5 %	93 954	2 347 877
<b>France</b>	199	25 666 442	7.9 %	128 977	6 292 134
<b>Ireland</b>	36	2 479 009	0.8 %	68 861	1 153 006
<b>Italy</b>	306	42 720 132	13.2 %	139 608	668 892
<b>Luxembourg</b>	0	0	0.0 %	0	0
<b>Netherlands</b>	173	68 937 482	21.2 %	398 483	4 300 262
<b>Austria</b>	119	19 553 727	6.0 %	164 317	1 226 413
<b>Portugal</b>	15	2 004 205	0.6 %	133 614	251 350
<b>Finland</b>	18	782 783	0.2 %	43 488	540 992
<b>Sweden</b>	34	2 599 246	0.8 %	76 448	2 420 601
<b>United Kingdom</b>	122	4 610 551	1.4 %	37 791	3 667 932
<b>EUR-15 TOTAL</b>	<b>2 119</b>	<b>324 544 459</b>	<b>100 %</b>	<b>153 159</b>	<b>80 562 638</b>

## ANNEX 8

*update 07/05/2003*

### EAGGF GUARANTEE

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

(amounts in €1.000)

<i>Member States</i>	<i>To be recovered cases communicated before 2002</i>	<i>To recover cases communicated in 2002</i>	<i>In Justice before 2002</i>	<i>Amounts "irrecoverable" before 2002</i>
B	73,966	2,775	20,338	605
DK	9,756	350	0	8,042
D	243,797	15,448	46,757	20,685
EL	59,230	4,668	32,242	5,538
E	170,855	57,004	48,814	15,302
F	68,012	9,349	36,866	2,314
IRL	6,919	4,747	4,124	524
I	1,415,158	70,604	518,926	81,036
L	36	0	0	0
NL	34,591	2,046	2,753	2,874
A	5,388	801	0	590
P	30,317	1,570	18,910	665
FIN	100	39	16	0
S	711	164	178	0
UK	58,640	2,013	8,541	11,623
<b>TOTAL</b>	<b>2,177,477</b>	<b>171,579</b>	<b>738,466</b>	<b>149,798</b>

\* *In justice: awaiting outcome of judicial proceedings in national courts*

\*\* *Amounts irrecoverable: awaiting formal decision in Clearance of Account procedure*

ANNEX 9

**STRUCTURAL ACTIONS**

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

(Amounts in 1.000 €)

*Update 01/07/2003*

<i>Member State</i>	<i>Total to recover before 2002</i>	<i>Total to recover 2002</i>
BELGIQUE	887	561
DANMARK	482	4,124
DEUTSCHLAND	69,409	248,056
ELLAS	9,510	8,939
ESPANA	37,403	25,728
FRANCE	19,883	8,021
IRELAND	6,068	272
ITALIA	126,317	18,969
LUXEMBOURG	0	0
NEDERLAND	1,383	18,969
ÖSTERREICH	88	514
PORTUGAL	16,519	1,006
SUOMI	865	934
SVERIGE	249	117
UNITED KINGDOM	48,593	28,723
<b>Total</b>	<b>337,656</b>	<b>368,287</b>

## ANNEXES

**ANNEXE TITLE I**

**FOLLOW UP OF THE 2001-2003 ACTION PLAN**

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION</b>				
<b>1.1. Fostering a culture of prevention and tightening up legal texts</b>				
<p><i>1.1.1. Reinforce Fraud-proofing legislation and contract management</i></p>	<p>Preliminary analysis of certain new legislative initiatives  (Action 94 of the White Paper on Reform)</p>	<p>OLAF, with the help of a specifically created interdepartmental group (legislation aspect)  BUDG with the help of OLAF and the Legal Service</p>	<p><b>Action ongoing</b></p> <p>On 10 October 2002, Parliament welcomed the Commission's Communication concerning the fraud-proofing of legislation and contract management (SEC (2001) 2029, 7.11.2001).</p> <p>The year 2002 was devoted to implementing the legislation aspect and preparing standard procurement contracts and standard grant agreements for use by the Commission departments. The interdepartmental group, specially established for legislative aspects, determined the criteria for selecting high-risk areas and identified the legislative initiatives to be submitted to OLAF.</p> <p>As far as the contracts aspect is concerned, the cooperation initiated in 2001 between OLAF and the central contracts unit in DG BUDG focused in 2002 on the drafting of manuals and the updating of existing guides.</p>	<p>This action concerns the reinforcement of legislative initiatives in all areas of the Community budget (own resources and expenditure) from a fraud-proofing perspective, on the basis of a selection by OLAF and the specific interdepartmental group.</p> <p>It also covers the contracts aspect, namely:</p> <ul style="list-style-type: none"> <li>- all expenditure directly managed by the Commission and its departments;</li> <li>- certain types of contractors and operators, mainly the recipients of grants under Community programmes.</li> </ul>

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION</b>				
<b>1.1. Fostering a culture of prevention and tightening up legal texts</b>				
<p>1.1.2. <i>Greater security for key sectors</i></p>	<p>Development of information system allowing the exclusion of tenderers who have been convicted</p> <p>(Action 94)</p>	<p>MARKT, OLAF, BUDG, JAI</p>	<p><b>Action ongoing</b></p> <p>In January 2002 Parliament examined at first reading the proposal for a Directive on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts, COM (2000) 275 final, 10.5.2000 (OJ C 29 E, 30.1.2001), and the Council adopted a common position in March 2003.</p>	<p>The purpose of the proposed Directive is to recast the Community legislation on public procurement, the aim of which is to create a genuine single market in public purchasing, in order to modernise and simplify the existing legal framework and make it more flexible.</p> <p>One of the objectives of the directive is to oblige the contracting authorities to exclude non reliable tenderers (bidders convicted for participation in a criminal organisation, corruption or fraud harmful to the Community's financial interests or for money laundering). A political compromise was found on the obligation for the contracting authorities to cooperate with the competent authorities of another Member State, which requires information on the personal situation of the economic operators concerned.</p> <p>Given the results of the system therefore put in place, the Commission will examine the usefulness of an identification system for the operators concerned.</p> <p>For direct management, see at 1.2.2 the recasting of the Financial Regulation, which sets up a procedure for excluding non-reliable tenderers from contracts and grants.</p>

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION</b>				
<b>1.1. Fostering a culture of prevention and tightening up legal texts</b>				
	Protection of the euro against counterfeiting: closer cooperation between the Member States, the Commission, the ECB and Europol	OLAF, ECFIN, JAI, SJ, ECB, Europol	<p><b>Objective achieved</b></p> <p>With the adoption of the basic Regulations Nos 1338/2001 and 1339/2001, the action has been completed.</p> <p>As part of the implementation of this action, the list of Member State and third country authorities responsible for applying the Regulations was published.</p> <p>Adoption of the Commission Recommendation of 19 August 2002 concerning medals and tokens similar to euro coins, which is aimed at strengthening the protection of euro coins against counterfeiting.</p>	<p>This action aims at reducing the circulation of counterfeit euro notes and coins and at enhancing the effectiveness of the fight against counterfeiting.</p> <p>It is addressed to the Member States, which are invited to amend their legislation in line with the provisions of the Framework Decision of 29 May 2000.</p> <p>Publication of the list of competent authorities complies with Article 10 of Regulation No 1338/2001, which is addressed to the departments responsible for the detection of counterfeits, the intelligence services and the representatives of the central banks, including in Member States outside the euro area.</p>

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION</b>				
<b>1.1. Fostering a culture of prevention and tightening up legal texts</b>				
	Training, exchange and assistance programme	OLAF, ECFIN	<p><b>Objective achieved</b></p> <p>As far as implementation is concerned, seven projects had been launched by the end of 2002 under the Pericles Programme (Council Decisions 2001/923/EC and 2001/924/EC).</p>	<p>The competent national authorities of four Member States (D, I, E and EL) organised seminars on the fight against euro counterfeiting. Europol was mandated by three Member States to manage a project for the exchange of senior staff. The ETSC<sup>118</sup> organised a seminar for the CNACs<sup>119</sup> and OLAF held a technical meeting for budget experts.</p> <p>The budget earmarked for implementation of the Pericles Programme in 2002 was approx. €475,000.</p>

<sup>118</sup> European Technical and Scientific Centre.

<sup>119</sup> Coin National Analysis Centres.



Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION</b>				
<b>1.1. Fostering a culture of prevention and tightening up legal texts</b>				
	Setting up and developing the role of the European Scientific and Technical Centre (ESTC) for the protection of the euro	OLAF, ECFIN	<p><b>Objective achieved in 2001</b></p> <p>In 2002, three initiatives in particular were taken:</p> <ul style="list-style-type: none"> <li>- establishment of common basic procedures for analysing counterfeit coins;</li> <li>- agreement on the parameters and criteria to be used for authenticating euro coins;</li> <li>- creation of a database on materials used by counterfeiters.</li> </ul>	These actions are intended to provide assistance to police forces and other authorities responsible for guaranteeing the authenticity of euro coins.

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION</b>				
<b>1.1. Fostering a culture of prevention and tightening up legal texts</b>				
	Action to combat piracy and counterfeiting: implementation of Green Paper	MARKT, OLAF, TRADE, TAXUD, JAI	<p><b>Action ongoing</b></p> <p>Proposal for a regulation and proposal for a directive.</p>	<p>The proposed regulation aims to extend intellectual property to new products, to facilitate the approaches by the holders of rights with the customs authorities and to simplify the action of the competent authorities of the Member States in the event of suspicion of counterfeiting linked with goods from third countries.</p> <p>The proposed directive intends to harmonise in the national legislation of the European Union instruments enabling intellectual property rights to be respected and to define a framework for the exchange of information between the competent national authorities.</p> <p>The Commission will present the proposals to Parliament and the Council in 2003 (COM (2003) 20 final and COM (2003) 46 final).</p>

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION</b>				
<b>1.1. Fostering a culture of prevention and tightening up legal texts</b>				
1.1.3. <i>Involving the applicant countries in fraud prevention</i>	Creation of anti-fraud structures inside the candidate countries, reinforcement of controls	ELARG, OLAF, BUDG	<p><b>Action ongoing</b></p> <p>A multi-country anti-fraud section of the Phare programme for the protection of the Community's financial interests (PH/2002/1412) was adopted on 16 May 2002.</p> <p>In 2002 the anti-fraud provisions concerning the management of the national, frontier region and multi-country PHARE programmes were aligned on those of ISPA and SAPARD. The financial protocol for each PHARE programme provides for the immediate introduction, by the candidate countries, of a notification mechanism equivalent to that established by Commission Regulation No 1681/91.</p> <p>By the end of 2002 eleven candidate countries had identified their Anti-Fraud Coordinating Service (AFCOS) responsible for coordinating the legislative, administrative and operational activities linked to protection of the Community's financial interests, after Estonia, Lithuania, Cyprus and Slovenia had designated such services in the course of the year. Bulgaria definitively identified its AFCOS in early 2003.</p>	Under the programme, the Community is to provide assistance in three main areas: the establishment of anti-fraud structures, links and databases, and the strengthening of operational expertise. Implementation of the programme began in 2003.

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION</b>				
<b>1.2 Strengthening legal instruments for detecting, monitoring and penalising fraud</b>				
<i>1.2.1. Improving detection and control in the financial field, including at international level</i>	Conclusion of a cooperation agreement with Switzerland covering the fight against fraud	OLAF, RELEX	<p><b>Action ongoing</b></p> <p>On 14 December 2000, the Council gave the Commission a negotiating mandate to conclude an anti-fraud agreement.</p> <p>The Commission is pursuing the negotiations to establish a framework for effective cooperation against Community fraud. The key points yet to be settled are:</p> <ul style="list-style-type: none"> <li>- checks and inspections in the context of administrative assistance;</li> <li>- judicial assistance in tax and customs matters, and in particular the conditions for the execution of searches and seizures (dual criminality);</li> <li>- assistance in laundering cases.</li> </ul>	The negotiations have been going on for more than two years on account of the restrictive position taken by the Swiss authorities. Despite the efforts made, the negotiations have not yet been concluded.
<i>1.2.2. Improving financial follow-up and penalties</i>	Implementation of the Communication of 13 December 2000 on Action 96 of the White Paper on recovery of unduly paid funds (SEC	BUDG, OLAF, ADMIN, AGRI, REGIO, EMPL, RELEX, SJ, MCG <sup>120</sup>	<p><b>Objective achieved</b></p> <p>On 25 June 2002, the Council adopted the new Financial Regulation (Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Community, OJ L 248, 16.9.2002).</p> <p>On 23 December 2002, the Commission adopted the</p>	These measures concern all authorising, accounting and management departments affected by direct expenditure and are aimed at improving financial monitoring and penalties. With this action the Commission is implementing its policy on recovery. It is a response to requests from Parliament, the Council and the Court of Auditors

<sup>120</sup>

Monitoring and Coordination Group for Reform Actions 92-98.

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION</b>				
<b>1.2 Strengthening legal instruments for detecting, monitoring and penalising fraud</b>				
	(2000) 2204)		<p>Regulation laying down the implementing rules for the new Financial Regulation (Commission Regulation (EC, Euratom) No 2342/2002, OJ L 357, 31.12.2002). This instrument entered into force on 1 January 2003, at the same time as the Council Regulation.</p> <p>On 3 December 2002, the Commission adopted its Communication on improving the recovery of Community entitlements arising from direct and shared management of Community expenditure (COM(2002) 671)</p> <p>On 9 December 2002, the practical rules needed for the application of certain provisions of Council Directive 76/308/EEC on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures were laid down by Commission Directive 2002/94/EC.</p>	<p>for detailed information on progress on Action 96 of the Reform White Paper (more effective management of recovery of unduly paid funds).</p> <p>In its Communication of 3 December 2002 on improving the recovery of Community entitlements, which relates in particular to the EAGGF Guarantee Section, the Commission announced that it would be setting up a temporary task force on recovery composed of specialists from DG AGRI and OLAF.</p>
	Action 97: improved financial monitoring and control of structural funds. Implementation of the Commission Communication of 7.8.2001 (C (2001) 2517).	REGIO	<p><b>Action completed</b></p> <p>In accordance with the Commission Communication of 13 December 2000 (COM (2000)2204), a new regulation was adopted in 2002 on sound financial management of assistance granted from the Cohesion Fund, including the follow up of recovery and financial corrections concerning assistance granted from the Cohesion Fund (Commission Regulation (EC) No 1386/2002 of 29 July 2002 laying down detailed rules for the implementation of Council Regulation (EC) No 1164/94).</p> <p>See interdepartmental protocols at 3.1.1.</p>	

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION</b>				
<b>1.2 Strengthening legal instruments for detecting, monitoring and penalising fraud</b>				
	Integration of administrative measures and penalties in the field of direct expenditure	OLAF, INFSO, RTD, other departments	<p><b>Action ongoing</b></p> <p>Internal procedures for recovery in relation to direct expenditure were reviewed and consolidated on 17 December 2002.</p>	A report by the Internal Audit Service (IAS) will be presented in early 2003, following an audit that is underway in the Member States.
	Harmonisation of on-the-spot inspection arrangements	OLAF, other departments	<p><b>Action ongoing</b></p> <p>Comparative study of legal bases:</p> <p>On the basis of work by OLAF, the Commission considers it useful to continue the discussion on the scope of legislation, since certain loopholes have been found with regard to cooperation and coordination with the national authorities. This cooperation should be stepped up from the standpoint of information exchange and administrative assistance, and, in the case of investigations led by OLAF, the legal instruments available at Community level for the protection of financial interests in the field of direct expenditure should be strengthened.</p>	See the report evaluating the first three years of OLAF's activities required by Article 15 of Regulation No 1073/1999 (COM(2003) 154 final) (see point 1.1.2. of the report, on external investigations).

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>2. A NEW CULTURE OF COOPERATION</b>				
<b>2.1. Establishing a Community platform of services</b>				
2.1.1. <i>Rationalising and making better use of cooperation structures</i>	Analysis of services which the Commission/OLAF can offer to the institutions and to the Member States, evaluation of possible synergies	OLAF	<b>Action ongoing</b>  The following are scheduled for 2003: <ul style="list-style-type: none"> <li>- Validation of the file with the Member States;</li> <li>- Further selective contacts with certain national authorities already consulted and organisation of new consultations;</li> <li>- Presentation of draft to Cocolaf during the first half of 2003;</li> <li>- Creation of specialised working parties in Cocolaf.</li> </ul>	Cocolaf is to be asked to discuss the definition of the nature and content of each of OLAF's three main functions (Intelligence, Operations, and Policy and Programming) and the creation on a regular basis of specialised working parties in Cocolaf in order to enable OLAF to draw on the Member States' know-how and experience and take their needs into account.  An analysis will also be carried out, on the basis of the full range of its current functions, of all the services that OLAF can offer, in order to establish close and effective cooperation with all the Office's partners.
	Strengthening current coordination structures	OLAF	<b>Action postponed</b>  Amendment of Commission Decision 94/140/EC establishing Cocolaf (the Advisory Committee for the Coordination of Fraud Prevention (OJ L 61, 4.3.1994) was planned for the second half of 2002 but has been postponed until 2003.	The main objective of this measure is to improve cooperation with the national administrations and cooperation bodies.  The action is aimed at updating the Decision.

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>2. A NEW CULTURE OF COOPERATION</b>				
<b>2.1. Establishing a Community platform of services</b>				
2.1.2. <i>Widening the scope of information-gathering, improving use and analysis of intelligence</i>	Evaluation of possible synergy with national or external anti-fraud bodies (Eurojust, Europol, Interpol, etc.)	OLAF	<p><b>Action ongoing</b></p> <p>See below.</p>	See the Commission Report evaluating the activities of OLAF pursuant to Article 15 of Regulations Nos 1073/1999 and 1074/1999 (COM(2003) 154 final, 2.4.2003).
	Structure relations with Eurojust, Europol, Interpol	OLAF, JAI, other police and judicial cooperation bodies	<p><b>Action ongoing</b></p> <p>Opening of negotiations for a memorandum of understanding between Eurojust and OLAF (actual signature on 14 April 2003).</p> <p>The agreement between the Commission and Europol, on which discussions began in early 2001 in connection with the adoption of Council Regulation (EC) No 1338/2001 of 28 June 2001 on the protection of the euro against counterfeiting, was finalised on 18 February 2003.</p> <p>OLAF maintains appropriate contacts with international organisations such as Interpol, the WCO or the World Bank in the field of cooperation.</p>	<p>The memorandum of understanding with Eurojust should provide for the practical arrangements for mutual exchanges of information and cooperation on practical cases and on more general issues.</p> <p>The administrative arrangement between the Commission and Europol also covers possible cooperation between OLAF and Europol.</p>



Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>2. A NEW CULTURE OF COOPERATION</b>				
<b>2.2. Developing a closer partnership with Member States</b>				
2.2.2. <i>A policy of evaluation and forward planning</i>	Inventory of the new measures taken by Member States in 2001-2002	OLAF	<p><b>Objective achieved</b></p> <p>The Annual Report 2001 on the protection of the Community's financial interests and the fight against fraud (COM(2002) 348 final, 2.7.2002), provided for by Article 280(5) of the EC Treaty, summarises both the Community initiatives and the measures taken by the Member States and presents the major fraud trends, broken down by Community policy.</p> <p>Future action by the Commission is set out in its Action Plan 2001-2003 on the protection of the Community's financial interests and the fight against fraud (COM (2001) 254 final, 15.5.2001).</p>	<p>The Annual Report gives an overview of the efforts made by the Commission, outlines the measures taken by the Member States for the application of Article 280 of the EC Treaty and addresses various aspects of the organisation of national authorities in this context. And it analyses trends in fraud and irregularities.</p> <p>As from 2001, the Commission ensures a follow-up and an update of its Action Plan via its Annual Report on the protection of the Community's financial interests.</p>
	Annual evaluation of OLAF's operational activities (Articles 11 and 12 of Regulations Nos 1073/1999 and 1074/1999)	OLAF	<p><b>Objective achieved</b></p> <p>The Office's reports provided for by Articles 11 and 12 of Regulations Nos 1073/1999 and 1074/1999 were published in OJ C 234, 30.9.2002 and OJ C 328, 30.12.2002 respectively.</p>	<p>One of the aims of these reports is regularly to inform Parliament, the Council, the Commission and the Court of Auditors of the Office's activities.</p> <p>See also the Commission Report 'Evaluation of the activities of the European Anti-Fraud Office' drawn up pursuant to Article 15 of Regulations Nos 1073/1999 and 1074/1999 (COM(2003) 154 final, 2.4.2003).</p>

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>2. A NEW CULTURE OF COOPERATION</b>				
<b>2.2. Developing a closer partnership with Member States</b>				
	Definition of OLAF's strategic objectives	OLAF	<p><b>Action ongoing</b></p> <p>OLAF is preparing the establishment of its activity programme foreseen by Article 11 of Regulations (EC) 1073/1999 and 1074/1999, taking into account the broad orientations from the other institutions.</p>	
	Evaluation of OLAF's activities, pursuant to Article 15 of Regulations Nos 1073/1999 and 1074/1999	SJ, SG, OLAF, JAI, ADMIN, IAS and BUDG	<p><b>Action ongoing</b></p> <p>Preparation of Commission report in 2002. A high-level interdepartmental working party was set up for the purpose by Commission decision on 15 January 2002.</p> <p>The report has been adopted on 2 April 2003 and transmitted to the other institutions together with the opinion of the Supervisory Committee (COM (2003) 154 final, 2.4.2003).</p>	Overall evaluation of the Office's activities, in accordance with the Commission's mandate, to assess whether the objectives of the legislation have been achieved. See also at 3.2.2.

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>3. AN INTER-INSTITUTIONAL APPROACH TO PREVENT AND COMBAT CORRUPTION</b>				
<b>3.1. Raising awareness among officials of the institutions of the principles of sound project management</b>				
<i>3.1.1. Improving coordination and cooperation between OLAF and other Commission departments (Action 93)</i>	Conclusion of memoranda between OLAF and the specialised financial departments	OLAF, IAS, SG, CFS, ADMIN (IDOC), other departments	<b>Action ongoing</b>  The IAS Protocol was concluded in 2001 and extended by a follow-up document in 2002.  Protocols are being negotiated. The protocols to come between OLAF and the departments responsible for the Structural Funds will define respective responsibilities with regard to financial follow up.	This measure aims to reinforce cooperation between OLAF and the other Commission departments.
<i>3.1.2. Drawing up guidelines for sound financial management (Action 92)</i>	Training plan, codes of conduct	OLAF, IAS, BUDG, ADMIN, SG	<b>Action ongoing</b>  Merged with the following action (Typology of high-risk behaviour).	
	Typology of high-risk behaviour	OLAF	<b>Action ongoing</b>  The Practical Guide to prevent any conduct prejudicial to the financial interests at different stages of programmes and projects is being finalised.	This action is aimed at awareness-raising and prevention of risk behaviour among officials, servants and members of the Commission.

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>3. AN INTER-INSTITUTIONAL APPROACH TO PREVENT AND COMBAT CORRUPTION</b>				
<b>3.2. Improving the legal framework for administrative investigations</b>				
3.2.1. <i>Reforming disciplinary procedures</i>	Adjustment of administrative practices, amendment of rules and disciplinary obligations laid down in the Staff Regulations (Actions 57 and 58)	ADMIN (IDOC), OLAF, SG	<p><b>Action completed</b></p> <p>On 19 February 2002, the Commission adopted Decision C (2002) 540 concerning the conduct of administrative investigations and disciplinary proceedings.</p> <p>The Commission adopted a proposal for a Council Regulation amending the Staff Regulations of officials and other servants of the EC (COM (2002) 213/3) on 24 April 2002, now under consideration by the Council.</p> <p>A legal basis was introduced in the recasting of the Financial Regulation for the creation of an advisory Financial Irregularities Panel (Action 66 of the Reform White Paper), and will be in operation from January 2003. The Commission must adopt a decision to establish this body in July 2003.</p>	<p>One of the objectives of the proposal is to reform disciplinary proceedings (Actions 57 and 58), in order to:</p> <ul style="list-style-type: none"> <li>– increase the efficiency and speed of the administrative investigations and disciplinary proceedings;</li> <li>– strengthen prevention and transparency with regard to disciplinary matters.</li> </ul>
3.2.2. <i>Improving the effectiveness and consistency of administrative investigations</i>	Analysis of conditions of implementation of Article 4 of Regulation No 1073/1999 in Community institutions and bodies	OLAF	<p><b>Action ongoing</b></p> <p>See report under Article 15 at 2.2.2.</p>	<p>Analysis and evaluation of the internal checks and inspection function conferred on the Office with a view to recommendations if appropriate.</p>

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>4. STRENGTHENING THE CRIMINAL-LAW DIMENSION</b>				
<b>4.1. Following up the Commission communication on criminal-law protection of the Community's financial interests</b>				
<p>4.1.1. <i>Reviving the debate on the criminal-law protection of financial interests</i></p>	<p>Ongoing discussions on the detailed arrangements for introducing a European public prosecutor in relation to the protection of financial interests</p>	<p>OLAF, JAI</p>	<p><b>Action completed</b></p> <p>More than 12,500 copies of the Green Paper on criminal-law protection of the Community's financial interests and the establishment of a European Prosecutor, adopted by the Commission on 11 December 2001 (COM(2001) 715), have been distributed in Europe.</p> <p>In 2002, the Commission led public discussion on this issue, taking part in twenty or so seminars in the Member States and the applicant countries. It held a public hearing in Brussels in mid-September 2002, with a panel representing all the interests concerned.</p> <p>On the basis of nearly 200 replies, the Commission presented a summary of the debate in the form of a Green Paper follow-up report (COM (2003) 128), adopted on 19 March 2003.</p> <p>At the same time, in the run-up to the forthcoming Treaty review, the Commission has defended its proposal in various political contexts, in particular the Convention on the future of Europe.</p>	<p>Initial analysis of reactions received in response to the public consultation suggests that there is a majority trend towards support for the principle of a European Prosecutor. A minority remains seriously hostile to the idea.</p> <p>At the same time as discussions are going on about revision of the Treaties, the consultation highlighted a number of institutional and legal issues that will need full study in 2003 on the basis of further academic work.</p>

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>4. STRENGTHENING THE CRIMINAL-LAW DIMENSION</b>				
<b>4.1. Following up the Commission communication on criminal-law protection of the Community's financial interests</b>				
4.1.2. <i>Speeding up the entry into force of legal protection in criminal matters</i>	Implementation of certain provisions of the Convention on the protection of financial interests and its protocols on the basis of new Article 280 EC	OLAF	<p><b>Action ongoing</b></p> <p>The Commission presented in October 2002 an amended proposal for a Directive on the criminal-law protection of the Community's financial interests (COM (2002) 577 final). Despite the positive position of the European Parliament and the Court of Auditors, the Council is reticent to deal with the proposed directive.</p>	<p>The aim of this measure is to incorporate into a Community instrument certain criminal-law provisions (definitions of illegal behaviour, liabilities and penalties, cooperation with the Commission) which appear in third-pillar instruments (Convention on the protection of the financial interests of the European Community, signed by the Member States on 26 July 1995, and its two protocols).</p>

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>4. STRENGTHENING THE CRIMINAL-LAW DIMENSION</b>				
<b>4.2. Stepping up cooperation and facilities for action in criminal matters</b>				
<i>4.2.1. Simplifying judicial assistance procedures</i>	Follow-up to Commission Communication on the creation of Eurojust	JAI/OLAF	<b>Action completed</b>  See next action.	
	Establishment of a European judicial cooperation unit	JAI/OLAF	<b>Action completed</b>  On 28 February 2002, the Council adopted Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime.  Eurojust began operating on 6 March 2002 (OJ L 63, 6.3.2002).	Memorandum of understanding between Eurojust and OLAF (see at 2.1.2).

Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>4. STRENGTHENING THE CRIMINAL-LAW DIMENSION</b>				
<b>4.2. Stepping up cooperation and facilities for action in criminal matters</b>				
4.2.2. <i>Stepping up cooperation in criminal matters for the criminal-law protection of financial interests</i>	Vertical cooperation with the Member States in combating crime affecting the Community's financial interests	OLAF/JAI	<p><b>Action ongoing</b></p> <p>Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002). This Framework Decision is in force and will cease to have effect when the Convention on mutual assistance in criminal matters between Member States of the EU will enter into force in all Member States.</p> <p>An analysis of the technical and operational assistance which the Office can offer to the judicial authorities is under way in the context of the service platform (see at 2.1.1).</p> <p>The effectiveness of administrative investigations is one of OLAF's concerns, reflected in its follow-up and advisory functions in both the legal (institutional and Community law) and judicial (national law) fields. These functions include support for the judicial expertise of the Magistrates Unit reporting direct to the Director-General of OLAF. Creation of the service platform should enable better use to be made of the contribution provided by these functions.</p>	The Convention of 26.07.1995 on the protection of financial interests was ratified and entered into force in October 2002. Ratification of the Second Protocol, the key to unlocking the close and regular cooperation provided for by Article 280 of the Treaty, has not yet been achieved.
	Mutual recognition of decisions in criminal matters	JAI/OLAF	<p><b>Action completed</b></p> <p>Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States has been adopted (OJ L 190, 18.7.2002).</p>	



Objectives	Measures	Lead dept.	Implementation and follow-up	Comments
<b>4. STRENGTHENING THE CRIMINAL-LAW DIMENSION</b>				
<b>4.2. Stepping up cooperation and facilities for action in criminal matters</b>				
	Cooperation in police matters	OLAF, JAI, Europol	<p><b>Action completed</b></p> <p>A draft cooperation protocol has been finalised and signed on 18th February 2003 between the Commission and Europol.</p>	Closer cooperation with Europol in combating illegal activities related to the protection of financial interests.

## ANNEXE TITLE II :

### - Implementation of Article 280 by the Member States in 2002 –

#### Measures taken by the Member States to protect the Community's financial interests

#### Texts contributing to the implementation of Article 280 of the EC Treaty - principal legislative, regulatory and administrative developments

<b>1.1. Own resources:</b>	
<b>New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002</b>	
<b>B</b>	<p>Circular “Criminal liability of legal persons – application in respect of customs and excise” of 30 July 2002, C.D. 802.1 – D.C. 12.900.</p> <p>This circular comments on the Law of 4 May 1999 establishing the criminal liability of legal persons (<i>Moniteur belge</i> of 22 June 1999) and specifies its consequences for the conduct of criminal investigations in customs and excise cases, the establishment of the minutes and the criminal proceedings.</p>
	<p>Article 71 of the Law of 28 December 1992, which lays down tax, financial and other provisions, procures the legal basis for taxation officials to serve in public prosecution offices. In all, it concerns sixteen posts in the public prosecution offices in Brussels, Ghent, Antwerp, Tournai, Liège, Mons and Charleroi. About half were not filled at the beginning of 2001. A candidate selection process took place and was completed in 2002. On 1 May 2002 an official joined the Court of Appeal in Mons and three others took up posts at the Court of Appeal in Antwerp. On 1 June 2002, one of the two posts vacant in Ghent was filled. The vacant post in Brussels was filled on 1 July 2002.</p>
	<p>Bankruptcy is regularly used as determining factor in all the mechanisms of serious and organised fraud by those who, operating behind a “straw” man or “front” companies, intend to rid themselves of them to complicate the tracing of the fraud mechanisms used and claims on their property.</p> <p>The legislation on bankruptcy did not seem sufficient to frustrate the abuse of legal personality in such practices. In view of this, the new legislation on bankruptcy contains two special provisions.</p> <p>The first implements Article 54 of the law on bankruptcies. The second supplements Articles 265, 409 and 530 of the Companies Code. They tend essentially to facilitate the drawing up of the liquidation balance sheet, the determination of the causes and circumstances of the bankruptcy and the responsibility of administrators in fact or law who have become guilty of serious and organised tax fraud.</p> <p>This amending law of 4 September 2002 was published in the <i>Moniteur Belge</i> of 21 September 2002.</p>

<b>1.1. Own resources:</b>	
<b>New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002</b>	
	<p>Between 1 July 2001 and 30 June 2002, in 735 cases the allocation of a VAT number was suspended. The VAT identification number, which is the key element in carousel files, was not allocated. It is remarkable to find that none of these suspended files became the subject of a complaint either to the administration or before the courts. This manifest lack of reaction makes one wonder about the true intentions of the applicants.</p> <p>The development of a specific IT application to obtain information about doubtful taxpayers for the competent services is essential for the registration procedure. From 1 January 2003, all the administration's offices will have this IT application.</p>
	<p>The additional protocol to this European convention on legal aid of 20 April 1959, concluded in Strasbourg on 17 March 1978, stipulates concretely that aid cannot be denied for the sole reason that the application concerns a tax-related offence. The ratifying provision was submitted on 28 February 2002 to the European courts, and entered into force on 29 May 2002.</p>
	<p>On 10 July 2002 Belgium and France signed an administrative arrangement on information exchange. This arrangement, which comes into force on 1 September 2002 (see <i>Moniteur belge</i> of 25 October 2002) provides for an automatic and spontaneous exchange of information between the two countries concerning direct and indirect taxes. As for the rest, it also defines the methods for implementing simultaneous checks.</p>
	<p>By analogy with the officials serving in courts of appeal (cf. law of 10 June 1997), a draft law also provides for the grant of the status of criminal police to a limited group of tax officials. This applies to tax officials serving in the OCDEFO (Central Office for Combating Organised Financial Crime) on the one hand, and to a small group of customs officers on the other hand. This preliminary draft law was adopted by the Chamber of representatives at its plenary of 18 December 2002 and then sent to the Senate.</p>
<b>DK</b>	<p>On 31 May 2002 the Folketing (Danish Parliament) adopted an amendment to the Customs Act (Bill No L 30) as part of the Government's anti-terror package. The Act came into effect on 8 June 2002.</p> <p>The aim is to prevent people who are entering and leaving Denmark from carrying money etc. if there is reason to suspect that the money etc. being carried stems from a crime or will be used for committing a crime, including the financing of terrorism.</p> <p>Travellers who bring with them sums of money etc. with a value in excess of EUR 15 000 are obliged to declare these large sums of money etc. to the customs and excise authorities and must stop at customs control without having to be asked. At the same time as the amendment to the Customs Act, the customs and excise authorities are being given the power to retain sums of money etc. with a value in excess of EUR 15 000. The value limit is the same as that set with regard to the law on measures to combat money laundering.</p> <p>The state customs and excise authorities shall immediately inform the police of the retention and transfer the matter to the police who can then also assess whether there are grounds to arrest the person concerned.</p>
<b>EL</b>	<p>There have been no significant legislative, administrative developments in 2002 seeing that the implementation of the new National Customs Code in 2001 addressed, to a significant extent, issues relating to the implementation of Article 280. Regarding administrative developments, a proposal is being discussed in the context of the working group to set up a special unit at the main Customs Offices to deal with all matters relating to combating fraud.</p>
<b>E</b>	<p>Instruction No 2/2002 of 11 March 2002 on the processing of requests for <i>a posteriori</i> checks on proof of origin, issued by the Director of the Department of Customs and Excise.</p>
	<p>Instruction No 4/2002 of 10 September 2002 on the regulation of Risk Analysis Units and action against smuggling in customs zones, issued by the Director of the Department of Customs and Excise.</p>

<b>1.1. Own resources:</b>	
<b>New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002</b>	
<b>F</b>	<p>Decree No 2002-1372 of 18 November 2002 gives effect to the Council Decision of 29 September 2000 on the European Community's own resources system.</p> <p>In addition, the French authorities have issued Decree No 2002-1499 of 18 December 2002 giving effect to the Convention based on Article K.3 of the Treaty on European Union concerning the protection of the Community's financial interests of 26 July 1995.</p>
	<p>Following the enactment of a new Article 28-1 in the Code of Criminal Procedure so that customs officials can be authorised to conduct judicial enquiries, <b>particularly concerning fraud vis-à-vis Community financial interests (traditional own resources</b> and agricultural expenditure), new provisions were adopted in 2002 to provide officials with an autonomous service to boost the resources available to the judicial authority in economic and financial terms. This was the Order of 5 December 2002 setting up a nationwide service known as the "National Judicial Customs Service" and Decree No 2002-1415 of 5 December 2002 concerning the involvement of customs officials in certain investigative work and amending the Code of Criminal Procedure.</p> <p>These new provisions make it easier to ensure that there is no violation of the non-accumulation of powers under the Customs Code and the Code of Criminal Procedure.</p>
	<p>A circular issued by the Ministry of Justice concerning criminal-law policy in relation to Community fraud on 18 December 2002 explains the national provisions set in place to protect Community financial interests and urges investigating magistrates to make contact with the judicial customs service wherever there are suspicions concerning <b>receipts</b> or expenditure <b>under the Community budget</b>. The point here is to proceed as effectively as possible against physical and legal persons responsible for violations by combining the criminal-law and customs elements.</p>
<b>IRL</b> 1	<p>Ireland adopted the CIS and Naples 2 Conventions and related instruments on 27 March 2002. Consequently, we are now in a position to apply the Provisional Application Agreement for the CIS Convention with effect from 1 June 2002.</p>
	<p>Ireland enacted Regulations giving effect to Council (Recovery) Directive No. 76/308 as most recently amended by Council Directive No. 2001/44 on mutual assistance for the recovery of claims between Member States. These Regulations update and consolidate previous Regulations in this regard.</p>
	<p>Ireland enacted an amendment to Section 908A of its Taxes Consolidation Act, 1997 (Revenue Offence – Power to obtain information from financial institutions). The effect of this amendment is to extend the existing power of access to records and information held by financial institutions for the purposes of investigating serious tax offences to investigations involving the evasion or attempted evasion of all taxes including offences under the Customs Acts. This power has already been used in one case involving the smuggling of cigarettes from outside the EU.</p>
	<p>Concerning significant administrative developments, in the area of a posteriori audit control, the Irish Customs Service introduced in 2002 an electronic risk analysis system known as IRAC (Integrated Risk Analysis for Customs). The objective of the system is providing speedier and more comprehensive risk based profiles of operators so as to enable enhanced targeting of operators for audit.</p>
<b>I</b>	<p>The <b>Customs Agency</b>, with its Circular No 25/D of 29 March 2002, initiated new automated management procedures for the separate accounting of own resources.</p> <p>In addition, Note No 949 of 10 October 2002 issued instructions for dealing with the cases of requests for dispensation from the obligation to make available any unrecovered amounts, as mentioned in Article 17(2) of Regulation No 1150/2000, for the successive drafting of the Annual Report on the activity and audit results in the sector of own resources, within the meaning of paragraph 3 of the same article.</p>

<b>1.1. Own resources:</b>	
<b>New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002</b>	
	<p>The <b>Region of Sicily</b> has set up a databank in which to enter regional and <i>de minimis</i> aid distributed by the Region pursuant to Article 15(3) of Regional Law No 32 of 2000, which derives from the Commission's communications. Once it is up and running, the system should ensure effective and targeted checking in respect of the maximums, which provides:</p> <ol style="list-style-type: none"> <li>information to the company to which aid is granted, on the nature of the aid itself and the submission by the company of a written declaration stating that the new aid will not bring the cumulative amount of the <i>de minimis</i> aid received to a level in excess of 100 000 euros;</li> <li>the registration of a single data bank of all information concerning the application of the regulation.</li> </ol> <p>The system should also ensure effective and targeted checking in respect of the rule relating to accumulation, which stipulates the following:</p> <ol style="list-style-type: none"> <li>companies which request aid, following announcements of competition or calls for an expression of interest, must submit to the implementing agency a self-certification concerning previous benefits received;</li> <li>subsidised investments must be shown in the supplementary note of the beneficiary company's balance sheet, in such manner that any false declarations will incur the infringement penalty stipulated by Article 2621 of the Italian Civil Code;</li> <li>the institution of a databank on aid, which will be available to all interested parties (competing companies, trade unions, environmental associations, public authorities and offices responsible for checks, including labour inspectorates).</li> </ol>
<b>A<sup>2</sup></b>	New working guidelines have been adopted for procedures for recovering and writing off debts on own resources.
	<p>Early Warning System (EWS) for the transit procedure.</p> <p>The Early Warning System was introduced on 1 December 1998. The aim of the system is to detect irregularities/offences in consignments of sensitive goods as soon as possible in order to be able to initiate investigation procedures and to take anti-fraud measures at an early date.</p> <p>In February 2002 the annex in which sensitive goods are listed was amended so that the product numbers now appear as six-figure numbers rather than the previous four-figure numbers. This leads to a more selective sample of goods that are liable to be declared under the Early Warning System.</p>
<b>P</b>	<b>Decree-Law No 248-A/02</b> , 14 November 2002, instituting an exceptional system for the settlement of tax debts and social security debts aiming to provide taxpayers with favourable conditions for full settlement of their debts and amends for associated infringements, thereby avoiding the consequences of failure to observe requirements (particularly access to tax benefits), was approved.
<b>FIN</b>	General : On 31.10.2001 the state treasury issued an order to the accounting offices regarding amendment of the financial regulations. The accounting office's financial regulations must include orders regarding measures to be taken upon observing errors or abuses in financial management (the responsibility and duty to notify of the person who makes this observation; the duty to initiate measures; notification of the abuses to the national audit office; notification of violations; notification of errors and abuses observed in the administration of EU funds; follow-up measures). The accounting offices must bring their existing financial regulations into line with this order of the state treasury without delay, and by 30.4.2002 at the latest.
<b>S<sup>3</sup></b>	

**1.1. Own resources:****New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002**

UK <sup>4</sup>	<p><u>Legislative</u></p> <p>UK Customs and other Member States have been actively engaged in the WCO Mutual Assistance Project Group to modernise and revise the multi-lateral Nairobi Convention on mutual assistance. The new proposed Convention will assist customs authorities world-wide to carry out more effective controls and will impact positively on fiscal controls and the fight against fraud for EU-third country trade.</p> <p>The introduction of regulatory and civil evasion penalties did not take place during 2002. It is now anticipated that these will be implemented during 2003. These penalties will cover a range of offences against Community provisions from genuine errors to deliberate dishonesty</p>
	<p><u>Administrative</u></p> <p>UK Customs' Business Assurance Programme for CAP Imports has been further refined and enhanced to better reflect the risks inherent in International Trade. Transactions are subject to a structured programme of post-clearance assurance activities, depending upon risk.</p> <p>Two multi-agency Memoranda of Understanding were signed with Croatia designed to combat serious organised crime</p>

**1.2. Agricultural expenditure (expenditure financed by EAGGF - Guarantee section):****New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002****a) horizontal developments (general control and preventive measures in the field of EAGGF-Guarantee)<sup>5</sup>**

<b>D</b>	Development of a catalogue of measures ranging from IT security criteria to uniform implementation of Regulation (EC) No 2025/2001 by the IT audit units
	Extending access to information in the HIT database to departments not involved in agricultural administration
	Increasing efficiency by conducting veterinary checks in conjunction with premiums-related checks on the basis of integrated risk analysis and an integrated control report

## 1.2. Agricultural expenditure (expenditure financed by EAGGF - Guarantee section):

### New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002

<b>EL</b>	<p>The following important decrees were issued in connection with the Directorate for the Management of Agricultural Products (OPEKEPE) pursuant to Regulation (EC) No 1663/95.</p> <p>1. Decree no. 227700/2002 by the Minister for Agriculture (Government Gazette 215B) on the responsibilities of the Directorates of the Ministry of Agriculture following the closure of the GEDIDAGEP and the incorporation of the OPEKEPE as the paying agency with effect from 03.09.2001. This decree makes the materially competent directorates of the Ministry of Agriculture responsible for issuing regulatory and individual administrative notices in connection with the paying agency. Specifically, provision is made for the Directorate of Finance of the Ministry of Agriculture to issue notices to recover payments made in error under the EAGGF Guarantee Section.</p> <p>2. Joint decree no. 245798/2002 (Government Gazette 1012B) approving amendments to the structural and operational regulations of the departments of the OPEKEPE (body corporate under private law). This decree makes changes to the administrative structure of the central and regional departments of the OPEKEPE and how they operate, in order to improve the managerial and auditing work it carries out under the constant supervision of the Ministry of Agriculture. It includes provisions to:</p> <ul style="list-style-type: none"><li>• set up an Accompanying Measures and Agricultural Development Measures Section at the OSDE Directorate;</li><li>• increase the number of regional departments from 10 to 11 and describe their responsibilities in detail. These responsibilities include auditing payments and accredited clearance bodies in order to ensure no irregular payments have been made and that Community and national legislation on aid and other guarantee measures are being applied correctly.</li></ul> <p>3. Decree no. 227195/2002 (Government Gazette 265B) transferring auditing responsibilities from the Olive Oil Aid Audit Agency (O.E.E.E.) to the Independent Olive Oil Aid Control Unit (A.Y.M.E.E.) at the OPEKEPE. This independent unit, which is incorporated into the administrative structure of the paying agency, exercises important auditing duties in the olive oil production aid sector (which were exercised by the O.E.E.E. before it was closed). It audits paying agencies, cooperative associations and olive oil presses and submits official reports on any irregularities it finds so that sanctions can be imposed. It will continue to report to the European Commission on its audits and work in general.</p> <p>4. Joint decree no. 507/3/12/2002 implementing a financial aid programme in mountainous and disadvantaged areas for the 4<sup>th</sup> year of the 2000-2006 period and appointing the OPEKEPE as the paying agency in accordance with the requirements of Regulation (EC) No 1663/95. The same will apply to other agricultural development measures subject to similar regulatory arrangements.</p>
<b>E</b>	<p>Minister of the Presidency, Royal Decree 1441/2001 of 21 December, adopting the Statute of the Spanish Agricultural Guarantee Fund (FEGA).</p> <p>This adapts the structure of the FEGA to improve performance of its functions, including supervision of the coordination and harmonised application, on national territory, in general, of controls and penalties resulting from application of the CAP, in particular controls set up by Regulation 3508/92.</p>

## 1.2. Agricultural expenditure (expenditure financed by EAGGF - Guarantee section):

### New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002

<b>F</b>	<p>Following the entry into force in December 2001 of a new Article 28-1 in the Code of Criminal Procedure so that customs officials can be authorised to conduct judicial enquiries, particularly concerning fraud vis-à-vis Community financial interests, new provisions were adopted in 2002 to provide officials with an autonomous service to boost the resources available to the judicial authority in economic and financial terms.</p> <p>Two regulations were adopted on 5 December 2002. One was Decree No 2002-1415 concerning the involvement of customs officials in certain investigative work and amending the Code of Criminal Procedure and the other an Order setting up a nationwide service known as the "National Judicial Customs Service". This service, to which all customs officers authorised to conduct judicial inquiries belong, is also competent in the area of the EAGGF (Guarantee section).</p> <p>A circular issued by the Ministry of Justice was also sent to all courts on 18 December 2002. The aim of this circular was to outline the legal framework and the persons and bodies involved in the protection of the Community's financial interests and to set guidelines for criminal-law policy. The point here is to proceed as effectively as possible against physical and legal persons responsible for offences by combining the criminal-law and customs elements.</p> <p>Finally, Decree No 2002-1455 of 12 December 2002 sets out the respective roles of the interministerial coordinating committee on controls (EAGGF - Guarantee section), the control services and the paying agencies in the application of Regulations (EC) Nos 1469 and 745/96 (blacklist)</p>
<b>IRL</b>	<p>The Department of Agriculture and Food has recently introduced a Risk Management system. This system seeks to assess the key risks (strategic, operational, financial, reputational) facing the Department in achieving its objectives and to outline measures, at departmental and divisional level to address these risks. The system was introduced into the agricultural payments area, covering all expenditure financed by the EAGGF – Guarantee section, in the first part of 2002 and has since been extended to other areas of the Department.</p>
	<p><b>Cattle Identification and Tracing – Council Regulation 1760/00</b></p> <p>Additional validation checks were introduced in respect of calf birth registration concerning the breed of dam.</p> <p>The requirement for veterinary proof and official authorisation in respect of late calf birth registrations was strengthened.</p> <p>Facilities were introduced to record the existence and disposal of still-born animals.</p> <p>A project was undertaken to replace all non-standard metal tags in respect of older animals with standard tags.</p> <p>A project was commenced to provide supplementary double plastic identification tags in respect of all older single tagged animals.</p> <p>Further exercises were conducted to update the data on the database in regard to the identity and location of older animals.</p> <p>Four regional units were established to conduct targeted enquiries and investigations into animal identification issues.</p>
<b>I</b>	<p>Legislative Decree 10/12/2002 No 305 issued “Sanctioning provisions implementing Regulation (EEC) No 4045/89 on the EAGGF – Guarantee section financing system, pursuant to Article 4 of the Law of 29 December 2000, No 422”.</p> <p>The <b>Customs Agency</b>, with its Circular No 77/D of 13 December 2002, issued detailed instructions on the correct application of the provisions of Articles 3 and 5 of Regulation No 595/91, three-monthly review, compilation and forwarding of any recorded frauds or irregularities against EAGGF funds.</p>
<b>NL</b>	<p>As a result of the new integrated management and control system (GBCS) EU Regulation No. 2419/2001, as from the 1 January 2002, all results of physical controls have been combined under the GBCS and applied to all relief schemes for cattle</p>



<b>1.2. Agricultural expenditure (expenditure financed by EAGGF - Guarantee section):</b>	
<b>New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002</b>	
<b>A</b>	Answer for the agriculture sector: – Amendment of Council Regulation (EEC) No 4045/89 from the end of 2002 – Reduction in the number of payment offices from 3 to 2 -> see point 4.2
<b>P</b>	<b>Unified Control System:</b> Legislative Order No 35/02 of 29 May 2002 places on a formal footing the integration of the Autonomous Regions of Madeira and the Azores in the Unified Control System (UCS) in connection with the implementation of operations for updating the system for the identification of agricultural parcels and statutory physical checks in the context of the EAGGF – Guarantee Section.
	<b>National System for the Identification and Registration of Bovine Animals:</b> Decree-Law No 99/02 of 12 April 2002 amended Decree-Law No 338/99 of 24 August 1999 approving the Regulation for the Identification, Registration and Movement of Animals by providing for the penalty system applicable, with the penalties being graded in accordance with the seriousness of the infringement committed.
<b>FIN</b>	General development : see point 1.1.
	Åland : improved cooperation with the Ministry of Agriculture and Forestry through a memorandum of understanding which results in more precise and organised controls so that the payment office satisfies EU requirements.
<b>S<sup>6</sup></b>	
<b>UK</b>	There have been no significant changes, but the requirements on accreditation continue to demand care and attention. From the 2002 scheme year the Rural Payments Agency (RPA) has implemented a programme continuing the inspection requirements under all the bovine subsidy schemes with those required under the Cattle Identification Regulations. The Combined Bovine Risks Analysis (CoBRA) system enables RPA inspectors to undertake multiple bovine subsidy and identification checks during one visit which will include a physical ear tag check of every bovine payment against data held on the Cattle Tracing System (CTS). This helps ensure that any anomalies are assessed for their impact across bovine schemes and provides an integrated approach to reporting anomalies. Under the new system inspectors send and receive inspection data by secure Email thus reducing the amount of time taken to report inspection findings to staff.
<b>b) developments in the field of export restitutions</b>	
<b>D</b>	Production of an animal transport manual to make it possible to standardise supervision of compliance with animal-safety provisions in connection with live-animal transport and uniform implementation of Regulation (EC) No 615/98
<b>F</b>	See answer to point 4.2
<b>I</b>	With its note with protocol No 30180 of 24 December 2002, the <b>Customs Agency</b> updated the instructions concerning the physical checks at the time of export of agricultural products that benefit from a repayment following the issuing of Commission Regulation (EC) No 2090/2002 detailing methods for the implementation of Regulation (EEC) No 386/90.

**1.2. Agricultural expenditure (expenditure financed by EAGGF - Guarantee section):****New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002**

<b>S</b>	<p>The implementing regulation for Council Regulation (EEC) No 386/90 on physical checks on products qualifying for export refunds, previously Regulation No 2221/95, was replaced at the end of 2002 by Commission Regulation (EC) No 2090/2002. The implementing regulation, which entered into force on 1 January 2003, did not mean any major developments compared to earlier and, during the period in question, Sweden has not implemented any ensuing legislative, regulatory or administrative developments.</p> <p>As far as Sweden is concerned, the effect of one of the developments is nevertheless significant; at least the development is important for smaller customs offices (customs offices with a relatively low frequency of refund goods). Previously, in each product sector, each customs office was required to inspect the first consignment in each inspection period if it was uncertain whether there would be more than one refund export, in order to maintain the frequency of inspections. With the new wording of the regulation, that requirement has been “relaxed”, which means that the risk analysis can be applied more effectively and inspections can therefore be adapted to the most important risk areas.</p>
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**c) developments in the field of intervention expenditure**

<b>E</b>	<p>Ministry of Agriculture, Fisheries and Food. - Royal Decree 330/2002 of 5 April 2002 transposing certain elements of the European regulations governing cotton production aid. This includes the introduction of control arrangements and spells out the relations between the body which coordinates aid and the paying agencies of the autonomous community</p>
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**1.2. Agricultural expenditure (expenditure financed by EAGGF - Guarantee section):****New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002**

<b>F</b>	<p>In the milk and milk products sector, Decree No 2002-1001 on cow's milk production and on the arrangements for recovery of the additional charge levied on buyers and producers of milk was adopted on 16 July 2002. This decree outlines the circumstances under which a producer's approved status could be withdrawn, listing the deficiencies which could lead to such a step. It introduces a 30-day default procedure whereby approved status may be withdrawn from buyers who do not comply with the regulations. It sets out the conditions under which approved status can be restored at the request of the buyer if, after a minimum period of six months, an in-depth inspection shows that the regulations are once again being respected. It also sets up an annual procedure for renewing approved status. Finally, it defines materials accounting, in accordance with opinion of the Chair of the interministerial coordinating committee on controls, which set out in 2001 the general principles of this type of accounting which is essential for ensuring the traceability of information on granting aid and the effective carrying out of checks.</p> <p>Following adoption of this Decree, a circular (ONILAIT MPL No 02.05) was distributed on 6 December 2002. This circular, on the approved status of milk buyers, sets out the implementing regulations for Articles 5 and 13 of Decree No 2002-1001.</p> <p>The control mechanism for producers of milk for direct sales was also updated, to take account of the legislative changes arising from the entry into force of Decree No 2002-1001. This update was detailed in Circular DPEI/SPM/SDEPA/C2002-4045 of 8 October 2002, which lays down the mutual obligations of the paying agency and the Departmental Directorates of Agriculture and Forestry which are responsible for carrying out on-the-spot checks and describes the preparatory stages of the checks, their nature and the way in which they should be reported.</p> <p>Finally, two circulars were issued by the paying agency regarding the implementation of Regulation (EC) No 2571/97 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs. The purpose of these two circulars, which are addressed to retailers and purchasers, is to standardise the sales statements in such a way as to facilitate administrative control over product destinations.</p>
<b>FIN</b>	Council of State Decree (860/02) on reimbursement of storage costs payable for assignable C-sugar from marketing year 2001/2002: specifies size and payment date of reimbursement
	Ministry of Agriculture and Forestry Decree on certain items to be complied with in intervention purchases of grain (17.5.2002): specifies control procedures relating to acceptance of grain
	Ministry of Agriculture and Forestry Order on inspections relating to industrial butter aid (2.4.2002 1190/524/2002): division of quality inspections between the Veterinary Medicine and Food Standards Research Institute and the National Food Administration
	Ministry of Agriculture and Forestry Direction to the National Board of Customs regarding quarterly inspections and annual stocktaking of intervention warehouses for butter and skimmed powdered milk (30.7.2002 2385/571/2002): more specific instructions on annual stocktaking
	Ministry of Agriculture and Forestry Direction to Customs regarding inspections of EU Food Aid (4.4.2002, Doc.No. 1271/524/2002)
<b>d) developments in the field of direct aid</b>	

<b>1.2. Agricultural expenditure (expenditure financed by EAGGF - Guarantee section):</b>	
<b>New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002</b>	
<b>E</b>	Ministry of Agriculture, Fisheries and Food. - Royal Decree 1322/2002 of 13 December 2002 Basic national rules on agro-environmental requirements for the full payment of direct aid under the CAP, and for its implementation, coordination and control.
<b>F</b>	No new legislative or regulatory texts on the control of animal or area-based aid were adopted in 2002. The legal basis for these controls is still Community legislation, fleshed out in national circulars (ministerial instructions to a department): circulars on area-based aid, on-the-spot-checks and follow-up to checks on animal aid.
<b>P</b>	<b>National System for the Identification and Registration of Bovine Animals:</b> Publication of Order 25586/02 of 2 December 2002 of the Minister of Agriculture, Rural Development and Fisheries laying down measures for greater operationalisation and reliability in the identification of bovine animals by setting up new modules in the NSRIBA database.
	<b>School milk:</b> Adaptation of Order in Council No 398/02 of 18 April 2002 regulating the terms of application in Portugal of the system for the granting of aids for the supply of milk and milk products to pupils at educational establishments on the mainland and in the Autonomous Regions of the Azores and Madeira, particularly as regards the conditions of eligibility for the aid, whether in terms of type(s) of product or in terms of the quality and quantity of products for which aids are granted. According to the said Order in Council, it is the responsibility of the INGA, or National Institute for Agricultural Guarantee and Intervention (NIAGI), either directly or via bodies indicated by it, to inspect and discuss all the supporting documents for the distribution of aided milk products so that the product used is not diverted from its intended purpose and the amount to be paid matches the quantities actually consumed, with all the administrative support allowing the necessary checks to be carried out within the extent of its powers being established for the purpose.
	<b>System of supplementary taxation:</b> By virtue of the recent changes in Community legislation on the supplementary taxation system, Decree-Law No 240/02 of 5 November 2002, laying down the rules governing the system of supplementary taxation applying to the quantities of cow's milk or cow's milk equivalent delivered to a purchaser or sold directly for consumption which is provided for in Regulation No 3950/92 of 28 December 1992 and Regulation No 1392/01 of 9 July 2001, was published.
	<b>Sheep meat and goat meat sector:</b> Publication of Legislative Order No 37/02 of 1 July 2002 laying down the objective criteria according to which the supplementary payments will be made to producers of sheep meat and goat meat and the respective rules for the granting of subsidies, including the penalty framework, in accordance with the necessary and adequate measures to ensure the correct application of Regulation No 2550/01 of 21 December 2001.
<b>FIN</b>	Several Decrees of the Ministry of Agriculture and Forestry were issued in 2002 <sup>7</sup>
<b>S<sup>8</sup></b>	
<b>UK</b>	At the very end of 2001 Regulation (EC) No. 2419/2001 came into force. It laid down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No. 3508/92. It applied to aid applications relating to marketing years or premium periods starting from 1 <sup>st</sup> January 2002. In the interests of clarity and rationalisation the new regulation replaced its much-amended predecessor (Regulation (EEC) No. 3887/92) and introduced certain new provisions. There is cooperation between paying agencies on day to day administration and control issues as the need arises. The most significant change in the field of direct aid will emerge out of the Mid-Term Review. Along with the de-coupling of aid and digressive subsidy payments, it is likely that cross-compliance will impact substantially on the associated control regimes.
<b>e) developments in the field of rural development measures financed by EAGGF-Guarantee</b>	

<b>1.2. Agricultural expenditure (expenditure financed by EAGGF - Guarantee section):</b>	
<b>New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002</b>	
<b>D</b>	Further development of guidelines on the use of management and control systems in connection with rural development measures.
<b>EL</b>	<p>Joint decree no. 518/350/2003 and its implementing decree no. 430/2003 make provision for:</p> <p>a) ongoing on-site and administrative audits by local action teams at all stages of the implementation of investment programmes (in order to ensure local programme projects are being carried out properly and final recipients are honouring their contractual obligations) and all publicity, information and evaluation procedures. Certified loans are audited for accuracy and measures are taken to identify and rectify irregularities;</p> <p>b) audits by authorised officers of the Ministry of Agriculture, the Ministry of Economy &amp; Finance and other ministries and the European Commission and the European Court of Auditors of the aforementioned local action teams and final recipients over the entire performance of the contract. Administrative audits are carried out under the “administration and audit” system using the Integrated IT System, in conjunction with the information submitted by the local action teams;</p> <p>c) sanctions in the event of irregularities identified either in connection with the final recipient or the team’s administration and audit system which infringe national and Community legislation, with a simultaneous procedure to be set in motion in order to recover sums paid in error or even deregister the agency in the case of serious irregularity. If programme plans are not completed on time for reasons for which the team or the final recipient is to blame, the Ministry of Agriculture will ask for the entire sum paid in aid to be returned and for the letter of guarantee to be forfeited.</p>
	<ul style="list-style-type: none"> <li>– joint decree no. 19/2002 setting up the monitoring committee for the LEADER Community initiative 2000-2006;</li> <li>– decree no. 198/2002 by the Minister for Agriculture inviting expressions of interest in the submission of local programme plans;</li> <li>– decision no. 830/2002 by the Minister for Agriculture approving local programmes etc. and related circular no. 833/2002 from the special secretariat-general and</li> <li>– decisions nos. 846/2002, 1587/2002 and 305809/8184/2002 by the Minister for Agriculture on international competitions to select a mid-term evaluation consultant for the operational programme and implementation contractors for specific programme projects.</li> </ul>
<b>E</b>	Ministry of Agriculture, Fisheries and Food. - Royal Decree 708/2002 of 19 July 2002. Additional measures for the rural development programme concerning CAP flanking measures
<b>F</b>	<p>The DERF/DEPSE departmental note of 13 August 2002, which cancels and replaces the previous departmental note of 27 July 2001, updates the general principles applicable to controls of all RDR measures and their consequences.</p> <p>It draws attention to the general provisions implementing Articles 58-64 of Regulation (EC) No 445/2002 and includes the latest updates to the Commission's guidelines (ref: VI 10535/99, rev 7) for applying the applications, controls and sanctions systems for rural development measures introduced by Council Regulation (EC) No 1257/1999.</p> <p>The note is specifically concerned with stipulating the content of administrative controls, the way in which on-the-spot checks should be carried out, both before and after final payment, and the concept of irregularities</p>

## 1.2. Agricultural expenditure (expenditure financed by EAGGF - Guarantee section):

### New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002

<b>IRL</b>	<p><u>Early Retirement Scheme</u></p> <p>In February 2002, the European Commission agreed to a formal amendment to Ireland's Rural Development Plan, so as to limit the inclusion of Widow's and Widower's pensions in the list of State pensions defined as national retirement pensions to recipients of those pensions who are aged 66 years or over.</p> <p>The Alternative Enterprise Scheme Division in cooperation with the Livestock Division introduced some simultaneous inspections for compliance with Good Farming Practice.</p>
<b>I</b>	<p>Within the scope of the directive "agriculture and livestock development policies", the <b>Region of Valle d'Aosta</b> has created an operative structure called the "farming system", whose aim is to coordinate the administrative and information technology procedures required for the implementation of the rural development plan (rdp), with the aim of setting up an integrated and simplified system for managing regional farming.</p> <p>The <b>Regional Agency for Agricultural Supplies in the Region of Tuscany</b> (ARTEA) has produced some manuals on the management of procedures for checking the measures of the rural development plan (Reg. EC No 1257/99).</p> <p>A recently established body is the <b>Veneto Agency for Payments in Agriculture</b> (AVEPA), which was recognised by the Minister for Agricultural and Forestry Policies with the decree of 26 June 2002 as the organisation responsible for disbursing the RDP interventions in the Veneto Region.</p> <p>The above Agency established an agreement with AGEA for the transfer of functions and works with the Region of Veneto in line with that agreement for the authorisation of payments relating to all the RDP measures mentioned in Regulation (EC) No 1257/99.</p>
<b>NL</b>	<p><u>The policy regulations reducing the subsidy for the countryside development programme</u> (Official Gazette dated 22 January 2002, No. 15) became effective on the 1 February 2002. This gives a closer interpretation of Article 64 of the EC Regulation No. 445/2002 in connection with the consequences of non-compliance with subsidy obligations within the framework of the Netherlands countryside development programme.</p>
	<p><u>Regulation governing the subsidy for the countryside development programme</u> (Official Gazette 2002, No. 91). This regulation replaces provincial decrees under which previously implementation was given to Appendix 2 of the Provincial Programme (POP).</p>
<b>P</b>	<p><b>Compensatory payments:</b> Order in Council No 134/02 of 9 February 2002, amending the Regulation for Implementing the Compensatory Payment Assistance approved by Order in Council No 46 - A/01 of 25 January 2001, introducing in Article 12(2) the penalties arising from the failure to comply with the rules relating to sound agricultural practices.</p>
<b>FIN</b>	<p>Åland : a bill which concerns the financing of rural commerce has been referred by the Provincial Board for Åland to Åland's Lagting for consideration. A new provincial law is expected to enter into force during 2003.</p> <p>The bill concerns rural development and the aid co-financed by the EU is start-up aid, environmental aid and LFA aid. National investment aid can be granted under the bill. This is not co-financed by the EU.</p> <p>Under the law, the previous provincial legislation is brought more in line with EU rules. The law includes provisions on the different forms of aid, the financing of such aid, the procedure for the grant of aid, monitoring and control, recovery and sanctions. As far as recovery is concerned, it is proposed in the bill that, where repayment is not made voluntarily, it must be able to be effected using the arrangements laid down in the Law on recovery of taxes and charges by enforcement order (FFS 367/1961).</p>

<b>1.3. Structural actions :</b>	
<b>New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002</b>	
<b>a) horizontal developments (covering two or more structural funds)</b>	
<b>B</b>	<p><u>Decision of 18 July 2002 by the Walloon Government organising the reform of the Audit Committee and the OLAF Inter-administrative Working Group</u>, whose role was described in the 2001 report. For these two committees, the Government decided to ask the administrations to designate by name a full representative and a replacement, so as to guarantee their systematic presence at meetings and to allow the decisions required to be taken in their name to be adopted in session; it also decided to amend the internal rules of the Audit Committee and the OLAF Inter-administrative Working Group, so that the rules stipulate that problems not resolved satisfactorily within three months of their examination by the Committee or the OLAF Working Group are communicated to the Minister-President and the functionally relevant Minister for the presentation of a notification proposal to the Government.</p>
	<p>On 28 October 2002 the Ministry of Foreign Affairs drew systematic attention to a procedure for the notification and follow-up of the irregularities specified in Regulation (EC) No 1681/94. The document laying down this notification procedure was sent to the various Administrations of the Ministry of Finance since changed into SPF Finances by internal notes of 28 October 2002, although SPF Finances is not competent to allocate interventions paid from the structural funds. The purpose of that distribution was to allow each Administration to examine the possible implications of that communication in the event that an irregularity were to be discovered during a tax check and, where necessary, to establish collaborations with the regional authorities competent in the matter for certain more detailed investigations in these sectors.</p>
<b>EL</b>	<p>In 2002, an extensive review procedure commenced for the recovery of amounts unduly or unlawfully paid under co-financed Community programmes, which had been established by virtue of Joint Ministerial Decision (JMD) 2007892/461/27-5-98 "Recovery of unduly or unlawfully paid amounts from national resources or resources of the European Union in the framework of implementation of Community policies".</p> <p>Under the new JMD being drafted, a new national fiscal adjustments system, in accordance with the provisions of Commission Regulation (EC) 438/2001 is being established, while at the same time, an adjustment of the recovery procedure is made to new institutions and new data under the 3<sup>rd</sup> CSF, as such are derived from the Community and national legal framework adopted for managing expenditure from Structural Funds and the Cohesion Fund for the 2000-2006 planning period. The drafting of the new Ministerial Decision for the recovery of such amounts is expected to be completed shortly within 2003.</p>
	<p>The Paying Authority conducted a tender procedure for awarding the study "Risk analysis in sampling of actions to be audited under the 3<sup>rd</sup> CSF" with a view to developing a sampling methodology for actions to be audited in accordance with the provisions of Article 10 of Commission Regulation (EC) 438/2001. Selection of the contractor was made in 2002, while deliverables associated with this study are expected to be in by the end of May 2003.</p>
	<p>The Paying Authority in conjunction with the Financial Control Committee (FCC) prepared joint audit questionnaires to verify actions taken by the Final Beneficiary and the management systems of the Special Management Services, which will be uniformly applied by the audit instruments, depending on the audit level.</p>

### 1.3. Structural actions :

#### New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002

<b>F</b>	<p><u>Decree No 2002-633 of 26 April 2002</u> confers upon the interministerial committee for the coordination of controls of operations co-financed by the European Structural Funds (CICC-Structural Funds) the responsibility for ensuring that all of the authorities concerned comply with the requirements regarding the control of operations co-financed by the European Structural Funds and that the management and control systems implemented are effective.</p> <p>The CICC for Structural Funds defines the overall framework of controls and ensures that these are carried out, undertakes systems audits, receives summaries of controls carried out by other departments; evaluates the results and draws up the annual report on controls required by Article 13 of (EC) Regulation No 438/2001 of 2 March 2001.</p> <p>It provides the Ministries concerned with recommendations which might help to improve the management and control systems, proposes appropriate measures and is informed of how these are followed up. It organises consultations with the Ministries concerned or any other Ministry involved in the management or control of operations co-financed by the European Structural Funds. It coordinates the network of auditors.</p> <p>It seeks to promote the coordination of national and Community controls.</p> <p>On winding up the assistance, it draws up the validity declarations required by Articles 15 and 17 of (EC) Regulation No 438/2001 of 2 March 2001.</p>
	<p><u>Article 60 of the amending finance act for 2002</u> No 2002-1576 of 30 December 2002 conferred upon the CICC for Structural Funds its own power of scrutiny with regard to the authorities responsible for the management and payment of structural funds, including regional authorities, intermediary organisations or relays and final beneficiaries of European Structural Funds.</p>
	<p>Furthermore, <u>the Prime Minister's circular of 15 July 2002</u> relaunched the process of programming and carrying out operations by strengthening partnership and effective organisation. It also specified the requirements laid down by Community rules regarding management and control by defining specifically the roles and tasks of the different people involved.</p>
	<p>The circulars of 19 August and 27 November 2002 from the Ministries responsible for supervising the management of structural funds and the circular from the Prime Minister of 24 December 2002 were intended to simplify the management of the European Structural Funds.</p>
<b>I</b>	<p><b>The Region of Sicily:</b> see point 1.1.</p>
<b>NL</b>	<p><u>The TES Law:</u> On the 1 May 2002, the Law on supervision of EU-subsidies came into force in the Netherlands. As well as regulating the right of recovery and the authority to issue instructions, the law regulates the right to information. The TES Law is also applicable to the Structural Funds. In the latter part of 2003a report on the allocation of EU subsidies will be submitted to the Dutch Parliament for the period May to December 2002. Decentralised control bodies that come under the law are required to submit details of European subsidies that they have received to the respective policy departments. At the same time as the TES Law, the eighth amendment to the Dutch Government Budget Accounts Act came into force. With this amendment, the Netherlands Court of Audit receives the power to monitor EU subsidies right down to the level of the end-beneficiary. The Netherlands contribution to the Annual Report under Article 280 EU Treaty 2000 and 2001 includes an explanation of the TES Law and the eighth amendment to the Dutch Government Budget Accounts Act.</p>



<b>1.3. Structural actions :</b>	
<b>New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002</b>	
	<u>Simplification:</u> The European Commission is currently engaged on a project for greater simplification, clarification, coordination and flexibility of the administration of structural policy during the period 2000-2006. The aim is to achieve a more accurate and a more transparent policy and to improve financial control. In this context, the Member States, including the Netherlands, have asked for a simplification. This project will only become effective after the year 2002.
	<u>Scheme for supervision and control:</u> Supervision and control by the policy departments over the disbursement of EU subsidies has been tightened in 2002. A supervisory and control scheme has been drawn up by the ministries
	<u>Regulation 438/2001:</u> Under EC Regulation No. 438/2001, the disbursing state has received a new system of forms. A form is to be attached to the 'Certificate of Expenditure', in which all requests for repayment must be listed. This form has been introduced for use with the municipal programmes Objective 2 and Urban 2. The form is not yet in use for Objective 3 and Equal, but will be introduced as quickly as possible. However, it is being used for the IIIB NEW, North Sea programmes and Interreg C under the responsibility of the Ministry of the Ministry of Housing, Spatial Planning and the Environment (VROM).
	<u>Urban:</u> Urban 2 cities have similar procedures to that of the Objective 2 cities.
<b>P</b>	<p>Bearing in mind that the CSF III legal framework was concluded in 2001, with the following being prominent:</p> <ul style="list-style-type: none"> <li>• Decree-Law No 168/01 of 25 May 2001 regulating the operation of the National Control System (NCS) vis-à-vis the obligations laid down in Regulation No 438/01 of 2 March 2001, and</li> <li>• Order in Council No 684/01 of 5 July 2001 laying down detailed rules for articulation among the different NCS control levels, in particular as regards the planning, implementation and reporting of control activity, the circulation of information, audit methodologies and the communication of irregularities to the EC,</li> </ul> <p>2002 was characterised by the actual operationalisation of the model for articulation among the bodies performing control functions at the different levels, with a view to fulfilment of the obligations stipulated by current Community regulations.</p> <p>The forms of coordination established between the different players are referred to in Point 4.3 of this questionnaire.</p>
<b>FIN</b>	General development : see point 1.1.
	Åland : By a decision of 29 April 2002, Åland's Lagting adopted a provincial law on the application in the province of Åland of Chapter 29 of the Criminal Code. The law means that crimes against public finances in Åland are penalised under Chapter 29 of the Criminal Code, in the version that applies in the State. The law is intended to protect the financial interests of the province and of the Community and means that the requirements laid down in the Fraud Convention with regard to criminal law provisions are satisfied. Under the law, crimes against public finances will be penalised in the same way, irrespective of whether the crimes are against the province, the State or the European Community. The provisions of the new provincial law have been implemented by ÅFS No 60/2002.
	Åland's Lagting has supplemented the provincial law on the Provincial Board's Audit Office to the effect that external auditors may be brought in to carry out checks on EC aid. This means that several auditors can be used for the "5%" and other checks. The law was supplemented by ÅFS No 27/2002.

<b>1.3. Structural actions :</b>	
<b>New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002</b>	
<b>S</b>	Sweden has not adopted any new laws or regulations during the period in question. However, there have been certain new administrative developments in 2002. The Internal Audit Division of the National Labour Market Board has been appointed to issue audit certificates for Social Fund Objective 3 and Equal for the 2000-2006 programme period. The Internal Audit Division of Gävleborg County Administrative Board has been appointed to issue certificates for Objectives 1 and 2 and for the Interreg IIIA, Interreg IIIB Northern Periphery, Leader + and Urban II Community initiatives and for structural aid to the fishing industry not covered by Objective 1. These arrangements apply only where the managing authorities are here in Sweden. For the Interreg programme, where the managing authorities are situated in other countries, there is no responsibility, e.g. Interreg Öresund.
<b>UK</b>	<b>Department of Trade and Industry :</b> The DTI operates a zero tolerance policy towards fraud. While no new legislation was adopted during the reference period, DTI continues to work issuing and offering guidance and assistance to other Government Departments in both reporting and identifying irregularities. DTI was included in a series of meetings with OLAF/DG Regio that took place in England in December 2002. The meetings were helpful in helping to demonstrate the procedures for notifying and following –up reports in place in the United Kingdom.
<b>b) developments in the area of the ERDF</b>	
<b>B</b>	Publication of a vade-mecum addressed to the operational administrations for the implementation of projects co-financed by the ERDF, as regards programmes coordinated by the Directorate for European Programmes (DEurP): definition of eligible zones, project management, information to be passed on to the DEurP, first-level checks – Regulations Nos 1260/1999 and 438/2001, eligibility of expenditures, working groups, useful definitions, main regulatory texts. This document and the CD ROM mentioned under 1.3a) are intended to reinforce the monitoring of the service provided and consequently to improve the ability to detect frauds and attempted frauds.
	In 2002, the service known as the “Control of European Structural Funds” was created within the section “Management, Finances and Budgets”. This service is responsible for monitoring actual expenses and additionally reports to the Paying Agency of the Objective 2 and Urban 2 programmes. The director-General with the responsibility for this newly created service is also responsible for communicating irregularities to OLAF.
	Application of the recommendations from the DG Regio audit (November 2001) to the administrative and control systems, resulting in particular in a separation of the control functions
	Implementation of new structures relating to the programme period 2000-2006.
<b>D</b>	Production and amendment of guidelines on assistance regarding measures to be implemented using ERDF funding
<b>EL</b>	Promotion of a special structural framework for carrying out technical assistance – support and management regarding respective resource actions (Pres. Decree 4/2002, Gov. Gazette 3/iss.A/14-01-02).
	Publication of a Technical Assistance – Support Guide (March 2002)
	Operation of a Support Office to deal with Integrated Information System (IIS) matters, as well as a special software application (discoverer) for easier utilisation of IIS data available.
	Establishment of a framework for activating measures related to SME at PEP (JMD 192249/EYS4057, 19-08-2002, Gov. Gazette 1079/iss. B/19-0802002 and JMD 206883/EYS 5066, 23/10/2002, Gov. Gazette 1470/iss. B/21-11-02).

<b>1.3. Structural actions :</b>	
<b>New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002</b>	
<b>I</b>	<p><b>Valle d'Aosta</b> is adopting the administrative act approving the implementation methods of Regulation (EC) No 438/01 and Regulation (EC) No 1681/94 concerning the programmes for the period 2000-2006.</p> <p>For <b>Community Initiative Programme URBAN II 2000-2006</b>, there is a first-level audit at local level and a second-level audit by the Ministry of Infrastructures and Transport and the Ministry of the Economy and Finance – Community Structural Funds Department.</p> <p>The programme provides for control paths (within the meaning of Article 38 of Regulation (EC) No 1260/99) adopted by all the Departments and Sections involved in the programme. Coordination is carried out by the Intersectorial Committee, by means of periodic meetings.</p>
<b>NL</b>	<p><u>The scheme for irregularities:</u> The scheme for irregularities of the Ministry for Economic Affairs (EZ) and the Ministry of Agriculture, Nature Management and Fisheries (LNV) started in 2002. This scheme gives insights into procedures and regulations relating to the notification of irregularities. The scheme has been made available to all contract partners and contact persons in the field of irregularities. The Ministry of Housing, Spatial Planning and the Environment has used the EZ and LNV (Ministry of Agriculture, Nature Management and Fisheries) scheme as a basis for its own scheme for its own Interreg programme. It has been agreed that the concept will shortly be sent to OLAF.</p>
	<p><u>Testing audit plans:</u> Target 2 cities will arrange for their audit plans to be tested by the Audit Service of the Ministry of Interior and Kingdom Relations (BZK) for the preparation of their 2002 annual reports.</p>
<b>FIN</b>	<p>Regional Development Act (602/2002) and Council of State Decree (1225/2002) on funding granted in administrative sector of Ministry of the Interior concerning financing of regional development measures. These include provisions on the granting, payment, monitoring, audit and sanctions for abuses of funds, such as the grounds for recovery and increases in the amount recovered.</p>
	Åland : see a)
<b>c) developments in the area of the ESF field</b>	
<b>B</b>	<p>“Decree by the Government of the French Community establishing the implementation methods of the cooperation agreement relating to the coordination and management of aid granted by the European Commission in the areas of human resources and to the creation of the ESF Agency, concluded in Brussels on 2 September 1998 between the Walloon Government, the Government of the French Community and the College of the French Community Commission of the Region of Brussels-Capital, approved by decree of the Council of the French Community on 5 May 1999”, approved on 4 September 2002.</p> <p>This decree provides for the creation of a “management” department and an “inspection” department, which are distinct from one another.</p>
	Approval of the draft decree on the 16 October 2002 by the Flemish parliament relating to the establishment of the VZW ESF-Agency
<b>EL</b>	<p>By virtue of Joint Decision 118267/12-12-00 of the Ministers for Internal Affairs, Public Administration and Decentralisation, National Economy and Finance, and Labour &amp; Social Security and implementing the provisions of Law 2860/00 “Management, monitoring and auditing of the Community Support Framework and other provisions”, a Special Management Service was set up for the O.P. “Employment and Vocational Training”.</p>

<b>1.3. Structural actions :</b>	
<b>New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002</b>	
	By virtue of Joint Decision 80056/3-9-01 of the Ministers for Internal Affairs, Public Administration and Decentralisation, National Economy and Finance, and Labour & Social Security, ESF Programme Planning and Implementation, Community Initiatives and other Sources of Financing, and Control and Evaluation Directorates were abolished and the responsibilities regarding the auditing of ESF interventions for the Operational Programmes and Community Initiatives programs for the periods 1989-1994 and 1994-1999 were transferred to the Special Management Service for O.P. "Employment and Vocational Training".
<b>E</b>	<p>Ministry of Labour and Social Affairs - Royal Decree 683/2002 of 12 July 2002, laying down rules for the functions and management procedures of the unit administering the European Social Fund (UAFSE):</p> <ul style="list-style-type: none"> <li>- it defines the functions of the UAFSE as paying and managing agency and determines powers of control over actions co-financed by the ESF</li> </ul> <p>Internal procedures manual of the UAFSE: this sets out the methods to be applied by the unit in exercising its control powers as managing and paying agency.</p>
<b>IRL</b>	National Administrative Requirements were enhanced through the promulgation of ESF Circulars "ESF PA5" and "ESF PA6" to augment the Structural Funds Regulations themselves and the earlier Circulars implemented by the ESF National Authority. ESF PA5 refers to additional certification requirements being demanded by the ESF Paying Authority whereas ESF PA 6 refers to the implementation of various recommendations emanating from the Preventive Audit Report of the ESF Paying Authority, the EHRD-OP Managing Authority and the EQUAL CI Managing Authority, by DG Empl published in February 2002.
<b>I</b>	<p><b>Valle d'Aosta</b> is adopting the administrative Act approving the implementation methods of Regulation (EC) No 438/01 and Regulation (EC) No 1681/94 concerning the programmes for the period 2000-2006.</p> <p>The <b>Commune of Milan</b> approved the following guidelines in 2002:  "Guidelines for the accounting and certification of expenditure", approved by D.D.G. No 10529 of 5 June 2002, which amended and replaced D.D.G. No 5728 of 27 March 2002.  The guidelines allow the periodic checking of expenses carried out for ESF activities and the final certification of the expense by an Auditor entered in the Register of Auditors.  For some projects, and as in previous years, auditing commissions have been confirmed or nominated, in which there participate members of the Commune or of interested parties (Ministries, Region, External Certifying Bodies). The commission follows the project through from start to finish, with meetings on average every month in which 7/8 members take part; it is set up when provided for in the announcement of the project.  Finally, in some cases checks are carried out by dependants of the Commune on the conformity of the services rendered with what the project requires.</p>
<b>A</b>	The Special Directive on Equal under point 6 of the Federal Ministry of Economic Affairs and Labour General Framework Directives on the grant of assistance from Federal funds (in force since February 2002).
<b>FIN</b>	Ministry of Labour Direction on the local verification of delivery of products and services, based on Commission Regulation (EC) No 438/2001, Doc.No. 3870/0551/2002 TM).
	Åland : see a)

<b>1.3. Structural actions :</b>	
<b>New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002</b>	
<b>UK</b>	<p>In 2002 DWP put in place improvements to the administrative processes for Monitoring and Inspection systems on ESF projects. This has been achieved by working closely with all English regions to develop existing guidance and to meet the needs of new and improved arrangements for managing ESF. During the period we have introduced the following administrative processes:</p> <ul style="list-style-type: none"> <li>§ established new systems and processes for ensuring that we meet, and report on, the requirement to audit 5% of the programme value</li> <li>§ established improved systems for reporting ESF irregularities to the European Commission</li> <li>§ introduced a new system of assurance by requiring ESF projects to have annual certificates provided by external authorities to support the payment process</li> </ul>
<b>d) developments in the area of the EAGGF - Guidance section</b>	
<b>E</b>	Ministry of Public Administrations - Royal Decree 355/2002 of 12 April 2002. This amends and expands the basic institutional structure of the Ministry of Agriculture, Fisheries and Food: It assigns to the Directorate-General of Rural Development the role of general and territorial development of programmes co-financed by the European Union which fall within the Ministry's area of competence.
<b>IRL</b>	The Department of Agriculture and Food has recently introduced a Risk Management system. This system seeks to assess the key risks (strategic, operational, financial, reputational) facing the Department in achieving its objectives and to outline measures, at departmental and divisional level to address these risks. The system was introduced into the agricultural payments area, covering all expenditure financed by the EAGGF – Guidance section, in the first part of 2002 and has since been extended to other areas of the Department.
	The Department of Agriculture and Food circulated guidelines to implementing Divisions/bodies on the financial monitoring and control arrangements for structural funds. In association with the two Regional Assemblies (these are the managing authorities for the two Regional Operational Programmes), seminars were held for all involved in the implementation of EAGGF Guidance measures at which the requirements were fully explained.
	Financial Management and Control Procedures governing the EAGGF (Guidance) cofinanced Forestry Measures of the Regional Operational Programmes were finalised and implemented in 2002.
<b>I</b>	<p>The <b>Region of Tuscany</b> has produced and submitted to the services of the European Commission the report on the management and checking methods of the PU document for the LEADER PLUS Community initiative, within the meaning of Regulation (EC) No 438/01.</p> <p><b>Valle d'Aosta</b> is adopting the administrative Act approving the implementation methods of Regulation (EC) No 438/01 and Regulation (EC) No 1681/94 concerning the programmes for the period 2000-2006.</p>
<b>NL</b>	The irregularities scheme mentioned in 1.3 b) also applies to EAGGF - Guidance
<b>A</b>	New: Special Directive on Leader Plus (No 26.100/01-II/6/02); Regulation No 445/2002
<b>FIN</b>	Åland : see point a)
<b>e) developments in the area of the FIFG</b>	

<b>1.3. Structural actions :</b>	
<b>New legislative, regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty in 2002</b>	
<b>IRL</b>	At the beginning of 2002, NDP/EU Structural Funds Section and Internal Audit Unit of the Department of the Marine and Natural Resources gave a presentation to Implementing Agencies, and Implementing Departments on the Financial Management and Control Procedures for FIFG 2000 – 2006. All areas of financial management were covered in the presentation. Department Circular FIFG/1-2001 was circulated to all relevant persons involved in the Programme.
<b>NL</b>	The irregularities scheme mentioned in 1.3 b) also applies to FIOV
<b>P</b>	<b>The Portuguese authorities have submitted a list of new legislative and ministerial decrees, adopted in 2002.</b>
<b>FIN</b>	Ministry of Agriculture and Forestry Direction on recovery of structural aid for fisheries (FIFG) (14.10.2002 Doc.No. 3363/701/2000), which deals with the analysis of violations and abuses leading to recovery, the reporting of abuses and directions regarding recoveries.
	<b>Åland : see a)</b>
<b>UK<sup>9</sup></b>	
<b>f) developments in the area of the Cohesion fund</b>	
<b>IRL</b>	The Department of Finance issued a Guidance Note (D/Finance Circular 41/2002) in December 2002 to implement the provisions of Commission Regulation 1386/2002 (management and control systems and financial corrections for Cohesion Fund assisted projects first approved after 1 January 2000). The purpose of the circular is to set out the process by which Ireland will implement the provisions of Regulation 1386/2002 in relation to Cohesion Fund expenditure. The circular sets out the mandatory procedures to be followed by the Intermediate Bodies and Implementing Bodies in relation to (i) processing and certification of claims for Cohesion Fund payments and (ii) institution of required financial control systems.
<b>P</b>	Pursuant to Regulation No 1164/94 of 16 May 1994, with the amendments introduced by Regulations Nos 1264/99 and 1265/99, both of 21 June 1999, Decree-Law No 17/02 of 29 January 2002 regulating the operation of the control of the Cohesion Fund as a component of the NCS of CSF III, was published.

**2. Texts contributing to the implementation of the Convention on the Protection of the Community's financial interests**

<b>2.1. State of ratification, in the Member State, of the Second Protocol to the Convention of 26 July 1995 on the protection of the Community's financial interests<sup>10</sup></b>	
<b>B</b>	12.03.2002
<b>DK</b>	2.10.2000
<b>D<sup>11</sup></b>	
<b>EL<sup>12</sup></b>	26.07.2000
<b>E</b>	20.01.2000
<b>F</b>	4.08.2000
<b>IRL</b>	3.06.2002
<b>I<sup>13</sup></b>	
<b>L</b>	
<b>NL</b>	28.03.2002
<b>A</b>	
<b>P<sup>14</sup></b>	15.01.2001
<b>FIN<sub>15</sub></b>	
<b>S<sup>16</sup></b>	12.03.2002
<b>UK</b>	11.10.1999

<b>2.2. New steps taken in 2002 to transpose the 1995 Convention and its protocols<sup>17</sup>. Aspects, or rules, still uncovered by national measures, possible difficulties to adopt them</b>	
<b>B<sup>18</sup></b>	
<b>DK<sub>19</sub></b>	

**2.2. New steps taken in 2002 to transpose the 1995 Convention and its protocols<sup>17</sup>. Aspects, or rules, still uncovered by national measures, possible difficulties to adopt them**

<b>D</b>	<p>On 30 August 2002 the Act implementing the Second Protocol of 19 June 1997 to the Convention on the protection of the European Community's financial interests, the joint action to combat corruption in the private sector of 22 December 1998 and the Framework Decision of 29 May 2000 on the application of criminal-law and other penalties to improve protection against counterfeiting in view of the introduction of the euro of 22 August 2002 (Federal Gazette 2002 I, p. 3387) came into force. With regard to the Second Protocol, the field of application of section 261 of the Criminal Code (money-laundering and concealment of unlawful earnings) regarding earnings deriving from bribery and corruption was extended to cover corruption of Community officials and office holders in EU Member States. Furthermore, the circle of persons covered by section 30 of the Administrative Offences Act (<i>Ordnungswidrigkeitengesetz</i> - fines imposed on legal persons and associations of persons), whose conduct may result in the imposition of a fine on legal persons was extended. It now generally covers actions by persons who are responsible for running companies. This includes supervision of the management or other top-level control functions. The extension of the field of application of section 30 makes it possible to include all legally liable partnerships. The maximum fine for deliberate criminal acts was also increased from €500 000 to €1 million.</p> <p>The <b>Act ratifying the Second Protocol</b> was signed and promulgated on 21 October 2002 (Federal Gazette, 2002 II, p. 2722). This "Act implementing the Second Protocol of 19 June 1997 to the Convention on the protection of the European Community's financial interests" extended the jurisdiction of the European Court of Justice and the right and duty of presentation of German courts that were officially the final instance to the field covered by the Second Protocol.</p>
<b>F</b>	<p>Decree No 2002-1499 of 18 December 2002 gives effect to the Convention based on Article K.3 of the Treaty on European Union concerning the protection of the Community's financial interests of 26 July 1995.</p>
<b>IRL</b> 20	
<b>I</b>	<p>In 2002 the Italian State did not adopt any new measures to transpose the 1995 Convention and its protocols.</p> <p>The Convention, the First Protocol and the Protocol concerning the interpretation of the Convention by way of preliminary rulings, were ratified by Law No 300 of 29 September 2000, which also amended the rules previously in force. By virtue of these acts, all the rules are covered by national measures with the sole exception of the rules of the protocol on the interpretation of the Convention by way of preliminary rulings: in line with those rules, Law No 300/00 authorises the Government to issue implementing rules, but this has not yet been done.</p> <p>The Second Protocol has not yet been ratified, but as mentioned in 2.1 above, its content is almost completely included in current legislation. The only aspect not covered is the responsibility of legal persons for the offence of money-laundering.</p>



**2.2. New steps taken in 2002 to transpose the 1995 Convention and its protocols<sup>17</sup>. Aspects, or rules, still uncovered by national measures, possible difficulties to adopt them**

<p><b>NL</b></p>	<p>The 1995 Convention and its respective protocols have been transposed, as and where necessary, into national legislation.</p> <p>Since 2001, the Penal Code has been supplemented in the following sections with new penalisations so as to ensure complete compliance with the obligations arising from the said Convention and its protocols:</p> <ul style="list-style-type: none"> <li>• Article 323a of the Penal Code now includes a separate penalisation relating to fraud in connection with an EU subsidy</li> <li>• The (Corruption) Articles 177, 177a and 362,363 and 364a of the Penal Code have been adapted in such a way that they can also include officials from other Member States of the European Community. Furthermore, in connection with the 1995 Convention and the first protocol thereto, the regulations regarding jurisdiction have been published.</li> <li>• With regard to the second protocol, it is important to note that since 1976 the Netherlands has had its own legislation on the penal liability of legal persons. It should also be noted that since 2001 the Netherlands has had independent penalties (not coupled to the crime of handling stolen goods) for crimes such as the laundering of proceeds from criminal activities.</li> <li>• In the Netherlands, one result of the protocol regulating the judicial powers of the Court of Justice is that judges now no longer refer cases to a higher instance where an interpretation of certain articles of the Treaties is required, but turn directly to the Court of Justice.</li> </ul>
<p><b>A<sup>21</sup></b></p>	<p>The only measure that has not yet been transposed is the <u>introduction of the liability of legal persons</u> which is provided for in the Second Protocol. Under Article 18(2), the Second Protocol allows Austria a period of five years from the adoption of the legal instrument to implement that obligation. <u>In order to introduce criminal liability for legal persons it is proposed to send a draft based on the international requirements (EU, Council of Europe, OECD, UN) for general examination in the first half of 2003 so that ratification of the Second Protocol might take place by the end of 2003.</u></p>

**2.2. New steps taken in 2002 to transpose the 1995 Convention and its protocols<sup>17</sup>. Aspects, or rules, still uncovered by national measures, possible difficulties to adopt them**

<p><b>P</b></p>	<p>Despite the Convention and the respective Protocols being directly applicable, the following legal instruments relating to this subject were approved:</p> <p><b>Act No 5/02 of 11 January 2002</b>, laying down a set of measures for the control of organised crime and economic/financial crime, which were reflected in the establishment of a special system for the collection of evidence, the violation of professional secrecy and loss of assets to the State in relation to unlawful acts of a specified type, such as corruption, money laundering, criminal association and smuggling if carried out in an organised way. It was specifically laid down that:</p> <ol style="list-style-type: none"> <li>1) the professional secrecy of the members of company bodies of credit institutions and finance companies and also that of tax administration officials must be set aside when it has been deemed by the judicial authority directing the proceedings that the information in question is of interest with a view to ascertaining the truth;</li> <li>2) in the event of a conviction for any one of the crimes referred to above, the difference between the value of the offender' assets and that which would be plausible with its legal interest is presumed to constitute an economic advantage</li> </ol> <p><b>Act No 10/02 of 11 February 2002</b>, which improved legal provisions intended to prevent and punish the laundering of money from criminal activities. The following are prominent:</p> <ol style="list-style-type: none"> <li>1) the laying down of the obligation, on the part of accountancy specialists, external auditors and conveyers of funds who assist in accounting or audits of undertakings, companies and clients and in the conveyance and keeping of assets, to notify the legal body with jurisdiction for transactions which, by virtue of the amounts involved, the frequency, the financial situation of the players or means of payment used, arouse suspicion that activities involving the laundering of money, other assets or products have been carried out;</li> <li>2) the laying down of the obligation, on the part of notaries, record-keepers or any bodies involved in the purchase or sale of property or commercial operations, transactions relating to funds, transferable securities or other assets, the opening or management of bank accounts, accounts for savings or transferable securities or the establishment, operation or management of undertakings, to notify the competent legal authorities of situations which, for the reasons adduced in 1), arouse suspicion that activities involving the laundering of money, other assets or products have been carried out;</li> <li>3) the compulsory nature of identification in connection with distance orders for an amount exceeding €12 469.95; the data has to be kept for a period of 10 years.</li> </ol>
<p><b>FIN</b></p>	<p>During 2002 Finland made progress in putting into effect the Second Protocol of the 1995 Convention.</p> <p>The Protocol was brought into effect nationally by the "Blanket Act", i.e. the Act (1191/2002) putting into effect provisions pertaining to the legislative sector of the Second Protocol relating to the Convention on the protection of the European Community's financial interests.</p> <p>It was proposed that the amendments required by the Protocol be implemented in the Bill revising the provisions on economic crime (HE 53/2002, vp). The proposals contained therein, insofar as these were required by the Protocol, were approved in November 2002. The related Act amending the Criminal Code was ratified on 31.1.2003 (61/2003). The Act will enter into force on 1.4.2003.</p> <p>As a result of the Protocol, the penal liability of a legal person has been extended to tax frauds against the Community's financial interests. In addition, attempted money laundering and conspiracy to carry out serious money laundering are made punishable. On 17.2.2003 Finland sent the Protocol's acceptance document for delivery to the Secretary General of the Council.</p>
<p><b>S<sup>22</sup></b></p>	

**2.2. New steps taken in 2002 to transpose the 1995 Convention and its protocols<sup>17</sup>. Aspects, or rules, still uncovered by national measures, possible difficulties to adopt them**

**UK**  
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### 3. Organisation of departments for the protection of the Community's financial interests

The following overview tables represent staff assigned to different types of controls in the respective sectors (own resources, agricultural expenditure, structural actions) during the reporting period, estimated in full-time equivalent.<sup>24</sup>

#### 3.1 Traditional own resources

The first table below represents staff assigned by Member States to each of the control functions (ex ante, ex post and anti-fraud) in the field of traditional own resources.

Having regard to possible differences between Member States as regards the interpretation of the definitions given in the questionnaire, the following results should be interpreted with caution.

**Table 3.1. Own resources : manpower assigned by each Member State to the three types of control<sup>25</sup>**

	(1) Ex ante	(2) = (1)/(7) %	(3) Ex post	(4) = (3)/(7) %	(5) Anti-fraud investigations <sup>26</sup>	(6) = (5)/(7) %	(7) = (1)+(3)+(5) Total (three types of control)	(8) Budget to be controlled (M. €) <sup>27</sup>	(9) = (8)/(7) Budget to be controlled per control agent (M. €)
<b>B</b>	801	<b>74,7 %</b>	155	14,4 %	116	<b>10,8 %</b>	1 072	<b>1 247,1</b>	<b>1,16</b>
<b>DK</b>	45	38,8 %	49	42,2 %	22 <sup>28</sup>	19 %	116	290,9	2,51
<b>D</b>	12 650 <sup>29</sup>	98,7 %	170 <sup>30</sup>	1,3 %	- <sup>31</sup>		12 820	3 148,7	0,25
<b>EL</b>	2 200 <sup>32</sup>	54,9 %	338 <sup>33</sup>	8,4 %	1 470 <sup>34</sup>	36,7 %	4 008	182	0,05
<b>E</b>	512	30,6 %	434	26 %	726	43,4 %	1 672	904,6	0,54
<b>F</b>	8 246 <sup>35</sup>	92,4 %	580	6,5 %	97 <sup>36</sup>	1,1 %	8 923	1 509,4	0,17
<b>IRL</b>	222	58,9 %	99	26,3 %	56	14,9 %	377	160,1	0,42
<b>I</b>	8 221	78,3 %	808	7,7 %	1 471	14 %	10 500 <sup>37</sup>	1 398,9	0,13
<b>L</b>									
<b>NL</b>							5 505 <sup>38</sup>	1 745,7	0,32
<b>A</b>	672 <sup>39</sup>	40 %	644 <sup>40</sup>	38,3 %	364 <sup>41</sup>	21,7 %	1 680	228,7	0,14
<b>P</b>	610	83,4 %	100	13,7 %	21 <sup>42</sup>	2,9 %	731	165,6	0,23
<b>FIN</b>	649 <sup>43</sup>	88,3 %	41	5,6 %	45 <sup>44</sup>	6,1 %	735	118,3	0,16
<b>S</b>	470	86,1 %	50	9,2 %	26 <sup>45</sup>	4,8 %	546	360,2	0,66
<b>UK</b>	850	47,7 %	919	51,6 %	13	0,7 %	1 782	3 109	1,74
<b>Total</b> <sup>46</sup>	36 148	80,4 %	4 387	9,8 %	4 427	8,8 %	50 467	14 589,2	0,29

### 3.2. Agricultural expenditure (expenditure financed by the EAGGF-Guarantee section)

The following table represents staff assigned by Member States to each of the control functions (ex ante, ex post and anti-fraud) in the field of agricultural expenditure.

Having regard to possible differences between Member States as regards the interpretation of the definitions given in the questionnaire, the following results should be interpreted with caution.

**Table 3.2. Agricultural expenditure : manpower assigned by each Member States to the three types of control<sup>47</sup>**

	(1) Ex ante	(2) = (1)/(7) %	(3) Ex post	(4) = (3)/(7) %	(5) Anti-fraud investigations <sup>48</sup>	(6) = (5)/(7) %	(7) = (1)+(3)+(5) Total (three types of control)	(8) Budget to be controlled (M. €) <sup>49</sup>	(9) = (8)/(7) Budget to be controlled (M. €)
<b>B</b>	773 <sup>50</sup>	75,8 %	184 <sup>51</sup>	18 %	63,5 <sup>52</sup>	6,2 %	1 021	937,9	0,92
<b>DK</b>	277	89,6 %	30			0,6 %	309	1 112	3,60
<b>D</b>	3 665 <sup>54</sup>	98,9 %	40 <sup>55</sup>	1,1 %	- <sup>56</sup>		3 705	5 861,7	1,58
<b>EL</b>	587 <sup>57</sup>	90 %	50 <sup>58</sup>	7,7 %	15 <sup>59</sup>	2,3 %	652 <sup>60</sup>	2 613,5	4,01
<b>E<sup>121</sup></b>	526	76,9 %	158	23,1 %			684 <sup>61</sup>	6 184,5	9,04
<b>F</b>	2 241 <sup>62</sup>	97,4 %	29 <sup>63</sup>	1,3 %	31 <sup>64</sup>	1,3 %	2 301	9 230,1	4,01
<b>IRL</b>	902 <sup>65</sup>	90,4 %	85 <sup>66</sup>	8,5 %	11 <sup>67</sup>	1,1 %	998	1 584,5	1,59
<b>I</b>	643	52,1 %	235	19 %	357	28,9 %	1 235 <sup>68</sup>	5 343,8	4,33
<b>L</b>									
<b>NL</b>	401	89,8 %	34	7,5 %	12	2,7 %	447 <sup>69</sup>	1 111,8	2,49

<sup>121</sup>

The data referred to for Spain are incomplete, for the following reasons :

- an important number of services has not submitted any information for this point ;
- whenever controls were effected by audit firms, the manpower involved in these controls has not been taken into account ;
- there is no information available on the number of staff affected to anti-fraud investigations

<b>A</b>	1 023 <sup>70</sup>	86,2 %	20 <sup>71</sup>	1,7 %	144 <sup>72</sup>	12,1 %	1 187	1 052,6	0,89
<b>P</b>	533	95,2 %	27	4,8 %	0		560	875	1,56
<b>FIN</b>	183	78,3 %	6	2,5 %	45 <sup>73</sup>	19,3 %	234 <sup>74</sup>	815	3,49
<b>S</b>	148 <sup>75</sup>	92,5 %	6 <sup>76</sup>	3,7 %	6 <sup>77</sup>	3,7 %	161	780,1	4,86
<b>UK</b>	2 396	87,2 %	314,25	11,4 %	38	1,4 %	2 748 <sup>78</sup>	3 998,8	1,46
<b>Total</b>	14 299	88 %	1 218	7,5 %	724	4,5 %	16 240	41 502,1	2,56

### 3.3. Structural measures

The following table represents staff assigned by Member States to each of the control functions (ex ante, ex post and anti-fraud) in the field of structural measures.

Having regard to possible differences between Member States as regards the interpretation of the definitions given in the questionnaire, the following results should be interpreted with caution.

*Table 3.3. Structural measures : manpower assigned by each Member State to the three types of control<sup>79</sup>*

	Ex-ante	% (7)/(1)	Ex post	% (7)/(1)	Anti-fraud investigations <sup>80</sup>	% (7)/(5)	Total manpower assigned to the three types of control	Budget to be controlled (M. €) <sup>81</sup>	Budget to be controlled per control agent (M. €)
<b>B</b>	143 <sup>82</sup>	86,3 %	23 <sup>83</sup>	13,7 %	- <sup>84</sup>		166	155,9	0,94
<b>DK</b>	54 <sup>85</sup>	48,9 %	44 <sup>86</sup>	39,8 %	13 <sup>87</sup>	11,3 %	111	40,9	0,37
<b>D</b>	1 879 <sup>88</sup>	79,8 %	475 <sup>89</sup>	20,2 %			2 354 <sup>90</sup>	3 635,6	1,54
<b>EL</b>	63 <sup>91</sup>	34,6 %	119 <sup>92</sup>	65,4 %			182 <sup>93</sup>	2 940,1	16,15
<b>E<sup>122</sup></b>	236	49,6 %	240	50,4 %			476 <sup>94</sup>	7 141,7	15,00
<b>F</b>									
<b>IRL</b>	480 <sup>95</sup>	56,4 %	360 <sup>96</sup>	42,3 %	11 <sup>97</sup>	1,3 %	851 <sup>98</sup>	624,9	0,73
<b>I</b>	575	64,8 %	140	15,8 %	173	19,5 %	888 <sup>99</sup>	2 707,2	3,05
<b>L</b>								4,6	
<b>NL<sup>100</sup></b>	46 <sup>101</sup>	51,5 %	42 <sup>102</sup>	46,9 %	2 <sup>103</sup>	1,7 %	89	225,8	2,53
<b>A</b>	366 <sup>104</sup>	95,9 %	16 <sup>105</sup>	4,1 %	- <sup>106</sup>		382 <sup>107</sup>	206,4	0,54
<b>P</b>	11 <sup>108</sup>	6,1 %	170	93,9 %	0		181	1 969,8	10,88
<b>FIN</b>	249 <sup>109</sup>	83,5 %	37 <sup>110</sup>	12,2 %	13 <sup>111</sup>	4,3 %	299	83,6	0,28
<b>S</b>	251	89	25	8,9 %	6 <sup>112</sup>	2,1 %	282	135,6	0,48
<b>UK</b>	248	48,6 %	200	39,3 %	62	12,2 %	510	1 091,4	2,14

<sup>122</sup>

The data referred to for Spain are incomplete, for the following reasons :

- an important number of services has not submitted any information for this point ;
- whenever controls were effected by audit firms, the manpower involved in these controls has not been taken into account ;
- there is no information available on the number of staff affected to anti-fraud investigations.

<b>Total</b>	4 600	68 %	1 890	27,9 %	279	4,1 %	6 769	20 958,9	3,10
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#### 4. Co-ordination between departments within the Member State

<b>4.1. Own resources :</b>	
<b>New arrangements adopted in 2002 for organising co-ordination between the different departments within the Member State<sup>113</sup></b>	
<b>B</b>	<p>The Protocol on cooperation on combating major fraud relating to mineral oils, concluded on 20 July 2000 between the Ministers for Finance and for Justice, provided for the creation of a support unit located at the National Directorate of Research for customs and excise in Brussels.</p> <p>A supplement to the initial Protocol was signed by the Ministers for Finance, Justice and the Interior, and by the Government Commissioner responsible for the simplification of procedures and for combating major tax fraud. That supplement, which officially associates the Directorate of the Criminal Police with the Protocol's coordinating structure, was approved by the administrative authorities concerned at the beginning of 2002.</p> <p>A member of the Federal Police was seconded to the support unit.</p>
	<p>The Council Decision of 6 December 2001 extending the mandate of Europol to the fight against the serious forms of international crime listed in the annex to the Europol Convention (Official Journal of the European Community, Series C, No 362 of 18 December 2001), entered into force on 1 January 2002.</p> <p>Although that decision did not as such give rise to any new administrative provisions, it still is not without influence on the part played, in the field considered, by customs officers liaising with the headquarters of Europol and the National Europol Union.</p> <p>Since the decision's adoption, Europol's mandate covers fields such as the falsification of administrative documents and illicit trading or deceits and frauds.</p>
<b>EL</b>	Creation of a committee for the purpose of creating a common information system at the Customs Directorate General to meet the needs of all inspection and investigation departments. The creation of such a system is considered to also address coordination issues.
<b>F</b>	All administrative checks and inquiries in the field in question are carried out by the French customs, requiring no coordination with other administrations, just internal coordination.
	Under the Order of 30 April 2002, the offices of the Directorate General for Customs and Indirect Levies (DGDDI) were reorganised. An office responsible for controls policy was set up to improve the way customs checks are coordinated and to make those checks more effective.
	The French customs drew up, on 27 November 2002, an internal set of instructions designed to optimise the processing, implementation and follow-up of cases of mutual assistance which OLAF distributes to the Member States on the strength of Regulation (EC) No 515/97 of 13 March 1997 concerning mutual assistance in customs and agricultural matters. The point is to lay down a general framework for intervention on the part of each and every customs official with a view to specifying at national, regional and local levels one of the main aspects of operational cooperation with OLAF. The DGDDI was nominated as the national authority for all correspondence with the other Member States and with OLAF under the above Regulation (EC) No 515/97.

	<p>A circular from the Ministry of Justice concerning criminal-law policy relating to Community fraud and dated 18 December 2002 urges investigating magistrates to contact the Judicial Customs Service wherever any suspicions arise concerning <b>receipts</b> or expenditure <b>under the Community budget</b>.</p> <p>In addition, Article 343a of the National Customs Code requires the judicial authority to bring to the attention of the customs services any information concerning violations in their sphere of competence, more especially violations relating to the protection of Community financial interests (<b>own resources</b> and EAGGF-Guarantee expenditure), whatever the type of instance.</p>
<b>IRL</b>	
<b>I</b>	<p>At the regional level:</p> <ul style="list-style-type: none"> <li>- The <b>Region of Tuscany</b> signed an agreement on 23 April 2002 with the Ministry of the Economy and Finance.</li> </ul> <p>In summary, the framework agreement provides that:</p> <p>The <b>Ministry of the Economy and Finance</b> undertakes the activities of:</p> <ol style="list-style-type: none"> <li>a. technical support in the phase of processing expenditure for the implementation of the relevant interventions on the basis of the needs expressed by the Region;</li> <li>b. participation in the checking activities at Level II for the completion of the tasks related to the closure of operations concerning regional plans 94/99 and 2000/06 of the Structural Funds in accordance with the methods laid down by Regulation (EC) No 438/01;</li> <li>c. participation in meetings promoted in the context of the region of Tuscany.</li> </ol> <p>The <b>Region</b> undertakes:</p> <ol style="list-style-type: none"> <li>a. to arrange for the extraction of the sample specified in Article 10 of Regulation (EC) No 438/01;</li> <li>b. to supply all data and elements useful for the proper completion of the checking operations;</li> <li>c. to liaise with the Provincial Department (Ministry of the Economy and Finance) for the completion of the checking activities, jointly preparing an annual work programme;</li> <li>d. to keep all acts and final documents concerning the checking activities of the Provincial Departments.</li> </ol> <ul style="list-style-type: none"> <li>- The <b>Region of Liguria</b> has set up an Office for the Coordination of Inspecting Functions, as part of the Department of Agriculture, charged <i>inter alia</i> with carrying out audits of finance granted on the authority of the Department.</li> </ul>
<b>A</b>	<p>On 1 July 2002 the tax and customs divisions in the Federal Ministry of Finance were merged into a single section.</p>
<b>P</b>	<p><b>Legislative measures:</b></p> <ul style="list-style-type: none"> <li>• <b>Decree-Law No 305/02</b> of 13 December 2002, which introduces amendments to the act on the organisation of criminal investigation, attributing exclusively to the Criminal Investigation Department the investigation of complex crime, particularly as regards tax crimes involving sums exceeding €500,000, when they assume special complexity, an organised form or a transnational nature.</li> <li>• <b>Act No 16-A/02</b> of 31 May 2002 and <b>Decree-Law No 262/02</b> of 25 November 2002 which abolished the AGT, or General Tax Administration, and moved the departments which had been under its aegis to the Directorate-General they had formerly belonged to. Hence the respective internal audit units were returned to the DGAIEC and the Directorate-General for Taxes (DGCI).</li> </ul>



	<p><b>Administrative measures:</b></p> <ul style="list-style-type: none"> <li>• Cooperation protocol concluded on 27 February 2002 between the DGAIEC, the Directorate-General for Taxes, the Inspectorate-General for Economic Activities and the Republican National Guard, covering the fight against fraud, tax evasion and financial crime, seeking to identify joint objectives at national and Community level, lay down the broad lines of intervention methodologies, periodically assess the action carried out and study and plan other forms of cooperation, particularly at training level;</li> <li>• Administrative cooperation protocol concluded on 15 March 2002 between the DGAIEC and the Directorate-General for Energy, affecting the petroleum sector and aiming at mutual accessibility to administrative documents and data relating to that sector;</li> <li>• Cooperation protocol concluded on 13 September 2002 between the DGAIEC and the REACT (European Anti-Counterfeiting Network), an organisation representative of various undertakings which are holders of intellectual property rights and registered trademarks with a view to obtaining information, by computerised means, on goods suspected of being counterfeit or pirated;</li> <li>• DGAIEC Circulars Nos 7/02 and 20/02 of 29 April and 18 November 2002 respectively, introducing internal procedures as regards the activity of the DGAIEC in the sphere of criminal investigation, laying down (in harmony with Circular No 7/02 of the Procuracy-General of the Republic), in particular the immediate notification to the Public Prosecution Service of a customs tax crime;</li> <li>• Establishment of a Financial Intelligence Unit (FIU) with a view to the exchange of information between the Criminal Investigation Department and the tax administration services (DGAIEC and Directorate-General for Taxes) in relation to the fight against fraud, and, in particular, money laundering.</li> </ul>
<b>S</b>	<p>The responsibilities mentioned below include horizontal measures that encourage coordination in the fields of own resources, agricultural expenditure and structural measures.</p> <p>As has already been mentioned, an EU Fraud Council had previously been set up in Sweden within the Economic Crime Authority, whose tasks include the encouragement of coordination between authorities that have a direct or indirect responsibility for protecting EU financial interests. The Council discusses relevant issues in order to minimise or, if possible, remove any obstacles to the effective protection of EU financial interests. In the course of the year, training has been run on the reporting of irregularities to OLAF. Specific training measures have also been implemented for personnel who work on investigating suspected crimes. It should also be mentioned that an annual report is being drafted on the way in which protection of EU financial interests functions in the country.</p> <p>During the year, the Economic Crime Authority has also worked on developing informal cooperation with other Member States in order to exchange experiences with regard to the protection of EU financial interests.</p>
<b>UK</b>	<p>UK Customs, as with all Member States, continues to operate under the Customs 2002 Programme that supports the concept of 15 working as 1. The Programme is a major forum for co-ordination and exchange of information and the promulgation of best practice on customs matters between Member States. 2002 also saw greater involvement of the Candidate Countries.</p> <p>The Customs 2002 Action Plan is divided into six work areas each of which is controlled by a Management Group made up of representatives from all Member States. Examples of work areas include a harmonised model for risk management and the trial of a 'risk information form', and seminars on counterfeit goods control.</p>

	<p>In order to enhance its relations with other MS, UK Customs continually reviews its overseas deployments. At present it has the following coverage:</p> <p>(1) Liaison officers covering the following MS: Austria, Belgium, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal and Spain.</p> <p>(2) In addition UK Customs has coverage in the following applicant countries: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia.</p>
	<p>The Administrative Agreement in place between UK Customs and the Rural Payments Agency (RPA) was substantially revised during 2002. However, those elements of the agreement that relate to CAP imports remain relatively unchanged. UK Customs perform most tasks related to own resources and agricultural charges. However, the RPA undertake certain work, including control of Import Tariff Quota work in respect of beef, and the management of all tariff quotas controlled by licences. UK Customs remain responsible for most anti-fraud measures.</p>

<b>4.2. Agricultural expenditure (expenditure financed by the EAGGF - Guarantee section):</b>	
<b>New arrangements adopted in 2002 for organising co-ordination between the different departments within the Member State<sup>114</sup></b>	
<b>B</b>	The re-organisation of co-ordination between the different departments as provided for under the regionalisation of the Ministry of Agriculture and Copernicus Reform was started in 2002 (paying agencies and control services). Results will be notified to OLAF during the first half of 2003.
	Agriculture: As a result of the latest institutional reform (special Law dated 13 July 2001) agricultural regionalisation became effective with effect from the 1 January 2002. As a result of the COPERNICUS reform on the orders of the Federal Government, the Belgian federal government services are now fully restructured thus strengthening the remaining powers of the federal government services for agriculture and the powers of the small businesses sector in 2002. The final transfer of personnel from the Ministry with responsibility for agriculture and small businesses to the regional and federal government services, which have inherited these as stipulated in the reforms, took place on the 1 October 2002. Since the 1 October 2002, therefore, the Ministry with responsibility for agriculture and small businesses has been fully relieved of these responsibilities.
	BIRB: The necessary protocols were completed well before 2002. With regard to the control powers assigned in 2002 to other bodies, the protocols that were completed previously will still be effective and the negotiations for adapted protocols are already at an advanced stage.
	Interdepartmental prevention cell: Ongoing compliance on the part of the control services with European control regulations by a strict follow-up of reporting and a striving for continuity with these services, taking account of the different reforms that have been carried out (Agency, Regionalisation, Copernicus); testing the actual application of existing instructions in sensitive sectors on the ground by means of preventive on the spot control missions; the establishment of a good level of coordination of EU control missions.
<b>DK</b>	The Directorate for Food Fisheries and Agro Business (the paying agency) has drawn up agreements with the agencies to which the Directorate has delegated the task of control. The agreements lay down the general guidelines for the tasks of the authorities in connection with the fulfilment of the requirements of Commission Regulation (EC) No 1663/95 with regard to the authorisation of payments, the execution of payments, accounting and control etc. The agreements are reviewed at least once a year. Regular meetings between the relevant departments ensure that the quality of the control cooperation is continuously assessed. With regard to discussions of general issues, meetings are held between the executive boards of the directorates at least once a year.
<b>D</b>	<ul style="list-style-type: none"> <li>– Centrally organised training courses for members of national audit bodies in cooperation with Austria</li> <li>– Introduction of an integrated information system to improve the exchange of information between the veterinary and the premiums administrations that also allows IT access to results of controls conducted by other authorities</li> </ul>
	Extension of access to the HIT data base to departments not involved in agricultural administration (e.g. HH-Jonas main customs office with regard to export refunds)

	<ul style="list-style-type: none"> <li>– As a new measure in connection with the supervision of agricultural expenditure, in 2002 supervision of compliance with the minimum control requirements under Regulation (EEC) No 386/90 was made a matter for the Regional Finance Directorates responsible for the customs offices of departure. Until 2002, these had been tasks for the central anti-fraud department at the Hamburg-Jonas main customs office.</li> <li>– Centralising these tasks makes it possible to obtain more accurate statistics and make supervisory procedures more efficient. Optimising the control procedure improves the possibilities of taking action to counter fraud.</li> </ul>
<b>F</b>	<p>As regards the customs service, an order of 30 April 2002 reorganised the offices of the Directorate General for Customs and Indirect Levies (DGDDI). An office responsible for controls policy was set up to improve the way customs checks are coordinated, particularly in the area of the Common Agricultural Policy, and to make those checks more effective. This new service is responsible for the scheduling of EAGGF checks carried out by the customs service, as well as for follow-up, analysis of regulatory risk, and liaising with Community control procedures.</p> <p>In addition, instructions were issued, as they are every year, under the cooperation agreement between the DGDDI and the DGCCRF (fraud enforcement service) In 2002, these instructions dealt with legal points aimed at improving the communication of information and documents between the staff of the two Directorates-General.</p> <p>As regards matters within the field of activity of the customs service, it should be stressed that Article 343(a) of the National Customs Code requires the judicial authority to bring to the attention of the customs services any information concerning violations in their sphere of competence, whatever the type of instance.</p>
	<p>The French customs drew up an internal set of instructions, distributed on 27 November 2002, designed to optimise the processing, implementation and follow-up of cases of mutual assistance which OLAF distributes to the Member States on the strength of Regulation (EC) No 515/97 of 13 March 1997 concerning mutual assistance in customs and agricultural matters. These cases of mutual assistance may relate to suspicions of fraud concerning EAGGF-Guarantee expenditure. The point is to lay down a general framework for intervention on the part of each and every customs official with a view to specifying at national, regional and local levels one of the main aspects of operational cooperation with OLAF.</p>
	<p><b>Fishery products sector (internal aid):</b></p> <p>A protocol was signed between the customs service administration and the competent paying agency (OFIMER), to lay down the practical arrangements for checks relating to the award of compensatory payments for tuna for processing.</p>
	<p><b>Export refunds sector</b></p> <p>The Technical Export Commissions (CTE) were set up in 2002. Each quarter, they bring together the relevant paying agencies and the administrations concerned (i.e. customs, Ministry of Agriculture and the fraud enforcement service). The aim of these bodies is to facilitate the putting in place of Community rules and regulations in this sector and to improve the checking facilities.</p> <p>Also in this area, in the cereals sector, working parties were organised in 2002 to examine the rules and regulations pertaining to the prefinancing of export refunds (authorised mixtures) and to lay down those on the maximum tolerated error (MTE) in weighing. Collaboration on the MTE issue resulted in a written instruction to services in July 2002.</p> <p>Finally, a working party on the "dematerialisation" of export certificates was set up in 2002. An agreement of principle on setting up an Internet server hosted by the competent paying agency in the milk sector, ONILAIT, was drawn up. The idea here is to enable the customs services to have access in real time to agricultural documents with a view to facilitating checks. The intention is also to enhance the way information is circulated between the customs services and all the agricultural offices.</p>

	<p><b>Cereals sector:</b> The protocol between the French paying agencies responsible for the cereals sector (ONIC and ONIOL) and the French customs was updated on 19 April 2002 with a view to incorporating legislative changes into the organisation of checks at the stages of import and export, the prefinancing scheme and the cereals intervention regime, and the new procedures for the exchange of information between the signatories. The same updating procedure is under way in the other paying agencies.</p>
	<p><b>Wine sector</b> In the wine sector, a convention on CMO market measures was signed in 2002. This convention set out the respective roles of ONIVINS and customs service officials in the carrying out of checks on market measures in relation to this CMO.</p>
	<p><b>Rural development sector</b> In the rural development sector, a permanent inspection team for on-the-spot checks has been set up within the paying agency. This team works in liaison with and under the responsibility of the Ministry of Agriculture's decentralised departments. Moreover, a coordination unit has been put in place to improve the consistency of checks carried out by the paying agency. In this area also, a methodological guide for inspectors carrying out on-the-spot checks has been drawn up and a computer tool ("RDR checks") has been developed.</p>
	<p><b>Multi-sector measures</b> Work also began in the last quarter of 2002, under the aegis of the interministerial coordinating committee on controls, on defining the procedure to be followed once an irregularity has been formally registered. The purpose of this work is essentially to take into account the recommendations of the 19th meeting of COCOLAF on 11 April 2002 on the concept of economic operator, to lay down provisions on the specific arrangements for information from OLAF where a serious irregularity is detected which may involve risks for other Member States or have cross-border implications and, finally, to ensure closer cooperation between paying agencies as regards the issuing of forms notifying irregularities. This work was finalised at the beginning of 2003 and a procedural note was sent to all the national departments concerned by the application of Regulation (CEE) n° 595/91.  As regards coordination measures in the area of post-clearance checks (controls scheduled under Regulation (EEC) n° 4045/89 or anti-fraud investigations), the measures outlined in the 2001 answer to the questionnaire continue to apply.</p>
<b>IRL</b> 115	
<b>I</b>	<p>In 2002 the <b>Customs Agency</b> initiated collaboration with the IT Office of the General Command of the Guardia di Finanza for the exchange of information concerning refund payments made: every two months the Autonomous Service for Interventions in the Agricultural Sector (SAISA) of the Customs Agency supplies the said Command with a report giving the data relating to payments made to the community agencies in the past two months.</p>
	<p>For the <b>Region of Veneto</b>, AVEPA (Veneto Agency for Payments in Agriculture) was set up, and this operates in collaboration with the Region of Veneto and with the 19 Mountain Community of Veneto, and is responsible for authorising payments related to all the RDP measures mentioned in Regulation (EC) No 1257/99.</p>

	<p>The <b>Region of Valle d’Aosta</b>, within the scope of the directive on “farming and livestock development policies”, has set up an operative structure known as the “farming system” whose purpose is to coordinate the administrative and IT procedures required for the implementation of the rural development plan (RDP), to create an integrated and simplified system for the management of regional farming. This is organising better coordination between the various offices of the council responsible for the management of the RDP measures, among them the “System” itself. To that end, the computerisation of all the administrative procedures is in progress and an integrated IT system is being created, which will allow networked cross-checking of business data and of the state of advancement of the practices, by all offices managing the RDP measures. For that purpose new technologies are being prepared or are already in use, such as computerised mapping tools and datawarehouse systems. The correlated administrative measures are decisions and/or management measures mainly concerning the assignment of technical consultancy and procurement directed towards the creation of the integrated system.</p>
	<p>The <b>Region of Liguria</b> has set up an Office for the Coordination of Inspection Functions, as part of the Department of Agriculture, responsible <i>inter alia</i> for auditing the financial grants made on the Department’s authority.</p>
<b>A</b>	<ul style="list-style-type: none"> <li>– Transfer of the responsibilities of the Rural Development Payment Office in the BMLFUW to Agrarmarkt Austria on 16 October 2002, (Presidential notification of the BMLFUW No 32/2002); at the same time</li> <li>– Coordination of the inspection services for livestock and area premiums with the inspection services for all rural development measures.</li> <li>– Thus, there are now only two payment offices in Austria:</li> <li>– Agrarmarkt Austria, Dresdnerstrasse 70, 1210 Vienna</li> <li>– Salzburg Customs Office/Refunds, Walserberg 25, 5071 Wals</li> </ul>
	<p>Cooperation between the customs administration, tax administration and police services. Affected legal bases: § 246 StGB (deception), § 33 FinStrG (tax evasion) in conjunction with § 7 AEG, judicial investigations for customs and taxes under § 197 FinStrG.</p> <p>Setting-up of a special commission consisting of members of the customs administration (3 financial crime authorities, field and internal audit services of Vienna Principal Customs Office) in respect of export refund fraud, the tax administration in respect of turnover tax fraud (tax investigation, audits of large-scale undertakings) and the executive (Lower Austria Criminal Investigation Department) in respect of deception/fraud under the StGB, setting-up of interfaces between these organisational units, central information flow via the Federal Ministry of Finance, Anti-Fraud Division.</p> <p>Purpose of the special commission: many offences have been committed whose punishment falls within different spheres of competence. However, the different organisational units must work together. The special commission is not a separate organisational unit; its purpose is to facilitate information exchange. In regular meetings the state of each investigation and the action to be taken by the investigators are discussed. (Also mutual assistance, provision of information material).</p>

<b>P</b>	<p>The end of 2002 (beginning of the EAGGF 2003 financial year) was marked by a political decision of extreme importance, via the publication of Decree-Law No 250/02 of 21 November 2002, in relation to the management and control of aids to Portugal's farmers - the establishment of a single Management Board for the INGA and the Institute for the Financing and Support of Development in Agriculture and Fisheries (IFADAP).</p> <p>The establishment of a single Management Board for the two paying agencies, whose chief mandate is the phased integration of the two institutes into a single body, seeks to provide better conditions to allow a more rational and strict management of the resources currently assigned to the two bodies.</p> <p>By means of this merger, which will have to be concluded on 22 November 2004 on account of the said instrument, it is intended to make the emerging body more efficient in applying Community regulations, implementing better articulated and more effective control measures, with the objective of fulfilling, on a unified basis, the institutional mission shared by the two bodies in the sphere of the EAGGF - Guarantee Section, thereby protecting the financial interests of the Community more efficiently.</p> <p>Reference may also be made to the Administrative Cooperation Protocol concluded on 7 March 2002 between the DGAIEC and the Vine and Wine Institute (IVV), affecting the wine-growing sector and aiming at uniformity of documentation, the exchange of information and the planning and implementation of joint controls.</p>
<b>FIN</b>	<p>The agreement between the Ministry of Agriculture and Forestry and the Ministry of Finance on the transfer of certain tasks to the National Board of Customs was updated. At the same time, points of the agreement relating to directions and reporting were rendered more specific (11.7.2002 2267/571/2002).</p>
<b>S</b>	<p>The Economic Crime Authority runs regular training of relevant personnel within administrative authorities that deal with cases involving EU funds on the subject of the formulation of crime reports etc.</p> <p>See also 4.1</p>
<b>UK</b>	<p>The Forestry Commission and the Agriculture Departments exchange information to meet the requirements of the Rural Development Regulation. The protocols are kept under review and strengthened whenever possible.</p>
	<p>2002 was the first full year of operation of the Rural Payments Agency (RPA) and the Inspectorate. These arose from the merger of the DEFRA (Department for the Environment, Food and Rural Development) regional structure and the Intervention Board on 16/10/01 and the amalgamation of the DEFRA field inspection staff and the Intervention Board verification staff. Assistance and cooperation in respect of Regulatory and other obligations between the RPA and the other Departments including HM Customs &amp; Excise remains good.</p> <p>Under Reg. (EEC) No. 3508/92, the RPA exchanges information each year with other UK paying agencies on cross-border holdings (farms with subsidiary land in other parts of the UK). This control ensures that direct aids are paid correctly without duplication of entitlement. It also maintains accurate databases of land recorded under IACS. Information on the performance of IACS controls is shared between the UK paying agencies via the harmonisation functions of the UK co-ordinating Body, responsible as the intermediary for reporting of EAGGF accounting and controls on behalf of the paying agencies.</p>

<b>4.3. Structural actions:</b>	
<b>New arrangements adopted in 2002 for organising co-ordination between the different departments within the Member State<sup>116</sup></b>	
<b>B</b>	These agricultural structural measures have been adopted in the countryside development regulation, financed by EAGGF-Guarantee
<b>DK</b>	<p>FIFG</p> <p>The Directorate for Food Fisheries and Agro Business (the paying agency) has drawn up an agreement with the Directorate for Fisheries to which the Directorate has delegated the task of control. The agreement lays down the general guidelines for the tasks of the authorities with regard to the authorisation of payments, the execution of payments, accounting and control etc. The agreement is reviewed at least once a year. Regular meetings between the relevant departments ensure that the quality of the control cooperation is continuously assessed. With regard to discussions of general issues, meetings are held between the executive boards of the directorates at least once a year.</p>
<b>D</b>	A working party consisting of staff from national ministries and the Länder has been set up to improve coordination of fundamental questions of financial control that affects all EU funds.
	<p>The existing national-regional Budgetary Law and Systems Committee has examined the impact of EU requirements on national funding legislation and produced the following documents:</p> <ul style="list-style-type: none"> <li>-Guidelines for taking account of EU requirements when implementing national funding legislation of 25 April 2002 and</li> <li>-Guidelines on exemptions from the notification requirement (incl. <i>de minimis</i>) of 25 April 2002.</li> </ul> <p>The Guidelines for taking account of EU requirements when implementing national funding legislation examine overlaps between EU Structural funds provisions and national funding legislation. The Guidelines are not final and do not release the administration from the obligation to check whether there are any other overlaps. The Guidelines on exemptions from the notification requirement concern assistance granted for the most part under national provisions, in the form, for example, of soft loans, exemption from taxes or levies, or coverage of losses.</p>
	Extension of the centrally organised training programmes to allow access to staff of independent bodies.
	Update of the description of the administrative and control systems with regard to paying out funds in a Land.
	Partial solution of the question of cooperation between internal auditing and the independent body, particularly with regard to irregularities.
<b>EL</b>	The Paying Authority in conjunction with the FCC and the CSF Managing Authority prepared common audit questionnaires for controlling actions taken by the Final Beneficiary and the management systems of the Special Management Services, which shall be uniformly applied by the audit Operation of a "Support Office" for matters relating to the utilisation of information originating from the IIS (Integrated Information System). All auditing agencies involved have access to the IIS and utilise available data according to their needs, depending on the audit level.
	Operation of a "Support Office" for matters relating to the utilisation of information originating from the IIS (Integrated Information System). All auditing agencies involved have access to the IIS and utilise available data according to their needs.



<b>E</b>	Ministry of Finance - Decision of 1 March 2002 of the Directorate-General for Community funds and territorial financing concerning certain aspects of the management of the Objective 1 Community Support Framework and the Objective 2 Single Programming Documents: - Instructions from the managing authority to the implementing agencies and intermediary bodies concerning the presentation of the certificates of expenditure incurred and the annual implementation reports
<b>F</b>	Various instruments were adopted in 2002 relating to the controls of actions co-financed by the European Structural Funds: Decree No 2002-633 of 26 April 2002, Article 60 of the Amending Finance Act for 2002 and a circular from the Prime Minister dated 15 July 2002 (see point 1.3a) above). These instruments conferred upon the CICC for Structural Funds the responsibility for coordinating controls of operations co-financed by the Structural Funds
<b>IRL</b>	EAGGF Guidance: Internal Audit Unit IAU assisted in presentation to staff both administrative and technical on audit and control requirements of Regulation 438/01  On Farm Investment Relocation of Administrative service from Cavan to Wexford. Both Administrative and Technical Divisions are now located together in Wexford, with consequent improvements in co-ordination and planning. (Same Division manage both national and co-funded expenditure)
	ESF The operational separation between the ESF Paying Authority and the EHRD-OP Managing Authority and the EQUAL-CI Managing Authority, who all reside in the Department of Enterprise, Trade and Employment, was further clarified in relation to the expenditure certification process. This clarification included the formal delegation of responsibilities under Section 9 of the Public Service Management Act from the Secretary General (and Accounting Officer) of the Department of Enterprise, Trade and Employment to the relevant officials of the EHRD-OP and EQUAL-CI Managing Authorities in respect of financial management and control of the ESF certification process.
<b>I</b>	<b>The Department for the Community Policies of the Presidency of the Council of Ministers:</b>  - with its Note No 7800 of 8 July 2002, distributed to all interested parties the final text of working paper COCOLAF/11 April 2002/2 <sup>nd</sup> edition concerning the obligation to notify irregularities in accordance with Regulation No 1681/94, drawing attention to its content. Subsequent clarifications have also been provided on the completion of some points of the OLAF form provided for the above information;  - with the General Command of the Guardia di Finanza, it has undertaken appropriate initiatives to simplify and improve the communications envisaged by Regulation (EEC) No 1681/94. Most important among the recommendations of all the territorial Departments of the Inland Revenue is the Special Unit for the Prevention of Community Frauds, which must take responsibility for forwarding the forms to the party and/or body involved in the action of recovery and to the Department for Community Policies.

	<p>Since 2001 the <b>General Command of the Guardia di Finanza</b> has begun initiatives in association with the Regions with a view to implementing systematic and regular exchanges of information on beneficiaries of financing from the structural funds subject to control. This initiative, which is nearing completion at the national level, was developed further in 2002 by improving redefinition of the procedures governing the flow of data and information in concert with the Conference of Presidents of Regions and Autonomous Provinces. In summary, the framework Convention provides that:</p> <p>The <b>Regions</b> undertake to supply:</p> <ol style="list-style-type: none"> <li>a) the databank of beneficiaries of Community co-finance and the related reference regulations for the programming period 2000-2006;</li> <li>b) periodic updates and any amendments of the databank of beneficiaries of Community co-finance relating to the programming period 2000-2006.</li> </ol> <p>The <b>Guardia di Finanza</b>, for its part:</p> <ol style="list-style-type: none"> <li>a) will note instances coming under the criminal law for the purposes of this protocol, and undertakes – with the approval of the Judicial Authority – to notify to the Regions the particulars of the natural and legal persons involved, so that the procedures for recovering funds wrongly paid may begin;</li> <li>b) will ascertain infringements of an administrative nature, undertaking to notify them to the Regions and indicate the provisions infringed, the nature and amount of the expenditure, the time or period when the irregularity took place, the manner in which the infringement was committed, the possibilities for recovery, the date when the infringement was detected, and the identity of the natural and legal persons involved.</li> </ol> <p>Besides the procedures carried out by the regional Administration within the scope of its own competences, the operative association with the Guardia di Finanza introduces other checking and guarantee elements on the detection – especially for aid systems – of any improper funding and its consequent recovery.</p>
	<p>In the <b>Fisheries sector (FIG financing)</b>, by way of implementing the provisions of the protocol of the agreement between the State and the Regions on the implementation of Regulation No 438/01 (No 260/64 of 8 May 2002), a Decree of the Ministry of Farming and Forestry Policies – General Directorate of Fisheries and Aquaculture established a permanent technical committee comprising representatives from the Ministry itself and the Regions outside Objective 1.</p> <p>At the regional level, the <b>Region of Veneto</b>:</p> <ul style="list-style-type: none"> <li>- adopted, for the ESF, DGR No 1804 of 6 July 2001 “Ob. 3 ROP Veneto 2000/2006, Commission Regulation (EC) No 438/01. Organisational provisions”;</li> <li>- with DGR No 2845 of 4 October 2002, formalised the coordination of the regional Departments and Offices responsible for second-level audits within the meaning of Regulation 438/01; this measure established the planning Unit for Inspection Activities and corporate Participations which, in relation to the Structural Funds, has the following responsibilities: <ul style="list-style-type: none"> <li>• to undertake coordination within the regional administration of the Offices entrusted with the second-level audits, and the related IT system;</li> <li>• to develop specific and specialised training and information courses for the personnel to whom auditing activities are entrusted;</li> </ul> </li> </ul> <p>to develop relations relevant to the second-level audits with the aforesaid Departments and Offices at national and Community level.</p>

<b>NL</b>	In the Netherlands system, each member of the government is responsible for his/her own particular corner. These responsible members of government are also the key figures for contact with the European Commission, including OLAF. OLAF has asked the Netherlands to improve central coordination in this system. The Netherlands is of the view that responsibilities must lie where knowledge and expertise are at their greatest <sup>15</sup> . In the Netherlands system, the ministers concerned are individually liable. Every member of the government is required to deal with notifications of irregularities that are confirmed in his or her particular area. However, central coordination could be further improved by discussions led by the Minister of Finance on the notifications reported by the individual members of government. The contact persons from the departments concerned have together discussed this matter.
<b>P</b>	As provided for in the legislation applicable to CSF III, a start was made in 2002 with the <i>de facto</i> coordination exercise between the bodies of the National Control System of the Structural Funds, including the Cohesion Fund (paying agencies, 2 <sup>nd</sup> level control coordination bodies and the IGF), on the subject of planning and following-up the implementation of work measures, methodologies and instruments, the monitoring of questions detected in national or Community initiative audits, training schemes, the analysis of cases of irregularities requiring notification to the OLAF and forms of access to information relating to controls conducted by the bodies of the NCS. We would draw attention to the work carried out with the objective of managing debtors.
	The information concerning the IGF's audits and audits by other NCS bodies, including the financial consequences, are recorded in a database of controls (SIGIFE), constructed by the IGF and made available to bodies with control functions via a page on the IGF website which also includes the user's guide. Data is entered by the actual bodies responsible for implementing controls; they are exported every quarter to the respective 2 <sup>nd</sup> level control coordinators, who subsequently send them to the IGF. The results of the EC audits or of the ECA audits are inserted by the IGF.
	In 2002, protocols were concluded between the Institute for the Management of the European Social Fund (IGFSE) and the Inspectorate-General of the Ministry for Social Security and Labour, to be implemented only in 2003. These protocols, established under Article 3 of Order in Council No 684/01, regulate intervention from that Inspectorate-General, which will conduct 2 <sup>nd</sup> level controls under the Employment, Training and Social Development Programme.
	Under the joint terms of Article 36 of Decree-Law No 54-A/00 of 7 April 2000 and Article 6 of Implementing Decree No 12-A/00 of 15 September 2000, programme contracts were concluded by the management authorities of the Regional Programmes with the Employment and Vocational Training Institute (IEFP) which associate this Institute with the technical, administrative and financial management of specified measures.
	Founded on legal provisions, the Inspectorate-General and Audit Office for Management (IGA), as the body coordinating 2 <sup>nd</sup> level control of the EAGGF-Guidance Section and the FIFG, joined forces with the bodies of the NCS; noteworthy in 2002 were the drawing up and dissemination of control instruments for use by the 1 <sup>st</sup> and 2 <sup>nd</sup> control levels (in particular, control manuals, sample selection criteria and risk analysis) and the exchange of information on the control effort implemented in connection with those Funds, with a view to ensuring the checks complement each other.
<b>FIN</b>	Cooperation between the EEDCs and the other authorities has been tightened in the areas of exchange of information, control and training, and in order to prevent abuses in advance and to bring any cases of presumed violations to pretrial investigation. EU project groups operate within the EEDCs, dealing with questions of cooperation relating to projects which are part-funded by the EU. Other authorities are also involved in these groups. The various sources of funding have carried out joint inspection missions to those recipients of aid who administer projects financed by them. In addition, various bodies of directions have been issued.

<p><b>S</b></p>	<p>Administrative procedures for Interreg IIIA Öresund region have taken shape through an agreement between the National Board for Industrial and Technical Development, as the paying authority, and Hovedstadens Udviklingsråd (HUR), as the managing authority. Under the agreement, each Member State is responsible, in accordance with the EC regulations, for ensuring that irregularities do not occur and, in the event that irregularities do take place, for reporting them to the Commission. Sweden and Denmark are responsible for reporting the irregularities that have arisen in projects with Swedish or Danish aid recipients.</p> <p>In addition, agreements have also been established between the National Board for Industrial and Technical Development and the programme secretariat.</p> <p>The Economic Crime Authority runs regular training of relevant personnel within administrative authorities that deal with cases involving EU funds on the subject of the formulation of crime reports etc.</p> <p>See also 4.1</p>
<p><b>UK</b></p>	<p><b>Department for Work and Pensions (DWP):</b> Following the transfer of responsibility for ESF from the Department for Education and Skills to DWP in 2001 close policy links have been maintained between the Departments to ensure coherence of objectives in reducing fraud. Complete integrity of all ESF audit functions was maintained throughout the process. Responsibility for independent audit functions and fraud investigation was formally transferred to DWP in April 2002.</p>
	<p><b>Department of Trade and Industry (DTI):</b> The United Kingdom has a co-ordinated reporting system whereby all the Managing Authorities in the UK, including Gibraltar and Northern Ireland; report identified irregularities to the DTI who forward them to OLAF. DTI maintains a list of all reported cases, and the follow-up reports under Article 5, which is updated each quarter and circulated to the OGDs/DAs in the UK. DTI has offered guidance and advice on the treatment of irregularities in the light of the closure of the 1994-99 programmes.</p>
	<p><b>Office of the Deputy Prime Minister (ODPM):</b> The Office of the Deputy Prime Minister took over responsibility for administration of ERDF from the former Department for Transport, Local Government and the Regions. In 2002 ODPM acted as the co-ordinating department for closure of 1994-99 programmes – organising a series of regular meetings at which all departments and Government Offices responsible were present. The meetings reviewed progress and shared experience in tackling problems encountered in the closure procedures. Note that concentration on this important task meant that ODPM was unable to consider the introduction of other novel measures in the area of ERDF administration.</p>
	<p><b>Scottish Executive</b> On-line access to the integrated database, for the management of ERDF and ESF in Scotland was made available to everyone involved in the management of these Funds.  The Scottish Executive’s contingency plan for dealing with fraud against ERDF and ESF was reviewed and updated.</p>

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<sup>1</sup> The extensive range of existing customs legislation and administrative measures operated by the Irish Customs Service (part of the Office of the Revenue Commissioners) constitute a comprehensive basis to counter fraud and other illegal activities in the field of traditional own resources. Substantial penalties apply to smuggling offences; smuggled goods may be seized and are liable to forfeiture. Details of these powers have already been forwarded to OLAF (then UCLAF) in response to a previous questionnaire on this issue. Specific new developments are set out in the body of the table.

<sup>2</sup> The Austrian authorities specify that the following authorities have contributed to the replies to the questionnaire: traditional own resources : BMF (Federal Ministry of Finance) ; EAGGF-Guarantee, EAGGF-Orientation, FIG: BMLFUW (Federal Ministry of Agriculture, Fisheries, Environment and water management) ; ESF: BMWA (Federal Ministry of Economics and Employment) ; ERDF: BKA (Federal Chancellery).

<sup>3</sup> During the reference period, Sweden has not adopted any new laws or provisions, nor regulations concerning own resources. During previous years, it brought important modifications to legislative, regulatory and administrative provisions implementing Article 280 of the EC Treaty .

<sup>4</sup> General measures : The United Kingdom points out that UK Customs have in place legislation and a number of systems that counter fraud and other illegal activities. Generally, the legislation, regulations and administrative measures in place are satisfactory

<sup>5</sup> Including measures aimed at applying the Integrated Administration and Control System (Regulation (EC) n°3508/92).

<sup>6</sup> The Swedish authorities indicate that Sweden has not adopted any new laws, regulations or administrative provisions relating to the Guarantee Section of the EAGGF during the period in question. In previous years Sweden has implemented comprehensive legislative, regulatory and administrative developments that have contributed to the implementation of Article 280 of the Treaty.

<sup>7</sup> The Finnish authorities have submitted the list of 29 Decrees.

<sup>8</sup> On 1 January 2002 the new IACS Regulation (EC) No 2419/2001 was introduced, which inter alia governs controls and sanctions for agricultural aid. That regulation replaced Regulation (EC) No 3887/1992. As far as area compensation and livestock aid is concerned, there have been no developments in the system of rules in question. No such developments affect the system of milk quotas either. During the period in question, Sweden has not implemented any ensuing legislative, regulatory or administrative developments.

<sup>9</sup> The United Kingdom points out that there have been no significant legislative, regulatory or administrative developments in the area of the FIG. The Fisheries and Aquaculture Structures (Grants) (England) Regulations 2001 and equivalent legislation for Scotland, Wales and Northern Ireland remain in force.

<sup>10</sup> Second Protocol, drawn up on the basis of Article K.3 of the treaty on European Union, to the Convention on the protection of the European Community's financial interests - Joint Declaration on Article 13 (2) - Commission Declaration on Article 7 - Official Journal C 221, 19/07/1997.

<sup>11</sup> Completed on 5.03.2003.

<sup>12</sup> The Greek authorities specify that the Convention on the protection of the Community's financial interests, together with its protocols, has been ratified by Law 2803/2000 (Gov. Gazette 48/03-03-00).

<sup>13</sup> The procedures for ratifying the Second Protocol have not yet been initiated in the Italian legal system. It should be pointed out, however, that the contents of the protocol are in large measure implemented by the laws already in force.

As regards Article 2 of the Protocol, since 1978 the Italian penal code (P.C.) covers the offence of money-laundering (Articles 648-bis and 648-ter P.C.).

As regards the responsibility of legal persons, Legislative Decree No 231 of 2001 introduced the responsibility of legal persons for offences committed by their agents; the instances of crimes also include offences of fraud (640, co. 2, 640-bis P.C.) and corruption (Articles 318, 319, 319-ter, 320, 321, 322, 322-bis P.C.), for which Article 3 of the Second Protocol requires the Member States to hold legal persons responsible. Legal persons are held responsible both when the offences have been committed directly by agents of the organisation in senior positions, and when they have been committed by persons subject to the direction and supervision of those agents.

The penalties for legal persons conform to the standard indicated in Article 4 of the Second Protocol.

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In line with Article 5 of the Second Protocol, confiscation of the proceeds of offences of fraud, money-laundering and corruption committed by physical persons was already provided for by Article 240 P.C., and, for administrative infringements dependent on offences for which responsibility of legal persons is recognised, it was introduced by Article 19 of Legislative Decree No 231/01.

<sup>14</sup> The Portuguese authorities indicate that, as was already stated in the 2001 report, the ratification process was concluded by Portugal.

Thus the second Convention Protocol of 26 July 1995 on the Protection of the European Community's financial interests was approved (jointly with the Convention and the other two Protocols) by Resolution No 86/00 of the Assembly of the Republic and ratified by Decree No 82/00 of the President of the Republic, both published in the Journal of the Republic, Series I, A, No 288, of 15 December 2000.

Portugal notified the General Secretariat of the Council of the European Union on 15 January 2001 of the conclusion of the ratification process.

<sup>15</sup> Completed on 26.02.2003. Åland : Åland's Lagting has adopted the Law on approval of certain provisions of the Convention on the protection of the European Community's financial interests, with the result that it enters into force in the province of Åland in respect of the parts of the Convention that fall within the competence of the province. This happened on 19 January 2001. As regards ratification of the Second Protocol, this applies to Finland, and not specifically to Åland. Account was taken of the protection of financial interests in the abovementioned report containing proposals for new provincial legislation concerning *inter alia* rural development. Åland's legislation concerning fisheries also includes provisions that are intended to safeguard Community and national financial interests.

<sup>16</sup> General remarks : Sweden has ratified and transposed into national law both the Convention of 26 July 1995 on the protection of the European Community's financial interests and its supplementary protocols.

Specific comments on individual instruments:

#### I. Fraud Convention (26 July 1995)

The Convention has been transposed into Swedish law and the necessary legislation entered into force on 1 July 1999 (Bill 1998/99:32, Report 1998/99:JuU16, Parliament Communication 1998/99:167).

In order for Sweden to be able to satisfy fully the requirements laid down in the Convention, certain legislative amendments have been made. A new crime, subsidy misuse, was introduced into the Criminal Code. The new crime means that the use of an EU subsidy for a purpose other than that for which it was granted is a punishable offence. In addition, the criminalisation of corruption of foreign ministers, members of parliament and holders of public office was extended. Furthermore, liability for bribery was extended to situations where benefits accrue to someone other than the person whose performance of duties may be affected by the bribery; there were also certain adjustments to the rules on the impeding effect of foreign criminal court judgments.

#### II. First Protocol (27 September 1996)

The Convention has been transposed into Swedish law and the necessary legislation entered into force on 1 July 1999 (Bill 1998/99:32, Report 1998/99:JuU16, Parliament Communication 1998/99:167).

#### III. Second Protocol (19 June 1997)

The Convention has been transposed into Swedish law and the necessary legislation entered into force on 1 January 2002 (Bill 2002/01:133, Report 2001/02:JuU2, Parliament Communication 2001/02:3).

In order for Sweden to be able to satisfy fully the requirements laid down in the Protocol, certain legislative amendments have been made. Attempts, preparations and conspiracy to perpetrate serious offences of receipt of stolen goods or money have been criminalised. The rule on the impeding effects of foreign criminal court judgments has been extended so that foreign criminal court judgments relating to acts that are covered by the Protocol do not, in certain cases, constitute an obstacle to the institution of legal proceedings in Sweden.

#### IV. Protocol on the European Court of Justice (29 November 1996)

The Convention has been transposed into Swedish law and the necessary legislation entered into force on 1 July 1999 (Bill 1998/99:32, Report 1998/99:JuU16, Parliament Communication 1998/99:167).

<sup>17</sup> - Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Community's financial interests (Official Journal C 316, 27.11.1995);

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- Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Community's financial interests - Statements made by Member States on the adoption of the Act drawing up the Protocol (Official Journal C 313 , 23.10.1996);

- Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Community of the Convention on the protection of the European Community's financial interests - Declaration concerning the simultaneous adoption of the Convention on the protection of the European Community's financial interests and the Protocol on the interpretation by way of preliminary rulings, by the Court of Justice of the European Community, of that Convention - Declaration made pursuant to Article 2 (Official Journal C 151 , 20.05.199);

- Second Protocol, drawn up on the basis of Article K.3 of the treaty on European Union, to the Convention on the protection of the European Community's financial interests - Joint Declaration on Article 13 (2) - Commission Declaration on Article 7 (Official Journal C 221, 19.07.1997).

<sup>18</sup> The Belgian authorities underline that the objectives set by the Convention of 26 July 1995 and aiming, on the one hand, to designate fraudulent actions that affect the financial interests of the European Community as criminal offences punishable by effective, proportional and deterrent criminal penalties (including sentences of imprisonment), and on the other hand, to establish the criminal responsibility of heads of enterprises, are satisfied by the General Law of 18 July 1977 on customs and excise

<sup>19</sup> The Danish authorities indicate that the Convention and its Protocols were transposed into Danish law by means of Law n° 228 of 4 April 2000 modifying the criminal law (serious VAT fraud, fraud to Community resources, corruption of foreign officials, etc.).

<sup>20</sup> The Irish authorities indicate that Ireland completed all steps to transpose the 1995 Convention and the associated Protocols during 2001, with the enactment of the Criminal Justice (Theft and Fraud Offences) Act, 2001.

<sup>21</sup> The transposition obligations laid down in those four EU legal instruments (including the Second Protocol) had already been satisfied partially by the existing rules and, in all other respects with one exception (see below), were transposed by Austria through the Strafrechtsänderungsgesetz (Law amending criminal law ) 1998, BGBl. I 1998/153, which entered into force on 1 October 1998, in particular through:

- introduction of "misuse of assistance" as a criminal offence (§ 153b StGB (Criminal Code));

- extension of the rules on corruption of officials to Community officials and officials of other Member States (§§ 74(4a) and (4b), 304, 307 StGB);

- extension of the list of predicate offences for money laundering (§ 165 StGB).

Reference is made to the amendments to the Finanzstrafgesetz (Law on financial crime) and to the Ausfuhrerstattungsgesetz (Law on export refunds) by the Abgabenänderungsgesetz (Law modifying taxes) 1998, which also serve to transpose the abovementioned legal instruments.

<sup>22</sup> Sweden has not taken any new steps in 2002 because the 1995 Convention and its protocols have already been fully implemented.

<sup>23</sup> The United Kingdom points out that most of the provisions in the Convention and its protocols already existed in UK law before the Convention and its Protocols were signed. Part 1 of the Criminal Justice Act 1993, which entered into force on 1 June 1999, enabled the UK to ratify the Convention. The jurisdiction required by the first indent of Article 4(1) of the Convention (cases where fraud is committed within the territory of the Member State, including where the benefit was obtained in its territory) was conferred by those provisions

<sup>24</sup> Member States were asked to limit their estimates to staff that is effectively responsible for the execution of these controls, i.e. excluding supporting personnel (secretariat, archives,...).

In case certain staff are responsible for the performance of several types of control (ex-ante, ex post and/or anti-fraud), Member States were asked to base their figures on an estimate of the relative time spent by the staff concerned on each type of control.

Similarly, should certain staff be responsible for the execution of controls covering several sectors (own resources, agricultural expenditure and/or structural funds), Member States were invited to base their figures on an estimate of the relative time spent by the staff concerned on each sector.

If the performance of particular control tasks has been delegated to outside (private) agencies or bodies, Member States were asked to include the manpower affected by these agencies or bodies for the performance of these tasks in the figures submitted.

Figures are rounded off to the next whole number.

<sup>25</sup> In the field in question:

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- ex-ante controls are represented by the monitoring provided for in Article 4(13) of the Community Customs Code and by customs controls provided for by Article 4(14) of the Code, excluding controls envisaged by Articles 3 and 4 of Regulation No 386/90<sup>25</sup>)
  - ex post controls are those provided for by Article 78 of the Community Customs Code;

anti-fraud investigations are those conducted on the basis of suspected irregularities.

<sup>26</sup> The Member States who were in a position to do so were asked to include also the number of staff in the criminal prosecution departments (police, judicial authorities) allocated to this type of investigation.

<sup>27</sup> As the data for 2002 were not available when the Report was drawn up, the amounts are taken from the report on the Allocation of 2001 EU Operating Expenditure by Member State, Chapter 5 (statistical annex), Table 2a - Own resources payments by Member State in 2001 - traditional own resources.

<sup>28</sup> Of which 2 were assigned to the Public Prosecutor for Special economic crime.

<sup>29</sup> A total of 12 650 staff at main customs offices, border customs offices and inland offices conduct ex-ante controls. These statistics do not distinguish on the basis of the criteria laid down by the Commission. It is therefore impossible to further break down the allocation of staff.

<sup>30</sup> 170 staff conducted ex post controls under Article 78 of the Customs Code. This figure was arrived at on the basis of the time required for the checks.

<sup>31</sup> Statistics on the manpower assigned to anti-fraud investigations are not available, and the cost of making the calculations would be prohibitive.

<sup>32</sup> 56% of customs personnel.

<sup>33</sup> 8% of all customs personnel.

<sup>34</sup> 1400 of all customs personnel (36% of customs personnel) ; 70 inspectors of the Department of Financial Crime (SDOE). N.B. the Department of Financial Crime (DFC) staff, 70 persons, dealt with all three types of audit, in cases relating to tobacco and spirits products in which fraud was detected.

<sup>35</sup> As with previous reports, the statistical data provided by the French customs does not give a breakdown by sector (traditional own resources and EAGGF-guarantee).

<sup>36</sup> Amongst these 97 agents, the number of customs agents competent for the performance of judicial missions, and having implemented judicial enquiries in 2002, amounted to 48. These double hatted agents have the competence to conduct both administrative investigations and judicial enquiries. The scope of competence of judicial customs officials covers, notably, infringements, foreseen by the national customs code, affecting the Community's financial interests (own resources and EAGGF expenditure).

<sup>37</sup> Data relating to the Administrations which answered the questionnaire.

<sup>38</sup> Of which 4,5 were assigned to the Ministry of Agriculture, Nature Management and Fisheries (4 of which for ex ante controls and 0,5 for ex post controls) ; 5500 were assigned to the Ministry of Finance (the staff of the customs authorities of the Ministry of Finance amount to approximately 5 500 full-time equivalents. The majority of these are responsible for operational tasks. Administrative information received from the customs authorities is not subdivided according to the categories asked).

<sup>39</sup> Of which 628 were assigned to customs clearance / customs posts for merchandise transport ; 14 were assigned to Inspection Office for customs management ; 30 were assigned to house inspections/monitoring bodies.

<sup>40</sup> Of which 102 were assigned to field audits and internal audits (customs) ; 14 to the Inspection Office for customs management ; 528 to mobile surveillance teams.

<sup>41</sup> Of which 144 were assigned to criminal cases ; 104 to special operation teams ; 14 to the Inspection Office for customs management ; 102 to field audits and internal audits (customs).

<sup>42</sup> Refers to the number of staff of the DGAIEC (Directorate-General for Customs and Excises) EEC who, during 2002, were appointed as inquirers and/or experts in customs criminal proceedings. General remark on anti-fraud investigations – Nationally, there is no group of magistrates exclusively responsible for directing the investigations in question. Even so, it may be contended that the DCIAP (Central Department for Investigation and Penal Action) with national jurisdiction, and the DIAP (Department for Investigation and Penal Action) in Lisbon, constitute departments for the directing of inquiries into, *inter alia*, crimes of corruption or fraud in obtaining and diverting subsidies, subventions or credit, economic/financial infringements committed in an organised way or with an international or transnational dimension, with 13 magistrates from the Public Prosecution Service at its disposal.



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Anti-fraud investigations - The Criminal Investigation Department has 22 officials assigned to investigations of this type (1 coordinator, 3 chief inspectors and 18 inspectors).

<sup>43</sup> Customs: In the case of the 349 persons taking part in Customs clearance, that part of their work which relates to control and inspection is not separately quantified.

<sup>44</sup> Customs: The same anti-fraud staff operate in Customs, excise duty and agricultural aid matters.

<sup>45</sup> Personnel years earmarked to investigate customs crime.

<sup>46</sup> The percentages in columns 3, 5 and 7 do not include the data from the Dutch authorities, which were not broken down by type of control.

<sup>47</sup> In the field in question:

- a priori controls are physical checks and checks on the file of payment requests carried out by the paying agencies and customs services. They include controls on internal market aids, controls on export restitutions, as well as the controls conducted in the framework of interventions intended to stabilize the agricultural markets in the following sectors : products of the wine-growing sector, cereals and rice, sugar, olive oil, oilseeds and protein plants, textile plants and silkworms, fruit and vegetables, raw tobacco, seeds, hop and bee-keeping, milk and milk products, beef and veal, sheepmeat and goatmeat, pigmeat, fishery products (see the consolidated Council Regulation N°1883/78 of 2 August 1978 ;

- a posteriori controls are on-the-spot checks and inspections provided for by Regulation No 4045/89;

- anti-fraud investigations are those conducted on the basis of suspected irregularities.

<sup>48</sup> The Member States who were in a position to do so were asked to include also the number of staff in the criminal prosecution departments (police, judicial authorities) allocated to this type of investigation.

<sup>49</sup> As the data for 2002 were not available when the Report was drawn up, the data are taken from the report on the Allocation of 2001 EU Operating Expenditure by Member State, Chapter 5 (statistical annex), Table 1a - Allocation of 2001 operating expenditure by sector and Member State - agriculture.

<sup>50</sup> 102.23 of which were assigned to customs and excise. 40 were responsible for the ex ante control of investment and start up grants to farmers. 67 were responsible for ex ante controls within the ALT, 408 in the BIRB (this is an approximate figure, taking account of the Belgian reform on the application of the Common Agricultural Policy, notably the abolition of the national ministry of agriculture and the effective transfer of inspection powers to the federal agency for the security of the food chain), 100 within DG 3 (figure valid until 1 October 2002, after which date there was a regionalisation and restructuring after this date and new structures were created within the community and regions).

<sup>51</sup> 50.5 of which were assigned to customs and excise; 8 to the EAGGF Unit. 5 members of staff were responsible for ex post controls on aid for agri-food investment. As far as post-clearance controls are concerned, account must also be taken of the Economic Inspection Service of the Public Administration (SPF), to which 11 officials are assigned (not shown in the table). 24 were responsible for the ex post controls within the BIRB, 100 within DG 3.

<sup>52</sup> Of these staff numbers, 2 were assigned to customs and excise in Antwerp; 8.5 to Brussels; 8 to Ghent; 4 to Hasselt; 1 to Liège; 2 to Mons; 0 to the EAGGF Unit; 34 to the BIRB (including 27.5 to the administrative departments; 5 to the police and 1.5 to the judicial authorities), 4 to DG 3; 10 were assigned to the ALT.

<sup>53</sup> Public Prosecutor for Special economic crime.

<sup>54</sup> See 3.1; in 2002 about 120 staff at the EU paying agency (Hamburg-Jonas main customs office) were involved in checking applications for payment (cf. Art. 4 of Regulation (EEC) No 386/90).

<sup>55</sup> Over the 2001/2002 control period 51 staff were assigned to ex post controls under Regulation (EEC) No. 4045/89. This figure was arrived at on the basis of the time spent on the checks.

<sup>56</sup> Where there are suspicions of subsidy fraud, the Subsidy Act requires payment to the Public Prosecution Service of a levy and therefore no staff need to be assigned. There are no statistics available on the manpower assigned to anti-fraud investigations and the cost of making the calculations would be prohibitive.

<sup>57</sup> Of which : 150 Auditors of the Department for Financial Crime (the department of Financial Crime has assisted the Ministry of Agriculture in auditing all deliveries of cotton for the 2002 ginning year) ; 437 staff of the OPEKEPE.

<sup>58</sup> OPEKEPE.

<sup>59</sup> Auditors of the Department for Financial Crime. Within the framework of anti- fraud investigations, joint investigations were conducted with OLAF (Regulation No. 4045/89) into "long-term set-aside" programmes.

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<sup>60</sup> Of which : 165 Auditors of the Department for Financial Crime; 487 of OPEKEPE.

<sup>61</sup> These figures do not represent all the staff of the bodies performing control functions throughout the country, as figures are not available for many of them.

<sup>62</sup> Ex-ante checks (e.g. at the stage of applications for funding in the case of expenditure, and acceptance of the declaration in the case of revenue)

Because of the way in which the statistics are currently kept, it is not possible to isolate the number of full-time equivalent customs service staff assigned to ex-ante checks as provided for in Article 2 of Regulation No 386/90, since these staff members carry out both own resources and EAGGF (Guarantee section) checks (the total number of staff carrying out ex ante own resources and EAGGF (Guarantee-section) checks is 8246). Only fruit and vegetable withdrawal checks are identified in terms of full-time equivalent staff, viz. 35 FTE staff. As well as 2 241.05 FTE staff, 1026 staff/days are given over to on-the-spot checks on certain aid measures relating to the CMO milk and milk products which cannot be expressed in terms of FTE staff.

<sup>63</sup> - Ex-post checks (e.g. checks on use/outurn)

The number of full-time equivalent customs service staff assigned to ex-post checks under the EAGGF-Guarantee scheme is not identifiable in the statistics. However, the number of staff/days spent by customs on checking the application of Regulation (EEC) No 4045/89 was **6 532.5** (for the period July 2001 to July 2002).

<sup>64</sup> - Anti-fraud inquiries proper (search for irregularities). The number of full-time equivalent staff in the customs service assigned to anti-fraud inquiries for the protection of financial interests (traditional own resources and EAGGF-Guarantee) is 97. However, the number of FTE staff specialising in agriculture is estimated at 30. Of the above 97 staff, the number of customs officials authorised to conduct judicial inquiries and who carried out judicial inquiries in 2002 was 48. The scope of activity of judicial customs officers covers violations, as provided for in the National Customs Code, of the protection of the Community's financial interests (own resources and EAGGF expenditure).

<sup>65</sup> 376 of these staff are involved in both a priori and a posteriori controls.

<sup>66</sup> 376 of these staff are involved in both a priori and a posteriori controls.

<sup>67</sup> 2 of these staff are involved in general litigation issues.

<sup>68</sup> Data related to the Administrations which answered the questionnaire.

<sup>69</sup> Ministry of Agriculture, Nature Management and Fisheries.

<sup>70</sup> Of which 628 were assigned to customs clearance / customs posts for merchandise transport ; 27 to house inspection/monitoring bodies ; 43 to the Salzburg customs office payment office / refunds ; 270 to the AMA (paying agency Agrarmarkt Austria) ; 55 to LE (paying agency «rural development» at the BMLFUW). N.B. Of this staff of the AMA and the LE, 110 (for AMA) and 35 (for LE) are calculated on the basis of staff responsible for the authorisation of payments within the paying agency (in each case, they constitute 50 % of this staff).

<sup>71</sup> Of which 14 are composed of individual auditors in the field and internal audit service/customs ; 6 are responsible, within the BMLFUW (Federal Ministry for Agriculture, Fisheries, Environment and Watermanagement), and for EU financial controls.

<sup>72</sup> These resources are responsible for criminal affairs. There are no staff nor any specific agency specifically responsible for the fight against fraud.

<sup>73</sup> These 45 staff are assigned to Customs, and are all available for own resources, excise duty and agricultural aid matters.

<sup>74</sup> Of which 2,86 were assigned to ex ante controls and 0,8 for ex post controls in Åland.

<sup>75</sup> SJV : Intervention: 6 (This also includes the checks carried out by the Swedish Seed Testing and Certification Institute on behalf of the National Board of Agriculture) ; foreign trade: 15 ; Direct aid: 4 ; KULM: 1 (KULM = Competence Development, Environment within the Rural Programme. Carried out by the National Board of Agriculture) ; company unit: 2 ; inspection unit : 4 ; customs office: 25, of which at SJV :1½. County Administrative Board : Direct aid and Guarantee section : 90.

<sup>76</sup> National Board of Agriculture Inspection Unit.

<sup>77</sup> Total of 6 personnel years, of which 2 prosecutors, 2 police officers and 2 auditors. The same team also investigates 3.3 (structural measures).

<sup>78</sup> Total includes 10.5 Forestry Commission staff who perform a mix of duties which cannot be split between the three previous headings.

<sup>79</sup> In the field in question:

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ex-ante controls consist:

- for the Structural Funds, of checks and inspections on projects or actions, carried out at the various levels (managing authority, payment authority, delegated or intermediate authorities, final beneficiaries) to ensure the accuracy, regularity and eligibility of requests for Community aid in accordance with Article 4 of Regulation n° 438/2001, and with verifications foreseen by Article 9, paragraphs 2, 3 and 4, of Regulation 438/2001;
- for the Cohesion Fund, of checks and inspections carried out at different levels (implementing bodies, managing authority, payment authority, intermediary authorities) in order to verify the authenticity of expenditure claimed and execution of the project, from the preparatory phase through the entry into service of the financed investment in accordance with Article 2 of Regulation 1386/2002, and with verifications foreseen by Article 8, paragraphs 2, 3 and 4, of Regulation n° 1386/2002 ;

ex post controls consist:

- for the Structural Funds, of the on-the-spot checks and inspections provided for by Article 3 of Regulation (EC) No 2064/97 and Article 10 of Regulation (EC) No 438/2001;
- for the Cohesion Fund, of on-the-spot checks and inspections foreseen by Article 9 of Regulation (EC) n° 1386/2002, allowing to verify the effectiveness of management and control systems in place and expenditure declarations related to projects ;

anti-fraud investigations include all investigations conducted on the basis of suspected irregularities.

<sup>80</sup> Member States capable of doing so were requested to also include the manpower which criminal prosecution authorities (police services, judicial authorities) had assigned to this type of investigations.

<sup>81</sup> As the data for 2002 were not available when the Report was drawn up, the data are taken from the report on the Allocation of 2001 EU Operating Expenditure by Member State, Chapter 5 (statistical annex), Table 1a - Allocation of 2001 operating expenditure by sector and Member State – structural measures.

<sup>82</sup> The Belgian authorities note that this is an estimate. Of the total number, 26 were assigned to ex ante controls in the field of the EAGGF-Guidance Section; 22 to "Article 8" checks; 3 to "Article 9" checks; 3.8 were assigned to checks on the implementation of Objective 3 within the Brussels region (placement service); 4 were responsible for the ex ante control of the Objective 2 and Urban 2 programmes; 10 for the FIFG and Leader; 6 for ESF ex ante controls (including 3 for content control and 3 for financial control).

<sup>83</sup> 6.5 of which were assigned to the Audit Unit of the Inspection des Finances, and 1.2 to controls on the implementation of Objective 3 within the Brussels region (placement service); 2 were responsible for the ex post control of Objective 2 and Urban 2 programmes; 1 for the FIFG and Leader; 6 for ESF ex post controls (including 3 for content control and 3 for financial control); 2 inspectors were responsible, within the labour inspection service, for on-the-spot inspections.

<sup>84</sup> Included in the two previous data.

<sup>85</sup> Of which 5 were assigned to EAGGF and FIFG controls ; 29 to controls in the framework of ERDF, including Interreg ; and 20 to ESF controls.

<sup>86</sup> Of which 3 were assigned to EAGGF and FIFG controls ; 1 to controls in the framework of ERDF, including Interreg ; and 40 to ESF controls.

<sup>87</sup> Of which ½ was assigned to controls in the framework of ERDF, including Interreg ; 10 to ESF controls ; and 2 to the Public Prosecutor for Special economic crime.

<sup>88</sup> FIFG : 21 ; EAGGF-Orientation : 683 ; ERDF : at least 720 (it is not possible to give a precise indication); ESF : at least 455.

<sup>89</sup> FIFG : 3 ; EAGGF-Orientation : 53 ; ERDF : at least 137 (it is not possible to give a precise indication); ESF : at least 282.

<sup>90</sup> Until now, it has not been possible to give to a precise indication.

<sup>91</sup> Payment authorities and management authorities for the 3rd CSF: 60 (Art. 4, Reg. 438/2001) ; staff of the special management service : 3.

<sup>92</sup> Of which : • DEL: 52 (Art. 10, Reg. 438/2001) ; • DEL: 4 (Art. 9, Reg. 1386/02) ; staff of the payment authority and management authorities for the 3<sup>rd</sup> CSF: 60 ; staff of the special management service: 3.

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<sup>93</sup> The distinction into manpower assigned to ex-ante and ex-post controls is indicative, seeing that such a distinction is not made in the respective regulations. Investigations for combating fraud are conducted mainly by the DFC, however for the year 2002 there is no evidence of such controls being conducted. Also, part of the manpower assigned to controls, also deals with fraud - irregularities cases pertaining to the Structural Funds. The total manpower (182 persons) assigned to all control stages is indicative.

<sup>94</sup> These figures do not represent all the staff of the bodies performing control functions throughout the country, as figures are not available for many of them.

<sup>95</sup> Of which : 97 for EAGGF-Guidance (76 of these are involved in both ex-ante and ex-post controls) ; 14 + 4 for ESF (including article 4) (i.e. all members of the ESF Paying authority, the EHRD-OP Managing authority and the EQUAL-CI managing authority have ex-ante control responsibilities as part of their duties, as do 4 members of the Technical Support Structure contracted to assist with the implementation of EQUAL) ; 344 for ERDF ; 3 for FIFG ; 18 for the Cohesion Fund ; 0 for the Gardai (Police).

<sup>96</sup> Of which : 76 for EAGGF-Guidance (involved in both ex-ante and ex-post controls) ; 5 + 3 for the ESF (including article 10) (1 manager/controller and 5 controllers comprising Ireland's ESF Financial Control Unit ; 3 members of the Department's Internal Audit Unit) ; 266 for the ERDF ; 2 for FIFG ; 8 for the Cohesion Fund ; 0 for the Gardai (Police).

<sup>97</sup> EAGGF – Guidance.

<sup>98</sup> Of which EAGGF – Guidance : 108 (of whom 67 are involved in forestry) ; ESF : 26 (of whom 5 are dedicated exclusively to control activity-Financial Control Unit) ; ERDF : 610 ; FIFG : 5 ; Cohesion Fund : 26 ; Gardai (Police) : 3 (The police assign staff to anti-fraud investigations as instances of suspected fraud are reported; it is estimated that regarding reports of suspected fraud, the manpower resources required would amount to three fulltime police officers in 2002).

<sup>99</sup> Data relating to the administrations which answered the questionnaire.

<sup>100</sup> The Dutch authorities specify that the number of staff (in full-time equivalent) cover both the implementation and control of the applicable regulations for the previous period, as the implementation and control for the new period.

<sup>101</sup> Of which 3 were assigned to ex ante controls of FIFG and EAGGF – Guidance section within the Ministry of Agriculture, Nature Management and Fisheries; 43 were assigned to ex ante controls of the ESF within the Ministry for Social Affairs and Employment. Because of the decentralised nature of the ERDF programmes, the number of staff participating actively in controls linked to this programme within the Ministry for Economic Affairs is not known.

<sup>102</sup> Of which 0,1 were assigned to controls of ERDF – cities and Urban within the Ministry for the Interior. (NB because of the decentralised nature of the ERDF, Objective 2 and Urban 2 programmes, the number of staff participating actively in controls is not known. A report is established on a quarterly basis in the framework of the urban programmes under Objective 2 and Urban 2. Reports are regrouped by the Ministry of the Interior and sent to the European Commission. Given that Urban programmes have not formed the subject of irregularity communications for 2002, the time that is dedicated to respective controls was limited to 0,1 staff (in full time equivalent). Once communications are effectively made, it will be appropriate to dedicate more time to these controls) ; 2 were assigned to a posteriori controls of FIFG and of EAGGF – Guidance within the Ministry of Agriculture, Nature Management and Fisheries ; 1,8 were assigned to a posteriori controls I the framework of Interreg 6 and c within the Ministry for Housing, Spatial Planning and the Environment (excluding interventions by the payment authority, the management authority and the international programming secretariat) ; 38 were assigned to a posteriori controls of the ESF within the Ministry for Social Affairs and Employment.

<sup>103</sup> Of which 0,5 were responsible for anti-fraud controls in the framework of Interreg 6 and c within the Ministry for Housing, Spatial Planning and the Environment (excluding interventions by the payment authority, the management authority and the international programming secretariat) ; 1 was assigned to anti-fraud controls in the framework of the ESF within the Ministry for Social Affairs and Employment.

<sup>104</sup> Of which 4 were assigned to ex ante controls in the framework of EAGGF-Guidance and FIFG ; 264 to ex ante controls in the framework of the ESF ; and 98 to ex ante controls in the framework of ERDF. N.B. in the case of the ERDF, numbers date from 2001 given that no statistical overview has been made since.

<sup>105</sup> Of which 4 were assigned to ex post controls in the framework of EAGGF-Guidance and FIFG ; 1,5 to ex post controls in the framework of the ESF ; and 10 (of which 4 within the Federal Criminal Police Office - BKA) to ex post controls in the framework of the ERDF.

<sup>106</sup> There is no staff of no agency specifically responsible for the fight against fraud.

<sup>107</sup> NB : Because of their diverse responsibilities and their often complex tasks, the organisational units mentioned here and their respective personnel could, generally, also be mentioned under points 3.1. and 3.2.

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<sup>108</sup> In the ex ante controls, reference is only made to the human resources allocated to the checks under Article 9 of Regulation 438/01 to be conducted by the paying agencies, excluding the checks of requests for assistance and expenditure statements. If these types of checks are also included, as other Member States have done, the following are the staff numbers : ex ante checks : 1585 ; ex post checks : 188 ; anti-fraud investigations : 0 ; total for the three types of check : 1773.

The human resources assigned to the Operational Programme control bodies are indicated. Nevertheless, in a significant number of programmes, recourse has been had to the services of external auditors (e.g. OP for the Economy, Employment, Training and Social Development, Regional OPs for the Mainland, Accessibility and Transport). Also the IGF, or Inspectorate-General for Finance, had recourse on a supplementary basis to contracting external auditors in 2002, a solution which will continue to be adopted in 2003.

<sup>109</sup> ERDF : 88 FTE ; EAGGF + FIFG : 75 FTE (data also include personnel assigned to controls of rural development measures cofinanced by EAGGF - Guidance section) ; ESF : 82,4 FTE ; Åland : 3,75.

<sup>110</sup> ERDF : 19 FTE ; EAGGF + FIFG : 2 FTE (data also include personnel assigned to controls of rural development measures cofinanced by EAGGF - Guidance section) ; ESF : 9,82 FTE ; Åland : 5,70.

<sup>111</sup> ERDF : 6 FTE ; EAGGF + FIFG : 2 FTE (data also include personnel assigned to controls of rural development measures cofinanced by EAGGF - Guidance section) ; ESF : 4,8 FTE ; Åland : falls under a) and b).

<sup>112</sup> The same team that is mentioned under point 2.

In Sweden, investigations are conducted by the Economic Crime Authority. However, the role of the authority's officials and order inspectors includes detecting any irregularities and forwarding information on such irregularities to the competent authority. For the National Labour Market Board and the ESF Council, 2 personnel years are earmarked for investigation of any suspected irregularities. The National Labour Market Board and the ESF Council each also have a lawyer equivalent to one personnel year for consultation and investigation. If necessary, the National Labour Market Board also reallocates resources from ex-ante controls to investigations. The National Board for Industrial and Technical Development has half a post dedicated to consultation and investigations.

<sup>113</sup> Notably measures :

- for the coordination of inspections and inquiries carried out by different bodies (in order to prevent overlapping action or lack of action on a given case), e.g. ad hoc procedures, programme of periodic meetings, etc.
- for the exchange of information between departments responsible for inspections and inquiries (administrative authorities, police, customs, judiciary, etc.), including the existence of a shared database and/or arrangements for allowing each ministry access to the others' bases;
- for the administrative authorities to communicate cases of presumed fraud to the judicial authorities.

<sup>114</sup> Notably measures :

- for coordination of the scrutiny of payment application files by paying agencies under Article 4 of Regulation 386/90, the administrative checks under Article 8(1) of Regulation No 3508/92, the on-the-spot checks under Regulation No 4045/89, and anti-fraud inquiries (in order to prevent overlapping action or lack of action on a given case), e.g. ad hoc procedures, programme of periodic meetings, etc.;
- for the exchange of information between departments responsible for inspections and inquiries (administrative authorities, police, customs, judiciary, etc.), including the existence of a shared database and/or arrangements for allowing each department access to the others' bases;
- in particular, departments which may have access to the databases provided for in Regulations Nos 3508/92 and 4045/89 and the access arrangements;
- for the administrative authorities to communicate cases of presumed fraud to the judicial authorities.

<sup>115</sup> Internal Audit Unit : no new arrangements adopted. Existing co-ordination methodologies via Departments Audit Committee have proved satisfactory.

<sup>116</sup> Notably, in the area of the Structural Funds, measures :

- for coordination of checks and inquiries relating to operations or operators receiving assistance from more than one Fund;

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- for coordination between ex ante checks at whatever level (management, payment, delegate or intermediary), and between these checks, the sample checks under Article 3 of Regulation (EC) No 2064/97 and Article 10 of Regulation (EC) No 438/2001, and anti-fraud inquiries;
  - for the exchange of information between departments responsible for the various checks and inquiries (administrative authorities, police, judiciary, etc.);
  - for the administrative authorities to communicate cases of presumed fraud to the judicial authorities.

In the area of the cohesion fund, measures :

- for coordination between checks on projects prior to Commission approval, checks that projects have been properly completed and anti-fraud inquiries;
- for the exchange of information between departments responsible for inspections and inquiries including the existence of a shared database and/or arrangements for allowing each department access to the others' bases;
- for the administrative authorities to communicate cases of presumed fraud to the judicial authorities.

<sup>117</sup> Cf. letter (Ref. DAR 2002-0686 M) dated 20 December 2002 concerning the communication of irregularities Structural Funds Regulation (EC) No. 1681/94 and 1831/94, to OLAF.