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**REPORT FROM THE COMMISSION TO THE COUNCIL AND
THE EUROPEAN PARLIAMENT**

**Protection of the financial interests of the Communities - fight against fraud-
Commission's annual report 2004**

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INTRODUCTION

The protection of the European Communities' financial interests and the fight against fraud is an area in which responsibility is shared between the Community and the Member States. Consequently, each year the Commission draws up a report in cooperation with the Member States on the measures taken to implement this obligation, according to article 280 of the EC Treaty. This report is addressed to the European Parliament and the Council and is published.

In order to make the report more readable, this year the Community and national measures will be presented in parallel in each area (rather than being treated separately in two different parts as in previous reports). The aim of this new presentation is to give a fuller overview of an area where Community and national powers complement each other.

The **first section** of the report deals with **major developments in 2004** in the protection of the Communities' financial interests: the reform of the European Anti-Fraud Office (OLAF), the accession of ten new Member States, the signing of a cooperation agreement with the Swiss confederation, the fight against cigarette smuggling, the cooperation agreement concluded with the cigarette company Philip Morris International to fight against fraud and the signing of the Treaty establishing a Constitution for Europe.

The **second section** begins by summarising the results of the **statistics on the irregularities reported** by the Member States under the sectoral Regulations **and the measures taken** by them **in 2004**, and goes on to give a mid-term review of the Commission's 2004-05 action plan and the efforts made to increase OLAF's efficiency. A sub-section discusses the question of public information in the fight against fraud.

The **third section** deals with the implementation of the Regulation on **mutual assistance in the area of customs and agriculture**¹. Given the numerous different kinds and levels of authorities with powers in these fields, cooperation is essential to ensure that the Community's financial interests are effectively protected. This year, mutual assistance between the relevant authorities was chosen by the Commission and the Member States as one of the central questions covered in the questionnaire on which the Member States' contributions are based.

Lastly, **section 4** outlines the measures taken to **improve recovery** of amounts not received or wrongly paid. Clearly, organised financial monitoring is the only way of remedying damage caused to the European budget by fraud and other irregularities.

The report only gives a summary and overview of the measures taken and the results achieved by the 25 Member States. The Commission is simultaneously publishing two working documents², one listing the measure taken by the Member States, one on statistics, which provide additional information.

¹ Regulation (EC) No 515/97.

² "List of measures taken by the Member States" and "Statistical analysis of irregularities".

1. MAJOR DEVELOPMENTS IN 2004

1.1. Proposed reform of the European Anti-Fraud Office

In his speech to the European Parliament on 18 November 2003, President Prodi drew conclusions from the “Eurostat” affair, concerning communication flow and the clarity of the rules on OLAF’s operational activity. A code of conduct³, drawn up by the Commission and OLAF in July 2003, already aimed at improving the exchange of information on internal investigations in the Commission.

Subsequently in February 2004, the Commission adopted a proposal aimed at laying down clear rules on exchanges of information between OLAF and the Community institutions, bodies, offices and agencies and to increase OLAF’s effectiveness by enabling it to concentrate on its operational priorities and speed up its investigations. The proposal aims to clarify the rules on opening, closing and extending investigations and to strengthen the defence guarantees and protection of individual rights and the role of the Supervisory Committee. The legislative procedure is still pending⁴.

26th of October 2004 the Commission produced a complementary evaluation of the activities of the European anti-fraud office⁵, which above all contains a quantitative analysis. Some figures of this report are included in point 2.4.2.

1.2. The accession of 10 new Member States

Thanks to the pre-accession aid and the fully decentralised management of SAPARD and ISPA acceding states were well prepared to take on full financial responsibilities for the correct implementation of EU funds. By the date of accession an extended decentralised implementation system (EDIS) was in place.

All the new Member States have created central services for the fight against fraud (AFCOS). AFCOS is a structure aiming at helping the new Member States to familiarize themselves with their duties concerning fraud prevention and fraud repression. The two main objectives of the services are to coordinate, within their country, all legislative, administrative and operational obligations and activities related to the protection of the Communities’ financial interests and to ensure operational cooperation and communication with the Commission (OLAF) and other Member States.

Through the multi-country Phare programme⁶ assistance was given by setting up the structures, establishing communication links and databases and developing operational know-how. Seminars, trainings and internships are being organized by the Commission (OLAF) to ensure a professional approach by the AFCOS.

In the majority of the new Member States the AFCOS are established as either a department or an office within the Ministry of Finance. In other Member States they

³ SEC(2003)871.

⁴ COM(2004)103 and 104: amendment to Regulations (EC) 1073/1999 and 1074/1999.

⁵ SEC(2004)1370.

⁶ PH/2002/1412.

are established in the Ministry of Justice (Czech Republic and Cyprus), or in the Ministry of Internal Affairs (Lithuania) and in Slovakia it is a department within the Government office.

In most of the new Member States, AFCOS are also responsible for the conduct of anti-fraud investigations and/or for the coordination of these actions. In Slovenia AFCOS is only responsible for examining the adequacy and effectiveness of the inspection systems. The AFCOS powers with regard to the monitoring of the methods used by other institutions to conduct investigations are not widespread; only AFCOS Poland has these powers, and in Malta a special Coordinating Committee was created to monitor the methods of other bodies.

In all Member States AFCOS are responsible for the collection of information on irregularities in the area of expenditure and for the communication of this information to the Commission in accordance with EU legislation. More details on AFCOS in the new Member States can be found in the working document issued with this report⁷.

1.3. The cooperation agreement with the Swiss Confederation

In October 2004⁸ the European Community and its Member States, on the one part, and the Swiss Confederation, on the other part, signed a cooperation agreement to combat fraud and all other illegal activities damaging their financial interests. This agreement, reached after lengthy negotiations, is currently being ratified.

The agreement binds the parties to provide each other with full judicial and administrative assistance in all cases of fraud and other illegal activities, including customs and indirect taxation offences committed when trading goods and services. Cooperation in the fight against money laundering will be substantially stepped up, in particular with regard to serious cases of fraud and smuggling.

As a result of this agreement, the rules governing cooperation between the parties in the protection of their financial interests have been brought considerably closer to the Community *acquis*. Administrative cooperation will lean on the prepositions of the Convention concerning mutual assistance and cooperation between customs administrations (the “Naples II” Convention⁹). The arrangements for judicial cooperation will be similar to those established by the Convention for mutual judicial assistance in criminal matters between the Member States of the European Union and its additional protocol¹⁰. Judicial cooperation in coercive measures (searches and seizures) will be subject to the double criminality principle, as laid down and formulated by the same terms as in the Convention implementing the Schengen Agreement¹¹. The money-laundering provisions are also based on the Community *acquis* relating to this area¹².

⁷ SEC(2005)973

⁸ COM(2004)559 final and 2004/0187 (CNS), not yet published in the OJ.

⁹ Council Act of 18 December 1997, OJ C 24, 23.1.1998, p.1.

¹⁰ Convention of 29 May 2000, OJ C 197, 12.7.2000, and additional protocol of 16 October, OJ C 326, 21.11.2001.

¹¹ Convention implementing the Schengen Agreement, OJ L 239, 22.9.2000. If the double criminality rules applicable to letters rogatory for the purposes of search and seizure is no longer to be applied in

The Commission hopes that similar agreements can be negotiated with other third countries in the future.

1.4. Cigarette smuggling

For several years the European Community has been vigorously combating cigarette smuggling, which causes considerable damage to the EU and Member States' budgets. In 2000 and 2001 the Commission and ten Member States¹³ brought civil proceedings before New York courts against the cigarette companies RJ Reynolds and *alia*, for involvement in cigarette smuggling and money laundering, and applied for an injunction to prevent smuggling in the future.

1.5. Agreement with Philip Morris International

On 9 July 2004 the European Commission and the ten Member States announced that an agreement had been concluded with the cigarette company Philip Morris International (PMI), establishing an effective system for combating cigarette smuggling and counterfeiting in the future and putting an end to the differences between the parties in this area. Under this agreement PMI will cooperate with the Commission's departments, particularly OLAF, and the judicial authorities of the Member States in the fight against contraband and counterfeiting. In this context, the agreement also contains financial provisions whereby PMI is to pay around 1.25 billion dollars over 12 years. The partners to this agreement hope that this will provide a model for similar agreements with other companies.

1.6. The Constitutional Treaty and the proposal to establish a European Public Prosecutor's Office

The transnational nature of fraud affecting the Community's financial interests and the role played by organised crime make it necessary to remove the boundaries for the national police and judicial authorities to cooperate across Europe. Although numerous agreements have been signed for this purpose, the main obstacle to effective suppression of fraud is still the fragmentation of the European criminal law-enforcement area. In 2001 the Commission adopted a Green Paper¹⁴ to widen the debate. The Convention on the Future of Europe¹⁵ inserted a provision allowing the creation of a European Public Prosecutor's Office in the draft Treaty.

Finally Article III-274 of the Treaty establishing a Constitution for Europe states that once the Treaty comes into force, the Council, acting unanimously and after obtaining the consent of the European Parliament, may establish a European Public

Schengen, the new Schengen rules will apply fully to matters regulated by the cooperation agreement, with the exception of direct taxation.

¹² In particular Directive 91/308/EEC as amended by Directive 2001/97/EC (OJ L 344, 28.12.2001) and the second protocol to the Convention on the protection of the European Communities' financial interests (OJ C 222, 19.7.1997).

¹³ Belgium, Germany, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Portugal and Finland

¹⁴ Green Paper on criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor, COM(2001)715.

¹⁵ The Convention on the Future of the Union, chaired by Mr Giscard d'Estaing, was set up following the Laeken declaration on the future of the European union to launch a debate on the reform of the European institutions.

Prosecutor's Office from Eurojust to combat crimes affecting the financial interests of the Union. The European Public Prosecutor's Office would be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in, offences of this type. The Council, acting unanimously after obtaining Parliament's consent and after consultation with the Commission, may adopt a European decision to extend the Office's powers to fight serious international crime.

The Commission has announced in May 2005¹⁶ in its proposal for Hague action plan in the context of European judicial cooperation and Eurojust, that it will follow up its previous work and the possibilities afforded by the Constitution, as regards strengthening the protection of the Union's financial interests.

With regard to the fight against fraud in general, Article III-415 of the Constitution maintains the actual text of the EC Treaty. However, the removal of part of the text¹⁷ will enable the Union to acquire the necessary legal instruments in the criminal law area to protect its financial interests.

2. RESULTS OF THE FIGHT AGAINST FRAUD: STATISTICAL ANALYSES AND NEW MEASURES TAKEN BY THE COMMISSION AND THE MEMBER STATES

2.1. Fraud and other irregularities notified by the Member States under the sectoral regulations

Community legislation requires the Member States to notify fraud and other irregularities detrimental to the Community's financial interests in all areas of its activity¹⁸. The same requirement applies to countries benefiting from the pre-accession funds. The Commission document published at the same time as this report contains an in-depth analysis of the statistics obtained on the basis of these communications¹⁹. The table below shows the number of irregularities notified in 2004 and the amounts involved in each area.

¹⁶ COM(2005)184.

¹⁷ Last part of paragraph 4 has been deleted, it stated that "measures against fraud and the prevention of fraud affecting the financial interests of the Union shall not concern the application of national criminal law or the national administration of justice".

¹⁸ See in particular Article 3.1 of Council Regulation (EEC) No 595/91 of 4 March 1991 (OJ L67, 14.03.1991), Commission Regulation (EC) No 1681/94 of 11 July 1994 (OJ L178, 12.07.1994) and Commission Regulation (EC) No 1831/94 (OJ 191, 27.07.94) for the area of expenditure, and Article 6.5 of Council Regulation (EC, Euratom) No^o1150/2000 (OJ L130, 31.05.2000) for the area of traditional own resources.

¹⁹ SEC(2005)974

Table 2.1. – Number of irregularities and amounts

TOTAL 2004		
Area	Number of irregularities notified	Total amounts (in €1 000)
Own resources	2 735	205 692
EAGGF- Guarantee	3 401	82 064
Structural and cohesion funds	3 327	694 535
Total	9 463	982 291

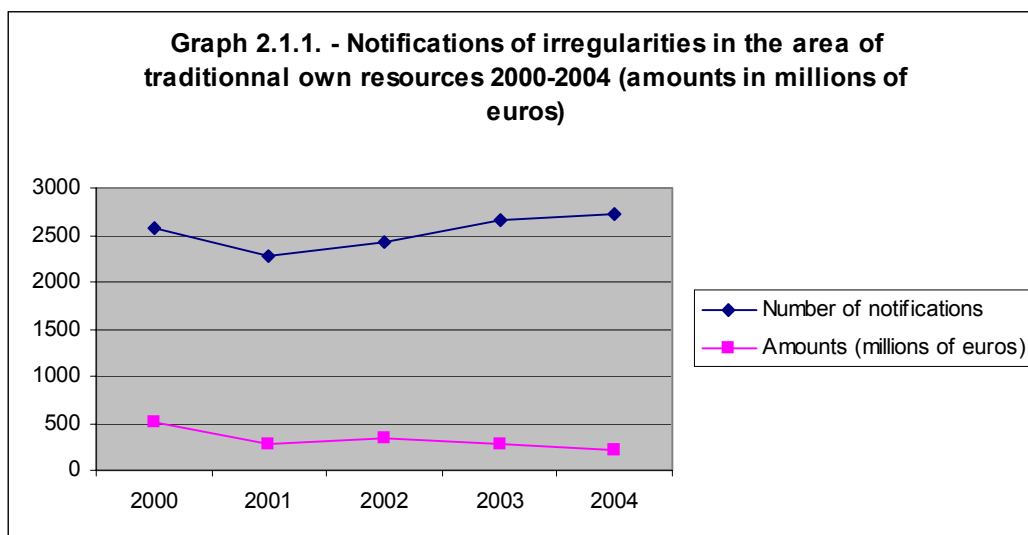
There was an overall increase in the number of irregularities notified for 2004. However, the estimated financial impact of the irregularities is lower for all areas except for structural funds. The average financial impact of the irregularities is around 0.19% for agricultural expenditure, 1.5% for own resources and 2% for structural funds (including cohesion funds). However, distinction should be made between fraud and irregularity. Fraud is defined as an irregularity committed deliberately, which only the courts can classify as such²⁰. It constitutes a criminal act. In the area of agricultural expenditure, suspected cases of fraud accounted for around 11% of the irregularities notified, i.e. 0.02% of total appropriations for the EAGGF - Guarantee. In the case of structural funds, fraud accounts for around 20% of irregularities, i.e. 0.4% of the structural and cohesion fund appropriations.

2.1.1. Traditional own resources

The number of cases notified in this area (2 735 cases for 2004) is rising steadily, but the amount affected (€205.7 million) has been falling since 2002 and represents around 1.5% of the total own resources collected (€12 307 million²¹ in 2004). In 2004 the products most affected by the irregularities were cigarettes, televisions and sugar.

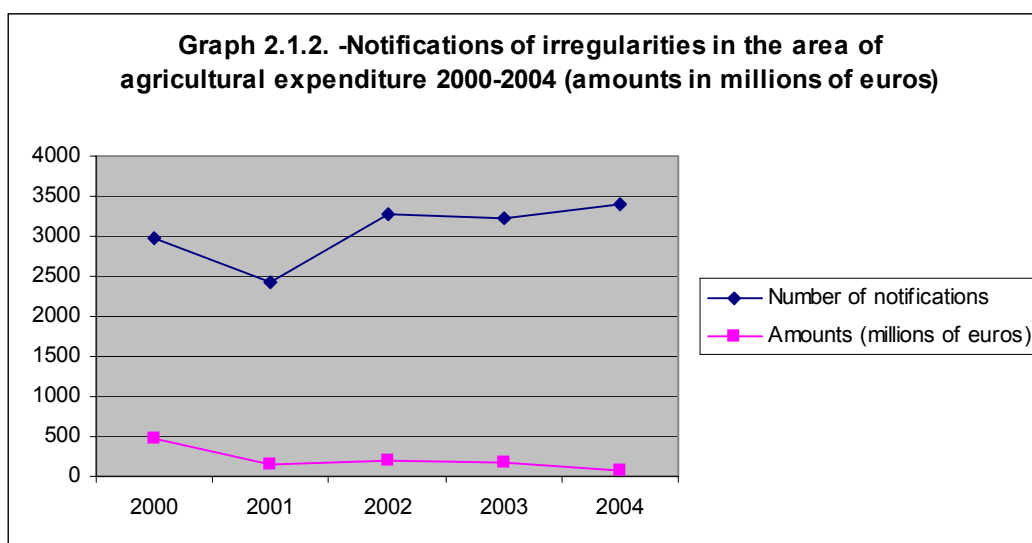
²⁰ See the definition in Article 1 of the Convention of 26 July 1995 on the protection of the Communities' financial interests (OJ C 316, 27.11.1995), which came into force on 17 October 2002.

²¹ This amount corresponds to the customs debts recorded in the Member States' A accounts for 2004, i.e. debts that had been paid and/or guaranteed. The sums for which a customs debt has been opened but which have not been paid or guaranteed (or have been guaranteed but are contested) are recorded in the B accounts and are not included in this figure. The amounts notified as being affected by irregularities are divided between A and B accounts.



2.1.2. Agricultural expenditure (EAGGF- Guarantee)

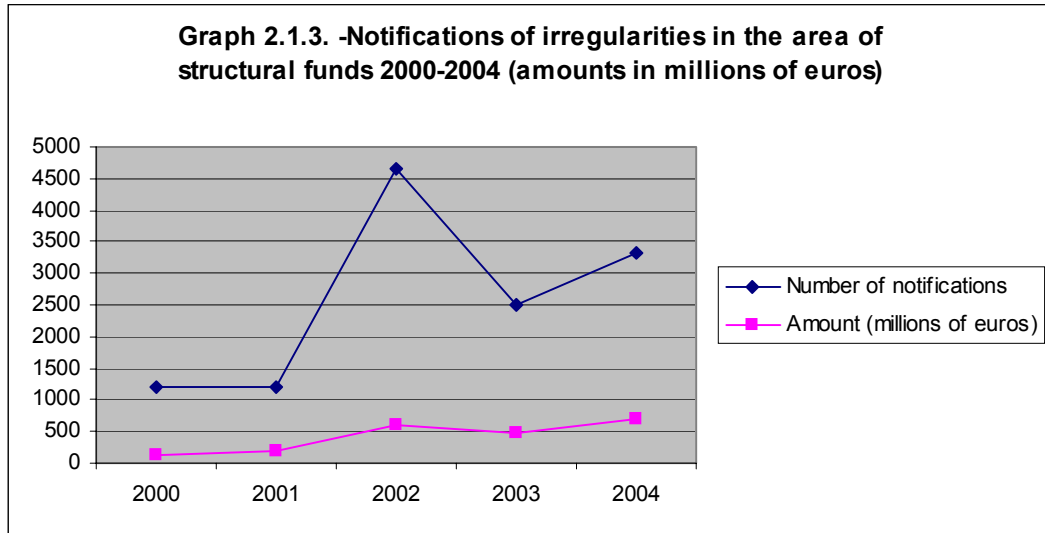
In 2004 the number of notified irregularities increased slightly with respect to previous years (3 401 cases), but their financial impact decreased (€82 million), it represents around 0.19% of the total EAGGF-Guarantee appropriations (€42 935 million for 2004, which is a huge improvement compared to preceding years figures).



The Commission has assessed the effect of fraud on the Community budget based both on estimates provided by the Member States and on its own analyses. According to the Commission's estimates, 11% of the irregularities notified, i.e. 0.02% of total appropriations for the EAGGF – Guarantee, can be classified as fraud and the total amount involved is around €6.8 million. Most suspected fraud cases were committed using fictitious area declarations, forged customs documents and forged aid applications.

2.1.3. Structural funds

In 2004 both the number of irregularities notified (3 339 cases, including cohesion funds) and their financial impact (€695.6 K) increased with respect to the previous year owing to an increase in cases of irregularities in the area of ERDF. The financial impact of the irregularities notified in 2004 represents around 2% of the structural and cohesion fund appropriations (€35.665 million for 2004).



According to the Commission's estimates, 20% of the irregularities notified, i.e. 0.4% of the structural and cohesion fund appropriations, can be classified as fraud. The most affected appears to be the European social fund (around 26%).

2.1.4. The pre-accession funds

A system of notification of irregularities similar to that for the structural funds has been established for multiannual financing agreements for PHARE²², SAPARD²³, ISPA²⁴ and the funds granted to Cyprus and Malta²⁵.

²² Poland and Hungary Aid for Economic Reconstruction, Regulation (EC) No 3906/89, OJ L 375, 23.12.1989.

²³ Sapard (Agricultural Pre-Accession Instrument), Regulation (EC) No 1268/1999, OJ L 161, 26.6.1999.

²⁴ ISPA (Structural Pre-Accession Instrument), Regulation (EC) No 1267/1999, OJ L 161, 26.6.1999.

²⁵ Regulation (EC) No 555/2000, OJ L 68, 16.3.2000.

Table 2.1.4. : Notifications of irregularities pre-accession funds. Amounts, in millions of euros, representing the total eligible cost in respect of the projects affected by the irregularities.

Year	PHARE ²⁶		SAPARD		ISPA	
	Case	Amount	Case	Amount	Case	Amount
2002	30	1 073	0	0	0	0
2003	12	9	26	76	20	391
2004	81	35	131	81	28	713
Total	123	1 118	157	157	48	1 105

The authorities in charge of notifying irregularities must continue to make serious efforts to improve the quality of the notifications. In over 90% of the cases notified it is impossible for the Commission to ascertain the classification of the irregularities detected, the amounts recovered and the amounts yet to be recovered. It is for this reason that the table above gives the total amount of the eligible cost in respect of the projects affected rather than the amounts really affected. Thus, the figures available cannot yet be analysed in depth.

2.2. Informing the public on the results of the fight against fraud

With a view to increased transparency the Commission wishes to inform better about the types of frauds and other irregularities which threaten the Community's financial interests, the consequences which they may have and the measures which are taken to avoid them.

In November 2004 the European Anti-Fraud Office organised a seminar with the anti-fraud communicators network, bringing together the communication experts of the national fraud authorities. In his introductory speech Commissioner Siim Kallas said that "Transparency is one of the cornerstones of the fight against and prevention of corruption and fiscal mismanagement, and communication is the active side of transparency. Transparency in itself is often enough to prevent fraud." However, in the case of investigations, different interests have to be weighed against each other.

Analysis of the contributions by the Member States²⁷ to this report shows that each country has different judicial and legislative rules to providing information to the public on the different stages of administrative or judicial inquiries.

A limited number of Member States are in favour of providing extensive information to the public on both administrative and judicial inquiries throughout the process,

²⁶ The figures in this column include notifications made under Regulation 555/2000 by Cyprus and Malta.
²⁷ SEC (2005)973

from the opening of an investigation to publication of information on an inquiry once it has been closed.

However, most Member States limit the information provided to the public on the different stages of administrative inquiries on the grounds that the public's right to be informed must be balanced against the need to protect the rights to defence, privacy and human dignity. These Member States also refuse to make public the facts of an inquiry once it has been closed. The information made public on judicial inquiries is more extensive, although it is usually only provided at the request of the media or with express authorisation rather than spontaneously.

2.3. The measures adopted by the Member States

The legislation discussed below is intended to solely for illustration. A separate Commission document²⁸ lists all the new measures taken in 2004 reported by the Member States. The new Member States have in principle only reported on legislation that was adopted or came into force after 1 May 2004.

2.3.1. New horizontal measures

The Member States indicated that they had adopted very wide ranging measures aimed at improving the protection of the Community's financial interests: measures to counter money laundering or corruption, national anti-fraud strategies, widening of the area of customs investigations, extension of the definition of certain offences so as to include attacks on the European budget, improvements in financial controls or procedures for the processing of data held on computers and so on.

In 2004 a new Act was adopted in Belgium to combat money laundering. It requires the unit responsible for handling financial information to notify the Ministry of Finance when information is provided to the public prosecutor on money or property laundering resulting from an offence relating to serious organised tax fraud. The Act also concerns fraud affecting the Community budget.

The Latvian government has adopted an extensive anti-corruption programme for 2004-2008. , A Latvian Act authorises especially the office responsible for preventing and combating corruption to receive information on criminal investigations in progress (subject to authorisation by the prosecutor), donations received by public organisations, or debts and receivables of civil servants (with the authorisation of the prosecutor or the President of the Supreme Court).

The Czech Republic²⁹, adopted the National Strategy against fraud affecting or threatening the financial interests of the European Communities.

²⁸ SEC (2005)973 Member States were asked to provide information only on measures that are more than a mere implementation of Community law. Since the Commission's report comes out annually, the lack of any new measures in 2004 in certain Member States cannot be interpreted as reflecting the general level of protection of financial interests in those countries. On the contrary, it may be owing to a higher level of activity in the preceding period.

²⁹ Decree No 456, 12.5.2004.

France³⁰, extends the remit of the French national judicial customs department to cover all offences affecting the Communities' financial interests. From now on, officials authorised to conduct judicial inquiries will also have powers in cases of infringements relating to the structural funds.

An amendment to the Polish Treasury Penal Code has introduced a new definition of legal public duty. From now on, failure to collect a European budget resource or a resource of a budget managed on behalf of or by the European Communities may constitute an infringement of the rules on legal public duty, provided the other determining criteria have been fulfilled.

The Slovenian Criminal Code has been amended to extend the definition of tax evasion to include fraud against the Communities' financial interests.

In Slovakia, the definition of infringement of budgetary discipline has been extended to irregularities committed in spending Community funds³¹.

Finland has created the function of financial controller, with independent status and the right to access to information, tasked with coordinating the internal and administrative controls for European funds in Finland and to draft reports on the supervision and auditing of these funds, on mismanagement and irregularities, addressed to EU institutions and other EU bodies. The Finnish government has also set up an internal control and risk management board harmonise control procedures and improve internal audit.

In Portugal, external audits should be conducted henceforth at least once every eight years on the expenses of bodies that manage public expenditure (in particular European funds)³². The audits must assess the body's function and aims and whether its expenses meet criteria of economy, efficiency and effectiveness.

An agreement has been concluded to facilitate cooperation between the Latvian financial police and the Estonian customs authorities.

In the Czech Republic, improvements have been made to the laws governing selection of the winning bid in public tenders, to avoid in particular frauds.

Computer processing of data. Several Member States have reported improvements in the computer processing of data which should make the activities of the authorities involved more effective and reliable. In France a new software application is to be rolled out that will make it possible to automate, trace and increase the reliability of administrative checks and selections of on-the-spot visits and inspections relating to rural development funds. Lithuania has introduced a computerised management system to gather and store information on programming and on the use of structural funds and supplementary financial resources. In the UK the Scottish authorities have introduced an on-line system for applications and claims relating to the structural funds, while in Hungary a unified computer management system (EMIR) was

³⁰ Act No 2004-204 on 9 March 2004 adapting the judicial system to developments in criminal behaviour.

³¹ Act 523/2004.

³² Act 48/2004.

created in 2004 for the effective and uniform processing of information on the structural and cohesion funds.

2.3.2. *New measures relating to own resources*

Spanish tax legislation was amended by an Act passed in July 2004. As a major innovation is the possibility of employing new technologies and mechanisms to combat fraud more effectively. It also increases the number of tax audits and improves the procedure for recovering tax debts.

In Ireland, a new law significantly extends the powers of customs officials to seize assets that are the proceeds of an offence or have been used to commit this offence. In December 2004 the Irish authorities bought a mobile containers scanner that should significantly increase the effectiveness of the customs department in the fight against maritime smuggling.

In Poland, customs legislation has been adapted to provide for tax audits for Community own resources as well.

2.3.3. *New measures relating to agricultural expenditure*

France is grouping together the various paying offices for the common agricultural policy into poles, and the creation of a single paying agency should be realized by 2007.

In Italy a decree-law has been adopted aimed at harmonising and rationalising inspections. This gives the regional governments the power to impose administrative penalties in cases of food fraud, committed in breach of Community law.

In Poland, a new law allows the president of the agricultural market agency to issue an administrative decision whereby agricultural payments received unduly or in excess of the amount due are treated as customs debts and can therefore be recovered by administrative enforcement procedures.

2.3.4. *New measures relating to structural measures*

In Malta, Act I of 2004 amends the system for receipt, control and payment of public funds, including structural funds. The new Act also stipulates the procedures to be used in combating fraud and other irregularities.

The Netherlands adopted a series of administrative measures to ensure correct use of ESF resources and more effective prevention of irregularities. These measures relate in particular to exchanges of information, assistance and audits, particularly as regards applications submitted retroactively.

In Poland, an Act passed on 20 April 2004 created national monitoring units for each of the structural funds.

The new Portuguese audit manual on the structural and cohesion funds was approved. It outlines the methods to be employed by the IGF as the body responsible for drawing up the statement of validity when assistance that is co-financed from the funds is wound up.

2.4. Measures adopted by the Commission

2.4.1. Measures taken under the 2004-2005 action plan

The overall strategic approach 2001-2005³³ was followed by the Commission's action plan 2004-2005 on the protection of financial interests and the fight against fraud³⁴.

In 2004 the Commission delivered 11 of the 37 measures contained in this action plan for 2004-2005. The most noteworthy were:

- Proposals to amend Regulations Nos 1073 and 1074/99³⁵ (see 1.1);
- Proposal for a Regulation on mutual administrative assistance for the protection of the financial interests of the Community against fraud and any other illegal activities, in particular money laundering and VAT fraud³⁶ (see 3.2);
- A report³⁷ on implementation by the Member States of the Convention on the Protection of the Communities' financial interests, which came into force in 2002. A number of shortcomings have been identified, and the Commission considers that there are good grounds for pursuing the adoption of the draft directive³⁸ on the protection of the Community's financial interests.

2.4.2. Strengthening OLAF's effectiveness

Since it was set up, OLAF has made considerable efforts to reduce the length of preliminary assessments and investigations. The average length of assessments of information on suspected irregularities, which rose to 18 months in the period July 2000-June 2001³⁹, fell to 5 months in 2003-04. The average length of investigations has been falling steadily since 1999 and is now around 22 months compared with 29 months five years ago.

³³ Communication from the Commission on protection of the Communities' financial interests, the fight against fraud, for an overall strategic approach, COM (2000) 358 final.

³⁴ Communication from the Commission on protection of the Communities' financial interests, the fight against fraud, action plan 2004-05, COM (2004) 544 final.

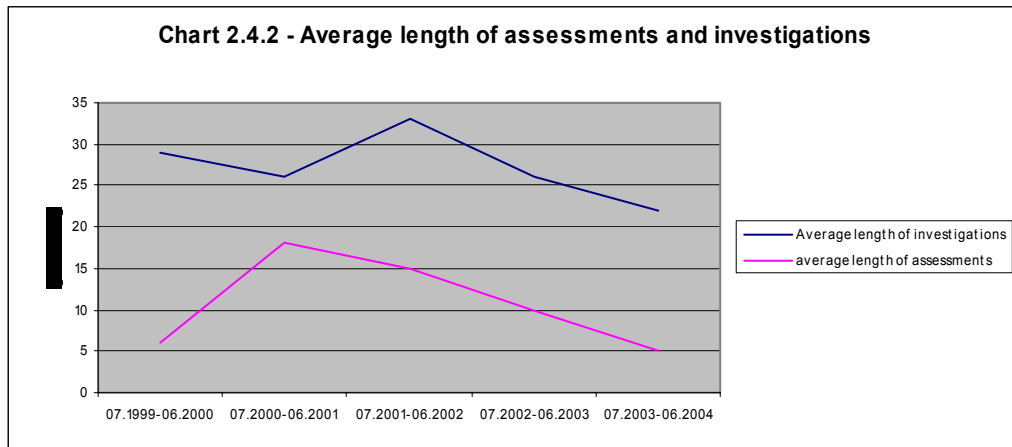
³⁵ COM(2004)103 and 10 final.

³⁶ COM(2004)509 final.

³⁷ COM(2004)709.

³⁸ COM(2002)577.

³⁹ During the period June 1999 - July 2000, the average duration of the assessment phase was 6 Months, but this period can't be considered representative, because the implementation of new procedures took effect only in late 2000.



The proportion of investigations closed with follow-up has increased to around 1 in 2 in the period July 2003 - June 2004 compared with 1 in 5 in the period 1999-2000, most markedly as concerns judicial follow-up (almost 1 case in 3 in 2003-04 compared with 1 case in 22 in 1999-2000)⁴⁰.

2.4.3. *Operational expertise at the service of legislation and of contract management*

The Commission's White Paper on reform⁴¹ contains a series of measures designed to make better use of the expertise available to improve prevention of irregularities and fraud. A Commission communication⁴² sets out a mechanism for consulting OLAF as far in advance as possible when submitting legislative proposals, to improve quality of legislation. The communication also proposes that DG Budget, in cooperation with OLAF, should take a series of preventive measures in the area of contract management. The system came into operation in 2003.

For 2004, 29 legislative measures programmed were identified as risk measures in terms of fraud proofing. The Office has thus been able to contribute its operational experience in relation to the drafting of Community documents, such as the Green Paper on the future of preferential systems and the modernisation of the customs code, as well as more specific regulations, such as a proposal to regulate mushroom quotas, or certificates of origin for garlic imported from third countries.

In the area of direct expenditure, on the new model memorandum of understanding for participation by the candidate countries in Community programmes will include clauses ensuring more effective protection of financial interests.

⁴⁰ For more details concerning the Office's results see the complementary evaluation of the activities of the European anti-fraud office, SEC(2004)1370.

⁴¹ Reforming the Commission, White Paper part I point V3 and part II point XXX, COM(2000)200 final.

⁴² Commission Communication concerning the fraud-proofing of legislation and contract management, of 7.11.2001 – document SEC(2001)2029 final.

3. COOPERATION IN AGRICULTURE AND CUSTOMS MATTERS

The instrument for cooperation in agricultural and customs matters⁴³ lays down the conditions under which the customs and agricultural authorities of the Member States cooperate with one another and also with the Commission at the request of an applicant authority or spontaneously, to ensure, notably the exercise of a special surveillance on persons, places, movements of goods and means of transportation, administrative inquiries, the providing of a document, etc.

The regulation has led to a wide system for exchange of information between the Commission and the Member States. The national authorities communicate to the Commission any relevant information concerning irregularities detected and suspected fraud, the methods and the practices used, etc. (Art 17). The regulation also makes provisions for mutual assistance with the authorities in third countries and the information from the Commission when this presents a particular interest (Art. 19 to 22).

The regulation established a customs information system (Art 23 to 41), that enables information to be disseminated rapidly and makes the cooperation procedures more efficient⁴⁴.

This year this subject was chosen by the Commission and the Member States as one of the central questions covered in the questionnaire and the following section gives an overview on the state of play in this area.

3.1. Results of analysis of the contributions from the Member States⁴⁵

While in general the implementation of the Regulation is satisfactory. Analyses shows that the quality of both Member State and Commission statistical data could be improved and that certain practical problems should be resolved.

Statistics on communications. Most Member States have encountered difficulties in supplying reliable and coherent statistics concerning the communications or reports requested. The Member States have neither a centralised database for this type of information nor a uniform definition of the concept of “mutual assistance communication”. No analysis was therefore possible and examination of the figures was based merely on a quantitative approach. Also, there are no exploitable statistics on the number of communications and reports requested by or communicated to the Commission. The improvement of the data bases is desirable for use in risk analysis.

⁴³ Regulation (EC) No 515/97, OJ L 82, 22.3.1997, supplemented by Commission Regulation (EC) No 696/98: OJ L 96, 28.03.98, p. 22.

⁴⁴ A third pillar instrument has been introduced to complete the system. The Naples II Convention lays down the arrangements for mutual assistance in the context of criminal investigations of infringements of Community and national customs regulations. A certain number of the investigations concerned are the natural extension of administrative inquiries initiated under Regulation (EC) No 515/97. In 2004, 10 Member States (Austria, Belgium, Cyprus, Hungary, Lithuania, Latvia, Portugal, Finland, Slovenia, Slovakia) ratified the Naples II Convention. A further two (Czech Republic, Estonia) ratified it at the beginning of 2005. At the time this report was drafted, only three Member States had not yet deposited their instrument of ratification.

⁴⁵ All the answers by Member States can be consulted in the working document (SEC (2005)973) relating to the report, since the report gives only a very summarised overview.

Handling of request for mutual assistance. Member States have reported problems, in particular response time, the quality and relevance of responses (or even the absence of any response, particularly from certain third countries) and translation problems. As a result, the time limit for instituting the proceedings in question sometimes expires. Most of the Member States regularly use reminders to speed up the procedure.

Cooperation with third countries. Member States have suggested concluding cooperation agreements with third countries to resolve some of the problems reported⁴⁶. Although the Commission updates and distributes the contact list during each Mutual Assistance committee meeting (two or three times a year), it has been reported that sometimes it is difficult to determine the competent authority in a third country in a Member State (when request is sent by a third country).

Handling of fraud risk messages. Member States are required⁴⁷ to inform the Commission of risks of fraud or other irregularities that are of particular relevance at Community level, and the Commission conveys this information to other Member States. In some Member states there are two or more competent administrations for the application of customs legislation, messages are then handled in the same way as other requests for mutual assistance; a central coordinating unit or office generally receives the message and conducts an initial analysis of it in order to determine which competent authority should deal with it⁴⁸. The results are conveyed to the Commission (OLAF) by the coordinating unit/office.

Necessity of a judicial authorisation. Where the consent of the judicial authority is required to implement a measure needed to handle a request for mutual assistance, the information thus obtained is conveyed to the requesting Member State.⁴⁹ An additional judicial authorisation may be necessary for the transmission of information. Member States differ widely as to which types of investigative measures require authorisation from the judicial authority, specially the customs authorities have more extensive powers of administrative inquiry. Generally speaking, however, each time such an authorisation is required to take an investigative measure, it is also required in order to send the report to the requesting Member State⁵⁰. Certain Member States also impose additional requirements, not laid down in the Regulation, for transmitting the data obtained.

Treatment of reports submitted following a mission in a third country. Following a Community mission in a third country, a report, countersigned by those taking part in the mission, and the supporting documentation which could be used as

⁴⁶ It has been suggested that agreements be concluded with the following countries: Albania, Armenia, Belarus, Bosnia-Herzegovina, Canada, China, Croatia, United Arab Emirates, Indonesia, Japan, Laos, Malaysia, Panama, Romania, Russia, Serbia and Monte Negro, Singapore, Taiwan, Thailand, Tunisia, Vietnam, the countries of the middle East, the Balkan countries, the North African countries and the countries of South-East Asia. The cooperation agreements signed with India (20.10.2004) and Mexico (26.03.2001) came into force.

⁴⁷ Article 18 of Regulation (EC) No 515/97

⁴⁸ In Poland, the Bureau for International Treasury Relations is the main correspondent of the Commission, but the customs authorities must also be contacted in a certain number of cases. Both services are departments of the Ministry of Finance

⁴⁹ Article 3 of the Regulation 515/95.

⁵⁰ With the exception of Poland, Slovakia and France concerning customs investigations.

evidence are sent to the Member States concerned even if they have not taken part in the mission⁵¹. The Commission wished to know if the reports and documentation could be used as evidence in a recovery procedure before a national court whether or not the Member State took part on the mission. The Member States replied in the affirmative. However, there may be difficulties with the evidence in a recovery procedure in a Member State that has not taken part in the mission in cases where the third country have not signed the report, something which is not required by the Community regulation.

Statistics on follow-up of cases reported. The communication of the administrative and judicial decisions on reported cases is obligatory⁵². Although several Member States plan to set up departments responsible for following up cases reported and drawing up statistics, there is no centralised management of this information at present and the statistics currently obtained are incomplete and unreliable. Only a few decisions concern organised crime. The reason for this may be the scant incidence of organised crime in customs and agricultural infringements the restricted definition of organised crime in the legislation of certain Member States, reclassification by the judicial authority of the offences reported (for example conspiracy) or also a lack of evidence in the case file.

3.2. The measures taken by the Commission in 2004

Stepping up cooperation in agricultural and customs matters. Following the thematic report of DG Budget on the handling of mutual assistance messages⁵³, the Commission consulted the Member States and confirmed the need to:

- reinforce the efficiency of working methods by faster and more modern exchange and follow-up of information;
- foster a better co-operative environment between the tools of detection, investigation and prosecution (articulation between Mutual assistance sheets, CIS⁵⁴ and FIDE⁵⁵);
- better synergy between the respective aims of various Commission departments.

In 2004 a feasibility study was conducted with a view to creating an electronic message: “Mutual Assistance/Fraud communication”.

⁵¹ Article 20 of the Regulation.

⁵² Article 49 of the Regulation, generally made through the Ownres system

⁵³ Thematic report of 2002 on handling of mutual assistance messages in the Member States.

⁵⁴ Database « Customs information system », foreseen by the Convention of 26 July 1995 on the use of information technology for customs purposes (OJ C316 of 27.11.1995). A new common interface should allow the storage of a certain number of information from the mutual assistance messages.

⁵⁵ The creation of a customs files identification database (FIDE) foreseen by the additional protocol to the Convention on the use of information technology for customs purposes of 8 May 2003 (OJ C 139 of 13.6.2003). Its objective is to allow the competent authorities of a Member State to identify the competent authorities of the other Member States who investigate of investigated the same persons or companies.

Extension of cooperation to other areas. On 20 July 2004 the Commission submitted a proposal for a Parliament and Council Regulation on mutual administrative assistance⁵⁶.

The proposed Regulation could provide a more detailed legislative framework in fight against fraud and encourages cooperation with and coordination by the Commission, particularly OLAF. The proposal is horizontal: it covers all the areas involved in the fight against Community fraud not yet addressed by sectoral legislation, in particular the cooperation between Member States and the Commission in the fight against intra-community VAT fraud⁵⁷, the structural funds and direct expenditure. It also concerns the use of information on financial transactions suspected of involving laundering of proceeds from Community fraud. Cooperation should be used above all for cases of particular importance for the Community, i.e. tax losses of at least €500 000 in cases of VAT fraud or of €100 000 in other cases.

4. RECOVERY

The Commission supervises the recovery of amounts unduly paid by the Communities as the result of an error, fraud or another irregularity, and the collection of own resources. In the areas directly managed by it, the Commission itself is responsible for recovery. In areas in which management has been decentralised, this responsibility is shared, with the Commission following the recovery procedures initiated by the Member States or else applying the clearance procedures.

In 2004 the Commission took several measures aimed at improving recovery of own resources, agricultural funds, structural funds and direct expenditure.

4.1. Traditional Own resources

Member States are responsible for the recovery of traditional own resources. The Member States must keep “A accounts”⁵⁸ for the registration of paid and/or guaranteed customs debts, and “B accounts” for the registration of either unpaid or not guaranteed” debts (or debts guaranteed but contested). Many debts appearing in the “B accounts” are the result of fraud or irregularities detected.

A report⁵⁹ analysed 17 cases of recovery which were subject of previous Mutual assistance communications from OLAF, involved several Member States and had a financial impact of over €1 million on the Community budget. The sample involved different types of asset and fraud mechanisms (false customs values, false prices and false declarations of origin). The Commission observed a steady improvement in the

⁵⁶ COM(2004)509 final.

⁵⁷ The aim of the proposed Regulation is to supplement Council Regulation No 1798/2003 of 7.10.2003, OJ L 264, 15.10.2003, which concerns only cooperation between Member States, and not between Member States and the Commission.

⁵⁸ Regulation (EC) 1150/2000, OJ L 130, 31.5.2000.

⁵⁹ Commission report on the follow-up of traditional own resources in cases of fraud and irregularities of 7.1.2005, COM(2004)850.

effective rate of debt recovery (2% for the sample examined in 1994, 12% in 1998 and 15% in 2003).

Member States are also responsible for entering all cases of detected fraud and irregularities in the OWNRES database if they have a potential financial impact of traditional own resources over €10,000. Because it is to be expected that customs debts over €10,000 will appear not only in OWNRES but also in the B-accounts, the Commission, in 2003, compared the twos. The results of this comparison were not very satisfactory. When the Commission did the exercise in 2004 significant improvements became evident.

Regulation (EC) No 2028/2004⁶⁰ obliges Member States to treat as irrecoverable amounts of traditional own resources in excess of €50,000 which have not been recovered within five years from the request for payment became definitively enforceable. This means that all such items (including very difficult to recover debts arising from fraud and irregularities) cases must be presented to the Commission for evaluation.

4.2. Direct expenditure

4.2.1. The new Financial Regulation

The new Financial Regulation⁶¹ significantly improves the effectiveness of recovery of direct expenditure. From now on, systematic use will be made of offsetting (Article 73), whereby any claim that the Communities have on a debtor who himself has a claim on the Communities that is confirmed, quantified and due will be offset as to an equivalent amount.

Article 72(2) also confirms that the institution can “formally establish an amount as receivable from persons other than States by means of a decision which is enforceable”. This possibility was provided for in Article 256 of the EC Treaty, but no implementing regulations had been issued.

In addition, the new Financial Regulations introduce automatic collection of late payment interest for any debt not repaid on the due date⁶², and significantly increase the amount thereof⁶³.

4.2.2. Contractual warranties for better contract management.

Payment of advances or granting of pre-financing without consideration at the time of payment constitutes an appreciable risk for the Communities' financial interests. However, such payments are an essential tool for carrying out certain actions that meet Community policy objectives. The new Financial Regulations and in particular

⁶⁰ OJ L 352, 27.11.2004.

⁶¹ Council Regulation (EC, EURATOM) No 1605/2002, OJ L 248, 16.9.2002.

⁶² Commission Regulation (EC, EURATOM) No 2342/2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002, OJ L 357, 31.12.2002, Article 86.

⁶³ The rate of late payment interest applicable is the reference rate of the European Central Bank plus 7 percentage points for service and supply contracts and the reference rate plus 3.5 percentage points in other cases. This is a significant increase with respect to the previous rate (the reference rate plus 1.5 percentage points).

the Regulation laying down detailed rules for its implementation, provides for a number of measures that mitigate this risk. Thus, in the cases provided for by the implementing rules, the contractors or beneficiaries must provide a guarantee in advance before receiving pre-financing.

The Commission's departments, through standard contracts or conventions (including agreements with candidate and third countries in the area of foreign aid or participation in Community programmes) ensure that effective provisions on recovery are included.

4.2.3. *Recovery by joining a civil action to criminal proceedings and precautionary measures under Member States' legislation*

The study published in last year's report⁶⁴ showed that in the majority of Member States the Commission is entitled to join a civil action to ongoing criminal proceedings with a view of obtaining damage to secure recovery of Community entitlements related to direct expenditure. Launching a civil action within criminal proceedings is considered an effective instrument to facilitate the Commission's efforts to recover debts in the field of direct expenditure. It offers several advantages, including the shortening of legal proceedings. In Member States having common law systems⁶⁵, although the Commission would not be entitled to launch 'civil action within criminal proceedings', it would nevertheless be allowed to make a request for a compensation order.

The 2003 report also established that the Commission may usually apply for precautionary measures⁶⁶ as from the investigation phase of criminal proceedings.

In 2004, the Commission wished to make a more detailed assessment of the conditions under which it may represent the Community in legal proceedings relating to direct expenditure. The questionnaire submitted to the Member States took the form of a case study involving an economic operator defrauding the Commission. Two Member States were not able to provide answers to this part of the questionnaire⁶⁷. The full text of the responses is available in the form of a Commission services' working document.

Although certain common trends can be identified, the national legal systems provide for very different conditions under which the Commission's application for civil action can be launched. This highlights the need for the Commission to have close co-operation with national judicial authorities. The 2004 report also gives the Commission a better understanding of the conditions under which applications for precautionary measures should be made following national legislations.

⁶⁴ COM(2004)573.

⁶⁵ Ireland, United Kingdom.

⁶⁶ Precautionary measures are those measures which the prosecutor or the court may order to prevent the defendant from dispersing his assets before the court reaches its decision. They include the freezing and seizing of the defendant's assets.

⁶⁷ Luxembourg, Malta. It should also be noted that the answers of some Member States were not detailed enough to be able to establish what were the essential points to be included in a Commission's application to conduct a 'civil action within criminal proceedings'.

Civil action within criminal proceedings. *The application for ‘civil action within criminal proceedings’.* The majority Member States’ answers show that the claim must be filed by the Commission. In Sweden the prosecutor is entitled to submit the claim. In Finland and Portugal it can be made by the prosecutor if he considers it appropriate. In this case, there will be no need for the Commission to make an application. Finland pointed out that, if the Commission applies for damages on the basis of facts which are not shown in the charge drawn up by the prosecutor, those facts should be presented in the claim together with the supporting evidence.

In certain Member States, it is also necessary to state all the facts supporting the object of the claim⁶⁸ and/or the amount sought for compensation⁶⁹. Additionally, in some Member States⁷⁰, the link of causality between the fraud and the loss to the Community budget must be clearly demonstrated in the application. Only two Member States⁷¹ reported that a claim may be submitted after the opening of the trial.

Requirements as to evidence in relation to civil action within criminal proceedings. All the Member States who answered apply the rule of evidence by all means, whether by a witness statement or in written report. However, the courts are also bound to apply the rule of the free assessment of evidence. This means that no piece of evidence in relation to the damage produced by the Commission, even a report of a certified auditor, might be in itself sufficient enough to prove an infringement of a criminal provision by the contractor.

Even if it is the rule that evidence may be provided by all means, three Member States indicated there are limits to the admissibility of a report of a certified auditor. (Sometimes, it is necessary that the report be written by a registered expert⁷², or one that has been appointed by the Court⁷³). In the Czech Republic the admissibility of the statement is subject to inclusion of specific clauses in the claim. In Italy, a quantitative limit is imposed on private parties, and therefore also on the Commission: they may appoint up to a maximum of two experts to give testimonies to the court.

In other Member States, auditors’ reports are freely admissible, but there are special conditions for the treatment of this type of evidence⁷⁴.

Precautionary measures. All Member States which allow ‘civil action within criminal proceedings’ also permit applications for precautionary, or safeguarding, measures.

Initiator of precautionary measures. The general rule is that it is the damaged party, and therefore the Commission, which must initiate the application before the public

⁶⁸ Czech Republic, Greece, Italy, Germany, Sweden.

⁶⁹ Czech Republic, Greece, Italy, Latvia, Slovakia.

⁷⁰ France, Hungary, Poland.

⁷¹ Netherlands, Slovakia

⁷² Czech Republic.

⁷³ Poland. The expert must be a court expert or a person who is known to possess adequate knowledge in a given field.

⁷⁴ Thus, in Sweden the report must be presented in person during the hearings. In Slovenia, the Court may appoint a financial expert to verify the document.

prosecutor or the court⁷⁵. Only two Member States reported that it is possible for both the Commission and the prosecutor to apply for a precautionary measure during the trial⁷⁶.

Application for precautionary measures. The obligatory information to be included in the application for precautionary measures varies greatly from one Member State to another. Some Member States⁷⁷ do not impose obligations concerning the application. At the opposite end of the spectrum, the application must sometimes be very detailed, including for example the legal basis for the application, a description of the relevant facts, evidence of dispersal of assets, and a description of the contractor's known assets together with their location. Slovakia imposes the condition that the application includes a proposal of a precautionary measure.

As far as the risk of disappearance of assets and consequently the impossibility of recovery is concerned, the burden of proof will generally fall on the injured party, that is to say the Commission⁷⁸. In this respect, it will always be in the interest of the Commission to submit an application with as many details as possible. Finally, it should be noted that an equivalent of precautionary measures may be found in certain Member States who have common law systems. They are known as freezing orders⁷⁹ and restraint orders⁸⁰.

4.3. Agriculture

In 2002 the total arrears of recoverable amounts relating to irregularities in the EAGGF Guarantee section were estimated at €2.2 billion, according to data provided by Member States under Articles 3 and 5 of Regulation No 595/91⁸¹. In its Communication of December 2002⁸², the main aim of which was to improve recovery, the Commission decided to set up a "Recovery Task Force" (RTF) made up of officials from OLAF and DG Agriculture. The Recovery Task Force was charged with clarifying the situation of unrecovered debt and drawing up decisions on financial liability under the formal clearance procedure in the EAGGF Guarantee section. It started its audit work in 2003 for unrecovered amounts dating from before 1999 exceeding €500 000 each. This exercise, involving nine Member States, revealed that the total amount of unrecovered debt was €765 million⁸³. At the end of 2004 the clearance procedure was initiated by DG AGRI; formal letters under Article

⁷⁵ Austria, Belgium, Czech Republic, Greece, Spain, Finland, France, Hungary, Italy, Latvia, Portugal, Sweden, Slovenia.

⁷⁶ Czech Republic and Slovakia. In the pre-trial proceedings, the prosecutor may secure the claim even without application by the injured if the protection of the latter's interest calls for it and, in particular, if there is a danger of omission.

⁷⁷ Austria, Belgium, Greece, Italy.

⁷⁸ Finland is only reported exception to this rule: application for a precautionary measure such as a transfer prohibition or seizure will not require any evidence of that risk. In principle, it is enough to claim that the risk is rather likely. However, the application should describe how the risk is manifesting itself in the case in question.

⁷⁹ England and Wales.

⁸⁰ Scotland.

⁸¹ OJ L 67, 14.3.1991.

⁸² COM(2002)671 final.

⁸³ This amount does not include 32 cases communicated before 1999 for an amount exceeding € 500 000, which revealed inconsistencies when compared with the communications were compared with the results of the audit. Priority will be given to dealing with these cases in 2005.

8 of Regulation (EC) No 1663/95 on financial liability were sent to the nine Member States in question with the financial corrections proposed by the Commission.

The RTF also began the audits of around 3 400 cases for an amount of under €500 000 each, which had been communicated before 1999 and not recovered to date (the total financial impact was estimated at around €200 million). The External Communications Registry database, managed by OLAF, contains all the communications sent by the Member States under Articles 3 and 5 of Regulation (EEC) No 595/91 on irregularities relating to the EAGGF Guarantee Section. The Member States were asked to verify and complete these data, fill in an electronic self-assessment form on the results of the recovery measures and submit a proposal on dealing with unrecovered amounts. The RTF will verify the data sent in 2005; the formal clearance procedure will begin after completion of the verifications and any necessary supplementary audits.

The RTF's work has resulted in better use of the data communicated by the Member States in line with the Commission's undertaking to "improve the quality of the available data relating to irregular payments under the CAP" in its response to the Court of Auditors' special report No 3/2004⁸⁴.

4.4. Structural funds

In the area of the structural funds, the recovery of unduly paid amounts due to irregularity or fraud is carried out by Member States. The recovery of those amounts at Community level can be done by reduction or cancellation of the financial contribution with the possibility of a transfer of funds to other operations when the programme concerned has not yet been closed.

The programmes co-financed by the structural funds are multi-annual and based on interim payments. Recovery of amounts unduly paid may take place before or after conclusion of the programme. For the 1994-1999 programming period, the deadline for presentation of the request for final payment to the Commission was 31st March 2003. In that period, about 1,000 programmes were co-financed by the Community for a total of around €159 billion⁸⁵. The Commission's authorising and managing departments (DG REGIO, EMPL, AGRI, FISH), assisted by the European Anti-Fraud Office, are responsible for administrative and financial follow-up once these programmes have been concluded. This follow-up is based in particular on the communications, in accordance with Regulation No 1681/94⁸⁶, of irregularities by Member States that have been recorded in the External Communications Registry database.

In the period in question, the Member States communicated cases of irregularities involving an amount of approximately € 1,370 billion⁸⁷ affected as Community contribution.

⁸⁴ Special report No 3/2004 on recovery of irregular payments under the Common Agricultural Policy, OJ C 269, 4.11.2004.

⁸⁵ These are multiannual programs. This figure does not include projects directly financed under the structural funds and projects co-financed under the cohesion funds.

⁸⁶ OJ L178 of 12.7.1994.

⁸⁷ Situation according to the data contained in the ECR database of 18.4.2005.

Among these cases, 5028 have been the subject of a final closure at Commission level and the amount of € 634.6 billion has been deducted during the final payment. Furthermore, for a number of 2,604 cases concerning the same period, Member States informed the Commission that the administrative and judicial procedures has been concluded at national level. The Commission departments are preparing decisions on how the amounts not recovered will be charged.

2,694 cases remain open, involving an amount of approximately 647€ to be recovered.