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THE FIGHT AGAINST FRAUD

Report on work done and progress achieved in 1990

(presented by the Commission)

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FOREWORD

The first report on work done and progress achieved in the fight against fraud outlined the general problems which Community action was having to tackle, referring in particular to the undertaking given by the Commission to report annually to Parliament and the Council.<sup>1</sup>

This report on 1990, which has been produced in conjunction with the General Report on the Activities of the European Communities and the EAGGF financial report,<sup>2</sup> is also in response to that undertaking. It is intended to become the key component of cooperation between the institutions.

As a year of mobilization and intense political activity on the issue of fraud affecting the Community's finances, 1989 should stand out as the year in which the political leaders were awakened to the need for in depth and long-term action to contain and bring about a lasting reduction in the impact of this phenomenon. The fight against fraud thus continued to be a major, priority concern in 1990.

Parliament, the Council and the Court of Auditors continue to give it their close attention. This has been conducive to continuation of the efforts to make significant progress in terms of both legislation and tangible operational results.

<sup>1</sup> The fight against fraud: Report on work done and progress achieved in 1989 (SEC(90)156 final, 31 January 1990).  
<sup>2</sup> COM(90)397 final, 5 September 1990 concerning 1989. Publication of the twentieth financial report on the EAGGF Guarantee Section covering 1990 is scheduled for the third quarter of 1991.

STRUCTURE OF REPORT

INTRODUCTION

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## INTRODUCTION

### Background and aims

The gradual establishment of the Community's financial mechanisms broadly reflects the development of its policies. It is hardly surprising, then, that the Community, faced with the new objectives of completing the single market in 1992 and implementing the Single Act, should have sought a new balance for its financial arrangements. After outlining its proposals for financial reform, which eventually produced the decisions of 24 June 1988<sup>1</sup> on the system of own resources and stricter budgetary discipline, the Commission also resumed its detailed consideration and analysis of the issue of protecting the finances of the Community policies.

One of the Commission's conclusions in its report on tougher measures against fraud affecting the Community budget<sup>2</sup> was that its action here needed to be more closely coordinated, and it therefore proposed creating a new unit in the Secretariat-General, which would report direct to the President.

Several developments since then stand out.

Most notable were the statement adopted by the Council on 13 March 1989, which provided a marked impetus, and the resolution passed by Parliament on 13 April 1989. These were followed up by the Commission's unveiling of a 45-point work programme that was put to the Member States in May the same year. The programme received the seal of approval at the highest political level from the Madrid European Council in June. As was made quite clear at the time, the scale of the programme is such as to require long-term action.

<sup>1</sup> Council Decision 88/376/EEC, Euratom of 24 June 1988 on the system of own resources; Council Decision 88/377/EEC, Euratom of 24 June 1988 on budgetary discipline.

<sup>2</sup> COM(87)572 final, 20 November 1987.

Developments in 1990

On 12 March 1990 the Council discussed the first report<sup>1</sup> submitted by the Commission in response to the undertaking given to the two arms of the budgetary authority and took note of the progress achieved in the areas covered by the programme. It also reaffirmed its desire to see more achieved in the way of simplifying legislation and strengthening cooperation between national authorities and Commission departments. While observing that much remained to be done within the Commission's action programme, it nevertheless felt that it offered a sound basis for the continuing effort to curb fraud aimed at the Community budget.

Parliament, too, through its Committee on Budgetary Control (at a meeting on 23 and 24 April 1990), welcomed the publication of the report.

After the many major developments of 1989, which were given extensive coverage in that first report, 1990 was a year of methodical application of the programme and some substantial progress; all this according to plan. At the same time the quality of operations carried out in collaboration with the Member States improved appreciably. The results testify to the effectiveness of the arrangements now in place at Community level and to the fact that they combine well with their national counterparts. While the year was less fertile in headline-catching events, it demonstrated the value of long-term action and the importance of constant contact with those active in the field.

The most salient points are as follows:

- . The adoption of an internal Commission procedure designed to prevent legislation which could give rise to the risk of fraud.

<sup>1</sup> "The fight against fraud: Report on work done and progress achieved in 1989", SEC(90)156 final, 31 January 1990.

- . The systematic incorporation of control measures and sanctions into agricultural and fisheries legislation.
- . The setting-up of a high-level group of experts to review agricultural legislation with a view to simplifying it.
- . The adoption and implementation of provisions to tighten national controls on EAGGF Guarantee operations.
- . Continued investigations in high-risk areas by the Commission departments responsible.
- . The extension to all the Member States of the computerized network for rapid communications in the area of administrative cooperation in customs and agriculture (SCENT).
- . Improved collaboration and participation of all the Member States in administrative cooperation.
- . A significant expansion of investigations carried out in non-member countries.
- . The adoption of a code of conduct for the notification of fraud and irregularities in relation to the structural Funds.
- . Commission proposal for regulations to strengthen administrative cooperation in the Community in order to reduce the risk of fraud in the field of indirect taxation after 1992.
- . Commission communication on the interpretation of the judgment of the Court of Justice (Case 68/88) on the legal protection of the Community's financial interests, and a request to the Member States to ensure that infringements of Community law are penalized in the same way as infringements of national law.



Once the action programme had been established, the amount of budget resources needed to implement it had to be determined.

The substantial appropriations entered in the 1990 budget to step up the fight against fraud, mainly in agriculture, clearly reflect the determination of the Commission and the budgetary authority to translate their firm-avowed political commitment into effective action.

The financial commitment made in 1990 has not weakened and virtually the same level of funding for anti-fraud measures can be found in the 1991 budget adopted in December.

#### Outlook

Methodical progress on all aspects of the programme will place the Community in a strong position to tackle the growth of fraud against the budget.

It is widely recognized that fraud could pose a serious threat to the credibility of the Community's financial management. The harm that it does to free competition makes it essential for action to be taken. As 1993 approaches, and with it the elimination of all frontiers, the actors on the Community institutional scene are ready to play their parts.

Bolstered by the political impetus given, there is a gathering momentum at every level to give substance to the advocated principles of subsidiarity. Without this the bold design for a single market with free and fair competition is liable to prove a pipedream.

The growing recognition by all those concerned of the crucial role that the Community can play is having a significant impact on the course of developments and is contributing greatly to the gradual emergence of wider systematic cooperation. There is every reason to believe that this will ultimately pay a rich dividend.

TITLE I - MAIN ACTIVITIES IN 1990

Chapter 1 - Own resources and customs union

It is not possible to launch a political venture and make a success of it without the necessary financial resources, and the building of Europe is no exception. Even if the Rome Treaty did not at the outset follow the ECSC Treaty<sup>1</sup> in adopting the principle of financial autonomy, Article 201 none the less provided the possibility of replacing financial contributions from the Member States by own resources.

These resources and the implementing arrangements, set up in stages beginning in 1970,<sup>2</sup> were adjusted substantially when the new financial system was introduced in 1988.<sup>3</sup>

The Member States collect what are essentially taxes on behalf of the Community in order to finance its budget, which is administered by the Commission.<sup>4</sup>

Article 2 of the June 1988 Decision defines revenue as consisting of levies and other agricultural charges, customs duties, the application of a uniform rate of VAT and a fourth, variable resource based on each Member State's GNP.

1 Treaty establishing the European Coal and Steel Community, Article 49.  
2 Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources.  
3 Council Decision 88/376/EEC, Euratom of 24 June 1988.  
4 First paragraph of Article 205 of the Treaty.

To make this basic system operational, the Council in 1989 revised and strengthened the measures taken to implement the own resources system<sup>1</sup> and to remedy the inadequacies of the initial scheme, particularly as regards traditional own resources.

The new regulations preserve the primary responsibility of the Member States for collecting own resources but reinforce the Commission's special responsibility for seeing that they are uniformly recovered.

The new measures amplify the existing rules set out in the Financial Regulation<sup>2</sup> and, in the specific matter of fraud prevention, those concerning mutual assistance in customs and agricultural matters.<sup>3</sup>

When the single market is completed on 31 December 1992, the customs union will acquire a new dimension. If it works well, it will help to protect the Community budget, particularly if own resources obtained from customs duties and agricultural levies, which represent a third of Community revenue, are collected properly and uniformly.

#### 1. Own resources

##### 1.1 Traditional own resources (customs duties, agricultural levies)

- 1 Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources: OJ L 155, 7.6.1989, p.1.  
Council Regulation (EEC) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax: OJ L 155, 7.6.1989, p.9.
- 2 Financial Regulation of 21 December 1977: OJ L 356, 31.12.1977, p.1; last amended by Council Regulation (ECSC, EEC, Euratom) No 610/90: OJ L 70, 16.3.1990, p.1.
- 3 Council Regulation (EEC) No 1468/81 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters: OJ L 144, 2.6.1981, p.2; last amended by Council Regulation (EEC) No 945/87 of 30 March 1987: OJ L 90, 2.4.1987, p.3.

Regulation (EEC) No 1552/89 lays down the rules for establishing, entering in the accounts and making available own resources. It specifies what information the Member States must supply the Commission, upon which it also confers autonomous powers of inspection.

The new rules were first put into effect in 1990.

The Commission thus has a role to play in supervising the operation of national schemes for the collection of own resources, particularly in the matter of fraud prevention. The new arrangements make it possible to step up quite considerably the efforts made to ensure that traditional own resources are paid to the Community in full. There are three key components in the scheme of relations between the Member States and the Commission:

- a legal obligation to report established entitlements, which means that the Commission is assured of full and systematic information;<sup>1</sup>
- separate accounts for entitlements not recovered, which can then be monitored more easily;<sup>2</sup>
- the power to carry out inspection measures on the spot, both in the traditional form of associated inspections and under the new provisions for autonomous inspection measures.<sup>3</sup>

#### Notification to the Commission

Member States are required to inform the Commission of all cases of fraud or irregularity twice a year from 1 January 1990. These six-monthly reports contain a brief description of all cases involving amounts

<sup>1</sup> Article 6(3) of Regulation No 1552/89.

<sup>2</sup> Article 6(2)(b) of Regulation No 1552/89.

<sup>3</sup> Article 18(3) of Regulation No 1552/89.

exceeding ECU 10,000 and set out the measures taken or planned to avoid recurrences. A good many of these reports concern proven cases of fraud or irregularity; some, however, double up with the reports circulated under the mutual assistance arrangements.<sup>1</sup>

A standard report form has been sent to all Member States so that the Commission will receive the same information from all of them.

The 410 cases of fraud or irregularity reported to the Commission at 31 December 1990 break down as follows:

Member State	B	D	DK	EL	ES	F	IRL	I	L	NL	P	UK	TOTAL
Number of cases	45	32	46	4	2	105	1	22	-	24	12	117	410
Amounts (ecu million)	3.2	33.7	1.7	0.6	0.8	7.8	0.03	14.4	-	4.6	0.3	22.4	89.513

These reports cover both cases where the relevant entitlements (totalling ECU 75,216,101) have already been recovered and those where recovery procedures are still in hand.

The Commission is looking into the possibility of using the reports as a means of providing the Member States, in return, with information which may help them in devising measures to prevent and counter fraud.

<sup>1</sup> See 2.2 below.

It should also be possible to use the annual reports<sup>1</sup> on the establishment and entry in the accounts of own resources and the half-yearly reports<sup>2</sup> on the outcome of the Member States' inspections and on questions of principle concerning the most important matters in dispute as a basis for statistical analyses of the types of goods most commonly affected, the nature of the infringements themselves and the categories of rule which are infringed.

#### Separate accounts

Considerable progress has been made in that the Member States are now required to keep separate accounts for entitlements that are established and recovered and entitlements that are established but not yet recovered or secured.

This separate accounting scheme will enable the Commission to check that own resources are in fact recovered, especially in cases of fraud or irregularity reported by the Member States.

#### On-the-spot inspections

The new rules applying to traditional own resources allow the Commission not only to be associated with national inspection measures but also to undertake its own inspection measures on the spot, so that its powers in this area are now comparable to those it already enjoyed in relation to agricultural expenditure (EAGGF Guarantee Section).

The new facility was first available in 1990, and seven such inspections were made.

<sup>1</sup> Article 7 of Regulation No 1552/89.

<sup>2</sup> Article 17(3) of Regulation No 1552/89.

It should also be noted that the Commission has launched discussions with the national authorities, in the Advisory Committee on Own Resources, on the way these inspections are organized and performed in the Member States. Its working paper on the subject is now being considered by that Committee.

#### 1.2 VAT own resources

The Commission, as required by Article 12 of the VAT own resources Regulation,<sup>1</sup> is currently working with each of the Member States on a study of improvements which might be made to national procedures for establishing, recovering and verifying VAT liability with a view to combating fraud. The Commission is to send its first report to Parliament and the Council before the end of 1991.

Member States have received a detailed questionnaire on practical and technical aspects of national VAT management and control procedures. Most of them have answered. The Commission is now studying the answers with a view to bilateral discussions with each national VAT department on possible improvements.

In order to complete its information, the Commission has launched a study<sup>2</sup> of the problems involved in the collection and control of VAT encountered by taxable persons.

The study is being undertaken only in those Member States where VAT has already existed for a good many years.

<sup>1</sup> Council Regulation (EEC) No 1553/89.

<sup>2</sup> OJ C 196, 4.8.1990, p.22.

This study, without affecting work in hand on indirect taxation, will reflect opinions expressed by trade associations in certain sectors where the problem of fraud is particularly acute.

## 2. Mutual assistance

### 2.1 The regulations

Regulation (EEC) No 1468/81 and, in textile matters, Regulation (EEC) No 616/78<sup>1</sup> organize the cooperation between national authorities which is necessary for the smooth functioning of the customs union and for combating fraud at Community level. These regulations determine mutual administrative assistance arrangements, both as between the relevant authorities and as between them and the Commission. Their chief aim is to engender the necessary solidarity between different bodies so that the rules can be applied uniformly and fraud against the Community budget, and indeed fraud anywhere in the economy, can be combated. They are not confined to own resources alone.

In this context the Commission stimulates and coordinates mutual assistance, especially where fraud has ramifications in several Member States and when cases dealt with bilaterally raise questions of general interest for the other Member States.

<sup>1</sup> Council Regulation (EEC) No 616/78 on proof of origin for certain textile products: OJ L 84, 31.3.1978, p.1; last amended by Council Regulation (EEC) No 3626/83: OJ L 360, 23.12.1983, p.5.



## 2.2 Mutual assistance in practice

In 1990 there was a marked improvement in the quality and significance of cases dealt with under the Community cooperation arrangements in customs matters.

While there was no actual increase in the number of cases notified for coordination, the improvement in the quality of the information supplied and the joint action taken are particularly welcome evidence of the Member States' clear desire to step up their cooperation.

The arrangements operate by means of mutual assistance advices,<sup>1</sup> which are sometimes no more than an exchange of information, or even mere suspicions, relating to unusual movements of goods, operations contrary to Community rules or movements of goods which may facilitate fraud. These are cases which have not yet been judged by a court and which are still being, or still need to be, investigated by the Member States or the Commission. They are in advance of cases reported under Regulation (EEC) No 1552/89.<sup>2</sup>

The cases reported in 1990 were substantially more important than those dealt with in earlier years, in terms both of the amounts involved and of their ramifications in Member States other than those initially concerned. Several networks have been uncovered and proceedings are in hand in the national courts.

Although the number of cases reported varied from country to country, for the first time all contributed this year. It is also worth noting the

<sup>1</sup> Governed by Article 19 of Regulation No 1468/81. The form contains all the operational information needed to deal with cases of fraud or irregularity.

<sup>2</sup> See 1.1 "Information for the Commission" above.

cooperation and goodwill manifested by all those involved in dealing with cases where the national authorities of other Member States were also concerned.

A large number of cases are handled bilaterally between the relevant Member States themselves under the mutual assistance arrangements, without the Commission necessarily being notified. The results achieved can none the less be counted as a victory for the mutual assistance arrangements in the fight against fraud and for the smooth application of the subsidiarity principle.

The development of SCENT,<sup>1</sup> a computerized information exchange system, continued in 1990 with the supply of new hardware to the Member States. This is a particularly important link in channels of communication between the Member States and between them and the Commission, and simplifies access to certain data banks. All the Member States are now connected to the system, and users have been trained for it.<sup>2</sup>

Examination of the cases handled so far reveals that agricultural produce, fisheries, textiles, electronics and iron and steel are the areas of business where fraud is most prevalent.

Most of the cases concerned false declarations of origin, of type or of value. A few concerned anti-dumping duties.

Efforts made in recent years to improve coordination between the different authorities have been continued and intensified with a series of ad hoc meetings with inspectors in the Member States involved in specific cases.

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1 System for a Customs Enforcement Network.

2 See Title II, Chapter 2, Section 3.

In 1990 the Commission sent out 81 mutual assistance or textile fraud records, 65 of them relating to new cases; not all had an impact on own resources.

Member / State/ /Comm.	B	D	DK	EL	ES	F	IRL	I	L	NL	P	UK	Comm.	TOTAL
Number of cases 1	1	4	-	-	-	7	-	3	-	1	3	12	5	36

### 2.3 Further action on cases from earlier years

The following results were achieved in 1990 in cases where investigations commenced in earlier years:

#### Maize from Yugoslavia

The Greek authorities continued measures to give effect to the judgment of the Court of Justice in Case 68/88 as follows:

- they paid the relevant own resources - ECU 2 197 135 in levies evaded and ECU 2 429 907 in interest on late payments;
- they carried out additional inspection measures on all cereals import, export and transit operations, associating the Commission with their preparations and notifying it of their findings. No comparable frauds were detected;
- they began legal proceedings against the ringleaders.

1 This table records only the cases which have an impact on own resources

#### Textiles from Mauritius

The investigations which began in 1989, revealing 144 preferential EUR 1 certificates not complying with the rules, continued in 1990. It was found that a further 118 EUR 1 certificates were invalid.

The five Member States concerned are analysing the results of these inspections and are taking the necessary measures to recover funds. New developments can be expected in 1991, as the last Community inspection revealed the involvement of even more companies which will now have to be investigated.

The complex ramifications of this case are still unfolding and new investigations have to be launched as information analysed by the Member States reaches the Commission; it is consequently not possible to give a precise estimate of the sums involved, but they will run to several million ecus.

#### Fishery products

Two missions organized in 1989 in the Gambia, Sierra Leone and Las Palmas uncovered two fraud networks specializing in forged preferential certificates of origin; the activities of the main person responsible were brought to an end.

One of the organizations was found to have falsified 80 EUR 1 certificates, and the equipment used for the purpose was confiscated.

In the second case, operations mounted simultaneously in Las Palmas and the Gambia uncovered 200 falsified Form A certificates, which were seized before they could be used.

The three Member States concerned (Belgium, France and the Netherlands) have analysed the results of these inspections, which concern own resources totalling about ECU 3.4 million. Recovery measures are in hand, but will take a long time because of the large number of businesses

concerned and because court proceedings have been commenced against certain importers who were aware of the fraudulent origin of the goods.

The discovery and seizure of 200 falsified Form A certificates prevented the fraudulent import on to the Community market of about 4 000 tonnes of fishery products (estimate based on the average weight of a consignment).

#### Beef from Brazil

Inspections carried out in difficult circumstances uncovered more than 400 falsified Brazilian animal health certificates which had been presented in Germany to accompany beef imports, one object being to evade customs duties.

Findings so far relate to recoverable amounts of around ECU 2.5 million. Inquiries are continuing, as further large amounts are still involved.

#### 2.4 New inquiries in non-member countries

There are signs of positive developments concerning Community inquiry missions conducted jointly in non-member countries by officials from the Commission and from the Member States under Article 15 of Regulation (EEC) No 1468/81. Twelve such missions were carried out in 1990, as against only three in 1989, and their value is beyond doubt. They are organized jointly with the Member States concerned and give them additional scope for action, particularly where all the possibilities for action within the Community have been exhausted and substantial evidence looks likely to be available elsewhere. These missions are in many cases the only basis for effective action against international rings, whose development is greatly assisted by the complex structure of international trade and finance. There is also a valuable deterrent effect; the ringleaders should be kept under such psychological pressure.

Despite occasional misgivings, the authorities of non-member countries generally support Community inquiry missions by giving access to official documentation, and sometimes even to firms' records. The Commission is now endeavouring to establish a broader legal basis in order to facilitate further development of this form of administrative cooperation.<sup>1</sup>

Inquiries conducted in non-member countries with the authorities of the Member States require lengthy preparation. Even if some research still needs to be pursued and certain information remains to be analysed, the results obtained so far highlight the value of these activities; there may be some difficulty in developing them further, however, as the Commission is short of the necessary financial and human resources. The table at Annex 1 summarizes the results of these inquiries, which are outlined below. It is worth noting that against a budgetary outlay of ECU 131 238, the own resources involved amount to some ECU 55 million.

#### Imports of electric motors from Malta

A Community investigation team visited Malta to check whether electric motors imported under preferential arrangements were genuinely eligible for them.

It was found that the motors were of Bulgarian origin and had merely been assembled, tested and painted in Malta.

The Committee on Origin confirmed the Commission's view. Anti-dumping duties have already been recovered in Germany and France (ECU 186 000), and recovery measures are in progress in the other Member States concerned.

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<sup>1</sup> See Title II, Chapter 2, Section 6.

**Potassium permanganate, videocassettes and textile products from Hong Kong and the People's Republic of China**

The Commission organized two missions to Hong Kong and China regarding fraud in these three areas.

False declarations of origin and value were made on imports of potassium permanganate with a view to evading anti-dumping duties and generally circumventing the regulations. Own resources worth ECU 2 million were involved, and ECU 750 000 has already been recovered in Belgium and the Netherlands.

False declarations of origin were made on void Form A certificates for videocassettes which had been assembled in one non-member country from components manufactured in another non-member country. Payment of own resources worth approximately ECU 2.4 million was evaded as a result.

The results of the textiles investigation are still being analysed. It has been ascertained that several million textile items produced in Hong Kong were fraudulently imported into the Community under false declarations of preferential origin. The amount of duties evaded is estimated at around ECU 1.3 million; ECU 600 000 has already been recovered.

**Shrimps and cod from Greenland**

It was found that false declarations of origin had been made out for shrimps and cod imported into the Community under the preferential arrangements for the OCT. No transit customs formalities had been carried out, which complicated the investigation and facilitated fraud. Following the visit by the investigation team, the Greenland authorities have established control procedures for these products.

The financial impact already established is ECU 800 000 which is now being recovered in Denmark and Portugal. Investigations are continuing into products from another country fished in Canadian waters and transiting via another territory; several million ecus could be involved.

#### Preserved tuna imported from Mauritius

Initial suspicions related to the true capacity of the boats involved for catching and freezing tuna, given the quantities of preserved tuna actually imported (over 12 000 tonnes in four years).

The investigation revealed that the two boats concerned had adequate theoretical capacity but that only part of their catch went into the preparation of preserved products for the Community market. The shortfall of initial input products meant that the relevant EUR 1 certificates were partly void, and information currently available suggests that duties of ECU 7 million were evaded. ;

Further investigations are in hand. The exact amount of own resources involved will not be known until these investigations are complete.

#### Rice from Guyana

Rice originating in Thailand, the United States, Argentina and Uruguay was imported into a number of Member States with false declarations of Guyanese origin. The total own resources lost on consignments already detected run to nearly ECU 4.6 million.



Chapter 2 - EAGGF Guarantee Section expenditure

1. The regulations

The division of responsibilities between the Member States and the Commission gives the Member States the task of ensuring that the measures taken at Community level, and in particular those for the financing of the common agricultural policy, are properly implemented. It is thus for the national authorities to see that the operations financed by the EAGGF Guarantee Section have actually been carried out and that the rules have been complied with. They must also take action to prevent any irregularities, to bring proceedings in cases of infringements and to recover any sums wrongly paid. The Commission, for its part, has the role of coordinating, encouraging and monitoring the operation of the financial mechanisms of the agricultural policy. For this purpose it has at its disposal various well-established rights and means of legal recourse.

The regulations define the complementary roles of the Commission and the Member States on the basis of:

- the legal obligation on the Member States to keep the Commission regularly informed;<sup>1</sup>
- the possibility for the Commission to carry out on-the-spot inspections or to have additional checks made by the national authorities;<sup>1</sup>
- the need for the Commission to verify, in the context of the clearance of accounts, that expenditure has been in accordance with the rules.<sup>2</sup>

<sup>1</sup> Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy: OJ L 94, 28.4.1970, p.13.  
Council Regulation (EEC) No 283/72 of 7 February 1972 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field: OJ L 36, 10.2.1972, p.1.

<sup>2</sup> Article 5(2)(b) of Regulation (EEC) No 729/70: for 1987, see the Financial Report on the EAGGF Guarantee Section (COM(90)397 final of 5 July 1990, Title IV, p.60, and Decision 89/627/EEC of 27 September 1989); for 1988, see Decision 90/644/EEC of 31 December 1990.

## 2. Notification to the Commission

Articles 3 and 5 of Regulation (EEC) No 283/72 require the Member States to notify the Commission every quarter of any irregularities, giving details of the provisions infringed, the nature and amount of the expenditure involved, the possibilities of recovery, the judicial or administrative procedures initiated, and the decisions taken at the end of such procedures.

By processing this information, the Commission can define more closely the action required on its part and is in a better position to follow the progress of the cases investigated by the Member States.

For 1990, the breakdown by Member State of irregularities with financial consequences for the EAGGF was as follows:

Member State	B	D	DK	EL	ES	F	IRL	I	L	NL	P	UK	TOTAL
Number of cases	1	132	29	12	57	76	3	95	-	133	54	188	780
Amounts (ecu million)	-	27,05	3,05	0,5	1,7	2,23	0	92,6	-	6,8	1,14	2	137
Amounts recovered (ecu million)	-	0,95	0,17	0,01	0,05	1,15	0	1,97	-	4,02	0,57	0,31	9,2

The table in Annex 2 gives the sectoral breakdown for this period.

### 3. Controls

In cases of irregularities committed by persons making or receiving payments under the EAGGF financing system, the Commission is empowered (under Regulation No 729/70) to supplement the checks carried out by the Member States, essential though these may be. Article 9 of the Regulation provides that officials appointed by the Commission may carry out additional checks, including on-the-spot inspections (in which officials of the Member State concerned may take part, if necessary). Under these same provisions and Article 6 of Regulation (EEC) No 283/82, the Commission may formally request the national authorities to hold an administrative inquiry in which Commission officials may take part.

### 4. Further action on cases from earlier years

In 1990 the following progress was made on inquiries initiated in earlier years and mentioned in the 1989 report:

#### Inward processing arrangements for durum wheat

This inquiry began in Italy at the end of 1989 and revealed that, quite apart from any frauds which called for stricter controls, the inward processing rules were unsuitable for dealing with this specific product. The Commission has proposed<sup>1</sup> amendments to the rules (change in the standard rate of yield for wheat meal and compulsory use of the quantitative scale for calculating the duty on derived products). This proposal is now being considered by the Council.

At the same time the Commission investigated the fraud aspects. A request for joint inspections was addressed to Italy under Article 6 of Regulation No 283/72 and Article 18(2) of Regulation No 1552/89. These inspections began in 1990 and will continue into 1991. They cover not only inward

<sup>1</sup> COM(90)448 of 8 November 1990.

processing (in the case of wheat, equivalent compensation rather than the present system of identical compensation) but also export refunds (quality of exported meal, mixtures of common and durum wheat, proof of arrival at destination).

#### Fruit and vegetables

As a result of the inquiry conducted into the citrus fruit sector in 1989, the Commission will have to consider making corrections to the Italian accounts with reference to the following:

- . non-recognition of certain producers' organizations which are not operating in accordance with the rules;
- . payment of national aid for processing in breach of the Community rules;
- . failure to comply with quality standards, with a consequent increase in the quantities withdrawn from the market.

Any appropriate financial adjustments will be made in the context of the clearance of accounts for 1989.

#### Variable slaughter premium for sheepmeat and goatmeat (clawback)

This matter is still the subject of bilateral discussions between the Commission and the United Kingdom.

#### Quality control of olive oil in intervention storage

The Commission refused to finance this measure in the light of its findings in 1988 and 1989 and those of an earlier inquiry. For the period 1985-88 the financial corrections for Italy amount to some ECU 39 million in the clearance of the 1988 accounts. As a result of the inquiry the expenditure declared by the Member State for 1989 has been reduced by approximately ECU 11 million and the Member State has been requested, for subsequent years, to exclude from its statements of expenditure the costs relating to olive oil not accepted for intervention.

#### Public storage of beef

The Commission widened the scope of its investigations into the private storage of beef to include purchases made by intervention agencies. Checks focused on the quality of the beef in storage. Inspections were carried out at cold stores and slaughterhouses in France, Ireland and Germany, in the presence of a veterinary expert, with a view to verifying the quality of the beef bought in and ascertaining whether it complied with the rules.

These inquiries have now been completed and the conclusions of the final report will be discussed bilaterally with the Member States concerned.

#### Ewe premium

Following the inquiries conducted in Spain and Greece in 1989, inspections were carried out in two other Member States in 1990 (United Kingdom and Portugal). Irregularities identical with those discovered in 1989 occurred in 1990:

- . "inflation" of applications: some producers apply for aid in respect of a number of animals which is 10 to 40% greater than the size of the actual flock;
- . more than one application in respect of the same flock;
- . applications in respect of non-existent flocks.

The inquiries revealed the shortcomings, and in some cases the complete absence, of national controls.

The Commission has not yet completed all its checks. Any financial adjustments will be made in the clearance of accounts for the 1989 financial year.

#### 5. New cases

As regards export refunds on beef and veal, three inquiries have been conducted to ascertain whether the products concerned were actually

released for consumption in the non-member country for which the export refund was requested:

**Romania**

Meetings have been held with the Romanian authorities in Bucharest to check the veracity of reports suggesting that meat qualifying for refunds had been exported to Romania and then re-exported to other non-member countries. The documentation obtained will be scrutinized with the Member States to determine what action should be taken.

**Mauritius**

An inquiry was conducted in Mauritius in conjunction with the above-mentioned checks on the origin of preserved tuna.<sup>1</sup> Investigations revealed that the meat exports on which refunds had been paid had not been released for consumption but were being held by a Mauritian firm under duty-free arrangements with a view to processing and subsequent re-export. The refunds in question amount to ECU 1.5 million.

**Zimbabwe and Zaire**

Inspectors were sent to Zimbabwe and Zaire for the same purpose. Their findings were as follows:

. In Zimbabwe it was found that 15 consignments of beef which had qualified for export refunds had not been released for consumption in South Africa (the country of destination) but had been imported into Zimbabwe. The fraud was perpetrated by presenting false certificates claiming that the meat had been released for consumption in South Africa. The refunds wrongly obtained amount to ECU 380 000. Proceedings to recover this sum have been initiated in Germany.

. In Zaire it was found that in most cases the goods had arrived at their destination and that the Commission's suspicions, which had been based on

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<sup>1</sup> See Chapter 1, Section 2.4 of this Title.

the submission of Annex II<sup>1</sup> documents bearing "forged" stamps, were unjustified.

The inquiry clarified the situation and obviated the need for further checks based on wrong assumptions.

It was established, however, that eight consignments loaded on to one vessel had never arrived in Zaire and that no trace of eight other consignments was to be found in the records kept by the local customs.

The German authorities are making additional investigations into these operations.

#### Production aid for durum wheat

This aid is calculated on the basis of the area cultivated, but applications have been submitted to obtain the aid for non-cultivated areas.

The checks carried out in Italy in 1987 and in Greece in 1989 revealed that a certain percentage of the areas declared were not in fact cultivated, and that farmers tended to apply for more aid than they were entitled to.

It was decided to make some financial corrections to the Italian accounts in the clearance of the 1988 accounts. The corrections relate to 1987 and 1988 and total some ECU 44 million. Any financial adjustments for Greece will be made in the clearance of accounts for 1989.

In 1990 a first attempt was made to conduct a survey of the areas under durum wheat by remote-sensing techniques.<sup>2</sup>

Checks on the observance of the minimum price payable to cotton growers on the basis of quality and quantity

Inquiries were carried out in Spain and Greece to verify the quality of

<sup>1</sup> See Title II, Chapter 2, Section 3.1, 4th paragraph.

<sup>2</sup> See Title II, Chapter 1, Section 5.

the unginned cotton supplied to ginning mills, the Commission having been alerted by an increase in expenditure on this sector. No fraud was detected. Abundant harvests in 1988 and 1989 were the main factors responsible for the increase in production premiums and, consequently, in budget expenditure over these two years.

#### Storage of dried grapes in Greece

An on-the-spot inquiry revealed certain shortcomings in the way the Community rules were applied by the Greek authorities. The financial consequences (if any) for storage aid and financial compensation are being evaluated.

#### Withdrawal of pigmeat from the market following the outbreak of swine fever in Belgium

The Commission carried out a number of inquiries at slaughterhouses, cold stores and cutting plants to check the quantity and quality of the products concerned and their origin.

A number of anomalies have been found. Further checks are being made.

#### Quality of cereals (durum wheat and common wheat) in intervention storage

The Commission has carried out inspections in Italy and Germany to ascertain the quality of cereals in intervention storage. Samples have been taken and are being analysed at various laboratories. Once the results are known the Commission will inform the Member States concerned of its conclusions. Similar inspections will be carried out in other Member States in 1991.



Tobacco

The Commission gave an expert group the task of preparing a study on the particular situation in the tobacco sector. The findings of these experts are set out in a report which is currently being examined by Commission staff. On the basis of their conclusions, the Commission will shortly present its proposals for the reform of the market organization for tobacco. Without calling into question the basic principles, the objective is to simplify the rules with a view to improving the transparency of the market and its management. To achieve this, the control arrangements will become more widely applicable throughout the Community and will be made stricter, with greater responsibility being placed on the Member States, thus giving full meaning to the concept of "subsidiarity".

The Commission has noted a sharp increase in expenditure on the hybrid Badischer Geudertheimer variety, suggesting the possibility of fraud. An inquiry into the payment of premiums on this variety has been launched in Italy. In the course of this inquiry the control arrangements have been fully analysed and the movement of products has been studied.

At the present stage of the investigations it would appear that the system of premiums for harvested raw tobacco encourages operators to produce very large quantities of a product for which there is no real market outlet. Recommendations have been made to the Italian authorities so that they will be in a better position to evaluate the economic significance of all data relating to production.

Chapter 3 - The structural Funds

New structural policy guidelines have been established by the Council to make a success of the Single Act and to strengthen economic and social cohesion in the Community (Article 130a of the EEC Treaty). The impact in financial terms takes the form of a doubling of the sums allocated to the structural Funds.

Implementation of this policy, with the large amounts involved, is based on close cooperation with the authorities or agencies designated by the Member States. This decentralized management of Community financial support is counterbalanced by stricter inspection arrangements.

It was in this context that the Council adopted rules to coordinate assistance from the various Funds<sup>1</sup> under which the Member States must take measures to prevent and act against irregularities and inform the Commission of measures taken to this effect, particularly when administrative or court proceedings are involved.

The rules adopted are similar to those applying to the financing of the common agricultural policy.<sup>2</sup> The Commission has prepared a code of conduct with the Member States to put the rules into practice and deal with cases of fraud or irregularity.

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1 Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different structural Funds: OJ L 374, 31.12.1988, p.1.

2 Council Regulation (EEC) No 729/70: OJ L 94, 28.4.1970, p.13.

1. Establishment of the code of conduct

Regulation No 4253/88 does not contain detailed operational rules. When the Regulation was adopted, a statement was entered in the Council minutes to the effect that the Commission would take the necessary measures to ensure uniform application of Article 23(1) in the Member States. The Commission put forward the idea of establishing a code of conduct and instructed its staff to work with the Member States on the details and the procedure for informing the Commission.

The Member States were consulted at meetings of the Community Committee for the Coordination of Fraud Prevention on 20 February, 8 May and 17 July 1990; the code was sent to the Member States on 31 July 1990.<sup>1</sup>

The code requires the Member States to notify the Commission of provisions adopted with a view to preventing and taking action against irregularities and the departments responsible for applying them. The Commission is to be informed of all cases involving over ECU 4 000, reports being made on a specific form every four months. The code broadly follows the rules applicable to the EAGGF Guarantee Section.<sup>2</sup>

The code should help national departments to inform the Commission of irregularities. Regular transmission of information will provide a basis for analysing detection methods, proposing changes to the rules and monitoring recovery procedures.

<sup>1</sup> OJ C 200, 9.8.1990, p.3.

<sup>2</sup> Council Regulation (EEC) No 283/72: OJ L 36, 10.2.1972, p.1.

Germany, Greece, Luxembourg and Portugal have notified the Commission, under this code, of the measures taken and arrangements made for taking action against irregularities (point 3 of the code). Under point 4, Greece and Ireland reported a number of EAGGF Guidance Section cases in December 1990 involving ECU 100 000. Some Member States have asked for more time to prepare their reports.

## 2. EAGGF Guidance Section

As there were no clear rules before the code of conduct was introduced, some Member States continued transmitting information on the basis of Regulation (EEC) No 283/72, which no longer applied to the EAGGF Guidance Section after Regulation (EEC) No 4253/88 entered into force.

There were 56 cases reported for the last quarter of 1989 and the first quarter of 1990 under the old rules,

They mainly concerned:

- Council Directive 72/159/EEC of 17 April 1972 on the modernization of farms;<sup>1</sup>
- Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures;<sup>2</sup>
- Council Regulation (EEC) No 777/85 of 26 March 1985 on the granting, for the 1985/86 to 1989/90 wine years, of permanent abandonment premiums in respect of certain areas under vines.<sup>3</sup>

The amounts involved ran to ECU 285 548, of which ECU 78 843 has already been recovered in 1990. A further ECU 925 210 was recovered in the same period in respect of earlier irregularities. The most common irregularities concerned false invoices, the cessation of farming, the sale of farms and overstatements of expenditure on invoices for services.

1 OJ L 96, 23.4.1972, p.1.

2 OJ L 93, 30.3.1985, p.1.

3 OJ L 88, 28.3.1985, p.8.

Under the old system the Member States were required to notify the Commission of irregularities involving over ECU 1 209 (1 000 UA).

Under the new system the threshold is raised to ECU 4 000, which means that the Commission will be able to concentrate on the most significant cases. Many requests for assistance under the EAGGF Guidance Section relate to amounts of less than ECU 1 000, so it can be assumed that in future the only cases dealt with at Community level will be those that have some real impact.

### 3. European Regional Development Fund

In 1990 the Member States did not notify the Commission of a single case of fraud under Article 23 of Regulation (EEC) No 4253/89 (code of conduct).

Nor did the Commission detect any cases of fraud during its own inspections.

### 4. European Social Fund

The 1989 report referred to difficulties encountered and measures undertaken by the Portuguese authorities. Court proceedings have now been brought.

The Commission joined civil claims to the criminal prosecutions brought to its attention by the Portuguese courts in 21 cases. In two of these, the Portuguese authorities have already paid back the amounts in dispute (ECU 98 476).

The Commission, in agreement with the Portuguese authorities, has left in suspense 757 cases amounting to about ECU 63 million, relating to the years 1986, 1987, 1988 and 1989.

The Commission has stepped up its on-the-spot inspections<sup>1</sup> and given the local authorities technical assistance for the measures they take.

The Commission has also established a programme to:

- check measures currently taken;
- review the inspection system in Portugal.

#### The Leros case

This social measure, which received special Community funding,<sup>2</sup> posed a number of problems. A series of press articles and TV programmes concerning the case in the autumn of 1989 stirred up public opinion in the Community and prompted a series of parliamentary questions relating to both the social and the financial aspects. Attention focused particularly on the fraudulent use of Community funds allocated to specific programmes submitted by the Greek authorities for the reform of the psychiatric centre on the island.

Inspections on the spot revealed that the real problem in Leros was that appropriations were not being taken up because the work was not being carried out and objectives were therefore not being achieved.

The outcome confirmed that work was proceeding very slowly, and expenditure with it (only about 15% of planned commitments and about 8% of payments). Some projects within the programme had been completed when others had not even started.

Some commitments have already been cancelled, and the Greek State has been asked to repay advances which have not been used.

<sup>1</sup> From a total of 90 cases in 1986, 1987 and 1988, the number of cases checked has increased to 118 in 1989 and 68 in 1990.

<sup>2</sup> Council Regulation (EEC) No 815/84 of 26 March 1984 on exceptional financial support in favour of Greece in the social field.

TITLE II      WORK PROGRAMME

Developing a credible Community anti-fraud policy needs to rely on a structured programme of action based on continuity, consistency and transparency. The programme established in 1989 was designed to serve as a guide and support for joint action by the Commission and the Member States.

Set out in the form of a 45-point action plan, the work programme combines at least four major advantages:

- . it brings together a series of separate measures in a coherent whole, grouped under three key headings: prevention, cooperation and counteraction;
- . it has received approval from all the institutions and from the highest political level;
- . it sets action in a long-term perspective;
- . it allows progress to be measured in tangible terms.

Annex 3 sets out an updated summary table of the 45 points of the programme grouped under the three headings indicated above, each of which is dealt with separately in the three chapters of this part of the report. To make identification easier each section in the chapters that follow indicates the points to which it relates.

## Chapter 1 - Prevention

### 1. Preventing the risk of fraud at the legislative stage (point 13)

Given the large amounts of agricultural expenditure and its susceptibility to fraud, the Commission began by concentrating on improving the situation there and in fisheries, where the management mechanisms are similar. A preventive control procedure has been introduced for these two sectors. The possibility of extending it to other sectors coming under Community rules is being considered.

The procedure operates on the principle of functional separation between the department managing a resource and the department which checks that the measures taken are suited to their purpose. Essentially this formula means that there has to be prior interdepartmental consultation to assess the applicability, controllability, and susceptibility to fraud of any new regulations involving measures with a financial impact.

The system, which has been in operation since April 1990, is the Commission's response to Parliament's request<sup>1</sup> for legislation to be analysed for its susceptibility to fraud prior to adoption. However, it must be borne clearly in mind that no amount of scrutiny can ever guarantee absolutely watertight regulations, however much care is taken to make them less complex and less vulnerable to fraud.

Nevertheless the Commission's departments examine every new proposal to check that it does incorporate the appropriate control measures. They also take care to ensure that appropriate sanctions are incorporated where necessary, in line with the Commission's policy.<sup>2</sup>

<sup>1</sup> Resolution of the European Parliament, OJ C 120, 16.5.1989, p.279.

<sup>2</sup> See section 9 of this Chapter.



2. Simplification of agricultural legislation (points 1 and 2)

There is no denying the complexity of the Community regulations governing some of the market organizations.

And not only is the legislative structure fragmented and complex, it also has to be adjusted frequently to the prevailing economic situation in the Member States and on the world markets.

Efforts at consolidation have so far failed to remedy the problem, which is often seen as a major factor contributing to the scope for fraud.

With a view to a solution in the medium term the Commission therefore set up a high-level expert working party, chaired by Mr André Lachaux, to look at ways of simplifying the mechanisms of the market organizations and the rules governing them.

On the basis of a systematic and comprehensive review of all the market organizations, the working party will draw up proposals for simplifying the relevant regulations. It presented its first report - on the aid scheme for butter for pastry products - in December 1990. After listing the problems arising from the implementation of the existing provisions, the working party proposed that the Commission take a series of measures, in particular that it simplify the descriptions of the various uses to which products may be put, define and list the eligible products and adapt the conditions governing verifications and release of securities to two categories of users instead of three (as is the case at present). It also proposed that a new document be introduced, on an experimental basis, to replace the present procedure for goods exchanged between traders operating in different Member States (use of control copy T5).<sup>1</sup> The

<sup>1</sup> Commission Regulation (EEC) No 2823/87 of 18 September 1987 on the documents to be used for the purpose of implementing Community measures entailing verification of the use and/or destination of goods: OJ L 270, 23.9.1987, p.1.

working party should, in principle, take three years to complete its task.

**3. Rationalization of the export refund scheme**  
(points 2, 7, 8, 9, 22 and 35)

The arrangements for exports of Community agricultural products are often the target of criticism, directed both at the way in which the amounts are fixed and at the whole procedure for monitoring proper application.

As part of its action programme for combating fraud, the Commission has embarked on the long and exacting task of simplifying the export refund scheme and tightening up verification procedures, in particular physical checks and audits of export transactions.

**3.1 Physical checks and audits of export transactions**

While it is true that the national authorities appear to be making a determined effort to ensure the sound management of agricultural expenditure, certain shortcomings in verification procedures nevertheless remain, notably in the auditing of accounts and checks that products are actually exported and that the rules are complied with. These deficiencies have been pointed out by the Court of Auditors on several occasions and confirmed by the Commission's own departments during on-the-spot checks for the clearance of accounts.<sup>1</sup>

The introduction of a minimum requirement for spot checks and Community financial assistance to help tighten up control procedures in the Member States should contribute a great deal to improving the situation.

During 1990 there were a number of notable achievements in the quest for more effective protection of the Community's finances:

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<sup>1</sup> See Part I, Chapter 2, Section 1, footnote 2.

. In February the Council adopted a Regulation to improve and harmonize the standards of physical checks on exports.<sup>1</sup> Based on the principle of combining physical checks and the audit of accounts, the Regulation sets a minimum rate of 5% of goods being exported which must be physically checked. In July an implementing Regulation was adopted to ensure the rapid application of the new system and to provide for transitional measures up to the end of 1991 to allow for the difficulties of some Member States in achieving the minimum rate of 5%.<sup>2</sup> In view of the importance of these new provisions, the Commission will present to the Council a progress report on the application of the new monitoring system by 1 January 1992 and will propose any amendments which are necessary to improve it.

. Amendments were made to the Regulation laying down common detailed rules for the application of the refund system<sup>3</sup> in order to make the system of proof of arrival at destination in third countries more reliable. Certain documents submitted in support of applications for refunds where amounts vary according to the destination are no longer admissible as they do not offer sufficient guarantees.<sup>4</sup>

Still in the context of the Regulation on the system of refunds

- 1 Council Regulation (EEC) No 386/90 of 12 February 1990 on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts: OJ L 42, 16.2.1990, p.6.
- 2 Commission Regulation (EEC) No 2030/90 of 17 July 1990 laying down detailed rules for the application of Regulation (EEC) No 386/90: OJ L 186, 18.7.1990, p.6.
- 3 Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down detailed common detailed rules for the application of the system of export refunds on agricultural products: OJ L 351, 14.12.1987, p.1.
- 4 Commission Regulation (EEC) No 354/90 of 9 February 1990 amending Regulation (EEC) No 3665/87 as regards proof of arrival at destination in third countries of agricultural products qualifying for a variable refund: OJ L 38, 10.2.1990, p.34.  
Notice to exporters: OJ C 108, 1.5.1990, p.5.

(Regulation (EEC) No 3665/87), the Commission intends to make it possible for national authorities, in certain specific circumstances and on their own responsibility, to employ the services of firms specializing in the inspection of goods. A draft is at present being considered by the Committee on Trade Mechanisms.

To help achieve these objectives, the Commission plans to include operations of this kind among the measures which are eligible for a Community financial contribution under a proposal before the Council.<sup>1</sup>

When the use of approved surveillance firms was discussed by the Committee on Trade Mechanisms in 1990, the Commission also recommended extending the use of such firms to the implementation of Article 18 of Regulation (EEC) No 3665/87, which provides for different kinds of proof of arrival at destination in third countries.

Finally, the Council made provision for a Community financial contribution towards the expenditure arising from the reinforcement of national control procedures and in June the Commission adopted the necessary measures for launching these co-financing operations.<sup>2</sup> These measures are part of the general framework for the tightening of controls in the EAGGF Guarantee Section, the main points of which are summarized in section 4 below; they should make a substantial contribution to improving the monitoring of export refunds.

### 3.2 The refunds nomenclature

When it introduced the system of refunds, the Commission, in order to adapt its policy to the commercial realities of the agri-foodstuffs sector in the Community and throughout the world, had to draw up a specific

<sup>1</sup> See paragraph 2 of Section 4 below.

<sup>2</sup> Council Regulation (EEC) No 4045/89 of 21 December 1989 and Commission Regulation (EEC) No 1863/90 of 29 June 1990 (see paragraph 1 of Section 4 below).

nomenclature of products which is both complex and sophisticated. Experience has shown that there are limits to the extent to which this kind of nomenclature can be expanded to keep up with the changing market situation (e.g. technological development, new products etc.). Both the Court of Auditors and the Commission - during on-the-spot checks - have come to realize the risks inherent in including in the refund nomenclature products which cannot easily be identified either by visual checks or by analysis (composition, endogenous fat, content in certain elements, geographical designation, etc.).

For this reason, the Commission has begun a systematic sector-by-sector review of the nomenclature. It is adopting a pragmatic approach to this operation, which has already yielded tangible results leading to a substantial reduction in the number of items in the beef/veal, fruit and vegetables and cereals nomenclatures.<sup>1</sup> The review currently under way in the dairy sector will provide an opportunity to make further significant progress in view of the particularly large number of products involved.

#### 4. Tightening of controls (points 10 and 11)

The Commission adopted detailed rules<sup>2</sup> for the application of the Council Regulation concerning stricter audits of accounts relating to the EAGGF Guarantee Section.<sup>3</sup> In particular there is to be closer scrutiny of the commercial documents of firms receiving or making payments under the EAGGF. Under the new rules, the minimum number of checks to be

1 Regulations (EEC) No 1468/89 of 26 May 1989: OJ L 144, p.49; No 3445/89 of 15 November 1989: OJ L 336, p.1; No 998/90 of 20 April 1990: OJ L 101, p.10; No 99/90 of 15 January 1990: OJ L 12, p.21; No 233/90 of 29 January 1990: OJ L 26, p.14; No 3236/90 of 9 November 1990: OJ L 310, p.16.

2 Commission Regulation (EEC) No 1863/90 of 29 June 1990 laying down detailed rules for the application of Regulation (EEC) No 4045/89: OJ L 170, 3.7.1990, p.23 (see Section 3.2 above).

3 Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the EAGGF and repealing Directive 77/435/EEC: OJ L 388, 30.12.1989, p.18 (see Section 3.2 above).

carried out on firms is increased to around 40% (in three stages); scrutiny is to focus on high-risk sectors on the basis of work programmes coordinated by the Commission, and each Member State will set up a special coordination and monitoring department. The Commission has proposed that the new financial resources available for fraud prevention be used to make a contribution towards the additional costs of the staff, training and equipment necessary for the rapid implementation of these new measures.

. Also in connection with the EAGGF Guarantee Section, the Commission adopted and sent to the Council a proposal for a Council Regulation on the reinforcement of national monitoring departments.<sup>1</sup>

Under this proposal the Community will be able to make a financial contribution - at the request of the Member States - to the cost of staff and equipment used specifically for the monitoring of export refunds and to national departments carrying out checks in other areas (aid per hectare, set-aside of arable land, wine, fruit and vegetables, dried grapes, beef and veal, sheepmeat, goatmeat, tobacco and oilseeds). Contributions will also be available for the cost of using approved surveillance firms and laboratories.

The impact of the Regulation will depend on the extent to which Member States draw on the financial incentives offered by the Community over the five years it will be in force. The cost to the budget will be no more than ECU 20 million per year.

. On a more specific point, Portugal's entry into the second stage of the accession process will result in a substantial increase in the number of applications for financial assistance under the EAGGF Guarantee Section; this implies greater commitment and responsibility on the part of the Portuguese authorities in checking that payments are in order.

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<sup>1</sup> OJ C 126, 22.5.1990, p.6.

The Council therefore adopted a Regulation on 29 October 1990 providing for a Community financial contribution towards the setting-up of a data processing system in the intervention agency (INGA) to ensure sound management and effective monitoring.<sup>1</sup> On 10 December the Commission adopted a Decision laying down detailed rules for the application of this Regulation.<sup>2</sup>

5. Development of new control structures and methods (points 21 and 45)

. Agencies: To offset the difficulties arising from the implementation of specific controls, particularly in the olive oil sector, the Council had already provided for the creation of special agencies to carry out the checks prescribed by Community rules in relation to the production aid scheme.<sup>3</sup> In view of the success of these arrangements, the Council adopted special provisions during the first half of 1990 widening the scope of the agencies' activities to cover consumption aid and the buying-in and public storage of olive oil.<sup>4</sup> The Member States concerned have recently taken the necessary steps to assign these new tasks to the agencies.

. Remote sensing: Financial assistance to Community farmers increasingly takes the form of aid schemes related to the surface area or the nature of actual plantations.

In certain cases (in particular perennial crops), the monitoring of aid schemes requires specialized registers to be kept (e.g. registers of vineyards, olive or citrus fruit cultivation, etc.). Despite the intensive use of aerial photography, the production and updating of registers entails a heavy administrative burden.

1 Council Regulation (EEC) No 3151/90 of 29 October 1990 on stepping up checks in Portugal on expenditure charged to the Guarantee Section of the EAGGF: OJ L 302, 31.10.1990, p.52.

2 Decision C(90)2541 of 10 December 1990 (not published).

3 Council Regulation (EEC) No 2262/84 of 17 July 1984 laying down special measures in respect of olive oil: OJ L 208, 3.8.1984.

4 Council Regulation (EEC) No 200/90 of 27 January 1990: OJ L 22, 27.1.1990.

In order to reduce these constraints and make checks more reliable, including those in sectors not covered by registers, the Commission is assessing the various possibilities offered by advanced technology such as the digitization of the boundaries of planted plots on aerial photographs or the use of satellites. Recording techniques are of course much easier for annual than for perennial crops.

These initiatives have already yielded results, particularly in the recording by satellite image of durum-wheat-growing areas in Italy and Greece. The Joint Research Centre continues to provide technical assistance to other Commission departments and is exploring the advantages of using satellites (SPOT and LANDSAT) to draw up regional inventories, estimate harvests or monitor the extent of vegetation (droughts, irrigation, etc.).<sup>1</sup>

More systematic use of these techniques within an appropriate framework of rules should help to make monitoring more reliable and hence more of a deterrent against irregularities. The Commission will continue its efforts to promote progress in this field, if possible in cooperation with the Member States.

. Audits: As well as encouraging Member States to make use of the expertise of surveillance firms or private laboratories (see point 4 above), the Commission itself uses specialized firms for auditing and monitoring purposes. Research contracts concluded under the Community Framework Programme for Research and Development<sup>2</sup> are subjected to an audit by outside agencies under the responsibility of the relevant Commission departments. The harmonized research contract contains a

<sup>1</sup> Council Decision 88/503/EEC of 26 September 1988 adopting a pilot project on remote sensing applied to agricultural statistics: OJ L 273, 5.10.1988, p.17.

<sup>2</sup> Programme to implement Community policy in science and technology.



special clause stipulating that the Commission reserves the right to check the amount of costs claimed by the contractor. Under the ESPRIT I and II and RACE programmes, more than 300 contracts have been examined in this way and some of these audits have led to amounts being repaid.

#### 6. Customs Code (point 3)

The progress which has been made in harmonizing customs legislation since 1958 has led to the establishment of a customs union and ranks as one of the undisputed achievements of the movement towards European integration. Now that this major lawmaking exercise has been completed, there is a need to bring together all existing provisions into one coherent body so that they may be applied more effectively as the single market of 1993 approaches.

The Commission's proposal for such a Code<sup>1</sup> is the logical consequence of a guiding principle which is regularly invoked by the European Parliament. The Code will serve as a framework and a basis for all customs activities in the Community, in particular concerning the implementation of the common policies.

By bringing together and consolidating customs legislation, this initiative will help make the rules simpler, clearer and more transparent and should therefore make a substantial contribution to the prevention of fraud.

The proposal was laid before the Council in April 1990 and has been given a first reading in the Working Party on Economic Questions. For its part, Parliament is awaiting the opinion of its Committee on Legal Affairs and Citizens' Rights; the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Budgetary Control are also studying the Code - the latter in conjunction with the Court of Auditors - and will contribute to the drafting of a Parliamentary opinion from their respective standpoints and in particular with an eye to reinforcing the

<sup>1</sup> OJ C 128, 23.5.1990, p.1.

protection of the Community's financial interests. Parliament is expected to deliver its opinion in the first quarter of 1991.

7. The Community transit procedure (point 4)

As part of the simplification and rationalization of the Community transit procedure to adapt it to the new circumstances of the customs union, the Council and the Commission adopted a series of Regulations in 1990<sup>1</sup> laying down a legal and technical framework for the conditions governing the movement of goods inside the Community. These measures are aimed at tightening control of the assessment of own resources and of amounts to be granted, in particular under the common agricultural policy, by the introduction of effective surveillance procedures, and at ensuring that amounts due can be recovered quickly.

It should be stressed that by limiting the scope of the new rules and considerably simplifying the existing arrangements, this initiative - which is in line with the objectives of the 1992 programme - will strengthen the hand of the national authorities combating fraud.

Dispensing with the need for several million documents hitherto presented at internal frontiers will, for instance, reduce the workload of inspection departments and enable staff to be redeployed elsewhere: freed from purely administrative duties, they can thus be employed in tasks which are more relevant to and more effective in the fight against fraud and irregularities.

<sup>1</sup> Council Regulation (EEC) No 474/90 abolishing the transit advice note: OJ L 51, 27.2.1990, p.1.  
Commission Regulation (EEC) No 1429/90: OJ L 137, 30.5.1990, p.21.  
Council Regulation (EEC) No 2726/90 on Community transit: OJ L 262, 26.9.1990, p.1.  
Commission Regulation (EEC) No 2920/90, OJ L 279: 11.10.1990, p.20.

8. Audit of national anti-fraud systems (point 14)

A pilot study has been carried out on traditional own resources in ten Member States. The assessment of the study's conclusions, without calling into question its usefulness in the medium term, raised a number of questions concerning methodology. In view of the size of the project, an outside consultant was called to advise on whether to continue the study. His report was submitted in December and is now being studied.

The Joint Research Centre at Ispra is continuing its work on the proposed DAF (anti-fraud documentation) system. A demonstration model has been set up and a feasibility study will be presented at the beginning of 1991.

9. The Community approach to controls and administrative penalties (points 6, 34 and 37)

When carrying out preventive checks on proposals for agricultural and fisheries legislation,<sup>1</sup> the Commission's departments ensure that appropriate control measures are incorporated and that, where necessary, provision is made for penalties.

This Commission approach is consistent with Article 155 of the EEC Treaty and with the rules governing the executive powers conferred by the Council for the proper implementation of Community regulations.

To enable it to assume its responsibilities to the full, the Commission instructed a working party to define a more systematic approach to the problem which would ensure the legal consistency of legislative proposals and thus offer better guarantees of their uniform application. This exercise was completed in July 1990,<sup>2</sup> complementing the measures taken

<sup>1</sup> See Section 1 above.

<sup>2</sup> Commission communication on the harmonization of controls and penalties relating to agriculture and fisheries (point 6 of the work programme), SEC(90)1381, 12 July 1990, EAGGF Committee, 19 December 1990.

in April to introduce preventive checks on agricultural and fisheries legislation.<sup>1</sup>

The working party's conclusions reinforced the Commission's view that it already has the necessary powers in this field and that there is no need to adopt new legal bases to enable it to exercise its responsibilities.

The Commission also concluded from this study that, as far as possible, Community legislation should lay down appropriate control measures and impose penalties which outweigh the economic advantage to be gained from infringements, thus achieving both a preventive and a deterrent effect.

It follows from this that, in order to be fully effective, penalties should, as a rule, go beyond the mere repayment of benefits wrongly received or amounts evaded (whether or not interest is added). In certain cases, temporary exclusion from an aid scheme or the withdrawal of an authorization might be just as effective as a financial penalty.

However, this view is not shared by all the Member States, some of whom argue that the Commission is not empowered, under the provisions of the Treaty and the general executive powers conferred on it by the Council, to lay down the application of penalties in the areas in question. They believe that the Council alone has jurisdiction in this matter.

To resolve this issue, the Commission proposed on 20 May 1990 a Council Regulation on the controls and penalties applicable under the common agricultural and fisheries policies.<sup>2</sup> With this proposal the Commission honoured an undertaking given at a Council meeting (Agriculture) on 25 and 26 September 1989 to propose a Regulation defining the principles

<sup>1</sup> See Section 1 of this Chapter.

<sup>2</sup> Proposal for a Council Regulation, OJ L 137, 6.6.1990.

to be applied to controls and penalties in relation to the common agricultural and fisheries policies. It should be stressed that the Commission stands by its view that a regulation of this kind can only be of a declaratory nature. The purpose of Community provisions is to ensure that the various instruments of the common policies achieve their objectives and to guarantee that unjustified expenditure is not charged to the Community budget.

It should also be noted that the Court of Justice will be giving an opinion on the question of the Commission's competence when it delivers its judgment in an action brought by Germany.<sup>1</sup>

In order to define its approach even more clearly, the Commission has taken a series of initiatives to assess the impact of Community administrative sanctions on the various systems of national penalties and to try to formulate general principles for gradually attaining the greatest possible degree of harmonization.

The situation at present is unsatisfactory: the autonomy of national law can mean that the same infringement is punished with varying degrees of severity. It is generally recognized that penalties must act as a deterrent, but to ensure their full effectiveness at Community level they must be applied with the same rigour regardless of who is concerned, where the infringement took place or whether the rule breached was a Community one or a national one. With the approach of the single market, the persistence of disparities in this area entails a high risk of distorting competition and even deflecting trade.

In parallel with its approach to the question of legislation, which is discussed above, the Commission has asked a high-level team of researchers to carry out a comparative study of administrative penalties. The first report is expected by the middle of 1991.

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<sup>1</sup> Case C-240/90: OJ C 216, 31.8.1990, p.6.

As a useful complement to this general project, a specific study on penalties in customs law has recently been commissioned from a consultant specializing in the field.<sup>1</sup> The final report and recommendations are expected by the end of 1991.

The comparative analysis of national legislation and practices, both at a general level and in the area of customs law, will serve to provide more information on the various approaches which are adopted for dealing with infringements.

Together, these Commission initiatives on the question of penalties provide a valuable counterpart to the work carried out specifically on the legal protection of the Community's financial interests described in Chapter 3 of this Title.

Their purpose is to shed light on the problems of the relation between Community law and the criminal law of the Member States, and in particular to make it possible to avoid harmful disparities in the way the Community's financial interests are protected in the various Member States in the run-up to the completion of the large internal market in 1992.

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<sup>1</sup> Study on the harmonization of sanctions for infractions against Community customs law: OJ C 192, 1.8.1990, p.8.

## Chapter 2 - Cooperation

### 1. Stepping up the dialogue with the national authorities

One of the advantages of the faster pace of Community integration has been to awaken the European partners to the need to actively encourage anything which will help to instil a spirit of solidarity throughout the Community. Administrative cooperation is the central feature, the cornerstone of this solidarity based on mutual understanding and trust. Past experience and the results already achieved<sup>1</sup> show that everyday application of this cardinal virtue is the most effective and durable method of preventing misappropriation of the Community's finances.

To ensure that this solidarity takes lasting root, cooperation and dialogue must be promoted at every level in accordance with the principle of subsidiarity, partnership and responsibility. The combined effect and complementary nature of the measures carried out in accordance with these basic principles will make it possible to strike the right balance between concern for the Community dimension of fraud and its national implications. All progress in this matter will favour the establishment of keen and fair competition essential to the economy and society in general.

The Commission, for its part, is endeavouring to promote contacts between the national authorities and between these authorities and its own departments. It is taking every opportunity to explain its views in all the relevant bodies,<sup>2</sup> placing the emphasis on the need to improve reciprocal information.

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<sup>1</sup> See Title I.

<sup>2</sup> EAGGF Committee, EAGGF Working Party on Irregularities and Mutual Assistance, Customs Working Party on administrative cooperation (Regulation (EEC) No 1468/81), Advisory Committee on Own Resources (ACOR), Community Committee for Coordination of Fraud Prevention.

The account of the most important cases contained in Title I demonstrates the value of developing and stepping up joint activities in the fraud sector. The participation in the investigations of the various parties concerned and the results achieved (together with the constant increase in the information supplied by the Member States) are grounds for being reasonably optimistic. It is encouraging to note that all Member States are making increased use of the various fraud notification arrangements (own resources, mutual assistance, EAGGF Guarantee and the structural Funds).

Of course, the problems facing the Member States and the Commission are anything but simple and it would be best not to be overoptimistic, especially as a final victory over fraud is impossible to attain. However, the existing conditions appear to guarantee that the current process will not go into reverse. The current trend does not suggest that Member States will slacken in their efforts. On the contrary, appreciable progress appears to have been made.

2. The Community's financial support (points 35 and 45)

The substantial funds allocated by the Community to bolster national control structures is an important factor in any assessment of the Community's contribution to the Member States. This support must also be interpreted as a tangible sign of solidarity and as a step in the direction of greater cooperation.<sup>1</sup>

Particular attention should be paid in this connection to the Commission proposal now before the Council<sup>2</sup> to improve notification and information

<sup>1</sup> See Chapter 1, Section 4 of this Title.

<sup>2</sup> OJ C 138, 7.6.1990 (Proposal for amending Regulation No 283/72).



arrangements under Regulation (EEC) No 283/72. Here too, the Commission is proposing that the Community make a financial contribution towards the costs incurred by the Member States in recovering sums wrongly paid by the EAGGF Guarantee Section. The progress made to date by the Council suggests that this matter could be settled by mid-1991.

### 3. Training (points 31, 32, 33)

Measures to protect the Community's finances cannot develop unless there is special awareness of the Community dimension of fraud, and this requires a clearer definition of the role of the officials who, in their national duties, help to protect the Community's financial interests.

The Commission has therefore set up training programmes to make national officials more aware of what is at stake for the Community. The measures taken by the various Commission departments in the areas within their jurisdiction have been supplemented by a specific fraud prevention programme.

Although difficult to assess from the cost/benefit angle, these operations have a direct and extremely positive effect, particularly on the conditions for cooperation between the various national authorities.

3.1 As part of this training policy, the Commission organized a number of seminars in 1990:

. Seminars on the Community's fraud prevention policy (The Hague, January 1990, and Athens, October 1990).

These seminars stressed the practical aspects of implementing the various Community rules, in particular in the customs sector and agriculture.

Seventy officials from investigation departments took part in the seminar in The Hague. Almost 200 customs and agriculture officials attended the programme in Athens. In view of the extremely favourable reactions of these officials and their departments, it has been decided to organize similar seminars in other Member States.

. Training seminar for inspectors from olive oil control agencies (Greece, Spain, Italy and Portugal) (Brussels, May 1990).

The subjects addressed were designed to meet the information requirements of both the Commission representatives and the agencies. They related largely to current developments within the Community and the operation of the agencies.

. Training seminar on fraud prevention (agricultural expenditure) (Brussels, October 1990).

This seminar was attended by around 100 officials from the customs service and national paying agencies. Special attention was paid to problems relating to control of export refunds in certain sectors.

. Seminar on use of the SCENT system (December 1990).

This seminar, organized with reference to the SCENT data-processing system<sup>1</sup> and its extension to all the Member States, drew the attention of national officials to the value of this network and to the advantages to be gained from its utilization. Those attending had the opportunity to discuss their experience of the system and put forward various suggestions for improvement.

3.2 The Matthaëus programme: One training measure deserving special attention is the Matthaëus programme, a large-scale operation to which

<sup>1</sup> See Section 4 below.

the Commission allocates a specific budget of ECU 2.5 million.<sup>1</sup> It is designed to prepare customs officers for Europe 1992, and consists of conventional training measures (organization of seminars in the Member States and the establishment of common training programmes taught in the national colleges for customs officers) and a more original scheme for the exchange of national officials.

Under the third stage of the Matthaeus programme, there was an exchange of 623 national officials in 1990 in order to improve their training and their relations with customs officers in other Member States. The officials taking part in this year's exchange were specialized in fraud investigations.

As part of this programme, seminars were also organized in 1990 in Athens and Thessaloniki on "The common agricultural policy: combating fraud through better training". More than 300 customs officers from Greece and several other Member States attended these seminars.

#### 4. Developments in computerized techniques and communications networks

The development of electronic transmission networks and the use of data bases are of considerable value for the rapid processing of information in a sector where information is of major importance.

. In 1990 the computerized system for the rapid communication of information in the customs and agriculture sectors (SCENT) was extended to all the Member States. This extension, the development of the network's possibilities and the increase in the number of connections made the system more effective and interactive.

The initial conclusions of a study highlight the potential of this system and the need to train users.

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<sup>1</sup> 1990 budget: Item A 3550 (Coordination of customs inspections).

A more elaborate version of the system is now being prepared.

Work will continue on turning the IRENE data base (irregularities, inquiries, exploitation) into a vast data bank recording all reported cases of fraud.

Originally intended to record cases concerning agriculture reported under Regulation (EEC) No 283/72, the IRENE 3 version has been extended since March 1990 to include cases of fraud affecting own resources.<sup>1</sup> A feasibility study is now in progress for the incorporation in this data base of information on the structural funds and on mutual assistance in the customs and agriculture sectors.<sup>2</sup> However, use of this expanded base will remain conditional on the necessary guarantees of confidentiality and data security.

. In its resolution of 22 January 1990,<sup>3</sup> the Council stressed the importance of establishing trans-European networks to attain the objectives of economic and social cohesion. These networks include computerized and electronic transmission links between government departments in the Member States.

The third research and technological development framework programme (1990-94) includes a specific programme on telematics systems in areas of general interest which is to start early in 1991. One object of the programme will be the creation of standardized electronic links between customs and excise departments in the Member States.

In the customs field, work has begun under the CADDIA programme in cooperation with the national customs departments. Working parties are meeting periodically to consider matters such as message standardization,

1 See Title I, Chapter 1, Section 1.

2 See Title I, Chapter 2 and Chapter 1, Section 2.

3 Council resolution on trans-European networks: OJ C 27, 6.2.1990, p.8.

transmission protocols and the improvement of control procedures for goods in transit using computerized systems.

As regards indirect taxation, preparatory standardization work has begun under the TEDIS programme, which involves measures to promote user-awareness of electronic data interchange.

#### 5. Administrative cooperation in the field of indirect taxation

The establishment of an internal market and the elimination of tax frontiers demand closer administrative cooperation between the Member States' tax authorities. As the principle of collection at destination is being maintained for a transitional period, there is a risk that cases of fraud will increase. To prevent this, the Commission has put forward proposals to strengthen the existing rules on administrative cooperation and mutual assistance in the field of indirect taxation.<sup>1</sup>

The exchange of information is the main component of this new type of administrative cooperation in the control of intra-Community operations subject to VAT and excise duties. The system is based on the obligation for the competent authorities to cooperate with each other and with the Commission to ensure that national and Community rules are complied with.

The Commission is given a special role in a consultation and coordination procedure; it is required to organize meetings to deal with matters of Community interest and to monitor the cooperation procedures. It is also required to communicate to the Member States' competent authorities any relevant information which it is able to supply.

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<sup>1</sup> Proposal for a Council Regulation concerning administrative cooperation in the field of indirect taxation (COM(90)183, 19 June 1990).

At their meeting on 3 December the Twelve's Ministers of Economic and Financial Affairs reached a political compromise on how VAT will be collected once frontiers and customs controls disappear in January 1993.

The more ambitious agreement on the harmonization of rates should be adopted next year along with the date for the transition to the final system under which VAT will be collected in the country where the goods are produced.

6. Cooperation with non-member countries (point 37)

If any proof were needed, the development of Community inquiry missions involving national and Commission officials referred to in Title I shows the importance and value of international cooperation to overcome fraud.

The surge in world trade favours the development of cleverly organized networks which are able to work relatively undisturbed because of the absence of institutionalized cooperation between authorities on different sides of the frontier. The Commission is therefore promoting moves to extend administrative cooperation with its main partners beyond the limits laid down in a number of agreements.<sup>1</sup> The Commission departments have had a mandate for negotiations with the EFTA countries since 10 October 1989. Three meetings were organized in 1990 and the state of progress suggests that a specific agreement on administrative assistance will be signed with all the EFTA countries by the end of 1991.

The Commission is investigating every opportunity for making similar progress with other non-member countries.

<sup>1</sup> European Free Trade Agreement (EFTA), Lomé Convention, system of generalized preferences. The scope of the assistance clauses usually contained in the protocols relating to the origin of goods attached to these agreements is limited to specific categories of goods.

Chapter 3 - Counteraction

Criminal law protection of the Community's financial interests (points 32, 39 and 40)

In order to be able to consider all the implications of the Court's judgment in Case 68/88 (maize) for the protection of the Community's finances, the President of the Commission sent a letter to the Heads of Government of the twelve Member States on 7 June 1990, drawing their attention to the particular importance of this ruling. According to this judgment, Member States are required by Article 5 of the EEC Treaty to take action against infringements of Community law in conditions analogous with those applicable to infringements of national law and to confer on the sanction an effective, proportionate and dissuasive character.

The Member States were asked to check whether their legislation complies with these principles. Those which have replied to date have either confirmed that their legislation complies with the principles laid down by the Court or indicated that a more detailed examination is in progress. They have stated that they will make the findings of this examination available to the Commission.

At the same time, the Commission has conducted targeted inspections in four Member States (Ireland, Italy, the Netherlands and the United Kingdom) on how cases of fraud affecting the Community are dealt with by the national courts. These inspections will continue in the other Member States in 1991.

Examination of the findings of these inspections and analysis of all the replies by the Member States to the letter concerning the Court's judgment should enable the Commission to draw up a more precise strategy for the legal protection of the Community's financial interests and to advance the activities and proposals pending. The findings of the two studies now being conducted into administrative sanctions<sup>1</sup> could also be of some value in this respect.

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<sup>1</sup> See Chapter 1, Section 9 of this Title.

At an informal meeting in Rome on 6 November 1990 the Ministers of Justice recognized the need to step up fraud prevention. Attention should be drawn in this connection to the importance attached by the Ministers to this subject and, in particular, to the basic question of the interrelationship between the Community legal order and national criminal law, especially from the angle of the problems arising within the various national legal systems as a result of the increasing interest shown by Community law in preventing and acting against irregularities and fraud.<sup>1</sup>

The Commission views favourably any move likely to combine action or define measures which will help strengthen the protection of the Community's finances. It is prepared to take account of all constructive suggestions on the subject. It has given its support, for instance, to the establishment of an association of European lawyers in Italy and is encouraging the creation of similar organizations in the other Member States in order to make those involved in the legal professions more aware of the question of the legal protection of the Community's financial interests.

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<sup>1</sup> See Chapter 1, Section 9 of this Title.



TITLE III - FINANCING THE FIGHT AGAINST FRAUD

In 1989 the Commission, after taking stock of the situation and producing a structured programme of measures to combat fraud, proposed a financing plan to support its own activities and those of the Member States; the budgetary authority accepted this and incorporated it in the 1990 budget.

The fact that the appropriations have been authorized again for 1991 is clear evidence of the already manifest political will to see that combating financial and economic crime in Europe will be a durable concern.

1. The extent of the funds devoted to financing the fight against fraud

A few comments should be made on the funds set aside for this purpose before discussing how the funds were used and what is planned for the future.

By appropriating more than ECU 70 million for anti-fraud measures in 1990,<sup>1</sup> the budgetary authority made it clear that its political will was irreversible. Apart from this political impact, it is also worth noting that the funds are largely devoted to preventive measures and are directly allocated to strengthening operational departments in the Member States and to establishing the necessary supervisory bodies or instruments to ensure that certain agricultural market organizations are managed soundly.

<sup>1</sup> See Annex 1 to "The Fight Against Fraud: Report on the work done and progress achieved in 1989" (SEC(90)156 final, 31 January 1990).

Profitability analysis of policies, relating results achieved to costs incurred, is always a valuable and often a stimulating exercise. But it would be wrong to measure the efficiency of an anti-fraud policy or its budgetary impact exclusively in terms of amounts recovered or evaded. The preventive and deterrent effects cannot be expressed in figures, and in any case the achievements of such a policy have to be seen in the medium and long term.

## 2. Budgetary implementation in 1990

The ECU 74 695 000 entered in the 1990 budget represented the first substantial and significant increase in appropriations to finance the fight against fraud. This budget broadly reflected the Commission's proposals.

Any assessment of expenditure during the year<sup>1</sup> must have regard for delays and difficulties encountered in establishing the legal bases. Moreover, this was the first allocation in a multiannual plan for combating fraud and the appropriations were mainly intended for the structural reinforcement of national control arrangements.

This applies particularly to the implementing rules for Council Regulation (EEC) No 4045/89, which provides for more stringent controls of EAGGF Guarantee Section operations at national level, with Community financial participation. The requisite additional funds (Item A3531) are planned for five years and cover expenditure on staff, training and computerization. Since the implementing Regulation<sup>2</sup> was not adopted until June 1990, the final date for the submission of applications by the Member States was put back to 15 October for this first year. On the

<sup>1</sup> See table at Annex 4.

<sup>2</sup> Article 3(5) of Commission Regulation (EEC) No 1863/90 of 29 June 1990: OJ L 170, 3.7.1990, p.23. See also Title II, Chapter 1, Section 4.

basis of the expenditure forecasts sent in by the national authorities, the Commission still managed to make the necessary commitments before the end of the year, with the result that only payments were delayed and should be spread over 1991.

The same applies to the commitment of the amounts entered in Chapter 100 (Provisional appropriations) for Article B298 (ECU 21 million). Only ECU 3 million, to strengthen the Portuguese intervention agency (INGA), could be committed, after a transfer from Chapter 100 to Article B298.<sup>1</sup> As the other regulations providing a legal basis for commitments have still not been adopted by the Council,<sup>2</sup> no transfers could be made to the intended headings.

The excellent utilization rate for most of the administrative appropriations helped to achieve a number of objectives under the work programme and to produce the results described in earlier parts of this report.

The overall budgetary outturn can be considered broadly satisfactory, even though the utilization of some appropriations was low because of difficulties encountered in the adoption of legal bases. This delay is not particularly significant if it is borne in mind that these instruments are part of a programme covering several years and affecting the very structure of the Member States' inspection arrangements. All that can be said is that the timing plans for the adoption of the basic rules, committing Community and national authorities in the long term, were rather optimistic. After all, there will only be a few months' delay in the decisions and the establishment of the means for tightening controls. It can therefore be expected that budget performance will be better in future years.

<sup>1</sup> See Title II, chapter 1, point 4.

<sup>2</sup> See Title II, chapter 1, point 4.

### 3. 1991 budget

The 1991 appropriations will have much the same total as in 1990, and the new nomenclature, reflecting the changes to the Financial Regulation, will make implementation easier to monitor. Appropriations in the budget were only about 5% down on those for the previous year.<sup>1</sup>

### 4. The Commission's approach to management of appropriations

As the appropriations for anti-fraud operations are scattered throughout the budget and are managed by various authorizing departments, the Commission has defined a special approach for budgetary forecasting and implementation in this area.

The various departments responsible for managing appropriations are required to prepare their forecasts for the next year by an internal coordination procedure. Once the budget has been adopted, implementation of the programmes and use of the appropriations are also monitored centrally.

The initial years' experience will help Commission staff to assess the value of this approach and make any changes that might improve the coordination necessary for the sound management of the funds earmarked for the fight against fraud.

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<sup>1</sup> See Annex 5.

CONCLUSION

Results and prospects

In the previous year there was intensive political action and media attention devoted to financial crime at Europe's expense; 1990, in contrast, saw the methodical pursuit of action undertaken to put a durable brake on a phenomenon which could jeopardize the Community's standing and public image. This was the year in which the importance of long-term action and of ongoing contact with grassroots reality was most fully revealed.

It will be vital to continue in this vein, not only because it will then be possible to protect the Community's financial interests but also because this will establish a reliable framework for developing relations of mutual trust between the various authorities concerned.

The concerns expressed at recent meetings of Parliament's Committee on Budgetary Control remind us, in case we had forgotten, of the unceasing efforts that all authorities have to maintain if they are to remain credible and satisfy the demands made of them as the guardians of public funds.

At the same time the Commission, in the light of experience and results acquired so far, is continuing its reflections on ways of enriching and renewing the work programme so as to give full expression to the ambitions it has set itself, with support from Parliament. Parliament has always worked constructively for the defence of Community financial interests, and its involvement has always been a source of progress.

The financial and political interests at stake are such that all those involved in combating fraud must be sure never to be caught out by events; they must continue to augment their capacity for creative thinking and action so as to stay one step ahead of those who are exploiting every loophole and every weakness in the rules and their enforcement mechanisms. Fraudsters will be defeated if a united front pools its experience and its achievements at all levels, operating a coherent programme in a spirit of unreserved cooperation. The Community will thus confirm that it is capable of managing its finances soundly.

In 1991 the Commission will pursue its pragmatic approach, with the Member States, so that as national frontiers come down it will be possible to build up the sense of mutual confidence and responsibility without which there can be no durable partnership based on subsidiarity.

Both arms of the budgetary authority are equally determined to translate declarations of intent into practical action; by and large they have accepted the Commission's approach and allocated substantial funds so that measures approved at the highest political level can be put into effect.

Combating fraud will be a major concern, indeed a priority concern, for several years to come. It will depend on closer and quicker cooperation between both administrative and judicial authorities.

The Council meeting of 12 and 13 March 1990 confirmed the call for more results, particularly on the simplification of existing rules and the strengthening of administration cooperation.

The concerns expressed at the informal meeting of Ministers of Justice in Rome on 6 November 1990 confirmed that those with the highest responsibility for the judicial system are aware of the need to step up efforts at Community level to improve the legal protection of Community financial interests.

Everywhere the accent has been on the need to plan well and to maintain the momentum.

The Commission is pleased that all these conclusions correspond to its own. It will take advantage of these various declarations and will invite the Council and the Parliament to approve the direction of its priorities for the year 1991 with the aim of, within the context of the single market :

- . strengthening administrative co-operation in the financial, agricultural and Customs fields,
- . developing the association between national and Community authorities so that enquiries are carried out in the third world on Customs and agricultural matters,
- . improving the methods whereby and the conditions in which national controls are exercised in the agricultural and own resources areas,
- . continuing work undertaken to simplify regulations in particular in the area of export refunds,
- . clarifying the powers falling within the national or Community legal remit, defining their complementary nature and their degree of clarity to ensure a better legal protection of the Community's financial interests, especially in the area of penalties.

It is within this context and in this spirit of constructive dialogue that the Commission is now presenting this report, which, with its programme of action, is at the centre of cooperation between the various institutions; each of them can now reiterate its unfailing commitment and political will to achieve the objectives that are set.

The Community will then be better placed to respond in the most appropriate way and capitalize on achievements so far; this will undoubtedly polish its image and enhance its standing in the eyes of the citizens of Europe at a time when the single market is but two years away.

MISSIONS OF INQUIRY IN NON-COMMUNITY COUNTRIES

ANNEX 1

Place and date of mission	Product and type of fraud	Quantity	Amount of duty evaded (ECU)	Comments
Malta 3 to 8.2.1990	Electric motors False declaration of origin		185 826 (anti-dumping)	This amount has already been recovered in two Member States. The amounts for the other Member States have not yet been communicated.
Yugoslavia 14 to 17.2.1990	Steel False declaration of origin		401 390 + 118 056 (anti-dumping)	Recovery procedure in progress
Hong Kong + Republic of China 7.2 to 4.3.1990	Potassium permanganate False declaration of value and origin		2 000 000	Some ECU 750 000 already recovered
22.11 to 9.12.1990	Videocassettes False declaration of origin	7 000 tonnes	2 400 000	Other findings from the mission are now being examined. Anti-dumping duties amounting to several million ecus may be applicable.
	Textiles	10 million items	1 300 000	Established: 3 000 000 items Under examination: 7 000 000 items Already recovered: around ECU 600 000
Mauritius 17.3 to 1.4.1990	Textiles False declaration of origin		Established 800 000 Further inquiries 5 000 000	Recovery procedure in progress Further inquiries into operations revealed during the mission

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Place and date of mission	Product and type of fraud	Quantity	Amount of duty evaded (ECU)	Comments
Canada 2 to 6.7.1990	Shrimps and cod False declaration of origin	850 tonnes	Established 800 000 Further enquiries 8 000 000	Recovery procedure in progress Further inquiries into operations revealed during the mission
Greenland and the Faeroes 4 to 25.9.1990				
Brazil 5 to 23.3.1990 19.11 to 11.12.1990	Beef False declaration of goods		Established 2 500 000 Further enquiries 20 000 000	The first mission had to be interrupted for domestic reasons in Brazil. The findings led to the recovery of around ECU 2.5 million. Analysis is continuing. Some ECU 20 million may be involved
Mauritius 3 to 19.11.1990	Tuna preserves	12 000 tonnes	7 000 000	Amount to be confirmed (further inquiries)
United States, Argentina, Uruguay 3.11 to 2.12.1990	Rice False declaration of origin	24 000 tonnes	3 600 000	ECU 1 035 000 confiscated; confiscation of ECU 550 000 in progress (personal security and proceeds from the sale of the confiscated goods)
Thailand 16.11 to 2.12.1990	Rice False declaration of origin	6 500 tonnes	982 500	Already recovered: ECU 465 000; ECU 517 500 still to be recovered
TOTAL			55 087 772	

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EEC GUARANTEE SECTION - 1990 (\*)  
 IRREGULARITIES REPORTED AND STATE OF RECOVERY

ANNEX 2

(ECU million)

SECTOR	BELGIUM	GERMANY	DENMARK	FRANCE	GREECE	SPAIN	IRELAND	ITALY	PORTUGAL	NETHERLANDS	U.K.	EEC TOTAL
CEREALS AND RICE		(1) 0,007	(2) 0,142		(4) 0,029			(3) 0,008		(12) 0,746	(9) 0	(33) 0,931
SUGAR AND ISOLUCOSE				(8) 0,086						(9) 0,146		(17) 0,232
OILS AND FATS				(3) 0,051		(11) 0,040		(53) 32,881	(10) 0,238	(2) 0,018		(79) 33,276
PROTEIN PLANTS		(4) 0,088		(7) 0,463	(1) 0,002	(3) 1,015		(1) 0,874		(5) 0,024	(1) 0	(22) 2,446
FRUITS, VEGETABLES			(1) 0,008	(4) 0,023	(4) 0,124	(4) 0,031		(23) 44,787		(1) 0		(37) 44,951
FINE PRODUCTS		(1) 0,004		(24) 0,184		(2) 0,264						(27) 0,453
TOBACCO												
OTHER AGRIC. SECTORS					(1) 0,393			(5) 1,889		(1) 0,016		(7) 2,098
MILK PRODUCTS		(11) 20,807	(11) 0,106	(10) 0,376		(34) 0,327	(1) 0	(10) 12,433		(23) 2,991	(2) 0,281	(206) 17,323
DEEP/VEAL		(11) 24,912	(7) 1,625	(1) 0,001		(2) 0,045	(2) 0			(4) 1,858	(158) 0,387	(185) 26,926
LAMB/GOATMEAT						(1) 0,043			(14) 0,114	(60) 0	(18) 1,332	(83) 1,489
PORK	(1) 0	(1) 0,133	(7) 1,166	(1) 0,004						(4) 0,007		(14) 1,310
BIRD, POULTRYMEAT				(2) 0,077						(8) 0,949		(8) 1,026
NON-ANNEX II PRODS.		(4) 1,12	(1) 0,004	(3) 0,450						(8) 0,059		(13) 1,613
COMPENSATORY AM'TS				(8) 0,541					(30) 0,442	(1) 0,001		(39) 0,984
FISHERY PRODUCTS												
OTHER SECTORS												
TOTAL	(1) 0	(132) 27,05	(29) 3,051	(76) 2,236	(12) 0,549	(57) 1,765	(3) 0	(95) 92,852	(54) 1,147	(133) 4,693	(168) 2,000	(780) 137,340
COUNTS RECOVERED		(31) 0,949	(13) 0,165	(45) 1,143	(5) 0,013	(10) 0,053	(1) 0	(13) 1,970	(33) 0,570	(117) 4,019	(102) 0,313	(370) 9,203
COUNTS LOST							(1) 0				(4) 1,283	(5) 1,283

(\*) These figures relate to cases of irregularities reported for the 4 quarters, except for France where they relate only to the first 3 quarters.  
 The figures in brackets refer to the number of cases reported.  
 Luxembourg has not reported any cases.

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ANTI-FRAUD POLICY  
COMMISSION WORK PROGRAMME

Measures and planned dates*	Action already taken	Action still to be taken
<p>1. <u>PREVENTION</u> 1.1 <u>Simplification of legislation</u></p> <p>1. Setting-up of a group of experts to review agricultural legislation (second half of 1989)</p> <p>2. Rationalization of the differentiated refund arrangements (second half of 1989)</p>	<p>Commission Decision of 28.3.1990 (SEC(90)539). First meeting of the group chaired by Mr Lachaux on 31 March 1990. Presentation of the first sectoral report in December 1990.</p> <p>Reduction in the number of headings in the export refund nomenclature - beef and veal (Reg. No 1468/89 of 26 May 1989; OJ L 144, 27.5.1989; Reg. No 3445/89 of 15 November 1989; OJ L 336, 20.11.1989; Reg. No 998/90 of 20 April 1990; OJ L 101, 21.4.1990); - fruit and vegetables (Reg. No 99/90 of 15 January 1990; OJ L 12, 16.1.1990; Reg. No 233/90 of 29 January 1990; OJ L 26, 31.1.1990); - wheat and rye flour (Reg. No 3236/90 of 8 November 1990; OJ L 310, 9.11.1990).</p>	<p>Work to be spread over three years. Preparation of a report and recommendations to the Commission on the simplification of legislation.</p> <p>The review will continue in all sectors. Review of milk sector now in progress.</p>

\* The dates shown in this column are for the start and not the end of the measure.

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Measures and planned dates*	Action already taken	Action still to be taken
3. Finalization of the draft European Customs Code (proposal for a regulation to be forwarded to the Council in December 1989)	Proposal for a European Customs Code sent to the Council on 29 February 1990 (OJ C 128, 23.5.1990).	Adoption by the Council in accordance with the timetable proposed by the Commission (completion scheduled for December 1991).
4. Measures to simplify Community transit arrangements (end of first half of 1989)	On 22 February 1990 the Council adopted Reg. No 474/90 (OJ L 51, 27.2.1990). Entry into force: 1 July 1990. On 17 September 1990 the Council adopted Reg. No 2726/90 on the overall reform of the transit procedure (OJ L 262, 26.9.1990), to apply from 1 January 1993. Action completed.	
5. Possible tightening-up of legislation on anti-dumping duties (end of first half of 1989)	A conference with representatives from the Member States was held in June 1989 to analyse the difficulties encountered in fraud prevention in connection with anti-dumping duties.	Permanent monitoring necessary. #

Measures and planned dates	Action already taken	Action still to be taken
<p>1.2 <u>Introduction of appropriate controls and administrative sanctions</u></p> <p>6. Harmonization of the rules on CAP controls</p> <p>7. Revision of the proposal for a regulation on monitoring the payment of amounts granted in respect of exports of agricultural produce (first half of 1990)</p>	<p>1. A list of all control measures and sanctions has been drawn up and guidelines for future action have been laid down. These were approved by the Commission on 12 July 1990 (SEC(90)1381) and distributed to the Member States.</p> <p>2. Most of the recent agricultural regulations contain provisions relating to controls and sanctions.</p> <p>3. A proposal for a regulation on CAP controls and sanctions has been sent to the Council (COM(90)126 final: OJ C 137, 6.6.1990).</p> <p>On 12 February 1990 the Council adopted Reg. No 386/90 (OJ L 42, 16.2.1990). On 17 July 1990 the Commission adopted the relevant implementing rules (Reg. No 2030/90: OJ L 186, 18.7.1990).</p>	<p>2. Operation to be continued.</p> <p>3. Adoption by the Council.</p> <p>The new rules are now being applied.</p>

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Measures and planned dates	Action already taken	Action still to be taken
8. Adoption of specific rules on granting of export refunds in beef/veal sector (first half of 1989)	This item is covered by a more wide-ranging review.	Ongoing action.
9. Re-examination of concept of proof of arrival at final destination of exported agricultural products as defined by Regulation No 3665/87 (second half of 1989)	On 9 February the Commission adopted Reg. No 354/90 amending Reg. No 3665/87 as regards proof of arrival at destination, with deletion of Annex II (OJ L 38, 10.2.1990).	Permanent monitoring is necessary. Amendment of Article 18 (list of third countries/proof of arrival). Work in progress in the Management Committee for Trade Mechanisms. A model "proof of importation" is being drawn up for a large number of destinations.
10. Amendment of Directive 77/435 with a view to tightening ex post controls on EAGGF-financed operations (first half of 1989)	On 21 December 1989 the Council adopted Regulation No 4045/89 replacing Directive 77/435 (OJ L 388, 30.12.1989). On 29 June 1990 the Commission adopted the implementing rules (Reg. No 1863/90: OJ L 170, 3.7.1990).	Implementation in the Member States.

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Measures and planned dates	Action already taken	Action still to be taken
11. Measures to improve operation and monitoring of public storage on basis of findings of Member States working party (presentation to the Council in the first half of 1989)	Reform of the flat-rate system for financing storage costs. Operation completed. On 15 December 1989 the Council adopted Reg. No 3757/89 amending Reg. No 3247/81 (OJ L 365, 15.12.1989). On 14 March 1990 the Commission adopted the relevant implementing rules (Reg. No 618/90: OJ L 67, 15.3.1990).	
12. Assessment of the susceptibility to fraud of contractual expenditure and possible measures to be taken (second half of 1989)	Survey of the various items of expenditure.	<ul style="list-style-type: none"><li>- Thorough analysis now in progress with the departments responsible.</li><li>- Seminar to be held with the anti-fraud units in the departments concerned.</li></ul>
1.3 <u>Assessment of applicability and controllability of regulations</u>		
13. Definition of procedures for preventing fraud and introduction of preventive control system (first half of 1989)	On 13 April 1990 the Commission adopted an internal procedure to be applied throughout the agricultural and fisheries sectors (SEC(90)793).	Ongoing operation. The Financial Controller will systematically examine all new agricultural legislation. Possible extension to other sectors.

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Measures and planned dates	Action already taken	Action still to be taken
14. Audit of national systems for combating fraud (second half of 1989)	Following on the conclusions of the preliminary study on traditional own resources, an initial assessment has been carried out and an outside consultant has been asked to prepare a study on how the audit should be conducted.	1) Examination of the consultant's recommendations. 2) Decision on the auditing method to be adopted. 3) Collection of data for all other sectors covered by the budget. 4) Entry of data into the DAF data base.
15. Setting-up of working party to oversee harmonization of procedures for administering and monitoring financial assistance from structural Funds (first half of 1989)	The guidelines have been drawn up and were approved by the Commission on 17 December 1989.  These guidelines (financial rules) are now operational and are appended to each Commission decision on the granting of assistance.	Operation to be continued.
16. Constitution of working party to define rules for implementing Article 23(1) of Regulation (EEC) No 4253/88 of 19 December 1988 (first half of 1989)	On 1 August 1990 the Commission presented to the Member States its code of conduct for the notification of frauds against the structural Funds. The code was published in OJ C 200, 9.8.1990.	Implementation to be discussed with the Member States.

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Measures and planned dates	Action already taken	Action still to be taken
	A model notification form has been drawn up and was sent to the Member States on 31 August 1990. The first reports have been received from the Member States.	
17. Audit of national arrangements for monitoring operations under the structural Funds (second half of 1989)	A manual has been drawn up for the Commission auditors. An inspection manual has been prepared for use by the Commission and the Member States. 22 on-the-spot inspections have been carried out.	The programme of on-the-spot inspections is to be continued in 1991.
18. Inquiry into the conditions under which Member States grant aid for private storage in the beef/veal sector (first half of 1989)	On-the-spot inquiries completed.	Further information to be obtained before conclusions are drawn.
19. Inquiry into risks of fraud in connection with ewe premiums in some Member States (first half of 1989)	Tightening of national controls by changes to on-the-spot arrangements.	The programme of special controls is to be continued and the improvements made to systems in the Member States already visited are to be evaluated.

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Measures and planned dates	Action already taken	Action still to be taken
20. Inspection of procedures and methods available to the Member States for determining numbers of cattle and sheep qualifying for premiums (second half of 1989)	The Member States visited so far have been urged by the Commission to improve their management procedures.	The Commission will subsequently check the systems set up.
21. Possible creation of new national departments or agencies (second half of 1989)	On 27 January 1990 the Council adopted Regulation No 200/90, which broadens the scope of the tasks assigned to olive oil agencies by including the consumer subsidy and public storage (OJ L 22, 27.1.1990). (See also point 35.) Operation completed as regards olive oil agencies. Agencies may also be set up under the regulations on the tightening of EAGGF controls (See point 35).	Regulation to be adopted by the Council.
22. Gradual involvement of specialized firms in activities carried out by Member States (second half of 1989)	Draft Commission Regulation amending Regulation No 3665/87, and in particular Article 18 thereof (use of approved surveillance firms to verify proof of arrival at destination - payment of export refunds). The Regulation on the tightening of EAGGF controls also provides for the use of surveillance firms (See point 35).	Now before the Trade Mechanisms Committee. Adoption by the Commission.
		Adoption by the Council.

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Measures and planned dates	Action already taken	Action still to be taken
23. Introduction of specific control measures in wine-growing sector (second half of 1989)	On 19 June 1989 the Council adopted Regulation No 2048/89 (OJ L 202, 14.7.1989).	An EAGGF inspectorate for the wine sector is to be set up.
24. Survey on application of Regulation No 283/72 concerning irregularities in CAP (second half of 1989)	Surveys carried out in all Member States. Operation completed.  The findings were taken into account for drawing up the proposal for amending Regulation No 283/72 (OJ C 138, 7.6.1990).	Adoption by the Council.
25. Clarification of concept of irregularity in Article 3 of Regulation No 283/72 (first half of 1989)	The EAGGF Irregularities and Mutual Assistance Working Party has reached agreement on the interpretation of the concept of irregularity (working paper VI/680/89 presented to the Working Party on 7 April 1989). Operation completed.	

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Measures and planned dates	Action already taken	Action still to be taken
<u>II. Cooperation</u>		
2.1 <u>Improving channels of communication and analytical methods</u>		
26. Generalized use of the SCENT system by the Member States (nearing completion)	All the Member States now use the SCENT system. The network has been extended in all Member States. A seminar was held in Brussels from 5 to 7 December 1990.	Work on the final version of the system, following the consultants' report.
27. Extension of capacity of IRENE data base (starting in the second half of 1989)	The IRENE 3-UCLAF prototype was created and cases reported under Regulations No 283/72 and No 1552/89 were input into the system. UCLAF was computerized to facilitate the working of this prototype.  Following a preliminary version of the feasibility study, an outside contractor was engaged. Detailed discussions have been held on rights of access and draft rules have been proposed.	DG IX/1 is to produce the definitive version of the feasibility study on the use of the final data base. Extension of the prototype to cover mutual assistance and the structural Funds.

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Measures and planned dates	Action already taken	Action still to be taken
28. Creation of DAF hand in hand with audit of national systems (feasibility study by end of 1989)	A first version of the user interface, offering assisted access, has just been presented, based on the description of national systems relating to own resources.	The Joint Research Centre is to complete a study indicating how the project should develop.
29. Gradual expansion of capacity of instruments for assessment of fraud, in conjunction with IRENE data base (second half of 1989)	A contract has been signed with an outside consultant.	Completion in late June 1991.
2.2 <u>Stepping up cooperation between Commission and national fraud prevention departments</u>		
30. Stepping up administrative cooperation between customs departments and the Commission (in progress)	Development of mutual assistance (Reg. No 1468/81).	Continuation of cooperation with Member States within the framework of mutual assistance.
31. Training for national customs officials under MATTHAEUS programme, with view to consequences of single market (beginning in 1990)	Under the third phase of the programme, 623 officials took part in exchanges. Organization of two seminars.	Training operations to be continued and expanded.

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Measures and planned dates	Action already taken	Action still to be taken
32. Seminar on legal protection of Community's financial interests (November 1989)	Seminar held from 27 to 29 November 1989. Operation completed. Follow-up to seminar: 1) Study (in progress) on systems of administrative and criminal sanctions in the Member States; 2) Review (in progress) of way in which national courts (Italy, Ireland, United Kingdom and Netherlands) treat cases of fraud affecting Community funds. (See also point 44.)	Ongoing operations in the other Member States.
33. Seminar on the falsification of papers and supporting documents (second half of 1989)	Seminar held at Ispra from 18 to 20 October 1989 with experts from investigation departments of Member States. Operation completed.	
- Programme of training and seminars for 1990/91	Six seminars held in 1990 on controls and fraud prevention. (See also point 31.)	Ongoing operation.

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Measures and planned dates	Action already taken	Action still to be taken
<u>2.3 Incentives</u>		
34. Study on sharing of financial losses between Member States and Community (second half of 1989)	In progress at Commission.	Study still to be finalized.
35. Financial contributions to strengthen national control departments and to meet some costs of recovering amounts wrongly paid (new measures)	<ol style="list-style-type: none"><li>1. On 21 December 1989 the Council adopted Reg. No 4045/89 (OJ L 388, 30.12.1989).</li><li>2. Proposal for the amendment of Reg. No 283/72 (OJ C 138, 7.6.1990).</li><li>3. Proposal for a Council Regulation on stricter monitoring of certain expenditure chargeable to the EAGGF Guarantee Section (OJ C 126, 22.5.1990).</li><li>4. On 29 October 1990 the Council adopted Reg. No 3151/90 on stepping up the checks in Portugal on expenditure charged to the EAGGF Guarantee Section (OJ L 302, 31.10.1990). Operation completed.</li></ol>	<ol style="list-style-type: none"><li>1. Implementation in the Member States.</li><li>2. Adoption by the Council.</li><li>3. Adoption by the Council.</li></ol>

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Measures and planned dates	Action already taken	Action still to be taken
36. Charging to Community budget of financial consequences of failing to recover amounts wrongly paid (first quarter of 1989)	74 cases relating to EAGGF Guarantee Section expenditure have been settled (7 cases of non-recovery have been charged to the Member States).	Ongoing operation.
2.4 <u>Expanding possibilities of Community intervention in relations with non-member countries</u>		
37. Conclusion of mutual assistance agreements with Community's main trading partners (first half of 1989)	On 10 October 1989 the Council approved a negotiating brief for mutual assistance agreements with EFTA countries. The negotiations are still in progress.	Negotiations to be concluded.
38. Inclusion in Lomé IV of provisions guaranteeing ACP cooperation on cases of fraud involving agricultural exports (under negotiation, to be completed by end of 1989)	A clause has been inserted which enables the Commission to participate in on-the-spot investigations under the rules of origin (Lomé IV Convention signed on 15 December 1989, Protocol No 1). Operation completed.	

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Measures and planned dates	Action already taken	Action still to be taken
<u>III. Counteraction</u>		
<u>3.1 Additional protection for the Community's financial interests</u>		
39. Adoption of draft Treaty on criminal law protection of Community's financial interests and prosecution of infringements of Community law (in progress)	The strategy to be adopted after the Court's ruling in Case 68/88 is now being examined.  A notice concerning the judgment of the Court of Justice in Case 68/88 was published OJ C 147 on 16 June 1990. The President of the Commission sent a letter to the Member States on 7 June 1990 (SG(90)D/22700). Nine Member States have replied.	Guidelines will be adopted in the light of the replies received from the Member States.
40. Inclusion in Community rules of concept of subsidy fraud (second half of 1989)	This matter is now being studied in the light of the replies received from the Member States (See point 39).	A decision on the principles involved will be taken once all factors have been considered.

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Measures and planned dates	Action already taken	Action still to be taken
<p>3.2 <u>Consolidating and extending Commission's supervisory powers</u></p>		
<p>41. Clarification, in conjunction with national authorities, of scope and aims of new rules contained in Regulations No 1552/89 and No 1553/89 on own resources (operation began in June 1989)</p>	<p>Member States have been sent the model for the computerized format on frauds and irregularities involving traditional own resources (Article 6(3) of Reg. No 1552/89).</p> <p>Computerization of data (see point 27). The first 381 cases notified have been recorded.</p> <p>IRENE 3 - UCLAF data base on own resources: extension of the "thesauri" now in progress.</p>	<p>Further computerization of irregularity reports and improvement of the quality of data in such reports, in cooperation with the Member States.</p> <p>Feeding of data into the IRENE 3 - UCLAF data base (now in progress).</p> <p>Analysis of the cases notified.</p>

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Measures and planned dates	Action already taken	Action still to be taken
42. Analysis and assessment of fraud prevention measures taken by national authorities, on basis of information obtained under new Regulation on traditional own resources	Implementation of Article 4 of Reg. No 1552/89 (the required information has been forwarded to the Commission).	Examination of the information received.
43. Scrutiny of national VAT controls in accordance with Regulation No 1553/89	The Member States have been sent a detailed questionnaire on national VAT recovery and control procedures and on foreseeable improvements in this area. A study now in progress is examining the problems of VAT recovery and control as they affect taxpayers.	Application of Article 12 of Reg. No 1553/89: before the end of 1991 the first three-yearly report is to be drafted on the procedures applied in the Member States and possible improvements thereto.

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Measures and planned dates	Action already taken	Action still to be taken
44. Stepping-up of cooperation with national judicial bodies (ongoing measure)	The Commission took part in the Congress on European Fraud Prevention which was held for Belgian and Dutch magistrates in Rotterdam on 19 and 20 April 1990.  Visits and discussions with judicial bodies on legal protection for the Community's financial interests (See point 32).  Establishment (in five Member States) of Associations of European Lawyers for the legal protection of the Community's financial interests.	Operations to be continued.  Operation to be continued in the other Member States, together with an action programme on information and training.
45. Increased recourse to firms specializing in auditing and controls, and to private experts (ongoing measure).	1990 budget: appropriation set aside for this operation.  Recourse to auditing firms and external experts: - for certain on-the-spot checks on EAGGF matters; - for on-the-spot checks on expenditure and costs charged to certain research contracts. (See also point 35.3.)	Operation to be continued.

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MEASURES FINANCED WITH APPROPRIATIONS ENTERED IN THE 1990 BUDGET

Annex 4

Part	Chapter Article Item	Heading	Measures financed	1990		%
				Appropriations in budget	Commitments	
A	3530	Unit to coordinate action against fraud	- Mission expenses - Meetings - Seminars	195 000	192 368	98.7
A	3531	Controls, studies, analyses	- Tightening of controls, application of Reg. No 4045/89 - Studies, audits, seminars* - Missions* - Data processing* - Reserve	9 000 000 6 000 000 2 425 000 160 000 335 000	8 167 556 6 030 000 1 600 003 156 223 330 530	90.8
A	3540	Computerized customs network for fraud prevention	- SCENT	2 000 000	1 937 098	99.9
A	3550	Coordination of customs inspections	MATTHAEUS programme	2 500 000	2 414 000	98.6

\* Administrative appropriations.

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Part	Chapter Article Item	Heading	Measures financed	1990		%
				Appropriations in budget	Commitments	
B	2980	Measures to combat fraud affecting the EAGGF Guarantee Section	New anti-fraud measures: - Reg. (EEC) No 283/72 - Export refunds - "Customs" department for the surveillance of exports - Horizontal control department	21 000 000 1 000 000 5 000 000 5 000 000 10 000 000	3 900 000	14.3
				40 000 000	35 671 000	98.2
B	3820	Measures to control and combat fraud*	- Vineyard register - Olive oil agency - Quality control in Greece	22 000 000 17 000 000 1 000 000		

\* A transfer during the year reduced the appropriations available to ECU 35 722 000, thus giving a utilization rate of 98.2%.

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## BUDGET HEADINGS / FRAUD PREVENTION

Item	Heading		1991 appropriations
<u>Part A</u>			
A 3530	Unit to coordinate action against fraud	p.m.	) ) ) 200 000
A 4530	Support expenditure for the Unit to coordinate action against fraud (A 3530)	200 000	) )
A 3531	Controls, studies and analyses in connection with the fight against fraud	5 200 000	) ) ) 8 631 000
A 4531	Support expenditure for controls, studies and analyses in connection with the fight against fraud (A 3531)	3 431 000	) ) )
A 354	Tax harmonization and computerized customs network for fraud prevention	1 200 000	) ) ) 3 200 000
A 454	Support expenditure for tax harmonization and computerized customs network for fraud prevention (A 354)	2 000 000	) ) )
A 355	Coordination of customs inspections	1 929 000	) ) ) 2 700 000
A 455	Support expenditure for coordination of customs inspections (A 355)	771 000	) )

Part B

B 1-360	Measures to combat fraud affecting the EAGGF Guarantee Section		21 000 000
B 2-5110	Measures to control and combat fraud	36 036 000	)
B 8-2510	Support expenditure for measures to control and combat fraud	364 000	) 36 400 000
B 2-102	European Agricultural Guidance and Guarantee Fund, Guidance Section - Fraud in agriculture		p.m.
B 2-112	European Agricultural Guidance and Guarantee Fund, Guidance Section - Fraud in fisheries		p.m.
B 2-121	European Regional Development Fund - Fraud		p.m.
B 2-131	European Social Fund - Fraud		p.m.



