



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION STAFF WORKING DOCUMENT

ANNEX TO THE

REPORT FROM THE COMMISSION

**Protection of the European Communities' financial
interests and the fight against fraud**

Annual report 2003

**Follow up to the Action Plan 2001-2003 and measures taken by
the Member States**

**Implementation of Article 280 of the Treaty by the Member States and
the Community in 2003**

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COMMISSION STAFF WORKING DOCUMENT

This document is intended to accompany the Commission's Annual Report for the year 2003 on the protection of the European Communities' financial interests and fight against fraud which is drafted in accordance with Article 280 of the Treaty¹.

The first part contains a detailed description of the implementation of the 2001-2003 Action Plan for the protection of the Communities' financial interests and the fight against fraud in 2003². The Action Plan defines the priority actions for the protection of the Community's financial interests which are intended to implement the first phase of the overall strategic approach 2001-2005 adopted in June 2000³. The follow-up to the Action Plan, presented below in the form of a table, summarises the progress achieved in 2003 and, where it is considered useful, important achievements by the services concerned since the start of the year 2004. The table also identifies, where appropriate, legal or administrative instruments implemented.

In the second section the services of the Commission make available all the answers given by the Member States to a questionnaire sent to them in preparation for the 2003 Annual Report on the Protection of the Financial Interests of the Member States.

¹ Report of the Commission (COM/2004/573 final)

² Communication from the Commission (COM/2001/254/Final, 15.5.2001).

³ Communication from the Commission (COM/2000/358/Final, 28.6.2000).

TITLE I - FOLLOW-UP TO THE 2001-2003 ACTION PLAN

Objectives	Measures	Lead department	Implementation and follow-up	Comments
1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION				
1.1. Fostering a culture of prevention and tightening up legal texts				
<p><i>1.1.1. Reinforce fraud-proofing legislation and contract management</i></p>	<p>Preliminary analysis of certain new legislative initiatives</p> <p>(Action 94 of the White Paper on Reform)</p>	<p>OLAF, with the help of a specifically created inter-departmental group (legislation aspect)</p> <p>BUDG with the help of OLAF and the Legal Service</p>	<p>Action ongoing</p> <p>The development of the action launched by the Commission's Communication concerning the fraud-proofing of legislation and contract management (SEC/2001/2029, 07.11.2001) continued in 2003.</p> <p>On the basis of the criteria defined in 2002 for selecting high-risk areas and identifying the legislative initiatives to be submitted to OLAF, the fraud-proofing procedure was launched in March 2003; OLAF was duly consulted regarding a number of sensitive legislative proposals upstream of the interservice consultation and within the interservice consultation procedure itself. The procedure has been renewed for 2004 (the lists of criteria and high risk sectors were updated).</p> <p>As far as the contracts aspect is concerned, in 2003 the Commission continued to focus on the standard procurement contracts and grant agreements as well as the specific contracts developed for the implementation of the 6th Framework Research programme and External Aid programmes (including pre-accession and European Development funds).</p>	<p>This action concerns the reinforcement of legislative initiatives in all areas of the Community budget (own resources and expenditure) from a fraud-proofing perspective, on the basis of a selection by OLAF and the specific interdepartmental group.</p> <p>It also covers the fraud-proofing of standard contracts, namely the standard procurement contracts and grant agreements concerning administrative expenditure, internal policies and external aid.</p>

Objectives	Measures	Lead department	Implementation and follow-up	Comments
1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION				
1.1. Fostering a culture of prevention and tightening up legal texts				
1.1.2. <i>Greater security for key sectors</i>	Development of information system that excludes tenderers who have been convicted	MARKT, OLAF, BUDG, JAI	<p>Action completed</p> <p>The European Parliament and the Council adopted the Directive 2004/18/EC on 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.04.2004).</p>	<p>The Directive recasts the Community legislation on public procurement with a view to creating a genuine single market in public procurement.</p> <p>The directive contributes to the fight against corruption and organised crime as it provides that the contracting authorities exclude from public tendering procedures tenderers convicted of taking part in a criminal organisation, of corruption, of fraud harmful to the Community's financial interests or of money laundering. In order to have the necessary information, the contracting authorities request the appropriate documents from the economic operators and, in case of doubt, they can request information from the competent authorities. When an economic operator is established in another Member State, they can ask the collaboration of the competent authorities of this other State.</p> <p>This Directive entered into force on 30 April 2004 and must be implemented by the Member States in the following 21 months.</p>

Objectives	Measures	Lead department	Implementation and follow-up	Comments
1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION				
1.1. Fostering a culture of prevention and tightening up legal texts				
	Protection against euro counterfeiting by means of criminal-law penalties	OLAF, ECFIN, JAI	<p>Action completed</p> <p>Second Commission report based on Article 11 of the Council Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro was adopted by the Commission on 3 September 2003 (COM / 2003 / 532 / final).</p>	In view of enlargement, a third report could be elaborated.
	Protection of euro coins	OLAF, ECFIN	<p>First part of the action completed</p> <p>Council Decision 2003/861/EC of 8 December 2003 concerning analysis and cooperation with regard to counterfeit euro coins and Council Decision 2003/862/EC of 8 December 2003 extending the effects of Decision 2003/861/EC to those Member States which have not adopted the euro as their single currency (OJ L 325, 12/12/2003).</p>	<p>With these Decisions, Member States assign to the Commission the responsibility for the European Technical and Scientific Centre (ETSC) and for the coordination of relevant actions.</p> <p>The Decisions need to be complemented by a Commission Decision formally setting up the ETSC.</p>

Objectives	Measures	Lead department	Implementation and follow-up	Comments
1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION				
1.1. Fostering a culture of prevention and tightening up legal texts				
	Training, exchange and assistance programme	OLAF, ECFIN	<p>Action completed</p> <p>In 2002 and 2003, a total of 23 projects were financed under the Pericles program, involving a grant commitment of €1.350.000.</p> <p>The 2003 objective was achieved.</p>	<p>Implementation of the action will go on until 2005</p> <p>In 2005, a proposal needs to be introduced for another Council Decision, if it is considered appropriate to continue the training and assistance with regard to the protection of the euro.</p>
	Action to combat piracy and counterfeiting: implementation of Green Paper	MARKT, OLAF, BUDG, TAXUD, JAI	<p>Action completed</p> <p>On 20 January 2003 the Commission presented a proposal for a Council Regulation (COM / 2003 / 20 / final), which was adopted by the Council on 22.07.2003 (Regulation (EC) No 1383/2003 - JO L 196, 02.08.2003).</p> <p>On 30 January 2003 the Commission adopted a proposal for a Directive (COM / 2003 / 46 / final).</p> <p>On 29 April 2004, the Directive was adopted by the Parliament and the Council (Directive No 2004/48/EC, on OJ L 157, 30.04.2004).</p>	<p>This Regulation concerns customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.</p> <p>This directive concerns the harmonisation of the national laws of the Member States as regards procedures aiming at ensuring the respect of intellectual property rights. It also defines a framework for the exchange of information between the competent national authorities.</p>

Objectives	Measures	Lead department	Implementation and follow-up	Comments
1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION				
1.1. Fostering a culture of prevention and tightening up legal texts				
<i>1.1.3. Involving the applicant countries in fraud prevention</i>	Creation of anti-fraud structures in the candidate countries, reinforcement of controls	ELARG, OLAF, BUDG	<p>Action completed</p> <p>All candidate countries and acceding states have identified an Anti-Fraud Coordinating Service (AFCOS) responsible for coordinating legislative, administrative and operational activities linked to the protection of the Community's financial interests. Support is provided through the Multi-Country Anti-Fraud PHARE Programme for the Protection of the Communities' Interests (MCP).</p>	<p>Under the MCP programme, the Community is to provide assistance in three main areas: the establishment of anti-fraud structures, links and databases, and the strengthening of operational expertise. Implementation of the programme began in 2003.</p> <p>The Transition Facility, which aims to continue to assist the acceding Member States to develop and strengthen their administrative capacity to implement and enforce Community legislation, will address any remaining gaps in the acceding states during the period 2004 - 2006.</p>

Objectives	Measures	Lead department	Implementation and follow-up	Comments
1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION				
1.1. Fostering a culture of prevention and tightening up legal texts				
<i>1.1.4. Involving trade circles in prevention</i>	Awareness-raising, using as a model the Charter of 27.7.1999 on action to combat organised crime	OLAF, JAI	Action temporarily withdrawn	<p>The European Union Strategy for the beginning of the New Millennium on the prevention and control of organised crime provided for strengthening partnerships between the criminal justice system and civil society.</p> <p>A Model protocol for Partnership between the Public and Private sector to reduce the harm of organised crime was adopted by the Council on 29/4/2004.</p> <p>The experience acquired from this action could be used as the basis on which to launch a similar action in the field of the Protection of Financial Interests.</p>

Objectives	Measures	Lead department	Implementation and follow-up	Comments
1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION				
1.2. Strengthening legal instruments for detecting, monitoring and penalising fraud				
1.2.1. <i>Improving detection and control in the financial field, including at international level</i>	Conclusion of a cooperation agreement with Switzerland covering the fight against fraud	OLAF, RELEX	<p>Action ongoing</p> <p>The Commission (exercising the negotiating mandate to conclude an anti-fraud agreement, received from the Council on 14.12.2000) has conducted negotiations aiming to establish a framework for effective cooperation against Community fraud.</p> <p>Following a Summit between the Council Presidency, the Commission and Switzerland, which took place on 19 May 2004, an antifraud agreement was signed on 25 June 2004.</p>	<p>The antifraud agreement extends its scope to indirect tax offences connected with trade in goods and services and includes the money laundering of the proceeds of the activities covered by the agreement.</p> <p>The main points included in this agreement are full judicial cooperation and administrative assistance regarding fraud, particularly in relation to custom duties (smuggling) and indirect taxation affecting the Communities', the Member States' and Switzerland's financial interests.</p> <ul style="list-style-type: none"> • Judicial cooperation will be provided with relaxation of the dual criminality rule to ensure the appropriate level of assistance in indirect tax and customs matters. • Administrative assistance will be in full compliance with the standards of Naples II. <p>Banking and financial information will be treated in accordance with the standards laid down in the 2001 Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU.</p>

Objectives	Measures	Lead department	Implementation and follow-up	Comments
1. A COMPREHENSIVE ANTI-FRAUD POLICY FOR LEGISLATION				
1.2. Strengthening legal instruments for detecting, monitoring and penalising fraud				
<i>1.2.2. Improving financial follow-up and penalties</i>	Implementation of the Communication of 13 December 2000 on Action 96 of the White Paper on the recovery of unduly paid funds (SEC/2000/2204, 12/12/2000)	BUDG, OLAF, ADMIN, AGRI, REGIO, EMPL, RELEX, SJ	<p>Action ongoing</p> <p>The Commission adopted on 03.12.2002 a second Communication on Recovery. One of the action points decided was the creation of a joint OLAF/AGRI Task Force Recovery (TFR) to deal with the backlog of cases communicated before 1999 under Regulation 595/91 (EAGGF, Guarantee sector).</p> <p>The TFR started its work at the beginning of 2003. A total of €700 million is to be recovered in respect of cases communicated between 1995 and 1999 involving 9 Member States. Work will definitely continue in 2004.</p>	The second report of the Commission to the EP and the Council on the application of the "black list" mechanism in EAGGF Guarantee Section (Regulation No 1469/95) is under preparation.
	Integration of administrative and control measures and penalties in the field of direct expenditure	OLAF, INFSO, RTD, other departments	Action postponed	In accordance with Recommendation No 3 of the Commission Report evaluating the activities of OLAF pursuant to Article 15 (COM / 2003 / 154 / final, 02.04.2003), the action will be reconsidered in the 2004/2005 Action Plan.
	Harmonisation of on-the-spot inspection arrangements	OLAF, other departments	Action postponed	In accordance with Recommendation No 4 of the Commission Report evaluating the activities of OLAF pursuant to Article 15 (COM / 2003 / 154 / final, 02.04.2003), the action will be reconsidered in the 2004/2005 Action Plan.

Objectives	Measures	Lead department	Implementation and follow-up	Comments
2. A NEW CULTURE OF COOPERATION				
2.1. Establishing a Community platform of services				
2.1.1. <i>Rationalising and making better use of cooperation structures</i>	Analysis of services which the Commission/OLAF can offer to the institutions and to the Member States, evaluation of possible synergies	OLAF	<p>Action ongoing</p> <p>The preparation of the operational platform was furthered in 2003, by means of:</p> <ul style="list-style-type: none"> - Further consultations with certain national authorities; - Reflections on establishing specialised working parties within the Cocolaf. 	<p>Cocolaf was consulted on the basis of a working document that identified the nature and content of each of OLAF's three main functions (Operations, Intelligence and Policy and Programming) and examined the possibility of creating specialised working parties in Cocolaf on a regular basis to enable OLAF to draw on the Member States' know-how and experience and take their needs into account.</p> <p>Recommendation No 5 of the Commission Report evaluating the activities of OLAF pursuant to Article 15 - (COM / 2003 / 154 / Final, 02.04.2003) considers the operational platform a project intended to improve the presentation of the range of activities undertaken by OLAF and to set out an inventory of the expertise available so as to give concrete expression to value added at Community level.</p>

Objectives	Measures	Lead department	Implementation and follow-up	Comments
2. A NEW CULTURE OF COOPERATION				
2.1. Establishing a Community platform of services				
	Strengthening current coordination structures	OLAF	<p>Action postponed</p> <p>To take into account the recommendations of the Article 15 Report, the amendment of Commission Decision 94/140/EC establishing Cocolaf (the Advisory Committee for the Coordination of Fraud Prevention (OJ L 61, 4.3.1994) that was planned for the second half of 2002 has been postponed until 2004.</p>	<p>The main objective of this measure is to update the Decision in order to reflect the consequences of development of OLAF's tasks and, in particular, to emphasise its role in strengthening the judicial dimension and its function as direct point of contact with police and judicial authorities.</p>
2.1.2. <i>Widening the scope of information-gathering, improving use and analysis of intelligence</i>	Evaluation of possible synergy with national or external anti-fraud bodies (Eurojust, Europol, Interpol, etc.)	OLAF	<p>Action partly completed</p> <p>See below.</p>	<p>Recommendation No 9 of the Commission Report evaluating the activities of OLAF pursuant to Article 15 (COM / 2003 / 154 / final, 02.04.2003) considers that it is necessary to improve cooperation with all organisations that are responsible for combating transnational economic and financial crime.</p>

Objectives	Measures	Lead department	Implementation and follow-up	Comments
2. A NEW CULTURE OF COOPERATION				
2.1. Establishing a Community platform of services				
	Structuring relations with Eurojust, Europol, Interpol	OLAF, JAI, other police and judicial cooperation bodies	<p>Action partly completed</p> <p>Negotiations between Eurojust and OLAF resulted in the signing of a memorandum of understanding on 14 April 2003.</p> <p>The agreement between the Commission and Europol, on which discussions began in early 2001 in connection with the adoption of Council Regulation (EC) No 1338/2001 of 28 June 2001 on the protection of the euro against counterfeiting, was signed on 18 February 2003. It provides for a direct agreement between OLAF and Europol in the field of investigations.</p> <p>In the field of cooperation, OLAF maintains its contacts with international organisations such as Interpol, the WCO or the World Bank.</p>	<p>The memorandum with Eurojust sets out the arrangements for exchanges of information and cooperation on practical cases and on more general issues.</p> <p>The direct agreement between OLAF and Europol was signed on 8 April 2004.</p>

Objectives	Measures	Lead department	Implementation and follow-up	Comments
2. A NEW CULTURE OF COOPERATION				
2.2. Developing a closer partnership with Member States				
2.2.1. <i>Reinforcement of cooperation to prevent and combat money laundering and VAT fraud</i>	Money laundering, VAT: Assistance and mutual information between the Commission and Member States on suspicious transactions	OLAF, MARKT, BUDG, JAI, TAXUD, REGIO, AGRI	Action postponed Proposal for a Regulation of the European Parliament and of the Council on mutual administrative assistance for the protection of the Community's financial interests against fraud and other illegal activities, based on Article 280 of the EC Treaty. The document is in preparation and will be presented in 2004	This is a regulation on mutual administrative assistance and exchange of information for the purposes of protecting the Community's financial interests against fraud and other illegal activities. In particular, it concerns transnational VAT fraud, money laundering of proceeds of EC-fraud, structural funds fraud and other fields of Community expenditure.
2.2.2. <i>A policy of evaluation and forward planning</i>	Inventory of national measures taken by Member States	OLAF	Action completed The 2002 Annual Report on the protection of Communities' financial interests and the fight against fraud, provided for by Article 280 (5) of the EC Treaty (COM/2003/445/F2-1), was adopted on 23.07.2003. It presents measures taken by Member States and the European Community as well as the results of the operations by the Member States and the Commission to detect infringements damaging the Communities' financial interests and to combat fraud.	The annual report includes a follow-up to the Action Plan for 2001 – 2003 (COM / 2000 / 358 / Final, 28.06.2000).
	Annual evaluation of OLAF's operational activities (Articles 11 and 12 of Regulations (EC) Nos 1073/1999 and 1074/1999)	OLAF	Action completed The Fourth Activity Report of the European Anti-fraud Office for the year ending in June 2003 was adopted on 17 October 2003 (OJ C 20, 24/01/2004).	The report is available in eleven official languages on : http://europa.eu.int/comm/anti_fraud/reports/index_en.html

Objectives	Measures	Lead department	Implementation and follow-up	Comments
2. A NEW CULTURE OF COOPERATION				
2.2. Developing a closer partnership with Member States				
	Definition of OLAF's strategic objectives	OLAF	<p>Action in progress</p> <p>OLAF has been conducting a preliminary review of its 2004 Activity programme in accordance with Article 11 of Regulations (EC) Nos 1073/1999 and 1074/1999.</p>	
	Evaluation of OLAF's activities, pursuant to Article 15 of Regulations (EC) Nos 1073/1999 and 1074/1999	SJ, SG, OLAF, JAI, ADMIN, IAS and BUDG	<p>Action completed</p> <p>Adoption of the Commission Evaluation Report on 2 April 2003 – (COM/2003/154/Final). The Supervisory Committee adopted opinion No 2/03 of 18.06.2003, accompanying the report.</p> <p>The report has been transmitted to the other institutions and bodies together with the Supervisory Committee's opinion</p> <p>On 04.12.2003 the European Parliament adopted Resolution No P5 TA (2003) 0551, and the Council adopted its conclusions on 22.12.2003 (Doc No 16280/2003).</p>	<p>The object of the evaluation exercise was to produce an overall assessment of the OLAF's activities supplementing the analysis conducted by the Office itself and the Supervisory Committee, by examining its functions, the means available and the difficulties encountered. The Report assesses whether the objectives of the legislator, by creating the legal base for OLAF in 1999, have been achieved. That exercise covers the period from June 1999 to December 2002.</p> <p>The Commission makes 17 recommendations the implementation of which will concern antifraud policy as a whole and involve the drawing-up of legislative proposals with a view to strengthening the structure and functionality of the Office.</p> <p>(see also, in particular, 3.2.2)</p>

Objectives	Measures	Lead department	Implementation and follow-up	Comments
3. AN INTER-INSTITUTIONAL APPROACH TO PREVENT AND COMBAT CORRUPTION				
3.1. Raising awareness among officials of the institutions of the principles of sound project management				
<i>3.1.1. Improving coordination and cooperation between OLAF and other Commission departments (Action 93)</i>	Conclusion of memoranda of understanding between OLAF and other Commission departments	OLAF and other Commission departments	Under examination	The Recommendation No 7 of Commission Report evaluating the activities of OLAF pursuant to Article 15 - (COM / 2003 / 154 / Final, 02.04.2003) considers that initiatives under action 93 of the Commission Reform White Paper should be extended to other Commission departments to improve coordination between OLAF and certain services, which will step up the fight against fraud and other irregularities and improve the use of available resources.
<i>3.1.2. Drawing up guidelines for sound financial management</i>	Training plan, codes of conduct	OLAF, ADMIN, IAS, BUDG, SG	Action completed Merged with the following action (Typology of high-risk behaviour).	

<i>(Action 92)</i>	Typology of high-risk behaviour	ADMIN, OLAF, IAS, BUDG, SG	<p>Action completed</p> <p>In the context of the Commission's amended proposal on the new Staff Regulations adopted on 18.11.2003 (COM / 2003 / 721 / final), the Commission updated the Administrative Guide for officials, servants and members of the Commission on 05.11.2003.</p>	<p>One aim of the Administrative Guide is to raise awareness of ethics and standards for conduct with a view to preventing administrative behaviour detrimental to the Communities' political, legal and financial interests.</p> <p>The Administrative Guide has been updated to implement Action 92 of the White Paper on Reforming the Commission.</p> <p>The Administrative Guide is available on:</p> <p>http://www.cc.cec/pers_admin/admin_guide/index_en.html</p>
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Objectives	Measures	Lead department	Implementation and follow-up	Comments
3. AN INTER-INSTITUTIONAL APPROACH TO PREVENT AND COMBAT CORRUPTION				
3.2. Improving the legal framework for administrative investigations				
3.2.2. <i>Improving the effectiveness and consistency of administrative investigations</i>	Analysis of conditions to implement Article 4 of Regulation No 1073/1999 in Community institutions and bodies	OLAF	<p>Action ongoing</p> <p>See Article 15 Report at 2.2.2 below and the Prodi action plan (Mr Prodi's speeches in Parliament in September and November 2003).</p>	This issue is taken up in the Commission proposals to amend Regulations (EC) Nos 1073/1999 and 1074/1999 (COM/2004/103 and 104/Final of 10.02.2004 respectively).

Objectives	Measures	Lead department	Implementation and follow-up	Comments
4. STRENGTHENING THE CRIMINAL-LAW DIMENSION				
4.1. Following up the Commission communication on criminal-law protection of the Communities' financial interests				
4.1.1. <i>Reviving the debate on the criminal-law protection of financial interests</i>	Ongoing discussions on the detailed arrangements for introducing a European public prosecutor in relation to the protection of financial interests	OLAF, JAI	<p>Action completed</p> <p>A follow-up report on the Green Paper (COM/2003/128), was adopted on 19.03.2003.</p> <p>The Commission made a contribution to the Convention (WG X/WD 27, 25.11.2002) and to the IGC (COM/2003/548/Final, 17.09.2003).</p>	<p>In the report, the Commission has analysed about 200 responses to the Green Paper and drawn new guidelines on that basis in the momentum of the European Convention.</p> <p>The text of the Constitutional Treaty adopted by the Heads of State and Government on 18 June 2004 defines the conditions of creation and the competences of a European public prosecutor (Article III-175 of the provisional text of the Constitutional Treaty).</p>

Objectives	Measures	Lead department	Implementation and follow-up	Comments
4. STRENGTHENING THE CRIMINAL-LAW DIMENSION				
4.1. Following up the Commission communication on criminal-law protection of the Communities' financial interests				
<p><i>4.1.2. Speeding up the entry into force of legal protection in criminal matters</i></p>	<p>Implementation of certain provisions of the Convention on the protection of financial interests and its protocols on the basis of the new Article 280 EC</p>	<p>OLAF</p>	<p>Action ongoing</p> <p>In October 2002 the Commission presented an amended proposal for a Directive on the criminal-law protection of the Community's financial interests (COM/2002/577/Final, 16.10.2002).</p> <p>The European Parliament (OJ C 153 E, 27.06.2002) and the Court of Auditors (OJ C 14 E, 17.01.2002) delivered favourable opinions on this matter. The proposed directive is blocked in the Council because some Member States doubt whether Article 280 EC Treaty provides a sufficient legal basis for such a directive.</p>	<p>The aim of this measure is to create a Community instrument incorporating certain criminal-law provisions (definitions of illegal behaviour, liabilities and penalties, cooperation with the Commission) which appear in third-pillar instruments (Convention on the protection of the financial interests of the European Communities, signed by the Member States on 25 July 1995, and its two protocols).</p> <p>The Convention and its first Protocol entered into force on October 2002, whereas the second Protocol is still to be ratified by all Member States.</p> <p>To further the objective of developing effective and equivalent protection of the financial interests of the Communities, it is planned to present a Commission report on the implementation of the Convention on the Protection of the European Communities' financial interests and its protocols based on Article 10 of the Convention in 2004.</p>

Objectives	Measures	Lead department	Implementation and follow-up	Comments
4. STRENGTHENING THE CRIMINAL-LAW DIMENSION				
4.2. Stepping up cooperation and facilities for action in criminal matters				
<i>4.2.1. Simplifying judicial assistance procedures</i>	Establishment of a European judicial cooperation unit	JAI, OLAF	<p>Action completed</p> <p>A memorandum of understanding between Eurojust and OLAF was signed on 14 April 2003.</p>	(See Item 2.1.2)

Objectives	Measures	Lead department	Implementation and follow-up	Comments
4. STRENGTHENING THE CRIMINAL-LAW DIMENSION				
4.2. Stepping up cooperation and facilities for action in criminal matters				
<p>4.2.2. <i>Stepping up cooperation in criminal matters for the criminal-law protection of financial interests</i></p>	<p>Vertical cooperation with the Member States in combating crime affecting the Community's financial interests</p>	<p>OLAF, JAI</p>	<p>Action ongoing</p> <p>Deliberations on a guide of best practice in judicial cooperation and assistance.</p> <p>An analysis of the technical and operational assistance the Office can offer to the judicial authorities is under way in the context of the Platform Service (see under 2.1.1).</p>	<p>The Convention of 26.07.1995 on the protection of financial interests was ratified and entered into force in October 2002. The Second Protocol, which provides for vertical cooperation between the Commission and the Member States, has not yet been ratified.</p> <p>The effectiveness of administrative investigations is one of OLAF's concerns, reflected in its follow-up and advisory functions in both the legal (institutional and Community law) and judicial (national law) fields. These functions include judicial support and expertise provided by OLAF's Magistrates Unit. The creation of the Platform Service should enable better use to be made of these functions.</p> <p><i>P.M.:</i> Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.06.2002). This Framework Decision is in force and will cease to have effect when the Convention on mutual assistance in criminal matters between Member States enters into force in all Member States.</p>

TITLE II - INVENTORY OF THE CONTRIBUTIONS OF THE MEMBER STATES

1. TEXTS CONTRIBUTING TO THE IMPLEMENTATION OF ARTICLE 280 OF THE EC TREATY – PRINCIPAL LEGISLATIVE DEVELOPMENTS

<p>1.1. Horizontal developments:</p> <p>New legislative developments contributing to the implementation of Article 280 of the Treaty</p>	
DE	<p>A new guide for drawing up the reports of irregularities in accordance with Regulations (EEC) No 595/91 and (EC) No 1681/94 for all EU funds (point 1.5.b).</p>
ES	<p>Law 38/2003 of 17 November 2003, lays down general rules on government grants</p> <p>Royal Decree 180/2003 of 14 February 2003 makes it compulsory for an audit to be carried out of the annual accounts of certain firms which have received grants totalling more than €600 000 during the financial year from government or EU funds.</p> <p>Section 186 of General Tax Law 58/2003 of 17 December 2003 establishes the loss of the right to obtain public aid or grants as an additional non-pecuniary fiscal penalty for serious or very serious infringements.</p> <p>Law 11/2003 of 21 May 2003, on joint criminal investigation teams in the European Union, governs the setting-up of joint investigation teams by two or more Member States of the European Union, where one Member State requests the establishment of the group and the relevant Spanish authorities participate, or where the group's activities are carried out on Spanish territory. It also applies to joint investigation teams set up under the auspices of OLAF.</p>
FR	<p>Law No 2003-239 of 18 March 2003 on internal security increased the severity of the penalties laid down in Article 414 of the Customs Code for importing or exporting goods without making a declaration and smuggling carried out by an organised group.</p> <p>In such cases, the fine, which is normally between once and twice the value of the object of the fraud, may now be up to five times the value. The maximum prison term, set at three years for other categories of offence, is increased to ten years.</p> <p>This constitutes a significant reinforcement of the retributive element for this type of offence which concerns both own resources and EAGGF-Guarantee.</p> <p>It should be noted that this same law inserts six articles into the Code of Criminal Procedure in order to give a legal framework to searches and access to computer data (Sections 57-1, 60-1, 76-3, 77-1-1, 97-1 and 153-1-1). These measures of a general nature are applicable in field of protection of Community financial interests.</p>

1.1. Horizontal developments:

New legislative developments contributing to the implementation of Article 280 of the Treaty

LU

In 2003 the Government submitted the following bills, all of which deal in part with the protection of the Communities' financial interests within the meaning referred to in Article 280 of the EC Treaty.

1) Bill 5262 approving:

- the Convention based on Article K.3 of the Treaty on European Union on combating corruption involving officials of the European Communities or of the Member States of the European Union, signed in Brussels on 26 May 1997;

- the second Protocol based on Article K.3 of the Treaty on European Union to the Convention on the protection of the financial interests of the European Communities, signed in Brussels on 19 June 1997;

- the Criminal Law Convention on Corruption signed in Strasbourg on 27 January 1999;

- the additional Protocol to the Criminal Law Convention on Corruption, signed in Strasbourg on 15 May 2003;

and amending and supplementing

- certain provisions of the criminal code;

- the amended law of 28 December 1988 regulating access to professions in the skilled crafts, trade and industrial sectors as well as in some liberal professions.

2) Bill 5165 on combating money laundering and the financing of terrorism transposing European Parliament and Council Directive 2001/97/EC of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (in particular with regard to the protection of the European Communities' financial interests).¹

1.1. Horizontal developments:

New legislative developments contributing to the implementation of Article 280 of the Treaty

PT	<p>Decree-law No 38/2003, of 8 March makes an addition to the Criminal Code (Section 227 – Avoidance of repayment of debts) where provision is made for penalties for debtors who fail to repay claims by third parties in part or in full;</p> <p>Decree-Law No 93/2003, of 30 April regulates the conditions for cooperation, and real time access to and analysis of information relating to the investigation of tax crimes by the Judicial Police (Financial Intelligence Unit of the PJ) and by the Tax Administration.</p> <p>Law No 36/2003, of 22 August lays down guidelines for the implementation of the Decision of the Council of the European Union setting up EUROJUST, in order to strengthen the fight against serious criminal activity, and which governs the status and the powers of the national member concerned;</p> <p>Law No 65/2003, of 23 August approves the legal requirements for the European arrest warrant (complements the Council’s Framework Decision No 2002/584/JAI, of 13 June);</p> <p>Resolution of the Council of Ministers No 178/2003 of 31 October approves the overall concept for the reform of the forestry sector, stating its objectives and assigning to the Ministry of Agriculture, Rural Development and Fisheries the responsibility for carrying out the structural reform of the forestry sector, establishing which measures will take priority in the fulfilment of these objectives and setting out a timetable.</p>
FI	<p>In 2003 Parliament approved an amendment of the State Budget Act (HE 56/2003 vp; L 1216/2003) which included provisions concerning the “financial controller” function. The amendment entered into force on 1.1.2004. The amendment provided for a financial controller to be set up under the Ministry of Finance, with duties that include reconciling the internal and administrative audit of European Union funds which are the responsibility of the Finnish Government. It has to prepare positions regarding the control and audit of EU funds, errors in the management of funds and abuses of funds, and report to the European Union institutions and other bodies.</p>

1.2. Own resources:

New legislative developments contributing to the implementation of Article 280 of the Treaty

BE The Act of 22 April 2003 confers the status of auxiliary officer of the criminal investigation department of the public prosecutor and of the labour auditor on certain Customs and Excise Administration officials (Belgisch Staatsblad/Moniteur belge, 8 May 2003):

Among the latter, certain officials from the Customs and Excise Administration's National Investigations Department, as well as from regional investigations inspectorates and their divisions, can exercise the powers of criminal investigation department officer, without prejudice to their powers in the customs and excise field, with a view to the investigation and recording of:

- (1) infringements of the regulations on the protection of the European Communities' financial interests;
- (2) infringements as regards intra-Community movements of goods coming within the scope of the excise regulations and legislation;
- (3) infringements of all the laws and all the regulations conferring any powers whatsoever on the Customs and Excise Administration officials with respect to the import, export and transit of goods;
- (4) infringements similar to those referred to under points 1 to 3.

Conferring this status on certain officers of the customs and excise sector, and in particular on 38 officers specialising in combating fraud, including organised crime, aims to allow more effective cooperation between the customs departments and the judicial authorities and police departments at national, European and international levels.

It this way it will be possible, depending on the circumstances, the seriousness of the case or the requirements of the inquiry, to opt for the judicial procedure or to the customs criminal procedure.

1.2. Own resources:

New legislative developments contributing to the implementation of Article 280 of the Treaty

The customs and excise officials with the status of officer of the criminal investigation department will be able to accomplish, within the framework of limited tangible powers, all the actions conferred upon the criminal investigation department, in total harmony with the police departments and under the authority of the courts. (For additional information see parliamentary documents: Chamber: 50-2249-2002/2003 and Senate: 2-1585-2002/2003.)

Without prejudice to the provisions of Articles 47b and 40a of the Code of Criminal Procedure, these officials will be able to use the special investigation methods consisting of observation and recourse to indicators, as well as the deferred intervention coming under other investigation methods, under the same conditions as those set out in the Code of Criminal Procedure.

The ministerial decrees designating customs and excise officials to assume the status of officer of the criminal investigation department were adopted on 2 June 2003 (Belgisch Staatsblad/Moniteur belge, 06.06.2003) and 19 December 2003 (Belgisch Staatsblad/Moniteur belge, 30.12.2003).

1.2. Own resources:

New legislative developments contributing to the implementation of Article 280 of the Treaty

Related legislation:

Act of 6 January 2003 on the special investigation methods and other methods of conducting inquiries (Belgisch Staatsblad/Moniteur belge, 12 May 2003)

Act of 12 July 2002 assenting to the agreement between the Government of the Kingdom of Belgium and the Government of the Federal Republic of Germany relating to the cooperation between the police authorities and the customs authorities in border regions, adopted in Brussels on 27 March 2000 (Belgisch Staatsblad/Moniteur belge, 05.03.2003).

The purpose of this Act is to intensify the cooperation and exchange of information between the police authorities and the customs authorities in the Belgo-German border regions in order to prevent and combat crime more effectively.

Act of 22 April 2003 amending Article 63a of the Value Added Tax Code (Belgisch Staatsblad/Moniteur belge, 13.05.2003) gives the officials of the newly created recovery administration the same powers of investigation as those of the VAT Administration as regards establishing the assets of the debtor to secure the recovery of value added tax, interest and tax fines. This provision allows the tax officials and those responsible for recovery to work together or separately under the same conditions and following identical methods.

Royal Decree of 16 June 2003 amending Royal Decrees Nos 3, 4, 14, 48 and 51 on value added tax (Belgisch Staatsblad/Moniteur belge, 27.06.2003) made the refund of VAT after submission of the monthly return subject to the delivery of authorisation by the head of the control office which the taxable person comes under. This authorisation must be requested by letter containing all the facts and accompanied by all the documents of a nature to establish that the taxable person meets the special conditions required for the refund.

This measure extends the strict control of refunds embarked upon in 2002.

There is a bill to allow more effective recovery of Belgian claims which are the subject of a request for assistance for recovery in one of the Member States of the European Union. It translates European Council Directive 2001/44/EC of 15 June 2001 amending Council Directive 76/308/EEC of 15 March 1976 into Belgian law. Its aim is to modify the existing recovery arrangements to meet the threat of fraud and to safeguard better the competitiveness and neutrality of the internal market.

The Act of 12 January 2004 adopts the measures for the translation of Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

<p>1.2. Own resources:</p> <p>New legislative developments contributing to the implementation of Article 280 of the Treaty</p>	
	<p>The circular “Community transit – guarantees” of 30 January 2003, C.D. 852.0-860 – D.C. 17,200, comments on the changes made by Commission Regulation (EC) No 444/2002 of 11 March 2002 on notification of the guarantor that the Community transit declaration has not been discharged and explains the consequences with regard to the tasks of the national offices of departure or competent for the recovery. This circular also specifies the conditions for dispensation from the guarantee obligation of the public authorities.</p>
	<p>NCTS (new computerised transit system). The launch of a ‘paper-free’ Customs and Excise Administration was embarked upon with the implementation of the European NCTS project. This implementation will take place in 3 phases: 24 March 2003 (the Antwerp directorate), 5 May 2003 (the Brussels and Liège directorates) and 26 May 2003 (the Ghent, Hasselt and Mons directorates). The aim is for this computerised transit system to make the transit procedure more effective, more secure and more accurate. The basic principle of the system is for data to be transferred electronically between customs administrations of the EU Member States, EFTA and the Visegrad countries, and also between the economic operators and the local customs authorities.</p> <p>The Customs Administration will install the NCTS application on 300 workstations linked to the Finance network and spread over some fifty sites. Its mobile departments will also have 70 portables at their disposal operating with the GPRS (general packet radio service) system in order to be able to undertake company inspections efficiently. For these officials, the NCTS application will also be enhanced by an automatic risk analysis system and an advanced electronic search procedure in the event of irregularities. In order to guarantee accurate collection of any taxes due, computerised management of the guarantees is added to this project at national level.</p>
EL	<p>Law No 3052/02 (Government Gazette 221/A/24-09-2002) on changes in the Greek Accounting Books and Records Code, VAT and the Customs Legislation, transposes Directive (EC) No 44/2001 on mutual assistance for the recovery of claims resulting from certain levies, duties and other measures into national law.</p> <p>Ministerial Decision No. T3383/243/A0019 (Government Gazette 1068/B/1.8.03) on mutual assistance for the recovery of claims, transposes Directive (EC) No 94/2002 in national law which relates to the scope of Directive (EC) No 44/2001.</p> <p>These new provisions enlarge the scope of mutual assistance which is provided now, <i>inter alia</i>, for claims relating to administrative sanctions and fines.</p>
FR	<p>The law passed by Parliament on 18 March 2003 on internal security (see point 1.1) is applicable in the field of own resources.</p>

1.2. Own resources:	
New legislative developments contributing to the implementation of Article 280 of the Treaty	
IE	With effect from 5 May 2003, the detection and tackling of fraud, including illegal activities affecting the financial interests of the Community, have been strengthened by virtue of an amendment of the Criminal Justice Act 1994 by the Central Bank and Financial Services Authority of Ireland Act 2003. This amendment has the effect of requiring financial institutions to report suspicious transactions to the Office of the Revenue Commissioners (for intelligence purposes) and to the Police Authorities (for money laundering purposes).
IT	Law No 350 (the 2004 Budget Act) of 24 December 2003, Article 4, paragraphs 50 to 53 established the regulatory framework for creating a database of images generated by X-ray scanning equipment issued to the Customs Agency and divisions of the <i>Guardia di Finanza</i> , to combat fraud.
NL²	
PT	Decree-Law No 296/2003 of 21 November transposes Directive (EC) 2001/44 of 15/06/2001 and Commission Directive (EC) 2002/94 of 9/12/2002 on mutual assistance for the recovery of claims relating to certain contributions, duties, taxes and other financial means.
	Decree-Law No 147/2003, of 11 July approves rules for goods in circulation, which are the object of transactions between parties subject to VAT, particularly with regard to the necessity for and requirements concerning the transport documents which accompany them.
	Decree-Law No 93/2003, of 30 April regulates the form, scope and limits of the cooperation between the PJ and the DGCI (Directorate-General of Taxes) and the DGAIEC (Directorate-General of Customs and Special Taxes on Consumption) in a coordinated manner, in the fields of the access to and processing of information concerning taxation/customs matters, and relevant to criminal investigation activities, defining the conditions for reciprocal access to the data bases of the authorities empowered to carry out investigations in the field of tax/customs crime, which will be carried out in relation to the Financial Information Unit (UFI) of the PJ .

<p>1.2. Own resources:</p> <p>New legislative developments contributing to the implementation of Article 280 of the Treaty</p>	
FI	<p>Law No 179/2003 (which entered into force on 15.5.2003) modifies the consequences for default on the payment of Customs duties, the collection of Customs duties through enforcement and the securing of collection, and the provisions of the Customs Act regarding the order of payment of amounts due.</p> <p>The extension of the powers of technical surveillance and the right of remote surveillance in order to combat and uncover criminal offences entered into force on 1.10.2003 (amendment of Customs Act; L 774/2003).</p> <p>The number plate and freight container description and identification system (LIPRE) entered into force on 1.10.2003 (amendment of Customs Act; L 774/2003).</p>
UK	<p>Civil Penalties: A new system of civil penalties to deal with contraventions of national and European Community Customs law was introduced in primary legislation in the UK 2003 Finance Act. There will be two types of penalty:</p> <ul style="list-style-type: none"> - The civil evasion penalty will deal with less serious cases of evasion of customs duties and/or import VAT (Customs will, however, retain the right to investigate these cases with a view to prosecution); - The penalty for non-compliance will deal with contraventions of European and national customs laws covering imports and exports where evasion is not a factor. <p>Penalties will provide an effective and proportionate sanction to counter evasion and non-compliance with customs laws.</p>

1.3 Agricultural expenditure (expenditure financed by EAGGF - Guarantee section):	
New legislative developments contributing to the implementation of Article 280 of the Treaty	
a) Horizontal developments (general control and preventive measures in the field of EAGGF-Guarantee)	
DE	A new guide for drawing up the reports of irregularities in accordance with Regulations (EEC) No 595/91 and (EC) No 1681/94 for all EU funds (see point 1.5.b).
EL	<p>Law 3147/2003 (Government Gazette 135/A/05.06.03) regulating matters concerning agricultural land, aid to livestock farmers and other provisions:</p> <p>1) Article 24 (2) replaces Article 3 of Law 1409/83 which in accordance with Legislative Decree 131/74 stipulates the granting of aid for irrigation, handicrafts, agrotourism and the promotion of agriculture, livestock farming, forestry and fisheries production.³</p> <p>2) Article 29 regulates, <i>inter alia</i>, issues concerning the EAGGF Paying and Audit Agency. In particular it contains provisions which:</p> <ul style="list-style-type: none"> - provide for the issuing of regulatory or individual administrative decisions to support the Agency in its work in the public interest. These decisions will be taken by the Minister of Agriculture and other competent Ministers following an opinion from the Agency and a report from the competent departments of the Ministry of Agriculture; - add a new indent to Article 982(2) of the Greek Civil Procedure Code on garnishment which stipulates that claims from “all manner of community aid or subsidies in the hands of the EAGGF Paying and Audit Agency is exempted from the garnishment of claims.”; - stipulate that, “for civil disputes arising from the exercise of any competences which have been assigned to the EAGGF Paying and Audit Agency vis-à-vis third parties, only the Agency as a legal entity shall be liable”; - amend and supplement the provisions of Law 2637/98 on legal assistance to the Agency provided by the Special Community Law Bureau of the State Legal Counsel and by attorneys at law engaged as stipendiaries, approval of the budget and the finances of the ELEGEP account. <p>3) Article 34 inserts provisions into Legislative Decree 185/73 relating to a) the procedure for collecting and managing fees for the animal feed section in compliance or implementation of community and national provisions and b) the imposition of administrative sanctions (fines) for animal feed by means of decision of the Secretary General of the Ministry of Agriculture due to the seriousness and duration of infringement, the size of the enterprise, deliberateness of the breach and repeated offences.</p>

1.3 Agricultural expenditure (expenditure financed by EAGGF - Guarantee section):	
New legislative developments contributing to the implementation of Article 280 of the Treaty	
IT	<p>Pursuant to Legislative Decree No 305 of 10 December 2002, published in the Official Journal No 24 of 30 January 2003, beneficiary companies of funding issued by the EAGGF - Guarantee section are subject to administrative fines, equal to the payments made, in the event that - in accordance with the controls set out by Regulation (EEC) No 4045/89-they refuse to produce, state that they do not possess, or remove, documents required for inspection and verification set out in Article 4 of said Regulation.</p> <p>This decree further introduced an administrative fine of up to €10,500, to be paid by third parties that, as part of the cross checks carried out pursuant to Article 3 of Regulation (EEC) No 4045/89, refuse to comply with the obligation to provide the documents set out in Article 5 of said Regulation.</p> <p>Measures to establish three carabinieri anti-fraud groups (NACs) have begun in the cities of Parma, Rome and Salerno, which will be responsible for the areas of Northern Italy, Central Italy and Sardinia, and Southern Italy and Sicily respectively.</p>
PT	<p>Normative Resolution No 28/2003 of 16 June transfers the officials from the Regional Agricultural Directorates involved in controls for the SUC (Unified Control System) to INGA (National Institute for Agricultural Intervention and Guarantees).</p> <p>Decree-Law No 244/2003 of 7 October establishes the rules governing enterprises producing animal by-products regarding their collection, transport, storage, handling, processing, and use or disposal, and with regard to regulations for financing a system for collecting dead animals for research purposes (SIRCA);</p> <p>It also provides for a system of sanctions, and fixes the fines and additional sanctions to be applied in case of contravention.</p>
FI	A new legislation on agricultural financing has come into effect in the Province of Åland (law No 65/2003).
UK⁴	
b) Developments in the field of export restitutions	
c) Developments in the field of intervention expenditure	
ES	Law No 62/2003 of 30 December 2003 on tax, administrative and social measures (Articles 115 to 117) modifies the system of infringements and penalties applicable to the milk quota scheme and governs responsibility for payment of the milk quota additional levy and authorisation for the transfer of data on the management of the milk levy.

1.3 Agricultural expenditure (expenditure financed by EAGGF - Guarantee section):	
New legislative developments contributing to the implementation of Article 280 of the Treaty	
d) Developments in the field of direct aid	
ES	Law No 62/2003 of 30 December 2003 (Article 120) lays down basic rules on the application of the direct support schemes referred to in Regulation (EC) No 1782/2003.
LU	Grand-Ducal Regulation of 28 February 2003 on application to the Grand-Duchy of Luxembourg of the premium in favour of sheepmeat producers.
PT	Regional Decree No 96/2003, of 24 July adopts measures for the provision and control of aid granted for fruit (excepting bananas from Madeira), horticultural products, live plants and flowers picked or produced locally and destined for the supply of the Madeira Autonomous Region (RAM) – POSEIMA; Regional Decree No 64/2003, of 31 July: adopts measures for the provision and control of aid granted for the wine sector benefiting the Azores Autonomous Region (RAA) – POSEIMA.
e) Developments in the field of rural development measures financed by EAGGF-Guarantee	
IE	Early Retirement Scheme: in January 2003, the European Commission agreed to changes to the Scheme of Early Retirement from Farming introduced in Ireland in 1994 under Council Regulation 2079/1992. The changes limit to the first five years of participation in the Scheme the requirement on the transferee (the young farmer taking over the holding from the retired farmer) to enlarge and engage in farming as a main occupation.
PT	Decree No 193/2003 of 22 February: clarification and detailed explanation of a number of concepts and topics referred to in the Regulations for the Application of the Intervention for Compensatory Payments, and particularly regarding penalties to be applied in case of non-fulfilment (RURIS); Resolution of the Council of Ministers No 58/2003 of 19 March: determines changes in the contents of the Plan for Rural Development (RURIS); Regional Decree No 20/2003 of 27 March: changes some points in the Regulations for the Application of the Intervention for Compensatory Payments relating to sanctions to be applied in the case of non-fulfilment (Azores); Decree No 1212/2003 of 16 October: approves the Regulations for the Application of the Intervention “Agro-Environmental Measures” in the Rural Development Plan (RURIS).

<p>1.3 Agricultural expenditure (expenditure financed by EAGGF - Guarantee section):</p> <p>New legislative developments contributing to the implementation of Article 280 of the Treaty</p>		
<table border="1"> <tr> <td data-bbox="256 436 352 786"> <p>UK</p> </td> <td data-bbox="352 436 1513 786"> <p>Department of Agriculture and Rural Development Northern Ireland's administration of the Sheep Annual Premium Scheme was the subject of a Public Accounts Committee (PAC) hearing in July 2003. The PAC was critical of the Department's failure to adequately enforce the record keeping requirements of the scheme. In response to the PAC the Department intends to adopt a much firmer approach to the enforcement of the requirement to produce flock records at on-farm inspections. The revised approach includes the strengthening of the offences provisions to create an offence of failing to comply with a request of an authorised officer of the Department to produce flock records.</p> </td> </tr> </table>	<p>UK</p>	<p>Department of Agriculture and Rural Development Northern Ireland's administration of the Sheep Annual Premium Scheme was the subject of a Public Accounts Committee (PAC) hearing in July 2003. The PAC was critical of the Department's failure to adequately enforce the record keeping requirements of the scheme. In response to the PAC the Department intends to adopt a much firmer approach to the enforcement of the requirement to produce flock records at on-farm inspections. The revised approach includes the strengthening of the offences provisions to create an offence of failing to comply with a request of an authorised officer of the Department to produce flock records.</p>
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<p>1.4 Structural actions :</p> <p>New legislative developments contributing to the implementation of Article 280 of the Treaty</p>	
<p>a) Horizontal developments (covering two or more structural funds)</p>	
<p>DE</p>	<p>A new method for drawing up the reports of irregularities in accordance with Regulations (EEC) No 595/91 and (EC) No 1681/94 for all EU funds (see point 1.2.b).</p> <p>The further training of the audit departments and independent agencies in the field of the EU structural funds has been redesigned. Joint further training for the audit departments – independent agencies, department responsible for certification and the internal audit departments – was organised and instituted at the Federal Agency for Agriculture and Food. Following coordination with the departments concerned, the further training programme is carried out by a private auditing firm.</p>
<p>EL</p>	<p>Law No 3148/2003 (Government Gazette 136/A/5-6-2003) amends Sections 16 and 17 of Law 2860/2000 (Government Gazette 251/A/14-11-2000) on management, monitoring and control of the Community Support Framework and other provisions as follows:</p> <p>“Representatives of the Fiscal Control Committee (EDEL) shall now participate in Monitoring Committees for 3rd CSF Operational Programmes and Community Initiatives as well as the Cohesion Fund 2000-2006 Monitoring Committee in a consultative capacity without voting rights.” This reform achieves greater independence and objectivity in relation to Fiscal Control Committee’s mission which is to ensure that the principles of proper fiscal management are observed.</p> <p>The auditing team prepares a report following completion of the audit, which will be delivered to the Programming and Control Directorate. Having examined the completeness of this report and approved it, this Directorate will present its recommendations to the Fiscal Control Committee for approval.</p> <p>From now on, in the case where an issue of imposing fiscal corrections or imputing fines arises the amount shall be recovered in accordance with the provisions in force from time to time on fiscal corrections and the recovery of amounts unlawfully or unduly paid.</p>

<p>1.4 Structural actions :</p> <p>New legislative developments contributing to the implementation of Article 280 of the Treaty</p>	
	<p>The amendment of Section 17(11) means that the Programming and Control Directorate (Directorate 51 of the State General Accounting Office) consists of the following 5 Units:</p> <ul style="list-style-type: none"> – Unit I: ERDF Programmes - Programming and Controls – Unit II: EAGGF-Guidance and FIFG - Programming and Controls – Unit III: ESF Programmes - Programming and Controls – Unit IV: Cohesion Fund - Programming and Controls – Unit V: Community Initiative & other financing instruments - Programming and Controls <p>Following amendment of Section 17(12) by Law No 3148/2003 a certain number of statutory posts have been created to staff the two support Directorates for the Fiscal Control Committee (Programming and Controls and Studies and Evaluation).⁵</p> <p>Thanks to the amendment to Section 17(13) these Directorates may be staffed by employees seconded, transferred or drawn from the public sector, local government authorities and public or private law bodies corporate in the wider public sector by means of joint decision of the Minister of Finance and Economy and another competent Minister as the case may be.</p>
	<p>Adoption of Law No 3164/2003 (Government Gazette 176/A/2-7-2003) on registers of design consultants, award and preparation of designs and the provision of related services and other provisions, proceeds to the transposition of Community law into the national legal system relating to the preparation of designs. It is expected that the Presidential Decrees required to bring it into effect will be issued soon.</p>
ES	<p>Law 62/2003 of 30 December 2003 (Article 67) amends Royal Legislative Decree 2/2000 of 16 June adopting the revised text of the Law on Public Contracts, with regard to the conditions for advertising and competition, adoption of provisional measures and resources.</p>

<p>1.4 Structural actions :</p> <p>New legislative developments contributing to the implementation of Article 280 of the Treaty</p>	
FR	<p>Decree No 2003-1088 of 18 November 2003 implements Section 60 of the amending Budget Act for 2002 (No 2002-1576 of 30 December 2002). This text assigns a new control power to the CICC-Structural Funds (Interministerial Commission for Coordination of Controls in respect of operations co-financed by European structural funds) concerning management and payment authorities, especially local authorities, but also any individual or corporate body receiving these funds, the organisations through which the funds have passed and the various administrative bodies.</p> <p>This Decree provides that CICC-Structural Funds may make recommendations directly to a local authority when it acts as a management and payment authority.</p> <p>The provisions also create a position of vice-president (by appointment of the Prime Minister) among the inspectors-general, full members of the CICC-Structural Funds.</p>
IT	<p>The Region of Veneto has announced that it has approved the directives relating to the functions, duties and procedures of the Monitoring Offices [Uffici Monitoraggio], as well as the audit trail and the operational directives for the sample selection and the execution of controls in accordance with Articles 10-12 of Regulation (EC) No 438/01. (Decree No 963 of 28 July 2003).</p> <p>It has adopted procedures to launch level II controls too, approving an analysis form of management and control systems for the Management Authority and release of structural funds, as well as the forms for the inspection report (Decree No 2 of 13 May 2003 of the Regional Secretariat of the Productive Activities of the Region of Veneto).</p> <p>The Decree No 4 of 29 July 2003 of the Regional Secretariat for Productive Activities has approved the document "Methodology, Audit trail and Forms for level II controls".</p>
	<p>The Region of Campania has approved rules for the application of Regulation No 448/01 and Article 8 of Regulation 438/01 under Campania's Regional Operational Programme, in which it sets out the duties and activities of each party involved in the implementation of the Regional Operational Programme (Management Authorities, Payment Authorities, Level II Control Office, Measure Managers). Specifically, the Payment Authorities were allocated the activities pertaining to irregularities, recovery, correct bookkeeping and financial adjustments. (Decision No 3290 of 21 November 2003 of the Regional Council).</p>
LU	<p>In 2003 there were no changes in the organisation of the <i>ex post</i> controls under Article 3 of Regulation (EC) No 2064/97 (for the programming period 1994-1999) carried out by the Inspectorate-General for Finance on agricultural expenditure (EAGGF-Guidance) and the Community's structural funds.⁶ This is also the case for the organisation of the <i>ex post</i> controls under Article 10 of Regulation (EC) No 438/2001 for the programming period 2000-2006.</p>

1.4 Structural actions :	
New legislative developments contributing to the implementation of Article 280 of the Treaty	
NL	Following the signing of cooperation protocols in 2002, the relevant departmental audit services considered the Commission proposal in 2003 to conclude contracts of confidence ⁷ .
b) Developments in the area of the ERDF	
DE	No changes have occurred at Federal level compared to 2002. The Länder have extended their aid schemes in part. For example, the Saxon State Ministry of the Economy, Employment and Social Affairs has redesigned the aid scheme for the granting of allocations from the ERDF for technical aid.
IT	The Regional Council of the Valle d'Aosta, through decision No 559 of 17 February 2003, has approved the audit trail as well as measures to implement Regulation (EC) No 438/01 and subsequent amendments, and the provisions pursuant to Regulation (EC) No 1681/94.
	The Regional Council of Tuscany, through decision No 8 of 16 June 2003, has established provisions relating to the separate responsibilities relating to the planning, management, accounting and supervision activities regarding the spending of the various parties involved in implementing the Objective 2 Single Programming Document (implementation of Regulation (EC) No 438/01).
	By management decree (D.D.) No 88/2003 of the Director of Division 01 of the Central Management Authority (AGC) 09 that acts as the ERSF Payment Authority, the Region of Campania has approved the "the manual of internal procedures" for the certification of expenditure on ERDF measures pertaining to Campania's Regional Operational Programme 2000-2006, and also laid down procedures to carry out relevant controls.
LU	On 13 March 2003 the Ministry of Economic Affairs, which is responsible for managing ERDF Objective 2 (2000-2006), sent the European Commission a description of the management and control system pursuant to Article 5(1) of Regulation (EC) No 438/2001. On 16 April 2003 the European Commission endorsed the description.

1.4 Structural actions :	
New legislative developments contributing to the implementation of Article 280 of the Treaty	
FI	<p>The Regional Development Act (602/2002) and the Council of State Decree on the financing of regional development measures (1225/2002) entered into force on 1.1.2003. These statutes regulated matters relating to the granting, payment, follow-up, right of audit, performance of audit and recovery of aid. Provisions were also laid down on the duty of Regional Councils to repay the State in cases where the Member State is obliged to repay structural fund monies to the European Commission. This updating of the law raised the above-mentioned provisions from the level of a Decree to that of an Act. The Act also enabled the recovered amount to be increased in certain deliberate and gross cases.</p> <p>These provisions have a preventative impact and one that also strengthens <i>ex post</i> measures.</p> <p>The Public Employment Services Act (1295/2002), the Council of State Decree on the use of certain employment appropriations (1345/2002) and the Council of State Decree on the implementation of public employment services (1347/2002) include general principles for the granting and allocation of employment-based investment grants which are distributed through the administrative sector of the Ministry of Labour.</p>
c) Developments in the area of the ESF field	
DE	Adaptations to the Länder aid schemes, e.g. scheme of the Saxon State Ministry of the Economy and Employment to promote additional vocational training places being made available and taken up in small and medium-sized enterprises.
IT	<p>The decision No 559 of 17 February 2003 of Valle d'Aosta's Regional Council (see point 1.3.b) is applicable in the field of ESF too. The Council has approved too "the mechanism for the accreditation of training institutions for the execution of actions part financed by the ESF", through decision No 745 of 3 March 2003, and the audit trail regarding the objective 3 regional operational programme (ROP), 2000/2006, through decision No 1819 of 12 May 2003.</p> <p>The Region has further adopted provisions regarding regional policies for work, professional training and the reorganisation of employment services through Law No 7 of 31 March 2003.</p>
	The Region of Campania, through decree (D.D.) No 2118 of 29 May 2003, has approved the Payment Authorities Manual, which lays down the principles and procedures of level I controls, with precise instructions on their execution. Ordinary level I controls were subsequently initiated. ⁸
FI	The Regional Development Act No 602/2002 (see point 1.4.b) also concerns the ESF when the aid is granted by a Regional Council.
d) Developments in the area of the EAGGF - Guidance section	

1.4 Structural actions :	
New legislative developments contributing to the implementation of Article 280 of the Treaty	
EL	Dispositions of Article 24 (2) of Law No 3147/2003 (see point 1.3.a) concern the EAGGF-Guidance section too.
IT	The Region of Veneto has allocated the AVEPA Payments Agency: <ul style="list-style-type: none"> - the responsibility of carrying out accounting and administrative checks of the expenditure audited by the local action group (GAL) for the Leader Plus programme (DGR No 812 of 28 March 2003); - responsibility of carrying out first-level controls (DGR No 2224 of 16 July 2003) for Innovative Actions (ERDF).
	The Region of Campania, within the organisational procedures for <u>EAGGF</u> measures, has adopted Decree No 127/03, which lays down provisions for the co-ordination of controls at the various levels concerned.
e) Developments in the area of the FIG	
IT⁹	
UK₁₀	
f) Developments in the area of the Cohesion fund	
PT	Decree No 37/2003, of 15 January establishes the ways of forming links between the entities responsible for the various levels of control of the Cohesion Fund and defines conditions for the supply of and access to relevant information for such controls.

1.5.a	Major developments: Mentioned (points 1.1 – 1.4) new (sectoral or horizontal) developments which are considered most significant by the Member States
BE	Circular “Community transit – guarantees” of 30 January 2003 (point 1.2). Implementation of the European NCTS (New Computerised Transit System) project (point 1.2).
DE	A guide for drawing up reports on irregularities in accordance with Regulations (EEC) No 595/91 and (EC) No 1681/94 (point 1.5.b) and further joint training of the audit departments.
EL	Adoption of Laws Nos 3147/03 (point 1.3.a) and 3148/03 (point 1.4.a).
ES	Law 38/2003 of 17 November 2003, General rules on grants (point 1.1).
FR	Enactment of the law on internal security of 18 March 2003 reinforcing the sanctions set down in Article 414 of the Customs Code for customs offences (point 1.1).
IT	The legislative decree No 305 of 10 December 2002 (point 1.3.a).
PT	Decree-Law No 93/2003 of 30 April (point 1.2).
FI	The legislative measures relating to the function of financial controller (point 1.1) Law No 774/2003 (LIPRE. Point 1.2) Law No 602/2002 and Decree No 1225/2002 (ERDF and ESF, points 1.4.b and c).
UK	The new system of civil penalties (point 1.2).

1.5.b Significant regulatory and/or administrative developments	
BE	<p>At national level:</p> <p>Federal public service – Economy, EAGGF, Guarantee Section: a new Federal Public Service Economy, SMEs, Self-employed and Energy was set up on 1.1.2003. As control body, the Economic Inspection Board was succeeded by the new Control and Mediation Directorate-General. No changes were made regarding the control activities of this authority in the context of Article 280. This authority was designated at the beginning of 2003 as contact point to assist OLAF in control missions pursuant to Regulation (Euratom, EC) No 2185/96.</p> <p>On 01.04.2003, the payment authority competent for Flemish rural development aid and the payment authority competent for European income support were incorporated in the Agricultural Production Management Administration. This integration was accompanied <i>inter alia</i> by the extension of an IT interface with strict separation of functions and the generalised use of a single producer number.</p>
	<p>As a result of the restructuring of the Belgian Federal public services, a Coordinating body for the EAGGF Guarantee Section payment authorities was created on 1 January 2003. It coordinates :</p> <ul style="list-style-type: none"> – Federal Public Service Economy, SMEs, Self-employed and Energy, – Economic Potential Directorate-General (E4), – Financing of Agricultural Policy Department – The EAGGF Guarantee Section payment authorities. <p>On 1 April 2003, two Flemish payment authorities were incorporated: the ex-DG3 (Agricultural Production Management Board of the former Ministry of the Self-employed and Agriculture), and ALT (Agriculture and Horticulture Administration).</p> <p>Flemish Government Decree of 28 March 2003 establishing a Flemish payment authority for the European Agricultural Guidance and Guarantee Fund, Guarantee Section, published in the Belgisch Staatsblad/Moniteur belge of 24.4.2003.</p>

1.5.b Significant regulatory and/or administrative developments

A Cooperation agreement between the Federal State, the Flemish Region, the Walloon Region and Brussels Capital Region with regard to exercising regionalised powers in the field of Agriculture and Fisheries was signed on 18 June 2003 (Belgisch Staatsblad/Moniteur belge, 01.09.2003).

Compliance with this agreement and with the respective commitments is ensured within the Inter-ministerial Conference for Agricultural Policy (ICLB).

The parties undertook to set up the ICLB and to guarantee its operation, and to set up the Agriculture Bureau, the operation and composition of which are based on the rules set out in the manual on the representation of Belgium regarding agricultural affairs in European and international bodies, and consultation between the federal government and the regional governments regarding agriculture and fisheries policy, hereinafter referred to as “the manual”.

Concerning the intergovernmental prevention unit (IPC), it is stated that the future operation and the new composition of this unit are regulated by the specifications of the relevant provisions contained in of the manual.

The ICLB has given its agreement to the entire text of the draft manual (with the exception of the spokesman in the SCL (Special Committee for Agriculture)) and more specifically to chapter VI “The coordinating body of the payment authorities (EAGGF, Guarantee Section) including VI.4 “the Intergovernmental Prevention Unit (IPC). Pending finalisation of the manual, the ministers have agreed to act in the spirit of the draft as approved.

1.5.b Significant regulatory and/or administrative developments

Federal public service – Finance

1) The VAT control departments continued the intensified controls on VAT refunds in 2003 focusing on combating “carousel-type” fraud.

2) As it is not possible to combat tax evasion optimally without consulting the various sectors of the economy, the Secretary of State for Finance conducted exploratory talks with a number of professional groups active in the trade in wine, spirits, tobacco and oils, as well as construction. With a view to concluding cooperation protocols, each sector undertook to take various measures to combat tax evasion more effectively.

3) A study conducted by the tax authority revealed that the addresses of 14,924 companies out of a total of 283,404, i.e. 5.7%, are different in the VAT records from those in the direct tax records.

In order to improve the controls, in the context of the implementation of the decision of the Council of Ministers of 8.10.2002 concerning the control of enterprises and in accordance with the government agreement, it was decided to harmonise the domicile for tax purposes of legal persons with regard to income tax and value added tax (VAT).

The interest for the authority in resolving this problem in a uniform manner lies in the fact that henceforth a single control centre will be responsible for verifying the tax situation of a company and that assessors are closer to the actual day-to-day running of a company and its accounting and can therefore inspect the aforementioned legal persons more effectively.

4) Accelerated introduction of data mining exclusively in the context of risk analysis management which is a priority of the management plan of the Federal Public Service – Finance.

The aim of data mining is to detect and examine all the data collected in order to establish the links between the various elements and to interpret the profiles of high-risk taxpayers. This will help the Finance Department to put its investigation and information-gathering activities to the best use to combat fraud effectively. During the Council of Ministers meeting of 25.07.2003 it was decided that the general tendering procedure for assistance in finding a solution with regard to data mining could be launched.

1.5.b Significant regulatory and/or administrative developments

On the regional level:

The *Flemish community* announces the implementation of the recommendations made by Internal Audit as a result of the audit conducted in the context of the winding-up of the 1994-1999 assistance packages in the field of ERDF (Article 15, Commission Regulation 438/2001).

In the field of ESF, audits of the system were made by the departments of the Directorate-General for Employment, the European Court of Auditors and the Internal Audit entity of the Flemish Community. The observations formulated with regard in particular to the separation of functions were taken into account.

At EAGGF Guidance Section, EAGGF Guarantee Section and FIFG, agreements have been made within the Agriculture and Horticulture Support Policy Department of the Agriculture and Horticulture Administration on the consistent reporting of PII (foreign affairs)/OLAF irregularities.

Following the regionalisation of competence regarding agriculture, the payment and control systems for the “investments in agricultural holdings” and “setting up of young farmers” measures were modified in the *Walloon region* (EAGGF, Guidance Section):

- a specific directorate responsible for on-the-spot checks was set up within the Directorate-General for Agriculture of the Ministry for the Walloon Region;
- the payments are now made by the Aid to Agriculture Division of the Directorate-General for Agriculture which is the accredited payment authority for EAGGF, Guarantee Section.

1.5.b Significant regulatory and/or administrative developments

In *Brussels Capital Region*, more developments are to be reported.

Administrative development: a new *internal auditor* was recruited within the Brussels Regional Employment Office (ORBEM) in September 2002 and was initiated in the various methodological approaches with regard to control and management in 2003.

In parallel, with a view to guaranteeing the transparency of all the operations involved in drawing up the management and control procedures, *an external audit* is carried out by a body independent of the ORBEM. An administration contract was signed in February 2002 between the Government of the Brussels Capital Region and the Finance Inspectorate. In 2003 this unit carried out its mission in accordance with the inspection agreements for the European structural funds pursuant to Regulations (EC) Nos 2064/97 and 438/2001.

The internal administrative organisation of the controls, as described under question 1.3.b) of the 2002 questionnaire, has undergone a few adjustments which are still under review.

Regulatory developments: The Brussels Capital Region adopted measures to ensure the optimum organisation of its internal audit. By means of two Government Decrees, which were adopted on 9 May and 3 June 2003 respectively and entered into force in 2003, it set up an audit committee within the Ministry of the Brussels Capital Region and designated its members. The internal audit consists in examining and evaluating the operation, effectiveness and efficiency of the internal control and it has the particular objective of improving the risk management procedures. In this way, such a measure also contributes to combating fraud where it comprises checking the reliability of the financial and management reports and aims to protect assets.

DK

In the field of the *own resources*, there has been the following administrative change in the reporting of fraud affecting the EU's own resources (OWNRES), that was adopted at the 116th meeting of the Advisory Committee for the Communities' Own Resources on 5 July 2000 in connection with the reporting of incidences of fraud or irregularities with regard to the smuggling of cigarettes:

Where smuggled cigarettes are impounded or destroyed and there is, therefore, no actual customs debt because they have not been released for consumption in the EU, the case is to be reported in OWNRES as usual, but the "potential" amount of duty is to be immediately entered in the field "corrected amount" so that the balance is set at zero and the case is considered closed.

In this way the Commission is advised of the case via OWNRES but there will be no open amount that cannot or will not in reality be recovered.

This new practice has been adopted for use in Denmark in connection with reporting from the fourth quarter of 2003 and means that reports on EU fraud will be more realistic.

1.5.b Significant regulatory and/or administrative developments	
	<p>In the field of structural actions, there has been an ongoing updating of procedures in the area of the Social Fund. Following the merging in May 2003 of ministerial responsibility at national level for the Social Fund and Regional Development Fund, a general updating and defining of the administrative rules was undertaken at the beginning of 2004. Efforts have been made to ensure the greatest possible co-ordination with the rules of the Regional Development Fund in this regard.</p>
DE	<p>The Federal Ministry of Finance, in conjunction with the Länder, has drawn up a guide for drawing up the reports of irregularities in accordance with Regulations (EEC) No 595/91 and (EC) No 1681/94 for all EU funds. This guide takes account of amended regulations and developments in this field since the adoption of the Regulations and updates the national guidelines of 1991.</p> <p>The competent Federal and Land authorities have hence received up-to-date directions on drawing up the Article 3 and Article 5 reports. Technically, the procedure has been simplified in so far as the reports are dispatched directly to the Federal Ministry of Finance in the form of an Excel table, thereby also easing the administrative burden.</p>
EL	<p>Adoption of the joint Ministerial Decision No 907/0052/2-7-2003 (GG 878/B/2-7-2003) on the national system for fiscal corrections to recover amounts unduly or unlawfully paid from national resources to implement co-financed programmes in the context of the CSF, Cohesion Fund and Community Initiatives for the programming period 2000-2006.</p> <p>This Decision consists of 9 articles which lay down procedures, establish bodies and the content of fiscal correction decisions, the manner of confirming and registering amounts unduly or unlawfully paid, the recovery, repayment or return thereof and includes interim and final provisions. It is a new integrated system for fiscal correction regulating the recovery of amounts unduly or unlawfully paid from the Public Investments Programme (national and community resources) following audits carried out at three levels by the Managing Authorities, Paying Agency, and Fiscal Control Committee.¹¹</p>
	<p>Joint Ministerial Decision No 64517/EYS 6195/2003 (Government Gazette 15399/B/17-10-2003) on the ESPEL (Special Consultants on Quality Control) committee regulating all matters concerning controls of the quality of public works carried out by the special committee, specific issues concerning its operation and all other modalities.</p> <p>This Decision establishes procedures to be followed once it is ascertained that a project does not meet the contractual quality specifications as well as the relevant bodies and their powers in the context of these procedures. It establishes sampling control procedures to verify quality, the use of control results and how any defects could be redressed.</p>

1.5.b Significant regulatory and/or administrative developments	
	Adoption of the joint Ministerial Decision No 212964/878/24-01-2003 (Government Gazette 65/B) “stipulating the supporting documents and mode of payment of beneficiaies under the Measure 1 Early Retirement Scheme (Rural Development Operational Programme 2000-2006)”.
	Adoption of the joint Ministerial Decision No 90159/372/27-01-2003 (Government Gazette 103/B) “stipulating the supporting documents and mode of payment of financial aid under Regulation (EC) No 1257/99 and implementation of the agricultural land reforestation measure”.
	The joint Ministerial Decision No 523/12671/13-3-2003 (Government Gazette 336/B) provides for preliminary administrative, cross-checking and on-the-spot controls by the appropriate Rural Development Directorates of Prefectural Government Authorities and final controls before payment. The EAGGF Paying and Audit Agency is responsible for monitoring the entire procedure relating to payments in collaboration with the competent policymakers in the Land Planning & Environment Directorate and the Rural Development Operational Programme Managing Authority.
	<p>In the field of LEADER PLUS Community Initiative</p> <ul style="list-style-type: none"> - Joint Ministerial Decision No 518/350/2003(Government Gazette 235/B) on the Leader Plus Community Initiative implementation framework (amended and supplemented by Joint Ministerial Decision No 564/1/2004) - Joint Ministerial Decision No 430/2003 on the modalities of implementing the Leader Plus Community Initiative - Joint Ministerial Decision No 1416/2003 on supporting documents to prove implementation of the physical scope and expenditure for investment plans. other special implementation procedures for categories of sub-projects under the Leader Plus Community Initiative Operational Programme.
	Joint Ministerial Decision No 222819/2003 (Government Gazette 567/B) on the abolition of the Coordination Agency.
	<p>By Circular No 29414/EYS 2568/30-4-2003 issued by the Deputy Minister of Finance and Economy the Common Control Manual for Unit III – Control was sent to all 3rd CSF Operational Programme and Community Initiative Managing Authorities. It consists of a general set of instructions to facilitate controls by Managing Authorities. This guide includes:</p> <ul style="list-style-type: none"> – The necessary definitions, the regulatory framework, the control targets, as well as procedural and general methodological issues; – Annexes, with Managing Authority, Final Beneficiary and Operation Control Questionnaires, model reports containing control results.

1.5.b Significant regulatory and/or administrative developments	
ES	<p>Resolution of 14 November 2003 of the Directorate-General for Community Funds and Regional Finance [Dirección General de Fondos Comunitarios y Financiación Territorial] formally establishes the Control and Payments Unit as one of the ERDF and Cohesion Fund administrative units to carry out the provisions of Regulation No 438/2001 and Regulation No 1386/2002.</p> <p>Resolution of 14 January 2003 of the Directorate-General for Community Funds and Regional Finance governing the signatures recognised on certificates and implementation reports for Cohesion Fund projects.</p> <p>Finance Ministry Order No 2324/2003 of 31 July establishes the competent body and the procedure for carrying out operations involving mutual assistance on recovery of funds including own resources and EAGGF (Guarantee Section) aid.</p>
FR	<p>The adoption of an order of 1 July 2003 creates at the General Department for Customs and Indirect Taxes (DGDDI) an IT system as an additional measure in the fight against fraud (SILCF). The purpose of the system is the proper implementation of research missions, the identification, prosecution and repression of fraud within the framework of the powers granted to the DGDDI in the fiscal and economic fields and the protection of national and Community interests (including fraud affecting the Community budget).</p>
	<p>France also wished to report several significant regulatory and administrative developments in the field of EAGGF-Guarantee:</p> <p><i>Aid involving the Integrated Administration and Control System (IACS)</i></p> <p>Orders of 8 December 2003 published in the Official Journal of the French Republic of 10 December 2003 amended, firstly, the Order of 15 October 1996 giving authorisation to paying agencies in respect of expenditure financed by EAGGF-Guarantee for the National Interprofessional Office for Cereals (ONIC), last amended by Order of 31 January 2000, and, secondly, the Order of 15 October 1996 giving authorisation to paying agencies in respect of expenditure financed by EAGGF-Guarantee for the National Centre for the Development of Agricultural Businesses (CNASEA), last amended by Order of 4 November 2002. These two orders are intended to entrust some of the measures of the plan for national rural development to each of the paying agencies.</p> <p>In order to improve the implementation of on-the-spot checks on cattle subsidies, circular No 2003-8003 was published on 26 March 2003. Its purpose is to recap and set out the terms for on-the-spot checks at cattle farms as part of the 2003 marketing year to identify and register cattle and the applications for subsidies made in connection with the 2003 marketing year (BSPS, SCPS, slaughter premiums).</p>

1.5.b Significant regulatory and/or administrative developments

Aid measures concerning Rural Development

The departmental memorandum from DERF/DEPSE (Department for Rural Areas & Forests/Department for Businesses, Social Policy and Employment) dated 13 August 2002, which revokes and replaces the memorandum of 27 July 2001, brought up to date the general principles applicable to checks for the range of RDR measures and their consequences.

In particular, it refers to the general provisions implementing Articles 58 to 64 of Regulation (EC) No 445/2002 and takes into account the most recent directions given by the Commission in its policy paper (reference VI/10535/99 rev 7) for the application of systems of administration, control and sanctions for rural development measures instituted by Regulation (EC) No 1257/1999.

The memorandum focuses in particular on identification of the content of administrative controls, the method for the conduct of on-the-spot checks before and after final payment, as well as the concept of irregularities.

The schedules of the framework memorandum relating to sampling procedures of populations subject to on-the-spot checks before and after final payment have been updated.

Two circulars have been published: the first relating to on-the-spot checks of “off-surface” RDR measures dated 17 March 2003, the second relating to “surface” RDR measures of 14 April 2003 (in respect of controls on RDR surface measures and surface measures of the 1st pillar of the CAP).

The principles set out in the memorandum of 13 August 2002 remain applicable.

Operational funds and programmes – the fruit and vegetable sector

Following the adoption by the Commission of Regulation (EC) No 1433/2003 laying down detailed rules for the application of Regulation (EC) No 2200/96 as regards operational funds, operational programmes and financial aid, an Order dated 15 October 2003 was published in the Official Journal of the French Republic on 29 November 2003. The Order sets out the eligibility conditions for financial assistance in the operational funds and provides for various measures to facilitate the implementation of controls (a definition of the models for recording the working hours of the persons employed in the implementation of the actions contained in the operational programmes).

1.5.b Significant regulatory and/or administrative developments	
	<p><i>POSEIDOM (Programme of Options Specific to the Remote and Insular Nature of the French Overseas Departments)</i></p> <p>By decree 2003-1244 of 22 December 2003 published in the Official Journal of the French Republic on 24 December 2003, the powers of ODEADOM (the Office for the Development of Agriculture in the French Overseas Departments) were widened to cover specific measures relating to POSEIDOM and involving sugar cane, saccharose syrup and agricultural rum. By an Order of the same date the approval of this body as a paying agency for EAGGF-Guarantee expenditure was accordingly extended from the beginning of operations relating to the 2004 budgetary year.</p>
IE	<p>ESF: Control/Audit Mission Reports from DG Employment and the ESF Financial Control Unit were responded to fully by the national authorities and, where appropriate, financial corrections were made to the end-2003 claims rectifying over/under claims identified by these audits, and by other internal or national checks. See point 2.2 too.</p> <p>Own Resources: in order to improve controls at the point of importation and improve the level of detection of contraband smuggling, the Revenue Commissioners called for a review to be carried out on the use and effectiveness of Container Scanners. A report was completed in 2003 and culminated in a decision to proceed with the acquisition of a scanner for use in Irish Ports and the issue of a Request for Tenders on 19 December 2003. The Revenue Commissioners intend to deploy the equipment at the earliest possible date.</p>
IT	<p>The Region of Basilicata has initiated proceedings to recover amounts unduly received.</p>
	<p>In the field of EAGGF – Guarantee section, several measures have improved recovery procedures. The Ministry of Agriculture and Forestry has taken measures under Legislative Decree No 228/2001 and Law No 898/1986 to organize the suspension of payments and introduce a compulsory recovery procedure, a new method of credit control, guarantees and a register of debtors, kept by the AGEA Paying Agency, and a new recovery procedure in the Veneto Region adopted by the AVEPA Paying Agency.</p>

1.5.b Significant regulatory and/or administrative developments

In the field of ESF

The Ministry of Labour has issued the following general administrative documents:

– UCOFPL (Central Office for Professional Guidance and Training) Circular No 11 of 7 April 2003, published in the Official Journal of the Republic of Italy General Series No 96 of 24 April 2003, laid down provisions for documents relating to the management and accounting of activities co-financed by the European Social Fund, where they are the direct responsibility of UCOFPL as managing authority, or where the Ministry departments are involved in inspecting the activities carried out by other administrative authorities acting on behalf of the Ministry of Labour. These intermediaries may decide to establish further procedures where considered appropriate. The provisions are intended to homogenise procedures, and set out general rules for the keeping of documents, with which operators must comply when managing payments, and detailing the specific documents to be prepared, according to the type of activity to be carried out.

– UCOFPL Circular No 41 of 5 December 2003, published in the Official Journal of the Republic of Italy, General Series No 301 of 30 December 2003, concerned “types of promoters, admissibility of spending and maximum costs for activities co-financed by the European Social Fund within National Operating Programmes”. The Circular is applicable to the activities, co-financed by the ESF under National Operating Programmes run by the Ministry of Labour and activities delegated by the Ministry to the intermediate bodies; admissible items of expenditure are outlined in Regulation (EC) No 1685/2000, as amended by Regulation (EC) No 1145/2003.

In DGR No 1222 of 10 October 2003 the Management Authority of the Region of Liguria for Objective 3 Regional Operational Programmes set out “Guidelines for the certification of expenditure presented by implementing parties for ESF Objective 3 Programmes 2000-2006”.

In the field of FIG, the Ministry of Agriculture and Forestry has issued different provisions with a view to implementing on an operational level the controls laid down in Section IV of Regulation (EC) No 438/2001.¹²

The Ministry established also level II controls for structural projects, implemented with the aid of public works staff, the harbour master’s office and engineering staff.

Within the framework of these controls, it has used risk forms specifically created by the Directorate General for Fisheries and shared with regional administrative bodies.

The Region of Campania, within the framework of organisational procedures adopted for FIG measures, has adopted Decree 127/03, which lays down provisions for co-ordinating controls among the various levels concerned.

1.5.b Significant regulatory and/or administrative developments	
LU	<p>In the framework of the enquiry into the systems and procedures for the notification and follow-up of irregularities under Regulation (EC) No 1831/94, on 18 December 2002 the Ministry of Economic Affairs notified OLAF of the procedures relating to irregularities.</p> <p>The Luxembourg ESF authorities inform the Commission quarterly as required by Article 3 of Commission Regulation (EC) No 1681/94 and Article 5 of Commission Regulation (EC) No 1831/94.</p>
NL	<p>In 2003 an audit was carried out by the Commission services in the context of Regulation (EC) No 1681/94. It was found that the Dutch system for the reporting of irregularities and the recovery of sums wrongly paid works well. However, following this audit, there have been further administrative and contractual improvements.</p> <p>In particular, at the Ministry of Economic Affairs (EZ), the following developments have taken place:</p> <ul style="list-style-type: none"> – starting from 2003, the EZ departmental audit service also carries out on-the-spot checks and inspections of projects; – information is provided to auditors checking and inspecting programmes; – the irregularities procedure has been made better known to those involved (cooperation EZ/LNV (Ministry of Agriculture, Nature and Food quality), with the assistance of OLAF); – an application has been made for electronic processing of irregularities vis-à-vis OLAF (implementation in 2004).
AT	<p>Conclusion of agreements between AMA as paying agency and the authorising authorities in the Länder in the field of EAGGF/Guarantee/rural development.</p>

1.5.b Significant regulatory and/or administrative developments	
PT	<p>In respect of the EAGGF Guarantee:</p> <p>Resolution No 4552/2003 of 21 February sets up a permanent and effective system for monitoring the implementation of the Plan for Surveillance, Control and Eradication of BSE, regulations for animal welfare and public health, as well as the Regulations for the Identification, Registration and Movement of Animals.</p> <p>Resolution No 9137/2003 of 28 April creates a system for collecting dead animals (SIRCA), in accordance with Regulation (EC) No 1774/2002, to be operated under INGA (National Institute for Agricultural Intervention and Guarantees).</p> <p>Joint Resolution No 317/2003, of 21 March assigns to the DGAIEC (Directorate-General of Customs and Special Taxes on Consumption) the powers for managing and the responsibilities for overseeing the “forms of manufacture” provided for in Article 3(2) of Regulation (EC) No 1520/2000.</p> <p>Joint Resolution No 643/2003, of 27 May establishes the rules for the compulsory slaughter of bovine, ovine and caprine species as part of a policy for combating BSE.</p>
	<p>In the area of EAGGF-G and FIFG:</p> <p>Guidelines for the management of EAGGF-G and FIFG Debtors, established by IGA [The General Inspectorate for Management Auditing], in conjunction with the Authorities responsible for the Management and Payment of the various operational measures for CSFIII, and also with the Inspectorates responsible for the Autonomous Regions, published in May 2003.</p> <p>Guidelines concerning the “Identification and Communication of Irregularities in the area of EAGGF-G and FIFG”: established by IGA and communicated in November 2003 to the Authorities responsible for Management and Payment and to the Inspectorates of the Autonomous Regions.</p>
	<p>In the area of ERDF and the Cohesion Fund:</p> <p>Guideline No 1/2003 (June 2003) – DGDR (Directorate-General for Regional Development)/Control “System for the Management and Control of Debts resulting from amounts wrongly paid by the ERDF and the Cohesion Fund in the Programming Period 2000 – 2006”;</p> <p>Guideline No 2/2003 (June 2003) –DGDR/Control “Communication of Irregularities in amounts paid by ERDF and the Cohesion Fund in the Programming Period 2000 – 2006”.</p>
SE	<p>The alteration of the financial thresholds for the selection of audit items introduced in Council Regulation (EC) No 2154/2002 amending Regulation (EEC) No 4045/89 has led to a somewhat lower number of <i>ex-post</i> controls being planned and implemented.</p>

1.5.b Significant regulatory and/or administrative developments	
	<p>Regulation (EC) No 2221/95 implementing Council Regulation (EEC) No 386/90 concerning the physical control of export goods was replaced at the end of 2002 by Commission Regulation (EC) No 2090/2002. The implementing regulation that came into force in January 2003 produced a significant change, particularly for small customs offices (customs offices with a relatively low frequency of export goods). Now they can apply risk analysis in a more effective manner and thereby adapt checks to the most important areas of risk.</p>
UK	<p>Mutual assistance: The World Customs Organisation (WCO) Mutual Assistance Project Group (under UK Chair) presented a final draft of the new Mutual Administrative Assistance Convention to the WCO Council and Policy Commission in June 2003. The draft instrument was approved and endorsed at these meetings. Work continues on a supporting Commentary which is due for completion and approval in June 2004. EU Member States, in particular the Netherlands, France, Spain, UK and Cyprus (new Member State from 2004) have been very actively involved in this work. The text of the draft instrument reflects, and in some instances mirrors, the MAA provisions of Regulation (EC) No 515/97 and the Naples II Convention, thus extending long-standing EU good practice on a global scale.</p>
	<p><i>CAP Import Risk Methodology:</i></p> <p>The UK has designed a new approach to the identification of risks for products subject to CAP import measures. The initial development has recently been completed and it is anticipated that it will be deployed operationally in 2004-5.</p> <p>The approach consists of:</p> <ul style="list-style-type: none"> – a methodology for the systematic study of CAP import traffic data supplemented by other risk information which provides a platform for decision making on the current levels of risk and the planning of countermeasures to be deployed on a national level to address the most important risks identified; – an innovative matrix-type analysis of CAP imports at four-digit stem level comparing the relative importance of the stems of traffic weight and fiscal involvement with risk information derived from study of the measures applying and the fiscal advantages obtained from the operation of those measures, for example the use of licence quotas. This comparison allows for the identification of products, which have both significant traffic, and high levels of perceived risk. This is a key component of the process of systematic study. <p>This new approach has not yet been operationally tested. It will be used as the basis for the decision making on high level risks for 2004-5 and to devise the countermeasures to be deployed.</p>

2. COORDINATION BETWEEN DEPARTMENTS WITHIN THE MEMBER STATE

<p>2.1 Structural actions:</p> <p>New arrangements adopted for organising co-ordination between the different departments within the Member State¹³</p>	
<p>BE</p>	<p><i>Walloon region.</i></p> <ul style="list-style-type: none"> – Updates in June and December 2003 of the CD-ROM for the programmes coordinated by the European Programmes Directorate of the Ministry of the Walloon Region, for the functional administrations: Community provisions (general, eligibility, publicity, use of the euro, management and control), regional provisions (implementing terms, control), programming documents, minutes of meetings, annual reports, list of useful Internet sites. The CD-ROM was distributed to the functional administrations (intermediate bodies) and supervisory authorities. – Decisions of the Walloon Government of 9 October 2003 and 27 November 2003 concerning the designation of four grade A6 attachés, one grade B3 graduate and a grade C3 assistant for the Structural Funds Internal Audit Unit of the paying authority, pursuant to Article 9 of Regulation (EC) No 438/2001 of 2 March 2001. – By Decision of 13 November 2003 the Walloon Government approved a new version of the administration contract which it concluded with the Interfederal Financial Inspectorate for the execution of an audit of the management and control systems of the programmes co-financed by the European structural funds (period 2000-2006). By Decision of 17 December 2003, this contract was also approved by the Government of the French Community.
	<p><i>Brussels Capital region.</i></p> <p>During 2003 the exchanges between the managers of Belgian European programmes became systematic with the aim of reducing the risks of double co-financing, in particular in the context of the socio-professional integration conducted by the public social welfare centres (CPAS) between the federal programme and that of the Brussels Capital Region. This supplements the objective pursued by the Coordination unit already existing in 2002 for the SPD Objective 3 of the Brussels Capital Region and the SPD Objective 3 Wallonia-Brussels.</p>

DK	<p>By Danish Royal Decree of 9 May 2003 it was decided that matters concerning Act No 254 of 12th April 2000 concerning administration of grants from the European Social Fund, were to be transferred from the Employment Minister to the Minister for the Economy, Business and Industry. The national administration of both the Social Fund and Regional Development Fund will hereafter be dealt with under the same management area in the National Agency for Enterprise and Housing.</p> <p>The managers of the control function for the areas of both the Social Fund and Regional Development Fund are now, quite independently of this, embedded in a collective unit reporting directly to the executive board. The managers of the control function - who are involved as partners in the two administrative agreements from 2002 with the Commission on the financial control of the aforementioned Structural Fund areas - work together and coordinate the general principles, guidelines and controls on the spot as far as possible.</p>
	<p>In the field of FIFG, the Directorate for Food, Fisheries and Agri Business (the paying agency) has come to an agreement with the Directorate for Fisheries and has delegated control to them. The agreement lays down the overarching guidelines for the authority's duties with regard to approving payments, making payments, rendering accounts and monitoring etc. The agreement is reviewed at least once a year. The quality of this control partnership is assessed on a continuous basis by means of periodic meetings between the relevant offices. At least once a year a meeting is held between the executive boards of the two directorates to discuss general questions.</p>
DE	<p>During the period under review no new arrangements were adopted in this field as regards areas of responsibility. Instead, the coordination already existing has been extended further.</p> <p>Also see point 1.3.</p>
EL	<p>Joint Ministerial Decision No 222822/2003 was issued to supplement the similar decision No. 399570/2001 (Government Gazette 592/B). This decision makes changes to the administrative structure of departments which are competent for implementing the 3rd CSF in the agriculture sector so as to achieve better coordination between these departments and consequently more rapid and effective implementation and management of the CSF.</p>

	<ul style="list-style-type: none"> – A memorandum of understanding has been signed by the EAGGF Paying and Audit Agency and the Customs Directorate General of the Ministry of Finance and Economy relating to returns during export which, <i>inter alia</i>, lays down the information exchange framework in cases of irregularities. More specifically, it stipulates that in the case where an irregularity is ascertained by the customs authorities, Directorate 33 (Customs Control) should inform: <ul style="list-style-type: none"> – The EAGGF Paying and Audit Agency about the irregularities ascertained during the export procedures for possible implementation of Article 51 of Regulation (EC) No 800/99 by the paying agency and recovery of any amounts unduly paid during imposition of the sanctions by national or community bodies. – The competent Legislative and Legal Affairs Directorate of the Ministry of Agriculture about cases of irregularities over €4,000 so that it can report to OLAF in accordance with Article 3 of Regulation (EEC) No 595/91.
FR¹⁴	
IE	<p>The Department of Agriculture and Food and the Department of Community, Rural and Gaeltacht Affairs put protocols in place regarding the respective roles and responsibilities for EAGGF funded measures.</p> <p>The Department of Agriculture and Food signed an agreement with the Head of Audit in the Department of Environment and Local Government regarding the carrying out of both 5% controls and systems audits.</p>
	<p>Forestry: following a Government Decision in 2003, responsibility for all forestry expenditure (Guarantee and Guidance) was transferred to the Department of Agriculture and Food from Department of Marine and Natural Resources with effect from 1 January 2004.</p>
	<p>ESF: The ESF Paying Authority and the Co-ordinating Managing Authorities for the EHRD-OP (the main investment OP for the ESF) and the EQUAL CI, as well as the ESF FCU, all reside within the Department of Enterprise, Trade and Employment. During 2003, the Management Board of the Department approved the Decision to bring the ESF FCU, which has responsibility for the Article 10(2) 5% audits, under the supervision of the Department's Head of Internal Audit. Previously, the ESF FCU had its own Manager. The Head of Internal Audit is the Article 15 person for "closure" purposes and his Internal Audit Unit is directly responsible for the Article 10(1) system based audits.</p> <p>Consequent to this re-organisation, the Department established an ESF Financial Control Steering Group comprising representatives from the ESF FCU, the Internal Audit Unit, the ESF Paying Authority and relevant Managing Authorities as a formal mechanism for the exchange of views and information on ESF financial management and control issues.</p>

<p>IT</p>	<p>At national level, in 2003, the Regions, Autonomous Provinces and Regional Headquarters of the <i>Guardia di Finanza</i> continued to sign memoranda of understanding regarding the coordination of controls and the exchange of information concerning structural fund payments.</p> <p>These memoranda are intended to improve the overall efficiency of controls pertaining to EU structural and cohesion policy funding, thereby facilitating the recovery of amounts unduly received for whatever reason by applicants under co-funded programmes, responding to the obligation imposed on each Member State under Regulation (EC) No 1681/94 to inform the Commission immediately of any irregularities encountered and developing the necessary synergies when conducting the controls.</p> <p>The Ministry of the Economy and Finance – IGRUE – issued the following documents:</p> <ul style="list-style-type: none"> - Management Order No 092159 of 29 July 2003, establishing the central finance co-ordination committee; - Management Order No 092166 of 29 July 2003, establishing the regional finance co-ordination committees; - Management Order No 131645 of 7 November 2003, amended by D.M. 092159 of 29 July 2003.
	<p>At regional level:</p> <p>The Region of Veneto has announced that it has regulated co-ordination of the Services and Offices responsible for level II controls intended to harmonise control processes. To this end, Regional Decree (DGR) No 2845 of 4 October 2002 has established the Project Unit for Inspection Activity and Company Shareholdings [Unità di progetto per l'attività ispettiva e le partecipazioni sociali] within the Secretariat General for Planning.¹⁵</p>
	<p>By Decision No 45 of 24/11/2003 the Regional Council of Tuscany established the methods of data collection relating to irregularities and their submission.</p>
	<p>With reference to measures to co-ordinate controls and investigations relating to operations or operators receiving financing from two or more funds, the Region of Campania adopted DGR No 712 on 20 February 2003 solely for application to Payment Authorities to define procedures for certifying spending in respect of the Regional Operational Programme for Campania. The Payment Authorities have issued their own decrees on adopting certification and accounting procedures.</p> <p>With reference to measures to co-ordinate <i>ex-ante</i> controls at various levels and measures to co-ordinate controls pursuant to Article 10 of Regulation (EC) No 438/2001, the Regional Council decision No 713 of 20 February 2003 approved the level II controls programme. It sets out the tasks and responsibilities involved and assigns the responsibilities of all the other parties required to co-operate with its.</p>

NL	One of the findings of the irregularities audit was that the greatest difficulties arise at organisational level. It was also found that all departments are duly aware of their obligations. If actual developments so require, control becomes even stricter. Because it was concluded that the Dutch system works well, no supplementary arrangements have been adopted apart from the improvements mentioned under question 1.
PT	In the ERDF area, a Cooperation Protocol was signed on 10 September 2003 between the DGDR (Directorate-General for Regional Development) and the Regional Administrative Inspectorate of the RAA for carrying out second level control activities in the context of PRODESA (Operational Programme for the Economic and Social Development of the Azores) within CSFIII.
	<p>In the area of the Cohesion Fund, Cooperation Protocols have been signed for carrying out level II control activities between the DGDR and:</p> <ul style="list-style-type: none"> – The Regional Finance Inspectorate of RAM, in the context of the Cohesion Fund within RAM (17 January 2003); – Inspectorate-General of Public Works, Transport and Communications, in the context of the Cohesion Fund in the field of Transport (26 February 2003); – The Regional Administrative Inspectorate of RAA, in the context of the Cohesion Fund within RAA (3 April 2003). <p>See also point 1.4.f).</p>
	In the area of the ESF a Cooperation Protocol was signed on 12 March 2003 between IGFSE (the Institute for the Management of the European Social Fund) and the Regional Administrative Inspectorate of RAA, in which the conditions are established for the carrying out of second level control on the RAA by this Inspectorate.

	<p>In the area of EAGGF Guidance and FIG:</p> <p>Resolution of MADRP (Ministry of Agriculture, Rural Development and Fisheries) No 8745/2003 of 17 April creates a national liaison group presided over by the GPPAA (Office for Agricultural and Food Planning Policy) to ensure coordination between the follow-up, the evaluation and the control of the execution of the AGRO Programme and the AGRIS Measures within the Regional Operational Programmes.</p> <p>Creation by IGA in May 2003 of a database (SIRAI) with the objective of registering and following up all irregularities detected in the area of EAGGF-G and FIG.</p> <p>A Cooperation Protocol was signed on 9 April 2003 on carrying out level II control activities between the IGA and</p> <ul style="list-style-type: none"> - The IRF (Regional Inspectorate of Finance for Madeira) in the context of the Multi-funded Operational Programme for RAM within CSF III (POPRAM III) in its aspects related to EAGGF-G and FIG; - The IAR (Regional Administrative Inspectorate of the Azores) in the context of PRODESA (the Operational Programme for the Social and Economic Development of the Azores) within CSF III, in its aspects related to EAGGF-G and FIG. <p>Under these two Protocols the IGA promoted a theoretical and practical <i>training scheme</i> in the area of second level control for candidates from the IRF and the IAR, which took place between 23 June and 4 July 2003, lasting 70 hours.</p> <p>The IGA also provided a twelve-hour <i>training scheme</i> concerning “First level control instruments - EAGGF-G” in collaboration with the Director of the AGRO Programme. It was for technicians from INGA/IFADAP (the Financial Institute for the Support of the Development of Agriculture and Fisheries) and took place on 10 and 11 December 2003.</p>
	<p>Coordination of Structural Funds and the Cohesion Fund:</p> <p>Extraordinary Meeting of the National Control System (a permanent coordinating structure concerned with the national control system for the Structural Funds and the Cohesion Fund, which operates under the responsibility of the IGF), which was expanded to include all the management, payment and control authorities, with the aim of clarifying practical aspects relating to the use of data bases for controls (SIGIFE), particularly with respect to the harmonisation of the procedures to be adopted by all users.</p> <p>Training Scheme for auditors of the SNC (National Control System), lasting 120 hours which included four modules (Community Finances, Accounting/Taxation, Auditing and Data bases/sampling). This activity, resulting from a joint initiative between the DGDR and ISEG (the Higher Institute of Economics and Management), which was supported by IGF (the Inspectorate-General of Finances), was designed to improve the technical abilities of the auditors working on control measures in the area of the ERDF. This training was attended by approximately 60 staff belonging to the separate control structures of the Management Authorities, as well as by technicians from the DGDR and the IGF.</p>

FI	<p>The Finnish authorities organised more seminars intended to develop coordination between departments to improve the effectiveness of controls. In October 2003, the office of the Prosecutor-General organised a seminar, which served the need for the development of cooperation between authorities which use EU funds and the prosecution and police authorities.</p> <p>The Ministry of the Interior organised joint meetings with the Ministry of Finance, the Ministry of Agriculture and Forestry, the Ministry of Labour and the Ministry of Trade and Industry for the purpose of clarifying and coordinating mutual cooperation and measures relating to OLAF in Finland. The Ministry of the Interior organised annual seminars for the staff of the Regional Councils and of the various Ministries regarding topical questions in the administration of ERDF monies.</p> <p>The Ministry of Labour organised two discussion days during 2003 for the ESF's intermediary bodies and final beneficiaries. The discussions focused on questions regarding good management and control, and the study of audit results. Joint meetings were arranged on a regular basis for ESF coordinators to discuss topical matters.</p> <p>The Ministry of Trade and Industry has also engaged in training and information work in order to improve the control of use of structural funds at the EEDCs. At the EEDCs, the control of use of structural fund monies was enhanced by reorganising control and audit matters and by tightening cooperation between the police and the prosecution authorities.</p>
	<p>During the course of 2003 the Ministry of Labour drafted new directions on the reporting of irregularities involving EU funds.</p>
UK	<p>In 2003, the various departments responsible for the management of the Structural Funds in England set up a Compliance Group to ensure that lessons learned from the closure of the 1994-99 programmes could be taken into account to ensure consistent guidance in relation to the requirements of Regulations (EC) Nos 438/01 and 448/01. It is hoped that the working groups set up under the Compliance Group will consolidate the Guidance Notes currently issued by each Structural Funds department in England into a single set of guidelines, with additional clarifications where appropriate, where the mechanics of the funds vary. The results from this group will be effective in 2004 and next year's report will give an account of the actions achieved.</p>
	<p>EAGGF: The Paying Agency function has moved from the Department for Environment, Food and Rural Affairs (Defra) to the Rural Payments Agency (a Defra executive agency) to bring EAGGF-Guidance funding into line with EAGGF-Guarantee funding. This was effective from 4 January 2004 and the Commission has been informed.</p>
	<p>The Management Information System used by the Scottish Executive for administration of ERDF and ESF has been enhanced to improve electronic transfer of data.</p>

	<p>Within the Department of Social Development (DSD), Northern Ireland, where a suspected fraud is identified all potential funders are notified. There are quarterly meetings of the Northern Ireland EURONET group allowing departmental Heads of Internal Audit Services to exchange information and identify emerging patterns/ trends regarding fraud and irregularities. Article 4 and 10 teams also hold regular meetings to review procedures and best practice techniques.</p>
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<p>2.2. Other fields :</p> <p>Significant new arrangements adopted for organising co-ordination between the different departments within the Member State in fields other than structural actions</p>	
BE	<p>The Act of 22 April 2003 (Belgisch Staatsblad/Moniteur belge of 8 May 2003, see also item 1.2) conferred the status of auxiliary officer of the criminal investigation department of the public prosecutor and of the labour auditor, without prejudice to their powers with regard to customs and excise, on Customs and Excise officials:</p> <ol style="list-style-type: none"> 1. Seconded to the national Europol Unit and to their deputies; 2. Designated in the context of the cooperation agreements between the police and customs authorities concluded with States with a common border with Belgium, pursuant to Article 39(4) of the Convention applying the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders.
	<p>The Act of 10 April 2003 (Belgisch Staatsblad/Moniteur belge of 12 May 2003) conferred the status of auxiliary officer of the criminal investigation department of the public prosecutor and of the labour auditor on certain officials of the tax authorities seconded to the Federal Police Force for the purposes of assisting the latter in combating economic and financial crime.</p> <p>The officials seconded, who are responsible for the examination and investigation of infringements, have the status of criminal investigation officer during their secondment.</p> <p>Five Customs and Excise Administration officials are seconded to the Federal Police Force on the basis of the Ministerial Decree of 22 December 2000 establishing the number of officials of the Ministry of Finance to be made available to the central office for combating economic and financial crime (Belgisch Staatsblad/Moniteur belge of 29 December 2003).</p> <p>Related legislation: Act of 13 March 2002 making officials of the tax authorities available for secondment to the Federal Police Force (Belgisch Staatsblad/Moniteur belge of 29 March 2002).</p>

	<p>An “international customs cooperation” division (CDI) was set up within the Customs and Excise Administration’s National Investigations Department to assume the role in Belgium of central coordination service and if necessary provide the interface between the foreign coordination services and the Belgian judicial authority.</p> <p>Since 2002 central and local risk management has been in place within the Customs and Excise Administration with a view to directing the controls. The general controls are based on standards determined in a centralised fashion, taking into account the risks associated with both the goods and the customers.</p>
	<p>To improve the interaction between the assessment and recovery departments, various computer files have recently been interlinked. By comparing the tax collectors’ files with the refunds requested by persons liable to VAT (both monthly and quarterly), VAT refunds wrongly made to the tax authority’s debtors are avoided. These first measures have effectively increased recoveries by €50 million. Other similar initiatives are under way in other fields of taxation.</p> <p>In addition, in order to be able to communicate the arrears in payment of VAT and income tax on wages without delay to the commercial courts, the recovery authority, in cooperation with the judicial authority, recently implemented an electronic data transfer system. Accordingly, the IT systems of the VAT and direct tax collection offices have been harmonised. The readability of the files has been improved considerably. In the short term, further progress will be made in this respect as regards both the content (refinement of the data selection according to the amount of the debt, deletion of defaulting debtors or taxpayers in the situation of collective debt settlement, etc.) and the form (readability and making available of modern communication techniques).</p>
ES	<p>In the field of agricultural expenditure (EAGGF Guarantee section), Royal Decree 327/2003 of 14 March, establishes a new legal status for the paying agencies, their relations with the coordination body and the procedure for implementing the principle of financial co-responsibility.</p>
FR	<p>A major new development occurred in 2003 in France in the organisation of departments responsible for combating fraud: a Decree of 15 May 2003 gave the National Customs Service (SNDJ) six new local units throughout France to enable customs officials within such units to carry out judicial enquiries, particularly in the field of Community financial interests (traditional own resources and agricultural expenditure).</p> <p>As regards the co-ordination of departments responsible for controls, six significant developments should be noted from 2003, particularly in the agricultural sector:</p> <ul style="list-style-type: none"> – An interministerial circular of 31 January 2003, linking the various relevant administrative bodies, lays down the arrangements for implementing of the supply regime financed by the European Union within the framework of POSEIDOM (own resources).

	<p><i>In the field of the EAGGF-Guarantee :</i></p> <ul style="list-style-type: none"> – The French customs have drawn up new control instructions in accordance with the Regulations (EC) Nos 2090/02 on physical checks carried out when agricultural products qualifying for refunds are exported (which entered into force on 1/1/2003) and 1429/03 which relate to substitution checks. – Pursuant to Regulation (EC) No 444/03 of 11/3/2003 amending Council Regulation (EEC) No 565/80 and Commission Regulations (EC) No 800/1999 and (EC) No 2090/2002 as regards the advance payment of export refunds in respect of agricultural products, the French customs have drawn up new internal guidelines redefining the terms of physical control of goods placed under this regime.
	<p>Concerning controls in the field of rural development measures, a CNASEA/ONIC partnership has been put in place in respect of the specific control of the measuring of areas which is the responsibility of ONIC for the following: compensatory allowance for natural handicaps, the extensification premium and agro-environmental measures (sunflower and rotational). On-the-spot checks of these measures are carried out in close co-operation with on-the-spot checks of area aid of the 1st pillar.</p> <p>The “RDR” people-resources network has been created within the training departments at the Ministry of Agriculture. In 2003, 5 training sessions were organised. In this way, 62 officials seconded from the ministry were trained (14 officials of the Regional Offices for Agriculture and Forestry and 48 officials from “Departemental” Offices for Agriculture and Forestry). These training sessions also involved a dozen officials from the regional branches of the CNASEA. Similarly, a specific session was organised for the relevant personnel in central administration and the head offices of paying agencies (80 officials completed this specific session). The training sessions will continue in 2004 and the development of the network will continue.</p> <p>Training was given in 2003 to CNASEA inspectors: 56 people participated in this training, which involved the culture of control, the measurement of plots of land and the marking of the results of the controls.</p> <p>Finally, the central departments of the Ministry of Agriculture and the CNASEA are currently planning a detailed and formal agreement on the delegation of responsibilities within the framework of Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Regulation (EEC) No 729/70 regarding the procedure for the clearance of the EAGGF-Guarantee section accounts.</p>

	<p>In the IACS (Integrated Administration and Control System) field, the circular referred to in item 1.5 (b) was followed by six training sessions (each lasting 2 days), the objective of which was to train for a single control of IPG identification / animal premiums and the utilisation of data from the national identification database. Carried out by officials from the department for economic and international policy and the department for food, they explained how devolved agencies (at “departemental” level: the office of agriculture and forestry and the office of veterinary services) should co-ordinate to ensure controls with a twin objective: controls linked to sanitary problems and controls linked to the grant of cattle subsidies.</p> <p>The central departments of the Ministry of Agriculture and the paying agencies are currently planning a detailed and formal agreement of delegation of responsibilities within the framework of Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Regulation (EEC) 729/70 regarding the procedure for the clearance of the EAGGF-Guarantee section accounts.</p>
	<p>The preparation of a procedural guide for paying agencies and control bodies has been undertaken by the secretariat of the Interministerial Commission for Coordination of “EAGGF-Guarantee” Controls responsible for the centralisation of effective communications pursuant to Regulation (EEC) No 595/91. The purpose of the guide is to clarify the chain of <i>notification for irregularities</i>, the harmonisation of working practices and in consequence, the securing of information forwarded to OLAF. It includes instructions on the appropriate means of completing the supporting form for the communication of irregularities and a reference guide for codes distinguishing the state of progress of the recovery of aid wrongly paid.</p>
<p>IE</p>	<p>Customs: in the field of export refunds, a revised agreement between the Irish Customs Services and the Department of Agriculture and Food was put in place on the 15 December 2003. The agreement concerns the procedures and controls through which the Irish Customs Services fulfils its obligations under EU legislation as detailed in a Memorandum of October 1997 signed by both Customs Services and the Department of Agriculture and Food.</p> <p>In 2003, the ongoing restructuring operation of the Office of the Revenue Commissioners (which incorporates the Irish Customs Service) was completed. This operation has resulted in the establishment of a new Revenue-wide Investigations and Prosecutions Division, which is tasked with co-ordinating criminal prosecutions across all tax heads, including customs fraud cases. The Investigation Bureau now forms part of the new Division. This Division is also tasked with ensuring that investigators have adequate powers to fulfil their remit. The restructuring operation has also seen the establishment of a new regional structure and a new Large Cases Division for dealing with business customers on a streamlined and a simplified manner across all tax heads including customs duties.</p>

	<p>Early Retirement Scheme: relocation of processing of the pensions from the Department's regional Office in Cavan to the Regional office in Wexford. All aspects of the administration of the Scheme are now located together in Wexford, with consequent improvements in co-ordination and flow of information.</p> <p>Dairy Sector: the Department of Agriculture and Food has established an Internal Control Unit within the Dairy Regions Division with the aim of ensuring that controls are operated in a consistent and uniform manner and in accordance with the Standard Operating Procedures (SOPS). The Unit has also input to revising SOPs and training staff.</p>
IT	<p>As part of the "agricultural company system", the region of Valle d'Aosta is improving co-ordination among the various council offices for agriculture, natural resources and civil protection responsible for managing the measures of the rural development plan, which include the management of the "system" itself. To this end, all the administrative procedures are directed towards computerisation and the creation of an integrated IT system that allows cross-checks of company data and the development status of practices to be carried out on the network by all of the offices responsible for managing the measures within the rural development plan. Work is therefore continuing to equip the offices with new technology, including, for example, computerised mapping equipment and data warehouse systems.</p>
PT	<p>In the area of Own Resources, following the approval of Decree-Law No 93/2003, a Cooperation Protocol was signed on 7 May 2003 between PJ, DGAIEC, and DGCI with a view to outlining the concrete forms of cooperation and coordination, whether on an operational level or with regard to real time access to relevant information to achieve greater rationality and efficiency in the fight against tax/customs crime.</p>

3. MEMBER STATES' GENERAL COMMENTS ON THE COOPERATION WITH THE COMMISSION (OLAF) REFERRED TO IN ARTICLE 280 (3) EC AS REGARDS THE FIELD OF STRUCTURAL ACTIONS

DE	<p>The Federal Ministry of Finance sends the reports of irregularities to OLAF in accordance with Regulation (EC) No 1681/94. OLAF publishes an overview in the statistics section of the annual report on protection of the Communities' financial interests. Germany considers that there is no adequate benefit to justify the considerable administrative expenditure at national level.</p> <p>This applies for all EU structural funds (EAGGF-Guidance, ERDF, ESF).</p> <p>The same is true for the field of Regulation (EEC) No 595/91, which is not mentioned here.</p> <p>The still unresolved irregularities in the agricultural sector from the years 1972-1994 have been processed since 1999. First conclusions in the context of the clearance of accounts procedure in 2003 are not yet complete. There is not yet any procedure to deal with reports under Regulation (EC) No 1681/94.</p>
EL	<p>Greece considers that it would be useful to establish regular bilateral contact between the Fiscal Control Committee and the appropriate departments at the European Commission with the aim of resolving matters that arise from implementation of Regulations (EC) Nos 1681/94 and 1831/94. In response to a request to the OLAF Director General from the Fiscal Control Committee by letter No 1407/0052/20-10-2003 made, a one-day training seminar took place (30th January 2004) for Managing Authorities in collaboration with OLAF representatives at which the following issues, inter alia, were discussed: a) how to fill out the quarterly reports referred to in Articles 3 and 5 of the aforementioned Regulations and monitoring thereof, b) the new system for dispatching irregularity reports (AFIS), and c) how to carry out fiscal controls based on the control manuals,</p> <p>Directorate 41 of the State General Accounting Office is planning to submit a proposal for participation in the OLAF training scheme for 2004 with the aim of training specialized staff in relation to the management and control issues faced by agencies involved in all three stages of control.</p>

<p>FR</p>	<ul style="list-style-type: none"> - The French authorities repeat their request that the OLAF file be the only file in the case of incomplete cases of irregularities, so as to avoid the multiplication of European and national databases. - The French authorities would like to receive statistics from OLAF which will give them a greater understanding of irregularities and fraud in the matter of structural actions committed within their jurisdiction, - Lastly, the French authorities again request that the threshold for the communication of irregularities be raised from the present €4000. They consider it to be their responsibility, in liaison with the sectoral Directorates-General of the Commission, to correct directly irregularities involving small amounts. <p>The same request was made last year to raise the threshold for notification of irregularities relating to EAGGF-Guarantee from €4000 to €10000.</p>
<p>IT</p>	<p>To have a legal instrument able to ensure that the financial interests of the European Union are adequately protected in the area of Structural Funds, the General Headquarters of the <i>Guardia di Finanza</i> prepared draft community regulation relating to mutual administrative assistance in this area, an initiative in which the head of legal affairs at OLAF showed great interest, given the loopholes in Regulation (EC) No 515/97. The Ministry for the Economy and Finance - Office of Legislative Co-ordination and the Director of OLAF have already both expressed a favourable opinion with regard to this document, which is currently before the European Commission – Office of the Budget Commissioner, Mrs. Schreyer.</p>
<p>PT</p>	<p>Portugal believes that regular and close collaboration exists between the national authorities and the Commission, and would particularly highlight the good cooperation established with OLAF.</p> <p>In fact, Portugal has fully satisfied its obligations under Regulations (EC) Nos 1681/94 and 1831/94.</p> <p>In its opinion, the procedure for electronic transmission of communications through AFIS [<i>Anti Fraud Information System</i>] is clearly better than the previous system for the transmission of information by sending paper files, since it provides OLAF with information in a more rapid, secure and simple manner. In spite of the advantages indicated, experience with the use of the AFIS system in 2003 revealed some difficulties which need to be resolved if the objectives which led to its adoption are to be entirely fulfilled.</p> <p>Hence, although in all cases the same care and attention were exercised in sending files to the EC, cases were noted in which the transmission was not made or, if it was made, it was not routed to its final addressee (OLAF). These specific cases were resolved with the support of the OLAF staff assigned to the AFIS system, but they involved increased costs in terms of the use of time, human resources and finance for IGF as the organisation responsible for sending these communications to OLAF.</p> <p>For the above reasons, Portugal considers that the system should be improved in order to avoid the repetition of such situations in 2004.</p>

SE	Sweden regrets that there is no joint working group for all Member States at EU level with regard to the reporting of irregularities in accordance with Regulation (EC) No 1681/94 (like the group for Regulation (EEC) No 595/91).
	The reporting of irregularities should be able to take place half-yearly instead of quarterly.
UK	<p>There has been continuing close co-operation between the Department for Work and Pensions and OLAF in 2003 on the administration of the European Social Fund.</p> <p>The Department of Trade and Industry (DTI) is still hoping to obtain a connection to AFIS in 2004, following discussions with their IT support and the OLAF help desk in 2003. OLAF has been very helpful in trying to overcome difficulties in the UK with the link to their system. There has also been good feedback and co-operation between OLAF and the DTI regarding irregularity cases arising from the 5% checks and closure of the 1994-99 programmes.</p> <p>The National Assembly for Wales has commented that it would like to see greater publicity for detected fraud cases, and wider dissemination of findings when systems weaknesses are identified. There should also be more preventative work more opportunity to comment on existing and planned systems.</p>

4. RECOVERY (DIRECT EXPENDITURE)

4.1 Procedural rules in the Member States legal system enabling a damaged party (including the European Communities) to launch civil action within criminal proceedings (without having to bring a separate civil action)	
BE	<p>Under Belgian law, the victim of the crime does not bring criminal prosecutions.</p> <p>However, to enable victims to lodge civil actions within criminal proceedings in the case of inertia on the part of the public prosecutor's department, the Code of Criminal Procedure has made it possible to bring a criminal prosecution, where appropriate, by direct summons before the tribunal entertaining jurisdiction (Sections 145 and 182) or by submitting the claim for damages to the investigating judge (Section 63).</p> <p>The victim may be a natural person or a legal person (public or private).</p> <p>The party claiming damages can:</p> <ul style="list-style-type: none">– either file a complaint with the public prosecutor who nevertheless remains free to bring the case before the criminal judge,– summon the perpetrator of the crime directly before the criminal judge,– or submit a claim for damages to the investigating judge. <p>This claim for damages sets the criminal prosecution in motion (i.e. obliges the investigating judge to examine the facts referred to him). The party claiming damages must nevertheless deposit a guarantee.</p>
	<p>To bring a civil action within criminal proceedings, the injured party must have the capacity, as well as the authority and the interest to take legal action. The capacity is the capacity to exercise one's own rights. The authority is a legal document enabling an applicant or a defendant to appear in court and have the dispute judged by the judge. The interest is any material or moral benefit that the applicant may obtain from the application when it is made. Apart from the fact that the damage cannot consist of the loss of an unlawful advantage, it is also necessary for it to meet certain other conditions. The alleged damage must derive from a crime, be certain, be caused, and be current and personal.</p> <p>The admissibility of the claim for damages by legal persons is accepted where they have personally incurred a loss resulting from the crime.</p> <p>However, unless expressly stipulated otherwise by law, case-law does not generally accede to the application of legal persons brought on account of the harm caused either to their members in general or to the objectives they pursue.</p>

DK	<p>There are, in Danish law, general rules for civil actions within criminal proceedings are laid down in Chapter 89 of the Danish Administration of Justice Act.</p> <p>According to these rules it is up to the wronged party to put forward a request for compensation either directly to the court or, in serious cases, to the Prosecutor, who will subsequently pursue the demand through criminal proceedings if is possible without any major disadvantages. The competent court can, in accordance with the rules, decline to deal with a civil action within criminal proceedings when, for example, this cannot take place without any major disadvantage. In this case, the application is referred to be dealt with as a civil action.</p> <p>A civil demand for compensation may only be launched in association with criminal proceedings if the case results in a conviction.</p>
DE	<p>Civil actions are regulated in Section 395 et seq. of the Code of Criminal Procedure. The injured party, who has a right to protection, is entitled to participate at all points in the proceedings. However, the incidental action through which the injured party can join the public prosecution lodged in certain criminal offences listed by law has nothing to do with the recovery of claims.</p> <p>The enforcement of claims for compensation arising from the criminal offence is regulated by the so-called <i>Adhäsionsverfahren</i> (joinder) under Sections 403 to 406c of the Code of Criminal Procedure. This action can be brought by the injured party, who may also be a legal person.</p> <p>The person who maintains that he has a direct property claim against the accused arising out of a criminal offence which falls under the jurisdiction of the ordinary court, may bring this claim against the accused in criminal proceedings. The claim must not be pending before another court (Section 403(1) Code of Criminal Procedure). The prerequisite is an application to the court in accordance with Section 404 Code of Criminal Procedure which must be made at the latest at the main hearing before the closing speeches begin.</p> <p>A decision may be taken only after the main hearing. Where Section 405 applies (accused not guilty, application unfounded, application not suitable to be dealt with in criminal proceedings e.g. on account of it protracting the proceedings, application is inadmissible), the court will refuse to rule on compensation.</p> <p>If the court rules on the application in accordance with Section 406, the decision is equivalent to a judgment in civil litigation.</p> <p>In the Victims' Rights Reform Bill, the Federal government proposed restricting the possibilities of the court to refuse to give a decision under the <i>Adhäsionsverfahren</i>.</p>

EL	<p>Article 63 of the Greek Civil Procedure Code states that, “Civil actions for compensation and restitution from crime and for financial satisfaction due to moral harm or mental anguish may be brought before the criminal courts by persons with legal standing in accordance with the Civil Code”.</p> <p>In order to introduce a civil action within criminal proceedings the criminal proceedings need to have been opened and for such actions to be tried they must have reached the hearing procedure.</p>
ES	<p>Actions arising from a crime or offence may be brought separately or together, but a separate civil action may not be lodged while the criminal action is ongoing until a verdict has been reached in the criminal proceedings, without prejudice to the provisions of Sections 4, 5 and 6 of the Code (Preliminary rulings). (Section 111 of the Criminal Procedure Act).</p> <p>Where only the criminal action is brought, the civil action is also deemed to be brought, except where the harmed or damaged party explicitly decides not to do so, or to bring it after a judgment has been handed down in the criminal action, where applicable (Article 112 of the Criminal Procedure Act).</p>
FR	<p>The principles governing the possibility for victims to bring court proceedings are set out in Sections 1 to 6 of the Code of Criminal Procedure. The preliminary Section of the Code of Criminal Procedure lays down the principle that the judicial authority ensures that the victims are kept informed and that the rights of victims are protected during any criminal proceedings.</p> <p>In accordance with Section 3 of the Code of Criminal Procedure, a civil action may be brought simultaneously with public proceedings before the same jurisdiction. The civil action may also be brought independently (Section 4 of the same code). In that case, judgment on an action before the civil jurisdiction is suspended until a definitive judgment has been given in criminal proceedings.</p> <p>The system is based on the freedom of choice between two procedural options.</p> <p>There is nothing to prevent the European Commission from joining a civil action, providing it has an interest in bringing proceedings, subject to assessment of the admissibility of its request as laid down in the ordinary law (Section 87 of the Code of Criminal Procedure).</p>

	<p>1. The conditions for bringing civil proceedings are as follows:</p> <ul style="list-style-type: none"> - the existence of a punishable offence; - the claimant must have legal capacity to appear (capacity to act); - the claimant must have suffered a direct and personal loss; - the claimant must have an interest in bringing proceedings. <p>2. A civil action can be joined in two ways:</p> <ul style="list-style-type: none"> - by intervention: in this case, the criminal proceedings have already been brought by the public prosecutor. A civil action can then be joined either before the examining court or the court giving judgment, depending on the stage reached in the criminal proceedings. - by action: if the public prosecution service has not initiated prosecution proceedings, the injured party may bring their own civil action before the examining court or the court giving judgment, in accordance with the terms set out below. <p>The injured party choosing the action route has in principle two procedures for initiating a prosecution: a petition for constitution as civil party before the examining judges (Sections 85 to 91 of the Code of Criminal Procedure) or by direct citation of the suspect before the criminal court or the police court whether it involves a serious or a minor offence (Sections 392 and 533 of the Code of Criminal Procedure). The first procedure is not applicable if the offence is a minor one. The latter option is not possible where the offence is defined as a crime or the perpetrator is a minor.</p> <p>The injured party may also file a civil party petition before the court giving judgment during the hearing (Section 418 of the Code of Criminal Procedure). In this case, it is not necessary to file a preliminary claim.</p>
IE	It is not possible to lodge a civil action within criminal proceedings.

<p>IT</p>	<p>The procedural rules in the Italian legal system enable the injured party (including the European Community) to lodge a civil action within criminal proceedings without bringing a separate civil action, pursuant to Sections 74 to 79 of the Code of Criminal Procedure (approved by Decree of the President of the Republic of Italy No 447 of 22 September 1988).</p> <p>Civil action brought within criminal proceedings by public administration bodies is regulated by Article 1(4) of Law No 3 of 3 January 1991, according to the following procedure:</p> <p>The public administration refers the matter to the State Legal Advisory Service concerned with the criminal proceedings on the advisability of lodging a civil action. If the opinion is favourable, the public administration seeks authorisation from the Government to bring a civil action.</p> <p>Only after obtaining this authorisation may the State Legal Advisory Service bring an action within criminal proceedings.</p> <p>The civil action, even if brought by a civil judge, may be transferred to a criminal court before there a judgement has been delivered (in <i>res judicata</i> or not) in the civil proceedings.</p> <p>When the civil action is lodged or pursued within criminal proceedings, it is subject to the regulations laid down in Book I – Chapter V (Sections 74 to 89) of the Code of Criminal Procedure.</p>
	<p>The conditions for bringing a civil action within criminal proceedings are regulated by Sections 76-82, chapter V, Book I of the Code of Criminal Procedure, which concern the parties involved in the proceedings.</p> <p>The possibility of introducing civil action within criminal proceedings is established in Section 185 of the Criminal Code, which states exactly that: “any offence that causes property or non-property damage..., makes the guilty party and the people who according to civil law (Sections 2047 <i>et seq.</i> of the Civil Code) responsible for the action... liable for the payment of damages”.</p> <p>The legitimation of the civil action is the responsibility of the party injured by the offence or of their universal successors; the action may be taken against the defendant or the criminally liable party. The conditions that must be in place for a civil action to be brought during criminal proceedings are as follows:</p> <ul style="list-style-type: none"> – the “petitum” must consist of a petition for the restitution of assets or claim for material or moral damages; – active legitimation with regard to the defendant and the criminally liable party is the responsibility of the party to whom the offence caused damage or to their universal successors: the party may be a natural person, a corporate entity or a public or private legal entity; – the “case being brought” must consist of damage to a subjective right.

<p>LU</p>	<p>Under Section 3 of the Code of Criminal Procedure, in Luxembourg civil actions can be brought within criminal proceedings. They may be brought separately too. However, in this case, its exercise is suspended until there has not been a final ruling on the public action brought before or during the continuation of the civil action.</p> <p>With regard to the recovery of Community entitlements, in particular import duties, civil cases in which no actions are brought for imprisonment, fines or confiscation are heard in accordance with the rules laid down by the Code of Civil Procedure regarding competence and procedure (Section 280 of the General Coordinated Customs and Excise Duties Act). On the other hand, if claims derive from infringements in relation to customs and excise duties, the competent court - the criminal court or the regional criminal court for the trial of minor offences- will also deal with the civil action aspect of the case (Section 283 of the General Coordinated Customs and Excise Duties Act).</p>
<p>NL</p>	<p>Under Dutch legislation, a party having incurred a loss as a result of a criminal offence may join in the criminal proceedings as injured party with a claim for compensation. This party may be either a natural person or a legal person.</p> <p>Prerequisites are that a direct connection is established between the loss incurred and the criminal offence and that the claim is of a simple nature, which means that it must be a claim which is absolutely clear or on which clarity is easily obtainable. The applicable provisions are Sections 51a and 361 of the Code of Criminal Procedure.</p> <p>Where a complex claim is involved, the amount of which can be assessed only by a thorough investigation with the help of witnesses and experts, the judge is entitled to bar this from the criminal proceedings and the normal proceedings under civil law have to be followed.</p> <p>Legal provisions on an injured party bringing a claim for compensation within criminal proceedings</p>

<p>AT</p>	<p>Where criminal proceedings are instituted, the general duty exists, pursuant to the Code of Criminal Procedure (StPO), officially to consider the losses incurred from the criminal offence and to advise the injured party of the proceedings so that he can avail himself of his right to join in the proceedings as a “private party concerned”. The injured party is also entitled to be advised of the closing of the proceedings, so that he can obtain an order for continuation of the proceedings under Section 48 of the Code of Criminal Procedure.</p> <p>In theory, any party whose rights have been infringed through a crime or through an offence against which proceedings are to be taken <i>ex officio</i> may join in the criminal proceedings on account of his statements of claim up to the start of the trial and as a result becomes a private party concerned [Privatbeteiligter]. As such, he has, for example, the right to pose questions, the right to inspect the files and the right to hand over to the public prosecutor and the investigating judge evidence that may serve to convict the accused or to justify the claim for compensation (Section 47 of the Code of Criminal Procedure).</p> <p>If the accused is convicted, the court must as a rule take a decision on the statements of claim of the injured party, if the need for further explanations does not the case to be referred to the civil courts. In this case, the private party concerned and any heirs may appeal against referral to the civil courts. If the accused is not convicted, the private party concerned must take any claim for compensation to the civil courts.</p> <p>However, in criminal proceedings for financial offences only the financial criminal authority may act as the private party concerned, under the terms of the Section 200 of the Financial Offences Act [Finanzstrafgesetz - FinStrG]. The European Communities, in the exercise of their prerogatives of public power, are not permitted to join in these proceedings as a private party concerned. The financial criminal authority enjoys additional rights compared to usual private parties concerned.</p> <p>It may in particular hand over to the public prosecutor and the investigating judge everything that may serve to convict the accused or to justify the claim for compensation, It may inspect the files and, in principle, already do so during the preliminary investigation by the police and the preliminary investigation by the investigating judge. It must be invited to the trial, and may put questions to the accused, witnesses and experts or make statements during the trial.</p> <p>If the public prosecutor decides to dismiss the proceedings, the injured party is also entitled to pursue the legal proceedings under Section 48 of the Code of Criminal Procedure. Academic writers refer to “subsidiary accuser” [Subsidiarankläger].</p>
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<p>PT</p>	<p>According to the provisions of Section 71 of the Code of Criminal Procedure (CPP), claims for civil damages are lodged within the criminal proceedings, although they can also be pursued separately before a civil court in cases specifically provided for by law.</p> <p>Section 72 of the CPP lists the cases in which such a claim can be pursued separately.</p> <p>The claim for civil compensation is brought by the injured party, who is understood to be the person who suffered the damages caused by the crime, and it is also possible for action to be brought by the injured party and the Public Prosecutor representing the State or representing other persons or interests by virtue of Articles 74, 76 and 77 of the CPP.</p> <p>For the crimes established in the Subsection II of the Decree-Law No 28/84 of 20 January, where the offence of subsidy fraud has been committed, under Section 39, the Court always will order the return of the amounts unduly paid whenever it decides to convict, irrespective of the civil compensation based on the crime that was committed,.</p>
<p>FI</p>	<p>Finland's legal system allows a damaged party to launch a civil law claim for damages in connection with criminal proceedings.</p> <p>Chapter 3 of the Criminal Proceedings Act includes provisions regarding the lodging of a civil claim within criminal proceedings.</p> <p>Under these provisions, it is possible to bring a civil claim in connection with a criminal case where the claim stems from the criminal offence in question. Such a claim may also be brought separately, but then the action must comply with the provisions regarding proceedings in a civil dispute. When a civil claim is launched in connection with a prosecution case, the court may rule that the claim must be dealt with separately in accordance with the procedure governing civil proceedings.</p> <p>If the case is dismissed, the civil law claim may still be considered in the court or continued in accordance with the procedure governing civil proceedings.</p>
	<p>A condition for the processing of a civil claim in connection with a criminal-law case is that the claim be based on the case with which the criminal proceedings are concerned.</p> <p>At the request of the applicant, the public prosecutor must also bring the civil claim based on the criminal offence against the defendant in the criminal case he initiates. It must be possible for the claim to be brought without material inconvenience, and the claim may not be obviously unfounded. If the prosecutor fails to bring the applicant's civil claim, he must give notice of this to the applicant.</p> <p>A civil claim may also be presented by the applicant himself or by some other person who has the right to do so.</p>

SE	<p>Civil action for compensation on account of an offence may be taken within criminal proceedings, even by the European Community.</p> <p>An action against the suspect or third person for a private claim arising from an offence may be conducted in conjunction with the prosecution of the offence. If the court chooses not to deal with the claim in conjunction with the prosecution then an action should be instituted in the manner prescribed for civil actions (Chapter 22, Section 1 of the Code of Judicial Procedure).</p> <p>When an action for private claims has been brought in a separate case, the court, where appropriate, may order that the action be consolidated with the prosecution. (Chapter 22, Section 3 of the Judicial Code).</p> <p>Even after the initiation of a prosecution, a private action may be brought without a summons, if the court, considering the inquiry and other circumstances, finds it appropriate (Chapter 45, Section 5 of the Judicial code).</p> <p>When an action for private claims has been consolidated with the prosecution, the court may order that the action be dealt with as separate case in the manner prescribed for civil actions, if further joint adjudication would cause major inconvenience. (Chapter 22, Section 5 of the Judicial Code).</p> <p>The above also applies when the action has been taken over by a third person.</p>
UK	<p>In England and Wales it is not possible to lodge a civil action within criminal proceedings. However, on conviction for a criminal offence the Court may order the offender to pay compensation to the victim. A compensation order could be made in favour of the Commission following a conviction for fraud affecting Community funds. The Court must take into account the means of the offender in deciding the amount to be paid.</p> <p>Tax recoveries are normally separate civil matters – the debt is assessed, is subject to appeal at an independent tribunal and is enforced by debt management practices; these include confiscation of assets. The latter may be connected with the criminal proceedings in that confiscation orders under the Proceeds of Crime Act 2002 are conditional on criminal convictions.</p> <p>In Scotland, civil action by a party other than the prosecution is not possible in the context of criminal proceedings. But where criminal proceedings have commenced, a “restraint order” can be granted by a civil court (sheriff court or the Court of Session) on the prosecutor’s application, preventing any person from disposing of the property of the accused (Proceeds of Crime (Scotland) Act 1995, Part III). The order can be varied or revoked by the Court on the application of anyone with an interest, and must be revoked after proceedings have concluded (see 4.3 for permanent measures). These measures are not specific to recovery of Community funds.</p>

4.2 Judicial authorities in charge of the civil action and applicable limitation periods

BE	<p>In theory, the judicial authorities in charge are the public prosecutor's department and the investigating judge.</p> <p>The public prosecutor's department is involved throughout the investigation procedure; the investigating judge is involved from the start of the investigation of the case.</p> <p>It is also possible for the party claiming damages to submit a claim for damages before the trial judge who is responsible for judging the case.</p> <p>The statute of limitations for civil action resulting from a crime has been governed exclusively by the provisions of civil law since the Act of 10 June 1998. In principle, it is 30 years. However, civil action cannot be barred before the criminal prosecution. A limited link is consequently maintained between the two, in that the civil action of the victim is admissible for as long as criminal proceedings can be brought against the perpetrator of the crime by the public prosecution service.</p>
DK	<p>The claim is subject to the general statute of limitations, even if it has been lodged during criminal proceedings. A demand for the repayment of funds that have been obtained in fraudulent circumstances will in general be statute-barred 20 years after the event giving rise to the claim.</p>
DE	<p>This is a matter for the court usually in charge trying the case.</p> <p>The periods of limitation under civil law apply.</p> <p>According to the experience of the managing authorities, the <i>Adhäsionsverfahren</i> (joinder) in criminal law is of little significance with regard to enforcing claims involving EU funds because as a rule administrative or financial court proceedings are already pending.</p>
EL	<p>The criminal court examining the civil action is obliged to issue a decision on it.</p> <p>The periods of limitation are as follows. Claims are subject to a 5-year limitation period from the time the injured party learned of the injury and of the person liable for compensation. In any case, however, claims are time-barred 20 years after the event. However, this limit is suspended while criminal proceedings are underway (Section 937 of the Greek Civil Code). The relevant provisions are Sections 63-68, 82-84, 89-95 of the Greek Code of Civil Procedure in conjunction with Articles 297-299 and 914, 932 and 937 of the Greek Civil Code.</p>

<p>ES</p>	<p>Civil proceedings must be started at the same time as criminal proceedings by the Ministry of Taxation (Article 108 of the Criminal Procedure Act).</p> <p>Civil action is time-barred under the rules of civil procedure. The time limit for civil action arising from a criminal offence is fifteen years (Section 1964 of the Civil Code and Supreme Court judgments of 21.3.84 and 3.3.88). The time limit for bringing proceedings to ensure performance of sentence obligations begins when the judgment becomes final (Section 1971 of the Civil Code).</p>
<p>FR</p>	<p>An act damaging the financial interests of the European Union is a criminal offence. In this field, the limitation period for public action is three years from the date the offence was committed, provided that no prosecution or investigation has been made.</p> <p>Even if the civil action is time-barred under the rules of the Civil Code (variable deadlines outlined in Section 2260 <i>et seq.</i> of the Code), it should be noted that this action may no longer be brought before a criminal court once the limitation period for the public action has expired. Only the route of civil action remains open, as the limitation period for this action is longer than that for the public action, which is often the case.</p>
<p>IE</p>	<p>It is not possible to bring a civil action within criminal proceedings.</p>
<p>IT</p>	<p>The judge before whom the criminal proceedings are held is competent to deal with the civil action.</p> <p>The deadline for the appearance of the applicant is regulated by Section 79 of the Code of Criminal Procedure. The appearance of the applicant may take place at the beginning of the criminal action and not beyond the opening of the first instance hearing, while rights are retained. By the same time, the prosecutor, the defendant or the party liable under civil law may submit a reasoned request to exclude the applicant for failure to satisfy essential procedural requirements.</p>
<p>LU</p>	<p>At the criminal investigation stage the victim of a crime or offence can refer the matter to the <i>examining magistrate</i> by bringing an action for damages as a private individual (Sections 56 <i>et seq.</i> of the Code of Criminal Procedure).</p> <p>An action for damages can also be instituted during the hearing in the <i>criminal court</i>, either by means of a statement taken by the clerk of the court or by lodging submissions.</p> <p>The victim is not entitled to institute legal proceedings himself, by directly summoning the defendant and the persons responsible for the infringement under civil law before the criminal court, if he has already brought an action for damages as a private individual (Section 182 <i>et seq.</i> of the Code of Criminal Procedure).</p>

	<p>Civil proceedings are subject to the limitation periods laid down by civil laws (Section 2 of the Code of Criminal Procedure), i.e. in theory by thirty years (Section 2262 of the Civil Code). In exceptional cases, a shorter period applies. In cases of fraudulent declarations, the importer, the customs official and the person directly liable for payment of the duties are jointly liable for payment of the outstanding duties. Where it is established that the duties payable have not been received in full, a three-year period is set from the date of entry in the accounts of the amount originally required from the person liable or, if the amount was not entered in the accounts, from the date on which the tax debt originated (Section 202(1) of the General Act).</p> <p>A civil action cannot be brought in a criminal court if the statute of limitations period for actions brought by the public prosecutor has expired (Section 3 of the Code of Criminal Procedure). The statute of limitations period for actions brought by the public prosecutor is 10 years for serious offences, 3 years for minor offences and 1 year for quasi-offences (Sections 637 <i>et seq.</i> of the Code of Criminal Procedure).</p>
NL	<p>The claim must be submitted to the public prosecutor charged with the prosecution of the criminal offence before the start of the trial. The submission is made using a form drawn up by the Minister for Justice. The court decides on the admissibility and the merits of the claim.</p> <p>Judgment can be passed on a claim for compensation by the injured party at the same time as on the criminal case. For such claims, just as for normal claims under civil law, a limitation period of 20 years is applicable.</p>
AT	<p>Private applications are normally to be made to the judge in charge of the case at the court dealing with the criminal proceedings. In the preparatory investigation phase, in addition to the public prosecution service, the investigating judge also has jurisdiction. The application to pursue the proceedings under Section 48 of the Code of Criminal Procedure must be made to the competent judge.</p> <p>As regards the statute of limitations, the general rules of the Criminal Code are applicable to the criminal proceedings (Sections 57 to 60 of the Criminal Code). However, the general limitation rules of civil law (Section 1489 of the Civil Code [Allgemeines Bürgerliches Gesetzbuch – ABGB] are, in this instance, applicable to the enforcement of financial claims.</p>

<p>PT</p>	<p>The competent judicial authorities are:</p> <ul style="list-style-type: none"> • The Public Prosecutor at the stage of drawing up the writ. • The judge at the stage of passing judgment <p>With regard to periods of limitation, the conditions for civil damages claims are set out in Section 498 of the Civil Code, where it is stipulated as a general rule that the right to compensation applies for a period of three years from the date on which the injured party became aware of the case affecting him.</p> <p>Subsection 3 provides that in cases where the illegal act constitutes a criminal offence for which the law establishes a longer period in which action may be taken, this period shall apply.</p> <p>In these situations, the statute of limitations varies between 5 and 15 years.</p>
<p>FI</p>	<p>Notice of the presentation of the claim must be made at the preliminary hearing or to the prosecutor. There is a deadline for the claim and its grounds to be lodged with the court in writing. If the deadline is not met, the court may decide that the claim will not be investigated in connection with the criminal case. On the other hand, if a written claim is presented, the court may even investigate it in the absence of the presenter of the claim.</p> <p>Even after charges are brought, a civil claim based on the criminal offence may be presented against the defendant without a summons, if the court takes the view that this can go ahead without inconvenience.</p> <p>Provisions regarding the period of limitation are those of the civil law rules (Chapter 7 of the Damages Act No 412/1974 and in the Time-Barring of Debt Act 728/2003).</p>

<p>SE</p>	<p>The judicial authorities in charge:</p> <p>When a private claim is based upon a criminal offence, the prosecutor, upon request of the injured party, shall also prepare and present the party's action in conjunction with the prosecution, provided that no major inconvenience will result and that the claim is not manifestly unfounded. During the investigative proceedings, if the head of the investigation or the prosecutor finds that a private claim may be based upon the offence, he shall, if possible, notify the injured party in good time prior to the institution of the trial. The above also applies when the action has been taken over by a third person (Chapter 22, Section 2 of the Judicial Code).</p> <p>If the action for private claims has been detached to be disposed of as a private case, the prosecutor may no longer present the action. This also applies if the case is appealed against only with regard to the damage element.</p> <p>Limitation period:</p> <p>The regulations describing the limitation of claims are found in the Limitation of Claims Act (1981:130.) The principle rule of the Act is that a claim is time-barred after ten years unless the limitation is suspended prior to this. A claim for damages as a consequence of an offence does not, however fall under the statute of limitations before the expiry time for the prosecution limitation with regard to the offence unless the matter of responsibility for the offence has been determined beforehand. If this is the case, the claim falls under the statute of limitations from, at the earliest, one year following the date of the judgement or final decision.</p>
<p>UK</p>	<p>Although civil action is usually separate from the criminal proceedings, under the Proceeds of Crime Act 2002, in the event of a confiscation order the judicial authority is the Crown Court. If applicable, action commences before the Crown Court passes sentence but the Court has discretion to postpone.</p> <p>A compensation order is made by the judge or magistrate following conviction, on application by the prosecution. There is no limitation period.</p>

4.3 Specific criminal proceedings rules on safeguarding the recovery of amounts unduly paid in the Member States legal system

BE	<p>The precautionary measures are of two types:</p> <ul style="list-style-type: none">– Seizures by the public prosecutor or the investigating judge. These seizures are always provisional by definition. Sections 35 and 35a of the Code of Criminal Procedure and, in the case of the investigating judge, Section 89 of the Code of Criminal Procedure.– Confiscations by the trial judge – Sections 42, 43, 43a, 43b, 43c of the Criminal Code.
	<p>A seizure in criminal matters is any precautionary measure adopted in the context of an investigation involving goods being removed from the disposal of their owner or possessor and being placed under the control of the judicial authorities with a view to subsequent production before the court.</p> <p>The object is to place under the control of the courts all the goods constituting the object of the crime or, more broadly, those of a nature to be taken into consideration for confiscation, on the one hand, and those where seizure is likely to contribute to establishing the truth, on the other (Section 35 Code of Criminal Procedure).</p>
	<p>The criminal judge has the possibility to confiscate the pecuniary benefits derived directly from the crime, the goods and securities paid for out of them and the income coming from the invested benefits.</p> <p>Two types of confiscation penalty can be imposed on any “money launderer”. The first, of an optional nature, provided for by Section 42(3) of the Criminal Code, relates to the benefit he derives from the money laundering crime he has committed. The second, which is compulsory, provided for by Section 505(3) of the same Code, relates to the object of the crime, i.e. the things he has laundered.</p> <p>Confiscation is a personal penalty and must therefore be ordered by the judge against each person convicted of money laundering.</p>

	<p>The OCSC (Central Office for Seizure and Confiscation) is a centre for seizure and confiscation in criminal matters. It is responsible for establishing law enforcement with regard to pecuniary benefits as a model to crack down on crime in its own right, essentially in cases of serious crime and organised crime.</p> <p>It ensures appropriate application of pecuniary penalties, ensuring scrupulously that they are duly executed. The office has been operational since 1 September 2003.</p> <p>It undertakes the following tasks:</p> <ul style="list-style-type: none"> – maintenance of a uniform policy as regards seizure and confiscation; – ensuring centralised, computerised management as regards pecuniary benefits seized in order to achieve more effective execution; – management of these pecuniary benefits in order to maintain their value; – ensuring the due enforcement of judgments in the field of confiscation in close cooperation with the State Property Department; – coordination and management of the inquiries into pecuniary benefits; facilitating contacts with foreign countries.
DK	<p>Danish law contains general rules on the freezing of a suspected person's assets, see Chapter 74 of the Danish Administration of Justice Act, in particular Section 802, where more detailed terms for freezing of assets of a suspected person's funds are laid down.</p>
DE	<p>According to Section 73 <i>et seq.</i> of the Criminal Code, all the benefits derived from the crime are in principle to be declared forfeit. If the perpetrator is no longer in possession of the property, the forfeiture of the equivalent value is to be ordered. As security, the objects can be secured in the preliminary investigation by seizure or attachment <i>in rem</i> (Section 111b <i>et seq.</i> of the Code of Criminal Procedure). Claim for compensation by the victim take priority over the order of forfeiture in favour of the State and property found with the perpetrator can also be secured to improve the claims of the victim (State assistance for recovery in favour of the victim).</p> <p>In connection with claims by managing authorities for recovery of EU funds, this possibility has little practical relevance.</p>

EL	<p>The relevant legal statutes of in Greece are the following:</p> <ul style="list-style-type: none"> – Criminal Code Section 76, for confiscation; – Code of Criminal Procedure, Sections 310(2) and 373 for the confiscation; – Code of Criminal Procedure, Sections 260-269, 280 and 373, for precautionary measures – temporary seizure; – Code of Civil Procedure, Sections 707 and 711-714, for precautionary measures, temporary seizure; – Law No 2331/95 for the prevention and penalty of laundering of the proceeds of criminal activities, Sections 5(1); – Law No 2803/00 Sections 3, 4, 6 and 9.
ES	<p>The Judge or Court may take steps to safeguard funds, including costs. These measures are agreed by order and are recorded separately.</p> <p>The rules laid down in the Civil Procedure Act regarding content, budget and alternative securities apply (Section 764 of the Criminal Procedure Act).</p> <p>Sections 721-747 of Law 1/2000 of 7 January 2000 envisage the possibility of adopting general precautionary measures. These Sections do not relate only to safeguarding the recovery of amounts unduly paid. Section 727 (“Specific Precautionary Measures”) provides for various measures including the freezing of assets.</p>
FR	<p>Sections 706-30 of the Code of Criminal Procedure allow preventive measures to be taken against the property of individuals under investigation. Although these measures are principally aimed at drugs-related offences, they also apply to the criminal offence of money-laundering which can involve offences in the field of Community fraud.</p> <p>Where an investigation is opened regarding a money-laundering offence, at the public prosecutor’s request the custody judge may order these types of measures to ensure payment of fines and forfeitures.</p>
	<p>It should also be noted that the area of enforcement of civil judgments, any person whose claim appears to be well-founded in principle may request the judge for authorisation to effect preventive measures against the property of the debtor, without prior notice, if it appears likely that the recovery of the debt would otherwise be jeopardised (Section 67 of the law No 91-650 of 9 July 1991 enacting reform of the civil enforcement procedure).</p>

<p>IE</p>	<p>The Criminal Justice Act, 1994 contains detailed and comprehensive provisions on the confiscation of the proceeds of crime following conviction. In the case of an offence other than drug-trafficking it is open to the DPP, following conviction, to apply to the court to determine whether the person has benefited from the offence and to order confiscation of the such sum as the court thinks fit. The standard of proof for determining whether and to what extent the person benefited from the offence is that applicable in civil proceedings, which is the balance of probabilities, although of course the conviction itself must be obtained on the normal criminal standard, which is beyond reasonable doubt. If necessary, the property of the convicted person can be taken into possession and sold to satisfy the confiscation order.</p>
	<p>The 1996 Proceeds of Crime Act enables the High Court to freeze and ultimately dispose of property which the court is satisfied, on the balance of probabilities, is the proceeds of crime. Under the Act the court is empowered on an <i>ex parte</i> application by a Chief Superintendent or a Revenue official to make an "interim order" freezing property for up to 21 days. An "interlocutory order", freezing property for up to 7 years, may then be sought. The Gardaí or the Revenue must make out a case to the court that the property is the proceeds of crime. If the court accepts that they have succeeded in this, the onus then shifts to the respondent to show that this is not the case. Finally, the Act empowers the High Court on application by a Chief Superintendent or a Revenue official to issue a "disposal order" once the property has been frozen for 7 years. The court must issue the order unless it is shown to its satisfaction that the property is not the proceeds of crime. The effect of a disposal order is to deprive the respondent of any rights regarding the property.</p>
	<p>There are two basic differences between the 1996 Proceeds of Crime Act and the 1994 Criminal Justice Act. Firstly, the confiscation provisions of the 1994 Act are employed following the conviction of the accused whereas, under the 1996 Act, the application may be made without any such conviction. Secondly, the 1996 Act applies to property that is worth at least €15,000 and is the proceeds of any crime.</p> <p>The 1996 Criminal Assets Bureau Act established the Criminal Assets Bureau. The Proceeds of Crime Act has been extensively and successfully used by the Bureau in its targeting of criminals and their assets. The Bureau brings together in one agency the skills and powers of the Garda Síochána, the Revenue Commissioners and the Department of Social, Community & Family Affairs so that individuals suspected of involvement in organised crime can be comprehensively investigated, and it has already made a major impact.</p> <p>The Disclosure of Certain Information for Taxation and Other Purposes Act, 1996 allows for the exchange of information between the Revenue Commissioners, the Gardaí and other relevant persons in relation to the identification of criminal assets. This facilitates the effective operation of the Criminal Assets Bureau.</p>

<p>IT</p>	<p>The Italian criminal legal system provides the following specific provisions on safeguarding the recovery of payments:</p> <p>1) Preventive confiscation of movable property and real estate of the defendant or the party civilly liable pursuant to Book IV – Chapter II – Part I (Sections 316-320) of the Code of Criminal Procedure.</p> <p>- Precautionary or preventive seizure (Section 321 of the Code of Criminal Procedure)</p> <p>2) Security guarantee (the aforementioned measures do not apply if the defendant or the party civilly liable offers a suitable security by way of guarantee; Section 319 of the Code of Criminal Procedure).</p> <p>Under Section 316 of the Code of Criminal Procedure, if there is just cause to believe that the payment of fines, court expenses or any other amount due to the State treasury will not or may not be made, the prosecutor may request the preventive attachment of the defendant’s movable property or real estate or the amounts or items owed, within the limits allowed by law, at any point in the proceedings in question.</p>
	<p>If there is just cause to believe that civil obligations resulting from the offence are not secured or may be at risk, under Subsection 1 of the same Section, the applicant may request the preventive attachment of the assets of the defendant or the party civilly liable</p> <p>Confiscation in response to an application from the prosecutor is also favourable to the applicant.</p> <p>Legislative decree No 228/2001 and Law No 898/1986 — which establish the ways in which payments may be blocked, thereby guaranteeing the recovery of amounts unduly paid — do not however apply to criminal offences.</p> <p>In the event of a conviction for the offence of “aggravated fraud for the procurement of public funds” specifically (Section 640<i>bis</i> of the Code of Criminal Procedure), which concerns funding and payments unduly received from the State, other public bodies or the European Union, judges order the confiscation of assets that amount to the proceeds or the cost of the offence, or, when this is not possible, the confiscation of assets or sums of money for a corresponding value of said proceeds (Sections 640 <i>quater</i> and 322 <i>ter</i> of the Code of Criminal Procedure).</p>

<p>LU</p>	<p>The Code of Criminal Procedure authorises the seizure of goods, documents and effects involved in the crime, all the objects that may have been the proceeds of the crime in question, all the objects in general that may be of use in determining the truth or use of which would be detrimental to the proper conduct of the investigation and all the objects liable to be confiscated or returned (Sections 31 and 66 of the Code of Criminal Procedure, Sections 31 <i>et seq</i> of the Criminal Code).</p> <p>Applicants claiming to title to any of the objects seized can ask for them to be returned during the investigation (Section 68 of the Code of Criminal Procedure).</p> <p>Applicants may also ask the trial judge conducting the proceedings to order the return of objects seized. The court can also order objects to be returned on its own authority (Sections 194-1 <i>et seq.</i> of the Code of Criminal Procedure).</p>
	<p>The director of the Customs and Excise Department ensures that court judgments or decisions that have acquired <i>res iudicata</i> effect are complied with. If the offender does not comply voluntarily, enforcement measures can be taken (custodial sentence, attachment of movable property, attachment of real estate). Enforcement of judgments and decisions involving custodial sentences are governed by Sections 197(1) and 197(2) of the Code of Criminal Procedure. Enforcement by attachment is served by a bailiff at the creditor's request. The main kinds of attachment are the following:</p> <ol style="list-style-type: none"> (1) attachment of goods (Sections 719 to 791 of the Code of Criminal Procedure); (2) attachment of standing crops, fish in a pond and other potential movables not yet separated from the land (Sections 762 to 771 of the Code of Criminal Procedure); (3) attachment of a debt or of property of the debtor in the hands of a third person (Sections 693 to 718 of the Code of Criminal Procedure); (4) attachment of real estate (Sections 809 <i>et seq.</i> of the Code of Criminal Procedure); (5) special attachment (Sections 772 <i>et seq.</i> of the Code of Criminal Procedure). <p>In order to ensure that the enforcement proceedings are effective in cases in which the offender owns real estate, the director of the Customs and Excise Department can, if he thinks fit, order a mortgage to be taken out on this property (Section 315 of the General Act).</p> <p>The mortgage can be taken out in compliance with a judgment after trial or by default, a judgment ordering a provisional measure or a final judgment in favour of the administration (Section 2123 of the Civil Code).</p>
<p>NL</p>	<p>Precautionary measures are possible in criminal proceedings if necessary to furnish proof or if necessary for the purposes of confiscation of the benefit unlawfully obtained. The precautionary measures may consist of seizure or freezing assets (Sections 94 and 94a of the Code of Criminal Procedure).</p>

<p>AT</p>	<p>The Austrian Code of Criminal Procedure contains specific rules allowing the judge to declare forfeit assets in the possession of a criminal organisation or a terrorist association or made available or collected as a means to finance terrorism (Section 20b of the Criminal Code).</p> <p>Forfeiture is precluded where persons who are not involved in the criminal offence or in the criminal organisation have legal claims to the assets concerned, or its purpose can be achieved through other legal measures, in particular where restitution of the unlawful enrichment is ensured through proceedings abroad and the foreign judgment can be enforced in Austria. Forfeiture is not ordered from if it is disproportionate to the importance of the matter or to the cost of the proceedings (section 20c of the Criminal Code).</p> <p>In principle, the restitution of the unlawful enrichment from the offence, forfeiture, confiscation and other financial orders is decided during the criminal proceedings. The Court that has jurisdiction over the offence also has jurisdiction in these matters, or, falling this, the court of first instance in whose district the asset or object is located. If there are sufficient grounds to presume that the prerequisites are met to satisfy applications for claims, but it is not possible to take a decision on the matter within the framework of the criminal proceedings, the public prosecutor must make an independent application for adoption of a financial order of this kind (sections 443 and 445 of the Code of Criminal Procedure).</p> <p>An application for confiscation is, as a rule, decided by judgment of the district court of the place where the act causing the damage occurred, but if this is unknown or abroad, by the district court in whose district the object is located. The judgment may be contested by appeal.</p> <p>If the results of the criminal proceedings do not suffice either in themselves or after carrying out simple additional investigations to be able to form a reliable judgment on the financial orders cited in paragraph 1, the decision may be taken to separate judgment. An application for confiscation may be decided by the district court in independent proceedings after hearing the public prosecutor and the person concerned (section 444) if the value of the object under threat of confiscation does not exceed €726 or possession of the object concerned is generally prohibited.</p>
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<p>PT</p>	<p>The Portuguese criminal law system contains specific rules provided to guarantee the payment of compensation corresponding to the amounts unduly paid as a consequence of a criminal offence.</p> <p>In accordance with the provisions of Section 227 of the Code of Criminal Procedure the injured party may require the accused or the person responsible in civil law to provide a financial guarantee if there is a justified fear that payment of the damages will not be made or will be reduced. In this case the injured party is required to provide proof of such justified fear.</p> <p>If the previously fixed financial guarantee is not secured, the injured party may, in accordance with Section 228 of the Code of Criminal Procedure, demand the seizure of fixed or movable assets, or amounts receivable (claims or bank deposits for example) according to the Code of Civil Procedure, without it being necessary to show reasons justifying the fear of losing the guaranteeing assets, although such seizure is of a subordinate nature compared with the financial guarantee.</p> <p>In addition to what is mentioned above, the following possibilities should also be noted:</p> <p>Under Section 178 of the Code of Criminal Procedure all objects, goods or rights which were used or were intended to be used in committing an offence, or which constitute the product, profit, price or reward of an offence may be seized.</p> <p>Furthermore, under Section 181 of the Code of Criminal Procedure, the judge may impound, from banks or other credit institutions, documents, deeds of title, valuables, monetary sums or any other objects, even if these are in private safes, providing that they are connected with the committing of an offence.</p>
<p>FI</p>	<p>The provisions of Finland's criminal law system regarding security measures are contained in Chapter 3 of the Enforcement Act. These provisions are applied in a situation where there is a danger that a person who is suspected of a crime or a person who may, as a result of a crime, be sentenced to pay damages will try to avoid payment of the damages or of the sum ordered to be forfeit by concealing or destroying his property, by absconding or in some other similar way. In such a case his property can be placed under a sequestration order, however for no more than that amount which is likely to correspond to the damages or forfeiture to be ordered.</p> <p>If a sequestration order cannot be regarded as an adequate safeguarding measure, in order to safeguard the amount due a corresponding amount of his moveable property may be attached.</p> <p>Decision on the sequestration order or attachment is made by the court.</p> <p>Before the prosecution comes before the court, an application for a sequestration order or attachment may be made by the person in charge of inquiries or the prosecutor. After the prosecution has come before the court, the demand may be made by the prosecutor or (in order to safeguard payment of damages due to himself) the applicant.</p>

<p>SE</p>	<p>The Swedish criminal legal system contains general rules on safeguarding the recovery of amounts unduly paid. These rules apply to matters concerning so-called EU frauds. The main safeguard in this area is provisional attachment. Provisional attachment means that the property of a person suspected of an offence may be impounded or his right of disposition withdrawn in another manner so the claim can be assumed to be secured. The provisions relating to this are in Chapter 26 of the Judicial Code. A decision on provisional attachment requires that a person is reasonably suspected of an offence and that there is reasonable cause to anticipate that, by fleeing, removing property or otherwise, he will evade the obligation which can be assumed will be placed upon him because of the offence to pay fines, the value of forfeited property, corporate fines, or other compensation to the community, or damages or any other compensation to an aggrieved person. The court may then order provisional attachment of so much of the suspect's property that the claim may be assumed to be secured on execution.</p> <p>Applications for provisional attachment may be lodged at the request of a police investigation leader, a prosecutor or an injured party. Once a case has been brought the court may take up the matter of provisional attachment of its own accord.</p> <p>When an application for provisional attachment has been made, the court holds a hearing on the matter as soon as possible. If delay entails risk the court may direct the provisional attachment to apply until further notice without a hearing. However, the court must hold a hearing in such cases as soon as possible.</p> <p>While awaiting the court's decision on provisional attachment, the head of the police investigation, prosecutor or, if delay entails risk, any other police officer may impound moveable property.</p>
	<p>If the property in question, e.g. money, can reasonably be presumed to be of importance to a criminal investigation the property may be seized in accordance with the provisions relating to this in Chapter 27 of the Judicial Code. A decision on seizure is taken by the head of a police investigation, a prosecutor or, if delay entails risk, a police officer. Furthermore, objects discovered in the course of a lawful apprehension, arrest or search of premises may be seized. Finally, in certain cases the court may also issue a seizure order.</p> <p>If a seizure is executed without the court issuing a seizure order, the person affected by the seizure is entitled to request a court determination of the decision. The court shall then, as soon as possible and, if no extraordinary impediment exists, no later than four days thereafter hold a hearing regarding the matter.</p> <p>The seized objects shall, as a general rule, be impounded by the person executing the seizure.</p>
<p>UK</p>	<p>There is no criminal law in the UK which directly concerns redress of a victim (such as the defrauded Community budget). That said, if the Proceeds of Crime Act 2002 is applicable, the Crown Court has powers to safeguard assets identified, by means of restraint orders; these can be granted at an early stage in an investigation.</p>

	<p>In March 2003 the Assets Recovery Agency began operating in Northern Ireland. The Agency was established under the Proceeds of Crime Act 2002 and has powers to confiscate assets of individuals and/or organisations following orders issued through the Court system.</p>
	<p>In Scotland, the following measures are not specific to recovery of Community funds. See 4.2 for freezing assets in Scotland before conviction. After conviction, a criminal court on the prosecutor’s application can grant-</p> <ul style="list-style-type: none"> • a “confiscation order” to seize assets of a person convicted which were obtained as benefits from offences; the court can rely on certain assumptions that property was obtained through crime, which can be disproved by the convicted person (Proceeds of Crime (Scotland) Act 1995, Part I); • a “compensation order” requiring compensation to be paid, through the court, for loss caused to another by the offence. The court takes account of the means of the person, and there are limits on the compensation awarded in cases with no jury. An order can be appealed and reviewed, and the amount recovered is deducted from subsequent civil award of damages (Criminal Procedure (Scotland) Act 1995, ss. 249-253).

4.4 Summary table

It has been possible to use the MS responses to produce an overview on the various legal instruments provided for by the MS legal systems. The table below is meant to be a synthesis of the initial descriptions of the legal basis for such action within MS legislation¹⁶

Member State	Civil Party Action within Criminal procedures						Safeguarding measures		
	yes/no	Legal provisions	Initiation of procedure	Judicial Authorities in charge			statutes of limitations	yes/no	Legal provisions
				judge	prosecutor	police			
Austria	YES	Sections 4,5, 47, 48, 365, 366 of the Code of Criminal Procedure, Section 12 of the Prosecutor's Office Act, Sections 47, 48, 57, 58 and 60 of the Criminal Code & Section 1489 of the General Code of Civil Law (see also Section 200 FinStrG)	Application for Civil party action with the judge possible until start of trial.	x	x		With respect to criminal proceedings: general rules for prescription of the punishability and or enforceability apply (see Sections 57 to 60 of the Criminal Code) With respect to the civil claim: general time bar rules of civil law apply concerning the enforcement of claims (see Section 1489 of the General Code of Civil Law)	YES	Sections 20, 20a, 20b, 20c of the Criminal Code & Sections 443, 444, 445, 445a of the Code of Criminal Procedure
				In the pre-trial-procedure: information of the prosecutor and/ or the investigative judge is possible additionally. After opening of trial: in principle all claims have to be addressed to the judge.					
Belgium	YES	Sections 3, 4, 5 and 26 of Title I; 145 and 182; 63 of the Code of Criminal Procedure	Under Belgian law, victims of crime do not bring criminal actions, but may bring civil actions within criminal proceedings. This claim for damages sets the criminal prosecution in motion.	x	x		Section 2 of the Act of 10 June 1998 replaced Section 26 of Title I of the Code of Criminal Procedure, which is henceforth worded as follows: "Civil action resulting from a crime shall be barred according to the rules of the Civil Code or special laws applicable to the action for damages. However, this may not be barred before the criminal prosecution." (in principle 30 years)	YES	The precautionary measures by the public prosecutor or the investigating judge are of two types: - seizures: Sections 35 and 35a and Section 89 of the Code of Criminal Procedure - confiscations by the trial judge: Sections 42, 43, 43a, 43b, 43c of the Criminal Code
				Prosecutor's department is involved throughout the investigation procedure. Investigating judge becomes involved from the start of the investigation of the case. The party claiming damages can file a complaint with public prosecutor, summon the perpetrator of the crime directly before criminal judge, or submit a claim for damages to investigating judge.					
Denmark	YES	Chapter 89 of the Danish Administration of Justice Act (Sections 991, 992, 993, 994, 995, 995a, 996 & 996a)	It is up to the wronged party to apply for compensation either directly to the court or, in serious cases, to the prosecutor	x	x		The demand is subject to the general statute of limitations in the same manner as if the demand had been launched as a civil action. (in general be statute-barred 20 years after the event giving rise to the demand)	YES	Chapter 74 of the Danish Administration of Justice Act; Section 802 (freezing assets of a suspected person's funds)

Member State	Civil Party Action within Criminal procedures						Safeguarding measures		
	yes/no	Legal provisions	initiation of procedure	Judicial Authorities in charge			statutes of limitations	yes/no	Legal provisions
				judge	prosecutor	police			
Finland	YES	Chapter 3 of the Criminal Proceedings Act	<i>A deadline is given for the presentation of the claim, within which time the claim and its grounds must be delivered in writing to the court.</i>	x	x	x	Provisions regarding the period of limitation are contained in Chapter 7 of the Damages Act (412/1974) and in the Time-Barring of Debt Act (728/2003).	YES	The provisions of Finland's criminal law system regarding security measures are contained in Chapter 3 of the Enforcement Act (450/1987).
France	YES	Sections 1, 2, 3, 4, 4-1,5, 5-1, 6, 10, 85-91 of the Code of Criminal Procedure	<i>The conditions for bringing civil proceedings: - the existence of a punishable offence; - the capacity of the claimant to act legally; - direct and personal loss; - claimant's interest in bringing proceedings.</i>	x	x		The limitation period for public action with regard to offences in connection with the financial interest of the European Community is three years after the date the offence was committed, provided that no prosecution or investigation has been initiated.	YES	Sections 706-30 of the Code of Criminal Procedure allows for preventive measures to be taken against the property of individuals under investigation.
Italy	YES	Sections 74 to 79 chapter V, Book I of the Code of Criminal Procedure (No 447 of 22 September 1988)	<i>The appearance of the applicant may take place at beginning of criminal action and not beyond opening of the first instance hearing. The prosecutor, defendant or party civilly liable may submit a reasoned request to exclude the applicant for non-fulfilment of requirements before the opening of the hearing.</i>	x			The deadline for the appearance of the applicant is regulated by Section 79 of the Code of Criminal Procedure.	YES	Preventive confiscation pursuant to Book IV Chapter II Section I (Sections 316 - 320) of the Code of Criminal Procedure and Precautionary or preventive seizure (Section 321 of the Code of Criminal Procedure). Security guarantees (Section 319 of the Code of Criminal Procedure).

Member State	Civil Party Action within Criminal procedures						Safeguarding measures		
	yes/ no	Legal provisions	initiation of procedure	Judicial Authorities in charge			statutes of limitations	yes/ no	Legal provisions
				judge	prosecutor	police			
Germany	YES	<p>Civil actions are covered by Section 395 <i>et seq.</i> (Code of Criminal Procedure).</p> <p>The enforcement of claims for compensation arising from the criminal offence is regulated by the so-called Adhäsionsverfahren (joinder) according to Sections 403 to 406c of the Code of Criminal Procedure.</p>	<p><i>The application to the court shall be in accordance with Section§ 404 of the Code of Criminal Procedure, which must be made at the latest at the main hearing before the closing speeches begin.</i></p>	x			<p>The periods of limitation under civil law apply.</p>	YES	<p>According to Sections 73 <i>et seq.</i> of the Criminal Code all the benefits derived from the crime are in principle to be declared forfeit.</p> <p>As security, the objects can be secured in the preliminary investigation by seizure or attachment in rem (Sections 111b <i>et seq.</i> of the Code of Criminal Procedure).</p>
				<p><i>By means of application to the court, the procedure of civil party action can be brought into the court proceedings by the injured party, including a legal person. If the court decides on the application in accordance with Section 406, the decision is equivalent to a judgment in civil litigation.</i></p>					
Greece	YES	<p>Sections 63-68, 82-84, 89-95 of the Greek Code of Civil Procedure in conjunction with Sections 297-299 and 914, 932 and 937 of the Greek Civil Code</p>	<p><i>To introduce civil actions within criminal proceedings the criminal proceedings need to have been opened and must have reached the hearing stage.</i></p>	x			<p>Claims are subject to a 5-year limitation period from the time the injured party learned of the prejudice and of the person liable for compensation. In any case, however, claims are prescribed 20 years from the occurrence of the act. N.B. this limit is suspended for such time as the criminal procedure is underway (Section 937 of the Greek Civil Code)</p>	YES	<p>The relevant legal statutes in Greece are the following: Criminal Code Section 76, for confiscation; Code of Criminal Procedure, Sections 310(2) and 373 for confiscation; Code of Criminal Procedure, Sections 260-269, 280 and 373, for precautionary measures – temporary seizure; Code of Civil Procedure, Sections 707 and 711-714, for precautionary measures – temporary seizure; Law No 2331/95 for the prevention and punishment of laundering of the proceeds of criminal activities, Section 5(1) Law No 2803/00 Sections 3, 4, 6 and 9.</p>
				<p><i>The criminal court examining the civil action is obliged to issue a decision on it.</i></p>					

Member State	Civil Party Action within Criminal procedures						Safeguarding measures		
	yes/ no	Legal provisions	initiation of procedure	Judicial Authorities in charge			statutes of limitations	yes/ no	Legal provisions
				judge	prosecutor	police			
Luxembourg	YES	Sections 2, 3, 56 <i>et seq.</i> , 182 <i>et seq.</i> , 637 <i>et seq.</i> of the Code of Criminal Procedure		x	x			YES	The Code of Criminal Procedure authorises the seizure of goods, documents and effects involved in the crime, all the objects that appear to have been the proceeds of the crime in question, all the objects in general that may be of use in determining the truth or use of which would be detrimental to the proper conduct of the investigation and of all the objects liable to be confiscated or returned (see Sections 31 and 66 of the Code of Criminal Procedure, Sections 31 <i>et seq.</i> of the Criminal Code).

Member State	Civil Party Action within Criminal procedures						Safeguarding measures		
	yes/ no	Legal provisions	initiation of procedure	Judicial Authorities in charge			statutes of limitations	yes/ no	Legal provisions
				judge	prosecutor	police			
Netherlands	YES	Sections 51a, 51b and 361 of the Code of Criminal Procedure	<p><i>The claim must be submitted to the public prosecutor charged with the prosecution of the criminal offence before the start of the trial. The submission is made using a form drawn up by the Minister for Justice. Prerequisites: direct connection between the loss incurred and the criminal offence and that the claim is absolutely clear or on which clarity is easily obtainable.</i></p>	x			<p>For such claims, just as for normal claims under civil law, a limitation period of 20 years is applicable.</p>	YES	<p>Precautionary measures (seizure or freezing) according to Article 94 and 94a of the Code of Criminal Procedure</p>
				<p><i>The court decides on the admissibility and the merits of the claim. 2)</i></p>					
Portugal	YES	Sections 71, 72, 74, 76, 77 of the Code of Criminal Procedure and section 498 of the Civil Code	<p><i>The claim for civil compensation is possible for action to be brought by the injured party and the Public Prosecutor representing the State or representing other persons or interests by virtue of Sections 74, 76 and 77 of the Code of Criminal Procedure.</i></p>	x			<p>With regard to periods of limitation, the conditions for civil damages claims are set out in Section 498 of the Civil Code, where it is stipulated as a general rule that the right to compensation applies for a period of three years from the date on which the injured party became aware of the case affecting him.</p> <p>Paragraph 3 of this same article provides that in cases where the illegal act constitutes a criminal offence for which the law establishes a longer period in which action may be taken, this period shall apply.</p>	YES	<p>Sections 227, 228 (financial guarantee from accused person) and 178, 181 (seizure) of the Code of Criminal Procedure</p>
				<p><i>Prosecutor is competent at the stage of drawing up the writ. Judge is competent at the stage of passing judgment.</i></p>					
Spain	YES	Sections 108, 111 and 112 of the Criminal Procedure Act	<p><i>Actions arising from a crime or offence may be lodged separately or together, but a separate civil action may not be launched while the criminal action is ongoing until a ruling has been given in the criminal proceedings.</i></p>		x		<p>Section 1971 of the Civil Code: "the time limit for bringing proceedings to ensure fulfilment of sentencing obligations begins when the sentence is pronounced". Section 1964 of the Civil Code in connection with Supreme Court judgments (of 21.3.84 and 3.3.88): The time limit for civil action arising from a criminal offence is fifteen years.</p>	YES	<p>Section 764 of the Criminal Procedure Act (safeguarding funds, including costs)</p> <p>Sections 721-747 of Law 1/2000 of 7 January 2000, Civil Procedure Act (under certain conditions: "Specific Precautionary Measures")</p>
				<p><i>Civil Proceedings have to be introduced jointly with a Penal Proceedings, by the Public Prosecutor Ministry of Taxes.</i></p>					

Member State	Civil Party Action within Criminal procedures						Safeguarding measures		
	yes/ no	Legal provisions	initiation of procedure	Judicial Authorities in charge			statutes of limitations	yes/ no	Legal provisions
				judge	prosecutor	police			
Sweden	YES	Chapter 22, Sections 1, 3 and 5 of the Code of Judicial Procedure Chapter 45, Section 5 of the Code of Judicial Procedure	<i>After the institution of a prosecution, the prosecutor or the injured party may initiate, without a summons, an action for a private claim based upon the offence if the court, considering the inquiry and other circumstances, finds it appropriate.</i>	x			<p>Limitation of Claims Act (1981:130.) The principle rule of the act is that a claim is time-barred ten years after coming into existence unless the limitation is suspended prior to this. A claim falls under the statute of limitations ten years after coming into existence unless the limitation is suspended prior to this.(Section 2, subsection 1).</p> <p>A claim for damages as a consequence of an offence does not, however, fall under the statute of limitations before the expiry time for the prosecution limitation unless the matter of responsibility for the offence has been determined prior to this. If this is the case, the claim falls under the statute of limitations one year after the day that the judgement or final decision is issued, unless the limitation period expires later in accordance with Section 2. (Section 3)</p>	YES	<p>The Swedish criminal legal system contains general rules on safeguarding the recovery of amounts unduly paid. These rules apply to matters concerning so-called EU frauds.</p> <p>The main safeguard in this area is provisional attachment (Chapter 26 of the Judicial Code). If the property in question, e.g. money, can reasonably be presumed to be of importance to a criminal investigation, the property may be seized in accordance with the provisions relating to this in Chapter 27 of the Judicial Code.</p>

Member State	Civil Party Action within Criminal procedures						Safeguarding measures		
	yes/ no	Legal provisions	initiation of procedure	Judicial Authorities in charge			statutes of limitations	yes/ no	Legal provisions
				judge	prosecutor	police			
United Kingdom	NO							YES	<p>A compensation order is made by the judge or magistrate following conviction, on application by the prosecution. There is no limitation period.</p> <p>Although civil action is usually separate from the criminal proceedings in the event of a confiscation order under the 2002 Proceeds of Crime Act, the judicial authority is the Crown Court. If applicable, action commences before the Crown Court passes sentence but the Court has discretion to postpone. If the 2002 Proceeds of Crime Act is applicable, the Crown Court has powers to safeguard assets identified, by means of restraint orders; these can be granted at an early stage in an investigation.</p>
Ireland	NO							YES	<p>The 1994 Criminal Justice Act contains detailed and comprehensive provisions on the confiscation of the proceeds of crime following conviction.</p> <p>The 1996 Proceeds of Crime Act enables the High Court to freeze and ultimately dispose of property which the court is satisfied, on the balance of probabilities, is the proceeds of crime.</p>

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- ¹ This Bill amends the criminal code, the Code of Criminal Procedure, the amended law of 7 March 1980 on organisation of the judicial system, the amended law of 23 December 1998 setting up a supervisory committee for the financial sector, the amended law of 5 April 1993 on the financial sector, the amended law of 6 December 1991 on the insurance sector, the amended law of 9 December 1976 on the organisation of the profession of notary public, the amended law of 10 August 1991 on the profession of lawyer, the amended law of 28 June 1984 organising the profession of company auditor, the amended law of 10 June 1999 organising the profession of chartered accountant, the amended law of 20 April 1977 on gambling and betting on sporting activities and the general tax law (“*Abgabenordnung*”).
- ² There have been no significant new developments. The Netherlands completed the national implementation of the Anti-fraud Convention, the Anti-Corruption Convention and all the additional protocols some time ago.
- ³ The procedure for granting such aid derogates from the provisions on public accounting. The manner and procedure for payment, the competent bodies and all other relevant details are to be laid down by means of joint decision of the Minister of Finance and Economy.
- ⁴ The Department for Agriculture and Rural Development, Northern Ireland, wishes to recall that Council Regulation (EC) No 1593/2000 that established the control systems for certain Community aid schemes concerns the establishment and operation of automated IACS cross-checks. The new GIS system when introduced will facilitate an improved anti-fraud measure i.e. a field can only be claimed by one claimant.
- ⁵
- 57 employees with tertiary level education (Public Finances)
 - 10 employees with tertiary level education (Engineers)
 - 3 employees with tertiary level education (Geotechnical Studies)
 - 4 employees with tertiary level education (IT)
 - 2 employees with tertiary level education (Translation)
 - 2 employees with technological education (Technological Applications)
 - 1 employee with technological education (Public Finances)
 - 6 employees with secondary level education (Public Finances)
 - 4 employees with secondary level education (IT – Computer Operators)
 - 1 employee with secondary level education (Technician)
 - 2 scientific experts employed on a private law open-ended contract.
- ⁶ Luxembourg points out that the Inspectorate-General for Finance, which is part of the Ministry of Finance, is independent of all management and payment authorities in Luxembourg. In hierarchical terms the Inspectorate-General for Finance is an executive body that comes under the Minister responsible for the Treasury and the Budget.

The Inspectorate is assisted in its tasks by an external audit firm which audits the annual accounts and also the management and control systems of the management and payment authorities appointed. One of the auditors’ tasks is to detect fraud.

The audit tasks are performed in accordance with international auditing standards and the recommendations on professional conduct and examination of accounts issued by the Institute of Company Auditors and with the rules contained in the manual for the auditing of the management and control systems of the Directorate-General – financial audit of the European Commission.

EAGGF-Guidance was not audited in 2003. However, an ESF project and an ERDF project were audited by teams of five and four auditors, respectively, from the audit firm.

The only project funded in Luxembourg by the Financial Instrument for Fisheries Guidance (FIFG) was also audited in 2003 by a team of four.

The audit work is closely monitored by two members of the Inspectorate-General for Finance.

The audit reports are submitted to the relevant management and payment authorities, which are asked to take account of the recommendations of the audit firms and to monitor any irregularities notified to OLAF.

Noteworthy among the work carried out in 2003 were the exhaustive controls performed by two members of the Inspectorate-General for Finance in relation to 20 validity statements issued on the winding-up of assistance under Article 8 of Regulation (EC) No 2064/97.

The reports issued contain a summary of the controls of which the Inspectorate was aware. These controls comprise the Inspectorate's own controls and those performed by the audit firm engaged for this purpose.

- ⁷ The aim of the contracts of confidence proposal is to enhance cooperation between the Commission and the Member State in the auditing field. Progress is as yet limited and new legislative developments are still awaited.
- ⁸ The level I controls consist of all the controls that flank the actions of the Payment Authorities and Intermediaries – Measure Managers of Objective 3 – non-objective manpower and Measures – which carry out their ordinary controls using the manpower of the Inspection Service of the Professional Training Division of the Province's administrative and technical units, responsible for the territory of AGC 17 – Methods of verification and control, which are based on on-the-spot checks on a representative sample of funded operations as laid down in the Payment Authorities' Manual.
- ⁹ See point 1.5.b.
- ¹⁰ The United Kingdom points out that there have been no significant developments in the FIFG. The Fisheries and Aquaculture Structures (grants) (England) Regulations 2001 and equivalent legislation for Scotland, Wales and Northern Ireland remain in force.
- ¹¹ This Joint Ministerial Decision has been dispatched to all competent Directorates General of the European Commission and OLAF by letter No 976/0052/18-7-2003. A draft circular on implementation of the National Fiscal Corrections System has been prepared which includes instructions on how to apply the aforementioned Joint Ministerial Decision and sections 6, 9 and 17 of Law 2860/2000 and is expected to be signed by the Minister of Finance and Economy at the beginning of 2004.
- ¹² Ministerial Decree (D.M.) no. 157 of 12 March 2003; D.M. no. 150 of 7 February 2003; D.M. no. 188 of 17 April 2003; D.M. no. 189 of 18 April 2003 and D.M. no. 208 regarding the integration of the level II control unit.
- ¹³ Notably, in the area of the Structural Funds, measures :
- coordinating checks and inquiries relating to operations or operators receiving assistance from more than one Fund;
 - coordinating *ex ante* checks at whatever level (management, payment, delegate or intermediary), and between these checks, the sample checks under Article 3 of

Regulation (EC) No 2064/97 and Article 10 of Regulation (EC) No 438/2001, and anti-fraud inquiries;

- for the exchange of information between departments responsible for the various checks and inquiries (administrative authorities, police, judiciary, etc.);
- for the administrative authorities to communicate cases of presumed fraud to the judicial authorities.

In the area of the cohesion fund, measures :

- coordinating checks on projects prior to Commission approval, checks that projects have been properly completed and anti-fraud inquiries;
- for the exchange of information between departments responsible for inspections and inquiries including the existence of a shared database and/or arrangements for allowing each department access to the others' bases;
- for the administrative authorities to communicate cases of presumed fraud to the judicial authorities.

¹⁴ As indicated under item 1.4, in 2003 Decree No 2003-1088 of 18 November 2003 took into account the new power granted to the Interministerial Commission for Coordination of Controls of operations co-financed by the European structural funds (CICC-Structural Funds) to control the management and payment authorities, especially the local authorities, as provided in section 60 of the amending Budget Act for 2002 No 2002-1576 of 30 December 2002) but also any individual or corporate body receiving these funds, the organisations through which such funds may have passed and administrative bodies.

This Decree provides that CICC-Structural Funds may make recommendations directly to local authorities where the latter are the management and payment authority.

¹⁵ The Project Unit for Inspection Activity and Company Shareholdings has held a series of co-ordination meetings in order to harmonise and standardise level II controls in accordance with Article 10 of Regulation (EC) No 438/01 (control procedures, methodology, risk analysis, etc).

¹⁶ See 4.1. – 4.3.