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*Annex to the*

**2004 report from the Commission on the protection of the European Communities'  
financial interests and the fight against fraud**

**Implementation of Article 280 of the Treaty by the Member States in 2004**

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## INTRODUCTION

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

The Commission bases its report on the measures taken by Member States on the replies to the "Article 280" questionnaire. This questionnaire covers the period from 1 January to 31 December 2004.

The present document lists all the answers of Member States to the 2004 questionnaire. The new Member States have in principle only reported on legislation that was adopted or came into force after 1 May 2004.

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

The first two questions (1.1 and 1.2) concern the ten new Member States:

<b>1.1. Legal instruments regulating the setting-up and operation of the AFCOS in the 10 New Member States</b>	
<b>Each new Member State has set up an anti-fraud coordinating service (AFCOS) responsible for coordinating the legal, administrative and operational aspects of the protection of the Community's financial interests.</b>	
<b>The Member State is invited to list the legal instruments regulating the setting-up and operation of the AFCOS and specify their status (ministerial decision, government decision, Act of Parliament).</b>	
<b>CY</b>	The Cyprus AFCOS was set up in September 2002 by decision of the Ministerial Council, and two contact persons were appointed by the Legal Service. The members of the AFCOS were designated as the Legal Service (Covert Crime Prevention Unit - MOKAS), the Auditing Service, the General Accounts Office, the Customs Department and the police.

<p><b>1.1. Legal instruments regulating the setting-up and operation of the AFCOS in the 10 New Member States</b></p>
<p><b>CZ</b></p> <p>By decision of the Czech Ministry of Justice of 17.5.2000, the Chief Public Prosecutor's Office (CPPO) was designated as the contact point for cooperation with the European Anti-Fraud Office (OLAF) in the Czech Republic.</p> <p>Official cooperation with OLAF began on 15.12.2000 with a meeting initiated by the CPPO, which was attended by OLAF staff and representatives from all the departments directly concerned by the issue of combating fraud and other illegal activity. The outcome of the meeting was a draft agreement on cooperation between the European Anti-Fraud Office (OLAF) and Chief Public Prosecutor's Office of the Czech Republic in the fight against fraud and other illegal activity to the detriment of the financial interests of the Community in the period prior to the accession of the Czech Republic to the European Union. The agreement was concluded in October 2001 and came into force on 1.1.2002.</p> <p>Further to that agreement, agreements were concluded between the CPPO and individual departments during the first half of 2002 on mutual information in the fight against fraud and other illegal activity to the detriment of the financial interests of the Community in the period prior to the accession of the Czech Republic to the European Union, and at the same time the ministers of the relevant departments designated the staff responsible for cooperation with the CPPO.</p>
<p>In accordance with the agreements, a committee for registering the findings of case investigations was set up in accordance with Article 3 of the agreements, creating the structure for cooperation with OLAF in the Czech Republic (AFCOS - Anti-Fraud Coordinating Structure), with the Chief Public Prosecutor's Office as the central coordination point. On 18. 6. 2003 the Government of the Czech Republic adopted Resolution No 601 on improving cooperation between the European Anti-Fraud Office and the Czech State authorities, inter alia obliging the departments concerned to declare irregularities affecting the financial resources of the European Union and to inform the Chief Public Prosecutor's Office about such cases in order to determine whether a criminal offence has been committed.</p>
<p>The Government also ordered the drafting of a national strategy against fraud to the detriment of the financial interests of the European Communities.</p> <p>The national strategy against fraud to the detriment of the financial interests of the European Communities was approved by Czech Government Resolution No 456 of 12.5.2004. At the same time members of the Government and the heads of other central State authorities whose activities involve or will involve handling resources from the general budget of the European Union were asked to draw up an internal strategy on methods against fraud affecting or threatening the financial interests of the European Communities on the basis of an assessment of individual elements of the national strategy. The present members of the AFCOS network were also instructed to continue with the currently agreed cooperation arrangements with the CPPO of the Czech Republic and the European Anti-Fraud Office in the context of mutual cooperation when combating fraud affecting or threatening the financial interests of the European Communities and setting up an internal communication network to gather and transfer information on irregularities involving resources from the EU budget (AFCOS).</p>

	<p><b>1.1. Legal instruments regulating the setting-up and operation of the AFCOS in the 10 New Member States</b></p>
<p><b>EE</b></p>	<p>Organisation of cooperation with the European Anti-Fraud Office</p> <p>Order No 674-k of the Government of the Republic of October 15th, 2002</p> <p>Statutes of the Ministry of Finance</p> <p>Regulation No 412 of the Government of the Republic of December 24th, 1999</p> <p>The tasks of the cooperation partner (AFCOS) of OLAF were added by Regulation No 215 of the Government of the Republic of August 12th, 2003 amending the Statutes of the Ministry of Finance.</p> <p>Rules on recovery and repayment of structural assistance</p> <p>Regulation No 27 of the Minister of Finance of February 25th, 2004</p> <p>Statutes of the Financial Audit Department</p> <p>Confirmed by Directive No I-1-4/449 of the Minister of Finance of September 30th, 2003</p> <p>Committee for the Protection of the Financial Interests of the European Union (AFCOS Steering Committee)</p> <p>Directive No 238 of the Minister of Finance of May 27th, 2004</p> <p>Division of tasks for informing about infringements that occurred whilst using assistance that was co-financed by the European Union.</p> <p>Directive No 416 of the Minister of Finance of October 18th, 2004.</p>
<p><b>HU</b></p>	<p>The Government of Hungary has introduced Government Resolution No. 2255/2001. (XI. 14.) laying out the rules for liaising with OLAF and has assigned this task to the Ministry of Finance. Accordingly, an OLAF Coordination Bureau has been set up within the Ministry's Legal Department, which is the counterpart of AFCOS in terms of its functions.</p> <p>Act XIX of 2004 on the Customs and Excise Guard – the duties of the Customs and Excise Guard (5)d). The tasks specified in separate legislation in relation to cooperation and coordination with OLAF – the European Anti-Fraud Office – are carried out by the Customs and Excise Guard within the framework of its international operations.</p> <p>Act XXIX of 2004 on the amendment and repeal of certain laws as well as the establishment of certain regulations relating to Hungary's accession to the European Union – Chapter XII of the Act provides for cooperation with the European Anti-Fraud Office.</p>

<b>1.1. Legal instruments regulating the setting-up and operation of the AFCOS in the 10 New Member States</b>	
<b>LT</b>	<p>The Financial Crime Investigation Service (FNTT) under the Ministry of Internal Affairs was designated by Resolution No 747 of the Government of the Republic of Lithuania of 24 May 2002 as the body responsible for cooperation with the European Anti-Fraud Office (OLAF) (Official Gazette 2002, No 53-2092).</p> <p>On 9 October 2003 the Lithuanian Parliament amended the Financial Crime Investigation Service Act, laying down the following tasks:</p> <ul style="list-style-type: none"> <li>- detect and investigate criminal acts and other breaches of the law connected with the receipt and use of financial support from the European Union (EU) and other countries;</li> <li>- implement precautionary measures to prevent misappropriation and wastage of financial support from the EU and other countries;</li> <li>- gather, compile, analyse and summarise information concerning the unlawful receipt and use of financial support from the EU and other countries;</li> <li>- coordinate cooperation by State authorities' and other bodies' with OLAF.</li> </ul>
<b>LV</b>	<p>In compliance with Decree no. 495 of the Cabinet of Ministers of 11 September 2002, the Ministry of Finance is the contact point for OLAF in Latvia. Decree no. 895 of the Ministry of Finance of 16 September 2002 established an inter-ministerial working group with the task of preparing an informative report on the circulation of information for co-operation with OLAF.</p> <p>On 14 October 2003 with Decree No.933 of the Ministry of Finance a working group for the co-ordination of co-operation with OLAF was established, and at the same time the composition of the former working group was reviewed.</p>

<b>1.1. Legal instruments regulating the setting-up and operation of the AFCOS in the 10 New Member States</b>	
<b>MT</b>	During the negotiations of Chapter 28 – Financial Control as shown in the Position Paper for the same Chapter, the Government decided that the Internal Audit and Investigations Directorate (IAID) should be designated as the Anti-Fraud Co-ordinating Service with respect to the management of EU Funds. Furthermore, in 2003, the role of the IAID as AFCOS was also regulated by the Internal Audit and Financial Investigations Act (IAFI Act) Cap 461 which was enacted by the Maltese Parliament. There are also enacted two pieces of subsidiary legislation, which form part of the Act itself, namely to regulate ‘conflict of interest’ situations and defining the extent of audit and investigative duties of the Directorate.
<b>PL</b>	<p>1) Regulation by the Council of Ministers, dated 1 July, 2003, concerning the Government Plenipotentiary for Combating Frauds against the Republic of Poland or the European Union (Journal of Laws No. 03.119.1113 with further amendments). Issued pursuant to legislative delegacy set forth in Art. 10.1 and art. 10.4 of the Act on the Council of Ministers of 8 August 1996, the Regulation establishes the Governmental Plenipotentiary for Combating Frauds against the Republic of Poland or the European Union, and sets the scope of his competence and functions. The Regulation also appoints the Bureau for International Treasury Relations of the Ministry of Finance and the Multidisciplinary Team for Combating Frauds against the Republic of Poland or the European Union as administrative bodies responsible for the supply of the Plenipotentiary with services related to the matters covered by his activities.</p> <p>2) Ordinance No. 62 of the Council of Ministers Chairman (Prime Minister) of 28 July 2003, concerning the Multidisciplinary Team for Combating Frauds against the Republic of Poland or the European Union. The Ordinance establishes the Multidisciplinary Team for Combating Frauds against the Republic of Poland or the European Union and lays down the scope of its competence<sup>1</sup>.</p> <p>3) Resolution No. 1 of the Multidisciplinary Team for Combating Frauds against the Republic of Poland or the European Union, dated 30 September 2003, concerning the By-laws of the Multidisciplinary Team for Combating Frauds against the Republic of Poland or the European Union.</p> <p>4) Act on Treasury Control of 28 September 1991 (Journal of Laws No. 04.8.65 as amended). According to the Act, the Bureau for International Treasury Relations of the Ministry of Finance is incorporated in to the structure of the Treasury Control Service and is subordinated directly to the General Inspector of Treasury Control, who also acts as the Governmental Plenipotentiary for Combating Frauds against the Republic of Poland or the European Union. The Act on Treasury Control requires that treasury control service protects the EU own resources as well as controls the expenditure of EU funds. The Act also provides that treasury inspection plans may be forwarded to the European Commission and that representatives of the European Commission may participate in the controls of EU funds.</p>

<sup>1</sup> The Team is composed of the representatives of the Minister of Finance, the Central Investigation Office of the Police National Headquarters, the Office for Tactics for Fighting against Crime of the Police Headquarters, the Head of the National Security Agency, the Head of the Intelligence Agency, the Ministry of National Defence, the Head of the Border Guard Service and the Minister of Internal Affairs and Administration.



**1.1. Legal instruments regulating the setting-up and operation of the AFCOS in the 10 New Member States**

5) Regulation No. 102 by the Chairman of the Council of Ministers, dated 30 August 2002, amending the regulation laying down the statute of the Ministry of Finance (Monitor Polski No. 02.38.602). The Regulation issued pursuant to art. 39.5 of the Act on the Council of Ministers of 8 August 1996, establishes the Bureau for International Treasury Relations as a unit of government administration situated within the organisation structure of the Ministry of Finance.

6) Regulation No. 2 of the Minister of Finance dated 21 January 2005, creating the Organisation By-Law of the Ministry of Finance. The Regulation, issued pursuant to the Act on the Council of Ministers of 8 August 1996, lays down the By-Law of the Ministry of Finance and thus sets forth responsibilities and competence of the Bureau for International Treasury Relations being the Ministry's organisational entity.

7) Agreement of 1 April 2004 concluded between the Minister of Finance (represented therein by the General Inspector of Treasury Control and the Head of the Customs Service), and the Minister of Agriculture and Rural Development (represented therein by the Undersecretary of State) concerning efficient and effective co-operation between control services in the control of expenses financed from the Guarantee Section of the European Agricultural Guidance and Guarantee Fund.

8) Decision No. 3 of the Chairman of the Multidisciplinary Team for Combating Frauds against the Republic of Poland or the European Union, dated 10 October 2003, establishing the Multidisciplinary Working Group for fight against the smuggling of cigarettes.

9) Decision No. 2 of the Chairman of the Multidisciplinary Team for Combating Frauds against the Republic of Poland or the European Union, dated 26 February 2004, establishing the Multidisciplinary Working Group for fight against the subsidies crimes.

10) Decision No. 3 of the Chairman of the Multidisciplinary Team for Combating Frauds against the Republic of Poland or the European Union, dated 27 February 2004, establishing the Multidisciplinary Working Group for fight against crime in fuel trade.

**1.1. Legal instruments regulating the setting-up and operation of the AFCOS in the 10 New Member States**

	<p>11) Decision No. 4 of the Chairman of the Multidisciplinary Team for Combating Frauds against the Republic of Poland or the European Union, dated 27 February 2004, establishing the Multidisciplinary Working Group for the development of the National Strategy for Counteracting Economic Crime.</p> <p>12) Decision No. 5 of the Chairman of the Multidisciplinary Team for Combating trafficking the Republic of Poland or the European Union, dated 2 March 2004, establishing the Multidisciplinary Working Group for counteracting irregularities in the use of EU funds.</p> <p>13) Decision No. 7/2004 of 24 May 2004 and Decision No. 10/2004 of 31 August 2004 of the Chairman of the Multidisciplinary Team for Combating Frauds against the Republic of Poland or the European Union, establishing – within the Multidisciplinary Working Group for counteracting irregularities in the use of EU funds – the Task Group for implementing and monitoring the application of Regulation (EEC) No 4045/89 in Poland.</p>
	<p>14) Decision No. 9 of the Chairman of the Multidisciplinary Team for Combating trafficking the Republic of Poland or the European Union, dated 28 June 2004, establishing the Multidisciplinary Working Group for co-operation of governmental administrative bodies in protecting financial interests of the Republic of Poland and the European Union on the external EU borders.</p> <p>15) Decision No. 1/KC/2004 of the Minister of Finance of 12 February 2004 establishing the Executive Team for the Implementation of the Customs Information System (CIS) in the customs administration units.</p> <p>16) Decision No. 1/MS/2004 of the Minister of Finance of 14 June 2004 establishing the Executive Team for the Implementation of AFIS in the organisational entities of the Ministry of Finance and customs administration units.</p> <p>17) Agreement concluded between the Chief Commander of the Police and the General Inspector of Treasury Control, dated 11 January 2005, concerning co-operation between the Police and treasury control service.</p> <p>18) Agreements concluded between the Paying Authority and the Managing Authorities<sup>2</sup></p> <p>19) “European Union Own Resources. A Guide to Procedures and Administration Structures” – a document developed by the European Integration Department of the Ministry of Finance, approved by the management of the Ministry of Finance in March 2004.</p>

<sup>2</sup> Managing Authorities of the Sectoral Operational Programmes “The Increase of the Competitiveness of Companies” (5 April 2004); “Human Resources Development” (17 April 2004); “The Increase of the Competitiveness of Companies” (2 April 2004) “The Restructuring and Modernisation of Food Sector and the Development of Rural Areas” (30 September 2004); “Fisheries and Fish Processing”(8 November 2004), “Technical Support” (3 December 2004) EQUAL Communities Initiative (1 June 2004), Managing Authorities and Intermediaries of the Integrated Regional Development Programme.

	<p><b>1.1. Legal instruments regulating the setting-up and operation of the AFCOS in the 10 New Member States</b></p>
<p><b>SI</b></p>	<p>In Decision No 245-24/2002-1 of 4 July 2002 the Government of the Republic of Slovenia established the Budget Supervisory Service of the Ministry of Finance (now the Budget Supervision Office of the Republic of Slovenia, hereafter: UNP) as the contact point for cooperation with OLAF (AFCOS). At the same time the Government set up an interdepartmental working party for cooperation with OLAF (hereafter: MRDS) consisting of the Supreme State Prosecutor's Office, the Commission for the Prevention of Corruption, the Ministry of Justice, the Ministry of the Interior's Criminal Police Directorate, the Tax Administration, the Customs Administration and the Foreign Exchange Inspectorate.</p> <p>In Decision No 245-24/2002-3 of 18 March 2004 the Government of the Republic of Slovenia appointed the representatives to the MRDS.</p>
	<p>The MRDS carries out the following tasks:</p> <ul style="list-style-type: none"> <li>- preparing the national anti-fraud strategy for the protection of the Community's financial interests and coordination of its implementation;</li> <li>- detecting any weaknesses in the system for administering and inspecting Community resources, including resources for pre-accession aid (Phare, SAPARD and ISPA) in the Republic of Slovenia;</li> <li>- making suggestions for the legal or organisational changes needed to make the protection of the Community's financial interests more effective, including proposals to involve other bodies or institutions concerned with the protection of the Community's financial interests and the establishment of common structures and mechanisms;</li> <li>- informing bodies and organisations responsible for the management of EU resources in terms of both revenue and expenditure of the obligations and procedures with which they have to comply in connection with the protection of the Community's financial interests;</li> <li>- coordinating findings concerning the training needs of bodies and organisations involved in the protection of the Community's financial interests;</li> <li>- cooperating with OLAF on the implementation of specific training programmes, including provisional training in other Member States;</li> <li>- providing organisational support for training;</li> <li>- providing support and advice to other bodies and organisations involved in the protection of the Community's financial interests.</li> </ul>

	<p><b>1.1. Legal instruments regulating the setting-up and operation of the AFCOS in the 10 New Member States</b></p>
	<p>The institutions making up the MRDS give full support to the UNP in its role as an AFCOS within the areas under their jurisdiction, in particular by providing information on activities or suspected activities harming the EU budget.</p> <p>Under the Public Finance Act the UNP is responsible inter alia for the coordination and harmonisation of the internal control of public finances. In accordance with the Regulations on Guidelines for the Harmonised Functioning of the Public Internal Financial Control, spending authorities must report to the UNP all irregularities they find in connection with the use of EU resources within specific time-limits. The UNP forwards information on any irregularities established to OLAF each quarter.</p>
<p><b>SK</b></p>	<p>Government decision No. 1133/2001 of 28 November 2001 (came into force from 1 January 2002) – the setting-up of the Central Contact Point for OLAF in the Slovak Republic as a department within the Section of Control at the Office of the Government of Slovak Republic</p> <p>Act No. 10/1996 Coll. on Control in the State Administration as amended (amendment published under No. 461, came into force on 1 September 2002, Act of Parliament) – operational powers</p> <p>Co-operation Arrangement between the European Anti-Fraud Office (OLAF) and the Control Section of the Government Office of Slovak Republic in the Fight against Fraud and Other Irregularities Detrimental to the Communities' Financial Interests, which came into force on 15 September 2002</p>

**1.2. Powers of the AFCOS in the anti-fraud investigations in the 10 new Member States**

**The Member State is asked to state, for the following fields, the extent to which the powers of the AFCOS enable it to coordinate and/or conduct anti-fraud investigations, monitor the manner in which anti-fraud investigations are organised and carried out by other institutions or bodies and communicate irregularities and/or coordinate such communications.**

- AFCOS powers as regards the coordination and/or conduct of anti-fraud investigations
- AFCOS powers as regards the monitoring of the methods used by other institutions or bodies to conduct anti-fraud investigations.
- AFCOS powers as regards the communication of irregularities to the Commission and/or the coordination of such communications by other institutions and bodies.

**a) Direct expenditure**

**CY**

The Cyprus AFCOS is not a separate service; in accordance with the decision by which it was set up it comprises a number of services, each responsible for implementing the provisions of the Community Regulations concerning its particular area.

With regard to the sending of fraud reports, the General Accounts Office, which is the central payment authority for the Structural Funds, is responsible for implementing Regulation (EC) No1681/94 on irregularities in connection with the Structural Funds and Regulation (EC) No 1831/94 on irregularities in connection with the Cohesion Fund, and is also responsible for notifying irregularities concerning payments made from those Funds.

The police and the Customs Department undertake investigations into fraud.

As manager of appropriations from the European Agricultural Guidance and Guarantee Fund, the Cyprus agricultural payments organisation (KOAP) will undertake the implementation of Regulation (EEC) No 595/91 on the notification of irregularities in connection with those appropriations, while the Customs Department is contracted by the KOAP to notify irregularities in connection with export refunds.

As regards investigations, for those services that do not have powers under the law to carry out investigations into fraud, once suspicions have been raised, the Cyprus Legal Service, as coordinating service of the AFCOS, may give instructions to the police to carry out an investigation. For the purposes of notification, each member of the AFCOS gives an independent notification of the irregularities it has detected.

**CZ**

The Czech AFCOS system is a communication platform enabling the bodies that are linked to provide mutual information on established cases of irregularities and on progress in investigating them and allowing mutual coordination in the area of the fight against fraud and other illegal activity to the detriment of the financial interests of the European Communities. In this area it is also responsible for communication with the European Anti-Fraud Office (OLAF).

The central focus of the AFCOS network is the CPPO, which, as the central coordination point, communicates with OLAF and with others linked to the AFCOS network.

**1.2. Powers of the AFCOS in the anti-fraud investigations in the 10 new Member States**

Other members of the AFCOS network include representatives of all Managing Authorities, Paying Authorities and Paying Units for the Structural Funds and the Cohesion Fund (Ministry for Regional Development, Min. of Agriculture, Min. of Finance, Min. of Employment and Social Affairs, Min. of Industry and Trade, Min. of the Environment, Min. of Transport, State Agricultural Intervention Fund). These members of the network are responsible for information in the field of indirect expenditure. Each month AFCOS network representatives in the relevant departments (executive functions in the Managing Authorities) regularly receive a statement of established irregularities. After the monthly statement is drawn up, individual cases may be discussed with CPPO if there is doubt about whether they constitute irregularities or criminal offences. On the basis of the monthly statement and the results of any consultations with the CPPO, the AFCOS network representatives draw up regular quarterly statements of established irregularities in the implementation of the Structural Funds and the Cohesion Fund, which are sent via the AFIS information system direct to OLAF. Copies of the quarterly reports are also sent to the CPPO, the Paying Authority (National Funds section of the Finance Ministry) and the Central Harmonisation Unit for Financial Control in the Finance Ministry. AFCOS network representatives thus have an overview of established irregularities and the course of their investigation, including the state of recovery of the sums paid out. If necessary (e.g. at the request of OLAF or the CPPO) they can request the relevant bodies involved in implementation of the Funds for any further information required on established irregularities.

**1.2. Powers of the AFCOS in the anti-fraud investigations in the 10 new Member States**

	<p>Consultations between members of the AFCOS network and the CPPO, and the transmission of the quarterly reports on established irregularities to the CPPO ensure that cases of fraud are established in good time and that criminal proceedings are started in cases of irregularities where there is suspicion of a criminal offence.</p> <p>Also important is the transmission of the quarterly declarations on irregularities to the representative of the Central Harmonisation Unit for Financial Control, as this is the central administrative body for financial control and as such is responsible inter alia for the methods used in managing and coordinating implementation of the entire financial control system for the Structural Funds and the Cohesion Fund, for drawing up the relevant documentation on methods, providing consultative, advisory and training services in the field of public administrative controls and on the internal control system in the entire area of implementation of EU resources etc. Keeping this body informed of established irregularities makes it possible to react in time to observed trends and to update methodological tools and, where necessary, legislation.</p> <p>Another member of the AFCOS network is the representative of the General Directorate of Customs, which provides information in the field of own resources (customs). The General Directorate of Customs serves as the National Coordination Unit for mutual assistance with the authorities of other States and international organisations in customs matters. The General Directorate or subordinate customs authorities also have police functions in cases of criminal offences involving infringements of customs regulations and rules on the import, export or transit of goods, and in such cases they may conduct criminal prosecutions.</p> <p>Information in the field of own resources is also provided by the Ministry of Agriculture's representative. The powers of this member of the AFCOS network are described in more detail under point 3.</p> <p>The AFCOS network also includes representatives of the Police Presidium of the Czech Police. Their participation in the system allows coordination in the field of criminal prosecutions, both in respect of fraud and in respect of counterfeiting of the euro.</p>
	<p>Another member of the AFCOS network is the representative of the Supreme Audit Office (NKÚ). Under the Czech Constitution this body is independent of the executive and can, inter alia, carry out audits of the handling of funds granted to the Czech Republic from abroad, including funds from the general budget of the EC (the mission of the NKÚ is rather like that of the European Court of Auditors at EU level). If, in the course of its activity, the NKÚ establishes facts suggesting that a crime has been committed, it notifies such cases to the authorities responsible for criminal prosecutions. Its participation in the AFCOS network again ensures that information is available on cases of fraud which it has uncovered and that there is coordination in the conduct of criminal proceedings (in detecting and prosecuting fraud).</p>

**1.2. Powers of the AFCOS in the anti-fraud investigations in the 10 new Member States**

**EE**

- Conduct of the investigation falls in the jurisdiction of the Prosecutor's Office and investigative bodies (police authorities and the Tax and Customs Board) and AFCOS does not coordinate the investigations or intervene in the investigation process.

If the authority conducting state supervision or audit of the final beneficiary responsible for granting assistance or of the grant recipient needs advice, the AFCOS may counsel and if necessary, involve the auditors of the Ministry of Finance, bring the problem to the attention of the State Audit Office, submit data connected with possible violation of law to the Prosecutor's Office or ask for assistance from OLAF.

The Committee for the Protection of the Financial Interests of the European Union (AFCOS Steering Committee) enables both in the form of a meeting as well as bilaterally analysing the cases under investigation and discussing if it would be necessary to start criminal proceedings regarding the infringement detected.

AFCOS belongs to the Financial Audit Department of the Ministry of Finance and can instruct the audit divisions located in the same department to carry out audits if necessary.

- AFCOS does not monitor the methods used by other authorities during the investigations, state supervision and audits. AFCOS is informed of the final results (including the court judgment) of the investigation, state supervision or audit. If necessary, AFCOS will monitor the progress and development of the investigation, state supervision or audit.

- The task of AFCOS includes consolidating data internally regarding infringements and informing OLAF and other agencies if necessary according to the Regulations No 1681/94 and 1831/94 of the European Commission.



**1.2. Powers of the AFCOS in the anti-fraud investigations in the 10 new Member States**

<b>HU</b>	<p>Act XXIX of 2004 on the amendment and repeal of certain laws as well as the establishment of certain regulations relating to Hungary's accession to the European Union – Chapter XII of the Act provides for cooperation with the European Anti-Fraud Office:</p> <p>Article 125. The basic duties of the OLAF Coordination Bureau are:</p> <ul style="list-style-type: none"><li>a) coordinating the tasks to be carried out in relation to safeguarding the financial interests of the European Communities in the course of onsite examinations carried out by OLAF,</li><li>b) forwarding quarterly reports to OLAF concerning irregularities relating to pre-accession funds, the Structural Funds and the Cohesion Fund,</li><li>c) participating, as an invitee, in the meetings of the monitoring committees of programmes implemented with the various forms of financial assistance provided by the European Union,</li><li>d) facilitating the performance of onsite examinations carried out by OLAF on the basis of Community Directives,</li><li>e) accessing the data contained in documentation relating to tendering for EU support, the contracts concluded with beneficiaries and the use of the supports,</li><li>f) managing personal data, exclusively for fulfilling its reporting obligation in connection with cases under investigation, as specified in this Chapter,</li><li>g) forwarding the requests of OLAF pertaining to individual investigations and requests for information commissioned by OLAF to the agencies concerned within no more than 15 days.</li></ul> <p>- The OLAF Coordination Bureau has no investigative power.</p>
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	<p><b>1.2. Powers of the AFCOS in the anti-fraud investigations in the 10 new Member States</b></p>
	<p>- Government Decree No. 360/2004. (XII. 26.) Korm. on the establishment of the operational programmes of the National Development Plan, the EQUAL Community Initiative programme and the financial implementation, accounting and controlling systems relating to the receipt of support from the Cohesion Fund – Chapter VII:</p> <p>Article 49(1). Within seven weeks of the end of each quarter, on the basis of the quarterly reports submitted by the EQUAL programme managing authority or the Cohesion Fund managing authority, the paying authority shall submit a consolidated report to the OLAF Coordination Bureau of the National Headquarters of the Customs and Excise Guard (VPOP) concerning any irregularity or infringement identified in the course of implementing the projects, the actions taken with respect to such irregularities and the status of ongoing administrative or court procedures. Such report shall be forwarded by the VPOP OLAF Coordination Bureau to the European Commission (European Anti-Fraud Office).</p> <p>(2) Once a year a report is forwarded on the basis of the quarterly reports submitted by the paying authority, the operational programme managing authority and the EQUAL programme managing authority or the Cohesion Fund managing authority, to the OLAF Coordination Bureau, concerning the amounts to be collected through forced collection, organised according to the year in which the collection process is initiated, which is forwarded by the VPOP OLAF Coordination Bureau to the European Commission (European Anti-Fraud Office).</p> <p>Government Decree No. 119/2004. (IV. 29.) Korm. on the financial planning, implementation, accounting and controlling system for using the EU pre-accession facilities and the Transition Facility – Chapter VII:</p> <p>Article 61(1) Within two months of the end of each quarter, the National Programme Authorising Officer shall submit a report on any irregularities or infringements identified in the course of implementing the programmes, the actions taken with respect to them and the status of ongoing administrative or court proceedings, or on the fact that no irregularity or infringement took place – if that is the case – to the EDIS Committee, the ÁBPE Interdepartmental Committee and – through the OLAF Coordination Bureau – to the EU Commission and the EU Anti-Fraud Office (OLAF).</p>
<p><b>LT</b></p>	<p>- The FNTT, like other Lithuanian law enforcement agencies, has the right to launch preliminary anti-fraud investigations, but it does not have the right to coordinate preliminary anti-fraud inquiries conducted by other law enforcement agencies.</p> <p>Moreover, the FNTT has the right to carry out operational tasks, conduct preliminary investigations of financial offences and investigate economic and financial activity.</p> <p>- The FNTT does not have the right to monitor anti-fraud investigations conducted by other institutions and bodies. Only the public prosecutor’s office monitors the way in which officers of such institutions and bodies carry out preliminary investigations or individual actions forming part of such investigations.</p> <p>- Within the limits of its powers, the FNTT gathers and compiles information on the unlawful receipt and use of EU financial support and communicates this to the European Commission.</p>

<b>1.2. Powers of the AFCOS in the anti-fraud investigations in the 10 new Member States</b>	
<b>LV</b>	<ul style="list-style-type: none"> <li>- Considering that the AFCOS is located at the Ministry of Finance, the Minister can appoint Financial Police Board or Customs Criminal Board responsible for the coordination and/or conduct of anti-fraud investigations.</li> <li>- AFCOS has no powers regarding monitoring of the methods used by other institutions or bodies to conduct anti-fraud investigations.</li> <li>- AFCOS is responsible for collecting irregularity reports from the institutions involved and forwarding these reports to the Commission.</li> </ul>
<b>MT</b>	<p>According to Article 20 (1) of the IAFI Act, the IAID, for the purpose of carrying out its functions, has the power (a) that in case where the IAID has reason to suspect that irregularities and, or fraud, have occurred or are occurring, to enter any premises for the purpose of conducting a financial investigation, (b) to require the production of any books, records, files, accounts, documents or information including any computer data in any form and or part thereof, including contracts, bills, vouchers and receipts relating to them, and if deemed necessary, to retain such documents in the original, and to ensure that copies or extracts are made thereof without paying any fee thereof notwithstanding any law or regulations to the contrary.</p> <p>In Malta, in terms of Article 23 of the IAFI Act, a Co-ordinating Committee is appointed by the Internal Audit and Investigations Board (IAIB) and chaired by the Director IAID. The purpose of this Committee is to co-ordinate the activities of, and to facilitate the exchange of information among different entities charged with the protection and safeguarding of public including EU funds. This Committee is made up of representatives from organisations that are charged with investigative services in Malta being: IAID, VAT, Customs, Police, Financial Intelligence Analysis Unit (FIAU), Ministry for Rural Affairs and the Environment (MRAE), Attorney General (AG), and the Malta Information Technology and Training Services (MITTS).</p> <p>This monitoring is done through the Co-ordinating Committee mentioned above.</p> <p>As OLAF interlocutors, the IAID is responsible for reporting irregularities to OLAF on a quarterly basis in terms of EC Regulations: 1831/94 (Cohesion Fund); 1681/94 (Structural Funds); and 595/91 (Agricultural Funds – Guarantee Section)</p> <p>These irregularities will be communicated to the Commission through the Anti Fraud Information System (AFIS).</p>

**1.2. Powers of the AFCOS in the anti-fraud investigations in the 10 new Member States**

**PL**

The Bureau for International Treasury Relations conducts administrative investigations concerning the cases of the breach of financial interests of the European Union, involving first of all irregularities and criminal offences in the application of EU funds. Proceedings are conducted pursuant to art. 47 of the Regulation No. 2 of the Minister of Finance dated 21 January 2005, laying down the Organisational By-Law of the Ministry of Finance.

The Bureau for International Treasury Relations conducts proceedings in order to co-ordinate actions taken by competent administrative bodies, institutions and services in order to protect financial interests of the European Union. For that purpose, the Bureau for International Treasury Relations co-operates with the Prosecutor's Office, the Police, the Border Guard, the Customs Service, units subordinated to the General Inspector of Treasury Control and other bodies that are involved in the application and control of EU funds. Moreover, in performing its duties, the Bureau for International Treasury Relations co-operates and exchanges communications and information with OLAF in Brussels and with other customs and treasury services of Member States with respect to the protection of financial interests of the European Union.

The Bureau for International Treasury Relations, in certain cases, may carry out the control of use of EU funds in the scope provided by the Act on Treasury Control.

The Bureau for International Treasury Relations co-operates with investigation bodies with respect to subject matters covered by operational or legal actions conducted by these bodies in relation to the protection of financial interests of the European Union.

The Bureau for International Treasury Relations, acting as AFCOS, provides – within the scope of its competence – administrative assistance when requested to do so by domestic and foreign authorities.

The Bureau for International Treasury Relations may instigate administrative investigations and co-ordinating proceedings concerning irregularities, frauds, acquisition of property under false pretences and corruption detrimental to financial interests of the European Union and the Republic of Poland. Within the framework of these proceedings, the Bureau may co-operate with departments, services and institutions whose actions concern the finance of the Republic of Poland and the European Union.

<b>1.2.</b>	<b>Powers of the AFCOS in the anti-fraud investigations in the 10 new Member States</b>
	<p>The Bureau for International Treasury Relations may – with respect to the protection of the financial interests – initiate checking and explanation procedures to be conducted by investigation bodies (the Police) as well as the Treasury Control Service and the Customs Service.</p> <p>The Bureau for International Treasury Relations may mandate treasury controls to be performed in other institutions involved in EU funds implementation in order to detect possible financial irregularities or to determine whether applicable procedures are applied by the audited institution in a proper manner.</p> <p>The Bureau for International Treasury Relations may instigate and monitor actions conducted by internal audit units of government and/or local administration bodies with respect to matters related to possible irregularities in the management of EU funds.</p> <p>The Bureau for International Treasury Relations forwards to OLAF communications on irregularities found in the course of the scrutiny of projects financed from EU funds.</p>
<b>SI</b>	<p>In accordance with the rules, Community resources form an integral part of the national budget and as such are the object of uniform surveillance, although there is additional surveillance in accordance with special Community requirements.</p> <p>On the basis of the rules of public internal financial control, the UNP combines a number of functions:</p> <ul style="list-style-type: none"> <li>- It directs, harmonises and inspects the operation of financial management and internal control systems and the internal auditing of the spending authorities. If there is any suspicion of irregularities in connection with the use of Community resources, the internal auditors of the spending authorities are obliged to inform the UNP without delay;</li> <li>- As an independent control body for Community resources (the certification body for the EAGGF Guarantee Section – certification of revenue and expenditure - and the audit body responsible for all other funds - certification of revenue on completion of the project, 5% or 15% control), the UNP always examines the adequacy and effectiveness of the inspection systems. If there is any suspicion of criminal activity, its auditors inform the Public Prosecutor’s Office and the police;</li> <li>- In its role as an AFCOS, the UNP is not responsible for the investigation of fraud as this is the task of the Public Prosecutor’s Office; however, it cooperates within the MRDS in the exchange of information and proposals for operations.</li> </ul> <p>Within the MRDS, the bodies making up this group preserve their independence and organisation. The MRDS permits the exchange of information on irregularities and the way in which they are dealt with and allows the UNP to act as coordinator. The Public Prosecutor’s Office directs and manages the pre-trial procedure. The UNP is not responsible for monitoring how the investigations are conducted.</p> <p>Under the Guidelines on the communication of irregularities, which form an integral part of the system of financial management and internal control, the UNP is responsible for the collection of information concerning irregularities and sending it to OLAF and the National Fund or management body.</p>

<b>1.2. Powers of the AFCOS in the anti-fraud investigations in the 10 new Member States</b>	
<b>SK</b>	<p>- Pursuant to Act No. 10/1996 on Control in State Administration as amended AFCOS as an organizational part of Government Office of the Slovak Republic fulfils tasks related to the control and protection of the financial interests of the European Communities. Referring to the above-mentioned law AFCOS may perform controls (administrative investigations) of the efficiency of the use of state budget funds and funds provided from EU. Due to provision of the section 14 of the above-mentioned law the AFCOS may ask any other public administration authority for the co-operation by performance of controls and/or to provide the required information related to the control process and results of control activities as well.</p> <p>- Methods of the performance of control used by other institutions are based on binding legal provisions by course of them these controls are performed or on own internal rules of the public administration authorities. In this connection, the AFCOS may not interfere and influence the application of these methods, the AFCOS can only, pursuant to a request, provide assistance to these authorities with its own knowledge and experience and/or forward their request to other authorities of the Slovak Republic or OLAF.</p> <p>- The AFCOS, pursuant to agreements with relevant authorities, is the only body, which communicates to OLAF the irregularities detected. The irregularities reporting procedures in the Slovak Republic are set up in the manuals of relevant authorities and they were audited by the European Commission in the course of the preparation of the Slovak Republic to the EU accession.</p>
<b>b) Traditional own resources</b>	
<b>CY</b>	See point a)
<b>CZ</b>	See point a)
<b>EE</b>	AFCOS lacks powers. It is a task of the Tax and Customs Board. AFCOS has access to the OWNRES system in order to monitor reports regarding submitted infringements.
<b>HU</b>	See point a)
<b>LT</b>	See point a)
<b>LV</b>	<p>Considering that the AFCOS is located at the Ministry of Finance, the Minister can appoint Financial Police Board or Customs Criminal Board responsible for the coordination and/or conduct of anti-fraud investigations.</p> <p>AFCOS has no powers regarding monitoring of the methods used by other institutions or bodies to conduct anti-fraud investigations. These powers have been delegated to the State Revenue Service.</p> <p>In order to ensure the communication of the found irregularities as is determined by the Commission Regulation No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources, State Revenue Service has issued an order on April 29, 2004 which sets down the procedure how information on cases of irregularities and fraud are obtained, summarized and registered in the OWNRES system.</p>
<b>MT</b>	See point a)

<b>1.2. Powers of the AFCOS in the anti-fraud investigations in the 10 new Member States</b>	
<b>PL</b>	<p>The Bureau for International Treasury Relations conducts administrative investigations and proceedings in order to co-ordinate actions taken by competent bodies and services, related to irregularities in own resources (custom duties and sugar levies), detrimental to financial interests of the European Union or the Republic of Poland</p> <p>The Bureau for International Treasury Relations may instigate administrative investigations and co-ordinating proceedings concerning irregularities, frauds, acquisition of property under false pretences and corruption detrimental to financial interests of the European Union or of the Republic of Poland. Within the framework of these proceedings, the Bureau may co-operate with departments, services and institutions whose actions are related to the finance of the Republic of Poland and of the European Union.</p> <p>The Bureau for International Treasury Relations may – with respect to the protection of the financial interests – initiate checking and explanation procedures to be conducted by investigation bodies (the Police) as well as the Treasury Control Service and the Customs Service.</p> <p>Pursuant to the Act on Treasury Control of 28 September 1991 (Journal of Laws [Dz.U.] No. 04.8.65, as amended), the Bureau for International Treasury Relations supervises control and inspection procedures conducted by Treasury Control Offices with respect to the correctness of the transfer of own resources to the EU budget.</p> <p>The entry of data into OWNRES system, concerning irregularities in own resources, is the responsibility of the Customs and Excise Control Department of the Ministry of Finance</p>
<b>SI</b>	<ul style="list-style-type: none"> <li>- The UNP's powers are the same as in the case of Community expenditure. If there is any suspicion of criminal activity reported by the internal auditor of the spending authority or the UNP auditor in the certification or control procedure, the UNP must immediately inform the Public Prosecutor's Office and the police, which of course are also represented on the MRDS. In accordance with Regulation No 1150/2000 the Customs Administration notifies the European Commission of irregularities of more than EUR 10 000.</li> <li>- As in the case of indirect expenditure, each body retains its independence. The Public Prosecutor's Office manages the pre-trial procedure. The bodies retain their organisational and autonomous relations while the UNP acts as coordinator.</li> <li>- The Customs Administration reports direct to the European Commission.</li> </ul>
<b>SK</b>	See point a)

**1.3. Horizontal developments: New legislative developments contributing to the implementation of Article 280 of the Treaty**

**Have there been any significant new legislative horizontal developments contributing to the implementation of Article 280 of the Treaty in 2004? Member States are asked to list only national measures and not those which simply transpose Community legislation.**

**If so, please give a brief description below.**

**1.3. Horizontal developments: New legislative developments contributing to the implementation of Article 280 of the Treaty**

<b>BE</b>	<p><b>A. TAX MEASURES</b></p> <p>1. The Law of 12 January 2004 (Moniteur belge, 23 January 2004) added a new paragraph to Article 17(2) of the Law of 11 January 1993 on preventing the use of the financial system for money-laundering. This created the Financial Information Processing Unit (CTIF/CFI).</p> <p>Article 17(2) now states that “if such transmission (i.e. transmission of information on the laundering of capital or goods by the CTIF/CFI to the public prosecutor or federal prosecutor), concerns information on the laundering the proceeds of a crime associated with serious and organised tax fraud, which employs complex mechanisms or uses processes with an international dimension, or the proceeds of a crime falling under the jurisdiction of the Customs and Excise Administration, the CTIF/CFI will inform the Ministry of Finance of the transmission”. The scope of this provision includes fraud affecting the budget of the European Communities.</p> <p>The Belgian Customs and Excise Administration have seconded a part-time liaison officer from the National Investigation Directorate of the Customs and Excise Administration to the CTIF/CFI.</p> <p>2. The law of 13 September 2004 ratified the Naples II Convention.</p>
	<p><b>B. FINANCIAL MEASURES:</b></p> <p>1. The Law of 12 January 2004 amending the Law of 11 January 1993 on preventing the use of the financial system for money-laundering, the Law of 22 March 1993 on the statutes and supervision of credit institutions, and the Law of 6 April 1995 on the statutes and supervision of investment companies, financial intermediaries and investment consultants, published in the Moniteur belge of 23 January.</p> <p>2. The Royal Decree of 21 September 2004 modifying the list of organisations subject to the Law of 11 January 1993 on preventing the use of the financial system for money-laundering and for financing terrorism and amending the Royal Decree of 11 June 1993 on the composition, organisation, operation and independence of the Financial Information Processing Unit, published in the Moniteur belge on 6 October 2004,</p> <p>* go beyond simply transposing European measures</p> <p>* have extended the scope of the Law of 11 January 1993 to new categories of organisations and individuals and have increased the maximum number of members of the Financial Information Processing Unit to eight, reflecting the increase in the number of cases and in order to ensure the proper functioning of the Unit. The Law of 12 January 2004 allowed a senior officer from the Federal Police to be appointed to the staff of the Financial Information Processing Unit. Previously the Unit consisted of six members: three judges seconded from the public prosecutor's offices and three financial experts.</p> <p>3. The Banking, Finance and Insurance Commission Regulation of 27 July 2004 on preventing money-laundering and the funding of terrorism and the Royal Decree of 8 October 2004 adopting this Regulation, published in the Moniteur belge on 22 November 2004, also contain a number of measures (in particular Article 31) which contribute to the implementation of Article 280 of the Treaty.</p>



<b>1.3.</b>	<b>Horizontal developments: New legislative developments contributing to the implementation of Article 280 of the Treaty</b>
<b>CZ</b>	<p>Decree No 416 of 2004, implementing Act No 320/2001 on Financial Control in the Public Administration. This decree spells out the methods and procedures for carrying out individual types of financial control governed by the Financial Control Act and sets out the content, manner and time limits for the presentation of the annual summary reports on the results of financial controls.</p> <p>Decree No 240/2004, on information systems on the award of public contracts and methods of evaluating tenders in terms of their value for money. This decree was issued to implement the new Act No 40/2004 on the award of public contracts. The new law was adopted with a view to harmonising Czech legislation with European legislation and other Community provisions (White and Green Papers on public contracts).</p> <p>Czech Government Resolution No 456 of 12. 5. 2004, adopting the National Strategy against fraud affecting or threatening the financial interests of the European Communities. In particular it defines the AFCOS network, sets out a procedure for declaring irregularities, lays down measures against corruption and gives an overview of the essential legislative changes required to implement the obligations stemming from agreements concluded at EU level on the protection of the financial interests of the European Communities.</p>
<b>EE</b>	<p>Directive No 238 of the Minister of Finance of May 27th, 2004 :</p> <p>In order to ensure effective cooperation concerning illegal activities in the field of protection of financial interests, the AFCOS Steering Committee has been established within the Financial Control Department, which includes representatives of the Tax and Customs Board, Security Police, Central Criminal Police, State Audit Office and State Prosecutor's Office in addition to the officials of the Ministry of Finance.</p> <p>The main tasks of the Management Committee are the following:</p> <p>Exchange of information and cooperation at the national level and with OLAF regarding the anti-fraud co-ordinating service of the Union;</p> <p>Make proposals for resolving Problems raised by OLAF, including initiating investigations;</p> <p>Make proposals for resolving fraudulent conduct, corruption or other violations of law damaging the financial interests of the European Union;</p> <p>Make proposals for improving the system for the Protection of the Financial Interests of the European Union.</p>
<b>EL</b>	<p>Law 3263/2004 "on the system of awarding public contracts to the lowest bidder and other provisions," which abolishes the mathematical method and introduces the system of awarding to the lowest bidder, with increased guarantees in cases of high discounts;</p> <p>Extension of Law 716/1977 "on the Register of Researchers and the assignment and drafting of studies" for a period of six months following suspension of Law 3164/2003, pending the adoption of a new law on studies.</p>

<b>1.3. Horizontal developments: New legislative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>FI</b>	<p>The amendment of the State Budget Act (423/1988), adopted in 2003, came into force on 1 January 2004. This law created the financial controller function to act as the Government's joint guidance and control authority. The function is operationally independent and has a statutory right to information from central government. Section 24f(1)(3) of the State Budget Act states that it is the duty of the financial controller function to coordinate the internal and administrative control of European Union funds for which the Finnish State is responsible and draw up opinions and reports relating to the supervision and audit of Union funds, errors in management of these funds and irregularities involving them for European Union institutions and other bodies.</p>
	<p>The State Budget Decree (1243/1992) was amended by Decree 254/2004. The Government established an Internal Control and Risk Management Board within the Ministry of Finance on 9 September 2004 for a mandate ending on 30 September 2007. The Board is a new statutory body and its duties, in accordance with Section 71 of the State Budget Decree, include harmonising the procedures of the various authorities and government agencies as regards internal control and administrative supervision of financial management and preparing the requisite measures; monitoring and assessing the state of the internal auditing set-up, the quality and performance of the work and how it is used for management and guidance purposes, and the methods and general trend in internal auditing, and launching initiatives for the development of internal auditing and its utilisation; arranging cooperation on internal auditing by the various government agencies and, where necessary, harmonising the internal auditing work of the various government agencies and exploiting the results; monitoring and assessing the control and auditing of funds of the European Union and reporting on them in Finland and harmonising and developing the activities and procedures of the various authorities and government agencies in this respect and drawing up measures necessary for harmonisation and development; monitoring and assessing the situation as regards irregularities and offences committed in the activities of government agencies or directed against the assets or property of the government or against assets or property for which the government is responsible and coordinating and developing the activities and procedures of the various authorities and government agencies in this respect, as well as reporting on irregularities and errors.</p>

**1.3. Horizontal developments: New legislative developments contributing to the implementation of Article 280 of the Treaty**

It is also the duty of the Board to deal on a preliminary basis with the information collected from Finland for the report referred to in Article 280(5) of the Treaty establishing the European Community and also with Finland's reply to the Commission of the European Communities on the annual report of the Court of Auditors.

The chair of the Board is the Government Controller-General and the deputy chair is the Deputy Government Controller-General. The Government appoints the Board and its members and deputy members for three years at a time, so that it has a representative from each Ministry and, where necessary, representatives from the Board's principal cooperation partners, as well as experts on fiscal administration, public finances and management, and financial control and auditing.

The new Section 65(1)(9) of the State Budget Decree stipulates that, from 2004, the final accounts of the state accounting offices are to include a summary of irregularities and offences relating to state assets or assets for which the State is responsible and of pre-trial investigation and legal proceedings, as well as of other procedures initiated as a result of irregularities and offences.

**FR**

Act No 2004-204 of 9 March 2004 adapting the judicial system to developments in criminal behaviour (*la loi portant adaptation de la justice aux évolutions de la criminalité*) extends the remit of the French national judicial customs department (*service nationale de douane judiciaire*, SNDJ) to cover all offences affecting the financial interests of the European Union. Customs officers authorised to carry out judicial investigations could already (like other customs officers) investigate and record offences concerning own resources and advantages granted under the EAGGF-Guarantee Section, provided for in the Customs Code.

Article 28(1) of the Code of Criminal Procedure, which is amended by the new Act, states that judicial customs officers are now also authorised to deal with offences concerning Structural Funds.

This Act, which transposes the framework decision 2002/584/JAI concerning the European arrest warrant<sup>3</sup>, specifies the conditions of delivery and execution of such a warrant by the French judicial authorities.

This same law of 9 March 2004 also sets out the following provisions:

- Creation of interregional courts specialised in economic and financial matters.
- Waiver of secrecy with a view to improve the fight against undeclared economic activities which can involve Community funds.
- Possibility to take precautionary measures concerning the assets of the defendants in a judicial inquiry in the area of organised crime.

<sup>3</sup> OJ L 190 of 18.7.2002.

<b>1.3. Horizontal developments: New legislative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>HU</b>	<p>The methodology guide issued by the Ministry of Finance concerning the management of irregularities, pertaining to state administration agencies:</p> <p>Pursuant to Article 145/A (5) of Government Decree No. 217/1998. (XII. 30.) Korm. on the public finance operating system, the heads of budgetary organisations are obliged to introduce a system of procedures for the management of irregularities.</p>
<b>IE</b>	<p>The Naples 2 Agreement (Convention of 18 December 1997) was ratified and became operative by Ireland on 26 June 2004. The enabling legislation is the Customs and Excise (Mutual Assistance) Act 2001.</p>
<b>IT</b>	<p>Law 36 of 6 February 2004 (New Forest Rangers' Code) vested the Forest Rangers with responsibility for carrying out inspections on the basis of EU agroforestry and environmental legislation and for taking part in enforcing legislation governing food security, consumer protection and biosecurity in general (section 2(1)(e)).</p>
<b>LT</b>	<p>Government Resolution No 77 of 27 January 2004 amending Resolution No 953 of the Government of the Republic of Lithuania of 31 July 2001 on the procedure for the administration, management and control of European Union financial support. This Resolution lays down the obligation to submit reports on irregularities.</p> <p>Act No IX-1992 of 29 January 2004 amending Article 206 of the Criminal Code and establishing liability for the use of targeted assistance for a purpose other than that intended or in a manner other than that laid down.</p> <p>The FNTT signed an agreement on administrative cooperation with OLAF on 1 February 2004.</p> <p>Act No IX-2021 of 12 February 2004 on the ratification of the Convention on the Protection of the European Communities' Financial Interests, drawn up on the basis of Article K.3 of the Treaty on European Union, and the protocols thereto drawn up on the basis of Article K.3 of the Treaty on European Union.</p> <p>Government Resolution No 661 of 31 May 2004 amending Resolution No 953 of the Government of the Republic of Lithuania of 31 July 2001 on the procedure for the administration, management and control of European Union financial support. This Resolution lays down the definition of the term "irregularity".</p>

**1.3. Horizontal developments: New legislative developments contributing to the implementation of Article 280 of the Treaty**

**LV**

Amendments in the Law on Credit Institutions entered into force stipulating that the Corruption Prevention and Combating Bureau is mandated to receive information while investigating criminal cases (with a Prosecutor's permission) as well as information on donations received by political organizations and on assets and debt commitments of state officials (with a permission of a Prosecutor or chairmen of the Supreme Court).

National Programme for Corruption Prevention and Combating for 2004-2008 was adopted by the Government on 3rd August, 2004. The Programme clearly sets priorities, defines responsible institutions, their tasks and timeframe for the implementation of the strategy thus effectively coordinating the cooperation amongst all the agencies involved. The CPCB is responsible for control and co-ordination of the implementation of the Program and report on implementation to the Cabinet of Ministers.

One line of activities within the frame of the Programme is addressed to ensure legitimate and expedient allocation of funding of the European Union and international institutions and organizations in terms of defining the scope of those public officials involved and introducing control and monitoring mechanisms over the allocated funding. In order to gather information on personnel working with European Union the Bureau asked all relevant institutions to submit lists of public officials as well as description of procedures working with EU funds. This information could be used for random examinations to prevent conflict of interest situations in activities of particular public officials.

Amendments to the Law on Financing of Political Organisations (Parties) are effective as from March, 2004. The general objective of the amendments was to eliminate existing loopholes in the law, improve the control mechanisms and make the process of political party financing more transparent. Stricter criteria of political parties' financing, as well as stronger sanctions for violations of this law were introduced by those amendments. Among many other changes, restrictions to receive donations from legal persons were introduced apart from an obligation to declare source of financing. Criminal liability for intermediation in financing political organizations has been introduced in the Criminal Law.

Republic of Latvia Cabinet Regulation No 298 Adopted 13 April 2004 On procedure for preparation, approval, implementation and monitoring of the projects financed from the European Union Cohesion Fund

**1.3. Horizontal developments: New legislative developments contributing to the implementation of Article 280 of the Treaty**

Other developments: in order to improve efficiency of control system over income for natural persons and to solve currently acknowledged problems detecting the origin of illicitly acquired means the Bureau initiated creation of working group comprising officials from state institutions as well as nongovernmental community. By December 2004 work on draft Concept on Improvement of Income Control of Individuals was finalised. Several lines of activities laid down in the Concept of Income Control for Natural Persons that are seen as solution to current problems however as most rational approach is introduction of overall income declaration system in Latvia. The Concept is to be examined by the Government and most appropriate suggestion will be approved.

In order to solve detected problems in renting out state and municipal property (real estate) a working group has been created. Expected outcome is elaboration of amendments to current legislation thus eliminating existing loopholes.

The Bureau has contributed to the process of ratification of United Nations Convention against Corruption in Latvia. Draft law on ratification has been elaborated and currently harmonisation process among institutions takes place.

**1.3. Horizontal developments: New legislative developments contributing to the implementation of Article 280 of the Treaty**

**PL**

Act of 24 July 2003 amending the Treasury Penal Code (Journal of Laws No. 03.162.1569) entered into force on 1 May 2004. Within the Polish legal system, the Treasury Penal Code regulates matters related to penal liability for prohibited acts (treasury criminal offence or treasury petty offence) involving the infringement of financial interests of the state (within a broad meaning of the term) secured by customs law, tax law, currency law and public finance legislation. Amendments that entered into force extend the applicable catalogue of penalised offences by treasury criminal offence against financial interests of the European Communities committed or aided by a Polish citizen (in Poland or abroad) or a foreign subject (in Poland). And further, the amendment to the Treasury Penal Code provides that within the meaning of the Code a revenue of the general budget of the European Communities or a budget managed on behalf of or by the European Communities constitutes legal public duty. Hence, after the amendment of the Code, the penal provisions of the Treasury Penal Code also apply to prohibited acts (for instance, undue payment or drawing of moneys in contravention of the objective of subsidy or subvention) involving funds being the dues of the budgets of the European Communities.

On 1 May 2004, Act of 19 March 2004 entered into force and amended the Fiscal Ordinance and the Act on Treasury Control. Consequently the General Inspector of Treasury Control was imposed with the obligation to communicate to the European Commission, plans of control of EU resources and other resources appropriated for programmes co-financed by the European Union. The Act amended art. 34a.5 of the Act on Treasury Control. The Act after amendments provides that documents containing information other than that referred to in art. 33 of the Act on Treasury Control (i.e. disclosed by banks, information relating to a person against whom preparatory proceedings have been instituted on the ground of suspicion of criminal offence or petty offence or treasury criminal offence or treasury petty offence) may be disclosed on a reciprocal basis to other states or to the European Commission by treasury control bodies to the extent that the disclosure is related to programmes financed from the resources of the European Union or to the correctness of the transfer of own resources to the budget of the European Union..

The provision was introduced with respect to the control of projects implemented within the framework of the Community initiative of INTERREG III. The nature of these projects requires exchange of information between services scrutinising the said projects located in various countries. The wording “on a reciprocal basis” means that information will be disclosed to foreign scrutiny authorities by Polish treasury control bodies only where Polish treasury control bodies may obtain similar information from the given foreign party.

<b>1.3. Horizontal developments: New legislative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>PT</b>	<p>Law No 48/2004 of 24 August 2004 amends for the third time Law No 91/2001 of 20 August 2001, the Law regulating the budget.</p> <p>Portugal would like to draw attention to Article 62 (Checks on Public Spending), according to which (paragraph 1)“spending by the bodies mentioned in Article 2(1) [services without administrative and financial autonomy, services and funds that are autonomous and/or relate to social security] shall be subject to an external audit at least every eight years. This audit shall include an assessment of the body’s mission and objectives, as well as the economy, efficiency and effectiveness of the expenditure effected”;</p> <p>(paragraph 2) “the system of internal checks on operations giving effect to the budget and related procedures [...] must be subject to auditing within the framework of the Internal Audit System [...]”</p> <p>Decree-Law No 2/2005 of 4 January 2005 states that in order to transfer the head office of a European public limited company from Portugal to another Member State, proof must be provided that its tax and social security situation are in order. In the absence of such proof, the certificate stating that the transfer of the head office is admissible will not be issued;</p> <p>Decree-Law No 53/2004 of 18 March 2004 (Insolvency and Business Recovery Code), as amended and reframed by Decree-Law No 200/2004 of 18 August 2004. This law reforms the business recovery and insolvency procedure, placing particular emphasis on expediting the process. It also reforms the methods and procedures for the liquidation of goods and for payments to creditors, particularly the State. The aim is to minimise loss of the value of the assets of insolvent businesses and the rights of all stakeholders in the business (shareholders, workers, creditors and management staff).</p>
<b>SI</b>	<p>The Act Amending the Penal Code (KZ-B; Official Gazette 40/2004) should be mentioned in this connection as it also amends the articles relating to fraudulent behaviour in the acquisition of loans or facilities, to fraudulent behaviour in share dealings and the unauthorised use of foreign labels or models, amends the article relating to the receipt of kickbacks for unlawful mediation and introduces a new article relating to the offering of kickbacks for unlawful mediation.</p> <p>Before KZ-B took effect, Article 254 of the Penal Code defined the criminal offence of tax evasion resulting from fraudulent behaviour only vis-à-vis the tax body. In line with the requirements of the Convention on the protection of the Community’s financial interests, the KZ-B extended the charges under Article 254 to “fraudulent behaviour towards any body which is responsible for assessment or for monitoring entry in the accounts and payment of the financial obligations of natural or legal persons”.</p>



<b>1.3. Horizontal developments: New legislative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>SK</b>	<p>- Act No. 523/2004 Coll. 2004 on Budgetary Rules and on Amending and Supplementing Certain Acts</p> <p>There is stated infringement of the budgetary discipline in the section 31, which is consequence of the irregularities arisen on the basis of the infringement of the EU legislative and generally binding legal provisions of the Slovak Republic found out during financial control of public resources spent. Provisions of the mentioned section state amount and conditions of sanction impose in the case of infringement of financial discipline. The provision of Section 31 paragraph (15) of the Act No. 523/2004 Coll. solves procedure considering of levies, penalties and fines in consequence of infringement of financial discipline at the spending of EU resources through Section 20 of the same act.</p> <p>- Act No. 618/2004 Coll. (valid since 1<sup>st</sup> January 2005), which amends and supplements the Act No. 502/2001 Coll. - in Section 35 paragraph (9) of the novel of this Act, there is stated the obligation for internal auditor to draw attention to treating risk, which could negative exert influence upon the audited entity, or if the facts establishing suspicion of criminal offence were found out, if needs urgently; in this case internal auditor shall draw up Partial Report on Result of Audit Action before finishing of audit action and submits this partial report to the law enforcement authorities and in case of suspicion of ineligible spending of EU resources to the legal person through which the EU resources were provided and to the Central Contact Point OLAF for the Slovak Republic.</p> <p>The Slovak Republic has ratified the Protection of Financial Interests Convention and its two additional Protocols (announcement of Ministry of Foreign Affairs of Slovak Republic No. 703/2004 B. of A., No. 704/2004 B. of A, No. 705/2004 B. of A.)</p>
<b>UK</b>	<p>Disability legislation introduced in the UK in 2004 requires enterprises to provide equal access of their services to disabled people. Organisations applying for Structural Funds support would have to take this into account, not least given the Funds' emphasis on mainstreaming equal opportunities.</p>

<b>1.4. Own resources: New legislative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>Have there been any significant <u>new legislative</u> developments contributing to the implementation of Article 280 of the Treaty in 2004? Member States are asked to list only national measures and not those which simply transpose Community legislation.</b>	
<b>If so, please give a <u>brief</u> description below.</b>	
<b>CZ</b>	Act No 185/2004 on the Customs Administration of the Czech Republic. Under the Act the General Directorate of Customs acts as the National Coordination Unit for mutual assistance with the authorities of other States and international organisations in customs matters. This function also includes the power to inform the Commission of irregularities in the area of own resources and the power to coordinate the activity of the General Directorate of Customs in this area.
<b>EE</b>	Directive No 423 of the Minister of Finance of October 25th, 2004 :  The directive sets out among other things the obligations of the relevant authorities regarding control of the collection of own resources, audit, recovery and reporting of infringements.  Division of tasks for organisation of fulfilment of the budgetary obligations of Estonia for the general budget of the European Communities regarding own resources.
<b>ES</b>	- Law 58/2003 of 17 December 2003 (General Tax Law)  This Law entered into force on 1 July 2004. Its main objectives in relation to the implementation of Article 280 of the Treaty are: making it possible to use new technologies, modernising tax procedures and setting machinery in place to strengthen the fight against fraud, tighten up tax checks and improve the collection of tax debts.  - Law 62/2003 of 30 December 2003 on tax, administrative and social measures  Certain exemptions provided for by Law 37/1992 of 28 December 1992 on value added tax are withdrawn, including the exemption for certain transactions involving recycled materials, which is replaced by a scheme in which the taxable person for VAT purposes is the business operator or trader receiving the materials.
<b>IE</b>	The legislative provisions governing cash seizures have been significantly extended in the Proceeds of Crime Amendment Bill which has already been passed by Parliament and is due to be signed into law early in 2005. These provisions enable Customs and Revenue Officers to seize cash anywhere in the State, which is believed to be the proceeds of crime or intended for criminal conduct. Crime/criminal conduct covers all forms of criminal behaviour including fraud in relation to Own Resources. An explicit power to search for cash at points of entry/exit from the State is also provided under the legislation.
<b>LT</b>	Act No IX-1781 of 16 October 2003 on the provision of assistance to EU Member State authorities for the recovery of amounts due in connection with levies, duties, taxes and other sums of money and the use of assistance provided by authorities of other EU Member States for the recovery of the aforementioned sums of money.

<b>1.4. Own resources: New legislative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>LV</b>	<p>In order to ensure organization of the common European sugar market in Latvia the law regarding sugar field was adopted on April 7, 2004 which came into force on May 1, 2004. On April 29, 2004 the Cabinet of Ministers adopted regulations No 461 which determine the procedure how sugar producers submit to the Rural Support Service information necessary for analysis of sugar market. These regulations determine also the contents of information to be submitted.</p> <p>On March 23, 2004 the Cabinet of Ministers adopted regulations No 163 which determine the procedure by which functioning of the European Communities' (Communities) own resources system, including execution of tasks connected with establishment, forecasting, collection, transmission and control of own resources, is ensured.</p>
<b>MT<sup>4</sup></b>	

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<sup>4</sup> During 2004 there were no developments contributing to the implementation of Article 280 of the Treaty. Significant legislative development had taken place during the last quarter of 2003 through the amendment of the Financial Administration and Audit Act. This act is intended to describe methods of detection as well as measures to be undertaken against fraud and irregularities with respect to Public Funds as well as for funds received by the Government from any international or supranational organization or body or from any of its institutions or bodies or under the terms of any treaty or other agreement between States.

**1.4. Own resources: New legislative developments contributing to the implementation of Article 280 of the Treaty**

**PL**

On May 1, 2004 amendment to art. 2.1.6 of the Act on Treasury Control entered into force pursuant to the Act of 27 June 2003 establishing Voivodship Treasury Boards and amending certain acts regulating responsibilities, competence and organisation of administration bodies subordinated to the minister competent in public finance. The amendment extended the scope of treasury controls by the scrutiny of the transfer of own resources to the budget of the European Union and to that extent falls within the competence of the Bureau for International Treasury Relations<sup>5</sup>.

The Customs Law of 19 March 2004 (Journal of Laws No. 04.68.622) entered into force on 1 May 2004. The Law regulates and complements the Communities customs legislation on the importation of goods to the customs area of the Community and the exportation of goods outside the customs area of the Community. The Law provides and regulates customs exemptions, customs debt, customs proceedings, reporting and statistics of the trade in of goods with Member States. The Law also provides procedures applicable to goods covered by the Common Agricultural Policy.

Pursuant to art. 96 of the Customs Law, the Minister of Finance issued a regulation<sup>6</sup> laying down patterns of documents to be used in the trading in of goods covered by the Common Agricultural Policy, and rules for handling these goods by the Customs Service. These transparent regulations completing Communities laws are of great importance to proper accrual of contributions due to the budget of the European Union as regards customs duties.

Act of 11 March 2004 on the Agricultural Market Agency and the organisation of certain agricultural markets entered into force on 1 May 2004 (Journal of Laws No. 04.42.386 with further amendments). Pursuant to art. 32.2b of the Act, the President of the Agency may collect sugar levies from producers of sugar and isoglucose, inclusive of sanction fees chargeable on C sugar and isoglucose that have not been exported within prescribed time limits. Art. 13 and art. 13a of the Act lay down rules for the determination and recovery of unpaid amounts due and payable on account of sugar levies and sanction fees.

Sugar and isoglucose production volumes are subject to control at production plants by the Inspection of the Commercial Quality of Foodstuffs and Agricultural Products. The control is executed within the framework of tasks assigned to the Agricultural Market Agency.

Additionally, the system of measures for the protection of financial interests of the European Union in relation to own resources consists also of other instruments that entered into force before 1 May 2004<sup>7</sup>.

<sup>5</sup> The Bureau for International Treasury Relations supervises the activities of the units of treasury control offices scrutinising the application of the funds of the European Union. With the assistance of these units, the Bureau for International Treasury Relations controls the transfer of own resources to the general budget of the European Union. The Bureau in co-operation with the departments/sections scrutinising EU funds in treasury control offices will apply the scrutiny methodology of EU own resources in institutions involved in the system of traditional own resources, i.e: the Customs Service; Competent departments of the Ministry of Finance; Ministry of Agriculture and Rural Development, Agricultural Market Agency, Inspection of the Commercial Quality of Foodstuffs and Agricultural Products; General Statistical Office; National Bank of Poland. The Bureau for International Treasury Relations in co-operation with these departments/sections will review the results of controls performed

**1.5. Agricultural expenditure (expenditure financed by EAGGF - Guarantee section): New legislative developments contributing to the implementation of Article 280 of the Treaty**

**Have there been any significant new legislative developments contributing to the implementation of Article 280 of the Treaty in 2004? Member States are asked to list only national measures and not those which simply transpose Community legislation.**

**If so, please give a brief description below. Please state whether the measures are general or if they apply to a specific sector of the EAGGF-Guarantee section and which one.**

<b>AT</b>	Amendments to national special guidelines (e.g. Rural development, Environmental program).
<b>EE</b>	The Regulation No 160 of the Government of the Republic of April 29th, 2004 plans the details for cooperation between the paying agency and the control authorities. ( <a href="http://www.riigiteataja.ee/ert/act.jsp?id=803261">http://www.riigiteataja.ee/ert/act.jsp?id=803261</a> )
<b>EL</b>	<p>The following horizontal decisions have come into effect:</p> <p>Joint Ministerial Decision No 324032/24.12.04 “on cross-compliance and other additional measures”;</p> <p>Joint Ministerial Decision No 217838/04.02.2004 “on the setting up of a committee to examine appeals against the outcome of second-level controls carried out by the OPEKEPE on Community aid schemes.”</p> <p>Regarding the payment of aid to beneficiaries under agricultural development measures, the following decisions were adopted and came into effect in 2004:</p> <p>Joint Ministerial Decision No 560/134186/9.12.2004 “on the setting up and formation of a five-member Central Control Committee for the programme on the long-term set aside of agricultural land and of local committees by the Regional General Secretaries of the Prefectures where the programme is implemented;”</p> <p>Joint Ministerial Decision No 12347/568/20.01.04 “on codes of correct agricultural policy;”</p> <p>Joint Ministerial Decision No 567/125316/29.01.04 “on the implementation of Measure 3.1, Organic Farming, under Priority 3 of the agri-environmental measures of the Rural Development Programming Document 2000-2006;”</p> <p>Joint Ministerial Decision No 130492/586/24.08.04 “on the implementation of Measure 3.2, Organic Livestock Farming, under Priority 3 of agri-environmental measures of the Rural Development Programming Document 2000-2006”.</p>

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by the Inspection of the Commercial Quality of Foodstuffs and Agricultural Products and the Customs Service.

<sup>6</sup> The regulation was published in the Journal of Laws No. 04.101.1031 and entered into force on 1 May 2004.

<sup>7</sup> Decision NO. 1/BV of the Minister of Finance, dated 3 February 2004, laying down rules for the exchange of VAT information and data in intracommunity trade.

**1.5. Agricultural expenditure (expenditure financed by EAGGF - Guarantee section): New legislative developments contributing to the implementation of Article 280 of the Treaty**

	<p>Regarding the payment to beneficiaries of animal premiums (beef and sheep meat and goat meat) by the OPEKEPE, the following measures came into effect in 2004:</p> <p>Circular No 47311/07.05.2004 on the procedure for granting aid to beef producers in the 2004 marketing year;</p> <p>Circular No 35030/19.03.2004 on the procedure for granting aid to sheep and goat meat producers in the 2004 marketing year.</p> <p>In the cotton sector, the following decision was put into effect in 2004:</p> <p>Joint Ministerial Decision No 61440/23.09.2004 laying down procedures and controls concerning the Community scheme for payment of aid to cotton producers and guarantee measures, replacing previous Ministerial Decisions and additional measures within the framework of Regulation (EC) No 1591/2001.</p>
	<p>In the olive oil sector, the following decisions were put into effect in 2004:</p> <p>Joint Ministerial Decision No 295530/05.10.2004 “on additional measures for the implementation of the Community aid scheme for olive oil producers;”</p> <p>Ministerial Decision No 322068/28.12.2004 “laying down the documents and procedure for financing work programmes of approved operator organisations in the olive sector, pursuant to Decision No 239789/20.05.2003, as in force for the period 2004/2005.”</p> <p>In the fruit and vegetable processing sector, the following decisions were put into effect in 2004:</p> <p>Joint Ministerial Decision No 322346/28.12.2004 “on the establishment of committees to check the processing of citrus fruits in the 2004-2005 marketing year;”</p> <p>Joint Ministerial Decision No 270060/23.08.2004 “on the delivery for processing of industrial peaches and pears for the period 2004-2005 and beyond;”</p> <p>Joint Ministerial Decision No 252399/03.05.2004 as amended by Decision No 270058/27.08.2004 “on the delivery of citrus fruits to processing units for the marketing year 2004-2005 and beyond”;</p> <p>Joint Ministerial Decision No 252431/21.05.2004 as amended by Decision No 322347/29.12.2004 “on the production and delivery of industrial tomatoes for the period 2004-2005 and beyond.”</p>

<b>1.5. Agricultural expenditure (expenditure financed by EAGGF - Guarantee section): New legislative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>ES</b>	<ul style="list-style-type: none"> <li>- Royal Decree 2128/2004 of 29 October 2004 regulating the Geographic Information System for agricultural parcels  Lays down the rules for the implementation in Spain of the Geographic Information System for agricultural parcels and its use as a management tool in the context of the integrated administration and control system and other area-related aid schemes under the common agricultural policy.</li> <li>- Royal Decree 2320/2004 of 17 December 2004 regulating certain powers in relation to Community economic aid to producer organisations that set up an operational fund  Lays down the criteria for determining the paying agency competent for examining and deciding on applications for Community economic aid submitted by producer organisations that set up an operational fund and sets out the principles that should govern the coordination of such aid and the provision of information thereon to the European Commission.</li> <li>- Royal Decree 2352/2004 of 23 December 2004 on the application of conditionality in relation to direct support schemes under the common agricultural policy  Lays down the rules for good agricultural and environmental condition that farmers have to observe in order to qualify for direct support schemes under the common agricultural policy, in accordance with Council Regulation (EC) No 1782/2003, and establishes a system for the application of controls and reductions in or exclusion from payments in accordance with Commission Regulation (EC) No 796/2004.</li> <li>- Royal Decree 2353/2004 of 23 December 2004 on certain Community aid schemes for agriculture in the 2005/2006 marketing year and for livestock farming in 2005  Lays down the basic rules applicable to the aid schemes established in Title IV of Council Regulation (EC) No 1782/2003 and the bases for the implementation in Spain of the integrated administration and control system with regard to those schemes.</li> </ul>
<b>FR</b>	See point 1.7.
<b>HU</b>	Government Decree No. 92/2004. (IV. 27.) Korm. on the manner in which the measures financed from the Guarantee Section of the Agricultural Orientation and Guarantee Fund of the European Union are financially implemented, accounted for and controlled.

<b>1.5. Agricultural expenditure (expenditure financed by EAGGF - Guarantee section): New legislative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>IT</b>	<p>Legislative decree 99 of 29 March 2004 (enacting provisions governing Administrative simplification in agriculture in relation to harmonising and rationalising inspections and food fraud pursuant to section 18, provided that:</p> <p>MIPAF inspectors performing inspections under Regulation 4045/89 have the status of Judicial Police Officers;</p> <p>the AGEA National Payment Agency may use the services of the Central Fraud Prevention Inspectorate of the Ministry of Agricultural Policies in connection with its inspection work;</p> <p>The Regional Governments are vested with powers to impose administrative penalties for breaches of obligations under Commission Regulation 2366/98 (laying down detailed rules for the application of the system of production aid for olive oil).</p>
<b>LT</b>	<p>Republic of Lithuania Regional Development Act of 20 July 2000 (Official Gazette 2000, No 66-1987, Official Gazette 2002, No 123-5558; Official Gazette 2004, No 116-4324).</p>



<b>1.5. Agricultural expenditure (expenditure financed by EAGGF - Guarantee section): New legislative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>LV</b>	Memorandum of understanding between the State Revenue Service of the Republic of Latvia and Tax and Customs Board of the Republic of Estonia concerning the co-operation in combating financial and other offences under the competencies of the mentioned institutions was signed and entered into force on 8 October 2004 and defines the co-operation between the Financial Police Department of the State Revenue Service of the Republic of Latvia and Offence Investigation Division of the Tax and Customs Board of the Republic of Estonia.
<b>PL</b>	<p>Art. 13, 13a and 14 of the Act on the Agricultural Market Agency and certain agricultural markets (Journal of Laws No. 42, item 386 as amended), regulate rules for the determination and recovery of debts payable to the Guarantee Section of the European Agricultural Guidance and Guarantee Fund, as well as establishes measures for the deduction from sums payable to beneficiaries by the fund, of wrongly paid undue or excessive amounts received by the debtor. For that purpose, the Act authorises the President of the Agricultural Market Agency to determine, by means of an administrative decision, undue or excessive amounts wrongly paid from the Guarantee Section of the European Agricultural Guidance and Guarantee Fund for Common Agricultural Policy implementation.</p> <p>Where an amount is found undue or paid in excess, then the amount is considered to constitute tax liability and its payment is enforced under administrative law enforcement procedures.</p> <p>An important aspect of the Act concerning the full recovery of undue or excessive sums wrongly paid is that the Act excludes the application of provisions otherwise allowing a tax authority to remit, defer or agree payment by instalments of debts.</p> <p>Where a payment of undue or excessive amounts was effected under a civil law contract, the repayment of these amounts will be claimed in a civil action at court.</p> <p>On 1 May 2004, the Customs Law of 19 March 2004 entered into force (Journal of Laws No. 04.68.622). The Law provides regulations complementary to the Community's legislation concerning the importation of goods to the Community's customs area and the exportation of goods from the Community's customs area, including rules for handling goods covered by the Common Agricultural Policy.</p> <p>Pursuant to Art. 96 of the Customs Law, the Minister of Finance issued a regulation laying down patterns of documents to be used in the trade in goods covered by the Common Agricultural Policy and rules for handling these goods by the Customs Service. The regulation provides patterns of documents to be used in the trade in goods covered by the Common Agricultural Policy and the proper rules applicable to goods covered by the system of refunds.</p> <p>The duties of the special department set forth in the Council Regulation (EEC) No 4045/89 are performed by Bureau for International Treasury Relations<sup>8</sup>.</p>

<sup>8</sup> In order to ensure effective and swift co-operation between services controlling expenditures financed from the Guarantee Section of the European Agricultural Guidance and Guarantee Fund, on 1 April 2004, an agreement was concluded between the Minister of Finance and the Minister of Agriculture and Rural Development. The agreement lays down rules of co-operation between services subordinated to the Minister of Finance (i.e. Combating Frauds against the Republic of Poland or the European Union) and the Minister of Agriculture and Rural Development (i.e. the Intervention Expenses Inspection Office).

**1.5. Agricultural expenditure (expenditure financed by EAGGF - Guarantee section): New legislative developments contributing to the implementation of Article 280 of the Treaty**

**PT**

In the wine sector:

Decree-Law No 212/2004 of 23 August 2004 establishes the institutional structure of the wine sector and regulates the accreditation and protection of the respective labels indicating origin and geographic provenance, as well as their verification, certification and use. It also lays down the regulatory framework governing the bodies that certify wine products;

Decree-Law No 213/2004 of 23 August 2004 establishes the regulatory framework applicable to infringements, which relates to non-compliance with the legal provisions on wine products and the production of, trade in, processing and transport of wines and wine products, and the activities developed in this sector.

In the field of rural development:

Decree-Law No 64/2004 of 22 March 2004 lays down the general rules implementing the Rural Development Plan (RURIS) for the period up to 2006;

Decree No 680/2004 of 19 June 2004 lays down the regulations implementing the Rural Development Plan's initiative for the afforestation of farmland;

Decree No 360/2004 of 7 April 2004 concerning the rules for the implementation of the Rural Development Plan's agri-environmental measures. This Decree amends Decree No 1212/2003 of 7 April 2003.

**1.6. Structural actions: New legislative developments contributing to the implementation of Article 280 of the Treaty**

**Have there been any significant new legislative developments contributing to the implementation of Article 280 of the Treaty in 2004? Member States are asked to list only national measures and not those which simply transpose Community legislation.**

**If so, please give a brief description below. Please state whether the measures are general or if they apply to a specific Structural Fund and, if so, which one.**

<b>1.6. Structural actions: New legislative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>DK</b>	<p><u>ESF</u></p> <p>The National Agency for Enterprise and Construction has issued two new orders regarding Act No 254 of 12 April 2000 on the administration of grants from the European Social Fund which entered into force on 1 January 2005: Order No 1327 of 14 December 2004 concerning responsibilities and the division of powers, etc., in connection with the administration of grants from the European Social Fund and Order No 1328 of 14 December 2004 on grants from the European Social Fund. These two Orders replace Order No 132 of 1 March 2001 concerning responsibilities and the division of powers, etc., in connection with the administration of grants from the European Social Fund and Order No 133 of 1 March 2001 on grants from the European Social Fund. The amendments relating to monitoring and control clarify the project administration's responsibilities for reporting irregularities under Commission Regulation (EC) No 1681/94.</p> <p>In October 2004 the National Agency for Enterprise and Construction issued guidelines to all project administrators regarding the forwarding of quarterly reports to OLAF.</p>
<b>EE</b>	<p>Structural Assistance Act</p> <p>Regulation of the Minister of Finance "Procedure for Financial Reporting of Implementation of Structural Assistance"</p> <p>Regulation of the Minister of Finance "Rules on Recovery and Repayment of Structural Assistance"</p> <p>Regulation of the Minister of Finance "Procedure for Submission of Structural Assistance Audit and Declaration on the Winding-Up of Assistance"</p>

**1.6. Structural actions: New legislative developments contributing to the implementation of Article 280 of the Treaty**

**EL**

Circular of 8 April 2004 on the implementation of the National Fiscal Corrections System in accordance with the provisions of Law 2860/2000 and Joint Ministerial Decision No 907/0052/2.7.2003. The aim of the Circular is to clarify and standardise the procedures to be applied by all the parties involved in completing the control procedure and following up the outcome. The procedures include issuing decisions, establishing undue or unlawful payments, recovery, return to the state treasury and fiscal corrections following controls by Community control bodies;

Amendment No 2/5709/0004/30.1.2004: “Amendment of Ministerial Decision No 2/4248/0004/24.1.2001 on the distribution of tasks among the Directorates for (a) Programming and Controls and (b) Studies and Evaluation of the Ministry of Economic Affairs and Finance (General State Accounting Office).” Under the above amendment the tasks of the two Directorates have been redistributed by section, and two new sections have been set up to deal with the programming and control of the Cohesion Fund and Community Initiatives respectively;

Joint Ministerial decision No 320752/17040/15.12.04 “on the recovery of unduly or unlawfully paid amounts from national resources or resources of the European Union with respect to implementation of programmes under the Community Support Framework for the 2000-2006 programming period;”

Decision No 3824/9.9.2004 of the Minister of Rural Development & Food: “Amendment of and supplement to Decision No 430/03 laying down detailed implementing rules for the Leader Plus Community Initiative, as amended by Decisions Nos 1222/03 and 4993/03.”

<b>1.6. Structural actions: New legislative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>FI</b>	<p>The Act on the Administration of Structural Fund Programmes at National Level (1353/1999, amendments 1286/2000, 115/2003 and 1033/2003) was amended by Law 590/2004 as follows:</p> <p>Section 35 of the Act on the Administration of Structural Fund Programmes at National Level was amended by adding paragraph 2 regarding the delegation of powers in the administrative sector of the Ministry of Social Affairs and Health.</p> <p>At the same time the new paragraph 1 on the transfer of powers in the administrative sector of the Ministry of Education was amended in such a way that the provisions specify those authorities to which the Ministry of Education may transfer some of its powers. Furthermore, the provision stipulates that transfer of powers is to be enacted by a Decree of the Ministry.</p> <p>The amendment came into force on 1 July 2004.</p> <p>Act on the Regional Self-Government Experiment in Kainuu (343/2003)</p> <p>The province takes the decisions allocating EC structural fund resources and the corresponding national funding to their intended uses as well as allocating the national development funding (which is important for the province and involves expediency consideration) for the uses stipulated in the legislation. The central government bodies that used to decide on the allocation of the funds in question deal with the release of funds in accordance with the decisions of the province. In the State budget, the funding significant for the development of Kainuu is brought together under a single heading.</p> <p>The law came into force on 1 June 2003 and the self-government experiment started on 1 January 2005.</p> <p>Law on the Services for the Development of Skills in SMEs (971/2004)</p> <p>The law governs the funding contribution of enterprises in those services for the development of skills in SMEs that are based on a mandate by the Ministry of Trade or an Employment and Economic Development Centre.</p>
<b>FR</b>	<p>Article 33-I of Act No 2004-204 of 9 March 2004. The remit of the SNDJ, defined in Article 28(1) of the Code of Criminal Procedure, has been broadened so that from now on customs officers can record offences connected with Structural Funds.</p>
<b>HU</b>	<p>The development of the implementation system of the Structural Funds and the Cohesion Fund has reached its final phase. It is fundamentally regulated by the implementing decrees (Government Decree No. 360/2004. (XII. 26.) Korm. See point 1.2 a).</p>

<b>1.6. Structural actions: New legislative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>IT</b>	<p>Legislative decree 124 of 23 April 2004, published in the Official Gazette of the Italian Republic, Serie generale, no. 112 of 12/05/2004 lay down general provisions to rationalise inspection functions in relation to social security and labour law; article 6(2) provided that inspectors working with the Regional and Provincial Work Directorates were also vested with judicial police powers when performing their duties under current legislation; article 7 defined the supervisory duties vested in these inspectors, while article 10(5) defined the evidential value of reports drawn up by inspectors in relation to facts ascertained and documented.</p> <p>Section 1(82) of Law n°311 of 30 December 2004 (Provisions governing the drafting of the annual and longer-term state budgets), published in the Official Gazette of the Italian Republic, Serie Generale, no. 306 of 31/12/2004, Ordinary Supplement no. 192, provided that in relation to basic and advanced vocational training courses, the employment of workers and the use of tax reliefs, for the purposes of pre-empting and preventing the risk of the illegal use of public funds (from central government, other public entities or from the European Union) all the entities and companies in receipt of such public funding were required, by no later than 31 October 2005, to adopt specific organizational and operational measures approved by Istituto per lo Sviluppo della Formazione Professionale dei Lavoratori (ISFOL) to prevent the risk of any legal act being committed to their advantage; when these measures are adopted, notification must be given to the Regional Financial Coordination Committee so that appropriate inspections can be conducted into the parties that have failed to adopt such measures. This provision has been cancelled before its implementation by Art.4(1) of the legislative decree n° 35 of 2005.</p>
<b>LT</b>	<p>Government Resolution No 1166 of 1 September 2003 amending Resolution No 649 of the Government of the Republic of Lithuania of 31 May 2001 apportioning responsibility among State authorities for the implementation in Lithuania of support from the European Union's Structural Funds (Official Gazette 2001, 48-1676; Official Gazette 2003, 88-3999). This Resolution contains provisions to the effect that managing and paying authorities and intermediate and implementing bodies are to notify the FNTT if they find there are serious irregularities concerning the use of EU Structural Funds and co-financing funds or if they receive information about such irregularities.</p>
<b>LV</b>	<p>Republic of Latvia Cabinet Regulation No 200 Adopted 30 March 2004 Regulations regarding Management of European Union Structural Funds. According to the Regulation detailed instructions and requirements adopted by Managing authority for the parties involved in the management of the Structural Funds and the rights and duties thereof.</p> <p>Republic of Latvia Cabinet Regulation No 277 Adopted 16 December 2003 Procedures by which Funds in the State Budget for the Implementation of Projects Financed by Structural Funds of the European Union shall be Planned and by which Payments shall be Transferred. And the amendments with Cabinet regulation No 824 adopted on 30 September 2004 and Cabinet regulation No 578 adopted on 06 July 2004.</p>

<b>1.6. Structural actions: New legislative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>MT</b>	<p>The Managing Authority takes due responsibility in terms of financial management and control in the course of programming and implementing EU Structural Funds Programme, as also, in the monitoring of projects that have been approved for funding.</p> <p>Chapter 174 of the Laws of Malta relating to Financial Administration and Audit Act, as amended by Act I of 2004, regulates the receipt, control and disbursement of public moneys (This includes money that government pays out or disburses from funds received from the EU). It also provides for the audit of accounts in relation to public money. Part X of the Act titled 'Audit and Inspection' identifies measures to be followed to counter fraud and irregularities. This Act applies to Public Money in general and does not relate to specific structural funds.</p>
<b>PL</b>	<p>On 7 June 2004, Act on the National Development Plan of 20 April 2004 entered into force<sup>9</sup>. The Act regulates procedures for the development of the National Development Plan, the financing, monitoring, reporting and control of the implementation of the Plan as well as the assessment of the effectiveness of the Plan.</p> <p>In order to monitor and scrutinise the application of structural funds, the Act establishes national monitoring and control units<sup>10</sup> for the European Regional Development Fund, the European Social Fund, the European Agricultural Guidance and Guarantee Fund, Guidance Section, and the Financial Support Instrument for Fisheries.</p> <ul style="list-style-type: none"> <li>- The responsibilities of national monitoring and control units include:</li> <li>- Monitoring and control the eligibility of expenditures under each structural fund,</li> <li>- Collecting of data and monitoring of expenditures under each structural fund,</li> <li>- Control of compliance with rules for and the systems of the application of structural funds,</li> <li>- Co-operation in planning and carrying out extended treasury controls covering 5% of the total amount of eligible expenses prior to the completion of operational programmes co-financed from structural funds.</li> </ul> <p>The aforementioned units are a part of the offices of ministers competent in regional development, labour, agriculture and rural development.</p>

<sup>9</sup> Art. 55 of the Act provides that where an irregularity is found in the appropriation of financial means by a beneficiary, the beneficiary shall forthwith return the whole sum of assistance he received (or an appropriate part thereof) along with interest accrued thereon at a rate from time to time applicable to tax arrears. The regulation shows that Poland applies measures for recovery of Community funds as rigorous as those applied to the recovery of domestic dues. According to the mode in which assistance was awarded, the recovery procedure is carried out in the course of a civil action

<sup>10</sup> The bodies act independently from control and scrutiny procedures carried out by treasury control units under the provisions of art. 10 and art. 15 of Commission Regulation (EC) No 438/2001.

**1.7. Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty**

**The Member State is asked to list any administrative measures, not referred to in points 1.1 to 1.4, which it regards as significant.**

**The Member State is asked to state whether the measures are general in scope or whether they concern a specific sector and, if appropriate, to provide a brief description of the measures.**

<b>BE</b>	<p>- Circular C.D. 810.22 – D.C. 25.000 of 5 July 2004, “Notification of serious fraud and irregularities – Separate B account”, informed local departments of standard procedures for recording cases of fraud and irregularities relating to the collection of traditional own resources in the Ownres web system made available to the Member States by the Commission. - ESF (European Social Fund): new manual setting out its procedures. Available to all partners via the website at <a href="http://www.esf-agentschap.be">www.esf-agentschap.be</a> or <a href="http://www.fse.be">www.fse.be</a></p> <p>Change of name for the coordinating body for EAGGF Guarantee Section paying agencies with effect from 17/12/2004,:</p> <p>FPS Economic Affairs, SMEs, Self-employed and Energy</p> <p>Economic Potential</p> <p>Federal Agriculture Unit (previously Agricultural Policy Funding Department)</p> <p>-Also a change in the terms of reference:</p> <p>Multidisciplinary Anti-Fraud Unit for the Safety of the Food Chain</p> <p>Chair: National Investigation Unit</p>
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	<p>- In the Walloon region, coordination between five departments responsible for auditing and inspecting the Structural Funds was set up in 2004 :</p> <p>The aim is to pool information on timetables for on-the-spot inspections on an internet site (FTP), in order to avoid duplication and overlap between the checks carried out by these five departments. A cooperation agreement has been signed and four meetings were held in 2004.</p>
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<b>1.7. Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty</b>	
	<p>As regards the EAGGF Guidance Section, the management and control systems have been improved in response to the Commission's comments during the audit mission of September 2003. The main improvements are as follows:</p> <p>introduction and implementation of a procedure for on-the-spot inspections for aid schemes;</p> <p>introduction and implementation of a procedure for drawing up expenditure declarations;</p> <p>accounting system for amounts recovered;</p> <p>recruitment of extra staff to the internal audit department (Article 9 of Regulation No 438/2001);</p> <p>Separation of functions of paying authority and authorising officer.</p> <p>As regards the FIFG (Financial instrument for fisheries guidance), action has been taken in response to the Commission's comments during the audit mission in March 2004. A general outline has been produced of the management and control system for the measure co-financed by the FIFG as part of the phasing out of Objective I.</p> <p>The procedures for examining dossiers and liquidation have been clarified and improved, particularly at the level of verifying expenditure and on-the-spot checks (ensuring a full audit trail) and informing operators of their rights and obligations.</p>
	<p>A federal policy memorandum on prevention and integrity is being prepared. The aim is to create a basis for preventing conflicts of interest, fraud and corruption.</p> <p>The introduction of internal audit procedures (Royal Decree of 26 May 2002 on the system of internal audit within federal public services) will be evaluated by the internal audit authority (Royal Decree of 2 October 2002 on internal audit within federal public services).</p> <p>The department will have a key role in the management control activities organised by the federal public services.</p>
<b>CY</b>	<p>The relevant departments gave instructions in the form of circulars on how to improve implementation of the legislation and regulations in this area.</p>

**1.7. Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty**

**CZ**

The Central Harmonisation Unit for Financial Control in the Finance Ministry has issued a series of instructions and methodology for implementing financial control, conducting internal and financial audits and for the declaration of irregularities etc. In particular these instructions include:

Instruction for the uniform application of procedural rules in carrying out public administrative on-the-spot controls and implementing subsequent measures connected with those controls.

Instruction for the uniform application of mandatory rules and recommendation for the performance of internal audits in public administrative bodies.

Instruction governing the methodology for carrying out financial audits in the public administration.

Instruction governing the methodology for selecting samples to check the correctness of operations when carrying out financial controls in the public administration.

Methodological aid containing an explanation of the concepts, and the bases and instructions for the declaration of established irregularities in connection with the CPPO and the European Anti-Fraud Office (OLAF).

Instruction for the uniform application of mandatory rules and recommendation for the risk management system in public administrative bodies.

Instruction for the uniform conduct of controls on a sample of operations and projects under the Structural Funds and the Cohesion Fund.

Instruction for drawing up a plan of action on the form of internal audit on the basis of risk analysis for the Structural Funds and the Cohesion Fund.

Methodological aid to ensure the functioning of the internal control system in the public administration (management control in the context of financial procedures).

Instruction for public administrative control of the handling of Phare resources made available to the Czech Republic.

Instruction governing the method for declaring irregularities established in connection with implementation of the Structural Funds and the Cohesion Fund to the European Anti-Fraud Office (OLAF).

Instruction on the procedure for drawing up declarations on the winding-up of assistance from the Structural Funds and declarations on the winding-up of projects under the Cohesion Fund.

Instruction governing the system of reporting activities in respect of the Structural Funds and the Cohesion Fund.

<b>1.7. Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>DE</b>	<p>A number of Länder have taken the following measures:</p> <p>They are monitoring the implementation of recommendations made in the mid-term evaluation.</p> <p>Further guidelines and procedural tips have been produced and distributed to those participating in the programme.</p> <p>Saxony has produced a manual on ERDF aid for 2000-06</p> <p>Operational programme on Structural Funds aid. Description of the administrative and control system in accordance with Article 5 of Regulation (EC) No 438/2001</p> <p>Instructions for the conduct of on-the-spot checks under Article 4 of Regulation (EC) No 438/2001 concerning rural development measures.</p> <p>They have updated their administrative and control systems</p> <p>Guidelines for random checks under Articles 10–12 of Regulation (EC) No 438/2001</p>
<b>EL</b>	<p>Order T984/79/A0019 27.2.2004 of the Ministry of Economic Affairs and Finance governs the procedure for internal controls carried out by the customs authorities. Customs must give priority to improving controls on fraud and identify, develop and implement best working practices, especially with regard to post-clearance audit, risk analysis and simplification of procedures. The internal audit for customs must be aimed at safeguarding Community and national resources, evaluating the results of procedures and rectifying any irregularity found.</p> <p>Order E2421/874/A0034 27/7/2004 of the Ministry of Economic Affairs and Finance revises and supplements the guidelines to Customs on how to fill in and submit forms on fraud against Community traditional own resources involving amounts over €10 000 (Article 6 of Regulation No 1150/2000). Customs are reminded that fraud forms must be filled in on time and updated and the corresponding data entered in the B account.</p> <p>OPEKEPE Guide No 942/5.01.04 on the programme of second-level checks on beneficiaries and supervision checks by the prefectural authorities for 2004”.</p>

<b>1.7. Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>ES</b>	<p>In 2005 the State Tax Administration Agency is going to develop a new programme to tackle intra Community VAT fraud. The programme involves devising a coordinated control strategy for all areas exposed to fraud, to be steered by the National Fraud Investigation Office (Oficina Nacional de Investigación del Fraude – ONIF) and covering both prevention and repression. Preventive action will be aimed at controlling access for economic operators to the Register of Intra Community Operators in order to prevent entry by operators that do not have the necessary economic structure for carrying out genuine intra Community commercial transactions. This control will be backed up by monitoring of operators already included in the Register with a view to proposing the removal therefrom, as a precautionary measure, of operators that do not meet the qualifying conditions. Repressive measures will be aimed at regularising and monitoring operators that are involved in suspected fraud schemes and are receiving VAT refunds. In carrying out these measures, the instructions issued by ONIF will be carried out by the different regional and local units, which will identify the coordinator of the fraud scheme as the main target for control measures in each case.</p> <p>Alongside the above intra Community VAT fraud schemes, the Tax Inspection Plan for 2005 also provides for coordinated measures to combat the use of false invoices, which normally arise under the special flat rate scheme.</p> <p>Lastly, in the area of checks on requests for VAT refunds, in addition to the traditional monitoring of newly created economic operators and operators that have apparently made large investments, the Inspection Plan for 2005 innovates by introducing new information technologies that enable controls to be targeted at operators which, on the basis of their track record and information in the possession of the authorities, display a certain tax risk profile, irrespective of the content of the specific declaration presented. The aim is for the Tax Inspectorate to focus its efforts on operators with the highest risk profiles by subjecting them to more intensive checks as a deterrent to fraud.</p>
<b>FI</b>	<p>The Internal Control and Risk Management Board includes an Internal Audit Division with representatives from Ministries and central agencies. The division drafts proposals for developing central government internal audit and risk management procedures.</p> <p>Under Interreg IIIA a special agreement has been concluded between the participants to settle issues and responsibilities concerning recovery. This provides improved protection for the financial interests in question.</p>

<b>1.7. Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>FR</b>	<p>Reforming the administrative organisation to facilitate the implementation of the new CAP</p> <p>Paying offices have started to be grouped by area, and a single payment agency is expected to be established by 2007. The ONIC, ONIOL and FIRS offices are run by the same Director General and the administrative, IT and inspection services have been merged. OFIVAL and ONILAT have the same Director, as do ONIVINS and ONIFLHOR. It is also expected that the offices will be moved to one site in 2007.</p> <p>As a forerunner to the single paying agency, the aid management mission (mission de gestion des aides, MGA) which, as delegated bodies of the paying agencies, coordinated the work of the departmental directorates for agriculture and forestry, has been affiliated to the ONIC (by creating a funding investigation department) in order to strengthen the links with the office's monitoring and aid payment departments and pool human and IT resources.</p> <p>The economic and international policies directorate has also strengthened its function of fixing rules and following up implementation by the funding investigation department affiliated to the ONIC. It also set up an office for direct aid to negotiate application of the CAP reform, consult with professional representatives and prepare instructions on decoupling, conditionality and single payment rights.</p> <p>Lastly, in order to implement the conditionality of aid which was introduced by the CAP reforms, the departmental directorates for agriculture and forestry's role as a single point of contact has been reinforced. The directorates are not only the one place where requests may be filed, but are also where the checks on several types of aid granted under the first and second pillars are coordinated, and where the results of the checks carried out by the various monitoring bodies chosen by the Ministry are collected. Coordinating and gathering the results of these checks should make the procedures and cross-checking more reliable.</p>
	<p>Agreements were signed between the paying agencies and the Ministry for Agriculture in 2004. The purpose of these agreements is to define the duties which the paying agencies delegate to the Ministry's decentralised departments in the context of managing and monitoring aid, in accordance with Commission Regulation (EC) No 1663/95, and the conditions for monitoring the delegation process. These documents clarify the role and responsibilities of each party at every stage of the procedure, particularly in terms of monitoring.</p> <p>Two circulars concerning on-the-spot checks on direct milk aid (aide directe laitière, ADL) have been adopted, making it obligatory to check 2% of all milk producers requesting ADL. Another circular organises on-the-spot checks on the activity of milk producers who supply and sell direct, in order to ensure they comply with rules on the control of milk production. 1% of producers who supply and 5% of those who sell direct must be monitored. These checks were implemented during the 2004-05 milk year (from 1 April 2004 to 31 March 2005). The process for selecting the farmers checked combined a random method and risk analysis.</p>

	<p><b>1.7. Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty</b></p>
	<p>Specific operations concerning rural development</p> <p>The IT program “RDR checks” was brought in at the end of 2004 in the Ministry’s services decentralised at departmental level (Departmental Directorates for Agriculture and Forestry) and which became operational in early 2005, will make it possible to automate, trace and increase the reliability of administrative checks (especially cross-checks and on-the-spot visits) as well as the selection of visits and on-the-spot checks. Furthermore, tackling this by funding group will help to make the checking system more consistent.</p> <p>The number of officers (full time equivalents) at the national centre for the development of farming structures (centre national pour l’aménagement des structures des exploitations agricoles, CNASEA) assigned to on-the-spot checks for RDR measures rose from 48 in 2003 to 72 by 31 December 2004, enabling these checks to be carried out more efficiently.</p> <p>It should also be pointed out that the amount of training given to officers whose work involves the procedures for managing and monitoring rural development aid, both in decentralised services and the CNASEA, was stepped up considerably during 2004.</p> <p>Some training is general in scope, such as that given to RDR resource personnel (organised as a network within the decentralised departments), the aim of which is to afford an overview of rural development, particularly including aspects relating to checks. Other training is more technical or specific, such as IT training in “RDR checks”. In addition, training has been carried out within the CNSEA in the use of GPS/measurements. All this training helps to improve the quality and effectiveness of the checks made.</p>
<p><b>HU</b></p>	<p>An IT system supporting the implementation of the supports from the Structural Funds and the Cohesion Fund is being elaborated; its finalisation is still in progress.</p> <p>In addition to facilitating the fulfilment of the reporting obligation prescribed in law by the European Commission, the tasks performed by the Standard Monitoring Information System (EMIR) also include an important function in contributing an up-to-date and complex IT system to the scheduled, regular and transparent utilisation of Community funds.</p> <p>The use of EMIR – unlike in the case of the previous systems – is not separated from the processing of programmes and projects, i.e. from the day-to-day activities of the persons engaged in processing. It is easy to see that the recording of data concerning programmes and projects in the system is not a task in addition to the implementation activities; instead, this is implementation itself.</p> <p>Making decisions on supports, concluding contracts and making disbursements without recording them in the EMIR system is against the law; it increases the risk of irregularities and is therefore not permitted.</p>

<b>1.7.</b>	<b>Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty</b>
<b>IE</b>	<p>The Tender Competition for the acquisition of a Mobile Container Scanner (referred to in last year's report) was concluded in 2004 when the winning tender was selected. This culminated in a contract being signed on 15 December 2004 for the supply of a Mobile Container Scanner which is due to be delivered in October 2005. The deployment of this scanner is expected to significantly improve the effectiveness of the Irish Customs Service to detect smuggling in maritime traffic arriving at all Irish Ports, including traffic from 3<sup>rd</sup> countries.</p> <p>Responsibility for Forestry Policy, including the administration of the Afforestation Scheme of the CAP Rural Development Plan co-financed from the EAGGF Guarantee Fund and forestry structural measures co-financed from the EAGGF Guidance fund, was transferred from the Department of Communications, Marine &amp; Natural Resources to the Department of Agriculture &amp; Food with effect from 1 January 2004. Department of Agriculture &amp; Food became the Paying Agency for these measures from 1 January 2004.</p> <p>The ESF Financial Control Unit recruited 2 auditors in the latter part of 2004 bringing the current staff numbers back up to 4 professional Controllers/Auditors.</p>
<b>IT</b>	<p>The Valle d'Aosta Regional Government issued resolution no. 956 of 5 April 2004, laying down the procedures for applying Regulation (EC) 1681/94 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organisation of an information system in this field to the procedures for implementing programmes relating to the Valle d'Aosta region for the period 2000/06.</p> <p>In 2004, the Valle d'Aosta Regional Government adopted two resolutions relating to the adjustment of Regional directives for the management of activities cofinanced by the European Social Fund Objective 3.</p> <p>In the Emilia-Romagna Region, 'Provinces' and 'Mountain Communities' are the entities delegated by AGREA to take administrative action to ascertain the illegal use of funds provided under Regulation (EC) 1257/99, such that there is now one single body responsible for recovering illegally obtained funds and for imposing the administrative penalties provided by Law 898/1986.</p>
	<p>L'AVEPA – the Veneto Region Payment Agency – has computerised the “Procedure to recover unlawfully obtained funds”, adopted by ‘Decreto Direttoriale’ 201/2003, to govern the recovery of illegally obtained funds, coordinating the provisions of art. 49 of Reg. (EC) 2419/2001 (laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92) with the provisions of law 241/1990 ( new provisions governing administrative procedures and the right of access to administrative documents).</p> <p>It also introduced provisions governing the suspension of payments pursuant to Legislative Decree 228/2001 (Orientation and modernisation of the agriculture sector, pursuant to section 7 of law 57 of 5 March 2001) and the law 898/1986, and contacts have been made with the Tax Collection franchisees, for the enforced recovery by the Agency of illegally obtained funds.</p>

<b>1.7. Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty</b>	
<b>LT</b>	The EU Structural Funds management and monitoring information system established in 2004 - a computerised information system administered by the Ministry of Financial Affairs and used to gather and store statistical and financial data relating to the implementation of the joint programming document and the use of EU Structural Funds and joint financial resources.
<b>LV</b>	<p>In November the Parliament has approved in the second reading amendments to the Law on Corruption Prevention and Combating Bureau. Amendments provide independence of the Bureau and restrictions to interfere in activities carried out by the Bureau implementing its functions. At present the Bureau is an institution of state administration under the supervision of Cabinet of Ministers.</p> <p>The Bureau was a recipient of a part of Third Programmatic Structural Adjustment Loan Grant awarded for building the capacity of the Bureau. The overall objective of the project was to provide assistance in strengthening the institutional capacity of the Bureau, including assignments in organizational management, prevention and enforcement matters. Drafting report advising on management structure was one of the tasks to be undertaken by expert in organizational management.</p> <p>All vacancies at management level have been filled up. On 27 May the Director of the Bureau was appointed by the Parliament for a term of 5 years. According to provisions of the National Programme for Corruption Prevention and Combating for 2004-2008 state institutions have to introduce internal anti-corruption activities, including elaboration of anti-corruption plans. That includes following directions of activities: prevention of conflict of interest for state officials in the respective state and local government organisations; introduction of stricter criteria for personnel selection; introduction of efficient internal control mechanisms with particular attention to activities of the courts, the Prosecutor's Office and the Police; strengthening observance of values of ethics in public administration in general.</p>
	<p>On 19 May 2004 at the Legal Department of the National Customs Board (NCB) of the State Revenue Service (hereinafter – the SRS) the Customs Debt Recovery Unit was established. The ultimate aim of establishment of the mentioned unit is to ensure the recovery of delayed customs payments and other payments administrated by other customs offices according to the law On Taxes and Fees. Among the responsibilities of the unit are the following: processing of applications submitted by persons or entities on distribution of stated tax debt calculated for payment to the budget in several payments or even cancellation. The responsibility of the unit is also the functional management of recovery structural units of the regional customs offices of the SRS.</p> <p>In May 2004 the reorganisation of the Enforcement Division of the National Customs Board and Customs Criminal Board of the SRS was initiated, where the Customs Criminal Board of the SRS took over the functions and resources of Information Verification Subdivision, Information System Support Subdivision, Drug Enforcement Subdivision and Intelligence Subdivision of the Enforcement Division of the National Customs Board of the SRS. In the end of 2004 regional local offices of the Customs Criminal Board of the SRS were established by taking over part of resources of Enforcement Divisions of Customs Boards of the SRS regional offices. It is planned that in the result of the reorganisation the customs capacity in respect to combating drugs will increase as well as the detection, disclosure and prevention of customs violations to be fined applying administrative or criminal punishment.</p>



**1.7. Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty**

**MT**

The Managing Authority has drafted a Manual of Procedure, available to the public, online. It has been designed as a guide to all key players involved in the management and implementation of Malta's Single Programming Document 2004-2006. This Manual of Procedures comprehensively addresses issues relating to:

- a) The roles and responsibilities of all entities involved;
- b) Compliance with Community Policies;
- c) Programming Procedures;
- d) Aid Schemes;
- e) Technical Assistance;
- f) Contracting;
- g) Monitoring;
- h) Reporting;
- i) Evaluation;
- j) Financial Management and Payments;
- k) Drawdown of Funds from the European Commission;
- l) Audit and Control;
- m) Reporting of Irregularities;
- n) Retention of Documents;
- o) Communication;
- p) Delegation of Authority.

<b>1.7.</b>	<b>Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty</b>
	<p>Moreover, four 4-day seminars were organized by the Staff Development Organisation, Office of the Prime Minister and the Planning and Priorities Co-ordination Division during the summer months, 2004. These seminars gave a short introduction into the main issues of implementation of EU Structural Funds in Malta. Attendees consisted of the main stakeholders of implementation, namely Project Leaders, EU Affairs Directors and Fund Managers. The four main pillars of the seminar were:</p> <ul style="list-style-type: none"> <li>i) Compliance with Community Policies;</li> <li>ii) Publicity;</li> <li>iii) Audit and Monitoring;</li> <li>iv) Payments and Financial Control.</li> </ul> <p>The issue of financial control and auditing in terms of preventing, detecting and reporting irregularities, as well as carrying out the appropriate financial corrections to correct such irregularities, was given importance throughout.</p> <p>Furthermore, the Managing Authority has one full-time officer, working solely on issues relating to financial control, as per article 4 of EC Regulation 438/2001.</p>
<b>NL</b>	<p>In 2004 additional administrative measures were taken which are important for protecting the financial interests of the Community and the Netherlands against irregularities involving ESF resources. These measures are particularly aimed at preventing irregularities and promoting the correct use of ESF resources. They fall into three categories: information and support, inspection and dealing with cases.</p> <p>In the area of information and support, measures included issuing a revised guide for the administration of subsidised projects, organising meetings with applicants, administrative offices and project accountants, constantly briefing all those involved on the correct use of ESF resources via newspapers and the internet, setting up support centres for specific groups of applicants and expanding the training for staff of the SZW Agency.</p> <p>In the area of administrative inspection, the instruments for dealing with applications have been expanded with the addition of specific inspection points for applications submitted with retroactive force.</p> <p>There were no changes in the administrative or criminal law procedures for dealing with irregularities in 2004. Where irregularities are detected the subsidy is refused and excess payments in the form of advances are recovered. Where appropriate, the SZW Agency reports any suspicions of criminal offences and the Social Intelligence and Investigation Department (SIOD), under the authority of the Public Prosecutor's Office, carries out an investigation with a view to a prosecution under criminal law.</p>

**1.7. Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty**

**PL** Decision No. 9 of the Chairman of the Multidisciplinary Team for Combating Frauds against the Republic of Poland or the European Union, dated 28 June 2004, established the Multidisciplinary Working Group for co-operation of government administration bodies in protecting financial interests of the Republic of Poland and the European Union on the external EU borders.

The Minister of Economy and Labour issued a number of regulations laying down patterns of contracts for co-financing projects from structural funds. Following advice from the Bureau for International Treasury Relations of the Ministry of Finance and the Multidisciplinary Working Group for counteracting irregularities in the use of EU funds, clauses extending the protection of Community's public means were incorporated into these contracts, including clauses establishing legal instruments securing the recovery of funds as well as requiring consent of natural persons to process their personal data, etc.

Following an initiative of the Bureau for the International Treasury Relations, a new position of a co-ordinator was established within the organisation scheme of the Police Headquarters (units for fighting against economic crime, corruption and the economic section of the Central Investigation Bureau). The co-ordinator's responsibility is to co-ordinate actions related to events in which irregularities of criminal nature detrimental to financial interests of the European Union or the Republic of Poland may be reasonably suspected. The Police Headquarters in co-operation with the Bureau for the International Treasury Relations developed and published a guide-book with directory and background information for police officers: "Financial Support from the European Union and Irregularities in that Field".

Pursuant to Orders No. 852 and 853 issued by the Police Chief Commander on 31 March 2004, two police officers were assigned to serve at the Bureau for the International Treasury Relations for a period of three years. They are specialists in combating economic crime. Their primary responsibility is to conduct actions (administrative investigations) related to the protection of financial interests of the European Union or the Republic of Poland, as well as interdepartmental co-operation in these matters.

Pursuant to Decision No. 7/2004 of 24 May 2004 and Decision No. 10/2004 of 31 August 2004 of the Chairman of the Multidisciplinary Team for Combating Frauds against the Republic of Poland or the European Union, establishing – at the Multidisciplinary Working Group for counteracting irregularities in the use of EU funds – the Task Group for implementing and monitoring the application of Regulation (EEC) No 4045/89 in Poland was appointed. The group is composed of the representatives of the Ministry of Finance, Ministry of Agriculture and Rural Development, General Inspection of the Commercial Quality of Foodstuffs and Agricultural Products. In the course of works of the Team, a draft document "A system for communicating irregularities in the application of funds from the Guarantee Section of the European Agricultural Guidance and Guarantee Fund".

Acting on the basis of the Statute of the General Inspection of the Commercial Quality of Foodstuffs and Agricultural Products, introduced by Regulation No. 4 of the Minister of Agriculture and Rural Development, dated 2 March 2004, the General Inspector of the Commercial Quality of Foodstuffs and Agricultural Products, established the Anti-Fraud Department. The department co-operates with bodies involved in the application of Regulation (EEC) No 4045/89 in Poland, i.e. with the Bureau for the International Treasury Relations of the Ministry of Finance and the Bureau for the Inspection of Investment Expenditures of the Ministry of Agriculture and Rural Development.

**1.7. Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty**

	<p>In 2004, in the 16 voivodship departments of the Inspection of the Commercial Quality of Foodstuffs and Agricultural Products, inspectors responsible for ex-post controls were appointed and provided relevant training.</p> <p>The staff of the Bureau for the International Treasury Relations has carried out and continues to conduct training courses and seminars on the importance of treasury control in the application of EU resources as well as on the system for reporting irregularities in the application of Community's resources. The aforementioned training courses and seminars were provided by the representatives of bodies involved in the application of structural funds and the Cohesion Fund in Poland.</p>
	<p>Guidebooks and manuals to provide orientation and general directions to Customs Services, Border Guards, Police Officers or administrative personnel have been adopted</p> <p>In March 2004, the Ministry of Finance completed the preparation of a document: "European Union Own Resources. A Guide to Procedures and Administration Structures". The document provides the description of: Polish administration units participating in the own resources system and objectives implemented by them; Transfers and payments of own resources to the European Commission; The control system of own resources.<sup>11</sup></p>

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<sup>11</sup> The control of own resources of the Polish administration is ensured by:

- i) treasury controls executed by Treasury control offices ensuring the proper enforcement of payment of budget revenues, supervised – as regards revenues from customs duties and sugar and agricultural levies – by the Bureau for International Treasury Relations, Bureau for International Treasury Relations supervising the transfer of own resources to the budget of the European Union.
- ii) Customs controls carried out by customs offices and customs chambers with respect to the collection of customs duties. The execution of customs controls is supervised by the Customs and Excise Control Department of the Ministry of Finance.
- iii) Controls exercised by the Inspection of the Commercial Quality of Foodstuffs and Agricultural Products with respect to the production volume of sugar and isoglucose.
- iv) Financial control and internal audit existing in each unit of the public Finance sector, which ensure the correct mode of collecting and disposing of own resources.
- v) Controls exercised by the Supreme Chamber of Control, mostly in form of the annual audit of state budget performance.

**1.7. Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty**

An agreement has been concluded on 21 January 2004 by the Minister of Finance and the President of the Agricultural Market Agency laying down detailed rules for co-operation between the Customs Service and the Agricultural Market Agency concerning circulation of documents and information pertaining to tasks related to trading in of products covered by export refunds within the framework of the Common Agricultural Policy, and processed products other than those listed in the Treaty establishing the European Community.

Agreements have been concluded by the Chief Commander of the Border Guard and the Police Chief Commander; by the Chief Commander of the Border Guard and the General Inspector of Treasury Control, concerning co-operation.

In July 2004, the Governmental Plenipotentiary for Combating Frauds against the Republic of Poland or the European Union approved two documents on reporting of irregularities, developed by the Multidisciplinary Working Group for counteracting irregularities in the use of EU funds. The Working Group composed of the representatives of the Bureau for the International Treasury Relations, the Bureau for Certification and Attestation of EU Resources, the Paying authority and Managing Authorities was established within the administrative structure of the Multidisciplinary Team for Combating Frauds against the Republic of Poland or the European Union:

1. "Irregularities' Reporting System - Structural Funds"
2. "Irregularities' Reporting System - Cohesion Fund"

The two documents regulate the flow information on irregularities in Poland from bodies involved in the application of structural funds and the Cohesion Fund to the Bureau for International Treasury Relations, which is a body responsible for communicating irregularities to the European Commission (OLAF).

SION (PL: System informowania o nieprawidłowościach; EN: Irregularities' Reporting System) is an application that provides a digital presentation of reports on irregularities<sup>12</sup>. The Multidisciplinary Working Group for counteracting irregularities in the use of EU funds also developed a document: "Legal Instruments Securing the Recovery of Wrongly Paid Sums from EU Funds". The document provides advice on available legal instruments that may be used to secure the return of financial means under civil law. The document is an advisory tool addressed to bodies awarding contracts to beneficiaries.

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<sup>12</sup> "Reporting of irregularities in the use of the Cohesion Fund" and "Reporting of irregularities in the use of structural funds". The application enables automatic generation of reports on irregularities, which reports are subsequently transmitted to the Bureau of International Treasury Relations. The application is a tool that facilitates the flow of information and communications on irregularities.

<b>1.7.</b>	<b>Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty</b>
	<p>In September 2004, the Police Chief Commander issued recommendations on permanent surveillance of irregularities that are of criminal nature and detrimental to financial interests of the European Union. The Chief Commander also appointed officers/coordinators at the Central Investigation Bureau, the Departments for Combating Economic Crime and the Departments for Combating Corruption, whose responsibility is to carry out and supervise matters related to irregularities. The appointed officers/coordinators co-operate with the Bureau for International Treasury Relations as an AFCOS unit.</p>
<b>PT</b>	<p>As regards the EAGGF (Guidance Section) and the FIGF:</p> <p>Protocols for the management of debtors under the EAGGF (Guidance Section) and the FIGF – in September 2004 protocols were signed between IFADAP (the Portuguese Institution for Funding and Support for the Development of Agriculture and Fisheries) and INGA (the Portuguese Intervention and Agricultural Guarantee Institution) on the one hand, and the managers of the following programmes on the other:</p> <ul style="list-style-type: none"> <li>● Regional Operational Programme for the Central Region;</li> <li>● Regional Operational Programme for Lisbon and the Tagus Valley;</li> <li>● Multi-Fund Operational Programme for the Autonomous Region of Madeira (POPRAM III),</li> </ul> <p>which seek to harmonise procedures relating to the management of debtors under the EAGGF (Guidance Section) and the FIGF and to set out in detail the mechanisms linking these entities as regards the exercise of their respective powers.</p> <p>Second-level control instruments – The second-level control instruments (which are to be used from 2005 on by the Ministry of Agriculture’s Inspectorate-General and Management Auditing Office, as well as by the Regional Inspectorates of the Autonomous Regions) were recast in November 2004. They introduce a set of items to be verified on the basis of the experience gained through the application of the previous version of control instruments (dated May 2003), plus suggestions put forward by the Portuguese Inspectorate-General of Finance and the European Commission.</p> <p>The Auditing Manual for use in connection with the Structural Funds and the Cohesion Fund was approved. This manual establishes the methodologies to be used by the Inspectorate-General of Finance, as the body responsible for issuing statements of validity when the various types of operation co-financed by the Structural Funds and the Cohesion Fund are closed.</p>
<b>SK</b>	<p>Agricultural Paying Agency has issued instruction to the Guideline of the Ministry of Agriculture of the Slovak Republic on the support provided in agriculture in the form of the single area payment scheme and in the form of a payment for selected crops grown on arable land.</p> <p>Agricultural Paying Agency has issued manual for employees who are responsible for direct payments. Manual includes control procedures as well as procedure on applications approval.</p>

<b>1.7.</b>	<b>Significant regulatory and/or administrative developments contributing to the implementation of Article 280 of the Treaty</b>
<b>UK</b>	<p>Government Offices in the Regions of England have been instructed by the Office of the Deputy Prime Minister (ODPM) to submit to the Department of Trade and Industry (as overall UK co-ordinator), copying to ODPM, special reports as requested by Article 5(2) of EC Regulation 1681/1994. The Commission will be invited to accept a loss (resulting from an irregularity) in cases where all avenues of seeking a repayment from the grant recipient have been exhausted and nothing would be gained through continuation of communication with the grant recipient.</p> <p>The Department of Trade and Industry issues consolidated guidance to all responsible bodies in the UK regarding the reporting of Structural Funds irregularities and cases of fraud.</p> <p>The Scottish Executive completed the development of a new online, web-based application and claims system in April 2004 for all Scottish Structural Funds programmes. New guidance was drafted and a revised description of management and controls procedures was submitted to the Commission in June 2004.</p> <p>During 2004 the Welsh European Funding Office established a dedicated team of officers specifically to fulfil the responsibilities under Article 4 of Regulation 438/2001. E.C. 438/2001 lays down detailed rules for the implementation of Regulation 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds. The Article 4 team carries out on the spot inspections of a sample of individual operations to organisations receiving funding from Structural Funds. The Article 4 team verifies the delivery of the products and services across all Structural Funds. The establishment of the team augmented the existing procedures.</p> <p>Over the last 18 months the Rural Payments Agency's Counter Fraud and Compliance Unit (CFCU) has undertaken a series of surgeries/advice sessions to Rural Payments Agency Staff on how to spot fraud and how to refer it to the CFCU for investigation.</p> <p>The Forestry Commission's codes, instructions and administrative arrangements are under constant review and updated regularly.</p>
	<p>The CSF Managing Authority in Northern Ireland, using the Structural Funds Database, carries out a six-monthly cross check for possible duplication of EU Funding between Programmes, Funds and Community Initiatives</p> <p>The Rural Development Council (RDC) has reviewed and updated its Irregularity &amp; Anti-fraud Policy.</p> <p>This applies to Rural Development Council (RDC) employees and the disbursement of EU Structural Funds to the Voluntary and Community rural Sector.</p> <p>The policy highlights types of fraud, procedures for investigating and dealing with fraud and sets out best practice guidelines. The policy also details comprehensive Whistle-blowing procedures for RDC employees.</p> <p>This also applies to the disbursement of EU Structural Funds to the Voluntary and Community rural Sector. Procedures provide staff with a means for reviewing the progress and eligibility of RDC projects in a manner compliant with EC Regulation 438/2001.</p>

## 2. MUTUAL ASSISTANCE IN AGRICULTURAL AND CUSTOMS MATTERS (REGULATION (EC) No 515/97)

### 2.1. Communications/reports were requested from other Member States<sup>13</sup> in 2002, 2003 and 2004

How many communications/reports were requested from other Member States<sup>14</sup> in 2002, 2003 and 2004? How many concerned operations contrary to the agricultural and customs regulations?

Did the national authorities encounter any difficulties when requesting information from or sending it to another Member State? Please describe any difficulties.

How did the national authorities overcome such difficulties?

Member State	Communications/reports concerning the agricultural and customs regulations.	Communications/reports concerning the agricultural and customs regulations.	Communications/reports concerning the agricultural and customs regulations.
AT	28	10	11
BE <sup>15</sup>	1301	659	
CY			11
CZ			-
DE <sup>16</sup>			
DK	14	16	3
EE			
EL	69	77	45
ES	2	0	0
FI			
FR	93	80	83
HU			13
IE <sup>17</sup>	1	2	2
IT	487	387	286
LT	0	0	
LU	0	2	1

<sup>13</sup> The ten new Member States are regarded as third countries before 1 May 2004 and as Member States from 1 May 2004 onwards. They need only communicate their data on that date.

<sup>14</sup> The ten new Member States are regarded as third countries before 1 May 2004 and as Member States from 1 May 2004 onwards. They need only communicate their data on that date.

<sup>15</sup> There are no specific accounts of requests for communications or reports under Articles 4.1. and 8 of Regulation (EC) No 515/97. The overall figures on the exchange of data on intra-Community international cooperation do, however, give an idea of the volume of correspondence on the subject. The figure indicates the number of requests for exchange of information made by the Belgian Customs and Excise Administration to other Member States.

<sup>16</sup> These figures do not include information exchanged within the framework of the Early-Warning System, joint customs checks, requests for notification or irregularities in connection with tobacco, alcohol and mineral oil. The objective in all cases was to ensure correct application of customs legislation (incl. agricultural legislation concerning trade with third countries). We have no detailed statistics on whether and to what extent the irregularities were the result of negligence or misconduct on the part of the economic operators. Most of these cases did not arise from criminal proceedings, but in any case this is not a pre-requisite for the application of Regulation (EC) No 515/97.

<sup>17</sup> Approximately 5% of requests related to operations contrary to agricultural and customs regulations.



LV			120
MT	0	0	1
NL	249	256	298
PL			295
PT	41	41	32
SE	36	19	32
SI			24
SK	0	0	350
UK	-	-	-
Total	2321	1549	1607

<b>Difficulties encountered by the national authorities when requesting information from another Member State concerning Communications/reports requested from other Member States</b>	
<b>AT</b>	<p>Following requests for mutual assistance in customs matters by the Hungarian Customs Authorities, the Austrian Customs Administration makes enquiry procedures and submits the results and copies of the important documents to the Hungarian Customs Administration. At a later stage Austria receives a judicial request in the same case via Interpol, because in Hungary the evidence can only be used in a judicial procedure, when it was provided via the judicial mutual assistance channel. But the Austrian Customs Administration, because of principal reasons and limited personal resources, does not investigate the same case twice and very often the documentation of the investigative results cannot be sent again, because there is no further copy of the documentation available.</p> <p>The Hungarian penal law should be amended insofar that evidence, which is provided in the frame of administrative mutual assistance could be used also in judicial penal procedures.</p> <p>The problem cannot be solved by Austria.</p>
<b>CZ</b>	<p>The Czech Customs Administration has encountered excessively long delays before requests for cooperation were dealt with. Where no answer was received within six months of issuing the request, urgent letters were sent to the requested Member States.</p>
<b>EL</b>	<p>A) Some Member States send their requests in their own language without attaching an unofficial translation into English (or French).</p> <p>B) Some Member States are late in replying to requests.</p> <p>The SDOE says that some countries, especially the UK, are rather slow in providing information.</p>
<b>IE</b>	<p>The main difficulty encountered was the delay in receiving a response and in a small number of cases, the information received was inadequate. The action taken included the issue of reminders and the issue of a further communication where the initial response received did not address the questions posed.</p>
<b>LV</b>	<p>Problems have arisen in co-operating with some member states where the institutions very strongly keep to the formal requirements of the requests and therefore the requests have too extended implementation date (even in urgent cases).</p>
<b>PL</b>	<p>Major difficulties encountered (also in the previous periods): in certain cases long periods of waiting for reply from certain administrations: Italy, Spain and sometimes France; not always properly grounded refusals to make any determinations, incomplete answers: Germany. Polish authorities tried to overcome difficulties by sending admonitions and complementary motions.</p>

**Difficulties encountered by the national authorities when requesting information from another Member State concerning Communications/reports requested from other Member States**

<b>PT</b>	Mutual assistance between the Member States was generally satisfactory. There were a few difficulties with a Member State, owing to inadequate compliance or even, in certain cases, the lack of any response. In such cases the Directorate-General for Customs and Excise (DGAIEC) refers the matter to the central department.
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## 2.2. Communications/reports requested from third countries in 2002, 2003 and 2004

How many communications/reports were requested from third countries in 2002, 2003 and 2004? How many concerned operations contrary to agricultural and customs legislation?

Did the national authorities encounter any difficulties when requesting information from or sending it to the authorities of a third country? Please describe any difficulties. How did the national authorities overcome those difficulties?

Member State	Communications/reports concerning the agricultural and customs regulations.	Communications/reports concerning the agricultural and customs regulations.	Communications/reports concerning the agricultural and customs regulations.
AT	63	42	18
BE <sup>18</sup>	818	611	-
CY			6
CZ			-
DE	46	167	147
DK	32	20	6
EE			
EL	118	93	160
ES	1	0	0
FI			
FR <sup>19</sup>	36	58	-
HU			25
IE	3	3	2
IT	183	150	95
LT	0	0	0
LU	0	0	0
LV			137
MT	0	0	0
NL	83	83	74
PL			345
PT	35	37	33
SE	67	62	50
SI	125	127	96
SK			150
UK	-	-	1
<b>Total</b>	<b>1610</b>	<b>1453</b>	<b>1345</b>

**Difficulties encountered by the national authorities when requesting information from the authorities of a third country**

<sup>18</sup> Article 19 of Regulation (EC) No 515/97 provides for information obtained under the Regulation to be communicated to third countries under restrictive conditions.

The figure indicates the number of requests for the exchange of information addressed by the Belgian Customs and Excise Administration to third countries.

<sup>19</sup> In 2002 France received 7987 requests for assistance of which 7951 concerned ex post checks of origin documents. In 2003 France received 8965 requests for assistance of which 8907 concerned ex post checks of origin documents. The indicated figures are without the origin documents.

<b>Difficulties encountered by the national authorities when requesting information from the authorities of a third country</b>	
<b>AT</b>	<p>There are no regulations on administrative mutual assistance in customs matters with Bosnia-Herzegovina, Albania and Kosovo.</p> <p>Information to these administrations is only given when the company concerned agrees.</p>
<b>CZ</b>	<p>The Czech Customs Administration met with an excessively long period in dealing with requests, or with replies, which did not resolve all the questions raised. The solution lay in sending a reminder or a request for further information.</p>
<b>DE</b>	<p>a) Requests to third countries</p> <p>With regard to Community missions under Title IV of Regulation (EC) No 515/97, it is possible that Member States are pursuing criminal investigations into the same case. There is therefore a need for close coordination between OLAF and the Member States. This procedure has proved effective in the past; the German customs authorities know of no case where OLAF's interests (protection of the Communities' financial interests) ran counter to those of the Member States (enforcement of criminal law). It would therefore be a good idea to set out procedural practice regarding cooperation in a manual (see Question 2.6).</p> <p>It is often not known who to contact abroad in connection with requests for assistance on customs matters submitted to third countries by the Member States on the basis of Community Treaties. Germany would therefore ask OLAF to ensure that the lists it prepares for the Member States of mutual assistance contact points in third countries' customs authorities be kept complete and up-to-date. OLAF should send the lists to the Member States after every update, preferably electronically.</p> <p>b) Requests submitted to the Member States by third countries</p> <p>Requests from third countries are often sent to the wrong place. This results in delays and unnecessary administrative work.</p> <p>OLAF is asked to take pains to impress upon the representatives of customs authorities in third countries that their requests need to be sent to the appropriate contact person in the Member States. To this end, OLAF should provide third countries with an up-to-date list of contact points in the Member States.</p> <p>It would also be helpful if the Office explained to the appropriate bodies in third countries the details of the legislation and the importance of the articles on the form and content of the request for assistance. This would greatly facilitate the provision of assistance.</p>

<b>Difficulties encountered by the national authorities when requesting information from the authorities of a third country</b>	
<b>EL</b>	<p>Greek customs have particular difficulty with requests sent to China, which is not bound by the Customs Cooperation Council Recommendation of 1953, which means that requests for verification of invoices go unanswered.</p> <p>Korea, with which the EU has signed a cooperation agreement on customs matters (L121 13.5.1997), does not reply to requests because in order to carry out investigations it requires the number of the relevant export declaration submitted in Korea. These declarations are not lodged with Greek customs, and it is not possible to find out the numbers, as this would mean asking the importer, which would destroy the confidentiality of the investigation.</p> <p>Switzerland, with which the EU has signed a cooperation agreement on customs matters (L 169 27.6.1997), does reply to requests concerning the verification of customs documents. However, with regard to the verification of invoices on the basis of which the import duty in the EU is calculated, the Swiss authorities raise difficulties because they consider that this breaches fiscal confidentiality, and so in order to carry out an official investigation into company records they require judicial cooperation.</p> <p>In general replies from third countries are slow in coming, which means there is a risk that offences may be time-barred. The Greek customs administration therefore sends out reminders.</p>
<b>FI</b>	<p>For example, as regards transit operations the Finnish authorities may ask for information or documents that they do not have at their disposal.</p>
<b>IE</b>	<p>As in the case of 2.1, delays in receiving a response were the main difficulties encountered.</p>
<b>PL</b>	<p>Encountered difficulties: requests often relate to unimportant matters (low value of goods shown on transaction documents), a large number of requests arrived from Ukraine in relation to the transit of goods through Poland. These requests often involved neither Polish, nor Ukrainian companies. Information provided in reply to these requests are limited to a minimum.</p> <p>Long periods of waiting for replies from certain administrations: Turkey, Bulgaria; replies are incomplete and unsatisfactory: Turkey. Poland tried to overcome these difficulties by sending admonitions and complementary requests.</p>
<b>PT</b>	<p>The most acute difficulties at this level have involved countries with which there is no mutual assistance agreement, in which case assistance is requested on the basis of the Recommendation made on 5 December 1953 by the former Customs Cooperation Council (CCC), now the World Customs Organisation (WCO). As a recommendation, this document is not binding on States.</p> <p>There have been a few constraints in these cases, particularly where it has been necessary to enter business premises to obtain the information requested.</p> <p>Another type of constraint arises from technical and organisational difficulties in the countries in question, as in many cases they are not sufficiently well organised, administratively speaking, to be able to provide the information requested, or there is no information about contacts, which means that Portuguese authorities do not know who to send requests for mutual assistance to.</p>

**2.3. Communications/reports requested by/communicated to the Commission in 2002, 2003 and 2004**

**How many communications/reports were requested by/communicated to the Commission in 2002, 2003 and 2004? How many concerned operations contrary to the agricultural and customs regulations?**

**Did the national authorities encounter any difficulties when requesting information from or sending it to the Commission? Please describe any difficulties.**

**How did the national authorities overcome those difficulties?**

**The computer resources at our disposal do not allow us at this stage to produce useful statistics.**

<b>Difficulties encountered by the national authorities when requesting information from or sending it to the Commission</b>	
<b>EL</b>	Often the data sent to the national authorities is inadequate, which does not help the investigative work.
<b>FI</b>	No difficulties were found in the programme period 2000-06.  However, at a coordination meeting with the Commission held in Brussels on 18 January 2004 on checks envisaged it was found that, in OLAF's lists of reported irregularities outstanding from previous programme period 1995-99, in some reports to OLAF the Provincial Government had mentioned amendments or indicated that the project had been removed from the particular EU objective programme and was thus not supported from the structural funds. Although these amendments and rectifications were made by the Provincial Government and notified to OLAF, the reported irregularities have remained on the OLAF lists.  The provincial authorities request OLAF to correct the lists. If that is not done, the Provincial Government will request by separate letters that the reported projects be removed from OLAF's lists for the period 1995-99.
<b>FR</b>	When sending its reports to OLAF, the French customs regularly asked it to pass on anti-fraud information sent in by other Member States in the context of MA cases, but has rarely received this information from the European Commission.

**Difficulties encountered by the national authorities when requesting information from or sending it to the Commission**

**IT**

In the course of cooperating with the Commission, the Customs Agency has pointed out the most important problems, also in terms of the volume and the sensitivity of their exchanges, which mainly refer to the operational fallout resulting from the type of information received which, have had all events been pointed out by the Agency and the recent meeting with a number of representatives of the European Court of Auditors.

For in some cases, the requests for information, and above all for documents from OLAF, are not tailored to its impact on the organisational structure of the Agency, because of the time allowed, the volume of information required and the type of action needed, making it necessary to commit an exceptional amount of resources, because these requests do not take account of the trade flows involving Italy.

A further difficulty, which has been pointed out on various occasions by the operational Offices has to do with the substance and the use of the information supplied by OLAF in relation to possible irregularities committed when importing goods into Italy and in particular with relation to the final reports by EU missions to third countries.

These reports, which contain a summary of all the information obtained by the mission, the investigations conducted and the results obtained, often suggest that the recipient member countries should commence review and recovery procedures, but in some countries they are not signed by the authorities of the third country involved, and are therefore not able to be used immediately as evidence, whether to institute a review or in the case of appeals by contributors.

This being so, the central Antifraud Office has issued instructions, on a case-by-case basis, to acquire more required information using all the other investigation systems available.

<p><b>2.4. Treatment of Mutual Assistance communications diffused by the Commission in order to inform the Member States of a risk of irregularity or fraud (Art.18 of Regulation (EC) 515/97)</b></p>	
<p><b>In accordance with Article 18 of Regulation (EC) No 515/97, the Commission sends “Mutual Assistance” communications to the appointed competent authority (Article 2(2)) to inform the Member States of a risk of irregularity or fraud.</b></p> <p><b>How do the competent authorities of your Member State deal with the Mutual Assistance communications:</b></p> <p><b>- Is there a specialised (central or regional) coordination structure?</b></p> <p><b>- If so, how are Mutual Assistance requests processed?</b></p>	
<p><b>AT</b></p>	<p>All AM messages are submitted via AFIS to the Central Anti Fraud Department of the Ministry of Finance. The cases are electronically stored in a local database. This makes sure that the data is available for all kinds of analysis (follow-up, cross checks, relations to other cases).</p> <p>Analysis in AM cases is made centrally. Concrete advises are given to the customs offices by the Central Anti Fraud Department of the Ministry of Finance.</p> <p>Risk profiles are implemented into the national customs clearance database only by this department. The customs offices send back their reports to the Central Anti Fraud Department of the Ministry of Finance. This enables the Central Anti Fraud Department to analyse the results (Reporting the results to OLAF, changing the profiles,...).</p>
<p><b>BE</b></p>	<p>The competent national authorities designated under Article 2(2) of Regulation (EC) No 515/97 for the purpose of applying the Regulation are the Central Customs and Excise Administration, Recovery and Disputes Department, (for questions of principle) and the National Investigation Directorate, Customs and Excise (for operational aspects).</p> <p>A Unit in the National Investigation Directorate is responsible for administering and distributing mutual assistance communications. The Unit handles mutual assistance dossiers relating to origin and agriculture regulations itself. In the case of dossiers relating to other issues (cigarettes, alcohol, value) it delegates responsibility to another department. The same Unit is also responsible for complying with the obligations towards the European Anti-Fraud Office in matters of information and, on a general level, for coordinating the follow-up to mutual assistance communications</p>
<p><b>CY</b></p>	<p>There is a specialised central coordination structure.</p> <p>All requests for mutual assistance are sent for processing to the Investigations and Information System Unit. Depending on the case, processing is carried out by the Unit’s staff or, where necessary, with the help of other units or services (e.g. public prosecutor or police), according to the subject involved.</p>



<b>2.4.</b>	<b>Treatment of Mutual Assistance communications diffused by the Commission in order to inform the Member States of a risk of irregularity or fraud (Art.18 of Regulation (EC) 515/97)</b>
<b>CZ</b>	<p>Customs Administration: The Customs Administration has established the National Coordination Unit in the General Directorate of Customs – Information Support Section. One of the main tasks of the National Coordination Unit is to organise and supervise the handling of MA messages, including filling in the tables indicating the status and method of handling. Every MA message is entered in the national information system, where records are stored of all infringements and suspected infringements of customs regulations. Requests for mutual assistance are also recorded in the system. The handling status of MA messages is also monitored in the system. The National Coordination Unit carries out the initial analysis of each MA message and decides or recommends how it should be dealt with and transmits the communication to the department/s that carry out investigations or to the departments that put the information into what are known as the blocking tables, the purpose of which is to warn customs officers applying customs procedures that there may be a case which meets the MA message criteria. The results of controls and investigations are reported to the National Coordination Unit, which fills in the overviews of how MA messages are dealt with on the basis of the declarations.</p> <p>Ministry of Agriculture: There is no special coordination structure. Where such information is sent by the Commission, the AFCOS contact point in the Ministry of Agriculture immediately informs the Managing Authority for the operational programme, the Paying Authority, Special body department. They then take the necessary measures and carry out an investigation, the results of which are reported to the Commission as swiftly as possible.</p>
<b>DE</b>	<p>The Customs Criminal Investigations Office (Zollkriminalamt – ZKA) is the customs service’s central coordination structure for mutual and judicial assistance. As well as processing bilateral administrative requests made under Regulation (EC) No 515/97 and MA communications, the ZKA, where necessary, also coordinates criminal investigations by means of the parallel application of the Naples II Convention. Only the ZKA may liaise with OLAF regarding the application of Regulation (EC) No 515/97 in relation to trade with third countries. Where it is necessary and potentially useful, the ZKA may refer contacts to local offices.</p> <p>Local offices, such as main customs offices, regional finance offices or customs investigation offices, conduct the necessary inquiries and forward their findings to the ZKA.</p> <p>In 2001 the Commission’s DG Budget conducted inspections in Member States to examine how they used MA communications under Title III of Regulation (EC) No 515/97 to protect the Communities’ financial interests. The Commission discovered that the Member States were often following very different procedures.</p> <p>OLAF, however, has not used these reports as a basis for recommendations regarding uniform application of Regulation (EC) No 515/97. It would therefore be advisable, if not essential, that OLAF does not simply incorporate the Member States’ descriptions in its report to the European Parliament and instead drafts its own contribution based on the detailed information at its disposal</p>

<b>2.4.</b>	<b>Treatment of Mutual Assistance communications diffused by the Commission in order to inform the Member States of a risk of irregularity or fraud (Art.18 of Regulation (EC) 515/97)</b>
<b>DK</b>	<p>All requests are dealt with by the authority responsible (Customs Unit of the Central Customs and Tax Administration) which has designated a person to coordinate these communications.</p> <p>Basic risk analysis is conducted centrally, using the existing customs systems to check whether the goods/materials in question are being imported into or exported out of Denmark. Subsequently, communications are sent to all regional customs authorities in Denmark (there are currently 8) so that they can deal with the case and reply to requests.</p> <p>The method for dealing with such cases is set out in an internal communication, which makes the local customs authorities responsible for conducting the investigations. The local customs authorities are required to confirm or deny whether investigations have been launched within 90 days of receipt of the notification. Any questions are forwarded to OLAF through the appropriate channels in the Central Customs and Tax Administration.</p>
<b>EE</b>	<p>Mutual Assistance requests are received through AFIS by the International Information Exchange Division of the Information Department of the Tax and Customs Board, which then forwards these notifications to the Analysis Division (specialised officials for separate precursors, cigarettes and other) of the Information Department of the Tax and Customs Board. The latter checks the information of the notifications regarding Estonia and conducts risk analysis. If elements of misdemeanour or criminal offence are detected, The Analysis Division of the Information Department of the Tax and Customs Board will forward the collected material to the regional customs authority or the Investigation Department of the Tax and Customs Board for investigation.</p>

<b>2.4.</b>	<b>Treatment of Mutual Assistance communications diffused by the Commission in order to inform the Member States of a risk of irregularity or fraud (Art.18 of Regulation (EC) 515/97)</b>
<b>EL</b>	<p>A special central coordination service, Directorate 33 for Customs Control, handles mutual assistance requests from the customs authorities. When the directorate responsible for the MA request receives a Mutual Assistance Message via AFIS, it creates a file. Directorate 33 then follows the file at each stage, as it has to submit six-monthly reports on the development of each case.</p> <p>Here is a breakdown of the complete procedure followed from receipt of the message, showing how all the departments involved in investigations work.</p> <p>As soon as it receives the MA message, Directorate 33 opens a file and then looks in the information system to see whether there have been any imports or exports of the product which is the subject of irregularity or fraud.</p> <p>If no imports or exports are found, the MA request is sent to all the customs services and to the SDOE for information and future reference.</p> <p>If imports or exports are found, the MA request is sent, together with the relevant lists, to the services shown on the distribution list as “<u>for action</u>”, and at the same time it is recorded in the integrated computer system (OPST), in order to check all future imports.</p> <p>As soon as Customs receive the message they also open a file on the case.</p> <p>An ex post check or an investigation is carried out depending on the content of the message, and supporting documents and commercial documents are gathered to be sent, via Directorate 33, to the EU for coordination of investigations etc.</p> <p>If the MA request requires investigation of a company, it is sent for action by the ELYT (Customs Control Service). Also, where the investigation originally assigned to a particular customs service shows that investigation of a company is required and the customs service does not feel able to carry it out, the investigation is transferred to the ELYT via Directorate 33.</p> <p>Reply to Directorate 33 concerning the outcome of the investigation, for the purposes of the six-monthly report to the competent department of the European Commission.</p> <p>A special unit has been set up within the SDOE to deal with Mutual Administrative Assistance, which makes an initial assessment of the data and then sends the request on to an appropriate unit for a full assessment.</p>
<b>ES</b>	<p>There is a central coordination structure within the Department for Customs and Excise Duties which centralises the Mutual Assistance communications from the Commission: the National Information and Investigation Office (Oficina Nacional de Información e Investigación – ONII).</p> <p>There are two possibilities for the processing of Mutual Assistance requests: either the request is dealt with direct by the ONII, or it needs to be referred to the regional departments for a response to some or all of the matters raised.</p>

<b>2.4.</b>	<b>Treatment of Mutual Assistance communications diffused by the Commission in order to inform the Member States of a risk of irregularity or fraud (Art.18 of Regulation (EC) 515/97)</b>
<b>FI</b>	In Finland requests for administrative assistance are dealt with by the National Board of Customs. Requests for administrative assistance requiring administrative checking are dealt with in the Control Unit of the Foreign Trade Department. If the investigation requires a control visit to the enterprise, the request is sent to the Control Unit of the Customs District in question.
<b>FR</b>	<p>The French national authority whose duty it is to liaise with the Commission and the Member States for the purpose of applying Regulation (EC) No 515/97 is the General-Directorate for Customs and Indirect Taxes (direction générale des douanes et droits indirects, DGDDI). More precisely, the DGDDI's "anti-fraud" office is the competent national administrative authority whose role is to apply Regulation (EC) No 515/97, whereas the National Directorate for Information and Customs Investigations (direction nationale du renseignement et des enquêtes douanières, DNRED) is the national service dealing with the operational aspects of applying the Regulation.</p> <p>DNRED, which receives "Mutual Assistance" communications in the same way as the "anti-fraud" office, forwards these to French customs to be processed, acted upon and supplemented.</p>
<b>HU</b>	No such organisation has been set up within the Customs and Excise Guard.

<b>2.4.</b>	<b>Treatment of Mutual Assistance communications diffused by the Commission in order to inform the Member States of a risk of irregularity or fraud (Art.18 of Regulation (EC) 515/97)</b>
<b>IE</b>	<p>The Irish Revenue Commissioners is the lead body for Mutual Assistance communications. All Mutual Assistance communications concerning reported or suspected irregularities are received simultaneously by the Mutual Assistance Liaison Office, Nenagh and by Customs Investigations, a Branch of Revenue's Investigations and Prosecutions Division, which carries out the necessary investigations, takes the necessary action in regard to recovery and proceedings, where appropriate, and reports the outcome.</p> <p>The Commission AMA communications under articles 18 of Council Regulation 515/97 are also received in Ireland by the Department of Agriculture and Food, as are AMA communications issued under Council Regulation Irregularities Regulation 595/91.</p> <p>In the Department of Agriculture and Food, Finance Division acts as the coordination unit for AMA communications and liases with the Irish Revenue Commissioners. AMA communications that concern agricultural matters are referred to the relevant Operational Administrative Section in the Department for attention, to take any relevant follow up action or to provide information and to report to back to Finance Division. The Department of Agriculture and Food responses to AMA communications are furnished to the Irish Revenue Commissioners for inclusion in Irelands reply.</p> <p>The Department of Agriculture and Food uses a standard document when issuing AMA communications to the Operational Sections. The standard notification form explains the purpose of AMA communications and draws attention to the action requested as set out in section 13.1 of the AMA communication. In addition, the Standard form points out that under the Regulations, AMA Communications are confidential and covered by the obligation of professional secrecy, in accordance with Article 45 of Regulation 515/97 and Article 10 of Regulation 595/91. The document further points out that the AMA communication may not be passed on to anyone, unless their functions require them to know or use the information. Also that the information may not be used for purposes other than those provided in the Regulation i.e. to ensure the correct application of Customs or Agriculture legislation and to prevent, investigate or prosecute breaches of legislation.</p>

<b>2.4. Treatment of Mutual Assistance communications diffused by the Commission in order to inform the Member States of a risk of irregularity or fraud (Art.18 of Regulation (EC) 515/97)</b>	
<b>IT</b>	<p>The specialised coordination body for the Guardia di Finanza is the Comando Generale – II Reparto – Ufficio Antifrode e Cooperazione Internazionale; for the Customs Agency is the Central Antifraud Office.</p> <p>As far as the Guardia di Finanza is concerned, mutual assistance applications are handled by the Antifraud and International Cooperation Office which, after assessing and supplementing the information with other information from their own files, send it to the competent Operational Units. Once the necessary work has been done, these Units report back to the Office which, after establishing the necessary information link, forwards the replies to the collateral requesting authority.</p> <p>As far as the Customs Agency is concerned, information sent from the Commission Office reach the Central Antifraud Office which analyses it and forwards it to all the Agency's regional offices to be sent on to the local offices.</p> <p>When the Central Antifraud Office sends the information to the Regional Offices, on the basis of the information received and after conducting the necessary checks on it, it indicates the type of action that is needed to protect the national and Community interests (review, recovery, administrative cooperation measures, access, etc).</p> <p>The results of the inspections returned by the Regional Directorates are promptly sent on to the Commission Service.</p>
<b>LT</b>	<p>A central body was set up in 2004, namely the Bilateral Assistance Section of the Irregularities Prevention Division of the Customs Department attached to the Ministry of Financial Affairs.</p> <p>The central body coordinates compliance with requests and instructs local units to carry out investigations within their jurisdiction.</p>
<b>LU</b>	<p>“Mutual assistance” communications are registered by a central coordination service, i.e. the Investigation Division of the Customs Department.</p> <p>Processing “MA form” communications:</p> <p>MA forms are examined separately in order to detect risks which could interest local checking and investigation departments Useful information and data are synthesised and sent electronically as a WARNING to all the checking and investigation departments. Should any irregularities be noticed, the local departments will alert the Customs Department Investigation Division which, if appropriate, will conduct an administrative investigation.</p>

<b>2.4. Treatment of Mutual Assistance communications diffused by the Commission in order to inform the Member States of a risk of irregularity or fraud (Art.18 of Regulation (EC) 515/97)</b>	
<b>LV</b>	<p>On 20 April 2004 the SRS issued order No. 620 On Procedure of Circulation of Mutual Assistance Reports. The document defines that the co-ordinating role regarding circulation of mutual assistance reports is taken by the Customs Criminal Board of the SRS.</p> <p>The work with mutual assistance reports takes place basing on the SRS order No. 620 issued on 20 April 2004 which defines procedure for reception of mutual assistance reports from OLAF as well as their registration, evaluated and forwarded to the performer of verification.</p> <p>This procedure also provide the cases in which Latvian customs office is providing feedback information to OLAF on control activities as well as information serving as a ground for initiation of mutual assistance reports.</p>
<b>MT</b>	<p>Customs' response:</p> <p>“Mutual Assistance” communications are received by the Head Investigations through AFIS. These are referred to the Inspector in charge Customs Enforcement Unit for the necessary action. If checks are positive, the results are transmitted to OLAF and further investigations carried out. Information is disseminated to the Customs Intelligence Section, the Verification Unit and the CAP Unit.</p> <p>To date “Mutual Assistance” communications have not resulted in any criminal investigation by our Division.</p>

<b>2.4.</b>	<b>Treatment of Mutual Assistance communications diffused by the Commission in order to inform the Member States of a risk of irregularity or fraud (Art.18 of Regulation (EC) 515/97)</b>
<b>NL</b>	<p>In the Netherlands the central competent authority for the exchange of information under Regulation (EC) No 515/97 is the Customs Information Centre in Rotterdam. It receives all mutual assistance communications, which are then dealt with in consultation and cooperation with specialists from the Origin Department, the Ministry of Finance’s special investigation department (FIOD-ECD) and the General Inspectorate of the Ministry of Agriculture.</p> <p>The Customs Information Centre is normally in charge of the procedure and is also responsible for reporting back to the Commission at the end. Only in cases where the emphasis is on criminal proceedings is the investigation department responsible for coordination. However, the central competent authority remains in charge of the formal exchange of information.</p>
<b>PL</b>	<p>Three services have been notified under Council Regulation (EC) No 515/97:</p> <ul style="list-style-type: none"> <li>– Customs and Excise Control Department of the Ministry of Finance</li> <li>– Customs Policy Department</li> <li>– Bureau for International Treasury Relations (AFCOS Poland)</li> </ul> <p>The International Administrative Assistance Section of the Customs and Excise Control Department of the Ministry of Finance provides administrative assistance in matters related to customs duties<sup>20</sup>.</p> <p>Requests received from foreign administration customs authorities are forwarded to Customs Chambers of proper jurisdiction and to other organisation units of the Customs and Excise Control Department and the Ministry of Finance, which units carry out subsequent proceedings and deliver replies to the Section of International Administration Assistance of the Customs and Excise Control Department. Subsequently; the Department forwards the replies translated into a foreign language to the requesting party.</p> <p>Requests received from Polish authorities, after their having been examined, completed and translated into a foreign language, are forwarded to foreign customs administration authorities. Replies to these requests are forwarded to the party requesting administrative assistance.</p> <p>The Bureau of International Treasury Relations, Administrative Assistance and Inter-service Co-operation Unit process requests for mutual assistance under Council Regulation (EC) No 515/97. On the basis of requests, the Section undertakes at its own initiative certain control actions necessary to commence and conduct</p> <ul style="list-style-type: none"> <li>– administrative investigations,</li> <li>– coordinating proceedings,</li> <li>– administrative assistance.</li> </ul>

<sup>20</sup>

Formerly: Customs and Excise Control Department.



<b>2.4.</b>	<b>Treatment of Mutual Assistance communications diffused by the Commission in order to inform the Member States of a risk of irregularity or fraud (Art.18 of Regulation (EC) 515/97)</b>
	<p>In the event that the Bureau for International Treasury Relations is not competent to process a request, the Bureau draws up its own motion and forwards the same to a competent control authority, investigation organ or department with a request to take relevant action commensurate to the competence of the addressee and to provide reply to the Bureau of International Treasury Relations.</p> <p>Furthermore, since 1 May 2004, AM/MA communications are received by the Bureau for International Treasury Relations also by AFIS. Until 31 December 2004, the Bureau received 5 AM reports made under Art. 18 of Council Regulation (EC) No 515/97. Communications received are forwarded to the Bureau of International Treasury Relations, Customs and Excise Control Department and Customs Policy Department. One communication was checked by the Bureau for International Treasury Relations and then forwarded to the Department of the Audit of Customs and Excise Duties. Also 6 communications made under art. 14 of Council Regulation (EC) No 515/97 were received</p>
<b>PT</b>	<p>The Directorate-General for Customs and Excise (DGAIEC) has a centralised service responsible for processing Mutual Assistance communications. It is based at the Anti-Fraud Services Department (Information Division, Risk Analysis Unit). Cases are processed there as follows:</p> <p>When the Mutual Assistance communication is received, its content is registered and stored in the Integrated System. It is then processed and the case is analysed with a view to determining whether there are any relevant situations in Portugal.</p> <p>If a relevant situation in Portugal is identified, an investigation is conducted to confirm the irregularity, find the persons responsible and take appropriate action. Whatever the outcome, it is always notified to OLAF.</p> <p>Conversely, if a case of fraud or irregularity with implications for other Member States is detected in Portugal, a Mutual Assistance communication is sent to OLAF, which then notifies the other Member States in the same way</p>
<b>SE</b>	<p>The messages are dealt with by a central group within the Business/Risk Analysis Competence Centre in the Customs and Excise Department.</p> <p>Mutual assistance requests are processed in such a way that the import in question is mapped, the problem is identified, the relevant legislation is looked up, experts may be consulted and a meeting is held at which the matter is presented and a decision is made on what measures to take.</p>

<b>2.4. Treatment of Mutual Assistance communications diffused by the Commission in order to inform the Member States of a risk of irregularity or fraud (Art.18 of Regulation (EC) 515/97)</b>	
<b>SI</b>	<p>In accordance with Article 2(2) of Regulation No 515/97, the Customs Administration's Investigations Unit (CURS) is the central contact point for receiving and forwarding MA reports. At first the CURS assesses the relevance of the MA report for the Republic of Slovenia. All MA reports are sent to the UNP with the recommendation that it notify all the other competent authorities of aspects within their responsibility (e.g. the police or for information. If the MA report is of relevance to the CURS, it must then examine the facts and draw up measures in response to the report. These measures depend on the content of the report and involve drawing up the risk profile to be entered in the national customs information system, carrying out inspections in the companies or carrying out customs investigations. A combination of measures is also possible for individual reports. After the measures are carried out, the report is sent to the central contact point of the CURS (Investigations Unit), which forwards the report OLAF and, for information, to the UNP. The UNP is also sent the half-yearly reports concerning the treatment of individual AM reports.</p> <p>The AM reports are also sent to the Office monitoring the Agency for Agricultural Markets and Rural Development (the paying agency), which exchanges information with the CURS.</p>
<b>SK</b>	<p>A coordination unit for Regulation 515/97 was established in Customs Criminal Office, which processes all the MA communications and passes it to the relevant units of Customs Criminal Office for taking the necessary measures.</p>
<b>UK</b>	<p>AMs are either sent to the National Intelligence Unit (NIU) for customs matters (which has overall responsibility for AMs) or to the HMCE CAP Team. Both teams agree what course of action should be taken, eg – whether it is proper for investigation or administrative action. AMs are then referred to the appropriate section of HMCE and regular updates are provided to the NIU and the CAP Team. Case progress reports are then sent to OLAF.</p> <p>Requests received by the Rural Payments Agency (RPA) are considered by a single point - the Counter Fraud and Compliance Unit (CFCU) - in consultation with others as necessary</p>

<b>2.5. Implementation of a request for administrative assistance or a communication requiring the authorisation or the request of a judicial authority (Art.3 §2 Regulation (EC) No 515/97)</b>	
<p><b>Where, on the basis of a request for administrative assistance or a communication under Regulation (EC) No 515/97, certain measures (e.g. searches, phone taps) cannot be implemented without the authorisation or at the demand of a judicial authority, any information concerning the application of customs and agricultural regulations or at least that part of the file required to put a stop to a fraudulent practice must be communicated with the prior authorisation of the judicial authority if the need for such authorisation derives from national law (Article 3(2) of Regulation No 515/97).</b></p> <p><b>How is this provision applied in your Member State:</b></p> <p><b>- Is the prior authorisation of a judicial authority required in order to forward the report to other authorities?</b></p>	

<b>2.5.</b>	<b>Implementation of a request for administrative assistance or a communication requiring the authorisation or the request of a judicial authority (Art.3 §2 Regulation (EC) No 515/97)</b>
<b>AT</b>	In Austria the prior authorisation of a judicial authority is required in order to forward the report to other authorities.
<b>BE</b>	<p>If the completion of an investigation requires measures that only an investigating magistrate can authorise or carry out (confrontation of witnesses, for example), Article 281(2) of the General Customs and Excise Law of 18 July 1977 states that on a written request by an official of the Customs and Excise Administration of the grade of Director or higher, the public prosecutor may ask the investigating magistrate to conduct an investigation.</p> <p>The Customs and Excise Administration is not aware of any request for administrative assistance or communication presented under the terms of Regulation (EC) No 515/97 that necessitated the implementation of such investigating measures.</p> <p>In such a case, the prior authorisation of the judicial authority would be required before communicating the information on the application of customs and agricultural regulations or the essential elements of the file required to put a stop to a fraudulent practice</p>
<b>CY</b>	Prior authorisation is required from the Ministry of Justice and Public Order and the Legal Service (Office of the Public Prosecutor).
<b>CZ</b>	<p>Customs Administration: In investigating a case following a request for mutual assistance or an MA message, permission from a judicial authority is not required for the investigation where it is possible to use powers deriving solely from the Customs Act (e.g. customs control, control of a declaration for entry into circulation, drawing up a record of a statement given etc.). However, if the request relates to a phone tap, for example, this can only be carried out in criminal proceedings with permission from the court. Such operations cannot be carried out under administrative powers.</p> <p>Ministry of Agriculture: Same as for Customs Administration. The law governing the conduct of administrative control does not allow bugging or invasion of domestic freedom (searches cannot be made of places intended for habitation).</p>
<b>DE</b>	Under German law, the judicial authorities must authorise the forwarding of information under Article 3(2) of Regulation (EC) No 515/97. Where the German customs authorities have assumed the role of the Public Prosecution Service in connection with non-payment of EU own resources, thereby becoming a judicial authority, they have always given their authorisation.

<b>2.5.</b>	<b>Implementation of a request for administrative assistance or a communication requiring the authorisation or the request of a judicial authority (Art.3 §2 Regulation (EC) No 515/97)</b>
<b>DK</b>	<p>In Denmark the Customs and Taxation Department is an administrative body.</p> <p>Where, in the course of an investigation, the Customs and Taxation Department concludes that a search is needed but is not convinced that a criminal offence has been committed, it can ask the police to assist it with its inquiries. The case remains an administrative matter for the Customs and Taxation Department.</p> <p>Where, however, the investigations lead to suspicions that a crime has been committed, the case is referred to the police for criminal investigation, while the Customs and Taxation Department continues to work together with the police to recover the amount involved.</p> <p>Police applications for authorisation from the judicial authorities must be accompanied by a detailed description of the background to the request. The application must contain the abovementioned request for mutual assistance under the specific Regulation. The judicial authorities will then decide whether to issue the authorisation and whether to send the report to other authorities.</p>
<b>EE</b>	Such operations may be conducted only within criminal matters and in terms of mutual assistance in criminal matters.
<b>EL</b>	Under national law, where it is decided that Customs are to take action (e.g. special searches), first a request for judicial cooperation or notification is made, in accordance with Regulation (EC) No 515/97, and authorisation must be given by the judicial authorities before the special searches can be carried out and before any communication of information concerning the application of customs and agricultural regulations, or at least that part of the file required to put a stop to a fraudulent practice.
<b>ES</b>	<p>Under Spanish law, the measures referred to in the question (searches, phone taps) have to be adopted by a judicial authority in the course of criminal proceedings. To that end, sufficient grounds must be given and the measures must be properly justified (principle of proportionality); they are adopted whenever there are indications that the possible commission of an offence and the identity of the suspected perpetrators and/or accomplices are likely to be discovered or established by these methods, and the information thereby obtained may be used as evidence.</p> <p>The measures must be monitored by the examining judge who authorised them and by the court registrar to ensure that the statutory and constitutional requirements for the proper implementation of the measure are complied with. These requirements include any obligations to forward the report to other authorities.</p>

**2.5. Implementation of a request for administrative assistance or a communication requiring the authorisation or the request of a judicial authority (Art.3 §2 Regulation (EC) No 515/97)**

<b>FI</b>	<p>The procedures in question and the conditions governing them are laid down in the Criminal Investigations Act (449/1987) and the Coercive Measures Act (450/1987), and the publicity of trial materials, including the documents regarding the request for permission, is provided for in the Act on the Publicity of Court Proceedings (945/1984).</p> <p>Telecommunications interception is possible only in the case of certain serious crimes specified in the legislation. Additional conditions governing telecommunications interception have also been enacted. For example, in the case of serious tax fraud, telecommunications interception is justified only if the act was committed in the course of business or professional activity and is more serious than “ordinary” serious tax fraud. Telecommunications interception always requires the consent of a court. A court's consent is also required for the disclosure of information regarding telecommunications interception to the authorities of the country concerned.</p> <p>Telecommunications monitoring generally requires the prior consent of a court, except in certain urgent cases. Telecommunications monitoring is permissible in the case of suspected customs crimes carrying penalties of four years' imprisonment and in drug offences. The communication of traffic data to foreign authorities requires the consent of a court, except in the potential urgent cases mentioned above.</p> <p>The head of the investigation can decide on searches to be conducted on the basis of an offence and physical examinations, for example, can be carried out on the basis of decisions by certain other crime prevention officers. Communication of information obtained in a search to another Member State may be permissible under Regulation 515/97, whereas seizure based on a request for judicial assistance by a foreign State must be confirmed by a court, following an interim measure of one week at the most.</p>
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<b>2.5. Implementation of a request for administrative assistance or a communication requiring the authorisation or the request of a judicial authority (Art.3 §2 Regulation (EC) No 515/97)</b>	
<b>FR</b>	<p>There are two possible scenarios:</p> <p>1) When authorisation by a judicial authority is necessary to conduct a customs investigation under the provisions of the Customs Act (for example house search, telephone taps), there is no need to obtain an authorisation to communicate the information obtained in answer to a request under Article 3 (2) of Regulation (EC) 515/97. Judicial authorisation is only necessary if the investigation reveals a breach of customs rules which is then prosecuted, either by direct summons or a fiscal originating procedure (<i>acte introductif d'instance fiscale</i>, AIF) which leads to a judicial investigation. However, it is specified that customs officers may only resort to administrative telephone taps for such lawful purposes as national security, protecting France's essential elements of scientific or economic potential, preventing terrorism, criminal behaviour and organised crime and preventing armed groups or private militia re-forming or operating. In view of this, it appears unlikely that the DGDDI would organise taps of this kind in the context of a request for assistance based on Regulation (EC) No 515/97, unless the suspected fraud could be treated as organised crime.</p> <p>Furthermore, the French authorities would not be able to grant requests made pursuant to Regulation (EC) No 515/97 by authorities in another Member State for carrying out a search of premises for the sole purpose of sending information. Searches of premises may only be carried out for the purpose of establishing that customs offences against the National Customs Code have been committed in France.</p> <p>2) When information is obtained during judicial investigations under the provisions of the criminal proceedings Act, the authorisation of the judicial authority is necessary in particular to ensure that there are no obstacles to the proper conduct of proceedings. This obligation has the aim of reconciling the secrecy of the investigation and the preparatory inquiry under Article 11 of the aforementioned Act in conformity with Community legislation.</p>
<b>HU</b>	<p>It is not possible to carry out investigations that are subject to judicial authorisation on the basis of an administrative request received from a foreign customs authority. In the case of such a request, the requesting customs authority is informed that if criminal proceedings are under way in another country with respect to the case concerned, the request should be submitted to us within the framework of international judicial legal assistance.</p>
<b>IE</b>	<p>Documents or information, made freely available without restriction can be forwarded to another authority without the need for judicial authorisation. On the other hand, documents or information that are obtained using a coercive power, whether judicial or statutory, can only be forwarded to another authority on receipt of a Mutual Legal Assistance request (Letter of Request issued under the '59 Convention on Mutual Assistance in Criminal Matters). On a point of information, phone tapping is not within the competence of Customs but falls within the responsibility of the police.</p>
<b>IT</b>	<p>Before the findings of the judicial police can be forwarded, prior permission must be obtained from the judicial authorities.</p>

<b>2.5. Implementation of a request for administrative assistance or a communication requiring the authorisation or the request of a judicial authority (Art.3 §2 Regulation (EC) No 515/97)</b>	
<b>LT</b>	If a preliminary investigation is being conducted in the dossier in question, data from the preliminary investigation may be supplied to other authorities only with the consent of the public prosecutor overseeing the preliminary investigation.
<b>LU</b>	<p>The Opinion of the Public Prosecutor of the Grand Duchy of Luxembourg of 28 June 1993 particularly concerning Article 3 of the proposal for a Council Regulation on mutual assistance (Regulation (EC) No 515/97): “The current wording of Article 3 provides a good balance between the requirements of our laws on criminal procedure, particularly regarding the obligation to guarantee the confidentiality of investigations, and Member States’ duty to comply with Community law.</p> <p>The obligation to communicate information obtained during a judicial enquiry firstly supposes that the requested authority, on the basis of a request for administrative assistance or a communication made pursuant to the proposed Regulation, has decided to open legal proceedings. Accordingly, it would be pointless to first open an enquiry and afterwards not to communicate the outcome to the claimant. However, under Article 3, the competent judicial authority may always refuse to communicate the file or information it contains in order to maintain the confidentiality of the investigation throughout the preparatory phase, when the information sought is not yet all available in any case. The national rules of criminal procedure are therefore unaffected by this provision.”</p> <p>Since, under section 281 of the General Customs and Excise Act, failure to comply with customs regulations will result in the customs authorities in the Grand Duchy of Luxembourg bringing legal action and proceedings before the relevant courts, the outcome of the requested judicial enquiry must be communicated to the customs administration pursuant to that section. The customs administration will then decide whether to prosecute.</p> <p>Consequently the report, or at least the essential parts thereof required to put a stop to fraudulent practice, may be communicated both to the Commission or any other party which may require it.</p>
<b>LV</b>	In accordance to Regulation (EC) 515/97 the performed activities do not require approval with the court or public prosecutor’s office. Criminal actions (search, examination, withdrawal of articles, etc.) can be performed only within the framework of legal assistance request by coordinating the implementation of activities with the Office of Prosecutor General.
<b>NL</b>	National legislation always requires the prior authorisation of the judicial authority.

<b>2.5. Implementation of a request for administrative assistance or a communication requiring the authorisation or the request of a judicial authority (Art.3 §2 Regulation (EC) No 515/97)</b>	
<b>PL</b>	<p>The Bureau of Fiscal Documentation is authorized to carry out investigation or surveillance procedures and to apply operational technical facilities. The body in the Ministry of Finance, authorised to do so, is the Bureau of Fiscal Documentation subordinated to the General Inspector of Treasury Control. The Bureau for International Treasury Relations of the Ministry of Finance closely co-operates in that field with the Bureau of Fiscal Documentation.</p> <p>Evidence provided by operational surveillance techniques, i.e. phone taps, correspondence search may not be exchanged between services and administration bodies. They may be forwarded only after their legalisation and processing sufficient to efface and obliterate their source. Non-processed evidence may be forwarded only within one and the same service according to rigorous internal rules or under an explicit consent by the court.</p> <p>The Polish Customs Service is not authorised to use certain surveillance techniques, such as phone taps, whilst other special services for counteracting crime, for instance the Agency of Internal Security, Police units, the Border Guard, may apply such techniques. However, the application of surveillance techniques of phone taps may be used only upon the consent of the judicial authority.</p> <p>The application of other surveillance techniques also requires permit from competent administration bodies, i.e. the Prosecutor's Office as regards controlled delivery, although the Customs Service is authorised under laws in force to use that technique after all.</p> <p>In order to forward a report (containing the results of customs search, including information obtained with the use of surveillance techniques, searches of individuals and rooms) to another administration authority, a prior consent from the judicial authority is <b>not</b> required.</p> <p>The authorisation to carry out customs search (including surveillance techniques, search of individuals or rooms) is provided by the Act on Customs Service of 24 July 1999 (Journal of Laws No. 04.156.1641).</p>
<b>PT</b>	<p>There are no cases in which this has been necessary.</p> <p>However, it is worth noting that when, in the context of a request for mutual assistance, there is a need to communicate information obtained under national law - that is, falling within the Member States' remit, the 3rd pillar - the Naples Convention is invoked.</p>
<b>SE</b>	<p>The provision is applied by treating it as our own legislation, that is to say, where a measure such as, for example, a search is requested, a prosecutor's decision is needed in Sweden, and that being so Swedish authorities request it; where a measure such as, for example, a telephone tap is requested, a court order is needed in Sweden, and that being so Swedish authorities request it. It all depends on the circumstances. In some cases, Customs can decide on a search.</p>



<b>2.5. Implementation of a request for administrative assistance or a communication requiring the authorisation or the request of a judicial authority (Art.3 §2 Regulation (EC) No 515/97)</b>	
<b>SI</b>	Requests for the use of special forms of cooperation or inspection received by the Customs Administration are sent in writing to the police as the body mandated to carry out the special measures. The following measures are possible under national law:-the monitoring of persons,- surveillance – the Public Prosecutor issues an ordinance following a written proposal by the police,- telephone tapping – the police send a written proposal to the Public Prosecutor who then makes a written application for investigations to the court which orders the telephone tapping,- other forms – inspection of letters, e-mails, faxes, accounting systems – on a written proposal from the police to the Public Prosecutor who then makes a written application for investigations to the court which issues the order.
<b>SK</b>	The prior authorisation of a judicial authority in order to communicate our findings is <b>not</b> needed.
<b>UK</b>	In HM Customs and Excise, information and intelligence could be communicated in response to a request for mutual assistance under Regulation 515/97 but the use of Mutual Legal Assistance would be required to transmit evidence of an offence.  This provision has not been utilised in relation to Regulation 515/97 by the Rural Payments Agency. In general though, the CFCU is authorised within the scope of the Regulation of Investigatory Powers Act 2000 to make subscriber checks on telephone lines of suspects.

<b>2.6. Treatment of reports of participants to a mission to a third country by Member State which did not take part in the mission</b>	
<b>On completion of a Community administrative and investigative cooperation mission to a third country with which the Community and its Member States have concluded an agreement or a protocol on mutual administrative assistance in customs matters (Article 19 of Regulation No 515/97), a report countersigned by the participants in the mission and the documents that may be invoked as evidence are communicated to the Member States concerned, even if they did not take part in the mission. How are these reports dealt with in the Member States: Are reports dealt with differently in Member States which did not take part in the Community mission?</b>	
<b>AT</b>	The reports are handled in the same way as AM messages. (See point 2.4). There is no differential treatment.
<b>BE</b>	The mission report is attached to the administrative recovery dossier in Belgium or the dossier prepared with a view to prosecution, depending on the case. It constitutes the foundation for the findings justifying the recovery or prosecution. No, they are not treated differently. However, the fact that an officer of the Belgian Customs and Excise Administration has taken part in an investigation mission and has personally observed the facts and can therefore deliver a first-hand report is likely to facilitate the further examination of the case by the national judicial authorities.
<b>CY</b>	No such case occurred between 1 May and 31 December 2004.
<b>CZ</b>	Such reports are not dealt with differently in the Czech Republic.

<b>2.6.</b>	<b>Treatment of reports of participants to a mission to a third country by Member State which did not take part in the mission</b>
<b>DE</b>	<p>Whether or not a German official has taken part in the Community mission under Article 19 of Regulation (EC) No 515/97 has no bearing on the value of the evidence. The German customs bases its decision as to whether the information could provide a basis for an administrative decision on objective criteria, such as the content and source of the information.</p> <p>OLAF has produced its “Vademecum intended for use by the participants in anti-fraud fact-finding missions”, which deals with all questions relating to Community missions (document XXI/748/94 of 10 June 1994). Regrettably, it has not been updated. The German Government would like to see OLAF look at it again with a view to optimising the conduct of Community missions.</p>
<b>DK</b>	<p>Reports from OLAF to the central customs authorities are passed on to the local customs departments involved in the investigation. See also the answer to question 2.4.</p> <p>Where a mission report provides a real basis for possible recovery, access is usually granted in accordance with the rules in force so that the company can see what the demand is based on.</p> <p>Where criminal proceedings are launched, the documents are included in the file forwarded to the police. See also the answer to question 2.5.</p> <p>Reports are treated in exactly the same way, irrespective of whether Denmark takes part in the Community mission or not. However, if Denmark takes part, the Danish participants will produce a Danish report. This report is not used in connection with recovery but may provide the basis for referring the case to the police so that searches may be conducted or other measures taken.</p>
<b>EE</b>	<p>Forwarding data collected regarding criminal matters out criminal proceedings ("spontaneous exchange of information") is conducted taking into account each concrete case and the purpose of the use of data.</p>
<b>EL</b>	<p>The procedure is the same in either case, whether a representative of Greece takes part in the mission or not. The outcome of the Community mission is sent to the customs authorities involved (the customs offices where imports/exports have been found), which then recover the duties, depending on the infringement detected. The results of the Community mission are also used for dealing with those cases where the companies involved may appeal before the courts.</p>
<b>ES</b>	<p>The reports are not dealt with differently if Spain did not take part in the Community mission, and once they are received by the National Information and Investigation Office the necessary steps are taken to deal with the irregularities using the documents that may be invoked as evidence.</p>
<b>FR</b>	<p>The report drawn up by Commission staff, and the annexes to it, are taken in legal proceedings as evidence which is valid until proved otherwise, irrespective of the nationality of the participating staff members. It is important that the report contains precise facts and, if possible, is counter-signed by the local authorities.</p>
<b>IE</b>	<p>The findings of a Community administrative and investigative co-operation mission to a third country are accepted by Ireland at face value and any necessary action that is called for is implemented. This applies irrespective of which Member States participated in the mission.</p>
<b>IT</b>	<p>There is no differential treatment.</p>
<b>LT</b>	<p>They haven't had any of such reports.</p>

<b>2.6. Treatment of reports of participants to a mission to a third country by Member State which did not take part in the mission</b>	
<b>LU</b>	For customs and excise purposes, only the official report , i.e. that compiled by two people qualified to do so, one of whom must be a customs officer, has evidential value (see section 267 of the General Customs and Excise Act). A customs and excise offence may be proved by any of the methods allowed under law: confessions by those involved, witness statements, serious and corroborating suspicions. Officers' reports on their activities and duties are legally authentic unless proved to be false (ibid, section 272). The evidential value of these reports extends to material facts personally observed by the authors. Information which was not personally observed has no evidential value. Statements which they record must be considered as having actually been made unless proved otherwise, but for evidential purposes the statements' sincerity and truth will remain subject to the ordinary law and the assessment of the trial court exercising its discretion. Accordingly, a mission report is only one item of evidence. When the officer has taken part in the mission, their statement can always be admitted as evidence.
<b>LV</b>	National Customs Board and the Customs Criminal Board of the SRS do not have information on circulation of the mentioned reports.
<b>MT</b>	These reports are treated as "Mutual Assistance" communications.
<b>NL</b>	Mission reports are treated as evidence in both administrative and criminal law proceedings. No distinction is made according to whether or not the Netherlands took part in the mission(s) in question.
<b>PL</b>	The Polish Customs Service has not participated in missions involving investigation and administrative assistance.
<b>PT</b>	The Directorate-General for Customs and Excise (DGAIEC) receives reports on the Community missions carried out by OLAF to third countries, irrespective of whether it has or has not taken part in them.
<b>SE</b>	Reports are read through carefully and may form the basis for possible debits. Sweden has yet to take part in such a mission, and the first time will be in January 2005. But the way reports are dealt with should, of course, be the same, regardless of whether Sweden has taken part or not.
<b>SI</b>	The Customs Administration does not have any experience with this type of report at present, so that there should not really be any differences in the treatment of these reports.
<b>SK</b>	The Customs Criminal Office accepts the above-mentioned reports as evidence.
<b>UK</b>	Whether or not the UK participated in a 'Community mission', reports that are received are dealt with in the same way by HM Customs and Excise. The information may be worked up to form part of an intelligence package for possible criminal investigation or may be sent to the operational staff that could result in recovery action. Although not applicable to period of report, such information would be considered by the Rural Payments Agency's CFCU and actioned accordingly.

**2.7. Administrative or legal decisions relating to the application of penalties for breaches of customs or agricultural legislation in cases which have been the subject of communications under Articles 17 or 18 of Regulation (EC) 515/97**

Under Article 49 of Regulation No 515/97, administrative or legal decisions or the main elements thereof relating to the application of penalties for breaches of customs or agricultural legislation in cases which have been the subject of communications under Articles 17 or 18 must be transmitted to the Commission by the Member States. As regards 2002, 2003 and 2004:

a) How many administrative decisions have been definitively taken and executed for breaches of customs legislation in your Member State?

b) How many legal decisions convicting natural or legal persons for breach of customs legislation have been taken in your Member State?

c) Of the latter number, how many judicial decisions finding that breaches have been committed as part of organised crime<sup>21</sup> under national law have been taken in your Member State?

d) In order to define “good practice”, how is the communication of administrative or legal decisions to the Commission, or at least the essential elements thereof, organised in your Member State?

Member States	Number of administrative decisions 2002	Number of legal decisions 2002	Of which concern organised crime	Number of administrative decisions 2003	Number of legal decisions 2003	Of which concern organised crime	Number of administrative decisions 2004	Number of legal decisions 2004	Of which concern organised crime
AT	7 <sup>22</sup>	61 <sup>23</sup>	0	3 <sup>24</sup>	69 <sup>25</sup>	0	8 <sup>26</sup>	-	-
BE	-	-	-	-	-	-	-	-	-
CY	-	-	-	-	-	-	-	-	-
CZ	0	-	-	0	-	-	0	0	0
DE	-	-	-	-	-	-	-	-	-
DK	28	1	0	12	2	0	10	2	0
EE	-	-	-	-	-	-	-	-	-
ES	16	-	-	2	-	-	1	0	0
FR	-	15007 <sup>27</sup>	-	-	15425 <sup>28</sup>	-	-	-	-
UK	12	-	-	4	-	-	3	-	-

<sup>21</sup> The concept of organised crime is defined in the Joint Action of 21 December 1998 adopted by the Council, OJ L 351, 29.12.1998.

<sup>22</sup> Cases of cigarette smuggling not included.

<sup>23</sup> Includes smuggling and handling smuggled goods.

<sup>24</sup> Cases of cigarette smuggling not included.

<sup>25</sup> Includes smuggling, handling smuggled goods and false exportation refunds.

<sup>26</sup> Cases of cigarette smuggling not included.

<sup>27</sup> This refers to established offences for which a penalty has been imposed and not the number of criminal penalties actually imposed, which could be higher if more than one offender was involved (this figure is not available from current statistics).

<sup>28</sup> This refers to established offences for which a penalty has been imposed and not the number of criminal penalties actually imposed, which could be higher if more than one offender was involved (this figure is not available from current statistics).

EL <sup>29</sup>	-	-	-	-	-	-	-	-	-
HU	-	-	-	-	-	-	55	0	0
IT	-	-	-	-	-	-	-	-	-
IE	0	58	0	3	79	0	0	82	2
LT	1452	41	-	1138	52	-	1169	47	-
LU	-	-	-	-	-	-	16	0	0
LV	-	-	-	-	-	-	968	-	-
MT	-	-	-	-	-	-	-	-	-
NL <sup>30</sup>	-	-	-	-	-	-	15	20	0
PT <sup>31</sup>	-	-	-	-	-	-	-	-	-
PL	-	-	-	-	-	-	134	236	3
SE	8	1	1	3	1	1	-	-	-
FI	-	-	-	-	-	-	-	-	-
SI	0	0	0	0	0	0	0	0	0
SK	-	6	-	-	2	-	~550	1	1
<b>Total</b>	<b>1523</b>	<b>15174</b>	<b>1</b>	<b>1165</b>	<b>15630</b>	<b>1</b>	<b>2929</b>	<b>388</b>	<b>6</b>

**Organisation of the communication of administrative or legal decisions to the Commission (Art.49 of Regulation (EC) 515/97)**

<b>AT</b>	<p>Due to the fact that the member state is obliged to inform the commission about the results of cases related to the Reg No 515/97, Austria informs OLAF about all the results, as far as administrative decisions are concerned. In cases where irregularities are detected, reports are sent to OLAF. In cases without irregularities OLAF is informed with the AM status report (twice a year).</p> <p>There are no specific guidelines or decrees for the Austrian judicial authorities how to inform the Commission and/or OLAF about the outcome of a judicial proceeding.</p>
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<sup>29</sup> There is no data available for the years in question (2002, 2003, 2004), because those cases concerning administrative decisions which were definitively taken and executed for breaches of customs and agricultural legislation have not yet been catalogued, so it is not possible to give figures.

<sup>30</sup> The figures cover the period from 2002 to 2004 (not only 2004).

<sup>31</sup> The input of data into the anti-fraud information system does not yet make it possible to identify the cases of Irregularity Forms or misdemeanours/criminal offences that have resulted directly from a mutual assistance form. That is why this information is not yet available in the system.

**Organisation of the communication of administrative or legal decisions to the Commission (Art.49 of Regulation (EC) 515/97)**

<b>BE</b>	<p>If the investigations carried out with the involvement of the National Investigation Directorate and the regional inspection directorates (see reply to question 2.4) ascertain the existence of an operation that breaches agricultural or customs regulations, the investigation is completed either by drafting an official report with a view to prosecution or by preparing a dossier with a view to an administrative recovery procedure.</p> <p>Regardless of which of these two options is chosen for terminating the investigation, the file is sent to the regional director with jurisdiction for that area, who has the power to institute and pursue a prosecution and is responsible for launching recovery proceedings.</p> <p>For reasons relating to the different ways of collecting statistics, it is not possible directly to cross-check the data kept by the National Investigation Directorate relating to the follow-up to mutual assistance communications under Articles 17 and 18 of Regulation (EC) No 515/97 with the data available in the regional directorates responsible for administrative or judicial procedures following investigations initiated by such communications.</p> <p>However, information is provided to the Commission in two ways.</p> <p>Firstly, the National Investigation Directorate issues regular communications on the status of mutual assistance requests that have been made and specifies whether the administrative investigation has found any irregularity with or without an impact on the Community budget and, where appropriate, the subject of an administrative or judicial procedure with a view to recovery.</p> <p>Secondly, the Belgian Customs and Excise Administration notifies the Commission quarterly of all cases of fraud and irregularities involving the collection of traditional own resources where the amount of resources at stake is more than €10 000. It also informs the Commission of the status of cases communicated previously that have not yet been completed (in accordance with Article 6(5) of Council Regulation (EEC, Euratom) No 1150/2000 of 22 May 2000).</p> <p>This communication, which is done via the Ownres-web system, states whether the case is being communicated under Regulation (EC) No 515/97 and specifies the stage of the administrative or judicial procedure that has been reached and the financial consequences</p>
<b>CY</b>	By coordinating actions via the Cyprus AFCOS.
<b>CZ</b>	The staff responsible for supervising and organising investigations and controls on the basis of Articles 17 and 18 of Regulation No 515/1997 monitors the status of investigations in the information system, including administrative sanctions. The problem of criminal prosecutions and any court decision would be dealt with on an ad hoc basis.
<b>DE</b>	<p>The German customs service examines individual cases and after careful deliberation decides which parts of administrative or court decisions punishing violations of customs legislation to notify to OLAF.</p> <p>For example, by letter of 21 January 2002 (ref.: III B 8 – Z 4607 – 2/02), which was answered by Mr Brünner on 6 February (ref.: 1254 EMM/mg/1081/D(2002)), the German customs service informed OLAF of a judgment by the Supreme Tax Court that was of major significance for mutual assistance in relation to customs matters.</p>

<b>Organisation of the communication of administrative or legal decisions to the Commission (Art.49 of Regulation (EC) 515/97)</b>	
<b>DK</b>	<p>In Denmark the communication of administrative or legal decisions, or at least the key aspects of them, to the Commission is a matter for the Assistant Public Prosecutor for Special Economic Crime.</p> <p>Pursuant to Notification No 4/1998 from the Chief Public Prosecutor, reports concerning possible fraudulent conduct in connection with EU fraud cases are sent to the Assistant Public Prosecutor for Special Economic Crime, who in turn informs the Commission.</p>
<b>ES</b>	<p>The National Information and Investigation Office within the Department for Customs and Excise Duties is the central body which organises relations with the Commission as far as mutual assistance is concerned.</p>
<b>FR</b>	<p>This information is communicated to the European Commission through the Ownres program, which enables information to be transmitted on cases of fraud and irregularities involving a total amount of own resources equal to or exceeding €10 000 (cf. Article 6(5) of Regulation (EC) No 1150/2000 of 22 May 2000 on own resources). The Member States must specify the administrative and financial stage which each case is at (which includes bringing judicial proceedings).</p> <p>The same is true when informing the Commission of cases of fraud or irregularities concerning EAGGF-Guarantees where €4000 or more has been evaded (cf. Regulation (EEC) No 595/91 of 4 March 1991). In this context, the Member States must specify the administrative and financial status of each case (including opening criminal proceedings for example).</p>
<b>HU</b>	<p>As part of the irregularity reports, through the OLAF Coordination Bureau.</p>
<b>IE</b>	<p>If penalties have been applied in dealing with a case investigated as a result of a communication received from OLAF under 515/97, then such details are included in the final report on the case sent to OLAF. On the other hand, if the investigation had been initiated unilaterally, then details of any penalties applied would be communicated to the Commission where information was provided spontaneously under 515/97.</p>
<b>LT</b>	<p>Phare project LT 2002.04.01 "Implementation of EU customs information systems", Part 4 "National case management/intelligence system, including interfaces with AFIS/CIS", is currently in its final phase. When this project has been completed, the Lithuanian customs service will have a national case and information management system. This system will be used to compile data about (administrative, criminal and fiscal) investigations launched and conducted in the customs service, the progress of such investigations and the implementation of decisions taken with regard to them.</p>
<b>LU</b>	<p>Annual communication as part of the activity report submitted via AFIS.</p>
<b>NL</b>	<p>There are frequent consultations in the Netherlands between the customs authorities and the special investigation departments (FIOD-ECD and AID) concerning administrative and criminal law enforcement in cases of breaches of customs regulations.</p> <p>These consultations on mutual assistance are the forum for communicating administrative decisions and judgments to the Commission via the Customs Information Centre.</p>

<b>Organisation of the communication of administrative or legal decisions to the Commission (Art.49 of Regulation (EC) 515/97)</b>	
<b>PL</b>	For the time being, in Poland there is no central register of judicial and administrative decisions imposing penalties for breach of agricultural and customs legislation. A substitute of such register may be a collection of incidental reports on events of certain importance, filed by local Customs Service units. The Bureau of International Treasury Relations acting within its competence will propose a solution to establish a central monitoring system of these matters.
<b>SE</b>	By means of half-yearly reporting to OLAF on all cases, as well as by reporting back in every individual case that is handled.
<b>SI</b>	So far, there have been no examples of this type. The communication of decisions forms an integral part of the procedure for reporting and dealing with irregularities.
<b>SK</b>	Administrative or legal decisions are communicated to the Commission by our national OLAF communicator on request.
<b>UK</b>	The UK communicates any decisions to the Commission by way of a direct input of information to the relevant OLAF case officer.

**2.8. Staff assigned to the implementation of Regulation (EC) No 515/97 in the Member States in 2003 and 2004.**

**As far as possible, please state the number of staff that were assigned to the implementation of Regulation (EC) No 515/97 in the Member State, i.e. the staff carrying out the tasks referred to in Question 2.4 in 2003 and 2004?**

<b>Member State</b>	<b>Manpower 2003</b>	<b>Manpower 2004</b>
<b>AT</b>	373	325
<b>BE<sup>32</sup></b>		30
<b>CY</b>		4 <sup>33</sup>

<sup>32</sup> The investigation departments together (see reply to questions 2.4 and 2.7) employ about 300 staff, of whom an estimated 10% are engaged in the various tasks implementing Regulation (EC) No 515/97 (investigating unit in the areas of origin and agriculture and coordination of mutual assistance communications, drafting requests for mutual assistance and replies to requests from other Member States, providing spontaneous assistance, etc.), including investigation work.

<sup>33</sup> In 2004 (May to December) four members of the staff of the Customs Department working in the Information System Sector in the Customs Service Headquarters were assigned to the implementation of Regulation (EC) No 515/97. When necessary, they were aided by fifteen other colleagues from the Investigations and Information System Unit.



<b>CZ</b> <sup>34</sup>		8
<b>DE</b> <sup>35</sup>		180 <sup>36</sup>
<b>DK</b>		10 <sup>37</sup>
<b>EE</b>		1-2
<b>EL</b> <sup>38</sup>	103	123
<b>ES</b>	9	9
<b>FI</b>		1
<b>FR</b> <sup>39</sup>	23	22
<b>HU</b> <sup>40</sup>		
<b>IE</b>		6

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<sup>34</sup> Customs Administration: In the National Coordination Unit, two staff deal exclusively with the question of MA messages and another three are available where necessary or for one-off activities – e.g. consultation. The number of human resources in the unit dealing with the direct performance of controls or investigations is very difficult to quantify, as it depends in particular on the complexity of the investigation. Ministry of Agriculture: In the Ministry of Agriculture the AFCOS contact point was set up as part of the Audit and Supervision Section. Altogether 3 staff were assigned to it, and they also have full-time responsibility for the problem of controls under Regulation No 4045/89.

<sup>35</sup> The German customs service uses the same measures to combat fraud detrimental to the Communities' financial interests as it does to protect Germany's fiscal interests. It therefore does not keep separate records of the number of officials working together with other Member States on information spontaneously provided, requests for assistance or MA communications. The number of officials working on cases involving MA communications varies in direct relation to the workload created by requests for assistance. There are some 750 officers involved in checking compliance with customs and market regulations at the main customs offices. When necessary, they can also provide immediate assistance under Regulation (EC) No 515/97. There are also horizontal staff who work in clerical departments for example.

<sup>36</sup> On average, German customs investigation offices, including the ZKA, have 110 officers investigating and enforcing the law in connection with infringements of EU customs laws (including national bans and restrictions on cross-border trade but not including customs violations relating to alcohol, tobacco and mineral oil) and, on average, 70 officers investigating and enforcing the law in connection with infringements of EU market regulations. They are flanked by officers employed in clerical capacities or surveillance. The findings of checks and investigations can lead to new administrative decisions and, where necessary, to enforced recoveries. Again, the German customs service deploys staff, as needed, to perform the tasks.

<sup>37</sup> There are also an unknown number of people employed to conduct checks/*ex post* controls, etc., arising within the framework of mutual assistance under Regulation (EC) No 515/97.

<sup>38</sup> Staff in the customs administration assigned to the implementation of Regulation (EC) No 515/97 ranged from approximately 100 in 2003 to 120 in 2004, while in the SDOE three people were taken on at central level for the three years in question. It should be pointed out that in the customs authorities all the staff for each year are concerned with carrying out *ex post* checks following request and with checks in the context of mutual assistance on imports of goods

<sup>39</sup> The agents mentioned don't work full time on the application.

<sup>40</sup> The tasks relating to the implementation of the Regulation are or will be carried out by the designated persons as part of their day-to-day work, alongside their other duties, as a consequence of which it is not possible to determine the number of staff involved.

IT <sup>41</sup>	38	38
LT		13
LU	3	3
LV <sup>42</sup>	7	8
MT		3
NL		4 <sup>43</sup>
PL		17 <sup>44</sup>
PT		5
SE	2	2
SI		4 <sup>45</sup>
SK		8
UK	4	4

## 2.9. Extension of administrative inquiries initiated under Regulation (EC) No 515/97 in criminal investigations and application of the “Naples II Convention”

The Convention on mutual assistance and cooperation between customs administrations of 18 December 1997, known as the “Naples II Convention”, which lays down the machinery for mutual assistance in the context of criminal investigations into infringements of Community and national customs legislation, constitutes a natural extension of administrative inquiries initiated under Regulation (EC) No 515/97. As regards 2002, 2003 and 2004:

- How many administrative inquiries initiated under Regulation No 515/97 resulted in criminal investigations?

- In the Member States where the Naples II Convention has already been ratified, please state the number of cases in which the judicial authority had recourse to the Convention?

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<sup>41</sup> At the central level, the ‘Comando Generale della Guardia di Finanza – II Reparto’ has been using 20 officers per year to enforce Regulation (EC) 515/97; further personnel, difficult to quantify, from the decentralised ‘Comandi di Corpo’ have also been used to specifically implement community legislation. At the central and regional levels, the Customs Agency has used 18 officers per year.

<sup>42</sup> With the order issued by the SRS an official has been nominated responsible for circulation of mutual assistance reports both on central level and in each of the 5 Customs Boards of the SRS Regional Offices. In 2003 one person was assigned to the implementation of Regulation (EC) No 515/97, while 2 persons were assigned in 2004.

<sup>43</sup> This is the number of people working at the Customs Information Centre. For controlling the risks and performing physical and administrative controls central and local competent customs authorities are being used.

<sup>44</sup> The responsibilities of the employees include, but are not limited to the implementation and execution of Council Regulation (EC) No 515/97.

<sup>45</sup> Plus the regional officers who deal with individual requests depending on the case.

**- Otherwise, please state whether the judicial authority had recourse to the Convention on mutual assistance, the Schengen Agreement or the bilateral agreements on mutual assistance?**

Member State	Administrative inquiries 2002	Criminal investigations 2002 ("Naples II" Convention or other base) <sup>46</sup>	Administrative inquiries 2003	Criminal investigations 2003 ("Naples II" Convention or other base) <sup>47</sup>	Administrative inquiries 2004	Criminal investigations 2004 ("Naples II" Convention or other base) <sup>48</sup>
AT	5		3		2	
BE	-	-	-	-	-	-
CY					0	0
CZ <sup>49</sup>	0	-	0	-	0	-
DE <sup>50</sup>	-	-	-	-	-	-
DK	2	0	0	0	2	0
EE	0		0		0	
EL <sup>51</sup>						
ES	0	0	0	0	0	0
FI	-	-	-	-	-	-
FR	-	-	-	-	-	-
HU	0	0	0	0	0	0
IE						12
IT <sup>52</sup>	-	-	-	-	-	-
LT <sup>53</sup>	0	0	0	0	0	0
LU				1		3
LV	-	-	-	-	-	0
MT	-	-	-	-	-	-
NL	-	-	-	-	-	-
PL	-	-	-	-	-	-
PT	-	-	-	-	-	-
SE	-	-	-	-	-	-
SI	-	-	-	-	-	-
SK	-	-	-	-	-	-
UK	12		4		3	7
<b>Total</b>	<b>19</b>	<b>0</b>	<b>7</b>	<b>1</b>	<b>7</b>	<b>22</b>

**2.10. Proposals of third countries with which an agreement or a protocol on mutual administrative assistance in customs matters should be concluded as soon as possible**

**In the light of your experience, with which third countries should an agreement or a protocol on mutual administrative assistance in customs matters be concluded as soon as possible?**

<sup>46</sup> Cigarette smuggling not included.

<sup>47</sup> Cigarette smuggling not included.

<sup>48</sup> Cigarette smuggling not included.

<sup>49</sup> The Naples II Convention has not yet been ratified by the Czech Republic.

<sup>50</sup> The German customs service applies the Naples II Convention parallel to administrative inquiries initiated under Regulation (EC) No 515/97 so that it can investigate the administrative aspects of a case and the question of criminal liability at the same time. German authorities has no statistics distinguishing between the numbers of cases where the German customs service has brought criminal proceedings and where it has referred the case to the judicial authorities for investigation.

<sup>51</sup> Of the inquiries initiated under Regulation (EC) No 515/97 and examined by the SDOE, 80% resulted in criminal investigations.

<sup>52</sup> The Naples II Convention has not yet been ratified by Italy.

<sup>53</sup> The Naples II Convention has been ratified by Lithuania but it has not yet been used in practice.

<b>2.10.</b>	<b>Proposals of third countries with which an agreement or a protocol on mutual administrative assistance in customs matters should be concluded as soon as possible</b>
<b>AT</b>	<p>EC-agreements on mutual assistance in customs matters should be made with Bosnia-Herzegovina and Albania. A regulation with Kosovo should be found.</p> <p>As far as the judicial cooperation in criminal matters is concerned, there is no need for supplementary arrangements with the Member States of the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters signed on 17 March 1978, which is now ratified by 39 States.</p>
<b>CY</b>	Egypt, Lebanon, Syria and Jordan.
<b>CZ</b>	Belarus and Bosnia-Herzegovina.
<b>DE</b>	<p>Singapore (is often used as a transit country to disguise the real origin of goods.)</p> <p>All the basic elements for decisions on further procedures are available to OLAF.</p> <p>Before new agreements are concluded, OLAF should discuss with the Member States whether the obligations toward third countries imposed on EC Member States by agreements are proportionate to the foreseeable benefits. When doing so, they should take account of the amount of trade with such third countries and the efficiency of the customs administrations in the third countries concerned.</p>
<b>DK</b>	Certain Asian countries
<b>EL</b>	<p><b>1) China:</b> one of the priority countries with which a protocol on mutual administrative assistance on customs matters should be concluded. It is proposed that the EU accelerate the procedures for bringing into force the draft EU-China agreement on cooperation on customs matters, as Greece has outstanding requests for verification of the sale prices of goods. The problem is expected to get worse as a direct result of there being no quotas on imports into the EU from China since 1 January 2005. The national customs administrations do not have the means to protect Community producers and the Community's financial interests, while Chinese products are imported at very low prices and Greece authorities are unable to check the actual prices in China. As a result, the domestic market is dominated by Chinese products which have been released for free circulation on payment of extremely low import duties.</p> <p><b>2) Malaysia, Taiwan, Thailand, Indonesia</b> (Ever increasing volume of imports of mass-market consumer goods from these countries.)</p> <p><b>3) Low-cost countries in Africa.</b></p>
<b>ES</b>	The United Arab Emirates, Dubai and countries in South East Asia with which an agreement does not yet exist.
<b>FR</b>	Singapore, United Arab Emirates, Thailand, Malaysia, Panama, Japan, Vietnam, Tunisia and Laos
<b>HU</b>	China, Romania, Serbia-Montenegro, Ukraine, Vietnam
<b>IE</b>	Malaysia

<b>2.10.</b>	<b>Proposals of third countries with which an agreement or a protocol on mutual administrative assistance in customs matters should be concluded as soon as possible</b>
<b>IT</b>	Middle Eastern and Balkans states.
<b>LT</b>	Ukraine, the Russian Federation and Belarus.
<b>LV</b>	<p>Currently Latvia has started the procedure of signing mutual assistance agreements with the following countries: Belgium, Italy, Slovenia (EU Member States) and Croatia, Armenia (third countries).</p> <p>As of 1 May 2004 the Republic of Latvia started to apply the Council Regulation from 13 March 1997 No.515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters. On 1 May 2004 the Convention of 18 December 1997, developed basing on Article K3 of the European Union Treaty on mutual assistance and cooperation between customs administration (Naples II Convention), entered into force.</p> <p>With the entering into force of the mentioned documents the issue of signing the mutual assistance agreements in customs matters between the EU Member States became topical.</p> <p>On 11 August 2004 the SRS sent the letter No 3.3-30/1424 to the OLAF on mutual assistance agreements in customs matters by requesting OLAF's opinion on necessity of such agreements between the EU Member States.</p> <p>On 20 September 2005 the National Customs Board of the SRS sent the letter No.16.7.2/1897 to the European Commission Justice and Home Affairs Directorate General, OLAF as well as to European Commission Tax and Customs Union Directorate General on mutual assistance agreements in customs matters between the EU Member States asking to provide opinion on the necessity.</p>
<b>MT</b>	North African countries
<b>PL</b>	China, Thailand, Singapore, India and Canada.
<b>PT</b>	China (In view of the growth in trade links which has taken place over the last few years and that will entail greater use of instruments for mutual administrative assistance.)
<b>SI</b>	Serbia and Montenegro (and Kosovo-UNMIC)
<b>SK</b>	According to the statement of Customs Criminal Office the existing agreements should be carried out more properly.

### **3. RECOVERY – JOINING A CIVIL ACTION**

#### **Example:**

A contract for the provision of services (worth EUR 1 million) is concluded between the Commission and an economic operator in a Member State who is domiciled in the capital of your country. The report produced by an auditor requested by the Commission to examine the project in question shows that the Commission co-contractor has overestimated costs by EUR 222 222. Investigation by OLAF and the competent authorities of your country confirm the amount quoted in the auditor's report and conclude that there is sufficient evidence of fraud by the beneficiary of the contract to the detriment of the European Community budget. In addition, there is evidence, revealed by the inquiries, that the Commission's co-contractor has taken steps to transfer his assets to a third (non-EU) country.

According to the answers given in the preceding report, there are three alternative stages at which a civil action can be joined in a Member State. Member States are asked to answer the following questions according to which of the following stages the procedure is at:

- (1) the procedure is still at the stage of investigation by the police or public prosecutor;
- (2) the investigation procedure has ended and the public prosecutor is about to draw up an indictment;
- (3) the trial is underway.

	3.1. a) What essential points should be included in a Commission's application to the judicial authorities to join a civil action?	3.1. b) Are there any options or procedures open to the Commission other than launching a civil action (before civil or penal courts) in order to enforce recovery?	3.2. Requirements as to evidence  What specific requirements as to evidence are imposed by national law in connection with a recovery procedure and at what stage of the procedure?	3.3. Precautionary measures  What are the essential points as regards precautionary measures that should be included in an application made by or on behalf of the Commission to the judicial authorities? What particular characteristics of the legal system of the Member States should be taken into consideration?
AT	Applications can be made <b>until the start of the trial</b> .	The judge may declare the <b>forfeiture of assets</b> under the power of disposal of a <b>criminal</b> organisation or a <b>terrorist</b> association or made available or collected as a means to <b>finance terrorism</b> .	When joining a civil action, the same requirements regarding evidence as for any other <b>criminal proceedings</b> apply.	The same requirements as for any other <b>criminal proceedings</b> apply. It would nonetheless be advisable to make references to the <b>legal prerequisites</b> regarding the application for confiscation
BE	A civil action <b>cannot</b> be joined at the stage of the <b>investigation</b> .  The Commission can do so at the <b>end of the process</b> or when the procedure is being <b>decided in chambers</b> .  The action must be launched by a person <b>legally mandated</b> by the Commission  The complaint must contain as many matters of <b>fact and law</b> as possible.	No answer.	There are <b>no special requirements</b> as regards proof in the case of joining a civil action as opposed to any other procedures.  An auditor's report is one of a number of pieces of evidence that will be <b>examined</b> by the trial court, both to establish that damage has occurred and to determine the amount of that damage. It is <b>not binding</b> on the trial court. The Commission must try to establish the existence of damage and the amount of that damage as convincingly as possible in order to recover the funds misappropriated.	It is <b>advisable</b> (but not compulsory) for the Commission to request the seizure of the misappropriated funds or equivalent assets when lodging its <b>complaint</b> . The public prosecutor and investigating magistrate have to give grounds for their decision to seize equivalent assets, so it is advisable (but not compulsory) for the Commission to specify the " <b>serious and specific grounds for seizure</b> " and to provide indications of the estimated <b>amount</b> misappropriated.  In the interest of effectiveness, the Commission must therefore provide the <b>maximum</b> possible evidence to demonstrate convincingly that funds have been <b>misappropriated</b> . If it has any details on the <b>whereabouts</b> of funds, it is very much in its interest to <b>produce</b> this information.



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CY	The answer is insufficiently detailed. It is not possible to file a civil action within criminal proceedings.	The answer is insufficiently detailed.	The statement by a registered accountant is considered expert evidence and, as such, is admissible both in <b>civil</b> and <b>criminal</b> proceedings.	The court may order a precautionary measure only if it considers that the claim has a <b>valid legal basis</b> and that the <b>sale</b> or <b>transfer</b> of property to a third party may prevent the claimant from benefiting from a possible court ruling in his favour.

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CZ	<p>The claim must be lodged at any time during the course of the <b>criminal prosecution</b> but at the latest at the beginning of the <b>first court session</b> after reading the indictment.</p> <p>The Commission must lodge its claim in such a way as to leave <b>no doubt</b> that it is demanding <b>compensation</b> for damages.</p> <p>The claim for compensation must be lodged against the <b>accused</b> and only against a <b>natural person</b>, not a legal person.</p> <p>The request must show the <b>grounds</b> (it is sufficient for the Commission to state that it suffered damage as a result of the act referred to in the indictment) and at least the <b>minimum amount of the claim</b> for compensation (explicitly). If the claim for damages was made in <b>due time</b>, the <b>amount</b> of compensation claimed can be <b>changed</b> in the further course of the proceedings up to when the court <b>retires for its final deliberations</b>.</p>	No.	<p>The Commission may request that evidence be taken. To this end, it may submit an <b>expert opinion</b>. Such opinions are admissible in evidence provided that they satisfy all the <b>legal requirements</b> and contain a <b>statement</b> by the expert that he is aware of the consequences of knowingly giving false evidence.</p> <p>An expert opinion may be submitted only by an expert entered in the <b>register of experts, institutes or other establishments and scientific institutes</b>. The register of experts is kept by the regional courts and the central register of experts is kept by the Ministry of Justice.</p>	<p>The injured party may only request that his claim be secured <b>after charges have been brought against the accused</b>, i.e. not normally at the examining stage, but only at the criminal prosecution stage.</p> <p>If the request for a claim to be secured is made by the injured party, it should contain details of the <b>amount</b> of compensation being claimed or already claimed in criminal proceedings against the accused, details of the grounds for suspecting that satisfaction of the claim will be <b>frustrated</b>. If the injured party knows that the accused owns immovable or movable property, or other assets, the proposal should indicate where such property or assets are <b>located</b>.</p>

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<b>DE</b>	The application must stipulate the <b>object</b> and <b>grounds</b> of the claim and should contain the necessary <b>supporting evidence</b> .	No.	Whether a report produced by a registered auditor and submitted by the Commission is sufficient is decided on a <b>case-by-case basis</b> . Where necessary, the Court will call for a further report. The Commission/OLAF does not need to take any <b>special measures</b> regarding the reliability of evidence.	As an injured party, the Commission may apply for its claim for compensation arising from the criminal act to be executed by <b>debt enforcement</b> or <b>attachment of assets</b> . Where assets have been impounded in the course of criminal proceedings with a view to subsequent confiscation or becoming the object of an order of forfeiture, an application for the authorisation of enforcement measures must be submitted to the judge.  The European Commission may also pursue its interests <b>less formally</b> , e.g. by contacting the judicial authorities through the Federal Ministry of Justice.
<b>DK</b>	The answer is insufficiently detailed.	The answer is insufficiently detailed.	There are no specific provisions concerning evidence in connexion with the submission of a civil claim in criminal proceedings.	. The answer is insufficiently detailed.

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EE	There are <b>no special requirements</b> for joining a civil action to criminal proceedings. A statement of claim should be filed in <b>writing</b> , indicating the <b>nature</b> and <b>extent</b> of loss and the loss has to be <b>proven</b> .	The answer is insufficiently detailed.	<p>A victim has the right to submit evidence at <b>every stage</b> of the proceedings. Evidence may be the <b>statements</b> of a <b>victim</b> or a <b>witness</b>, an <b>expert's opinion</b> (including an accountant), <b>statements</b> given by an <b>expert</b> explaining an expert's report, <b>physical</b> evidence, <b>documents</b>, <b>photographs</b>, <b>films</b> or other data recordings, but <b>other evidence</b> can also be used for proving the circumstances of a criminal proceeding.</p> <p>No evidence has a <b>predetermined</b> weight. A court shall evaluate all evidence in aggregate according to the <b>conscience</b> of the judges.</p>	<p>In the example, it is advisable to file an application for securing an action in the <b>statement of claim</b>, if there is a suspicion that the agreement partner intends to <b>transfer</b> his or her assets to a third country.</p> <p>Property is seized at the request of a <b>Prosecutor's Office</b> and on the basis of an order of a <b>preliminary investigation judge</b> or on the basis of a <b>court ruling</b>.</p> <p>In cases of <b>urgency</b>, property may be seized <b>without</b> the permission of a preliminary investigation judge; in that case the preliminary investigation judge shall be <b>notified</b> of the seizure of the property within <b>twenty-four hours</b> after the seizure and the judge shall immediately decide whether to <b>grant</b> or to <b>refuse</b> permission. If the preliminary investigation judge <b>refuses</b> to grant permission, the property shall be <b>released</b> from seizure immediately.</p> <p>Upon seizure of property in order to secure a civil action, the <b>extent of the damage</b> caused by the criminal offence shall always be taken into consideration.</p>

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EL	<p>Joining a civil action may be done in the criminal court, <b>in open session</b>, not necessarily during the criminal proceedings.</p> <p>In open court, the case is <b>presented</b> briefly and the <b>reasons</b> on which the right to join the case is based are set out. It is also necessary to specify that <b>financial reparation</b> is requested.</p>	The answer is insufficiently detailed.	No, a report produced by a registered auditor is <b>not binding</b> . The Greek courts freely assess all evidence produced in accordance with the principal of moral proof.	<p>The Commission may submit an application to the civil courts for precautionary measures to be taken, such as <b>registration of a mortgage prenotation on immovable property, seizure, suspension of Community payments</b>, etc.</p> <p>The Commission may produce <b>witnesses</b> to justify the claim. Proof in full is <b>not required</b>.</p>
ES	<p>The Commission is entitled to join a civil action in criminal proceedings involving <b>fraud</b> against its financial interests.</p> <p>The civil action may be lodged at any time <b>before</b> the indictment is brought, in other words before the accused is charged.</p> <p>The civil action is brought by means of a simple <b>application</b> to become party to the proceedings as an injured party. Subsequently, once the preliminary proceedings have been completed, the civil party receives notice to <b>prepare the accusation</b>.</p>	. The answer is insufficiently detailed.	In cases involving fraud in particular, the <b>statement</b> drawn up by the <b>public official, inspector or auditor</b> during the administrative phase and quantifying and describing the nature of the loss is allowed as evidence. Such reports have the status of evidence provided by experts and are subject to the overall assessment of the burden of proof that has to be made by the judge. They do <b>not</b> therefore establish damage in a binding manner, but provide an <b>indication</b> or element of proof thereof.	Precautionary measures can be sought at any time during the <b>investigative phase</b> . The <b>grounds</b> on which the appropriate precautionary measure is requested will have to be explained, with special reference to the evidence of <b>criminal activity</b> justifying adoption of the measures and identifying the civil liability that is sought to be established.

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FI	<p>The civil claim of the injured party arising from an offence is deemed to have been instituted in court as soon as the <b>prosecutor</b> presents the application for a summons. This means that no separate institution of proceedings is required from the injured party. However, the injured party has to decide at the stage of the pre-trial investigation whether to lodge the claims himself or to ask the prosecutor to lodge them for him.</p> <p>The grounds of the claim would be presented in the prosecutor's charge and the Commission could rely on them as the basis for his claim, even if the prosecutor did not pursue the claim. If, in view of its basis or the amount at stake, the claim for damages required as its basis the kind of facts not shown in the charge, those facts would have to be presented in the claim and the evidence that would substantiate them would have to be stated.</p>	No.	In this situation, there are no specific requirements as to evidence, but general principles characteristic of <b>free evaluation of evidence</b> are applied. This means that the registered auditor's report has <b>no binding</b> effect as regards the evaluation of evidence by the court. The auditor will be heard as a witness in court and may be questioned by the defendant.	<p>In the situation referred to, Finnish law recognises the risk of alienation and in such cases a transfer prohibition or seizure does <b>not require</b> any evidence of that risk; in principle it is enough to claim that the risk is <b>rather likely</b>. However, the application should describe <b>how</b> the risk is manifesting itself in the case in question. A decision on precautionary measures can be assured by adding to the application, for instance, a written testimony of the defendant's intention to transfer assets.</p> <p>In the example given, the following facts essential for the implementation of precautionary measures would have to be included in the application presented to the judicial authorities: a clear description of the <b>grant application</b>, its <b>purpose</b>, <b>who applied</b>, <b>who signed</b>, <b>date</b> of application, <b>subject</b> of the grant and the <b>reasons</b> why the applicant considers the case a <b>misuse</b> of a grant.</p>

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FR	<p>The application must be <b>as precise and complete as possible</b>, irrespective of the <b>stage</b> of the stage of the criminal proceedings of for proceedings to be brought.</p> <p>The admissibility criteria are:</p> <ul style="list-style-type: none"> <li>- The fact that the Commission is the <b>victim</b> and a reminder of the <b>Community legislation</b> involved, especially in terms of the <b>budget</b>;</li> <li>- The nature of the <b>damage</b> and the <b>offence</b> being prosecuted;</li> <li>- The link of causality between the <b>fraud</b> and the <b>loss to the Community budget</b>, determined mainly by the outcome of <b>OLAF's investigation</b>;</li> <li>- The link between the <b>Commission</b> and the <b>amounts paid</b> (the contract to provide services in the example).</li> </ul>	<p>The Commission can launch a civil action within criminal proceeding, or bring a civil action before civil courts to enforce recovery. There is no other possibility in French law.</p>	<p>A report from an authorised expert is <b>not binding</b>, but enables the court's decision to be <b>clarified</b>.</p> <p>OLAF must endeavour to show the different elements of the offence (<b>legal, material and intentional</b>). The three elements are likely to be linked:</p> <ul style="list-style-type: none"> <li>- legal element: Community fraud which could be defined as <b>criminal</b> (fraud);</li> <li>- Material element: <b>overestimation</b> of costs;</li> <li>- Intentional element: <b>fraud</b> committed by the <b>beneficiary</b> of the contract.</li> </ul> <p>Each of these three aspects should be explained <b>in detail</b> in order to prove the three elements.</p>	<p>In cases where it is deemed appropriate to resort to precautionary measures as part of civil enforcement procedures, the creditor must be able to justify <b>two basic conditions</b>:</p> <ul style="list-style-type: none"> <li>- the debt must be <b>justified in principal</b>;</li> <li>- circumstances must <b>threaten</b> the recovery of the debt. All applications for court approval must therefore endeavour to show that these <b>two</b> conditions are met.</li> </ul> <p>In the example given, the debt appears to be <b>justified in principle</b> and transferring funds abroad is liable to <b>impede recovery</b>. The application must therefore confirm that the two basic conditions are fulfilled.</p>

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HU	<p>The application must be made during the <b>trial phase</b>, but the Commission may state its <b>intention</b> to join a civil action at the stage of the <b>investigation</b>.</p> <p>The Commission should provide the investigative authorities with all the information it has on the <b>reality of the damage</b>, its <b>amount</b> and the link between the damage and the <b>alleged act</b>.</p> <p>In the example, the domiciliation of the economic operator is <b>indifferent</b>; it is the <b>place</b> where the offence is committed which determines the competence of the Hungarian courts.</p>	No.	<p>Proof can be given by <b>all means</b>: witness statement, report, deposition, written proof.</p> <p>The auditor's report is merely an <b>element</b> of proof which does not by itself establish the damage.</p>	<p><b>Sequestration</b> can be ordered by the Court. It is possible from the <b>investigation stage</b>. There must be a <b>joining of civil action</b> and a real <b>risk</b> concerning the compensation of the victim.</p> <p>In the example, the Commission should make the claim when <b>joining the civil action</b> or when presenting the justification of its joining the civil action. It should also furnish evidence proving that the co-contractor is attempting to impede the <b>recovery</b> of the debt. It should also inform the Hungarian authorities about the <b>known assets</b> of the co-contractor.</p> <p><b>Sequester of property</b> is a measure which prevents the suspected person or an associated party from exercising his <b>property rights</b>. It is a coercive measure which <b>precedes the sequestration</b> and which may be used by the <b>prosecutor</b> or the <b>investigative authorities</b> when sequestration seems <b>probable</b> and the suspect has made an attempt to <b>transfer</b> his assets or looks that he will make such an attempt. The sequester of property must immediately be followed by an application for a <b>sequestration</b></p> <p>The civil party does not play a direct role in the sequester of property, but must give the investigative authorities any useful <b>information</b> which may furnish grounds for a sequestration or a sequester of property.</p>



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IE	Civil action cannot be joined with criminal proceedings.	No.	This question does not arise.	This question does not arise.
IT	<p>Up <b>until the hearing in court</b>, the Commission must register an appearance with the Clerk's office of the court, indicating:</p> <ul style="list-style-type: none"> <li>- The Commission's <b>name</b> together with the details of its <b>legal Counsel</b>;</li> <li>- The personal particulars of the <b>defendant</b> to be sued or any other personal indications to identify that defendant;</li> <li>- The given name and surname of the <b>defence Counsel</b> and details of the <b>power of attorney</b>;</li> <li>- A statement of the <b>grounds</b> justifying the application. The Commission must also indicate in particular detail the <b>amount</b> of alleged damage caused and the <b>acts</b> or <b>events</b> that may have caused it.</li> <li>- Signature of the <b>defense Counsel</b>.</li> </ul>	The answer is insufficiently detailed.	At the request of one of the parties to the case, the court may request, by a reasoned court order, an "expert testimony". In any case, the private parties may appoint up to a maximum of two (in the latter instance) consultants of their own	Italian law does not specify the essential elements that an application for an injunction or a court order presented on behalf of the Commission must contain. However, an application for a court order/injunction must be adequately <b>reasoned</b> and <b>motivated</b> .

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LT	<p>A civil action is brought by filing a <b>claim</b> with the <b>public prosecutor</b> or a <b>court</b> at any stage of the criminal proceedings, albeit <b>before</b> examination of the evidence commences.</p> <p>A civil action is to be included in the <b>notification of suspected offence</b> or in the <b>indictment</b>. If the claimant in the civil action is of the opinion that, as a result of the alleged criminal act, the European Community has suffered greater loss than is indicated in the notification of suspected offence or in the indictment, it is entitled to submit to the public prosecutor or the court documents providing <b>evidence</b> of such loss.</p>	. The answer is insufficiently detailed.	The answer is insufficiently detailed.	The answer is insufficiently detailed.
LU	No answer.	No answer.	No answer.	No answer.

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LV	<p>The Commission should submit an <b>application</b>, which states that the Commission is initiating a civil claim within the criminal proceedings and enclose documentation that confirms the <b>amount</b> of the civil claim submitted.</p> <p>The investigator or the prosecutor will decide whether a person can be considered to be <b>eligible</b> to submit claim and whether <b>loss</b> has occurred due to the offence committed by the suspect.</p>	Non.	<p>The Commission, which on the basis of the decision made by the performer of the investigation, the prosecutor or the court is considered to be eligible to submit a civil claim, has the right to submit appropriate <b>evidence</b> and requests.</p> <p>The European Commission must indicate in its application that a certified auditor has found <b>material losses</b> to the EU financial means <b>caused</b> by the actions performed by the Commission contractor.</p>	It is possible to ask the investigator or the prosecutor to freeze the property of the suspected or accused person or the person who is materially liable for the above mentioned persons actions, or property of other persons, in who's property the materials acquired through criminal offence stands.
MT	No answer.	No answer.	No answer.	No answer.

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NL	<p>To join a civil action at the stage of the <b>investigation</b> and when the investigation has <b>ended</b>, the Commission must fill out a <b>form</b> explaining the damage.</p> <p>When the trial is underway, it must submit a claim for a <b>hearing</b>.</p> <p>There must be a <b>direct connection</b> between the loss incurred and the criminal offence. The claim must concern a case of a <b>simple matter</b>, which is easy to prove. Where a complex claim is involved, the amount of which can be assessed only be 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>	No	<p><b>Civil rules</b> concerning evidence are applicable.</p> <p>The report of the registered auditor is <b>not binding</b> for the judge.</p>	<p>The Code of Criminal Procedure does not contain the possibility for the party that has suffered the damage to demand that precautionary measures be taken vis-à-vis the accused. Such possibility does, however, exist for a procedure under civil law (Art. 700, Code of Civil Procedure). The condition is that there has to be a representative of the Commission who acts in her behalf in the civil proceedings by Dutch law.</p>

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PL	<p>The Commission may, within the procedure of criminal proceedings, file its claim at any time <b>before the main trial is commenced</b> (i.e. before the <b>indictment</b> is read during the first trial session). Hence, the civil action may be joined at the stage of the preparatory proceedings as well as after preparatory proceedings are completed and the indictment is filed to court. No civil action may be joined to criminal proceedings when the court trial is underway.</p> <p>The claimant must prove before the court that (i) a <b>criminal offence</b> was committed, (ii) the perpetrator was the <b>accused</b>, (iii) the party suffered damages <b>directly related</b> to the criminal offence, (iv) the damage has a <b>certain value</b>.</p>	<p>A settlement before a <b>court of conciliation</b> may be sought by the European Commission where the agreement provides such option. The <b>agreement</b> between the European Community and the economic operator should provide that disputes may be settled before a court of conciliation.</p>	<p>The general rules of the examination and hearing of evidence in <b>criminal proceedings</b> apply.</p> <p>The court is competent to <b>admit</b> or <b>dismiss</b> evidence according to the principle of free appraisal of evidence.</p> <p>Evidence can be heard on the Commission's request. The request should specify the <b>evidence</b> and the <b>circumstances</b> that the evidence is to prove. The Commission may also indicate the <b>mode</b> in which the evidence should be examined or taken.</p>	<p>The injured party may, <b>before</b> the proceedings are instituted or at <b>any stage</b> of the proceedings, request that its claim be properly secured. Such a request may be filed with respect to claims litigated before a <b>court of law</b> or a <b>court of conciliation</b>.</p> <p>A request for a court provisional enforcement writ should <b>specify and substantiate circumstances</b> that make the request <b>reasonably grounded</b>.</p> <p>Pecuniary claims may be secured by (i) the <b>seizure</b> of movable property, <b>garnishment</b> of salaries or wages or the seizure of sums receivable or other rights, (ii) <b>compulsory mortgage</b> of the debtor's real estate or a pledge registered in the ship register, (iii) prohibition to <b>dispose</b> of or <b>encumber</b> real estates where the same is not covered by a land and mortgage register or the land and mortgage register covering the real estates was lost or destroyed.</p>

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			<p>In criminal proceedings before court, the Commission may request that expert opinion be admitted as evidence and examined by the <b>court</b>. The expert, who is appointed by the court, may be a <b>court expert</b> or any person who is known to possess <b>adequate knowledge</b> in a given field.</p> <p>Hence, in the example given, the injured party may request that a <b>report</b> (expert opinion) produced by a registered auditor be admitted as evidence and the report may be used to prove that damage was suffered by the European Community.</p>	

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PT	<p>The Commission must join a civil action <b>during the investigation</b> and up to five days before the <b>fact-finding debate</b> or the <b>trial hearing</b>.</p> <p>The request for <b>civil compensation</b> must be presented <b>before</b> the trial starts, 10 days after the indictment whether the Commission has instituted itself "assistant party" or not. If the Commission has not instituted itself "assistant party", but has shown its intention of submitting a claim for civil compensation during the investigation, the time-limit is 20 days.</p> <p>It is also possible for the <b>prosecutor</b> to initiate civil action within criminal proceedings (joining a civil action as an "<b>injured party</b>")</p>	<p>Recovery can be enforced through an <b>administrative process</b> where the criminal action is not a preliminary issue to be resolved prior to the administrative proceedings.</p>	<p>As regards the assessment of the civil damages claim, expert reports are <b>freely assessed</b> by the court. In the case under consideration, the expert report produced by a registered auditor is deemed to be a <b>technical opinion</b> whose weight as evidence is freely determined by the court. Consequently, it may or may not be sufficient, depending on the opinion formed by the judge. This being the case, it does <b>not</b> establish damage in a binding manner.</p> <p>To make recovery as efficient as possible, the opinion must be presented during the <b>first stage</b> of the proceedings. However, it can be presented up to the <b>end of the trial</b>. Evidence must be presented with the articulated pleadings.</p>	<p>The application for a precautionary measure is not subject to any particular <b>formal</b> requirements. A <b>simple request</b> may be made to the judge, which must present any <b>facts</b> in support of the concern that the guarantees of the payment of the damages or other civil obligations arising from the crime may be <b>lacking</b> or <b>insufficient</b>.</p> <p>The burden of proof that a concern is justified falls on the <b>injured person</b>. He or she must therefore adduce positive, concrete facts to prove that the guaranteeing assets have been <b>used up, concealed</b> or <b>lost</b>, and that there is a genuine risk of failure to satisfy the claim.</p> <p>In this case, the Commission can ask the accused or the person liable under civil law to provide a sum of money by way of a security.</p> <p>The Commission can also ask the judge to order the <b>seizure</b> of assets, pursuant to the law on civil proceedings. If a sum of money by way of a security has previously been established but not provided, the Commission is dispensed from the need to prove that it has well-founded concerns about the loss of the guaranteeing assets. Preventive seizure can also be applied to business people. The seizure order is revoked at any time that the accused or the party bearing the civil liability provides the financial security required.</p>

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SE	<p>The Commission should notify its claim to the prosecutor as soon as possible, stating the <b>grounds</b> for the claim, and furnish any relevant <b>documentation</b> in order that it might be included in the investigation report.</p> <p>The <b>prosecutor</b> may be responsible in connexion with the prosecution for <b>pleading the plaintiff's case</b> if this can be done without considerable inconvenience and the latter's claim is not manifestly unfounded.</p> <p>The Commission can also bring a claim against the suspect or other person in the private action arising from the criminal offence in conjunction with the <b>criminal prosecution</b>.</p>	No.	<p>Swedish courts apply the rule of <b>free assessment and free sifting of evidence</b>.</p> <p>As regards evidence in a private action, it is considered that the evidential requirements are the same as for a case to be <b>prosecuted</b>.</p> <p>It should be pointed out that only evidence which is presented during the <b>main proceedings</b> in a case may form the basis of a judgement. Therefore, if a person's knowledge of a fact material to court proceedings is to be used as a source of information, that knowledge must be presented to the court by his being heard <b>in person</b>. The prohibition does not apply to letters, receipts or other certificates which have not been presented as evidence during the court proceedings.</p>	A claim for <b>sequestration</b> must be made in <b>writing</b> .



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SI	<p>The Commission may join a “civil law claim” under a criminal proceeding, if this will not protract the proceeding too much.</p> <p>The civil-law application itself indicates the level of the amount, the offender's liability to pay or repay the amount and a description of the causal link showing that the prejudice originated precisely because of the conduct of the party acquiring EU resources.</p> <p>The content of the action is determined by the Civil Procedure Act. The action must contain a specific application regarding the main case and secondary claims, the facts on which the plaintiff bases the application, evidence documenting these facts and the other information which every application must contain.</p> <p>The proposal must be submitted to the <b>public prosecutor</b> or to the <b>court</b> hearing the procedure. The claimant may do this up to the <b>end of the main proceedings</b> before the court of first instance.</p>	No	<p>The tribunal examines all facts submitted and circumstances related to the civil claim. The auditor's opinion may serve as <b>evidence</b>, but the documentation must also be <b>verifiable</b> by the financial expert appointed by the court, especially if the auditor cooperated directly in detecting the irregularities and could therefore be accused of being partial and not objective.</p> <p>The court is not bound by formal rules of evidence and therefore it cannot be affirmed that the auditor's report will be <b>sufficient</b> to win the case.</p>	<p><b>Reasons</b> must be given to back up the suspicion that a <b>criminal offence</b> has been committed and that a security is necessary since an attempt has already been made to transfer assets to a <b>third party</b>.</p> <p>Execution of Judgements in Civil Matters and Insurance of Claims Act: of the precautionary measures available, it will probably be best to use an <b>interim</b> measure. To secure financial claims, the Commission may propose the application of interim measures if it demonstrates the probability of the <b>claim</b> and the probability of the danger that the debtor will <b>transfer, hide</b> or otherwise <b>dispose</b> of the assets and make establishment of the claim impossible or very difficult. The creditor is not obliged to demonstrate this danger if it appears probable that the debtor would suffer only negligible damage under the proposed measure. An interim measure may be introduced <b>before</b> initiation of a court procedure, <b>during</b> the procedure or even <b>after the end</b> of the procedure <b>up to the time of enforcement</b>.</p>

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SK	<p>In criminal proceedings, the Commission has the legal right to claim damages from the accused <b>until the end of the investigation</b>. It must specify the <b>purpose</b> of its claim and the total <b>amount</b> of damage claimed.</p> <p>The claim for compensation may be made in writing or by oral deposition. The Commission may also claim compensation when <b>interrogated</b> either in the <b>pre-trial</b> proceedings or <b>proceedings before a court</b>.</p> <p>The decision whether or not to accept the Commission's application belongs to the <b>court</b>.</p>	<p>The answer is insufficiently detailed.</p>	<p>It is up to the <b>court</b> to decide whether a report produced by a registered auditor may establish damage in a binding manner.</p> <p>To determine the total amount of damages, the court can make use of the <b>testimony</b> of the injured party, <b>expert opinions</b> or <b>documentary evidence</b>, which could include the <b>auditor's report</b>.</p>	<p>Conditions: there should be <b>reasonable grounds</b> to believe that the settlement of the injured person's claim for damage inflicted as a result of a crime will be <b>impeded</b> or <b>frustrated</b>.</p> <p>The <b>attachment order</b> shall be issued by the <b>court</b>, on application by a <b>prosecutor</b> or the <b>injured</b>. In <b>pre-trial proceedings</b>, a <b>prosecutor</b> may secure the claim even <b>without</b> application by the injured if the protection of the latter's interest's calls for it and, in particular, if there is a danger of omission.</p> <p>The essential points are in particular:</p> <ol style="list-style-type: none"> <li>1. Description of the <b>relevant facts</b> – <b>contract</b> concluded between the economic operator and the Commission;</li> <li>2. Evidence of <b>fraud</b> by the beneficiary of the contract to the detriment of the European Community budget – <b>report of the auditor</b>, results of investigation by the competent authorities;</li> <li>3. <b>Reasons</b> for needing to issue the precautionary measure, danger of <b>imminent direct damage</b> in case of delay; evidence – the co-contractor's steps to <b>transfer</b> his assets to a third country;</li> <li>4. <b>Proposal</b> of a precautionary measure.</li> </ol>

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UK	<p>In <b>England, Scotland and Wales</b> it is <b>not possible</b> to lodge a civil action within criminal proceedings.</p>	<p>In <b>England and Wales</b>, on conviction for a criminal offence, the Court may order the offender to pay <b>compensation</b> to the victim. The Court must take into account the means of the offender in deciding the amount to be paid.</p> <p>In <b>Scotland</b>, a <b>compensation order</b> could be granted to the Commission by the criminal court on conviction of an offence . Details of the <b>loss</b> suffered by the Commission would have to be provided to the prosecutor at as early a stage as possible and <b>before the trial stage</b> to allow the evidence to be put to the court on which the court could base a compensation order.</p>	<p>A registered auditor's report is <b>not determinative</b>, as an auditor has no judicial powers. The report is simply an expert opinion that still needs to be accepted. It is not necessarily probative.</p> <p>Nonetheless in seeking an <b>injunction</b> an auditor's report may well persuade the court that there is a good arguable case that there is evidence of fraud and will assist in persuading the court to grant an <b>interim freezing order</b>.</p>	<p>In <b>England and Wales</b>, where there is evidence of dissipation of assets, the victim can apply for a <b>freezing order</b> provided that there is a good arguable case. He can apply to the court without notice to the co-contractor but in doing so he will have to give an undertaking to the court that he may be liable for damages in the event that the grounds for the injunction are not made out and the co-contractor suffers loss because his bank account was frozen.</p> <p>If it is thought that the co-contractor might <b>destroy</b> evidence of his fraud, the Commission may apply for a <b>search order</b> allowing it (through its solicitor) to enter the co-contractor's property and search for documents.</p> <p>In <b>Scotland</b>, where criminal proceedings have commenced, a "<b>restraint order</b>" can be granted by a civil court (sheriff court or the Court of Session) on the <b>prosecutor's application</b>, preventing any person from <b>disposing</b> of the property of the accused. The order can be <b>varied</b> or <b>revoked</b> by the Court on the application of anyone with an interest, and must be revoked after proceedings have concluded.</p>

#### 4. INFORMING THE PUBLIC ABOUT INVESTIGATIONS INTO FRAUD AGAINST THE COMMUNITY BUDGET

For the first time, a Eurobarometer survey commissioned by OLAF on the subject of fraud and corruption was carried out in October 2003 among the citizens of the Member States, the new Member States and the applicant countries. The survey, the results of which were published in January 2004, analyses public awareness of fraud in general and fraud against the EU and its budget in particular.

It reveals that most of the respondents disagree with the statement that fraud against the EU and its budget happens very rarely; they agree, however, that such fraud is harmful both for citizens and for the national economy and that fighting fraud should be a political priority. The respondents felt they were fairly badly informed about the fight against fraud to the detriment of the EU and its budget; three out of four respondents considered that the EU should disseminate more information about anti-fraud campaigns and results achieved in this field.

In order to satisfy the desire of the citizens of your country for better information on the measures taken to combat fraud and corruption, and inasmuch as information plays a part in prevention in respect of both the national and the Community budget, the Member States are asked to list the legal provisions governing the dissemination of information.

Information relating to anti-fraud investigations: to the extent investigations in your country are confidential, please give details of the limits of the confidentiality

Information on the initiation of an investigation		
	Administrative investigation services	Judicial investigation services <sup>54</sup>
<b>AT</b>	No	As a rule information is given to the media upon request only. In matters of general interest the media service centre or the spokesman of the court can provide information proactively <sup>55</sup> .
<b>BE</b>	No	FPS Finance : On request Federal Police : No
<b>CY</b>	Oui	It depends on the case, but as a rule the information is given at the request of the media.
<b>CZ</b>	No	No
<b>DK</b>	No	-
<b>EE</b>	At the initiative of the body conducting proceedings any aspect of the case of the administrative proceeding can be discussed if this does not damage the interests of the proceeding.	Judicial investigation services have the authority to comment on and disclose information regarding the initiation, termination, process and results of the proceeding only with the prosecutor's permission.
<b>EL</b>	No	No
<b>ES</b>	No	
<b>FI</b>	No <sup>56</sup>	The head of the investigation or his superior takes the decision. In practice, information is made public only if the case is significant or, for instance, of public interest, or for some other compelling reason, or when, for example, journalists have acquired information on the case that needs to be corrected.

<sup>54</sup> Police, gendarmerie and, if appropriate, customs services subject to judicial authority.

<sup>55</sup> The personal rights of the involved, the principle "in dubio pro reo", the guarantee of a fair trial on one hand and the interest of the public in free and complete information, as well as the public function of the media in regard to all acts of the state on the other hand are to be taken in consideration.

<sup>56</sup> Authorities' confidential documents are: reports of an offence given to the police and other pre-trial investigation authorities, the public prosecutor or inspection and supervision authorities; documents drafted and received for pre-trial investigation and consideration of charges, and applications for a summons, the summons and the response to it in a criminal case until the case reaches court or the

<b>FR</b>	In terms of communicating information on a customs investigation to the public, the French customs administration is bound by a professional secrecy obligation in accordance with Article 59a of the National Customs Code.	Article 11 of the Code of Criminal Procedure stipulates the conditions under which the French Public Prosecutor may make parts of the proceedings public. When the media wishes information on judicial investigations they need authorisation from the judicial officer in charge of the case before information is released.
<b>HU</b>	Notice about the start of an investigation by KEHI (Government Control Office) is sent only to the agency to be investigated and the supervisory agency.	
<b>IE</b>	Non-specific information provided in response to a request from the media	There is no specific legislation which governs the release of information to the media in these circumstances. However, the Garda Press Office controls the release of information to the media. <sup>57</sup>
<b>IT</b>	No	No <sup>58</sup>
<b>LT</b>	Only at request of the media	Information from a preliminary investigation is not to be published. Before a case is considered in court, such information may be published only with the consent of the public prosecutor and only to the extent acknowledged to be permissible.
<b>LU</b>	No	
<b>LV</b>	No	Not on regular basis (Decision is taken by an investigator in order not to disturb process of investigation)
<b>MT</b>	Customs : No IAID : No	Customs : No Police: Information is given depending on the nature, sensitivity and confidentiality of the investigation. There are instances where the Police can say that an investigation has commenced but details are not given out. This is not done spontaneously but upon request.
<b>NL</b>	Information about individual cases is covered by the confidentiality requirement of Article 67 of the General Tax Act and is not, therefore, made public. <sup>59</sup>	No, only in exceptional circumstances or at request of the media.
<b>PL</b>	Only on request by media.	Criminal proceedings before court are open. Radio, television, film and press reporters may be permitted to the trial, where the permit lies in an important social interest, and recording does not disturb the trial and where the permit is not in conflict with an important interest of a party.

public prosecutor has decided not to prosecute or when the case has been dropped, unless it is obvious that communicating information regarding them would not jeopardise solving the offence or the purpose of the investigation or would not, except for a compelling reason, cause damage or suffering to a party involved in the case or hinder the court from using its right to determine the confidentiality of documents under the Act on the Publicity of Court Proceedings. Act on the Openness of Government Activities and statutory provisions issued on the basis of this.

<sup>57</sup> This Office operates under a strict code of practice. Under this code, only general information on the initiation of a prosecution will be released. An individual or an organisation under investigation will never be identified. There are proposals in the Garda Síochána Bill to legislate for the matter in the future

<sup>58</sup> Information about judicial investigations isn't possible unless court clearance has been given.

<sup>59</sup> General information about the results of particular inspection activities by the Tax Department is sometimes disclosed, e.g. in a press release. The Tax Department gives an account of all its activities to Parliament each year in the *Beheersverslag* (management report), which is available to the public. This includes the results of anti-fraud measures.

<b>PT</b>	Only on request.	at the request of persons in the public eye or, if the judicial authority considers that certain persons should have access to this information, because it seems likely that this will help to cast light on the truth.
<b>SE</b>	Yes, after a confidentiality review in the individual case.	Yes, after a confidentiality review in the individual case.
<b>SI</b>	Yes	Yes, only general information and without specific information in cases where there is no threat to the investigation
<b>SK</b>	It is individual and dependent on the case and also on the degree of secrecy and other circumstances	The Police Corps provide information on the initiation of an investigation only in some cases, according to the matter of the investigation. The Customs Criminal Office provides restricted information
<b>UK<sup>60</sup></b>	C&E <sup>61</sup> : No NIO <sup>62</sup> : Yes but limited RPA <sup>63</sup> : never gives out information in this stage of investigation. SFO <sup>64</sup> : No jurisdiction	C&E: No, if it is “pre-knock” Post-knock, yes, although minimal information released. NIO : N/A RPA: Never gives out this information. SFO: constraints on announces of investigation.

<b>Information on the status of an investigation before its closure</b>		
	<b>Administrative investigation services</b>	<b>Judicial investigation services</b>
<b>AT</b>	No	As a rule information is given to the media upon request only. In matters of general interest the media service centre or the spokesman of the court can provide information proactively.
<b>BE</b>	No	FPS Finance : On request Federal Police : No
<b>CY</b>	Non	No, if this might influence the inquiry procedure.
<b>CZ</b>	No	No
<b>DK</b>	No	-
<b>EE</b>	At the initiative of the body conducting proceedings any aspect of the case of the administrative proceeding can be discussed if this does not damage the interests of the proceeding.	Judicial investigation services have the authority to comment on and disclose information regarding the initiation, termination, process and results of the proceeding only with the prosecutor’s permission.
<b>EL</b>	No	Generally speaking, information is not given except when this would not prejudice the judicial investigation.
<b>ES</b>	No	
<b>FI</b>	Provisions mentioned.	Provisions mentioned.
<b>FR</b>	In terms of communicating information on a customs investigation to the public, the French customs administration is bound by a professional secrecy obligation in accordance with Article 59a of the National Customs Code.	Article 11 of the Code of Criminal Procedure stipulates the conditions under which the French Public Prosecutor may make parts of the proceedings public. When the media wishes information on judicial investigations they need authorisation from the judicial officer in charge of the case before information is released.
<b>HU</b>	Prior to the closure of an investigation, no status report is prepared for the agencies under investigation. The draft of the investigation report is, however, discussed with the agency under investigation and the supervisory agencies prior to finalisation.	

<sup>60</sup> All information released by UK Departments is now subject to the Freedom of Information Act (FOI Act) and the constraints from this act. It came into force on 1 January 2005 and had retrospective effect.

<sup>61</sup> Customs & Excise

<sup>62</sup> Northern Ireland Office

<sup>63</sup> Rural Payments Agency

<sup>64</sup> The Serious Fraud Office

<b>IE</b>	Only to the extent that an investigation is ongoing.	There is no specific legislation which governs the release of information to the media in these circumstances. However, the Garda Press Office controls the release of information to the media.
<b>IT</b>	No	No <sup>65</sup>
<b>LT</b>	Only on request	Information from a preliminary investigation is not to be published. Before a case is considered in court, such information may be published only with the consent of the public prosecutor and only to the extent acknowledged to be permissible
<b>LU</b>	No	
<b>LV</b>	No <sup>66</sup>	No
<b>MT</b>	Customs: Only on request. IAID : No	Customs : No Police: Considering that investigations are highly sensitive, such information is not normally divulged but exception can be made if this will be of assistance and beneficial to the investigation itself.
<b>NL</b>	Information about individual cases is covered by the confidentiality requirement of Article 67 of the General Tax Act and is not, therefore, made public.	No
<b>PL</b>	Only on request by media.	Criminal proceedings before court are open. Radio, television, film and press reporters may be permitted to the trial, where the permit lies in an important social interest, and recording does not disturb the trial and where the permit is not in conflict with an important interest of a party.
<b>PT</b>	No	the Public Prosecutor's Office can grant access.
<b>SE</b>	Yes, after a confidentiality review in the individual case.	Yes, after a confidentiality review in the individual case.
<b>SI</b>	Yes	Yes, only general information and without specific information in cases where there is no threat to the investigation
<b>SK</b>	It is individual and dependent on the case and also on the degree of secrecy and other circumstances	The Police Corps provide information on the status of an investigation before its ending only in the cases when the information provision can not influence the development and the outcome of the investigation. The Customs Criminal Office provides restricted information
<b>UK</b> 67	C&E: No NIO: Yes but limited. RPA: Never gives out information in this stage of investigation.	C&E: Yes if court case has begun. NIO: N/A RPA: Never gives out information in this stage of investigation. SFO: does not give information but would do so at request of media.

<b>Information on the transfer of an investigation from one service to another</b>		
	<b>Administrative investigation services</b>	<b>Judicial investigation services</b>
<b>AT</b>	Only on request	As a rule information is given to the media upon request only. In matters of general interest the media service centre or the spokesman of the court can provide information proactively.
<b>BE</b>	No	FPS Finance : On request Federal Police : No

<sup>65</sup> Information about judicial investigations isn't possible unless court clearance has been given.

<sup>66</sup> In cases when it is presumed to be a long term and complex administrative examination some information can be exposed on measures taken.

<sup>67</sup> All information released by UK Departments is now subject to the Freedom of Information Act (FOI Act) and the constraints from this act. It came into force on 1 January 2005 and had retrospective effect.

<b>CY</b>	Oui	Oui
<b>CZ</b>	No	No
<b>DK</b>	No	-
<b>EE</b>	General rule is that comments are given by the service that is investigating the matter.	Comments are made by the Prosecutor's Office.
<b>EL</b>	Yes or on request.	Yes or on request.
<b>ES</b>	No. Only at the request of a judicial authority.	
<b>FI</b>	Provisions mentioned.	Provisions mentioned.  From the police to the prosecutor and concerned parties, and from the prosecutor to the court yes, otherwise no.
<b>FR</b>	In terms of communicating information on a customs investigation to the public, the French customs administration is bound by a professional secrecy obligation in accordance with Article 59a of the National Customs Code.	Article 11 of the Code of Criminal Procedure stipulates the conditions under which the French Public Prosecutor may make parts of the proceedings public. When the media wishes information on judicial investigations they need authorisation from the judicial officer in charge of the case before information is released.
<b>HU</b>	No information is given to the public if an investigation of KEHI is extended to a criminal investigation.	
<b>IE</b>	No	There is no specific legislation which governs the release of information to the media in these circumstances. However, the Garda Press Office controls the release of information to the media. <sup>68</sup>
<b>IT</b>	No	No <sup>69</sup>
<b>LT</b>	Only on request	Information from a preliminary investigation is not to be published. Before a case is considered in court, such information may be published only with the consent of the public prosecutor and only to the extent acknowledged to be permissible
<b>LU</b>	No	
<b>LV</b>	Yes <sup>70</sup>	Yes, upon request
<b>MT</b>	Customs: only on request. IAID : No	Customs : only on request. Police: It is not the Department's procedure to divulge information of this sort to the Media.
<b>NL</b>	Information about individual cases is covered by the confidentiality requirement of Article 67 of the General Tax Act and is not, therefore, made public.	Only on request
<b>PL</b>	Only on request by media	Criminal proceedings before court are open. Radio, television, film and press reporters may be permitted to the trial, where the permit lies in an important social interest, and recording does not disturb the trial and where the permit is not in conflict with an important interest of a party.
<b>PT</b>	No.	On request. Decision taken by the authority consulted for this purpose.
<b>SE</b>	Yes, after a confidentiality review in the individual case.	Yes, after a confidentiality review in the individual case.

<sup>68</sup> General information, only, will be given as to the fact that a case has been referred to the DPP. No details on dates or on the specifics of the case will be given.

<sup>69</sup> Information about judicial investigations isn't possible unless court clearance has been given.

<sup>70</sup> Due to large amount of administrative examinations at the Bureau in some cases an announcement is made for mass media, in some cases mass media representatives make a request on particular case



<b>SI</b>	Yes	Yes, when pre-trial procedure has been completed.
<b>SK</b>	It is individual and dependent on the case and also on the degree of secrecy and other circumstances	The Police Corps provide information on the transfer of an investigation to another service. a) to the announcer always. b) in other cases only on request The Customs Criminal Office provides restricted information.
<b>UK<sup>71</sup></b>	NIO: Yes RPA: This information would be referred to Defra (Dept of environment, Food and Rural Affairs) Legal Division to consider and act appropriately.	NIO: N/A RPA: only to the suspect and legal advisor. SFO: investigates and prosecutes its own cases.

<b>Information on the closure of an investigation</b>		
	<b>Administrative investigation services</b>	<b>Judicial investigation services</b>
<b>AT</b>	No	As a rule information is given to the media upon request only. In matters of general interest the media service center or the spokesman of the court can provide information proactively.
<b>BE</b>	No	FPS Finance : On request Federal Police : No
<b>CY</b>	Oui	If requested, but also where the case has aroused public and media interest.
<b>CZ</b>	No	No
<b>DK</b>	Only on request	-
<b>EE</b>	General rule is that comments are given by the service that is investigating the matter.	Comments are made by the Prosecutor's Office.
<b>EL</b>	Yes	Yes or on request.
<b>ES</b>	No	
<b>FI</b>	Provisions mentioned.	Provisions mentioned. Information depends on significance of the matter.
<b>FR</b>	In terms of communicating information on a customs investigation to the public, the French customs administration is bound by a professional secrecy obligation in accordance with Article 59a of the National Customs Code.	Article 11 of the Code of Criminal Procedure stipulates the conditions under which the French Public Prosecutor may make parts of the proceedings public. When the media wishes information on judicial investigations they need authorisation from the judicial officer in charge of the case before information is released.
<b>HU</b>	The agency covered by the investigation is notified of the closure of the investigation. Notice to the government is provided on the closure of the investigation by submitting the summary report on the investigation [Article 8 (3)-(4) of Government Decree No. 70/2004 Korm].	
<b>IE</b>	Non-specific information provided on request.	No specific information will be given. The media will often speculate about the current status of an investigation.
<b>IT</b>	Yes	No <sup>72</sup>
<b>LT</b>	Only on request	Information from a preliminary investigation is not to be published. Before a case is considered in court, such information may be published only with the consent of the public prosecutor and only to the extent acknowledged to be permissible

<sup>71</sup> All information released by UK Departments is now subject to the Freedom of Information Act (FOI Act) and the constraints from this act. It came into force on 1 January 2005 and had retrospective effect.

<sup>72</sup> Information about judicial investigations isn't possible unless court clearance has been given.

<b>LU</b>	No	
<b>LV</b>	Yes	Yes, upon request
<b>MT</b>	Customs : yes IAID : No	Customs : yes Police: On most occasions the Police Department issues a press release concerning the outcome of an investigation without the dissemination of sensitive data.
<b>NL</b>	Information about individual cases is covered by the confidentiality requirement of Article 67 of the General Tax Act and is not, therefore, made public. <sup>73</sup>	Only on request
<b>PL</b>	Only on request of the media.	Criminal proceedings before court are open. Radio, television, film and press reporters may be permitted to the trial, where the permit lies in an important social interest, and recording does not disturb the trial and where the permit is not in conflict with an important interest of a party.
<b>PT</b>	Only on request.	The criminal proceedings are public after closure of the investigation, where the accused does not require examination, or, if he does, refrains from stating that he opposed disclosure.
<b>SE</b>	Yes, after a confidentiality review in the individual case.	Information on the closure of an investigation or a decision on whether to bring an indictment and a decision to discontinue an investigation is made public.
<b>SI</b>	-	Yes when the pre-trial procedure has been completed.
<b>SK</b>	It is individual and dependent on the case and also on the degree of secrecy and other circumstances	The Police Corps provide information on the ending of an investigation. The Customs Criminal Office provides this information.
<b>UK</b> 74	C&E : No NIO : Yes RPA : This information would be referred to Defra Legal Division to consider and act appropriately.	C&E: No but could be requested. NIO: N/A RPA: only to the suspect and his legal advisor upon their request. SFO: only on request

<b>Information on the outcome of an investigation</b>		
	<b>Administrative investigation services</b>	<b>Judicial investigation services</b>
<b>AT</b>	No	
<b>BE</b>	No	FPS Finance : On request Federal Police: Yes to some extent, after judgement.
<b>CY</b>	Oui	If requested, but also where the case has aroused public and media interest.
<b>CZ</b>	No	No, but court judgments must always be delivered in public.
<b>DK</b>	Only on request	-
<b>EE</b>	At the initiative of the body conducting proceedings any aspect of the case of the administrative proceeding can be discussed if this does not damage the interests of the proceeding.	Judicial investigation services have the authority to comment on and disclose information regarding the initiation, termination, process and results of the proceeding only with the prosecutor's permission.

<sup>73</sup> General information about the results of particular inspection activities by the Tax Department is sometimes disclosed, e.g. in a press release. The Tax Department gives an account of all its activities to Parliament each year in the *Beheersverslag* (management report), which is available to the public. This includes the results of anti-fraud measures.

<sup>74</sup> All information released by UK Departments is now subject to the Freedom of Information Act (FOI Act) and the constraints from this act. It came into force on 1 January 2005 and had retrospective effect.

<b>EL</b>	Yes	Yes
<b>ES</b>	No. Only at the request of a judicial authority.	
<b>FI</b>	Provisions mentioned.	Provisions mentioned. If prosecutor decides so, otherwise no.
<b>FR</b>	In terms of communicating information on a customs investigation to the public, the French customs administration is bound by a professional secrecy obligation in accordance with Article 59a of the National Customs Code.	Article 11 of the Code of Criminal Procedure stipulates the conditions under which the French Public Prosecutor may make parts of the proceedings public. When the media wishes information on judicial investigations they need authorisation from the judicial officer in charge of the case before information is released.
<b>HU</b>	Detailed investigation reports are produced on the findings of the investigation submitted exclusively to the agency covered by the investigation and its supervisory agencies [Article 8(1)]. A summary report is prepared for the Government [Article 8 (3)-(4)].	
<b>IE</b>	Only in cases where information is already in the public domain as a result of proceedings being instituted.	When a suspect appears in Court, this fact, together with details of what he/she is charged with will be published.
<b>IT</b>	Yes <sup>75</sup>	No <sup>76</sup>
<b>LT</b>	Only on request	Information from a preliminary investigation is not to be published. Before a case is considered in court, such information may be published only with the consent of the public prosecutor and only to the extent acknowledged to be permissible
<b>LU</b>	No	
<b>LV</b>	Yes	Yes, for the period before a case is sent for a criminal prosecution
<b>MT</b>	Customs: only on request. IAID : No	Customs : yes Police: On most occasions the Police Department issues a press release concerning the outcome of an investigation without the dissemination of sensitive data.
<b>NL</b>	Information about individual cases is covered by the confidentiality requirement of Article 67 of the General Tax Act and is not, therefore, made public. <sup>77</sup>	No, only in exceptional circumstances or at request of the media.
<b>PL</b>	Only on request of the media.	Criminal proceedings before court are open. Radio, television, film and press reporters may be permitted to the trial, where the permit lies in an important social interest, and recording does not disturb the trial and where the permit is not in conflict with an important interest of a party.
<b>PT</b>	Only on request.	The criminal proceedings are public after closure of the investigation, where the accused does not require examination, or, if he does, refrains from stating that he opposed disclosure.

<sup>75</sup> But the information must be aggregated, without any indication likely to disclose the identity of the parties under investigation.

<sup>76</sup> Information about judicial investigations isn't possible unless court clearance has been given.

<sup>77</sup> General information about the results of particular inspection activities by the Tax Department is sometimes disclosed, e.g. in a press release. The Tax Department gives an account of all its activities to Parliament each year in the *Beheersverslag* (management report), which is available to the public. This includes the results of anti-fraud measures.

<b>SE</b>	Yes, after a confidentiality review in the individual case.	Information on the outcome of an investigation is covered by confidentiality, but it may be disclosed after a confidentiality review in the individual case
<b>SI</b>	-	Yes when the pre-trial procedure has been completed.
<b>SK</b>	It is individual and dependent on the case and also on the degree of secrecy and other circumstances	The Police Corps provide information on the outcome of an investigation. The Customs Criminal Office provides this information
<b>UK</b> 78	C&E: No NIO: Yes, Final report issued lessons learned. RPA: This information would be referred to Defra Legal Division to consider and act appropriately.	C&E: Yes if is the outcome of a Court case. NIO: N/A RPA: only to the suspect and his legal advisor. SFO: reported to contribute to the deterring of fraud.

<b>Disclosure of investigation documents after closure (without the names of the persons involved and classified information)</b>		
	<b>Administrative investigation services</b>	<b>Judicial investigation services</b>
<b>AT</b>	In the anti fraud reports of the Ministry of Finance, the names of persons or companies are not mentioned.	Neither the public nor the media have access to court files. However court decisions may be distributed in anonymized form.
<b>BE</b>	No	FPS Finance : On request Federal Police: Yes to some extent, after judgement.
<b>CY</b>	Oui	If requested, but also where the case has aroused public and media interest.
<b>CZ</b>	No	No
<b>DK</b>	Only on request	-
<b>EE</b>	Procedural documents are not disclosed.	Procedural documents are not disclosed.
<b>EL</b>	Yes	Always in public journal and in the Greek Government Gazette.
<b>ES</b>	Only in publications with controlled distribution.	
<b>FI</b>	Provisions mentioned. In general pre-trial investigation documents only become public after the case has been brought to court for the first time or when a decision not to bring a charge has been made. The case is not made public in an official publication, but in that case no permission is required from the head of the investigation or any other body.	Provisions mentioned. Yes, they are public, including the names.
<b>FR</b>	In terms of communicating information on a customs investigation to the public, the French customs administration is bound by a professional secrecy obligation in accordance with Article 59a of the National Customs Code.	Article 11 of the Code of Criminal Procedure stipulates the conditions under which the French Public Prosecutor may make parts of the proceedings public. When the media wishes information on judicial investigations they need authorisation from the judicial officer in charge of the case before information is released.
<b>HU</b>	The public is not notified of the findings of the investigation, and the reports of the Office are not public pursuant to the provisions laid out in Article 19(5) of Act LXIII of 1993 on the protection of personal information and the disclosure of public information. When the government has made its decision, the Prime Minister's Office is entitled to inform the public of the findings of an investigation.	

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All information released by UK Departments is now subject to the Freedom of Information Act (FOI Act) and the constraints from this act. It came into force on 1 January 2005 and had retrospective effect.

<b>IE</b>	Never, unless by order of the court or otherwise required by law.	Investigation documents will never be disclosed without a court order.
<b>IT</b>	No	No <sup>79</sup>
<b>LT</b>	Only on individual request	Information from a preliminary investigation is not to be published. Before a case is considered in court, such information may be published only with the consent of the public prosecutor and only to the extent acknowledged to be permissible
<b>LU</b>	No	
<b>LV</b>	No	No, only to limited group of persons
<b>MT</b>	Customs: Always in a public or official journal. IAID : Never.	Customs : Always Police: Never.
<b>NL</b>	Information about individual cases is covered by the confidentiality requirement of Article 67 of the General Tax Act and is not, therefore, made public. <sup>80</sup>	No, never.
<b>PL</b>	Documents of closed preparatory proceedings may be disclosed according to rules set forth in the Act of 6 September 2001, laying down rules of access to public information – only on an individual request.	Criminal proceedings before court are open. Radio, television, film and press reporters may be permitted to the trial, where the permit lies in an important social interest, and recording does not disturb the trial and where the permit is not in conflict with an important interest of a party.
<b>PT</b>	Only on request.	The criminal proceedings are public after closure of the investigation, where the accused does not require examination, or, if he does, refrains from stating that he opposed disclosure.
<b>SE</b>	Yes, after a confidentiality review in the individual case.	Most information in the investigation is made public when the indictment is brought, that is to say, when the information is brought before the court. “Investigation documents” may be disclosed if someone seeks to obtain them, but only after a confidentiality review
<b>SI</b>	-	-
<b>SK</b>	It is individual and dependent on the case and also on the degree of secrecy and other circumstances	The Police Corps never provide documents after the ending of an investigation. The Customs Criminal Office provides this information.
<b>UK</b> 81	C&E: Documents can be requested under the FOI Act. NIO: only on request, subject to FOI exemptions. RPA: This information would be referred to Defra Legal Division to consider and act appropriately.	C&E: Relevant documents are disclosed as part of the Court case. NIO: N/A RPA: only on request. SFO: Relevant documents are disclosed as part of the Court case. Other documents could be requested under the Freedom of Information Act 2000.

**Observations concerning information to the public about investigations into fraud against the community budget**

<sup>79</sup> Information about judicial investigations isn't possible unless court clearance has been given.

<sup>80</sup> General information about the results of particular inspection activities by the Tax Department is sometimes disclosed, e.g. in a press release. The Tax Department gives an account of all its activities to Parliament each year in the *Beheersverslag* (management report), which is available to the public. This includes the results of anti-fraud measures.

<sup>81</sup> All information released by UK Departments is now subject to the Freedom of Information Act (FOI Act) and the constraints from this act. It came into force on 1 January 2005 and had retrospective effect.

<b>Observations concerning information to the public about investigations into fraud against the community budget</b>	
<b>BE</b>	<p>FPS FINANCE:</p> <p>The duty of confidentiality imposed on officials of the Customs and Excise Administration and its limits</p> <p>Article 320 of the General Customs and Excise Law of 18 July 1977 and Article 337 of the Income Tax Code introduce the principle of confidentiality.</p>
	<p>Legal possibilities for informing the public:</p> <p>Criminal law in customs matters is a branch of special criminal law and is not automatically covered by the Code of Criminal Procedure, for example. However, unless specified otherwise in the criminal law relating to customs matters, the general provisions are applicable.</p> <p>The provisions of Article 28d(3) of the Code of Criminal Procedure apply, to the effect that when the public interest dictates, information may be released to the press.</p> <p>If the investigation is not under the exclusive authority of the Customs and Excise Administration, or is not covered by its powers to bring a prosecution, the public prosecutor will have to be consulted before any information is communicated to the press.</p> <p>Officials who are approached by the media in connection with an investigation must contact the relevant department of the central administration, which will take the final decision and lay down any conditions to apply to the communication of information</p>
	<p>FPS ECONOMIC AFFAIRS:</p> <p>The judicial examination (and the investigation carried out by the public prosecutor's department) is confidential in Belgium. Only the public prosecutor has the right to lift the confidentiality of the investigation. When the case is under investigation, the public prosecutor will consult with the investigating magistrate if he believes there is a need to release information to the press. Once the case has been sent for trial it becomes public in the sense that hearings are held in public (exceptionally, courts may sit in camera) and the press is free to attend and report under its own responsibility. Judicial decisions may be published in specialised journals, but the names of the parties are omitted to protect their privacy.</p>
<b>CY</b>	

**Observations concerning information to the public about investigations into fraud against the community budget**

**DE**

The German authorities indicate that the questionnaire form is unsuitable for answering such a highly sensitive subject, so they described the situation as follows:

Criminal proceedings

The law enforcement authorities decide at their discretion whether and what extent they should disclose information concerning the opening, state-of-play, conclusion and findings of investigative proceedings to the press or public on a case-by-case. The public's need for information may make such disclosure advisable. As a rule, section 23 of the guidelines on criminal and administrative proceedings (RiStBV) covers cooperation with the press and broadcasting bodies. It makes disclosure of information to the public through the press, radio and television dependent on the nature of its purpose and its significance with regard to the shaping of public opinion. Such disclosure must not, however, jeopardise the objective of the investigation, pre-empt the conclusion of the main proceedings or in any way undermine the accused's right to a fair trial.

In general, the public may be informed of the bringing and details of charges only after the accused has been made aware of the charges. Moreover, under Section 353d(3) of the Criminal Code, it is an offence for anyone to make public in full or in part a charge or other official documents relating to criminal proceedings before they have been discussed at an open hearing or before the proceedings have been concluded. At no point may the files relating to the investigation be made public.

Administrative proceedings

As a rule, the authorities may not make public the personal details of all parties involved in administrative proceedings or any business or trade secrets without authorisation. As investigations of irregularities or suspicions of fraud may damage the image, and therefore the business interests, of the parties, they may not be made public.

Such details may be made public only if authorised by the parties concerned or where the law provides for such publication.

This is based on the need to strike a balance between the right to confidentiality of the parties concerned and the public interest.

The Land of Baden-Württemberg, for example, has laid down the following provisions:

Under the administrative rules on the prevention and combating of corruption of 21 July 1997, (GABL. p. 487), serious misconduct on the part of tenderers for public procurement contracts must be recorded in the corruption register (District Government Office Karlsruhe).

Only information regarding existing entries may be disclosed prior to the awarding of major contracts.

**Observations concerning information to the public about investigations into fraud against the community budget**

<p><b>DK</b></p>	<p>Danish law does not contain specific rules on providing information about fraud investigations.</p> <p>Administrative investigation services</p> <p>Like all other public authorities in Denmark, the Customs and Excise Services are required to acquaint persons and companies involved in a case with documents relating thereto. The extent of the obligation incumbent on the authorities is set out in Act No 571 of 19 December 1985 and subsequent amendments.</p> <p>Furthermore, under Act No 572 of 19 December 1985 on administrative transparency, other interested parties, including the press, have the right to demand access to documents relating to a specific case being dealt with by the authorities.</p> <p>Administrative audit cases that are being launched or processed may be undermined by giving the parties involved, or the public, access to documents or information relating to the proceedings. In the worst case the audit may be spoiled or ruined before final conclusions can be reached.</p> <p>For this reason access to documents and information relating to most ongoing administrative audits is denied, under Section 15(4) and (5) of the Administration Act (the conduct of public audits, control, planning services or planned measures in relation to customs and taxation legislation – covering all economic interests, including the conduct of public companies). Section 13 of the Danish Access to Information Act contains details of the exceptions.</p> <p>Access is also denied to documents relating to ongoing administrative checks and involving exchanges of information with foreign customs authorities under agreements on mutual assistance on customs matters. The same sections are applied with the following text: “the country’s foreign policy or foreign trade interests, including relations with foreign powers and international institutions.” These provisions also apply in relation to Article 45 of Regulation (EC) No 515/97. The provisions on “exchanges of information and confidentiality” with regard to agreements on mutual assistance concluded between the EU and third countries also apply.</p> <p>After investigations have been concluded in an inspection case and a decision has been taken, the general provisions on access to documents apply.</p>
	<p>Judicial investigation services</p> <p>The police and the public prosecution service may provide information on the course of a criminal case, for example in response to a request from the media, if allowed by the provisions contained in the Administration of Justice Act. Chapter 3a of the Administration of Justice Act contains rules on access to rulings, decisions, etc. Under Section 41a, any person may inspect a court’s findings, but must apply within a week of the verdict being passed. Moreover, Section 41b of the Administration of Justice Act gives everyone the right to obtain from the court a copy of final judgments or decisions. To provide a more detailed explanation of Denmark’s rules on access to documents regarding criminal cases we enclose a copy of the Chief Public Prosecutor’s Notification of 7 July 2004, which sets out the newly amended Danish provisions on the matter.</p>



**Observations concerning information to the public about investigations into fraud against the community budget**

**ES**

Legal provisions:

- Framework Law 15/1999 of 13 December 1999 on the protection of personal data;
- Law 47/2003 of 26 November 2003 (General Budget Law);
- Law 38/2003 of 17 November 2003 (General Law on Grants);
- Law 58/2003 of 17 December 2003 (General Tax Law).

In Spain there is a general secrecy obligation concerning the identity or content of ongoing or completed investigations which is imposed by the General Tax Law with regard to taxation matters and by the General Budget Law as far as public spending is concerned. The only question to which a (qualified) positive answer can be given is the last one, namely whether information can be disclosed anonymously after closure of an investigation, where the latter is particularly important. The annual data on the results of the inspection activities carried out by the State Tax Administration Agency are also made public through its reports.

Generally speaking, the rules governing information on anti fraud investigations by the administrative or judicial authorities are laid down in Framework Law 15/1999 of 13 December 1999 on the protection of personal data.

In criminal proceedings, the preliminary investigations remain confidential until the oral hearing begins, apart from the exceptions laid down by law (Article 301 LECRIM). Nevertheless, the parties can have access to and take note of all the judicial proceedings, except where the judge orders that some of them must be withheld from the parties for a period of not more than one month (Article 302 LECRIM).

The oral hearing is generally held in public (Article 232 of the Framework Law on the judiciary and Article 680 LECRIM), except where the chief judge orders otherwise on grounds of morality, public policy or due respect for the persons injured by the offence or members of their family.

**Observations concerning information to the public about investigations into fraud against the community budget**

<p><b>FI</b></p>	<p>In this area authority is shared between national authorities and provincial authorities.</p> <p>Regarding the Åland Provincial Government, the Provincial Law on the public nature of general matters (ÅFS 72/1977) applies; this means that that public nature extends to administrative investigations or auditors' reports, including those relating to decisions of the Provincial Government.</p> <p>An initial investigation will not be public but the investigation will be made public when the report is presented or considered by the courts; "considered" means that the charges are read out in court.</p> <p>Comprehensive records of crimes reported are maintained by the Åland police authority pursuant to the Provincial Law on police registers (ÅFS 49/1999). Data from the register can be disclosed and the general public can obtain data from the register if the police consider that this is appropriate having regard to the interests of the person registered. In the Åland Province the national rules on personal registers apply under the Åland Provincial Law on the application in the Province of the national rules on personal registers (ÅFS 50/1999).</p> <p>Reference is moreover made to national legislation on openness in the courts. In view of the replies provided in this section the alternative replies set out in the table below have not been completed and reference is made to the relevant legislation.</p>
<p><b>LV</b></p>	<p>State Revenue Service</p> <p>Taking into consideration the fact that information relating to anti-fraud investigations is regulated by several different laws, it is not possible to give details of the limits of the confidentiality. Information is provided in an amount and order provided under the laws.</p>
	<p>Rural Support Service</p> <p>Information on the initiation and the course of an investigation is not disclosed until the decision is adopted.</p>
	<p>Economic Police Department</p> <p>The issues in this part of the questionnaire are more related to the legislation on protection of data protection of natural persons and to the Criminal Proceedings Code of Latvia rather than to fraud combating measures for publicity of information is only one measure in the scope of anti-fraud actions. It is the normal praxis of the State Police in Latvia to inform the society on actual cases of fraud using mass media (like television).</p>

<b>Observations concerning information to the public about investigations into fraud against the community budget</b>	
	<p>Office of the Prosecutor General</p> <p>According to the law “On protection of data of natural persons” the above mentioned information can be disclosed in following cases:</p> <ol style="list-style-type: none"> <li>1) Information on initiation of an investigation of a fraud case can be disclosed if such information is requested by the media;</li> <li>2) Information on the status of investigation prior to its closure is disclosed upon an inquiry;</li> <li>3) Information on forwarding of investigation from one service to another is disclosed upon an inquiry;</li> <li>4) Information on closure of investigation and results of investigation is disclosed only upon an inquiry;</li> <li>5) Information on investigation data after its closure is available in a public or an official publication or upon an inquiry.</li> </ol>
<b>MT</b>	<p>N.B. For the purpose of this questionnaire, the IAID as AFCOS Malta had to consult with the relevant authorities being the Police, Customs Department, Attorney General, Managing Authority, Director Financial Administration within the Ministry of Finance and the Ministry for the Rural Affairs and the Environment. In spite of the various reminders, no replies have been received from the Attorney General’s Office. In this respect, when a question appears either partly answered or completely unanswered, the reason would be because of this failure by the Attorney General to not respond.</p>
<b>SI</b>	<p>The replies given to the questionnaire relate to pre-trial proceedings or police investigations which do not involve the use of secret investigation measures (surveillance) as Slovenia does not make any information public in cases which do. It should also be pointed out in this connection that all police investigations into criminal activities are characterised by a specific degree of secrecy which, in the interests of the investigation, rules out the open provision of information. Likewise, if information is already made public during investigations, the police do not give any specific information about persons or the stage of investigations. After their investigations have been completed, the police give a report of their findings, together with all the documents, to the Public Prosecutor’s Office, which may issue a public statement. However, in the course of their investigations, the police already cooperate with the public prosecutor so that all the information given is mutually harmonised. In most cases, information is provided to the media only on request.</p>