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

Codification of the *Acquis communautaire*

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EXPLANATORY MEMORANDUM

1. The Presidency conclusions of the Lisbon European Council foresee the establishment by the European Union of a regulatory environment which is clear, effective and workable in a rapidly changing, global market place. Following the submission of an interim report to the Stockholm European Council¹, the Commission presented its White Paper on European Governance in July 2001, in which, *inter alia*, it outlines its coordinated strategy to simplify the regulatory framework within the European Union, as part of a set of recommendations on how to enhance democracy and increase the legitimacy of its institutions.

The codification of the Community's secondary legislation forming part of what is known as the *acquis communautaire* complements the Commission's governance strategy and is totally in line with its spirit. It will allow citizens and the business sector, in both the EU and the Candidate Countries seeking membership to benefit from a more accessible and transparent legislative framework. The codification of that *acquis* will clarify the law by bringing together in a single new legal act all the provisions of the basic act and its subsequent amendments. This process also renders the law more accessible by the deletion of obsolete provisions and the harmonization of the terminology used. It enables the mass of the legislation to be reduced whilst maintaining its substance, yet facilitating its readability.

2. Since the foundation of the European Communities, the *acquis communautaire* has never been the subject of a comprehensive review of its organisation, structure or presentation. As a rule, new or amending legislation was added to existing texts. According to Commission estimates, the total *acquis communautaire* (secondary legislation) currently comprises about 80 000 pages, with about 2 500 new pieces of legislation generated each year; the codification of existing legislation would reduce the *acquis* by about 30 000 to 35 000 pages.

The conclusions of the Edinburgh European Council of 1992 provide the political mandate for codifying the *acquis*². Further, the inter-institutional *Task Force on Administrative Preparations for Enlargement* recommended in its final report of January 2001 that the codification of the *acquis* be accelerated in view of the accession of new Member States. This recommendation was endorsed by the Secretaries General of the Commission, the Council and the European Parliament at their meeting of 24 February 2001, and by the meeting of Directors General on administrative preparations for enlargement of 6 April 2001.

Based on the conclusions of the Edinburgh European Council, the European Parliament, the Council and the Commission concluded an inter-institutional *Agreement on an Accelerated Working Method for Official Codification* in December 1994. Since then, out of about 2400 legal families, 27 codified texts have been adopted (replacing 280 pre-existing acts) and a further 11 are in the pipeline.

¹ COM(2001)130 final

² In Section II of Annex 3, under the heading of making existing Community legislation more accessible, it is stated (i) that it is possible to make Community legislation more accessible, concise and comprehensible, by having recourse more quickly and in a more structured fashion to consolidation and codification (two operations which must proceed in parallel), and (ii) that codification provides legal security as regards the law applicable at a given moment to a given subject-matter and that it should be carried out on the basis of priorities proposed by the Commission.

3. The Codification Project submitted by this Communication aims to accelerate and strengthen codification activities already underway, with a view to establishing a simple, readable and transparent *acquis* in all Community languages. In the context of EU enlargement, the Project would contribute to facilitating the administrative preparations for enlargement, in particular for future accessions following the completion of the Codification Project, by reducing the number of pages to be translated, revised and published in the languages of the new Member States.

On the basis of the existing working hypothesis used by the Commission for internal planning purposes, ten countries could accede on 1 January 2004, with the requisite number of new official languages. However, given the existing constraints under heading 5 (Administration) of the Financial Perspectives, the Codification Project will be completed only by the end of 2005.

Consequently, this Communication contains a detailed analysis of the resources needed to carry out and complete the codification of the *acquis* by the end of 2005. In summary, 67 million € will have to be allocated under the 2002 to 2006 budgets, which would otherwise have accrued at later stages. In this context, 17.8 million € have already been included in the Commission's Preliminary Draft Budget for 2002.

In the light of the foregoing scenario, financial savings amount to 17 million €. However, any change in this scenario, in particular as regards the acceleration of the Project, a later accession date or a reduction in the number of countries acceding to the European Union in the next wave (so that more accede at a later stage) would increase savings.

Savings for the Commission will be possible in the following areas:

- (i) linguistic revision of the *acquis communautaire* translated by the Candidate Countries: those countries which are more advanced in this task will have already translated a major portion of the *acquis*. As regards these languages, savings will be small. However, for countries which are at a less advanced stage and for those which will not form part of the next accession wave, savings will be realised to a much higher degree;
 - (ii) legal revision of the *acquis communautaire*: the situation is the same as for linguistic revision;
 - (iii) proof-reading prior to the publication of the *acquis communautaire* in the Special Edition of the Official Journal: as above, savings will be possible in those areas and languages where codification precedes accession;
 - (iv) printing of the Special Edition of the Official Journal: the situation is the same as for the proof reading of the *acquis*;
 - (v) consolidation of the *acquis* in the languages of the new Member States: no such consolidation will be necessary in those areas which are already codified by the date of accession.
4. On the basis of the existing enlargement scenario, a large number of acts will be codified only once the next enlargement has taken place, in the current 11 official languages plus the languages of the countries acceding on that occasion. In order to synchronize codification between these two groups of languages, legislation which is

adopted during the pre-accession period but after the cut-off date (nine months before the date of accession) will not be codified prior to enlargement. Whilst it will still form part of the *acquis* and, as such, will be translated into the Candidate Countries' language versions and published in the Special Edition of the Official Journal, its codification will be completed only after enlargement.

5. The Legal Service of the Commission is responsible for the legal examination and reworking of the legal texts to be submitted and proposed for codification, in conjunction with the relevant Directorate General.
6. In order to ensure the smooth fast-track implementation of the Codification Project, it will be crucial to ensure that all three EU institutions directly involved allocate sufficient resources to the implementation of the Project and work together to accelerate existing procedures, in parallel and on the basis of a joint co-ordination effort, adapting where necessary their specific internal administrative procedures to the objective pursued.
7. The full long-term benefit of a simple, readable and transparent *acquis communautaire* will also be facilitated by a more structured recourse to the technique of recasting, the detailed rules for which are contained in an inter-institutional agreement to be adopted before the end of 2001 and due to enter into force at the beginning of 2002. Advantage will be taken of this in the course of the Codification Project but more particularly as a follow-up thereto.
8. It is proposed that the monitoring and co-ordination of activities be organised along the following lines:
 - a high-level Trilateral Steering Committee reporting to the Secretaries General of the European Parliament, the Council and the Commission will be set up by the latter for the joint management and monitoring of the Project;
 - within the area of competence of the Commission, its Legal Service will be responsible for the implementation of the Project, assisted by a Working Group on the Codification of the *Acquis* reporting to the Commission representative on the Trilateral Steering Committee.
9. In its risk assessment, this Communication concludes that the Codification Project allows for savings in the context of enlargement, given the substantial increase in the number of Community languages to be expected in the near future. However, any delays in the implementation of the Codification Project would reduce the potential benefits of the Project.

In conclusion, it is requested,

- (1) that the Legal Service of the Commission be charged with the implementation of this Communication; and
- (2) that the Communication be sent to the European Parliament and to the Council.

Codification of the *Acquis communautaire*

1. INTRODUCTION

1.1. Political framework

The Presidency conclusions of the Lisbon European Council foresee the establishment by the European Union of a regulatory environment which is clear, effective and workable in a rapidly changing, global market place. Against this background, in July 2001, the Commission presented its White Paper on European Governance which, *inter alia*, outlines its coordinated strategy to simplify the regulatory framework within the European Union, as part of a set of recommendations on how to enhance democracy and increase the legitimacy of its institutions. The codification of Community secondary legislation forming part of what is known as the *acquis communautaire* complements the Commission's governance strategy and is totally in line with its spirit. It will allow citizens and the business sector, of both the EU and Candidate Countries seeking membership to benefit from a more accessible and transparent legislative framework.

1.2. Definition

In order to simplify the existing legislative framework and render it more accessible, recourse may be made to the following instruments.

In order for legislation to be codified, it must first be consolidated. **Consolidation** means, according to the conclusions of the Edinburgh European Council, the regrouping of the diverse fragments of legislation governing a given matter without affecting the validity of those fragments and without the regrouping having any legal effect. It is therefore a mechanical process whereby the provisions of the basic act governing a particular matter, and all its amendments are brought together, without any examination or alteration of the text and without the recitals. The resulting consolidated text is for information only and has no legal status. Consolidation of Community law is currently undertaken by the Office for Official Publications (OPOCE) and provides the raw material for its codification. As such it is vital for the codification of the *acquis*.

Codification is, according to point 1 of the Interinstitutional Agreement of 20 December 1994, the procedure whereby the acts to be codified are repealed and replaced by a single act containing no substantive change to those acts. It therefore involves the reworking of the consolidated text into a coherent and comprehensible new single legal act formally replacing the basic act and all its amendments. This process includes the deletion of all obsolete provisions, the harmonization of the terminology used in the new act and the determination of its recitals. It is this process which enables the mass of the legislation to be reduced whilst maintaining the substance of the legislation.

A **recast** is, according to point 2 of the draft Interinstitutional Agreement to be adopted before the end of 2001, a new legal act which incorporates in a single text both the amendments it makes to the previous act and the provisions of that previous act which remain unchanged, the new legal act replacing and repealing the previous act. The new legal act therefore amounts to a codification of the pre-existing basic act and all its amendments, but at the same time it provides for changes to the law, which are not possible in the case of a codification. Save as otherwise stated in this Communication, recasts do not fall within its ambit.

1.3. Policy background

Since the foundation of the European Communities, the *acquis communautaire* has never been the subject of a comprehensive review of its organisation, structure or presentation. As a rule, new or amending legislation was added to existing texts. According to Commission estimates, the total *acquis communautaire* (secondary legislation) currently comprises about 80 000 Official Journal pages (all acts regardless of the institution adopting them). With about 2 500 new pieces of legislation (representing some 5 000 Official Journal pages) generated each year, this figure will increase to some 90 000 pages in 2003, if the existing legislative procedures are maintained.

According to Commission estimates, it would be possible to reduce the *acquis* by about 30 000 to 35 000 pages if it were codified. Some 70 000 pages of the *acquis* could benefit from this operation (some 10 000 pages never having been amended and therefore not being codifiable). Its systematic and comprehensive codification would render the *acquis communautaire* more transparent, readable and simple and it would also strengthen legal security for both the European citizen and the business community.

Against this background, in its final report of January 2001, the inter-institutional *Task Force on Administrative Preparations for Enlargement*, recognising the clear case in favour of a policy of systematic review of the *acquis*, analysed the existing options in the overall context of enlargement. In particular, it considered the question of using simply the consolidated texts produced by OPOCE and validated in the new languages by annexation to the Accession Treaty. However, this approach does not provide the necessary legal certainty and does not ensure a level playing field between existing Member States and those acceding in the coming years, unlike the replacement of existing legislation by a new legal act.

Overall, the codification of the *acquis* will facilitate the accession of the EU Candidate Countries and the familiarisation of their citizens and business community with the new legislative framework. There is also scope for administrative savings on the side of the Commission, if the codification is carried out prior to accession. Indeed, in view of the expected doubling of the currently 11 official Community languages the corresponding additional cost could be considerably cut down in the areas of translation, legal revision and publication of the *acquis*, in particular if the *acquis* were codified prior to the next accession wave. This reinforces the argument for a comprehensive codification.

Savings for the Commission are possible in the following areas:

- (i) linguistic revision of the *acquis communautaire* translated by the Candidate Countries: those countries which are more advanced in this task will have already translated a major portion of the *acquis*. As regards these languages, savings will be small. However, for countries which are at a less advanced stage and for those which will not form part of the next accession wave, savings will be realised to a much higher degree;
- (ii) legal revision of the *acquis communautaire*: the situation is the same as for linguistic revision;
- (iii) proof-reading prior to the publication of the *acquis communautaire* in the Special Edition of the Official Journal: as above, savings will be possible in those areas and languages where codification precedes accession;

- (iv) printing of the Special Edition of the Official Journal: the situation is the same as for the proof reading of the *acquis*;
- (v) consolidation of the *acquis* in the languages of the new Member States: no such consolidation will be necessary in those areas which are already codified by the date of accession.

Based on the enlargement scenario which the Commission uses for internal administrative purposes, ten Candidate Countries could join the European Union on 1 January 2004, with the requisite number of new languages. In that event, the full potential of enlargement-based saving can be realised only for Bulgaria and Rumania, the two countries aiming at a later accession date. Table I shows the potential savings by country, if codification is concluded prior to accession.

Table I: Savings per country where codification is concluded prior to accession

Item	Main issue/Comments	Cost savings (estimated) in €
Revision of translations (Translation Service)	Savings would allow the establishment of smaller pre-accession translation antennae: reduction of translation A-auxiliaries from 15 to 11 per country and from 5 support staff down to 4, over 2 years (144 000 € per language per year) Total savings: 10 man/years of local agents = 288 000 €	288 000
Legal revision (Legal Service)	Assumption: 1 A auxiliary revises 2 500 pages per year: 12 man/years x 89 232 €	1 070 784
Proof reading (OPOCE)	Assumption: 1 B auxiliary reads 10 000 pages per year: 3 man/years x 52 452 €	157 456
Printing (OPOCE)	General estimate: 2 Mio € per 30 000 pages per language	2 000 000
Consolidation (OPOCE)	Cost of consolidating the backlog in the new language versions which would fall away with codification of the complete backlog	1 200 000
	Total:	4 716 240

This figure will be considerably lower for the languages other than Bulgarian and Rumanian. On the basis of the existing enlargement scenario and the resources allocations under the Preliminary Draft Budget for 2002, about 20% of the potential benefits could be realised. Table II shows that the likely benefits of the Codification Project as presented in this Communication would amount to about 17 million €.

Table II: Estimated savings under the current baseline scenario³

Item	Main issue/Comments	Cost savings (estimated) in €
Bulgaria/Rumania	Full savings on the basis of Table I	9 432 480
Revision of translations (Translation Service)	20% of Table I (x 8 languages)	460 800
Legal revision (Legal Service)	20% of Table I (x 8 languages)	1 713 254
Proof reading (OPOCE)	20% of Table I (x 8 languages)	251 930
Printing (OPOCE)	20% of Table I (x 8 languages)	3 200 000
Consolidation (OPOCE)	20% of Table I (x 8 languages)	1 920 000
	Total:	16 978 464

If the scenario were to change, either by the adoption of a later accession date and/or a reduction in the number of countries acceding in 2004, benefits would increase accordingly.

2. OVERVIEW OF CURRENT DEVELOPMENTS AND INSTITUTIONAL TASKS OF THE INSTITUTIONS AND SERVICES INVOLVED

2.1. Inter-institutional agreements

On the basis of the conclusions of the Edinburgh European Council of 1992⁴, the European Parliament, the Council and the Commission launched a new approach to codification in the framework of which the Commission is mandated to establish and adopt proposals for codified acts to be approved and adopted by Council and the European Parliament. Given the scale of this comprehensive task, a simplified and accelerated procedure is applied, as agreed between the three institutions on 20 December 1994 (*Inter-institutional Agreement on an Accelerated Working Method for Official Codification*⁵). Under the accelerated procedure, provided the Commission confines itself to a straightforward codification without substantive changes, the European Parliament operates a simplified procedure and the proposal is examined by a single committee and in the Council it is examined by a single working party and the "I/A items" procedure operates for COREPER. Since the adoption of the Agreement, out of about 2400 legal families, 27 codified texts have been adopted (replacing 280 pre-existing acts) and a further 11 are in the pipeline.

A further inter-institutional *Agreement on a more structured use of the recasting technique for legal acts* has been elaborated and is currently being examined by the three institutions. This

³ Cost savings based on the assumption of ten additional languages.

⁴ Annex 3, Section II

⁵ OJ C 102, 4.4.1996, p. 2-3.

Agreement is due to be adopted before the end of 2001 and come into force at the beginning of 2002.

2.2. The role of the Commission under the agreements

OPOCE is, since 1 September 1998, mandated to carry out the consolidation of Community legislation under the control of the inter-institutional *Working Group on Consolidation*. The process of consolidating that legislation reached cruising speed in 2000. So far, more than 40% of the *acquis* exists in consolidated form.

In the context of preparing proposals for the codification of acts of the other institutions, the Commission has various tasks, including the examination and appraisal of the text, the weeding out of provisions no longer in force, and checking for overlaps, inconsistencies and errors. Its Legal Service, in conjunction with the competent Directorate General, is responsible for the legal examination and reworking of the consolidated legal texts to be submitted and proposed for codification. Based on the consolidated text established by OPOCE, the Legal Service elaborates a Master Copy of the draft codified text in one Community language.

The conversion of the consolidated text into a codified text in the other languages is carried out, on the basis of the Master Copy, by the College of Bruges, which is subcontracted for this task by OPOCE. Final control remains with the Legal Service of the Commission which also undertakes the legal revision of the text in all language versions.

2.3. Legislative acts adopted by the Commission itself

Legislative acts adopted by the Commission do, of course, not require the more complex structures for the adoption of European Parliament and Council acts. The procedure for their codification is correspondingly simpler and does not fall within the inter-institutional agreements, but it requires the same legal input and such acts are nonetheless subject to formal adoption by the Commission. In addition, they must be approved by the appropriate (management, regulatory or advisory) committee. Such codification is carried out by the Directorates General in consultation with the Legal Service. In fact, the Directorates General are already under an obligation, by virtue of a Commission decision of 1 April 1987, to codify an act at the latest after it has been amended ten times.⁶

2.4. Identification of the *acquis*

Whenever a candidate country is seeking accession to the EU, it is necessary to establish a list of all the secondary legislation forming part of the *acquis communautaire*. In the past this has proved a difficult task for the Council and the Commission but this list is essential as it provides the basis for the work programme for the consolidation and codification of the *acquis*, and for the translation of the *acquis* into the languages of the candidate countries. In order to address effectively concerns regarding a lack of legal security and a lack of transparency, this list needs to be reviewed and updated.

A new database and management system for the "*Legislation in Force - Codification and Translation*" will be established to allow national administrations and Commission Delegations in Candidate Countries direct on-line access via internet. It will be organised along the lines of the chapters to be negotiated with EU Candidate Countries.

⁶ See the minutes of the Commission's meeting, COM(87) PV 868 final, dated 14 April 1987, point X.

2.5. Preparations of the EU Candidate Countries regarding the Translation of the *acquis* into their languages

The *acquis* as it stands at present has been communicated in its entirety to the Candidate Countries, forming as such the basis for the accession negotiations. Since 1998, Candidate Countries have launched major efforts to translate the *acquis* into their languages. As of July 2001, the approximate number of pages translated ranged between 14 000 and 60 000, depending on the country. Table III provides an overview of the current state of affairs.

Table III : Estimated number of pages of *acquis* translated by Candidate Countries

	August 1998	October 1999	November 2000	July 2001
Bulgaria	346	3 856	13 308	14 000
Czech Republic	2 283	18 000	45 000	50 000
Estonia	458	12 094	24 748	40 000
Hungary	1 280	21 000	36 000	60 000
Latvia	62	8 659	19 498	33 000
Lithuania	1 190	18 965	21 866	29 000
Poland	3 574	21 663	29 200	33 000
Romania	205	5 080	10 132	21 000
Slovak Republic	782	22 206	39 006	49 000
Slovenia	400	13 410	27 917	31 000

Note: Figures relate to pages that have been translated but not necessarily fully revised

Negotiations with all twelve Candidate Countries have reached more or less advanced stages. To what extent codification can contribute to costs savings for the Commission administration will depend on a variety of factors, in particular the pace of codification, when the next enlargement takes place and the number of countries acceding to the EU at that date.

In this pre-accession period, it will be of prime concern for the Commission not to create any additional hurdle for enlargement. This means in particular that the legal reference framework for current negotiations must remain transparent and accessible. Consequently, during a period of nine months prior to the next accession date no codified texts will be adopted and published, although technical work preparing proposals for codification will continue with a view to publication in the official languages after accession. In the legislative field, this will ensure a level playing field between the Member States of the enlarged EU, once the Special Editions of the Official Journal in the new languages are published.

As regards those countries which will not be part of the next group of acceding countries, cost savings will be considerable.

Candidate Countries will benefit from the Codification Project in various ways. In general terms, they will share with the existing Member States the benefits of a more transparent, readable, codified *acquis*. Indeed, as new Member States unaccustomed to Community law this benefit will be all the greater for the Candidate Countries than for the existing Member States who are already subject to the myriad of rules which it is proposed to codify. Furthermore, as the Candidate Countries will have to undertake a massive effort to replicate and distribute the *acquis communautaire* following accession, a reduction in pages will translate into substantial savings. Finally, as initial translation and revision of Community law texts is under the responsibility of the Candidate Countries themselves, there will be immediate savings where legislation is codified prior to its translation.

2.6. Accession-related responsibilities of the Commission

The Translation Service of the Commission scrutinises and revises the translated legal texts submitted. Once the texts are completed, legal revision and final control is carried out by the EU (Legal Services of both the Commission and the Council).

As regards preparations preceding accession, OPOCE prepares the texts of the founding Treaties and all primary legislation of the *acquis*, including the technical adaptations to the secondary legislation, by the date of signature of the Accession Treaty. All secondary legislation is to be published in the Special Edition of the Official Journal on the occasion of accession of the country in question.

3. OBJECTIVES OF THE CODIFICATION PROJECT

The overarching objective of the Codification Project is,

- a) to establish a simple, readable and transparent *acquis*, as regards secondary legislation, in all Community languages;
- b) in the context of enlargement, to facilitate the administrative preparations for accession by reducing the number of pages to be translated into the languages of the new Member States and, as a longer-term aim, to facilitate accession negotiations with those Candidate Countries where negotiations take place after the Master Copy is finalised.

Operational objectives of the Codification Project are,

- c) as a technical preparation for codification, to consolidate the *acquis communautaire* in all Community languages by the middle of 2003;
- d) to complete the Master Copy of the draft codified *acquis* by the spring of 2005;
- e) to complete the submission of that part of the draft codified *acquis* subject to approval by the European Parliament and the Council to those institutions, in all Community languages, by the summer of 2005, thereby allowing the proposals to be adopted by them by the end of 2005;
- f) to ensure the adoption by the Commission of that part of the draft codified *acquis* which it alone is competent to adopt, by the end of 2005;
- g) to have recourse where appropriate to the technique of recasting in accordance with the inter-institutional agreement once it is adopted, either within the framework of the Project or as a follow-up thereto, as appropriate;
- h) to ensure the publication of any future Special Edition of the Official Journal in a new Community language, after completion of the Project, on the basis of the codified version of the *acquis*;
- i) through the Translation Antennae being set up by the Commission's Translation Service in the Candidate Countries, to support these countries in establishing draft codified legislation in line with the Master Copy established or under elaboration.

4. ELEMENTS AND PHASES OF THE CODIFICATION PROJECT

4.1. The Codification Project

Based on the Presidency conclusions of the Edinburgh European Council 1992 and in line with the 2000 Lisbon Strategy, the Commission is proposing a Codification Project to the European Parliament and the Council taking advantage of the existing accelerated procedure for codification whilst ensuring that measures are taken in the context of the codification of the *acquis communautaire* so as to render it truly fast-track given the limited time-scale of the Project.

On the basis of the inter-institutional *Agreement on an Accelerated Working Method for Official Codification*, the codification of legal texts can be proposed on the basis of specific legal families of secondary legislation. Once the Commission has adopted a proposal for a Council act or one of the European Parliament and Council, the document is submitted to those institutions for their approval. Under that Agreement, the institutions concerned apply an accelerated procedure. Final adoption of the codified legislation remains with the competent institutions (European Parliament and Council or Council alone) under the general rules.

As regards this Project, a rapid adoption on a broad scale of the codified *acquis* seems possible if and provided that the proposal remains limited in principle to a simple codification. Once the inter-institutional *Agreement on a more structured use of the recasting technique for legal acts* has been adopted, it will be possible to take advantage, where appropriate, of the procedures thereby provided for, but without bringing into question the completion of the Project within the time limits set.

It is essential that the three institutions involved ensure in parallel and on the basis of a common understanding and a joint co-ordination effort that the Codification Project can be executed smoothly and rapidly, in particular with regard to the functioning of the Consultative Group of the Three Legal Services which has the task of vetting the Commission proposal and assuring the European Parliament and the Council that the proposal is a true codification and that the Commission has not introduced any changes of substance. In order to ensure, facilitate and monitor coordination between the three Legal Services a Trilateral Steering Committee for the Codification of the *Acquis* should be set up at a high level. It will monitor progress at regular intervals, supervise the timely and effective implementation of the Codification Project and will intervene in the case of technical or procedural obstacles. The Committee will also submit six-monthly reports to the Secretaries General on progress in the implementation of the Project.

With regard to the acts falling within the competence of the Commission alone, its Legal Service will be assisted by a *Working Group on the Codification of the Acquis* composed of representatives of all Directorates General (based on the network of legislative coordinators) reporting to their Directors General. In addition to monitoring progress in the implementation of the Project and supervising its timely completion, the Working Group will be responsible, in close cooperation with, in particular, the Enlargement Directorate General, the Personnel and Administration Directorate General and OPOCE, for setting the codification priorities (thereby replacing the Codification Inter-Service Group) and ensuring that any action plan embodying those priorities is executed in good time.

4.2. Updating and Maintaining the List of the *Directory of Legislation in Force*

The existing *Directory of Legislation in force*, administered by OPOCE and published twice a year, provides for a comprehensive common reference list of the *acquis*. This list is the result of an inter-institutional decision taking into account the positions of Member States, some of which have adopted the same classification at their national levels. It is an off-print of the CELEX data base and has the merit of guaranteeing a stable framework of reference, representing as far as possible all existing secondary Community law in force, at a given moment, in a rapidly evolving environment.

However, the Directory needs to be comprehensively reviewed and updated. Many acts are no longer applicable, but not *de jure* repealed. This entails a lack of legal transparency if not uncertainty throughout the European Union and exerts a similar but accentuated effect on the accession preparations in Candidate Countries.

Therefore, the Council, the Commission and the European Parliament should allocate the necessary resources for the Directory to be reviewed and updated so that action can then be taken by the competent authorities to formally repeal outdated legislation.

A new database and management system for the "*Legislation in Force - Codification and Translation*" will have to be established in order to match the technical requirements in particular with a view to extending on-line access via internet to national administrations and Commission Delegations in Candidate Countries. In this context, the existing database of the Enlargement Directorate General (specifically TAIEX), set up to provide Candidate Countries with guidance on the *acquis* to be translated, will be analysed with regard to possible synergy effects and/or cost savings.

4.3. Legislative acts adopted by the Commission itself

Whilst the cooperation and assistance of the Directorates General is necessary, as hitherto, for the adoption of those codification proposals which have to be submitted to the other institutions for final adoption, the codification of legislative acts which do not have to be submitted to them is carried out under the responsibility of the competent Directorates General.

Since acts to be adopted by the Commission form a significant part of the *acquis communautaire* those Directorates General should assign appropriate priority to this Project within their legislative programme, if necessary by reassigning some staff. The Legal Service will facilitate and support the work of the Directorates General in particular by providing the legal input in the preparation of the codified text on the basis of the consolidated text furnished by OPOCE.⁷ The precise modalities for this cooperation are to be defined bilaterally with the Directorate Generals concerned, in particular with the aim of establishing work schedules and staffing needs, by the end of 2001.

In close cooperation with the Legal Service, provision should be made for the *Working Group on the Codification of the Acquis* to coordinate the process of codifying Commission acts.

⁷ In particular with regard to the identification of the recitals to be included in the codified text.

4.4. Establishing the Special Edition of the Official Journal with the *Acquis* in the languages of the Candidate Countries

Candidate Countries are to be encouraged to follow the codification process closely in order to keep track of the process, in particular in view of the potential savings involved. At the same time, as a matter of administrative prudence, Candidate Countries should avoid the risks of taking short-cuts by translating the *acquis* in its consolidated version prior to its adoption as new Community legislation as there are no guarantees that the codified legislation will be adopted prior to their accession. To monitor the process effectively, close co-operation with the Candidate Countries will be maintained and, where appropriate, intensified.

In order to have the Special Edition of the Official Journal available at the date of accession, OPOCE launches its printing activities ideally 18 months prior to a definite accession date. As in the past, accession preparations in this field require the close co-operation of all actors involved, with all tasks being processed iteratively and continuously.

Candidate Countries need to have translated the complete *acquis* in such a way as to allow for its publication by the date of accession. Therefore, given the time required for translation, revision and publication of the *acquis* in the Special Edition of the Official Journal, new proposals for codified legislation will not be taken into consideration beyond nine months prior to a definitive accession date, unless compatible with the work plan of OPOCE.

This Project will further ensure that the accession process of the Candidate Countries will not be prejudiced by enhanced codification activities inside the European Union and that they can continue to concentrate translation efforts on the *acquis* not yet translated. For the new languages the Translation Service will convert the texts which have already been translated by Candidate Countries into the codified acts so as to align them with the texts resulting from this Project. This work would form an integral part of the linguistic revision of the translations submitted. It would be carried out by the Translation Antennae being set up in each of the Candidate Countries by the middle of 2002.

Following the pre-accession cut-off date applicable to proposals for codified texts, OPOCE will take up consolidation in the new languages, alongside the existing 11 Community languages. As a consequence, the amending acts will be available in translation at the accession date, ready for codification.

5. FOLLOW-UP TO THE CODIFICATION PROJECT - A BASIS FOR A MORE STRUCTURED RECOURSE TO THE TECHNIQUE OF RECASTING

In order to realise the full long-term benefit of a simple, readable and transparent *acquis communautaire*, its regular maintenance and update in line with legal developments will be indispensable, in particular in view of ever shorter cycles of legislation in many Member States by virtue of the rapid pace of change in society, in technology and in the global economy.

Therefore, in the future, in submitting draft legislation for approval, a more structured recourse to the technique of recasting, made possible by the inter-institutional Agreement to be adopted before the end of 2001, will complement the Codification Project. Following the codification of the *acquis*, the technique of recasting will make it possible for that legislation to be continuously accessible and transparent to all citizens of the Union. Moreover, it is

integral to the philosophy behind this Project that once legislation has been codified any amendment thereto should be made systematically by means of a recast.⁸

Once this new approach is comprehensively applied,⁹ future pre-accession preparations will benefit substantially from the availability of a simplified, readable and transparent *acquis*, notably in terms of transposition costs and the organisation of accession negotiations.

The future inter-institutional *Agreement on a more structured use of the recasting technique for legal acts* will provide the framework for streamlined administrative and legislative procedures on recasting. Its adoption is therefore vital to the new approach outlined above, as is the completion of the technical work for the development of the IT tool, “Legiswrite Codification/Refonte”, by the Informatics Directorate of the Personnel and Administration Directorate General.

6. ORGANISATION OF THE CODIFICATION PROJECT

6.1. Time Frame

The more official Community languages exist within the EU, the more costly will be the codification of the *acquis*. Immediate savings are possible in the context of current accession preparations, to the extent that codification advances prior to the accession of the Candidate Countries.

Therefore, operational targets of the Codification Project are driven by the existing scenarios for accession by the Candidate Countries. Within the constraining framework of limited budgetary resources under heading 5 of the Financial Perspectives, it is the aim of the Project to complete codification as early as possible. Based on and constantly extrapolating the resources allocated under the Preliminary Draft Budget (PDB) 2002, it is expected that the Codification Project will be completed in all (currently 11) Community languages by 31 December 2005. According to the budget requested in the PDB 2002, it will be possible to complete the consolidation of the *acquis* for the current 11 Community languages by the middle of 2003.

Human resources for codification will have to be spread over 4 years, based on the assumption that human resources allocations earmarked under the PDB 2002 will also be available in the following three years (2003, 2004 and 2005). On this basis, the Master Copy of the draft codified *acquis* will be available by the spring of 2005 (for acts to be adopted by the European Parliament and the Council or by the Council alone) and by the autumn of 2005 (for acts to be adopted by the Commission).

⁸ In this connexion the Legal Service is preparing a new Commission decision to replace that of 1 April 1987 (referred to in point 2.3. above) with the aim of ensuring the integrated, structured and comprehensive use of all legislative techniques which allow for greater accessibility of Community legislation, namely codification, recasting and amendment with simultaneous updating. The intention is to have this decision adopted as soon as the inter-institutional *Agreement on a more structured use of the recasting technique for legal acts* has been signed.

⁹ Greater recourse to recasts following the adoption of the inter-institutional *Agreement on a more structured use of the recasting technique for legal acts*, and the systematic recourse to recasts envisaged as a follow-up to the codifications carried out within the framework of this Project will increase the workload of the Legal Service’s Codification Group to a considerable extent, with the result that the Group’s permanent staff will need to be strengthened by 3 Grade A posts and one Grade C post.

As regards the languages of the Candidate Countries, there will be a close monitoring and co-ordination of the parallel processes of codification and accession preparations. The objective is to ensure a legislative level playing field for all languages as of the date of accession and to avoid any codification-generated negative effects on the accession negotiations. In due course prior to the relevant accession date, the Trilateral Steering Committee will have to take a decision about the practical options and consequences.

Further, national administrations in Candidate Countries need a clear and precise orientation on the *acquis* to be taken over. Against this background, the list of the *acquis* should be updated as soon as possible. OPOCE will establish the database on *Legislation in Force Translation and Codification* within six months.

6.2. Resources Needs

So far, OPOCE has consolidated about 40% of the currently existing *acquis communautaire*. Given the ambitious targets set by the Codification Project, it intends to accelerate its consolidation activities in order to finalise them by the middle of 2003. OPOCE has requested 10 million € (of which 5 million € are additional funds in the PDB 2002) for the funding of this activity. This provides a sound basis for proof reading, correction and codification once the necessary resources are allocated and available.

The elaboration of the Master Copy of the draft codified *acquis* will involve an increase in costs of some € 4 million (44 man/years of A auxiliary staff) for legal preparation of the text by the Legal Service's Codification Group. The corresponding appropriations have been allocated under the PDB 2002 together with additional appropriations for support auxiliary personnel (3 C Grade posts and 1 B Grade post). For completion of the Project the same temporary reinforcement of the Group will be required in the years 2003, 2004 and 2005.

As regards the codification of those acts which are adopted by the Commission alone, the Legal Service's Codification Group will provide assistance to the Directorates General, in particular to those where the codification effort will be the greatest, in line with the procedures set out in point 4.3 above.

For the legal revision of the codified *acquis* in the 11 existing languages the Legal Service's Lawyer-Linguists Group is to be strengthened by 11 LA posts redeployed temporarily from the Commission's Translation Service. This is in addition to its requirements in connection with the revision of the translations of the *acquis* into the languages of the Candidate Countries (20 LA posts, 10 C posts and 3 B posts, including one post at Grade LA3) which will be covered by internal redeployment of LA posts (14) and an *ad hoc* reinforcement with auxiliary personnel (whose annual cost is estimated at 200,000 €).

The College of Bruges is contracted by OPOCE to prepare the remaining 10 Community language versions from the Codification Master Copy. To speed up this exercise, the contract needs to be reinforced by an estimated 6 million € in 2002 and 2003, covering the cost of about 120 man/years to be managed by the College.

Further, the acceleration of codification under this Project will entail additional publication costs for the Official Journal in the years 2003, 2004, 2005 and 2006. These amount in total to 33 million € (3 million € per language).

An additional cost accruing in the context of the Codification Project, namely the creation of the database and management System for the "*Legislation in Force - Codification and Translation*" amounts to 0.4 million € for which resources will be reallocated in 2001.

In conclusion, additional short-term costs amount to an estimated 67 million €. However, all costs would also accrue without the Codification Project, though at later stages.

7. RISK ASSESSMENT

The early completion of the Codification Project and the possibility of a more structured recourse to the technique of recasting will ensure that future translations of the *acquis* can run smoothly, with the minimum input of human and financial resources on the basis of a much more readily identifiable *acquis*. Codification is a technical legal process of which the institutions already have experience and with which they are familiar. With recasting there is a risk that deliberations by the legislator with regard to those parts which are new could delay adoption. The future adoption of the Interinstitutional Agreement should reduce this risk but in the interests of completing the Project in good time, the option of a recast should be focused on those texts where it is appropriate and represents added value. One advantage of the codification of the *acquis* will be to identify those texts where a recast would be appropriate and to state the legal problems to be addressed in such a recast.

Whereas the long-term benefits of the Project are obvious and without risk, it remains to be seen to what extent the full potential of the possible benefits will be realised. Therefore, it remains an objective to increase human resources for codification to the extent possible. The risk is, however, that budgetary constraints under heading 5 of the Financial Perspectives will further affect the implementation of the Codification Project. This would have a negative impact on the extent of the benefits of the Project.

Given the overlapping processes of administrative accession preparations and codification, close co-ordination with Candidate Countries will be necessary to prevent codification activities having any adverse effect on accession negotiations. In view of the advanced state of accession preparations on the part of some Candidate Countries, there is a certain risk that the Codification Project will not be completed in time so as to allow the full potential of the Project's benefits to be realised for those countries. The earlier accession takes place and the higher the number of countries acceding on the conclusion of the current round of negotiations, the more important is the timely implementation of the Project, but equally the greater is the risk that only part of the *acquis* will have been codified.

Nevertheless, all interested parties, namely existing Member States, Candidate Countries who accede on the conclusion of the current round of negotiations, and all future Candidate Countries will benefit from the completion of the Project regardless of the timing of any particular accession, by virtue of the fact that the Project will provide all citizens with an accessible, transparent and efficient legislative framework. Whilst that framework will evolve continually, the possibility of having recourse to recasting will help to keep it up-to-date.

Finally, effective inter-institutional co-operation between the Commission, the European Parliament and the Council is a pre-condition for the smooth functioning of the Codification Project. The risk of failure to meet the deadlines foreseen is being addressed through the establishment of the two co-ordination mechanisms proposed in this Communication, at operational level and at the level of Secretaries General. Further, a regular exchange of information is to be maintained in the follow-up to the final report of the inter-institutional *Task Force on Administrative Preparations for Enlargement*.

8. CONCLUSIONS

The Codification Project allows for considerable cost savings if implemented and concluded in line with the stipulations of this Communication. The codification of secondary legislation forming part of the *acquis* provides substantial benefits in terms of transparency, readability and simplicity. The Project complements Administrative Reform and facilitates future accessions to the EU.

The Commission therefore calls on the European Parliament and the Council,

(1) to endorse the actions envisaged in this Communication and to authorize the related demands contained in the 2002 Preliminary Draft Budget,

and

(2) to join the Commission in a concerted joint effort,

- to carry out the codification of the *acquis* within the period set, including, where necessary, the amendment of their internal procedures,
- to prepare the ground for a more structured recourse to all legislative techniques, and in particular that of recasting, once the codification of the *acquis* has been completed.

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Administrative Reform/Administrative Preparation for Enlargement
Activity: Codification of the *acquis communautaire*

TITLE OF ACTION: CODIFICATION OF THE *ACQUIS COMMUNAUTAIRE*

1. BUDGET LINE(S) + HEADING(S)

Article A-340, article A-342, article A-343 and article A-700.
Article A-270 (Council)

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): € million for commitment nil

2.2. Period of application:

2002 – 2005

2.3. Overall multiannual estimate on expenditure:

2.4. Compatibility with the financial programming and the financial perspective

- Proposal compatible with the existing financial programming
- This proposal will entail reprogramming of the relevant heading in the financial perspective
- This may entail application of the provisions of the Interinstitutional Agreement.

2.5. Financial impact on revenue:

- No financial implications (involves technical aspects regarding implementation of a measure)

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA participation	Participation applicant countries	Heading Financial Perspective
Non-Comp	Non-Diff	YES	NO	NO	V

4. LEGAL BASIS

Autonomous action.

Based on the conclusions of the Edinburgh European Council of 1992, the European Parliament, the Council and the Commission concluded on 20 December 1994 an Inter-institutional *Agreement on an Accelerated Working Method for Official Codification*. The Inter-institutional *Agreement on a more structured use of the recasting technique for legal acts*, expected to be adopted by the end of 2001 and to enter into force at the beginning of 2002, will provide the framework for streamlined administrative procedures on recast.

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention

5.1.1. Objectives pursued

According to Commission estimates, the total *acquis communautaire* currently comprises about 80 000 pages, with about 2 500 new pieces of legislation generated each year. According to Commission estimates, the codification of the 70 000 pages of existing legislation capable of being codified will reduce the *acquis* by about 30 000 to 35 000 pages.

Currently, out of about 2 400 legal families, 27 codified texts have been adopted (replacing 280 pre-existing acts) and a further 11 are in the pipeline. More than 40% of the *acquis* has already been established in its consolidated version (but not yet legally reviewed).

Measurable objectives pursued by the Codification Project are:

- a) to complete the consolidation of the entire *acquis* in all Community languages by the middle of 2003;
- b) to complete the codification of the entire *acquis* in all Community languages by the end of 2005.

5.1.2. Measures taken in connection with ex ante evaluation

The current status of consolidation has been established by the Office for Official Publications (OPOCE). The *Working Group on Consolidation*, established in 1999, monitors progress in consolidation at regular intervals. The minutes of their meetings can be consulted in order to measure progress.

Figures on the current status of codification were provided by the Codification Group of the Commission's Legal Service. Codified legal acts are published in the Official Journal which can be consulted in order to measure progress.

An *ad hoc* working group consisting of representatives of the Commission services involved and representatives of the Council and the European Parliament administrations was established in order to design and set up the Codification Project. Major bottlenecks hampering smooth and swift progress were identified and appropriately addressed. Main weaknesses identified were:

- a) in general: lack of political commitment to attach sufficient priority to the matter;
- b) Commission: lack of financial and human resources;
- c) European Parliament: administrative procedures which could be improved or accelerated;

- d) Council: lengthy deliberation of proposals for codified legislation.

The conclusion drawn by the three institutions was that, if swift and smooth adoption of codification proposals was to be viable, self-discipline would have to be shown by all persons involved in the process and a major effort would have to be made to address the weaknesses identified:

- a) in the context of administrative enlargement preparations, the inter-institutional *Task Force on administrative preparations for enlargement* recommended that the codification of the *acquis* be carried out prior to the next accessions;
- b) through this Communication, and the budgetary requests submitted in the context of the PDB 2002, the Commission addresses the problem of financial and human resources;
- c) the European Parliament's representatives have indicated their readiness to underline the need to allocate additional human resources in order to streamline internal administrative procedures and draw the necessary internal attention to the swift processing of proposals submitted by the Commission;
- d) the Council has indicated its readiness to draw the necessary internal attention to the swift processing of proposals submitted by the Commission.

5.1.3. Measures taken following ex post evaluation

– not applicable –

5.2. Actions envisaged and arrangements for budget intervention

General objective: The Codification Project submitted by this Communication aims at intensifying codification activities already underway, in view of establishing a simple, readable and transparent *acquis* in all Community languages. It thus contributes to the Administrative Reform of the Commission and the EU institutions in general. In the context of EU enlargement, it facilitates the administrative preparations for accession by reducing the number of pages to be translated, revised and published in the languages of the new Member States. It will facilitate accession negotiations with future accession candidates.

Action 1: Full consolidation of the *acquis* by OPOCE by the middle of 2003, thereby providing the basis for codification. To achieve this objective, current ongoing efforts will be intensified through additional financial and human resources.

Resource requirements: 9 million € on the 2002 budget and 1 million € on the 2003 budget. (10 million € in total)

Action 2: Creation by OPOCE of the database and management system for the “*Legislation in Force – Codification and Translation*”, thereby providing a photographic overview of the current *acquis*.

Resource requirements: 0.400 million € in 2001/2002.

Action 3: Elaboration of the Master Copy of the codified *acquis*, providing the basis for transfer of the codified *acquis* into all Community languages by the end of 2005.

Resource requirements: 44 person-years of A category, 4 person-years of B category and 12 person-years of C category auxiliaries amounting to 4.8 million €, spread evenly over the 2002, 2003, 2004 and 2005 budgets. The annual cost is estimated at 1.2 million €.

Action 4: Strengthening the capacity of the Legal Service's Lawyer Linguists Group in its legal revision of the *acquis* in the existing official languages.

Resource requirements: the Group is to be strengthened by the temporary redeployment of 11 LA category posts. (Annual cost: 1.2 million € over 4 years)

Action 5: Preparation, on the basis of the Master Copy, of the codified text in the remaining 10 Community languages, to be carried out by OPOCE's contractor for legal expertise services by the autumn of 2005.

Resource requirements: 12 million €, spread over the 2002 and 2003 budgets.

Action 6: Supervision of the Project and submission of the whole of the codified *acquis* to the competent institutions for adoption (Commission, Council or European Parliament and Council) by the autumn of 2005.

Resource requirements: 3 A category officials and 1 C category official for an annual cost of € 432,000 over four years (1.7 million €)

Action 7: Publication of the fully adopted codified *acquis* by the end of 2005.

Resource requirements: 33 million €, spread over 2003-2006. This cost is to be borne by the Council and the Commission: the exact percentage for each institution will depend upon the number of autonomous acts for which the Commission is solely responsible. OPOCE will also require more people to publish the Official Journal (6 B category outside personnel more or less for 2 years, for a total of some € 650,000) but considers that the bulk of this requirement can be met by redeploying existing resources.

5.3. Methods of implementation

Core actions are to be carried out by the Legal Service and OPOCE. Overall project management and supervision will be carried out directly by the Legal Service of the Commission and OPOCE. The transfer of the Master Copy of the *acquis* into the remaining Community languages will be carried out by OPOCE's contractor for legal expertise services (Action 5). Temporary needs for additional human resources will be covered through auxiliary personnel, managed by the Legal Service under Action 3. There are no long-term decentralisation effects as the project is clearly limited in scope and time.

5.4. Total financial impact on Part B - (over the entire programming period)

None

6. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

6.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Permanent officials	A	3 A and 1 C (permanent officials)		4	Preparation of Master Copy, training and supervision of new temporary staff and corresponding secretarial tasks
	B				
	C				
Permanent officials		11 LA		11	Legal revision of the <i>acquis</i> in the existing official languages
Other human resources			15 auxiliary personnel (11A, 1B, 3C category)	15	Elaboration of the Master Copy of the codified <i>acquis</i>
Other human resources			6 B category outside personnel	6	OPOCE: Proof reading for the publication of codified <i>acquis</i> in the Official Journal
Total		15	21	36	

6.2. Overall financial impact of human resources

Type of human resources	Amount €	Method of calculation *
Officials	1.620 mio	15 x € 108,000
Temporary staff		
Other human resources Budget line 700	1.2 mio	21 outside personnel (11 A, 3 C, 7 B) by corresponding average cost (A category: € 92,000; B: € 54,000; C: € 42,000) with the redeployment of 6 B
Total	2.820 mio	

The amounts are total expenditure for twelve months .

6.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount €	Method of calculation
Information systems (A-5001/A-4300)	-	
Other expenditure - Part A		Actions 1 and 2 are based on existing contract and experience Action 3 is based on a reinforcement of the current College of Bruges contract Action 4 is based on 30 000 pages at 100 € per page for each language to be published (current price per page of the L series)
A-343 - Consolidation by OPOCE (Action 1)	9 mio	
A-342 - Creation of database (Action 2)	0.400 mio	
A-343 - Preparation of language versions by OPOCE subcontractor (Action 5)	6 mio	
A-340 and A-270 (Council) - Publication in the OJ (Action 7)	8. 250 mio	
Total	23.650 mio	

The amounts are total expenditure for twelve months.

I.	Annual total (7.2 + 7.3)	€ 26.470 mio
II.	Duration of action	4 Years
III.	Total cost of action (NB: Some actions have a duration shorter than 4 years - see section 5 above, and actions relating to publication may have to be completed in 2006)	€ 66.700 mio

7. FOLLOW-UP AND EVALUATION

7.1. Follow-up arrangements

The monitoring and co-ordination mechanism and the reporting mechanism provided for in section 4.1 of the Communication, will ensure that progress is examined regularly. Publication of the codified texts in the Official Journal will provide an unambiguous indicator of successful implementation in the time frame established.

7.2. Arrangements and schedule for the planned evaluation

Regular meetings of the *Working Group on Consolidation* at operational level already take place. The *Working Group on the Codification of the Acquis* will report twice a year to the Trilateral Steering Committee to be set up by the Secretaries General of the European Parliament, the Council and the Commission.

An interim evaluation is foreseen for March 2003, with a view to assessing the scope for publishing the whole of the codified *acquis* in the languages of those Candidate Countries acceding to the European Union on 1 January 2004 (insofar as a decision is taken to this effect).

8. ANTI-FRAUD MEASURES

Activities will be carried out under the direct control and supervision of the Legal Service of the Commission and OPOCE. Internal financial circuits and auditing procedures can be expected to sufficiently address any risk of fraud or irregularity.