REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Follow-up Report on the EP 1999 Discharge Resolution for the Commission

[EP resolution (A5-0113/2001) on 1999 Discharge/General Budget]
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Annex 2
1. SUMMARY

I/ Context

1/Scope of the Follow-up Report

Article 276 of the Treaty determines the discharge procedure and stipulates that "The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure […] At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget." The Commission accordingly, at Parliament’s request, produces two Follow-up Reports: one relating to the Council recommendation and the other to the resolution voted by the European Parliament. These reports are sent to all the other institutions.

2/Object of the follow-up report

In accordance with the Treaty, the object of this Follow-up Report is mainly to present the action taken by the Commission or that which it intends to take in response to the comments and recommendations contained in the discharge resolution voted by the European Parliament on 4 April 2000.

The Commission notes that the recommendations made are already well incorporated in its actions, whether they concern in-depth reform of management and control (summary section II) or correction of errors and irregularities under its general mission of protecting the financial interests of the European Union (summary section III). However, in some cases, the Commission is not able to satisfy all of Parliament's requirements (summary section IV) immediately. Finally, the Commission considers that the information transmitted to the discharge authority enables the European Parliament to exercise effective control of the work of the Commission (summary section V). Summary section VI provides a conclusion.

II/The follow-up in relation to reform of management and control instruments

The resolution voted by the European Parliament largely supports the Commission's own concerns as regards improvement of financial management and is broadly inspired by the same philosophy. In this context, the Commission notes that implementation of the reform meets the recommendations of the European Parliament, in particular with regard to the 10-point action plan. One of the cornerstones of the reform is the amendment of the Financial Regulation.

1/ 10-point action plan

The Commission considers that in this field, the discharge resolution provides encouragement and support for its reform policy.
This is the case for the **increased responsibility of actors**, which results in particular in a more precise definition of the objectives to be achieved by each DG (see detailed point 10.I): individual job descriptions, evaluation of officials, the annual work plan for each DG. The annual declaration and the annual report that Directors-General and Heads of Services will have to sign (see detailed point 10.II), which will provide a better gauge of the quality of the Commission’s management, pursue the same objective. Although the Commission does not agree to establish a hierarchy of the performance of its various departments (see detailed point 10.III), owing to the diversity of the policies and management tools of the various DGs, the Commission considers that these new instruments will enable it to further identify both good practices and the policies which need further improvement.

Similarly, the reform of the Commission puts emphasis on management **controls (including evaluation) and independent internal auditing** of its activities (see detailed point 10.IV). In this respect, the Commission has strengthened its control and audit resources within each DG and with the creation of the Central Financial Service and the Internal Audit Service. The Commission also puts greater stress on evaluation, which will allow it to measure the quality of its management and to check whether the objectives set are actually achieved. The success of such a policy requires rational management of information within the Commission, which will be the subject of a specific work plan (see detailed point 10.X).

Thirdly, like the European Parliament, the Commission is anxious to guarantee the **integrity and transparency** of the institution. For this reason, it takes on, as far as it is able, the objectives set by the discharge authority on the ethics and integrity of public service and on the strengthening of its powers with regard to disciplinary matters (see detailed points 10.V, VI and VII).

The **protection of the financial interests** of the European Union is one of the Commission’s priorities. The improvement of the instruments enabling it to recover sums wrongly paid is a constant concern and is integrated into the reform process (see detailed point 10.IX). The Commission has prepared several measures which will make it possible to strengthen and clarify the powers of each individual, give authorising officers more responsibility and secure the means of keeping a closer watch on amounts to be recovered. The means of preventing fraud are also developed (exclusion of suspect tenderers from calls for tenders, exchange of information with the Member States). Similarly, the creation of centralised databases on contracts and contractors will make it possible to check all the stages of contractual relations between the Commission and final beneficiaries (see detailed point 10.VIII).

Lastly, following the so-called Fléchard case: the Commission will adopt guidelines on the implementation of the **proportionality principle concerning debt waivers**.

2/ Other reforms

The Commission considers that the discharge resolution supports its action in several other fields, significant examples of which are:

- the European Parliament devoted a large section of its resolution to **external actions**. In this field, and in addition to other measures carried out in the framework of Commission-wide reform, the Commission undertook reforms aimed **inter alia** at clarifying internal responsibilities, improving the quality of programming, phasing out the Technical Assistance Offices and closing old and dormant commitments wherever possible. The Commission is open to pursue a constructive and forward-looking dialogue with Parliament on possible
further measures to improve the quality and speed of aid delivery. In general terms efforts are being made to rationalise the use of human resources, such as the process of devolution to the delegations or the creation of EuropAid, which are central elements of the management of external aid reform. On more specific points, such as financial relations with the UN, the Commission is re-negotiating the EC-UN framework agreement, which should make it possible to improve the audit and reporting arrangements for EU-financed operations implemented by UN agencies. Similarly, in the field of nuclear safety in the CEECs the Commission took measures as from September 2000 in order to simplify and rationalise its involvement.

- **Financial corrections for Structural Funds** is an important item of reform. Two regulations\(^1\) adopted in March 2001 organise the respective responsibilities of the Member States and of the Commission in this field. They were inspired by the methodology governing the clearance of the agricultural accounts.

### III/ Protection of the financial interests of the European Union

The discharge resolution deals with individual cases involving possible undue or irregular payments or practices. Some of these cases were communicated to the discharge authority by the Court of Auditors but also by the Commission itself, as part of its transparency effort with regard to the budgetary authority. Information provided by the Commission enabled Parliament, for instance, to draw conclusions and make recommendations on the management problems detected. However, as the Commission had as a rule been informed of these cases, appropriate measures had already been decided in most of them. As part of its broader mission of protecting the European Union’s financial interests, the Commission endeavours to correct any irregular situation as soon as possible.

Several significant examples can be quoted:

- **Concerning the common agricultural policy**, the Commission, in accordance with the wishes of the European Parliament, has strengthened measures to cope with several problems:
  - In view of the persistent weaknesses of Italy and Spain as regards the additional milk levy, the Commission brought infringement proceedings against these Member States and decided to reduce advances for four Member States. As a result of this action combined with the extra powers on sanctions, which the Commission enjoys following the recent revision of the quota implementing regulation, improvements have gradually been seen in these Member States.
  - At the Commission’s insistence the Danish agency responsible for export refunds tackled the many outstanding cases of guarantees not released. This made it possible to reduce the number of these outstanding cases by a factor of 10. A specific audit on this matter will be carried out.
  - Concerning the cultivation of flax and adulteration of dairy products, OLAF has conducted investigations covering Spain and Italy. Other enquiries are ongoing and the Commission is examining what financial measures should be taken in the clearance-of-accounts procedure.

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• Concerning the **Structural Funds**, the Commission took important measures on ESF payments in the Netherlands and in Spain. In these two cases, procedures under Article 24\(^2\) of the coordination Regulation were initiated.

• Concerning **external actions**, the Commission has undertaken to monitor closely and follow up the audits which were conducted, in particular with regard to the representation in Stockholm where disciplinary proceedings were initiated. In one case, disciplinary proceedings were initiated. For another case, the delegation in Washington, the file has been passed to OLAF. Monitoring has led to financial action, such as the issuing of a recovery order (the official title is "debit note") with regard to IRELA or to the opening of an OLAF investigation (for example for ACEAL).

• Concerning the **DAS errors** detected by the Court of Auditors, the Commission looks at each one to determine the most suitable actions to be taken. The Commission’s follow-up action is exhaustive. Whenever possible and appropriate, the Commission recovers amounts wrongly paid.

The agricultural sector regulations ensure that errors are normally automatically picked up via the ex-post controls. In the case of structural funds (another area of large expenditure, along with agriculture) it is not necessary to recover amounts for ineligible expenditure as offsets against current eligible expenditure can be made.

However, it is not always possible to recover amounts initially identified. Further investigation may reveal no error, or new material facts may come to light, or there may be a difference in interpretation of the rules. The Commission will take legal action where it feels its claim is justified.

The Commission has taken an initiative to further clarify the difference between an irregularity and a fraud with its proposal for a directive of the European Parliament and of the Council on the criminal law protection of the Community’s financial interests. The proposal contains a definition of fraud and what constitutes serious fraud. EC Regulation No 2988/95 contains in its Article 1(2) a definition of what constitutes an irregularity.

**IV/ Recommendations that cannot be fully implemented**

There are no major disagreements between the Commission and the European Parliament.

However, sometimes there is a conflict between a request and the respect of an individual’s human rights.

In other cases, Parliament’s demands come up against specific difficulties making it impossible to introduce the measures planned. In general, the obstacles are of a legal nature. Some examples can be found in the 10-point action plan where the Commission cannot always go as far as the discharge authority demands. The Commission will keep the appraisals of individual officials internal. Concerning the dismissal of A1 officials, the Commission’s power is governed by the provisions of the Staff Regulations, which do, however, allow considerable sanctions. In the process of administrative reform, proceedings

dealing with professional incompetence are being developed. The respect of existing legal obligations also limits the information which OLAF can provide to the discharge authority.

Finally, sometimes, technical or material reasons prevent the Commission from meeting Parliament’s request. This is especially the case concerning the error rate for the DAS. The Commission is not in a position to communicate an error rate for the general budget, let alone by sector.

The Commission shares the discharge authority’s views concerning the principles and objectives set out by the resolution. But with regard to the new disciplinary board arrangements, the Commission will stick to its proposal in the White Paper.

V/ Policy of information for the discharge authority

During the discharge procedure, the Commission fully complied with the Treaty obligations and provided Parliament with a large volume of detailed information which allowed Parliament to act as the discharge authority.

The Commission has improved its reporting tools. Parliament receives weekly budget implementation figures. It will receive information concerning the audits of the Commission via the IAS annual report and the Annual Report of OLAF. The development of audit, evaluation, control and reporting tools will enable the Commission to supply more detailed information.

The respect of confidentiality, and correct transmission procedures remains crucial. The 1999 discharge procedure showed that the Framework agreement provides an effective and satisfactory framework for cooperation between Commission and Parliament.

VI/ Conclusion

Finally, the Commission would stress that much has been done during the limited time between the vote on the discharge and the publication of this report. Nevertheless, it is evident that meeting some of Parliament’s demands will take significantly longer: reforms, enquiries, changes in management systems have to be studied and prepared carefully if they are to have maximum positive effects for the coming years. This applies, for example, to changes in the existing contractual clauses in the field of research policy, the reallocation of staff in the external action sector or, more generally, the full implementation of the Commission’s reform process. Nevertheless, the Commission would repeat that its follow-up of the discharge does not end with the publication of this report, as improvement of management of EU funds needs a continuous effort.

The discharge procedure is seen by the Commission as an important component in the process of improving its financial management. This is why it has paid close attention to Parliament’s recommendations. This document shows that there is a broad measure of agreement on the main principles and objectives and even on the measures which have to be taken to meet them. They have already produced positive results and the reform process will continue in this direction.

*The European Parliament,*

1. to 4. (description of the accounts/resources/expenditures/balance sheet)

5. Is concerned that the failure to draw up comprehensive financial statements indicates a lack of adequate data checks, management supervision and budget procedures; calls on the Commission to introduce an effective accounting system to allow anomalies to be discovered in good time; asks the Commission to introduce procedures to enable each Directorate-General and delegation to draw up interim aggregate financial statements every six months; notes that, under the reform programme, the system will be fully operational by 2003;

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**Commission’s reply to Point 5:**

*The Commission has begun putting in place a new system for the regular data checks. A first trial was conducted with the closure of the 2000 accounts.*

*The quality of data extraction for the preparation of the 2000 revenue and expenditure account was far better than in past years. The Commission performed various checks on the data of the individual volumes of the revenue and expenditure account in order to ensure that they were accurate and coherent.*

*The Commission has given high priority to improving its monitoring systems on budget implementation. The Commission currently produces for the budgetary and discharge authority:*

-weekly budget implementation tables on the basis of authorising officers’ returns in electronic form, giving continuously the most up-to-date situation on budget implementation for budget decision-making;

- monthly and quarterly accounting records of implementation published on the Europa website. The quarterly returns also give a summary analysis of the main features of the implementation, compared with the previous year;

- a monthly Early Warning System for agricultural expenditure.

- the Budget Implementation Plan for 2001, which has been developed with the objective of becoming an improved management tool for monitoring the implementation of the budget;
• the Annual Financial Management Report, which provides a detailed analysis of budget implementation and has a focus on budget output, showing what has been achieved compared with the plan and assumptions when the budget was approved.

• the Annual Financial Report, which provides an overview of Community financing, with a focus on what is achieved with EU budgetary expenditure. The report also highlights particular priority actions.

The production of full financial statements by each DG will be examined as part of Action 82 (declaration by Directors-General in their annual activity report) of the White Paper on Reform.

6. Recalls that the Court of Auditors, in the context of its Statement of Assurance, is of the opinion that the accounts reflect reliably the Communities' revenue and expenditure and the financial statement at the end of the year, but as in previous years, has voiced reservations regarding the effect of a number of errors and weaknesses on the consolidated revenue and expenditure account, including:

(a) a net understatement of fixed assets of around EUR 240 million, as buildings of the European Parliament and European Court of Justice are not included and inconsistencies in the treatment of depreciation between, and even within, different Commission Directorates-General,

(b) an understatement of short-term amounts receivable from Member States, in the area of own resources and EAGGF-Guarantee debtors,

(c) a material understatement of sundry debtors, essentially sums paid to various intermediate bodies but not yet transferred to final recipients,

(d) the inaccurate and inadequate presentation of information on advances and payments on account at 31 December 1999, as a result of incorrect recording by the authorising officers and technical problems linked to the introduction of SINCOM2,

(e) the understatement of commitments by some EUR 2 600 million,

(f) the overstatement of commitments still to be settled by some EUR 940 million, since they are maintained in the accounts although they no longer represent an obligation to make further payments owing to poor monitoring by various Commission departments,

(g) the overstatement of potential receivable amounts;

Commission's reply to Point 6:

(a) The two buildings in question were included on the assets side of the balance sheet at 31/12/2000. Before that they were referred to in the annex to the balance sheet.

In order to harmonise the valuation rules and the accounting procedures, on 29 December 2000 the Commission adopted Regulation (EC) 2909/2000 on the accounting treatment of non-financial fixed assets applicable to all the European institutions and it has also produced an accounting and consolidation manual. (The financial statements of the individual institutions are now produced in a harmonised manner.)
When the 2000 financial year was closed, all the institutions made entries for depreciation.

(b) As regards traditional own resources, the Commission would point out that it is not currently in a position to give a more accurate figure for short-term amounts receivable because of the uncertainty about whether they will be recovered.

Pursuant to the accounting principle of prudence, the Commission entered for 1999 a 100% provision for doubtful debts; it did not apply a probable recovery rate for lack of information.

For 2000, in order to give a more realistic estimate of short-term amounts receivable, the value adjustment was calculated on the basis of recovery statistics for earlier years and put at 63%.

In order to improve the valuation of own resources receivable, the Commission has presented a proposal for the amendment of Regulation (EEC/Euratom) 1552/89 with a view to tightening up the procedure for Member States to write off irrecoverable amounts.

The same difficulty exists for estimating EAGGF debts, as hitherto there were no regulations requiring Member States to provide information about recovery possibilities. For 1999 for instance, a 100% value adjustment for doubtful debts was likewise entered on the assets side of the balance sheet as a deduction from receivables. For 2000 the value adjustment for doubtful debts was estimated on the basis of the information supplied by the Member States and that emerging from controls carried out.

From 2001 onwards a Commission Decision (EC 2761/99) requires Member States to inform the Commission every six months of the amount of debts for which the likelihood of collection is virtually nil (even if legal procedures for recovery are still in progress). It will then be possible to make a more accurate estimate of receivables.

(c) In order to improve the information available about financial intermediaries, the Commission conducted a survey in Directorates-General in 2000 to produce lists of all fund administrators. As a result the amount of budget advances paid to public or private intermediaries shown on the assets side of the balance sheet is more comprehensive than in past years.

This survey of financial intermediaries will be conducted each year.

(d) In its proposal for the recasting of the Financial Regulation the Commission has clarified the concepts used for types of payment.

(e) These are mainly commitments from the Structural Funds. The reason for the €2,600 million understatement is that 1999 was the last year of the 1994-99 programming period for structural operations. Mainly because of delays in the reprogramming by Member States, the Commission did not have sufficient time to make the commitments at the end of 1999 and therefore carried the appropriations forward in order to comply with the amounts set at the Edinburgh Summit.

This was thus clearly a one-off problem.
(f) The Commission keeps a close eye on outstanding commitments by means of a permanent surveillance programme in all DGs to ensure that the amount stated corresponds to current legal obligations. On 20 November 2000 it presented to the budgetary authority a report entitled "Strategy on outstanding commitments".

It should, however, be stressed that some commitments must be kept for a number of years because of legal constraints (legal proceedings, etc.).

In order to improve the information on this subject the Commission shows in the off-balance-sheet commitments the position concerning outstanding commitments and it comments on developments.

(g) Decision C(2000) 1992 of 14 July 2000 laying down the format of the tables for the transmission of EAGGF Guarantee data distinguishes between amounts to be recovered as a result of irregularities and fraud (Regulation (EEC) No 595/91) and other receivables. This information will help in eliminating double entries and hence the overstatement of potential receivable amounts. Although the decision is not applicable until 1 January 2001, some Member States sent in the information for 2000. Only for those Member States was it possible to avoid double entries in the 2000 financial statements.

7. Approves the closure of the accounts for the implementation of the general budget for the 1999 financial year;

3.1. **Access to information**

1. Regrets that, even after the conclusion of the Framework Agreement, the Commission has not forwarded certain information and documents requested by the discharge authority; again reaffirms paragraph 26(b) of its resolution of 19 January 2000 containing the comments which form an integral part of the decision giving discharge to the Commission for the implementation of the general budget of the European Union for the 1997 financial year, in which Parliament points out that it has to have at least as much access to Commission documents as the Court of Auditors; recalls that Parliament has respected the Framework Agreement when requesting information from the Commission despite the fact that the rules:

   i. are open to very broad interpretation, in particular as to whether a document is deemed confidential,

   ii. may cause undue delays, for example the transmission of documents on 16 February 2001 following the questionnaire of 5 December 2000;

therefore calls, in the light of this experience, for the revision of the Framework Agreement, this process to be governed by the following principles;

   (a) confirmation of the right of any Member of Parliament to demand and receive confidential information, too, where necessary, from the Commission pursuant to Article 197 EC,

   (b) unreserved application of the provisions of Annex VII to the Rules of Procedure on the consideration of confidential documents, which includes the right of any committee member to consider the confidential documents,

   (c) forwarding of complete original documents without prior alterations or obliterated text;

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**Commission's reply to Point 1:**

*The 1999 Discharge procedure was the first to which the Framework Agreement, concluded on 5 July 2000 was applied. The Commission sought to apply the agreement fully and loyally throughout that procedure. Article 4 of Annex III to the Framework Agreement contains the specific procedure to be followed for its possible revision. An action concerning the Agreement is currently pending before the European Court of Justice. In the Commission's view, the Framework Agreement has proved to be an effective mechanism, one benefit being that it allows Parliament to receive confidential and other information.*

2. Reminds the Commission of Article 80 of the Financial Regulation, pursuant to which the analysis of the financial management must supply details as to whether the principles of sound management laid down in Article 2 of the Financial Regulation have actually been complied with; regrets that that document, which is fundamental to budgetary control, contained no more than highly incomplete information for 1999 and was available in one
language only; calls on the Commission to submit a complete analysis for 2000 which covers all budget headings and is available in all official languages;

**Commission’s reply to Point 2:**

*The analysis of financial management for the year 2000 complies with the principles set out in Article 2 of the Financial Regulation: by presenting a comparison, for all important budget lines, between expected and actual financial and output implementation, it satisfies the requirement that ‘quantified objectives must be identified and the progress of their realisation monitored’. However given that the Budget now contains some 1200 lines, and in conformity with the principle of cost-effectiveness, the Commission does not consider it appropriate to report extensively on each and every budget line irrespective of importance. Instead, and following the Court of Auditors’ remarks that the scope of the comments should reflect the relative importance of the budget lines being reported on, the Commission has for the year-2000 financial management report selected for detailed review those lines with appropriations exceeding €30 million and/or of particular importance or interest. The emphasis has been on preparing a document which is manageable in terms of the workload and volumes of data involved. Given the timeframe and the large size of the document (more than 400 pages of detailed analysis) it is necessary to produce it in one version only.*

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<th>3.2. Statement of Assurance</th>
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<td>3. Questions the utility of the global Statement of Assurance for 1999 so long as the figures are not given; notes that the Court of Auditors, which expends considerable resources of both the auditor and auditee, has not published substantive and formal error rates in recent years, which would allow Parliament to gauge the success or otherwise of the Commission’s management of the Union budget:</td>
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<td>(i) recalls that the overall substantive error rate of the Union budget was reported as 4.0% in 1994, 5.9% in 1995 and 5.4% in 1996 and not published for subsequent years;</td>
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<td>(ii) notes, however, that the figures for the agriculture sector, provided for the first time by the competent Commissioner, responsible for the expenditure of EUR 39.5 billion or 47% of the budget, amounted to 2.52% in 1995, 3.78% in 1996, 1.94% in 1997, 3.29% for 1998 and 3.06% for 1999 and was markedly lower than the global error rate;</td>
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<td>(iii) notes that funds managed by other Directorates-General, particularly those jointly managed with Member States, suffer, as a whole, from much greater error rates; calls for all remaining Commissioners to inform Parliament of annual error rates, in their respective areas of responsibility, since 1994 and in the future;</td>
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<td>(iv) Welcomes the Court’s willingness to undertake sectoral appraisals as an initial step towards more transparent and accurate assessments of budget utilisation rates but insists that the Court modify its approach in the direction of quantifying the error rate and specifying its results from DAS audits on both a geographical and a sectoral basis; if necessary, recommends that the Court identify the additional human and financial resources required to provide such data;</td>
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(v) calls on the Court of Auditors to transform the DAS into an instrument enabling the Discharge and Budgetary authorities to compare and monitor progress in financial management;

(vi) restates paragraph 1(a) of its resolution of 13 April 2000 on the postponement of discharge to the Commission in respect of implementation of the general budget of the European Union for the financial year 1998 that the Commission should cut the error rate of more than five percent by a considerable rate; calls for this reduction to be made in conjunction with Member States, on the basis of a method to be discussed by the Court of Auditors, the Discharge Authority and the Commission; urges the Commission to ensure that it achieves a positive statement of assurance for budget year 2003 at the latest;

**Commission's reply to Point 3:**

(iii) The Statement of Assurance (DAS) is the preserve of the Court of Auditors. As part of a process of continual improvement in the presentation of the DAS, the Court of Auditors decided some years ago that a descriptive DAS was the most effective method of communication. The DAS description is a global statement for the Commission’s activities; the relevant provision of the EC Treaty, Article 248, does not provide for a detailed breakdown by DG. Therefore, for the four DAS statements made by the Court each year, on the reliability of the accounts and legality and regularity of revenue, commitments and payments the Commission is not able to give errors rates, nor details by DG. The DAS for payments (alone) was negative.

(vi) The Commission has stated that it ‘is committed to do all in its power to improve the DAS as quickly as possible’ and reaffirms this commitment. The means of achieving a consistent and long term improvement in the DAS is via improvement to the Commission’s and Member States' control systems and ensuring the appropriate resources for the tasks. The reform of the Commission that was set in motion in the first half of 2000 is addressing these two areas. For example, the financial functions in operational DGs have been strengthened. The Central Finance Service is in place and so substantially are audit functions in the DGs, the Internal Audit Service, and the revision of the Financial Regulation is progressing.

3.3. Council

4. (the Council:)

3.4. Member States

5. Recalls that more than 80 % of the Union budget is administered by the Member States:

(i) calls for Member States which have not yet ratified the 1995 Convention on the Protection of Financial Interests, namely Belgium, Ireland and Luxembourg, to do so as soon as possible;

(ii) notes that, in its answers of 26 January 2001 to the questionnaire from the discharge authority, the Court of Auditors indicates that in its Annual report following Member States are singled out for criticism;
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(iii) is surprised that figures of irregularities and fraud given by Member States are, as a whole, much lower than error rates drawn up by the Court of Auditors under the sectoral declaration of assurance; observes that the figures provided by Member States may give a distorted picture owing to differences in definitions and methods used by the Court of Auditors and Member States; invites the discharge authority to investigate this matter;

(iv) Own resources section:

(a) recalls that Member States reported irregularities and fraud of EUR 266.1 million, i.e. 1.92% of the Own Resources budget of EUR 13.8 billion (Regulation (EEC, Euratom) No 1552/1989); notes that of a total of EUR 214.8 million reported as irregularities by Member States, 48.7% were identified by the United Kingdom and of a total of EUR 51.3 million reported as fraud by Member States, 76.8% were identified by Germany;

(b) points out that four Member States, namely Ireland, Luxembourg, Portugal and the United Kingdom have not reported any cases of fraud in the collection of traditional own resources;
calls on the Commission to explore the feasibility of bringing forward a financial corrections procedure for Own Resources adapted from the EAGGF-Guarantee clearance of accounts system;

**Commission's reply to Point 5. (iv):**

(a) & (b) As the Commission has noted before, the notion of fraud is not consistently interpreted by the various competent authorities in Member States - largely because the convention providing for a consistent interpretation has not yet been ratified by them all. In some Member States, a violation of a Community regulation can only be considered fraud after the definitive court judgment, whilst in others operational services make this classification themselves during their inquiries.

(c) Prior to tabling a modification of Regulation 1552/89 (now 1150/2000) in 1997, the Commission examined various ways to make the "write-off" procedure (Art. 17(2) of Regulation 1150/2000) more transparent and effective. In the framework of that analysis, the possibility of a "clearance" system was also looked at. It was concluded that such an approach would be cumbersome for traditional own resources, because unlike the EAGGF situation, the total number and magnitude of the underlying transactions are an unknown. The Commission therefore proposed a more straightforward solution under which Member States would be obliged to report to the Commission all cases above €10,000 for which recovery had been unsuccessful during the previous 5 years. Where a Member State had failed to demonstrate due diligence in the recovery process, it would be held financially responsible. This proposal (COM (97) 343 final) is still under scrutiny by the Council.

(v) EAGGF Guarantee section:

(a) recalls that Member States reported irregularities and fraud of EUR 232.1 million, i.e. 0.59% of the EAGGF Guarantee budget of EUR 39.5 billion (Regulation (EEC) No 595/1991); notes that of a total of EUR 116.5 million reported as irregularities by Member States, 70% were identified by Germany, Spain and Italy and of a total of EUR 115.5 million reported as fraud by Member States, 78% were identified by Germany, France and Italy;

(b) points out that two Member States, namely, Greece and Finland, have not reported any cases of fraud in the area of the CAP;

(e) regrets that one Member State, Denmark, had, at 1 February 2001, built up an unacceptably high level of DKK 2.2 billion (approximately EUR 300 million) as export refund guarantees, a level that seems too high and of which DKK 6 million (approximately EUR 800 000) was deposited by companies five years ago; urges the Commission, along with the Court of Auditors, to audit the handling of export refunds by the Danish Directorate for Food, Fisheries and Agro Business;

(d) regrets that Italy has been paying the super-levy for the breaching of milk quotas, on behalf of its farmers, thereby distorting competition across the Union; attaches great importance to the establishment of an appropriate legal basis allowing penalisation of Member States with inadequate management of the milk quota system; urges the Commission to investigate thoroughly the allegations that skimmed-milk powder subsidised by the Community may be being reprocessed as fresh milk;
(e) regrets that Greece has not set up a vineyard register, despite a legal obligation to do so since 1992; deplores the Commission’s persistent failure to set up an effective specialised control body in the wine sector, in spite of repeated requests by both the Court and Parliament; asks that conditions attached to the granting of supplementary human resources for the Commission, in the context of the 2002 budget, include specific and verifiable measures for the operation of the body in question;

(f) calls for the Commission to extend the clearance period for which financial recoveries can be made from the current 24 months to 36 months, review the membership of the Conciliation Body and bring forward a proposal for a legal base enabling the Commission to apply increasing financial corrections to Member States for repeated weaknesses in control systems, including for delays in the introduction of IACS;

Commission’s reply to Point 5. (v) c.:

The Commission has audited the management of advances and guarantees by the Danish Directorate for Food, Fisheries and Agro-business (EFFD) as part of a European-wide enquiry on this subject.

Advances for export refunds are only paid if an acceptable guarantee is lodged. This guarantee is cleared after the delivery of suitable documentation. In cases of differentiated refunds the exporter has up to 12 months to deliver proof of arrival and placing in free circulation in the third country, although such proof can be delivered up to 18 months after the date of export with a loss of 15% of the export refund. This period can be extended in well-justified cases. Exports to Russia are currently subject to additional requirements and exporters have up to two years to deliver the necessary proof of arrival.

It is therefore not surprising that, in a major exporting country like Denmark, a considerable amount of guarantees are held by the EFFD at any time. However, the Commission has confirmed that the backlog of uncleared guarantees had built up to an unacceptable level. This entails additional costs for exporters and potential risks to the EAGGF if recoveries are made late or not at all.

Under pressure from the Commission, in May 2000 EFFD set up an action plan to deal with the backlog, which consisted of 22 000 cases from before 1 March 1999 with guarantees of 740m DKK. By 30 April 2001 this had been reduced to 2400 cases with guarantees of 99m DKK and, by 13 June, to 70m DKK. The plan is to eliminate the backlog by the end of 2001.

While certain recoveries have been made later than necessary, the Commission did not find any evidence that EFFD has failed to make recoveries required under the legislation. The Commission welcomes the steps already taken by EFFD to deal with this problem.

The Commission will carry out a follow-up audit to ensure that the commitments of EFFD are in fact respected and to check that the problem is finally resolved.

Commission’s reply to Point 5 (v) d:

Concerning milk quota
The Commission has opened infringement proceedings (still pending) against Italy (reasoned opinion 97/2228) for incorrect application of the milk quota regime and failure to collect the levy as well as against Spain (reasoned opinion 97/2227). The problems in Italy had been pointed out by the report of an Italian Committee of Enquiry. The Commission has been thorough and persistent in its actions and will continue to pursue recovery whilst recognising the delays caused by Member States, Regions and individuals exercising their rights of defence.

The Commission agrees that the milk quota regime has not yet been fully implemented in Italy insofar as problems remain with collection of the supplementary levy. However, it is necessary to differentiate between the reasons for non-collection in Italy which mainly comprise levy appealed to the national courts, incorrect compensation between delivery and direct sales quotas, and further amounts of uncollected levy. The latter two reasons for non-collection of the levy are why infringement proceedings against Italy remain open (reasoned opinion 97/2228). Nevertheless, while the situation regarding levy collection remains unsatisfactory in Italy, the Commission recognises that major improvements have been made. Italy has implemented relatively effective control measures retroactively from the 1995/96 marketing year. However, a serious problem remains as regards the non-collection of the levy.

The Commission has made great efforts to enforce the payment of the levy. The present legislation allows the Commission to reduce the advances when the levy is not paid within the time limit. For the majority of Member States, no financial correction or only a small correction is necessary in the clearance of accounts decisions. Up to 1999, reduction of advances were necessary for four Member States - Greece, Spain, Italy and UK, and in the case of UK for small amounts, which proves that the regime is correctly applied in the EU.

However, changes to the quota legislation to reinforce the powers of both the Commission and the Member States with regard to sanctions have been proposed and introduced in the course of the recent revision of the quota implementing regulation (within the limits of powers conferred on the Commission by Council Regulation 3950/92 which does not permit the Community budget to be the recipient of amounts collected (such as financial sanctions) other than supplementary levy (and the interest for late payment of levy) in the event of the overshoot of the national quotas). The new regulation is likely to be adopted and published by the end of July.

Concerning skimmed-milk powder

Any serious allegations that skimmed milk powder has been reprocessed into fresh milk to the detriment of the Community budget will be investigated.

Commission's reply to Point 5 (v) (e):

The Commission can merely confirm that Greece is indeed late in setting up a vineyard register. It should, however, be borne in mind that as a result of the successive extensions accorded by the Council the final date for completion was only 31 December 2000. At that date Greece had not made any significant progress. While taking the view that Greece continues to be under the obligation to set up the register even beyond the final date in the regulation which allowed Community co-financing, the Commission is especially disturbed by this delay as the new reform of the wine sector, which has been in force since August 2000, makes the register the central instrument for surveying and controlling wine-making
potential. The Commission views the absence of a vineyard register with great concern and appropriate actions will be taken in the context of the clearance of accounts procedure.

Concerning the Specialised Control Body, it is correct that the Commission could not man the Body with the posts initially proposed by Parliament in 1996, based on the Court's remarks. Given the number of posts available and the relative importance of the wine sector in budgetary terms, priority was given to core clearance of accounts including expenditure of the wine sector. This was also a consequence of Parliament's demand to allocate 15 additional posts to clearance of accounts in general (which was done in recent years), which is also in charge of the Specialised Control Body. That figure of 15 included one post for the Specialised Control Body for wine. It is also underlined that this Body was created by Regulation 2048/89 as a result of fraud cases (not only implying finance but also health risks) which seriously disrupted the wine sector both in 1985 and in 1986. For the last couple of years, the Commission has no evidence of an exceptional high risk for the wine sector which would justify an over-proportional allocation of audit resources to this sector.

As regards the establishment of a specific control team for the wine sector, it should first be pointed out that the clearance-of-accounts department assumes its expenditure control function, including in its work and mission programme enquiries which involve tasks assigned to the specific control team. From autumn 2001 onwards, specific enquiries will be launched with the assistance of national experts whose involvement and coordination are provided for in the work programme. The Commission will not be asking for additional human resources for this area given that these limited resources could be more effectively used elsewhere.

Commission's reply to Point 5 (v) f.:

The Commission views this proposal positively and is evaluating it in the light of the experience gained with the current 24 month period. The results of this review could lead to a proposal to amend the existing Regulation. The new composition of the conciliation body was determined by Commission decision with effect from 1 August 2001. Of the five members, three already belonged to the body as highly qualified experts on EAGGF Guarantee matters, and the two new ones are highly qualified experts in financial auditing, as is allowed by Decision 2000/649/EC of 12 October 2000. A Commission notice concerning these appointments was published in the Official Journal of 17 July 2001 (2001/C 201/02).

The Commission is considering the possibility of increasing financial corrections where there are repeated shortcomings.

(vi) Structural Funds section:

(a) recalls that Member States reported irregularities and fraud of EUR 120.6 million, i.e. 0.39% of the Structural Funds budget of EUR 30.6 billion (Regulations (EC) No 1681/1994 and 1831/1994); notes that of a total of EUR 97.3 million reported as irregularities by Member States, 64% were identified by Italy and the United Kingdom and of a total of EUR 23.2 million reported as fraud by Member States, 99% were identified by Germany, Italy and the United Kingdom;
(b) points out that nine Member States, namely, Belgium, Denmark, France, Luxembourg, the Netherlands, Austria, Portugal, Finland and Sweden, have not reported any cases of fraud in the area of Structural Funds;

c(e) takes note of the substantial improvements brought about by the new Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds; counts on the Commission to make sure that that regulation is applied in full and, in particular, to make the necessary financial corrections where Member States are responsible for irregularities; calls on the Commission to ensure that the decommitting procedure laid down in that Regulation is fully implemented; calls on the Commission to introduce a clearance of accounts procedure for Structural Funds;

**Commission's reply to Point 5. (vi) (a), (b) & (c):**

*On 2 March 2001 the Commission issued Regulations Nos 438 and 448/2001 which specify further the provisions of the basic regulation concerning management and control systems and financial corrections. It has commenced audits of Member States’ systems to ensure that they meet the standards required by the new regulations. Under Regulation No 448 the Commission will be kept informed about financial corrections made by the Member States and is determined to make corrections itself where necessary, especially for systemic irregularities, when it will apply flat rates and extrapolation. It adopted internal guidelines for corrections at flat rates at the same time as Regulation 438.*

*The Commission has explained to Member States in good time through the Structural Fund committees how the provisions governing decommitment in year n+2 will be implemented.*

*Concerning the EAGGF Guarantee Section clearance of accounts procedure, the Commission considers that the new management and control systems and financial corrections regulations, together with the financial correction guidelines, have already transposed into the Structural Fund rules those parts of the Guarantee clearance procedure rules that are compatible with the Structural Funds.*

*The Member States are obliged under the sectoral regulations to notify the Commission of cases of fraud and irregularity affecting the Community budget. They are, moreover, under the obligation (Article 280 of the Amsterdam Treaty) to take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests. The Commission services take every opportunity of reminding the Member States of their reporting obligations in this regard, in particular in the framework of the Advisory Committee for the coordination of fraud prevention, whose role it is intended to enhance to strengthen cooperation both between the Member States and between the latter and the Commission. With regard to the statistics in the area of structural measures, the tendency in the year 1999 was for an increase in both the number of cases of fraud and other irregularities and the amounts concerned. This reflects the increased efforts made by the Member States in terms of formal notifications. The considerable variations between Member States in cases reported is striking. The Commission continuously calls on the Member States to improve their awareness of the various types of fraud and irregularities so that more consistent results may be achieved.*
Regarding the distinction between what constitutes fraud as distinct from an irregularity, the Commission has taken an initiative to fill in the void in this area in 2001 with its proposal for a directive of the European Parliament and of the Council on the criminal law protection of the Community’s financial interests. The proposal contains elements from the 1995 Convention on protection of financial interests including in its Article 3 a definition of fraud and what constitutes serious fraud. The Commission took the initiative to make this proposal under Article 280 of the Treaty on European Union as it seemed unlikely given the current state of affairs that the Convention and its associated protocols would be ratified by all the Member States, an essential precondition for their being applied throughout the European Union, in the foreseeable future. Article 1(2) of Regulation (EC) No 2988/95 contains a definition of what constitutes an irregularity.

(d) regards the trend in the amount of outstanding commitments both in the area of structural measures and TEN projects as unacceptable; calls for the submission of an emergency reduction programme coordinated between the Member States and the Commission, in particular for pre-1994 outstanding commitments in the area of structural measures; calls for no extensions requested by Member States to be granted to payment deadlines;

Commission's reply to Point 5. (vi) (d):

Structural Measures

Each Structural Fund has an action plan for the reduction of the RAL, involving monitoring of all pre-1994 commitments that should be closed at the end of 2001 with the exception of legal cases pending. In accordance with the regulation, if payment claims from the Member States have not been registered, the corresponding commitments will be cancelled.

In absolute terms, the RAL has been increasing over the period 1994-1999 reflecting the doubling of the budget over this period.

The RAL for the Structural Funds has remained broadly flat in the last 3 years taking into account the fluctuation in the budget. The ratio of the RAL at the end of the period to appropriations for the period has been: 121% for 1998, 136% for 1999 and 126% for 2000 thereby showing no significant change.

In view of these figures, which concern multiannual actions in areas connected with infrastructure investments, conversion and modernisation of the productive sector, training, etc., the Commission would repeat its opinion that the volume of the RAL is normal. The pre-1994 RAL for the FEDER was too high and intensive action was therefore taken. As a result it has fallen from around €1.7 billion in 1999 to €674 million in June 2001. Work continues on reducing it.

The Commission is working with the Member States to clear these programmes in the course of 2001. The new regulation is intended to close old commitments so the changed legal base will result in reduced RALs in the future.

The reduction and closure takes time even when selected for intensive action. Decisions for action need to be based on good supporting documentation and must comply with the regulations; it may lead to legal action which takes time, but may be necessary in order to protect the financial interests of the EU.
In order to reduce the amount of outstanding commitments (RAL), measures to reinforce the management of the TEN projects have been drawn up; for example projects which have not started within 2 years will now be cancelled (Article 10 of the new TENs Regulation 1655/99).

Although the RAL increased from end-1999 to end-2000 (€940m to €1078m) these measures along with increased operational vigilance should result in an effective net reduction from 2001.

(vii) urges the Member States to comply with the eligibility criteria laid down in the new regulations, so as to avoid any recurrence of the irregularities that are highlighted each year and asks to be kept informed of the action taken by the Commission on the irregularities in European Social Fund operations in Member States, especially:

- Netherlands: Rijnmond-Drechtsteden and Gelderland;
- Spain: Catalonia;
- Denmark: Kolding, recalling that the national authorities did not report the case to the Anti-Fraud Office;

**Commission's reply to Point 5. (vii):**

In her letter to Mr Blak (0541 of 28 March 2001), Ms Diamantopoulou reported on the action taken by Commission staff on the Rijnmond-Drechtsteden and Gelderland and Catalonia cases.

- **On the Rijnmond-Drechtsteden and Gelderland case,** the Commission departments concerned organised a meeting on 22 June 2001 with the Dutch authorities in order to take a position on the recovery of the amounts wrongly paid in connection with utilisation of ESF appropriations in the Netherlands. As the Dutch Minister for Social Affairs was not prepared to accept the repayment plan proposed by the Commission (i.e. repayment of 1994-96 amounts before summer 2001 and 1998 and 1999/2000 amounts after completion of the controls), the Commission has applied the procedure laid down by the Coordination Regulation (Article 24 of Regulation (EEC) No 4253/88: reduction, suspension and withdrawal of assistance). The Commission informed the Dutch authorities of this at the meeting.

- **In the Catalonia case** an Article 24 procedure has been in progress since December 2000 to suspend all the ESF funds assigned to the two promoters concerned.

- **Denmark: Kolding –** The requirement to report irregularities to OLAF was discussed at the annual co-ordination meeting with the Danish control bodies on 21 February 2001. A formal report from the Danish authorities was subsequently sent to OLAF on 19 July 2001. The case is still being investigated by the Danish police authorities. The Commission is following it closely and no further payments relating to this project will be made pending the outcome of the judicial proceedings in Denmark.
(viii) calls on Member States who have not yet done so to give their national Court of Auditors full powers to audit the use of EU-funds down to the final recipient level; welcomes the reports produced by the Dutch Court of Auditors which have led to steps being taken by the Dutch Government;

(ix) notes that when examining transactions in order to draw up the declaration of assurance the Court of Auditors identified irregular payments worth EUR 418 million; invites the Commission to recover funds incorrectly paid to Member States and to propose a simplification of the infringement procedure, which allows a lump sum or penalty payment to be paid by the Member State, following a judgement by the Court of Justice, if the Commission considers that the Member State concerned has failed to fulfil an obligation under the Treaty (Article 228);

Commission's reply to Point 5. (ix):

Detection of irregularities and recovery of funds is achieved via specific and appropriate legislation for the different sectors of activity where the Commission acts. The actions that have been taken by different sectors are detailed below:

Agriculture: Guarantee - The Commission takes into account the results of the DAS in the EAGGF Guarantee clearance of accounts. As for EAGGF - Guidance - all the DAS cases have been verified and the recovery is in progress or the undue amounts have been received, or in particularly serious cases the Commission has launched infringement procedures against the Member States in question.

Regional Development: As regards the European Regional Development Fund, the Commission services are following up all cases of substantive errors on payments identified by the Court. Further inquiries with the Member States are in some cases still ongoing. These will allow the Commission to either gather evidence that the necessary corrections have been made for the errors accepted by the Member States, or will allow the Commission to reach a final conclusion, for the other cases.

Not all situations of error detected by the Court will give rise to a receipt of funds from the Member States of amounts paid. For example, if a programme where an error was detected is not closed there may be offsetting of new eligible expenditure against the non-eligible.

Commission departments responsible for employment activities ensure a close follow-up of all the substantial errors detected by the Courts of Auditors during the DAS exercise 1999. The totality of these errors have been reported for appropriate action to the Member States concerned. As 1999 was the last year of the programming period 94-99, most of the errors will be corrected in the framework of the closure process of the OPs (2001-2002). Final payment requests will be adjusted in order to take into account the observations of the Court, and, when applicable, recovery orders will be issued.

Furthermore the Council Regulation (EC) No 2236/95 of 18 September 1995 laying down general rules for the granting of Community financial aid in the field of trans-European networks stipulates that Member States shall take the necessary measures to recover any amounts lost as a result of irregularity including interest on account of late repayment in accordance with the rules adopted by the Commission. Commission officials or agents may
carry out spot checks, including sample checks, in respect of projects financed under this Regulation and may examine the control systems and measures established by the national authorities, which shall inform the Commission of measures taken to that end.

The Commission may require the Member State concerned to carry out an on-the-spot check to verify the correctness of payment applications. Commission officials or agents may take part in such checks, and must do so if the Member State concerned so requests.

In respect of the administration, two payment errors were identified. The first had a difference of €75.50 between the declared and correct amounts. No recovery was made as it was considered that Article 85 of the Staff Regulations was not applicable. The second error was for a difference of €3 055.32 and two recovery orders were established. The person concerned is repaying the balance in instalments. At 27 June 2001 the amount outstanding was €1 444.01. The Commission is continuing its efforts to recover the remainder.

In the area of fisheries, a payment error for €24 191.87 had been identified. In their request for reimbursement of expenditure connected with marine surveillance in 1999, the Greek authorities failed to declare to the Commission the amounts deducted by way of penalties or interest for late payment. In addition they applied a 0.10% deduction to certain payments to finance operational expenditure by the Ministry for Development. In their preliminary contacts with Commission departments on this subject, the Greek authorities did not object to the amounts in question being deducted from a future payment. A letter was sent to the Greek authorities on 8 September 2000 expressing the Commission's position, which is the same as that of the Court of Auditors. As the Greek authorities did not react to the Commission's letter despite a number of reminders, a recovery order was issued on 14 March 2001. During an on-the-spot visit in July 2001, the Commission officials were informed that as a result of a mistranslation of its application for repayment, the Greek authorities took the view that they did not have to repay anything. The Commission has insisted that the amount be repaid.

A simplification of the infringement procedure would imply a modification of the Treaty. The Court of Justice has underlined the large margin of discretion the Commission enjoys regarding the opening of infringement procedures under Article 228 of the Treaty, and the Commission uses other specialised and effective procedures for recovery of funds where significant expenditure with Member States occurs (EAGGF and Structural Funds). The Commission therefore does not see any pressing need to change the procedure at present.

3.5. Court of Auditors

6. (Court of Auditors)
3.6. Anti-Fraud Office

7. Underscores the urgent need for clarification of OLAF's information policy, so as to allow account to be taken of three demands, which are contradictory in some respects, in a rigorous and balanced fashion:

(i) a demand for transparency vis-à-vis the discharge authority;

(ii) a demand for confidentiality for certain information, the disclosure of which is likely to harm legitimate material and non-material interests;

(iii) a demand for compliance with the presumption of innocence and with the rights to defence of natural or legal persons called into question;

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**Commission's reply to Point 7:**

*OLAF remains fully committed to continuing to provide the European Parliament with information, in accordance with the legislation in force, on cases of fraud and irregularity affecting the Communities' financial interests. Given the need, on the one hand, to respect confidentiality in such a way as not to jeopardise ongoing inquiries or to harm the legitimate rights of the defence, and, on the other hand, to inform the Parliament in order to enable the latter to carry out its discharge duties, OLAF has taken the initiative of drawing up a draft document on its communication policy with regard to cases of fraud and irregularity affecting the Communities’ financial interests, which aims to satisfy these different objectives. The draft document is now under discussion in the appropriate Commission's services and has been submitted to the OLAF Supervisory Committee for its opinion.*

8. Regards it as essential in this regard to continue the debate between OLAF and its competent committee, the Committee on Budgetary Control, so as to lay down agreed, precise and binding ground rules on the matter; looks forward to receiving from the Anti-Fraud Office, under appropriate conditions of confidentiality as laid down in Annex VII of the Rules of Procedure, the final internal and external reports of investigations into programmes or organisations that fall under the responsibility of the following Directorates-General; invites the Anti-Fraud Office to indicate the date the allegation was received, the overall cost, main problems identified and recommendations to the Commission and/or other parties:
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<td>Illicit traffic in butter-based products</td>
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<td>External Relations Directorate-General:</td>
<td>Commission delegations including:</td>
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<td>European Migrants Forum,</td>
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**Commission's reply to Point 8:**

*OLAF agrees with the need to have precise rules for informing the Parliament of cases of fraud and irregularity affecting the Community’s financial interests. With regard to the specific cases mentioned, the current position is as follows:*

**BUTTER**

*The adulterated butter case is a complex one involving criminal organisations and concerning several Member States. Investigations are continuing. A rogatory commission has recently been terminated in Italy by the French authorities in the presence of OLAF investigators and Commission staff with a view to establishing the existence or otherwise of a risk to public health on the basis of the elements known about the nature of the adulterated butter as well as regarding the destination of the final product. Recovery action is under way for those operators who acquired the finished product. The blacklist regulation has been applied for some of these economic operators.*

**WASHINGTON**

*OLAF is re-examining the Commission’s internal report into the Washington delegation following the resubmission to it of the report by the Commission services in August. However, given the conclusions of the report, it is unlikely that an OLAF investigation will be initiated.*

**IRELA**

*The IRELA case is still under investigation by OLAF. Given the complexity of the case and the need to interview a considerable number of persons, it is anticipated that the dossier will not be finalised for a further two or three months.*
ACEAL

OLAF is continuing its investigation into ACEAL.

ECHOFLIGHT

The OLAF investigation into ECHO FLIGHT has been finalised recently. No evidence has been found of any fraud and in consequence the file has been closed.

EUROPEAN MIGRANTS’ FORUM

OLAF has completed its investigation into the matter of the European Migrants Forum and a file has been referred to the Belgian judicial authorities.

ESF

OLAF is following closely the developments regarding the European Social Fund in the Netherlands and is standing ready to provide assistance to the Dutch judicial authorities, if needed.

BERLAYMONT

Work on the Berlaymont case is ongoing. It is a complex case involving many different layers of responsibility. OLAF will report on the results of its investigation.

3.7. Commission

9. Expects the Commission to report back on developments in cases discussed below, in particular with regard to remedying underlying system weaknesses brought to light by those cases:

(i) Retroactivity and Proportionality - Fléchard affair

(a) recalls that in 1991 a French company Fléchard agreed to transport 6,750 tonnes of Irish butter, to the former Soviet Union, upon submission of a guarantee of ECU 17 617 500; points out that a joint mission by DG VI and the Irish authorities, to Poland in May 1992, concluded that the transaction "was orchestrated as a fraud from the beginning";

- notes that the Commission adopted on 22 July 1993 Regulation (EEC) No 1938/1993 under which the guarantee would be lowered to ECU 6 277 500 and applied retroactively to Fléchard;

- understands that a decision to lower the guarantee to ECU 3 003 750 was adopted during the meeting of 7 January 1994, chaired by the deputy head of Cabinet of the President of the Commission, in the presence of the Financial Controller, the Director-General of the Legal Service and the Director of EAGGF;

- points out that the Anti-Fraud Office, Parliament’s Legal Service, the Court of Auditors, and the Committee of Independent Experts have questioned the legal basis of the decision taken by the Commission to lower the penalty to ECU 3 003 750;

(b) regrets that the Commission took an ad hoc decision:
- without a sufficient legal basis;
- without carrying out a conclusive investigation into fraud;
- without the involvement of the Commission College or responsible Commissioner on the basis of a meeting of its senior officials, the minutes of which have disappeared;

(c) welcomes the fact nevertheless that the Commission has:

- acknowledged, for the first time to Parliament, that the handling of the Fléchard case is open to criticism;
- acknowledged that a more thorough investigation should have been carried out;
- realised the extent of the problems highlighted by the case;

(d) calls on the Commission to:

- state clearly and unequivocally that it would not handle a similar case in the same manner today;
- bring forward, by November 2001, guidelines on the application of the principle of proportionality, as promised;
- ensure that the College takes a formal decision in cases involving proportionality for the waiving of debts greater than EUR 1 million or EUR 100 000, if this represents a reduction greater than 25%;

**Commission's reply to Point 9. (i):**

*At the April 2001 Plenary, Ms Schreyer made a clear and unequivocal statement on this case. An interdepartmental working party has been set up in response to Parliament's request to the Commission to present guidelines on the application of the principle of proportionality. It is planned that the Commission will adopt a communication on the adoption of these guidelines. In this way the Commission will shortly be laying down a set of rules providing certain and transparent protection for the financial interests of the Communities when debts are waived for reasons of proportionality.*

(ii) Flax

Questions why insufficient action was taken by competent authorities in Spain, even though weaknesses in control systems were reported by the Commission (Financial Control and the Agriculture Directorate-General) and the Anti-Fraud Office; asks the Anti-Fraud Office to investigate similar irregularities in the flax sector in other Member States; asks the Committee on Budgetary Control to continue to monitor developments in those cases; expects the Commission to apply rigorous financial corrections to Spain and other Member States under the clearance of accounts procedure; expects the Commission to sanction adequately the violation of Community legislation both by the producers of flax and by the processing factories;
Commission’s reply to Point 9. (ii):

On the basis of the definitive results of the on-going OLAF investigation and the investigations undertaken by the competent authorities in Spain the Commission will calculate what part of expenditure under this regime will be excluded from Community financing. In this context the Commission is at present investigating in the framework of the Community regulations what financial consequences under the clearance of accounts procedure can be applied to the Member State concerned. A bilateral meeting between the services of the Commission, OLAF and the Spanish authorities has taken place. A decision on correction is being prepared. The Spanish authorities have been informed by letter that all the expenditure on flax incurred for the financial years 1996 until and including 2000 is under consideration.

The report on the OLAF investigation into the flax sector in so far as it concerned Spain has already been transmitted to the Budgetary Control Committee of the European Parliament. Further inquiries into the flax sector in other Member States in the north and south of Europe are continuing.

(iii) Adulteration of dairy products

Parliament is alarmed by reports of fraud, involving the adulteration of 35 200 tonnes of butter, orchestrated by a multi-national organised crime syndicate; recalls that Community subsidies were paid on what was declared illegally as butter; encourages the Anti-Fraud Office to continue to coordinate controls in a number of Member States, including Italy, France and Belgium; calls on the Commission, within the clearance of accounts procedure, to apply maximum financial corrections, once the results of the investigation by the Anti-Fraud Office are finalised;

Commission’s reply to Point 9. (iii):

OLAF is continuing to coordinate ongoing inquiries into suspected irregularities involving adulterated butter products (see reply to point 8). Financial corrections will, if appropriate, be included in a clearance decision based on the results of the national judicial investigations with which OLAF is assisting and will be made in accordance with the formal procedure under Article 4 (obligations for Member States paying agencies) of Regulation (EC) No 1258/1999 on the financing of the common agricultural policy.

(iv) Enlargement

(a) regrets, with regard to support for public administration, the lack of a strategy, the general nature of objectives and the fact that candidate countries appear not to have the capacity to apply, manage and monitor programmes to prepare for accession; welcomes, however, improvements in twinning programmes;

(b) deplores, with regard to PHARE, that financial decisions are concentrated at the end of the year; notes that the Commission was forced to make late payments, because supplementary and amending budgets were adopted at the end of the year; is concerned about the financial
impact this may have on the beneficiaries of programmes or projects; expects that the adoption of new guidelines will improve tender procedures;

(c) calls on the Commission to ensure that, before accession to the Union, all applicant countries have introduced proper control systems in the areas of shared management of Community funds;

Commission's reply to Point 9. (iv):

(a) As emphasised in the Phare review, the Commission shares Parliament’s concerns about the capacity of the candidate countries and the difficulties that this implies for the effective absorption of EU assistance. The issue can only be satisfactorily addressed by the candidate countries themselves. The Commission will help them to do so firstly by raising awareness (in particular through the Regular Reports and Accession Partnerships) of the issue and secondly by providing the countries with assistance to address it. This will be a high priority for Phare.

(b) Phare national programmes in a given year address the weaknesses identified in the Regular Reports which are only finalised towards the end of the previous year. Typically it takes six months to develop the Phare national programme. The programme is made up of projects in many sectors. Only fully developed projects are accepted and it is the speed of the slowest project that dictates the time taken to develop the programme. It takes a further four months to pass the programme through all the approval procedures (inter-service consultation, translation, management committee approval, Commission decision, budgetary commitment, signature of Financing Memorandum). For 2002 the Commission will split countries’ national programmes so that projects in Institution Building and associated investment which are ready can proceed more quickly. This will allow commitment of a significant part of the budget in the first half of the year.

Provided adequate payment appropriations are available, the Commission would now expect to respect payment times for the Phare programme.

(c) The Commission is working closely together with the candidate countries to help them introduce “extended decentralisation” for pre-accession assistance whereby the Commission waives the right to ex ante control of tendering and contracting carried out by the countries and relies solely on ex post controls. This can only be done on the basis of a thorough analysis of the financial management and control systems in place in the candidate countries. Where possible, the Commission would wish to have such systems operational in advance of accession in order to ensure that they function correctly.

(v) Food aid to Russia

doubts the appropriateness of the programme to supply agricultural products to the Russian Federation; wonders whether the objectives pursued were realised; regrets that the Commission was unable to enforce its policy with the Russian federal authorities; expects the Commission to forward the final audit report to Parliament before the end of 2001;
**Commission's reply to Point 9. (v):**

The Commission made every effort under difficult circumstances to ensure that the programme as decided by Council was broadly successful in achieving its principal objective of delivering the food aid to Russia efficiently. Problems arose, inter alia, concerning control of the distribution of the food within Russia through the Russian organisations. The Commission stopped the programme in December 1999. The European Parliament will be informed of the results of the audit as soon as it is available.

(vi) Nuclear safety

encourages the Commission, to pursue efforts for:

(a) operations undertaken by the European Union in the field of nuclear safety in Central and Eastern Europe (CEE) and in the new independent states (NIS), to continue its efforts to improve the management of this aid in the context of the reform process, notably as foreshadowed in the document on 'Externalisation of the management of Community programmes' of 12 May 2000 by the Planning and Coordination Group on Externalisation, and

(b) redirecting funds by creating an independent budget line with the intention of strengthening cooperation in the field of nuclear safety for TACIS countries;

**Commission's reply to Point 9. (vi):**

(a) The Commission is continuing to improve management of external aid, including aid to strengthen nuclear safety.

(b) On 6 September 2000, the Commission decided to re-organise the responsibilities for nuclear safety programmes in support of Central and Eastern European Countries and Newly Independent States. This decision clarified the responsibilities and, particularly, with regard to PHARE pre-accession support reduced the number of interfaces between different Commission actors.

With regard to the PHARE financial instrument, one Commission directorate was given responsibility over the full project cycle. This directorate subsequently established a “Task Force for Nuclear Safety” to address both the political issues arising with regard to nuclear safety in the context of enlargement as well as the delivery of PHARE-funded assistance. This Task Force became operational during the first half of 2001. The lead directorate enjoys the support of the transport directorate as the line service in charge of nuclear safety issues. The concentration of responsibility in DG Enlargement allows the service in charge of the accession process to combine financial assistance with the pre-accession dialogue with candidate countries and thus contributes to a concentration of the Commission’s efforts to ensure the improvement of nuclear safety levels in candidate countries. Simultaneously, the involvement of EC Delegations in candidate countries and their reporting to headquarters have been further streamlined to add to the impact of the Commission’s activities.
As a further measure to improve the management of assistance in this field, the Commission also adopted new rules for contracts in the field of nuclear safety (for details, see annex to the Communication COM(2000) 493 final). These rules are intended to result in an improved delivery of the programmes’ objectives.

Already in the 2001 budget a specific line was created B7-524 "Assistance in the nuclear sector" with a p.m. The allocation for the nuclear sector will be provided via transfer of appropriations. In the PDB 2002 the Commission has suggested allocating €85 million for the purpose of strengthening cooperation in the nuclear sector for TACIS countries. Furthermore on the line B7-525 "Chernobyl Shelter Fund" €25 million has been proposed.

(vii) "Screening" of Delegations

(a) regrets that staff and resources allocated to the Commission's delegations are not always commensurate with the Union's current political priorities or amount of aid disbursed; points out that there is an uneven attribution of resources, noting by way of example that the delegation to Mali, responsible for an annual budget of EUR 152 million, is staffed by six officials while Barbados, with a negligible aid budget, also has six officials; notes that there are no delegations in key regions including Singapore, Malaysia or any of the Gulf States;

(b) notes that in view of the benefits deriving from Annex X of the Staff Regulations, the average cost of an official overseas is EUR 270,000 in the first year and EUR 207,000 in subsequent years, as compared with the average cost of officials in Brussels or Luxembourg of EUR 120,000; notes that the cost of a locally recruited expatriate is one third of the cost of an official; encourages the Commission to continue the redeployment programme launched in 1996 in which regional delegations would be created; notes that, since 1996, 70 statutory posts were redeployed between Delegations and 50 posts from headquarters to Delegations; considers that a number of official posts in ACP countries could legitimately be replaced with locally recruited expatriates;

(c) calls for a clear definition of the duties to be conferred on all categories of staff; considers that a coherent approach must be taken to the question of the ratio of officials to local staff; calls for a proposal on how to simplify management of auxiliary, temporary and permanent staff in order to avoid the application of different standards;

Commission’s reply to Point 9. (vii):

(a) Concerning the reported uneven attribution of resources in Delegations, the College has recently decided (COM(2001)381 of 03.07.01) on redeployment of resources within the External Service, including the opening of new Delegations and streamlining of others. Concerning the allocation of resources to the Commission Delegation to Barbados, it should be stressed that this Delegation has regional responsibilities covering 13 countries. Concerning Parliament’s wish to see the redeployment programme continue, this question was also addressed in the recent communication on the External Service.

(b) As regards the possibility of replacing officials by locally recruited expatriates, this possibility is one of the instruments used by the Commission provided the professional profile makes this replacement possible.
(c) Parliament’s call for a clear definition of the duties to be conferred on all categories of staff is addressed in the ongoing administrative reform programme. As regards the ratio of officials compared with local staff, the redeployment of officials initiated in 1996 constitutes a re-balancing of this nature. This exercise will be continued. Concerning Parliament’s call for proposals on how to simplify staff management in order to avoid the application of different standards, the different contractual patterns in use in the External Service are related to the different aspects of the mission statement (temporary or permanent tasks). The administrative reform programme includes a review of the legal framework for non-permanent staff (auxiliaries, seconded national experts). Annex X of the Staff Regulations does not allow for auxiliary contracts nor temporary staff in third countries.

(viii) Sarajevo delegation

welcomes that at Parliament's instigation the Commission gave greater powers to the Sarajevo delegation which is now a role model for other offices;

(ix) Jerusalem delegation

(a) welcomes that a further 23 delegations have been selected to take on direct financial responsibilities, including the delegation in Jerusalem; notes that although aid to Palestine amounts to EUR 132 million, in 1999 the Jerusalem office was essentially staffed by two A-grades, one B-grade and one C-grade official; invites the Commission, in view of its new tasks, to increase the number of staff in Jerusalem beyond the fixed ceiling of officials and experts, established by the Israeli authorities, by starting negotiations with Israel, as the delegation itself already suggested in 1999;

(b) stresses the importance of European Union assistance within the framework of the Middle East Peace Process; points out that both the independent external evaluation and the special report No 19/2000 by the Court of Auditors, noted that the positive impact of aid was reduced by a number of factors including the fragmentation of responsibility, a lack of performance indicators and insufficient coordination with other donors; calls on the Commission, within the context of the reform of external aid, launched on 16 May 2000, to draw up an action plan following the audit and evaluation and to report on progress, the first time after six months and thereafter at least once a year;

(c) notes that the European Union, as the Palestinian Authority’s largest donor, should ensure that its assistance promotes peace and reconciliation; the Commission should ensure that its support for Palestinian education does not either directly or indirectly finance expressions of racial hatred but that, on the contrary, its desire to play a role in the peace process results in the promotion of peace and reconciliation among the younger generation in a region where peoples have been subjected to terror for too long;

Commission’s reply to Point 9. (ix):

(a) Clearance was received from the Israeli authorities in June 2001 to enable the Commission to increase the staff by up to 8 persons. Having obtained this authorisation the Commission Representative’s Office in Jerusalem will receive extra staff as part of the deconcentration from Brussels of financial control which will take place in 2002; the exact timetable will depend on the security situation.
(b) The reform of the management of the Commission’s external aid programmes is designed to increase effectiveness, and includes measures to define responsibilities more clearly through the unification of the project cycle and through devolution to the Delegations, and to improve the quality of project preparation and monitoring through better use of performance indicators. Measures for improved coordination were adopted in January and should have been sent by each Member State to their representatives in the field (all Commission Delegations have been briefed). A progress report on the implementation of the Action Plan is being prepared.

(c) The European Union as a whole, and the Commission in particular, has a proven record of seeking to promote peace, tolerance and human rights in the Middle East. The Commission has allocated in 1999-2000 €50 million to peace-building programmes promoting peace building through joint projects and awareness campaigns. Among these projects are “Democracy Education for Youths” and “Peace Education - Curriculum Enrichment”. The latter develops guidelines and outlines for lesson plans for joint educational endeavours, which instil the values of the peace process.

The issue of support to Palestinian education has come up on several occasions. The Commission finds it deplorable that textbooks containing messages of racial hatred are still being used in some schools in the West Bank and Gaza and profoundly supports initiatives taken by the Palestinian authorities in 2000 to phase out the use of those textbooks.

The European Commission does not finance the production and distribution of schoolbooks in the Palestinian territories, either directly or indirectly. None of the Commission's projects in support of the Palestinian authority, include the production or distribution of textbooks.

(x) Stockholm representation

regrets, as regards the Commission's handling of the Stockholm office affair, the lack of openness to the discharge authority, delays in the disciplinary case of involved officials and the failure to investigate other offices for similar cases:

(a) notes that the Commission audit of the Stockholm office in March 1999 apparently revealed no problems, although allegations in November 1999 following press reports of alleged malpractice proved partly true; urges the Commission to improve the quality of audits; regrets procedural delays, pointing out that whilst the Anti-Fraud Office recommended disciplinary enquiries in May 2000, three disciplinary cases were only transmitted to the disciplinary board in March 2001; expects the disciplinary proceedings to be concluded in a consistent, professional and fair manner;

(b) calls on the Commission to inform Parliament of the rules and their application regarding officials under investigation;

(c) welcomes that audits were carried out in the Commission's representations in Helsinki, Vienna, Madrid and Barcelona; calls upon the Commission to initiate preventive controls in all its remaining Representations and to inform Parliament of the results;
Commission's reply to Point 9. (x):

(a) Audit tests are not intended to identify fraudulent practices, but to ensure that the rules are complied with and that the audited structure is working in optimal manner. Financial irregularities identified during an audit are normally not fraudulent; however any suspected cases of fraud identified by such means would be passed to OLAF.

The disciplinary proceedings concerning certain local staff at the Commission's representation in Sweden were conducted with due diligence and in full compliance with the requirements of Swedish law. The decisions were taken by the Authority Empowered to conclude Contracts of Employment within the time-limits laid down by Swedish law and were not delayed at all. The local staff concerned then had every opportunity to make use of the appeal procedures available under the procedure applied and their cases are now pending before the national courts.

Concerning the three "Stockholm" cases the disciplinary proceedings are still pending. The Disciplinary Board has delivered an opinion on one case. A second opinion is expected shortly and the third and final opinion is likely to be delivered in autumn. In principle, the appointing authority must then take its decisions on the basis of these opinions in accordance with Article 7 of Annex IX to the Staff Regulations. However, as regards the investigation by the Swedish judicial authorities it is still open whether the Swedish prosecutor will start judicial proceedings against the three officials concerned. If the three officials should be indicted, the disciplinary procedures will have to be suspended in accordance with Article 88(5) of the Staff Regulations.

(b) The rules regarding officials under investigation are set out in Title VI and Annex IX of the Staff Regulations and are further fleshed out in the case law of the Court of First Instance and the Court of Justice and the administrative practice of the Commission. In the interest of transparency, the Commission is currently in the process of bringing these rules together and codifying its practice in a comprehensive code of administrative procedures, a copy of which will be provided to Parliament.

(c) Audits will be conducted in the Representations in the other Member States.

(xi) Washington delegation

(a) notes that the Financial Controller, following a comparison with the German, British and Dutch embassies, pointed out highly questionable practices regarding the refurbishment of the Washington delegation residence, the cost of which was in excess of the sale value, and the provision of temporary accommodation, at greater than average market value cost, over a two-year period;

(b) believes that a posteriori approval of overspend on refurbishment by the Advisory Committee on Procurements and Contracts and approval by headquarters for lodgings of delegation staff that breach existing standards is questionable; asks the Commission to investigate this incident and review its buildings policy with respect to delegations;
Commission's reply to Point 9. (xi):

The ACPC did not issue an opinion because the case was presented ex post.

The report following an administrative inquiry on the reported practices regarding the refurbishment of the Washington Delegation residence was sent to OLAF on 6 August 2001.

However, given the conclusions of the report, it is unlikely that an OLAF investigation will be initiated.

As regards internal rules on lodging, these rules are now under review in order to achieve better transparency and value for money. Decisions are expected for December 2001.

(xii) Europe Aid

notes that the new ‘Europe Aid’ service is an important step towards solving existing problems of arrears in payment appropriations. Nonetheless considers that such a step is not sufficient to achieve the desired level of efficiency; therefore invites the Commission to draw on the experience of external agencies in implementing external aid on the ground, provided that these agencies can demonstrate a higher level efficiency than the existing centralised and decentralised services; points out that in such cases the activities of these agencies must be carried out in compliance with policy guidelines set by the Commission and the European Community's legal framework with regard to financial and accounting standards;

Commission's reply to Point 9. (xii):

The key objective of the measures to reform the management of external assistance, which were set out in the Commission’s decision of 16 May 2000, is to increase the speed and quality of the delivery of the Community’s aid to third countries. In particular, the creation of EuropeAid is partly intended to address the problems of weak political control and accountability which have arisen through the inappropriate use of Technical Assistance Offices in this area.

Considerable efforts have been made since the creation of EuropeAid to build links with the agencies which some Member States have established to implement their bilateral aid programmes – this is clearly necessary in the interests of coordination and complementarity. The Commission envisages cooperating fully with these agencies, within the framework of the Commission’s own regulations and procedures, and whilst ensuring the need for Community actions to retain their distinctly Community character.

(xiii) IRELA

(a) points out that Commission services were alerted to problems regarding the management of the Europe-Latin America Institute (IRELA) by Financial Control in its report of 6 June 1997 and by the Court of Auditors in its sector letters of 12 May 1998 and 13 November
1998, as well as in its special report No 12/2000 of 18 May 2000; regrets that the Commission audit was only completed in 2001;

(b) asks the Commission to give urgent consideration to the means of solving the problem of unpaid staff not involved in irregularities and mismanagement, calls on the Commission to recover EUR 4.4 million, identified by the audit, lost owing to gross mismanagement including losses incurred owing to ineligible expenditure, including non-contractual remuneration of the Director and double payments from parts A and B of the General Budget and undue travel expenses;

(c) urges the Commission to launch administrative enquiries and, if appropriate in the light of the Anti-Fraud Office internal enquiry, disciplinary proceedings;

Commission's reply to Point 9. (xiii):

(a) The external audit was launched as soon as possible once the Court had finalised its own audit.

(b) IRELA is an independent body. The Commission cannot be held responsible for IRELA's closure. Following the last audit, the Commission has issued recovery orders for the €3.4 million which remains outstanding from IRELA.

(c) The Commission will act upon the forthcoming results of the OLAF investigation.

(xiv) ACEAL carry out a thorough audit of ACEAL and an investigation of its links with Commission staff and asks the Commission not to hesitate to launch administrative or disciplinary enquiries in the event of any apparent favouritism in the granting of contracts by officials to former agents of the Commission;

Commission's reply to Point 9. (xiv):

The case referred to is under investigation by the Anti-Fraud Office. Should this investigation provide evidence that favouritism has occurred in the granting of contracts, then the Commission will decide whether to launch the necessary administrative or disciplinary enquiries and take any appropriate measures.

(xv) A-30 subsidies cooperate with the Anti-Fraud Office and the Court of Auditors in auditing institutes or centres funded almost exclusively from the Union budget and to report to Parliament in time for the second reading of the 2002 budget; calls for Members of Parliament holding positions on executive boards or similar boards of organisations that receive a majority of their funding from the Union or to declare their interest in writing before budgetary debates and votes, in line with Annex I, Article 1 of Parliament’s Rules of Procedure;
**Commission’s reply to Point 9. (xv):**

The Commission adopted the Vade-Mecum on Grant Management in July 1998, with the aim of:

- Setting sound and transparent standards for the management of Community funds.
- Providing the Commission departments with a common framework for awarding and monitoring direct grants.
- Developing a reference guide for explaining the Commission’s policy to the other institutions as well as the public at large, since a version for applicants and beneficiaries is available on the EUROPA website.

The Vademecum provides for standard grant agreements annexed to which are the General Terms and Conditions Applicable to Grant Agreements of the European Communities. These General Terms and Conditions are unalterable by DGs and contain a special clause for ‘technical and financial control’ in which it is clearly stated that the beneficiary agrees to the Commission and the Court of Auditors of the European Communities verifying the use to which the grant is put, throughout the duration of the agreement and for five years after its end date.

The Vademecum also contains a chapter on audits (general objectives, planning, reports) as well as concrete tools designed to assist auditors during on-the-spot audits. The Vademecum came into force on 1 January 1999. The report to the Commission for its first year of application showed that DGs had increased the number of on-the-spot audits since the introduction of the Vademecum.

As such the Commission can confirm that audits are or will be carried out, for example on ECRE, European Migrants Forum, Soul for Europe.

OLAF does not conduct audits as such, but will examine any suspicions of fraud or irregularity referred to it by the Commission’s services or the Court of Auditors following the audits of the institutes in question. It has standing arrangements with the Court of Auditors whereby any suspicions of irregularity found by the Court in the course of its audits are automatically transmitted to it.

Among the A-30 beneficiaries there are, apart from IRELA, five institutes specialising in relations with non-member countries.

Each of these institutes submits accounts to the Commission which are certified either by an external statutory auditor or by an equivalent public sector procedure. On top of that, Commission services undertake financial checks on a sampling base. In 2001, by September, one out of the five institutes had been checked. The visit did not reveal particular problems.

(xvi) calls on the Commission to develop an information policy which promotes dialogue by making it possible for all organisations respecting fundamental human rights to apply for funds;
The Commission agrees wholeheartedly with the Parliament that it is necessary to develop an information policy that promotes dialogue. On 27 June 2001 it adopted a communication on “A new framework for cooperation on activities concerning the information and communication policy of the European Union”. As the document states, one of its primary aims is to “enlist support for objectives which include developing a proper dialogue with the public, bridging the gap between the Union, and the public and ensuring that people have access to the right information”. The objective is to foster greater understanding of the Union and its policies. The communication was endorsed by the Inter-Institutional Group on Information at its meeting on 3 July 2001.

Clearly access to information about funding is extremely important. The relevant Directorates-General, therefore, seek to ensure that there is wide dissemination of information and that it is easily accessible to organisations who may wish to apply for funds. Steps are constantly being taken to improve the provision of this information.

Respect for fundamental rights is a Treaty obligation (Article 6).

(xvii) International donor co-ordination (including the United Nations (UN))

(a) regrets that despite requests in both discharge questionnaires the Commission has been unable to indicate the amount of funds channelled through the United Nations as a whole, as well as individual agencies; requests details including objectives of support, amounts committed, amounts spent, impact of aid and action taken following audits and evaluations;

(b) is concerned about funds channelled through the United Nations International Drug Control Programme, asks for information and follow-up; notes that Commission audits have revealed the high risk of double payments to beneficiaries, once through the Commission and once more via UN agencies such as via the United Nations High Commission for Refugees; regrets that the World Food Programme has not allowed audit access, leading to the delay or even blockage of projects;

(c) regrets that the Commission has failed to ensure full compliance of EU-funded investment promotion activities with core International Labour Organisation and other international human rights standards;

(d) calls on the Commission to ensure control and visibility of funds under mandate to international organisations; make its financial assistance provisions subject to obtaining sufficient information on the use of the funds spent by international organisations acting in parallel with the Commission and, where there is found to be too little transparency, to halt the contribution to the UN agencies concerned;
Commission's reply to Point 9. (xvii):

(a) In its communication of 2 May 2001 "Building an effective partnership with the United Nations in the fields of development and humanitarian aid", the Commission quotes a figure for the overall contribution by the European Union to the activities of the United Nations agencies (€354 million a year on average). The Commission expects to be able to give more detailed information for 1999 soon with further improvements for 2000 and beyond. This estimate is currently being updated. It will then be possible, after the data have been compared with those of certain United Nations agencies, to take a more qualitative approach and analyse our partners' mandates. The Commission has undertaken, in accordance with the objectives of the communication as confirmed by the Council conclusions of 31 May 2001, to develop a more selective approach based on results and performances with a view to determining the most strategic United Nations partners.

(b) Besides the fact that no new contracts have been concluded with the UNDCP, the EC informed the UNDCP (letter from Mr Prodi to Mr Arlacchi of 21 March 2001) that its services are considering undertaking an audit on all ongoing contracts. The UNDCP gave a formal assurance that the Commission would be given access to any information needed within the framework of the EC/UN agreement. In addition to this, the Commission asked for the reports of the UN Internal Oversight Office on this matter. The results of this review and the findings of the external audit body of the UN, would be of great importance for the assessment and planning of any EC audit activity considered necessary.

In respect of those instances where the Commission and UN bodies are funding the same third party, the Commission’s auditors are required to carry out their work in accordance with standard audit methods. Standard audit methods require that auditors review the accounting systems of third parties to ensure that the systems are accurate and reliable. To date, ECHO has not needed to issue a recovery order against an NGO in respect of double recovery of funding through the UNHCR.

(c) At a general level, the Community's support aims to help partner countries' own analysis of the general policy and the institutional and regulatory framework in which the private sector, both foreign and domestic, is active. The goal is to anchor or enforce labour norms and standards in national laws for different issues such as forced labour, child labour, health and safety protection:

- In its direct support to enterprises the Commission stresses the importance of the voluntary nature of ‘codes of conduct’ and/or ‘social labelling’. However a code of conduct is no substitute for national laws that respect the fundamental rights of workers. In this area the Commission supports the introduction of existing international rules, such as developed by the ILO and the OECD guidelines, or for example, the so-called ‘Sullivan’ principles (good practices against racial discrimination in the workplace).

- Moreover, the Commission demands commitment to fair and social behaviour from the beneficiary enterprise who benefit from direct support e.g. by demanding a declaration to abstain from child labour and compliance with national laws for health and safety requirements.
- In other projects the Commission’s support has helped notably NGO’s to discuss, sensitise and assess the conduct of multinational investors and it supports awareness campaigns in developing countries.

- The Commission contributes to capacity building of local organisations to reinforce workers associations to enhance dialogue with the public sector and business. It can equally help chambers of commerce to introduce know-how on modern practices and requirements e.g. on health and safety measures or how to improve corporate governance.

(d) In its communication of 2 May 2001, the Commission undertook to develop possibilities for cooperation with the United Nations in compliance with the requirements of the Community rules on verification and financial information.

Agreement was reached in 1994 on application of the verification clause and this agreement has been subsequently extended. The standard grant agreement with international organisations produced by the Commission, which is already being used with many international bodies, contains very strict clauses on matters of visibility such as verification and reporting. In some cases the arrangements for the application of the verification clause have been the source of problems.

The Commission would draw attention to the fact that the cooperation arrangements and more particularly the arrangements for the application of the verification clause to operations conducted by United Nations agencies and the reporting arrangements are currently the subject of negotiations on the revision of the 1999 EC-UN framework agreement. The results are due in autumn.

(xviii) Non-governmental organisations

(a) encourages the Commission to continue its general audit plan for NGOs based on risk analysis and welcomes the action of the Development Commissioner for not hesitating to recover monies lost owing to mismanagement by various NGOs;

(b) notes that although the Commission was aware of problems in March 2000, an audit of CLONG (Liaison Committee of NGOs to the EU) was only started in October 2000; looks forward to receiving the audit report as soon as it is finalised;

(c) notes that CLONG has not made all documentation available to the auditors, neither during the first visit to the NGOs nor in the contradictory procedure; encourages CLONG to submit any further information immediately; calls on the Commission to take full account of any further documentation in the recovery procedure; expects the Commission to unblock the funds put on hold when the recoveries issue has been settled and sufficient guarantees as to the proper financial management have been established;

(d) welcomes that, following allegations of misuse and diversion of humanitarian aid in Yugoslavia in November 1999, ECHO, together with the International Federation of the Red Cross, commissioned an audit of the Yugoslavian Red Cross; is concerned about the risk of double payments, excessive invoicing and weaknesses in management control systems; calls on the Commission to apply lessons from its audit of the International Federation of the Red Cross in Yugoslavia to similar operations in other countries;
Commission's reply to Point 9. (xviii):

(a) The Commission will continue its general audit plan for NGOs.

(b) The audit report in question was sent to Parliament on 20 February 2001.

(c) An agreement to this effect was approved by the Commission in April 2001.

(d) The lessons learnt from the audit have been clearly identified:

- It is often more effective for the Commission to launch an audit directly rather than rely on an intermediate organisation with which it has a contract.

- An important factor critical to success is to involve the auditors at the earliest dates possible, once the allegations have been made.

- More audit controls in the field, and not just at the headquarters of organisations, are necessary and will be performed.

These elements will be taken into consideration in the Commission in future appropriate circumstances.

Commission's reply to Point 9. (xix):

The Commission accepts that there is a need to further improve the management information systems. The 1% figure is likely to underestimate the total support to the health sector; health in cooperation activities is a key political priority for the Commission. As intended, the Commission is implementing measures to adopt OECD/DAC standards in all regions for reporting on commitments and disbursements for 2001. Significant implementation effort will be required to ensure a resultant high quality of reporting, and the Commission currently expects to be compatible with the standards by 2003.

Commission's reply to Point 9. (xx):

The Commission accepts that there is a need to further improve the management information systems. The 1% figure is likely to underestimate the total support to the health sector; health in cooperation activities is a key political priority for the Commission. As intended, the Commission is implementing measures to adopt OECD/DAC standards in all regions for reporting on commitments and disbursements for 2001. Significant implementation effort will be required to ensure a resultant high quality of reporting, and the Commission currently expects to be compatible with the standards by 2003.

Commission's reply to Point 9. (xxi):

Energy sector

regrets the Commission's discontinuation, in 1999, which means that EUR 5 million out of EUR 15 million will remain unused, of the SYNERGY programme which focuses on small scale and flexible projects to favour dialogue and co-operation between the EU and third countries; calls for the best projects of the call for proposals of 1999 to be transposed immediately in order to disburse funds foreseen under the 2001 budget; calls for a new call for proposals with a lower minimum threshold but with criteria that specify high quality and allowing bigger but also small and medium sized projects to be taken into account;
Commission’s reply to Point 9. (xx):

A new call for proposals was published on 8 June 2001 (OJ C No 165/10) with a new minimum threshold amount of €250 000. This amount follows the new guidelines adopted by the Council on 9 April 2001 and corresponds to an increase compared with the previous calls with an average threshold amount from €100 000 to €150 000. Flexibility as to the threshold will continue to apply for projects that present characteristics of high quality as well as obvious benefit to the programme.

Participants in the 1999 call have been invited, by letter, to resubmit their initial proposals. If necessary, clustering of projects can be proposed by the project applicant. The cancellation of the call for proposals has allowed a reorientation and strengthening of the programme. The expenditure is now subject to new reinforced budgetary procedures put in place with the setting up of the new Directorate-General for Energy and Transport.

The total financial reference amount set in the Council Regulation is indeed €15 million. Taking into account the amounts adopted from 1999 to the PDB 2002, the total for the programme will be €22.7 million. Given the outturn figures from 1999 and expectations for 2001 and PDB 2002, the total executed budget will be €17.2 million. The financial reference amount should be exceeded by €2.2 million. Thus the cancellation of the 1999 call for proposals will be unlikely to have any negative impact on the implementation of the budget.

The commitments for 2001 and 2002 will be made in the framework of reinforced financial procedures.

(xx) Internal policies

(a) asks the Commission to make provision for contractual penalties in the event of excessive expenses being claimed;

(b) asks the Commission to require beneficiaries above a certain size to submit a certificate by an independent auditor attesting the correctness of the expenses claimed and the eligibility of expenditure for subsidy in accordance with contractual conditions;

Commission’s reply to Point 9. (xxi):

Most of the expenditure on internal policies concerns research. The following answers address this major area.

(a) Strengthening of provisions on controls and penalties is of high priority for the Commission. The action plan for 2001, in the Commission Communication COM(2001)254, provides appropriate guidance within a global strategy for this purpose.

The current legal framework for direct expenses and particularly contracts under the 5th Framework programme of the European Community already includes measures to protect the financial interests of the Community, including, in particular, the reimbursement of the entire Community financial contribution.
Discussions are currently taking place between the relevant services, including OLAF and the Commission's Legal Service, in order to assess the form and content of a draft of a sectoral anti-fraud Regulation based on Art. 280 of the EC Treaty (co-decision) and in particular the question of application to running contracts.

In its proposal for the Framework Programme 2002-2006 of the European Community for research, technological development and demonstration activities, the Commission is taking concrete initiatives to ensure that the financial interests of the European Communities are protected by effective checks and, in case of detected irregularities, through appropriate measures as well as deterrents and proportionate penalties.

The following are particular points of focus in respect of providing a reinforced legal framework in contracts:

– the introduction of specific and detailed penalty contractual clauses to protect the financial interests of the Community, in addition to financial technical auditing and controls in relation to the work performed;

– the application of administrative penalties for all intentional or negligent irregularities in the implementation of the contracts, in accordance with the framework Regulation No 2988/95, and/or the above-mentioned sectoral Regulation, including the ineligibility of their authors to participate in current or future indirect actions.

– the fact that recovery orders in case of irregularities or fraud be more easily enforceable applying all the possibilities of Article 256 of the EC Treaty.

(b) With regard to the certification by an independent auditor attesting the correctness of the expenses claimed, the Commission has started pilot projects in the context of the CRAFT contracts as well as the calls for proposal of the IST programme launched from 2001 onwards.

Specific implementation arrangements have been defined and contractual arrangements have been decided upon. The IST pilot project includes an obligation to have audit certificates for most partners at the end of the project, as well as, in selected cases, for the first reporting period, in order to allow the Commission to evaluate initial results of those pilots at an early stage. Those pilot projects will be monitored and evaluated.

In the meantime, the Commission is looking into the possibility of having an independent auditor certificate attesting the correctness of the expenses claimed for the implementation of new instruments of the next Research Framework Programme 2002-2006, particularly in the case of integrated projects.

The costs and benefits of certification by an independent auditor, along with the threshold for implementation need to be assessed.

Such certificates will not restrict the Commission nor stop it from carrying out its own checks.

(e) Calls on the Commission to draw up detailed breakdowns of implementation in the financial year 2000 of the SOCRATES (B3-1001), YOUTH (B3-1010) and CULTURE (B3-2008) programmes;
**Commission’s reply to Point 9. (xxi) - (c):**

Detailed explanations on budgetary implementation of the programmes in question were published in the revenue and expenditure accounts for 2000 (Volume I Tome II) on pages 148 to 158 (SOCRATES), 159 to 165 (YOUTH) and 173 to 178 (CULTURE).

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(xxii) Agencies

(a) notes that appraisals of satellite agencies by the Court of Auditors and the Commission have, on the whole, focused on purely financial matters; calls for regular independent evaluations to determine how effectively the agency fulfils its mission; calls for the results of the evaluation and recommendations to be made public;

**Commission’s reply to Point 9. (xxii) (a):**

The Commission’s Communication on evaluation from July 2000 (SEC(2000)1051) stipulates that all DGs and Services have to ensure that the activities they manage are subject to an overall ex post or interim evaluation at intervals not exceeding six years, depending on the nature of each activity. In the case of multi-annual programmes at least one thorough evaluation in the life cycle of the intervention is needed. The Commission services will design their evaluation programmes so that this requirement will be fulfilled, adjusting the choice and timing of evaluation projects to decision-making needs. In general, these provisions also apply to the evaluation of agencies.

Some agencies have already been subject to an evaluation (for example, the European Environment Agency in 2000), for others (CEDEFOP, European Agency for Safety and Health at Work) the evaluation results will be available soon. The Commission compiles once a year a report on all evaluation activities and publishes an “Annual Evaluation Review”, including a summary of each completed evaluation project and information on the availability of the final report, which is regularly transmitted to the Council and Parliament.

Status of evaluations for agencies:

- Arthur Andersen conducted an evaluation of the European Environment Agency in 1999/2000. The evaluations coordinator of the services of the Commission was a member of the steering committee. The specifications were heavily based on the evaluations of programmes conducted by the services of the Commission, which followed closely the evaluations guide drawn up by the services of the Commission in 1997. This evaluation was in response to a requirement in the Agency's regulation. It was designed to appraise implementation of this regulation and in particular the Agency's performances and its environmental information and observation network and its thematic centres. While it looked at resources aspects, the accent lay on the substance of past achievements and recommendations for the future. The results and recommendations were transmitted to Parliament and an environmental expert from Parliament was a member of the steering committee.
• An evaluation of the European Agency for the Evaluation of Medicinal Products (EMEA) was conducted by a firm of outside consultants. The Commission will be adopting the official report in October on the evaluation of the operation of the EMEA and the arrangements for the evaluation of medicinal products. This report will then be officially sent to the Council and Parliament.

• The evaluation report of CEDEFOP has been finalised.

• The evaluation of agencies and observatories (Bilbao, Dublin, Vienna) has been launched. Results will be made available in 2001 (Bilbao) and 2002 (Dublin, Vienna). The evaluation will cover the way each "agency" carries out its specific missions and the results gained in the framework of their implementation; financial matters will be dealt with in a "value-for-money" context.

(b) notes, for those agencies not based in the capital city of the Member States, the substantial difference in the cost of living between the location of agencies and the capital of the corresponding Member States; calls on the Commission to re-examine the system of weightings applied to agencies;

Commission's reply to Point 9. (xxii) (b):

The system of weightings applicable to officials and other servants of the European Communities already provides that where objective factors show a substantial and permanent difference in the cost of living, weightings may be introduced for places of employment other than capitals, including the headquarters of decentralised Community agencies. However, given the cost of statistical surveys away from capitals, the Commission conducts such verifications only when it has knowledge of such objective factors. In this connection the Commission would point out that the system of weightings used for the Agencies and for the other institutions is the same.

(c) Expects the Management Board and management of the European Monitoring Centre on Racism and Xenophobia, with due regard for their respective roles, to take the measures needed to ensure that, in future, the accounting systems are modernised and that staff are recruited and supply, goods and services contracts are awarded in compliance with all the rules in force;

Commission's reply to Point 9. (xxii) (c):

The comments of the Parliament are duly noted. In addition, the Commission will, in its relations with the Monitoring Centre on Racism and Xenophobia, take into account the observations made by the Court of Auditors following its recent mission.

(xxiii) Joint Research Centre

recalls that, in its special report No 10/2000 on the public contracts awarded by the Joint Research Centre, the Court of Auditors asked that all irregular, questionable and dubious practices, identified during the course of the audit, should be terminated by appropriate means; recalls that financial penalties for authorising and accounting officers have not been laid down in the Financial Regulation, which has been in existence for more than 20 years; calls on the Commission, in conjunction with the reform of the Financial Regulation, to make proposals to this end without delay;
The Commission took immediate firm action so that by the time of publication of the special report the administrative weaknesses identified by the Court had already been acted upon.

Administrative inquiries had also been carried out and disciplinary proceedings conducted and penalties imposed. The Commission therefore feels that the problems to which the Court was referring have been resolved, but a watch will be kept on the situation by means of regular internal audits.

As regards the Financial Regulation, the Commission has, in its amended proposal, given effect to Action 66 of the White Paper on reform and to a similar amendment made by the European Parliament. It is accordingly proposing that a specialised financial irregularities panel be set up in each institution to determine whether an irregularity has been committed and give an opinion on whether disciplinary proceedings be taken against an authorising officer by delegation or subdelegation with the possibility of financial penalties. Pursuant to Action 67 of the White Paper, the financial liability of financial actors is governed solely by the Staff Regulations.

Notes that with regard to the Leonardo da Vinci budget heading the Commission, because inter alia of pressure from Parliament and as a result of a legal complaint to the Brussels public prosecutor’s office, terminated the contract with the AGENOR technical assistance office; acknowledges that the Commission has in the meantime adopted measures concerning management of Community programmes and external technical assistance; demands that the Commission provide Parliament, within six months, with a meticulous assessment of the current situation with regard to all external technical assistance;

1. On the question of externalisation, the Commission has presented to the institutions:
   - the proposal for the recasting of the Financial Regulation which prevents private sector bodies (TAOs) taking part in implementation of the Community budget and restricts their involvement to "technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgment";
   - the proposal for a framework regulation on executive agencies, public bodies designed as a tool for externalisation to manage Community programmes which are currently handled entirely or in part by TAOs.

2. The Commission has also prepared a new guide and model contract on technical assistance (use of private-sector bodies) which will shortly be distributed to departments.

The Commission has already supplied Parliament with information and will give an up-to-date situation of the TAOs.

Critises the obvious management deficiencies affecting the following budget lines:
B7-6210  North-south cooperation schemes in the context of the campaign against drug abuse
B7-663  Campaign against sex tourism in third countries;
In 1999 the budget line B7-6210 (North-south cooperation schemes...) was allocated €9.8 million. Programming for that budget line was prepared and carried out in accordance with the rules. For the ACP region, a number of projects had been prepared for about €3.5 million for the end of the year. The services where the responsibility for the identification, preparation and finalisation of financing proposals lay with the geographical, instead of the thematic units - had decided to put the emphasis on the use of geographical budget lines instead of small thematic budget lines. Human resources were allocated accordingly. The result of this approach was a considerable undercommitment for the ALAMED regions, only €2.2 million (for Latin America) being committed for these regions out of an allocation of €7 million. The commitment for the ACP region - although largely in excess of the initial allocation – could not make up for the undercommitted allocation for the ALAMED countries.

In addition, during the reorganisation of the Commission in November 1999, the internal rules on the management of the budget were modified and responsibility for this budget line was changed in particular through an untimely transfer of responsibilities at the end of the year. The reorganisation did also generate delays in the preparation of the projects. However, in order to avoid any undercommitment of allocated resources, the Commission decided to transfer the appropriation to the environment budget line, which at that time did not have sufficient funds.

Corrective measures were taken during the budget year 2000 and resources allocated for both the ALAMED and ACP regions were fully committed following agreement between the Commission departments, in particular with the establishment of a coordinating and programming task force between departments.

Budget line B7-663 (Fight against child sex tourism in third countries) was set up in 1997 to enable the Commission to implement the general framework for the fight against child sex tourism, provided for by COM (96)547. In this context the activities focused on curbing the factors underlying this phenomenon in both the origin and destination countries.

The initial amount (ECU 500 000) was doubled in 1999. The commitment appropriations of €1 million were maintained at the same level in 2000.

In operational terms, in 1999, €768 652 was committed for the implementation of three projects, in the more general framework of the awareness and communication campaigns:

1. Development of the Internet platform against the sexual exploitation of children in tourism
2. Adoption of the code of conduct for tour operators against child sex tourism
3. Production of guidelines for journalists and media concerning the coverage of issues related to the sexual exploitation of children.

Moreover, this enabled the Commission to participate actively in several travel fairs and to produce and publish relevant information material.

Detailed information concerning this commitment of €768 652 is given below:
<table>
<thead>
<tr>
<th></th>
<th>Commitments 1999</th>
<th>Budget line B7-663</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Terre des hommes (TDH) Deutschland</strong></td>
<td>60%</td>
<td>122,954</td>
<td>Internet platform against sexual exploitation of children connected to tourism” for tourists and tourism professionals – Phase I Setting up of necessary structures, completion of the internet searches and design of the internet platform.</td>
</tr>
<tr>
<td><strong>ECPAT Sweden</strong></td>
<td>60%</td>
<td>239,396</td>
<td>Code of Conduct for tour operators against child sex tourism– Phase I Establishment of the network of participant countries, design of the evaluation procedure and body.</td>
</tr>
<tr>
<td><strong>International Federation of Journalists (IFJ)</strong></td>
<td>60%</td>
<td>32,610</td>
<td>Project “Enhance media awareness of the ethical dimension of responsible tourism” – Phase I Establishment of guidelines for journalists for ethical and professional performance in reporting, development of a common approach between journalists and trade unions on joint information strategies.</td>
</tr>
<tr>
<td><strong>STRATCOM-consultant</strong></td>
<td>100%</td>
<td>111,270</td>
<td>Technical support</td>
</tr>
<tr>
<td><strong>European Commission</strong></td>
<td>100%</td>
<td>188,759</td>
<td>Participation and exhibition in 1999 and 2000 Tourism Fairs Production and dissemination of flyers on the EU action to combat child sex tourism and organisation of groups for discussion with the travel industry.</td>
</tr>
<tr>
<td><strong>European Commission</strong></td>
<td>100%</td>
<td>73,663 (10.075+ 10.588+5 3.000)</td>
<td>Publication material Wide-ranging awareness raising</td>
</tr>
</tbody>
</table>

(xxvi) Administrative expenditure

(a) recalls that, in 1999, the annual cost of invalidity pensions in all institutions, awarded to officials in the case of total permanent invalidity, was around EUR 114 million for approximately 2 700 officials; notes that 28 779 officials worked in all European institutions in 1999; observes that the high incidence of retirement on grounds of invalidity indicates undue use of such retirement arrangements as part of personnel policy; would welcome a comparative study of invalidity rates in Member States and other international organisations from the Court of Auditors; calls on the Commission to report on underlying causes for such problems and ensure that existing provisions are strictly enforced;

(b) recalls that an EU-US fellowship programme was set up 20 years ago, whereby EU officials, with at least five years’ experience, may be sent on long-term mission to American
academic institutes; regrets that no such programme exists for European universities; calls on the Commission to carry out an evaluation of the cost-effectiveness of the programme before the start of the next discharge procedure;

Commission’s reply to Point 9. (xxvi):

(a) INVALIDITY PENSIONS

1. Invalidity retirements

Over the last 10 years, the number of retirements on grounds of invalidity in the European institutions has been as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>All institutions</th>
<th>Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Invalidity Retirements</td>
<td>Population</td>
</tr>
<tr>
<td>1990</td>
<td>143</td>
<td>24 018</td>
</tr>
<tr>
<td>1991</td>
<td>134</td>
<td>24 629</td>
</tr>
<tr>
<td>1992</td>
<td>126</td>
<td>25 567</td>
</tr>
<tr>
<td>1993</td>
<td>140</td>
<td>26 359</td>
</tr>
<tr>
<td>1994</td>
<td>142</td>
<td>26 984</td>
</tr>
<tr>
<td>1995</td>
<td>153</td>
<td>28 868</td>
</tr>
<tr>
<td>1996</td>
<td>153</td>
<td>29 651</td>
</tr>
<tr>
<td>1997</td>
<td>157</td>
<td>30 048</td>
</tr>
<tr>
<td>1998</td>
<td>202</td>
<td>30 384</td>
</tr>
<tr>
<td>1999</td>
<td>205</td>
<td>30 599</td>
</tr>
<tr>
<td>2000</td>
<td>212</td>
<td>30 819</td>
</tr>
</tbody>
</table>

The percentage of retirements remained relatively stable – at around 0.53% – until 1997 and then rose to 0.69% in 2000.

In the Commission, part of this increase was due to objective factors concerning the ageing of the workforce. Furthermore, the large number of retirements on the grounds of invalidity related to psychological conditions (46% of such retirements in the last four years) should be noted.

2. Checks on retirements on the grounds of invalidity – Decision-making procedure

The procedure for retirement on the grounds of invalidity is begun at the request of the member of staff or, in the case of staff who have taken more than 365 days of sick leave over 3 years, by the administration. In either case the appointing authority requests the opinion of the Medical Service which, if the state of health of the person in question is unlikely to improve within a period which would permit a resumption of work, convenes an Invalidity Committee.
The Invalidity Committee comprises three doctors: one appointed by the Medical Service, one appointed by the member of staff and one appointed by common accord between the other two. It issues an opinion on the invalidity, on whether or not it is professional in origin and on whether the member of staff’s state of health should be regularly reviewed subsequently. The appointing authority takes its decision on this basis.

Most applications for invalidity are justified and succeed. The responsible work of the Invalidity Committees is documented by a number of statistics:

- the average age of retirement on invalidity pension is 52.2 years and average seniority in the service is 20.6 years (figures for the last four years);
- the percentage of retirement on invalidity in the OECD is 0.55%, similar to the figure for the Commission;
- the percentage of retirement on invalidity in the national public services varies between 0.36% and 1.07% (figures provided by EUROSTAT). These figures, and any comparisons which may be made, have to be treated with caution, as some figures are already 10 years old and as EUROSTAT received very little information from the Member States (in particular regarding which people are covered by the figures);
- finally the average age of death among those invalided out is 10 years lower than that for those receiving retirement pensions.

To conclude the allegation that “the high incidence of retirement on grounds of invalidity indicates undue use of such retirement arrangements as part of personnel policy” is not supported by the facts.

The Court of Auditors is currently completing an audit of expenditure by the Sickness Insurance Fund before and after retirement on invalidity and then intends to carry out an audit on the operation of the Invalidity Committees.

3. Budgetary impact of invalidity

The invalidity pension is:
- in the case of professional invalidity: 70% of final salary
- in other cases of invalidity: the retirement pension which the member of staff would have received if he had remained in active service until the age of 65.

In 2000 payments of invalidity pensions (for all the institutions) cost €124 million and went to 2,885 people broken down as follows:
- 1,159 aged under 60
- 586 aged from 60 to 65
- 1,141 aged over 65.

The situation from a budgetary point of view is therefore distorted because those aged over 65 continue to be included although they should really be counted under the retirement pension scheme. If only the 1,159 aged under 60 are counted, the budget for 2000 would be about €50 million.

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3 This should be confirmed in 2001 by the Court of Auditors, which is currently completing an audit of expenditure by the Sickness Insurance Fund before and after retirement on invalidity and which then intends to carry out an audit on the operation of the Invalidity Committees.
4. Improvements proposed under the reform

The orientation document “Pay and pensions” approved by the Commission on 28 February 2001 as part of the Reform proposed a number of measures to make the invalidity arrangements more coherent. This includes the termination of certain provisions which sometimes make invalidity more attractive than the normal retirement pension. These include:

- replacement of the invalidity pension by an invalidity allowance to be followed by a retirement pension to be taken from 65, unless the maximum rate was achieved earlier;
- fixing the invalidity allowance at 70% of the last basic salary instead of calculating the hypothetical pension which would have been received at the end of a complete career;
- no further salary steps;
- setting the minimum invalidity allowance at the basic salary of a D 4/1 official (instead of at 120% of a D4/1 salary);
- anti-duplication: in the case of any allowance of the same type or the result of any paid activity, the part which, when added to the invalidity allowance, exceeds the last basic salary, will be deducted from the allowance.

(b) FELLOWSHIPS IN THE UNITED STATES

1. Purpose and origin

This is an annual programme (managed by a Commission unit) provided by certain American universities and research centres which, wishing to familiarise their students and staff with European issues, offer to receive an official from the European institutions to teach certain classes and/or to conduct research.

It dates back to the early 1970s when the Commission was invited to send fellows to certain universities or research institutes in the United States (Harvard University and the Brookings Institute in Washington) in order to familiarise their students with European issues.

It is a programme responding to this specific need designed to offer training and exchanges with the European Union's main trading partner. It would therefore be difficult to extend such a specific programme to European universities. If such a need were to exist, it would seem more appropriate to respond to it by other means outside this programme.

A sporadic measure in the early days, the programme was then structured as a result of its growing success and extended to nine of the most prestigious American universities and research centres, both public and private, offering high-quality education favouring European affairs (Annex 1). After first being limited to Commission officials it was later opened up to officials from the other European institutions (Parliament, Council, Court of Justice etc.).

From 1977 to 2001, out of the 106 fellows who took part in the programme 22 came from institutions other than the Commission.
For the 2000-2001 academic year seven fellowships have been awarded for stays at Harvard University, Texas University, Duke University, George Mason University (Virginia), Tufts University, University of Washington in Seattle.

2. Programme of the fellows

The mission of the fellows includes, depending on the programme and their interests, a combination of the following:

- teaching of European and international affairs to graduate and/or post-graduate classes or seminars;

- personal research (e.g. A study of technology transfer in North America: proposals for improving technology transfer in EU research and development programmes, East Asia policies of the US and the EU, etc.), some of which is published (e.g. The Euro from a European Union point of view, Environmentally-friendly decision-making in structural policies - an analysis of the mechanisms and practice in the US and conclusion for the European Union, etc.);

- assistance to students and teaching staff on European affairs;

- lectures on European affairs both within the university and to the political and business world.

At the end of their stay the fellows submit a report on their activities during the stay to the selection committee.

3. Selection of participants.

- Candidates are subject to selection by a high-level committee entitled Committee on Fellowships and Academic Visits set up in 1978.

This Committee is currently chaired by a Director-General and a chef de Cabinet with representatives of five other departments. The other institutions take part in the Committee’s work via a representative of the secretariats of Parliament and the Council.

As they are required to share their knowledge and experience in high-level university programmes and be informal ambassadors for the European institutions, fellows must be officials who, in addition to a command of English and very good interpersonal and research skills, have an excellent knowledge and experience of European affairs in the political, economic or legal field. In actual fact participants have in general far more than the required minimum of five years' experience of European institutions and policies, most of them when selected being in Grades A5-A3.

4. Cost benefit analysis

4.1 Benefits

The direct benefits of this type of training are not easy to quantify. The following, however, can be put forward as benefits both for the fellow and for the institution:
For individuals the programme enables fellows to broaden their knowledge and experience by taking part in the host university's teaching and research programmes, usually in a particularly stimulating environment. It also provides an opportunity to forge useful links and informal contacts with the American academic, political and business world.

While gains in terms of knowledge, experience and networking depend of course on each programme, the following remark sums up the benefit which participants can gain: "the Harvard fellowship provides an exceptional opening of the mind, high level of training and the possibility to look in depth at a field of research. The overall result is highly positive and the experience enriching in both professional and human terms".

For the institution for which the fellow works, this programme is a (modest) component of management training available to middle and senior managers.

It gives fellows the opportunity to deepen their knowledge and acquire new and frequently specialised knowledge in the field of international relations, political, economic and commercial relations in particular between the United States and the European Union. This highly-specific programme will continue to be included on the training programme for managers.

As is stressed in a number of reports, the contacts which the programme facilitates, not only with the academic world but also with the political and business world, make it an unequalled method of representation, broadcasting and influence about and for the benefit of European institutions and policies.

In this connection one fellow pointed out that "[these lectures] certainly provided a good opportunity to put a number of misconceptions about the EC/EU into a clearer perspective". Similarly another participant stated that "the EU fellowship scheme is amply justified by the positive influence this can have on potential leaders in the United States".

4.2. Costs

The expenditure involved in these visits is covered by mission expenses.

The visits are treated as long-term missions (defined as stays of at least four weeks in the same place) and therefore, as provided by Article 13(7) of Annex VII to the Staff Regulations, the mission allowance (including hotel costs) is reduced by a quarter.

The 2000 budget for all the fellowships (2000/01 programmes) amounts to €340 000, or around 0.8% of the Commission's total missions budget.

On top of this direct cost comes the indirect cost of the absence of high-ranking officials during this period, put at one per thousand of the wagebill (7 to 9 fellows a year relative to the number of Grade A officials eligible, for a period of nine months).

These gains in terms of knowledge, experience and networking, combined with the impact on the American students show a clear benefit for the institutions and more than offset the direct and indirect costs, which are indeed relatively small, associated with this programme and which can therefore be considered a reasonable investment in the training available to a limited number of officials.
3.8. Ten Point Plan

10. Congratulates and encourages the Budget Commissioner who has been striving to drive through much-needed change; acknowledges that, in response to repeated calls by Parliament to reduce unacceptably high error rates, the Commission submitted action plans in February 2000 and in February 2001; is determined to closely monitor the follow-up and implementation of the action plan; regrets the absence of a “performance scoreboard” to judge the effectiveness and efficiency of the management of taxpayers’ money by the Directorates-General of the Commission under the MAP2000 and SEM2000 reform programmes; welcomes that, at Parliament’s request, the Commission has embarked on comprehensive root-and-branch reform and has proposed a recasting of the Financial Regulation in order to improve financial management; expects the Commission to make a commitment to those items in the following ten-point plan that have not already been addressed by the Commission reform and report back in a progress report on Commission reform before the next discharge procedure begins in November 2001; asks the Commission to:

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**Commission's reply to Point 10:**

The Commission thanks the rapporteur, the relevant Committee and the Parliament for its encouragement.

The Commission will submit a further progress report summarising the implementation of reform up to September 2001 in the last quarter of 2001.

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I. Annual Plans: submit, for the first time, a summary by Directorate-General of all completed and outstanding tasks for 2000, since annual work plans for each of the 29 Directorates-General and job descriptions of all 59 officials who occupy A1 posts were not established for 1999, or for any prior year; welcomes that under Action 22 of the White paper on Reform, the Commission would carry out individual performance appraisals of A1 and A2 officials in April 2001; regrets substantial delays whereby the first appraisal will only start by the end of 2001, as stated in the Commission decision of 22 December 2000 on the appraisal, selection and appointment of senior Commission officials (SEC(2000) 2305); calls for the transmission of annual work plans and, on a confidential basis, appraisals of A1 officials; asks the Commission to inform Parliament of the number of officials that have left under Articles 50 and 51 of the Staff Regulations; calls on the Commission to take into account the staff appraisals; invites the Commission to implement measures that will allow it to dismiss A1 officials whose career development reports indicate that performance is inadequate;

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**Commission's reply to Point 10. I.: Job descriptions for A1 officials**

The Commission reconfirms its intention to proceed with the establishment of job descriptions for the entirety of the staff, including A1 and A2 officials. On the basis of a pilot project in 2000, the services of the Commission are currently preparing guidelines which will, at the end of the negotiations, be the subject of a Commission Decision in the autumn of 2001. Following this decision, job descriptions will be established and the Commission reconfirms its commitment to communicate those relating to A1 officials to the Parliament.

**Evaluation of A1 officials**

**Timing**

The Commission Decision of 22 December 2000 provides for a system of performance appraisal for senior Commission officials to be designed and carefully implemented, using
methods which are best adapted to the role, organisation and culture of the Institution. In this task the Commission will use the assistance of external professional consultants.

Launching and completing the calls for tender in strict accordance with the rules of the public procurement Directives takes time. That is the reason why the first appraisal exercise cannot be completed before 2002.

Communication of the A1 appraisals to the EP

The Commission Decision on senior personnel enumerates in a restrictive way the Institutions who could have access to the appraisals and the reasons for requesting the access in question:

“Appraisals of individual officials would be placed in their personal files, but would remain confidential to the Institution for internal use. Access to the appraisals from outside the Commission would only be permitted to authorised EU Institutions (notably the ECJ and the ECA) to fulfil their principal Treaty obligations, but in accordance with Article 287 of the Treaty”.

Dismissal of A1 officials

The decision on senior personnel provides that in the event of two successive unsatisfactory assessments, the Commission may consider reassigning the official to other duties following normal selection procedures or by a decision under Article 7 of the Staff Regulations. Underperforming officials could also be downgraded.

Number of officials to whom Article 50 has been applied

For the period 95-99: 25
In 2000: 5 A1 and 2 A2
Up to 30 June 2001: 2 A1 and 10 A2
Total population today is: 254

No officials left in 2000 under Article 51 of the Staff Regulations. The Commission will introduce new procedures regarding professional incompetence. As stipulated in the Commission’s decision of 22 December 2000 on the Appraisal, Selection and Appointment of Senior Commission Officials, these new procedures should also be applied mutatis mutandis to officials of grades A1 and A2.

Within the framework of ABM, the annual management plan (AMP) is in the first instance the tool used by each department to organise and improve the management of its activities and resources on the basis of objectives set. It is also the instrument that translates the Commission’s political priorities into concrete actions and ensures their follow-up, monitoring and evaluation. It contains all the elements (objectives, indicators, description of monitoring and reporting systems and of evaluation plans, human and budgetary resources) that enable each service to follow up actively, efficiently and effectively the implementation of its activities. Work on the AMP for 2002 will commence in the second half of 2001. The work programme is published each year.

II. Annual Declaration: ensure that each Commissioner, Director-General and Head of Delegation signs an annual declaration of assurance, for the first time by June 2001, that adequate internal controls have been put in place; also ensure that each of these persons signs
annually, for the first time by March 2002, a statement that all funds for which he/she is responsible have, as far as he/she is aware, been spent in accordance with the principles of sound and efficient management; notes that the consequences of not signing, and of not living up to the expectations deriving from such assurances and statements, as well as the consequences for the chain of responsibility would have to be clarified;

**Commission’s reply to Point 10. II.:**

As provided for by Action 82 of the White Paper on administrative reform and included in points 4.9 and 4.10 of the Charter for authorising officers by delegation adopted by the Commission on 13 December 2000, each Director-General and Head of Service will be required, from 2002 onwards, to draft an annual activity report to which will be attached information concerning budgetary and accounting management in the Directorate-General or Service concerned, and to sign a declaration certifying that departments are operating correctly and in particular that the internal control system put in place is reliable.

The purpose of the report and declaration is to improve internal management of financial and human resources and in no way alters the accountability of the full Commission to the discharge authority nor the responsibilities of the Directors-General and Heads of Service in relation to the Commission. Their responsibility as authorising officers by delegation remains unchanged and is therefore translated in the declaration but is in no way extended.

The declaration will express the reasonable assurance of the Director-General or Head of Service, based on their own judgment and on the information available, that the resources assigned to the activities described in the annual report have, during the past year, been used in accordance with the principles of legality, regularity and sound financial management and also that they intend to improve, wherever necessary, the management and/or internal control systems under their responsibility.

In drafting their declarations Directors-General and Heads of Service may make any qualifications which prevent them giving their reasonable assurance. Such qualifications will relate to organisational shortcomings in internal controls within the Directorate-General which are known to the authorising officer by delegation. When bringing them to the Commission’s attention, the authorising officer by delegation will also indicate the measures and timetable planned to remedy them.

When it has received all the individual reports and declarations the Commission will have to adopt a summary report. In this way the Commission will take note of any qualifications made, will pass judgment on the remedies and timetable proposed and will ensure that they are implemented. The summary report will thus become not only an internal management tool taking stock of the results and performances of Commission departments, but also an additional source of information for the institutions on the management of the institution.

The content and scope of these reports and declarations and the procedure for their finalisation and internal and external utilisation were covered by the communication adopted by the Commission on 27 June 2001 (SEC (2001) 875/6). The Commission decided that the annual report, comprising the declaration, will be drawn up by no later than 1 May each year.
In June 2001 the Directors-General and Heads of Service produced an interim report and declaration setting out the measures taken to implement financial reform. In line with the factual content of the reports, the declaration merely states that the information gives a true and fair view.

This first exercise also gives the Commission the opportunity to report to the other institutions, and Parliament in particular, on the progress of financial reform. It demonstrates the priority which the Commission is attaching to ensuring that the transitional phase is advancing smoothly and informs them of the results expected in 2002 in the light of the progress made in 2001.

### III. “League table”

Introduce a suitable management information system to allow a qualitative and quantitative assessment to be established and thereby share best-practice across the Commission; notes that a statistical breakdown, by Directorate-General, was not available for the 2,805 commitment proposals, payments and recovery orders, rejected in 1999 by the Financial Controller and Accounting Officer, on a number of grounds including errors due to incorrect draft contracts, ineligible expenditure, ineligible beneficiaries, insufficient consideration of economy and value for money as well as duplicate payments; calls for a comparison of Directorates-General on a number of management criteria including: payment delays, 'reste à liquider', recoveries initiated and completed, actual to planned execution, hours of training, average time of vacancy of posts and action following financial audits, performance evaluations, allegations of malpractice by whistleblowers and reports by the Anti-Fraud Office;

### Commission’s reply to Point 10. III.:

As stated in the reply to the previous point (10.II), as from 2002 Directorates-General will systematically prepare annual activity reports including a declaration by the Director-General on the adequacy of the internal controls in his service. The Commission considers that the summary of the Annual Report of the DGs is one of the elements on which to judge the performance of the Commission. The Commission, for the 2000 Annual Report, will produce a summary monitoring the implementation of the reform in each DG. Information on budget outturn, dormant commitments, outstanding amounts on commitments and payment times will be provided.

League tables comparing the performance of the services against the indicators given risks misleading the reader because of the widely varying circumstances facing different DGs and services, and it would also therefore be difficult to make a meaningful comparison between DGs.

The Commission will draw up a summary report to identify the advancement of reform in all the DGs.

As regards “allegations of malpractice by whistleblowers” reference is made to point 10 VI.

### IV. Follow-up of audits, evaluations and budgetary implementation:

(a) Audits: transmit, on a bi-annual basis, to the discharge authority a synthesis of key findings, recommendations and follow-up of all internal audits carried out by the Commission; notes that action following audits carried out by the Financial Controller in
1999 has not always been swift, effective or comprehensive; asks the Commission to indicate what action was taken following the audits listed in Annex 3;

Commission's reply to Point 10. IV.:

The IAS Annual Report for 2000 sets out how the IAS was established in 2000, how its capacities were gradually built up and which audit activities were undertaken and, in fact, were ongoing as of 31 December 2000. An IAS Interim Report for 2001 on interim results will be presented during the second half of 2001.

The procedure prior to the formation of the IAS was that directorates general took action on the weaknesses identified in audits. Financial Control would follow up on these subsequent audits. This approach has been strengthened with the formation of the IAS and the Audit Progress Committee, which makes an overall follow-up on recommendations.

(b) Sectoral evaluations: undertake regular policy evaluations by sector and present results to the Committee on Budgetary Control in the presence of the relevant policy Director-General, the relevant Member of the Court of Auditors and a delegation from Parliament's relevant specialised committee;

Commission's reply to Point 10. IV. (b):

Subject to the principle of collective responsibility of the full Commission and in accordance with the framework agreement on relations between Parliament and the Commission, the Members responsible for the budget and administrative reform will present the summary report on the annual reports of Directors-General to the appropriate bodies in Parliament, in particular the Committee on Budgets and the Committee on Budgetary Control.

The other Commissioners will give their political assessment on the areas for which they are responsible in accordance with the arrangements agreed with the parliamentary committees. They may ask the Director-General to present his management report to the parliamentary committee in question.

The Commission will be happy to present results of evaluations carried out.

(c) Implementation figures: send a representative to the Committee on Budgetary Control to present and explain the quarterly budget implementation figures, outlining and examining any trends or potential areas of concern as well as problems relating to late payments, in order to allow Parliament to monitor closely budget expenditure at regular intervals during the course of the year; regrets that the analysis for financial management for 1999 is incomplete and only available in one language; calls on the Commission to make a full analysis for subsequent years and make this available in all languages;

Commission's reply to Point 10. IV. (c):

Parliament is regularly kept informed of the implementation situation and the Commission has recently started forwarding to Parliament's Committee on Budgetary Control and to the other Institutions a weekly list showing, under each budgetary heading, the actual implementation of commitments, of payments and of commitments remaining to be paid (RAL).
The Commission informs the Parliament in real time, this being a lot more rapid than before, though this is only possible in one language.

The Commission will be happy to present this new form of presenting the implementation figures.

V. “Revolving door”: tighten the interpretation of and strictly apply existing provisions to avoid the state of affairs where former Commissioners, cabinet appointees and officials are able to use their in-house knowledge and expertise, in an inappropriate manner, in the service of private interest groups or industry; points out that this occurred for a number of senior persons in 1999; notes that provisions exist whereby the Commission must specify those posts which debar officials who have held them from engaging in any occupation, whether gainful or not, for a period of three years after leaving the service; asks for details of such posts and information on the application of such, or similar, provisions to former Commissioners, cabinet appointees, heads of Delegation or Representation or Director Generals;

Commission’s reply to Point 10. V.:

Increasing attention has been paid in recent years to the ethics and integrity of public services, because an effective ethical framework in public services is a prerequisite to, and underpins, public trust. The Staff Regulations contain specific rules both on the substantive obligations applicable to former officials and temporary staff who take up posts in the private sector and on authorisation procedures. Articles 16, 17 and 18 of the Staff Regulations provide that they are under an obligation of integrity and discretion. The Commission ensures strict application of these rules. The former officials or temporary staff must therefore avoid use of any potentially sensitive information acquired in the course of their duties in the Commission.

Article 16 of the Staff Regulations provides that the Institutions should list jobs from which former officials are debarred for a period of three years from the date of leaving service. In practice, it has not been possible to draw up a comprehensive list. However, particularly for senior officials, thorough consideration by means of an ad hoc procedure is given to appointments before the official concerned receives authorisation to take up the new job. That authorisation is subject to full and continued compliance with the terms and principles of the Staff Regulations. The authorisation procedure set out in Article 16 of the Staff Regulations is being reviewed as part of the Reform exercise.

As far as former Members of the Commission are concerned, they are answerable for their activities and conduct under the Treaties (Article 213(2) of the Treaty establishing the European Community). In addition, the Code of conduct for Commissioners obliges former Members of the Commission to inform the Commission, whenever they intend to take up a professional activity within one year after leaving the Commission. If the activity is related to the former portfolio the Commission will decide after consulting a "committee on ethics" about the compliance of the activities with Article 213 TEC.

VI. Whistleblowing: ensure that the discharge authority is informed, at least on an annual basis, of all completed investigations into allegations of serious wrongdoing, including the date the allegation was made, a description of alleged wrongdoing, action taken within the

4 Article 16 of the Staff Regulations
Commission, date of disclosure to the Court of Auditors and/or Anti-Fraud Office and details of any follow-up action including the launching of administrative or disciplinary proceedings and measures taken to protect the legal position of the whistleblower in question; welcomes that the Commission adopted, on 29 November 2000, a consultative document on raising concerns about serious wrongdoing (SEC(2000) 2078); welcomes that the Commission has satisfactorily investigated allegations, forwarded by the Committee on Budgetary Control, including those regarding the use of Community funds in Bolivia (technical assistance), Columbia (Tumaco housing project) and Lebanon (UNRWA refugee camps);

**Commission's reply to Point 10. VI.:**

*In the period from January 2000 to July 2001, no disciplinary procedures have been initiated on the basis of legitimate concerns about possible wrongdoings raised by Commission officials.*

*Supplementary information was provided by an official acting as a whistleblower, which assisted in the finalisation of an OLAF investigation, whose findings have been transmitted to the Commission and the judicial authorities concerned.*

**VII.** Disciplinary proceedings and sanctions: provide summary information on closed administrative enquiries and disciplinary procedures; notes that the Commission provided information on 14 of the 26 cases opened, conducted or finalised in, or concerning expenditure from the year 1999; considers that 12 pending cases should be dealt with under the next discharge procedure; calls on the Commission to apply strictly suitable penalties against persons, be they Commissioners, cabinet appointees or officials, found to have been grossly negligent in their duties; recalls that officials may be stripped of their pension rights under the Staff Regulations; asks to be informed how the revised disciplinary procedure operates, with emphasis on external supervision; takes note of the Commission consultation paper of 29 November 2000 (SEC(2000)2079) on reform of the disciplinary procedure; notes that the proposals it contains are inadequate because:

(a) the external element provided for is too weak: only the chairman of the disciplinary board would be appointed from outside the institution on an annually extendable contract only,

(b) the project establishment of an additional Investigation and Disciplinary Office to carry out administrative inquiries will lead to overlapping remits and conflicts with the European Anti-Fraud Office OLAF, on which the Commission has already conferred responsibility for administrative inquiries in cases of serious breaches by officials of their obligations under the Staff Regulations,

(c) the issue of the financial liability of officials for the damage they have caused has been completely excluded and, to date, the Commission has made no proposals whatever in this connection;
Commission's reply to Point 10. VII.:  
The Commission will provide the Committee on Budgetary Control with summary information on disciplinary procedures for the next discharge, as was done the last time.

(a) The Commission does not agree that the external element provided for is too weak.

The role of the chairman is an important one: he is responsible for the composition of the Disciplinary Board and for appointing a member of the Board as rapporteur. In addition, the chairman ensures that the various decisions taken by the Board are implemented and that all relevant information and documents are brought to the attention of each of its members. This includes conducting additional inquiries, consulting the Legal Service, calling for witnesses, and forwarding the opinion of the Board to the appointing authority.

The fact that the chairman is external ensures a neutral approach, and while he does not vote on matters before the Board, save on procedural questions or in case of a split vote, he does play an important role in ensuring that the Board performs its duties correctly.

(b) In July 2000, the Commission created a specific Unit within its Directorate General for Personnel and Administration which is dedicated to the preparation and handling of disciplinary cases. This Unit took up its functions in January 2001. It will be reinforced and called the “Investigation and Disciplinary Office”. Its remit is clearly distinctive from that of OLAF, which has priority competence in terms of the investigation of certain kinds of serious wrong-doing. Therefore, in case any doubt may exist, the Commission always consults OLAF in identified cases or possible misconduct to make certain that OLAF is not itself undertaking an enquiry or intending to do so. The close cooperation between the Unit responsible for disciplinary and administrative procedures and OLAF will be codified in a cooperation agreement, elements of which will be included in a manual of internal procedures.

(c) In its Communication "New orientations for the reform of personnel policy" of 18 July 2001 (SEC(2001) 1202/6), the Commission has acknowledged that Article 22 of the Staff Regulations is of obvious importance, not only as the remaining plank of the reform of disciplinary proceedings, but also in the context of the reform of financial management. The Commission has further stated that there is a need to develop guidelines on the application of Article 22 in the future.

While stating that the overarching principle should be that personal financial liability remains exceptional, since it is not appropriate for minor faults or mistakes, the Commission has given orientations as regards the main elements to be covered by such guidelines.

In addition, where serious misconduct amounts to a breach of national criminal law, the appointing authority brings the case to the attention of the national judicial authorities.

VIII. "Blak list": maintain a central database, in line with best practice in international organisations such as the World Bank, containing the names of companies and individuals found to have defrauded the Union budget so as to avoid contracts being granted by different departments to the same companies or individuals; asks that details of convicted defrauders are published on the Commission website; regrets that an early warning system, the so called grey list, is poorly understood and is not strictly enforced throughout the Commission; points out that no preferential treatment should be given to organisations with direct links to persons working or having worked in European institutions; asks that both the Blak and grey lists be cross-referenced to the central register of invoices foreseen in April 2001 under Action 11 of
the White paper on Reform (COM(2000) 200) and to the central contracts database foreseen in June 2001 under Action 74 of the White paper on Reform; asks the Commission to put forward proposals to amend the Council Regulation (EC) No 1469/1995 of 22 June 1995 on measures to be taken with regard to certain beneficiaries of operations financed by the Guarantee Section of the EAGGF in order to list companies under suspicion of wrongdoing or fraud; asks the Commission to ensure that all external contractors indicate whether they have worked in European institutions; reserves the right to make enquiries concerning individual contracts; calls on the Commission to put forward a proposal for a legal base enabling the Commission to add the names of companies and individuals to the Blak list;

Commission's reply to Point 10. VIII.:  

The Commission shares the objectives of the European Parliament that, in principal, companies and individuals who have been found to have acted against the financial interests of the Union budget should not be granted contracts by the Union. This principal is spelled out in the recast of the Financial Regulation.

Therefore, in the framework of an early warning system, the Commission is committed to preventing future contracts from being concluded with companies or individuals found to have defrauded the Union budget. The Commission fully agrees with the need to protect the Community's financial interests via a system embracing all Commission departments, thereby avoiding fragmentation and consequent inconsistencies in dealing with the problem.

However, the rules to which Community institutions must adhere when creating lists of contractors for the above purposes, should not be overlooked. If the processing methods set up to this effect by the Commission infringed the legitimate rights of contractors, this could render the mechanisms created inapplicable.

In particular, Regulation (EC) 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, sets a number of limitations to the power of the Commission to draw up, circulate and make use of lists containing data on individuals.

It should be pointed out that the early warning system described along with the quoted article of the recast Financial Regulation, should be seen only as an instrument and a support for authorising officers, who remain fully responsible for the decision to proceed on a case-by-case basis.

On a broader scale, the different actions of the White Paper and in particular Action 94 (“fraud-proofing” of contract management) are being implemented by the Commission in both a preventive and dissuasive perspective. The objective is to secure control of the whole life cycle of a contractual relation (and the related documents) and also to make it possible to trace the performance records of each contractor. This will create in the Commission a general environment which is more favourable to sound and efficient protection of the Community's financial interests.
The Commission has adopted a proposal for a directive on the coordination of procedures (COM (2000) 275 final of 30.08.00) for the award of public supply contracts, public service contracts and public works contracts, which introduces a compulsory mechanism for excluding tenderers who have been convicted of belonging to a criminal organisation, corruption or fraud against the Communities’ financial interests and also an optional mechanism for ruling out economic operators who are «not reliable». In addition, under a special initiative to be introduced in November 2001, a system is to be set up for exchanging information between Member States, allowing tenderers who have been convicted of certain offences to be excluded from public contracts.

OLAF is in contact with Commission departments and has begun work on revising the "black" list mechanism in the agricultural sector with the aim of clarifying the existing provisions to ensure a more coherent application of the regulation. A proposal for an horizontal regulation proposing to extend the scope of the "black" list to other sectors is envisaged for 2003.

IX. Recovery of losses: ensure that there is no laxity or omission in the recovery of funds unduly paid to Member States, companies or individuals; calls for a regular progress report, at least on an annual basis, from the central recovery department, set up in July 2000, indicating, by Directorate-General, all cleared and outstanding recovery requests; urges the Commission to recover irregular payments discovered by the Court of Auditors for the financial year 1999 as soon as possible and in future to launch recovery proceedings within three months of receipt of details of irregularities from the Court; calls for the Commission College to take a formal decision, similar to those taken under the clearance of accounts procedure, for the waiving of debts greater than EUR 1 million; ensure that a “firewall” is introduced so that decisions taken by civil servants are exempt from any political interference;

Commission’s reply to Point 10. IX.:

The reports on debt recovery will be provided when the revenue and expenditure account for 2001 is presented after the adapted computer applications now being developed have been introduced.

The Commission communication on implementation of Action 96 "More effective management of recovery of unduly paid funds" did not opt for setting up a central recovery department but provides for strengthening and improving the sharing of tasks between the actors involved - i.e. authorising officers and accounting officer - in the debt recovery procedure.

As a result of the empowerment of authorising DGs under Action 96, they will have to set up appropriate structures for issuing recovery orders in compliance with the principle of sound financial management.

In connection with the discharge for implementation of the 1999 budget the Commission has undertaken to ensure that a decision is taken at the appropriate level concerning the waiver of debts of over €1 million. This measure will be incorporated in the forthcoming issue of the internal procedure provisions for debt recovery which are currently being overhauled.

Any decision with financial impact - in particular the issue, reduction or cancellation of a recovery order - must be taken in compliance with the procedures laid down by the Financial Regulation.
Finally the Code of Good Administrative Behaviour for Staff of the European Commission lays down guidelines of objectivity and impartiality stating that "staff shall always act objectively and impartially, in the Community interest and for the public good. They shall act independently within the framework of the policy fixed by the Commission and their conduct shall never be guided by personal or national interest or political pressure."

X. Archiving: introduce, in the light of best practice in Member States and using the latest cost-effective technology, electronic archiving of all documents to avoid files being lost or mislaid; deplores that no visible action has been taken, although, in paragraph 1(e) of its abovementioned resolution of 13 April 2000 on the postponement of the discharge for the 1998 financial year, Parliament asked the Commission to present a detailed regulation on new archive routines and launch full administrative enquiries where documents are found to be missing.

Commission's reply to Point 10. X:

The Commission has undertaken a major review of all procedures and rules concerning the archiving and management of documents. Because of the increase in the number of media, input and output points, and procedures managed by often decentralised departments, the rules need to be clarified and security guaranteed for the safekeeping of documents and mail. The introduction of modern and coherent document registration and archiving systems was also underlined in connection with the planned transition to the e-Commission.

The development of an exclusively electronic archiving system covering all Commission documents would require massive investment and a great deal of time. It could not be conducted without taking into account the existing systems and technological developments.

The Commission will accordingly shortly be receiving for approval a decision repealing and replacing the 1986 decision to remedy certain shortcomings in particular following the massive increase in the use of information technology and also a major workplan which should eventually result in the introduction of secure and reliable document management systems.
Annex 2

The Parliament requested certain additional audit reports which are included in Annex 2 to its Resolution as follows:

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*Commission’s reply:*

The Commission is providing information in the appropriate form.