



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.8.2002
COM(2002) 348 final/3

Corrigendum:
concerne les versions FR,DE,EN et DA
Points : 9.- 9.2.(2è. graphique, et paragraphes 2è. et dernier)-
10.2.(dernier paragraphe)-11.2.(premier graphique, premier paragraphe
et 2è. paragraphe)
et les annexes 2, 3, 4 et 8.

REPORT FROM THE COMMISSION

PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITIES AND FIGHT AGAINST FRAUD - ANNUAL REPORT 2001 -

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REPORT FROM THE COMMISSION

**PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITIES AND
FIGHT AGAINST FRAUD - ANNUAL REPORT 2001**

Summary

The Commission submits herewith its third annual report on the protection of financial interests of the Communities and the fight against fraud, in accordance with Article 280(5) of the EC Treaty. To give an account of the shared responsibility of the Member States and the Community, the report presents in turn:

- an evaluation of the Community's legislative and regulatory activity in 2001, accompanied by an illustration of cooperation with the Member States, the applicant countries and the third countries (Title I);
- a presentation of the measures taken by the Member States pursuant to Article 280 of the EC Treaty, in particular legislative measures and measures concerning the organisation of enforcement authorities (Title II);
- a statistical evaluation of the results of activities to protect financial interests and combat fraud undertaken by the Member States and the Commission in 2001 (Title III).

The aim of this document is to present the combined action of all those involved in the protection of the Community's financial interests and to give concrete expression to the aims of general and shared responsibility of the Member States and the Community. The report considers the action undertaken by all the national authorities and the Commission, both in prevention terms and in terms of the fight against economic and financial crime to the detriment of the Community's interests. It follows the broad approach of the Action Plan¹ and in this sense it is not strictly limited to actions based on art. 280 of the Treaty.

Lastly, it meets the need for permanent and transparent evaluation of Community policies to which the Commission, Parliament and the Council are all attached². Moreover, the Commission regularly meets with representatives of national authorities as well as with members of its own services in order to continue to improve the evaluation of the protection of financial interests³.

¹ Commission Communication – Protection of the Communities' Financial Interests – Fight against Fraud : Action Plan for 2001-2003 (COM(2001) 254 final).

² Conclusions of the ECOFIN Council of 7 May 2002 point 13 and Resolution of the European Parliament on the Annual Report 2000, para. 2.

³ The Advisory Committee for Coordination for Fraud Prevention met three times in 2001, just like the Working Group Article 280. The services of the Commission met twice to this purpose in 2001 as well.

TITLE 1 –THE ACTIVITIES OF THE COMMUNITY FOR THE PROTECTION OF THE COMMUNITIES’ FINANCIAL INTERESTS AND THE FIGHT AGAINST FRAUD

1. MAJOR DEVELOPMENTS IN COMMUNITY POLICY IN 2001

The Commission established its general political objectives regarding the protection of financial interests in the Overall Strategic Approach, adopted on 28 June 2000,⁴ the scope of which is multiannual (2001-2005). The aim of the Community approach is to develop a legislative and regulatory framework covering all Community policies and allow exchanges and cooperation between those actively involved in the Commission and the Member States, in accordance with the principle of shared responsibility laid down by Article 280 of the EC Treaty. This approach was approved by the Economic and Financial Affairs Council on 17 July 2000 and by Parliament in its Resolution of 13 December 2000⁵.

On 15 May 2001, the Commission adopted a 2001-2003 Action Plan to implement the political objectives defined by the Overall Strategy and allow the presentation of tangible and measurable results. Parliament and the Council welcomed the method followed in the Action Plan for the implementation of the Strategy and approval the proposed formula of regular evaluation and monitoring.

1.1. **Prevention** provides the key to an overall and coherent anti-fraud policy. This is why the Commission developed the preventive measures to take into account the protection of financial interests right from the legislative drafting stage, an approach welcomed very warmly by Parliament and the Council.⁶ The Commission, under the White Paper on Commission reform⁷ (Action 94), developed an approach intended to ensure “fraud-proofing” of instruments or measures concerning the management of the Community funds. This action seeks to identify weaknesses in Community legislation and contractual mechanisms which certain external operators are keen to exploit⁸. These weaknesses are then corrected in the course of preliminary review of sensitive legislative drafts, in the light of lessons learned on the ground, and OLAF is routinely consulted.⁹

⁴ The four strategic guidelines are to: promote an overall anti-fraud policy; promote a new culture of cooperation with the competent authorities of the Member States; encourage an inter-institutional measure to prevent and combat corruption and strengthen the credibility of the European institutions; strengthen the criminal judicial dimension in accordance with the new obligations resulting from the Treaties (COM(2000) 358 final, 28.6.2000).

⁵ Council conclusions of 17.7.2000 on the Commission communication concerning the protection of the financial interests of the Communities - Fraud prevention: for an overall strategic approach (document 10344/00 FIN 273). Parliament Resolution of 13.12.2000 on “Strategic Overall Approach” (Doc. A5-0376/2000).

⁶ Conclusions of the Economic and Financial Affairs Council of 15.6.2001 (document 9270 FIN 169). In its Resolution of 29.11.2001 on the annual Report 2000, European Parliament makes fraud-proofing of new legislation one of the four major measures likely to bring a qualitative leap forward in the efforts to combat (Doc A5-2001-393).

⁷ Commission Reform – White Paper (COM(2000) 200 final/2 of 5.4.2000).

⁸ Commission Communication concerning fraud proofing of the legislation and contract management adopted on 07.11.2001 (SEC (2001)2029 final).

⁹ Parliament Resolution on the annual Report 2000 and Council (Conclusions of 15 June 2001) have noted the value added by involving OLAF in the fraud-proofing of legislation.

This approach is concerned as a priority with horizontal initiatives that affect all Community policies and are of interest to all those involved in implementing them. Among those, public procurement is a field where the Commission and Member States are equally interested in an effective dissuasion and warning mechanism. This constitutes one of the issues of the proposal for a Parliament and Council Directive on the coordination of procedures for the award of public contracts and of the specific initiative on an information exchange system between the Member States¹⁰. Work on these proposals is continuing in the Council. In addition, the Commission has proposed specific antifraud provisions for the recast of the Financial Regulation which has been adopted on 25 June 2002.

To protect the authenticity and credibility of the common currency, the Council, on a Commission proposal, adopted Regulations Nos 1338/2001 and 1339/2001 on 28 June 2001¹¹. These Regulations provide the legislative basis for cooperation between all the institutional actors concerned (ECB, Europol, Commission/OLAF¹²), the central offices and other competent authorities of the Member States, and non-member countries. As regards the protection of the euro by the criminal law, the Commission submitted to the Council a first report on the implementation by the Member States of the provisions of the framework Decision.¹³ In general, Member States discharged their obligations. In December 2001, the Council adopted the Pericles programme¹⁴. This programme co-finances transnational and multi-disciplinary projects on exchanges, assistance and training, for the protection of the euro against counterfeiting.

2001 also saw the adoption of the Directive on the prevention of the use of the financial system for the purposes of money laundering¹⁵. The purpose of this Directive is to update the 1991 Directive and extend its scope by a number of amendments, the main ones of which are as follows: expansion of the prohibition of money laundering to cover not only drug trafficking but also organised crime and a wide variety of serious offences, on the other hand extension of the obligations of the Directive to certain non-financial activities and professions.

¹⁰ In compliance with the action programme on organised crime established by the high level group created by the European Council of Dublin in December 1996, and its political orientation N° 13 (adopted by the Council on 28 April 1997, OJ C251 of 15.08.1997).

¹¹ Council Regulation (EC) No 1338/2001 of 28 June 2001 defining the measures necessary for the protection of the euro against counterfeiting - OJ L 181, 4.7.2001; and Council Regulation (EC) No 1339/2001 of 28 June 2001 extending the effects of the Regulation No 1338/2001 defining the measures necessary for the protection of the euro against the false coining to the Member States which did not adopt the euro as a single currency - OJ L 181, 4.7.2001.

¹² Concerning false euro coins, a European Technical and Scientific Centre (CTSE) has been set up in accordance with the exchange of letters between the President of the Council and the French Minister for finance, managed by two Commission/OLAF officers.

¹³ Commission Report based on Article 11 of the Council Framework Decision of 29.5.2000 to strengthen by criminal and other penalties the protection against counterfeiting for the entry into service of the euro (COM (2001) 771 final of 13.12.2001).

¹⁴ Council Decision of 17.12.2001 drawing up an action programme on exchanges, assistance and training for the protection of the euro against counterfeiting ("Pericles" programme) (Decision 2001/923/EC) – OJ L 339, 21.12.2001.

¹⁵ Directive 2001/97/EC of the European Parliament and the Council of 4.12.2001, amending Directive 91/308/CEE of the Council on prevention of the use of the financial system for the purpose of money laundering.- OJ 344 of 28.12.2001

The desired overall nature of the approach to effective protection of financial interests requires the applicant states to take part in the Community policy to achieve prevention aims. From this point of view 2001 was a year of consolidation of efforts made by the Commission to prepare for enlargement by encouraging the establishment of financial management and control structures, including internal audit, in the relevant central and regional administrations. The emphasis in 2001 was to set up internal audit units in all Community funds management centres in both central and regional administrations.

The correct use, control, monitoring and the evaluation of Community pre-accession financing (in particular under the PHARE, ISPA and SAPARD programmes) constitute the key indicator of the applicant countries' capacity to implement the 'acquis communautaire' as regards financial control. With regard to fraud prevention, the constitution in Poland of a specific office responsible for the protection of the Community's financial interests began early in 2001. Experience gained this year will be used when corresponding structures are established in all the applicant countries.

In addition, the conclusion of an agreement by the Community and the Member States with Switzerland covering the fight against fraud was given priority status, with a view in particular to remedying the difficulties of judicial assistance in tax and customs matters. On 14 December 2000, the Commission had been given a mandate to negotiate with the Swiss authorities. Negotiations took place during the whole year 2001, but they have not yet led to results.

For the aspect relating to the strengthening of legal instruments governing detection, checks and inspections and penalties, as far as internal measures are concerned, the majority of decisions in principle taken at the end of 2000 were implemented by the Commission in 2001, in particular with a view to improving financial management¹⁶. As regards direct management by the Commission and the management of Community funds by the Member States, following the Communication on White Paper action 96 (More effective management of the collection of unduly paid funds in the field of direct expenditure), the principle of increased awareness of authorising and accounting officers was laid down. The Commission is preparing implementing provisions to ensure a sound distribution of tasks between authorising officers, accounting officers, the Legal Service and OLAF.

The Structural Funds (Action 97 of the White Paper) obtained an improved legal framework for financial management with the adoption of two Regulations applicable to the new programming period in March 2001¹⁷. The Member States' obligations as regards monitoring of projects and payments were specified in these instruments. The strengthening of financial control for the new programming and the finalisation of the interdepartmental protocols provided for in the recommendations of the White Paper on Reform of the Commission are to provide a solution to

¹⁶ These measures are essentially based on Chapter V - XXIV of the White Paper on Commission Reform, concerning renovation of financial circuits and financial control and the creation of an Internal Audit Service and Internal Audit Capabilities (IAC).

¹⁷ Commission Regulations (CE) 438/2001 and 448/2001 of 2.3.2001 (OJ L 63, 3.3.2001, and OJ L 64, 6.3.2001) laying down the detailed rules for the application of Council Regulation (EC) 1260/1999 on the systems of management and of control on the one hand, on the procedure of implementation of the financial corrections on the other hand.

comments made by the Court of Auditors,¹⁸ in particular on the notification and monitoring of irregularity cases.

1.2. The aim of efforts to develop a **new co-operation culture** with the Member States is to draw the conclusions from the shared responsibility of the Community and the Member States for the protection of financial interests. The purpose of the concept of the OLAF as a platform of services is to set up a genuine long-term partnership with the Member States¹⁹ to facilitate synergy between the Community and national levels, having regard to the principles of proportionality, subsidiarity and effectiveness.

From the Community point of view, OLAF must be able to respond to the demand from the Member States for better fraud prevention. To achieve this objective, without prejudging its Community prerogatives, the European Anti-Fraud Office is organising itself to give practical effect to the concept of the “Community platform of services”, reflecting its responsibilities and tasks in organisational terms and making the internal distribution of tasks more visible. Stabilised in these terms, the added value that the Community level can supply will be more explicit and it will be easier to satisfy the national authorities’ need for an interface.

An important step in consolidating OLAF was taken in 2001 with the establishment of an Intelligence Directorate which, by developing strategic and operational analysis, will help to improve the Commission’s operational strategy and to assist the national administrations to define their priorities in the fight against fraud. With regard to information on the detection of fraud and irregularities from the Member States, this new directorate should make it possible in the long term to improve the quality of the information provided by the Member States. As explained at Title III of this report, the setting up of new computer modules for the notification of frauds and irregularities was accompanied by training activities in the Member States throughout 2001. OLAF also organised, jointly with the national administrations, some twenty training sessions on different aspects of the fight against fraud, to enhance the exchange of best practices and to fulfil specific needs.

In addition, a unit of magistrates and judicial advisers was set up in the Office to monitor OLAF investigations, among other things. By incorporating the administrative and judicial dimensions, this expertise will make it easier to integrate the Office into the broader network of national actors concerned. This mainly means the customs and tax authorities and the police and prosecution authorities, whose assistance is requested by the Office and who also require assistance, if financial interests are to be given the fullest possible measure of protection, including protection by criminal law.

Moreover, OLAF is pursuing reflections with the Member States to give the Advisory Committee for the Coordination of Fraud Prevention (CoCoLaF) its full dimension. The frequency of meetings and the structuring of the Committee’s work

¹⁸ Report 10/2001 relating to the financial control of the Structural Funds (OJ C 314, 8.11.2001). In its Resolution on the Commission 2000 Annual Report, Parliament was alarmed at the very incomplete character of information provided the Commission on the irregularities in certain fields of the Structural Funds.

¹⁹ In its Conclusions on the overall Strategy, the Economic and Financial Affairs Council stressed its importance.

increased notably in 2001, with a view in particular to deepening the dialogue with national authorities. The ad hoc group of national experts on counterfeiting boosted the Commission's expertise in preparing a common legislative mechanism in this field. And the ad hoc "Article 280" group made it possible to bring the experts of the Member States together to work specifically on the annual report so as to make the procedure for drawing up of the Report provided for by Article 280 of the Treaty more transparent and develop the participation of the Member States in this procedure more fully. In addition national experts on counterfeiting enhanced the Commission expertise to set a legal framework in this field.

The Commission recently joined with ten Member States in commencing an action in the US courts to combat massive threats of cigarette smuggling and organised crime, including money laundering, in the European Union. These illicit activities seriously undermine the common vital interests of the Community and the Member States. In this case the Commission acts as a service platform, by offering the Member States its assistance in proceedings in the courts of a non-member country, and thus facilitates a coordinated initiative by the Member States. The Commission serves as the Member States' legal representative in these proceedings, and is responsible for coordinating the action of the Member States and liaison with the U.S. lawyers representing the Community and the 10 Member States in the U.S. court.

In addition, within the framework of its own Resource controls, the Commission carried out, during 2001, verification missions in all the Member States on the specific topic of the *Treatment of the mutual assistance messages*. The purpose of these missions was to check that the national systems and the procedures put in place by the Member States ensure adequate protection of the traditional own resources while at the same time contributing to effective collaboration with the Commission. The subject report made on this topic leads to a positive conclusion.

Additionally, in the field of the traditional own resources, the Commission, and more particularly the Directorate-General for the Budget, continues its work under the *Joint Audit Arrangement*²⁰, in close co-operation with the internal audit services of the Member States. Member States take an active part in the work of the Audit sub-group some of which are very closely involved in the development of audit modules. With regard to the implementation of methodology by means of joint audits carried out by the Member States, the assessment for 2001 is very positive, in particular in view of the results which confirm the method. In particular, Denmark and Austria carried out a "joint audit" on the external transit procedure and the Netherlands continued their action initiated in 2000, on the topic of "free circulation". These topics had been decided by, mutual agreement, on the basis of the audit modules approved by the Member States and the Commission.

Once the audit was completed, and on the basis of the audit reports which were sent to it by these Member States, the Commission conducted, on the spot, an analysis of all the work undertaken, with close attention paid to the evaluation of the risk analysis system, the validity of the conclusions, and any recommendations proposed, having regard to any anomalies identified or to comments made. The Commission has benefited from the conclusions of the reports in terms of impact on own resources. It will ensure that the results of these audits are taken into account from

²⁰

See report on the protection of the financial interests and fight against fraud, fiscal year 2000.

the financial point of view. Of course, the financial consequences were officially recognised under conditions identical to those which would result had the control been conducted by the Commission itself. Denmark, Austria and the Netherlands will repeat the experience in 2002 .

1.3. In 2001, **the criminal judicial dimension of the policy of protection of the Community's financial interests** was itself strengthened at the operational level. The judicial advisers' unit provides assistance, advice and judicial expertise to the administrative investigation function and to the monitoring of investigations, in particular for effective cooperation with the national judicial and police authorities.

At the legislative level, since the European Council of Nice had not acted on its first proposal²¹ the Commission revived the debate on the establishment of a European Prosecutor responsible for the criminal protection of the Communities' financial interests by adopting a Green Paper²². The function of this European Prosecutor would be to coordinate and direct the investigation and prosecution the offences against the financial interests of the Communities, subject to review by the national courts, in order to remedy the fragmentation of the European law-enforcement area and the relative impunity which criminals enjoy as a result. The aim of the Green Paper is to prompt a broad public debate, the results of which will be sent to the Convention on the Future of Europe for the next Intergovernmental Conference. This initiative has for a long time been supported by Parliament²³. Within the framework of a Treaty amendment, it called for "a qualitative leap forward" in efforts to combat fraud, with the establishment of a European prosecutor with broad jurisdiction in financial matters. The OLAF Supervisory Committee issued opinions supporting and supplementing the Commission's proposals.

In addition, in spite of the repeated calls from the Council²⁴ the ratification of the Convention of 26 July 1995 concerning the protection of the financial interests of the European Communities²⁵ and the additional protocols to it is behind schedule, which harms effective cooperation within the Union. To accelerate the entry into force of these provisions, the Commission adopted a proposal for a Directive concerning the criminal protection of the Community's financial interests²⁶. It aims to include in an instrument based on new Article 280 of the EC Treaty all the provisions of the Convention and its protocols which relate to the definition of offences, liability,

²¹ Additional Commission contribution to the Intergovernmental Conference on Institutional Reform - *The Criminal Protection of the Community's Financial Interests: a European Prosecutor*, 29.9.2000, COM (2000) 608 final. This contribution supplements the opinion of the Commission under Article 48 of the Union Treaty on the meeting of a conference of the representatives of the governments of the Member States with a view to amending the Treaties, *adapting the institutions to make a success of enlargement*, of 26.1.2000, COM (2000) 34).

²² Green Paper on the criminal protection of the Community's financial interests and the establishment of a European Prosecutor, 11.12.2001 (COM (2001) 715 final). The site devoted to the green paper is as follows: http://europa.eu.int/olaf/livre_vert.

²³ Resolution of 16.5.2000 on the Commission Annual Report for 2000 (OJ C 59, 23.02.2001), and Resolution of 14 March 2001 on the Commission Annual Report for 1999 (OJ C 343, 5.12.2001), asking the Commission to present such a proposal before 1 June 2001.

²⁴ As in its conclusions of 17.7.2000 and its conclusions on the occasion of the Discharge 2000,

²⁵ Council Act of 26 July 1995 drawing up the Convention on the protection of the financial interests of the European Communities (OJ C 316, 27.11.1995).

²⁶ Doc.COM(2001)272 final (OJ C240E of 28.08.01) adopted on 23.05.01.

penalties and cooperation with the Commission The European Parliament²⁷ approved the Commission's proposal, that was also endorsed by the European Court of Auditors²⁸. It is now for the Council to examine the proposal of the Commission.

A permanent structure for judicial cooperation was set up (EUROJUST²⁹) and the decision was taken to extend EUROPOL's remit to serious forms of international crime.³⁰ The relationship between the respective powers of EUROPOL and OLAF in the fight against certain forms of economic and financial crime is to be determined by a cooperation agreement between the two bodies. The institutions welcomed the establishment of Eurojust to review investigations and facilitate proceedings in the national courts. Regarding the substance of the matter, the Commission expressed a clear opinion in the Council's subordinate bodies as to the importance of organising the close and regular cooperation provided for by the Treaty (Article 280) with the national prosecution authorities and cooperation with Eurojust.³¹ The magistrates' unit in OLAF is specifically responsible for this.

In addition, major progress was made with the *strengthening of judicial cooperation, in particular in criminal matters*. Political agreement was reached on the implementation of the principles of mutual recognition of judgements (civil and criminal) and of harmonisation of criminal law in the priority fields identified by the Tampere Summit (point 48 of the conclusions). The Commission presented proposals for framework Decisions on the European arrest warrant³² and the harmonisation of the criminal law as regards trafficking in drugs³³ and terrorism³⁴ (definitions of offences, common penalties). In addition, in the context of action to combat the financing of terrorism and financial crime, a framework Decision on the freezing of assets and assets deserves highlighting³⁵.

1.4. In the interinstitutional **fight against corruption**, it is important to maintain a sound relationship between OLAF's main tasks under the legislation and of the current disciplinary and financial reforms (Staff Regulations, and Recast of the Financial Regulation). In this context, the investigation and discipline mechanism will be complete only after 2001: while in early 2002, the Commission created an

²⁷ Legislative Resolution of 29.11.2001 on the proposal for a Directive of the European Parliament and the Council on the criminal-law protection of the Community's financial interests (doc. A5-390/2001, not yet published in the OJ).

²⁸ Opinion No 9/2001 of 8.11.2001 on a proposal for a Directive of the European Parliament and of the Council on the criminal-law protection of the Community's financial interests (OJ C 14, 17.01.2002).

²⁹ Council Decision 2002/187/JAI of 28.02.2002 establishing Eurojust to strengthen the fight against the serious forms of crime (OJ L63, 6.3.2002), in particular Article 11.

³⁰ Council Decision of 6.12.2001 (OJ C 362, 18.12.2001).

³¹ Commission Declaration 39/02 on Article 4, para.1.b), 2nd indent and Article 26(3) of Decision 2002/187/JAI.

³² Proposal for a Council Framework Decision concerning the European arrest warrant and surrender procedures between Member States [COM(2001) 522 final - OJ C 332 E, 27.11.2001]. The Council reached a political agreement on this subject in December 2001.

³³ Proposal for a Council Framework Decision drawing up minimum provisions concerning the constituent components of criminal offences and the applicable penalties in the field of the drug trafficking [COM(2001) 259 final, OJ C 304 E, 30.10.2001].

³⁴ Proposal for a Council Framework Decision concerning the fight against terrorism [COM(2001) 521 final, OJ C 332E, 27.11.2001].

³⁵ Initiative by the governments of the French Republic, the Kingdom of Sweden and the Kingdom of Belgium for the adoption of a Council Framework Decision concerning the implementation in the European Union of orders freezing assets or evidence (OJ C 75, 7.3.2001).

Investigation and Disciplinary Office, the necessary amendments to the disciplinary rules in the Staff Regulations are due to be adopted in 2003³⁶. The recast of the Financial Regulation, adopted on 25 June 2002, provides for the creation of an instance specialised in questions regarding financial irregularities³⁷ which will further assist enquiries into potential financial irregularities without infringing on OLAF's specific role in relation to fraud and serious professional wrong-doing.

Internal administrative investigations will be strengthened by the involvement of the magistrates, which will also secure the protection of individual rights. All the institutions should now, therefore, be in a position to comply fully with Article 7 of Regulation No 1073/99 (exchange of information)³⁸. These measures are likely to satisfy the concern expressed by Parliament and the Council³⁹. In addition, the scope of the internal investigations has been clarified by the Community courts⁴⁰.

2. EXAMPLES OF INTERNAL AND EXTERNAL COOPERATION AND PARTNERSHIP WITH THE NATIONAL AUTHORITIES

Commission.

The added value resulting from the synergy between dispersed sources of information in the Community and the broad scope of OLAF's action are illustrated below by examples of investigations and by the Commission's actions in preparation for enlargement..

2.1. Sugar export to the OCT⁴¹ and reimportation of sugar and sugar mixtures into the European Community.

The Commission launched investigations to prevent a threatened malfunctioning of the common organisation of the market in sugar and a diversion of the objectives of the common commercial policy with certain OCT.

OLAF and the Dutch and Belgian authorities carried out an investigation in Aruba in November 1999 concerning exports of sugar originating in the European Community, on which export refunds were paid, reimported into the Community less

³⁶ Proposal for a Council Regulation amending the Staff Regulation of officials and the conditions of employment of other servants of the European Communities (COM (2002) 213 final of 24.4.2002, annex IX, Sections 1 and 2.). Constitution of an Office of Investigation and of Discipline within the Commission (Commission decision on the conduct of administration inquiries and disciplinary proceedings adopted on 19 February 2002 (DOC.C(2002)540)).

³⁷ Article 66, para.4 of the new Financial Regulation and the constitution of an office of investigation and of discipline within the Commission.

³⁸ OJ L 136, 31.5.1999.

³⁹ Resolution on the Commission Annual Report for 2000. In its Resolution on the Commission Annual Report for 1999, Parliament pointed out the need for the OLAF "to obtain the unreserved cooperation of the staff and institutions of the European Union, and the police and judicial authorities of the Member States". Conclusions of the Economic and Financial Affairs Council of 7.5.2002, Conclusions of the European Council of 15 June 2001 (Doc. 9270 FIN169) and of the Economic and Financial Affairs Council of 17.7.2000 (Doc. 10344/00 FIN273).

⁴⁰ See the Court of First Instance's ruling in Case T-17/00 (" Rothley et al. / Parliament ") of 26.2.2002.

⁴¹ Non-European overseas countries and territories which maintain specific relations with Denmark, France, the Netherlands and the United Kingdom (Greenland, Aruba, etc...) cf. Annex II to the EC Treaty.

than two years later in the form of sugar and a mixture of sugar and Aruba cocoa powder.

The investigation revealed that 4 500 tonnes of sugar had been exported with refunds from Belgium and France to Aruba. The processing operations in Aruba (the sugar was cleaned and mixed with cocoa powder) do not constitute substantial processing justifying payment of export subsidies.

The Commission consequently asked the Belgian and French authorities to initiate proceedings for recovery of the unduly paid export refunds in accordance with Community case law (2 million euro in Belgium and 300 000 euro in France).

In addition, OLAF launched investigations into C quota sugar (sugar exported without right to refund) exported to the OCT.

The findings of these investigations prompted the Commission to adopt safeguard clauses on the rules governing Community imports of sugar originating in the OCT.⁴²

2.2. Abuse of the dairy quota systems.

OLAF was informed of allegations concerning a possible abuse of the system of milk quotas in Spain and of information concerning several Spanish companies allegedly involved in this irregular activity. On the basis of this information, an external investigation was opened and an action plan was agreed for a series of administrative on-the-spot checks and inspections into certain economic operators on the basis of the Council Regulation (EC, Euratom) No 2185/96.

During these checks and inspections, some of the firms refused to comply with OLAF's request for copies of data on hard disk. In accordance with Article 9 of the Regulation No 2185/96, which requires the Member State concerned according to the national provisions to provide OLAF with the assistance it needs to carry out its functions, the Spanish Payment Agency (FEGA) was asked to take the appropriate measures.

After obtaining the authorisation of the Spanish judicial authorities, the complete computer data were copied, giving access in particular to figures on these companies' real production and sales of milk and milk products.

On the basis of the objective evidence obtained and set out in the final report of OLAF's investigation, fraud against the Community budget was estimated at more than 6 million euro. This report was sent to the FEGA for it to launch the administrative procedures for recovery of this amount and to the special anti-corruption Prosecutor's office in Spain, on grounds of suspected false production and sales records. The report also shows that similar practices were followed by other Spanish firms, and the Spanish authorities have been asked to redefine their routine controls in order to remedy these weaknesses in the general control system.

This case is an eloquent example of the value added by OLAF to a Member State's action against fraud, by concentrating its multidisciplinary expertise (investigations,

⁴² Commission Regulation (EC) No 2423/1999 of 15.11.1999 (OJ L 294, 16.11.1999) and Commission Regulation (EC) No 465/2000 of 29.2.2000 (OJ L 65, 1.3.2000).

computer analysis of the evidence, judicial advice) on a fraud case with many facets. The advice given by the magistrates' unit was vital for obtaining the requisite court order in the Member State for access to the companies' computer files. A major share of the merit should be attributed to the Spanish authorities whose aid proved valuable in this case, proving beyond doubt what can be achieved when OLAF and Member States work together and take advantage of all the obligations and investigation possibilities under the European regulations.

2.3. Investigation for alleged forgery and fraud by a group of NGOs (non-governmental organisations)

The success of OLAF's investigations, in particular with regard to investigations concerning direct expenditure, depends both on the information collected and, to a large extent, on the high degree of cooperation with the Member States. The following case is a typical example of the difficulties in this field, and in particular that of judicial cooperation between Member States.

In August 1999, OLAF was informed by a Member State of a suspicion of dual national and Community financing of projects in developing countries. The financing requests were submitted to various donors by various non-governmental organisations in two Member States. The Ministry for Foreign Affairs at the source of the information filed a complaint with the relevant prosecution service.

In autumn 1999, OLAF started investigations and highlighted a first series of 16 projects where there was a risk of dual financing (Asia, Africa and South America), for which applications were being or had been examined by EuropeAid.

In November 1999, in accordance with Regulation (EC) No 1073/99, the Director-General of OLAF referred a case to the prosecution service in one of the Member States concerned. Searches conducted by the local authorities in February 2000 showed that the NGO acted on instructions given by the parent NGO located in a third Member State.

Searches at the beginning of December 2000 at the head office of the parent NGO in the presence of OLAF confirmed the suspicions. The double financing of the 16 projects identified at the start was estimated at US\$ 4 262 633 (not counting financing agreed by the Community but blocked following OLAF's investigation). Moreover, the authorities of the third Member State stated that they could not prosecute on account of legal difficulties.

In addition to the intensity of the efforts made by each of the national authorities involved, the role that the OLAF had to assume since 1999 must be stressed:

- analysing and identifying the multilingual projects suspected of being over-financed, sometimes with other donor bodies located outside the European Union (Worldbank, ADB,⁴³ Norway, etc.), while mobilising the delegations of the Commission in non-member countries; and identifying documents during searches at the parent NGO;

⁴³ African Development Bank.

- making the national judicial authorities aware, ensuring coordination between them, providing the necessary legal advice and technical assistance (translations of reports, projects, etc.);
- coordination within the Commission on the situation of the case for the question of joining civil proceedings to the criminal prosecution.

In this case cooperation between the Commission and the national criminal prosecuting authorities made it possible to pursue a fraud at EU level in spite of the legal difficulties which had appeared in the country of the parent associations. However, it was necessary to OLAF to suggest centralising the proceedings at the judicial authorities in one of the Member States concerned and that these agree to take the case over from the other national investigation authorities, with their agreement and support. If this had not been done, the investigation would have stopped. This file demonstrates the need to remedy the dispersal of investigations and prosecutions in the European Community and the obstacles raised by the fragmentation of the European criminal law-enforcement area. In the light of this experience and many others, the Commission considers it is necessary to make serious progress on the ideas in the Green Paper on the criminal protection of the Community's financial interests and the establishment of a European Prosecutor.

2.4. Past experience in the applicant countries: Poland

OLAF, in conjunction with Poland, prepared a PHARE project to help with the establishment of an inter-ministerial anti-fraud structure. The implementation of this project began in January 2001. The prime objective was to create an anti-fraud coordination service that is at the same time specialised, independent and multidisciplinary, to enhance the Polish authorities' operational capacities. In addition, activities launched in the first year of this biannual initiative improved awareness of the fight against fraud among the responsible authorities in Poland. This coincides with the government's overall objectives of improving transparency and the integrity of the Polish public sector and of guaranteeing effective protection of Community funds.

The complexity of the Polish administration, the constant changes in its structure for accession and the successive amendments made to Polish legal and administrative provisions do not make it easy to give effect to such a project quickly. Nevertheless, Union financial support is a major factor in helping the Polish authorities to increase their capacity to combat fraud against the Community budget. Follow-up projects are consequently planned.

These difficulties, most of which are local, do not all apply in all the applicant countries. But the Polish experience once again highlights the need for permanent investment in training and proper working conditions in the applicant countries, including the development of effective computer systems to support anti-fraud activities aimed at protecting the Communities' financial interests. It has also shown that effective and equivalent protection of the Communities' financial interests in the applicant countries can be guaranteed only by tried and tested internal coordination arrangements between all the authorities concerned with the management, implementation or financial control of European Union financing.

3. MONITORING THE 2001-2003 ACTION PLAN

The Commission is presenting here an interim report on the implementation of the Action Plan for the Protection of the financial interests of the Communities and the fight against fraud for 2001-2003. The aim of this report is to show how the projects provided for 2001 were actually executed, in compliance with the need to attain the broad objectives laid down by the Strategic Approach of June 2000.

Progress in the measures provided for in the Action Plan is set out in tabular form⁴⁴. It indicates the relevant elements in terms of compliance with the tentative timetable, the pilot services and, where appropriate, the identification of legal or other instruments.

⁴⁴ The table does not show the projects for which no step is planned in 2001. As regards the columns of the table:

- the first two columns point out the objective and the action appearing in the action Plan as adopted in May 2001;
- the third column identifies the lead Directorate-General,
- the fourth column indicates if and how the objective was reached; the elements of follow-up make it possible to exceed the strictly annual horizon of the table,
- the fifth column provides, if necessary, a brief explanation of the conditions of implementation and of the impact of the initiative.

Objectives	Actions	Lead Dept.	Implementation and follow-up	Comments
1 AN OVERALL ANTI-FRAUD LEGISLATIVE POLICY				
1.1. Develop a culture of prevention and strengthen regulations				
<i>1.1.1. Fraud proofing of legislation and of the management of contracts</i>	Preliminary analysis of certain new legislative initiatives (Action 94 of the White Paper on Reform)	OLAF, with the help of a specifically created interdepartmental group (legislation aspect) BUDG with the help of OLAF and the Legal Service	Deadline for action 2001 respected On 7 November 2001, the Commission adopted its Communication on fraud proofing of legislation and of the management of contracts (SEC(2001) 2029). The year 2002 will be devoted on the one hand to implementation at the level of the services of this legislation aspect of the communication (preventive examination mechanism by OLAF, of sensitive legislative proposals). On the other hand, standard public procurement contracts, standard aid conventions and a central database for contracts and contractors will be provided to the Commission services. In all cases, the Legal Service and OLAF should be involved at the earliest possible stage of the procedure.	This action concerns the reinforcement of legislative initiatives in all fields of the Community Budget (own resources and expenditure) from a fraud proofing perspective, on the basis of a selection by OLAF and the specific interdepartmental group. It also covers contract aspects, namely : – all expenditure directly managed by the Commission and its services; – certain types of contractors and operators, mainly the recipients of subsidies under the Community programmes.
<i>1.1.2. Greater security for key sectors</i>	Development of an information system on the procedures for the exclusion of non-reliable operators from public contracts, implementing article 46 of the draft Directive on public contracts of May 2000	MARKT, OLAF, BUDG, JAI	Action ongoing	Two proposals for a Directive from 10 of May 2000 are being studied within the Council COM(2000)275 final of 10.5.2000 (OJ C 29 E of 30.01.2001). An important aim is in particular to improve information between the Member States on the decisions on the exclusion of non-reliable operators (tenderers convicted for participation in a criminal organisation, corruption or fraud detrimental to the Communities' financial interests.). The first reading by Parliament was put back to 2002. The adoption of Article 46 is a precondition to the setting up of the system.

Objectives	Actions	Lead Dept.	Implementation and follow-up	Comments
1 AN OVERALL ANTI-FRAUD LEGISLATIVE POLICY				
1.1. Develop a culture of prevention and strengthen regulations				
	Protection of the euro against counterfeiting: co-operation strengthened between the Member States, the Commission, the ECB and Europol	OLAF, ECFIN, JAI, SJ, ECB, Europol	<p>Objective achieved</p> <p>The Council adopted Regulations (EC) 1338/2001 (laying down measures necessary for the protection of the euro against counterfeiting) and 1339/2001 (extending the effects of Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency) on 28.6.2001 (OJ L 181 of 4.7.2001).</p> <p>Follow-up:</p> <ul style="list-style-type: none"> – monitoring the measures taken by the Member States for the application of Article 6 of Regulation 1338/2001, on the obligations of credit institutions; – implementation of Article 9 of Regulation 1338/2001, on cooperation with third countries and accession countries; – publication in the Official Journal of the lists of the responsible national authorities, provided for in Article 10 of Regulation 1338/2001. 	<p>This action aims at reducing the circulation of counterfeit euro and at enhancing the effectiveness of the fight against the counterfeiting.</p> <p>Its beneficiaries are the services responsible for the detection of counterfeiting information services and central bank representatives, or any other professional class concerned, including in the Member States which are not part of the euro zone.</p>

Objectives	Actions	Lead Dept.	Implementation and follow-up	Comments
1 AN OVERALL ANTI-FRAUD LEGISLATIVE POLICY				
1.1. Develop a culture of prevention and strengthen regulations				
<i>1.1.2. Greater security for key sectors</i>	Training, programme for exchange and assistance	OLAF, ECFIN	<p>Objective achieved</p> <p>The Council adopted Decisions 2001/923/EC and 2001/924/EC on 17.12.2001 (OJ L 339 of 21.12.2001).</p> <p>Follow-up: implementation of the programme; selection and financing of the programmes</p>	<p>Council decision 2001/923/EC establishes an exchange, assistance and training programme, for the protection of the euro against counterfeiting ("Pericles" programme). Council Decision 2001/924/EC extends the effects of the decision establishing the "Pericles" programme to the Member States which did not adopt the euro as a single currency.</p> <p>The financial reference amount for the implementation of the Pericles programme for the period 1 January 2002 – 31 December 2005 is set at 4 million euro.</p>
	Setting in place and development of the role of the European scientific and technical Centre for the protection of the euro	OLAF, ECFIN	<p>Objective achieved</p> <p>The ECOFIN Council and the Member States agreed, on 28 February 2000, on a technical scheme for handling counterfeit coins, involving notably the establishment of:</p> <ul style="list-style-type: none"> – national analysis centres (national coin analysis centres – CNACs) linked with a database at the European Central Bank (ECB) – The European Technical and Scientific Centre (ETSC), responsible for analysis and classification of new classes of counterfeit euro coins. <p>On the basis of an exchange of letters between the President of the Council and the French Minister, the Centre was temporarily established at the Paris Mint from October 2001.</p>	<p>Member States and the ECB complied with the commitments taken.</p> <p>The ETSC is managed by two Commission (OLAF) officials.</p>

Objectives	Actions	Lead Dept.	Implementation and follow-up	Comments
1 AN OVERALL ANTI-FRAUD LEGISLATIVE POLICY				
1.1. Develop a culture of prevention and strengthen regulations				
	Prevention of fraud and counterfeiting of the means of payment other than cash	MARKT, JAI	<p>Objective achieved</p> <p>On 9.2.2001, the Commission adopted a Communication and Action Plan on prevention, fraud and counterfeiting the means of payment other than cash (COM (2001) 11 final).</p> <p>Implementation is foreseen by the end of 2003.</p> <p>A group of experts at EU level was established to assist the Commission in overseeing the implementation of the Plan, discuss new fraud prevention issues and identify further preventive measures. The Group includes representatives of banks, ministries, Central banks, law enforcement agencies (including Europol and Interpol), retailers, consumer groups and network operators.</p> <p>A Working Group composed of enforcement bodies and professionals in payment systems was established within the Forum on the prevention of organised crime⁴⁵.</p>	<p>The action plan envisages actions in the following sectors:</p> <ul style="list-style-type: none"> – technological improvements; – exchange of information; – training programme, educational equipment and cooperation; – other fraud prevention measures; – relations with non-Member countries. <p>These actions will proceed in partnership with all parties concerned, such as governments, banks, traders, holders of payment instruments.</p>

⁴⁵ See http://europa.eu.int/comm/justice_home/news/forum_crimen/workshop/en/workshp2_1_en.html

Objectives	Actions	Lead Dept.	Implementation and follow-up	Comments
1 AN OVERALL ANTI-FRAUD LEGISLATIVE POLICY				
1.1. Develop a culture of prevention and strengthen regulations				
<i>1.1.3. Involving the candidate countries in fraud prevention</i>	Creation of anti-fraud structures within the candidate countries, strengthening of controls	ELAR, OLAF, BUDG	<p>Objective partly achieved</p> <p>New standard anti-fraud clauses have been adopted for the PHARE financing proposals.</p> <p>Anti-fraud coordination structures or services, responsible for the coordination of all legislative, administrative and operational aspects of the protection of the Communities' financial interests, have been designated or established in several applicant countries (Hungary, Czech Republic, Slovak Republic, Poland) in 2001.</p> <p>Other applicant countries are assisted with the establishment or designation of similar anti-fraud coordinating structures or services.</p>	<p>These measures are aimed at associating the candidate countries in fraud prevention, in order to ensure effective and equivalent protection of the Community's financial interests in the future Member States, not only after accession but also during the pre-accession period.</p> <p>Total amount of aid provided for in 2002 under the three pre-accession instruments (Phare, Ispa and Sapard) for all the candidate countries amounts to 3.349 million euro in appropriation funds (General Budget of the European Union for the Financial Year 2002, OJ L 29 , 31.1.2002).</p>

Objectives	Actions	Lead Dept.	Implementation and follow-up	Comments
1 AN OVERALL ANTI-FRAUD LEGISLATIVE POLICY				
1.1. Develop a culture of prevention and strengthen regulations				
<i>1.1.4. Involving trade circles in prevention</i>	Awareness-raising, on the model of the Charter for the fight against organised crime of 27.7.1999	OLAF, JAI	<p>Action ongoing</p> <p>On 17/18 May 2001, the Commission launched the EU Forum on the prevention of the organised crime.</p> <p>Two meetings were held, respectively on 17/18 May 2001 and 30 October 2001.</p> <p>Follow-up: launching of Pilot projects, training, awareness-raising and studies on the prevention of criminality (cf. Communication COM(2000) 786 final of 29.11.2000).</p> <p>In the Forum's workshop on the role of the private sector in the prevention of economic and financial criminality⁴⁶, the Charter was presented as an example of the "practice of excellence", with its implementation by the European association of conveyancing solicitors.</p>	<p>This action aims to associate professional circles and private companies, the academic world and civil society with the prevention of organised crime.</p> <p>With regard to the Charter, its implementation by the conveyancing solicitors is satisfactory, the other groups received two reminders to report on progress at European and national level; accountants and auditors sent questionnaires, the answers to which are awaited from the tax consultants and lawyers.</p>

⁴⁶ http://europa.eu.int/comm/justice_home/news/forum_crimen/workshop/en/workshop3_1_en.html

Objectives	Actions	Lead dept.	Implementation and follow-up	Comments
1. AN OVERALL ANTI-FRAUD LEGISLATIVE POLICY				
1.2. Strengthen means of detection, controls and sanctions				
<i>1.2.1. Improving detection and control in the financial field, including at international level</i>	Computerisation of the movements and controls of products subject to indirect taxes	TAXUD	<p>Deadline for action respected</p> <p>The Commission has adopted a Proposal for a Council Decision, based on Article 95 of the EC Treaty [COM (2001) 466 final of 19.11.2001 (OJ C 51E of 26.2.2002)].</p>	<p>The objective of this measure is to replace the existing paper-based system with a computerized system for monitoring the movement of excisable goods. Such a system will allow Member States to obtain real-time information on those movements and to carry out the requisite checks, including checks during movement of products.</p> <p>The setting-up of a computer system should also allow the intra-Community movement of goods under suspension of excise duties to be simplified.</p>
	Conclusion of a cooperation agreement with Switzerland covering the fight against fraud	OLAF, RELEX	<p>Action ongoing</p> <p>On 14 December 2000, the Council gave a negotiating mandate to the Commission.</p> <p>Contacts are entertained on a regular basis with the Swiss authorities.</p> <p>The Commission will continue the negotiations.</p>	<p>This action aims at establishing a legal framework for the introduction and acceptance of requests for administrative and judicial mutual assistance, in order to avoid refusal of judicial assistance for tax and customs matters and delays of up to three years in assistance procedures.</p> <p>The Swiss authorities have so far adopted a restrictive position in the negotiations.</p>

Objectives	Actions	Lead dept.	Implementation and follow-up	Comments
1. AN OVERALL ANTI-FRAUD LEGISLATIVE POLICY				
1.2. Strengthen means of detection, controls and sanctions				
<p><i>1.2.2. Improving financial follow-up and penalties</i></p>	<p>Implementation of the Communication to the Commission of 13.12.2000 on Action 96 of the White Paper on recovery of unduly paid funds (SEC (2000) 2204</p>	<p>BUDG, OLAF, ADMIN, AGRI, REGIO, EMPLOI, RELEX, SJ</p>	<p>Objective partly achieved</p> <p>On 25/06/2002, the Council is to adopt the new Financial Regulation . The Commission should then adopt its proposal for a Commission Regulation laying down the Implementing rules of the new Financial Regulation by the end of July 2002, to be submitted to all the other institutions and finally enter into force on 01/01/2003 along with the new Financial Regulation.</p> <p>On 21 November 2001, the Commission adopted guidelines on the application of the principle of proportionality to the waiving of recovery of debts (SEC(2001) 1857 final), partly amending the 2001 internal rules on the implementation of the budget. This amendment is now consolidated in the Internal rules for 2002 adopted on 08/04/2002</p> <p>A Draft Commission Decision on the consolidation and revision of provisions for internal procedures on the recovery of debts as regards direct expenditure has been prepared.</p> <p>Other regulatory aspects of recovery will be addressed, such as enhancing related information technology tools.</p> <p>A further Communication on recovery matters is expected in the second semester of 2002.</p>	<p>This action concerns all authorising, accounting and managing services insofar as direct expenditure is concerned. It aims at improving financial follow-up and sanctions in order to:</p> <ul style="list-style-type: none"> - reinforce the automatic nature of the establishment of recovery orders for any certain liquid debt due; - enhance the effectiveness of means of recovery by compensation and use of enforced recovery - clarify on this occasion the role of the various actors

Objectives	Actions	Lead dept.	Implementation and follow-up	Comments
1. AN OVERALL ANTI-FRAUD LEGISLATIVE POLICY				
1.2. Strengthen means of detection, controls and sanctions				
	Action 97: improved financial monitoring and control of structural funds	REGIO	<p>Objective achieved</p> <p>On 7 August 2001, the Commission adopted its Communication C(2001) 2517 concerning administrative reform of the Commission : Action 97 - improved financial monitoring and control of structural funds.</p>	<p>In 2000, the Member States communicated cases of fraud and irregularities in this field amounting to 114.2 million euro (Annual Report 2000 on the protection of the Communities' financial interests and the fight against fraud, COM (2001) 255 final of 23.5.2001).</p> <p>Regulations (EC) 438/2001 and 448/2001, which provide for the separation of the management and control tasks and the acceleration of financial corrections, have been adopted.</p>
	Integration of administrative measures and sanctions in the field of direct expenditure	OLAF, INFSO, RDT, other Services	<p>Action ongoing</p> <p>This initiative raises several legal questions, i.e. concerning the scope of new rules and procedural aspects.</p> <p>Concerning Actions 73 (Advice on contracting), 74 (Contracts database) and 94 ("Fraud proofing" of legislation and contract management), a process of revision of contracts is under way in order to include clear clauses for the protection of financial interests (standard clauses, concerning checks and sanctions, making them more effective).</p>	<p>This measure aims to provide the possibility to impose administrative measures and sanctions in the field of direct expenditure.</p>

Objectives	Actions	Lead dept.	Implementation and follow-up	Comments
2. NEW COOPERATION CULTURE				
2.1. Setting-up of a Community service platform				
<i>2.1.1. Rationalising and making better use of cooperation structures</i>	Examination of the services that the Commission/OLAF can give within the framework of its missions to those involved in the protection of financial interests	OLAF	<p>Objective not yet achieved :</p> <p>The consolidation of the Office was still ongoing in 2001. Therefore, an exhaustive inventory of supplies and services that the Commission (OLAF) can offer could not be delivered.</p> <p>This inventory, currently ongoing, will be discussed, once finalised, with the Member States in 2002. Conclusions with regard to the setting up of this service platform and cooperation between OLAF, the Member States and the other Institutions will be drawn up.</p>	<p>This action is aimed at the rationalisation and enhancement of the cooperation structures, as well as at the identification of synergies with regard to:</p> <ul style="list-style-type: none"> – exchange of information and the activity of intelligence in cooperation with the national specialised services; – investigation activity; – Community advice and assistance, in particular at legislative, legal and political level.
	Reinforcement of the current coordination structures	OLAF	<p>Evaluation ongoing</p> <p>Follow-up: amendment of the Commission Decision 94/140/EC establishing the CoCoLaF (the Advisory Committee for the Coordination of Fraud Prevention (OJ L 61 of 4.3.94) is planned for the second half of 2002.</p>	The main objective of this measure is to improve cooperation with the national administrations and cooperation bodies.

Objectives	Actions	Lead Dept.	Implementation and follow-up	Comments
2. NEW COOPERATION CULTURE				
2.2. Developing a closer partnership with Member States				
2.2.1. <i>Reinforcement of cooperation to prevent and combat money laundering and VAT and customs fraud</i>	Assistance and mutual information between the Commission and the Member States to protect the financial interests of the Community against illegal activities	OLAF, TAXUD, MARKT, JAI	Work ongoing The issue is under examination.	The aim is to provide a framework for a cooperation mechanism between the competent national authorities of the Member States and the Commission with a view to ensuring the protection of the financial interests of the Communities against illegal activities.
	Administrative cooperation between the Member States and mutual assistance.	TAXUD	Deadline for action respected On 18 June 2001, the Commission adopted a proposal for a Regulation of the European Parliament and of the Council on administrative cooperation in the field of value added tax (COM (2001) 294 final, OJ C 270E, 25.9.2001).	The draft Regulation aims to enhance mutual assistance between Member States in VAT matters and to provide a sound legal basis for operational cooperation between the Member States.

Objectives	Actions	Lead Dept.	Implementation and follow-up	Comments
2. NEW COOPERATION CULTURE				
2.2. Developing a closer partnership with Member States				
<i>2.2.2. A policy of evaluation and forward planning</i>	Inventory of the new measures of the Member States in 1999-2000	OLAF	<p>Deadline for action respected</p> <p>The Annual Report 2000 on the protection of the Communities' financial interests and the fight against fraud, COM(2001) 255 final of 23.5.2001) provided for by Article 280-5 of the EC Treaty summarises both the Community initiatives and the measures taken by the Member States and presents the major fraud trends, broken down by Community policy.</p> <p>Future actions by the Commission are foreseen in its Action Plan 2001 – 2003 on the protection of the Communities' financial interests and the fight against fraud of 15.05.2001 (COM(2001) 254 final).</p>	<p>The aim of the Annual Report and the Action Plan is to provide a policy of evaluation and long-term planning and present an overall image of the efforts of those involved in the protection of financial interests.</p> <p>As from 2001, the Commission ensures a follow-up and an update of its Action Plan via its Annual Report on the protection of the Communities' financial interests.</p>
	Annual evaluation of the operational activities of OLAF	OLAF	<p>Deadline respected</p> <p>The Report provided for in Articles 11 and 12 of Regulations n° 1073/1999 and 1074/1999 (Official Journal L 136 , 31.5.1999) was communicated to the institutions on 18.10.2001.</p>	The Annual Activity Report forms an essential part of OLAF's policy of evaluation and long-term planning.
	Definition of OLAF's operational priorities	OLAF	<p>Action ongoing</p> <p>The definition of OLAF's operational priorities can follow the establishment of an actual intelligence capacity in the Office. The intelligence structure was set up in 2001.</p>	

Objectives	Actions	Lead Dept.	Implementation and follow-up	Comments
3. AN INTER-INSTITUTIONAL APPROACH TO PREVENT AND COMBAT CORRUPTION				
3.1. Make all agents of the institutions aware of the principles of sound project management				
<i>3.1.1. Improving coordination and cooperation between OLAF and other Commission departments</i>	Conclusion of protocols between OLAF and the specialised financial services (Action 93 of the White Paper)	OLAF, IAS, SG, CFS, ADMIN (IDOC), other Services	Action ongoing A Protocol between OLAF and the Commission's Internal Audit Service (IAS), describing their respective areas of activity and the specific level of independence under which each service operates, was signed on 25.7.2001. It defines the fields for exchange of information and expertise while respecting the respective missions and the independence of each service (internal investigations/checks as defined by Regulations 1073/99 and 1074/99).	This measure aims to reinforce cooperation between OLAF and the other Commission departments.
<i>3.1.2. Drawing up guidelines for sound financial management (Action 92)</i>	Typology of risky behaviour	OLAF, IAS, BUDG, SG, ADMIN	Action ongoing The Practical Guide to prevent any conduct prejudicial to the financial interests at different stages of programmes and projects should be adopted in Summer 2002.	This action is aimed at awareness-raising and prevention of risky behaviour of officials, servants and members of the Commission.
	Training plan, codes of conduct	OLAF, IAS, BUDG, ADMIN, SG	Fusion with the above-mentioned action Cooperation between the services will be implemented in order to incorporate the protection of the Communities' financial interests and sound financial management into training programmes.	

Objectives	Actions	Lead Dept.	Implementation and follow-up	Comments
3. AN INTER-INSTITUTIONAL APPROACH TO PREVENT AND COMBAT CORRUPTION				
3.2. Improve the legal framework of the administrative investigations				
<p>3.2.1. <i>Reforming disciplinary procedures (Actions 57 and 58)</i></p>	<p>Adaptation of administrative practices, amendment of the disciplinary rules laid down in the Staff regulations</p>	<p>ADMIN (IDOC), OLAF, SG</p>	<p>Objective achieved</p> <p>The Commission adopted a Proposal for a Council Regulation amending the Staff Regulation for officials and other servants of the EC (COM(2002) 213/3) on 24.4.2002.</p> <p>A legal base was introduced in the recasting of the Financial Regulation for an Advisory Instance on financial irregularities (Action 66 of the White Paper on the Reform).</p> <p>On 19.2.2002, the Commission adopted Decision C (2002) 540 concerning the conduct of the administrative investigation and disciplinary proceedings.</p>	<p>The main objective of the proposal to amend the Staff Regulations is to reform the disciplinary proceedings (Actions 57 and 58), in order to:</p> <ul style="list-style-type: none"> – increase the efficiency and speed of the administrative enquiries and disciplinary proceedings; – strengthen prevention and transparency with regard to disciplinary matters.

Objectives	Actions	Lead Dept.	Implementation and follow-up	Comments
4. THE ENLARGEMENT OF THE PENAL JUDICIAL DIMENSION				
4.1. Ensure the follow-up of the Commission communication on the penal protection of the Community's financial interests				
<i>Reviving the debate on the criminal law protection of financial interests</i>	Continuation of reflection on the methods of implementation of a European Public prosecutor for the Protection of the financial interests	OLAF, JAI	<p>Objective achieved</p> <p>The Green paper announced in Commission communication of 29.09.2000 (COM(2000) 608) was adopted by the Commission on 11.12.2001 (COM(2001) 715).</p> <p>Various meetings on this topic have taken place at national level in 2002;a public hearing is scheduled in Brussels, in mid-September 2002.</p> <p>Reactions to the public consultation are in the process of being collected and analysed (deadline for comments: 1 June 2002).</p> <p>On the basis of the answers received, the Commission will establish a synthesis of the debate and will submit a new contribution by early 2003, within the framework of the preparation of the amendment of the Treaties.</p>	

Objectives	Actions	Lead Dept.	Implementation and follow-up	Comments
4. THE ENLARGEMENT OF THE PENAL JUDICIAL DIMENSION				
4.1. Ensure the follow-up of the Commission communication on the penal protection of the Community's financial interests				
<p><i>Speeding up the entry into force of legal protection in criminal matters</i></p>	<p>Implementation of certain provisions of the PIF convention and its protocols on the basis of new Article 280 EC</p> <p>Monitoring the protection by criminal penalties and other sanctions against counterfeiting of the euro</p>	<p>OLAF</p> <p>OLAF, ECFIN, JAI</p>	<p>Deadline for action respected</p> <p>A proposal for a Directive concerning the penal protection of the financial interests of the Community (COM(2001) 272 final OJ C 240E 28.08.01) was adopted on 23.5.01 and submitted to the Council and to the European Parliament.</p> <p>The European Parliament adopted its opinion (favourable) in first reading on 29 November 2001, while the Court of Auditors delivered its opinion (favourable) on 8 November 2001.</p> <p>The Commission intends to present an amended proposal in Summer 2002.</p> <p>The joint ECFIN/JAI Council of 16 October 2001 concluded that "a report on the implementation by the Member States of the Council Framework Decision of 29 May 2000 will be submitted to the Council in the near future".</p> <p>The Commission issued a report on 13.12.2001 "based on Article 11 of the Council's framework Decision of 29 May 2000 on increasing protection by penalties and other sanctions against counterfeiting in connection with the introduction of the euro" (COM(2001) 771 final).</p>	<p>This action is aimed at the implementation of the provisions of substantive criminal law (definitions of illegal behaviour, responsibilities and sanctions, cooperation with the Commission) which exist in the third pillar instruments (not ratified).</p> <p>On the basis of the Report, the Council concluded that, in general, Member States complied with the provisions of the framework decision, thus achieving the objective of providing for a more efficient protection against counterfeiting through penal and other sanctions. However, some Member States have not yet complied with some of the provisions.</p>

Objectives	Actions	Lead Dept.	Implementation and follow-up	Comments
4. THE ENLARGEMENT OF THE PENAL JUDICIAL DIMENSION				
4.2. Strengthen cooperation and measures in criminal matters				
<i>Simplifying judicial assistance procedures</i>	Follow-up of the Commission Communication concerning the creation of Eurojust	JAI/OLAF	<p>Objective achieved</p> <p>The Council has adopted Decision setting up Provisional Judicial Cooperation Unit (OJ L 324 of 21.12.2000).</p> <p>The provisional unit (Pro-Eurojust) started its work on 1 March 2001. For an evaluation, see the 2001 report of Pro-Eurojust (Document 15545/01 du 20.12.01).</p>	
	Establishment of the European judicial cooperation unit	JAI/OLAF	<p>Objective partly achieved</p> <p>On 28 February 2002 The Council adopted a Decision setting up Eurojust (OJ L 63 of 6.3.2002).</p> <p>Preparations are under way to install Eurojust in its provisional seat in the Hague.</p> <p>Relations between Eurojust and OLAF as regards operational matters are subject to a memorandum of understanding.</p>	
<i>Stepping up cooperation in criminal matters for the criminal-law protection of financial interests</i>	Vertical cooperation with the Member States in the fight against criminality affecting financial interests	OLAF	<p>Action ongoing</p> <p>An analysis of the technical and operational assistance which the Office can offer to the judicial authorities is underway, in the context of the service platform (see item 2.1.).</p>	

Objectives	Actions	Lead Dept.	Implementation and follow-up	Comments
4. THE ENLARGEMENT OF THE PENAL JUDICIAL DIMENSION				
4.2. Strengthen cooperation and measures in criminal matters				
	Mutual recognition of decisions in criminal matters	JAI/OLAF	<p>Deadline for action respected</p> <p>In November 2000, the Council and the Commission adopted a Programme of measures to implement the principle of mutual recognition of decisions in criminal matters (OJ C 12 of 15.1.2001).</p> <p>For the follow-up of the Programme, see the half-yearly update of the scoreboard of progress achieved for the creation of an "area of freedom, security and justice" in the EU (COM(2001) 628 final of 30.10.2001).</p>	
	Cooperation in police matters (Protection of financial interests)	OLAF, JAI, Europol	<p>Action ongoing</p> <p>On 6.12.2001 the Council adopted a Decision extending the mandate of Europol to serious forms of international criminality listed in the annex of the Europol convention (OJ C 362 of 18.12.2001).</p> <p>Negotiations on a cooperation agreement between the Commission and Europol have been completed. The formal adoption procedures started in Europol and within the Commission.</p>	

Title II: Measures taken by the Member States for the implementation of Article 280 of the EC Treaty

For the second time, collaboration with the Member States, at non-operational level, is reflected in the Annual Report of the Commission on the Protection of the Communities' Financial Interests.

In accordance with Article 280 of the EC Treaty, this second part of the report gives account of the joint efforts of the Member States' administrations in the year 2001 with a view to the protection of the Communities' financial interests. It has been drawn up on the basis of a questionnaire established in co-operation with the Member States. The Commission recognises that the evaluation of the Member States' activities is still far from a genuine comparative analysis, as called for by the European Parliament. However, the Commission largely depends on the information that it actually receives, while providing interpretative elements necessary for a good comprehension by the Member States of their regulatory obligations.

A reflection could be carried out on the complementarity of this work with that on sound financial management which is carried out under the annual discharge procedure. In this connection, the Commission submits a report to the Budgetary Authority on the basis of the Member States' answers to the observations of the Court of Auditors⁴⁷.

This second part of the report opens with an overview of legislative developments in the Member States aimed at implementing Article 280 of the Treaty that have taken place in 2001, followed by two sections devoted to the state of ratification and implementation of the Convention of 26 July 1995 on the Protection of the European Communities' Financial Interests and its protocols.⁴⁸

Information is then provided on the mechanisms in place for internal co-ordination of the control and investigative authorities in each Member State, as well as for cooperation between the competent authorities of the different Member States and between the latter and the Commission.

Information provided by Member States reveals that their organisation is generally consistent with the common objective of the protection of the Communities' financial interests, based on the principle of equivalence laid down in Article 280 of the EC Treaty. However, a fragmented approach, either by policy area, administrative entity or between Member States, may reduce the effectiveness of the prevention of and fight against fraud. In this connection, some Member States have pointed out that coordination could still be improved.

Finally, as in the previous Report, a specific section addresses recovery. In this context, the Commission strives to verify that a good collaboration exists between the judicial and

⁴⁷ Answers of the Member States to the comments of the Court of Auditors in its Annual Report and in its Special Reports. This procedure is in place since the European Council of Dublin in December 1996. In April 2002, at the time of vote on the 2000 discharge, the European Parliament asked the Court of Auditors to evaluate the total cost of the internal and external controls of Community funds, by distinguishing those concerning the Community budget from those concerning national budgets.

⁴⁸ Convention of 26 July 1995 on the protection of the European Communities' financial interests (OJ C 316 of 27.11.95, p. 48) and its additional protocols (OJ C 313 of 23.10.1996, p. 1; OJ C 221 of 19.7.1997, p. 11; OJ C 151 of 20.5.1997, p. 1).

administrative authorities in the Member States in order to ensure an effective recovery of outstanding debts.

The Commission is fully aware that a genuine comparative analysis of the Member States' activities would require, as stressed in previous reports, a closer harmonisation of the concepts of controls and sanctions. In this connection, the Commission is engaged, in the framework of the CoCoLaF, in an exercise aimed at a better definition of these concepts.

4. TEXTS CONTRIBUTING TO THE IMPLEMENTATION OF ARTICLE EC 280 - PRINCIPAL LEGISLATIVE DEVELOPMENTS

The following table lists the main legislative developments aimed at implementing Article 280 of the EC Treaty in 2001. Consequently, it is possible that the table does not mention those Member States which adopted measures of an administrative nature in 2001, or which have witnessed an abundant legislative activity during the preceding period.

4.1. Own resources: principal legislative developments	
Member State	Measure
EL	The new customs code (Act 2960/2001) harmonises national legislation with Community legislation, especially as regards breaches of customs legislation.
F	Article 28-1 of the Code of Criminal Procedure, which authorises certain customs officers to conduct judicial investigations, in particular as regards fraud affecting the Communities' financial interests, has been implemented since December 2001 (offences defined by the Customs Code, and more specifically traditional own resources and agricultural expenditure). The new provision will facilitate the conduct of investigations concerning several Member States. In total, 73 officers have been authorised by ministerial decree to conduct judicial investigations.
IRL	The Customs and Excise (Mutual Assistance) Act of March 2001 gives force of law to the CIS Convention, the Customs Cooperation Convention and other related instruments.
I	Promulgation of a new Legislative Decree (No 68 of 19.3.2001), "Adaptation of the tasks of Guardia di Finanza as laid down by section 4 of Act No 78 of 31.3.2000). This Decree was promulgated in the general framework of the reform of the tasks of police forces, as laid down by Act No 78 of 31.3.2000. It gives the definition of the institutional mission of the Guardia di Finanza as economic and financial police protecting the budget of the state, of the regions, of the local bodies and of the European Union. It confirms the exclusive investigation powers of Guardia di Finanza officers to prevent, investigate and combat infringements concerning resources and expenditure in the EU budget.

4.1. Own resources: principal legislative developments	
	<p>Promulgation of a new Act (No 92 of 19.3.2001 amending standards as regards repression of cigarette smuggling Under this Act:</p> <ul style="list-style-type: none"> – smuggling is an offence punishable by imprisonment for between two and five years when the quantity of tobacco smuggled is more than 10 kilos; – the following circumstances aggravate the penalty: – using modified means of transport with a view to hindering police action or to causing danger; – using legal entities or financial facilities in countries which have not ratified the Strasbourg Convention on money laundering; – the cooperation of tobacco producers has been envisaged in order to identify the source of the merchandise; – the management of seized or confiscated goods has become easier and more economical; <p>a new offence has been introduced – that of group organisation in the purpose of tobacco smuggling, punishable by imprisonment for between three and eight years and falling within the competence of the Departmental Anti-Mafia Offices.</p>
NL	<p>A law has been adopted by the Parliament's second chamber, concerning control on Community funds. This law sets up free ministerial competencies: the right to be informed by managing body, the right to give instructions to the managing body and the recovery of funds from the managing body.</p>
P	<p>New general scheme relating to tax offences and a new tax offence structure: distinction between common tax offences, customs offences, tax offences and offences against Social Security.</p> <p>Investigations pertaining to one or other of the above-mentioned economic and financial offences are within the jurisdiction of the Criminal Investigation Department wherever they are committed on an organised basis and/or have an international or transnational dimension.</p>
	<p>As regards checks and inspections, the DGAIEC (Portuguese customs) has adopted implementing provisions for local customs, following the reform of the EC Customs Code and implementing provisions.</p> <p>With regard to the special seal for manufactured tobaccos, a code has been adopted which enables the DGAIEC to trace its origin.</p>
FIN	<p>Act 875/2001, amending the criminal code, has updated the provisions on the confiscation of assets.</p>
S	<p>The Swedish law criminalising smuggling was replaced on 1 January 2001 by Act 2000:1225. Customs offences can be punished by two years in prison. For serious offences, the penalty can extend to six years.</p>
	<p>Sweden has long had a customs criminal court that meets the requirements of Article 280. The new Act of 1 January 2001 (2000:1225) has strengthened the customs prosecutor's powers.</p>

4.2. Agricultural expenditure: principal legislative developments	
Member State	Measure
B	Royal Decree of 15 May 2001 relating to administrative fines: where the Royal Prosecutor, three-months after receiving the official report, has not notified the administration whether penalties should be ordered or not, the administration decides whether an administrative fine should be ordered or not.
EL	<p>The newly adopted Act 2945/2001 contains provisions as regards the fight against fraud affecting the EAGGF Guarantee Section:</p> <ul style="list-style-type: none"> – power of the rural development payment agency (EPAA) to conduct on-the-spot checks and cross-checks in the case of suspected irregularities; – possibility of suspending payments and of recovery; – forwarding evidence to the relevant disciplinary bodies and prosecution authorities in the event of irregularities; – powers of the payment and inspection agency (OPEKEPE) as regards the prevention and repression of all irregularities – possibility of imposing penalties on the basis of a decision by the Ministry of Agriculture; – legal advice provided to OPEKEPE by other bodies.
E	<p>Act No 24/2001, amending the general Budgetary Act:</p> <p>Designation of the competent body and definition of the functions to be exercised by this specific service as provided by Regulation No 4045/89;</p> <p>Designation of national and regional services empowered to carry out the checks and inspections provided for by Regulation No 4045/89.</p>
F	Article 28-1 of the Code of Criminal Procedure, which authorises certain customs officers to conduct judicial enquiries, in particular as regards fraud affecting the Communities' financial interests, has been implemented since December 2001 (offences provided for by the Customs Code, and more specifically traditional own resources and agricultural expenditure). See also item 4.1. above).
	A draft decree has been prepared with regard to the control of cow milk production and procedures for recovering the additional levy.
I	– Legislative Decree No 223 of 14.5.2001 lays down new penalties concerning Community aid to the production of olive oil and to table olive processing. The Department for Market Policies of the Ministry for Agriculture and Forestry approved the draft legislative decree concerning the penalty system based on Regulation No 4045/89.

4.2. Agricultural expenditure: principal legislative developments	
Member State	Measure
	<p>Legislative Decree No 68 of 19.3.2002:</p> <ul style="list-style-type: none"> – gives the Guardia di Finanza the role of “economic and financial police force for the protection of the public budget, and that of the regions, local bodies and the European Union “; – empowers Guardia di Finanza officers to conduct searches, investigations, inspections and banking enquiries in the field in question, while enjoying the same rights which it had as regards VAT and direct taxation.
	An agriculture, food and forestry protection (NAF) control unit has been set up in the Agriculture Ministry.
IRL	Diseases of Animals Act of March 2001: provides for additional powers for authorised officers, power to regulate dealers and for increased sanctions
NL	<p>Adoption, by the first and second chambers of Parliament, of the Dutch Government Accounts Act (Eighth Amendment) Act and of the EC Grants Monitoring Act (into force on 1.5.2002):</p> <ul style="list-style-type: none"> – listing powers of control of the Court of Auditors with regard to the use of Community grants (down to the final recipient); – establishing parallel powers for the Minister as regards the right to be informed by the management body, the right to give indications to the management body, and the right to recover funds from the management body
P	<p>New general rules for applying the rural development plan, known as RURIS, have been established for the period 2001 to 2006:</p> <ul style="list-style-type: none"> – aid is paid out only if the recipient has regularised his debt position with paying agencies; – paying agencies can offset claims on the recipient; – cancellation of the contract gives rise to an obligation to refund the aid granted and suspension of eligibility; – debt certificates issued by the paying agencies have the value of enforceable instruments.
FIN	<u>General measure</u> : Act 688/2001 on State aid covers, inter alia, the recovery and control of public aid, including Community aid.
S	<u>General measure</u> : since March 2001, the protection of Community financial interests and relations with OLAF have been coordinated by an Economic Crimes Bureau and a Community fraud Council.

4.2. Agricultural expenditure: principal legislative developments	
Member State	Measure
UK	<p>(England) new regulations on fishing and aquaculture structures: regulate conditions for granting national and Community subsidies (FIFG) as well as control and recovery measures (SI 2001 No. 117).</p> <p>Equivalent but separate provisions have been adopted in Scotland, Wales and Northern Ireland.</p>

4.3. Structural measures: principal legislative developments	
Member State	Measure
DK	<p>Decree No 132 of 1 March 2001 relating to responsibility and the division of powers for the administration of European Social Fund aid deals with the following points:</p> <p>Composition and tasks of the monitoring committees for Objective 3 and EQUAL; ESF measures under Objective 2; central and regional project approval subcommittees; organisation of the central and regional project administrations, responsibility and missions; use of the web-based IT system; control and auditing, in particular the obligation to notify irregularities; requirement that the project administration make at least one supervisory and control visit to each project during the subsidy period.</p> <p>Decree No 133 of 1 March 2001 relating to ESF aid: conditions of aid; control and follow-up; use of the web-based IT system; access to justice; recoveries and penalties.</p> <p>A bank guarantee is imposed on all private and independent aid recipients.</p> <p>To enable aid for a project to be granted, auditors are required to certify that the project's recording procedures and systems are appropriate.</p>
EL	<p>Act 2860/2000 has set up new management and control bodies, namely the Community Support Framework Monitoring Committee, the Operational Programme Monitoring Committee, the central CSF Management Agency, the management agencies for the operational programmes, the paying agency and the External Financial Control Committee (EDEL).</p>
E	<p>Royal legislative decree No 1098/2001: develops the current legal framework in the field of public procurement.</p>
	<p>Act 24/2001 amending the Public Procurement Act:</p> <ul style="list-style-type: none"> – Requires new securities as regards the solvency of tenderers; – Regulates the procedures for the award of services in the field of the management of information systems.
I	<p>Promulgation of a new Legislative Decree (No 68 of 19.3.2001, "Adaptation of the tasks of Guardia di Finanza as laid down by section 4 of Act No 78 of 31.3.2000").</p>

4.3. Structural measures: principal legislative developments	
NL	Adoption of the Dutch Government Accounts Act (Eighth Amendment) Act and of the EC Grants Monitoring Act : see item 4.2. above.
A	A convention has been concluded between the Bund and the Länder (this convention includes all Austrian bodies involved in and responsible for the management of the various structural interventions and projects which directly or indirectly involve protection of the financial interests of the Community).
P	<p>Pursuant to Regulations Nos 1260/99, 438/2001 and 448/2001, a specific national legislative framework for the <u>Community Support Framework (CSF) III</u> has been developed:</p> <ul style="list-style-type: none"> – a Decree-law governing the operation of the national control system (SNC), of CSF III. – under this Decree-law, the Inspectorate General of Finance (IGF) is the competent authority to issue the statement and to coordinate notification of irregularities; – a regional Decree-law establishing the Instituto de Gestão de Fundos Comunitários (Institute for the Management of Community Funds) in the Autonomous Region of Madeira.
FIN	<u>General measure</u> : see item 4.2.
	<p>The following Acts were passed:</p> <ul style="list-style-type: none"> – Act 1268/2000 amending the act on the management of the Structural Funds, which came into force on 1 January 2001: management and supervision provisions relating to Community initiatives and the ESF; – Act 574/2001 amending the act on regional development: rules on implementation of Community initiatives and recovery of structural and national funding; – Act 1113/2001 amending the act on employment: guidelines on public investments (ERDF).
	<p>New regulations:</p> <ul style="list-style-type: none"> – government decrees (943/2001 and 1466/2001) amending the employment decree (ERDF); – decree by the Ministry of Education (933/2001): powers of the national Council for Education and the provincial offices with regard to the management, follow-up and audit of projects financed by Interreg and the ESF.

4.3. Structural measures: principal legislative developments

S	<p>Adaptation of relevant Swedish legislation and implementing rules concerning administration of Structural Funds and specific rules within the field of EAGGF – Guidance Section, FIFG and ESF in order to:</p> <ul style="list-style-type: none"> – take action pursuant to the new Community legislation for 2000-2006; – clarify and strengthen the provisions relating to recovery. <p>Measures making it possible for the Interreg programmes to be managed as agreed with the Commission and other Member States</p>
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5. COMPLEMENTARY TEXTS FOR THE PROTECTION OF COMMUNITY FINANCIAL INTERESTS

5.1. What is the state of ratification by the Member State of the Convention of 26 July 1995 on the protection of the European Communities' financial interests and its protocol?

Progress with ratifications notified to the Secretariat-General of the Council of the European Union at 21.06.2002

	Financial interests Convention (26.7.1995)	1st Protocol (27.9.1996)	ECJ Protocol (29.11.1996)	2 nd Protocol (19.6.1997)
B	12.03.2002	12.03.2002	12.03.2002	12.03.2002
DK	02.10.2000	02.10.2000	02.10.2000	02.10.2000
D	24.11.1998	24.11.1998	03.07.2001	Ratification process under way
EL	26.07.2000	26.07.2000	26.07.2000	26.07.2000
E	20.01.2000	20.01.2000	20.01.2000	20.01.2000
F	04.08.2000	04.08.2000	04.08.2000	04.08.2000
IRL	03.06.2002	03.06.2002	03.06.2002	03.06.2002
I	Legislation adopted, but ratification not yet notified	Idem	idem	Ratification process not yet initiated
L	17.05.2001	17.05.2001	17.05.2001	Internal consultations initiated
NL	16.02.2001	28.03.2002	16.02.2001	28.03.2002
A	21.5.1999	21.5.1999	21.5.1999	Ratification not foreseen before end 2002
P	15.1.2001	15.1.2001	15.1.2001	15.1.2001
FIN	18.12.1998	18.12.1998	18.12.1998	Ratification process under way
S	10.6.1999	10.6.1999	10.6.1999	12.03.2002
UK	11.10.1999	11.10.1999	11.10.1999	11.10.1999

5.2. Where appropriate, has the Member State taken steps to transpose this Convention and these protocols? (This relates to measures taken after the adoption of the 2000 Annual Report in May 2001).

Member State	
DK	The convention and the protocols were implemented in Danish Law in 2000.
D	A law has been drafted to ratify the second protocol of 19 June 1997 to the Convention. Amendments to national law aiming to transposition depend on an implementing law that is being drafted too. It is envisaged to amend article 261 of the criminal code (money laundering, illegal asset concealing) and to extend the scope of art. 30 of the law concerning infringements in order to have the power to impose penalties to corporate bodies and association of persons.
EL	The Convention and its protocols have been taken into account in the new customs code (Law 2960/2001)
IRL	Part 6 of the Criminal Justice (Theft and Fraud Offences) Act of 19 December 2001 transposes the 1995 Convention and its protocols. It will come into operation with effect from 1 August 2002.
I	<p>The contents of the protocol to the PIF convention signed the 19.6.97 and concerning the liability of legal persons, confiscation, money laundering and the co-operation between the Member States and the Commission for the purpose of protecting the European Communities' financial interests and protecting personal data related thereto, have been in large part transposed in Legislative Decree n° 231/01 concerning the liability of legal persons for illegal activities consequent, among others to the crimes of embezzlement, misappropriation of funds or swindle detrimental to the State budget.</p> <p>Moreover, the Minister of Labour has adopted some administrative measures affecting checks on activities co-financed by ESF.</p>
L	The content of the Convention and the ratified Protocols was transposed into Law 30 on March 2001.

Member State	
A	<p>The obligation with regard to transposal contained in these four EU legal instruments (including the second protocol) has already been met in part by current provisions and, with one exception (see below), by the amendment to the Criminal Law Act of 1998, in particular as a result of:</p> <ul style="list-style-type: none"> – introduction of the offence “misuse of aid”; – extension of the provisions on the corruption of officials to include Community officials and officials of other Member States; – expansion of the list of offences in the field of money laundering. – Certain changes to the Act on the repression of financial offences and the Act on export refunds effected by the 1998 Act amending taxation also contribute to the transposal of the legal instruments referred to above. <p>The only measure which has not yet been transposed is the introduction of the responsibility of legal persons envisaged in the second protocol. With regard to the transposal of this obligation, in Article 18(2) the second protocol anticipates a five-year deadline for Austria with effect from the adoption of the legal instrument.</p>
P	<p>The Convention and respective protocols are directly applicable, without prejudice to adaptations to internal law.</p> <p>In this context Act 108/2001 was published amending the Portuguese Criminal Code with regard to the offences of trading of favours, passive corruption for illicit acts, passive corruption for lawful acts and, finally, the concept of official.</p> <p>At the same time, on 26 November 2001, Resolution 163/2001 of the Council of Ministers was published, which adopts a number of measures and national guidelines and basic principles in the fight against fraud and tax avoidance: prevention, control, strengthening of UCLEFA and measures against offences, strengthening external control and reinforced use of information systems (national and Community projects).</p>
FIN	<p>Some legislative amendments required by the second Protocol were implemented in 2001 (measure 369/2001 amending the criminal code): extension of the criminal liability of legal persons to situations where the person or legal entity has taken part in the crime or allowed the crime to be committed.</p>
	<p>(Åland) The provincial government, gave its approval to the 1995 Convention in 2001.</p>
S	<p>Legislation transposing the provisions of the second Protocol (1997) into Swedish law came into force on 1 January 2002. Attempting, preparing or conspiring to perpetrate serious laundering or serious bribery have been made a criminal offence. Provisions relating to foreign criminal judgments have been widened: the judgments of foreign criminal courts relating to the measures covered by the Protocol can hinder pursuit of the same measure in Sweden.</p>

Member State	
UK	The United Kingdom points out that most of the provisions in the Convention and its protocols already existed in UK law before the Convention and its Protocols were signed. Part 1 of the Criminal Justice Act 1993, which entered into force on 1 June 1999, enabled the UK to ratify the Convention. The jurisdiction required by the first indent of Article 4(1) of the Convention (cases where fraud is committed within the territory of the Member State, including where the benefit was obtained in its territory) was conferred by those provisions.

6. COORDINATION OF SERVICES CHARGED WITH THE PROTECTION OF FINANCIAL INTERESTS WITHIN EACH MEMBER STATE

The Community financial control system in terms of both expenditure and income is largely based on the primary responsibility of the Member States, which manage 80% of funds. The controls provided for by sectoral regulations involve a wide range of actors and staff at the various levels of the national administration (payment agencies, management authorities, central and decentralised national services, local authority services).

These controls constitute the system for the protection of Community financial interests where Member States are required to ensure both effective action and action that is equivalent to that which they undertake to defend their own interests.

This is why a good coordination between the different protagonists involved in all levels of controls is of a strategic importance

The sectoral regulations require national authorities to carry out what are known as regularity controls and controls that are more targeted on the fight against fraud. The former consist of documentary checks, sometimes called “first level” checks, aiming at compliance with procedures and at the criteria determined by regulation for the granting of financing or of advantages (customs duty-free movements, for example).

Regularity controls also include a posteriori checks (after payment of the funds for example), the aim of which is to check that the work has really been done, that the financed projects exist or that the control system is reliable.

In addition, certain controls are conducted on the basis of suspected fraud established by different authorities, depending on the Member States: customs, police, financial administration, judicial authorities at an advanced stage. The organisation of the services depends on the Member States.

Following the request of the Council on the one hand and the report of the European Court of Auditors on the structural Funds⁴⁹ on the other, information is here provided on the mechanisms in place for the coordination of the control and investigative authorities carrying out all these controls in Member states.

The information is presented by field of control: traditional own resources, agricultural expenditure and structural actions.

⁴⁹ Special Report n°4/2001 on the audit relating to EAGGF, Guarantee Section - implementation of the Integrated Administration and Control System (IACS) accompanied by the Commission's responses.

6.1. Own resources: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level	
Member State	
B	<p>Anti-fraud controls and investigations are carried out within the same government department (Customs and Excise department). It is also competent to prosecute customs infringements.</p>
	<p>With regard to the exchange of information with the police, the situation is as follows:</p> <ul style="list-style-type: none"> – agreed protocols are being negotiated with a view to formalising exchanges; – five tax authority officials have been made available to the Central Office for Combating Crime (Federal Police), pursuant to the Royal decree of 22 December 2000.
	<p>For passing on information about presumed frauds to the legal authorities, the following arrangements exist:</p> <ul style="list-style-type: none"> – seven tax officials are made available to the Public Prosecutor or the Judge Advocate for Labour; – collection of tax by the tax departments is possible at the judicial investigation stage, if the investigation uncovers indications of fraud (Act of 18 April 1999); – a cooperation agreement has been concluded between the Belgian Department of Justice and Department of Finance.
DK	<p>General comments concerning the coordination between the services and the impact of the law on data protection:</p> <p>With regard to the notification of cases of suspected fraud by the administrative authorities to the judicial authorities, inspections are carried out in accordance with the Director of Public Prosecutions' communication No 4/1998. This communication also sets out the procedures for informing the administrative authority of the outcome of the matter.</p>
	<p>Administrative or legislative adaptations are under way to implement the Act of 31 May 2000 on the protection of personal data in control measures.</p>
	<p>A committee for matters linked to economic crime and cybercrime ("Violations Committee") has undertaken to revise, under the direction of the Ministry of Justice, the provisions of criminal law applicable to different forms of economic crime.</p> <p>"The Committee on Economic Crime" constitutes an inter-ministerial forum, under the direction of the customs and tax authorities, with a view to combating economic criminality affecting the common interest. This Committee attaches as much importance to economic crime affecting the Community's financial interests as it does with regard to national resources and expenditure.</p>

6.1. Own resources: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level	
D	In the field of traditional own resources, a procedure for the coordination of external/customs controls and fiscal control/ customs surveillance measures with regard to enterprises established in several zones under the competence of a principal customs office, is regulated by paragraphs 59 to 64 of administrative instruction DA-AO. Rules with regard to the content and volume of data exchange include : federal and Länder data protection and budgetary laws, Article 15 of the Customs Code, Article 30 of tax laws (professional secrecy) and criminal code.
EL	The Greek authorities did not see any serious overlapping, since it is Customs that handles the administrative penalties and recovery, even where the complaint is lodged by another enforcement agency (SDOE, the Police, the Harbour Guard).
E	The official tax administration authority (AEAT) has established three coordination mechanisms, based on the various partial Plans which implement the General Tax Control Plan (2001): <ul style="list-style-type: none"> – coordination of activities relating to taxpayers who are the subject of inspections; – improvements in the exchange of information; – specific coordination between the recovery service and the Customs and Excise Duties Service.
	The AEAT special quality Programme for 2001 provides for the following measures: <ul style="list-style-type: none"> – measures to improve interdepartmental coordination in the fight against fraud: transmission of information sheets on recovery transmitted to recovery organisations, coordinated verification activities, research aimed at detailing the number and importance of preventive measures (legal and others) against fraud; – cooperation between the Customs and Tax Service and other public services in the fight against fraud (local corporations, autonomous communities and cities); – internal coordination: inter-territorial investigative activities.
F	The DGDDI (General Directorate of Customs and Indirect Taxes) carries out all checks and investigations in the customs field; therefore, no coordination with other services is needed, but only internal coordination.
	The French Customs has a specific action to impose tax penalties; it can either report to the judicial authority and prosecute offences through a complaint to the Public Prosecutor or summon directly before a criminal court.
	As customs officers have been recently empowered to conduct criminal investigations, cooperation with judicial authorities in the financial area will be enhanced. Moreover, in accordance with the national customs code, judicial authorities must inform the customs of any fact that can possibly be considered as a customs offence.
IRL	Comprehensive systems are in place for carrying out traditional checks, fraud investigations and horizontal and multidisciplinary coordination activities: Automated Entry Processing System (AEP), Customs Audit Teams, the Investigation Bureau, Customs and Excise Enforcement and Anti-Evasion Teams and the Customs National Freight Intelligence Unit.

6.1.	Own resources: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level
	A restructuring operation of the Office of Revenue Commissioners, which incorporates the Irish Customs Service, includes the formation of a Prosecutions Division, which is being tasked with coordinating criminal prosecutions across all tax heads, including customs fraud cases.
I	<p>Coordination between the services concerned (the Customs Agency and the Guardia di Finanza) is ensured at national level by legislative provisions and at local level by operational instructions drawn up by the head of Customs and the provincial Commander of the Guardia di Finanza.</p> <p>Generally, whenever a monitoring agency notes an irregularity, it sends a copy of the official report both to the authorising officer for the recovery of the improperly collected amounts and the application of administrative penalties, and to the prosecutor if a crime is suspected.</p> <p>In most cases, the administration will have to await the conclusion of criminal proceedings before starting a civil action for recovery. The legal basis for actions for recovery is either a court order (for criminal infringements), or an administrative order imposing sanctions and closing down proceedings.</p>
NL	<p>The Customs Information Centre (DIC) organises an operational coordinating meeting once a month, attended by all the services involved in control and, if necessary, in investigations relating to traditional own resources – the customs service, the tax information and investigation service and economic control services (FIOD-ECD) and the Agricultural Inspectorate (AID).</p> <p>These meetings are used to discuss irregularities and to determine the powers of the various services concerned.</p>
	Regular consultations also take place between the Ministry of Finance and the Ministry for Agriculture (LNV). A specific prosecutor has been appointed for the national coordination of criminal investigations and the regulatory aspects of criminal proceedings. Discussions take place regularly with the various services involved in criminal proceedings.
	The Director-General for Taxes and the College of Public Prosecutors have agreed on guidelines on the notification, transaction and pursuit of tax and customs offences (“ATV” guidelines). Using specific indicators, the customs authorities hold regular discussions on the treatment of suspected criminal acts with, on the one hand, the tax information and investigation service and the economic control services (FIOD-ECD) and, on the other hand, the public prosecutor’s department. This arrangement is evaluated annually.
	No obstacles have been identified with regard to coordination between the services involved in the control of traditional own resources. The guidelines of the tax service (VIV) make adequate provision for the exchange of information, both in the control phase and in the investigatory phase. However, when criminal investigations are involved, it is the prosecutor dealing with the case who decides on the way in which information will be revealed.
A	The Customs administration is using a standardised electronic form for the notification of irregularities.
	Established irregularities also are the subject of risk analyses, both under Regulation No 386/90 and under Regulation No 4045/89.

6.1. Own resources: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level	
P	<p>The decree establishing the tax general authority (AGT) provides for an internal supervisory authority as well as a common structure for tax administration, the purpose of which is to carry out administrative inspection and control measures with a view to ensuring control of compliance with set aims and the adoption of appropriate corrective measures.</p>
	<p>Moreover the customs (DGAIEC) establish, recover and entry in the accounts import duties, the management of the Community own resources audit system being the responsibility of this Directorate-General, more precisely the directorate of the department of national income and Community own resources.</p>
	<p>Suspected fraud in the three fields in question (own resources, EAGGF Guarantee Section and Structural and Cohesion Funds) are communicated by the control body to the public prosecutor.</p> <p>Consequently, they are brought to the attention, together with the despatch of the control report, of the financial interlocutor/payment authority/paying agency, for the purposes of supporting the process not only in criminal but also in administrative terms to recover aid, a process which continues regardless of whether the criminal procedure is concluded or not.</p> <p>The judicial authorities and the administrative authorities are required to keep each other informed of existing procedures, thus guaranteeing good collaboration between them.</p> <p>In relation to these offences the judicial authorities and foreign police bodies can travel (after obtaining the authorisation of the Minister for Justice) throughout the national territory, with a view to taking part in criminal investigations and setting up teams responsible for joint criminal investigations.</p>
FIN	<p>General measure:</p> <p>The anti-fraud programme on white-collar crime was continued in 2001. The Government made a decision in principle of starting a new programme for 2002-2005.</p> <p>The Ministry of Finance started a project for the development of the control administrations' work (VIRKE) in 2001.</p> <p>Customs:</p> <p>The Customs administration has many different kinds of information exchanges systems in use. It ran a research project on administrative and judicial cooperation on customs crime.</p>
S	<p>There is an agreement between the Customs Board and the Public Prosecutor containing rules on the handling of customs surcharge issues in a public prosecution context (Acts 2000:1225 and 2000:1281).</p> <p>In addition, the Customs Board takes part in regional (SABEM) and national coordination groups (Economic Council) together with representatives from, amongst others, the police, tax authorities, the Enforcement Authority, the Economic Crimes Bureau, the Patent and Registration Office and the Social Insurance Office.</p> <p>The Customs Board also cooperates with the National Bank and has privileged access to the register of suspected offences of the Police.</p>

6.1. Own resources: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level	
	<u>General measure:</u> Since March 2001, the protection of the Communities' financial interests and relations with OLAF are coordinated by the Economic Crimes Bureau and by a Council on EU Fraud (see point 4.1).
UK	A single point of contact within the customs service manages communications between customs assurance staff and investigators. This point of contact also coordinates communications with external agencies.
	Regular meetings are held between customs investigators and the rural payment agency (RPA). Discussions on revised administrative agreement should be finalised in 2002.

6.2 Agricultural expenditure: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level	
Member State	
B	In the field of operational programmes for vegetables and fruit, the Belgian Intervention and Refunds Bureau (BIRB) has signed cooperation protocols with Customs and the Walloon region.
	To guarantee the continuity of management and supervision, given the gradual regionalisation of the implementation of the common agricultural policy, the disbursing agency meets regularly with the supervising authorities.
	In the field of agricultural expenditure in general, several coordinating bodies have been set up: a multidisciplinary unit to combat fraud in the meat sector (MVC), an interdepartmental prevention unit (RPI), an interdepartmental subcommittee overseeing coordination of fraud prevention in the economic sectors and enforcement of Regulation (EC) 595/91.
	A list of the debtors is forwarded monthly to Customs by the Belgian Intervention and Refunds Bureau (BIRB), pursuant to Regulations (EC) Nos 3665/87 and 800/1999.
	Adaptation is under way to the Data Protection Act (8 December 1992).
	Coordination mechanisms between the Customs department and front-line supervising services: <ul style="list-style-type: none"> – the coordinating unit of the central Customs and Excise department is informed quarterly by the front-line supervising services and the disbursing agencies of any infringements or irregularity noted and communicated to these bodies, including infringements and/or irregularity involving an amount less than €4 000. These communications make it possible for the Customs department to conduct a risk analysis annually under Regulation (EC) 4045/89; – conversely, the coordinating unit informs the front-line supervising services and the disbursing agencies of cases of infringement and/or irregularity noted a posteriori which can have an impact on front-line supervision.

6.2	Agricultural expenditure: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level
	Cases of presumed fraud or irregularity are also discussed within the following inter-ministerial and interdepartmental coordinating bodies: the interdepartmental prevention unit (CIP), the inter-ministerial economic committee (CEI) and the interdepartmental coordinating committee for combating fraud in the economic sectors, pursuant to Regulation (EC) No 595/91 (CICF).
DK	General comments concerning coordination between services and the impact of the Data Protection Act etc. see item 6.1 above.
	<p>The Directorate for Food, Fisheries and Agri-Business (the “paying agency”) has concluded agreements with the authorities to which it delegated control missions. These agreements lay down the general guidelines on the tasks of the authorities, in conformity, in particular, with the requirements of <u>Regulation (EC) 1663/95</u>. These agreements are reassessed each year.</p> <p>Regular meetings between the departments concerned ensure the quality of cooperation as regards control and any adjustments that may be necessary.</p>
D	<p>In the field of EAGGF Guarantee, the supervising authorities are governed by paragraph 12 of working instruction DA-AWiMO and by item 5.2 of the control guide.</p> <p>For the implementation of controls laid down by Regulation (EEC) No 4045/89, special instructions were given, that:</p> <ul style="list-style-type: none"> – govern in detail the exchange of information between the supervising authority of the customs administration and other services/administrations – form part of the software of “Profit “control, which has been very broadly used since the beginning of 2000 for post-clearance verifications of export refunds within the control branch of the customs administration; – govern the dissemination of post clearance verification reports as well as of other information. Thus, in addition to the competent administrative authorities, the payment authority (also in the other Member States) the ZKA (bureau of investigation on customs infringements) or the risk analysis central service also obtain a copy of the reports.
	In the EU payment authority (head customs office, Hamburg-Jonas), the coordination of the fight against fraud gives rise to the processing of requests and files following established rules and its activities are subject to the permanent control of the internal audit service and of the certification organisation. (control on legality of the payments and on compliance with rules concerning recovery and penalties).
	<p>The payment authority and the risk analysis central service of the customs administration (ZORA) also communicate information in the form of risk profiles to the services responsible for checks and investigations. The latter are required to communicate the results of their work, in permanent contact and coordination with the payment authority (recovery) and with ZORA (preventive anti-fraud actions).</p> <p>Control and investigation authorities and ZORA have access to the data of the AIDA central computer system of the payment authority.</p>

6.2	Agricultural expenditure: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level
	There is no direct exchange of data between the payment authority/ZORA and the judiciary and police authorities. Information and files are nevertheless communicated according to the rules in force for criminal procedures.
	Within the framework of its coordination function, the federal Ministry for Consumer Protection, Food and Agriculture organises regular meetings with the authorities of the Länder in order to ensure that the transposal of European law by the Länder and, where they are concerned, federal institutions, is as uniform as possible.
	There has been intensive coordination to make the electronic database of the HIT system fully operational and ensure the implementation of the system. Administrative agreements have been concluded between payment/certification authorities and internal audit services.
	Adaptations needed at legislative or regulatory level for implementing the laws on data protection and budgetary laws both at federal and Länder level, Article 15 of the Customs Code, Article 30 of tax laws (professional secrecy) and criminal code.
EL	Cooperation in the field of exports between, on the one hand, the Ministry of Agriculture's Audit Directorate of EAGGF-Guarantee expenditure and, on the other hand, the Ministry of Finance's customs departments is considered satisfactory. Cooperation with the new customs inspection service is expected to be even closer.
	<p>Two new administrative units have been set up, in order to coordinate the new administrative departments of the Ministry for Agriculture referred at in point 4.2:</p> <ul style="list-style-type: none"> – A department whose task is to ensure lawful management of the program, through effective coordination between the departments that manage the program and the paying agency (Ministerial common decision 399570/2001); – A department whose task is to coordinate the EAGGF Guarantee Section paying agencies (Ministerial decision 422182/2001). <p>These new administrative units and the new administrative departments work closely together with the Direction for planning and agricultural structures and with General Directorate for fishing, to implement programs and structural actions.</p>
E	General measure: The General Intervention Board of the State Administration (IGAE) continues to develop its national database (TESEO) to check and monitor public grants and aid, by introducing changes as regards the exchange of information with the management bodies (Resolution of 7 February 2001).
	<p>Act 24/2001, amending the General Budget Act:</p> <ul style="list-style-type: none"> – assigns the General Intervention Board of the State Administration (IGAE), via the National Audit Office, as the responsible service for exercising the missions of the specific service as mentioned in Article 11 of Regulation 4045/89, and defines its functions; – designates the bodies responsible for the controls foreseen in that Regulation.
F	Fruit and vegetable sector: on 5 October 2001, an agreement was signed, defining the powers and scope of action of the respective Departmental Directorates for Agriculture and Forestry (DDAF) and the Inter-professional Office for Fruit, Vegetables and Horticulture

6.2	Agricultural expenditure: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level
	(ONIFLHOR).
	<p>France has developed remote sensing inspections, which increased from 23% in 1998 to 72.5% in 2001. Also, the partial use of Computer-Assisted Photo-Interpretation (PIAO) has progressively increased (30% of all diagnostics effected in 2001).</p> <p>In addition, 100 inspection staff were recruited by the payment agency between 1999 and 2001. The improvement of training and monitoring of temporary agents and the provision of improved tools to these agents (control manual, increasing numbers of differential global positioning systems (GPS), planimeters etc.) has continued.</p> <p>As regards the control of beef premiums, the French authorities have put in place joint checks and inspections by the services responsible for checks and identifications, and those responsible for premium controls in 2001, as recommended by the Court of Auditors.</p> <p>Individualised cells for the coordination of checks and inspections have been established in an important number of Departmental Directorates for Agriculture and Forestry (DDAF).</p>
	<p>Rural development: since 1 January 2001, there has been a single payment agency. A team of inspection staff has been appointed to work for this service, which operates in full liaison with the State's decentralised departments. Furthermore, a new computer application has been devised to fulfil the following objectives:</p> <ul style="list-style-type: none"> – implement cross inspections in the framework of administrative controls before the payment of aid; – establish on-the-spot control plans; – present the results of on-the-spot control plans, as well as follow-up measures taken further to these controls. <p>All these new elements aim to improve the detection of irregularities.</p>
	<p>Internal audit: improvement of the quality and continuity of internal audit:</p> <ul style="list-style-type: none"> – restructuring of all internal audit activities performed by the Permanent Committee for the Coordination of Inspections (COPERCI) in the framework of Community aid procedures into a single audit service, driven by an Audit Committee. – audit manuals for the 38 auditors, compulsory audit training and centralised professional documentation; – conclusion of agreements with the payment agencies' internal audit services and the General directorate for Public Accounts.

6.2 Agricultural expenditure: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level

Coordination in the field of export refunds:

- according to Regulation 800/1999, specialised firms (SCS) may deliver proofs of arrival of goods exported from the European Union to third countries, in order to allow payment agencies to disburse the refunds requested. In order to examine requests for approval of candidate firms in France, an inter-ministerial approval committee has been created by Ministerial decree of 20 December 1996. This committee examines SCS' compliance with their conditions for approval, and verifies proofs of arrival;
- EAGGF-related irregularities can constitute a breach of the Customs Code, and are subject to prosecution by the customs authorities, which have power to apply specific penalties. The French customs service can refer a case to the judicial authorities and prosecute established offences, either by filing a complaint with the Prosecutor of the Republic or by direct prosecution in a criminal court. The recent authorisation given to customs officials as regards the conduct of judicial enquiries (see point 4.1. above) should help to reinforce cooperation with the judicial authorities. In addition, the national customs code obliges the judicial authorities to inform customs of all acts which may constitute a breach of the Customs Code;

Since 1 January 2001, the customs services have been exchanging information concerning irregularities of a magnitude less than €4 000 on a quarterly basis with the agencies responsible for export refunds. This procedure helps to improve mutual information between inspection services and services responsible for the payment of refunds.

6.2	Agricultural expenditure: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level
	<p>Coordination and information exchange measures as regards ex posteriori controls established by the Inter-ministerial Committee for the Coordination of Controls (CICC):</p> <ul style="list-style-type: none"> – integration, into the risk analysis conducted in application of Regulation No 4045/89, of a specific coefficient for each aid measure, based on the opinion of the Committee for the Certification of Accounts of the Payment Agencies as regards the value of conducting a posteriori controls; – sharing of control methodologies elaborated by the ACOFA Inspection service with other services effecting checks and inspections under Regulation No 4045/89; – implementation of exchanges between the ACOFA Inspection service and customs as part of the training given to “4045 control agents”; – specific procedure aimed at preventing the implementation of Regulation 4045/89 controls in cases where controls concerning the same beneficiary, the same period and using the same investigation methods have already been effected; – systematic information of the CICC about the results of anti-fraud investigations conducted by customs in the case of irregularities exceeding €4 000; – systematic information of paying agencies by inspection services whenever prosecutable offences are reported to the authorities; – systematic information of inspection services about all irregularities brought to the attention of the CICC. <p>All administrative services in charge of the management and/or control of EAGGF Guarantee Section support may apply for access to the database of checks and inspections conducted under Regulations Nos 4045/89 and 595/91, which is managed by the CICC Secretariat.</p>
IRL	<p>In the Ministry of Agriculture, Food and Rural Development (DAFRD), a complex system of consultation and information exchange has been put in place between inspectors and authorising divisions, between divisions with common interests (for example in relation to the integrated administration and control system), between policy and implementing divisions and with support divisions.</p> <p>As regards export refunds, well-established procedures exist for cooperating with the customs authorities. Reports concerning beneficiaries of aid under Regulation No 4045/89 are transmitted by customs to the Ministry of Agriculture’s Finance Division. Information is freely exchanged between responsible Departments, including police or the judiciary as required, even though each service maintains its own database.</p> <p>In the field of area aid and livestock premiums, the management and control authorities report to the same Director.</p> <p>As regards milk quota, regular meetings take place between the different services involved. The Milk Quota Division uses the facility of shared database, allowing cross-checks with area data, bovine identification systems and herd number systems.</p> <p>With regard to production refunds for sugar used in the chemical industry, control tasks are shared between the Administrative Division and Inspectorate.</p>

6.2	Agricultural expenditure: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level
	The access to the information held by different Government Agencies takes due consideration of the Data Protection Act limits.
	Appeals in courts against the penalties imposed under Export Regulations are frequent and make recovery difficult.
I	<p>Coordination between the services concerned (the Customs Agency, the Guardia di Finanza and the Ministry for Agricultural and Forest Policies) is safeguarded at national level by legislative provisions and at local level by operational instructions drawn up by the head of Customs, the provincial Commander of the Guardia di Finanza and the Ministry for Agricultural and Forest Policies.</p> <p>The service set up by interdepartmental decree 1.4.1996 under Article 11 of Regulation No 4045/89 to coordinate checks and inspections operates in the Ministry for Agriculture.</p> <p>Generally, whenever a monitoring agency notes an irregularity, it sends a copy of the official report both to the authorising officer for the recovery of the improperly collected amounts and the application of administrative penalties and to the prosecutor, if a criminal offence is suspected</p>
NL	<p>Consultations regularly take place between the Agricultural Inspectorate (AID) and the paying agencies (implementation and rate of controls, methods of mutual information).</p> <p>The implementation and control of measures financed by the EAGGF Guarantee Section are also the subject of periodic consultations between AID and the coordination office of the directorate of international affairs of the Ministry for Agriculture (LNV).</p> <p>Where appropriate, <i>ad hoc</i> consultations take place between AID and the Public Prosecutor on specific cases of suspected fraud.</p>
	<p>In accordance with Article 11 of Regulation (EC) 4045/89, a control coordination unit (CCU) has been set up within the general inspectorate of the Ministry for Agriculture (LNV), which is responsible for the coordination of ex post accounting controls of expenditure financed by the EAGGF Guarantee Section.</p> <p>The coordination activities of the CCU cover the various aspects of the line of control: programming, control standards, management of controls, internal reporting, surveillance of the quality of controls, training, coordination of contacts with the OLAF within the AID.</p> <p>The methods of coordination between the various actors involved are specified by procedural handbooks.</p>

6.2	Agricultural expenditure: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level
	<p>Interaction takes place between the programming and implementation of accounting controls by the control coordination unit (CCU) of the general inspectorate of the Ministry for Agriculture (LNV) under Regulation (EC) No 4045/89 and physical controls pursuant to Regulation (EC) No 386/90.</p> <p>The paying agencies, the customs information centre (DIC) and the customs laboratory provide in particular information to the CCU concerning, respectively:</p> <ul style="list-style-type: none"> – payment of refunds made; – irregularities noted during physical controls; – samples taken at the time of controls and the results of analyses. <p>In general, before carrying out ex post documentary checks, CCU officials contact the customs post responsible for processing the export declarations in question.</p>
	<p>No coordination exists between Regulations (CE) Nos 3508/92 and 4045/89, since regulation 4045/89 expressly excludes the integrated administration and control system (IACS) from application of the regulation. Controls carried out under the Regulations (EC) Nos 386/90 and 3508/92 are not coordinated either, since there are no links between these controls.</p>
	<p>The exchange of information between the general inspectorate of the Ministry for Agriculture (AID) and customs is governed by an information protocol. Notification to the judicial authorities of facts likely to be the subject of criminal proceedings is governed by the criminal law.</p>
	<p>No obstacle was noted with regard to coordination between the various services in the agricultural field.</p>
A	<p>The paying agencies, Zollamt Salzburg Erstattung and Agrarmarkt Austria are informed of the control programme under Regulation No 4045/89 and receive the audit reports from the control bodies, which inform the agencies in particular of all complaints by means of a standardised electronic or paper form. Important files are the subject of coordinating meetings.</p>
	<p>With regard to the implementation of the control referred to in Regulation (EC) No 4045/89, an inter-ministerial Working Party has been set up, within the framework of the special department at the Ministry of Finance (BMF), between the BMF on the one hand and the Ministry of Agriculture (BMLFUW) on the other hand which ensures inter alia the coordination of controls. This is an informal Working Party which must be legalised (law or administrative convention).</p> <p>To this end, meetings take place on a regular basis with a view to exchanging information and data. This Working Party is also consulted by the three paying agencies. If necessary, contact is also made with the police and the judicial service.</p>
	<p>Any irregularities noted are also the subject of risk analyses, both under regulation No 386/90 and under Regulation No 4045/89.</p>

6.2	Agricultural expenditure: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level
P	<p>See also item 6.1 Regulation 386/90: administrative checks and inspections provided for in Article 4 are carried out in accordance with the implementing provisions in force, in two separate stages: the first concerns checks on documents sent by the customs authorities or by the economic agents, while introducing into the computer system information relating to various documents received. In the second phase, an administrative control is carried out of the various documents which supplement the already completed procedures by means of a “checklist”.</p>
	<p>Controls provided for in regulation 3508/92: the rules of procedure in force for each aid scheme covered by this regulation define the administrative controls that the services responsible for administration of the measures have to carry out.</p> <p>With regard to on-the-spot checks, these same rules give the supervisory authority the powers to plan and coordinate, for each year, the aims of control and cooperation with the service responsible for administering the measures and with the representatives of the permanent Commission of the system of unified control (SUC). The selection for control purposes is based on risk analysis, taking account of the results of control operations undertaken previously and avoiding duplication or absence of control.</p>
	<p>The competent authorities have access, either directly or indirectly, to the information on the databases provided for in Regulation No 3508/92</p>
	<p>Regulation No 4045/89: a Decree-Act defines the powers of the national organisations as regards the implementation, support and coordination of controls.</p> <p>The control programme is drawn up according to the criteria defined in this regulation, in an agreement between all the parties concerned, at specially convened meetings and controls are allotted according to the function and powers of each party. At the present time, controls are supervised by the National Agricultural Intervention and Guarantee Institute (INGA), the Institute of Wine and the Vine (IVV), the National Support Institute for Farming and Fishing (IFADAP), the Directorate-General for Fisheries and Aquaculture (DGPA) and the Directorate-General for Customs and Excise Duties on Consumption (DGAIEC). The Directorate-General for Audits (IGA) and the IGF itself are given an additional role in the implementation of these controls, the IGF having the additional task of coordinating control as well as the other specific service functions.</p> <p>Moreover, information has been supplied to inspectors in terms not only of the results of controls but also of the risks associated with each recipient and other relevant information for the purposes of control.</p> <p>Coordinating meetings, either extended to all those with responsibility for control, or bilateral to deal with specific issues, are organised between the control organisations and the specific services.</p> <p>There also is a database installed and maintained at the IGF to support controls, but its not common to the other ministries.</p>
	<p>See point 6.1. with regard to the treatment of cases of suspected fraud in the three fields in question (own resources, EAGGF Guarantee Section and Structural Funds and Cohesion Funds)</p>
FIN	<p>General measures: see point 6.1. The Ministry of Agriculture and Forestry and the National Board of Customs have close control cooperation.</p>

6.2 Agricultural expenditure: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level	
S	The exchange of information, especially between the tax authorities and the Agricultural Board, takes due consideration of the provisions with regard to data protection.
	<u>General measure:</u> Since March 2001, the protection of the Communities' financial interests and relations with OLAF have been coordinated by the Economic Crimes Bureau as well as by a Council on EU Fraud (see point 4.1.). These two bodies are currently examining the legal framework for exchange of information.
	The projects assistance unit within the Swedish Council for Agriculture (SJV) meets with the relevant authorities (town councils, other fund-managing authorities) to discuss the rules on reporting.
UK	The Counter Fraud and Compliance Unit (CFCU) of the UK Rural Payments Agency (RPA) conducts investigations into cases of suspected fraud affecting the EAGGF Guarantee Section. It meets regularly with the Department for Environment, Food and Rural Affairs (DEFRA) and with HM Customs and Excise, in order to ensure good cooperation under Regulation (EC) 595/91.
	Assistance and cooperation between the rural payment agency (RPA) and the other authorities are deemed to be satisfactory. Although there are no formal administrative agreements on the matter (except with HM Customs & Excise), valuable exchanges of intelligence have taken place.
	The Rural Payments Agency (RPA) is the only payments agency in the United Kingdom which administers export refunds under Regulation (EC) 386/90.
	Under Regulation (EC) 3508/92 the Rural Payments Agency (RPA) exchanges information annually with the agricultural regional offices for the devolved countries of the United Kingdom on farmers with land in more than one country of the United Kingdom. This exchange of information aims to prevent the duplication of direct aid and forms the basis for updating the corresponding databases, as well as for the implementation of on-the-spot checks.
	The Rural Payments agency is responsible for the transmission of information on behalf of the UK payment agencies on the operation of the Integrated Administration and Control System (IACS).
	The Forestry Commission and the regional agriculture offices exchange information in order to be able to comply with the obligations of the regulation on rural development. Protocols are reviewed and reinforced regularly.
	(Scotland) As a result of the abolition of the Intervention Board for Agricultural Products (IBAP), an Agency Agreement granted the functions of this body to the UK Rural Payments Agency (RPA)

6.3. Structural measures: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level	
Member State	

6.3. Structural measures: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level	
B	<p>(Walloon region)Two coordination mechanisms should be mentioned:</p> <ul style="list-style-type: none"> – an OLAF inter-administrative working party, consisting of a representative from each operational government department, the budget department and the tax inspectorate, was set up in 1996. Its role is to submit irregularity cases and developments in cases already reported to OLAF pursuant to Regulation (EC) 2064/97 to the competent members of the government; – an Audit Committee, set up in 1998, audits the management and supervision systems of programmes part-financed by the Structural Funds. It is to this body that the tax inspectorate reports on its mission.
DK	<p>The units responsible for checks and inspections on structural measures cooperate with other public authorities with a view to coordinating controls of the resources of a number of Structural Funds granted to the same recipient. In certain cases, the control measures are also coordinated with the customs and excise directorate.</p> <p>The checks and inspections units also participate in the inter-ministerial committees as well as in working parties within the framework of the fight against fraud cf. item 6.1 above. Besides the units are represented in the Committee on the coordination of the financial control of the Structural Funds' appropriations.</p>
D	<p>EAGGF</p> <p>Data on aid are compared by computer between the various Länder and between the administrations of agriculture, forestry, environment, customs and veterinary activities. Moreover, service meetings regularly took place, as well as information and improvement actions.</p>
	<p>ERDF</p> <p>Thanks to the establishment of a management authority for all Structural Funds, the conditions have been set up for the coordination of all the Funds for the period 2000-2006. Länder have uniform data banks, which serve as a base to the coordination of checks and investigations. The independent services are informed of the results of controls carried out by the administration. Numerous seminars are organised in order for the services concerned to exchange information concerning their checks and investigations.</p>
	<p>ESF</p> <p>The Federal Ministry of Labour and of Social Affairs keeps ESF managers at federal and Länder level regularly informed of the bases and innovations connected with the interpretation and the application of Community legislation. Thanks to this coordination covering all Funds, experience sharing in the field of controls is guaranteed.</p> <p>Adaptations considered at legislative or regulatory level: laws on data protection and budgetary laws both at federal and Länder level, law on subsidies and criminal code.</p>

6.3. Structural measures: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level	
EL	<p>Coordination of Community and national checks on programmes, final beneficiaries and measures which are financed in full or in part by the European Union is the responsibility of EDEL (the Financial Control Committee), in accordance with Act No 2860/2000 (Article 17.4(d)) and Decision No 2/4245/004 of 24 January 2001 by the Minister of Finance defining the powers and governing the affairs of the Financial Control Committee.</p> <p>This coordination is to be conducted in conjunction with the European Commission, the European Court of Auditors, the Central Administrative Agency, the Payment Agency and the Management Bodies handling the operational programmes under the 3rd Community Support Framework.</p>
	<p>As regards the exchange of information in this area, all the parties involved in the checks (first-level, second-level and third-level) have access to the Integrated Information System (IIS) and are required to enter their inspection findings. As a result, both the inspection bodies and the other agencies involved can immediately get hold of information from the IIS.</p>
E	<p>General Measure: see point 6.1.</p> <p>The General Intervention Board of the State Administration (IGAE) has pursued its coordination activities. These coordination efforts have allowed it to elaborate a Manual of procedures concerning the declaration of expenditure linked to each form of intervention (Article 8 of Regulation 2064/97), aimed at allowing the closure of the programming period 1994-1999 on the basis of homogenous criteria.</p>
F	<p>The Inter-ministerial Committee for the Coordination of Controls (CICC) has been designated to coordinate different administrative departments' activities. The State Council is currently examining a draft decree instituting the CICC.</p>
	<p>ESF: On 11 May 1999, the Ministry of Employment and Solidarity issued a circular concerning checks and inspections on actions co-financed under Regulation 2064/97. Furthermore, the general inspection services of those Ministries having obtained ESF appropriations have been asked to conduct in-depth checks and inspections under Article 3 of Regulation 2064/97.</p> <p>As regards ex ante controls, a standard form has been sent to the ESF management services, together with the recommendations made by the Inter-ministerial Committee for the Coordination of Controls (CICC). In addition, the Ministry of Employment and Solidarity organises training sessions on this theme.</p>
IRL	<p>EAGGF-Guidance: Close liaison is maintained between the Department of Agriculture, Food and Rural Development's administrative staff and inspectorate (regular meetings, seminars, participation in investigations). Well-established procedures exist for working with the Garda (police) and the Department of Justice.</p>
	<p>FIFG: an annual meeting is held with all agencies reporting to the Department of the Marine and Natural Resources (DMNR) with which there is a Bilateral Audit Agreement. The purpose of this meeting is to coordinate the systems audits to be conducted each year. The Internal Audit Unit has organised a number of workshops on the role of risk assessment methodology in the control of expenditure.</p>
	<p>ESF: An ESF Financial Control Steering Committee has been established, inter alia, to coordinate the work of the various bodies involved in financial control activities carried out within the Department of Enterprise, Trade and Employment (DETE).</p>

6.3. Structural measures: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level	
	<p>ERDF and Cohesion Fund: managing authorities are required to report quarterly to the Department of Finance any cases of fraud or irregularity detected in the previous quarter, and to undertake any necessary follow-up action in accordance with Regulations 1681/94 and 1831/94.</p> <p>The ERDF and Cohesion Fund Financial Control Unit regularly advises the payment agency for the ERDF (Department of Finance) of any cases of fraud or irregularity uncovered in their audits of programmes.</p>
I	<p>The Guardia di Finanza has drawn up protocols with the Regions, and the agricultural policy unit of the Carabinieri exchanges information regularly with the other bodies appointed to control on the correct application of Community legislation.</p> <p><u>In general</u>, whenever a control agency records an irregularity, it sends a copy of the official report to the authorising officer for recovery of the improperly collected amounts and for the application of administrative sanctions, and a copy to the judicial authority.</p>
NL	<p>With regard to <u>Objectives 1 and 2</u>, in particular, the Ministry for Economic Affairs (EZ), the Ministry for Agriculture (LNV) and the Ministry for Home Affairs (BZK) have established close cooperation: regular meetings and the coordination of administrative notes.</p> <p>Consultations have also taken place between the above-mentioned ministries and the Ministry of Finance, the Ministry for Housing, Spatial Planning and the Environment (VROM) and the Ministry for Social Affairs and Employment (SZW).</p>
	<p>Within the framework of <u>Objective 3</u>, close cooperation exists between the Ministry for Social Affairs and Employment (SZW), the Ministry for Education, Culture and Science (OCW), the Ministry for Home Affairs (BZK) and the Ministry of Finance.</p> <p>There are periodic consultations with representatives of local authorities.</p>
	<p>Coordination of services with regard to checks and inspections on <u>ESF expenditure</u>:</p> <ul style="list-style-type: none"> – The department for internal controls of the Social Affairs and Employment agency (SZW) is responsible for primary controls of the implementation of projects as well as of final statements. In terms of its functions, this department is separate from the other departments of the SZW agency. – When special investigations are necessary, the director of the SZW agency entrusts the task to an external accounting firm. This firm works under the aegis of the department for internal controls. – Secondary controls (audits of financial and material management by the SZW agency, control of the activities of the internal control department, control of the application of control protocols) are the responsibility of the accounting service of the Ministry of Social Affairs and Employment (AD). – The Economic and Financial Affairs directorate also checks that use of ESF funds is effective and within the law.
	<p>As regards information, the Social Affairs and Employment agency (SZW) and the SZW Ministry consult each other regularly on the results of monitoring and control activities under the ESF. The SZW agency also draws up a monthly qualitative/financial statement.</p>

6.3. Structural measures: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level	
	<p>When the agency for Social Affairs and Employment (SZW), the SZW Ministry or a third party notify cases of suspected fraud and irregularity in the context of ESF expenditure, the SZW Ministry has to see that appropriate action is taken. In similar circumstances the SZW agency decides if it is necessary to call on the labour inspectorate. If necessary, the labour inspectorate can initiate criminal investigations or take part in the preparation and implementation of such investigations.</p> <p>The ministry is also responsible for the periodic notification of cases of suspected fraud and irregularity in the context of the ESF in the Commission (OLAF).</p>
	The labour and revenue inspectorate (SIWI) of the Ministry for Social Affairs and Employment (SZW) notifies any cases of irregularity to the SZW agency.
	No aspect of current regulations or in the management and control structure obstructs the periodic exchange of information within the ESF framework.
	With regard to the Interreg <u>programme</u> , ex-ante controls are carried out by the programme secretariats on the basis of intermediate and final reports. If necessary, controls are carried out by the Ministry for Housing, Spatial Planning and the Environment (VROM).
	<p>The accounting department of the Ministry for Housing, Spatial Planning and the Environment (VROM) carries out two types of control in the context of Interreg:</p> <ul style="list-style-type: none"> – “5%” controls under the terms of Regulation (EC) 2064/97, in collaboration with the national planning service (RPD) and the services involved in the implementation of the programme. – ex post controls in the context of drawing up the accounting statement pursuant to Article 8 of Regulation (EC) 2064/97. <p>No anti-fraud control in the strict sense of the term was carried out in 2001 with regard to the Interreg programme.</p>
	Interreg: in general, coordination exists between the parties concerned within the Ministry for Housing, Spatial Planning and the Environment (VROM) and the programme secretariats. No obstacle has been notified in this respect. The same is true of cooperation with the other ministries.
	No obstacle has been noted with regard to <u>URBAN programmes</u> under the ERDF. The rules of procedure were defined in a protocol of irregularities concluded between the towns concerned and the Ministry for Home Affairs (BZK).
A	An administrative authority has been set up for each intervention, whose duties are to coordinate the various measures and the intermediate authorities as well as to ensure coordination between the funds involved in the various interventions.
	With a view to ensuring the exchange of information and coordination between the various administrative authorities under the various interventions, there is an “administrative authority Working Party”. In addition to experience sharing, this working party also coordinates the agendas supervising several funds or interventions
	In the area of control of financial transactions, the Chancellor’s Office is responsible for coordination between several funds.

6.3. Structural measures: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level	
	Coordination is facilitated by a databases placed at the disposal of the administrative authorities with regard to all operations in the context of the various interventions.
	<p>Measures provided for by Austrian law concerning data protection have to be implemented and respected.</p> <p>In particular, when a case of suspected fraud has not yet been confirmed by the competent court, the persons or firms associated with notification of the fraud must, as far as possible, be afforded special protection. In this context, the national authorities must be able to make the files they transmit anonymous. Account should be taken of possible libel action which could ensue if an unconfirmed suspicion is made public.</p>
P	<p>See also item 6.1. In view of the responsibilities resulting from <u>Regulation 438/2001</u>, the General Inspectorate for Finance (IGF) was given the responsibility for the overall coordination of controls, as was already the case during previous programming periods.</p> <p>The model developed for the national system of control (SNC) of <u>Community Support Framework III</u> is essentially structured on three levels where the following authorities intervene:</p> <ul style="list-style-type: none"> – the control units of the management authorities for each operational intervention (this function is separated from the other tasks associated with management and payments (1st level); – the authorities designated for the second level of control for each fund; – the Inspectorate-General of Finance (IGF) which, as a high level control body, ensures overall coordination of the national control system, without prejudice to its other functions, namely the evaluation of existing systems of management and control at the various levels of operational interventions, the notification of detected irregularities, the annual transmission of follow-up action pursuant to Articles 10 to 12 of <u>Regulation 438/2001</u> and the issue of statements. <p>The operation of the national control system is governed by internal regulations and manifests itself in regular meetings, convened by the IGF, which involve representatives of the coordinating authorities for second level control and the payment authorities.</p>
	A database has been created for the management of information on controls which, although installed at the Inspectorate-General of Finance (IGF), will be supplied directly by the transfer of files from other bodies.
	See point 6.1. with regard to the treatment of suspected fraud in the three fields in question (own resources, EAGGF Guarantee Section and Structural Funds and Cohesion Funds).
FIN	<p><u>General measure:</u> see point 6.1</p> <p><u>Ministries responsible for the Structural Funds:</u></p> <p>There are legal provisions concerning the executive assistance that the police can provide to the other authorities.</p> <p>In addition, the authorities responsible for the Structural Funds have close cooperation with other authorities in order to prevent irregularities and to start investigations when needed.</p>

6.3. Structural measures: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level	
	(Åland) With regard to the Interreg II A archipelago and the Interreg III A islands, an arrangement has been concluded between the parties concerned as regards recovery. A memorandum is currently being prepared for the Interreg III A islands.
S	The different payment authorities and the Economic Crimes Bureau exchange information in the framework of reporting to OLAF.
	The Swedish Business Development Agency (NUTEK), is responsible for the coordination of the Structural Funds in Sweden, for the programme period 1994-99. For the new programme period NUTEK has an advisory role to liaises with the various administrative bodies concerned (the Agricultural Board Council, Council for the Labour Market Board, Council for Fisheries, the National Board of Fisheries and the authorities responsible for Interreg). It also cooperates with the disbursement paying and management authorities (seminars, exchanges of information), as well as with the internal audit office for Structural Funds, the secretariat of the supervisory steering committee, the economic crimes bureau, and the Swedish National Financial Management Authority control bureau. For instance, the different payment authorities and the Economic Crimes Bureau exchange information in the framework of reporting to OLAF.
	With regard to ESF (Objective 3 and Equal), close cooperation exists between the competent authorities, the Council for the Labour Market (AMS) and the Swedish ESF Council (regular meetings, working paper on distribution of powers...).
	The authorities involved in the management of the Structural Funds have strengthened their cooperation and intensified their training initiatives.
	The paying authority (AMS financial services) and the ESF Council are responsible for the communication of irregularities to the Labour Market Board, which transmits them to OLAF. Follow-up is ensured by the Labour Market Board, the ESF Council and, if necessary, the Financial Crime Authority.
	The national authorities' requests for clarification from other authorities concerning persons having earlier applied for or received public aid, and vice versa, have to take account of the Data Protection Act.
	<u>General measure:</u> See point 6.2
UK	The Department of Trade and Industry (DTI) continues to assist the other Departments and the authorities in their reporting activities, in order to maintain the necessary consistency
	The Department for Work and Pensions (DWP): Government Offices (GOs) manage various Structural Funds, which makes it possible to coordinate controls carried out under the various programmes.
	Close coordination also exists between the different central departments involved in the management of funds (Department for Work and Pensions, or DWP, Department for Transport, Local Government and the Regions, or DTLR, and the Department of Trade and Industry, or DTI).

6.3. Structural measures: coordination and cooperation mechanisms, possible difficulties at legislative or regulatory level	
	<p>The Department for Work and Pensions (DWP): the follow-up and inspection teams of the Government Offices (GOs) carry out controls under Article 3 of <u>Regulation (EC) 2064/97</u> and Article 10 of Regulation (EC) 438/2001. Two types of follow-up may be given:</p> <ul style="list-style-type: none"> – the results of “5%” controls are forwarded to the central European secretariat within each Government Office (where they can be compared with other structural programmes), as well as to the central seat of the ministry; – cases of suspected fraud are forwarded to an independent unit within the ministry, the special investigation unit (SIU), which can conduct its own investigations, if necessary in conjunction with OLAF. If more rigorous investigations are necessary, the unit forwards its files to the police. The results of these police investigations or of the criminal proceedings, as the case may be, are retransmitted to the central seat of the ministry and to the Government Office concerned.
	(Scotland) The Scottish authorities have introduced a new integrated database for the management of ERDF and ESF funds, intended to be accessible on line to all parties involved in the management of these funds in Scotland.
	(Scotland) The managers of programmes at strategic and operational level have established coordination by means of formal communications.
	(Scotland) The management and payment authorities responsible for FIFG and EAGGF Guidance Section maintain contacts with organisations responsible for other European and national funds.
	<p>(Scotland) The Scottish authorities apply a contingency plan for the fight against fraud against the ERDF and ESF. It contains details of contact points, the procedures for identifying and reporting cases of suspected fraud and communication links with the prosecuting authorities.</p> <p>In the area of the FIFG and EAGGF Guarantee Section, the management and payment authorities also follow standard procedures to deal with cases of (suspected) fraud.</p>
	<p>(Northern Ireland) With regard to projects financed by the European Special Support Programme for Peace and Reconciliation (EUSPPR), a database holds the details of all organisations involved. Cross checks make it possible to see whether the same projects are financed by other Structural Funds.</p> <p>When visiting projects, officials stamp the supporting documentation to show by which fund the project in question is subsidised.</p> <p>Internal audit departments also visit projects on the basis of a risk analysis. They also check whether officials have carried out their controls in accordance with government or European guidelines. The internal audit departments are coordinated through the “Euronet” network.</p>
	(Northern Ireland) No obstacle has been notified with regard to cooperation between the various departments involved in controls and investigations.

7. COMMENTS ON COOPERATION BETWEEN THE COMPETENT AUTHORITIES OF THE MEMBER STATES (ARTICLE 280(3), OF THE EC TREATY)

The analysis of the Member States' replies has revealed that the necessary regulatory mechanisms have been put in place and that Member States are generally satisfied with the co-operation between their competent authorities and with the Commission and OLAF; some of them, however, feel that their co-operation could benefit from an improvement of the technical means at their disposal. This issue is currently being studied by the competent services of OLAF and the Commission.

8. RECOVERY

The previous Report specifically addressed the issue of recovery. In this context, it is up to the Commission to verify whether a good collaboration exists between the judicial and administrative authorities, in order to establish whether the Member States have taken all necessary measures to ensure an effective recovery of outstanding debts.

Most Member States mentioned good collaboration between the above-mentioned authorities. On the other hand, in some Member States, deficiencies have been noted.

8.1. Legislative mechanisms and administrative provisions for the judicial authorities to communicate the outcome of criminal proceedings to the administration, for the purposes of recovery	
Member State	Measure
B	The prosecuting authorities generally communicate the date of referral of a case before the Court so that the administration can join civil proceedings and apply administrative fines.
	As soon as the Belgian Intervention and Refunds Bureau (BIRB) is informed of an investigation into any irregularity, it introduces a complaint in accordance with the Code of Criminal Procedure. The disbursing agency is kept informed of the development of the proceedings.
	The regional director of Customs and Excise is responsible for civil and criminal proceedings within the context of his powers. For other cases, the question falls mainly within the competence of the justice department.
	Officials of the prosecution service attached to courts are duty bound to communicate any indications of fraud with regard to direct or indirect taxes (including own traditional resources) to the Ministry of Finance.
DK	<p>Cases of suspected fraud are handled in accordance with Notice No 4/1998 of the Director of Public Prosecutions. This communication also established the rules for informing the administrative authorities of the outcome of investigations.</p> <p>The administrative authorities are always kept informed of the outcome of criminal proceedings by the judicial authorities.</p> <p>Recovery of a wrongly paid amount does not in itself give rise to criminal proceedings.</p> <p>The normal procedure is to bring a civil action to recover the amounts. When a writ has been obtained recording the amounts to be recovered, the matter may be referred back to the court for attachment.</p>

8.1.	Legislative mechanisms and administrative provisions for the judicial authorities to communicate the outcome of criminal proceedings to the administration, for the purposes of recovery
D	<p>In theory, judicial authorities are not required to inform the administration of the end of criminal proceedings concerning the recovery of the amounts embezzled and unduly paid. But rules on information are provided for by the Code of Criminal Procedure and the Tax Code:</p> <ul style="list-style-type: none"> – The injured party having filed a complaint has to be informed of a writ of nolle prosequi of the Prosecutor’s office (Code of Criminal Procedure); – if assets belonging to the offender are seized to ensure the recovery the injured party has to be informed (Code of Criminal Procedure). This provision has its basis in a provision of the Civil Code whereby the seizure and final liquidation of assets cannot be ordered unless the injured person is entitled to assert his claim to compensation against the author of the offence. In such a case, the State intervenes actively in that it can seize the alleged fruits of the offence and place them at the disposal of the injured person, who can thus exercise his claim to compensation. A corresponding enforcement order and the authorisation of the judge are necessary. – information drawn from the public authorities’ procedural documents for the establishment, implementation or rejection of the claim is admissible in the context of the offence (Code of Criminal Procedure). A corresponding request for information must nevertheless be submitted. The same applies to the injured party’s right of inspection; – the criminal court communicates to the financial administration the judgment and other orders ending the procedure when it does not take part itself in the proceedings (tax code).
EL	The new customs code represents an improvement, in that it allows a clearer separation between the administrative recovery procedure and the criminal procedure.
F	<p>Administrative authorities have the possibility of bringing the civil proceedings provided for by Article 2 of the Code of Criminal Procedure. The circular of 5 December 2001 mentioned at point 4.3. above underlined the need to inform payment agencies whenever a case is likely to jeopardise funds, so that they can decide whether to bring a civil action. Such an action will in particular enable the payment agency to have access to the judicial file and to take the necessary precautionary measures for the recovery of the funds.</p> <p>The above-mentioned circular also emphasises the need to inform the customs authorities so that they can proceed to the recovery of duties and taxes. The Customs Code requires the judicial authorities to bring all indications of breaches of the Customs Code to the attention of the customs authorities, regardless of the type of proceedings engaged.</p> <p>The assignment of a magistrate to the General Director for customs and indirect taxation as of 2001, aimed at ensuring the administrative management of those customs agents who conduct judicial enquiries, facilitates the liaison between the judicial and administrative authorities.</p>
	As regards <u>structural actions</u> , a circular by the Department of Employment and Solidarity of 11 May 1999 specifies the procedure to follow in case of recovery of unduly paid funds.

8.1.	Legislative mechanisms and administrative provisions for the judicial authorities to communicate the outcome of criminal proceedings to the administration, for the purposes of recovery
IRL	<p>As regards <u>traditional own resources</u>, criminal proceedings are undertaken by the Director of Public Prosecutions on the basis of the evidence provided by the Office of the Revenue Commissioners (of which the Irish Customs Service is a part). The latter functions as investigating authority. Accordingly, the completion of such proceedings is always known to the authorities responsible for recovery.</p> <p>In the field of <u>agricultural expenditure</u>, officials of the Department of Agriculture, Food and Rural Development (DAFRD) are closely involved in criminal proceedings, either through having referred the file to the Director of Public Prosecutions (DPP) in the first instance or as a witness for the State. In significant cases Department staff will liaise closely with the office of the DPP and be briefed regularly on the progress of the case.</p> <p>As regards the <u>ERDF and the Cohesion Fund</u>, there are no specific legal or administrative provisions for the judicial authorities to report to the administrative authorities completion of criminal proceedings. Records are maintained by the Department of Finance, as the paying authority, of all outstanding irregularities reported in accordance with Regulations 1681/94 and 1831/94, and are periodically reviewed to establish the latest positions.</p>
I	<p><u>Generally</u>, whenever public servants are involved in offences, the office of the public prosecutor is obliged to inform the prosecutor of the Audit Office for determination of the loss to the public Treasury.</p>
	<p>As regards <u>traditional own resources</u>, no legislative mechanism is in place for the judicial authorities to inform the administration of the outcome of criminal proceedings for the purposes of recovery, owing to the fact that the existence of criminal proceedings does not prevent the customs authority from effecting the recovery, even forced, of the customs debt.</p> <p>In addition, criminal proceedings are followed by the office of the receiver of customs, which remains in contact with the judicial authority until the lawsuit comes to an end.</p>
L	<p>The judge gives his rulings both at civil and criminal levels. If no criminal proceeding is deemed necessary, a civil action for the payment of duties is brought before a civil Court. Once the judgement has been finalised and is res iudicata the administration has an enforceable judgement. On that basis, it can recover the debt established by the Court.</p>

8.1.	Legislative mechanisms and administrative provisions for the judicial authorities to communicate the outcome of criminal proceedings to the administration, for the purposes of recovery
NL	<p><u>Own resources</u></p> <p>Two paths can be followed when irregularities have been noted: the criminal route or the tax route. In both cases, the unpaid duty is levied and collected. Whenever levying or collection could hold up the criminal proceedings, priority will be given to the criminal investigation.</p> <p>Criminal proceedings are opened by the tax information and investigation service and the economic inspection services (FIOD-ECD) in an automated system (integrated system of information on fraud, or GEFIS).</p> <p>When a criminal investigation is over, the customs authority concerned is informed of the conclusions of the investigation, which will make it possible to levy and/or recover the unpaid duties.</p> <p>In addition, regular consultations take place between the investigating (FIOD-ECD), the authority responsible for the proceedings (the law officer involved) and the administrative authority (liaison official of the customs district concerned) on the development of criminal investigations.</p>
	<p><u>Structural measures</u></p> <p>For recovery of irregularities under objective 2 (Urban), cities will be held responsible directly when financial correction for NL is applied. In the area of ESF <u>actions</u>, the applicable regulation stipulates that subsidies can be reduced to zero. In addition, regular consultations take place between the Social Affairs and Employment agency (SZW) and the office of the public prosecutor (department in the case of EU fraud) in order for the necessary actions to be initiated.</p>
A	<p><u>Traditional own resources</u></p> <p>The paying agency's book of debtors, to which the principal Salzburg customs office (paying agency) also has access, has records of all recoveries of undue payments, all measures adopted by the paying agency with a view to collecting outstanding amounts as well as debtor payment.</p> <p>The administrative authorities are party to criminal proceedings set in motion by the judicial authorities in their capacity as joint interested party, and are consequently immediately informed of criminal decisions.</p>
	<p><u>Agricultural expenditure</u></p> <p>The administration is informed by the Ministry of Justice if (a) a criminal proceedings or a preliminary investigation are initiated or (b) if the accusation is withdrawn due to the absence of a punishable offence. The administration is informed of the outcome of criminal proceedings, although often after a considerable delay (forwarding the judgment).</p>

<p>8.1.</p>	<p>Legislative mechanisms and administrative provisions for the judicial authorities to communicate the outcome of criminal proceedings to the administration, for the purposes of recovery</p>
	<p><u>Structural measures</u></p> <p>Administrative bodies (including the implementing bodies) are responsible for the initiation of criminal proceedings (in the event of suspected fraud, for example) –for example by referral to the office of the public prosecutor. The administrative authority is, in such proceedings, at the very least a witness, even if it is not also a party to the proceedings. In any event, it is informed of the follow-up and outcome of all proceedings.</p> <p>The management authority within the meaning of Regulation (EC) No 1260/1999 is informed of pending proceedings and of their outcome by means of quarterly notifications published by the responsible authorities. The same is true for the central authorities which manage the funds and of the ministries responsible for controls which are, once again, responsible for the publication of the quarterly notifications to be sent to the OLAF</p>
<p>P</p>	<p>Persons who have incurred losses are informed of their right to join an application for civil compensation to criminal proceedings.</p> <p>Moreover, the possibility of the bodies responsible for recovery being party to the criminal proceedings makes it easier to monitor the proceedings.</p> <p>As a general rule, the administrative procedure for recovery of aid follows its course whether or not the criminal proceedings succeed. After judgment and notification by the judicial authorities to the authorities responsible for recovery, the writ is served on the economic operator with a view to recovering the unduly paid amounts. In the event of non-payment, a debt certificate (has the value of an enforceable instrument) is issued with a view to forced recovery, a procedure which involves tax enforcement in certain bodies responsible for the recovery of aid.</p> <p>Parallel to the criminal conviction, the court orders the total refund of the amounts unlawfully obtained or diverted, and publication of the judgment.</p>

8.1.	Legislative mechanisms and administrative provisions for the judicial authorities to communicate the outcome of criminal proceedings to the administration, for the purposes of recovery
FIN	<p><u>Traditional own resources</u></p> <p>There are no specific legal procedures for the recovery of amounts improperly paid or avoided. A set-off can be ordered by the court only in the event of non-payment of a duty claimed by the administrative authorities.</p> <p><u>Agricultural expenditure</u></p> <p>The management authorities are notified by the legal authorities of the completion of criminal proceedings. Recovery of EAGGF Guarantee expenses continues irrespective of a possible appeal, unless an explicit decision is made to stop recovery following a petition by the applicant. If applicable, the unit for legal and budgetary affairs of the Ministry for Agriculture and Forestry protects the Community's financial interests before the courts and submits evidence as an applicant.</p> <p><u>Structural measures</u></p> <p>The management authority takes an administrative decision regarding recovery. If recovery is not carried out, a request for compensation can be made to the court against the recipient.</p> <p>When recovery is linked with criminal proceedings, the authority that has introduced the complaint acts as an applicant. The authority is informed of the final outcome of the criminal proceedings and can initiate an action for recovery on this basis.</p>
	<p>(Åland) The provincial government (the management authority) informs the office of the provincial commissioner of police of the amounts improperly paid and not recovered. A court judgment is not required for the recovery of FIFG resources. The commissioner of police informs the provincial government regarding the initiation and progress of the action for recovery. Both authorities work closely together.</p>
S	<p>Sweden does not use criminal procedures for recovery. The management authorities are responsible for recovery. If necessary, the authority can refer the case to the public service for the enforcement of debts in order to recover the amount through civil proceedings.</p> <p>Criminal proceedings relate to the infringement as such, the sanction to be imposed and – in the field of customs duties – the confiscation of goods. The administrative authority takes the initiative in such a proceedings. At the end of criminal proceedings, a copy of the final judgment is passed to the public service for the enforcement of debts. The administrative authority is also informed.</p> <p>In the field of the <u>own traditional resources</u>, it is Customs who decide on the possible administrative fines to be applied. An application can be made to the administrative court.</p>

<p>8.1.</p>	<p>Legislative mechanisms and administrative provisions for the judicial authorities to communicate the outcome of criminal proceedings to the administration, for the purposes of recovery</p>
<p>UK</p>	<p><u>Own resources</u></p> <p>HM Customs and Excise acts as prosecution authority. Procedures are in place to monitor the development and outcome of cases.</p> <p>The judicial authorities are not responsible for communicating the end of criminal proceedings to administrative authorities. Customs monitors all criminal cases falling within its jurisdiction and advises the appropriate unit within Customs when recovery action should be instigated.</p> <p>A demand for duty is issued at the earliest opportunity once the amount has been quantified, and on condition that it does not compromise a criminal investigation.</p> <p>The amounts concerned can be recovered whether or not the criminal investigation has been successful.</p>
	<p><u>Agricultural expenditure</u></p> <p>(Scotland) The Scottish authorities closely monitor cases of suspected fraud with criminal implications in the agricultural field for the purposes of recovery.</p> <p>The Counter Fraud and Compliance Unit (CFCU) of Britain’s Rural Payments Agency (RPA) cooperates closely with the various regional and national authorities (including the customs authority, for which there is a designated liaison officer tasked with ensuring good communication with HM Customs and Excise on cases which they are investigating on behalf of the RPA) which can institute criminal proceedings. It is rare that the CFCU is not aware of the outcome of criminal proceedings.</p> <p>(Northern Ireland) the judicial authorities do not formally notify the outcome of criminal proceedings to the Department of Agriculture and Rural Development (DARD). The investigating officer (IO) will however inform the Grants and Subsidies Division of the Department, which is responsible for recovery, of the outcome of criminal proceedings.</p>
	<p><u>Structural measures</u></p> <p>The Department for Transport, Local Government and the Regions (DTLR) states that, as a general rule, the administrative authority takes the initiative to obtain information on behalf of the judicial authorities on the state of criminal proceedings.</p> <p>The Department for Work and Pensions (DWP) encourages Government Offices (GOs) to follow the development of criminal proceedings concerning cases affecting the ESF and falling under their responsibility. The recovery of the funds however is initiated automatically, and does not depend entirely on the outcome of the criminal proceedings.</p> <p>(Northern Ireland) The Departmental Solicitor’s Office (DSO) informs the ministries of the date and outcome of cases brought before the courts, so that they can take action with a view to recovery. The ministries also maintain close contacts with the Police Service of Northern Ireland (PSNI).</p>

8.2. Measures to improve the recovery of resources and of undue expenditure –links between the control and investigation authorities and those charged with recovery	
Member State	Measure
B	Keeping a “debtors” file and estimating the chances of recovery, as well as the time limits imposed by the European authorities (4 to 8 years) regarding actions for recovery, are instruments likely to guarantee an effective follow-up as regards protection of Community financial interests.
	(Walloon region) Directly an improper payment is detected, the operational government department asks the Collector of Taxes of the Ministry for the Walloon Region to proceed with the recovery of the amounts concerned.
DK	<u>Own resources</u> With a change in customs law (Act No 947 of 20 December 1999, in force by 1 January 2000) the conditions for customs credits were tightened and the possibility of not allowing customs credits was made possible if a risk of fraud is at hand.
	<u>Agricultural expenditure</u> The organisation of the recovery system was changed radically in 2000 and the work has continued in 2001 with the goal of improving the recovery.
	<u>Structural measures</u> As regards the ESF, the legal basis for recovery was improved with a new law and a new regulation on administration of subsidies from the ESF (Act No 254 of 12 April 2000, Regulation No 133 of 1 March 2001). The result has been important changes in the way of monitoring the projects and assuring recovery.
D	Having extensively employed magistrates, judges, police officers, auxiliaries and bailiffs, as well as members of the fiscal and customs police force, Länder made sure, also under pilot projects, that recovery and seizures have been much more enforced than during previous years. Improvements are not limited to the field of the financial interests of the Communities.
	<u>Customs administration</u> In 2001, a “central service for the acceleration of the recovery procedure” and the corresponding rules were introduced at the level of the payment authority of the principal customs office at Hamburg-Jonas. In order to prevent the omissions at the time of the collection, an audit procedure is thus implemented within the services charged take decisions in the fields concerned. Moreover, claims are the subject of a periodical legal and economic evaluation in order to better assess the risk of total loss. Data exchange between the payment authorities competent for the control of the entry of the traditional own resources and the recovery services takes place already by DP media. An IT procedure for data transmission between the supervising authorities (services charged with the follow-up of criminal cases and with the application of the penalties in the main customs offices) and the customs revenue offices is under conception (procedure IT STRAF).

8.2.	Measures to improve the recovery of resources and of undue expenditure –links between the control and investigation authorities and those charged with recovery
	<p><u>Structural measures</u></p> <p>The management or the payment authority referred to in Article 8 of Regulation (EC) No 438/2001 has to keep an account of recoverable amounts concerning payments carried out and co-financed by EU, to ensure that amounts are recovered without unjustified delay. By the introduction of computerised accounts and of institutional and staff adaptation measures, in particular in the field of the post-clearance verifications, Länder endeavoured to improve the recovery of undue expenditure.</p>
EL	<p>Responsibility for monitoring and improving the recovery procedure has been attributed to newly created Directorate 52 (Analysis and Evaluation) within the General State Accounts Office.</p>
E	<p><u>Own resources</u></p> <p>The General Tax Control Plan (2001) of the official agency of the tax authorities (AEAT) envisages coordination measures between, on the one hand, the recovery services and, on the other hand, the customs and excise authority.</p> <p>The Special Programme of Quality for 2001, established by the official agency of the tax authorities (AEAT), provides for numerous actions aiming to improve recovery, such as the strengthening of collaboration between the recovery services and the inspection and investigation services of the AEAT.</p>
F	<p><u>Agricultural expenditure</u></p> <p>Coordination bodies, made up of representatives of authorising and accounting departments and with which inspection services are associated, were put in place in 2001 in the majority of payment agencies. These bodies ensure the correct application of Community and national orientations as regards the management of unduly paid funds (creation of a pre-debtor record, monitoring of the delay between the establishment of an anomaly at the occasion of an on-the-spot check and the recovery of the corresponding undue payment). Such an approach helps to improve the monitoring of recovery and to inform inspectors of the follow-up of their findings.</p> <p><u>Structural actions</u></p> <p>The Ministry of Employment and Solidarity ensures the regular monitoring of recoveries on the basis of inspection reports issued by the regional inspection services. The Ministry keeps a general table allowing the follow-up of each inspection to be monitored from the date of the on-the-spot check until actual recovery. Furthermore, regional inspection services are informed by the Treasury of the completion of recovery actions (transmission of receipt declarations).</p>

8.2.	Measures to improve the recovery of resources and of undue expenditure –links between the control and investigation authorities and those charged with recovery
IRL	<p><u>Traditional own resources</u></p> <p>Please see item 6.1. above. All the areas referred to above are closely linked.</p> <p><u>Agricultural expenditure</u></p> <p>The new SAP Accounts System has improved the monitoring of debtors and recovery, by allowing the netting of debts against payments across aid schemes. Furthermore, a new debt collection unit has been set up within the Agricultural Structures in the framework of agri-environmental and early retirement schemes. As regards early retirement aid, several measures have been adopted in order to avoid a build up of debt in relation to concurrent payment of national retirement pensions. A litigation unit has been established within the Beef Exports Refunds Division to manage the recovery of EU monies through the courts and legal proceedings relating to the Paying Agency’s activities to protect EU funds. Professional and administrative staff have been assigned to the division.</p> <p><u>Structural actions</u></p> <p>The existing measures for recovery of irregular expenditure are considered to be adequate.</p>
I	<p>In general, whenever a control agency notes an irregularity, it sends one copy of the official report to the authorising officer for recovery of the improperly collected amounts and for the application of administrative sanctions, and one copy to the judicial authority.</p> <p><u>Traditional own resources</u></p> <p>The customs agency has asked the internal audit offices to intensify controls on the forced recovery of the customs debt and has laid down guidelines regarding the examination of requests for the customs debt to be written off.</p>
NL	<p><u>Traditional own resources</u></p> <p>The 1990 law on recovery also applies to traditional own resources. The operation of this law is deemed to be satisfactory by the Netherlands authorities.</p>
	<p><u>Structural measures</u></p> <p>In order to secure the recovery of undue expenditure under the <u>ESF</u>, the Netherlands has set up the “ Netherlands ESF recovery procedure” (November 2000). This procedure envisages the following stages:</p> <ul style="list-style-type: none"> – administrative decision; – 42 days later: first reminder; – 2 weeks later: second reminder; – 2 weeks later: transmission of file to the Social Affairs and Employment (SZW) agency <p>Under the Interreg <u>programme</u>, the Ministry for Housing, Spatial Planning and the Environment (VROM) will initiate, if necessary, the necessary recovery measures.</p>

8.2.	Measures to improve the recovery of resources and of undue expenditure –links between the control and investigation authorities and those charged with recovery
	<p><u>Agricultural expenditure</u></p> <p>When the control authorities of the paying agencies or the external services, in particular the accounting service (AID) or the customs, note irregularities, they inform the department of the paying agency responsible for recovery.</p> <p>The paying agency is also informed when AID or the tax information and investigation service and economic control services (FIOD-ECD) have drawn up an official report. If a current criminal investigation is opposed to the establishment of a full control report, the law officer decides what information it is advisable to give the paying agency, and when.</p>
A	<p><u>Own resources</u></p> <p>In theory the authorities responsible for controls and investigations and the authorities responsible for recovery are brought together in a single office and supervised by a common directorate.</p> <p>If, in exceptional circumstances, there is more than one address, steps are taken to ensure that documents are transmitted immediately.</p>
	<p><u>Agricultural expenditure:</u></p> <p>The total amount recovered by the paying agency AMA was €5 million in 2001 (0.5% of annual payments). A total of 90% of recoveries was brought in by compensation within a few months.</p>
	<p><u>Structural measures</u></p> <p>The Austrian authorities recall the general obligations of recipients of financing under the Structural Funds set out in the Convention. Complaints are basically the responsibility of the various implementing bodies, and there is no authority with specific responsibility for recovery.</p> <p>The federal implementing bodies are able to involve the financial prosecutor, who can be called upon in any recovery proceedings.</p>
P	<p><u>Agricultural expenditure</u></p> <p>At the National Agricultural Intervention and Guarantee Institute (INGA), the principal aid-paying agency of the EAGGF Guarantee Section, the Recovery, Frauds and Irregularities service has organised training on the new version of the regulation on recovering aid, for the other services concerned. Monthly meetings are organised with the services that administer the measures, and they are asked to provide information on the outcome of control reports.</p>
	<p><u>Structural measures</u></p> <p>In the case of the ESF, procedures have been adopted relating to the compensation, under the Social Security budget, of ESF amounts unduly paid to recipient authorities.</p> <p>Moreover, the increasing use of the credit compensation model has permitted increasingly frequent and increasingly rapid recovery.</p>

8.2. Measures to improve the recovery of resources and of undue expenditure –links between the control and investigation authorities and those charged with recovery	
FIN	<p><u>Traditional own resources</u></p> <p>Various measures improving recovery have been adopted during the last fifteen years (security of the amounts to be paid at an advanced stage, cooperation with the judicial authorities, general measures against the “grey” economy and the tracing of criminal profits...). In the case of post-settlement recovery, there are not necessarily any security and measures for recovery must be started. The customs authorities are informed when the tax authorities have initiated measures for recovery.</p> <p><u>Agricultural expenditure</u></p> <p>Several measures have been adopted to reinforce the effectiveness of recovery:</p> <ul style="list-style-type: none"> – communication by the supervisory authorities to the recovery authorities of risks of fraud detected at the time of supervision; – the passing of information by the recovery authorities to the supervisory authorities regarding the outcome of recovery proceedings; – risk analysis for ex post controls pursuant to Regulation (EC) 4045/89; – use of T5 control form (export refunds); – a centralised system of following up commitments to pay, based on the Commission’s guidelines. <p><u>Structural measures</u></p> <p>The following measures have been taken:</p> <ul style="list-style-type: none"> – definition of the competencies of the various departments within the Ministry of the Interior involved in the management of funds (pursuant to Regulation (EC) 438/2001); – changes to the law to clarify the principles as regards recovery; – procedure providing for the dispatch of follow-up reports by supervisory authorities to recovery authorities (centres for employment and economic development), and to the unit for rural and structural policy. The latter unit checks whether the management authority responsible for recovery has taken the necessary steps on the basis of the follow-up report; – changes to the law on State aid (measure 688/2001): measures contrary to Community legislation can henceforth give rise to proceedings for recovery; – amendment of the measure on regional development (measure 574/2001): establishes the Ministry of the Interior’s right to recover funds from regional councils.
	<p>(Åland) The provincial government could improve legislation on recovery in order to extend the applicability of the measures relating to recovery to all forms of aid part-financed by the Structural Funds.</p>
S	<p>The procedures for recovery are the same with regard to Community resources and expenditure as for the recovery of national debts; this is why no specific measures have been taken for recovery of EU monies. All authorities managing EU funds have produced manuals on procedures to follow in the case of recovery.</p>

8.2. Measures to improve the recovery of resources and of undue expenditure –links between the control and investigation authorities and those charged with recovery	
UK	<p><u>Own resources</u></p> <p>Procedures for the identification, notification and administration of outstanding amounts are regularly reviewed to ensure their effectiveness.</p>
	<p><u>Agricultural expenditure</u></p> <p>(Scotland) With regard to EAGGF expenditure, the recovery unit within the Scottish Executive Environment and Rural Affairs Department (SEERAD) has been expanded since its creation in May 2000. The amounts to be recovered are identified during on-the-spot checks and are recorded in the integrated administration and control system (IACS).</p> <p>With regard to the inspection arrangements of the Forestry Commission, these are being improved constantly.</p> <p>(Northern Ireland) The Department of Agriculture and Rural Development (DARD) has introduced a number of procedural improvements as well as reinforced management controls.</p>
	<p><u>Structural measures</u></p> <p>The Department for Transport, Local Government and the Regions (DTLR) has issued a number of guidance notes which also cover recovery procedures. Government Offices (GO) are obliged to consider and record all possibilities of recovery, and only to send a report of irrecoverability to the DTLR if all possibilities have been exhausted.</p> <p>The “EURONET” group permits a vital exchange of information between the internal audit units and the ministries responsible for the Structural Funds.</p>

8.3. Daily liaison between the control authorities and those responsible for recovery	
Member State	Measure
B	The supervisory authorities coordinate their activities by various means (in writing, by e-mail and through meetings).
	Named contacts have been designated within each disbursing agency in order to simplify contact: a single contact point within the Belgian Interventions and Refunds Bureau (BIRB); a contact point for each section at the Ministry for the Middle Classes and Agriculture.
	(Region of Brussels – Capital) Whenever recovery needs to be effected, the Region bases itself on the relevant texts: after having exhausted all means of redress within the Financial and Budgetary Administration of the Region, the regional centralising accountant applies Articles 94 and 95 of the Royal Decree of 17 July 1991 concerning the coordination of the State accountancy laws. Recovery is then effected by the Administration for Value-added Tax, Registration and State Property, which is attached to the federal Ministry of Finance.

8.3. Daily liaison between the control authorities and those responsible for recovery	
DK	<p><u>Own resources</u></p> <p>The customs and excise authorities carry out all work in relation to both control and recovery, so that they act as a single authority in this matter.</p>
	<p><u>Agricultural expenditure</u></p> <p>When proceedings for recovery are initiated (see item 8.2 above), the control authorities are no longer involved, and the operational services of the paying agency are responsible for contacts with the control authorities. The operational offices keep a permanent check on the conformity of controls with the adopted control programmes, in particular at frequent meetings with the control authorities.</p>
	<p>Structural Funds</p> <p>The control unit and the payment and management unit keep each other informed.</p>
D	<p>The authorities responsible for checks and recovery are usually under the responsibility of the competent authorities at local level but they are organised separately. That is why the regular procedures do not require any direct link between the authorities responsible for checks and for recovery collection. The mutual and regular exchange of information is automatic and targeted at needs.</p>
EL	<p><u>Traditional own resources</u></p> <p>Inspection departments are required to refer all cases to the customs offices to start the recovery procedure. The Customs Department has the sole responsibility for recovery.</p> <p><u>Structural actions</u></p> <p>Directorate 52 (Analysis and Evaluation) of the General State Accounts Office is working on amending the Joint Ministerial Decision on recovery, so as to bring it line with the new legislation with regard to the structural funds, in particular the 3rd CSF. This activity involves close cooperation with the General State Accounts Office's Directorate 41 (financial relations with the EU), the Central Management Agency and the Payment Agency.</p>
E	<p>See answers to items 4, 6.2 and 8.2. above</p>
F	<p>A "monitoring of follow-up" procedure exists in the framework of quarterly meetings of the EAGGF Inter-ministerial Committee for the Coordination of Controls (CICC) as far as controls under Regulations Nos 4045/89 and, since 2000, 595/91 are concerned.</p> <p>All files for which a recovery action has been decided on, either following checks and inspections under Regulation No 4045/89 or following a different type of control and for an amount exceeding €4 000, is systematically reviewed on the occasion of quarterly meetings. During these meetings, payment agencies are invited to inform the CCIC of the state of progress of the recovery of unduly paid sums.</p> <p>This monitoring procedure is materialised by regularly updated tables containing, for each file, the aid amount to be recovered, information about the initiation of the recovery procedure by the payment agency as well as, for cases exceeding €4 000, information concerning the state of the file in the light of Regulation No 595/91. The control services, which participate together with the payment agencies in the quarterly meetings of the CICC,</p>

8.3. Daily liaison between the control authorities and those responsible for recovery	
	receive copies of these tables and are therefore regularly informed of the current state of affairs.
IRL	<p><u>Traditional own resources</u></p> <p>The control and recovery services both form part of the Irish customs service (ICS) and close contacts are maintained.</p> <p><u>Agricultural expenditure</u></p> <p>Close and regular links exist between the “inspection department” and the “recovery department”, both at a formal and at an informal level. Irregularities are systematically reported to the administrative staff, who arrange for the recovery, if necessary, of amounts unduly paid.</p> <p><u>Structural actions</u></p> <p>Please see the replies to point 8.1 above.</p>
I	<p>In the area of traditional own resources, Customs offices follow up the enforced recovery of Customs duties carried out by the bodies competent for the recovery, through the analysis of write-off applications, as provided for by article 19 of Legislative Decree No112/99. The Customs office that initiated the recovery proceedings is also competent to verify if the competent body has complied with the regulation in force to recover the customs debt. The Customs Agency has given the necessary instructions by circular letter No270/D of 8.11.1996.</p> <p>When the activities of the control bodies reveal irregularities, they inform the authorising officer for the purposes of recovery. If irregularities amount to offences, the bodies inform the judicial authorities, and the authorising officer monitors the procedure with the judicial authority.</p>
L	The Customs and excises Departments are responsible for both checks and recovery.
NL	<u>Traditional own resources</u> : daily contacts between control and recovery services within the customs services. Communication lines are short.
A	<p><u>Traditional own resources</u></p> <p>It is generally the control authorities which also calculate the amount to be recovered a posteriori and which forward the relevant documents directly to the services charged with recovery.</p> <p>In this context, every effort is made to reduce the delay to a minimum.</p>
	<p><u>Agricultural expenditure</u></p> <p>See comments under 8.1. and 8.2.</p>
	<p><u>Structural measures</u></p> <p>There is no special service dealing with recovery of aid granted by the Structural Funds (the one exception, however, being the financial prosecutor who intervenes, if necessary, within the framework of legal proceedings).</p>

8.3. Daily liaison between the control authorities and those responsible for recovery	
P	The control bodies monitor recommendations and proposals formulated in the reports, the authorities responsible for recovery being obliged to provide information on the recovery of amounts due to notified irregularities. Within the bodies themselves, there are procedures to guarantee good liaison between the administration and control services and the recovery services.
	<p><u>Own resources</u></p> <p>The DGAIEC (customs) maintains a file for monitoring cases of fraud and irregularities.</p>
	<p><u>Structural Funds</u></p> <p>The paying agencies are preparing to adopt procedures necessary for the recovery of unduly paid sums.</p>
FIN	<p><u>Own resources</u></p> <p>The unit for the management of credits at the National Customs Council receives proposals for post-settlement recovery by e-mail from the customs districts. If necessary, the recovery authorities contact the legal or fiscal authorities (see item 8.1. above).</p> <p><u>Agricultural expenditure</u></p> <p>There are regular contacts between the supervisory authorities and the recovery authorities in the Ministry for Agriculture and Forestry;</p> <p><u>Structural measures</u></p> <p>Procedures have been set up to allow the follow-up of the measures taken in concrete cases by the supervisory authorities on the one hand, and the recovery authorities on the other (meetings, common databases...). Coordination is facilitated by the fact that the supervisory and the recovery authorities for each Structural Fund are within the same Ministry.</p>
	(Åland) In practice contacts are limited since requests for recovery are relatively rare with regard to projects part-financed by the Structural Funds. In general, requests for recovery are honoured without it being necessary to apply to the police.
S	All management authorities have concluded contracts with a debt collection company. In the event of non-payment of the sum owed after this company's intervention, the case is passed to the public service for the enforcement of debts.
UK	<p><u>Own resources</u></p> <p>Regular and effective channels of communication have been established within HM Customs and Excise, permitting the notification of debts to the teams responsible for recovery, and making it possible for the latter to inform the inspection teams of the results of their activities.</p>

8.3. Daily liaison between the control authorities and those responsible for recovery	
	<p><u>Agricultural expenditure</u></p> <p>The Rural Payments Agency (RPA) has both investigation departments and departments responsible for recovery.</p> <p>Within the Forestry Commission, the same people deal with controls and recovery (in the latter case, they are assisted by the financial sections).</p> <p>(Scotland) In the area of agricultural expenditure, the results of inspections are incorporated into the integrated administration and control system (IACS), which identifies the amounts to be recovered and transmits them to the sections responsible for recovery.</p> <p>(Northern Ireland) Within the Department of Agriculture and Rural Development (DARD), the subsidies and grants inspection division (SGID) and the subsidies payments division (SPD), which is responsible for recovery, come under the same management unit. Regular meetings and detailed instructions guarantee strict application of the rules in force. In addition, the Department of Agriculture and Rural Development (DARD) uses a centralised and completely integrated computer system for all aspects of direct agricultural aid management, including calculation and the application of sanctions, the authorisation of payments and the recording and processing of expenditure to be recovered.</p>
	<p><u>Structural measures:</u></p> <p>Both controls and recovery are the responsibility of the Department for Transport, Local Government and the Regions (DTLR). Day-to-day work however is carried out by the Government Offices (GO), on the Department's behalf.</p> <p>With regard to ESF expenditure, the Government Offices (GOs) are obliged to report the recovery of undue expenditure to the Department for Work and Pensions (DWP).</p> <p>With regard to the FIG, the authorities responsible for controls and those responsible for recovery are located in the same ministry.</p> <p>(Northern Ireland) Internal audit reports containing data on irregularities are sent to the accounting officers (AO) of the implementing ministries responsible for recovery. The same is true for reports drawn up by the investigators (IAUs).</p>

Title III: STATISTICS AND ANALYSES

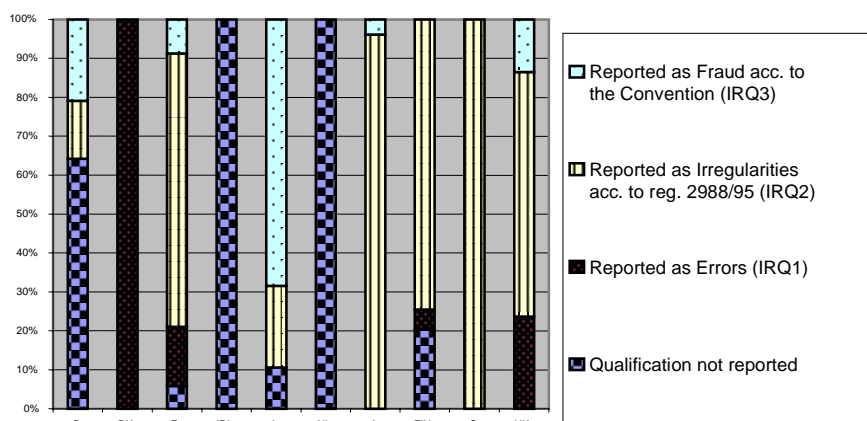
INTRODUCTION

For the protection of its financial interests, Community legislation lays down notification requirements as regards Community fields of activity (Own Resources and Expenditure). Based on the sectoral legislation, Member States are obliged to communicate to the Commission all cases of irregularity⁵⁰ which exceed €4 000 (€ 10 000 for own resources).

Member States also notify further stages in the examination of those irregularities such as administrative decisions or the transmission of the file to judicial authorities.

The distinction between fraud and other irregularities is that fraud is a criminal act⁵¹, which is ultimately determined at the outcome of the judicial process. Any attempt to distinguish, for reporting purposes, between fraud and other types of irregularity therefore requires Member State authorities to estimate in advance whether each irregularity is likely to constitute fraud.

Reported Communications Reg. 595/91 for 2001 in digital format:
Qualifications of Irregularities *



In general, the Member States accept that this approach is desirable for statistical purposes. In practice, however, the notification of cases of fraud and irregularity varies widely between Member States⁵². Some are more prepared to reach a judgement at an early stage in the procedure: others are more cautious. In some Member States judicial authorities conduct all the investigations, in others, administrative authorities do the initial investigation. The consequence is that the

⁵⁰ Article 1(2), Regulation (EC, EURATOM) N° 2988/95 of the Council of 18 December 1995 (OJ L312 of 23.12.1995).

⁵¹ The common definition of fraud is found under Article 1 of the Convention on the Protection of the Communities' Financial Interests of 26 July 1995 (OJ C N°316 of 27.11.1995).

^{52*} The chart shown above was produced on the basis of those communications that have been reported in digital format via the AFIS network, since the analysed field "Qualification of the Irregularity" is only available in that format. Consequently, only those Member States appear in the table that have used the AFIS-network to report their irregularities.

figures submitted by Member States in the past have not been prepared in a consistent way across the EU as a whole.

The Commission has set up a working group to provide Member States with guidelines by which irregularities, including suspected fraud, can be notified in a more consistent way. Improvements have been agreed on the practical modalities of communication. However, the consensus has not yet been achieved on how and when to determine for reporting purposes that a particular irregularity may involve fraud. The main difficulty is the reluctance of some Member States to make predictions, even for statistical purposes, before the completion of criminal proceedings. The Commission is determined to resolve this problem, and discussions are continuing.

A further difficulty in the preparation of the present Report is that the Member States are in the process of moving from the communication of irregularities on paper to electronic communication. In the agricultural sector in particular, a very high number of communications were presented in paper form rather than, as anticipated, via the new electronic format. This has made it difficult rapidly to analyse the communications and to establish their reliability. This situation will improve in the future as the migration to electronic format is completed.

Traditional Own Resources

In the context of the new approach to the information to the Budgetary Authority, from the year 2000 onwards, the Commission merged the report established by OLAF under Article 280 of the Treaty and the report established under Article 17(3) of Regulation N°1150/00 by the Directorate general Budget.

For the year 2001, the Commission notes with satisfaction that all Member States endeavoured to communicate the necessary information in the given timeframe.

Besides, the Commission adopted Decision C(2002) 416 final of 13.03.2002⁵³ in order to further simplify the modalities of notification of underlying information.

Expenditure

In order to ensure fast and reliable communication the Commission has created special irregularity modules under Regulation (EC) No 595/91 as well as under Regulation (EC) No 1681/94 and Regulation 1831/94 so the notifications can be sent in safe electronic form using the AFIS network. These notifications are to be stored in such a way as to be accessible and put to maximum use by both the Member States as well as other Commission services.

During the first half of 2001 all Member States received training to use the new system, as well as a module for use for communicating irregularities under Regulation 595/91. As a result of this all Member States should have been able to send messages in digital form since the third quarter of 2001. However some Member States have found this migration of communications to electronic delivery

⁵³ Amending Decision 97/245/CE, Euratom of 20 March 1997 defining the modalities for the communication by the Member States of certain information addressed to the Commission in the context of the system of the Communities' own resources.

problematic and by simply comparing Regulation 595/91 irregularity messages it is clear that there are some deficiencies in the figures.

At a series of meetings in Brussels in April 2002, Member States were encouraged to report any technical difficulties they had experienced in using the 595 module and to validate the 2001 figures electronically. Member States were all invited to verify the statistics and to comment on them. Those responses which were received on time have been taken into account. Due to the fact that some replies had not been received by the agreed deadline (18/04/2002), and the fact that some 2/3 of the messages were received in paper format, an in-depth analysis was not possible and these results should be treated as preliminary findings. However, an additional effort has been made to incorporate all the information received after the deadline and thus all statistics presented in this part of the report are based on figures on the situation 15/05/2002. This applies to communications under Regulation 595/91 as well as 1681/94 and 1831/94.

9. THE SITUATION IN 2001

Examination of all communications received in 2001 reveals that the total number of irregularity messages communicated has decreased in all sectors in comparison to the year 2000. This is the case particularly in Own Resources and in Agriculture, much less so in the Structural Funds. As regards the amounts, the same decrease can be observed. However, whilst the budgetary implications of irregularities affecting Own resources (from €27 million to €256 million) and the EAGGF Guarantee area (from €474 million to €141 million) have fallen, the budgetary implications affecting the Structural Funds have increased (from €114 million to €201 million). In the latter case, this may reflect stronger efforts in detecting fraud and other irregularities and cases involving greater amounts.

9.1. Traditional Own Resources

The Member States' Activity Reports (Article 17(3) of Regulation N° 1150/00)

Under Article 17(3) of Regulation N° 1150/00, the Member States communicate the annual data regarding the activity of the customs administrations (declarations accepted ; declarations submitted to ex post control ; staff numbers). These data make it possible to define the trends of customs activity in the European Union.

As compared to 2000, activity in the year 2001 reflects a clear rise in the number of accepted declarations⁵⁴ (+20,30%), especially in Germany, Italy and the United Kingdom. Given the economic conditions, this rise is surprising. The number of controlled declarations⁵⁵, on the other hand, rises by almost 50%. However, the overall rate of control rose by 1,70% only as compared to 2000, the rate of control increasing significantly in Belgium , Germany, Greece and Portugal.

In spite of this, the impact of this overall increase must be analysed with due caution, for a number of reasons :

⁵⁴ The number of declarations accepted in 2001 is 108.375.105 as against 88.625.612 in 2000.

⁵⁵ The number of declarations controlled in the context of audit cannot be quantified by nature; therefore the rate of control cannot take them into account.

- it seems that some Member States always communicate the total number of accepted declarations, regardless of the nature of duties concerned (own resources or national taxes), and do not necessarily specify the split between types of declarations;
- from one year to the next, some Member States have important variations in the number of controlled declarations : this is the case for Greece with 246 804 declarations controlled in 2001 as against 17 517 only in 2000.

The Commission draws again the attention of the Member States on the necessity of providing consistent statistics which can be used for a detailed analysis of each Member State's activity and a more objective comparison of the activity of the Fifteen. On the other hand, the Member States will be invited to justify the objective nature of some data in the context of the Advisory Committee on Own Resources.

Overall, the number of staff in the customs services is relatively stable. However, in some Member States, such as Greece, Germany, Austria and the United Kingdom in particular, this number diminished as compared with 2000. These Member States will be requested to explain this decrease. Besides, the overall staff level for ex post control remains stable.

An Analysis of the data transmitted by the Member States under Article 6(5) of Regulation N° 1150/00 (see Annex 1).

As provided by Article 6(5) of Regulation N° 1150/00, the Member States inform the Commission of cases of fraud and irregularity, whose amount is higher than € 10 000. This information makes it possible to describe trends in the fight against fraud and their financial impact.

The Member States' Communications of fraud and other irregularities - 1997/2001
(as on 26.04.2002)
(Article 6(5) Regulation N° 1150/00)

Member States	1997	1998	1999	2000	2001	Cases 2000-2001	Amounts 2000-2001
B	260	345	294	306	293	- 4 %	38%
DK	83	133	102	108	67	- 38 %	-48%
D	397	335	496	488	351	- 28 %	-63%
EL	15	12	14	0	10	+ 100 %	+ 100 %
E	81	73	119	116	134	+ 16 %	365%
F	232	216	267	246	215	- 13 %	-41%
IRL	54	63	40	37	35	- 5 %	-20%
I	302	173	288	226	197	- 13 %	140%
L	4	7	8	2	0	- 100 %	-100%
NL	466	305	205	264	205	- 22 %	-65%
A	81	163	87	89	98	+ 10 %	118%
P	16	18	14	19	11	- 42 %	30%
FIN	36	42	36	36	20	- 44 %	96%
S	46	98	66	17	18	+ 6 %	122%
UK	481	499	534	496	192	- 61 %	-91%
TOTAL CASES	2.554	2.482	2.570	2.450	1.846	- 25 %	-51%

Overall, for the period 1989-2001 (updated on 26.04.2002)⁵⁶, the Commission received **20 452** communications (initial communications and updates). For the year 2001 alone, **1 846** communications were transmitted by the Member States. The table above shows the evolution of the communications of cases of fraud and irregularity from 1997 to 2001.

Two tendencies emerge: in raw data, the number of cases of fraud and irregularity since 1997 continues to dwindle ; so does the number of cases of fraud and irregularity in 2001, which diminishes by 25% on the average as compared with 2000, with 1 846 communications in 2001 as against 2 124 in 2000.

The fall is particularly significant in the United Kingdom (-61%), a situation resulting essentially from the settlement of one particular file; the fall is equally important in Finland (-44%), Germany (-28%), the Netherlands (-22%), Portugal (-42%) and Denmark (-38% in cases). The new direction of certain customs controls to other areas of activity (for example, the fight against terrorism) could partly explain this tendency.

However, the Member States are obliged to monitor the Communities' resources as carefully as they do monitor national resources. Reorienting controls cannot be done at the expense of the Union's own resources. The Member States will be requested to explain the reasons for this trend, in the Advisory Committee for Own Resources.

⁵⁶

The table above was established on the basis of data provided by the Member States. The notion of fraud is not interpreted in a uniform manner by the Member States. This is due partly to the fact that the Convention on the Protection of financial interests which gives a definition of the notion has not yet been ratified by all national Parliaments. For some Member States, an infringement to Community law cannot be described as fraud as long as a Court has not adopted a final ruling. In some others, on the other hand, operational services qualify this type of infringement themselves during the investigations. The Commission therefore recommends that only the overall figures including both the concepts of fraud and irregularities be used for the sake of analysis.

The overall fall of *established amounts* (see Annex 7) is proportionately steeper than the fall in number of cases. The established amount falls back to the levels noted in 1998 and 1999. The fall in 2001 is very important (-51%) as compared to 2000 – a year in which the established amount had doubled as compared to 1998 and 1999. Such a variation derives naturally from the decreasing number of cases and also from the smaller impact of the file *Milk Products of New-Zealand*⁵⁷, which accounts for no more than 0.50% of established amounts in 2001 as against 55.66% in 2000, as well as of cigarettes.

An important increase of the established amount was noted mainly in Spain (+365%), Italy (+140%, due to cases related to banana imports), in Austria (+118%), in Sweden (+122%) and in Finland (+96%). This amount on the other hand falls substantially in Germany, the Netherlands, France and the United Kingdom. Given these elements, the Member States are invited by the Commission to state the reasons for this deficit.

The recovered amount in 2001 (€40 342 543, see Annex 7) decreased as compared to 2000 (€36 101 574). However, the overall average rate of recovery is comparatively stable (15.7% in 2001 as against 16.3% in 2000). This rate rose significantly in Denmark, in Germany, in France, in the Netherlands and in Finland. But it falls substantially in Greece, in Ireland, in Sweden, in the United Kingdom and in Portugal. The rate of recovery varies widely from one Member State to another, given in particular national procedures of recovery: therefore, it is not possible to appreciate the Member States' diligence.

The Commission is glad to underline the efforts made by the Member States as regards deadlines as well as the quality of information transmitted for the year 2001. The data collected from the Member States constitute a prime basis for risk analysis and defining the targets of the Commission controls.

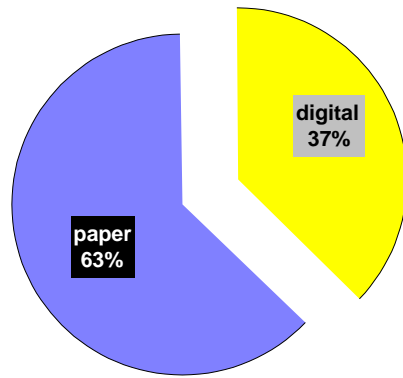
The overall balance 2001 confirms the general trends observed during previous years. Certain conclusions, however, require explanations from the Member States. The Commission wonders about the clear increase in the number of declarations when compared to the simultaneous fall in the number of cases of fraud and irregularities communicated. These questions will be open to debate in the next meeting of the Advisory Committee on Traditional Own Resources, on the basis of a more elaborate working document.

9.2. Agricultural expenditure (EAGGF Guarantee)

The year 2001 was a so called transitional year in which, for the first time, the communications of frauds and irregularities under Regulation (EEC) N° 595/91 should have been forwarded to OLAF in electronic or digital format rather than on paper. Unfortunately, the implementation of the new electronic system was a problem for some Member States which is why only a relatively small percentage of the communications received in 2001 were in digital format. The chart below illustrates how the communications were sent.

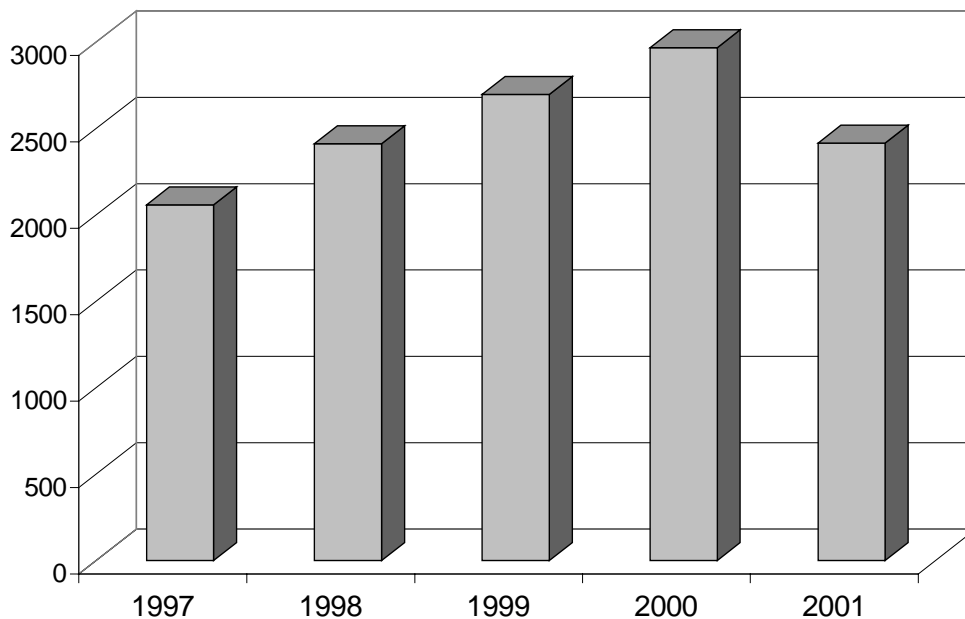
Irregularities communicated by the Member States

⁵⁷ See the Special Report of the Court of Auditors N° 4/98 (OJ N° C 127 of 24.04.1998 and OJ N° C 191 of 18.06.1998).



There is no certainty that the total number of communications received, both electronically and on paper, represent the total number of frauds and irregularities detected by Member States. The reason for this doubt is the fact that, in comparison to the year 2000, the number of frauds and other irregularities detected by the Member States in 2001 and their budgetary impact, decreased. The trend over recent years however, has been a steady and significant increase in the number of cases. In 2001 the number of cases decreased by almost 552 cases, situation as communicated on 15 May. The next chart provides an overview of the number of cases over the last five years.

Cases communicated by the Member States



It is, of course, difficult to give an explanation for this decrease. It is unlikely that the number of cases of fraud and irregularities has fallen so sharply. One of the explanations might be that the transition from paper format to digital format has resulted in not all irregularities being reported.

Not only the number of cases decreased but also the amount of money the fraud and irregularities entailed. In the year 2000 the amount affected was almost € 475 million. In the year 2001 it was approximately € 141 million . As a percentage of

total EAGGF expenditure this means a decrease from 1.18% to 0.34%. In annex 3 an overview is given over the number of cases, the amounts involved and the % of the EAGGF expenditure affected over the last five years.

9.3. The field of structural measures

In the field of expenditure on structural measures, the trend highlighted in the last annual report can be confirmed. In comparison to the year 2000, the number of cases decreased slightly, but the increase in terms of the budgetary impact continued. This could be the result of an improvement in the inspection system of the Member States, not only in terms of number of irregularities detected but also with regards to their seriousness (for chart and figures see annexes 4 and 5).

Also this year, the majority of cases communicated by the Member States concerned the Structural Funds (EAGGF Guidance Section, ESF, ERDF, FIFG). With regard to the Cohesion Fund (which amounts to approximately €3 billion a year), out of the four beneficiary Member States (EL, E, Irl, P), only Greece communicated 4 cases of fraud/irregularity (involving about €2.429 million). From the total number of cases communicated, it was once again the Social Fund which was most affected in 2001 (694 cases reported), whilst in monetary terms it was the Regional Fund which registered the highest level of fraud/irregularities (more than €102 million).

The analysis of patterns across Member States in the previous year was confirmed in 2001. The highest number of cases was communicated by the Netherlands and France, mostly and, in the former case only, those affecting the Social Fund. In terms of amounts, Ireland once again differed from the other Member States with a very limited number (smaller than the previous year) of cases involving very significant amounts of ERDF funding, a total of 41 cases amounting to more than €31 million.

9.4. Cases under investigation by OLAF

As a general rule, OLAF opens an investigation because fraud is suspected, with the sole exception of direct expenditure, where OLAF deals with all irregularities and has a key responsibility for conducting investigations. The national judicial bodies carry out the investigation to determine the definitive nature of the behaviour. Amounts are established once the investigation by OLAF is finished, and sent to follow-up. The impact of cases closed, however, is a *provisional estimate*, to be confirmed by the competent national bodies which must issue the recovery order to the persons concerned (except in the case of direct expenditure).

OLAF dealt in 2001 with 381 new cases most of which fall, according to the provisional assessment of the Office, into the criminal category⁵⁸. The total number, as shown in the first table, reflects a level of antifraud activity higher than it was in 2000 (328 cases opened). Cases are broken down by Community policy. A detailed account of investigations is given in the Activity report of the Office, under Article 12 of (EC) Regulation N°1073/99⁵⁹.

⁵⁸ It is possible that some of these cases have also been included by Member States in their communications.

⁵⁹ (EC) Regulation N°1073/99 of the European Parliament and the Council concerning the investigations of the European Office for the Fight against Fraud (OJ L 136 of 31.05.1999).

Budget area	New cases in 2001
Traditional Own Resources	74
EAGGF TOTAL	105
- <i>Agricultural trade/Export subsidies</i>	70
- <i>Subsidy and Direct Aid</i>	35
Structural Actions	66
Direct expenditure	
<i>Internal policies (Expenditure)</i>	37
<i>External policies)</i>	66
Internal cases	33
Overall Total	381

The second table presents the data regarding cases that were closed in 2001 and their budgetary impact. No quantification is done of the impact of ongoing cases in order to avoid disseminating figures which may be subject to considerable variations following the conclusion of the investigation. Therefore, the figures displayed below and in annex 6 do not give a complete picture of the overall fight against fraud affecting the Communities' budget, or of the consequences for national budgets or for the budget of separate institutions.

Budget area	Number of cases closed	Estimated Amount in €	% sectoral budget ⁶⁰
Traditional Own Resources	98	276 154 658	0,02
EAGGF TOTAL	364	198 500 000	0,47
– <i>Agricultural trade/Export subsidies</i>	281	190 000 000	
– <i>Subsidy & Aid</i>	83	8 500 000	
Structural Actions	66	47 530 187	0,12
Direct expenditure			
<i>Internal policies (Expenditure)</i>	52	13 901 214	0,21
<i>External policies</i>	70	7 768 308	0,16
Internal cases	13	20 878 599	
Overall Total	663	564 732 966	

In traditional own resources (customs duties and antidumping duties), 74 new cases were opened in 2001. The number of cases closed was 98, with an estimated impact of €276,15 million.

In agriculture, 105 new cases were opened in 2001 (70 for Agriculture trade and 35 for agricultural subsidies and direct aid) and enquiries in these matters were still ongoing at the end of the reporting period. 364 cases were officially closed, representing a financial impact of €198,5 million : half of these were referred to the Member States for follow-up action, as it was decided that they were best placed to check the matters in question ; another significant proportion, after a rigorous assessment, were deemed not worth opening as a formal investigation. In 2001 OLAF also continued its work on those cases which were opened before 2001 and were still ongoing when this report was done, for example, the multi Member State case of the importation of bananas covered by false licences (estimated financial impact € 155m), the Spanish flax affair (financial impact, € 100m – now going through the Commission Clearance of Accounts procedure) and various milk quota cases in different Member States (financial impact running to at least €10m).

In the structural funds, 66 new investigations were opened, out of which 84% concerned the ERDF and ESF. Priority was given to cases with a transnational

⁶⁰ Percentage of the 2001 Commitment appropriations of the EC Budget relevant for each Budget area, Execution as at 17.04.2002.

dimension and a significant financial and judicial output. In the same period, 66 cases were closed⁶¹, 90% of which concerned the ERDF. Most cases of suspected fraud involved false billing, false declarations of expense. Specific problems were detected in public tendering. OLAF increased efforts to ensure close cooperation with its natural partners, that is the national (administrative and judicial) authorities and the Commission departments concerned.

In direct expenditure, the distinction is made between internal policies such as Education or Research, External aid and finally corruption cases. In this field, which is managed mainly by the Commission, OLAF opened, in 2001, 136 new cases and closed 135 cases. Half of these new cases involved external aid (PHARE, TACIS, Development assistance programmes, etc). ¼ of new cases involved an anti-corruption dimension, thus demonstrating the importance which the Commission and OLAF attach to scrutiny in this sensitive area.

OLAF also closed some 135 cases with an estimated overall budgetary impact of € 42.5 million (see Annex 6). Again, external policies account for more than 50% of the total. However, the greater amount has to do with internal policies, and internal (anticorruption cases) cases.

⁶¹ This does not include cases dismissed because, after a rigorous review, no financial or other interests of the European Union were found jeopardised or because the sources were not reliable.

10. SPECIFIC ANALYSIS

10.1. The field of traditional own resources

As regards *the breakdown of frauds and irregularities by customs arrangements*, the 2001 figures confirm the impact of fraud on free circulation (73.40% of cases and 82.30% of established amounts). However, as far as the number of cases is concerned, fraud now affects the transit regime and outward processing.

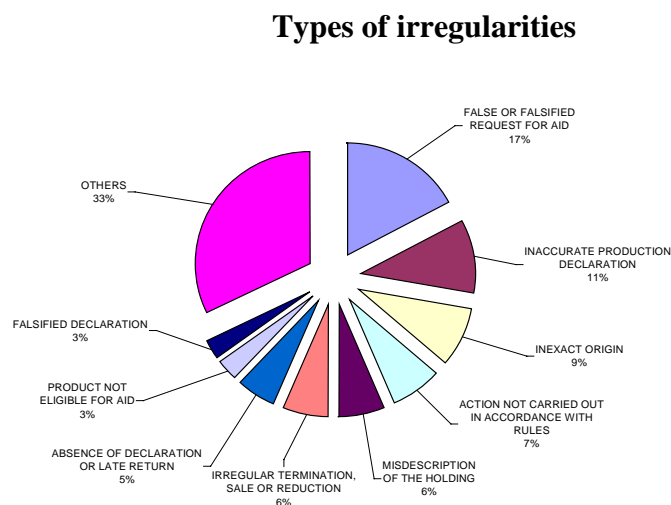
The detailed breakdown of the established frauds and irregularities by type of fraud in free circulation leads to the observation that cases mentioned under *Other Irregularities* is in increasing proportion – 49.10% of the cases for 73.60% of the established amount. The imprecise nature of the information, which was already highlighted in the previous years, distorts analysis. With this reservation, fraud in free circulation is high on the incorrect description of goods (28.80% of the cases for 15.10% of the amount).

The analysis of the data communicated can also reveal the impact of *fraud by type of goods*. In 2001, the impact was very strong on cigarettes and rice, as regards the number of cases. In established amounts, the impact of fraud is particularly significant on bananas. As far as the breakdown of cases of *fraud and irregularities by origin* is concerned, the 2001 figures confirm the tendency observed in the previous years : the impact is very strong on goods originating from the USA and China.

10.2. Agricultural expenditure (EAGGF Guarantee)

It is difficult to make an in-depth analysis until we are certain that all the cases, which occurred during 2001 have been communicated. It would therefore be premature to draw too many conclusions but certain facts can already be established.

The first conclusion is that the cases communicated are spread over all the possible types of fraud and irregularities. In the following chart an overview is given of the different types and their percentage.



It is also clear that, as in the year 2000, the highest numbers of communications are from Germany, Spain and France (see annex 2). Italy comes fifth this year with 163 cases. In monetary terms Italy is the Member State that reports the highest level of fraud and irregularities, i.e. more than € 45 million, followed by Spain with a reported amount of more than €30 million. Italy takes account for almost one third of the amount of irregularities.

10.3. The field of structural measures

The following tables report some figures concerning the irregularities communicated.

Most frequently appearing types of irregularities

Codes	Type of irregularity	Frequency	Indicative Implicated Amount	Indicative Average amount
999	other irregularities	339	74 405 978	219 487
325	not eligible expenditure	316	34 071 194	107 820
210	missing or incomplete supporting documents	170	10 126 475	59 567
612	failure to respect other regulations/contract conditions	107	13 289 780	124 204
102	incorrect accounts	79	16 091 043	203 684
831	overfinancing	73	3 994 668	54 721
811	action not completed	67	8 991 222	134 197
812	action not carried out in accordance with rules	58	1 573 023	27 121
211	incorrect supporting documents	43	9 702 371	225 637
	The rest of the codes	383	93 293 138	243 585

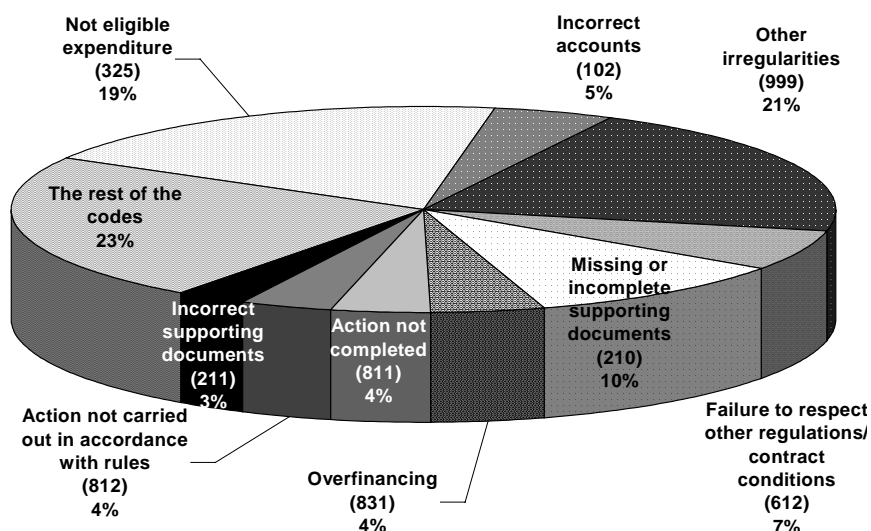
The first one shows the *types of irregularity which appeared most frequently*, together with an indicative implicated amount and the indicative average amount:

It must be noted that due to the reporting method a single case may contain more than one type of irregularity. As the objective of this table is to show the frequencies of the different types of irregularity their count slightly distorts the real total results.⁶²

The exact total amounts are those reported in annexes 4 and 5.

These figures are represented graphically below.

⁶² Therefore the 'total' row has been omitted. The same considerations must be kept in mind for the "indicative implicated amount" and for the "indicative average amount" columns. The values showed in those two columns are only "virtual".



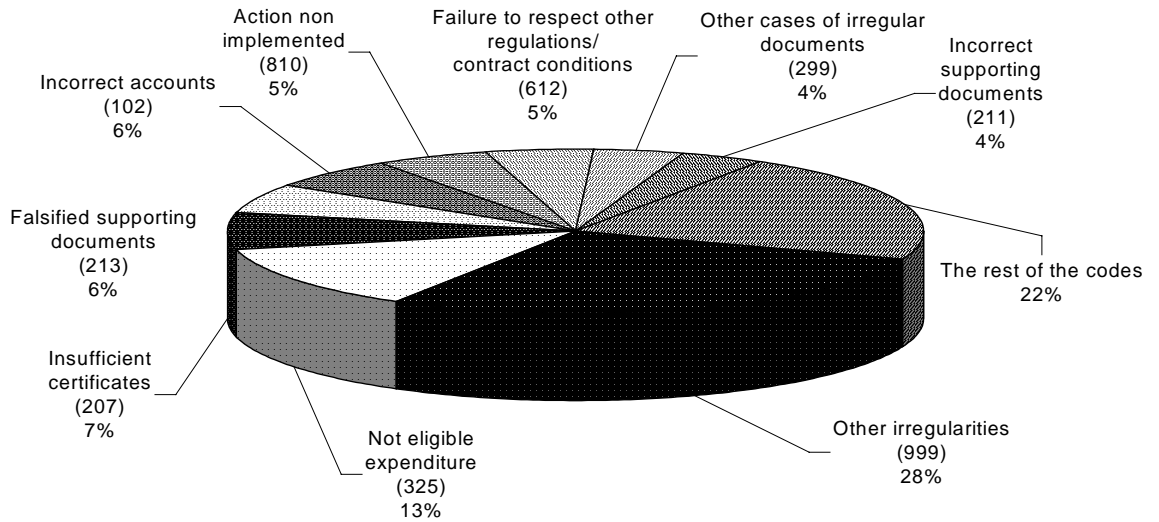
The next table⁶³ and chart focus on the most “risky” irregularities in respect of overall amount. By comparing it with the previous one, the type of irregularity that appears most often and poses greatest risk to the EU’s financial interests is the “not eligible expenditure” category:

Most Risky irregularities compared with indicative implicated amounts

Codes	Type of irregularity	Indicative implicated amounts	Frequency	Indicative average amount
999	other irregularities	74 405 978	339	219 487
325	not eligible expenditure	34 071 194	316	107 820
207	insufficient certificates	19 432 467	28	694 017
102	incorrect accounts	16 091 043	79	203 684
213	falsified supporting documents	15 466 563	40	386 664
810	action non implemented	14 090 878	31	454 544
612	failure to respect other regulations/contract conditions	13 289 780	107	124 204
299	other cases of irregular documents	11 124 250	25	444 970
211	incorrect supporting documents	9 847 896	43	229 021
	The rest of the codes	57 718 843	627	92 056

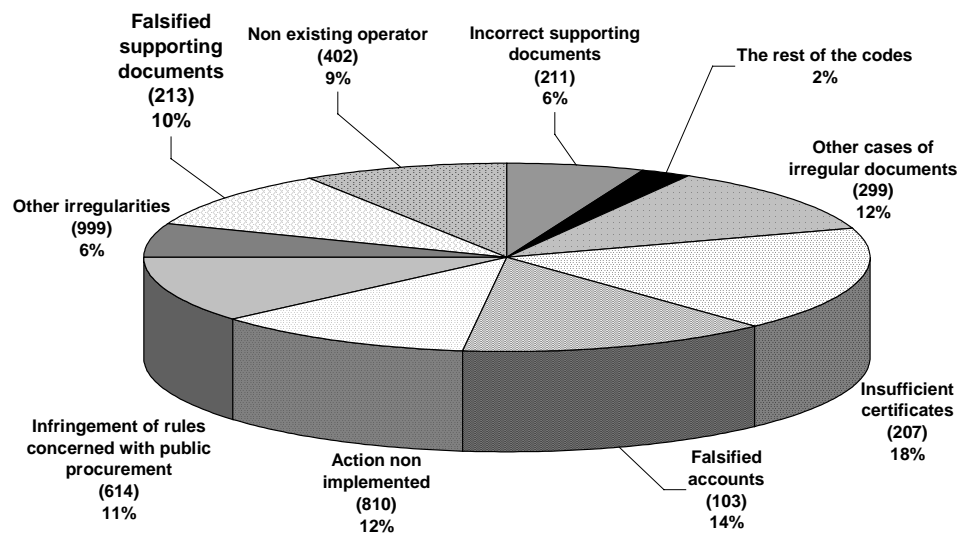
⁶³

Please note that the same considerations expressed for the previous table are valid also for the present table. See also the previous footnote. A total sum of the « Implicated amounts » column would not correspond to the amounts reported in annexes 4 and 5.



The last table presents the same aspects highlighted above, but from an “indicative average amount” point of view⁶⁴.

Codes	Type of irregularity	Indicative average amount	Frequency	Indicative implicated amounts
207	insufficient certificates	694 017	28	19 432 467
103	falsified accounts	532 682	10	5 326 816
810	action non implemented	454 544	31	14 090 878
299	other cases of irregular documents	444 970	25	11 124 250
614	infringement of rules concerned with public procurement	432 567	11	4 758 241
213	falsified supporting documents	386 664	40	15 466 563
402	non existing operator	356 569	6	2 139 411
211	incorrect supporting documents	225 637	43	9 702 371
999	other irregularities	219 487	339	74 405 978
	The rest of the codes	90 419	1102	99 642 140



⁶⁴

Same considerations as previous note.

Examination of the three tables shows a great impact on the overall evaluation by the «999 – other irregularities» code. Under this code the irregularities that do not fit any other possible description provided for by the communication system are reported.

However, their weight on the total seems excessive. The availability of more precise information in this field would certainly aid interpretations of the statistics concerned.

In respect of detection methods the following table is a complete list for the year 2001, accompanied by the total amount detected per method and its relative average⁶⁵:

Detection Methods

Code	Detection Method	Frequency	Indicative Amounts	Indicative Average Amount
101	National administrative or financial control	163	48 388 087	296 859
104	National fiscal control	64	17 359 742	271 246
107	judiciary inquire	61	50 724 814	831 554
111	Associated control	18	2 517 015	139 834
162	Associated control	2	53 547	26 773
170	Community control	6	17 208 220	2 868 037
199	Other controls	12	1 567 931	130 661
202	Control of products	1	107 699	107 699
206	Control of documents	128	39 402 423	307 831
207	Control of accounts	52	5 114 900	98 363
209	Control on the premises of the company	494	46 870 125	94 879
220	Physical check of goods	1	58 003	58 003
230	On the spot control of achievements of project or action	77	30 402 323	394 835
301	Spontaneous confession	12	264 187	22 016
302	Whistle blower	7	24 056 053	3 436 579
303	Complaint	7	215 980	30 854
307	Routine	6	823 740	137 290
316	Information published on the media	5	284 464	56 893
320	Ex post control	15	336 702	22 447
330	Ex ante control	1	136 530	136 530
999	Other facts	212	12 922 531	60 955
	blank	22	553 678	25 167

“Whistle blowing” as a detection method resulted in seven cases in four countries (F, I, D, EL). In general, its average indicative amount would have been the lowest in the table shown above. However, because of a single case in Italy, involving more than € 23 million, whistle blowing has the highest amount.

⁶⁵

Please note that as with the types of irregularity, more than one detection method could be related to a single case. All occurrences regarding detection methods have been taken into account. Therefore, also in this case the « Implicated amounts » column does not correspond to the amounts reported in annexes 4 and 5.

11. FINANCIAL FOLLOW-UP

11.1. Traditional own resources

Decision 2000/597/EC, EURATOM⁶⁶ on Own Resources, and more particularly Article 8, delegates to the Member States the collection of traditional own resources (see Annex 7). The Commission monitors the way in which the Member States carry out their mission in order to ensure the recovery of these resources in compliance with Community provisions in the customs and financial domain⁶⁷. To this end, the Commission set up a strategy for an overall monitoring⁶⁸ which permits an evaluation of the Member States' actions and the adoption of remedial measures.

There are three main principles in this strategy: a *sample survey* of the ongoing processing of cases, *the write-off procedure* for amounts of own resources above 10 000 euro that are considered irrecoverable and implementing the principle of *financial responsibility* for certain errors made by national administrations.

Sample survey

From the year 2000, the integration of information collected under Article 17(3) of Regulation N° 1150/2000 in the report on the Protection of financial interests dispensed from the « A Sample » report as such, in as much as the underlying information is of the same nature. However, the various aspects of customs activity are presented and discussed in the Advisory Committee of Own Resources on the basis of a more technical working document for the Member States.

Moreover, given the recent developments in the jurisprudence of the Court of Justice, as the relevant information was collected from the Member States within a reasonable time-scale, the Commission decided to constitute a new B Sample to be presented as the B 2002 report⁶⁹ and published in 2003. The monitoring done « Outside Sampling » - composed of cases which did not meet the conditions of the B Sample but could still be of interest for the monitoring of recovery – will be extended so as to analyse twenty cases or so.

The Write-off Procedure

The Member States take the necessary measures to make available traditional own resources, to the exception of cases where recovery proves impossible for reasons not attributable to the Member State concerned. Write-off cases (amount > €10 000) are communicated to the Commission for reviewing. If the Member State demonstrated all diligence in order to recover the amount due, in compliance with Community and

⁶⁶ Decision 2000/597/EC, Euratom of the Council of 29.09.2000 (OJ L 253 of 07.10.2000), entered into force on 01.03.2002. An amendment of Regulation N° 1150/2000 is being drafted so as to take into account the provisions deriving from the decision.

⁶⁷ Community Customs Code (EEC) Regulation N°2913/92 of the Council of 12.10.1992 (OJ L302 of 19.10.1992), Decision 2000/597/EC, Euratom and (EC, EURATOM) Regulation N° 1150/00 of the Council of 22.05.2000 (OJ L130 of 31.05.2000).

⁶⁸ For a detailed account of this strategy, see the 2000 Report on the Protection of Financial Interests and the Fight against Fraud.

⁶⁹ This report will come after Report B94, published on 9 June 1997 (COM(97)259 final) and B98, published on 29 April 1999 (COM(1999)160 final).

national law, the exemption can be accepted. If not, it is held financially responsible, under Article 8 of Decision 2000/597 and Articles 2 and 17 of Regulation N° 1150/00.

Examining the diligence of the Member States constitutes a very efficient action for convincing national administrations to take recovery more seriously, as they are held financially liable in cases of non-recovery. Moreover, the analysis of cases under Article 17(2) of Regulation N°1150/2000 is an opportunity for the Commission to make certain observations on the establishment of own resources, the way in which the separate account is kept and on the compliance of national provisions with Community law.

In order to have a more precise and objective vision of the conditions of non-recovery, the Commission amended Annex 6 of the Decision of 20 March 1997⁷⁰. The amendment was adopted by the College on 13 March 2002 (C(2002) 416 final).

During the year 2001, **12** requests for write-off totalling an amount of **€2 434 780.85** were addressed by six Member States (S, NL, UK, P, F, E) under Article 17(2) of Regulation N° 1150/2000. Yet **109 cases** in total were reviewed during the year 2001, as follows:

<i>Commission Position</i>	<i>Number of cases</i>	<i>% cases</i>	<i>Amount in €</i>	<i>% amount</i>
Exemption granted	48.50	44.50	7 875 024.78	37.90
Supplementary info	8	7.35	3 655 873.63	17.60
Inappropriate	32	29.35	3 578 622 50	17.25
Refusal	20.50	18.80	5 659 535 01	27.25
Total	109	100 %	20 769 055.92	100 %

The financial responsibility of the Member States for administrative errors

On the basis of Article 8 of EC Euratom Decision 2000/597/EC, the Member States have to ensure the collection of traditional own resources under the best conditions (see Annex 7) : with this remunerated responsibility (25% of resources collected) and in order to achieve sound and efficient management of public funds, any lack of diligence on the part of the Member States which results in a loss of resources gives rise to financial responsibility. According to this approach, the Commission holds the administrations financially responsible for their own errors⁷¹.

The year 2001 was mainly marked by the growing sensitivity of some Member States to the principle of financial responsibility for administrative errors. Therefore, the United Kingdom, Austria and Italy have made available to the Community budget, the amounts of own resources not recoverable due to errors committed by the responsible national administrations. France acted in the same way early in 2002.

⁷⁰ Commission Decision 97/245/EC, Euratom of 20 March 1997 defining the modalities of communication by the Member States of certain information to the Commission in the context of the system of the Communities' own resources.

⁷¹ For example, in case an amount is time-barred under art. 221 (3) of the Customs Code, whereas all the necessary particulars for entering the amount in the accounts were known, or in case of an administrative error which could not be detected by the debtor (*art. 220 (2)b of the Code*).

The total amount of the sums paid in this way by these four Member States was €7 388 990.12.

This example should lead some Member States whose share is in fact compensated by means of the fourth resource, to consider their position with regard to the principle of financial responsibility resulting from errors by their administrations.

In total, *30 files were opened in 2001* ; 48 reminder letters were sent. At the end of 2001, the total number of files was 91 involving a cumulative amount without interest of €50 933 636⁷².

*Initiative for better protection of the Union's financial interests: financial responsibility, external aspect*⁷³, *enhanced administrative co-operation*

Moreover, the Commission is developing the principle of external financial responsibility for the purposes of neutralising the negative effects on the Community budget resulting from errors committed by the national authorities in application of preferential arrangements. A clause on financial responsibility is found in the directives for negotiation of the free trade agreement between the Community and the Arab Gulf countries and the draft directives for negotiation with Albania and the ACP countries.

A similar principle has been implemented⁷⁴ in this domain regarding enhanced administrative co-operation: it consists of a safeguard antifraud mechanism which foresees the possibility of suspending preferential agreements or autonomous measures in cases of fraud or systematic lack of administrative co-operation. This provision is part of all directives mentioned above and is to be included in all new preferential agreements.

11.2. EAGGF Guarantee Expenditure

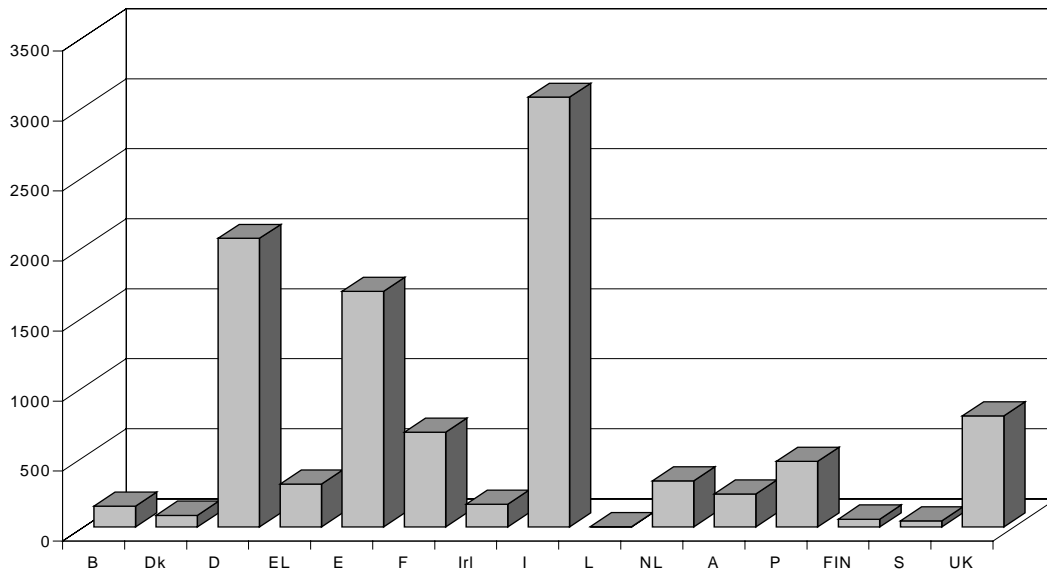
The total number of open cases is over 10 300. The amount still to be recovered is more than €2.2 billion (€2 203 659 000, see Annex 8). In the following chart an overview of the total number of open cases is given.

⁷² Item 13 of the European Parliament resolution on the situation concerning the European Union's own resources in 2001 (2001/2019(INI)) welcomed the action of the Commission regarding the actions started in the area of financial responsibility for administrative errors due to Member States.

⁷³ The Commission is developing the external aspect of the principle of financial responsibility, aiming to make partners responsible partners in international trade agreements which the Union has concluded or will conclude with non-member countries. The consequences of the Turkish TV decision -given on 10.05.2001 by the Court of First Instance of the European Communities- led to a communication to the Commission adopted on 17.07.2001 which provides expressly, amongst other things, for the implementation of this principle.

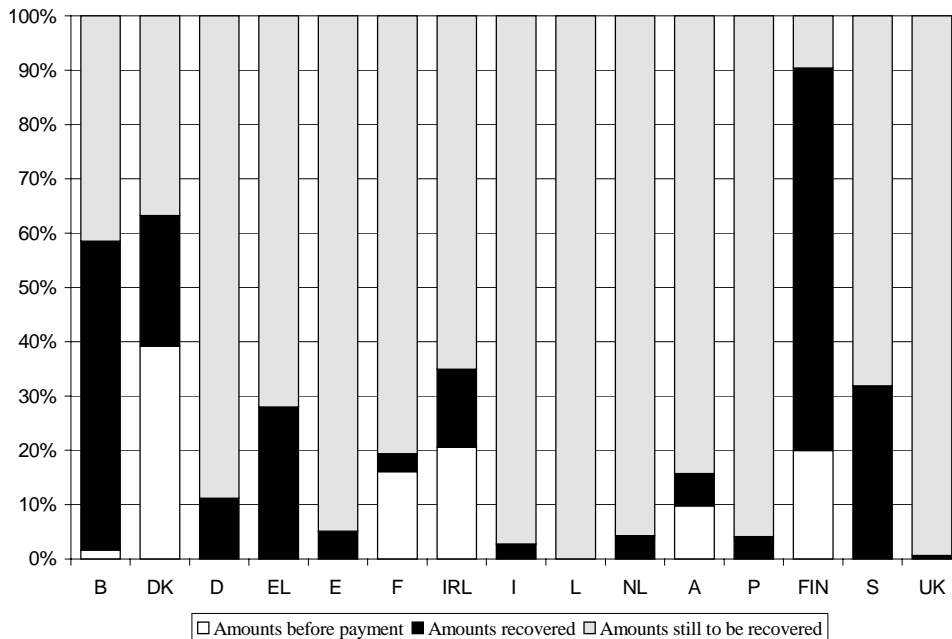
⁷⁴ A provision on enhanced administrative co-operation was already inserted in the EU-Chile Association Agreement reached in May 2002.

Total of open cases



From the new cases in the year 2001, which total more than €40 million, just over €122 million is still to be recovered. In the next chart an overview is given of the cases in the year 2001 and the state of recovery.

Percentage of recovery per Member State cases 2001.



11.3. Structural Funds

In the area of structural funds, the recovery situation (see Annex 9) as regards the data for the year 2001 is as follows:

- 22 % of the amounts concerned by irregularities were recovered,
- 14 % out of which is outstanding at national level and
- 64 % is the amount yet to be recovered.

In the area of structural funds, that is actions co-financed in the framework of multi-annual programs, the crucial phase as regards financial follow-up is the closing of the intervention in question. As regards the programming period 1994-1999, the closing of programs has just begun. A great part of cases, which were communicated under Article 3 of Regulation (EC) N°1681/94 must normally be discharged, with the exception of actions suspended for judicial reasons. The outcome of this exercise will appear in the course of reporting on the 2002 exercise.

From now on, the new (EC) Regulation 448/2001 makes it an obligation for the Member States to notify the Commission once a year the balance of outstanding recoveries. This will facilitate the financial follow-up in the future and the attribution to the Member States of amounts lost due to their negligence.

11.4. Direct Expenditure (including external aid)

The direct expenditure sector of the budget is managed mainly by the Commission and OLAF has special responsibility in this area. In cases of direct expenditure fraud and irregularity investigated by OLAF where it is not considered appropriate to launch criminal proceedings, the Office ensures that important elements arising either during the course of investigations or from the final investigation reports are communicated to the authorising DG for the expenditure in question so that appropriate safeguard measures and/or recovery action may be initiated in a timely manner. OLAF also supports the authorising DG throughout the financial follow-up and recovery process with the provision of advice and additional explanations etc. as necessary.

Where, however, OLAF's investigations lead it to believe that further criminal action should be taken in a case or where criminal proceedings are already in progress, OLAF ensures that the necessary steps are taken for the Commission to bring such action (or equivalent measures under the law of the country concerned) with a view to securing the recovery of unduly paid funds.

In this area, 23 direct expenditure fraud/irregularity cases were referred to the Follow-up unit during the reporting period. Most cases are still ongoing because of protracted legal (including bankruptcy) proceedings, some of a criminal nature. The total of actual financial recoveries in the reporting period amounted to €456 629.12. Many of the fraud/irregularity cases in question involved unauthorised expenditure, false or inflated claims for payment of expenses, or the non-delivery/fictitious delivery of contracted projects, goods or services.

ANNEXES

ANNEX 1

TRADITIONAL OWN RESOURCES

Number of cases of fraud and irregularity communicated by the Member States⁷⁵ to the Commission

Evolution of the communications over the period 1998- 2001

(updated 28.04.2002)

Member States	1998 Cases	1998 Amounts €	1999 Cases	1999 Amounts €	2000 Cases	2000 Amounts €	2001 Cases	2001 Amounts €
B	345	10 937 861	294	14 106 286	306	8 608 667	293	11 890 555
DK	133	14 579 458	102	8 423 483	108	9 737 390	67	5 023 409
D	335	25 969 777	496	33 134 340	488	54 489 168	351	20 279 207
EL	12	302 256	14	437 308	0	0	10	44 411
E	73	3 241 814	119	8 315 714	116	10 102 104	134	46 973 494
F	216	14 408 160	267	17 497 607	246	28 529 445	215	16 915 767
IRL	63	1 957 191	40	6 513 598	37	1 763 687	35	1 404 382
I	173	19 575 815	288	16 485 347	226	39 941 191	197	95 758 585
L	7	1 790 387	8	738 581	2	35 620	0	0
NL	305	9 014 326	205	8 925 914	264	13 440 108	205	4 758 162
A	163	7 857 517	87	4 569 400	89	6 577 552	98	14 359 390
P	18	1 315 011	14	546 348	19	1 180 000	11	1 534 849
FIN	42	1 673 759	36	5 104 165	36	1 598 820	20	3 140 752
S	98	8 625 341	66	5 096 843	17	1 139 647	18	2 524 769
UK	499	98 580 201	534	104 233 167	496	349 613 872	192	31 709 277
TOTAL CASES	2 482	219 828 874	2 570	234 128 101	2 450	526 757 271	1 846	256 317 009

⁷⁵ The communication by the Member States of cases of fraud and irregularity with an amount above €10.000 is a Community obligation set out in Article 6(5) of Regulation N° 1150/00 of 22.05.2000.

ANNEX 2*update 15/05/2002***EAGGF GUARANTEE**IRREGULARITIES COMMUNICATED BY THE MEMBER STATES UNDER
REGULATION N° 595/91

2001

(Amounts in € 1 000)

Member States	Number of cases	Amounts	% of EAGGF expenditure
B	67	5 717	0.61
DK	60	1 109	0.10
D	451	7 438	0.13
EL	25	13 403	0.51
E	492	30 191	0.47
F	412	10 896	0.12
IRL	88	1 161	0.07
I	163	45 377	0.83
L	2	29	0.10
NL	45	6 442	0.58
A	131	1 864	0.18
P	143	2 153	0.25
FIN	53	910	0.11
S	31	704	0.09
U K	252	13 290	0.34
TOTAL	2415	140 685	0.34

ANNEX 3

update 15/05/2002

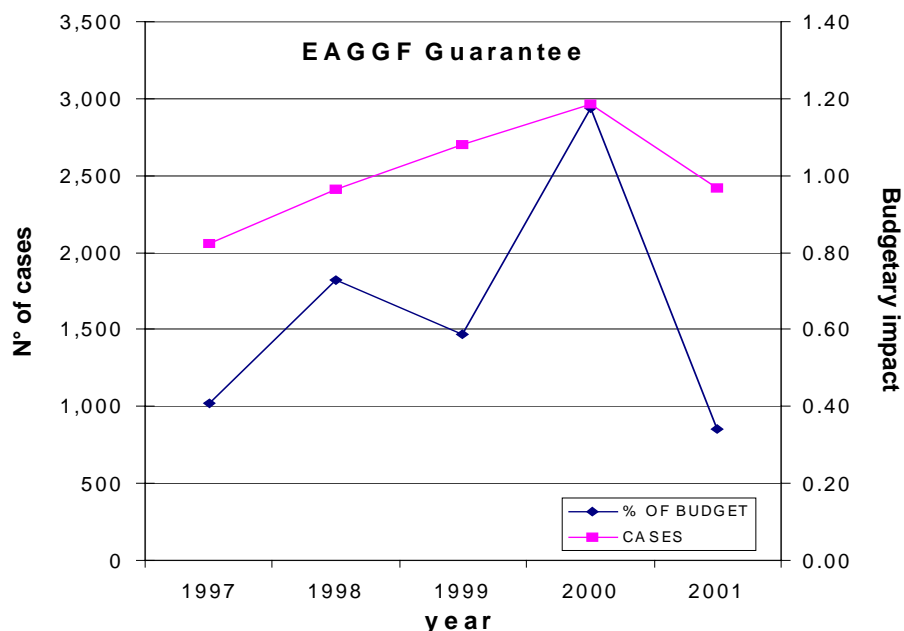
EAGGF GUARANTEE

IRREGULARITIES* COMMUNICATED BY THE MEMBER STATES
REGULATION N° 595/91

1997 - 2001

(Amounts in € 1 000)

YEAR	CASES	AMOUNT	% OF SECTORAL BUDGET	EAGGF-EXPENDITURE
2001	2415	140 685	0.34	41 866 940
2000	2967	474 562	1.17	40 437 400
1999	2697	232 154	0.59	39 540 800
1998	2412	284 841	0.73	39 132 500
1997	2058	164 884	0.41	40 423 000



* *The concept "irregularity" includes fraud. The qualification as fraud, meaning criminal behaviour, can only be made following a penal procedure.*

ANNEX 4

update 15/05/2002

STRUCTURAL ACTIONS

IRREGULARITIES COMMUNICATED BY THE MEMBER STATES UNDER REGULATIONS N° 1681/94 AND 1831/94

2001

(Amounts in € 1 000)

<i>Member State</i>	<i>Number of cases</i>	<i>Amounts involved</i>
B	0	0
DK	13	463
D*	164	12 535
EL**	80	6 108
E	80	6 256
F	205	12 114
IRL	55	48 642
I	91	58 792
L	0	0
NL	323	14 207
A	20	617
P	55	9 335
FIN	38	1 038
S	15	246
U K	55	31 199
Total	1.194	201 552

* Fourth quarter communications not yet received

** Including 4 communications concerning the Cohesion Fund

ANNEX 5

update 15/05/2002

STRUCTURAL ACTIONS

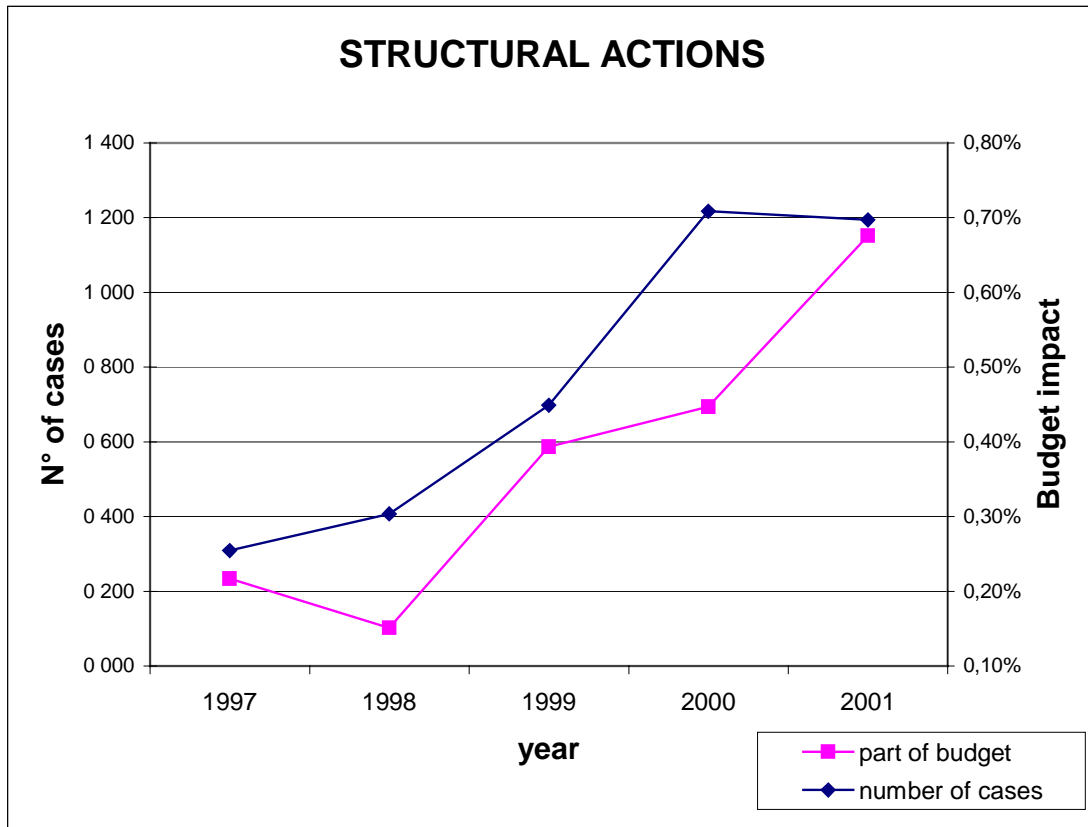
IRREGULARITIES* COMMUNICATED BY THE MEMBER STATES UNDER REGULATIONS 1681/94 AND 1831/94

1997-2001

(Amounts in € 1 000)

Year	Number of cases	Amounts	% of Budget	Total sectoral budget
2001	1 194	201 549	0.68%	29 829 680
2000	1 217	114 227	0.45%	25 556 000
1999	698	120 633	0.39%	30 654 450
1998	407	42 838	0.15%	28 365 990
1997	309	57 070	0.22%	26 304 900

**The concept of "irregularity" includes "fraud". The classification of fraud, meaning criminal behavior, can only be made following a criminal procedure.*



ANNEX 6

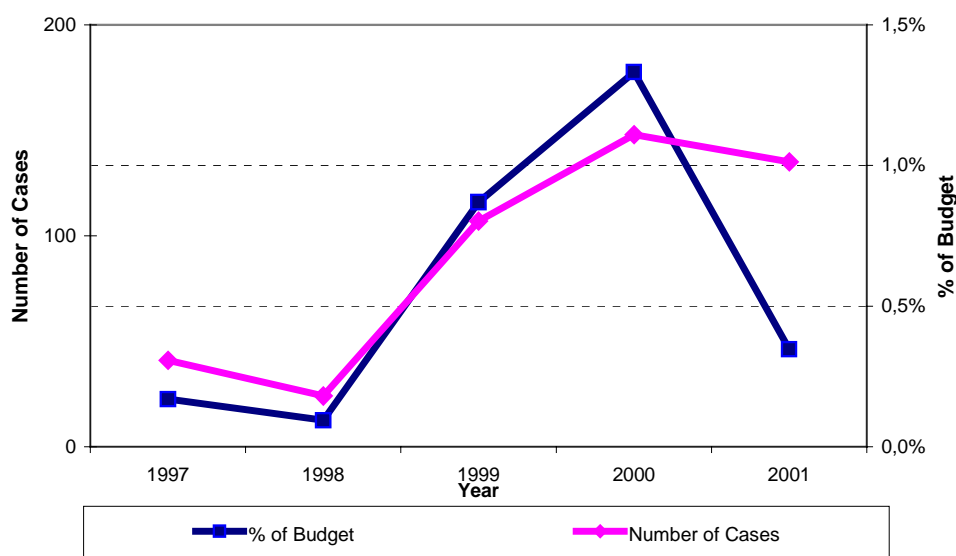
update 15/05/2002

DIRECT EXPENDITURE

SUSPECTED FRAUD AND OTHER IRREGULARITIES INVESTIGATED BY OLAF⁷⁶

(Amounts in €1 000)

Year	Amount of case	Amount	% of Budget	Total sectoral Budget
2001	135	42 548	0,35%	12 299 409
2000	148	170 374	1,33%	12 788 618
1999	107	73 300	0,87%	8 425 287
1998	24	11 000	0,09%	11 750 900
1997	41	18 000	0,17%	10 681 600



⁷⁶

The figure concerning 2001 does not include all cases investigated, but only those that were closed in that period

ANNEX 7

TRADITIONAL OWN RESOURCES (update 26/04/2002)

SITUATION OF RECOVERY IN CASES COMMUNICATED UNDER REGULATION N°1150/2000

(Amounts in €)

Member States	Number of cases communicated in 2001	Established Amounts	Percentage of establishments as compared to the EUR-15 total	Average Amount per case	Recovered Amounts out of the amounts communicated in 2001	% recovery EUR-15 total	Crude Rate of recovery ⁷⁷
(1)	(2)	(3)	(4)	(5) = (3) / (2)	(6)	(7)	(8) = (6) / (3)
B	293	11 890 555	4.6 %	40 582	2 068 940	5.1 %	17.4 %
DK	67	5 023 409	2.0 %	74 976	4 905 480	12.2 %	97.7 %
D	351	20 279 207	7.9 %	57 776	7 744 518	19.2 %	38.2 %
EL	10	44 411	0.0 %	4 441	44 411	0.1 %	100.0 %
E	134	46 973 494	18.3 %	350 548	4 238 717	10.5 %	9.0 %
F	215	16 915 767	6.6 %	78 678	5 171 695	12.8 %	30.6 %
IRL	35	1 404 382	0.5 %	40 125	721 505	1.8 %	51.4 %
I	197	95 758 585	37.4 %	486 084	620 584	1.5 %	0.6 %
L	0	0	0.0 %	0	0	0.0 %	-
NL	205	4 758 162	1.9 %	23 211	3 530 285	8.8 %	74.2 %
A	98	14 359 390	5.6 %	146 524	1 062 752	2.6 %	7.4 %
P	11	1 534 849	0.6 %	139 532	450 033	1.1 %	29.3 %
FIN	20	3 140 752	1.2 %	157 038	2 978 415	7.4 %	94.8 %
S	18	2 524 769	1.0 %	140 265	1 195 601	3.0 %	47.4 %

⁷⁷

The crude rate of recovery is not a significant element as it varies according both to the national procedures of recovery and the administrative and judicial procedures.

UK	192	31 709 277	12.4 %	165 152	5 609 607	13.9 %	17.7 %
EUR-15	1 846	256 317 009	100.0 %	138 850	40 342 543	100.0 %	15.7 %

ANNEX 8

update 15/05/2002

EAGGF GUARANTEE

**SITUATION OF RECOVERY IN CASES COMMUNICATED UNDER
REGULATION N° 595/91**

(Amounts in €1.000)

<i>Member States</i>	<i>To be recovered</i>		<i>In Justice *</i>	<i>Amounts ** "irrecoverable"</i>
	<i>cases communicated</i>			
	<i>< 2001</i>	<i>2001</i>		
B	60 813	2 370	17 580	2 801
DK	7 312	408	0	7 055
D	228 671	6 604	22 582	11 763
EL	36 200	9 648	12 985	5 538
E	153 853	28 644	15 108	38 403
F	59 835	8 783	30 704	1 813
IRL	4 750	755	3 351	201
I	1 392 677	41 661	401 942	14 939
L	7	29	0	0
NL	44 771	6 165	8 673	719
A	3 466	1 570	0	389
P	32 379	2 064	19 477	40
FIN	9	88	0	0
S	233	480	0	0
U K	56 209	13 206	19 558	3 440
TOTAL	2 081 185	122 474	551 960	87 101

** In justice: awaiting outcome of judicial proceedings in national courts*

*** Amounts irrecoverable: awaiting formal decision in Clearance of Account procedure*

ANNEX 9

update 15/05/2002

STRUCTURAL ACTIONS

SITUATION OF THE RECOVERY IN THE CASES COMMUNICATED UNDER
REGULATIONS N° 1681/94 AND 1831/94

(Amounts in 1.000 €)

<i>Member State</i>	<i>Total to be recovered <2001</i>	<i>Total to be recovered2001</i>
B	845	0
DK	391	139
D	55 516	10 863
EL	12 346	5 695
E	65 550	4 875
F	14 700	4 288
IRL	5 587	525
I	88 836	45 473
L	0	0
NL	1 112	1 256
A	0	102
P	20 023	3 067
FIN	737	448
S	823	48
U K	57 494	25 659
Total	323 961	102 438

N.B. In as much as these amounts are actually recovered, they can be reallocated to finance other projects in a program which is still open.