COURT OF AUDITORS

SPECIAL REPORT No 8/98

on the Commission’s services specifically involved in the fight against fraud, notably the ‘unité de coordination de la lutte anti-fraude’ (UCLAF) together with the Commission’s replies

(pursuant to Article 188c(4), second subparagraph, of the EC Treaty)

(98/C 230/01)

TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Paragraph references</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. INTRODUCTION. .................</td>
<td>1.1 – 1.12</td>
</tr>
<tr>
<td>Scope of the audit .................</td>
<td>1.1</td>
</tr>
<tr>
<td>Main observations .................</td>
<td>1.2 – 1.12</td>
</tr>
<tr>
<td>2. THE COMMISSION’S ORGANISATION OF THE FIGHT AGAINST FRAUD .................</td>
<td>2.1 – 2.34</td>
</tr>
<tr>
<td>The strategy of the Commission for the fight against fraud .................</td>
<td>2.1 – 2.12</td>
</tr>
<tr>
<td>Fraud prevention .................</td>
<td>2.13 – 2.19</td>
</tr>
<tr>
<td>Division of responsibilities: UCLAF’s mandate .................</td>
<td>2.20 – 2.25</td>
</tr>
<tr>
<td>Security measures .................</td>
<td>2.26 – 2.32</td>
</tr>
<tr>
<td>Internal administrative enquiries .................</td>
<td>2.33 – 2.34</td>
</tr>
<tr>
<td>3. ORGANISATION OF UCLAF .................</td>
<td>3.1 – 3.37</td>
</tr>
<tr>
<td>Structure .................</td>
<td>3.1 – 3.18</td>
</tr>
<tr>
<td>Cooperation with the Member States .................</td>
<td>3.19 – 3.27</td>
</tr>
<tr>
<td>Information and intelligence systems .................</td>
<td>3.28 – 3.37</td>
</tr>
<tr>
<td>4. FINANCIAL FOLLOW-UP AND RECOVERY .................</td>
<td>4.1 – 4.21</td>
</tr>
<tr>
<td>General overview .................</td>
<td>4.1 – 4.5</td>
</tr>
<tr>
<td>Traditional own resources .................</td>
<td>4.6 – 4.9</td>
</tr>
<tr>
<td>EAGGF guarantee section .................</td>
<td>4.10 – 4.11</td>
</tr>
<tr>
<td>Improvements to legislation in the agricultural area .................</td>
<td>4.12 – 4.14</td>
</tr>
<tr>
<td>Structural funds .................</td>
<td>4.15 – 4.21</td>
</tr>
</tbody>
</table>
1. INTRODUCTION

Scope of the audit

1.1. At the beginning of 1997 the Court decided to carry out an audit of the services of the Commission responsible for the fight against fraud, especially the ‘Unité de Coordination de la Lutte Antifraude’ (UCLAF). To date the audit work has covered an evaluation of the measures taken to establish appropriate legal, organisational and administrative arrangements to ensure the success of UCLAF’s mission, an assessment of the effectiveness of UCLAF based on an examination of all its units, enquiries in the United Kingdom and the Netherlands(1) and a global examination of the anti-fraud responsibilities of the Security Office, DG XIX and DG XX.

Main observations

1.2. The Commission has, in particular since 1990, made a major effort in its fight against fraud. This has led to a better legal and administrative framework in this area (see paragraphs 2.4—2.6). However, Conventions and Protocols agreed under the third pillar have still not been ratified (see paragraph 2.11).

1.3. A structure within the Commission has been created for the fight against fraud (see paragraphs 2.20—2.23). However, the organisational arrangements, including those in relation to the Member States, are not always clear, and are often complicated and cumbersome (see paragraph 2.34, table 1, paragraphs 3.21—3.23 and 3.35—3.36). Furthermore, security measures and procedures are frequently not correctly implemented (see paragraphs 2.28—2.32).

1.4. UCLAF has been given more tasks, more powers and more staff. The number of temporary staff is about 50% of total staff which creates a lack of continuity in the organisation (see paragraphs 3.2—3.4).

1.5. The databases of UCLAF were not fully operational or effective (see paragraphs 3.29—3.33). The databases were rarely used and the information kept by three of the four operational units within UCLAF did not reconcile with the database Pre-IRENE (see paragraphs 3.8—3.10).

1.6. Management information was insufficient for the effective management of the high number of cases held by UCLAF (see paragraphs 3.10—3.12). Furthermore the lack of standard methods of documentation and file management is considered a serious weakness (see paragraphs 3.13—3.18).

1.7. Cooperation between Member States and Commission is hampered by the manner in which the privileges and immunities of the European Union’s staff are implemented (see paragraphs 3.24—3.26). In addition, UCLAF in its inspections on Member States’

(1) According to the legal and administrative framework action to combat fraud affecting the Community’s financial interests is primarily the responsibility of the Member States (see chapter 2). For this reason it was decided to include in this audit controls at national level.
territory has had to cope with serious constraints related to national legislation (see paragraphs 3.20—3.23).

1.8. Recovery of amounts unduly paid is hindered by the fact that the information on the amounts recovered is incompletely recorded (see paragraphs 4.3—4.5). Furthermore Member States do not strictly respect their obligation to communicate all information to the Commission in this regard (see paragraphs 4.6, 4.7, 4.11, 4.19, 4.20).

1.9. It is to be noted that for EAGGF-Guarantee legislation has been adopted to create a so-called ‘black list’. So far, the results are disappointing (see paragraphs 4.12—4.14).

1.10. A number of preventive actions have been taken in the fight against fraud (see paragraphs 2.13—2.15, 2.19). The risk analysis study, carried out by the Joint Research Centre (JRC), however, suffered serious delays and only part of the areas that were intended to be included in the study could be covered (see paragraphs 2.16—2.18).

1.11. Elements of the data about cases of fraud, published in the Commission's annual report on the fight against fraud are incomplete and therefore misleading (see paragraphs 5.4—5.11).

1.12. Procedures and responsibilities concerning the fight against internal corruption and breaches of discipline are unclear and incomplete (see paragraphs 6.3, 6.11—6.13). In particular there are no clear guidelines for investigations (see paragraphs 6.5—6.7) and there is no clear policy (such as a ‘zero tolerance’ policy) (see paragraphs 6.8—6.9). There is exaggerated hesitation to lift the immunity of European Union staff suspected of corruption (see paragraph 6.10).

2. THE COMMISSION’S ORGANISATION OF THE FIGHT AGAINST FRAUD

The strategy of the Commission for the fight against fraud

2.1. The organisation of the fight against fraud within the Commission and the resources made available in this field developed in several phases.

2.2. The Commission firstly created within certain DGs (especially VI, XX and XXI) administrative units responsible for the fight against fraud. In a second phase the Commission decided in 1987(2) to establish a central coordination unit (Unité de Coordination de la Lutte Antifraude — UCLAF) in the General Secretariat and to set up anti-fraud teams in the different DGs. At the beginning of the second phase UCLAF had at its disposal 10 officials (of which five at grade A) which were placed under the authority of a director. It was foreseen that additional staff should be allocated to the operational services and UCLAF.

2.3. The third phase, which started at the end of 1994 was characterised by a clear distinction between the task of developing and implementing a common policy and the collecting of information, carrying out enquiries and stimulating corrective action where the financial interests of the Community have been put at risk. The Commission decided to transfer the responsibilities of the different DGs in the fight against fraud to UCLAF in order to ensure a far reaching centralisation in this field(3) (see paragraph 2.5). Thus major staff resources and the largest part of the budgetary competence have been transferred to UCLAF (for financial details see Annex II).

2.4. Parallel to these developments there was the completion of the single market and the entry into force of the Treaty of the European Union (TEU). Accordingly the Commission devised in 1994 a new strategy to combat fraud based on four major axes:

— presence on the ground;
— closer cooperation with the Member States;
— improvement of Community legislation;
— convergence of Member States’ criminal law enforcement systems(4).

2.5. The Commission sets out an annual work programme to take forward its strategy against fraud(5) which is not only binding on UCLAF but on all services having responsibilities in this field (see paragraphs 2.20—2.23). In the work programme for 1997/1998 the Commission explains that it ‘strengthens presence on the ground and continues the policy of partnership with national authorities’. The following main objectives are identified:

— detection of irregularities, where the Commission believes that it can add most value by concentrating on major transnational cases;
— recovery of the amounts involved, where the Commission intends to strengthen follow-up action;

(2) SEC(95) 249. It should be stressed that UCLAF has other responsibilities outside enquiry activities, see paragraph 2.20.
(3) COM(94) 92 final.
— preventive action through improvement of systems and legislation;

— emphasising the responsibility of Member States to manage the own resources system properly;

— the eventual creation of a European ‘judicial area for the protection of the Union’s financial interests’, within which criminal penalties for offences against the Community’s budget would be harmonised;

— preparation for enlargement, through development of relations with the countries which are candidates for accession.

The Court noted the Commission communication of the 18 November 1997 ‘Improving action against incompetence, financial irregularities, fraud and corruption’ SEC(97)2182/2. Part one of the communication describes the current situation in the Commission which confirms the Court’s understanding as described in this report. Part two proposes lines of action to remedy the weaknesses in the current situation. Whilst the Court welcomes the content of the communication it cannot, at present, assess the impact of the proposals presented therein. An Action Plan adopted by the Council(6) includes detailed recommendations indicating the direction to be taken for further work in this domain.

2.6. Making UCLAF’s presence more effective on the ground is clearly the responsibility of the Commission. Aspects of UCLAF’s execution of its tasks are reviewed in Chapter 3 of this Report. The initiative for improving Community legislation rests with the Commission, although significant changes are likely to require action by the Council and Parliament. Progress on this aspect of the Commission’s strategy is outside the scope of this Report. Closer cooperation on the investigation of frauds and irregularities and in the recovery of money wrongly paid involves both Commission and Member States; certain action is possible through legislation under the first pillar of the Treaty. Progress on financial follow-up and recovery action in cases involving UCLAF is reviewed in Chapter 4 of this Report. The convergence of Member States’ criminal law enforcement systems presupposes action by all Member Governments under the third pillar of the Treaty.

2.7. Given the absence of any Community criminal law, fighting fraud against the Community finances (and corruption) is governed by the provisions of Treaty texts concerning either the first or the third European Union pillars. In fact, Article 209(a) of the EC Treaty requires the Member States to take the same measures to combat Community fraud as they would take to combat fraud to the detriment of their own financial interests. This obligation derives without any doubt from subject matter covered by the first pillar.

2.8. In spite of this, since the detection and prosecution of fraud require criminal responsibilities and powers, it was considered that, if this obligation was to be complied with, use would have to be made of instruments deriving from traditional international law — in this case conventions — which, as such, come under the third pillar. Community legislative acts cannot provide for penal sanctions. They do, however, incorporate in the general notion of an irregularity both an intentional (and therefore fraudulent) infringement of Community law, and one that occurs through negligence. The legislation lays down administrative sanctions and extensive powers for the Commission to carry out checks and inspections so as to uncover such irregularities.

2.9. Although under the first pillar certain legislation exists relating to the combat against fraud, a definition of fraud is to be found under the third pillar: on 26 July 1995, the Council approved an act drawing up a Convention on the protection of the Communities’ financial interests(7). For the purposes of this Convention fraud affecting the European Communities’ financial interests shall consist of:

a) in respect of expenditure, any intentional act or omission relating to the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities, non-disclosure of information in violation of a specific obligation with the same effect and the misapplication of funds for purposes other than those for which they were originally granted;

b) in respect of revenue, any intentional act or omission relating the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the European Communities or budgets managed by, or on behalf of, the European Communities, non-disclosure of information in violation of a specific obligation or misapplication of a legally obtained benefit with the same effect.


(7) OJ C 316, 27.11.1995.
2.10. It should be noted that the new Treaty of Amsterdam has strengthened the wording of Article 209a by requiring measures taken to combat fraud against the Community budget to be, in particular, ‘(. . .) deterrent and such as to afford effective protection in the Member States’. In addition, the new text of the article now states that the Council, ‘after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud (. . .) with a view to affording effective and equivalent protection in the Member States. These measures shall not concern the application of national criminal law or the national administration of justice.’ This provision could open up the possibility of Community action in the harmonisation of national systems of criminal law, without prejudice to the exclusive prerogatives of the Member States in this area. Administrative sanctions would have to be developed subsequently.

2.11. Actions under the third pillar resulted in two Conventions and two Protocols agreed by the Council in the period 1995—97 (one of which the Convention mentioned under paragraph 2.9). However, these instruments become effective only when ratified by all 15 Member States; hitherto they have not yet been ratified by any Member State. As a result, present arrangements for judicial cooperation are still based on international legislation dating back to the 1950s, when Europe had no common institutions or policies covered by a single budget, when trade and financial flows were a fraction of what they are now and when financial crime was carried out by individuals or gangs, not organised international networks capable of maintaining an outward appearance of legality as is the case today(8).

2.12. Moreover, even supposing that all the new instruments were ratified in the short term, a series of measures still have to be taken to enhance the legal basis of the anti-fraud policy. The discontinuity of legal procedures and the disparity between the different Member State systems of criminal justice, notably in terms of the severity and nature of punishment, hinder the effective repression of fraud(9). There is a need for ‘radical response to the absurdity, still tolerated though universally condemned, of opening wide our national frontiers to criminals while continuing to shut them against those responsible for fighting crime, despite the risk of turning our countries into crime havens’(10).

Fraud prevention

SEM 2000

2.13. Together with the Member States the Commission embarked on a wide-ranging three-stage exercise, named SEM 2000 (standing for Sound and Efficient Management 2000), to make the management of Community appropriations more efficient. The first two stages involved the Commission improving the standard of its own financial management. The third stage aims to bring about improvements in the management of Community resources by the Member States.

‘Fraud-proofing’ of legislation

2.14. In this context the Commission adopted in 1996 internal measures with the aim of fraud-proofing legislation and decisions that have direct or indirect financial implications(11). The complexity and opaqueness of much existing Community legislation makes the EU budget particularly vulnerable to fraud. The necessary changes in the legislation will require a sustained effort over a long period.

Early warning system in the field of direct expenditure

2.15. The Commission started, in July 1997, a project which has as its objective the introduction of an early warning system in case of administrative errors or fraud committed by organisations or enterprises receiving direct funding from the Commission(12). It is too early for an evaluation of its effectiveness.

Setting priorities

2.16. UCLAF needs a basis for deciding which cases should receive priority in the allocation of the limited

(8) See Fraud without frontiers, Study for the European Commission (Justice and Home Affairs Task Force, Judicial Cooperation Unit) of international fraud within the European Union prepared by Deloitte & Touche European and International Fraud Group, 1997.


(11) SEC(96) 1802/4 (Implementation of recommendation No 7 of SEM 2000, Phase II).

(12) SEC(97) 1562.
resources for inspections to sensitive areas and ‘high-risk’ operators and/or recipients. This in turn requires criteria for optimising the use of the diverse information at the disposal of the unit. UCLAF concluded, on 8 December 1995, an administrative arrangement with the Joint Research Centre (JRC) to carry out a study on:

- the development and application of pattern recognition methods for fraud cases stored in the Commission’s databases IRENE and PRE-IRENE;
- the assessment of risk parameters concerning transactions financed or co-financed from the Community budget and;
- the description of trends over a given period of time and detection of heterogeneity in the amounts of subsidies in reference transactions and IRENE cases.

2.17. The project was initially intended to be carried out within a period of 12 months after the signature of the contract. Due to staff and technical problems, work on the project only started in April 1996. Therefore a first extension of the deadline of the last deliverable until the end of March 1997 was approved. As the JRC agreed to include in the work additional material and the results of an exchange on statistical sampling methods with the European Court of Auditors a second extension until the end of July 1997 was approved by UCLAF. The results of the study will only be of real practical value for UCLAF when its computer systems are further developed.

2.18. Due to the incompleteness of the information in the Pre-IRENE and the IRENE database the work on pattern recognition of frauds was limited to certain areas in the IRENE database (olive oil consumption aid, beef export refunds, own resources). DG XX refused its visa for the final payment. Meanwhile the situation remains that UCLAF has not yet developed any systematic basis for evaluating information contained in these databases in order to assist in the setting of priorities.

Other actions

2.19. A number of actions was taken recently in the area of customs. Furthermore UCLAF has organised seminars for Member States’ services to increase the awareness on fraud (see Annex IV).

Division of responsibilities: UCLAF’s mandate

2.20. By Commission decision of February 1995 (13) UCLAF is responsible for all Commission activities in the field of the fight against fraud. This includes in particular:

- the protection of the financial interests of the Community;
- the conception of the fight against fraud in all areas;
- the development of the necessary infrastructure for the fight against fraud (databases etc.);
- the collection of information concerning fraud cases and the treatment of this information;
- the operational measures (enquiries etc.).

2.21. The different Directorates General of the Commission are responsible for the conception and management of the common policies in their respective areas, including the control of the correct implementation of Community legislation. UCLAF and the departments concerned have to cooperate closely, coordinate their activities and exchange all the information necessary for their work (14) In February 1995 the Secretary General of the Commission requested the Directors General and the Heads of Services responsible for expenditure or own resources to ensure that all elements indicating a potential fraud are sent promptly and systematically to UCLAF.

2.22. In a further note of April 1997 the General Secretary asked the Directors General and Heads of Services to bring the guidelines, set out below, on ‘Action to be taken in cases of suspected fraud, irregularities or breaches of discipline’ to the attention of their services.

2.23. In accordance with the note from the Secretary General, if an incident comes to the knowledge of an official it is his duty normally to inform his Director General or Head of Service as soon as possible. The Director General without delay will inform the relevant service (no mention is made of DG XIX) according to the nature of the case:

- DG IX for possible breaches of discipline or professional misconduct;
- DG XX for irregularities relating to the commitment and authorisation of expenditure and the establishment and collection of Community revenue;
- UCLAF for all matters relating to cases of suspected fraud against the Community budget;

(13) SEC(95) 249.

(14) Apart from these general guidelines, detailed rules for the repartition of responsibilities have been fixed in the area of agriculture, customs and indirect taxation.
— the Security Office for all matters relating to the security of persons, property or buildings of the Commission, including security of information, its transmission and use.(15).

2.24. The internal guidelines introduced a 'whistle-blowing mechanism' which allows an official to directly inform the services mentioned above. The Court found evidence where this proved to be very useful (see paragraph 6.8).

2.25. Direct contacts between the Commission and the national judicial or fraud authorities in relation to fraud cases must transit via UCLAF.(16). Therefore it is UCLAF that has to notify the judicial authorities of a Member State of evidence or suspicions in a specific case.

Security measures

2.26. The Commission has by Decision of 30 November 1994, issued a set of rules 'on the security measures applicable to classified information produced or transmitted in connection with the activities of the European Union' (17).

2.27. The Decision aims to ensure adequate protection of information on hard copy or in electronic form and to afford the same level of protection as the grading set by the owner, this being another institution or a Member State. It contains specific measures in respect of assignment of security grading, access and filing including the vetting of officials and other staff with access to sensitive information.

2.28. There are serious weaknesses in relation to the implementation of the security measures foreseen by the Decision. The Security Office of the Commission undertook a security inspection of the premises of UCLAF in 1996. This security inspection did not include an essential aspect, i.e. the appropriate character of any staff (by vetting or special enquiry). However, following the security inspection, UCLAF in May 1997 requested the vetting of 59 permanent officials and in July for a further three permanent officials. No request was made in respect of the temporary staff or detached national experts who together make up more than half of UCLAF’s staff.

2.29. By the end of October 1997 only two UCLAF officials have been vetted, in DG XIX and DG XX no member of staff directly involved in the fight against fraud has yet been vetted.

2.30. Furthermore no security inspections have been undertaken in respect of the other services having access to information related to the fight against fraud (databases, confidential documents). In relation to those staff having access to classified information no enquiries were made into their personal files, held by the Commission. Such a check could possibly provide essential security assurances.

2.31. The recruitment of a full time Security Officer is still to be decided upon and implemented by UCLAF (planned for 1998), and other basics such as classification principles, security grading of information, control of documents and the registration of documents classified higher than RESTRICTED. Thus for the time being it is up to the discretion of each individual staff member to ensure the security of information held by UCLAF.

2.32. It is a matter of concern that, with the growing responsibility of UCLAF and that more than two years after the reorganisation of the Commission services, the Commission Decision of 30 November 1994 has not been entirely implemented. It is a matter of very serious concern that there is no scrutiny of the suitability of all staff having access to sensitive information. The Court has become aware of a particular case where there is a prima facie unsuitability of a Commission official for a specific function where he has access to sensitive information.

Internal administrative enquiries

2.33. In order to gain sufficient evidence to decide whether to take a case forward for criminal prosecution, UCLAF needs to carry out an administrative enquiry and to take a position on the results achieved. Well known cases exist (for example in the tourism sector) where dossiers have been withheld from UCLAF investigators and where incriminating documents have been systematically destroyed. Such events demonstrate the need for UCLAF to be granted powers enabling access to all files held by the authorising officers at the earliest possible stage, beyond the simple instruction to notify UCLAF of cases of suspected fraud. In an attempt to improve the situation, the Secretary General of the Commission approved in April 1996 a procedure to allow UCLAF to carry out searches with the prior

(15) The Inspectorate General is not regarded as an appropriate contact point in these cases as it is not implicated in ongoing management tasks. Its role is to monitor the effectiveness of the different services of the Commission in relation to their regulatory framework, use of resources and output obtained.

(16) Direct contacts with the security authorities in the Member States have to be channelled through the Security Office.

(17) COM(94) 3282 of 1 March 1995 replacing the decision of 7 July 1986 defining the security grading of documents and establishing the security measures applicable to classified documents.
agreement of the Secretary General and the Director General for Personnel and Administration to individual proposals made by the Director of UCLAF.

2.34. Table 1 gives an overview on the methods of accomplishment of certain operational tasks of UCLAF. It also shows that there are areas where serious deficiencies exist, for example in the definition of the powers of UCLAF when it comes to the questioning of Commission officials and the searching of files and offices in Commission buildings.

3. ORGANISATION OF UCLAF

Structure

3.1. At present UCLAF consists of two units with horizontal support tasks and four operational units. The first unit (F1) is responsible for general policy matters, judicial questions and coordination, the second (F2) for intelligence, information and evaluation of the legislation, the third (F3) for the structural funds and other domains, the fourth (F4) for import/export of agricultural

### Table 1

<table>
<thead>
<tr>
<th>Task</th>
<th>Legal base/Reference document</th>
<th>Execution</th>
<th>Decision/Signature</th>
<th>Remark</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notification of judicial authorities</td>
<td>Art. 209a TEC</td>
<td>UCLAF exclusively</td>
<td>Director of UCLAF</td>
<td>In order to simplify the procedures the notification of judicial authorities and the transmission of documents can be combined</td>
</tr>
<tr>
<td>with a view to open a judicial enquiry</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transmission of documents to a judicial</td>
<td>Actualisation of note SEC(95) 893 of 29.5.1995, SEC(97) 1293 of 25.6.1997 (particularly point 4.2.)</td>
<td>UCLAF in agreement with the DG competent in the policy area and the Legal Service</td>
<td>Director of UCLAF</td>
<td>Before the actualisation of 25 June 1997 the transmission was based on a decision of the Commission after a written procedure</td>
</tr>
<tr>
<td>authority — on the request of the latter</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>— on a Commission initiative</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Questioning of officials</td>
<td>—</td>
<td>UCLAF after approval by the Secretary General and information to the Director General concerned and the Director General of Personnel and Administration</td>
<td>Director of UCLAF</td>
<td>No specific legal basis or reference document</td>
</tr>
<tr>
<td>Search of files held by officials of the Commission (including those in electronic form)</td>
<td>Note of UCLAF No 530 of 2.2.1996 Note of Secretary General of 1.4.1996</td>
<td>UCLAF with the Security Office after approval of Secretary General and Director General of Personnel and Administration</td>
<td>—</td>
<td>Decision making powers unclear</td>
</tr>
<tr>
<td>Request of a judicial authority to lift the 'devoir de réserve' of an official of the Commission</td>
<td>Art. 19 of Staff Regulations</td>
<td>DG Personnel and Administration in dialogue with UCLAF</td>
<td>Appointing Authority (AIPN)</td>
<td></td>
</tr>
</tbody>
</table>
products, the fifth (F5) for the common market organisations in agriculture and the sixth (F6) is responsible for own resources. Furthermore the director of UCLAF is supported by an adviser with specific competences for external training, seminars, relations with the media and coordination of studies.

Staff resources to date

3.2. In order to fill the available posts as quickly as possible and to strengthen the experience available in the fight against fraud UCLAF selected and recruited in 1994/1995 a large number of national civil servants with requisite experience and qualifications combining financial, police, customs, judicial and tax expertise on temporary contracts. The number of staff of UCLAF and their administrative status as at 15 September 1997 is shown in Table 2. Of the total staff of 126 only 60 (48%) are permanent staff. 66 (52%) are temporary staff with 33 contracts finishing in 1997 (50%) and 33 in 1998 (50%). In addition to these staff there remain 20 staff in DG XIX and XX with some responsibility in the fight against fraud.

3.3. While the quick recruitment of temporary staff helped UCLAF to become operational in a minimum of time, the departure of a lot of these staff at the same time at the end of their standard temporary contract could cause severe problems. Therefore, UCLAF has instigated the procedures required for an open competition to recruit specialist investigators. UCLAF considers however that a balance has to be struck between recruitment of permanent staff and a regular rotation of temporary staff on secondment from the relevant national authorities.

3.4. A more recent development has been the recruitment of experienced national legal experts or magistrates. The continuation of this policy to establish,
within UCLAF, a prosecution interface consisting of experts in criminal law who afford assistance and advice and coordinate files in liaison with the national judicial authorities, would be a valuable addition to the fight against fraud. The situation could be further improved by the further recruitment of experienced ‘magistrates’ or legal experts to ensure that UCLAF can draw on the experience of at least one magistrate or other national equivalent per Member State.

**Financial resources**

3.5. The Court, using the Commission’s estimating methods(18) for staff and accommodation costs, adjusted to reflect UCLAF’s missions costs estimates the cost of UCLAF to be some 12,4 Mio ECU for the budget year 1996.

3.6. In addition to the staff and accommodation costs of UCLAF, the Commission’s expenditure on the fight against fraud amounted to 11,1 Mio ECU in 1996 and (an estimated) 11,9 Mio ECU in 1997 (see Annex II).

3.7. The anti-fraud appropriations allocated exclusively to the Commission include appropriations relating to specific activities of UCLAF such as specialist computer programmes, access to databases, certain computers, etc. These are, in practice, charged to budget line A-3 5 3 0 and in some specific cases to A-3 5 3 1. The anti-fraud appropriations allocated for the direct benefit of the Member States are used by UCLAF to finance national control structures, to cover the use of experts in national investigations or joint investigations with the Commission, training expenditure, and to co-finance certain programmes for setting up new control methods.

**Working methods**

3.8. The operational work of UCLAF is governed primarily by the information that is received from the various sources available (see paragraph 3.28). It is assessed by the staff of UCLAF and a decision is taken whether or not to open a case in relation to the information received. The Court sought to document the system by which the cases are opened, monitored, reported and concluded. However, no common system exists and moves toward standardisation, notably through the internal management system Pre-IRENE (see Annex III), have had only limited success.

3.9. There was a clear difference between the units as regards utilisation of the Pre-IRENE computer system. This ranged from almost complete utilisation of the system to the minimal use of the computer tool to keep a simple, if incomplete, list of the cases related to the unit. A significant number of cases introduced were never updated using the system. The units that did not make full use of the Pre-IRENE internal management tool used a variety of methods to keep track of cases, including spreadsheets developed within the unit and meetings between investigators of the unit. These various listings and management tools could not be reconciled with each other as regards the number of cases.

3.10. **Table 3** shows the number of cases held on the UCLAF Pre-IRENE database and those held on other forms of listings in the various operational units.

<table>
<thead>
<tr>
<th>Operational Unit</th>
<th>Number Staff</th>
<th>Files/cases as per PRE IRENE listing</th>
<th>Files/cases as per lists from heads of unit</th>
<th>Number of files/cases that are identified on both lists</th>
</tr>
</thead>
<tbody>
<tr>
<td>F3 Structural Funds +</td>
<td>20</td>
<td>356</td>
<td>356</td>
<td>356</td>
</tr>
<tr>
<td>Other domains</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F4 Import/Export</td>
<td>22</td>
<td>260</td>
<td>311</td>
<td>243</td>
</tr>
<tr>
<td>Agricultural products</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F5 Agricultural CMOs</td>
<td>13</td>
<td>39</td>
<td>64</td>
<td>35</td>
</tr>
<tr>
<td>F6 Own resources</td>
<td>29</td>
<td>101</td>
<td>596</td>
<td>8</td>
</tr>
<tr>
<td>Total</td>
<td>84</td>
<td>756</td>
<td>1,327</td>
<td>642</td>
</tr>
</tbody>
</table>

(18) Document DG IX, ref. IX.01/PT D(97)1552.
3.11. Within the units cases are normally assigned to a case officer who is responsible to a coordinator and ultimately to the head of unit. Given the number of cases held by most of the units the ability of the management hierarchy to effectively monitor and manage live cases without an adequate management information system must be called into question.

3.12. Given the fact that in three of the four units the number of cases runs into the hundreds it is evident that the head of unit cannot have all the necessary information at his disposal at all times. The coordinator has to ensure that the cases under his control meet standards required and that the hierarchy is informed of progress/problems with current cases. A properly defined role for the coordinator, common across all units, with a structured management reporting system would be of benefit. At present the coordinators are too often taken up with a great number of cases for which they have personal responsibility as well as retaining responsibility for coordinating cases being handled by the individual investigators.

Management of case files

3.13. The confidential nature of the majority of the cases means that, quite rightly, details of the case are only held by those with a need to know. This is often the investigator, his coordinator and the head of unit. This type of arrangement however needs to have safeguards built in that will protect the work done and ensure its subsequent usefulness.

3.14. Given the current structure of UCLAF with some 50% of investigators on temporary contracts with a remaining duration of less than one year it is probable that a significant number of cases will see a change in case officer between the initial opening of the case and the final closure. The files relating to the cases should therefore be properly structured in order that another member of the UCLAF staff can take over the case when the need arises. The cases examined by the auditors showed that for most of them there was a lack of a standard structure to the case files, and that there were no instructions to the investigators as to how files should be structured. Furthermore there were no guidelines on the standard to which documentation and notes should be kept in order to satisfy the minimum requirements for criminal evidence laid down in the Member States legislation.

3.15. The files examined ranged from those that were well structured, indexed and annotated (in the minority), to those that were little more than a collection of documents placed in no particular order onto ring binders. The most common shortcomings noted were absences of clear identification of case documents on the files (no listing, frequently no date(s), no indication of the source and finally often no case summary). Where progress/mission reports were held on the file they were not of a uniform content and did not appear to have been drawn up within any particular time frame, i.e. a six monthly progress report, mission report completed within a certain time following the mission etc. Furthermore the case files rarely contained any evidence that reviews by the coordinators and/or the heads of units had been carried out. No record of resources employed and time spent on each case exists. In addition there is no referencing system to link related cases. One officer had inherited and/or opened six files on one and the same suspect.

3.16. In a comparison with the systematic way many national investigation services are forced to compile an investigation file for the prosecutor it is difficult to see how the UCLAF files can form the basis for a case respecting national laws. Disclosure of evidence, used and unused material etc. are only some of the requirements of national law the Commission will have to respect when making use of the new on-the-spot control Regulation (Euratom EC) No 2185/96 (see paragraphs 20—22 of Annex I).

3.17. The lack of overall guidelines as to the form and content of case files (or at the very least a set of minimum requirements) needs to be addressed. The increase in size of UCLAF from 10 staff in 1987 to 126 today, when combined with the increased caseload means that more effective ways of managing staff and monitoring cases are required.

3.18. A consequence of the absence of file discipline is that it allows the possibility of the manipulation of the files by adding or removing documents at any time. This could reduce UCLAF’s credibility and the value of the evidence produced if the defendant has good legal advisors.

Cooperation with the Member States

Constraints imposed on the Commission services

3.19. Whether it be in the field of the fight against fraud itself or subsequently on the administrative and judicial level, full-scale, sincere and confident cooperation between the competent bodies in the Member States and the Commission’s anti-fraud structure is necessary. A climate of trust is vital if policies which demand full cooperation are to be carried out and produce results, especially where jointly conducted investigations are
of the organisations visited. The problems described above and in paragraph 3.22 explain why UCLAF to date has only carried out five missions under the new Regulation.

### Treatment of requests presented

3.24. In relation to the cooperation between the Commission and Member States it is of particular importance that the European and the national authorities deal in a constructive way with the requests presented by their partners. It is up to the Member States to decide whether a procedure has to be launched when the Commission has seized the competent national authorities after gathering sufficient evidence. However where Member States seek the help of the Commission in the course of an investigation the Commission has, inter alia, to apply the Protocol on the privileges and immunities of the European Communities in a way that allows the Member States to carry out the necessary actions.

3.25. Indeed, the privileges and immunities which the Protocol grants to the Communities have a purely functional character, inasmuch as they are intended to avoid any interference with the functioning and independence of the Communities (20). Therefore, if no danger of interference exists, the Commission is obliged to waive the immunity of the inviolability of its premises in order to allow a search by competent national authorities (Article 1). Furthermore, although Article 12 of the Protocol provides that officials are immune from legal proceedings in respect of acts performed by them in their official capacity, the Commission is required to waive the immunity when the interests of the Communities are not at stake (Article 18). Permission has to be given by the appointing authority according to Article 19 of the Staff Regulations if an official is requested to testify on some aspect of a criminal case and thus also on documentation seized during a search. This permission can be refused only where the interests of the Communities so require and such refusal would not entail criminal consequences as far as the official is concerned.

3.26. The Court identified several problems in relation to actual cases. In three of the cases examined by the Court the Member States did not start the procedures requested by UCLAF although evidence was produced.

---


(20) See recommendation 20 of the final report of the European Parliament’s temporary committee of enquiry on the Community transit procedures (PE 220.895/def).
Furthermore, where Member States need to cooperate with each other in relation to cases brought by UCLAF, this cooperation was, in one of the cases examined, lacking. As UCLAF is not always fully informed of the reasons why cooperation is not given it is difficult to pursue action. In two cases examined by the Court the Commission did not request or delayed a request to the Member States to start a procedure although the evidence available gave grounds to presume the existence of serious irregularities. In another case the Commission only lifted the immunity of three officials some twenty months after a request from the competent national authority (see also paragraph 6.10).

3.27. A criticism levelled at UCLAF by the two Member States visited was that the start up of a case was handled well but that subsequent work and follow up could be improved. Lack of consultation and feedback were cited. In a specific case a Member State contacted UCLAF in preparation of an action but UCLAF did not disclose all information it held. The Member State then effected a search and found information related to a presumed fraud that was already on file in UCLAF. A further problem mentioned was the fact that investigations started by UCLAF seemed to stop without reason. In a specific case there was concern on the part of a Member State as to whether a suspicion of fraud reported over one year ago should be allowed to lie with UCLAF for such a long time with no concrete action being taken. Finally criticism was made of the fact that in some cases work carried out in the Member States was completed but no mission report or letter was forthcoming from UCLAF. In one case the Commission services involved could not agree after a period of two years on a common position as to whether a fraud had taken place or not.

Information and intelligence systems

3.28. Seeking and gathering hitherto unavailable information relating to the fight against fraud, exploiting information that is available but in other contexts and combining information from different sources into coherent sets is an important instrument to protect the Community’s financial interests. The methodical processing of such a form of ‘intelligence’ will provide a better understanding of various types of fraud and fraudster and should help to ensure that the Community finances are protected [on the optimum cost-efficiency basis]. The fight against fraud involves such a vast amount of information that detailed knowledge of the result of the work effected in this field is needed right from the initial investigation stage to recovery and the ordering of penalties.

3.29. Based on its strategy programme published in March 1994 the Commission invested a lot of resources to expand its databases and information networks and develop a rational and integrated approach. As can be seen in Table 4, the results in terms of use of the IRENE database which records the communications of fraud and irregularity from the Member States is still very limited.

3.30. As regards the UCLAF internal case management database Pre-IRENE, paragraph 3.10 shows that its implementation has not been completely successful. UCLAF is currently working on IRENE 95 which should integrate IRENE and Pre-IRENE and link them to other

### TABLE 4

Use of the database IRENE as at 31 of August 1997

<table>
<thead>
<tr>
<th>Service</th>
<th>Total Users</th>
<th>Active Users</th>
<th>Inactive Users</th>
<th>Excluded Users</th>
</tr>
</thead>
<tbody>
<tr>
<td>UCLAF</td>
<td>63</td>
<td>7</td>
<td>10</td>
<td>46</td>
</tr>
<tr>
<td>DG VI (EAGGF Guarantee)</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>DGs responsible for the Structural Funds</td>
<td>11</td>
<td>0</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>(DG V, VI, XIV, XVI)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DG XIX</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>DG XX</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Others (including European Court of Auditors)</td>
<td>9</td>
<td>2</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>95</strong></td>
<td><strong>12</strong></td>
<td><strong>20</strong></td>
<td><strong>63</strong></td>
</tr>
</tbody>
</table>

(1) No interrogation in 1997.
(2) Excluded in February 1997 because no interrogation was made during the preceding six months.
sources of information. The project ‘UCLAF Integrated Information Management System (UIIMS)’ which should associate and interpret all information that is available for intelligence and investigation purposes in every area of Community activity has been abandoned. Instead the IIMS project (Integrated Information Intelligence Management System) has been launched. In the framework of the DAF project (documentation antifraude) four electronic registers for Member States were set up (United Kingdom, Spain, Portugal and Greece) to display the fraud prevention and detection systems set up there. This project has been abandoned because Member States were not willing to assure the permanent provision of the necessary data. The APSO (Anti-fraud Policy Support Office) which should help to meet the considerable need for information still awaits the approval of a formal agreement with the Joint Research Centre (JRC). At the moment only a ‘support cell’ exists within UCLAF consisting of a B official who prepares information at the specific request of investigators.

3.31. The development of the databases holding intelligence and case information has been beset by delays and problems of implementation. The low usage of the databases and the partial unreliability of information held therein casts serious doubt as to whether any of the computer tools could be said to be fully operational. Too often it appears that databases are replaced with new models promising more features before a basic database with, for example, a list of open cases, is established.

3.32. At the moment national investigation services do not have direct access to IRENE/Pre-IRENE. This gives rise to the risk that UCLAF and national authorities carry out enquiries on the same case without being aware of this duplication.

3.33. During the missions to the two Member States the officials met suggested that UCLAF should invest more resources on transnational intelligence work instead of increasing the number of its own inspections because, in the intelligence field, it could add the most value to a successful fight against fraud. (In the light of this the informal contacts between UCLAF and Europol could be intensified in order to establish an intelligence system on the European level(21)).

3.34. In the field of direct expenditure UCLAF does not possess a single database linking information on amounts established and/or recovered to cases of fraud or irregularity. As UCLAF has to deal with an increasing number of cases in this field consideration should be given to the introduction of this type of database.

3.35. The SCENT system and the customs information system were developed for the customs services of the Member States (see Annex III). In 1994 a number of measures were taken to improve the Customs transit arrangements:

- a list was drawn up of sensitive products for which there is a high risk of fraud(22);

- an early warning system (EWS) was introduced for the exchange of information relating to consignments of sensitive goods between the office of departure and the office of destination so that the office of departure can be notified when goods have not been presented.

3.36. According to the Member States visited, the EWS is cumbersome. It ought to be fully computerised and should work on a more selective basis. A similar criticism was made in relation to requests under the mutual assistance arrangements. As they often generate a lot of work, an explanation of the reasons for generating a request or ad hoc meetings to exchange views would help to motivate the national services.

Other sources of information

3.37. In November 1994 the Commission set up a permanent system for direct notification of information relating to Community fraud by creating a freephone number in each Member State. During 1995 and 1996 the Commission received more than 8 000 calls. A very reduced number of them led to further investigations being carried out. Around 50 of the calls prompted a formal enquiry. The Commission also makes use of the technique of informers, for the payment of whom there exists a budgetary heading supplied with the sum of 200 000 ECU. The result of the use of this instrument was confined to the payment of three cases during the 1995—1997 period.

(21) Decision No 2/94 of the EEC-EFTA Joint Committee on Common Transit (94/948/EC) of 8 December 1994 (OJ L 371, 31.12.1994). Sensitive products are products which are highly taxed on import into the Community or attract particularly high refunds on export to a non-member country.

(22) See also Action Plan to combat organised crime (OJ C 251, 15.8.1997), in particular page 9.
4. FINANCIAL FOLLOW-UP AND RECOVERY

General overview

4.1. Recovery is a fundamental obligation, and is the logical result of investigative work as it merely restores an equitable situation in relation to the taxpayer by withdrawing the financial advantage illegally obtained from the person or organisation at fault. Thus it is also one of the parameters of the success of the fight against fraud.

4.2. In principle, the sums involved in frauds and irregularities in the area of own resources and indirect expenditure can be recovered only by the Member States acting under Community and national law. Therefore, the Commission must ensure that Member States make regular reports to the Commission under the obligatory procedures so that appropriate action can be taken at Community level on the basis of the legal means available (23). However, the Commission is largely autonomous in respect of direct expenditure (24).

4.3. In its report accompanying the Statement of Assurance concerning the execution of the 1995 budget (25), the Court observed that the Commission must indicate the declared or known amounts pertaining to cases of fraud and irregularity and the chances of their recovery. Although the Commission announced in its 1993 Annual Report on Fight against Fraud that thanks to the refinement and the quantitative and qualitative improvement of input procedures, IRENE will be used for the financial monitoring of recoveries concerning cases of fraud and irregularities, in cooperation with the operational DGs concerned and to the full extent of their capacities (26), a series of problems still exist.

4.4. UCLAF has to play the role of a catalyst in systematically inviting the authorising DGs to establish a forward estimate of debt or recovery orders based on the question whether the debt is or is not identified as a tangible and valid obligation to pay. UCLAF sends information, communicated by the Member States under Regulations (EEC) No 595/91 (EAGGF Guarantee Section), (EC) No 1681/94 (Structural Funds) and (EC) No 1831/94 (27) (Cohesion Fund), (which is registered in the IRENE database) to DG XIX in order to include it in the ‘off balance sheet commitments’ of the Commission. For historical reasons the communications under Regulation (EEC, Euratom) No 1552/89 (traditional own resources) are sent by the Member States to DG XIX. As the information was paper-based DG XIX then had to input it manually to the IRENE database. It was foreseen that from the beginning of 1997 the Member States themselves should introduce the information, via an electronic system, directly to the database. However, due to several problems not all of the Member States use the system.

4.5. IRENE can still not provide an accurate picture of the situation regarding recovery in reported cases of fraud and irregularities. The effectiveness of the recovery procedure suffers from the fact that the different DGs concerned are not cooperating to a sufficient extent. Instead they tend to develop singular solutions for their own specific problems. Further significant problems are the slowness of internal administrative procedures in the Commission and in the Member States and the high percentage of cases in which the economic operators concerned contest recovery decisions before national courts. Moreover the figures indicated in previous Annual Reports on the fight against fraud were not reliable (see paragraph 5.4).

Traditional own resources

4.6. The own resources Decision and its implementation Council Regulation (EEC, Euratom) No 1552/89 require Member States to establish, enter in the accounts and recover any amounts due in cases where fraud or irregularity has been established (28). The Commission’s role is to ensure that recovery procedures are indeed initiated and completed by national authorities so that Member States can be given a discharge when their management can be considered as satisfactory. If sums are not recoverable because of bankruptcy or lapse of time, the Member State has to show that it has done everything possible to recover them if it is to be exempted from making them available to the Community.

---


(24) The Commission, however, has no power as regards the enforcement of the recovery of established debts.


(27) Under Regulation (EC) No 1831/94 no communication has been received to date.

(28) See Annual Report of the Court of Auditors concerning the financial year 1996.
4.7. The main difficulty in ensuring effective financial monitoring is that two areas of competence are involved. There is, on the one hand, the entry of amounts in the accounts which is usually the responsibility of accounting services. On the other hand there is the investigation and reporting of fraud, which is normally dealt with by specific departments. Therefore data contained in IRENE cannot easily be reconciled with data kept in the Member States. This is in part because the separate B accounts do not solely identify amounts relating to fraud and irregularities, nor was this the intention of the separate accounts.

4.8. The Commission should monitor constantly the own resources recovery situation and thus be able to call for measures which it feels are necessary in order to make up inadequacies in national action. Furthermore due to the technical problems described in paragraph 4.4 IRENE as at September 1997 only contained information for 1996 and 1997 for seven and eight Member States respectively and there has not been a systematic updating of the data concerning the traditional own resources for nearly one year.

4.9. A further difficulty lies in the fact that up to July 1996 no obligation existed for the Member States to update regularly their reports and to systematically notify the Commission of amounts recovered. After the amendment of the Regulation a quarterly detailed updating of statements of recoveries sent in by Member States in cases of fraud or irregularity is now provided for.

**EAGGF guarantee section**

4.10. Some progress has been made in recent years in the field of EAGGF Guarantee Section: 5 370 cases of irregularity communicated before 1993 have been closed (of a total of 6 878 cases), i.e. the Member States have recovered all the sums payable (5 043 cases) or the Commission has decided in connection with the clearance of accounts (29) to charge the Member State (30) (28 cases) or the Community (299 cases) those amounts which cannot be recovered. It should be pointed out, however, that these cases involved relatively small sums (in total 228,7 Mio ECU) and that, in cases where large sums are involved, recovery often takes a very long time because of the judicial procedures to be followed. Thus in the area of EAGGF Guarantee 1 508 cases notified before 1993 were still open with a total amount of 549 Mio ECU; legal proceedings were under way in 400 cases. Two Member States (Italy and Germany) brought more than 80% of all legal proceedings.

4.11. It has to be stressed, that not all Member States fulfil their obligations under the Regulation (EEC) No 595/91, on sending communications. Nevertheless the Commission did not mention this in the ‘Explanatory notes’ of the ‘off balance sheet commitments’ — potential liabilities and claims attached to its 1996 accounts.

**Improvements to legislation in the agricultural area**


4.13. This is the first time that Community law has made provision for a list of traders (the so-called 'black list'), whether individuals or companies, who have been ill intentioned or particularly negligent to be used by the competent national authorities to help them take the necessary preventive measures. The Member States may impose tighter controls on these traders or impose other measures, which may go as far as suspension of payments or temporary exclusion from them. UCLAF set up a computerised system to store and process data and to make sure that it is passed on to the other national authorities.

4.14. On 30 June 1997 only four communications coming from three Member States (33) have been received by the Commission. However, according to communications of the Member States under Article 3 of


**(30) The Member State is charged if it has failed to do everything possible to recover the sums in question or has shown itself to be negligent.


**(33) France, Netherlands and United Kingdom.
the Regulation (EEC) No 595/91 a much longer list of operators should have been put on the black list (34). In fact, every communication has to be made ‘as rapidly as possible’ (Article 1 of Regulation (EC) No 1469/95) on the basis of ‘the first written assessment, even if only internal, by a competent administrative or judicial authority, concluding on the basis of concrete facts that an irregularity has been committed, deliberately or through gross negligence, without prejudice to the possibility of this conclusion being revised or withdrawn subsequently on the basis of developments in the judicial procedure’ (Article 1, paragraph 2 of Regulation (EC) No 745/96). The Commission (UCLAF) intends to examine, together with the Member States, the reasons for the non-communication and how cases under inspection by UCLAF have to be treated (35).

4.15. Article 23 of Council Regulation (EEC) No 4253/88 defines the role of the Member States and the Commission as follows: the Member States bear prime responsibility and are required to ‘prevent and take actions against irregularities’, ‘recover any amounts lost’ and ‘inform the Commission of the measures taken for those purposes and, in particular, of the progress of administrative and judicial proceedings’ (Article 23(1)). The Commission has powers at its disposal to check that these responsibilities are carried out (Article 23(2)).

4.16. However, the Code of Conduct drawn up by the Commission to lay down the detailed rules for notification of irregularities by the Member States was declared void by the Court of Justice because it considered that its provisions went beyond those of Article 23(1) of Regulation (EEC) No 4253/88 (36). Although the Court of Justice’s judgment did not question the legal basis of the Member States’ obligation to communicate cases of fraud or irregularities, its effect was to curb the flow of information (37).

4.17. Article 23(1) of Regulation (EEC) No 4253/88 was modified in 1993. It now states that the Commission will draw up detailed arrangements for implementing that paragraph. On this basis the Commission Regulation (EC) No 1681/94 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organisation of an information system in this field was adopted (38).

4.18. While it is possible in the area of EAGGF Guarantee to hold a Member State responsible for any negligence in the recovery of amounts concerned by irregularities and to charge the amounts that ought to be recovered to the Member State involved on the basis of the clearance of accounts procedure, this possibility is not explicitly provided for at this stage in the regulations that govern the Structural Funds. The Madrid European Council in December 1995 advocated the extension of the clearance of accounts to the other budgetary areas. The Commission presented, on 15 October 1997, a document on the terms on which it will apply net and possible flat-rate corrections in the Structural Funds in line with Article 24 of Council Regulation (EEC) No 4253/88 (39).

4.19. At present, in the case of the Structural Funds any irregular behaviour or negligence resulting in the misappropriation or illegal use of payments is examined by the Commission in cooperation with the Member States under the partnership arrangements (40). In practice, repayments are a rare occurrence and the amounts recovered may be redeployed or reprogrammed for the benefit of operations or final beneficiaries other than those involved in the irregularity under specific conditions, i.e. that the Member State has notified the irregularity in accordance with the Regulation (EEC) No 1681/94 and that the re-programming was transparent. The Commission included in the ‘Off-balance sheet commitments’ as at 1996 the total amount of 81,8 Mio ECU communicated under Regulation (EC) No 1681/94 although the expected reimbursements to the Communities budget are rather low. The Explanatory Notes give no explanation. Furthermore it was not mentioned that some Member States fail to fulfill their obligations as they do not systematically communicate all cases or results of recovery procedures.

4.20. Where funds are redeployed (i.e. switched to another project in place of the irregular one) the implementation of a set of relevant rules concerning the redeployment requires, in particular, the development of a typology of cases to be communicated and the

\[^{(34)}\] In COM(97) 417 the Commission points out that only in the area of export refunds the Member States communicated 72 irregularities which go over the limit of 100,000 ECU (Article 2, paragraph 1 of Regulation (EC) No 745/96 foresees the cumulation of all irregularities committed by the same operator during one year).

\[^{(35)}\] See COM(97)417 final, pages 2 and 3.


\[^{(39)}\] See also Regulation No 2064/97 (EC) C(97)3151 final — II) of 15 October 1997 (OJ L 290, 23.10.1997).

4.21. The communications of the Member States sometimes contain wrong information or are incomplete. In some cases it is difficult to identify which specific project of a particular programme is concerned. Thus it is difficult for the Commission to monitor an eventual reprogramming. A specific problem concerns the region of Campania in Italy. The region at the end of 1996 directly communicated more than 1,000 cases of irregularities to UCLAF. However, given the number of cases presented and the errors and omissions in the communications, even to examine the contents of the files would have tied up the resources of the whole unit of UCLAF for a considerable period of time. Therefore these cases were not introduced into IRENE and were returned to the Italian Permanent Representation in Brussels for further examination and classification. Given that the communications were received it will be extremely difficult to close the programmes in this region in a legal and regular way.

5. RELIABILITY OF INFORMATION IN THE ANNUAL REPORT ON THE FIGHT AGAINST FRAUD

Data presented

5.1. The figures presented by the Commission in the annual reports on Fight against Fraud related to the impact of irregularities on the Community Budget show the financial importance of ‘Irregularities formally communicated by the Member States’ alongside figures relating to ‘Irregularities detected by the Commission in cooperation with Member States’.

5.2. In recent publications these figures have been presented as a type of performance indicator comparing average cases size and total of the irregularities in the two categories (41). The Commission itself presented, in its 1996 Annual Report on Fight against Fraud, similar reflections. According to the text, approved by the Commission, the average budgetary impact of cases under investigation by the Commission (i.e. those not formally communicated by Member States) is 1.6 Mio ECU. Cases of fraud or irregularity notified by Member States under the various regulations reach an average amount of 130,000 ECU.

5.3. According to the Commission, less than 5% of all the cases detected are dealt with by the Commission in close collaboration with the investigation authorities in the Member States. On an aggregate basis, these cases account for more than half of the amounts involved (42). This reflects a deliberate choice by the Commission to concentrate its efforts on combatting organised or sophisticated fraud. Such fraud, the origin of which is often characterised by the participation of persons or firms operating from one or many countries is difficult for the Member States to identify without the active support which can only be given at the Community level (43).

Reliability of data

5.4. The Court sought to break down the figures indicated in the 1996 Annual Report on Fight against Fraud and establish whether or not they provide a true picture of the actual situation: in theory the figures presented as Member State formal communications are the total of the amounts transmitted by Member States under the various regulations governing the fields of Community revenue and expenditure and, with the exception of own resources, registered in the IRENE database (see paragraph 4.4 and Annex I, table 1).

5.5. For 1996 IRENE contains 645 cases in the field of traditional own resources transmitted by the Member States with a total value of 123.1 Mio ECU. In the 1996 Annual Report on Fight against Fraud 1,950 cases are indicated with a total amount of 320 Mio ECU. A footnote explains that this includes an estimate for the

(41) See the Bösch Report (PE 222.169), page 8 or the UK Parliament Select Committee on European Legislation, Fight against Fraud Programme, London 1997, page xxiii.

(42) See Annual Report 1996 on Fight against Fraud (COM(97) 200 final, 6.5.1997, page 20. In the meantime the 1997 Annual Report has been published; that report has not been subject of the Court’s audit.

second half year. The practice in past years was to multiply the number/amount of the first six months by two. Thus there is a significant difference between the published figure and the figures available in IRENE.

5.6. The problem as it relates to own resources should not occur in the future, as Member States are required, according to Council Regulation (EC) No 1355/96(44), to report more frequently, i.e. every three months on irregularity cases detected (see paragraph 4.9).

5.7. The figures in Table 5 presented as ‘Irregularities detected by the Commission in cooperation with Member States’ are composed of the estimates of the financial importance of cases held by UCLAF. These cases come from a variety of sources and should in theory be the total of the cases held in the UCLAF Pre-IRENE database. As the Pre-IRENE database is not yet fully operational the figures for only one of the four units were produced from this source. For the other three units a note was prepared for the unit in charge of drafting the Annual Report giving a total amount of the estimated financial value of the cases held. Examination of these figures showed that some 88% of the amounts given were attributable to only 12% of the cases. The amount recorded for the estimated VAT, lost to the Communities own resources, in relation to work done by the cigarettes and alcohol task forces in 1996 amounted to some 36% of the total financial impact of the category. This amount should not be directly compared to the figures formally communicated by the Member States.

5.8. The total value of cases in Table 5 is higher than the actual value of the cases held in Pre-IRENE (2 460 Mio ECU) as 49 of them have more than one source and are therefore counted more than once in the table above. More than 142 cases are held in Pre-IRENE where no source is registered.

5.9. The fact that these figures, presented as detected irregularities, are estimates is not clearly indicated in the reports. Sources outside the Commission or the Member States are not indicated. In addition the figures are not updated each year to reflect changes in the impact of cases, amounts recovered, changes in estimated value, cases dropped etc. Many cases initially reported as irregularities detected by the Commission in cooperation with Member States will become the subject of a formal communication and therefore be reported at a later date as such. The fact that the previous years cases are not updated gives rise to the risk that some cases are reported in both categories and are therefore ‘double counted’.

5.10. Two ‘UCLAF cases’, resulting from audits carried out by the Court, were registered in the Pre-IRENE database for a total amount of 30 Mio ECU and without a source indicated. In the Annual Reports 1995/1996 these two cases were reported with a value of 58,8 Mio ECU. In IRENE nine communications from four Member States relating to the same cases are registered with a total amount of 58,8 Mio ECU. The grouping of what the Member States notify to IRENE as a number of irregularities (by entity or incidents) into one

<p>| TABLE 5 |
| List of PRE IRENE cases with source and case values |</p>
<table>
<thead>
<tr>
<th>Cases</th>
<th>Amounts Mio ECU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other</td>
<td>81</td>
</tr>
<tr>
<td>Informer</td>
<td>88</td>
</tr>
<tr>
<td>Communication Member States</td>
<td>84</td>
</tr>
<tr>
<td>Freephone</td>
<td>31</td>
</tr>
<tr>
<td>Information Financial Controller</td>
<td>17</td>
</tr>
<tr>
<td>Court of Auditors</td>
<td>14</td>
</tr>
<tr>
<td>Information Member States</td>
<td>149</td>
</tr>
<tr>
<td>Information authorising officer</td>
<td>96</td>
</tr>
<tr>
<td>Press</td>
<td>54</td>
</tr>
<tr>
<td>Total with source</td>
<td>614</td>
</tr>
</tbody>
</table>

Source: PRE IRENE as of April 1997.

(44) OJ L 175, 13.7.1996.
UCLAF case leaves the reader of the annual reports with the incorrect impression that the average value of a UCLAF case is greater than the average value of the cases dealt with by the Member States. In the example above the average UCLAF value is 29 Mio ECU against the Member States average value of only 7 Mio ECU.

5.11. The results of the work of the specialised task groups (on e.g. cigarettes, textiles) as reflected in the annual reports have been amongst the most important in terms of value. However this must be viewed with caution as the figures are estimates and no precise figures exist as to the actual recoveries/savings to the Community budget.

6. CORRUPTION AND BREACHES OF DISCIPLINE

Fight against corruption

6.1. Corruption (see Annex I point 26) relates to any abuse of power or impropriety in the decision-making process brought about by some undue inducement or benefit and is often used by organised crime. Corruption affects the interests of the Union in several ways: it not only damages the financial interests of the European Communities but it also undermines sound decision making, distorts competition and challenges principles of open markets, in particular the functioning of the internal market.

6.2. The need to combat corruption at EU level has already been recognised and a number of initiatives have been taken which are relevant to the fight against corruption (45). However, as these are not part of an integrated approach, the Commission adopted on 21 May 1997 a Communication to the Council and the European Parliament (46) in order to set out the main elements of a comprehensive Union Policy against Corruption. The document represents a good basis for proposals and actions of the Commission fighting corruption in specific policy areas but does not cover internal corruption in Community institutions. Also the Commission’s Work Programmes for the Fight against Fraud does not contain a strategy to tackle corruption (47).

Allocation of responsibilities

6.3. The responsibility for the fight against internal corruption is not clear. The note of 14 April 1997 from the Secretary-General entitled ‘Action to be taken in cases of suspected fraud, irregularities and breaches of discipline’ recalled the responsibility of UCLAF for ‘all matters relating to cases of suspected fraud against the Community budget’. Although the Director of UCLAF stressed in May 1996 that a clear written reference to corruption would be necessary to avoid confusion about responsibilities of UCLAF, there is still no clear formal written instruction as to which service has to deal with this task.

Lack of clear guidelines for administrative investigations

6.4. At present UCLAF has to treat around 40 cases which involve a ‘volet interne’. This expression was chosen by UCLAF because the limits between corruption, conflict of interests, favouritism or bad management are often difficult to identify and cases potentially involve one or more of the elements described. Most of these cases concern direct expenditure but there are also cases related to EAGGF Guarantee and the Structural Funds.

6.5. Although a number of such cases could be expected in an organisation of the size of the Commission, no standard procedure for handling such cases has been adopted. Despite the fact that some cases were several years old, procedures for investigating such cases were improvised on a case by case basis. No clear guidelines exist as to how the administrative investigations have to be carried out. Questions remain as to what the powers of the officials of UCLAF and the Security Office are in terms of searching of premises, sequestration of property and documents and questioning officials and what the rights and obligations of the persons suspected are. Furthermore, and perhaps more seriously, it is not clear at which stage national prosecuting authorities have to be notified and thus when the important change from the sphere of an

(45) Convention on the Fight against Corruption (see point 2.4), Resolution of the European Parliament on corruption of 15 December 1995 (Rapporteur Mrs. Salisch), Action Plan of the High Level Group on Organised Crime (OJ C 251, 15.8.1997) stress the importance of enhancing the fight against corruption. Furthermore a common opinion has been adopted on 6 October 1997 on the negotiations in the Council of Europe and the OECD on the fight against corruption (OJ L 279, 13.10.97).

(46) COM(97) 192 final. This document was prepared by the Justice and Home Affairs Task Force.

(47) For the 1997 Work Programme this has been explicitly criticised by the European Parliament (see PE 222.169).
6.6. The current situation gives rise to the serious and unacceptable risk that any investigation carried out will fail because the laws relating to investigation of such cases are not respected and any subsequent prosecution will therefore be rejected.

6.7. The rules related to collection of evidence and its subsequent use are markedly different in the various Member States. This is true, in particular, for the documents that a person, later accused during criminal proceedings, has been required to produce in a preliminary administrative investigation. The rules on the exclusion of evidence illegally obtained and as to the point at which a suspect becomes an accused person, and therefore starts to enjoy special rights (particularly the right to have charges communicated, the right to silence, the right to assistance by a defence lawyer of the accused’s choice etc.) also vary from one Member State to another.

Implementation of a ‘zero tolerance’ policy

6.8. Many of the cases investigated by UCLAF have been initiated by members of staff of the Commission reporting their suspicions relating to other officials. In all types of organisation this has proved to be one of the main sources of information when the uncovering of corrupt practices is made. In order to foster the climate in which this type of information is forwarded where fraudulent or corrupt practices are not tolerated the policy of the Commission must be clear and unambiguous.

6.9. The culture of the organisation must be ‘anti-fraud’ and the management must be prepared to demonstrate the fact that any cases of suspected internal fraud, corruption, breach of discipline or mismanagement will be investigated in a professional manner and, if proved, that the appropriate disciplinary measures will be instigated with rigour and transparency. If this so called ‘zero tolerance’ policy is implemented in the Community institutions it must be done on the basis of a strict application of the rules of the staff regulation and the financial regulation. However, in this context there is a lack of a definition and guidelines relating to the disciplinary and pecuniary responsibilities of those involved in the financial procedure ‘ordonnateurs’, financial controllers, accountants and imprest account holders as already criticised by the Court.

6.10. Furthermore an obligation should exist to notify the responsible prosecuting authorities of all suspicions of fraud and corruption. In this context it has to be very clear that the ‘Protocol on immunities and privileges’ cannot, and will not, be used to protect a member of the management or staff. Moreover it should not be the case that the Commission requires the responsible judicial authority of a Member State to justify its request to lift the immunity by sending relevant documents. It should be sufficient that on the basis of the specific national rules and procedures a motivated demand is presented. If the Commission is persuaded that its official fulfilled his obligations it can grant him legal protection under Article 24 of the Staff Regulation. In this context it should be kept in mind that only a formal judicial investigation and eventually a trial can establish whether a person accused is or is not guilty according to the penal law.

Problems identified

6.11. At present the Commission’s policy is anything but clear; cases are left to drag on for years with members of staff being transferred away from their post but remaining within the organisation. In many cases examined, UCLAF was not able to produce sufficient evidence for corruption. This could be due to the fact that the initial suspicion was not justified or that UCLAF was not able to uncover malpractice. In any case it is difficult for UCLAF to uncover sufficient evidence where payments were, for example, passed to third persons because no European institution has the power to search a house, analyse bank accounts etc. These actions can only be carried out with the agreement of the persons concerned or after authorisation by the competent judicial authorities. Nevertheless in all presumed corruption cases examined UCLAF was able to find clear


(54) Also the Bosch report (PE 222.169, page 4) criticises ‘the inadequacy of provisions for dealing with... [cases of] corruption occurring in the Commission’s own ranks’.

(55) See ‘Corpus Juris’, pages 134 to 140.


(57) See Fraud without Frontiers, An Executive Summary of the Study for the EC on International Fraud within the European Union, Deloitte & Touche European Fraud and International Disputes Group, page 1.

(58) Also the Bosch report (PE 222.169, page 15) criticises the absence of a zero-tolerance policy: ‘A series of recent cases have focused attention on how relatively lax financial culture within the Commission has allowed cases of corruption to occur within its ranks, and, perhaps even more worryingly, go uninvestigated for considerable length of time.’
evidence of breach of discipline (serious mismanagement, favouritism, conflict of interests etc.). However only in exceptional cases have disciplinary procedures been launched.(55)

6.12. Cases occurred where an administrative enquiry took place (during the investigation or after the presentation of a final report by UCLAF) which was not covered by the staff regulation or any other legal text. In such cases the official charged with the ad hoc investigation (normally a director independent of the DG concerned) is likely to encounter problems (transcription of minutes of the hearings/interviews/auditions; presence of lawyers; search for/requisition of documents). Again there are no guidelines covering the conduct of such investigations.

6.13. Experience so far raises questions whether UCLAF as presently structured should be responsible for dealing with cases of corruption involving staff of the Commission. This responsibility could be incompatible with the partnership between the operational DGs and UCLAF which is necessary to make UCLAF’s investigations successful. Consideration should be given to the establishment of a separate unit to which any suspicion of corruption would automatically be communicated, and which would have the authority and resources to undertake any necessary investigation.

7. CONCLUSION

7.1. As this enquiry did not include the Member States and the Commission’s operational DGs in great depth the findings concentrate on UCLAF. The Commission has, in particular since 1990, made a major effort in its fight against fraud relating to European funds which has resulted in a better legal and administrative framework for the fight against fraud. At the end of 1994 the Commission began setting up UCLAF as a central service with requisite financial, police, customs, judicial and tax expertise. However, improvements to security measures, the internal management procedures, intelligence and information systems and the cooperation with the responsible authorities of the Member States are of vital importance.

7.2. An overall evaluation of the results achieved by UCLAF up to now is difficult. However, the information on recoveries communicated by the Member States and included in the Annual Reports on Fight against Fraud is not reliable and does not differentiate between recoveries due to work of UCLAF and that of the national authorities. Furthermore in the area of direct expenditure no easily accessible information exists on the total amount to be recovered as a result of investigations effected by UCLAF. Finally the instruments ‘black list’ and ‘fraud proofing’ of legislation have only been introduced recently and have had a limited impact so far.

7.3. UCLAF needs a management system that holds information on the status of actual or former cases from the moment of receiving or obtaining the initial suspicion, to the administrative enquiry, seise of national authorities, penal investigation, prosecution, trial, decision and recovery. Without such a system an overall evaluation of its performance is virtually impossible.

7.4. The first steps have been taken in an ambitious programme to fight fraud simultaneously from all sides (prevention, enforcement and administrative and judicial cooperation). Important efforts still have to be made to put these initiatives fully into effect. None of the Conventions and Protocols agreed in the context of the third pillar has yet been ratified.

7.5. Fraud against the Community budget is often transnational. The enforcement agencies, however, operate according to a huge number of different procedures and in dispersed order in a very time-consuming way. In contrast the fraudsters themselves can operate in real time using their international networks of contacts. The procedures in place can simply not cope with the new criminal networks. Assistance from the Commission and the information exchange between UCLAF and the judicial authorities of Member States constitute the beginning of a solution. However, a major obstacle still is the lack of common standards of evidence, which prevents Member States from accepting evidence gathered in other Member States. Therefore a ‘European Law Enforcement Area’(56) with clear, limited objectives reflecting the specific responsibilities of the institutions regarding the protection of the Community’s financial interests is necessary.

(55) See also Court Opinion No 4/97, in particular paragraphs 5.20—5.23.

(56) Speech of Mr. Klaus Hänsch, President of the European Parliament, addressed to the interparliamentary conference on fraud, organised on the initiative of its Committee on budgetary control, on 23 and 24 April 1996.
7.6. UCLAF has to play a difficult role. It has administrative tasks in relation to the protection of the financial interests of the Community which belong to the first pillar but also it has responsibilities related to judicial investigations, which belong to the third pillar, without support from an independent European judicial authority able, to launch and direct investigations and bring prosecutions as appropriate. The liaison and criminal law expertise interface described in paragraph 3.4 only represents a preliminary solution to the existing problems(57). On 25 November 1997 the Commission presented a communication to the Parliament Committee on Budgetary Control (DOC(SEC97) 2182/2) entitled ‘Improving Action against Incompetence, Financial Irregularities, Fraud and Corruption’.

7.7. UCLAF has no competence to carry out enquiries related to the other Community institutions. In the Community context this has to be considered as a serious weakness in the legal and organisational framework of the fight against fraud. Priority should be given to finding a solution to this problem and any proposal for the reorganisation of the fight against fraud at European level should address this. In this context it is also necessary to define the responsibilities of Europol and UCLAF in such a way that synergy effects can be ensured.

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 10 and 11 June 1998.

For the Court of Auditors
Bernhard FRIEDMANN
President

---

(57) But it is no solution to the problem that UCLAF does not have the right to tackle the fraud in other European institutions. Furthermore in the field of the fight against corruption it is questionable whether UCLAF should be responsible.
ANNEX I

BASIC LEGISLATION CONCERNING THE FIGHT AGAINST FRAUD

Introduction

1. Virtually all own resources of the Community are collected by the Member States and about 80% of Community funds (essentially EAGGF Guarantee Section and Structural Funds) are paid out to the final beneficiaries by the Member States (indirect expenditure). Agricultural expenditure is managed by the national payment agencies. The Structural Funds are administered by the national authorities responsible for implementing the Community programmes, in particular at regional and local level. The Commission plays an important coordinating and monitoring role. Recent legislative changes have enhanced the role of the Commission as regards control.

2. Direct expenditure is managed by the Commission itself under contract without any formal obligations being incumbent on the Member States. This is the case for administration, energy, research, environment, internal market, industry, tourism, culture and audiovisual media, European Development Fund (EDF) and cooperation with the countries of Central and Eastern Europe (PHARE), the independent States of the former Soviet Union (TACIS), the Mediterranean countries (MED) and the countries of Latin America and Asia.

The two pillars and the fight against fraud

3. The entry into force of the Treaty on European Union (TEU) established a new institutional framework for the fight against fraud which is based on the first and third pillar.

The first pillar

Provisions in the three Community Treaties

4. The objective of combating fraud was formally enshrined in specific provisions in the three Community Treaties; the Treaty establishing the European Community (TEC), the Treaty establishing the European Atomic Energy Community (TEuratom) and the Treaty establishing the European Coal and Steel Community (TECSC) within the so-called first pillar of the institutional structure of the Union (Articles 209a TEC, 183a TEuratom and 78i TECSC). They clearly state the Member States' obligation (1) to 'take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests'. The Member States have to 'coordinate their action aimed at protecting the financial interests of the Community against fraud. To this end they shall organise, with the help of the Commission, close and regular cooperation between the competent departments of their administrations'.

5. As guardian of the Treaties the Commission has to ensure that this obligation is complied with. The cooperation between the Member States and the Commission is governed by the principle of subsidiarity to ensure that the financial interests of the Community are protected in the most adequate way.

6. The Amsterdam European Council on 16 and 17 June 1997 considered some proposals for Treaty amendments to protect the financial interests of the Community. A Danish proposal to include a specific legal base for measures to combat fraud was adopted. The draft Treaty provides for a new paragraph to be added to Article 209A enabling such measures to be adopted, after consulting the Court of Auditors, under the co-decision procedure by qualified majority voting (2). The paragraph provides, however, that the measures shall not concern the application of national criminal law and the national administration of justice (3).

(2) So far Regulations on the protection of the Community's financial interests have to be adopted under Article 235 TEC, where unanimity applies.
Advisory committee and fraud prevention

7. On 23 February 1994 the Commission adopted a decision (4) setting up the Advisory Committee for Coordination of Fraud Prevention (CoCoLaf) (5). It has to advise the Commission on all horizontal matters relating to the prevention and prosecution of fraud as well as the legal protection of the Community’s financial interests. The Committee is made up of representatives from the Member States and is chaired by the Commission (UCLAF). It set up its own working parties to look into specific questions.

Horizontal regulation

Reporting and controls

8. According to the actual legal framework under the first pillar actions against fraud affecting the Community’s financial interests are primarily the responsibility of the Member States who have the means at their disposal, through their authorities, for detecting, monitoring, countering and penalising fraud against the Union budget. The flow and the quality of information supplied by the Member States is a crucial factor guiding the work of the Commission. Therefore, a whole range of policy areas are now covered by Regulations defining the obligations of the Commission and the Member States regarding fraud and irregularity reporting.

9. In respect of the regulations governing controls on Community revenue and expenditure it can be said in general terms that Community revenue has better instruments of protection than Community expenditure and that on the expenditure side agricultural expenditure appears to be scrutinised more closely than expenditure under the Structural Funds. Customs authorities, who are responsible for own resources and a part of agricultural expenditure (essentially in liaison with exports or imports of agricultural products) have at their disposal special investigation units which have a long tradition in the fight against fraud.

10. In contrast, the controls on the other areas of agricultural expenditure and on the Structural Funds are the responsibility of the management agencies or authorities responsible for implementing the Community programmes, in particular at regional or local level, which are in the majority unfamiliar with techniques for combating large scale or sophisticated fraud. Therefore they tend to be traditional audit and account checking and are not necessarily the most effective way of detecting large scale and organised crime (6).

11. Given that, in recent years, the proportion of the Community budget allocated to agricultural guarantee expenditure has been decreasing whilst the expenditure on structural actions has increased, then the focus of the Commission’s fight against fraud effort should be reviewed and if necessary re-targeted to reflect this change.

12. Council Regulation (EC) No 2988/95 (7) fixes horizontal rules on Community controls, measures and administrative penalties concerning nearly all areas of the first pillar (8). It includes, for the first time, a definition of irregularity covering fraud, abuse of law and any other failure to discharge obligations under Community legislation (9) which jeopardises the finances of the institutions, whether on the expenditure or on the revenue side. Apart from the recovery of any benefits granted, the Regulation stipulates the conditions in which measures may be taken and Community administrative or financial penalties may be imposed on the legal and natural persons who commit the offence.

(5) The nature and tasks of the various sectoral committees (Committee for Mutual Assistance, Advisory Committee on Own Resources, Standing Committee on Administrative Cooperation in the Field of Indirect Taxes) or subcommittees (Sub-group on Irregularities in the Agricultural Sector, Sub-group on Recovery in the Advisory Committee on Own Resources, Anti-fraud Sub-group of the Standing Committee on Administrative Cooperation in the Field of Indirect Taxes) dealing with fraud prevention were maintained.
(6) It is to be noted that the Commission decided on 15 October 1997 detailed guidelines on the financial controls to be executed by Member States on operations co-financed by the Structural Funds; see Regulation (EC) No 2064/97 of 15 October 1997 (OJ L 290 23.10.1997).
(8) The Regulation applies to all expenditure and all traditional own resources. VAT is not covered by the Regulation.
(9) This concept of irregularity covers both simple omission due to error or negligence which is likely to have a harmful effect on the Communities’ budget and intentioned and deliberate acts which correspond for their part to the more restrictive concept of fraud as defined in the penal convention.
13. It follows from the notion of the liability of defrauders acting on behalf or under cover of a body corporate, which corresponds to the decision-making powers, that the business in question bears responsibility and should clearly be held liable under criminal law. Provision is also made for economic operators to be held liable for offences committed by staff of an undertaking on its behalf.

14. Furthermore, the Regulation provides for a control mechanism, setting out the general framework for inspections, with detailed arrangements being spelled out in a specific regulation concerning on-the-spot checks and inspections carried out by the Commission (10) or in regulations governing individual sectors.

 Regulations on reporting

**Table I.1:** Basic Regulations on the reporting of fraud and irregularity.

<table>
<thead>
<tr>
<th>Own Resources (customs duties and agricultural levies)</th>
<th>Article 6(3) of Council Regulation (EEC, Euratom) No 1552/89(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>EAGGF Guarantee Section</td>
<td>Articles 3 and 5 of Council Regulation (EEC) No 595/91(5)</td>
</tr>
<tr>
<td>Structural Funds</td>
<td>Article 24 of Council Regulation (EEC) No 4253/88(6)</td>
</tr>
<tr>
<td></td>
<td>Articles 3 and 5 of Commission Regulation (EC) No 1681/94(7)</td>
</tr>
<tr>
<td>Cohesion Fund</td>
<td>Article 12 of Council Regulation (EC) No 1164/94(8)</td>
</tr>
<tr>
<td></td>
<td>Articles 3 and 5 of Commission Regulation (EC) No 1831/94(9)</td>
</tr>
<tr>
<td>Mutual assistance in customs and agriculture</td>
<td>Council Regulation (EEC) No 1468/81(11)</td>
</tr>
</tbody>
</table>


15. The wide range of information received under this legislation should provide the appropriate transparency needed by the Commission for financial, administrative and judicial monitoring of cases and for operational inspections.

 Regulations on administrative cooperation

16. Council Regulation (EEC) No 1468/81(11) established the procedures for mutual assistance between the authorities responsible in the Member States in agricultural and customs matters and the conditions for cooperation between them and the Commission. It also provides for the exchange of information on cases where no material facts have yet been established but are already, or will be, under investigation. In 1997 the Council adopted a new Regulation (EC) to replace Council Regulation (EEC) No 1468/81 in order to improve the organisation of measures to combat fraud and to guarantee consistent protection of the Community’s external borders by stepping up mutual assistance and administrative cooperation (12). Council Regulation (EEC) No 218/92 lays down arrangements for administrative cooperation in the field of indirect taxation.


Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997).
17. As regards the Structural Funds the administrative cooperation is governed by the partnership principle. It implies a close dialogue between the Commission and all competent national authorities at central, regional and local level during all stages of programming. Article 4 of Council Regulation (EEC) No 2052/88(13) requires that the partnership shall be exercised in full respect of the institutional, legal and financial competences of all of the partners.

Regulations for controls

18. Council Regulation (EC, Euratom) No 2988/95 on the protection of the Community’s financial interests adopted a twin-track approach to the question of on-the-spot controls. On one side some general obligations are set out in Article 8 of the Regulation concerning the traditional checks which are carried out by the Member States. The task of harmonising checks to ensure a comparable level of stringency across the Community was left to sectoral Community legislation. On the other side Article 9 of the Regulation lays down certain rules for checks carried out by the Commission, though some more detailed provisions appear in Council Regulation (EC, Euratom) No 2185/96(14) and in the sectoral legislation.

19. Thus the Member States are responsible for ensuring the legality and regularity both of operations to recover revenue and of expenditure operations financed by the EAGGF Guarantee and the Structural Funds. It is up to them to take action for preventing and prosecuting fraud and irregularity offences and for recovering amounts evaded or wrongly paid out. The Commission has the task of monitoring the smooth working of the relevant procedures. Specific regulations give it the power to conduct direct on-the-spot inspections on its own initiative or to ask the national authorities to conduct special inspections, in which Commission officials may take part (see table).

Table 1.2: Basic Regulations concerning controls

<table>
<thead>
<tr>
<th>Own Resources</th>
<th>Article 18(2) and (3) of Regulation (EEC) No 1552/89(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>EAGGF Guarantee</td>
<td>Article 9 of Council Regulation (EEC) No 729/70(2)</td>
</tr>
<tr>
<td></td>
<td>Article 6 of Regulation (EEC) No 595/91(3)</td>
</tr>
<tr>
<td>Structural Funds</td>
<td>Article 23(2) of Council Regulation (EEC) No 4253/88, as amended by Regulation (EEC) No 2082/93(4)</td>
</tr>
</tbody>
</table>

(1) This Regulation has been amended by Council Regulation (Euratom, EC) No 1355/96 (OJ L 175, 13.7.1996).
(3) Apart from these horizontal regulations exist also regulations covering specific Common Market Organisations (e.g. Council Regulation (EEC) No 2048/89 on controls in the wine sector; OJ L 202, 14.7.1989; and Council Regulation (EEC) No 1319/85 on controls in the fruit and vegetables sector; OJ L 137, 27.5.1985).

Anti-fraud checks and inspections

20. Regulation (Euratom, EC) No 2185/96, which entered into force 1 January 1997, provides the Commission with a new horizontal legal basis for conducting specific anti-fraud checks and inspections through direct inquiries at operators(15). Thus it complements the current checks carried out by the various Commission services to ensure that Community regulations are being properly implemented by the Member States.

21. The new regulation has strengthened the powers of the Commission to carry out on-the-spot controls in the Member States. That said, the legal framework within which the Commission is empowered to

(17) Except VAT and areas without impact on the Union budget.
operate has been clearly defined, and the Member States' fundamental responsibilities in the matter remain unchanged. It follows from the subsidiarity principle that the Commission can conduct anti-fraud checks and inspections only where it can add a certain value. Therefore the Regulation defines the area in which on-the-spot checks and inspections may be carried out:

— for the detection of serious or transnational irregularities or irregularities that may involve economic operators in several Member States,

— where, for the detection of irregularities, the situation in a Member State requires on-the-spot checks and inspections to be strengthened in a particular case in order to improve the effectiveness of the protection of financial interests and so to ensure an equivalent level of protection within the Community,

— at the request of the Member State concerned.

22. The Regulation indicates, that in addition to economic operators receiving money from the Community budget or owing money to it, on-the-spot-checks and inspections may also be carried out on other operators (suppliers, carriers, insurers, etc.). The Commission's agents are entitled to have access to all information and documentation, to take samples and to enter business premises, in the same way as national inspectors. If necessary they may seek assistance from the authorities of the Member State.

The Third Pillar

23. Title VI TEU makes provision for various forms of intergovernmental cooperation in the fields of justice and home affairs (third pillar). This Title deals with several matters of common interest, notably combating fraud on an international scale, judicial cooperation in civil and criminal matters and customs cooperation. Furthermore it covers police cooperation in specific areas, notably serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organisation of a Union-wide system for exchanging information within a European Police Office (Europol) (16) (Article K.1(5) to (9)).

24. The Member States are to inform and consult one another within the Council with a view to coordinating their action. To that end they have to establish cooperation between the competent departments of their administrations. The Council may adopt joint positions, approve joint action and draw up conventions or protocols on the initiative of any Member State or the Commission (Article K.3).

25. In order to reduce the inconsistencies between laws on fraud in several Member States, which provide a breeding ground for international fraud (17), the Commission presented on the basis of Article K.3.2. a proposal for a Council instrument establishing a Convention for the protection of the Community's financial interests under criminal law (18). On 26 July 1995 the Council approved an act drawing up a Convention on the protection of the European Communities' financial interest (19). Its purpose is to establish a common definition of fraud and of other serious offences which damage the Community budget, enshrine the principle of a specific offence in the criminal law of the Member States and introduce provisions as regards appropriate penalties, jurisdiction, extradition and mutual cooperation. Serious fraud involving more than ECU 50 000 has to be made an extraditable offence, punishable by imprisonment. Persons with the power to take decisions within a business should be made criminally liable, albeit in accordance with the principles defined in national law. Furthermore the Convention includes rules on centralisation of the prosecution and on the extradite or prosecute principle.

(17) The features which make the various national systems incompatible were highlighted in a number of studies (see Corpus Juris or the study carried out under the direction of Professor Delmas Marty described in the 1993 Annual Report on the Fight against Fraud COM(94) 94 final).
26. On 27 September 1996 the Ministers of Justice signed the first Protocol(20) to the Convention relating to corruption to the detriment of the Communities’ financial interests. The main purpose of the protocol is to fill in the gaps in existing criminal law on corruption having a link with protection of the Community’s financial interests which involve Community and/or national officials. The Commission had already accompanied its proposal for a draft treaty from 1976 with a second instrument concerning the responsibilities under criminal law of officials and other servants of the European Communities, but discussions have never got off the ground. In a resolution passed on 11 March 1994 the European Parliament asked the Commission, under Article 138b of the Treaty, to draw up a legal instrument dealing with the liability of officials in charge of expenditure from the Community budget(21).

27. On 26 May 1997 the Council adopted on the basis of Article K.3.2. a further act which drew up a convention on the fight against corruption(22). This further act was needed as ‘for the purpose of improving judicial cooperation in criminal matters between Member States, it is necessary to go further than the said Protocol and to draw up a Convention directed at acts of corruption involving officials of the European Communities or officials of the Member States in general’ because corruption may also be committed outside the context of fraud against the Community budget. It provides for an offence covering both acts and omissions. European officials are assimilated to national officials under criminal law, while taking account of the immunity conferred by the Protocol on the Privileges and Immunities of the Communities. Members of Community institutions are assimilated to their political counterparts at national level rather than officials. The authorities in a Member State may claim jurisdiction for criminal cases involving European officials employed by a Community institution established on its territory.

28. As the Convention on the protection of the European Communities’ financial interests in certain specific areas merely sets out a few basic principles it was complemented by a second instrument, the Protocol on judicial cooperation(23). This Protocol provides apart from the provisions relating to the responsibility of legal persons, for the criminalisation of money laundering and the confiscation of the proceeds of fraud and for cooperation between the Commission and the national prosecuting authorities in the Member States in relation to fraud, corruption and money laundering. It also contains rules on the exchange of information between the judicial authorities and the Commission and provides that the latter shall render technical and operational assistance.

---

(20) OJ C 313, 23.10.1996. The Protocol has the same status and binding force as the Convention since it has to be adopted by the same procedures, i.e. those provided for by Title VI of the Treaty on European Union and notably ratification by national parliaments.


(22) OJ C 195, 25.6.1997. For the purposes of this convention passive and active corruption were defined in a similar way to the Protocol.

## ANNEX II

### FINANCIAL RESOURCES FOR THE FIGHT AGAINST FRAUD

**Table II.1:** Financial resources for the fight against fraud

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A-3 5 3 0</td>
<td>Unit to coordinate action against fraud</td>
<td>20000</td>
<td>20000</td>
<td>190000</td>
</tr>
<tr>
<td>A-3 5 3 1 (1)</td>
<td>Controls, studies, analysis in connection with the fight against fraud</td>
<td>330800</td>
<td>400000</td>
<td>3980000</td>
</tr>
<tr>
<td>A-3 5 3 2 (2)</td>
<td>Combating fraud in the textile sector (TAFI)</td>
<td>80000</td>
<td>80000</td>
<td>800000</td>
</tr>
<tr>
<td>A-3 5 5</td>
<td>European documentation, coordination and study network to control cross-border crime and fraud</td>
<td>40000</td>
<td>p.m.</td>
<td>p.m.</td>
</tr>
<tr>
<td>B2-1 0 1</td>
<td>Actions to combat fraud in the area of the European Agricultural Guidance and Guarantee Fund, ‘Guidance’ section</td>
<td>20000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B2-1 1 1</td>
<td>Actions to combat fraud in the area of the financial instrument for fisheries guidance</td>
<td>50000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B2-1 2 1</td>
<td>Actions to combat fraud in the area of the European Regional Development Fund</td>
<td>30000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B2-1 3 1</td>
<td>Actions to combat fraud in the area of the European Social Fund</td>
<td>20000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B2-1 5 0</td>
<td>Actions to combat fraud in the area of structural measures</td>
<td>75000</td>
<td>75000</td>
<td></td>
</tr>
<tr>
<td>B2-3 0 1</td>
<td>Actions to combat fraud in the area of the Cohesion Fund</td>
<td>30000</td>
<td>30000</td>
<td>300000</td>
</tr>
<tr>
<td>B2-5 1 9</td>
<td>Actions to combat fraud in agriculture</td>
<td>163000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B5-9 1 0</td>
<td>General anti-fraud measures</td>
<td>417500</td>
<td>500000</td>
<td></td>
</tr>
<tr>
<td>B6-7 9 2</td>
<td>Activities to provide scientific and technical support to Community policies on a competitive basis</td>
<td>993452</td>
<td>800000</td>
<td>916200</td>
</tr>
<tr>
<td>B6-9 1 0</td>
<td>Actions to combat fraud in the area of research (shared-cost)</td>
<td>50000</td>
<td>50000</td>
<td></td>
</tr>
<tr>
<td>B7-5 3 0</td>
<td>Measures to combat fraud in the cooperation sector</td>
<td>100000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B7-6 5 0</td>
<td>Measures to combat fraud in the cooperation sector</td>
<td>50000</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>8551452</td>
<td>11075000</td>
<td>11936200</td>
</tr>
</tbody>
</table>

(1) Budget line co-managed by UCLAF with DGs VI, XIX, XX and XXI.
(2) Budget line co-managed by UCLAF with DG I.

Source: UCLAF.
ANNEX III

DATABASES

IRENE Database

1. The IRENE (IRregularities, ENquiries, Exploitation) database has been in operation since 1 December 1992. As at the 6 October 1997 it contained details of 25 619 cases of fraud or irregularity (14 332 under the EAGGF Guarantee Section, 9 509 under own resources, 821 under the Structural Funds and 957 under the mutual assistance) based on the obligatory communications presented by the Member States. It contains, in particular, information on the practices adopted in committing the irregularity, the manner in which the irregularity was discovered, the national authorities which recorded the irregularity, the financial consequences and possibilities of recovery and the judicial and administrative procedures instituted.

Table III.1: Count of records in IRENE as of 6 October 1997

<table>
<thead>
<tr>
<th>Mutual Assistance</th>
<th>957</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structural funds:</td>
<td></td>
</tr>
<tr>
<td>ERDF</td>
<td>97</td>
</tr>
<tr>
<td>EAGGF Guidance</td>
<td>363</td>
</tr>
<tr>
<td>FIOF</td>
<td>11</td>
</tr>
<tr>
<td>ESF</td>
<td>350</td>
</tr>
<tr>
<td>Total Structural Funds</td>
<td>821</td>
</tr>
<tr>
<td>EAGGF Guarantee</td>
<td>14 332</td>
</tr>
<tr>
<td>Own Resources:</td>
<td></td>
</tr>
<tr>
<td>Old system</td>
<td>8 900</td>
</tr>
<tr>
<td>Own resources</td>
<td>609</td>
</tr>
<tr>
<td>Total Own Resources</td>
<td>9 509</td>
</tr>
<tr>
<td>Total number of records:</td>
<td>25 619</td>
</tr>
</tbody>
</table>

2. Often it is not possible, at the stage of communication, to distinguish between irregularities, for example resulting from clerical errors, and those which represent fraud or acts of negligence. In fact in the majority of cases the intentional nature and the seriousness of the irregularity only becomes apparent during the administrative and judicial procedures, which are often particularly lengthy.

3. The IRENE database was designed partly to allow a systematic follow-up of all the cases of fraud and irregularities which have to be communicated by the Member States and partly to serve as a source of intelligence. However, the database suffers from long delays in reporting, incompleteness of some records, absence of credibility checks of the information furnished and lack of user-friendliness. Furthermore individual cases are systematically reported without essential details (location of the incidents, names of individuals or entities involved, etc.). Thus it is of limited value for concrete investigative work.

Pre IRENE Database

4. In principle the Pre-IRENE database (UCLAF internal, case management database) contains information concerning cases of (presumed) fraud on which UCLAF carries out enquiries and which were not yet the subject of a specific communication by the Member States. In theory the information supplied should not only relate to identification of the case (category, type of programme, country or region, type of irregularity, amount involved) but also to particulars of the fraud technique or the irregularity and the proceedings in motion. The objective is, that the base should evolve as a valuable management tool enabling investigators to manage their cases autonomously and those in charge to manage the generality of
investigation business and produce summary tables. It is foreseen, by facilitating the correlation of information, to improve programming of UCLAF's operations in this field and to frame an intelligence strategy with a view to obtaining a better picture of fraud prevention and of economic and financial crime. Pre-IRENE should then be at the core of an intelligence based strategy with centralised information management. Furthermore it should be, following the analysis of the cases introduced, the starting point for targeted operational measures.

5. According to the Commission, Pre-IRENE was operational in 1994 on an experimental basis (1), and further changes were to be made to it in 1995. Beginning of April 1997 in total 756 cases were under management in this database — 356 relating to the Structural Funds and direct expenditure, 39 on the Common Market Organisations on Agriculture, 260 cases on export or import of agricultural products and 101 to non-agricultural own resources (customs duties).

**IRENE 95 Database**

6. In 1995 the Commission started to develop an integrated information system which would take account of different information sources. It is foreseen to base this new integrated information system on a new version of the IRENE database, which merges the two previously separate databases IRENE and Pre-IRENE. Furthermore, this new database will set up a direct link with 'mutual administrative assistance' messages having an impact on the Community budget. This new database (IRENE 95) will not be a mere database recording information on fraud cases but a management tool(2). Due to technical problems IRENE 95 is not yet operational.

**SCENT**

7. The SCENT (System Customs Enforcement NeTwork) system, which has been operational since 1987, was to have been complemented since 1996 by the SCENT taxation system which has been in the development stage since 1993. The system allows the exchange of information on indirect taxation via the SCENT-network. The CIS (Customs Information System)(3), which has been operational since 1993, is a database which contains information (data on persons, vehicles, goods, patterns of fraud, etc.) exchanged by the Member States through the SCENT network. More than 300 Terminals have been installed to link up offices at points of entry and exit of the Union and allow them to communicate 24 hours a day, seven days a week with their own central authorities and with Commission departments. CIS is also used for specific operations (surveillance of consignments of sensitive goods in the transit procedure, maritime surveillance, etc). The Commission provides user support in technical matters and looks after training for users in the Member States.

---

(2) See 1995 Annual Report on Fight against Fraud, page 78.
(3) The Member States have adopted, in the Title VI context, the convention on the use of information systems in the field of customs. Furthermore a Convention was drawn up on the use of information policy for customs purposes. The Conventions still have to be ratified.
ANNEX IV

PREVENTIVE ACTIONS

Action in the area of customs

1. Further to its communication of 29 March 1995(1) the Commission adopted on 3 April 1996 a communication on the emergency measures taken and those still to be taken, put in place a transit task force and presented a communication on the future of transit systems(2). Furthermore the Commission cooperated closely with the European Parliament’s temporary committee of inquiry (Article 138(c) of the EC Treaty) on the Community transit procedures(3). Finally on 19 December 1996 the European Parliament and the Council adopted an action programme for Customs in the Community (Customs 2000)(4). The objective of this programme is to improve the overall effectiveness of customs action and the uniformity of controls at the external community borders.

Seminars

2. As part of the general training policy of the Commission, UCLAF organises seminars to acquaint national anti-fraud services and administrations managing Community funds with the European dimension of fraud. General basic courses have been run in all the Member States. Lately the Commission has been concentrating more on targeted schemes for specialists departments managing Community funds and for judicial authorities. These training schemes are appreciated by the Member States.

(2) See SEC(96) 290 final ‘Commission action to counter transit fraud’ and COM(96) 477 final. For further information see 1996 Annual Report, pages 38 and 39.
(3) See PE 220.895/def.
COMMISSION’S REPLIES

1. INTRODUCTION

Scope of the audit

1.1. The Commission welcomes the opportunity to take stock of progress made in the fight against fraud as provided by the Court’s draft report. The effectiveness of UCLAF depends to a large extent on the quality of cooperation and on the Member States’ structures.

Main observations

1.2. The Commission welcomes the endorsement by the Court of the Commission’s commitment to the fight against fraud and the improvements in the legal and administrative framework that have resulted. The Commission is extremely concerned that the Conventions on the legal protection of the financial interests of the Community, together with its two protocols and the Convention on the fight against corruption have not yet been ratified by the Member States. It would point out that the Member States have undertaken at the European Council of Amsterdam in June 1997 to ratify these instruments by mid-1998 and it will follow closely progress towards meeting this commitment.

1.3. A wider ranging examination of the link between UCLAF and other control and police services would provide a useful basis for an appreciation of the overall arrangements that have been put in place. In relation to cases of suspected fraud or corruption within the Institution the Commission has established a clear policy and committed itself to a series of actions including the establishment of a formal decision on UCLAF’s role and powers in its Communication of 18 November 1997 on Sound Financial Management and Administration: Improving Action against Incompetence, Financial Irregularities, Fraud and Corruption (SEC(97) 2198 (see point 1.7 below). As to security measures the Commission has undertaken a number of initiatives which have provided for a progressive increase in security in UCLAF (see also comments on points 2.26 to 2.28 below).

1.4. The Commission agrees that the number of temporary staff in UCLAF as a proportion of the total staff is too high. The majority of temporary agents are coming to the end of their contracts in the period autumn 1998 to summer 1999 and a plan has been established for the conversion of a substantial number of these posts into permanent posts when the temporary posts become vacant. This should help to provide an appropriate balance between permanent officials and temporary staff and to ensure a proper continuity. However it would point out that the current situation is in large part due to a decision by the budgetary authority in 1994 to increase the staffing of UCLAF by 50 persons of which 35 were temporary agents. The advantage of having been able to recruit a substantial number of temporary agents in the period 1994/95 was that it allowed UCLAF to recruit specialist expertise at different levels and thus constitute a multi-disciplinary team that was quickly operational.

1.5—1.6. The general statements on the effectiveness and use of the UCLAF databases should be seen in the specific context. The rapid evolution of UCLAF over the last few years has given rise to a continuous re-evaluation of UCLAF needs in relation to information systems. At present UCLAF still depends to a large extent on old systems which are running on outdated software and which are not appropriate for UCLAF’s role. However the present systems represent a transitional arrangement which should be phased out during 1998 with the entry into operation of the new integrated IRENE database.

1.7. The Commission would refer to its communication of 18 November 1997 in which it has clearly explained its commitment to ensuring that cases where there are grounds for prosecution under the criminal law are dealt with quickly and effectively. A formal Commission decision is in preparation which will establish UCLAF’s role and powers in relation to contacts with national judicial authorities. It is true that national legislative requirements are important in the conduct of investigations particularly under Regulation (EC) No 2185/96.

This point is dealt with in more detail in the comments on point 3.

1.8. The Commission agrees that further actions are needed to improve the procedures designed to track and stimulate recovery actions in the Member States. However it would also underline the progress that has been achieved todate. This includes the introduction of a reporting system for the structural funds, the amendment of Regulation (EEC) No 1552/89 to improve the system for own resources reporting and the ongoing work in the context of SEM 2000 on the putting in place of financial correction mechanisms, such as exist in the agricultural domain, in the areas of own resources and the structural funds. In addition computerised systems have been established in all areas to facilitate recording and follow-up actions.

1.9. The Commission agrees that todate the results of the so-called ‘black-list’ procedure are not satisfactory
and is examining means of encouraging the Member States to become more active in this area. It would point out that under the relevant legislation it is only the Member States that can insert names on the so-called ‘black-list’.

1.10. The Commission would emphasise the fundamental reforms provided for in SEM 2000 together with specific actions arising from the implementation of SEM 2000 referred to in relation to point 1.8 above. The study carried out by the Joint Research Centre (JRC) did suffer delays; the coverage was altered as a result of agreement reached during the carrying out of the study.

1.11. The Commission is concerned at the Court’s affirmation that the figures published in the Commission’s annual report on the fight against fraud are misleading. The Commission will examine closely the presentation of its next annual report to ensure that the origin and calculation of the numbers of cases and amounts involved are clearly explained. Nevertheless the Commission would point out that there is a fundamental problem in relation to the estimation of the impact of fraud on the Community budget. This is because using only those figures formally communicated by the Member States in the framework provided by the Regulations applicable in the different domains tends to lead to a systematic underestimation of the problem as is evidenced by the growing importance of those cases of fraud identified by the Commission itself in collaboration with the specialist anti-fraud services of the Member States. The continuing work on the CORPUS JURIS project in the context of the notion of a ‘single judicial space’ also represents an area of considerable importance.

The transfers of human resources to UCLAF involved only DG VI and XXI and the operational budget transfers were very limited. Indeed both DGs VI and XXI maintained appropriations on the shared budget lines in the A part of the budget. In the B part due to action by the European Parliament a number of new budget lines were created to support UCLAF activity and subsequently a number of these were merged to give the current situation. These are shown in Annex II to the Court’s report. It is to be noted that Annex II contains only those budget lines where UCLAF is authorising officer or joint authorising officer.

2.5. The Council’s Action Plan is independent of the Commission’s anti-fraud work programme and indeed covers a wide range of subjects which fall outside the competence of UCLAF in its specific tasks even if a number of the issues raised in the Action Plan are also reproduced in the Commission’s work programme. In the negotiations that led to the adoption of the Action Plan UCLAF was represented and a number of points were inserted on the initiative of the Commission to broaden the scope to cover certain areas of Community interest.

2.14—2.15. The Commission agrees that the exercise of ‘fraud-proofing’ legislation which it has proposed will require a sustained effort which however will have to be applied continuously and in particular to new legislative initiatives.

Setting priorities

2.18. The study was hampered by incompleteness in pre-IRENE and IRENE databases. The domains in question were chosen because they represented sensitive
areas. The administrative arrangement with the JRC made it clear that part of the specific study would be concentrated on areas chosen by UCLAF.

The refusal of DG XX’s visa was related to a formal problem in the presentation of the dossier which arose because of a problem in the identification of the sub-heading within the budget nomenclature which was appropriate to the type of expenditure. The problem was encountered by a number of other services which use appropriations on budget line B6-7 9 2. After discussion with DG XX the problem was resolved and the final payment was approved. The Commission would point out that the detailed examination of the results of the study is still ongoing and that the next stage of development of information evaluation will be accomplished only when the new IRENE database becomes operational during 1998.

The establishment of UCLAF inspection priorities is guided not only by the historical development of reported fraud cases but also by ongoing intelligence work and evaluation of new policies and risks as well as by the evaluation of control reports supplied by other Commission services. The nature of UCLAF’s activities in relation to targeted anti-fraud investigation and intelligence operations does not lend itself easily to the setting up of an audit programme approach designed to provide a wide coverage of the different areas where Community finance is at risk. Nevertheless work is continuing on developing instruments for establishing priorities.

Security measures

2.26—2.28. The Commission accepts that the detailed rules of its Decision on security have yet to be fully implemented in UCLAF. However it points out that an essential feature of the implementation of the Decison will mean that only those persons who have been vetted can have regular access to documents classified confidential and above. As a result UCLAF launched the vetting procedure for all of its full time officials in May 1997. The procedure involves an enquiry in the Member State of origin of the official in question by the competent national authorities and can take the better part of a year to finalise. It was decided to concentrate on the permanent official population because the UCLAF temporary agents and national experts are as a general rule selected from services already dealing with sensitive information and subject to vetting procedures and because of the fact that temporary agent and national expert contracts were of limited duration (most of the temporary agent contracts will expire in the period September 1998 to April 1999). It is nevertheless the intention to apply the vetting procedure to future recruitment to such posts. In the interim advice on document classification was circulated to the units of UCLAF and measures were taken to ensure that adequate protected storage facilities existed together with a general protection of UCLAF premises. Special attention has also been given to computer security because of the importance of establishing the new integrated database IRENE. As a result the work undertaken by the security office was supplemented by a further detailed study by the JRC in the context of UCLAF’s overall security concept for computers. The results are in the process of implementation in the ongoing work on the finalisation of IRENE.

It should be noted that the security of information to be transmitted electronically is covered more pertinently by Commission Decision C(95)1510.

The inspection of UCLAF by the Security Office was a wide-ranging review that included document, physical, information technology and personnel security: recommendations on vetting are to be found in paragraphs 4.1 and 5.2 of the Security Office report.

2.30. It is not the practice for the Security Office to carry out routine checks of the personal files of Commission staff for the purpose of security clearances. Such clearances are governed by national procedures, including citizen’s rights: legal evidence of criminal activity should be thrown up in the course of those procedures.

2.32. The Commission intends to place ever greater emphasis on ensuring the implementation of all aspects related to security during 1998. It would point out that a post has been assigned for the purpose of the recruitment of a full-time security officer in UCLAF in 1998. The official who did not work in UCLAF has since been transferred to other duties within his service. It should be noted that services outside UCLAF have access only to the database containing formal communications of the Member States and not to that containing cases under investigation by UCLAF. In addition access is allowed only to certain officials in those services and to certain categories of cases. In the case of nominative data access is further restricted to cases of direct relevance to those services.

Internal administrative enquiries

2.33. The Commission agrees that there is a need to formalise and reinforce the existing procedures under which UCLAF acts in internal cases. It was for this reason that the Commission issued its Communication of 18 November 1997 (SEC(97) 2198). Moreover a formal Commission decision on UCLAF’s powers to include the elements set out in the Communication is currently in
preparation. It should be pointed out in relation to the reference to the Tourism sector that the destruction of documents referred to as well as the start of the case predated the creation in UCLAF of an operational unit responsible for such matters.

2.34. The specific points in relation to the questioning of Commission officials and the searching of files and offices in Commission buildings is being taken up in the draft decision on the powers of UCLAF referred to in the previous paragraph. It should be noted however that the Court of First Instance in its judgment of 19 March 1998 in the case Tzoanos v. Commission has confirmed the right of the Commission to take documents from officials’ offices and computers prior to the initiation of any disciplinary proceedings in the context of an internal administrative investigation. This and other aspects of the judgment are being examined carefully in the preparation of the draft decision on the powers of UCLAF.

3. ORGANISATION OF UCLAF

Staff resources to date

3.4. The Commission welcomes the Court’s endorsement of its policy in relation to the establishment of an interface and liaison function with national judicial authorities which is entirely in line with the new role that the Commission will be called on to play once the Convention on the legal protection of the Financial Interests of the Community and its protocols are ratified (in particular Article 7 of the second protocol). In line with the commitment in its 1997/98 anti-fraud work programme the Commission is creating an interface and liaison cell within the unit of UCLAF responsible for general affairs and legal matters. It is clear that extra human resources would be necessary if the Court’s recommendation of at least one magistrate or other national equivalent per Member State were to be implemented.

Working methods

3.8–3.9. The difference in use of the pre-IRENE computer system reflects to some extent the differences between the type of work carried out in the investigative units. As is explained in the comments in points 3.14 to 3.16 below the work of some units is more intelligence based than others. This type of work is less suited to the case by case follow-up for which pre-IRENE was designed. The Commission would point out that the current IRENE project is designed to provide a common basis for managing cases in UCLAF. This system is currently becoming operational unit by unit in parallel with the migration to WINDOWS NT. It should greatly improve the transparency of the system for authorised managers while at the same time improving security.

3.12. In the context of the current reorganisation of UCLAF attention will be given to ensuring a more clearly defined role for coordinators. The new IRENE provides for a structured management reporting system. It should be emphasised however that the high number of cases inevitably puts pressure on coordinators in view of the limited resources available to UCLAF.

Management of case files

3.14–3.16. The Commission accepts the need for investigation dossiers to be properly structured. However given the wide variety of subjects treated in UCLAF and the different legal and procedural frameworks that apply the imposition of a single structure is difficult. As a first step in developing standardised procedures UCLAF has established a vade-mecum on the operation of on-the-spot checks under Council Regulation (EC) No 2185/96 in view of the importance of UCLAF reports as input to possible prosecutions in the Member States due to the standing accorded to them by virtue of the regulation. The other area where presentation of reports is of importance is in missions led by UCLAF to third countries where mission reports may be subsequently used in judicial proceedings. Thus it is this aspect of UCLAF dossiers where most care is and will be taken (see point 3.20 and 21 below). It should be stressed that in relation to the preparation of investigation mission reports UCLAF has established a standard layout which includes resource use, and which is countersigned by the investigator responsible, the relevant Head of Unit and the Director of UCLAF.

The issue of possible guidelines on the standard of documentation and notes to satisfy the minimum requirements for criminal evidence laid down in the Member States legislation also presents particular problems in relation to the wide variety of situations encountered. The Commission underlines the nature of the role of UCLAF in relation to investigative and intelligence work. The overwhelming bulk of investigative casework is carried out by the specialist services of the Member States. This derives from the division of roles between UCLAF and such services and the limited
resources available to UCLAF. Thus the preparation of a file for a prosecuting service in many cases is carried out by national services with input from UCLAF but not by UCLAF alone. In addition within UCLAF there is a marked difference between the type of activity carried out by the different enquiry units. Certain units operate on a case by case basis, others are more intelligence oriented.

UCLAF has been obliged to take a pragmatic approach to the development of its work particularly in a context where its role has been rapidly developing. In addition its multi-disciplinary nature and the fact that it has been created by amalgamation of various previously separate sectors needs to be taken into account. A full examination of this aspect of UCLAF’s work will be launched in the context of the ongoing work on the application of Regulation (EC) No 2185/96.

A further point that needs to be stressed is that in a number of cases, and most notably in the cases of the different Task Forces, a significant amount of work is intelligence rather than case based. Thus the files that are created are intelligence files even though they may include details of cases where the Member States are operating with the assistance of UCLAF.

3.18. In relation to the specific point of file manipulation it should be pointed out that this presupposes an action on the part of an official that could warrant a disciplinary measure and it is of course linked to the issue of security procedures. Moreover UCLAF’s central archives have been redesigned to enable files to be reconstituted on the basis of registered incoming and outgoing documents as a backup to investigations enquiry files. Nevertheless UCLAF is examining its internal security procedures on this point.

Cooperation with the Member States

Constraints imposed on the Commission services

3.20—3.21. It is true that Regulation (EC) No 2185/96 requires UCLAF inspectors to comply with national rules of procedure in each Member State in which it carries out controls and the Commission agrees with the Court that this does present difficulties for UCLAF inspectors.

Nevertheless it should be emphasised that the regulation requires that the Commission only take account of national procedures for the establishment of control reports. In practice this should mean that depending on the nature of the procedural requirement the Commission may apply it (as in obligatory circumstances (such as respect of a contradictory procedure) or not (such as in the case of minor procedures which do not undermine the validity of the report). This wording was insisted on by the Commission during negotiations on this text precisely for the reasons put forward by the Court.

In any case where a joint control is carried out the Commission inspectors can benefit from the expertise of the agents of the Member State who are accompanying them. Indeed the latter are obliged to provide the necessary assistance to the proper carrying out of the control.

3.22. The vade-mecum provides investigators with a guide to the application of the Regulation in conformity with the commitment made by the Commission in Council when the Regulation was adopted.

3.23. The Court notes that the Regulation had only been applied on five occasions at the time of the audit. The Commission would emphasise a number of important elements arising from the need to put in place certain practical provisions in the first year of operation namely:

- the creation of the vade-mecum
- putting in place the Commission procedures for authorising UCLAF investigations,
- internal training for UCLAF investigators,
- a series of contacts with certain national administrations to launch the first control missions under the best conditions possible.

This work was necessary to allow actions under the provisions of the Regulation to be started within a clear and solid framework. It should be noted that since the visit of the Court’s audit team the number of cases of application of the Regulation has doubled. It is clear that in view of the newness of the Regulation its legal effects and its operational context UCLAF is only at the beginning of a process of establishing its use. It should be noted that the Commission will be reporting to the Council on its experience with the Regulation at the end of 1998. The vade-mecum will be subject to continuous review.

Treatment of requests presented

3.26—3.27. In general the Commission would point out that difficulties arising from the organisation of individual Member States services and particularly the lack in certain cases of a service with an overview of what is happening within a given Member State have posed practical problems in cooperation on casework. One Member State has decentralised its anti-fraud activities so that UCLAF has no central point of reference
at all. Others however have established central services in parallel with UCLAF. In addition where a specific legal problem in casework arises this cannot be justifiably linked to problems in the overall structure of UCLAF’s operational role and relations with Member States.

The Commission would point out that one of the three cases mentioned by the Court under point 3.26 where Member States did not start procedures requested by UCLAF led to a substantial recovery action by the Member State in question in May 1997. The two other cases are still in the hands of the appropriate judicial authorities. In the two cases cited by the Court where a request was not made or was delayed both cases were followed up and are in the hands of the appropriate judicial authorities. In the case involving the lifting of immunity of three officials there were difficulties with the initial requests which resulted in a prolonged exchange of correspondence before the matter was eventually resolved.

In relation to point 3.27 the Commission would make the following comments.

The Commission understands that the case which prompted the comment on lack of consultation and feedback is a case where, because a judicial enquiry was launched in a Member State, it was not possible for reasons related to the protection of the secrecy of the judicial procedure to provide detailed feedback to other Member States. Once this factor no longer applied the appropriate administrations were informed. In the specific case involving the claimed non-disclosure of information UCLAF received information which did not directly implicate operators in the Member State where the search took place. UCLAF was not able to establish a link between the information and the Member State operation in time for it to be provided to the relevant authorities prior to that operation.

The Commission would point out that the three cases, on which the Court’s statement about investigations seeming to stop without reason is based, were all continued. In one case, which is also the case referred to by the Court as having been with UCLAF for a long time without concrete action being taken, substantial difficulties in the organisation of an enquiry mission to a third country prevented a rapid conclusion. In this particular case the collection of the documentation which was needed to carry out the enquiry took the Member States concerned some nine months. However the case has since advanced following a joint UCLAF/Member State mission to a third country and a substantial fraud has been identified. The other two cases involved are again referred to by the Court in its statement in paragraph 3.27 about lack of feedback (letters, mission reports). In one the results were formally communicated to the administrations in question in November 1997. In the other, which is also the case referred to by the Court in relation to the issue of whether a fraud had or had not taken place, the issue concerned interpretation of complex legal provisions requiring exhaustive analysis by different Commission services.

Information and intelligence systems

Databases

3.28—3.29. It is true, as the Court points out, that the number of users of the IRENE database is very limited. However it should be borne in mind that the current version of IRENE (to be replaced this year) is a system that was developed in the 1970s which requires knowledge of a specific (and now outdated) computer language to operate it. As a result its use in UCLAF has been restricted to a relatively small number of trained operators. However, in spite of this the number of users is not a sufficiently accurate indication of the use of the system. Other criteria that have to be taken into account are the frequency of use and the length of consultation. According to the statistics of the Calculation Centre at Luxembourg where IRENE is held it is one of the most important databases there in terms of size and use. This is on the basis that although there are a relatively small number of users they account for a regular and substantial activity.

3.30. As mentioned above the Commission is in the process of replacing the outdated computer structure which was designed with the original UCLAF role in mind. Improvements in the pre-IRENE database which has already considerably evolved since its inception when it ran on the same basis as IRENE and suffered from using the same specific computer language are part of the process of modernisation and adaption to the new situation. It expects the situation to improve shortly with the integration of IRENE and pre-IRENE in the version of IRENE to be implemented in 1998. The project ‘UCLAF Integrated Information System (UIIS)’ was a project financed by the JRC in the context of its institutional support. The project as such was not abandoned. Its results were used as a basis for two further projects SURCOM and IIMS (Integrated Intelligence and Management System) which are still ongoing.

The APSO (Antifraud Policy Support Office) was a proposal of the JRC about the internal organisation of its support work for UCLAF. In practice the JRC opted for an interservice agreement supported by agreed annual work programmes between UCLAF and the JRC. In this context the JRC has given valuable support to UCLAF in the development of tools and systems. Once the new IRENE database has been successfully implemented, and in the context of the current reorganisation of UCLAF, it is planned to devote more resources to intelligence work based on data analysis from the Commission’s own
databanks. It should be noted that an important part of UCLAF's intelligence work is carried out in the operational units and particularly as part of the operation of the different task forces.

3.31. The Commission accepts that there have been very considerable problems in the development of communication systems and databases. However it would point out that it is not unique in its experience of such problems. In the context of the replacement of outdated and inappropriate systems by the type of complex information and management system that the Court itself is calling for the potential for problems to occur cannot be underestimated. It believes that the new IRENE system should provide a solid foundation for a reliable and effective management of cases both communicated by the Member States and under investigation by UCLAF.

3.32. The risk that UCLAF and the Member States could be running enquiries on the same case unknown to each other exists but is small. Member States are of course obliged to advise the Commission when cases of fraud or irregularity come to light. UCLAF concentrates on important transnational cases and Member States are informed of this work through the work of the different Task Forces and by ad hoc communication for information. Moreover the vast majority of UCLAF enquiries (other than in the area of direct expenditure) are carried out in partnership with the authorities of the Member States. The new IRENE includes a feature which will correlate possible overlapping cases.

3.33. It is certainly true that UCLAF can and does provide a substantial value-added in intelligence work and this is an area which will be receiving more attention. However the Commission must also fulfil its formal control and inspection functions under Community legislation. In addition much of its intelligence comes from links established as a result of its own operational activity. In relation to EUROPIOL contacts have been established. However this is a complex issue taking in as it does such a wide variety of areas (from customs to agricultural expenditure, etc.) and questions of principle relating to legal bases. At present UCLAF is discussing the establishment of a protocol with EUROPIOL as provided for in the Council's Action Plan to combat organised crime as a first step to increasing cooperation (as provided for in the Commission's annual anti-fraud work programme (COM(97) 199, point 1.9). The institution of an information system would, it is understood, require certain changes in the current legal framework.

3.34. The amounts that are to be or have been recovered in direct expenditure cases are listed in the pre-IRENE database as well as in the CORE database of the Commission's accountant which is accessible to UCLAF. All direct expenditure cases are listed in pre-IRENE and the new IRENE application will specifically cover the area in question.

3.36. The Early Warning System (EWS) was put together very quickly in order to respond to a crisis situation. As a result some compromises had to be made. In terms of becoming fully computerised it should be noted that the EWS does not replace the existing transit procedures and that the basic weakness in the transit system requires a full computerisation which is the subject of a Commission led project with the Member States under the responsibility of DG XXI.

To the extent possible improvements are being gradually introduced to the EWS and in particular the introduction of a reply function. In relation to requests for information UCLAF always asks Member States for information with a specific objective in view and has as a policy to inform national services of the results of its work.

Nevertheless it will consider taking up this point with the national authorities in the context of the mutual assistance committee provided for in Council Regulation (EEC) No 1468/81.

4. FINANCIAL FOLLOW-UP AND RECOVERY

General overview

4.1—4.4. The Commission shares the Court's view about the importance of having at its disposal accurate information regarding recovery action taken by Member States. The new integrated IRENE database expected to be available by mid-1998 will assist the Commission in monitoring the overall recovery situation as well as monitoring a number of very important traditional own resources cases. Moreover, with regard to the traditional own resources cases of fraud or irregularities, this database will receive the most recent information from Member States, including updates, via an electronic network. In relation to footnote number 24 it should be noted that the Commission envisages in its anti-fraud work programme for 1997/98 the introduction of administrative sanctions in the area of direct expenditure. In addition consideration is being given to providing that
certain contracts of a public service nature should be based on public Community law and in conformity with Article 192 of the Treaty it would be then possible to provide that the recovery decisions would be directly enforceable by the Commission.

4.5. The absence of an accurate picture of the situation regarding recovery of traditional own resources arising from reported cases of fraud or irregularity arose because until mid-1996 Member States were not obliged to follow a particular format when submitting reports. Since Regulation (EC) No 1355/96 amending Regulation (EEC) No 1552/89 came into force on 14 July 1996, Member States’ reporting obligations are clearly defined. The introduction of the new integrated IRENE database should enable the Commission to obtain an overall view of the recovery situation based on the data supplied by the Member States.

Traditional own resources

4.7—4.9. Up to July 1996, Member States were not formally obliged to communicate to the Commission the state of recovery in the cases reported under Regulation (EEC) No 1552/89. Since Regulation (EC) No 1355/96 came into force and on the basis of the new computerised system for the communications (OWNRES), the Commission is in a much better position to monitor the recovery. First results of the improved transparency will be presented in the annual report 1997. However, it will take considerable time to collect also the necessary information on cases communicated before July 1996.

4.8. The Commission’s monitoring activities cannot entail a constant examination of all the recovery cases. Instead, it reviews the overall situation regarding recovery. In addition, the Commission monitors individually, until their ultimate discharge, a number of significant cases identified by a risk analysis. The Budgetary Authority is regularly informed of the outcome of these monitoring actions. The Commission considers that most Member States are now regularly updating their fraud reports although some are still experiencing technical problems. The Commission continues to follow the situation carefully.

EAGGF guarantee section

4.10—4.11. The Commission is continuing its efforts to clarify the recovery situation especially in the older cases, i.e. cases reported before 1994. While it is true that at the end of 1997 65% of the amounts involved in cases communicated before 1994 were still to be recovered, for some 30% the recovery orders were challenged and pending in court or the Member State requested that the Commission accept that the amounts were no longer recoverable.

The Commission will systematically include in the forthcoming decisions in the ‘clearance of account procedure’ all amounts for which recovery is not imminent. Where the Member State does not provide sufficient elements which exclude any irregularity or negligence attributable to it, the Commission will not fail to charge the amounts to the Member State in accordance with Article 8 of Regulation (EEC) No 729/70 without necessarily waiting for the final outcome of proceedings pending in court.

Improvements to legislation in the agricultural area

4.14. The Commission is concerned by the lack of communications by Member States and intends to review the operation of the procedure during 1998.

Structural Funds

4.19. The Commission undertakes to provide more information on potential claims arising from the establishment of frauds and irregularities in the structural funds, in the Explanatory Notes to the off balance sheet commitments.

4.20. Member States are obliged to communicate all cases of irregularity in the structural funds. UCLAF monitors the communications and examines in particular cases that come to its attention in other ways to ensure that they have been included in the formal communications. Typologies have been established by UCLAF and communicated to the appropriate national authorities both directly on a bilateral basis and at the meetings of the Advisory Committee (COCOLAF) and at seminars supported by UCLAF.

4.21. It should be pointed out that the 1,000 cases received from the Region of Campania at the end of 1996 were returned to the Italian Permanent representation as the formal communication of cases is the responsibility of the Member States and not the regions under the terms of the relevant legislation.

5. RELIABILITY OF INFORMATION IN THE ANNUAL REPORT ON THE FIGHT AGAINST FRAUD

Reliability of data

5.4—5.6. As far as the practice of including an estimate for the second half year is concerned, this was
necessary because the provisions of Regulation (EEC) No 1552/89 did not allow the Commission to obtain the second half year figures in time for incorporation in the annual report. As the Court rightly points out the need to make estimates should not occur in the future following the amendment in 1996 of the provisions relating to the communication of cases. It should be noted that it was precisely for this purpose that the Commission proposed the amendment to Regulation (EEC) No 1552/89.

5.7. The Commission believes that the figures for losses to Community resources deriving from the VAT element of certain frauds relating to cigarettes needs to be underlined. Indeed the Commission attaches great importance to the idea of obtaining as accurate a picture as possible on the understanding that in the past the estimates solely based on the formal communications by the Member States have been underestimates of the real situation. It accepts that the amounts in question here cannot be directly compared to the traditional own resources communications by Member States given the different nature of the revenues involved. It will take measures for future reports to indicate clearly in footnotes to the tables to the report the origin and nature of these figures, which in previous years have been explained within the text of the report.

5.9. The Commission will clearly indicate the fact that the figures for irregularities in cases detected by the Commission are estimates in future reports even if this should of course be understood from the nature of investigative work. The Commission is alert to the possible double counting of certain cases and expects that the next IRENE system will give the necessary assurances that cases are being counted only once. The system should also facilitate the updating of cases. It has not been the practice to detail the source of cases under investigation by the Commission.

5.10. In the 1996 annual report the Commission has explained that it concentrates on complex transnational cases and on major criminal networks which operate in many different Member States. It tends therefore to treat as one case those cases which it considers have a common link in the Member States. Thus the Commission takes an overview that individual Member States cannot necessarily have. In relation to the cases reported by the Court the cases currently shown without a source will be the subject of an internal review.

5.11. The Commission takes the point that precise figures or savings and recoveries arising from the intelligence and investigative work of the different Task Forces is difficult to quantify and it is examining ways of making it clearer what are the benefits of this work without compromising ongoing operational activity.

6. CORRUPTION AND BREACHES OF DISCIPLINE

Fight against corruption

6.2. The Commission would again refer to its communication of 18 November 1997 where it has clearly set out its policy in relation to anti-corruption work within the institution.

Allocation of responsibilities

6.3. The Commission communication of 18 November 1997 also clarifies the responsibilities of UCLAF in relation to corruption cases.

Lack of clear guidelines for administrative investigations

6.5. The Commission communication of 18 November 1997 provides the basis for a standardisation of procedures. The questions raised by the Court in relation to the powers of UCLAF will be treated in the formal decision to be taken by the Commission on UCLAF’s powers. In relation to the notification of judicial authorities it has been the practice in UCLAF to notify the authorities as soon as it is established that there are grounds to do so. However it must be borne in mind that the purpose of UCLAF investigations is to establish the facts on which, subsequently, judgements can be made by the appropriate authorities.

6.6—6.7. The Commission is conscious of the need to ensure the protection of the rights of individuals and the respect of laws relating to investigation. It would point out however that UCLAF does not have police or judicial powers and that its enquiries into cases of suspected corruption or fraud within the institution are necessarily administrative enquiries which are designed to establish the facts.

If the results give reason to believe that criminal actions have taken place the file is passed to the appropriate national judicial authorities which then have to decide if a criminal action has taken place. In these and other cases the results of the investigation may give rise to a decision with the Commission to open disciplinary procedures. In its reflection on the formal decision on the powers of UCLAF however serious attention is being paid to this issue.
Implementation of a ‘zero tolerance’ policy

6.8—6.9. The Commission’s position is clearly set out in its communication of 18 November 1997 as well as its commitment to take a clear line on cases of suspected internal fraud and corruption. In addition the Commission has recently made a proposal (OJ C 359 of 25.11.1997 page 9) to provide for disciplinary measures and the payment of compensation by authorising officers.

6.10. The Commission’s communication of 18 November 1997 is clear on the issue of informing the prosecuting authorities. The Commission agrees that relevant documents should not necessarily have to be communicated to it provided a request for lifting immunity is clearly motivated, however it underlines the fact that in order to lift immunity the Commission must receive a properly motivated request in order to be able to take a decision.

Problems identified

6.11. The Commission’s communication of 18 November 1997 clarifies the Commission’s policy. It should be noted that in practice it is usually extremely difficult to obtain proof of corruption and that therefore it is normally the police or judicial authorities who have the powers necessary to do so who obtain such proof once they have been alerted to the existence of a case.

6.12. The Commission would refer again to the recent judgment by the Court of First Instance in the case of Tzoanos v. Commission (see comments above in relation to point 2.34) where the Court has given a clear view on the rights of the Commission in carrying out administrative enquiries prior to disciplinary proceedings.

6.13. The Commission intends within the limits of resources available to UCLAF to reinforce the team dealing with anti-corruption matters there through the creation of a specific sector responsible for such cases in an existing unit. At this stage the resources for a separate unit are not available.

7. CONCLUSION

7.1. The Commission appreciates the recognition of the efforts that it has made in the fight against fraud. Many aspects of its’ overall strategy are still being implemented given the fact that UCLAF in its’ current structure has really only existed in a fully operational form since the end of 1995. Moreover it takes time to fully implement new actions and to see the results of those actions.

7.2. The Commission accepts that work needs to continue on the improvement of recovery which is a complex and difficult task involving many different players. The non-differentiation between recoveries due to the work of UCLAF as against that due to the national authorities is, as a general rule, justified by the nature of cooperation between the Commission and the Member States. Thus the majority of cases treated by UCLAF are the result of cooperative work with the national authorities. The end results in terms of recovery should not therefore be solely attributed to the Commission (UCLAF).

In the area of direct expenditure however the situation is somewhat different and here information on recoveries is contained in the pre-IRENE database, held by UCLAF.

7.3. The Commission is implementing an integrated management system as a high priority. It expects that the implementation of this new version of IRENE in 1998 will provide the appropriate means for ensuring a rigorous control and cross referencing of cases formally communicated by the Member States and those on which UCLAF is working itself.

7.4. The Commission considers it of the highest priority that the Member States ratify the Conventions and protocols as quickly as possible.

7.5. The Commission shares the view expressed by the Court of the problems that can arise from the existence of so many different agencies and organisations in the Member States responsible for action in the fight against fraud. It is pleased to note the general trend to create central bodies with wide responsibilities and a proper overview of activities in each Member State in relation to European Union interests such as is the case in France, Italy, Denmark, Portugal and Sweden. Furthermore UCLAF is establishing specific cooperation agreements with a variety of different agencies to ensure that as wide a cooperation as possible takes place. The Commission is continuing further work on the CORPUS JURIS study in order to examine further the options for legislative initiatives in the area of enforcement.

7.7. As provided for in its anti-fraud work programme for 1998/99 (COM(98) 278 final), the Commission is reflecting on the establishment of appropriate agreements
with the other institutions and authorising UCLAF to provide technical advice on anti-fraud investigations.

Annex I — Point 6 — The Commission in its report to the Reflection Group on the Intergovernmental Conference also proposed a modification to the Treaty in relation to the inclusion of a specific legal basis for measures to combat fraud. The new text of Article 280 of the Treaty is also the result of this Commission initiative. The Commission also noted the paradox that the Council which can, as budgetary authority, decide on the budget on the basis of a qualified majority can only adopt measures to control expenditure and fight against fraud by absolute majority.

Annex I — Point 18 — It should be noted that Regulation (EC) No 2185/96 provides that the powers of control specifically provided to the Commission are in addition to those sectoral powers of control that already existed prior to the adoption of the Regulation.