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COMMUNICATION FROM THE COMMISSION

Protecting the Communities' financial interests

Fight against fraud

Action Plan for 2004-2005

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Following along the same lines as its 2001-2003 Action Plan¹, the Commission's 2004-2005 Action Plan on the protection of financial interests and the fight against fraud calls for the continued implementation of the overall strategic approach² adopted by the Commission on 28 June 2000, which defined the broad guidelines for the Community and the Member States for the five years ahead (2001 to 2005).

This overall strategic approach drew its legitimacy from the new Article 280 of the EC Treaty, which entered into force with the Amsterdam treaty and set the European Community ambitious objectives concerning the protection of financial interests and the fight against fraud. Article 280 EC also provides a new legal basis for taking the necessary measures to prevent and counter fraud and all other illegal activities adversely affecting the Communities' financial interests. The first practical application of this new legal basis was the adoption of the two Council Regulations concerning investigations conducted by the European Anti-Fraud Office (OLAF)³, which was set up by a Commission Decision in 1999⁴. The creation of the Office constituted a significant new step in the fight against fraud, and the opportunities it provides form the basis of the Commission's overall strategic approach. This approach also takes account of the specific measures to protect financial interests envisaged in the White Paper on the administrative reform of the Commission⁵. These measures are aimed at mobilising all the Commission's departments for the protection of the Communities' financial interests.

The overall strategy is thus to encourage a culture of reinforced cooperation between all the players concerned and a combined policy of prevention, follow-up (in particular financial) and effective sanctions.

Four main strategic guidelines were defined in this overall approach:

- *an overall anti-fraud legislative policy* (making regulations more effective and consistent)
- *a new culture of cooperation* (full participation of and collaboration between national and Community authorities)

¹ Commission communication (COM (2001) 254 final, 15.5.2001).

² Commission communication on the *Protection of the Communities' financial interests, Fight against Fraud, For an overall strategic approach* (COM (2000) 358 final).

³ Adoption of Regulation (EC) No 1073/99 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/99 of 25.05.99, OJ L 136, 31.5.99.

⁴ Commission Decision of 28 April 1999, OJ L 136, 31.5.1999. The activities of the Office as an independent operational service will be defined in a separate work programme which falls under the direct responsibility of the Director General of the Office.

⁵ COM (2000) 200 final/2 of 5.4.2000.

- *an inter-institutional approach to preventing and fighting corruption* (making the European institutions more credible)
- *strengthening the criminal law dimension* (adapting the legal and judicial framework for the protection of the financial interests of the European Union).

In response to these four main guidelines, without prejudice to the more specific initiatives that may be taken in each of the Commission's Directorates-General and departments or the operational tasks assigned by the legislator to the European Anti-Fraud Office, the Commission adopted a first Action Plan on 15 May 2001. It set out the priority actions, including legislative initiatives, to be prepared and implemented in close cooperation by all its Directorates-General and departments over the period 2001-2003. The implementation of the Plan is followed up in the annual report submitted by the Commission pursuant to Article 280 of the EC treaty⁶.

Although it was not possible to fully complete some of the proposed actions during this period, **the overall results of this 2001-2003 Action Plan** can be regarded as positive.

The Commission notes that a considerable number of actions, in particular those relating to *the establishment of an overall anti-fraud legislative policy*, were fully completed. In the areas of protection of the Union budget and of prevention, interdepartmental coordination aimed at ensuring that legislation is fraud-proof is now in place. Regarding the protection of the euro and the fight against piracy and forgery of manufactured products, the Commission has further developed the legal framework for action and intervention, as well as for specific international cooperation. An information system with data on unreliable tenderers has been proposed by the Commission and adopted by the legislator to make public procurement procedures more secure.

Efforts were also made by the Commission to help the ten new Member States and the applicant countries to adopt the *acquis communautaire* as regards protection of financial interests. One important result of this work was that a central national anti-fraud coordination structure was set up in each state to enable it to gain familiarity with the Community approach regarding anti-fraud investigations and to cooperate closely with the Commission's anti-fraud department.

One significant result of the shared responsibility of the Community and the Member States in the field of the protection of financial interests is the *development of a new culture of cooperation* with national administrations. The projected multi-disciplinary service platform⁷, which proposes a more structured and regular cooperation between all the players, is the appropriate instrument for achieving this objective. To this end, an "Intelligence" Directorate⁸ was created in the Office to provide the capacity for analysis of fraud and irregularities based on communications by the Member States. A judicial advisors' unit is also now in a position to ensure broader operational coordination with all the players on the ground in the Member States. The Commission's annual report on the protection of the Communities' financial interests and the fight against fraud, drawn up in conjunction with the specialised services of the Member States, gives an account of the actions undertaken and the results achieved. In parallel to this close and regular cooperation, which was initially defined in Article 280 of the EC treaty, the Commission and the new EU judicial

⁶ Commission's annual reports on the Protection of the Communities' financial interests and fight against fraud for 2001 and 2002. COM (2002) 348 final of 2.7.2002 and COM (2003) 445 final of 23.7.2003.

⁷ The aim of this project is to better present the range of activities undertaken by the Office and list the expertise available in it. See the Progress Report on the activities of OLAF, COM (2003) 154 final of 2 April 2003, point 1.2.1.

⁸ See point 1.2.1. of the Report (cf footnote 7).

cooperation and police bodies (Eurojust and Europol) also formalised their collaboration through memoranda of understanding⁹.

With regard to the *prevention of and fight against corruption* to protect the Community's financial interests, the new Financial Regulation laid the foundations for improving financial management at the Commission. Measures have been taken as part of the administrative reform to raise the awareness of Commission officials and agents of the principles of sound project management and the action to be taken in the event of suspected serious wrongdoing liable to harm the Community's interests.

As required in Article 15 of Regulations Nos 1073/99 and 1074/99, the Commission performed an evaluation of the activities of the Office¹⁰, and made seventeen recommendations for reinforcing its structure and operations. The European Court of Justice has on several occasions confirmed the legality and consistency of the inter-institutional framework for internal investigations. This framework applies to all the institutions, bodies and agencies set up by the EC and Euratom treaties.¹¹

Turning finally to *criminal law protection of financial interests*, while not all the Commission's efforts in this area were successful (a case in point is the proposed amendment of the Directive on the criminal law protection of the Community's financial interests¹²), significant progress has been achieved, notably the entry into force on 17 October 2002 of the first Convention instruments for the fight against fraud first proposed eight years ago (the Convention on the protection of financial interests¹³, the first protocol to this convention¹⁴ and the protocol relating to the jurisdiction of the Court of Justice¹⁵).

At the same time during this period (2001-2003), an important step was taken towards setting up a European Public Prosecutor's Office responsible for the protection of financial interests, which was endorsed by the Convention on the future of the European Union in the draft constitutional treaty. Throughout 2002, on the basis of the Green Paper on the establishment of a European Prosecutor adopted on 11 December 2001¹⁶, the Commission led a wide-ranging debate with the representatives from all the areas involved. Around 200 contributions were received, which were summarised in the follow-up report on the Green Paper in 2003¹⁷ and enabled the Commission to present a proposal to the European Convention and take an active part in the Convention's work in this field. Although the Commission's efforts did not lead to a successful outcome at the time of the conclusion of the Nice treaty, the debate launched by it was instrumental in the inclusion of a provision on the European Public Prosecutor's Office in the constitutional treaty (article III-175). This provision should enable the Council to set up, through Eurojust, a European Public Prosecutor's Office to protect the financial interests of the Union.

⁹ Protocols concerning communication of information (operational exchanges particularly in specific cases). See point 1.2.4. of the Report (cf footnote 7).

¹⁰ Cf footnote 7.

¹¹ Decision of the Court of Justice (case C-15/00 *Commission v EIB*), decision of the Court of Justice (case C-11/00 *Commission v the ECB*), decision of the Court of Justice (case C-167/02 *W. Rothley v the European Parliament*).

¹² COM (2001) 272 of 23.5.2001 – 240E OJ C of 28.8.2001, modified by COM (2002) 577 of 16.10.2002.

¹³ OJ C 316, 27.11.1995.

¹⁴ OJ C 313, 23.10.1996.

¹⁵ OJ C 151, 20.5.1997.

¹⁶ Green Paper on criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor, COM (2001) 715 final of 11.12.2001.

¹⁷ Document COM (2003) 128 final. See: http://europa.eu.int/comm/anti_fraud/green_paper/index_en.html.

The new 2004-2005 action plan corresponds to the second stage of the programme, in the framework of the 2000 overall strategic approach, and follows the four main action guidelines described above. It also takes into account the new guidelines set out in the Progress report on the activities of OLAF and the measures announced in the Commission President's speech¹⁸ in November 2003.

Specifically, the 2004-2005 Action Plan testifies to the Commission's ongoing commitment to the fight against fraud and contains one of its responses to the new challenges relating to the development of the Union in 2004 and 2005. The Plan comprises:

- actions that it was not possible to implement in the previous period and actions that still have to be decided on in order to complete implementation of the overall strategic approach, in particular the strengthening of the operational partnership with the Member States;
- recent developments relating to the reinforcement of the legal framework of OLAF¹⁹, as recommended by the Commission in its progress report on the activities of OLAF²⁰ and by the President of the Commission in his Action Plan of 18 November 2003. Because of the weaknesses revealed by the Eurostat case, the Commission thinks it necessary to act more rapidly and thoroughly than originally envisaged in the progress report. Consequently, a number of initiatives, some of which are already being implemented, will be taken in addition to the recommendations of the Progress report;
- a number of more specific initiatives, such as the White Book on the European Prosecutor, or other initiatives, which respond to specific requests or needs, such as the handling of irregularities notified before 1 January 1999 in relation to the EAGGF-guarantee section ("Recovery" Task-Force) or the simplification of the procedures for notifying irregularities (EAGGF-Guarantee, Structural Funds, Cohesion Fund).

This new Action Plan emphasises the following policy guidelines and priorities:

- reinforcing the regulatory framework of May 1999 for OLAF's activities and competencies (improving the information flow between OLAF and the European institutions and bodies; fully guaranteeing the rights of individuals affected by an external or internal inquiry; strengthening OLAF's operational efficiency and enhancing the role of the Office's Supervisory Committee);
- improving the information flow between the Member States and the Commission, for example by amending the regulations on notification of irregularities; developing the Customs Investigations Information File ("FIDE") and implementing the new Regulation concerning mutual administrative assistance in the field of VAT and the laundering of profits from Community fraud;

¹⁸ State of the Union Address on legislative and work programme of the Commission for 2004 by Mr Prodi at the European Parliament in Strasbourg on 18.11.2003.

¹⁹ Draft amendments of Regulations Nos 1073/99 and 1074/99 adopted on 10.02.2004, COM (2004) 103 final and COM (2004) 104 final.

²⁰ See the Resolution of the European Parliament on the Commission report on the evaluation of the activities of the European Anti-Fraud Office (COM (2003) 154 – 2202/2237(INI)) and conclusions of the Council on the same Report (doc. 16280/03 of 22 December 2003).

- developing the criminal-law protection of the Community's financial interests with the competent authorities in the Member States, for example by following up the decision of the Intergovernmental Conference (IGC) to establish, in the constitutional treaty, the legal basis for creating a European Prosecutor with competence for protecting the financial interests of the European Union.

This 2004-2005 action plan will therefore complete the implementation of the Overall strategic anti-fraud approach of June 2000 and create the conditions allowing the Commission to launch a new drive to protect the Community's financial interests and to fight against fraud.

OBJECTIVES Measure	LEAD DEPT. ²¹	2004		2005		Obs: ²²	
		1 st HALF	2 nd HALF	1 st HALF	2 nd HALF		
1. AN OVERALL ANTIFRAUD LEGISLATIVE POLICY							
1.1. DEVELOPING A CULTURE OF PREVENTION AND TIGHTENING UP LEGAL TEXTS							
Consolidation of the structure and functions of OLAF by reinforcement of its legal framework	OLAF, SG	Proposals for amendment of Regulations No 1073 and 1074/1999 ²³					II
Cooperation between the Community and the Member States to protect the Communities' financial interests Extension of cooperation mechanisms, exchange of information and assistance to new areas, especially to money laundering and VAT fraud	OLAF, TAXUD, MARKT, JAI		Proposal for a Regulation based on Article 280 of the EC Treaty on mutual administrative assistance, especially on money laundering and VAT fraud				I R. 3
Assessment of Regulations No. 1469/1995 and No. 745/1996 ²⁴ (Black list mechanism in EAGGF-Guarantee Section)	OLAF, AGRI, SJ		Second report on the "black list system" in the EAGGF-Guarantee Section	Proposal for amendment of the regulations concerned. Examination of their field of application			III
Defining OLAF's objectives, taking into account the strategic guidelines and the contributions of the Institutions in the field of anti-fraud action	OLAF		Preparation of a Commission communication on the main themes for strategic anti-fraud guidelines				II R. 11
Definitive setting-up of the European Technical and Scientific Centre (ETSC) to finalise Council Decisions 2003/861 and 862/EC ²⁵	OLAF, ECFIN		Commission decision			III	
Continuation and adaptation of the training, exchange and assistance action programme for the protection of the euro against counterfeiting (PERICLES programme ²⁶)	OLAF		Evaluation of the PERICLES programme with a view to a new legislative proposal	Communication on the adaptation of the PERICLES programme. Proposal for a Council		III	

²¹ Lead department, followed by associated departments.

²² The figures preceded by "R" refer to Report Art 15 recommendations. The figures in italics refer to the following categories:

- I - Carry-overs from previous years and recurring Actions;
- II - Actions based on Report Art 15 Recommendations and "Prodi Action Plan"
- III - Supplementary initiatives.

²³ COM (2004) 103 and 104 final of 10.02.2004.

²⁴ Council Regulation (EC) No 1469/95 of 22.06.95 (*OJ L 145, 29.6.1995*) and Commission Regulation (EC) No 745/96 of 24.4.96 (*OJ L 102, 25.4.96*).

²⁵ Council Decisions of 8 December 2003 Nos. 2003/861/EC and 2003/862/EC (*OJ L 325, 12.12.2003*)

OBJECTIVES Measure	LEAD DEPT.	2004		2005		Obs.:
		1 st HALF	2 nd HALF	1 st HALF	2 nd HALF	
1. AN OVERALL ANTIFRAUD LEGISLATIVE POLICY						
1.2. STRENGTHENING MEANS OF DETECTION, CONTROLS AND SANCTIONS						
Clarification of fraud investigation powers at Community level, particularly in the area of direct expenditure	OLAF, SG	Proposals for amendment of Article 3(2) of Regulations 1073 and 1074/1999				II R. 3
Extension of the administrative penalty system to the following areas: - customs - structural funds - direct expenditure - OLAF investigations (resistance to checks)	TAXUD, SJ, REGIO, EMPL, AGRI, FISH, OLAF		Preliminary examination with a view to including administrative penalties in the regulations concerned			II R. 12
	OLAF, BUDG, SJ				Examination of the need for a specific regulation on fraud and irregularities in connection with contracts involving Community financing	I
	OLAF, SG	Proposals for amendment of Article 6(6) of Regulations 1073 and 1074/1999				II R. 4
Technical guidelines for competent authorities in the Member States which may wish to carry out or supervise the process of authenticating euro coins on their territory	OLAF		Commission recommendation on methods of authenticating euro coins			III
1.3. ENSURE A MORE EFFECTIVE MANAGEMENT OF ADMINISTRATIVE AND FINANCIAL FOLLOW-UP						
Improvement of the recovery of sums wrongly paid (EAGGF-Guarantee Section, Regulation No. 1258/1999 ²⁷).	AGRI, OLAF		Proposal for amendment of Regulation No. 1258/1999, on financing of the CAP			III
Handling the backlog of irregularities reported before 1.1.1999 under Regulation No. 595/1991 ²⁸ (EAGGF/Guarantee Section). Recovery Task Force ²⁹	OLAF, AGRI				Conclusion of work	I

²⁶ Council Decisions of 17 December 2001 Nos. 2001/923/EC and 2001/924/EC (*OJ L 339, 21.12.2001*).

²⁷ Council Regulation (EC) No 1258/99 of 17.5.99 (*OJ L 160, 26.6.99*).

²⁸ Council Regulation (EEC) No 595/91 of 4.3.91 (*OJ L 067, 14.3.91*).

²⁹ COM (2002) 671 final of 3.12.2002.

OBJECTIVES Measure	LEAD DEPT.	2004		2005		Obs.:
		1 st HALF	2 nd HALF	1 st HALF	2 nd HALF	
2. NEW CULTURE OF COOPERATION						
2.1. ENHANCED USE AND ANALYSIS OF INFORMATION (“INTELLIGENCE”)						
Developing operational cooperation between customs administrations. Setting up the FIDE (Customs Investigations Information Files)	OLAF, TAXUD, JAI		Proposal for amendment of Regulation No 515/97 ³⁰		Reinforced coordination to support and manage joint operations	II R. 14 III
Simplifying the procedure for notifying irregularities based on Regulation (EC) No 1681/94 ³¹ concerning the Structural Funds	OLAF, DGs authorising Structural Funds		Proposal for amendment of Regulation No 1681/1994			III
Simplifying the procedure for notifying irregularities based on Regulation (EC) No 1831/94 ³² concerning Cohesion Funds	OLAF, REGIO		Proposal for amendment of Regulation No 1831/1994			III
Simplifying the procedure for notifying irregularities based on Regulation (EC) No 595/91 concerning EAGGF-Guarantee expenditure	OLAF, AGRI		Proposal for amendment of Regulation No 595/1991			III
2.2. DEVELOPING A CLOSER PARTNERSHIP WITH MEMBER STATES AND NON-COMMUNITY COUNTRIES						
Strengthening relations with Member States	OLAF, SG, SJ		Update of Commission Decision 94/140/EC ³³ establishing the COCOLAF			I R. 14, 6
Improving information from Member States at Community level on the follow-up given to OLAF’s investigations	SG, OLAF	Proposals for amendment of Articles 9 (3) of Regulations Nos 1073 and 1074/1999				II R. 6
Enhancing cooperation structures and exploitation of possibilities for synergy	OLAF		Inventory of the services that the Commission/OLAF can provide to the institutions and Member States	Implementation of multidisciplinary Service Platform		II R. 14
Assistance to new Member States to reinforce their own capacities for fighting fraud	OLAF, ELARG	Implementation of Transition Facility funds (2004-2006) for the protection of the Community’s financial interests and the fight against fraud Deployment of OLAF Regional Assistants in the new Member States				III

³⁰ Council Regulation (EC) No 515/97 of 13.03.97 - *OJ L 082, 22.03.97*.
³¹ Commission Regulation (EC) No 1681/94 of 11.07.94 - *OJ L 178, 12.07.94*.
³² Commission Regulation (EC) No 1831/94 of 26.07.94 - *OJ L 191, 27.07.94*.
³³ Commission Decision 94/140/EC of 23.02.94 - *OJ L 061, 04.03.94*.

OBJECTIVES Measure	LEAD DEPT.	2004		2005		Obs.:
		1 st HALF	2 nd HALF	1 st HALF	2 nd HALF	
2. A NEW CULTURE OF COOPERATION						
2.2. DEVELOPING A CLOSER PARTNERSHIP WITH MEMBER STATES AND NON-COMMUNITY COUNTRIES						
Reinforcement of anti-fraud coordination services in candidate countries	OLAF, ELARG	Ongoing assistance to Bulgaria and Romania through the Multi-Countries Anti-fraud PHARE Programme for the protection of PHARE financial interests Assistance to anti-fraud coordination in the new candidate countries Deployment of OLAF Regional Assistants in certain candidate countries				III
Memoranda of understanding with candidate countries and third countries	OLAF	Conclusion of administrative arrangements with Anti-fraud Coordination Services (AFCOS) of the candidate countries and, where appropriate, with competent services in third countries				II R. 10
Negotiations conducted with Switzerland on the fight against fraud	OLAF, RELEX	Conclusion of negotiations				I
Administrative cooperation and mutual assistance in customs matters with third countries	OLAF, TAXUD, RELEX	Negotiations of international mutual administrative assistance agreements in the customs area				II R. 10
Analysis, cooperation and information exchanges on matters relating to the euro with third countries	OLAF, ECFIN	Inclusion of anti-counterfeiting clauses in cooperation and association agreements, pursuant to Article 9(2) of Regulation No 1338/2001 ³⁴				I II R. 10
2.3. POLICY OF ONGOING EVALUATION OF ANTI-FRAUD ACTIONS						
Inventory of new measures at Community and Member State level in 2003 and 2004	OLAF	2003 Annual Report Article 280(5) of the EC Treaty		2003 Annual Report Article 280(5) of the EC Treaty		I

³⁴

Council Regulation (EC) No 1338/2001 of 28.06.2001 - *OJ L 181, 04.07.2001*.

OBJECTIVES Measure	LEAD DEPT.	2004		2005		Obs.:
		1 st HALF	2 nd HALF	1 st HALF	2 nd HALF	
3. AN INTERINSTITUTIONAL APPROACH TO PREVENT AND COMBAT CORRUPTION						
3.1. DEVELOP A CULTURE OF COOPERATION AT ALL LEVELS						
Possible definition of practical arrangements for cooperation between OLAF and other Commission departments	OLAF, SG, other services		Examine the usefulness of adopting a memorandum of understanding (or another type of text)			II R. 7
Facilitate the conducting of internal investigations within other institutions and bodies	OLAF, SG, SJ		Examine the usefulness of proposing protocols / memoranda of understanding with other institutions			II R. 9
Possible definition of practical arrangements for cooperation between OLAF and IDOC	OLAF, IDOC, ADMIN		Appropriateness of re-examining the memorandum of understanding agreed upon in 2003, in the light of recent developments ³⁵			II R. 8
Improvement of transparency in the flow of information between OLAF and other DGs to assure an appropriate follow-up	SG, IDOC, ADMIN, IAS, (OLAF)	Creation of high level interdepartmental group				II R. 8
3.2. IMPROVE THE LEGAL FRAMEWORK FOR ADMINISTRATIVE INVESTIGATIONS						
Clarification of arrangements for performing internal/external investigations and related measures by precise rules	SG, OLAF	Proposals for amendment of Articles 6, paragraphs 7, 7(a) and 7(b) of Regulations Nos 1073 and 1074/1999				II R. 2
Compliance with and standardised application of information procedures with regard to the institutions, bodies and offices concerned and the persons involved	SG, OLAF	Proposals for amendment of Articles 6, paragraphs 5(a), 7(a) and 7(b) of Regulations Nos 1073 and 1074/1999				II R. 16

³⁵ Namely, adoption of the Commission Decision C/2004/1588 final/4 of 28.04.2004.

OBJECTIVES Measure	LEAD DEPT.	2004		2005		Obs.:	
		1 st HALF	2 nd HALF	1 st HALF	2 nd HALF		
4. ENHANCEMENT OF THE CRIMINAL-LAW JUDICIAL DIMENSION							
Reinforcement of the effectiveness of criminal prosecutions by establishing a European Public Prosecutor	OLAF, JAI			Preparation of a White Book			<i>II</i> R. 13
Follow up the application of the Convention and its protocols to the protection of the Community’s financial interests	OLAF, JAI, SJ		Report on the implementation of the Convention by the Member States				<i>II</i> R. 6
Improvement of structured relations with Europol	OLAF, Europol	Conclusion of a protocol				<i>I</i>	
Development of the judicial dimension and the function of interlocutor of the police and judicial authorities	OLAF			Establishment with Member States of a Practical Guide for cooperation with criminal prosecution authorities		<i>I</i> R. 14, 6	