

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 92 final

Brussels, 23.03.1994

PROTECTING THE FINANCIAL INTERESTS OF THE COMMUNITY
THE FIGHT AGAINST FRAUD

THE COMMISSION'S ANTI-FRAUD STRATEGY

WORK PROGRAMME FOR 1994

**A STRATEGIC PROGRAMME FOR REINFORCING THE FIGHT AGAINST
FRAUD TOGETHER WITH AN ACTION PLAN FOR 1994**

1. **Background**

The protection of public finances is an essential element in ensuring the credibility and effectiveness of all policy. The need to strengthen the protection afforded to the financial interests of the Community, particularly in the context of the new provisions of the Treaty on European Union, was clearly spelled out by the Copenhagen European Council of 21/22 June 1993 when it asked the Commission to present proposals on this subject by March 1994.

With the creation of the internal market and the entry into force of the Union Treaty, Europe has undergone a major transformation.

The size of the Community budget, which stands at more than ECU 70 billion for 1994, and the threat posed to Community finances call for a new multidisciplinary approach, for an effort to modernize and rationalize methods and for the deployment of greater human and technical resources.

The complexity of the realities across a whole range of sectors (own resources, expenditure, etc.) and the international dimension of large-scale fraud make it essential to offer a common response at the most appropriate level, going beyond what would be possible at national level. The growth of financial crime through groups organized along almost "business" lines which are able to negotiate with one another demands that the fight against fraud be made a priority of the "new European dimension" by deploying the full armoury of existing instruments, including the possibilities of cooperation under Title VI of the Union Treaty.

Like organized crime, the fight against fraud has to extend beyond national bounds so that it can provide coherent and coordinated action as part of an integrated Community-level approach.

To curb the threat to the Community's credibility, the fight against fraud must be a privileged area of close partnership between the Member States and the Commission so that together they can ensure respect for Community law and guarantee the protection of the Community's finances. As stated by the Council (Economic and Financial Affairs) in its conclusions on 7 June 1993, the attainment of these objectives must not be compromised by the principle of subsidiarity.

1. CLOSER PARTNERSHIP

Tackling fraud is primarily the responsibility of the Member States. Essentially, it is they who possess the means and the powers to take action. But maximum account must be taken of territorial integration in the Community. Every aspect of this situation must now be borne in mind when assessing the risks in order to target future action.

To meet the challenge a national approach is no longer enough by itself. All the resources available must be combined to boost their complementary impact and enhance synergy at the Community level with the help and support of the Commission.

It follows that the fight against fraud can only be tackled through a close and constructive partnership between the Member States and the Commission. This partnership is anchored in the provisions of Article 209a of the EC Treaty, which provides that:

Member States shall 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.

Without prejudice to other provisions of this Treaty, Member States shall coordinate their action aimed at protecting the financial interests of the Community against fraud. To this end they shall organize, with the help of the Commission, close and regular cooperation between the competent departments of their administrations.

The Commission will make the necessary proposals to enhance this partnership and strengthen cooperation.

2. THE LEGAL FRAMEWORK

The legal framework for this partnership is clearly set out in the EC Treaty. Both the Commission and the Member States have clear obligations and responsibilities under the provisions of Article 209a EC. The Member States are also bound by Article 5 to respect their obligations under the Treaty and under secondary legislation. The Commission is bound to act to ensure the proper implementation of the Community budget by virtue of Article 205 and to ensure the application of the Treaty provisions themselves by virtue of Article 155.

Moreover, secondary legislation includes a number of Council directives and Council and Commission regulations which are aimed at strengthening anti-fraud activities and cooperation between the Member States and the Commission.

Finally the adoption of the Union Treaty has introduced another new and important element. The provisions dealing with cooperation in the fields of Justice and Home Affairs (Title VI) open up new possibilities for action in tackling fraud, complementing those which exist already under the EC Treaty. In particular, Article K.1(5) provides a legal basis for future initiatives by the Commission in this area. Under Article K.9 the Council, too, may decide unanimously that Article 100c EC should apply.

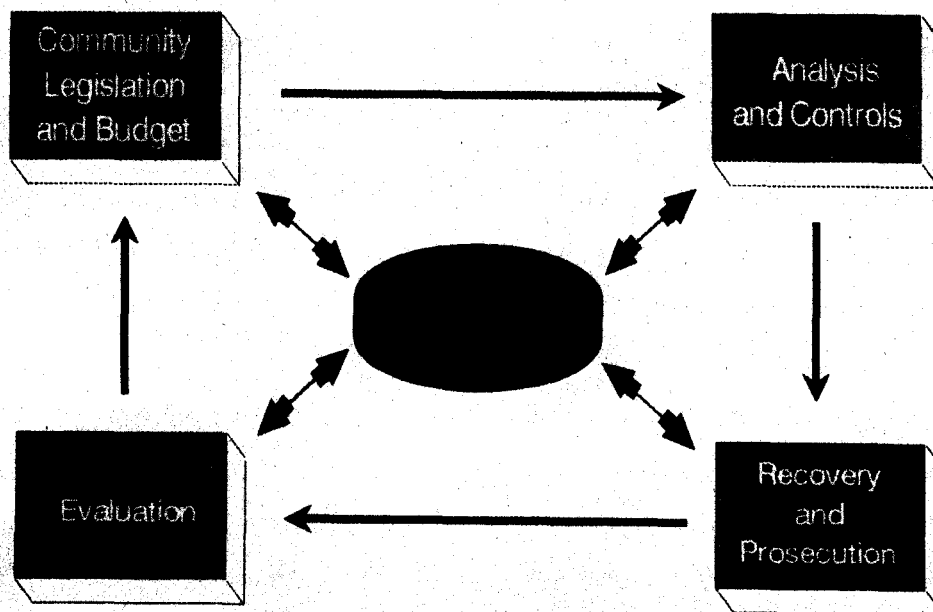
The Member States, the Council and the Commission must work together to ensure that this new framework is properly exploited to the maximum extent.

3. THE COMMISSION'S ANTI-FRAUD STRATEGY

The new strategy aims to establish a coherent set of guidelines to serve as the framework for more concrete measures. Essential to such an approach is the partnership between the Member States and the Commission and the optimum exploitation of intelligence sources.

The wide ranging nature of the financial interests at risk emphasizes the need to develop a common protective framework, of which the anti-fraud strategy will form a part. This framework must recognize the fact that only a close coordination of effort involving both the Commission and the Member States can lead to overall success.

Protection of the financial interests of the Community



The diagram above shows the main elements relevant to the protection of the financial interests of the Community, including the central role of the anti-fraud strategy, and demonstrates the interaction between the different activities involved.

Viewing the problem in the overall context, it must be realized that although the accent has to be placed on operational action to combat fraud, preventive action remains a key factor for the protection of the public finances. It is an inescapable prerequisite for the protection of the financial interests of the Community.

Improving the protection of the financial interests of the Community requires concrete measures based on a critical analysis of the elements noted above.

The policies of the Community are implemented through legislation and financed from the general budget. This legislation must limit the possibilities for fraud and provide a firm base for effective controls.

To be effective, controls must be properly targeted to ensure that inspection services concentrate on high risk sectors. These sectors should be identified by means of audits and risk analysis.

Where cases of fraud are detected, every effort must be made to recover sums which have been fraudulently obtained or which have not been paid when they were due. Equally it is vital for the Member States to prosecute and impose appropriate deterrent penalties.

Finally lessons must be learned from experience through a careful evaluation of past cases of fraud in the different sectors so as to improve legislation and all other aspects of anti-fraud activity.

At the heart of the action taken to ensure the highest level of protection there must be the optimum exploitation of information to select the operations to be carried out. To this end the Commission will be taking initiatives in close collaboration with the Member States to optimize the gathering and exploitation of intelligence so as to make the

cross-checks essential for improved results. To achieve this it will develop every instrument for good internal collaboration and closer partnership with the authorities responsible in the Member States.

This global approach, using modern tools and methods (computers, risk analysis, etc.), will make it possible to target action to counter the threats posed by large-scale financial fraud, with its links to organized crime.

4. THE BROAD LINES OF THE ANTI-FRAUD STRATEGY

The Commission's new strategy centres on the following four main elements:

Reinforcing the presence on the ground and support for operations, concentrating on high-risk sectors.

Strengthening the partnership between the Commission and the Member States, extending information networks and improving the exploitation of intelligence.

Improving the Community legislative framework in every sector of activity.

Securing greater compatibility between national legislation.

4.1 REINFORCING THE PRESENCE ON THE GROUND AND SUPPORT FOR OPERATIONS

Operations have to be conducted in every area of Community finance, but first and foremost in those areas which are considered the most sensitive. Reinforcement will cover both the supporting legislative provisions and direct operational arrangements. Attention must be given to ensuring that these measures also lead to improved recovery.

In 1994 action will cover the following priority areas:

(a) Operations

The Commission will deploy all the human resources at its disposal to reinforce operations and to support action by the Member States in this area.

In particular it will give priority to organizing and coordinating targeted enquiries and investigations in complex cases of transnational fraud liable to involve more than one Community financial instrument.

(b) Structural Funds (and other non-EAGGF areas of expenditure)

The Commission will put a high priority on extending its action in these areas of Community financing. Initiatives will be taken to:

speed up the adoption of the planned rules governing the notification by the Member States of cases of fraud and irregularities in the Structural Funds;

ensure that Member States communicate information on cases of fraud and irregularities affecting the Structural Funds, including information on subsequent administrative and legal action;

ensure that the new Cohesion Fund instruments are supported by adequate anti-fraud measures, including the reporting of suspect cases;

set up structures within the Commission and with the Member States to coordinate anti-fraud activities, including risk analysis techniques in all areas of expenditure not yet covered by specific measures.

(c) **Export procedures**

The Commission will take action in four areas to reduce fraud:

- developing risk analysis techniques for the entire Community in cooperation with the Member States;
- improving and computerizing transit procedures;
- clarifying the conditions concerning entitlement to refunds in Commission Regulation 3665/87;¹
- tightening up control procedures, including reinforcing and targeting its control visits to Member States, concentrating in particular on transnational activities.

(d) **Own resources**

The Commission will take specific action to safeguard own resources, concentrating on:

- improving and computerizing the transit system in parallel with the measures planned for export procedures;
- tightening targeted controls, in particular with regard to transnational operations;

¹ Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products; OJ L 351, 14.12.1987.

- . strengthening its information base in this sector;
 - . ensuring that agreements negotiated with third countries contain adequate provisions on mutual assistance and administrative cooperation;
 - . taking concrete action in cases of misuse of provisions aimed at granting preferential treatment to imports from non-Community countries.
- (e) Recovery of Community funds

The Commission will take practical steps to:

- . ensure follow-up action on fraud cases to assess the success of steps taken to recover Community funds. This action will involve improved notification by Member States and the use of the Commission's IRENE¹ data base;
- . ensure priority is given to the adoption of amendments to Council Regulation No 1552/89² to reinforce follow-up procedures in the area of own resources;
- . clarify the responsibilities of the Member States and their relations with the debtor or the beneficiary in recovery procedures, particularly in complex cases involving a number of Member States where close cooperation is required;
- . put forward proposals aimed at ensuring that national rules limiting the time during which recovery action can be taken do not hinder or complicate the recovery of Community funds.

¹ IRENE is the Commission's data base of cases of fraud or irregularity communicated by the Member States to the Commission in accordance with the provisions of certain Community legal instruments.

² OJ L 155, 7.6.1989.

establish a procedure in certain areas of expenditure (EAGGF Guarantee Section, for example) along the lines of the arrangements for own resources under Council Regulation No 1552/89, whereby the Member States keep separate accounts for established amounts that have not yet been recovered, so that the recovery of amounts paid out unduly as a result of fraud or irregularity can be better monitored.

4.2 STRENGTHENING THE PARTNERSHIP BETWEEN THE COMMISSION AND THE MEMBER STATES, INCLUDING THE IMPROVEMENT AND EXPLOITATION OF INTELLIGENCE

The object of this action is to ensure that the resources of the Member States and the Commission devoted to anti-fraud activity achieve the best possible results. This must be based on a sharing of responsibilities and of information and intelligence. Action must be aimed at:

strengthening working links between anti-fraud services in the Member States and in the Commission, including the partnership that is vital for effective operational action;

concentrating on the collection and analysis of intelligence, where the Commission will provide an integrated approach to information collection and analysis to cover all sectors of Community interest;

improving methods for tackling complex international frauds and large-scale financial crime, including its links to organized crime;

strengthening initiatives on training and exchanges of knowledge and expertise.

In 1994 action will cover the following priority areas:

(a) The Commission will strengthen its links with the anti-fraud services of the Member States by:

· developing an integrated system of internal Commission information and intelligence data bases containing information relevant to the fight against fraud to be used to assist in operational activities of the services of the Member States;

· exploiting intelligence systematically and developing early warning systems on suspect activities;

· drawing up proposals to limit entitlement to subsidies or access to certain import arrangements by establishing criteria for the exclusion of non-reliable beneficiaries.

(b) The Commission will take practical measures to increase its information sources by:

· installing an experimental freephone service to allow European citizens to provide information on fraud in confidence directly to the Commission;

· setting up other procedures to encourage people to provide information.

(c) The Commission will continue to develop and advocate the use of risk analysis techniques in all sectors, working in close contact with the Member States.

(d) The Commission will place a priority on training, exchange programmes and other initiatives designed to encourage the protection of the financial interests of the Community.

(e) The Commission will provide appropriate technical assistance to the Member States.

(f) The Commission will work to make a success of the new Advisory Committee for the Coordination of Fraud Prevention, set up jointly with the Member States as the principal forum for official consultation and the regular assessment of experience.

4.3 IMPROVING THE COMMUNITY LEGISLATIVE FRAMEWORK IN EVERY SECTOR OF ACTIVITY

Legislative action here must concentrate on two specific areas:

clarification and simplification of sectoral legislation; systematic inclusion of administrative sanctions in the regulations;

strengthening control procedures and specific anti-fraud measures.

In 1994 action will cover the following priority areas:

(a) Following the study on administrative sanctions¹ the Commission will make

¹ COM(92) 1450

proposals aimed at strengthening regulatory provisions in the area of controls and sanctions at Community level. In addition, the Commission intends to propose a mechanism to provide for a general regulation on administrative sanctions at Community level.

(b) Conscious of the need to combat fraud, the Commission will continue the systematic introduction of sanctions in the implementing provisions relating to the regulations on the common market organizations. It also intends to examine the possibility of extending the system of administrative sanctions to all budgetary areas, in particular in Community policy areas involving the Structural Funds.

(c) The Commission will consider proposing a legal instrument to extend administrative cooperation to cover the authorities most directly responsible for combating financial crime in order to improve the coordination at Community level of all operational activities at the stage before legal procedures are started.

(d) The Commission will give top priority to the adoption of amendments to Council Regulation No 1468/81¹ designed to strengthen mutual assistance procedures in customs and agriculture.

4.4 IMPROVING THE COMPATIBILITY OF NATIONAL LEGISLATION

The Commission, having examined the results of the comparative study it had carried out of the laws, regulations and administrative provisions of the Member States applicable to fraud against the Community budget,² believes that urgent measures are needed to ensure coherent action within and between the Member States. In this regard it is

¹ Council Regulation (EEC) No 1468/81 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 or agricultural matters. OJ L 144, 2.6.1981.

² SEC(93) 1172, 16 July 1993.

important to address the need for convergence of Member States' legal systems in appropriate areas. To put in place this common approach and the concrete measures which that implies the Commission and the Member States must ensure the best possible protection of Community finances by making maximum use in a complementary manner of both the provisions of the EC Treaty and the provisions on cooperation in Title VI of the Union Treaty.

In 1994 action will cover the following priority areas:

(a) The Commission will put forward proposals with the aim of ensuring that fraud against the financial interests of the Community is treated by the Member States as a criminal offence and that an adequate legal framework exists to bring those responsible for fraud to account.

(b) Furthermore it will put forward proposals for action on extraterritoriality, judicial cooperation and interstate cooperation in general to ensure that appropriate measures can be taken to combat fraud in cases involving more than one jurisdiction.

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ISSN 0254-1475

COM(94) 92 final

DOCUMENTS

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Catalogue number : CB-CO-94-100-EN-C

ISBN 92-77-66709-5

Office for Official Publications of the European Communities
L-2985 Luxembourg