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PROTECTING THE COMMUNITY'S FINANCIAL INTERESTS

THE FIGHT AGAINST FRAUD

ANNUAL REPORT 1994

(presented by the Commission)

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FOREWORD

The European citizens want value for money as tax-payers and efficient well-managed and corruption free distribution of Community funds. It is the duty of the Commission and Member States to ensure that this happens. The Essen European Council took a firm stand on combatting fraud and mismanagement in December 1994. And it is the intention of the Santer-Commission to do its utmost to qualify for the trust of the European citizens in this respect.

Fight against fraud as described in the present report is one important - but not the only - element of the Commission's strategy. Efficient delivery of Community funds necessitate action, both at the level of the Union and at the level of the Member States, in at least three areas:

First of all, sound financial management should be promoted. This involves correct application of existing legislation, smooth and efficient execution of programmes and policies, better evaluation of the results and an efficient feed-back of experience on policies and procedures.

Secondly, the legislation should promote sound financial management and deter fraud. This involves first of all a screening of existing legislation with that aim in view. It also involves strengthening of the protection of the Union's financial interests through a uniform approach across all Member States as regards definitions and prosecution of fraud to the detriment of the Community. Two very important pieces of legislation in this area will have to be adopted soon by the Council. Only then would fraud investigators be given the necessary instrument to support their work.

Thirdly, the fight against fraud has to be strengthened. The present report describes developments in this area in 1994.

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The action foreseen for this year is reflected in the work programme for 1995 adopted in February. This work programme fits into the comprehensive strategy based on four elements:

- reinforcing the presence on the ground and concentrating on high-risk sectors;
- strengthening the partnership with the Member States, in particular, by extending information networks to improve the exploitation of intelligence;
- improving the Community legislative framework by tightening up areas most vulnerable to fraud and focusing on its prevention;
- securing greater compatibility between national legislation with regard to punitive measures to deter fraud.

Already in 1994 the Commission stepped up the fight against fraud. It set up new sources of information, notably the so-called Freephone, and it launched more enquiries on its own initiative to be compiled on a special database (PRE-IRENE). Member States' obligations to communicate any case of irregularity in the Structural Funds and the Cohesion Fund were strengthened. A closer partnership with the competent authorities of the Member States was also put in place by establishing of an Advisory Committee for the Coordination of Fraud Prevention.

These efforts have begun to bear fruit.

Cases and amounts involving irregularities and fraud detected in 1994 by the Member States and the Commission have increased compared to 1993. They represent all together an amount equivalent to 1-2 percent of the Community budget.

Of the total amount concerned, the Member States' communications in 1994 account for about two thirds and the Commission's account for about one third. This reflects the increased operational role of the Commission in the fight against fraud, notably in linking intelligence from various sources across Member States.

Detection has to be followed by sanctions if fraud has to be deterred. Member States have an important responsibility in this respect. This was recognized in Maastricht by introducing a new Article 209A in the EC-Treaty.

Existing national laws do not as yet contain sufficiently precise rules to which allow for systematic and comparable prosecution and sanctions in Member States. This impedes investigations and weakens the legal proceedings. The Commission has put forward proposals concerning both administrative and penal sanctions, which involve some very necessary changes in national rules and practices. If fraud to the detriment of the Community is to be combatted effectively, the penal law of all Member States must contain specific legal provisions. The European Council has set a June deadline for a decision by the Council.

Recovery of all income due to the Community budget and of all Community funds which have been acquired fraudulently is another high priority. Virtually all own resources are collected by the Member States and about 80% of Community funds are paid out to the final beneficiaries by the Member States. This is why recovery in the first instance is a task of the Member States.

The recovery procedures still need to be greatly improved. One means of speeding up the recovery procedure would be the adoption of the Commission's proposal on amending the Regulation on Own Resources (Regulation n° 1552/89). Another means is the more systematic use of the "clearance of accounts" procedure, where agricultural expenditure is affected by irregularities and deficiencies of control. Here again, the Commission has proposed an amendment to the existing rules.

For its part the Commission has reorganized and centralized its anti-fraud services and has recruited the additional 50 staff voted by the European Parliament. It is further developing its intelligence and information systems in order to be able to cope with even the most sophisticated types of fraud.

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The Commission calls on the Council, the European Parliament and the Court of Auditors to cooperate with it in order to ensure a maximum of protection for the financial interests of the Community. It is nothing less than the credibility of the Union in the eyes of its citizens and taxpayers which is at stake.

CHAPTER 1: PROTECTION OF THE COMMUNITY'S FINANCIAL INTERESTS -- DEVELOPMENTS IN THE REGULATORY FRAMEWORK AND PREVENTION WORK IN 1994

It is now accepted that national government departments play a primary role in combating fraud against the Community budget.¹ Through their police authorities and the courts, Member States have the means to monitor, detect, prosecute and punish any fraudulent act. Their cooperation with the Commission is governed by the principle of subsidiarity to ensure that the finances of Europe are afforded the highest possible degree of protection.

The Commission itself has based its legislative activities on one of the priorities laid down in its strategy programme for 1994², concentrating on a fundamental twofold objective: first, to clarify and simplify Community legislation in individual policy areas and improve the regulations by the systematic inclusion of administrative penalties; and, second, to make all legislative provisions which have a financial impact as resistant to fraud as possible.

In adopting this guiding principle for its action, the Commission is laying great emphasis on prevention, in line with the political determination it has always shown to strengthen both *ex ante* and *ex post* controls. To this end, it encourages the work of horizontal groups for the simplification and revision of agricultural legislation.

SECTION 1: OWN RESOURCES

A proposal to amend Council Regulation (EEC, Euratom) No 1552/89³ was presented by the Commission on 11 December 1992. It has since been amended following the consultation of Parliament⁴ and the Court of Auditors.⁵ The amended proposal was sent to the Council on 3 November 1994.⁶

¹ The rules on notifications and inspections in force on 1 January 1994 are in Annex 1.

² COM(94) 92 final.

³ OJ L 155, 7.6.1989. See also the annual report on the fight against fraud for 1993, COM(94) 94 final.

⁴ One of Parliament's proposals was that Member States be given a financial incentive to help them bear the additional costs arising from *ex post* recovery in cases of fraud and irregularities already notified, by allowing them to keep 10% of sums recovered in such cases (new Article 10(1a) for cases notified under the new Article 6(4)).

⁵ Opinion No 1/93, OJ C 170, 21.6.1993.

⁶ COM(94) 458 final, OJ C 382, 31.12.1994.

However, these amendments have not affected the rules in the proposal concerning the notification of fraud and irregularities, including one that provides for the regular transmission of reports on cases already notified (state of play, accounting statement of amounts recovered, etc.) and the new version of Article 6(4), which describes in detail the content of reports (compared with the "brief description" referred to in the present Article 6(3)) and includes a subparagraph on the possibility of the same cases being notified under the mutual assistance arrangements.⁷

In its conclusions on combating fraud of 11 July 1994 the Council put further discussion of this proposal high on its list of priorities.

SECTION 2: AGRICULTURE

Work is continuing on the revision of Community legislation with a view to reducing its susceptibility to fraud. The exercise concerns mainly the regulations governing control procedures for the granting of certain benefits in respect of agricultural products covered by the EAGGF-Guarantee Section, notably export refunds.⁸

For example, the Commission clarified the provisions of Council Regulation No 163/94⁹ amending Regulation No 386/90 on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts by laying down basic criteria for the application of risk analysis by the Member States (a 5% rule with a minimum rate of 2% for each product sector).¹⁰

The Commission is at present drawing up rules for the implementation of this Regulation with regard to actual physical checks.

After conducting a study of the case law of the Court of Justice concerning the general principles of the right to refunds, the Commission concluded that the Court had taken a consistent line in a number of judgments. In the light of this study, the findings of which were confirmed by the Court's judgment in

⁷ This will allow the Commission's specialized departments to identify links between follow-up measures under Regulation (EEC) No 1468/81 and those reported under Article 6(3) of Regulation (EEC, Euratom) No 1552/89, especially from a financial angle, as reports on mutual assistance cases do not systematically refer to the amounts at stake. See also Chapter 6, Section 3 "Financial monitoring of fraud cases", page 70 *et seq.*

⁸ See Chapter 1, Section 5 "The customs transit arrangements", page 12.

⁹ OJ L 24, 29.1.1994. See also the annual report on the fight against fraud for 1993, cited above.

¹⁰ Commission Regulation (EC) No 3122/94 of 20 December 1994 laying down criteria for risk analysis as regards agricultural products receiving refunds, OJ L 330, 21.12.1994.

Case C 347/93 *Boterlux*,¹¹ the Commission could see no need to amend Article 5 of Commission Regulation No 3665/87 on the right to refunds.¹²

Given the economic objective of export refunds, which is to allow agricultural products from the Community to compete with goods from non-member countries on international markets, the exporter's responsibility is clear in all cases: to receive payment of the refund, he must prove, at the request of the relevant national authorities, that the products in question are exported to and placed on the market in a non-member country. This is an important point, as it implies that the products must actually be marketed in the country of import.

The Commission also put forward a proposal on measures to be taken in dealing with certain beneficiaries of operations financed by the EAGGF Guarantee Section who present a risk of unreliability.¹³ The aim of this proposal is to establish a permanent mechanism for identifying such beneficiaries by stepping up cooperation between national government departments. The proposal, commonly referred to as "the blacklist Regulation", was sent to the Council on 26 April 1994. The Council (Agriculture) reached agreement on it at its meeting on 6 December. Once it has been adopted, the Commission will draw up specific implementing rules.

Council Regulation (EEC) No 4045/89 of 21 December 1989 on *ex post* scrutiny by Member States of the commercial documents of firms receiving funds from the Guarantee Section of the EAGGF¹⁴ was amended by Council Regulation (EC) No 3094/94¹⁵ to include rules for selecting firms for scrutiny, in particular taking into account the risk-analysis techniques applied, to specify the commercial documents to be inspected and the courses of action open to Member States when commercial documents are inadequate or located outside the Community territory and to strengthen mutual assistance procedures.

The Council adopted Regulation (EC) No 165/94¹⁶ on the co-financing by the Community of remote sensing checks and amending Regulation (EEC) No 3508/92 establishing an integrated administration and control system for

¹¹ OJ C 275, 1.10.1994. In this judgment the Court restated the general principles of the right to refund which, on the basis of its own case law, had gradually been incorporated into existing legislation.

¹² Regulation laying down common detailed rules for the application of the system of export refunds on agricultural products, OJ L 351, 14.12.1987.

¹³ COM(94) 122.

¹⁴ OJ L 388, 30.12.1989.

¹⁵ OJ L 328, 20.12.1994.

¹⁶ OJ L 24, 29.1.1994.

certain Community aid schemes.¹⁷ The checks in question are surveys of agricultural land by remote sensing from the air or space and the Community share of financing may not exceed 50% of the actual expenditure by the Member State concerned in a given budget year. The new Regulation therefore alters the scope of Article 10 of Regulation (EEC) No 3508/92, which covers both the co-financing of expenditure on control infrastructure under the integrated system and spending on aerial or space photography and subsequent analyses. Accordingly, the Commission laid before the Council a new proposal for a Regulation amending Regulation No 3508/92 with a view to extending the Community contribution provided for in Article 10 until the end of 1996. This proposal was adopted as Council Regulation (EC) No 3233/94.¹⁸

Finally, the Council adopted Council Regulation (EC) No 3235/94 amending, as a result of the accession of Austria, Finland and Sweden, certain rules providing for part-financing of measures in the agricultural sector, in favour of the new Member States.¹⁹ The provisions in question are Regulations (EEC) Nos 4045/89 and 307/91 and Article 10(2) of Regulation (EEC) No 3508/92.²⁰

SECTION 3: STRUCTURAL OPERATIONS

From the outset, the legislation on the Structural Funds defined the roles of the Member States and the Commission with regard to the verification of operations and the prevention and prosecution of irregularities. The division of powers was laid down in symmetrical fashion in Article 23 of Council Regulation (EEC) No 4253/88 as follows:

the Member States bear prime responsibility and are required to "prevent and take action 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)).²¹

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

¹⁷ OJ L 355, 5.11.1992. See also the annual report on the fight against fraud for 1993, cited above.

¹⁸ OJ L 338, 28.12.1994, p. 13.

¹⁹ OJ L 338, 28.12.1994, p. 16.

²⁰ For the financial rules laid down in these three Regulations and the results obtained in 1994, see Chapter 7 "Anti-fraud appropriations", Section 1 "Budget implementation 1994", page 77.

²¹ OJ L 374, 31.12.1978; amended by Council Regulation (EEC) No 2082/93, OJ L 193, 31.7.1993.

Court of Justice²² on the grounds that its provisions went beyond those of Article 23(1) of Regulation (EEC) No 4253/88. Although the Court's judgment did not call into question the legal basis of the Member States' obligation to report cases of fraud, its effect was to curb the flow of information.

The Commission's first response was to take advantage of the general revision of Structural Funds legislation in 1993 to enshrine the need for detailed arrangements for notification in Council Regulation No 2082/93,²³ which amended Regulation (EEC) No 4253/88. As a result, the final indent of Article 23(1) of Regulation (EEC) No 4253/88 now states that the Commission will draw up detailed arrangements for implementing that paragraph.

As a second step, the Commission followed the normal procedure for adopting legislation applicable to the Structural Funds and the cohesion financial instrument, including mandatory consultation of the various committees. The result was the adoption of 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 organization of an information system in this field.²⁴

A similar Regulation was then drawn up for the Cohesion Fund²⁵ -- which had since succeeded the cohesion financial instrument²⁶ -- albeit following a simplified procedure.

The two Regulations are modelled on Council Regulation (EEC) No 595/91, which applies to the EAGGF Guarantee Section,²⁷ but differ from it in some respects, as they are tailored to specific areas of expenditure.

They provide in particular for the following:

notification by the Member States of the relevant provisions laid down by law and regulation and the list of authorities and bodies responsible for applying them;

notification by the Member States of irregularities, to be described in detail;

²² Case 303/90 *France v Commission*, judgment given on 13 November 1991. See also the annual report on the fight against fraud for 1992, COM(93) 141 final.

²³ OJ L 193, 31.7.1993.

²⁴ OJ L 178, 12.7.1994.

²⁵ Commission Regulation (EC) No 1831/94, OJ L 191, 27.7.1994.

²⁶ Council Regulation (EEC) No 792/93 establishing a cohesion financial instrument was repealed by Council Regulation (EC) No 1164/94, OJ L 130, 25.5.1994.

²⁷ OJ L 67, 14.3.1991.

three-monthly reports by the Member States on developments in cases of irregularities already notified, in particular the proceedings instituted as a result;

information from the Member States to the Commission on the amounts at stake in irregularities which have been detected and on the various categories of irregularities.

Unlike Regulation (EEC) No 595/91, Regulations (EC) Nos 1681/94 and 1831/94 make no provision for a "reward" for national government departments amounting to 20% of sums recovered,²⁸ but they do allow the possibility of amounts recovered being entirely reassigned for the benefit of operations or final beneficiaries other than those involved in the irregularity, subject to the constraints of transparency and budgetary discipline.

Implementation of these new rules, which entered into force in the third quarter of 1994, requires:

the introduction of appropriate means of communication (forms, electronic media), to be agreed by the Commission and the Member States;

training for the staff of national government departments responsible for reporting, with technical assistance from the Commission;²⁹

the establishment of procedures in the Commission's departments for administering the reports.

SECTION 4: ADMINISTRATIVE COOPERATION

The proposal for a European Parliament and Council Regulation (EC) on mutual assistance between the administrative authorities of the Member States and cooperation between them and the Commission to ensure the correct application of the law on customs and agricultural matters³⁰ is to replace Council Regulation (EEC) No 1468/81,³¹ which at present governs the procedures for mutual assistance between the national authorities and the Commission in the customs and agricultural sectors.

The aim of the proposal is to improve the organization of measures to combat fraud affecting the Community budget in the agricultural and customs fields, which are particularly vulnerable, and to guarantee consistent protection of the Community's

²⁸ Cf. the principle of a financial incentive laid down in Article 7 of Council Regulation (EEC) No 595/91.

²⁹ See Chapter 7, Section 1 "Budget implementation 1994", page 77.

³⁰ COM(94) 34 final, OJ C 80, 17.3.1994.

³¹ OJ L 144, 2.6.1981.

external borders by stepping up mutual assistance and administrative cooperation. The text will also serve as a legal basis for creating and implementing a central database accessible to both national departments and the Commission. The new base will form the second stage in the establishment of the Customs Information System (CIS).³² It will allow the various users to exchange information and hence improve their effectiveness in tackling fraudulent practices.

On 5 December 1994 the Council (Economic and Financial Affairs) reached unanimous agreement on the proposal. In so doing, the Council demonstrated its resolve to ensure the proper application of customs and agricultural legislation -- for which primary responsibility lies with the Member States -- through mutual assistance between the administrative authorities of the Member States and cooperation between these authorities and the Commission.

In line with the Commission's strategy, administrative cooperation between the Member States needs to be stepped up further, particularly with regard to controls on the Community's external borders, as there are still too many divergences between the various surveillance methods employed by customs authorities. The Commission has also drawn up a special programme entitled "Customs 2000" to serve as a basis for discussion in the Council.

The purpose of this programme is to produce a uniform external Community border by developing new working methods such as the use of company account audit techniques and risk analysis, the development of simplified customs clearance procedures and the coordinated development of the use of computerized customs procedures.

Following a specialized study on customs infringements, the Commission is at present examining with the Member States in the Customs Policy Committee a possible classification of the various categories of customs infringements and penalties.

SECTION 5: CUSTOMS TRANSIT ARRANGEMENTS: THE COMMON/COMMUNITY AND TIR PROCEDURES

The Community transit procedure allows goods to be moved under customs supervision between two points in the Community territory, while remaining exempt from taxes and duties and ineligible for any other measures resulting from Community policies. The cornerstone of the procedure is the designation of a natural or legal person as principal, whose main responsibilities are:

- . to lodge a guarantee to cover the collection of duties or other charges due in the event of irregularities;
- . to present the goods in good condition at the customs office of destination within a time limit set by the office of departure.

³² See the annual report on the fight against fraud for 1993, cited above.

The procedure begins with the presentation of the goods and validation of the transit document at the customs office of departure in the Community. A copy is kept there so that the authorities can check whether the operation is properly conducted. The goods are transported through Community territory with the transit document, which must be produced at the customs office of destination by the prescribed deadline. After the office of destination has carried out the necessary inspections on the spot, it returns a copy of the customs document, together with a report on these inspections, to the office of departure. If the transit operation is considered to have been properly discharged, the principal is released from his obligations.

However, in the event of fraud or irregularities, the perpetrator of the infringement, if he or she can be identified, is held liable for any duties and taxes which are payable. Failing this, payment is demanded from the principal; finally, if the latter is unable to fulfil this obligation, the guarantee covering the operation will be seized. Recovery of these amounts therefore depends to a large extent on whether the guarantee is sufficient to cover the risks incurred.

The Community transit arrangements were incorporated wholesale into the Convention on a common transit procedure with the EFTA countries. It has also been proposed that the scope of the common transit arrangements be broadened to cover the countries of Central and Eastern Europe.³³ As things stand at present, it is obvious that the transit scheme has become a prime target for organized criminal networks seeking to develop a highly-profitable line in fraudulent transactions.

In this context products which are particularly sensitive to fraud have been put under special surveillance in the transit procedure: the movement of highly-taxed goods such as cigarettes or other products covered by the common agricultural policy undoubtedly presents a high risk.

The most common types of fraud are:

- . failure to present goods at the customs office of destination;
- . falsification of customs documents certifying the presentation of goods at the office of destination by using stolen or counterfeit stamps on the copy of the transit document returned to the office of departure.

In both cases the goods in question are introduced and released on to the Community market illegally, without payment of the duties and taxes which are due.

In 1994 a number of measures were taken under the Commission's anti-fraud strategy programme, in both the legislative and operational fields:

³³ See Chapter 4, Section 3, "Organizing international cooperation/Agreements with non-member countries", page 39.

a list was drawn up of sensitive products for which there is a high risk of fraud in transit operations;³⁴

measures were adopted to increase the minimum amount of the comprehensive guarantee required to cover duties and charges relating to certain sensitive products;³⁵

the transit period was adjusted according to the distance to be covered for the delivery of goods;

operational measures coordinated by the Commission were stepped up to strengthen cooperation between national and Community investigation departments, in particular through an increase in missions to non-member countries;

an advance warning system was introduced for the exchange of information relating to consignments of sensitive goods between the office of departure and the office of destination.

In addition to these immediate measures, a feasibility study and a cost-benefit analysis were carried out with an eye to the computerization of the transit arrangements as an effective response to the defects in the present system. Computerization will close certain loopholes and provide customs authorities with an effective tool to prevent fraud, by allowing them to detect cases early enough to take appropriate protective measures.

Besides the Community and common transit arrangements, there is also an international transit scheme which provides for the movement of goods under the Customs Convention on the international transport of goods by road (TIR Convention), whose guarantee scheme is managed by the International Road Transport Union (IRU) in Geneva and is mainly used for the transport of goods by road from or to the countries of Central and Eastern Europe and the Commonwealth of Independent States.

As the Community has forged closer links with these countries, new opportunities have emerged which certain unscrupulous traders and known criminal organizations have exploited. The high incidence of fraud in this field led the IRU to suspend the use of TIR *carnets* for the transport of cigarettes and alcohol from 1 December 1994. Customs authorities have introduced tighter controls, in particular an advance warning system for sensitive goods.

³⁴ 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.

³⁵ Decision No 3/94 of the EEC-EFTA Joint Committee on Common Transit (94/949/EC) of 8 December 1994, OJ L 371, 31.12.1994.

SECTION 6: COMMISSION INITIATIVES ON LEGAL PROTECTION FOR THE COMMUNITY'S FINANCIAL INTERESTS

The protection of the Community's financial interests has been a special priority for the Community institutions for several years. From the 1970s, when the Commission proposed a draft Treaty,³⁶ to the Resolution of the Council (Justice) on 13 November 1991 and, more recently, on 1 December 1994,³⁷ it has been clear that the introduction of heavier penalties for failure to observe Community law in the financial field has become a top political priority. In spite of all its statements of intent, the Council has not yet made decisive progress in its discussion of the Commission's proposals.

If the Community's financial interests are to be afforded consistent and effective protection, actions and conduct which harm the Community budget must be identified in law, through instruments which are directly applicable by the Member States, and conditions must be laid down for the application of controls and measures and the imposition of administrative penalties in Community law and the imposition of criminal penalties in national law.

1. Proposal for a Regulation on Community controls, measures and administrative penalties

In order to enhance the effectiveness of Community law and strengthen the preventive aspects of its anti-fraud strategy, the Commission has opted to propose to the Council a horizontal instrument on Community controls, measures and administrative penalties.³⁸

The proposal for a regulation includes, for the first time, a clear definition of "irregularity" and "fraud". The scope of this proposal for a Regulation covers irregularities of all kinds: fraud, abuse of law and any other failure to discharge obligations under Community legislation which jeopardizes the finances of the institutions, whether on the revenue or on the expenditure side.

Apart from the recovery of any benefits granted, the proposal stipulates the conditions in which measures may be taken and Community administrative penalties may be imposed in the event of any such failure.

It also provides for a control mechanism, setting out the general framework for inspections, with the detailed arrangements being spelled out in the regulations on notification in individual sectors.³⁹ In this respect it seemed appropriate to bring together

³⁶ Draft Treaty for common rules on the protection under criminal law of the Community's financial interests and the prosecution of infringements of the Treaty, presented on 10 August 1976, OJ C 222, 22.9.1976, and finally withdrawn by Commission decision of 15 June 1994, (Min(94) 1206).

³⁷ OJ C 335, 14.12.1994.

³⁸ OJ C 216, 6.8.1994.

³⁹ See the annual report on the fight against fraud for 1993, cited above.

in one text all the principles which should govern the organization of inspections by the Member States and the Commission; once these general principles have been laid down, the Community legislator may draw on them to clarify and define the various sectoral regulations.

The proposal lays down the principles to apply to any administrative measures or penalties to be provided for in Community sectoral regulations. The possibility of financial penalties is also provided for. These administrative measures and penalties are to apply to the legal and natural persons who commit the offence. In addition to the measures having direct effect, such as those relating to abuse of law and limitation, this instrument, with its general principles, will have a knock-on effect to promote the development of such mechanisms in the various areas where a need exists. Given the nature and specific purpose of these mechanisms, their application will have no bearing on obligations relating to the principle of assimilation and the need for Member States to afford effective, proportionate and dissuasive protection for the Community's financial interests.

In adopting conclusions on the fight against fraud at the Essen European Council on 9 and 10 December and following initial discussions in the Council's Budget Committee, the Heads of State and Government invited the Council (Ecofin) to adopt the Regulation on the protection of the Community's financial interests as quickly as possible.

Furthermore, the Commission has deliberately stressed the need to make criminal-law protection for the Community's financial interests a matter for Member States, in order to provide appropriate penalties for fraudulent conduct affecting Europe's finances.

2. Proposal for a Council instrument establishing a Convention for the protection under criminal law of the Community's financial interests

In the context of its anti-fraud policy, the Commission considers that the legal protection of the Community's financial interests must be clearly identified in the Member States' armoury of criminal-law measures. A specific legal instrument should be drawn up to enhance protection under criminal law - an approach which is vital if anti-fraud measures are to be effective, transparent and deterrent. It is not only individual defrauders who seek to profit from the financial opportunities offered by Community legislation, but organized networks capable of mounting sophisticated illicit operations. Neither one nor the other can be countered unless all Member States have effective and homogenous legal penalties to ensure that there are no weak points in the Community's protective armour.

Combating fraud on an international scale is one of the matters of general interest specified in Title VI of the Treaty on European Union (the third pillar) -- "Cooperation in the fields of justice and home affairs" (Article K.1.5).⁴⁰ Using Article K.3.2 as a legal base, the Commission has presented a proposal for a Council instrument establishing a Convention for the protection of the Community's financial interests under criminal law.⁴¹

⁴⁰ See the annual report on the fight against fraud for 1993, cited above.

⁴¹ OJ C 216, 6.8.1994.

On 1 December 1994, as an interim step, the Council (Justice) passed a resolution envisaging the adoption of a legal instrument as early as possible in 1995. At the Essen European Council of 9 and 10 December the Council was urged to press on with its deliberations so that joint measures could be adopted or a convention drawn up in the first half of 1995.⁴² In a resolution passed on 15 December, Parliament asked the Commission to withdraw its proposal for a Convention, on the grounds that the institutional approach it had chosen divested Parliament of its power to act and conferred exclusive decision-making powers on the Council.⁴³ Parliament feared that this could lead to a considerable deterioration in the protection of the Community's financial interests.

The purpose of the Commission proposal is not only to establish a common definition of fraud against the Community budget and enshrine the principle of a specific offence in the criminal law of the Member States, but also to introduce provisions aimed at speeding up judicial cooperation.⁴⁴ A specific offence is the only way of meeting the requirements of Article 209a EC in full.⁴⁵ The precise scope of the concept of fraud affecting the financial interests of the Community needs to be defined, as it constitutes one of the components of international fraud referred to in Article K.1.5 TEU on which the Commission's initiative is based.

A key feature of the definition of fraud in the Commission proposal is the concept of "gross negligence" in respect of the minimum duty of care which, from a professional and ethical point of view, is incumbent on those who administer or benefit from Community financing.

In this context, it follows from the notion of the "liability" of defrauders acting on behalf of or under cover of a body corporate, which corresponds in fact to the decision-making powers of its legal agents and bodies (e.g. the board of directors, management board, etc.), that the business in question bears responsibility and should clearly be held liable under criminal law. Provision is also made for decision-making bodies to be held liable for offences committed by a member of an undertaking on its behalf. The Commission proposal is based on current trends in the practice and theory of law in certain Member

⁴² In March 1994 the United Kingdom presented a proposal for joint action on criminal penalties. The working party on criminal law and Community law set up in the framework of judicial cooperation to assist the K4 Committee was given a brief by the Council (Justice) on 21 June, later endorsed by the Corfu European Council on 23 and 24 June, to continue its comparative study of the formal proposals put forward by the United Kingdom and the Commission.

⁴³ PE 185 379, 15.12.1994.

⁴⁴ This particular Commission initiative was included in its work programme for 1994 under one of the four major priorities.

⁴⁵ Cf the first indent of Article 209a, "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."

States and aims to establish the existence of independent liability, from the standpoint of the legal duties incumbent on those who exercise power or have tasks conferred on them.

With a view to building a minimum platform of basic principles for the protection of the Community's finances and purely on the grounds of efficiency, the Commission has adopted the concept of "priority jurisdiction" for the purposes of prosecuting fraudulent conduct. This principle is essentially designed to come into play in complex cases of transnational fraud, allowing punitive measures to be centralized in the Member State where the essential factual elements of the fraud occurred, without however relieving the authorities of the other Member States concerned of their duty to investigate and provide assistance. This concept is a vital factor in the fight against fraud at Community level and particularly useful for preventing a conflict of responsibilities and above all distortion in the simultaneous application of punitive measures by the Member States.

Judicial cooperation in criminal matters, which is essential in cases of transnational fraud involving organized crime, is expressly mentioned in Article K.1.7 of the Treaty, which at present falls outside the scope of the Commission's right of initiative. Nevertheless, in order to present a full document, the Commission deemed it necessary to add to its proposal a set of minimum rules for the establishment of direct and efficient judicial collaboration, in line with the actual institutional situation in the Community. Ways must be found of encouraging the Member States to make the vital quantum leap, in judicial collaboration as in other fields, so that the authorities have a level of operational efficiency commensurate with the measures to be taken to combat transnational Community fraud. The Commission must be fully integrated into the flow of information concerning requests for judicial collaboration so that it can bring its expertise to bear at any time and provide any coordination that is necessary to counter transnational crime, which itself is organized in a highly coordinated and centralized manner.

The approach to be followed in drawing up a legal instrument under Title VI of the Treaty on European Union, as requested by the Essen European Council, must complement the initiatives on administrative penalties. In the final analysis, a comprehensive approach of this kind is the only way of satisfying the need for greater efficiency in anti-fraud mechanisms so as to form a coherent and complementary body of measures that guarantees the protection of Europe's finances. This also means that the legal instrument adopted under the third pillar must provide for the Court of Justice, in accordance with Article K.3 of the Union Treaty, to give a preliminary ruling on any dispute regarding application of the Convention or its interpretation and in particular on the question of the concept of fraud under the first pillar (Article 290a EC).

3: Prospects opened up by the Council Resolution of 1 December 1994

In July 1994 substantive discussion began in the Council on the initiatives on criminal matters put forward by the Commission and the United Kingdom. However, the scope of this discussion was extended, notably at the suggestion of the Presidency, to areas not covered by the initiatives themselves, so that corruption involving officials of the European institutions and the laundering of the proceeds of Community fraud could also be dealt with from the standpoint of the legal protection of the Community's financial interests.

The Council Resolution of 1 December repeats the idea of a common definition of fraud against the Community budget, for which appropriate penalties should exist in the various criminal-law armouries. For the Commission, this constitutes the minimum platform on which to continue working in accordance with the conclusions of the Essen European Council of 9 and 10 December, which stated quite categorically that fight against fraud should be waged with utmost vigour. For the Commission, this will require a clear and precise definition of the concept of fraud, including gross negligence, which the Member States must then make a specific offence under their criminal law.

The resolution also refers to the need to consider the subjects of corruption and laundering of the proceeds of fraud in drawing up the instrument in question.

3.1. Corruption

In the introduction to this section on legal protection, reference was made to the draft for a Treaty on protection under criminal law presented by the Commission in 1976.⁴⁶ The Commission had accompanied this draft with a second instrument concerning the responsibilities under criminal law of officials and other servants of the European Communities. This second instrument is still before the Council. This problem is still high on the political agenda: in a resolution passed on 11 March 1994 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.⁴⁷

In addition to this proposal made in 1976 concerning corruption, the Commission has launched a study of its impact, particularly in connection with cases of fraud which inflict considerable damage on the financial interests of the European Union.

3.2. Money laundering

Pursuant to Article 17 of Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering,⁴⁸ the Commission has drawn up a first report on the application of this Directive, to be laid before Parliament and the Council.

The report concludes that the Directive has clearly had an impact in establishing mechanisms in the Member States to combat money laundering, which is now assimilated to a criminal offence in all twelve Member States, eight of which have criminalized the laundering of the proceeds of any criminal activity or serious criminal offence, and not just the proceeds of drug trafficking.

⁴⁶ See footnote 37.

⁴⁷ OJ C 91, 28.3.1994.

⁴⁸ OJ L 166, 28.6.1991.

If there is to be a crackdown on the laundering of funds in Europe, one of the steps which must be taken is to extend criminal and administrative penalties to the proceeds of fraud against the Community's financial interests.

In its Resolution of 1 December the Council of Justice Ministers called for legislation on money laundering to be extended to the legal protection of the Community's financial interests.

To this end, all possible legal measures under the Treaty on European Union, including those available under Title VI, should be exploited to the full.

CHAPTER 2: OTHER NEW DEVELOPMENTS AT COMMUNITY LEVEL

The fight against fraud cannot be stepped up unless appropriate legal instruments and enforcement possibilities are available. Resources also need adjusting - structures need to be made more effective and human resources need to be more highly qualified, while analysis tools must be of a performance level commensurate with the scale and difficulty of the task.

The Union institutions work together to protect the Community budget against fraud in the same way as when they develop and monitor policies in other areas. The political impulse from the Council, the support of Parliament and the role played by the Court of Auditors with its new post-Maastricht status as a full institution are all aspects of the new scene for the pursuit of a coherent and effective anti-fraud policy.

SECTION 1: THE COMMISSION

The Commission, having regard as always to the concerns expressed by the European Parliament and the pointers it gives,⁴⁹ strengthened its central fraud prevention units by selecting and recruiting national civil servants with the requisite experience and qualifications. It also reorganized some departments, as envisaged in the strategy programme, to boost operational activities and support the action taken by the Member States, the aim being to optimize the deployment of the human resources allocated to the fight against fraud.

The reorganization was accompanied by changes in working methods, particularly as regards data gathering and analysis. Responsibility for checking the consistency of data and drawing conclusions is shared between the Member States and the Commission; this kind of partnership is essential for any attempt to improve the fight against fraud at source.

1. Organizational changes

The Commission strengthened its central fraud prevention department - SG/UCLAF - using the 50 new posts made available by the budgetary authority.

UCLAF was restructured into four units - three operational units (EAGGF Guarantee Section and agricultural imports, Structural Funds and other areas, and own resources) and one horizontal support unit (general matters, coordination, intelligence and legal questions) - and the 50 posts were allocated to reinforce the operational units. Of these posts, 35 were filled by temporary staff selected and engaged between April and September. Recruitment procedures are in hand; administrative complications inherent in seconding the relevant staff from their national departments mean that they will not be completed until 1995.

⁴⁹ See the annual report on the fight against fraud for 1993, cited above.

The Commission's other departments with anti-fraud responsibilities, in particular the Directorates-General for Agriculture (DG VI) and Customs and Indirect Taxation (DG XXI), continued to play their specific roles. The Directorate-General for Budgets (DG XIX) built up a monitoring technique based on selected cases of fraud affecting substantial amounts of traditional own resources, focusing on accounting aspects in relation to the prospects for recovery of the amounts evaded.⁵⁰

Financial Control (DG XX) maintained the intensity of its work on recovery of amounts in general and amounts defrauded in particular⁵¹ and launched two major studies on whistle-blowers and on out-of-court settlements.⁵² Financial Control also maintains specially close contacts with the highly active network of national associations of lawyers.⁵³ Contacts have also been made for setting up associations in the new Member States.

2. Intelligence

If the question of fraud against the Community budget is to be tackled thoroughly, the systematic gathering and analysis of the requisite data must be developed. The Commission's strategy programme published in March 1994 was especially attentive to this issue.

Intelligence basically means 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. The aim is to obtain every possible aid in the fight against fraud. The main user of intelligence is the investigator on the ground; his needs determine what is sought for.

The Commission has launched a series of initiatives to develop intelligence in close cooperation with the Member States; they are heavily influenced by measures taken nationally (e.g. by the Zollkriminalamt in Germany) and by firms in the private sector.

⁵⁰ See Chapter 6, Section 3 "Financial monitoring of fraud cases - recovery", page 70.

⁵¹ Last report of Financial Control on recovery of debts due to the Community - SEC(94)512.

⁵² The purpose of the study is to examine carefully each Member State's rules governing settlements and similar arrangements and their application to Community expenditure under the EAGGF Guarantee Section and the Structural Funds. It will seek to assess to what extent a harmonized approach can be devised at Community level for recovery by Member States of amounts wrongly paid.

⁵³ The quarterly review AGON reports regularly on new measures for the legal protection of the Community's financial interests and the proceedings of the seminars organized in this framework are discussed in many publications.

2.1 The UCLAF Integrated Information Management System (UIMS)

The Commission has begun studying the implementation of an integrated information management system to serve as the basis for intelligence gathering and exploitation and for investigations.

The object of the exercise is to associate and interpret all information that is available for intelligence and investigation purposes in every area of Community activity. If the project is successful, UIMS should provide a two-way communication facility between the system itself and users of directly exploitable information without experts intervening. It will facilitate and improve the work of the investigators, who will themselves have fed it with fraud data. Specific interactive data-processing facilities will complement other existing or innovative practices.

2.2 Developing the databases

IRENE

The base now contains about 15 000 cases of fraud and irregularities reported by the Member States: 9 300 concern the EAGGF Guarantee Section, 4 900 concern own resources, 700 concern mutual assistance and 100 are Structural Funds cases.

The main progress in 1994 was on the following points:

- increase in numbers of potential users (50 or so) who are starting to use the base regularly;
- consolidation of the base as an information retrieval and analysis facility for the Commission's anti-fraud policy;
- extension of Macros to different areas so as to facilitate input of cases notified by the Member States;⁵⁴
- statistical study launched by the Joint Research Centre on existing cases;
- commencement of prior analysis work needed to carry through the migration from the current technical environment, with the twin objectives of establishing an environment that is more user-friendly and efficient and of opening it up to the Member States.

Much remains to be done, however, in various fields: the possibility should be provided of updating the own resources reports sent in under Article 6(3) of Regulation (EEC, Euratom) No 1552/89 so that Member States' action to recover the amounts involved can

⁵⁴ For the Structural Funds and the Cohesion Fund, the Macro is already in use; for the EAGGF Guarantee Section it has enriched the quality of the data by adding the text of notifications. Macros are being devised for own resources and mutual assistance.

be monitored; similarly the input of reports under Article 4 of Regulation (EEC) No 595/91 following investigations by Member States⁵⁵ should be improved.

Pre-IRENE

This base contains information on cases which have not (yet) been formally notified by the Member States. It describes the progress of UCLAF investigations. It is now operational but still on an experimental basis, and further changes will have to be made to it in 1995.

On 9 February 1995, 127 cases were under management in this database - 65 relating to the Structural Funds and other areas, 58 to the formed arrangements for financing the common agricultural policy (22 of these involving own resources in the shape of agricultural levies) and 4 to non-agricultural own resources (customs duties).

The information supplied relates not only to identification of the case (category, type of product or 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 emphasis has initially been on describing measures taken. The base should soon evolve into 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.

Latest developments have sought to improve updating and retrieval procedures and data harmonization so as to enhance user-friendliness while securing the confidentiality of files handled by investigators.

Following analysis of these cases, Pre-IRENE will be the starting point for targeted operational measures; it will be at the core of an intelligence-based strategy with centralized information management in which combined management.

Anti-fraud Documentation (DAF)

In 1994 the Commission consolidated work already done on DAF. Four electronic registers for Member States were set up - for the United Kingdom, Spain, Portugal and Greece - to display the fraud prevention and detection systems set up there for the various expenditure and revenue instruments. The system contains answers to a series of queries regarding the basic national and Community legislation applicable to each of these financial instruments (known as domains for DAF purposes) plus the bodies responsible for general policy, management, checks and controls and, in particular, fraud investigation bodies. The ultimate aim is that Commission staff should know whom to contact in a

⁵⁵ Article 4 reads: "Each Member State shall forthwith communicate to the other Member States concerned and to the Commission any irregularities that have been discovered or that are suspected which it is feared may have effects outside its territory very quickly or which show that a new fraudulent practice has been adopted."

given situation and to demarcate the respective investigation functions of the Member States and the Commission; arrangements for mutual assistance, recovery procedures and provisions for out-of-court settlements are also to be described. The final benefit of the system will be that stock can be taken of Community and national penalties, both administrative and criminal, applicable in each domain.

The Commission presented a preliminary draft of the DAF information system when the Advisory Committee for the Coordination of Fraud Prevention met in Brussels on 30 November 1994. Delegations reacted broadly in favour, but the Member States rightly pointed out that the major outstanding difficulties lay firstly in data verification and updating and secondly in the translation effort needed for data exchange within the European Union. A cost/benefit analysis will be needed here.

The Commission has offered to prepare a CD-ROM containing the four electronic registers to allow the Member States to make their own detailed analyses.⁵⁶

APSO (Anti-fraud Policy Support Office) programme

The Commission's strategy programme generated a considerable need for information which the Commission (UCLAF) has endeavoured to meet in conjunction with the JRC in Ispra.

This programme's data coverage extends to the old Irene base (Member States' irregularity reports), Pre-Irene (investigations in progress or on the waiting list, with input from the Freephone),⁵⁷ and the DAF system that is intended in the long run to describe the legal and organizational framework for a given expenditure or revenue domain, the respective investigation functions of the Member States and the Commission and provisions for out-of-court settlements and administrative and criminal penalties. Analysis also extends to databases such as Celex, EC1, Comext and Dun & Bradstreet,⁵⁸ which can be particularly useful when data is gathered for an investigation.

These new resources should enable the Commission to migrate to a computer environment that is better adapted to the increased requirements.

2.3 *The Customs Information System (CIS)*⁵⁹

CIS is a component of SCENT (System Customs Enforcement Network), a 313-terminal⁶⁰

⁵⁶ At the Committee meeting of 1.2.1995, the CD-ROM was given to Member States for evaluation.

⁵⁷ See below "The new information sources".

⁵⁸ The first three are Community databases (Community law, Commission general documentation and Community external trade); the fourth is an international economic database.

⁵⁹ See also Chapter 1, Section 4 "Administrative cooperation", page 11 and earlier annual reports.

⁶⁰ Situation at 31.12.1994.

data network running controls at various sensitive places on the Community's external frontiers. It operates 24 hours a day, 7 days a week; it is accessible to national and Commission departments.

CIS operates as an electronic communications system⁶¹ for SCENT;⁶² standardized screen layouts are used in a variety of situations (data on persons, vehicles, goods, patterns of fraud, etc.). In 1994 a series of new functions were added, partly as a result of the development of new management tools that boosted the programme's performance.

The Commission provides user support in technical matters and looks after training for users in the Member States (in 1994, 35 weeks of courses were put on in Brussels, attended by 291 users drawn from all the Member States).

CIS was also used for specific operations (surveillance of consignments of sensitive goods in the transit procedure,⁶³ maritime surveillance and so on). In September 1994, for instance, the Member States used it, with logistical support from DG XXI (Customs and Indirect Taxation), to run a two-week Community-level airborne maritime surveillance operation targeted on the drugs trade, in the course of which about 4000 messages were exchanged.

2.4 The new information sources

In November 1994 the Commission set up a permanent system for direct notification of information relating to Community fraud to the departments needing it by a freephone in each Member State. The various numbers⁶⁴ connect the caller to a recording centre in protected premises at the Commission's fraud unit, which automatically identifies the country from which the call is being made and relays a pre-recorded message in that country's language. The information received by this system is processed as it arrives; it is entered in a database if it prompts operational action. The system is protected at both input and output levels to prevent hacking, and absolute anonymity of both call and caller is guaranteed.

This round-the-clock facility is based on practices existing in some Member States; they have proved their worth as means of protecting the public interest. The public can contribute to safeguarding the Community's financial interests wherever they may be,⁶⁵

⁶¹ To give a general idea, 17 293 messages were exchanged in 1994.

⁶² *SCENT fiscal* is for the exchange of information on indirect taxation between the Member States' tax departments and with the Commission via the same network.

⁶³ See Chapter 1, Section 5, page 12.

⁶⁴ It was technically impossible to establish a single number valid throughout the Community.

⁶⁵ The numbers are listed in Annex 2.

anonymously if need be and without needing to know foreign languages, by informing the Commission of fraud against the Community budget.

The system is to be reviewed after a one-year running-in period. Initial results are encouraging.

3. Risk analysis

The Commission is no different from the national administrative authorities in having but limited resources to deploy on anti-fraud work. To comply with the cost/effectiveness principle,⁶⁶ efforts need to be concentrated on areas of activity or categories of firms and persons that present a high risk potential, while at the same time ensuring that most trade flows are able to cross frontiers relatively easily.

Risk analysis techniques are applied to:

- *ex ante* evaluation of new legislation;
- development and exploitation of intelligence;
- presence on the ground (targeting checks and investigations);
- routine management (processing new files);
- changes to existing legislation in response to repeated findings of fraud in a given area.

Basically there are two distinct approaches to evaluating fraud risks:

- theoretical analysis of factors in play (definition of financial and other criteria, size of recipient firms, etc.);
- practical evaluation on the basis of known fraud cases (notably through analysis of data in bases such as IRENE and Pre-IRENE⁶⁷).

In practice the two approaches need to be combined at both Community and national levels.

⁶⁶ Described in Article 2 of the Financial Regulation applicable to the general budget of the European Communities (basic Regulation published in *Official Journal* L 356 on 31.12.1977).

⁶⁷ See preceding item on the development of intelligence and databases, page 24.

1.1 Risk analysis applied to controls

The technique is used to schedule controls. The largest possible volume of information on a given line of business is compiled and analysed so that controls can be targeted on the areas most vulnerable to fraud.

Given that all authorities are under a general duty to assist with the sound implementation of Community policies by virtue of Article 5 of the Treaty, it is for the Member States to undertake these controls as regards expenditure or revenue managed in partnership between them and the Commission. The national authorities are accordingly required to apply these techniques, with Commission help where necessary, in compliance with the subsidiarity principle.

Account has been taken of the possibilities for use of the technique in controls undertaken by national authorities both by Council Regulation (EEC) No 163/94 and the accompanying regulation on the details of the physical controls provided for by it and by the amendments to Regulation No 4045/89 as regards accounting checks (EAGGF Guarantee Section).⁶⁸

The national authorities' attention has been drawn to the importance of targeting controls at a series of meetings of committees responsible for specific areas (e.g. the Advisory Committee on Own Resources and the EAGGF Guarantee Section Committee) and now, of course, of the Advisory Committee for the Coordination of Fraud Prevention. This policy of raising awareness was pursued also in relation to expenditure areas not yet covered by specific measures in this respect: regarding the Structural and Cohesion Funds, apart from the fact that a separate unit was set up in the Commission,⁶⁹ regulations were recently enacted on irregularity reporting and information systems, which involve these techniques. And the Commission has clearly expressed its determination to develop comparable techniques for use in respect of direct expenditure.⁷⁰

1.2 Risk analysis as a means of targeting controls

The object of the exercise here is different. There is, admittedly, an obvious interaction with the technique applied to routine controls, since the point is to identify vulnerable areas (and high-risk firms or persons), but the idea this time is to prompt specific investigations with better prospects of actually recovering amounts evaded or wrongly paid while going for the maximum penalties with the highest exemplary effect. In this context risk analysis is both deterrent and preventive.

⁶⁸ See Chapter 1, Section 2 "Agriculture", page 7.

⁶⁹ See item on internal organizational changes, page 21.

⁷⁰ This covers transport, education, environment, culture, energy, the internal market, industrial policy, research and technological development, cooperation with developing countries and other non-member countries, the European Development Fund, ECSC budget operations etc.

But there are other factors that prompt fraud investigations, which can be targeted by means of the new information sources used by the Commission to organize its own investigations.⁷¹ The Commission must ensure that the Member States afford the Community's financial interests at least the same level of protection as their own financial interests. For this it is essential that Commission departments be kept informed about the progress of investigations undertaken by national authorities, which have to be monitored carefully by the Commission (DG XIX does this as regards recovery of traditional own resources).⁷²

There is also complementarity through the organization of cooperation between national and Community departments.

SECTION 2: THE EUROPEAN PARLIAMENT

The Community has its own financial system that is quite properly subject to political supervision by Parliament, which, with the Council, is one of the two arms of the budgetary authority. Political control by Parliament is exercised in practice by the Committee on Budgetary Control.

Members of that Parliamentary Committee consequently exercise the fullest control and monitoring powers over the Commission's anti-fraud strategy.

The Committee has played a major role in strengthening interinstitutional relations with the Commission. It has always stated that it wanted a single contact in the Commission that would report to it regularly on work done and results achieved in the fight against fraud and has often argued that the protection of the Community's financial interests demanded a reinforcement of the human and material resources available to the Commission's central fraud departments, most recently in 1993.⁷³ In 1994 SG/UCLAF was given 50 new posts and a whole series of new items were entered in the budget to finance fraud strategy.⁷⁴

The Commission was thus equipped to perform that part of its programme that consisted in supplying technical assistance to the Member States for boosting the efficiency of national operational measures relating to the EAGGF Guarantee Section, the Structural Funds and research.⁷⁵ Parliament was also anxious to reinforce the administrative

⁷¹ See previous item on the development of intelligence and new information sources, page 27.

⁷² See the annual report on the fight against fraud for 1993, cited above, and Chapter 6 "Statistics and analysis", page 67 of this report.

⁷³ See the annual report on the fight against fraud for 1993, cited above, and the item on organizational changes within the Commission, page 22 in this report.

⁷⁴ See Chapter 7, Section 1 "Budget implementation 1994", page 77.

⁷⁵ This policy will be pursued in 1995 in relation to traditional own resources.

resources available to the Commission to develop the frequency and effectiveness of its own investigations in the same areas.

Recent Parliament resolutions regarding the fight against fraud highlight the need both to tighten coordination and enhance the Commission's investigatory powers and to enact tough legislation to provide the Community's financial interests with the full protection of the criminal law.⁷⁶

Lastly, Parliament has announced its intention of holding a public hearing on protection of the Community's financial interests in the first half of 1995; a number of major questions are to be treated, notably the recovery of amounts defrauded.

SECTION 3: THE COUNCIL

The Council took note of the new anti-fraud strategy and work programme⁷⁷ transmitted by the Commission in response to the conclusions of the Ecofin Council of 7 June 1993 and the Copenhagen European Council of the same month. The Commission's annual report for 1993 was also well received.

The Council's proceedings are prepared by the Budgetary Committee and the Permanent Representatives Committee. Both bodies this year stated that the Advisory Committee for the Coordination of Fraud Prevention⁷⁸ should be the place for dealing with these matters so that the Budgetary Committee's work of preparing debates in the full Council could be facilitated.

The conclusions of the Ecofin Council meeting of 11 July 1994 regarding the fight against fraud were published in the Official Journal. This was the first time it had been done, thus bearing witness to the importance of the matter. Not that there is anything truly novel about the issue itself or the importance attached to it; it is simply that the public accountability and openness flowing from easy access to official Community documentation mean that the general public is more closely involved.

An ad hoc working party of the Council's Budget Committee was set up⁷⁹ to monitor the Commission's work on controls and penalties.⁸⁰ The Council's work on third-pillar

⁷⁶ Resolutions of 11.3.1994 and 15.12.1994. See Chapter 1, Section 6, page 16 for the draft Convention.

⁷⁷ Conclusions of 11 July 1994 on the fight against fraud; OJ C 292, 20.10.1994.

⁷⁸ See Chapter 4, Section 1, page 35.

⁷⁹ By decision of the Permanent Representatives Committee.

⁸⁰ See Chapter 1, Section 6 "Commission initiatives on legal protection for the Community's financial interests", page 15.

matters under Title VI of the Union Treaty is prepared by a Coordinating Committee (the K.4 Committee⁸¹), which is assisted by three steering committees. Steering Committee III (judicial cooperation) has set up a number of working parties,⁸² one of which is on Criminal Law and Community Law. This working party met several times in 1994; it reports back to the steering committee, which then reports via the K.4 Committee to Coreper, which coordinates third-pillar matters generally and ensures the requisite degree of consistency with the work of the Ecofin Council on first-pillar aspects of protection of the Community's financial interests against fraud.

The Council meeting (Justice) of 1 December 1994 passed a Resolution⁸³ agreeing to the principle of establishing a specific legal instrument to offer the Community's financial interests the legal protection of the Member States' criminal law. The Ecofin Council meeting of 5 December agreed that the Council should rapidly take the measures needed to improve the Community legal framework for fraud prevention. And the Essen European Council on 9 and 10 December 1994 agreed with all that.

As indicated above, the Council has not yet been able to adopt the proposals of the Commission concerning administrative and penal sanctions. This is also the case for the proposals concerning the replacement of Council regulation (EEC) N° 1468/81 as well as the amendment of Council regulation (EEC) N° 1552/89.

SECTION 4: THE COURT OF AUDITORS

The Court's annual reports, the latest of which was for 1993,⁸⁴ and its special reports are evidence of its vital role in the external control of the Community's finances.

The Court and the Commission are visibly on the same wavelength as regards anti-fraud policy and strategy. The specific practical measures in the Commission's work programme take the fullest account of the Court's recommendations.

The Court's elevation to full institution status has had a manifest impact on its relations with the Commission, particularly as Article 188c of the EC Treaty inserted by the Union Treaty requires the Court to provide Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions. The new institutional procedure imposes duties on the Court that effectively require the Commission to keep it informed, particularly as regards the financial monitoring of fraud cases.

⁸¹ See the annual report on the fight against fraud for 1993, cited above.

⁸² Under the programme adopted at the Council (Justice) meeting of 29 and 30.11.1993.

⁸³ OJ C 355, 14.12.1994.

⁸⁴ OJ C 327, 24.11.1994.

1. Annual reports

The Court's annual reports are on the legality, regularity and sound management of all Community revenue and expenditure. They verify whether revenue and expenditure are fully in conformity with all the rules and procedures and comply with the principles of sound financial management.

These are not strictly anti-fraud reports but they do provide the Commission with a valuable source of information, provoking useful reactions not only from the Commission but also from the Member States.

The remarks about financial circuits made at points 6.11 to 6.14 in the Court's 1993 report are wholly consistent with the Commission's own view that the channels followed by Community funds need streamlining.

2. Special reports

In addition to its annual reports, the Court may issue special reports at any time on specific areas.

In 1994 the Court adopted special report No 1/94,⁸⁵ which follows up special report No 2/92⁸⁶ and pursues the Court's investigations of export refunds paid to major dairies. Special report No 3/94⁸⁷ of 6 October relates to beef and veal intervention measures and report No 5/94 of 20 December to the cohesion financial instrument.

⁸⁵ OJ C 75, 12.3.1994.

⁸⁶ OJ C 101, 22.4.1992.

⁸⁷ OJ C 356, 14.12.1994.

CHAPTER 3: DEVELOPMENTS IN THE MEMBER STATES

Relations between the Commission and the Member States' national fraud prevention authorities are developing into a solid partnership. This development has highlighted the importance of the creation and operation of central coordination structures at national level and the identification of specific national departments to organize jointly with the Commission the monitoring of matters concerning fraud against Community finances. The recent establishment of the Advisory Committee for the Coordination of Fraud Prevention⁸⁸ is one of the most telling signs, and an illustration of "co-responsibility" or responsibility shared between the Commission and the Member States in fraud prevention, as now laid down explicitly in Article 209a of the EC Treaty.

SECTION 1: NATIONAL STRUCTURES TO COMBAT FRAUD AFFECTING COMMUNITY FINANCES

The Member States possess administrative and financial structures whose task it is to monitor the execution of their national budgets. The fact that fraud takes place at the expense of the Community budget raises the question of adapting these structures to fit the new context; the reallocation of funding and subsidy management, delegating power to collect Community resources (own resources) as laid down in the Treaty, regulatory obligations to monitor and prosecute offenders and recover sums lost - all these are specialist tasks which, if they are to be carried out more efficiently, require coordination at national level as well as between national authorities and with the Commission.

Examples of newly established structures are the *Office central de lutte contre la délinquance économique et financière organisée* (Belgium) and the *Office central pour la répression de la grande délinquance financière* and the *Office central de prévention de la corruption* (France), while an existing structure is the *Guardia di Finanza* (Italy).⁸⁹

SECTION 2: CONCERTED ACTION WITH COMMISSION DEPARTMENTS

Links with the national authorities have emerged from the purely institutional framework and started to develop into a more flexible pattern of bilateral meetings. In 1994 the Commission took a number of steps to develop targeted, high-level contacts with certain national authorities, particularly those with a central coordinating structure which operates in the field in much the same way as the Community, which is very gratifying to the Commission. These contacts have also been an opportunity to acquaint the Commission's opposite numbers with its anti-fraud strategy, illustrating it with specific practical examples, and thereby to encourage operational cooperation in carrying out investigations.

⁸⁸ See Chapter 4, Section 1, page 35.

⁸⁹ The Commission has contributed financially to the operation of some of these national structures or co-financed operations undertaken in cooperation with other national agencies. See Chapter 7, Section 1, Item 2 "Financial analysis", page 79.

Outside these institutional forums,⁹⁰ direct and worthwhile contacts have been established between the Commission and national, especially multidisciplinary, authorities, in an attempt to put up effective and firm resistance to criminal organizations which often form trans-national networks and channels.⁹¹

These contacts take place via the Commission's central fraud prevention structure (SG/UCLAF) and give promise of effective collaboration in future years, and not just from the strictly operational point of view.⁹²

From now on reports will have to be produced on the work done by national authorities as required by the Essen European Council in December 1994. This can only strengthen collaboration with the Commission, as its experience in this field will be of practical help to the Member States.

In its conclusions on action to combat fraud, the Essen European Council of 9 and 10 December 1994 urged the institutional partners to take joint action with the Member States and called on national authorities to submit reports on whatever domestic steps they took to combat waste and diversion of Community resources. These reports will be considered at the Ecofin Council meeting in June 1995 and, leading up to that, the Advisory Committee is the ideal forum for drafting the reports in a uniform manner, a task with which the Commission can usefully help.⁹³

⁹⁰ The advisory committee already mentioned and the various special committees.

⁹¹ Given the new strategic context, the technical assistance policy can only be properly reviewed in the relatively medium term (one or two years).

⁹² A good example is a fraud case under investigation in Ireland on which a report was drawn up in 1991 and published on 29.7.1994 so that allegations of illegal activity in the beef and veal industry in Ireland (EAGGF, Guarantee Section) could be looked into. Since the report was published, Commission departments have been continuing their inquiries, with due regard for the findings of the Irish court involved, for the purpose of carrying out the proper financial corrections as part of the procedure for clearance of the accounts. Parallel investigations are under way in Ireland, and details of any irregularities which come to light will be passed on to the Commission pursuant to Council Regulation (EEC) No 595/91 (for details of which see Annex 1).

⁹³ The Ecofin Council of 16.1.1995 in fact hoped that a consensus would emerge on the form and content of these reports, so as to make the best possible use of the surveys contained in them, including in the report on the implementation of Article 209a of the Treaty by the Member States which the Ecofin Council of 11 July 1994 asked the Commission to produce.

CHAPTER 4: COOPERATION AND PARTNERSHIP WITH THE MEMBER STATES

The policy for combating fraud will also depend for its effectiveness, its visibility and its credibility on the extent to which a sharing of responsibilities and information with the corresponding departments in the Member States is achieved.

Thus, for example, the Commission has taken steps to develop its contacts with national organizations which specialize in the field or are multidisciplinary and/or interministerial in character (the very establishment of such bodies or the widening of their fields of activity in response to changing circumstances are prime examples of developments which fit well in a context of international cooperation), with the object of combating all forms of organized financial crime, including fraud against the Community budget. The advantage of gradually establishing bilateral contacts of this kind and then increasing the number is that it can be done in a framework primarily of institutional partnership but at the same time with the proper degree of flexibility, vital if the steps taken are to complement one another, particularly when it comes to organizing checks, targeting investigations and sharing results.⁹⁴

In the same spirit of institutional partnership, the Commission has also continued its work on stepping up cooperation with non-member countries.

SECTION 1: THE ADVISORY COMMITTEE FOR THE COORDINATION OF FRAUD PREVENTION

On 23 February 1994 the Commission adopted a Decision setting up this Committee.⁹⁵ The function of the new body, pursuant to Article 209a of the Treaty, is to advise the Commission on the broad lines of its policy for protecting the Community's financial interests and organizing action to combat fraud. The Committee, which met for the first time on 1 July and then in October and November, is, as a setting for constructive exchanges, to become the main forum for discussion and assessment of the Commission's work programme and for keeping abreast of any matter involving legal protection of the Community's financial interests.

The Member States, too, have been urged to bring matters before this body as often as possible.⁹⁶

Underpinning the smooth running of a multidisciplinary body of this kind, whose purpose includes facilitating discussion linked to the drafting of Council conclusions,⁹⁷ there must

⁹⁴ See the item on intelligence in Chapter 2, Section 1, page 21.

⁹⁵ Decision 94/140/EC, OJ L 61, 23.2.1994.

⁹⁶ Details of the right of initiative are given in Article 2 of the Decision of 23 February 1994.

⁹⁷ Concerning the Council, see Chapter 2, Section 3, page 30.

be tight and lasting coordination between all the partners, both at the Commission and in the Member States.

At its first meetings the committee was kept informed of progress in carrying out the Commission's programme for 1994 and put forward its own suggestions. The Commission also uses the committee as the preferred setting in which, on its own initiative, it can raise any question connected with developments in exchanges of information⁹⁸ and the strengthening of ties between the authorities concerned with these matters and its own specialist departments.

Thus, for example, the Commission has been able, stage-by-stage, to set out and develop the main features of its anti-fraud strategy, in response to the clearly expressed wish of its opposite numbers to see a pooling of know-how with a view to ensuring that initiatives now under way and respective powers complement each other still further. The Commission, with the support of the European Parliament, in fact intends to establish a new Community policy of financial support and technical assistance for action to combat fraud⁹⁹ for the benefit of national bodies which so request; the plan was at once approved by most of the delegations to which it was submitted. In that sense, the Advisory Committee is the right setting in which to define a common fraud prevention strategy and assess whether it is worthwhile going ahead with appropriate measures in that field on a long-term basis.

SECTION 2: TRAINING AND EXCHANGES OF OFFICIALS

The Council meeting (Economic and financial affairs) of 11 July 1994 rightly pointed out that where fraud prevention is concerned the organization of special, targeted training and information schemes for officials from the Commission and the Member States is an effective course of action which ought to be stepped up.

The seminars held for this purpose by or with the help of the Commission are an important part of efforts to strengthen partnership with the Member States. Depending on the number of participants or the aim in view (to train national officials in a specific subject area at their request or bring together a few senior national officials responsible for passing the message on to officials in their own countries), the seminars are held in the countries concerned or in Brussels. Thus, where operations of this kind have to be carried out in the Member States and on their own initiative, the national authorities may tend to ask Commission departments for logistical assistance (in the form of a financial

⁹⁸ See the item concerning developments in the intelligence field (databases) in Chapter 2, Section 1, page 22.

⁹⁹ See Chapter 7, Section 1, "Budget implementation 1994", page 77, and Section 2 "1995 appropriations", page 81.

contribution)¹⁰⁰ or, if the method of organization so provides, they may ask for a number of the Commission's experts actually to take part by addressing the seminars.

Programmes of exchanges of officials have also developed on the basis of the existing rules and regulations governing customs and taxation.

1. Seminars

1.1. General seminars

These are attended by between 150 and 200 people from multidisciplinary departments and authorities responsible for organizing action to combat fraud against the Community budget in the Member States; these include operational customs and agriculture departments, taxation experts, auditors and lawyers.

The purpose of these "major" seminars is, or was, to make the bodies and authorities involved in national plans to prevent fraud against the Community even more aware of the fact that operators committing fraudulent acts always aim, by resorting to increasingly sophisticated techniques, to attract European subsidies to which they are not entitled or evade payment of certain taxes. At the same time the seminars were an opportunity for national officials responsible for fraud prevention to meet each other and lay the foundations for direct, regular and productive collaboration.

Two seminars of this kind were held in 1994, one in Brighton, UK, on 15 and 16 March and one in Noordwijk, Netherlands, on 14 and 15 September.

1.2 The new policy

Over the last few years general seminars have been held successfully in most Member States.¹⁰¹ More subject-oriented operations can now legitimately follow. In 1994 seminars attended by smaller numbers (30 to a maximum of 65) have been held in Brussels on 3 and 4 May for BEF (*Bundesamt für Ernährung und Fortwirtschaft*) inspectors, Genval, Belgium on 8 and 9 June for OCDEFO (*Office Central de lutte contre la Délinquance Economique et Financière*) investigators and Lisbon on 20 and 21 October for senior officials of IGA (*Inspecção-Geral e Auditoria de Gestão*).

More select working parties are set up at these special-subject seminars to work for a fixed period, as part of the seminar, on a particular topic (in workshop form) and report back to the plenary session.

¹⁰⁰ This policy falls within the framework of the technical assistance which the Commission gives the Member States; see Chapters 3 and 7.

¹⁰¹ See the annual reports on fraud prevention for 1989 - SEC(90) 156 final, 1990 already cited, 1991 - SEC(92) 943 final, and 1992 and 1993, cited above.

Besides working with national authorities to develop these types of seminars, following a strictly defined procedure which involves making contact and then drafting an official request, allowing enough time for it to be considered, particularly from the point of view of the funds available - the Commission plans to organize special briefings for the new Member States at the beginning of next year. The main focus of these will be awareness-raising for a number of senior officials from the police, tax, customs, agricultural and legal departments, thereby creating an opportunity for making the first official contacts so that the requisite conditions can then be established for a proper understanding and effective cooperation. Creating a climate of trust is absolutely vital if policies which demand full cooperation are to be carried out and produce results, especially where jointly conducted investigations are concerned.

Other special-subject seminars were held in 1994: the entry into force of the new Commission rules for reporting irregularities in the field of the Structural Funds and the Cohesion Fund¹⁰² require prior and regular awareness-raising among the departments concerned in the Member States - and this is also carried out through the Advisory Committee for the Coordination of Fraud Prevention.

In 1995, similarly, the Commission plans to hold seminars for exchanges of ideas, particularly as regards analysing the implementation of Regulation (EEC) No 4045/89¹⁰³ (post-clearance checking of commercial documents) as it affects the high-risk sectors; these will be limited to a maximum of 35 participants.

The Advisory Committee for the Coordination of Fraud Prevention has been kept informed in detail of training schemes run by the Commission in 1994 in the areas of inspection, cooperation and fraud prevention in general, and future schemes will be discussed and planned in the Committee.

This year the Commission's experts have again taken part in events organized locally by the Member States' national authorities and relating to fraud prevention in the various sectoral fields associated with it and to legal protection for the Community's financial interests. Nineteen such events were recorded in 1994.

2. Exchanges of officials

Following the pattern of the Matthaeus and Matthaeus-Tax programmes,¹⁰⁴ which concern customs and tax administration, some Member States expressed a wish to extend the procedures for exchanges of national officials responsible for inspection and investigation in certain specific fields relating to the EAGGF-Guarantee Section, and in the Structural Fund field.

¹⁰² See Chapter 1, Section 3, "Structural operations", page 10.

¹⁰³ See Chapter 1, Section 2, "Agriculture", page 8.

¹⁰⁴ See annual reports on the fight against fraud, cited above.

Experience with the Matthaëus programme (with 2000 participants) is a good background for considering these proposals, particularly from the angle of the objectives in view - to be worked out with the officials actually concerned, with the agreement of their superiors and the host departments - and the expected effects, not just for the participants but for their home departments at operational level (feedback).

SECTION 3: ORGANIZING OPERATIONAL COOPERATION

1. Within the Community

Stepping up operations and providing support for the Member States in this area form the first major strategic axis of the Commission's programme for 1994 and future years. The resources brought into play for this purpose must be shaped to allow for the trans-national character of fraud, especially in the areas of customs and agriculture, and setting up the Task Forces is in line with this approach, as indeed are the implementation and operation of the TAFI (Textile Anti-Fraud Initiative) programme, though in a specific industrial sector which is particularly vulnerable to large-scale trafficking.

1.1. The Task Forces

In 1994, following the first contacts with Member States as part of stepping up its operational presence in the field, and with their full cooperation and agreement, the Commission set up a Task Group in a particularly sensitive area, tobacco, the object of which is to combat large-scale sophisticated fraud under the Community transit arrangements more effectively.

The aim is to strengthen the official system, prevent major losses of customs duty and national excise revenue and smash the criminal organizations responsible for fraud.

Existing experience has shown that fraud involves trans-national and international factors which require special machinery at Community level.

The Commission's strategic approach in the tobacco sector comprises measures which have to be carried through simultaneously on four different fronts - the legal, the administrative, the technical and the operational.

By adopting a programme which takes these different aspects into account, the Task Group will make it possible for the Commission to make all its resources available to the Member States in the interests of proper coordination, and as a contribution and support at both the political level, with due regard for subsidiarity, and the practical level, in the knowledge that in practical terms the work will be carried out in strictest confidence.

1.2 The TAFI programme

The basic aim when this programme was set up in 1993 was to step up the battle against fraud at Community level in respect of the implementation of textile agreements; this includes making sure that the rules and regulations governing relations with non-member countries are being properly applied (to prevent the limits on quantity being

circumvented), at a time when the Community's textile industry is in recession and the limits on quantity are due to disappear gradually. To achieve this, an interdepartmental group in the Commission known as the TAFI Task Force decides which measures are to be charged to the budget heading for TAFI,¹⁰⁵ covering among other things the costs of officials from the Member States taking part in on-the-spot investigations into textile fraud.¹⁰⁶ Other measures which come under this programme involve inspecting and improving the checks carried out by the relevant departments in the Member States (a monitoring exercise is to be concluded in 1995) and non-member countries, as well as study trips to the United States by Community investigators and a subsidy for a body responsible for combating counterfeiting.

One of the most visible results of Community action on textiles must be the holding of joint consultations with certain non-member countries to discuss evidence obtained during Community missions and secure an adjustment in the limits on quantity where they have been circumvented, which, in terms of rectifying the situation regarding such limits, is equivalent to recovering duties where own resources have not been collected.

The main purpose of contacts with non-member countries as part of these checks and/or investigations is to maintain a high level of international cooperation, whether agreements to that effect have been reached with the Community or are still being negotiated, as is the case with a customs agreement with the United States at the end of 1994.

2. Agreements with non-member countries

The following agreements containing such provisions were concluded or came into force in 1994:

the "shared competence" agreement (mutual assistance covering both national and Community aspects) on the European Economic Area (EEA)¹⁰⁷ includes a protocol on mutual assistance in the customs field, as do the agreements, again of "shared competence" type, with the Central and Eastern European Countries (CEEC),¹⁰⁸ with which interim agreements have been concluded in respect of the part which falls within the Community's sphere of competence, pending ratification by the national parliaments;¹⁰⁹

free-trade agreements with the Baltic states¹¹⁰ (exclusive Community competence)

¹⁰⁵ See Chapter 7, "Anti-fraud appropriations/Budget implementation 1994", page 77.

¹⁰⁶ See Chapter 5, Section 3 concerning investigations in the field of traditional own resources, page 54.

¹⁰⁷ Austria, Iceland, Finland, Sweden, Norway and Liechtenstein.

¹⁰⁸ Poland, Hungary, the Czech Republic, Slovakia, Romania and Bulgaria.

¹⁰⁹ "Shared competence" type Europe agreements with Poland and Hungary came into force on 1.2.1994.

¹¹⁰ Estonia, Lithuania and Latvia.

were signed on 18 July 1994 and entered into force on 1 January 1995. They contain a protocol on CEEC-type mutual assistance in customs matters. Partnership and cooperation agreements have also been signed with a number of CIS countries (Russia, Ukraine and Moldova) containing a protocol on mutual assistance in customs matters;

the Commission continued negotiations on mutual assistance protocols to be incorporated into the preferential agreements with other CIS states, Turkey, Israel, Morocco and Tunisia, and on customs cooperation agreements with the United States, Canada and South Korea;

as well as the detailed provisions governing administrative cooperation or mutual assistance, the Community's framework cooperation agreements with certain non-member countries included references to customs cooperation.

CHAPTER 5: INVESTIGATIONS (COMMISSION)

The number of cases detected is rising. In the Commission's view, the first conclusion to be drawn from this is that detection systems are now more effective. The following factors should also be taken into account:

- the overall volume of the Community budget has grown;
- sophisticated fraud often spans several Member States, which means that the Member State which detected the fraud and reported it to the Commission is not necessarily the country where the fraud is based;
- when evaluating the effectiveness of action against fraud, longer-term trends are more significant than lists of figures, however spectacular, for a single year.

Action against fraud cannot and should not be restricted to detecting individual cases and imposing penalties. It is just as important, if not more so, that it should help eliminate the factors that make fraud possible or even encourage it. Therefore, our purpose in recounting individual cases in this chapter is as follows:

- to alert the relevant authorities in the Member States and draw their attention to particular areas and scenarios;
- to make it more difficult for the types of fraud described to be repeated, since they would be more easily detected;
- to prepare the ground for action with a view to eventually eliminating the circumstances which currently provide opportunities for fraud to be committed and flourish;
- to make more of the desired deterrent effect by leaving potential defrauders in no doubt as to the very serious consequences awaiting anyone committing an illegal act of this type.

The choice of cases was dictated by these objectives rather than by any attempt at geographical or sectoral balance.

Procedures subsequent to an investigation can be very lengthy, whether they are accounting procedures to recover the amounts or court proceedings to punish acts of fraud. The same is true of measures to follow up success in the field, for example the time it takes to make the appropriate changes to Community legislation most vulnerable to fraud. In this context, it must be noted that it is the responsibility of the Member States¹¹¹ and not the Community to bring actions before the courts to recover amounts and prosecute persons guilty of fraud. By the same token, it is the responsibility of the

¹¹¹ Except in the case of direct expenditure (see Section 5 of this chapter, page 66).

Community legislator (the Council and Parliament) to amend and/or supplement the legal arsenal, since the Commission's powers are merely to submit proposals for this.

As in the 1993 activity report, the investigations discussed here are broken down into sections according to main case type or budget heading and relate to:

- investigations into cross-border (import/export) fraud affecting Community revenue or a particular area of budget expenditure and, therefore, requiring internal coordination within the Commission;
- investigations relating to the financing of the common agricultural policy;
- investigations involving traditional own resources;
- investigations involving structural policies;
- investigations into irregularities involving direct expenditure managed by the Commission.¹¹²

Each section will deal with developments in the major on-going cases discussed in previous annual reports and describe the main significant files opened in 1994. Major cases under investigation by the Commission subject to special monitoring by SG/UCLAF are stored in the pre-IRENE database,¹¹³ which can perform a whole range of analyses as is done with cases reported by Member States where the necessary investigations are the responsibility of the national authorities.

SECTION 1: CROSS-BORDER (IMPORT/EXPORT) FRAUD

This section covers cases affecting several Member States involving both revenue (customs duties, import levies on products from non-member countries) and expenditure (export refunds).¹¹⁴ These are complicated cases which have to be handled in close cooperation with the national authorities of the country where the fraud was detected and of the countries to which it may have spread in cases where organized smuggling networks are operating. Organized financial rackets make use of sophisticated procedures to set up fraud circuits for transporting goods, in particular involving substitution of certain products depending on which measure they are designed to abuse. The response to this must be suitably targeted and in proportion to the crime, which is the thinking behind the Commission's new policy, incorporated in the anti-fraud strategy, of supplying

¹¹² This refers to contracts concluded directly between the Commission and end-beneficiaries in Member States which are not the responsibility of national administrations as regards management, monitoring or control.

¹¹³ See the item concerning the developments in intelligence (databases) in Chapter 2, Section 1, page 24.

¹¹⁴ Cases of cross-border fraud not involving import or export are dealt with in other relevant sections.

technical assistance to operational units in the Member States backed up by the provision of extra resources to the equivalent departments in the Commission. The latter must have available the necessary instruments in both the technical (information networks, databases remote sensing systems,) and legal fields (powers of investigation, specific offence).

Interaction between Commission departments and national departments and sound cooperation with non-member countries which are also involved is based on systematic exploitation of an "intelligence" strategy.¹¹⁵ Cooperation with national authorities is now operating effectively and efficiently, although an assessment of the results will only be possible in the long term.

1. New cases

1.1 Imports of milk powder into the Community

- Checks carried out in 1992 on customs documents drawn up in Antwerp (Belgium) for consignments of milk powder from non-member countries (Austria, Czech Republic, Poland and Slovakia) via Spain revealed that transit documents had been wrongly discharged for about 4 000 tons (or approximately 200 lorry-loads) of the product which was not subsequently released for sale at the import destination. The amount of agricultural levies evaded in this way is in the region of ECU 9.5 million. It was noticed that there had been an increase in Spanish exports of milk powder between 1991 and 1993, so inspections were organized on businesses entitled to export refunds for quantities of milk powder outside the external Community transit procedure.¹¹⁶
- Checks carried out on the selected businesses by the Spanish authorities further revealed that two of the businesses had been importing milk powder under false goods descriptions. A product called "SILITIR MMP" coming from Austria had been declared as "silicon soil".

The latter case of fraudulent importation involved 8 300 tons of milk powder being wrongly granted customs duty exemption. The amount of duties evaded is ECU 15 million.

- Furthermore, various cases of fraudulent importation into Spain of milk powder intended for export to non-member countries outside the external Community transit procedure involve British, Dutch, French and German companies and account for ECU 4.5 million in evaded duties.

¹¹⁵ See the item concerning intelligence in Chapter 2, Section 1, page 23 and Chapter 4 "Cooperation and partnership with Member States", Sections 1 and 2, page 36 *et seq.*

¹¹⁶ See Chapter 1, Section 5, page 13 regarding this procedure.

All together these fraudulent operations involving milk powder account for ECU 45 million in evaded duties. The Spanish authorities are continuing their investigations in conjunction with the Commission departments.

These cases highlight three key issues:

- a priority for the Commission in 1995 is to improve the Community transit procedure; this will involve raising political awareness of the risk of fraud in this area;
- the case involving SILITIR MMP illustrates how important and worthwhile it is to carry out physical checks on imports and analyses of imported products;
- the fraud mechanisms and techniques used as well as the complexity of the operations are proof that they were masterminded by criminal organizations.

1.2 Butter-based food product carousel

This fraud involved imports of a butter-based food product into the Community via San Marino from certain Eastern European countries. The product was imported into San Marino and Italy under a false description so as to evade payment of duties. This channel was organized within the Community itself, since the goods were never intended for sale in San Marino. It was discovered that the goods were exported to various Member States, converted into butter oil (98% liquid butter concentrate) and re-exported outside the Community with payment of refunds.

The levies evaded are estimated to be in the region of ECU 6.8 million, but the amounts wrongly paid are not yet fully known.

The Italian authorities, which are the principal party involved, are continuing their inquiries in conjunction with other Member States importing the product and with the assistance of the Commission. The main purpose of the inquiries is to establish the real destination of the products after they are imported into the Community: 300 tons of butter (with a value of approximately ECU 1 million) and 24 tons of milk powder have been seized and 17 people have been indicted.

Following their inquiries, the Italian authorities do not rule out the possibility that the perpetrators of the fraud have links with organized crime.

1.3 Butter, milk powder and sugar from the Czech Republic

Several cases are under investigation:

- Firstly, there are consignments of butter, sugar and milk powder to Morocco and Algeria via Spain with TIR carnets issued in the Czech Republic. The carnets had been discharged with false stamps from a Spanish customs office, giving the impression that the products had arrived at a Community exit point, whereas in

fact they had been placed on the Community market without completion of the necessary formalities.

An administrative cooperation mission carried out in the Czech Republic under the protocol on mutual assistance established that own resources worth ECU 20 million were involved.

- Secondly, consignments of butter were found to have been sent from the Czech Republic to the Netherlands, from where they were re-dispatched after storage to Italy via Switzerland.

The butter, which appeared to be of Czech origin, entered Italy under a false description and was placed on the market as margarine, thus avoiding the payment of levies. At the same time, Community margarine had been put in the place of this butter in the warehouse and then exported to Russia receiving the refunds applicable to this product.

According to preliminary information, 500 tons of products are involved, accounting for evaded duties and levies of ECU 1.5 million for the consignments discovered to date.

1.4 Export of cheese, meat and dairy products

These products were exported from Denmark and Germany to non-member countries and then re-imported into Greece.

Checks carried out by the Greek authorities at the Commission's request showed the administrative documents to be false; the import certificates referred to exports to Bulgaria, Jordan and Lebanon, for which larger refunds had been received. The documents proving that the consignments had reached their place of destination were discovered to be false, for the goods had been re-dispatched to Greece under cover of false certificates.

<p>The refunds in question are in the region of ECU 1.8 million in the case of Germany and ECU 2.1 million in the case of Denmark. Investigations are continuing to identify the perpetrators and bring them to justice.</p>
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2. **Old cases**

2.1 Refined sugar

Here is a summary of the further developments in this case in 1994, in particular the legal and financial outcome:

- One of the perpetrators was sentenced to a year and a half in prison in the Netherlands, while the cases against other suspects are still continuing. The case involves a total of 3 448 750 kg of sugar in 140 consignments. The Netherlands has already initiated procedures for recovering the duties evaded, which amount to ECU 2 078 138;

- Three people were arrested in Italy and one in France. A total of nine people are under investigation in Italy and the court is to decide on possible indictments in April 1995.

The quantity of sugar seized in Italy in 1993 was 97 237 kg. A total of 3 226 513 kg of sugar was fraudulently placed on the market, including 2 552 763 kg in Italy and 673 750 kilos in the south of France, and therefore could not be seized.

The levies evaded total approximately ECU 1.4 million.

It has not been possible to dismantle the organisation and origin of the contraband goods other than by recourse to investigation techniques especially adopted to combat this kind of organisation, in particular by surveillance of the sugar consignments. Legal proceedings are still under way, in particular in the Netherlands and Italy.

2.2 Meat carousel

This fraud involved importing live cattle from Eastern Europe into Italy under the inward processing arrangements and exporting beef to non-member countries.

The Italian *Guardia di Finanza* are continuing their investigations in conjunction with the Commission. The financial implications of this fraud are now estimated to be in the region of ECU 15.7 million in terms of own resources evaded and ECU 29.4 million in terms of wrongly paid out refunds.

In the course of the investigations the Commission conducted a mission in Malta together with the Italian authorities. Thanks to the cooperation of the Maltese authorities, proof was found that many container ships in Malta had been reloaded and sent on to Croatia via Italy. On-the-spot investigations in Croatia revealed that the goods never reached their destination. Furthermore, many of the containers imported into Malta were not even half full or contained only offal or low-quality offcuts.

This fraud was committed by an organization with close links to organized crime in Italy. It was made possible by the corruption of numerous national officials. The dismantling of the organisation was achieved thanks to the close cooperation of the police, magistrates and Commission investigators. Prosecution proceedings against 60 people are to begin in March 1995.

2.3 Milk powder and cheese

Investigations have been completed and a summary list of charges was issued on 29 November 1994. Prosecutions are under way and procedures to recover the ECU 4.9 million of evaded levies from the importers can now be initiated by the Belgian customs authorities without having to wait for the final court judgment.

2.4 Olive oil

The legal proceedings which were initiated in 1992 enabled the Italian authorities to indict five people for importing olive oil from non-member countries using false transit documents. During the proceedings a Commission investigator was able to give evidence of the established facts. Judgments are expected by the end of 1995 and the prospects of recovering the money are good, since the authorities managed to take all the appropriate distraining measures from the outset.

The *Guardia di Finanza* has also launched several other enquiries into olive oil, particularly as regards granting of consumption aid (bottling). Several new cases of fraud have come to light: companies specializing in bottling had been issuing fake purchase invoices for olive oil which was in fact vegetable oil (sunflower oil, rape seed oil). These practices were borne out by on-the-spot investigations.

As regards the new cases of fraud, it should be noted that the practices discovered in the course of investigations had already been identified by checks using risk analysis techniques.¹¹⁷

2.5 Milk powder

Here is an update on the proceedings against the accused company:

- on 11 April 1994 the examining magistrate at the court in Cremona drew up a request for two people to be indicted and appear before the preliminary investigation judge;
- on 11 May 1994 the preliminary investigation judge fixed the date for the first hearing for 12 October 1994;
- on 5 November 1994 the same judge decided that the trial would begin on 21 February 1995.

SECTION 2: FINANCING THE COMMON AGRICULTURAL POLICY

These investigations mainly cover export refunds, which are the largest single item in the EAGGF-Guarantee budget, accounting for approximately 30% of total funding. Other significant illustrative cases have also been selected regarding specific aid measures, in particular production aid.

1. **New cases**

1.1 Butter and olive oil exports

¹¹⁷ See the item concerning risk analysis in Chapter 2, Section 1, page 28.

During a Commission inspection visit to Hungary together with the Italian authorities, the Hungarian authorities carried out checks on the authenticity of certain documents which had been submitted to the Italian authorities for the purpose of obtaining refunds on butter exports. The documents were found to be fake. Evidence was collected on the spot indicating that the product that had been transported was not butter; armed with these facts, the Italian authorities were then able to identify other fake documents which had been submitted for olive oil export refunds.

Investigations are continuing in Italy, in particular to establish the sums involved.

The evidence collected proves the involvement of criminal organizations. The case highlights the need for local authorities (including payment agencies) to be on their guard when checking documents intended to prove that products have reached their destination.

1.2 Abuse of the regulations on the special aid for hill and mountain areas and the suckler cow premium

On the basis of information reaching the Commission, in particular the EAGGF departments, and subsequent examination of the files, several irregularities came to light, leading the EAGGF departments to organize an inspection visit to Haute-Corse (France) regarding implementation of the regulations on the special aid for hill and mountain areas and the suckler cow premium.

- the special aid for hill and mountain regions was introduced in the Community in 1975 and is intended for farmers with farming as their principal occupation who are permanently resident in a mountainous area where they keep their livestock eligible for premiums during wintering. Persons with farming as their secondary occupation may also be eligible, depending on their level of income and only in mountainous and extremely mountainous areas. In all cases the animals must be identified;
- the suckler cow premium, which was introduced in 1980, has become more important with the reform of the common agricultural policy; persons raising a herd of suckler cows for meat production are eligible.

Since 1 February 1993 these aid arrangements have been implemented within the framework of Council Regulation (EEC) 3508/92 on the Integrated Management System.¹¹⁸

The purpose of the visit to Haute-Corse (8-16 September 1994) was to check what was behind the irregularities discovered in the dossiers and to establish whether there was any link between the aid received as special aid for hill and mountain areas and suckler cow premiums and the forest fires which have broken out in Corsica over recent years.¹¹⁹

¹¹⁸ OJ L 355, 5.12.95. See the annual report on the fight against fraud for 1993, cited above.

¹¹⁹ The Commission's departments dealing with the environment had received information suggesting

The results of the enquiries highlighted three points:

- The French authorities should take concrete steps against the people who committed the irregularities;
- As regards the special aid for hill and mountain areas, serious problems were discovered with the management and supervision of the system in 1993, which was the year on which the checks were carried out. There is, however, good reason to believe that the state of affairs discovered during the inspection visit was not specific to 1993 as regards the management and supervision operated at the level of the *département*. The French authorities should therefore audit the terms on which the premiums were granted over the period 1988-92 by examining in detail the files on all recipients in Haute-Corse. EAGGF advances and payments for 1993 have been suspended in full pending the regularization of the individual cases referred to above. Advances and payments for 1994, and possibly subsequent years too, are also being suspended, until the French authorities have taken the necessary administrative steps to ensure that the system is applied in accordance with Community and national legislation.
- As regards the suckler cow premium, for 1994 the Commission is to make a 50% across-the-board reduction for applications submitted in 1993 (on a base of approximately ECU 3.8 million, including premiums for extensive farming).
The payment of premiums is being suspended for 1995 (applications lodged in 1994) and possibly also for subsequent years. The suspension will continue until the French authorities implement management and supervision structures that meet the requirements of Article 8 of Council Regulation (EEC) No 729/70.¹²⁰

The Commission is quite prepared to assist the French authorities in researching and adopting specific solutions so that this affair will serve as an example for similar regions elsewhere in the European Union.

1.3 Tobacco exports to Romania

Between December 1992 and May 1993, sixty-three containers of tobacco were unloaded at the port of Constanța. The tobacco, which was being exported by six Italian companies, was on its way to Bucharest and was stored in Constanța waiting for customs procedures to be initiated.

that the prospect of receiving these subsidies was behind the forest fires which broke out in Corsica in the summer of 1994.

¹²⁰ OJ L 94, 28.04.1970. See the annual report on the fight against fraud for 1993, cited above.

Since the plant health documents needed for customs clearance were not available, the company importing the tobacco in Bucharest did not submit an import declaration. The Romanian authorities therefore carried out checks on the goods so as to decide what should be done with them.

The checks revealed that most of the containers were filled with waste paper and plastic and mouldy tobacco waste. So the Romanian authorities decided to reload the goods back onto the ship which had brought them from Italy.

Commission departments are currently investigating the payment agency in Rome (AIMA) to ascertain what refunds and/or premiums may have been paid for this tobacco: as things stand, it looks as if about ECU 260 000 should be recovered as well as about ECU 2.2 million in premiums.

The Commission has decided to put an end to refunds for tobacco

1.4 Grape must exports

This case was discovered in the second half of 1993 when the Dutch authorities realized that large quantities of concentrated grape must had transited via Rotterdam.

The investigations revealed that following an increase in production capacity Spain had increased its exports of this product by a high rate from November 1991 onwards. There were serious doubts concerning the real destination of the quantities shipped to Sweden.

A mission in Sweden in March 1994 examined the supporting documents of three importers. It was found that at least a good part of the consignments sent to Sweden had immediately been re-exported to the United States and Canada, countries for which export refunds are not payable.

It was clearly demonstrated that the Spanish exporters concerned had intended all along to send the must to the United States and Canada. The investigations are now in the closing stages and the procedure for recovering the amounts which the Spanish authorities have identified as having been wrongly paid (around ECU 17.7 million) has begun.

Payment of refunds for Sweden was suspended as soon as the fraud was detected. The same flows were continuing via Norway, for which export refunds are also payable. As a result of these findings it was decided to halt all refunds for concentrated grape must.

1.5 Wine exports to Croatia

The Commission was tipped off that large quantities of wine exported from Spain to Croatia were actually ending up in Germany.

A mission to Croatia in November 1994 found that Spanish concentrated grape must had been added to Croatian wine which had then been exported to Germany. What is more,

the grape must in question had been under a temporary import arrangement in Croatia.¹²¹ The requirements of Article 18 of Council Regulation (EEC) No 3665/87¹²² had clearly not been met.

The Spanish authorities have been requested to recover refunds wrongly paid. The other Member States concerned have also been informed.

1.6 Beef exports to Egypt (rejection of certain consignments)

The Egyptian authorities rejected certain consignments of beef exported from the Community for which full refunds had been paid. The Member States concerned are the Netherlands, France, Ireland, Germany, Italy and Belgium.

An on-the-spot inspection revealed that 258 118 boxes in 48 consignments (a total net weight of 6 319.324 tonnes) between September 1991 and September 1993 had been rejected.

The export operations concerned were identified. One of the reasons for rejection was that the meat was of poor quality and did not satisfy the health requirements (high level of bacteria).
Recovery procedures have been initiated.

2. **Old cases**

Listed below are the main cases under investigation where there were significant developments in 1994:

2.1 Durum wheat: intervention stocks and pre-financing

Checks carried out in May 1993 established the final amounts of storage cost advances to be recovered in connection with the clearance of accounts (Italy: 1993 financial year). A total of ECU 62.4 million has already been recovered by deduction from advances due to Italy.

As regards payments made to pre-finance export refunds, the Italian Ministry of Finance has initiated the necessary proceedings to recover the amounts.

In both cases, legal proceedings are under way in addition to the administrative procedures to recover the amounts.

¹²¹ This arrangement, which also applies to tobacco, allows imports at a very low rate of duty. It is open to abuse, in particular in countries currently experiencing serious economic problems.

¹²² OJ L 351, 14.12.1987. This article concerns the provision of proof that the customs formalities relating to release for home use in the importing country have been satisfied.

Following the large-scale investigations carried out in Italy in May 1993, which revealed non-existent stocks, in December 1993 the Commission went on to conduct special investigations on the last group of warehouse owners who had not been inspected in Sicily and Sardinia. The investigations revealed discrepancies in the quality of the products being stored and the case is being examined with representatives of the parties involved to assess the financial impact of this fraud.

2.2 Olive oil in intervention

Investigations conducted in Italy on the 1991/92 and 1992/93 harvests finally established that 1 300 tons of the olive oil was of inferior quality. Since the findings revealed that the oil was not eligible for intervention, the Italian authorities have asked for a second expert opinion.

The financial implications of the case will be settled when the 1993 accounts are cleared.

2.3 Cotton production aid

Since the audits conducted in Greece revealed that the inspection system operated by the Greek authorities was not sufficiently reliable, the Commission applied a 25% financial adjustment on the expenditure declared by Greece for 1992.

A working party made up of officials from the Greek Ministry of Agriculture and the EAGGF was set up to examine improvements that could be made to the existing Greek inspection system. Regular meetings are to be held with a view to submitting a summary report towards the end of 1995.

SECTION 3: TRADITIONAL OWN RESOURCES AND OTHER CASES OF MUTUAL ASSISTANCE

The Community budget contains various types of revenue, including customs duties and agricultural levies (the "traditional own resources"), the VAT resource¹²³ and the "fourth resource" based on the Member States' GNP.

The cases discussed in this section concern, as regards the financial impact, only traditional own resources, which account for about 20% of all budget revenue. Cases of fraud and irregularities are not formally reported to the Commission by Member States as the Community's financial interests are only indirectly affected.¹²⁴

¹²³ See the three-yearly report prepared by DG XIX (Budgets) on VAT control and recovery procedures, produced pursuant to Article 12(3) of Council Regulation (EEC, Euratom) No 1553/89 (OJ L 155, 7.6.1989).

¹²⁴ Reports on traditional own resources are provided for in Council Regulation (EEC, Euratom) No 1552/89. See Annex 1 for details.

Pursuing customs fraud cases in 1994, the Commission organized 13 investigation missions to non-member countries¹²⁵ by teams of Member State officials led by Commission officials and eight missions by teams composed solely of Commission officials.

The Commission regularly had to remind certain Member States, firms and professional associations of their obligations as declarants (principals). Some claimed ignorance of them and neglected them when signing business contracts and insuring against risks. The declarant is liable to the customs of the importing Member State for payment of the duties ultimately found to be due by reason of the goods' origin, nature, value and so on, even if the declaration is made in good faith.

The recovery of duties merely rectifies the situation of the goods in terms of the amounts lawfully due. It is not a penalty designed to punish misconduct by the importer. Sums are accordingly recovered from the declarant whether there was fraud or just an irregularity.

The Commission routinely notifies the Member States of all information gathered in the exercise of its powers so as to facilitate their investigations and help them establish own resources that have been evaded.¹²⁶

1. New cases

1.1 Industrial goods and textiles

Cases handled here involve unwarranted applications for preferential schemes and attempts to circumvent common commercial policy measures, including anti-dumping duties and quantitative restrictions imposed under textile agreements. From the beginning of 1955, the Commission introduced an instrument enabling it to act more effectively to avoid circumvention of quantitative limits.

The commonest fraud technique is to present false declarations of origin, especially for textiles from less-developed countries, GSP countries (e.g. Bangladesh), ACP countries (e.g. Lesotho or Kenya) or countries with which the Community has not signed textile agreements imposing quantitative restrictions or dual controls.

The following investigations were conducted under the TAFI programme¹²⁷ in 1994.

Textiles and clothing from Kenya

¹²⁵ Under Council Regulation (EEC) No 1468/81.

¹²⁶ See Chapter 6, Section 3 "Financial monitoring of fraud cases - recovery", page 70.

¹²⁷ See the item concerning the TAFI programme in Chapter 4, Section 3 "Organizing operational cooperation - within the Community", page 40.

The Commission organized two missions to Kenya, the first in June/July to set up the investigation, which then took place in September and October. The object was to look into the validity of goods movement certificates issued in Kenya and presented upon importation of textile products into the Community.

The Kenyan authorities subsequently acknowledged that over 200 certificates issued for T-shirts were invalid, as the T-shirts had never been in Kenya but were imported into the Community from the United Arab Emirates. Other, comparable goods had actually been manufactured in Kenya but from non-ACP materials (the impact here was primarily financial).

Most of these imports were into Belgium, France, Germany, the Netherlands and the United Kingdom.

The amount of own resources at stake was of the order of ECU 2 million. The Kenyan authorities were asked to continue their investigations into manufacturers that had admitted having bought non-originating materials so as to ascertain whether the resultant end products had been exported with false certificates of origin. The figures may have to be revised upwards, but the true origin of the goods cannot be finally established until further investigations have been carried out, notably in the UAE.

The information yielded by the investigations provides the Member States with the means to commence their own investigations into the importers and to recover the amounts evaded. The Dutch authorities have already informed the Commission that they have recovered about ECU 900 000. The Dutch importer has been sentenced to 6 months in prison plus a further 6 months suspended, and ordered to pay a fine.

Textile goods and bed linen from Bangladesh

A Community administrative cooperation mission went to Bangladesh in December to work with local authorities on checking the validity of a large number of GSP certificates of origin issued there and presented with goods being imported into the Community. It was found that 115 certificates relating to 1200 tonnes of bed linen were entirely false, as the goods were exported from Pakistan or other non-member countries via Hong Kong or Singapore and never even passed through Bangladesh. A further 88 certificates were issued by the Bangladeshi authorities but for goods not complying with GSP rules of origin.

Investigations are still in motion to determine the true origin of goods not manufactured in Bangladesh and ascertain the own resources impact (estimated at ECU 2 million).

Investigations of this type always require the full cooperation of the country or countries concerned. Bangladesh has been exemplary in this respect.

Textile goods from Pakistan

A mission to Pakistan in January 1994 to investigate a source of fraudulent imports revealed that about 2000 tonnes of products originating there had been declared as originating in Bangladesh and the United Arab Emirates when imported into the Community. The goods included T-shirts for the United Kingdom and bed linen for Belgium (false certificates issued in Switzerland) and the Netherlands.

Own resources of around ECU 1 million are involved.

In 1995 the Commission is planning to open consultations for the adjustment of quantitative limits to take account of quantities that had been proved by documentary evidence to have originated in Pakistan.

Textile goods from Lesotho

Following joint inquiries conducted with the Lesotho authorities in February 1994, Lesotho agreed to withdraw over 600 certificates of origin for textile products, notably jeans and trousers, where there was no evidence of preferential origin, but without impact on the textile agreements since the country of origin for the purposes of the agreements would have been either Lesotho or Ciskei.

Germany is to recover the own resources evaded, running to over ECU 1 million.

Other products: cigarettes

The chief aim of the Tobacco Task Force¹²⁸ is to combat the fraudulent machinations of organized crime. Through cooperation with the Member States the Commission has been able to establish a common strategy in this matter involving action on four fronts - administrative, legal, technical and operational. Regarding the operational angle, work done in 1994 revealed six new cases in which cigarettes evaded the normal transit arrangements (Community/common and TIR); the duties evaded come to over ECU 116 million.

An administrative cooperation mission to Hungary in December revealed 70 consignments totalling about 10 million cigarettes exported from Hungary to the Community with TIR carnets discharged with false stamps so that the cigarettes evade the normal procedures. This case alone involved the evasion of around ECU 69 million in customs and excise duties and VAT.

The comprehensive strategic approach is more effective than a country-by-country case-by-case approach; it illustrates the usefulness of the task force technique. In the case in issue, investigations are continuing with a view to obtaining the requisite evidence for use against those who, often outside the Community, are responsible for setting up the fraud.

¹²⁸

See Chapter 4, Section 3 "Organizing operational cooperation", page 40.

1.2 Agricultural and fishery products

There is a long tradition of abuse of preferential import arrangements for fisheries products obtained from fish caught by ships not having an eligible nationality, and every annual Commission report describes irregularity cases. But this year for the first time falsified certificates of authenticity of beef products were found.¹²⁹

Abuse of transit schemes has become common since 1990 in agricultural import and export business with Central and Eastern Europe; there were as usual several such cases in 1994, though fraud techniques have evolved, particularly as regards false descriptions of nature.

These cases point up the need for close cooperation with the authorities in countries in the European Economic Area and Central and Eastern Europe, with which the Community has agreements containing mutual assistance clauses. There is still a problem with Switzerland, which is where many fraud schemes are based. The Community has enjoyed the assistance of the Geneva-based International Road Union (IRU), which is responsible for managing the TIR (International Road Transport) scheme.¹³⁰

Canned tuna from Ecuador and Colombia

Three administrative cooperation missions went to these countries (two to Ecuador and one to Colombia) to investigate certain canned tuna products imported into the Community with GSP certificates of preferential origin.

There were doubts about some of the products, which had been manufactured from fish caught by vessels not having Ecuadorian or Colombian nationality as required by Community legislation. Suspicions were substantially borne out; the own resources evaded are estimated at around ECU 6 million in each country, a total of ECU 12 million in all.

A part-solution emerged with the entry into operation of the Andean regional cumulation of origin on 15 December 1992 and the cumulation with the Community on 7 January 1995.

Orange juice from Israel

Analyses run at the Commission's request and expense revealed that samples of goods imported from Israel and labelled 'orange juice' either were not eligible for the description or were not manufactured exclusively from oranges and concentrates of Israeli origin. This proves that the preferential scheme set up by the EC/Israel cooperation agreement was being abused.

¹²⁹ See the discussion of this case under "Old cases (Agricultural and fishery products)", page 62.

¹³⁰ See Chapter 1, Section 5, page 14.

The administrative cooperation provisions will have to be activated to clarify the situation.

2. Old cases

2.1 Industrial goods and textiles

The Commission sent the Member States' investigation departments 33 additional reports on cases commenced in recent years, the most important of which are summed up below.

Car radios from Indonesia

The Member States commenced recovery proceedings following investigations undertaken in 1993 (including the mission on the spot) and 1994.

Radios were assembled in Indonesia from components mostly imported from other countries (especially South Korea). They were thus ineligible for generalized preferences. Many of them had actually to be regarded as originating in Korea, making them subject to anti-dumping duties.

There were a number of difficulties in administrative cooperation with the Indonesian authorities. The total amount of duties involved is estimated at ECU 16 million.

Two points are worth noting:

- the potential problem was detected by Commission staff on the basis of an analysis of intelligence (examination of statistics of exports from Korea and Indonesia; investigations began very early and the fraud was halted very quickly (case solved in a year);
- where the Member States' customs authorities require securities to be lodged for anti-dumping duties well before the investigation is at an end, recovery is all the easier.

Turkish TV sets

The Commission has reminded the Member States that the existing regulation required them to recover customs duties chargeable on goods not eligible for free movement under the Association Agreement with Turkey and accordingly not eligible for the preferential treatment applied for by Community importers.

The Commission has pursued its efforts to persuade the Turkish authorities of the need for practical measures to ensure proper application of the agreement to all industrial goods.

The Commission has reminded Member States where importers are established of the need to issue the regulations required by the Community Customs Code¹³¹ regarding

¹³¹ Council Regulation (EEC) No 2913/92: OJ L 302, 19.10.1992.

recovery of the customs debt. It wrote asking them to collect duties evaded forthwith, subject to any limitation periods that might be applicable.¹³²

Apart from the anti-dumping duties payable, given that the goods concerned were of Korean origin, the total sum at stake was more than ECU 45 million.

The real problem is that an individual case has highlighted a basic shortcoming in that the Turkish authorities manifestly failed to comply with signed agreements by not setting up proper inspection arrangements and by not collecting sums due.

This case highlighted the importance of implementing and monitoring the customs provisions in agreements with non-member countries. Nor did the case do anything to answer the question of other goods traded between Turkey and the Community.

These matters will need clarifying to provide an assurance as to the future of trade with Turkey before the customs union can be completed.

Video cassettes from Macao

Following a ruling from the Customs Code Committee in May, it was officially determined that the relevant goods had benefited unduly from GSP treatment and that the imports had been made in such a manner as to circumvent anti-dumping duties applicable to goods originating in China.

The duties evaded on imports over three years are estimated at ECU 48 million (of which anti-dumping duties account for ECU 45 million).

Textile products of Chinese origin circumventing quantitative limits

Textile negotiations with China (silk, ...) have begun. There were consultations in 1994 on adjustments to quantitative limits for certain product categories to reflect patterns of imports into the Community between 1990 and 1993 from various origins. Proof of Chinese origin of these products (T-shirts and pullovers) was gathered in the course of investigations conducted in the Community and a number of non-member countries.

China has agreed that 9.3 million items may be charged to its quantitative limits over a three-year period.

¹³²

Importers having contractual relations with Turkish exporters must insure against normal international trade risks but can, of course, claim compensation from their Turkish correspondents for any loss sustained as a result of *ex post* recovery of the Community customs debt and in future include clauses in their contracts providing explicitly for such compensation in such cases (failure to abide by bilateral agreements).

Textile goods from the United Arab Emirates

There were several investigations relating to textile goods imported from the United Arab Emirates into the Community; they all concerned trans-shipments, notably of:

- T-shirts declared to originate in the UAE (a non-preferential origin) but suspected of actually coming from China, India or Pakistan;
- T-shirts declared to originate in various ACP countries (Kenya, etc.) and GSP countries (Nepal, etc.) but suspected of actually coming from China, India or Pakistan. About 20 million items are involved, the own resources impact being estimated at ECU 5 million);
- bed linen imported via Switzerland and declared to originate in the UAE but suspected of actually coming from Pakistan (suspicion confirmed in part).

Investigations in these cases were pursued in connection with missions undertaken in Pakistan and Kenya in 1994.¹³³

2.2 Agricultural and fishery products

Fishery products from Norway

It was agreed in March 1993 that the Norwegian authorities would undertake the necessary investigations to check the position of fishery products exported to the Community under a preferential arrangement where some of the ingredients were non-originating.

An interim report was received in January 1994. The Norwegian authorities subsequently cancelled lists of certificates of origin issued because the products did not have originating status.

All the Member States, but especially Portugal, are involved in recovering own resources, the amount of which has not yet been determined.

Canned tuna from Thailand

Proceedings are currently in progress before the courts in the Netherlands, Germany and Denmark for the recovery of duties on imports of canned tuna accompanied by certificates of origin issued by the Thai authorities for canned bonito (*Sarda spp*).

¹³³

See the account of the mission to Kenya above.

The Commission removed canned bonito (*Sarda spp*) from its proposed GSP scheme for 1995 which was adopted by the Council on 19 December 1994. Abuse of the generalized system of preferences is therefore no longer possible.

Hilton beef from Argentina

The Argentine authorities contacted the Commission services in May 1993 about the possibility of a fraud in the area of import of beef meat into Germany. Following the on-the-spot mission carried out at the time, two further Community missions to Argentina, organized in conjunction with the authorities there in November 1993 and April-May 1994, established that more than 460 certificates of authenticity of Hilton beef presented in the Community in 1991 and 1992 were forged. Germany is by far the largest importing country in the Community, taking 80% of all Hilton beef imported from Argentina, but false certificates were also presented in the United Kingdom, Spain and the Netherlands.

In all over 4500 tonnes of falsely certified beef was imported into the Community, with a loss of own resources amounting to about ECU 18 million.

The documents gathered in the course of these missions and passed on to the Member States have provided them with the means of recovering duties evaded on the falsely certified beef. Investigations are continuing in both the Community and Argentina to elucidate the full circumstances of the fraud.

Cattle and beef from Eastern Europe

There has been much press coverage and many parliamentary questions concerning this major case of fraud against the transit arrangements which went on between 1988 and 1992. The cattle and beef theoretically intended for non-member countries were in fact removed from the transit arrangements and fraudulently placed on the market in the Community without payment of any import duties.

The estimate of amounts evaded has been raised from the initial ECU 17 million to ECU 33 million. Investigations are continuing in Germany, France, the Netherlands and Belgium.

This case prompted an amendment to the transit arrangements to restrict the use of the overall guarantee for certain sensitive products.¹³⁴

¹³⁴

See Chapter 1, Section 5, "The customs transit arrangements", page 13.

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While the financial aspect of recovery measures should not be neglected, the primary object of any fraud investigation must be to ensure that fraud does not happen and to break up fraud rings. Turning the spotlight on fraud and its perpetrators is a valuable deterrent; but the value of litigation, however resolutely it must be pursued, should not be blown up out of all proportion.

SECTION 4: THE STRUCTURAL FUNDS

1. New cases

1.1 European Social Fund

The Commission is in contact with the prosecuting authorities at Lanusei (Sardinia), who have had proceedings in hand since early 1993 concerning suspected fraud cases involving vocational training courses (via Contratti di Formazione-Lavoro) financed by the ESF and managed by the Sardinian regional authorities.

Several individuals, including a number of politicians and civil servants, are implicated. A mission there confirmed that there were a number of anomalies in the contract management procedures operated by recipient companies. Apart from anything else, there was no way of distinguishing training costs (if indeed there were any) and wage and salary costs.

An investigation was also commenced regarding a training scheme operated in the new Länder of Germany where an operator with a network of establishments in several Member States had misused funds.

A case now under investigation in Belgium originated in statements made in a weekly newspaper by the former director of an institute to the effect that he had made false declarations under duress in order to obtain ESF funds for the institute. Between 1989 and 1993 the institute received the equivalent of ECU 760 000 by way of co-financing for training schemes. But, he stated, these schemes never took place. The instructors mentioned in the file were research workers who had never done any teaching. The alleged trainees were institute staff working on routine analysis work sold commercially by the institute. The fictitious co-financing was drawn from the annual budget set aside by the provincial authorities for the institute.

The ESF is a specially sensitive area where the Commission has identified cases of fraud which are now being investigated; the problem is primarily, of course, that the services subsidized tend to be intangible.

1.2 EAGGF Guidance Section

In September 1994, when undertaking an on-the-spot inspection in Haute-Corse of the compensatory allowances scheme for stock farmers in mountain areas,¹³⁵ the Commission discovered that the scheme was operating in a somewhat unsatisfactory manner.

It forthwith suspended all payments under the Corsican SPD (single programming document), acting in accordance with Council Regulation (EEC) No 4253/88.¹³⁶ The French authorities have been asked to undertake further investigations to assess the scale of the problem and rectify the financial situation.

An investigation mission in Italy in September 1994 revealed a major fraud worth an estimated ECU 1.8 million affecting three projects running under Council Regulation (EEC) No 355/77.¹³⁷ The projects were for modernization of fruit and vegetable establishments belonging to the same company.

Community legislation was found to have been disregarded in a variety of respects: the projects had been altered without Commission approval, ineligible expenditure had been charged and the premises once constructed had been abandoned. Following the mission the Italian Ministry of Agriculture, Food and Forestry asked the Commission to disallow two of the three projects.

The Rome prosecution service has started an investigation.

1.3 European Regional Development Fund

One suspected case of fraud was detected in connection with a public works contract in Reunion. Payments have been suspended and the French authorities have been asked to conduct an administrative inquiry. They are looking into the matter.

This case suggests that a close watch should be kept on public procurement, particularly in the construction and civil engineering industries.

2. **Old cases**

What follows is a survey of main developments in cases announced in previous years' reports.

¹³⁵ Operating under Articles 17 to 19 of Council Regulation (EEC) No 2328/91: OJ L 218, 6.8.1991.

¹³⁶ OJ L 374, 13.12.1988; amended by Council Regulation (EEC) No 2082/93: OJ L 193, 31.7.1993.

¹³⁷ OJ L 51, 13.2.1977.

2.1 European Social Fund

The proceedings in the Milan courts concerning irregularities detected in ESF-financed projects in Lombardy are still in hand; they will take some time as there are 47 defendants and the procedure is inevitably complicated as a result. As was stated in the 1993 report, the Commission's *partie civile* status has enabled it to recover some of the money paid from the ESF even before the proceedings are terminated. So far it has recovered ECU 319 608.

The working group set up in 1992 to settle the ESF-Portugal case is continuing its business, though the case is a complex one involving hundreds of files. The deadline is 30 September 1995.¹³⁸

The case against the company accused of diverting ECU 2.7 million in Belgium, in which the Commission has joined *partie civile* proceedings, is still before the courts. Hearings were completed in 1994, but judgment has yet to be given.

Following investigations ordered by the Naples courts, a request has been made for seven airline officials, among others, to be indicted on financial charges (false accounting and invoicing, fraudulent overcharging by listing fictitious students and teachers and charging ineligible expenditure) in the execution of training schemes financed by the ESF and the EIB.

The investigation revealed that the company received financial support worth about ECU 5 million between 1985 and 1992; the exact amount unduly paid still has to be determined.

2.2 EAGGF Guidance Section

As a result of cooperation with the magistrates at Reggio Calabria and an on-the-spot investigation in January 1994, it was established that serious irregularities extended to olive oil storage and bottling facilities other than the Calabria regional centre at San Lorenzo, and specifically to the storage centres at Castri (Puglia) and Eboli (Campania).

The three centres had visibly never actually operated, for at both Castri and Eboli buildings were dilapidated, access roads were impassable and bottling machinery was neither bolted to the floor nor connected to vats.

The Commission commenced the procedure for halting assistance and recovering sums already paid out (approx. ECU 3 185 000); it joined *partie civile* proceedings to the prosecution at San Lorenzo.

¹³⁸

By virtue of Council Regulation (EEC) No 2052/88, as amended by Council Regulation (EEC) No 2081/93: OJ L 193, 31.7.1993.

2.3 Multi-fund Operational Programme

The court at L'Aquila, after 38 hearings, gave judgment on 21 June in the Abruzzi case; the 11 members of the four-party Regional Council were convicted of abuse of public office (cronyism) and sentenced variously to three years' imprisonment plus a further five years' disqualification from public office (the President of the Council) and to two years' imprisonment plus three years' disqualification (the ten Vice-Presidents). The President was further convicted of constructive forgery, since the official decision falsely recorded that the 2000 applications made had been subjected to comparative examination and that 460 had been selected as a result. The three Councillors were acquitted for lack of evidence.

The defendants have appealed. It should be noted here that the defendants were not discharged on the accusations of attempts to defraud the Community budget (Italian Criminal Code, Article 640bis).

SECTION 5: DIRECT EXPENDITURE

This new section deals with expenditure managed directly by the Commission itself under contract without any formal obligations being incumbent on the Member States as regards financial reporting or monitoring along traditional lines.

1. Environment

The Commission conducted an investigation in Italy when a firm failed to perform a Medspa contract¹³⁹ to set up a plant to recycle waste polyurethane varnish and sawdust into new materials within the period prescribed by the contract. The firm concerned had moved to another part of Italy and its sole Director had been replaced.

The project was never carried through and there were serious suspicions, based on information gathered in Italy, that the changes in the firm's location and management, for which there was no apparent reason, were made solely to shift the burden of the contract on to another person, who consistently denied all knowledge of it. The Commission has issued a recovery order in respect of the advances already paid out.

This case clearly illustrates the problem of subsidized projects that are executed inadequately or not at all. The Commission must recover advances paid in such cases.

2. Development cooperation

The Commission received a request for assistance from the German judicial authorities in connection with an investigation into alleged fraud against the Community budget by

¹³⁹ Under Council Regulation (EEC) No 563/91: OJ L 63, 9.3.1991.

those in charge of a non-governmental organization promoting two development projects financed by the Community and the German Government. The Commission had paid ECU 480 000 towards the projects, and was particularly keen to help the German authorities with their inquiries. The trial is in progress.

This is an exemplary case in that the Commission was answering a call for assistance from a Member State whose investigation into an NGO had revealed that Community money was involved.

3. Science, research and development

Several investigations are in hand in response to problems related to invoicing. These investigations concern some contracts in all the Member States.

An investigation has been launched in the Netherlands concerning irregularities in a project running under the Action Plan for the introduction of advanced television services in Europe.

4. Tourism

Investigations have revealed the existence of networks, apparently organized in all 12 Member States, set up to take advantage of Community funds by over-invoicing and by use of fictitious sub-contractors.

The Commission has asked several Member States under Article 209a of the EC Treaty to see that the proper authorities take the requisite action to pursue the investigations.

This is the first time that Member States have received such a request in accordance with the second paragraph of Article 209a of the EC Treaty as inserted by the Union Treaty, which reads: *'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.'*

*

* *

To conclude this section, the Commission is regularly at pains to see that investigations extend to new areas of direct expenditure where there is a risk of fraud or irregularities, notably where organized crime might be involved.

CHAPTER 6: STATISTICS AND ANALYSIS

The information in this chapter derives from the databases set up and managed by the Commission. The Commission, in conjunction with sectoral committees and specialized services in the Member States working within the framework of the Advisory Committee for the Coordination of Fraud Prevention¹⁴⁰ uses the information in coordinating and supporting action taken at national level, particularly against major cases of fraud.

The first section deals with the reports supplied by Member States under the sectoral regulations currently in force. The second section looks at the resulting data in the context of the development of the Commission's new sources of information such as the free phone¹⁴¹ or in the framework of exchanges of information in the area of "Mutual Assistance" in order to be able to assess the global financial impact of all irregularities. This is followed by an analysis of the comparative significance of irregularities in the different areas and different Member States. This will give an indication of the direction of future measures in the area of fraud prevention.

All the sections are accompanied by tables and figures illustrating the response of Member States and the Commission to the discovery of fraud or irregularities.

SECTION 1: REPORTS OF IRREGULARITIES FROM MEMBER STATES IN 1994

The cases of fraud and irregularities reported by Member States during 1994 under the current regulations¹⁴² are shown in Table 1 (EAGGF - Guarantee Section), Table 2 (Traditional own resources), and Tables 3 and 4 (Structural Funds).

Brief remarks on tables and figures

The number of cases reported is on the increase in all areas.

Table 1 shows all cases of fraud reported in 1994 involving the EAGGF - Guarantee Section, broken down by the year in which the fraud started, all of which were in fact

¹⁴⁰ See Chapter 4, Section 1, page 36.

¹⁴¹ See the item on the development of "intelligence" (new sources of information) in Chapter 2, Section 1, page 27.

¹⁴² See Annex 1 for the relevant regulations and Chapter 1, Section 3 "Structural operations - major developments", page 10.

detected in 1994. The length of time involved in the recovery procedures operated by national administrations is plain to see.¹⁴³

Table 2 lists the reports made in the first half of 1994 relating to own resources, showing the amounts involved and the breakdown of cases and amounts by Member State.

Reports concerning all structural measures are grouped together in Table 3 (Table 4 shows the corresponding amounts), and reflect recent legislative developments. A few points should be made concerning reporting requirements:

Member States are required to report irregularities by Article 23 of Council Regulation (EEC) No 4253/88, but because the Code of Conduct detailing the practical arrangements was annulled by the Court of Justice in 1991¹⁴⁴ new cases (or progress on old ones) were reported rarely if at all. By way of illustration, only 58 cases were reported between 1990 and 1993;¹⁴⁵

the adoption of Commission Regulation (EEC) No 1681/94 on 11 July 1994 marked the resumption of the reporting of cases of fraud and irregularities. In the first three months after the new Regulation came into effect, 22 cases were reported (the corresponding figure for the period of 1994 up to the new Regulation was 20);

the reports under Commission Regulation (EEC) No 1831/94 indicated that there were no cases of fraud. This was because Council Regulation (EEC) No 1164/94¹⁴⁶ setting up the Cohesion Fund only entered into force on 26 May 1994.

Figure 1 shows the total number of fraud cases reported involving traditional own resources and expenditure, as well as the amounts involved and the trend over the last four years.

Figure 2 shows, for each Member State, the number of cases notified over the last four years and the corresponding amounts (revenue and expenditure).

Figure 3 shows the various categories of own resources referred to in the reports received by the Commission.

Figure 4 provides the same detailed information in respect of the broad categories of expenditure under the EAGGF - Guarantee Section.

¹⁴³ See Section 3 below.

¹⁴⁴ See the annual report on the fight against fraud for 1991 (SEC(92)943 final).

¹⁴⁵ See the annual report on the fight against fraud for 1993, cited above.

¹⁴⁶ See Chapter 1, Section 3 "Structural operations - major developments", page 10.

Table 5 compares the cases notified by a Member State with the level of Community expenditure on the same Member State (EAGGF-Guarantee, Structural Funds). The same comparison is made for traditional own resources paid by a Member State into the Community's accounts and the cases notified in the same area.

SECTION 2: ANALYSIS OF DATA IN THE COMMISSION DATA BASES

Information on cases of irregularity is contained in the following databases:

- the IRENE base contains the reports from Member States concerning cases of fraud and irregularities in the field of traditional own resources, the EAGGF - Guarantee Section and the Structural Funds;
- the pre-IRENE base contains information on cases detected by the Commission and not reported by Member States;
- the "Mutual Assistance" base contains information on cases which have been the subject of an exchange of information in the mutual assistance framework¹⁴⁷ but which have not been formally reported in accordance with the Council regulations¹⁴⁸ concerned.

Table 6 shows irregularities detected in 1994. Taking into account the fact that information on 27% of the cases contained in the "Mutual Assistance" base originated from the Commission services, the formal reports from the Member States cover two thirds of the total amounts involved.

A more detailed statistical analysis of this data is being undertaken by the Joint Research Centre at Ispra. However, even a rough analysis of the data produces some interesting results, as the tables below show.

Sectoral analysis of the cases detected in 1994 involving the EAGGF - Guarantee Section indicates that some types of financing are highly vulnerable to fraud. Table 6 provides a more detailed picture of the measures concerned, where the aggregate sums involved exceed ECU 1 million. A large number of the cases reported concern direct aid schemes involving relatively small sums; a small number of cases, however, involve refunds (see table) where large amounts are at stake.

Table 8 shows how EAGGF - Guarantee Section frauds were detected in 1994; 42% of the total cases reported (accounting for 35% of the amounts involved) were detected

¹⁴⁷ Council Regulation (EEC) No 1468/81, cited above.

¹⁴⁸ Regulation (EEC) No 595/91 for the EAGGF Guarantee Section and Regulation (EEC, Euratom) No 1552/89 for traditional own resources, both cited above.

thanks to *ex post* document controls. Risk analysis¹⁴⁹ has an important role to play here in improving the targeting and effectiveness of controls.

SECTION 3: FINANCIAL MONITORING OF FRAUD CASES -- RECOVERY

Member States alone have the power to recover outstanding own resources or amounts wrongly paid under Community financing policies. For its part, in 1994 the Commission set about strengthening its operational activities and, under its strategy programme for 1994, embarked on positive action to ensure that procedures for recovering monies owed to the Community are properly monitored. The result is still not satisfactory.

The IRENE database should help make monitoring more systematic. Unfortunately there are still some areas where the regulations relating to financial monitoring of fraud or irregularities either do not exist or are insufficient. In 1994 the Commission therefore adopted various measures relating to the EAGGF - Guarantee Section and the Structural Funds;¹⁵⁰ a proposal for amending the own resources regulation still awaits a decision from the Council.

Shortcomings in the financial monitoring of expenditure led Financial Control (DG XX) to widen the scope of its report on the management of the Commission's direct debts¹⁵¹ to the recovery of indirect debts, responsibility for which lies in the first instance with Member States (own resources, EAGGF - Guarantee Section, Structural Funds). The report also deals with specific matters relating to the recovery of Community debts where cases of fraud or irregularity are involved. Some of the observations, recommendations and proposals in this report are dealt with below in so far as they concern the monitoring of recovery procedures.

1. Monitoring in respect of traditional own resources

1.1 Principles

The own resources Decision and its implementing 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. 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 is

¹⁴⁹ See Chapter 1, Section 2 on developments in agricultural regulations, and in particular the reference to the amendment to Council Regulation (EEC) No 4045/89, page 9.

¹⁵⁰ 18th report of the Financial Controller, the conclusions of which were formally adopted by the Commission on 28 April 1994.

¹⁵¹ See also the item on changes in the Commission's departmental organization in Chapter 2, Section 1, page 22.

satisfactory. If sums are not recoverable owing, for example, to bankruptcy or lapse of time, the onus is on the Member State to show that it has done everything possible to recover them if it is to be exempted from making them available to the Community.

IRENE is a documentary database containing information which can be used by the services concerned in the fight against fraud. Regulation (EEC, Euratom) No 1552/89 lays down that established entitlements that have not yet been recovered must be shown in a separate account ("B" account) and incorporated annually in the Commission's balance sheet and revenue and expenditure account. The quarterly statement which national authorities have to send the Commission allows it to verify that Member States are correctly recording in a separate account established entitlements that have not yet been recovered. The "B" account should also cover cases of fraud or irregularities involving entitlements of over ECU 10 000 reported under Article 6(3) of the Regulation as well as cases involving lower amounts. The accounts may also include amounts disputed by taxpayers, which may result subsequently in corrections to established entitlements.

The main difficulty in ensuring effective financial monitoring is that it involves two areas of competence: the investigation and reporting of fraud, and the entry of the amounts in the accounts (usually the responsibility of accounting departments). As a result, it is often difficult to establish a proper connection with the reports received from Member States. In other words, data obtained from IRENE cannot easily be compared with data from the B accounts kept by Member States; the latter correspond to established amounts, whilst the former are simply extracted from a report without the amounts in question having necessarily been established.

A further difficulty lies in the fact that there is no binding obligation on the part of the Member States to update regularly their reports. This obligation is part of the Commission's proposal on the amendment of the Council Regulation (EEC, Euratom) N° 1552/89.

Another problem stems from the incompatibility of the data stored in the three bases. The Commission will take the appropriate measures in 1995 to remedy this.

1.2 Methodology

At the end of 1992 the Commission proposed an amendment to Regulation (EEC, Euratom) No 1552/89, one aim of which was to provide for updating of reports of cases of fraud and irregularity and improved financial monitoring of recovery.¹⁵² However, the Council has not yet taken a decision on the proposal.

In the meantime, DG XIX (Budgets) has developed the following method based mainly on experience acquired since Regulation (EEC, Euratom) No 1552/89 came into force.¹⁵³

The two basic principles of the method are:

- to make the best use of the information available to the Commission; this information comes mainly from Member States, either in the context of administrative assistance, or in fulfilment of their obligations under Regulation (EEC, Euratom) No 1552/89 in respect of the establishment, entry in the accounts and the making available of own resources (quarterly statements and monthly statements of account,¹⁵⁴ reports on irrecoverable amounts);¹⁵⁵
- risk analysis¹⁵⁶ and sampling.

In its monitoring, the Commission therefore uses risk analysis in sampling cases of fraud and irregularities, since it cannot possibly follow up all the cases detected by Member States. Significant-size samples have been determined and the Member States' authorities are questioned until the case has been settled.

- Cases involving sums in excess of ECU 500 000 which have been reported under the regulations are monitored very closely. In money terms, such cases account for over 80% of the fraud and irregularities reported by Member States.
- Cases of which the Commission is cognizant, in particular under Regulation (EEC) No 1468/89 on mutual assistance (MA), are similarly monitored if they involve own resources in excess of ECU 1 million and meet a number of other criteria. This treatment is therefore reserved for cases of particular interest to the budgetary authority or the Court of Auditors, or for other cases which meet at least one of the following criteria (in addition to the financial one mentioned above): the involvement

¹⁵² See the item on developments in own resources legislation in Chapter 1, Section 1, page 7.

¹⁵³ See the corresponding section in the annual report on the fight against fraud for 1993.

¹⁵⁴ First subparagraph of Article 6(3) of Regulation (EEC, Euratom) No 1552/89.

¹⁵⁵ Article 17(2) of Regulation (EEC, Euratom) No 1552/89.

¹⁵⁶ See Chapter 2, Section 1, items 2 and 3, page 23 *et seq.*

of several Member States, investigation initiated by the Commission, or imminent expiry of the period of limitation.

The first sample ("Article 6(3) reports") has produced 99 cases for monitoring, and the second sample (MA and others) has produced a further six, relating to about 5 000 documents wrongly discharged or presented in error.¹⁵⁷

1.3 Recovery

Table 8 shows the situation as regards recovery of own resources, the total amount declared being given in Table 2.

In the 99 cases of the first sample, involving ECU 276 million, the Commission was able to ascertain that ECU 22.5 million had been recovered and that corrections totalling ECU 21 million had been made after examination of the cases by administrative or judicial procedures. Some of the Member States' answers are being scrutinized.

In the six cases of the second sample, the Commission has found that most of the amounts in question were entered in the accounts for amounts still outstanding (B accounts). A particularly close watch is kept on the situation concerning amounts actually recovered.

2. **Monitoring in respect of EAGGF - Guarantee Section expenditure**

2.1 Principles

The regulations concerning this category of expenditure do not require Member States to record amounts established but not yet recovered.

Accounts are only kept in respect of the amounts actually recovered by Member States or recovered from them (e.g. in cases of negligence) following an ad hoc decision by the Commission. The amounts recovered by Member States in the case of irregularities (within the meaning of Council Regulation (EEC) No 595/91) are, in accordance with the provisions of the second subparagraph of Article 8(2) of Council Regulation (EEC) No 729/70,¹⁵⁸ paid to the paying agencies and deducted by them from the expenditure financed by the Fund. Details of this accounting operation are given annually.

¹⁵⁷ This sample included the cases of the Turkish television sets and cattle and beef from Eastern Europe referred to in Chapter 5, pages 59 and 62.

¹⁵⁸ See Annex 1 on the regulations governing controls.

A distinction needs to be made between irregularities, where the national authorities retain 20% of any amounts recovered,¹⁵⁹ and amounts wrongly paid for any other reasons (e.g. negligence or mistaken beneficiary) where no such retention is made.

The system could be improved by making two adjustments:

The accounts are inadequate because they do not include amounts that have been established but not yet recovered. The Commission therefore proposes introducing a new procedure along the same lines as that for own resources described in Council Regulation (EEC, Euratom) No 1552/89, which stipulates that these amounts should be shown in a separate (B) account.¹⁶⁰

Statements of these accounts or of any other permanent record or list of Community debts would be communicated to the Commission; this information would be of help to both Member States and the Commission in managing and monitoring such debts.

Individual files on cases of fraud and irregularities could be checked during the on-the-spot control missions to ensure that Member States are making the correct accounting entries, including amounts written off and amounts that are irrecoverable owing to lapse of time. Such missions would also provide an opportunity for comparing the accounting and document systems (i.e. the reports Member States are required to make under Article 5 of Regulation (EEC) No 595/91).

Following the work of the Belle Group,¹⁶¹ the Commission has proposed an overhaul of the accounts clearance procedure¹⁶² in an attempt to address the growing difficulties encountered in implementing Fund expenditure. It has been decided to set up a Conciliation Body to reconcile the divergent positions of the Commission and Member States under this procedure.¹⁶³ In addition, ad hoc solutions could be sought for certain types of fraud, possibly by resorting to ad hoc financial adjustment procedures which are not tied to the accounts clearance timetable. The ultimate objective is to physically recover funds which have been misappropriated or employed for the wrong purpose and to ensure that defrauders receive proper administrative and/or criminal punishment.

¹⁵⁹ As provided under Article 7 of Regulation (EEC) No 595/91 in respect of cases reported under Article 5 of that Regulation. See Annex 1 for the rules governing the reporting of cases of fraud and irregularities in respect of the EAGGF - Guarantee Section.

¹⁶⁰ See previous item on own resources.

¹⁶¹ A group instructed by the Commission to propose improvements to the accounts clearance procedure.

¹⁶² Charging certain amounts to Member States in accordance with Article 8 of Regulation (EEC) No 729/70.

¹⁶³ Commission Decision of 1 July 1994 (94/442/EC), OJ L 182, 16.7.1994.

2.2 Recovery

Member States keep accounts only of amounts actually recovered, basic details of which are sent to the Commission (annual EAGGF Guarantee statements). They do not keep accounts of established amounts outstanding. The introduction of such accounts is one of the Commission's objectives, as stated above. Although the IRENE base is undeniably valuable from the documentary point of view, it cannot provide an accurate picture of the real situation regarding recovery in reported cases of fraud and irregularities.

Table 10 shows amounts recovered by Member State, without distinguishing between old and new cases. The highest recovery rate obtained is around 40% for amounts at national level, though the total at Community level for cases reported in 1994 is a mere 4%.

3. Monitoring in respect of structural measures and other expenditure

Table 11 below summarizes the situation as regards irregularities reported and amounts recovered by Member States:

Table 10

	Before 1.7.94 *	1.7.94 **	Total
Number of cases	78	26	104
Amount declared (ECU)	4 292 595	1 086 622	5 379 217
Amount recovered (ECU)	262 160	137 288	399 448

* Prior to implementation of Regulation (EEC) No 1681/94.

** Implementation of Regulation (EEC) No 1681/94.

Care should be taken in interpreting the figures concerning recovery since Member States are no longer sending in new reports¹⁶⁴ and the figures on earlier cases have not been updated. The situation will improve with the application of the abovementioned new regulation on irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organization of an information system in this field. It must also be borne in mind that irregularities found may also give rise to recovery from the end recipient and hence to a reduction in the Community contribution, even though there is no recovery in the strict sense, i.e. repayment to the Community budget. The reason for this is that the amounts recovered by the national authorities are reprogrammed and used for other projects.

¹⁶⁴ See Section 1 above, page 68.

As is the case for EAGGF - Guarantee Section expenditure, separate accounts are not kept for amounts established but not yet recovered. However, the matter is under study, particularly for cases reported after the reform of the Funds in 1989 and the general revision of 1993.

CHAPTER 7: ANTI-FRAUD APPROPRIATIONS

SECTION 1: BUDGET IMPLEMENTATION 1994

Anti-fraud appropriations in the 1994 budget totalled ECU 139.14 million in commitment appropriations and ECU 124.24 million in payment appropriations, including those entered in the reserve.

Most go to the national government departments responsible for inspections and investigations. The percentage allocated to the Commission to cover the requirements of its own operational departments is still tiny.¹⁶⁵ Nevertheless, the distinction between these two categories was more apparent in 1994, in line with the wishes of the budgetary authority. The anti-fraud appropriations allocated "exclusively" to the Commission included:

- appropriations for the functioning of the coordination unit (SG/UCLAF), including those assigned to internal operational support (a concept explained below);
- appropriations for the development of Community databases (IRENE and Pre-IRENE), the SCENT system, the TAFI programme and various studies and reports;
- appropriations used to set up a conciliation body as part of the reform of the procedure for clearing the EAGGF accounts.¹⁶⁶

These accounted for around 3% of all commitment appropriations. Nevertheless, this proportion was higher than the previous year, reflecting the political resolve expressed by the budgetary authority since 1993 to give the Commission extra resources to carry out its tasks.

While the initial allocation in the 1994 budget totalled ECU 139.14 million, this figure does not correspond to the appropriations actually available for use, as the Commission made various internal transfers over the financial year, subject to the approval of the budgetary authority and in accordance with the principle of sound financial management as laid down in Article 2 of the Financial Regulation.¹⁶⁷ There were also variations in the rate at which the appropriations available were actually used in the course of the financial year. Detailed explanations are given in the section below on the utilization rate for anti-fraud appropriations by heading and by sector.

¹⁶⁵ See the annual report on the fight against fraud for 1993 (cited above) for the recent trend in this proportion.

¹⁶⁶ See Chapter 6, Section 3 "Financial monitoring of fraud cases"... "EAGGF Guarantee Section", page 74.

¹⁶⁷ Basic Regulation of 21 December 1977, OJ L 356, 21.12.1977, last amended by Council Regulation (ECSC, EC, Euratom) No 2730/94, OJ L 293, 12.11.1994.

Before embarking on this detailed analysis, it is worth recalling that the operational appropriations in Part B of the budget are designed to benefit Member States in the form of technical assistance, a term which reflects the new thrust of the Commission's policy in this field, which has the encouragement and support of Parliament.

The appropriations in Part A are intended for administrative purposes and in this respect they too cover expenditure which benefits the Member States, for example through the financing of seminars and special training courses and also in the form of general subsidies to specialized national government departments.

1. Utilization of anti-fraud appropriations in the agricultural sector

These appropriations made up 93% of all anti-fraud appropriations in the 1994 budget. A breakdown of utilization by heading and by project is set out in Table 12. The comments below concern headings with a particularly large allocation, in respect of which appropriations were committed in accordance with the legal bases in force and in line with requests submitted by the Member States, the main beneficiaries.

1.1 Item A-3531 Controls, studies, analyses in connection with the fight against fraud

This heading contains non-differentiated appropriations, with equal amounts of commitment and payment appropriations. It covers various measures which extend beyond the end of the calendar year, so that the figure for utilization of appropriations at 31 December does not represent the final position for the budget year, which is not known until the third quarter of the following year. The corresponding tables therefore show only the utilization of appropriations at 31 December 1994, reflecting commitments in 1994 (Table 13). However, the final situation regarding appropriations paid from the 1993 budget is already known and is given in Table 14.

1.2 Article B1-360 Measures to combat fraud affecting the EAGGF Guarantee Section

The appropriations in this heading are also non-differentiated and, for the same reasons as in the previous heading, Tables 15 and 16 show the interim results for utilization at 31 December 1994 for the 1994 budget and the final outturn for 1993.

1.3 Article B2-511 Inspection in agriculture

The appropriations in this heading are differentiated.

A large proportion of the commitment appropriations and payment appropriations in the initial budget were made available again. There are two main reasons for this - non-utilization of the allocation earmarked for vineyard registers¹⁶⁸ and a drop in expenditure in connection with the olive oil control agencies as a result of fluctuations in exchange rates and a squeeze on working capital.

¹⁶⁸ See the annual report on the fight against fraud for 1993, cited above.

1.4 Article B2-519 Campaign against fraud in agriculture

This heading was first entered in the 1994 budget, at Parliament's initiative, to boost the resources available to the Commission for combating fraud. The initial allocation was substantial (ECU 2.5 million in commitment appropriations and ECU 1.5 million in payment appropriations), but, as a "mini-budget" heading, it fell foul of earlier instructions issued by the budgetary authority and confirmed by internal Commission instructions. It was therefore very difficult to use the appropriations, and those which were used were confined mainly to the financing of operational measures such as studies and the use of outside experts, etc.

Faced with this paradoxical situation, which was the sole reason for under-utilization, those responsible for administering the chapter proposed that the unused appropriations be reallocated in the annual transfer procedure submitted to the budgetary authority. As the budgetary authority decided against the internal transfer, the appropriations remained in this heading.

2. **Financial analysis**

2.1. Utilization of appropriations intended for agriculture

Council Regulation (EEC) No 307/91 provides for a system of co-financing by the Community to tighten controls on certain expenditure chargeable to the EAGGF Guarantee Section.¹⁶⁹ The co-financing is subject to a time limit and an annual ceiling of ECU 20 million (total amount available).

Expenditure declared by the Member States in 1993 totalled ECU 10.37 million, i.e. 52% of the total amount available (see Table 16).

The rate of utilization of Community appropriations varied according to Member State: it was high in Ireland, Germany, France and Denmark (between 52% and 80%) and about average in Spain and Portugal (45% and 50% respectively), while the United Kingdom, Greece, Italy and Belgium used a mere 11 to 17% of the amounts at their disposal. The Netherlands was the only country to use all the appropriations available and received additional financing in accordance with Commission Regulation (EC) No 1116/94.¹⁷⁰

The lion's share of expenditure declared by the Member States in 1993 (67% of the total eligible amount) went towards the cost of paying additional staff to carry out the inspections provided for in Regulation (EEC) No 307/91. Expenditure on training, including the cost of running courses on the various control methods for agricultural products, was still very low (2%), while spending on equipment accounted for 18%, some of which went towards the purchase of micro-computers and vehicles, vital operational

¹⁶⁹ OJ L 37, 9.2.1991.

¹⁷⁰ OJ L 122, 17.5.1994.

tools for carrying out inspections. Finally, relatively large amounts were requested by Denmark, Greece, Ireland and Portugal to pay for analyses carried out by laboratories, particularly in connection with checks on exported goods.

On 16 May, drawing on the experience gained during the first three years of application of Regulation (EEC) No 307/91, the Commission adopted Regulation (EC) No 1116/94,¹⁷¹ which allows Member States to transfer unused Community funds from one budget article to another within the total amount of financing allocated and, in addition, to have access to unused amounts from allocations to other Member States. These new measures are a response to requests by certain Member States and will help ensure optimum management of the Community funds in question.

Forecast expenditure for 1994, based on the statements submitted by the Member States, is ECU 7.2 million, or 36% of available appropriations (see Table 15).¹⁷² The final outturn will not be known until after 15 May 1995, when the Member States are due to submit statements of actual expenditure to the Commission.

As regards the other forms of Community co-financing from this budget heading, for example the establishment of an integrated management and control system under Council Regulation (EEC) No 3508/92¹⁷³ and expenditure on remote sensing, the utilization rate for 1993 and the forecast for 1994 can be regarded as satisfactory (see abovementioned tables).

2.2 The Commission's new policy of technical assistance and subsidies

Under this policy, which is supported by Parliament, the Community co-finances anti-fraud measures by the relevant authorities in the Member States, with the aim of stepping up the fight against fraud in fields where the existing legal bases do not define the concept of technical assistance let alone lay down detailed implementing rules, as is the case in the agricultural sector.

The scope of technical assistance to the Member States is governed by the principle of subsidiarity. The appropriations in question are intended to help Member States implement Community anti-fraud policy, in particular in developing inspections, for which national government departments do not have the necessary administrative or technical capacity. The aid may assume different forms depending on the nature of the requests submitted by Member States, for example subsidies for the purchase of special equipment for combating fraud on the ground or, at the specific request of national government departments, financing to cover the use of experts in national investigations or joint investigations with the Commission.

¹⁷¹ Regulation cited above, amending Commission Regulation (EEC) No 967/91, OJ L 100, 20.4.1991.

¹⁷² For 1994 the Commission committed only ECU 10 million instead of the projected ECU 20 million to allow for under-utilization in connection with Regulation (EEC) No 307/91.

¹⁷³ See the remarks on legislation in Chapter 1, Section 2 "Agriculture", page 8.

In the field of the Structural Funds (and the Cohesion Fund in 1995) assistance to Member States consists mainly of information seminars,¹⁷⁴ intended initially to explain in detail the new arrangements for reporting irregularities already detected under the new legislation which entered into force in 1994¹⁷⁵ or to contribute more specifically to the organization of projects on irregularities in these fields.¹⁷⁶

Technical assistance for the Member States has an internal equivalent in the form of assistance for the Commission's own operational departments. Although national government departments are chiefly responsible for implementing anti-fraud policy, the task of formulating, monitoring and coordinating it falls to the Commission's own central unit (UCLAF in the Secretariat-General). Everything possible is done to ensure that this department has the necessary operational tools to accomplish its tasks (see Table 12 on the utilization of appropriations in Article B2-519).¹⁷⁷

SECTION 2: 1995 APPROPRIATIONS

The 1995 budget contained a total of ECU 132.618 million in commitment appropriations for anti-fraud measures (an increase of 5.2%) and ECU 121.568 million in payment appropriations.

The increase on 1994 is apparent not only in the "traditional" anti-fraud headings in the agricultural sector, but also in new headings covering the Structural Funds, the Cohesion Fund, shared-cost research action and cooperation, which illustrate how a permanent mechanism is gradually being established to assist the specialized anti-fraud departments in the Member States, including central departments responsible for coordination, in the years ahead.

Once the policy is in place, it will be assessed, and a special report will be sent to the budgetary authority on the use made of appropriations allocated to the Member States in the form of technical assistance and the use of appropriations by the Commission's own departments in the context of internal operational support aimed at stepping up anti-fraud

¹⁷⁴ In 1994 a seminar was held for the Portuguese government departments responsible for the ERDF.

¹⁷⁵ See the comments on legislation in Chapter 1, Section 3 "Structural operations", page 10.

¹⁷⁶ In 1994 a seminar was held for the Dutch government departments responsible for the ESF.

¹⁷⁷ The level of resources has been adjusted to cover an increase in staff and the reorganization of the department in 1994. See Chapter 2, Section 1, item 1 "Organizational changes", page 22.

measures on the ground. As the fight against fraud is intensified, appropriate tools will be provided to analyse the data that is gathered, leading to more effective targeting of investigations and specific studies following these investigations.¹⁷⁹

The sector-by-sector breakdown of anti-fraud appropriations for 1995 is given in Table 17 and Figure 5.

¹⁷⁹ See the item on the development of intelligence in Chapter 2, Section 1, page 23.

ANNEX 1 SUMMARY OF REGULATIONS IN FORCE ON 1 JANUARY 1994

Under Article 5 of the EC Treaty Member States are required to implement Community law. In this context, they are responsible for ensuring that Community regulations are properly applied, for collecting revenue and for administering expenditure from the main European Funds placed at their disposal (EAGGF Guarantee Section, Structural Funds, etc.).

Under Article 209a EC, as amended by the Treaty on European Union which entered into force on 1 November 1993, Member States are required to combat fraud affecting the Community budget with the same measures and the same vigour as if their own finances were at stake and, in so doing, to establish close cooperation between their administrative departments, with the help of the Commission.

These Treaty provisions are clarified by regulations covering individual policy areas.

1. Inspections

Any policy providing for measures with financial implications must have an effective control system. Inspections are carried out primarily under the responsibility of the national authorities. The Commission's role is laid down in the EC Treaty, in particular Articles 155 and 205, and spelled out in the regulations covering individual sectors. In particular, it must ensure that the financial procedures for the collection of Community revenue are properly observed and that budget expenditure is correctly implemented and well used.

The obligations of the Member States are laid down as follows:

for traditional own resources, Article 18(1) of Regulation (EEC, Euratom) No 1552/89¹⁸⁰ lays down the obligations of the Member States as regards the collection and scrutiny of revenue. Under Article 18(2) the Commission may be associated with inspections carried out by the Member States (*joint inspections*), while Article 18(3) provides for inspection measures to be carried out on the spot by authorized Commission officials, with the participation of national officials (*autonomous inspections*);

for expenditure under the EAGGF Guarantee Section, Member States are required under Article 8 of Regulation (EEC) No 727/70 to ensure that transactions financed by the Fund are in order.¹⁸¹ Under Article 9(2) the Commission may take part in relevant inspections and inquiries by the Member States (*joint inspections*), while Article 9(1) provides for the Commission to undertake supervision where it considers it necessary (*autonomous inspections*). Furthermore, under Article 6(1) of Regulation

¹⁸⁰ OJ L 155, 7.6.1989.

¹⁸¹ OJ L 94, 28.4.1970.

(EEC) No 595/91,¹⁸² the Commission may specifically request a Member State to carry out inquiries in the form of joint inspections conducted by national officials.

for the Structural Funds, Article 23(1) of Regulation (EEC) No 4253/88,¹⁸³ amended by Regulation (EEC) No 2082/93¹⁸⁴ provides for checks to ensure that operations financed by the Community are properly carried out. Under the first indent of Article 23(2), the Commission has the power to check certain operations on the spot (*joint inspections*), while under the third indent of the same Article the Commission may require Member States to carry out checks in which officials or other servants of the Commission may take part;

for the Cohesion Fund the rules are similar to those applied to the Structural Funds: Article 12(1) of Regulation (EC) No 1164/94¹⁸⁵ provides for the verification of operations financed by the Community; Article 12(4) allows the Commission to carry out on-the-spot checks on certain projects financed by the Fund; and under Article G the Commission may require a Member State to carry out an on-the-spot check in which officials or other servants of the Commission may take part;

other specific regulations lay down special rules on inspections, notably in the wine sector and in respect of fruit and vegetables.

finally, under Article 24 of the Financial Regulation applicable to the general budget of the Communities the Commission's Financial Controller is authorized to inspect files relating to expenditure and revenue, and to carry out checks on the spot if necessary.¹⁸⁶

2. Reports

On the basis of their inspection obligations, the Member States are required to detect and punish cases of fraud or irregularity and inform the Commission of these cases and the action taken on them. This information is vital if the Commission is to carry out its coordination, surveillance and analysis work with a view to improving preventive measures and helping the relevant authorities in the Member States carry out their operational tasks.

¹⁸² OJ L 67, 14.3.1991.

¹⁸³ OJ L 374, 31.12.1988.

¹⁸⁴ OJ L 193, 31.7.1993.

¹⁸⁵ OJ L 130, 25.5.1994. This Regulation repealed Council Regulation (EEC) No 792/93 establishing a cohesion financial instrument.

¹⁸⁶ The Financial Regulation guarantees the Financial Controller the autonomy and independence necessary for him to perform his duties.

The obligation of the Member States to report cases of fraud and irregularity detected by their administrative departments is spelled out in the Council Regulations for each field:

- . for traditional own resources (customs duties and agricultural levies) in Article 6(3) of Regulation (EEC, Euratom) No 1552/89;
- . for expenditure under the EAGGF Guarantee Section, in Articles 3 and 5 of Regulation (EEC) No 595/91;
- . for the Structural Funds, in Article 23(1) of Regulation (EEC) No 4253/88;
- . for the cohesion financial instrument, which became the Cohesion Fund with effect from 26 May 1994, in Articles 12(1) and (2) of Regulation (EC) No 1164/94;
- . for information under the mutual assistance arrangements between the Member States on customs and agricultural matters, in Articles 14, 14a and 19 of Regulation (EEC) No 1468/81 (information of an operational nature relating to suspected cases of fraud or irregularities).¹⁸⁷

¹⁸⁷ OJ L 144, 2.6.1981.

ANNEX 2 LIST OF FREEPHONE NUMBERS IN THE MEMBER STATES

Belgium	080012426
Denmark	80018495
France	05917295
Germany	0130820595
Greece	08003212595
Ireland	1800553295
Italy	167878495
Luxembourg	08003595
Netherlands	060224595
Portugal	0505329595
Spain	9009932

Table 1

**COMMUNICATIONS OF MEMBER STATES ON
IRREGULARITIES EAGGF- GUARANTEE 1994 (*)**

Beginning of the irregularity	CASES			AMOUNT IN ECU	
	NOTIFIED	CLOSED	OPEN	COMMUNICATED	RECOVERED
unknown	175	29	146	190.997.081	5.137.401
1983	2	1	1	106.106	101.400
1984	2	0	2	16.843	0
1985	3	3	0	33.186	33.186
1986	15	7	8	3.163.360	293.460
1987	15	7	8	562.975	62.495
1988	65	17	48	23.369.701	568.214
1989	116	21	95	26.754.202	1.845.082
1990	192	48	144	16.815.274	1.532.764
1991	258	73	185	43.748.798	3.593.496
1992	277	81	196	23.711.896	3.088.676
1993	318	131	187	74.957.490	4.782.451
1994	159	89	70	7.675.456	545.271
Total	1.597	507	1.090	411.912.368	21.583.896

(*) Luxemburg had no irregularities to report / Belgium and Greece are represented only for the 1+2+3 Quarter 1994.

Beginning of the irregularity	CASES	AMOUNT
	NOTIFIED	NOTIFIED
unknown	11%	46%
1983	<1%	<1%
1984	<1%	<1%
1985	<1%	<1%
1986	1%	1%
1987	1%	<1%
1988	4%	6%
1989	7%	7%
1990	12%	4%
1991	16%	11%
1992	17%	6%
1993	20%	19%
1994	10%	2%
TOTAL	100%	100%

**COMMUNICATIONS OF MEMBER STATES ON IRREGULARITIES
TRADITIONAL OWN RESOURCES 1994**

(only 1 + 2 quarter 1994)

	CASES NOTIFIED	AMOUNTS NOTIFIED (ECU)	CASES NOTIFIED	AMOUNTS NOTIFIED
BELGIQUE	45	16.013.024	4%	14%
DANMARK	11	540.235	1%	0%
DEUTSCHLAND	727	29.264.095	60%	26%
ELLAS	10	1.442.947	1%	1%
ESPAÑA	35	5.157.635	3%	5%
FRANCE	74	9.482.976	6%	8%
IRELAND	10	616.050	1%	1%
ITALIA	81	24.061.295	7%	22%
NEDERLAND	7	2.057.179	1%	2%
PORTUGAL	20	637.380	2%	1%
UNITED KINGDOM	201	22.621.189	16%	20%
TOTAL	1.221	111.894.005	100%	100%

Cases reported under Article 3 of Reg. (EC) No 1681/94
3rd quarter 1994

&

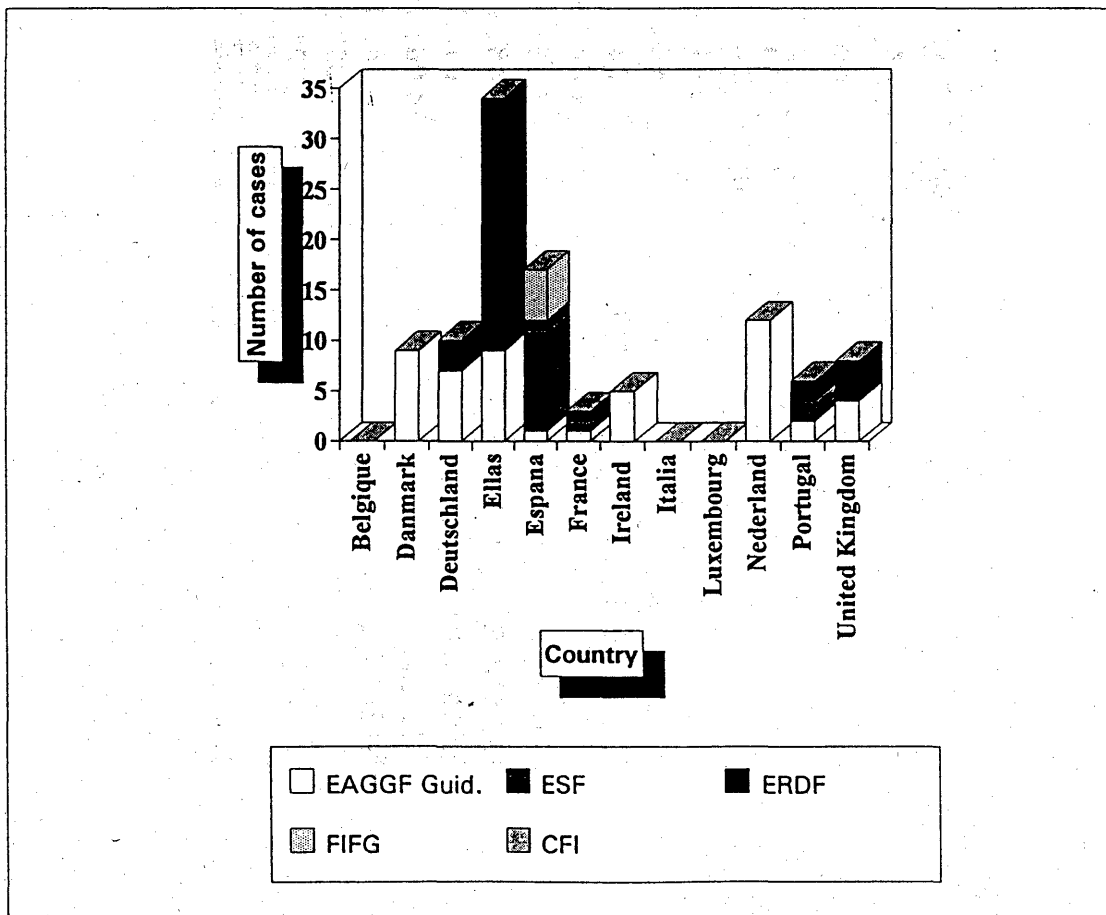
Cases reported under Article 23 of Reg. (EC) No 4253/88
1990 - 30.06.1994

Number of cases by Member State

	EAGGF Guid.	ESF	ERDF	FIFG	Cohesion Fin. Instr.	TOTAL
Belgique/België	-	-	-	-		-
Danmark	9	0	0	0		9
Deutschland	7	3	0	0		10
Ellas	9	25	0	0	0	34
Espana	1	10	1	5	0	17
France	1	1	1	-		3
Ireland	5	0	0	0	-	5
Italia	-	-	-	-		-
Luxembourg	0	0	0	0		0
Nederland	12	-	-	-		12
Portugal	2	2	2	0	0	6
United Kingdom	4	0	4	0		8
TOTAL	50	41	8	5	-	104

- : No report received.

0 : Reports recorded no cases.



As the new legislation was introduced very recently (Reg. (EC) No 1681/94, see Ch. 1, section 2, point 3) a number of Member States have not yet sent in their reports.

Cases reported under Article 3 of Reg. (EC) No 1681/94
3rd quarter 1994

&

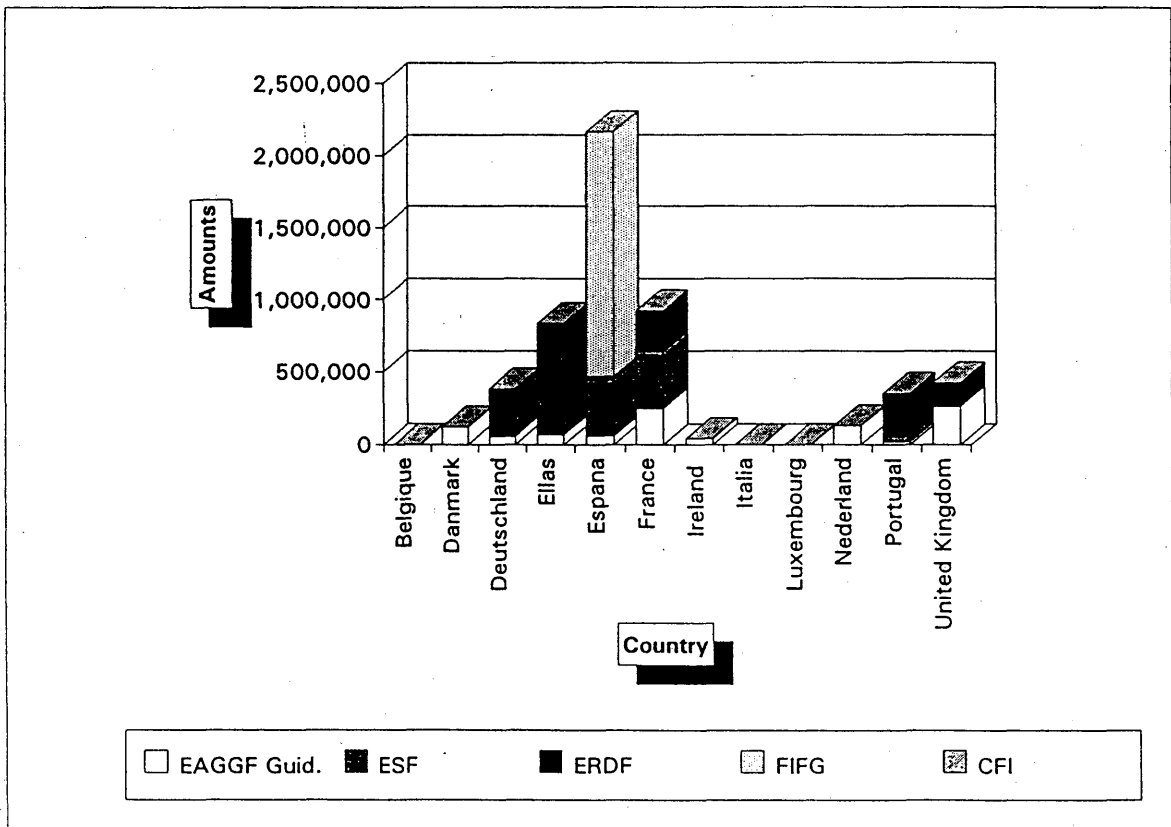
Cases reported under Article 23 of Reg. (EC) No 4253/88
1990 - 30.06.1994

Amounts in ecu by Member State

	EAGGF Guid.	ESF	ERDF	FIFG	Cohesion Fin. Inst.	TOTAL
Belgique/België	-	-	-	-	-	-
Danmark	122,291.00	0.00	0.00	0.00	-	122,291.00
Deutschland	57,701.71	326,171.79	0.00	0.00	-	383,873.50
Ellas	70,648.00	763,668.70	0.00	0.00	0.00	834,316.70
Espana	60,539.00	384,256.54	24,866.32	1,692,580.00	0.00	2,162,241.86
France	248,132.00	392,715.00	283,949.00	-	-	924,796.00
Ireland	43,006.00	0.00	0.00	0.00	-	43,006.00
Italia	-	-	-	-	-	-
Luxembourg	0.00	0.00	0.00	0.00	-	0.00
Nederland	128,845.00	-	-	-	-	128,845.00
Portugal	22,711.85	35,583.20	294,900.57	0.00	0.00	353,195.61
United Kingdom	261,119.00	0.00	165,532.00	0.00	-	426,651.00
TOTAL	1,014,993.56	1,902,395.22	769,247.89	-	-	5,379,216.68

- : No report received.

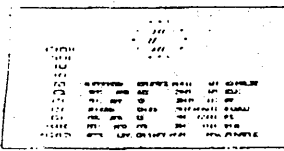
0 : Reports recorded no cases.



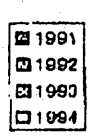
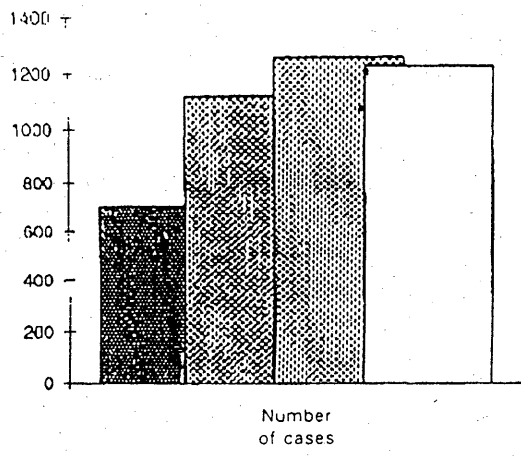
As the new legislation was introduced very recently (Reg. (EC) No 1681/94, see Ch. 1, section 2, point 3) a number of Member States have not yet sent in their reports.

Figure 1

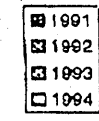
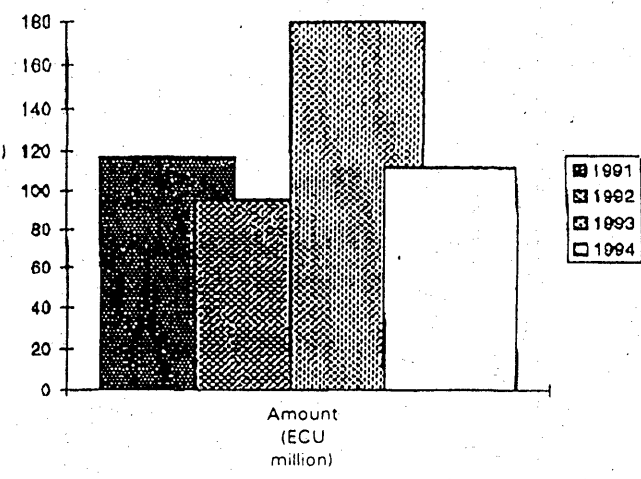
Member States' reports 1991-1994



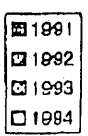
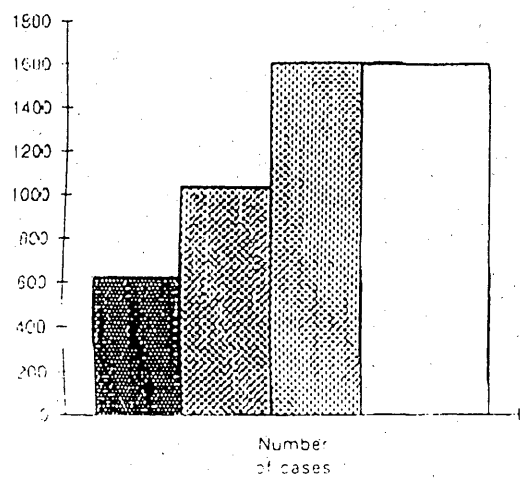
TRADITIONAL OWN RESOURCES



YEAR	Number of cases	Amount (ECU million)
1991	702	117
1992	1116	95
1993	1254	180
1994	1223	112
(first half-year only)		
TOTAL	4295	504



EAGGF GUARANTEE EXPENDITURE



YEAR	Number of cases	Amount (ECU million)
1991	622	121
1992	1038	109
1993	1605	300
1994	1597	412
TOTAL	4860	942

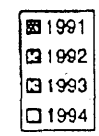
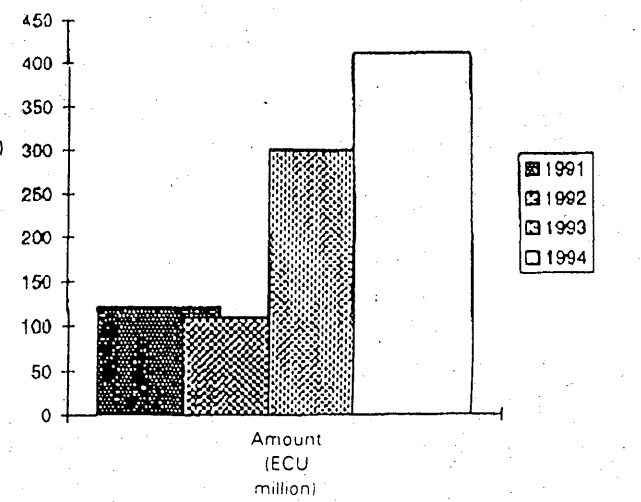
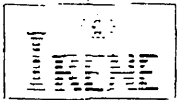


Figure 2

Member States' reports 1991-1994* by Member State
TRADITIONAL OWN RESOURCES AND EXPENDITURE



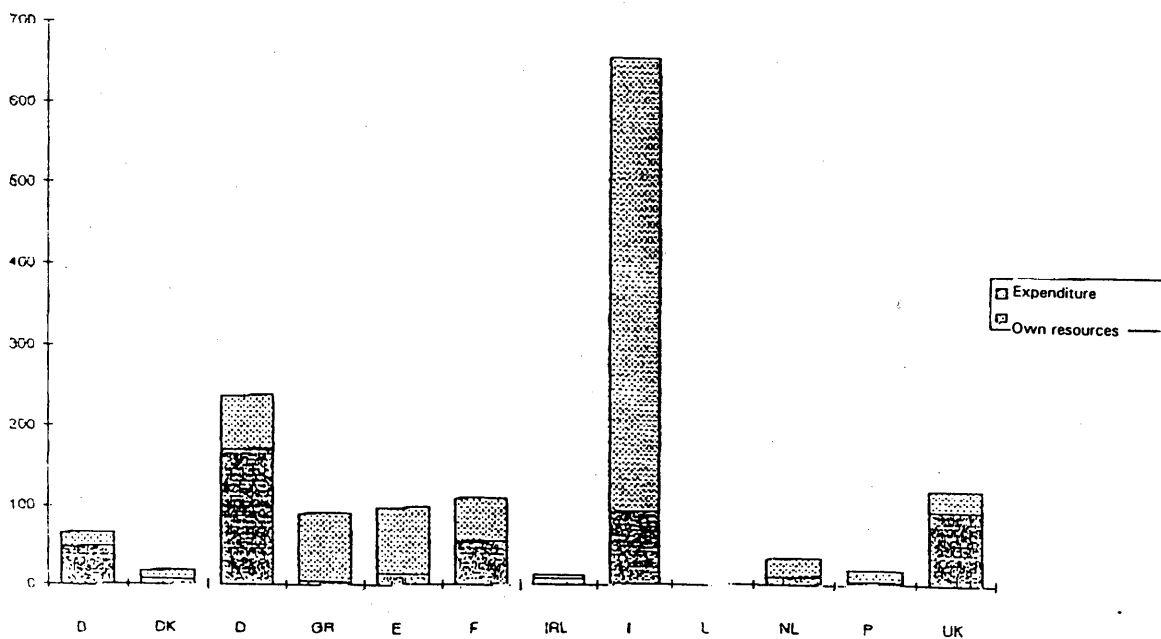
Number of cases

	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK	TOTAL
Own resources	328	86	1548	68	192	544	32	408	2	44	84	961	4295
Expenditure	132	230	552	363	525	288	65	955	0	438	270	673	4590



Amount (ECU million)

	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK	TOTAL
Own resources	49	7	171	3	14	54	8	92	0	10	3	92	503
Expenditure	17	11	66	87	83	54	6	561	0	23	15	27	949



* Own resources 1994: figures for first half-year only



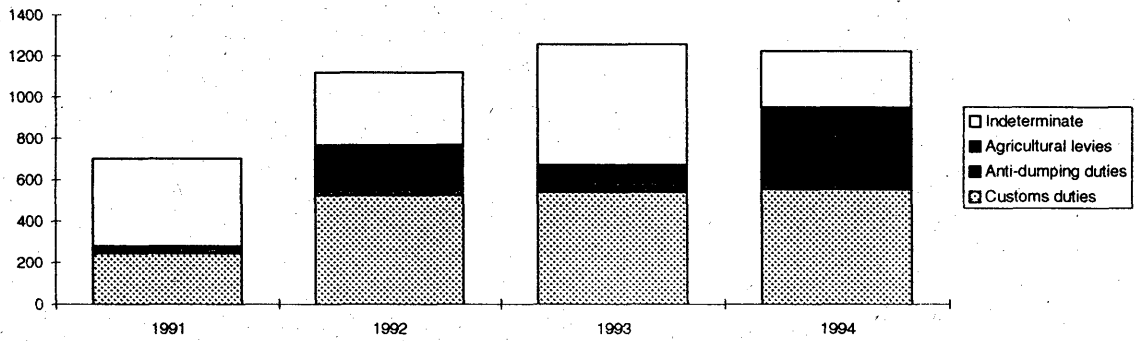
Figure 3

24-Mar-95

TRADITIONAL OWN RESOURCES
 Reports from the Member States for the period 1991-94*
 by type of Resource

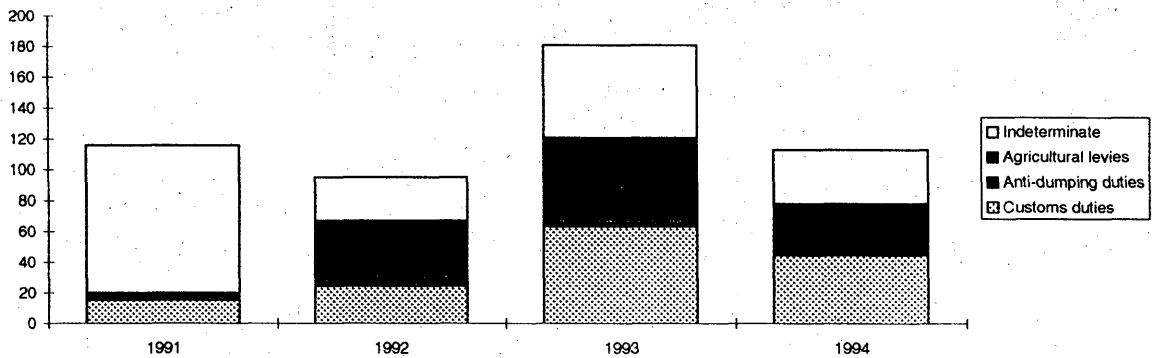
Number of cases

Year	Customs duties	Anti-dumping duties	Agricultural levies	Indeterminate	Total
1991	246	25	9	422	702
1992	523	29	215	351	1118
1993	540	47	82	585	1254
1994	551	20	376	274	1221
Total	1860	121	682	1632	4295



Sums involved (million ECU)

Year	Customs duties	Anti-dumping duties	Agricultural levies	Indeterminate	Total
1991	15	3	2	96	116
1992	24	8	35	28	95
1993	63	5	53	60	181
1994	44	2	32	35	113
Total	146	18	122	219	505



(* 1994: figures cover only the first six months.

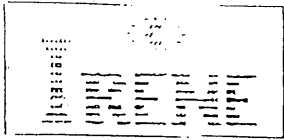


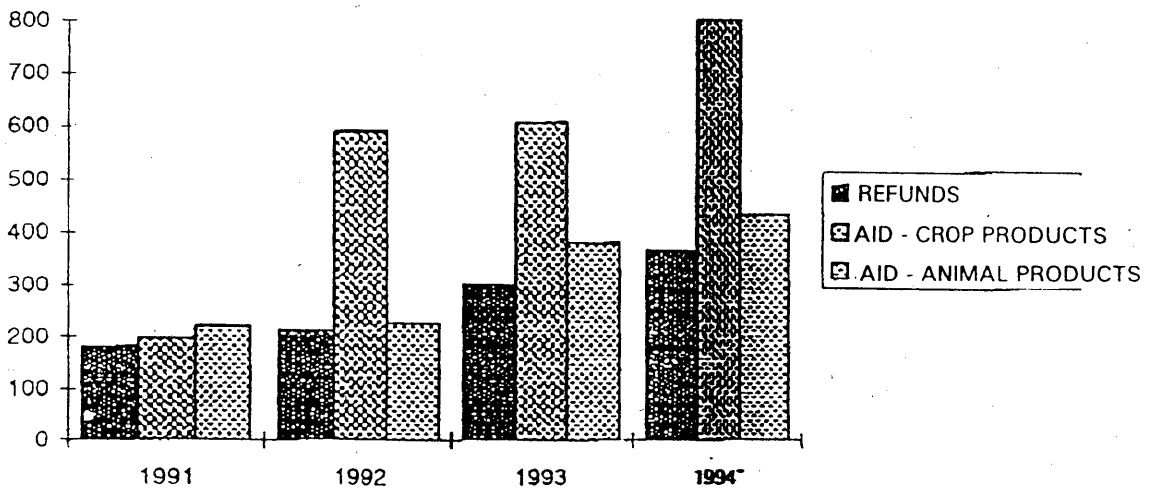
Figure 4

EAGGF-GUARANTEE

Member States' reports 1991-1994
by category of agricultural expenditure

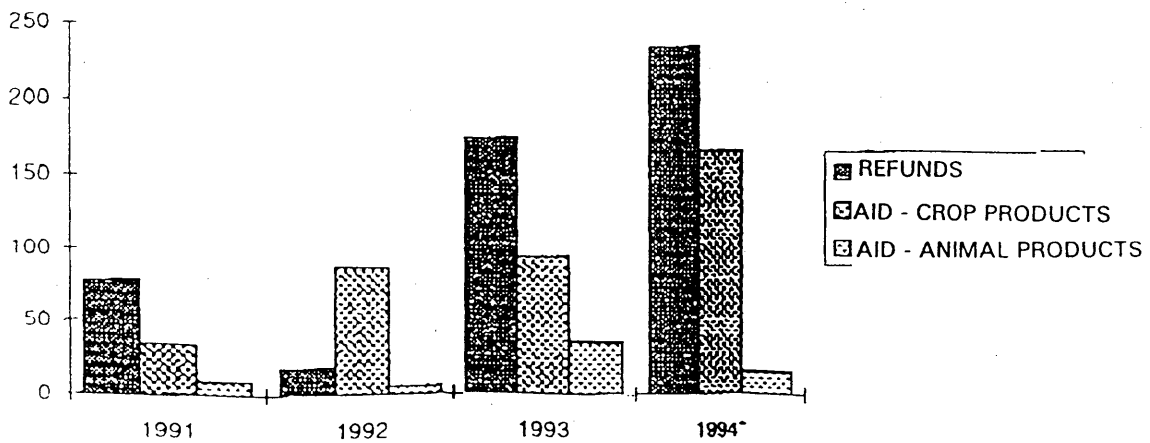
Number of cases

YEAR	REFUNDS	AID - CROP PRODUCTS	AID - ANIMAL PRODUCTS	TOTAL
1991	181	198	221	600
1992	213	589	226	1028
1993	299	606	379	1284
1994*	365	800	432	1597
TOTAL	1058	2193	1258	4509



Amount - ECU million

YEAR	REFUNDS	AID - CROP PRODUCTS	AID - ANIMAL PRODUCTS	TOTAL
1991	78	34	9	121
1992	18	86	5	109
1993	173	94	35	302
1994*	233	164	15	412
TOTAL	502	378	64	944



* 1994: 3 quarters

**Irregularities communicated by Member States during the period 1991 -1993 (million ECU)
in relation to EAGGF -Guarantee expenditure granted to each Member State.**

<i>Irregularities</i>	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK
Year 1991	0,8	1,4	5,0	0,1	1,3	5,8	2,9	94,6	0,0	3,6	0,1	5,4
Year 1992	2,0	1,2	7,2	1,3	4,0	6,7	1,0	68,9	0,0	6,6	3,8	6,3
Year 1993	7,0	4,8	20,3	82,4	4,6	35,9	1,1	129,5	0,0	6,0	4,8	3,7
Total	9,8	7,4	32,5	83,8	9,9	48,4	5,0	293,0	0,0	16,2	8,7	15,4
% of expenditure	0,24%	0,20%	0,22%	1,17%	0,09%	0,23%	0,11%	1,92%	0,00%	0,23%	0,71%	0,21%

**Irregularities communicated by Member States during the period 1991 -1993 (million ECU)
in relation to Traditional Own Resources collected by each Member State**

<i>Irregularities</i>	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK
Year 1991	3,2	0,9	75,2	1,0	1,4	13,5	0,2	3,0	0,0	0,4	0,4	17,7
Year 1992	9,9	3,4	23,2	0,4	0,6	12,7	4,4	19,2	0,0	1,3	1,2	18,1
Year 1993	20,1	2,0	43,8	0,4	6,9	17,8	2,8	46,2	0,0	5,8	0,7	33,8
Total	33,2	6,3	142,2	1,8	8,9	44,0	7,4	68,4	0,1	7,5	2,3	69,5
% of resources	1,23%	0,78%	1,19%	0,33%	0,41%	0,85%	1,50%	1,73%	0,21%	0,17%	0,38%	0,94%

NUMBER AND FINANCIAL IMPACT OF CASES RECORDED BY AREA (1995)

NUMBER OF CASES

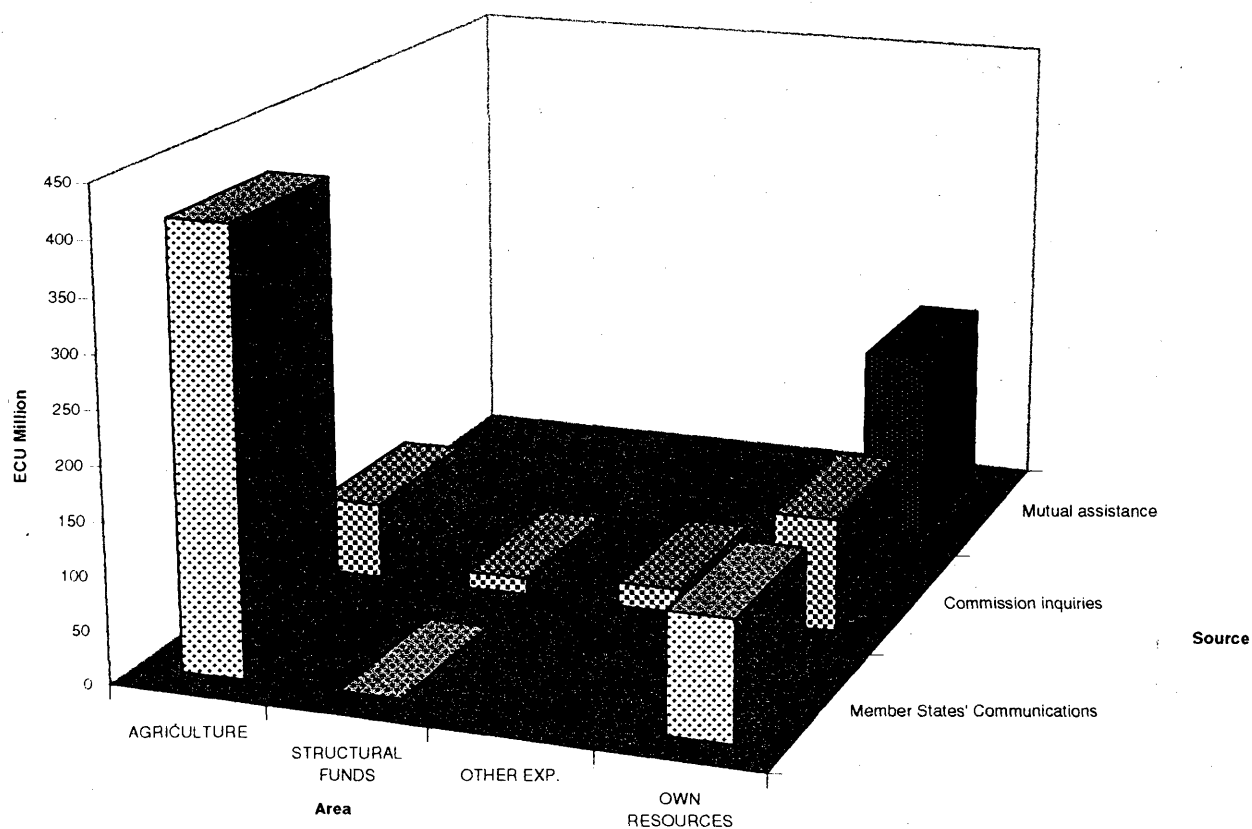
SOURCE	AGRICULTURE	STRUCTURAL FUNDS	OTHER EXP.	OWN RESOURCES
Member States' Communications	1597	42		1221
Commission inquiries	26	34	16	23
Mutual assistance				122

FINANCIAL IMPACT (ECU million)

SOURCE	AGRICULTURE	STRUCTURAL FUNDS	OTHER EXP.	OWN RESOURCES
Member States' Communications	412	1,5		112
Commission inquiries	72	16	23	107
Mutual assistance				181

Own Resources: only first half-year

FINANCIAL IMPACT



COMMUNICATIONS OF MEMBER STATES ON IRREGULARITIES EAGGF - GUARANTEE 1994 (*)

MEASURES	CASES			AMOUNT IN ECU		
	COMMUNICATED	CLOSED	OPEN	COMMUNICATED	RECOVERED	TO BE RECOVERED
<i>"SMALL MEASURES" in total</i>	512	211	301	16.718.351	3.896.197	12.822.154
CHEESE - refunds	21	11	10	1.089.151	283.085	806.066
VINEYARDS - definitive cessation	7	0	7	1.110.256	0	1.110.256
MILK - linear co-responsibility levy	36	9	27	1.176.255	246.425	929.830
BOVINE MEAT - storage	6	0	6	1.313.251	0	1.313.251
BUTTER - refunds	8	3	5	1.390.990	1.197.844	193.146
EWE AND GOATS - premiums	127	16	111	1.497.138	141.129	1.356.009
TABACCO	1	0	1	1.501.590	0	1.501.590
CEREALS - other intervention	41	0	41	1.722.657	0	1.722.657
POTATO STARCH - refunds	16	12	4	1.785.392	310.751	1.474.641
CEREALS - co-responsibility levy	53	27	26	1.911.518	497.407	1.414.111
COTON - production aid	14	0	14	1.995.479	0	1.995.479
SCHOOL MILK	61	41	20	2.136.927	714.746	1.422.181
SEEDS - production aid	11	1	10	2.189.815	54.489	2.135.326
NON - ANNEX II PRODUCTS - refunds	64	34	30	2.260.328	629.308	1.631.020
WINE - distillation	17	0	17	2.372.848	0	2.372.848
TOMATOES - processing aid	25	3	22	2.909.326	151.234	2.758.092
SET ASIDE ARABLE LAND - premiums	241	76	165	3.273.050	162.160	3.110.890
CITRUS JUICES - financial compensation	4	1	3	3.350.071	0	3.350.071
MILK PRODUCTS - refunds	14	7	7	3.709.521	73.130	3.636.391
BARLEY - refunds	5	0	5	4.502.880	0	4.502.880
BOVINE MEAT - intervention	2	1	1	4.691.622	65.672	4.625.950
DRIED FODDER - production aid	34	12	22	5.569.943	262.696	5.307.247
WINE PRODUCTS - refunds	20	3	17	20.485.450	0	20.485.450
BOVINE MEAT - refunds	68	16	52	53.217.980	410.582	52.807.398
OLIVE OIL - consumption aid	141	17	124	60.378.408	2.661.996	57.716.412
CEREALS - storage	16	0	16	65.414.319	4.840.740	60.573.579
CEREALS - refunds	32	6	26	142.237.852	4.984.305	137.253.547
TOTAL	1.597	507	1.090	411.912.368	21.583.896	390.328.472

(*) Luxemburg had no irregularities to report / Belgium and Greece are represented only for the 1+2+3 Quarter 1994.

COMMUNICATIONS OF MEMBER STATES ON IRREGULARITIES EAGGF - GUARANTEE 1994 (*)

METHOD OF DETECTION	CASES			AMOUNT IN ECU		
	NOTIFIED	CLOSED	OPEN	NOTIFIED	RECOVERED	TO BE RECOVERED
Miscellaneous methods (total)	317	155	162	32.119.094	3.825.888	28.293.206
CUSTOM CONTROL	84	36	48	11.443.717	680.348	10.763.369
FARM INSPECTION	102	33	69	12.558.778	1.360.404	11.198.374
ROUTINE CHECK	303	96	207	24.144.948	524.514	23.620.434
TAX INSPECTION	44	6	38	30.469.760	117.374	30.352.386
ANALYSIS OF SAMPLES	55	16	39	43.086.972	191.089	42.895.883
JUDICIAL INQUIRY	11	0	11	49.483.159	0	49.483.159
COMMUNITY INITIATIVE	19	2	17	63.512.818	5.219.411	58.293.407
EX POST DOCUMENTARY CONTROL	662	163	499	145.093.122	9.664.868	135.428.254
TOTAL	1.597	507	1.090	411.912.368	21.583.896	390.328.472

(*) Luxembourg had no irregularities to report / Belgium and Greece are represented only for the 1+2+3 Quarter 1994.

COMMUNICATIONS OF MEMBER STATES ON IRREGULARITIES EAGGF - GUARANTEE 1994 (*)

(Percentages)

METHOD OF DETECTION	CASES	AMOUNT
	NOTIFIED	NOTIFIED
Miscellaneous methods (total)	20%	8%
CUSTOM CONTROL	5%	3%
FARM INSPECTION	6%	3%
ROUTINE CHECK	19%	6%
TAX INSPECTION	3%	7%
ANALYSIS OF SAMPLES	3%	10%
JUDICIAL INQUIRY	1%	12%
COMMUNITY INITIATIVE	1%	15%
EX POST DOCUMENTARY CONTROL	41%	35%
TOTAL	100%	100%

**COMMUNICATIONS OF MEMBER STATES ON IRREGULARITIES
TRADITIONAL OWN RESOURCES
period : 1991 - 1994 (1+ 2 quarter)**

	CASES			AMOUNT IN ECU		
	notified	closed	open	notified	recovered	to be recovered
BELGIQUE	328	203	125	49.205.846	7.267.239	41.938.607
DANMARK	86	41	45	6.848.827	2.799.554	4.049.273
DEUTSCHLAND	1.548	115	1.433	171.442.258	7.715.408	163.726.850
ELLAS	66	0	66	3.223.998	0	3.223.998
ESPANA	192	15	177	14.051.855	1.025.938	13.025.917
FRANCE	544	9	535	53.500.248	5.093.467	48.406.781
IRELAND	32	13	19	8.001.875	1.183.211	6.818.664
ITALIA	408	41	367	92.474.916	654.257	91.820.659
LUXEMBOURG	2	1	1	85.220	45.417	39.803
NEDERLAND	44	1	43	9.513.448	122.232	9.391.216
PORTUGAL	84	39	45	2.969.940	579.444	2.390.496
UNITED KINGDOM	961	224	737	92.167.252	1.844.104	90.323.148
TOTAL	4.295	702	3.593	503.485.683	28.330.271	475.155.412

	CASES		MONTANT	
	notified	closed	notified	recovered
BELGIQUE	8%	29%	8%	29%
DANMARK	2%	6%	2%	6%
DEUTSCHLAND	36%	16%	36%	16%
ELLAS	2%	0%	2%	0%
ESPANA	4%	2%	4%	2%
FRANCE	13%	1%	13%	1%
IRELAND	1%	2%	1%	2%
ITALIA	9%	6%	9%	6%
LUXEMBOURG	0%	0%	0%	0%
NEDERLAND	1%	0%	1%	0%
PORTUGAL	2%	6%	2%	6%
UNITED KINGDOM	22%	32%	22%	32%
TOTAL	100%	100%	100%	100%

% OF THE AMOUNT NOTIFIED	
recovered	to be recovered
15%	85%
41%	59%
5%	95%
0%	100%
7%	93%
10%	90%
15%	85%
1%	99%
53%	47%
1%	99%
20%	80%
2%	98%
6%	94%

COMMUNICATIONS OF MEMBER STATES ON IRREGULARITIES EAGGF - GUARANTEE 1991 -1994 (*)

	CASES			AMOUNT IN ECU		
	notified	CLOSED	OPEN	notified	RECOVERED	TO BE RECOVERED
BELGIQUE	119	58	61	11.450.094	734.154	10.715.940
DANMARK	221	175	46	10.503.868	4.908.684	5.595.184
DEUTSCHLAND	546	265	281	66.217.645	12.301.686	53.915.959
ELLAS (**)	327	65	262	86.353.034	(**) 58.267.596	28.085.438
ESPANA	519	218	301	82.746.803	2.263.922	80.482.881
FRANCE	389	254	135	54.252.457	17.282.240	36.970.217
IRELAND	65	48	17	5.507.529	2.137.890	3.369.639
ITALIA	955	108	847	560.685.454	35.748.902	524.936.552
NEDERLAND	428	331	97	22.621.210	11.093.595	11.527.615
PORTUGAL	270	38	232	14.961.534	1.037.472	13.924.062
UNITED KINGDOM	670	466	204	26.774.056	11.006.035	14.825.247
TOTAL	4.509	2.026	2.483	942.073.684	156.782.176	784.348.734

(*) Luxemburg had no irregularities to report / Belgium and Greece are represented only for the 1+2+3 Quarter 1994.

(**) 56 Million ECU have been recovered by the Commission in the Clearance of Accounts 1991

	Cases		Amount	
	notified	notified	notified	notified
BELGIQUE	3%	1%	3%	1%
DANMARK	5%	1%	5%	1%
DEUTSCHLAND	12%	7%	12%	7%
ELLAS (*)	7%	9%	7%	9%
ESPANA	12%	9%	12%	9%
FRANCE	9%	6%	9%	6%
IRELAND	1%	1%	1%	1%
ITALIA	21%	60%	21%	60%
NEDERLAND	9%	2%	9%	2%
PORTUGAL	6%	2%	6%	2%
UNITED KINGDOM	15%	3%	15%	3%
TOTAL	100%	100%	100%	100%

% of the amount notified	
recovered	to be recovered
6%	94%
47%	53%
19%	81%
66%	33%
3%	97%
32%	68%
39%	61%
6%	94%
49%	51%
7%	93%
41%	55%
17%	83%

UTILIZATION OF APPROPRIATIONS - 1994

BUDGET ARTICLE, ITEM	HEADING	MEASURES FINANCED	APPROPRIATIONS AVAILABLE (INCLUDING TRANSFERS)	APPROPRIATIONS COMMITTED	UTILIZATION (%)	CARRY-OVERS FROM 1993	PAYMENTS AGAINST CARRY-OVERS FROM 1993
A 2554	Conferences, congresses and meetings in connection with the activities of the associations of European lawyers for the protection of the financial interests of the Community	Seminars, meetings and training courses in the Member States	<u>240.000</u>	<u>239.999</u>	100	130.997	120.277 91,8%
A 3530	Unit to coordinate action against fraud	- Meetings, seminars, investigations - Databases	<u>104.000</u>	<u>102.095</u> 14.595 87.500	98,2	85.280	62.939 73,8%
A 3531	Controls, studies and analyses in connection with the fight against fraud	- Reg. (EEC) No 4045/89 - Legal seminars and studies - Customs and VAT seminars - Studies customs + indirect taxation - Investigations and missions - Other seminars - Report on the fight against fraud - Analyses - Computer systems and databases (IRENE and Pre-IRENE, DAF) - Subsidies - Conciliation body (EAGGF) - SCENT	<u>4.145.000</u>	<u>4.103.478</u> 1.690.000 199.975 462.848 49.500 250.770 13.560 50.000 18.766 256.900 587.000 414.040 110.119	99	2.473.019	1.618.776 65,5%
A 3532	Fraud suppression in the textiles sector (TAFI)	- Seminars, investigations - Subsidy - Co-financing a research unit	<u>800.000</u>	<u>799.901</u> 449.901 50.000 300.000	99,9	376.695	314.126 83,4%
TOTAL TO CARRY FORWARD			5.289.000	5.245.473			

BUDGET ARTICLE, ITEM	HEADING	MEASURES FINANCED	APPROPRIATIONS AVAILABLE (INCLUDING TRANSFERS)	APPROPRIATIONS COMMITTED	UTILIZATION (%)	CARRYOVERS FROM 1993	PAYMENTS AGAINST CARRYOVERS FROM 1993
CARRIED FORWARD			5.289.000	5.245.000			
A 355	European documentation, coordination and study network to control cross-border crime and fraud	Establishment of a foundation under Dutch law (legal structure of the network) involving five countries: D, I, GR, L, NL.	p.m.				375.000 100%
B1.360	Measures to combat fraud affecting the European Agricultural Guidance and Guarantee Fund - Guarantee Section	<ul style="list-style-type: none"> - Reg. (EEC) No 307/91 - Reg. (EC) No 165/94 (Remote sensing) - Remote sensing (images) - Reg. (EEC) No 3508/92 (IACS) - Integrated system (land register) - Expert costs (IACS) - Technical studies 	<u>78.000.000</u>	<u>75.920.652</u> 10.000.000 12.000.000 1.518.475 50.000.000 322.061 200.300 1.879.816	97,33	30.624.834	15.024.860 49,1%
B2.102	Measures to combat fraud affecting the European Agricultural Guidance and Guarantee Fund - Guidance Section		<u>200.000(*)</u>	-	-		
B2.111	Measures to combat fraud affecting the Financial Instrument for Fisheries Guidance		<u>50.000(*)</u>	-	-		
B2.121	Measures to combat fraud affecting the European Regional Development Fund		<u>300.000(*)</u>	<u>15.000</u>	5		
B2.131	Measures to combat fraud affecting the European Social Fund		<u>200.000(*)</u>	<u>100.000</u>	50		
TOTAL TO CARRY FORWARD			84.039.000	81.281.125			

(*) The appropriations were entered in the reserve B0.40 (the headings carrying token entries). They could only be transferred to the headings by decision of the budgetary authority on the basis of a report by the Commission (SG/UCLAF). This decision was not taken until late November, thus not allowing optimum utilization in 1994.

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BUDGET ARTICLE, ITEM	HEADING	MEASURES FINANCED	APPROPRIATIONS AVAILABLE (INCLUDING TRANSFERS)	APPROPRIATIONS COMMITTED	UTILIZATION (%)	CARRYOVERS FROM 1993	PAYMENTS AGAINST CARRYOVERS FROM 1993
CARRIED FORWARD			84.039.000	81.281.125			
B2.5110	Inspection in agriculture	- Controls and analyses - Olive oil agencies	<u>28.500.000</u>	<u>12.217.000</u> 217.000 12.000.000	42,9		
B2.519	Campaign against fraud in agriculture	- Missions, investigations - Remote sensing (software) - Studies, analyses, controls - Expert costs - Operational resources (SG/UCLAF) - Purchase of miscellaneous equipment	<u>2.500.000</u>	<u>637.038</u> 56.229 138.214 138.750 30.000 260.000 13.845	25,5		
B5.3051	Community action programme concerning vocational training for customs officials (Matthaeus) and tax officials (Matthaeus-Tax)	- Matthaeus - Matthaeus-Tax	<u>2.900.000</u>	<u>2.899.985</u> 2.305.880 594.105	100	885.469	520.159 58,7%
B6.840	Measures to combat fraud in the shared-cost research sector		<u>50.000(*)</u>	-	-		
B7.530	Measures to combat fraud in the cooperation sector		p.m.				
GRAND TOTAL			117.989.000	97.035.148	82,2		

(*) The appropriations were entered in the reserve B0.40 (the headings carrying token entries). They could only be transferred to the headings by decision of the budgetary authority on the basis of a report by the Commission (SG/UCLAF). This decision was not taken until late November, thus not allowing optimum utilization in 1994.

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Table 13

BUDGET ITEM A0-3531 - UTILIZATION OF BUDGET APPROPRIATIONS 1994 (DG VI share)*

INITIAL APPROPRIATION DG VI = ECU 2.880 million

FINAL APPROPRIATION DG VI AFTER DISTRIBUTION = ECU 2.250 million

MS	REG. 4045/89				OTHER OPERATIONS (* *) (1)				TOTAL			
	BUDGET	Utilization			BUDGET	Utilization			BUDGET	Utilization		
		C a	P b	% b/a		C a	P b	% b/a		C a	P b	% b/a
BE	0,150	0,072	0,053	74 %	/	/	/	/	0,150	0,072	0,053	74 %
DK	0,150	0,134	0,100	75 %	/	/	/	/	0,150	0,134	0,100	75 %
DE	0,300	0,298	0,211	71 %	/	/	/	/	0,300	0,298	0,211	71 %
EL	0,150	0,114	0,042	36 %	/	/	/	/	0,150	0,114	0,042	36 %
ES	0,300	0,295	0,222	75 %	/	/	/	/	0,300	0,295	0,222	75 %
FR	0,300	0,291	0,216	74 %	/	/	/	/	0,300	0,291	0,216	74 %
IRL	0,150	0,029	0,022	74 %	/	/	/	/	0,150	0,029	0,022	74 %
IT	0,300	0,133	0,000	0 %	/	/	/	/	0,300	0,133	0,000	0 %
LU	0,030	0,000	0,000	0 %	/	/	/	/	0,030	0,000	0,000	0 %
NL	0,300	0,130	0,064	50 %	/	/	/	/	0,300	0,130	0,064	50 %
PT	0,150	0,150	0,106	71 %	/	/	/	/	0,150	0,150	0,106	71 %
UK	0,300	0,044	0,033	75 %	/	/	/	/	0,300	0,044	0,033	75 %
TOT.	2,580	1,690	1,068	63 %	0,300	0,534	0,000	0 %	2,580	1,690	1,068	48 %
									2,880	2,224	1,068	

(*) PROVISIONAL

Notes: BUDGET: Appropriations available in budget; C: Commitments; P: Payments

(* *) Agricultural simplification working party, SCENT, etc.

(1) Amount not distributed by country.

Table 14

BUDGET ITEM A0-3531 - UTILIZATION OF BUDGET APPROPRIATIONS 1993 (DG VI share)*

INITIAL APPROPRIATION DG VI = ECU 2.880 million

FINAL APPROPRIATION DG VI AFTER DISTRIBUTION = ECU 2.574 million

MS	REG. 4045/89				OTHER OPERATIONS (* *) (1)				TOTAL			
	BUDGET	Utilization			BUDGET	Utilization			BUDGET	Utilization		
		C a	P b	% b/a		C a	P b	% b/a		C a	P b	% b/a
BE	0,150	0.076	0.095	125 %	/	/	/	/	0,150	0.076	0.095	125%
DK	0,150	0.131	0.123	94 %	/	/	/	/	0,150	0.131	0.123	94%
DE	0,300	0.278	0.28	101 %	/	/	/	/	0,300	0.278	0.280	101%
EL	0,150	0.136	0.059	43 %	/	/	/	/	0,150	0.136	0.059	43%
ES	0,300	0.286	0.248	87 %	/	/	/	/	0,300	0.286	0.248	87%
FR	0,300	0.289	0.274	95 %	/	/	/	/	0,300	0.289	0.274	95%
IRL	0,150	0.031	0.026	84 %	/	/	/	/	0,150	0.031	0.026	84%
IT	0,300	0.189	0.031	16 %	/	/	/	/	0,300	0.133	0.031	16%
LU	0,030	0,000	0	0 %	/	/	/	/	0,030	0,000	0,000	0 %
NL	0,300	0.106	0.112	106 %	/	/	/	/	0,300	0.130	0.112	106%
PT	0,150	0.13	0.116	89 %	/	/	/	/	0,150	0.150	0.116	89%
UK	0,300	0.054	0.05	93 %	/	/	/	/	0,300	0,044	0,050	93%
TOT.	2,580	1.706	1.413	83 %	0,300	0.4	0,226	56 %	2,580	1,690	1,706	78%
									2,880	2,224	2,106	

Notes: BUDGET: Appropriations available in budget; C: Commitments; P: Payments

(* *) Agricultural simplification working party, investigations, etc.

(1) Amount not distributed by country.

BUDGET ITEM B 1-3600 - UTILIZATION OF BUDGET APPROPRIATIONS 1994 (*)

(ECU million)

INITIAL APPROPRIATION C/P: 71 + 15 in reserve = ECU 86 million

FINAL APPROPRIATION C/P AFTER TRANSFER = ECU 78 million

	REG. 307/91				REG. 3508/92				REMOTE SENSING (REG. 165/94)				REMOTE SENSING IMAGES			REG. 3151/90 SINGA (2)		REG. 595/91		CONSULT. 3508/92		TOTAL			
	BUDGET	Utilization			BUDGET	Utilization			BUDGET	Utilization			Utilization			BUD.	Util. C/P	(3) BUD.	Util. C/P	(4) BUD.	Util. C/P	BUDGET	Utilization		
		C	P	%		C	P	%		C	P	%	C	P	%								a	b	b/a
BE	1.028	0.164	0.1	63%	1,150	1,150	0,863	75%	0.345	0.276	0.207	75%	/	/	/	-	-	/	-	/	/	2,523	1,680	1,166	74 %
DK	0.967	0.377	0.3	79%	1,200	1,200	0,851	71%	0.36	0.288	0.216	75%	/	/	/	-	-	/	-	/	/	2,517	1,865	1,366	73 %
DE	2	1.163	0.87	74%	5,060	5,050	3.79	75%	1.515	1.212	0.342	28%	/	/	/	-	-	/	-	/	/	8,814	7,415	4,986	67 %
EL	2	0,137	0.09	63%	4,360	4,350	3.26	76 %	1.305	1.044	0.75	72%	/	/	/	-	-	/	-	/	/	7,459	6,631	4.098	74%
ES	2	1,910	0.36	19%	9,060	9.05	6.79	76%	2.716	2.172	1.386	64%	/	/	/	-	-	/	-	/	/	13,675	13,132	8,636	65 %
FR	4.424	3.08	1.94	63%	7,300	7.3	6.48	75%	2.19	1.752	0.195	11%	/	/	/	-	-	/	-	/	/	13,194	12,132	7,605	63%
IRL	0.609	0.185	0.12	63%	2,250	2,260	1.69	75%	0.675	540	0.267	49%	/	/	/	-	-	/	-	/	/	3,534	2,975	2,070	70 %
IT	3.282	1.016	0.44	43%	10,050	10,050	7.64	75%	3.015	2.412	1.809	76%	/	/	/	-	-	/	-	/	/	16,347	13,478	9,781	73%
LU	0	0	0	0 %	0,300	0,300	0.07	24%	0.090	0.072	0	0 %	/	/	/	-	-	/	-	/	/	0,390	0,372	0,073	20%
NL	1.843	1.36	0.84	62%	1,600	1,600	1.13	75%	0.45	0.36	0.27	75%	/	/	/	-	-	/	-	/	/	3,793	3,210	2,231	70%
PT	0.241	0.241	0.15	63%	2,860	2.86	1.69	56%	0.855	0.684	0	0%	/	/	/	p.m.	1,863	/	-	/	/	3,946	5,638	3,602	64%
UK	1.663	0.397	0.25	62%	4,960	4,950	3.71	75%	1.485	1.188	0.891	75%	/	/	/	-	-	/	-	/	/	8,088	6,635	4,852	74%
TOT.	20	10	5.42	54%	60,000	60,000	36.8	74%	15,000 (1)	1,690 0,534 2,224	12	53%	1,618	0,701	46 %	p.m.	1,863	0,500	0	0,500	0,504 0,204	85,000 1,000 86,000	73,863 2,058 '61,277	50,366 0,911 51,277	68 %

(*) PROVISIONAL

Notes: BUDGET: Appropriations available in budget; C: Commitments; P: Payments

(1) Including appropriations for images (Spot Image and Eurimage). They were in the reserve and transferred on 21.4.1994.

(2) This regulation concerns Portugal.

(3) No allocation by country.

(4) Appropriation to cover costs of outside consultants.

BUDGET ITEM B 1-3600 - UTILIZATION OF BUDGET APPROPRIATIONS 1993 (*)

Table 16

(ECU million)

INITIAL APPROPRIATION C/P: 22 + 60 in reserve = ECU 82 million

FINAL APPROPRIATION C/P AFTER TRANSFER = ECU 82 million

	REG. 307/91				REG. 3508/92				REMOTE SENSING				REMOTE SENSING IMAGES				REG. 3151/90 SINGA (3)		REG. 595/91		CONSULT. 3508/92		TOTAL			
	BUDGET	Utilization			BUDGET	Utilization			BUDGET	Utilization			BUDGET	Utilization			BUD.	Util. C/P	(4) BUD.	Util. C/P	(5) BUD.	Util. C/P	BUDGET	Utilization		
		C a	P b	% b/a		C a	P b	% b/a		C a	P b	% b/a		C a	P b	% b/a								C a	P b	% b/a
BE	1.137	1.137	0.19	17%	1,150	1,150	0,846	74%	0.202	0.202	0.202	100%	/	/	/	/	-	-	/	-	/	/	2.49	2.49	1.24	50%
DK	0.878	0.878	0.7	80%	1,200	1,200	1,200	100%	0.211	0.211	0.211	100%	/	/	/	/	-	-	/	-	/	/	2.289	2.289	2.11	92%
DE	3	2.526	1.5	59%	5,060	5,050	6.05	100%	0.889	0.889	0.303	34%	/	/	/	/	-	-	/	-	/	/	8.465	8.466	6.85	81%
EL	2	1,524	0.19	13%	4,360	4,350	1.93	44 %	0.766	0.766	0	0%	/	/	/	/	-	-	/	-	/	/	6.64	6,640	2.12	32%
ES	2	1,605	0.8	50%	9,050	9.05	9.05	100%	1.593	1.593	1.593	100%	/	/	/	/	-	-	/	-	/	/	12, 248	12.25	11.4	93%
FR	4.127	4.127	0,3,3 2	80%	7,300	7.3	7.3	100%	1.285	1.285	0.615	56%	/	/	/	/	-	-	/	-	/	/	12.712	12.71	11.3	89%
IRL	0.542	0.542	0.28	52%	2,250	2,260	2.25	100%	0.396	0.396	0.396	100%	/	/	/	/	-	-	/	-	/	/	3.188	3.188	2.93	92%
IT	3.36	3.36	0.47	14%	10,050	10,050	10.1	100%	1.77	1.77	1.77	100%	/	/	/	/	-	-	/	-	/	/	16.18	15.18	12.3	81%
LU	0	0	0	0 %	0,300	0,300	0.04	12%	0.053	0.053	0	0 %	/	/	/	/	-	-	/	-	/	/	0.363	0.353	0.04	10%
NL	1.749	1.749	2.32	132%	1,500	1,600	1.5	100%	0.264	0.264	0.264	100%	/	/	/	/	-	-	/	-	/	/	3.613	3.513	4.08	116%
PT	1.016	1.016	0.46	45%	2,860	2.86	0.82	29%	0.502	0.502	0.192	38%	/	/	/	/	1,000	0	/	-	/	/	5.368	4.368	1.46	34%
UK	1.536	1.536	0.17	11%	4,950	4,950	4.95	100%	0.872	0.872	0.872	100%	/	/	/	/	-	-	/	-	/	/	7.368	7,368	6	81%
TOT.	20	20	10.4	52%	50,000 (1)	60,000	45	90%	8,804 (1)	8,804	6.518	74%	(1) (2) 1,197	1,197	1,059	89 %	1,000	0	0,500	0	0,500	0,121 0,108	79,803 2,197 82,000	1,318 81,12	1,167 63,03	78%

Notes: BUDGET: Appropriations available in budget; C: Commitments; P: Payments

(1) These appropriations were in the reserve and were transferred.

(2) No allocation by country. The appropriation is for two companies, Spot Image and Eurimage.

(3) This regulation concerns Portugal.

(4) No allocation by country.

(5) Appropriation to cover costs of outside consultants.

TABLE 17

FRAUD PREVENTION APPROPRIATIONS - 1995 BUDGET

ITEM	DESCRIPTION	AMOUNT (ECU)
A-2554	Conferences, congresses and meetings in connection with the activities of the associations of European lawyers for the protection of the financial interests of the Community	260.000
A-3530	Unit to coordinate action against fraud	200.000
A-3531	Controls, studies and analyses in connection with the fight against fraud	2.808.000
A-3532	Fraud suppression in the textile sector (TAFI)	800.000
A-355	European documentation, coordination and study network to control cross-border crime and fraud	350.000
B1-360	Measures to combat fraud affecting the European Agricultural Guidance and Guarantee Fund - Guarantee Section	85.000.000
B2-101	Measures to combat fraud affecting the European Agricultural Guidance and Guarantee Fund - Guidance Section	200.000 ¹
B2-111	Measures to combat fraud affecting the Financial Instrument for Fisheries Guidance	50.000 ¹
B2-121	Measures to combat fraud affecting the European Regional Development Fund	300.000 ¹
B2-131	Measures to combat fraud affecting the European Social Fund	200.000 ¹
B2-301	Measures to combat fraud affecting the Cohesion Fund	300.000 ¹
B2-511	Inspection in agriculture	32.500.000
B2-519	Campaign against fraud in agriculture	1.500.000 ¹
B5-3051	Community action programme concerning vocational training for customs officials (Matthaeus) and tax officials (Matthaeus-Tax)	3.000.000
B5-800	Cooperation in the fields of justice and home affairs	5.000.000 ¹
B6-910	Actions to combat fraud in the area of research (shared-cost)	50.000 ¹
B7-530	Measures to combat fraud in the cooperation sector	100.000 ¹

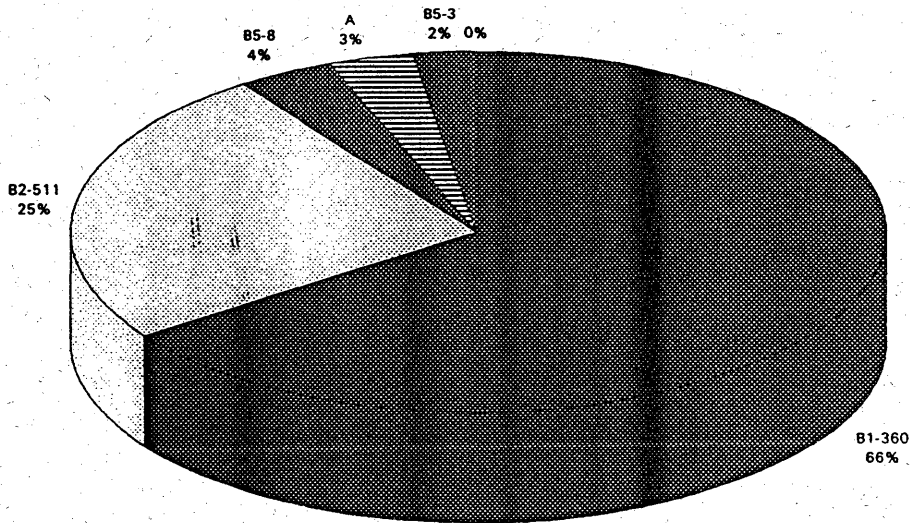
¹ Appropriations entered entirely in Chapter B0-40.

Figure 5

FRAUD PREVENTION APPROPRIATIONS 1995

Breakdown by major areas

Area	Budget heading	Amount (ECU thousand)
- EAGGF - Guarantee	B1-360	85000
- Agriculture (inspections)	B2-511	32500
- Cooperation justice	B5-8	5000
- Training, miscellaneous	A	4418
- Information on customs and indirect taxation	B5-3	3000
- Technical assistance and self-assistance concerning the Structural Funds, the Cohesion Fund, agriculture and other sectors	B2 - B6 - B7	2700
	TOTAL	132618



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