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*Annex to the*

**2004 Report from the Commission Protection of the European Communities' financial interests and the fight against fraud**

***Statistical Evaluation of Irregularities - Agricultural, Structural and Cohesion Funds and Own Resources - Year 2004***

{COM(2005) 323 final}

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## 1. THE SITUATION IN 2004

### 1.1. Introduction

Community legislation defines the conditions for the notification of frauds and other irregularities by the Member States with a view to protecting the Community's financial interests in all areas of activity<sup>1</sup>. This need is particularly evident in those sectors of the Community budget where the main responsibility for management is with the Member States, namely, in the fields of Agriculture and Structural Funds (on the expenditure side) and Own Resources (on the revenue side). In these areas, Member States are obliged to inform the Commission of all irregularities with an impact above € 4,000 for Community expenditure (€ 10,000 for traditional own resources) at the various stages in the procedure for recovering the amounts unduly paid.

The obligation for reporting irregularities is set out in Regulation No. 595/91 for the agriculture sector, Regulations Nos. 1681/94<sup>2</sup> and 1831/94<sup>3</sup> for structural measures and Regulation No. 1150/2000 for own resources. Member States are required to report irregularities under Article 3 of these regulations (for own resources the relevant provisions are contained in Article 6, paragraph 5) within two months of the end of each quarter. Under Article 5 (again, Article 6, paragraph 5 for own resources) they have to submit updates of the cases communicated and relevant information about the financial, administrative and judicial follow-up.

The distinction between irregularities and frauds is that frauds<sup>4</sup> are criminal acts as determined only by a judge in the context of judicial proceedings. As such, it is only when the judicial procedure has come to an end that the actual amount of fraud can be determined. In the mean time the Commission has at its disposition, the information relating to cases reported as irregularities some of which, in the opinion of the reporting Member States give rise to suspicions of fraud. It is clear that the accuracy of the statistical image of irregularities obtained by the Commission and improvements in the latter's capacity to react are affected by the accuracy and timeliness of the notifications made.

The practices of the national administrations still vary, though improvements have been achieved thanks to the efforts made to harmonise their approaches. The data communicated by the Member States remains sometimes incomplete. Furthermore, the distinction between "suspected frauds" and other irregularities is not consistent as Member States do not always have the same definition of criminal risk.

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<sup>1</sup> See in particular Article 3(1) of Council Regulation (EEC) No 595/91 of 4 March 1991 (OJ L 67, 14.3.1997), Commission Regulation (EC) No 1681/94 of 11 July 1994 (OJ L 178 of 12.7.1994) and No 1831/94 of 26 July 1994 (OJ L 191, 27.7.1994) for expenditure, and Article 6(5) of Council Regulation (EC, Euratom) No 1150/2000 for traditional own resources.

<sup>2</sup> Regulation 1681/94 applies to the Structural Funds, that is to say European Regional Development Fund (ERDF), European Social Fund (ESF), European Agriculture Guidance and Guarantee Fund (EAGGF) – Section Guidance and Financial Instrument for Fishery Guidance (FIFG).

<sup>3</sup> Regulation 1831/94 applies to the Cohesion Fund.

<sup>4</sup> See the definition in Article 1 of the Convention on the protection of the Community's financial interests of 26 July 1995 (OJ C No 316 of 27.11.1995), which entered into force on 17 October 2002.

Consequently, a significant proportion of communications do not categorise the case as a suspected fraud or a simple irregularity.

The Commission is working in close cooperation with the Member States to improve the notification system for irregularities, in particular to clarify the concepts of “fraud” and “irregularity”<sup>5</sup> and as a result of this, a first attempt to measure the possible economical impact of fraud in certain sectors has been achieved. However, because of all the reasons outlined above, the figures which are presented here should be very cautiously interpreted. It would be particularly inappropriate to draw simple conclusions about the level of frauds in this or that part of the Union or on the efficiency of the services which contribute to the protection of financial interests.

## **1.2. Cases notified by the Member States**

In general, the number of frauds and other irregularities notified for the year 2004 has increased slowly: after the steep rise in 2002, in agriculture (see Annex 3) and, above all, in structural actions (see Annex 6), followed by a natural slow down in both sectors in 2003, the number of reported irregularities has increased again in 2004 in the three fields.

However, whilst in agriculture and own resources the amounts of money involved in reported irregularity cases are in decline, in line with medium term trends (minus 26% in traditional own resources - see Annex 1 and minus 14% in the agriculture sector – see annex 3) they are increasing in the structural funds (by 44%).

In annex 10 an overview is given of all communicated irregularities by Member States under Regulation No. 595/91 for the agriculture sector, Regulations Nos. 1681/94 and 1831/94 for structural measures and Regulation No. 1150/2000 for own resources.

### *1.2.1. Traditional Own Resources (Annexes 1 and 2)*

a) Under Article 6(5) of Regulation 1150/2000, Member States communicate to the Commission, via the OWNRES-system, cases of fraud and irregularity when amounts exceed €10,000 by using a web-based OWNRES-application.

On the basis of OWNRES-information held (correct as of 13 April 2005), the following trends can be identified:

the number of detected cases of fraud and irregularity (cases > €10,000) increased by 2.9% compared to 2003, including data from the ten new Member States per May 2004, the contribution of which to the overall amount is smaller than the increase as such.

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<sup>5</sup> The Commission opened a dialogue with the representatives of the Member States to clarify basic concepts and to re-assure Member States that the communication of irregularities in no way prejudices the outcome of criminal judicial proceedings. A working document on the practical modalities for the communication of irregularities was established. Discussions are continuing in the Advisory Committee on the Coordination of Fraud Prevention.

In total, for the period 1989-2005 (13 April 2005), the OWNRES-database contains around 24,500 cases and about 40,500 communications including updates.

For 2004 alone, 2,735 communications were transmitted by the Member States compared to 2,659 for 2003 (of which 206 were notifications received after the deadline for last year's report, resulting from the Commission's reconciliation exercise and respective audits), representing an increase of 2.9%.

Compared with 2003, there has been a considerable increase in the number of cases communicated from Belgium (+ 58%), Sweden (+ 36%) and France (+30%). In contrast the number of cases communicated has decreased in eight Member States, notably Ireland (-70%), Spain (- 48%), Portugal (- 37%), Germany (- 28%) and Austria (- 26%).

b) Amounts affected have decreased by 26% compared with 2003.

The consolidated communications in 2004 amounted to €205,692,186 compared to €276,452,895 in 2003, representing a decrease of 26% compared to 2003. Since 2002, the amounts communicated are steadily falling.

The amount recovered in 2004 was €54,751,893, representing 27% of the amount, compared to €72,856,461 or 26% recovered at the same time regarding the previous year (the respective figures for 2003 are €119,015,067 or 46 % by now).

Analysis of the evolution of amounts affected allows us to show that compared to 2003, the increase in the amounts affected is particularly significant in Sweden (+367%), United Kingdom (+290%) and Belgium (+134%). Amounts affected have decreased significantly in Ireland (-83%), Germany (-71%) and in Spain (-57 %).

### 1.2.2. *Agricultural expenditure (Annexes 3 and 4)*

In 2004, Member States reported 3,401 irregularities under Regulation (EEC) No. 595/91 compared to 3,237 irregularities in 2003. The total amount affected in 2004 was about € 82 million as opposed to around € 170 million in 2003. Irregularities notified in this sector only correspond to 0.19% of the agricultural budget. Annex 4 gives an overview per Member State of the number of irregularities, the amounts involved and the percentage of the EAGGF expenditure.

In the period 1971 – 2004, Member States reported 36,223 irregularities. The total amount affected by these irregularities is about € 3,357 million. The total amount of irregularities that were detected before payment is about € 251 million and the total amount of irregularities that were detected after payment is about € 3,106 million. At the end of 2004 Member States still had to recover € 2,141 million.

#### 1.2.2.1. Reporting discipline

In 2004 OLAF received more than 16,000 communications under Regulation (EEC) No. 595/91. A large number of these communications were updates of cases that had been reported prior to 2004. The rather large number of communications can be explained by the "TFR-effect" (TFR = Task Force Recovery). The TFR has the task of closing all cases that were reported before 1999 and are still open. Due to the activities of the TFR, Member States have started to update irregularities.

In part 3 of the 2003 Annual Report, statistical evaluation of irregularities, it was noted that the reporting discipline of Member States had improved in 2003. This report also established that further improvements were still necessary and that the level of compliance of a Member State seems to decrease as the total amount of support measures increases. This is still true, but the reporting discipline has continued to improve in 2004. More Member States have reported on time and the quantity and quality of the information has improved.

In each quarter of 2004, Member States received an Information bulletin in which an overview was given of the communications sent in that quarter, feedback given on the reported irregularities and recommendations made to improve the reporting of irregularities.

The system of electronic reporting of irregularities introduced in 2001 in the agriculture sector has led to an improvement in data quality and in the timeliness of reporting. It has also resulted in a reduction of misunderstandings and misinterpretations owing to linguistics and the consequent, improved compliance with the regulations.

The system of electronic reporting is, however, not used by all Member States. At the end of 2004 three Member States (Germany, Greece and Spain) were still not using the electronic reporting system. Between them, Germany and Spain account for more than 40% of the total number of cases reported (1,493 cases and more than 10,000 communications).

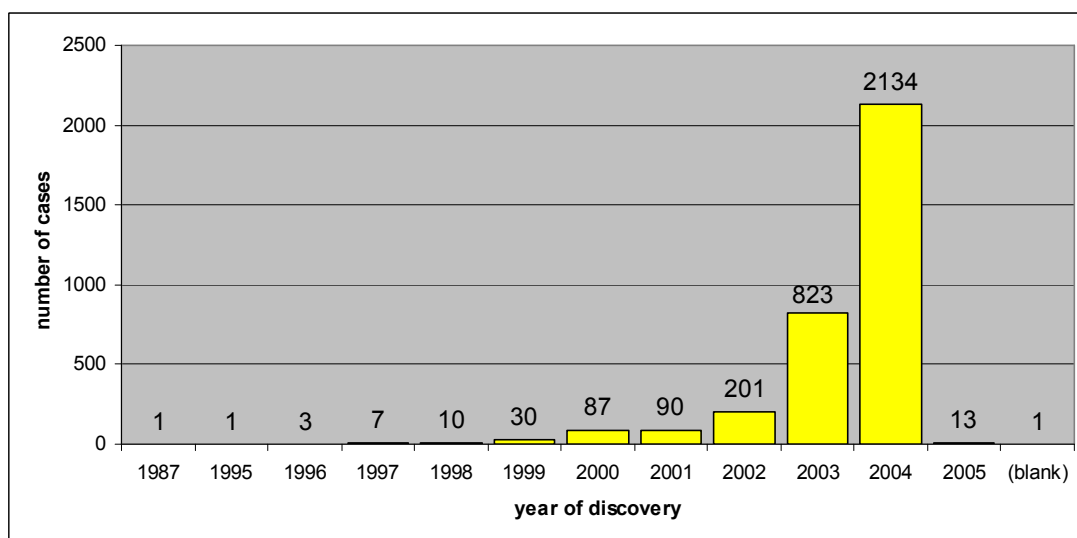
Member States should report the year of expenditure in their communications to make it possible to create a link between the budget year and the measures affected by the irregularity. For the EAGGF sector the budget year and the calendar year do not match. However, only in approximately 30% of cases do Member States do actually report the year of expenditure. Germany, Denmark, Spain, France, the Netherlands and Portugal seldom report the year of expenditure in any of their communications.

A point of concern is that Member States report a relatively high number of cases, (approximately 32%), in which the irregularity or fraud took place before 2001. This is of particular concern as the possibility of recovery decreases with time.

In addition, Member States also report the date of discovery of the irregularity and the date on which it was first reported to OLAF. Chart 1.1 shows an overview of the lapse (in years) between the discovery and reporting of the irregularity. The chart shows that the reporting discipline of Member States, although it has improved, still needs attention. Irregularities should be reported as soon as possible, which means immediately after discovery. More than 90% of irregularities are notified within 2 years following their discovery.

In 13 cases Member States wrongly reported 2005 as the year of discovery and in 1 case the year of discovery was not mentioned. The reporting of irregularities still needs some attention.

**Chart 1.1: Cases reported in 2004 and year of discovery**



The late reporting of an irregularity could imply that a Member State did not take all necessary actions to limit or to reduce the financial impact of an irregularity. Audits in Member States revealed that some Member States wait until the recovery procedures are underway before reporting. Furthermore, Member States also start their recovery procedures very late. This, in general, has a negative impact on the chances of recovery.

Member States are also required to give detailed information on the identity of the natural and legal persons involved. Germany has not reported the identity of the natural or legal persons involved in any case. The Netherlands has only reported in one case the identity of the natural and/or legal persons involved. For some other Member States, such as Greece, France, Finland and the United Kingdom, the reporting of the identity also needs attention. All other Member States have given information on the identity of the natural and legal persons involved, and therefore comply with Regulation (EEC) No. 595/91. Table 1.2 gives an overview of the reporting discipline concerning the identity of the persons involved in irregularities.

Table 1.2.: Reporting discipline: identity

MS	identity of natural and legal persons involved		
	no information	information	total
AT		133	133
BE		34	34
DE	813		813
DK		62	62
EL	12	17	29
ES		651	651
FI	21	3	24
FR	48	476	524
IE	1	104	105
IT	5	91	96
LU		3	3
NL	307	1	308
PL		5	5
PT		232	232
SE		75	75
UK	29	278	307
<b>TOTAL</b>	<b>1236</b>	<b>2165</b>	<b>3401</b>

The general conclusion is that the reporting discipline of Member States has improved in 2004, but further improvements are still necessary.

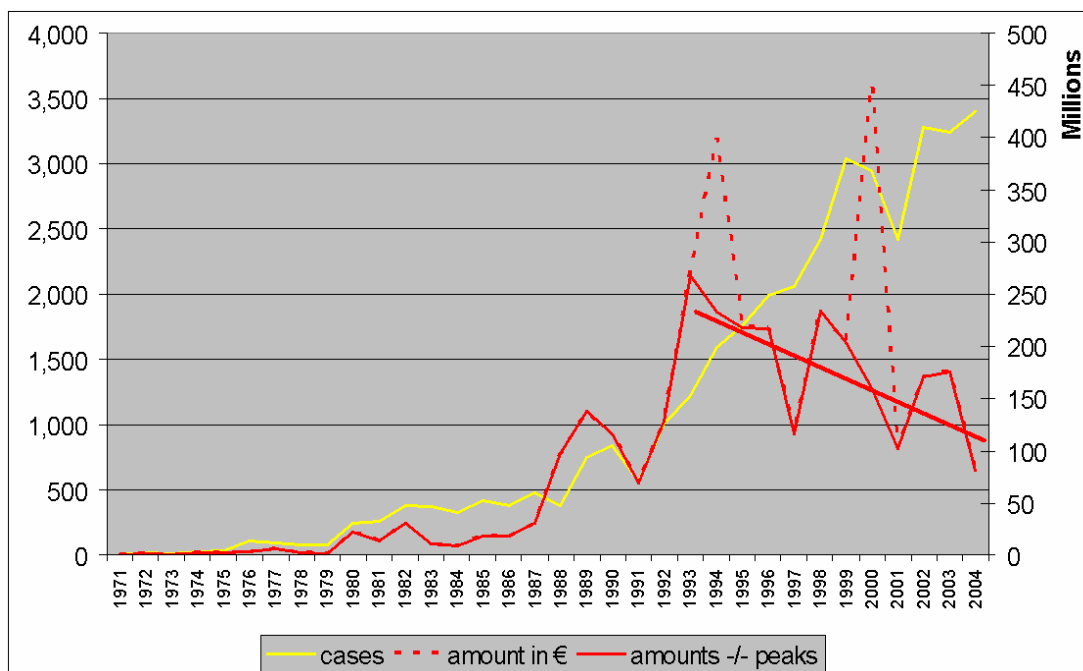
#### 1.2.2.2. Analysis - general

The total number of cases reported for 2004 is 3,401. These 3,401 cases amount to approximately € 82 million compared to approximately € 170 million for the 3,237 cases reported in 2003. In chart 1.3 the total number of cases per year and the total amount per year are shown. Annex 3 gives an overview over the years 1998-2004.

The trend of a steady and significant increase in the number of cases can still be seen, and the total number of reported irregularities is still increasing. The total amounts affected by these irregularities, however, have been decreasing since 1994. Chart 1.3 reflects these trends. The line “amounts in €” shows 2 peaks, one in 1994 and one in 2000. These peaks are caused by 3 Italian cases in the year 1994 and 2 Italian cases in the year 2000. If these peaks are ignored, the trend since 1994 has clearly been one of steadily decreasing total amounts affected by irregularities (see the ‘trend line’ in the graph). One explanation for this trend is the introduction of the direct aid/payment section in 1992.



**Chart 1.3: Irregularities communicated by Member States period 1971 – 2004**



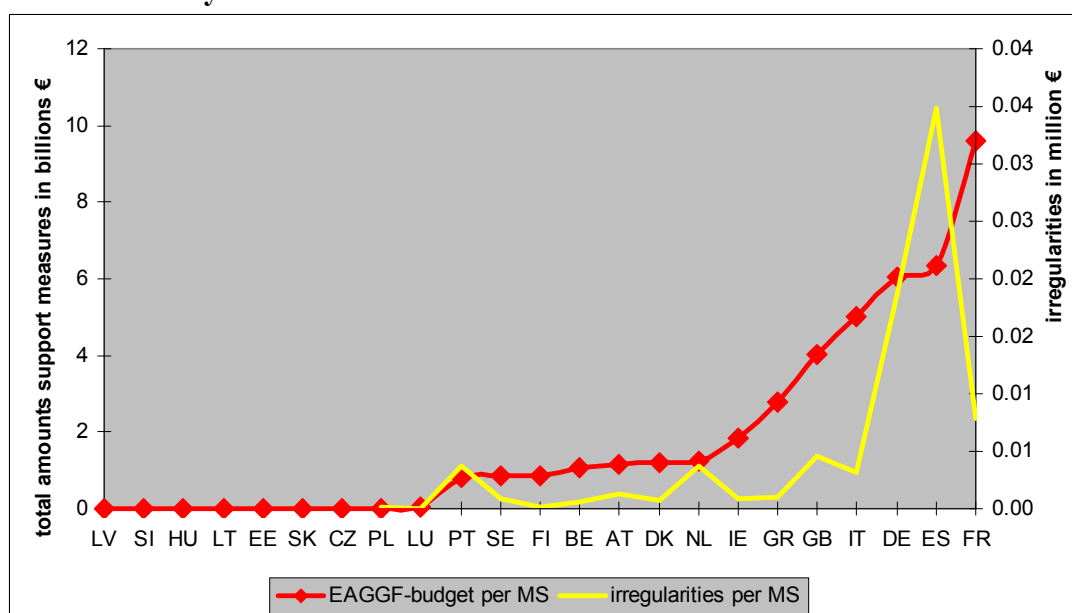
In 2004, the countries reporting the highest number of cases were Germany, Spain and France, with 813, 651 and 524 cases respectively. In monetary terms, Spain was the Member State that reported the highest amounts affected by irregularities, i.e. almost € 35 million, followed by Germany which reported a total amount of almost € 19 million. Spain and Germany together, account for more than 65 % of the total amount affected by irregularities in 2004. Poland was the first of the new Member States to start reporting irregularities. In Annex 4 an overview is given per Member State.

Also worthy of mention is the amount of the irregularities as a percentage of the EAGGF-expenditure per Member State. Focussing on the EU-15 Member States, Spain and Portugal have the highest percentage, 0.55% and 0.46% respectively, followed by Germany and the Netherlands with 0.31% and 0.30% respectively. Annex 4 gives an overview of these percentages.

Chart 1.4 gives an impression of the relationship between the total amount of the EAGGF-budget allocated per Member State and the total amount of the irregularities per Member State in 2004. Member States are placed according to the budget allocation, starting with the lowest Member State. Latvia received the lowest amount of the EAGGF budget as France received the highest.

Together France, Spain and Germany receive more than 50% of the total EAGGF-budget. France received more than € 9.6 billion in the year 2004, Spain more than € 6.3 billion and Germany more than € 6 billion.

**Chart 1.4: total amount of irregularities in relation to budget allocated per Member State year 2004**



Almost all Member States have a comparable relationship between the total amount of the support measures and the total amount of irregularities. Striking are, however, the results for Spain and France. Spain reports a high number of cases as well as a high total amount involved and a relatively high average amount involved per irregularity. For France the opposite holds: the total number of reported irregularities, the total amounts affected by the irregularities, as well as the average amount affected per irregularity, are relatively low. Germany, Spain and France together, receive more than 50%, i.e. approximately € 22 billion, of the EAGGF-budget. Portugal and the Netherlands report relatively more cases than other Member States. Italy, on the other hand, reports a relatively low number of cases compared to the other Member States. Cyprus and Malta are not mentioned in chart 1.4 due to the fact that these Member States did not receive any EAGGF support in 2004.

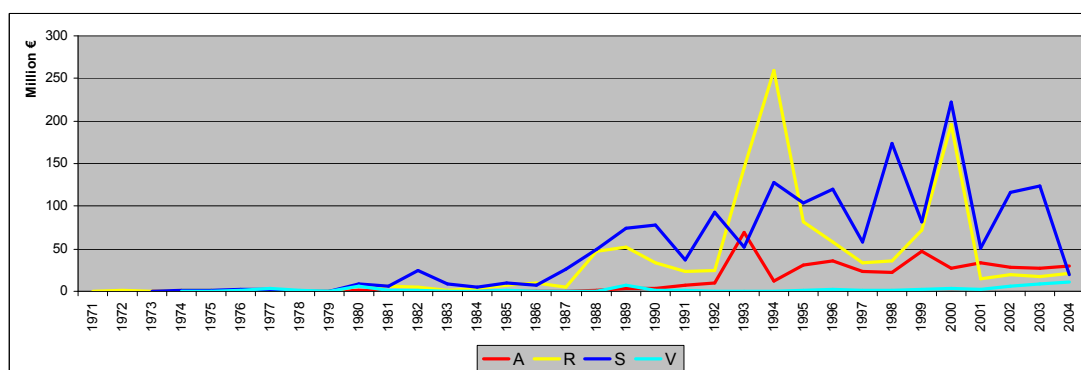
### **Type of support measure**

Member States have to inform the Commission of the measures affected by irregularities. The External Communications Registry (ECR) makes a distinction between 4 different types of measures/payment sections:

- A = direct aid/direct payment
- R = export refund
- S = market support
- V = other measures

Chart 1.5 gives an overview of the development of the reported irregularities per type of measure between 1971 and 2004.

**Chart 1.5: irregularities per type of measure period 1971 – 2004**



The graph clearly illustrates that in the period 1971 – 2004 irregularities affecting “market support” had a higher financial impact than irregularities relating to other types of measures. In 1993 and 1994, irregularities affecting support measure “export refund” had a higher financial impact. There is however a new trend: the number of irregularities and the amounts affected by irregularities is increasing in sector A (direct aid/payment). This is, however, a logical consequence of the introduction of direct aid/payment in 1992, the introduction of the Integrated Administration and Control System (IACS) and the modifications of the direct aid/payment in 2000.

Member States have reported a total of 1,740 cases affecting direct aid area (A). These cases alone amount to approximately € 29 million, which is approximately 35% of the total amount affected by irregularities. The number of cases relating to the direct aid schemes is rather high, i.e. 1,740, which implies that the average amount per irregularity (about € 16,700) is low. The amount involved in irregularities affecting export refunds (R) is approximately € 21 million, which is approximately 25% of the total amount affected by irregularities. Member States have reported a total of 671 cases concerning export refunds (R). The average amount per irregularities approximately € 31,300. The total amount of money involved in irregularities relating to market support measures (S) is approximately € 20 million, which is 24% of the total amount affected by irregularities. The average amount of money per reported irregularity is still the highest in market support measures (S) and is about € 50,000.

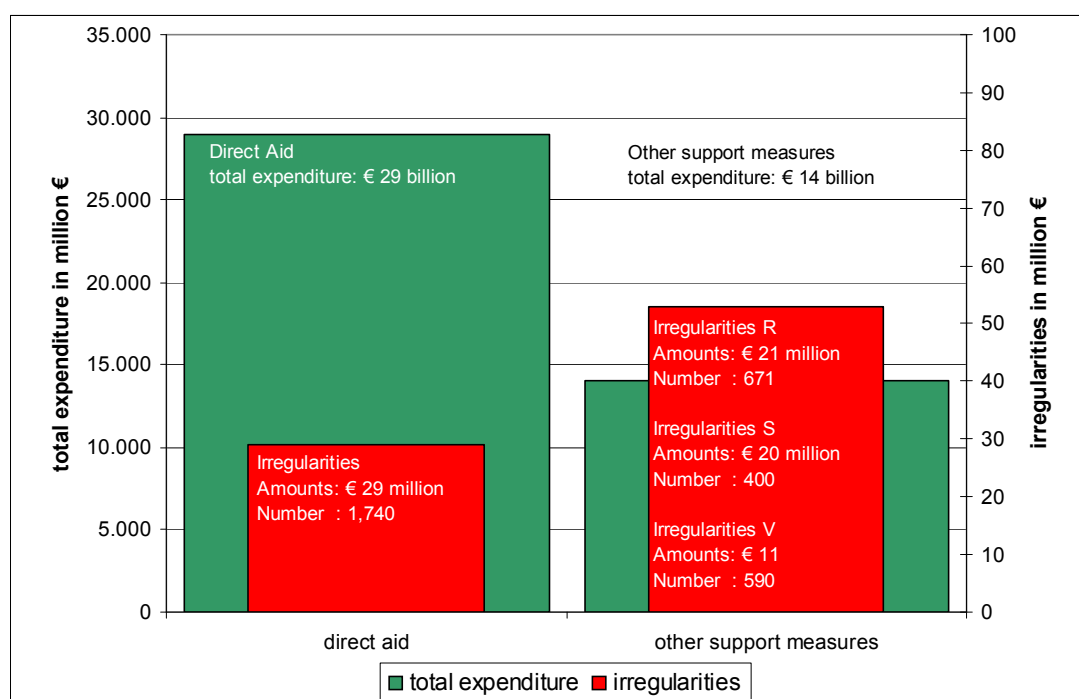
Direct aid/payment has the highest number (1,740) of reported irregularities and the total amount (€ 29 million) affected by these irregularities is higher than in the other types of measures (export refund, market support and other measures which altogether represent 1,661 cases and € 14 million of financial impact). This is, as mentioned above, a logical consequence of the introduction of direct aid/payment in 1992, the introduction of the Integrated Administration and Control System (IACS) and the modifications of the direct aid/payment in 2000.

The introduction of the direct aid/payment also meant a decline in total expenditure in the other types of measures/payment sections (export refunds, market support and other measures). The direct aid/payment accounts now for the large majority of total expenditure in the agricultural sector and it is therefore logic that a higher number of irregularities and a higher total amount are reported for this section. The latter has become visible for the first time in 2004. However, the average amount per

irregularity is lower in direct aid/payment than all other sections. The introduction of the direct aid/payment can be seen as one of the explanations for the decrease in the total amounts affected by irregularities (see chart 1.3.). Approximately 0.1% of direct aid/payment expenditure is affected by irregularities, compared with around 0.5% of expenditure in the other types of measures/payment sections combined. Approximately 0.19% of the total expenditure in the agricultural sector are subject to irregularities (annex 3).

Chart 1.6 shows the total amounts affected by irregularities in direct aid/payment compared to the total expenditure in this section and the total amounts affected by irregularities in the other support measures compared to the total expenditure in those sections.

**Chart 1.6: Relation total expenditure and total financial amounts affected by irregularities – Year 2004.**



### 1.2.2.3. Conclusions

- The total number of reported irregularities is increasing;
- The total amount affected by the reported irregularities is decreasing;
- Highest number and amounts of irregularities are reported in direct aid area;
- Average amount per irregularity is the highest in market support area.

### 1.2.3. Structural measures expenditure (Annexes 6, 7, 8 and 9)

In 2004, Member States reported 3,339 irregularities, of which 3,049 under Regulation (EEC) No. 1681/94 and 290 under Regulation No. 1831/94. The total EU budget amount affected by irregularities in 2004 was about € 695 million, € 532

million of which related to the Structural Funds and € 163 million to the Cohesion Fund. Irregularities notified in this sector correspond to 1.95% of the budget allocated to structural measure in the year 2004. Annex 6 gives an overview per Member State of the number of irregularities, the amounts involved and the percentage of the structural measures budget.

Since the establishment of the information system of irregularities, Member States reported 15,476 irregularities of which 15,123 affecting the Structural Funds and 353 related to the Cohesion Fund.

#### 1.2.3.1. Reporting discipline

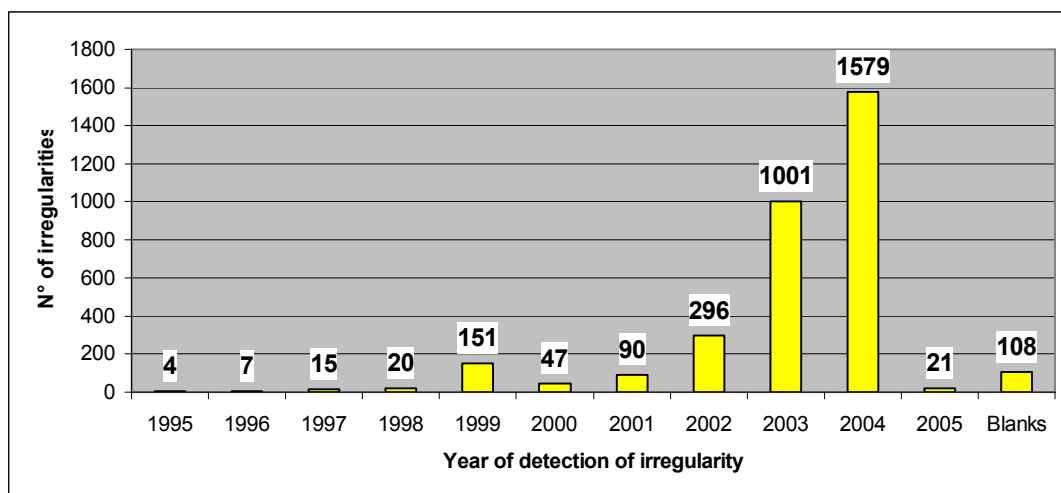
In 2004 OLAF received 3,879 communications under Regulations (EEC) Nos. 1681/94 and 1831/94. 540 of these communications were updates of cases that had been reported prior to 2004 (under article 5 of the above mentioned regulations).

The system of electronic reporting of irregularities was introduced in 2001. After a slow adoption of it by Member States in its first years of implementation, the number of Member States reporting irregularities electronically has increased notably. However, not all the systems used by Member States' authorities are fully interoperable with the OLAF External Communications Registry (ECR), therefore some manual data input is still required. However, overall, the situation is improving. A further extension of the Member States using the electronic connection is expected during 2005. At present, all but three Member States (France, Ireland and Spain) have requested a connection via AFIS, the Anti-Fraud Information System, in order to access the specific modules dedicated to Regulations Nos. 1681/94 and 1831/94 for the electronic submission of communications of irregularities.

Member States also report the date of discovery of the irregularity and the date on which it was first reported to OLAF. Chart 1.7 shows an overview of the lapse (in years) between the discovery of, and reporting of, the irregularity. The chart shows that, under this point of view, the reporting discipline of Member States needs more attention. Irregularities should be reported as soon as possible, which means immediately after discovery.

More than 86% of irregularities are notified within 2 years following their discovery.

**Chart 1.7.: Cases reported in 2004 and year of detection of irregularities**



Some 21 irregularities detected in 2005 were also reported under the 2004 reporting year. This happened because Member States have to report irregularities detected in the fourth quarter of the year (period October-December) by the 28 of February the following year. It sometimes happens that they also include the irregularities detected in the first days of the new year (in this case 2005). This practise should be avoided.

Member States are also required to give detailed information on the identity of the natural and legal persons involved. Germany has not reported the identity of the natural or legal persons involved, apart for 3 cases. All other Member States have given information on the identity of the natural and legal persons involved, and therefore complied with Regulations (EEC) Nos. 1681/94 and 1831/94. Table 1.8 gives an overview of the reporting discipline concerning the identity of the persons involved in irregularities.

**Table 1.8 Reporting discipline: Identity of persons involved in irregularities**

Member State	Identity of natural and legal persons involved		
	No information	Information	TOTAL
AT		38	38
BE		45	45
DE	982	3	985
DK		47	47
EE		7	7
ES		263	263
FI	2	35	37
FR		110	110
GB		244	244
GR		440	440
HU		1	1
IE	5	38	43
IT		638	638
LU		3	3
LV		2	2
NL		58	58
PL		3	3
PT		256	256
SE		119	119
<b>TOTAL</b>	<b>989</b>	<b>2350</b>	<b>3339</b>

Overall, the quality of the information communicated by the Member States improved during 2004.

Last year the implementation of Regulation No. 1681/94 reached satisfactory levels, but it is now necessary that beneficiary States concentrate their efforts on the correct implementation of Regulation No. 1831/94. The results achieved by Member State authorities in the structural funds regulation are encouraging, but the steep increase in communications from Greece concerning the Cohesion fund, raises serious doubts about the compliance with this obligation by the other countries benefiting from it.

It is to be hoped that the positive trend registered in the last years will continue in 2005, also in relation to the new Member States.

#### 1.2.3.2. Analysis - general

After a peak in 2002, owing to the concurring closure of the programming period 1994-1999, and the following decrease in 2003, there was a new rise in the number of irregularities received, up to 3,339 from 2,487 (+ 34%) in 2004. The amounts involved in 2004 were even higher than 2002. This was partly due to a steep increase in the number of communications from Greece, concerning the Cohesion Fund. The Cohesion Fund finances extremely costly projects (mainly infrastructure), and therefore the related irregularities also involve extremely high amounts, compared to the other Funds. If reported irregularities concerning the Cohesion Fund are taken out of the analysis, the amounts involved in those related to the four Structural Funds (EAGGF Guidance Section, ESF, ERDF and FIFG)<sup>6</sup> are still higher in 2004 than in 2003, but lower than 2002.

However, it is very difficult to highlight a real trend in irregularities concerning the Structural and Cohesion Funds as projects and actions financed through them take place on basis of multi-annual programmes.

It is very likely that the increased number of reported irregularities is strongly influenced by improved controls and better compliance with the reporting obligation more than a raise of the irregularities.

Annex 6 shows the general trend in the number of cases and amounts in the last seven years and the relative impact on the budget. It is important to highlight that the assessment of the real impact on the budget of irregularities communicated during the reporting period presents some difficulties.

The budget indicated follows the yearly allocations for the programming period 2000-2006 only, while irregularities communicated refer to both programming periods 1994-1999 and 2000-2006 (and in some cases even to the 1989-1993 round). Their impact has however, been calculated on the basis of the 2003 allocation. A full assessment of the impact of irregularities/frauds on the Structural Funds budget will only be possible following the full closure of the programming period 1994 - 1999 and the processing of the related information/data<sup>7</sup>.

Of all the irregularities reported, 62.6% refer to the projects financed during the 2000-2006 round, 35.6% to the 1994-1999 and a little less than 1.8% to the 1988-1993 or not specified. It is quite curious that 100% of the irregularities reported from Ireland, refer to the programming period 1994-1999. Belgium with 80% and Italy with 72.9% present also this peculiarity.

Chart 1.9 below shows the number of cases and irregular amounts communicated by each Member State. Member States are listed according to the level of structural funding allocated to them. Luxembourg, on the left, is the State receiving the lowest

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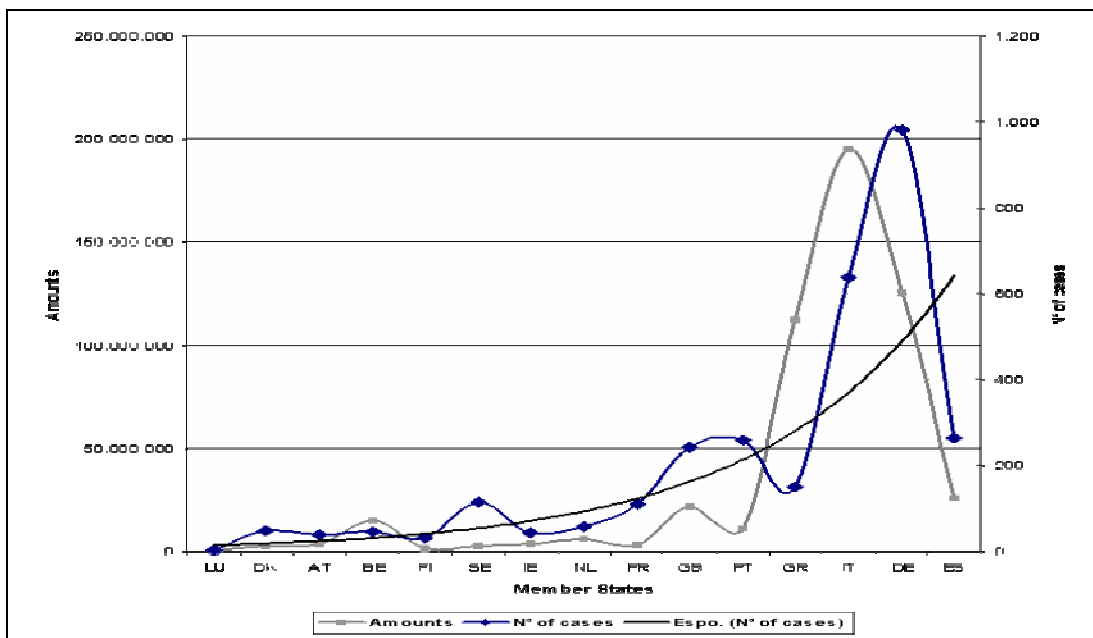
<sup>6</sup> EAGGF: European Agriculture Guarantee and Guidance Fund; ESF: European Social Fund; ERDF: European Regional Development Fund; FIFG: Financial Instrument for Fishery Guidance).

<sup>7</sup> This exercise will probably be possible by the end of 2005.



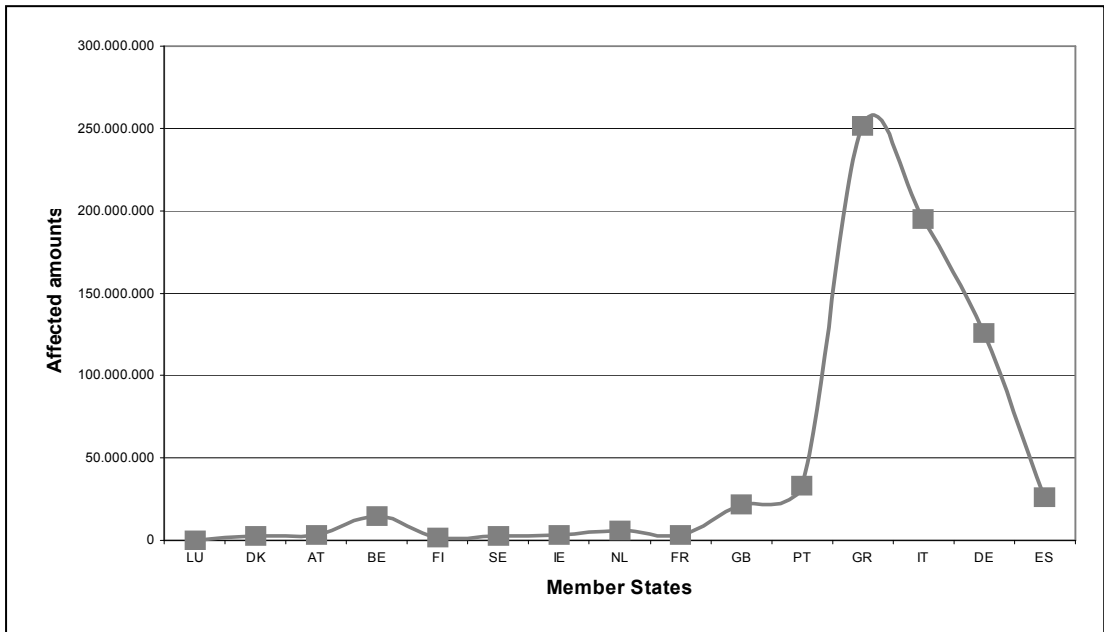
and Spain, on the right, is the country receiving the highest. The analysis is still based on EU-15 data, as figures coming from new Member States are not yet statistically significant.

**Chart 1.9: Number of cases and amounts (excluding Cohesion fund) per Member State in relation to budget allocated per Member State. Amounts in €**



Both lines (that of the irregular amounts, in grey, and that of the number of cases, in black) indicate a correlation between the resources allocated and the irregularities reported. Irregularities concerning the Cohesion Fund have not been included in the chart, as they can bias the result. Chart 1.10 below shows the trend of the amounts of irregularities reported including those related to the Cohesion Fund.

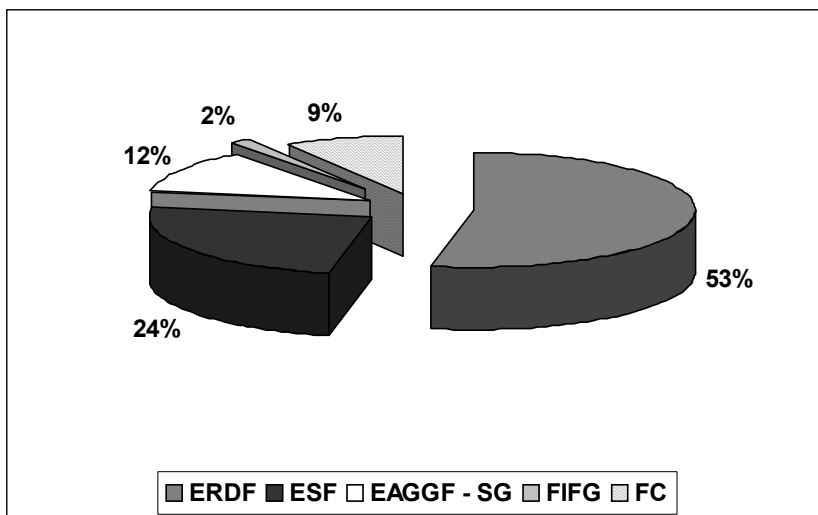
**Chart 1.10: Total amount of irregularities (with Cohesion Fund) in relation to budget allocated per Member State. Amounts in €**



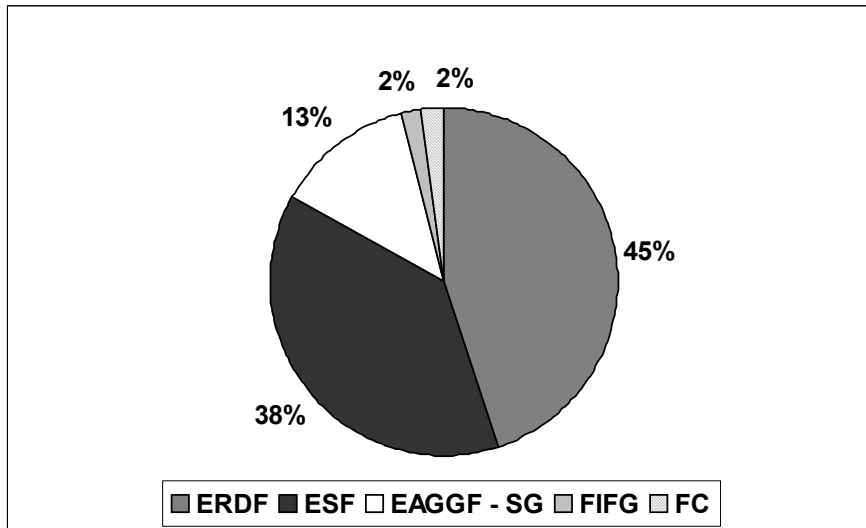
Distribution of irregularities among the different Funds

Charts 1.11 below shows how the number of irregularities was distributed between the different Funds in 2004, while table 1.12 gives the same distribution referred to all the communications received since the adoption of the information system.

**Chart 1.11: Distribution of communications among the different Funds – number of cases – 2004**



**Chart 1.12: Distribution of communications among the different Funds – number of cases – 1994-2004.**

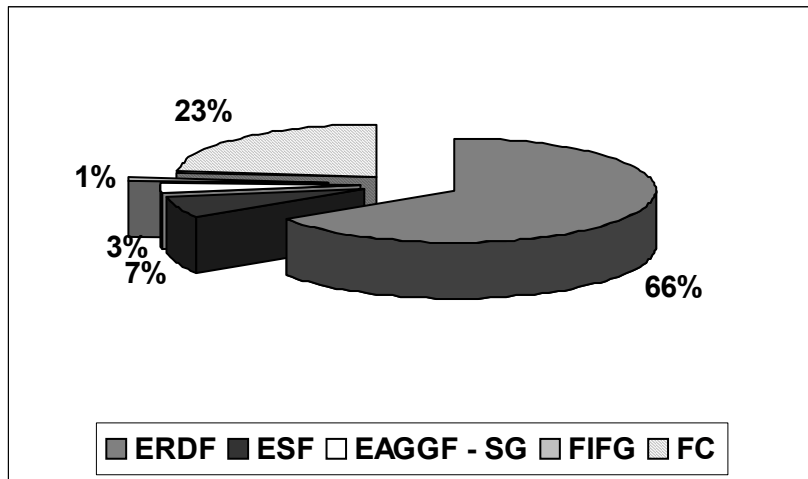


Two elements stand out when comparing the two charts: the increase in cases related to the ERDF, detrimental almost exclusively to the ESF, and the increase in irregularities affecting the Cohesion Fund. In particular, irregularities affecting operations financed through the Cohesion Fund may distort the overall analysis of data, owing to the high amounts involved. Mainly for this reason, in the present report for the first time, communications concerning the Cohesion Fund will be presented in a different annex<sup>8</sup>. However, as the majority of communications of irregularities come from only one Member State (Greece), section “Trends: structural measures”, will still treat cases from the Cohesion Fund together with those from the Structural Funds.

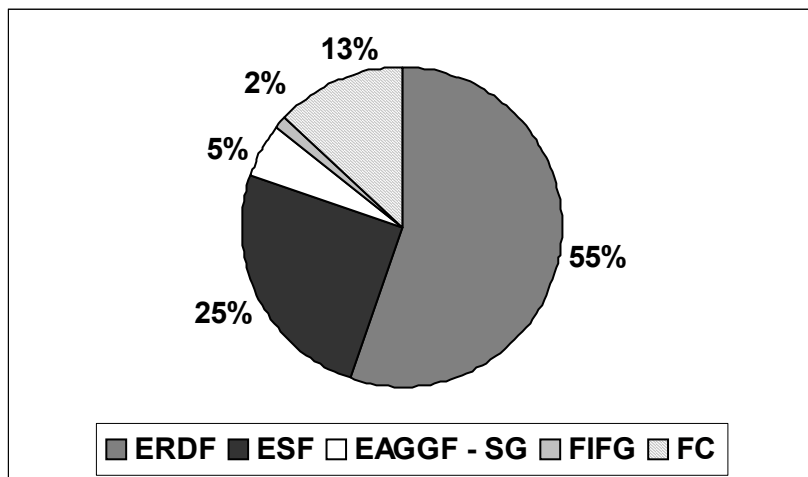
Chart 1.9 and 1.10, respectively, show how the amounts involved in irregularities were distributed between the different Funds in 2004 and across all the years since the adoption of the information system established under Regulations Nos. 1681/94 and 1831/94.

**Chart 1.13: Distribution of communications among the different Funds – amounts – 2004**

<sup>8</sup> It should also be kept in mind that, in fact, the creation of an information system concerning irregularities is established for the Structural Funds and the Cohesion Fund by two separate regulations, respectively Regulation N. 1681/94 and N. 1831/94. In previous years’ reports data were analysed together, also in the light of scarceness of communications related to the Cohesion Fund. This trend was inverted in the years 2003-2004, therefore a new approach seems justifiable.



**Chart 1.14: Distribution of communications among the different Funds – amounts – 1994-2004**



The considerations expressed about the number of communications apply equally to the amounts involved. The amounts involved for ERDF and the Cohesion Fund have increased since 2003, mainly to the detriment of ESF. Also in 2004, the vast majority of cases communicated by Member States relates to the Structural Funds. Of the total number of cases reported, the European Regional Development Fund was again the most affected, with 1,771 cases and € 458 million.

As far as the Cohesion Fund is concerned, the increase in terms of the number of cases (from 48 to 290) and amounts involved (from 134 million euro to 163 million) is significant; however, about 93% of communications come from only one beneficiary Member State, Greece. Latvia and Poland reported their first cases under the Cohesion Fund, whilst Ireland did not report any.

The analysis of patterns across Member States in the previous years is only partially confirmed in 2004. Germany is still the country which reports the highest number of cases in general (983), especially concerning the ERDF (736). In terms of the amounts involved however, Germany is only second, as Italy reported a higher cumulated amount. Greece is the third country, excluding the communications

concerning the Cohesion Fund. The sums involved in the latter, as already mentioned, are extremely high and refer, almost exclusively, to Greece.

In 2004, four new Member States submitted their first communications related to the Structural Funds: Estonia, Hungary, Latvia and Poland. For three Member States the number of communications remained relatively stable (Austria, Finland and the Netherlands), while five Member States saw a decrease in the number of notifications (Spain, France, Ireland, Luxembourg, United Kingdom). All the others reported an increasing number of cases, for some significant (Italy, Germany, Portugal, Greece and Belgium).

Relevant differences in the number of cases reported remain between Member States. The fact that figures from Italy are now in line with those from Germany opens the question whether some under-reporting may still characterise other big Member States, in particular Spain and France.

#### 1.2.3.3. Conclusions

- Irregularities concerning the ERDF have been increasing in number and financial impact;
- Cohesion Fund data are difficult to interpret. A more harmonised approach is needed from the Beneficiary Member States, especially in view of enlargement;
- In terms of the number of reported irregularities Italy is now in line with Germany (i.e. reporting a large number of cases). This situation raises some “questions” about the other “big” countries (big not only in terms of the size of the country, but especially of the financial amounts they receive);
- As regards the trend of irregularity reporting, Member States can be divided into three groups:
  - decreasing: Spain, France, Ireland, Luxembourg and United Kingdom;
  - stable: Austria, Finland, the Netherlands;
  - increasing: all the others;
- The first communications of irregularities have been received from four (4) new Member States.

#### 1.2.4. *Pre-accession funds expenditure*

The European Council decided in 1999 to implement a pre-accession strategy for the period 2000-2006, via the implementation of three financial instruments benefiting the then-candidate countries:

- PHARE (Poland Hungary Aid for Economic Reconstruction - Regulation N° 3906/89)
- ISPA (Instrument for Structural Policies for pre-accession - Regulation N° 1267/99)

- SAPARD (Special Accession Program for Agriculture and Rural Development - Regulation N° 1268/99)

For Malta and Cyprus, the Council adopted Regulation 555/2000 of 13 March 2000 with similar objectives and provisions.

As for the Pre-Accession Funds, the mechanism for reporting irregularities follows the same rules described for the Agriculture and Structural Funds sectors.

The first notifications of irregularities were sent to OLAF by the acceding states and candidate countries in September 2002. To date, including notifications for the fourth quarter of 2004, OLAF has received 328 primary notifications and 443 updates, totalling 571 notifications from the 12 countries involved, as shown in table 1.15 below.

**Table 1.15: Number of received communications (first notifications and updates)**

<b>Notification's version</b>	<b>Number</b>
<b>First notification</b>	<b>328</b>
<b>Update 1</b>	110
<b>Update 2</b>	69
<b>Update 3</b>	40
<b>Update 4</b>	15
<b>Update 5</b>	8
<b>Update 6</b>	1
<b>TOTAL</b>	<b>571</b>

To date, beneficiary countries have reported 328 primary notifications (30 in 2002, 75 in 2003 and 223 in 2004), corresponding with the phasing in of national programmes and individual projects. Further notifications during the period 2005-2008 (mostly updates) are expected until the financial closure of projects for the 10 countries that joined EU in May 2004. Candidate Countries (Bulgaria and Romania, joined by Turkey and possibly Croatia) will continue to implement the reporting system until the financial closure of their projects.

The total amount affected (for 300 notifications out of 328) is € 2,379 million (eligible costs). The amount of EU funds involved is not precisely known, since this information is seldom communicated, but it can be roughly estimated at 50% of the eligible cost, or € 1,190 million for the three years 2002-2004.

This latter amount represents 9% of EU credits available according to Financial Perspectives in 2000-2004 for pre-accession funds (€ 3.35 million per year on average).

**Table 1.16: Years 2002-04 – Amounts at stake and number of irregularities per fund**

Year of notification	PHARE	PHARE	SAPARD	SAPARD	ISPA	ISPA	TOTAL	TOTAL
	notification	amount	notification	amount	notification	Amount	notification	amount
2002	30	1073	0	0	0	0	30	1073
2003	12	9	26	76	20	391	58	476
2004	81	35	131	81	28	713	240	829
<b>TOTAL</b>	<b>123</b>	<b>1117</b>	<b>157</b>	<b>157</b>	<b>48</b>	<b>1104</b>	<b>328</b>	<b>2378</b>

#### Reporting discipline

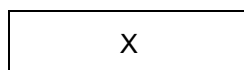
Consolidated results over the period 2002-2004 demonstrate that Candidate/Accession Countries did not fully comply with their obligation as regards timeliness and data quality, for the last quarter of 2004, only three countries (Slovenia, Latvia and Lithuania) fully complied with their obligations and sent their reports before the set deadline (1 March 2005). Out of 32 expected reports only 14 were received on time and 2 reports are still missing, as showed in table 1.17 below.

**Table 1.17: Timeliness in reporting communications of irregularities – 4th quarter 2004**

BENEFICIARIES	PRE-ACCESSION FINANCIAL INSTRUMENTS			
	SAPARD	ISPA	PHARE	555/2000
CY				X
CZ	X	X	X	
EE	X	X	X	
HU	X	missing	X	
LV	X	X	X	
LT	X	X	X	
PL	X	X	X	
SK	X	X	X	
SI	X	X	X	
BG	X	missing	X	
RO	X	X	X	
MA				X



Report received after deadline



Received on time

As regards the quality of data, some crucial information is still missing despite numerous on-site training sessions and on-request assistance provided by OLAF, as showed in table 1.18 below.



**Table 1.18: Quality of data in reported communications of irregularities**

<b>DATA QUALITY</b>	<b>RECEIVED</b>	<b>INFORMATION MISSING</b>	<b>TOTAL</b>
<b>Nature of expenditure</b>	203	125	328
Amount of project (eligible cost)	299	<b>29</b>	328
Currency used	323	5	328
<b>EU contribution</b>	158	<b>170</b>	328
<b>Amount recovered</b>	23	<b>305</b>	328
Interim measures	217	111	328
Administrative measures	120	208	328
Judicial proceedings	51	277	328
Method of detection	276	52	328
Source of first info	285	43	328
Practise employed	269	59	328
<b>Qualification of irregularity</b>	10	<b>318</b>	328
Reporting authority	285	43	328
Follow up authority	258	70	328
<b>Amounts to be recovered</b>	20	<b>308</b>	328

At present, notifications are forwarded to OLAF by mail and recorded in a specific database separate from the External Communication Registry (ECR).

## **2. SPECIFIC ANALYSIS: TRENDS**

### **2.1. Traditional own resources**

Notification of cases of fraud and irregularities under Article 6(5) of Regulation 1150/2000 revealed the following trends in 2004 (as per 13 April 2005):

a) The breakdown of frauds and irregularities by customs procedure and by type of fraud and irregularity confirms the impact of fraud on the release for free circulation.

2004 figures confirm that the majority of own resources cases relate to the arrangements for release for free circulation which account for 63% of the number of cases and 76% of the total value communicated. In relation to 2003, the proportion of reported cases has decreased (72% in 2003) as well as the percentage in terms of amounts (80% in 2003). A more detailed breakdown by type of those fraud and irregularities relating to free circulation demonstrates the high share - of misdescription (44% of cases in 2004 compared with 46% in 2003 – 36% of the amounts involved in 2004 compared with 33% in 2003). Origin fraud and irregularities increased in relation to 2003 (9% of the cases in 2004 compared with 5% in 2003 - 13% of the amounts in 2004 compared with 7% in 2003). Slightly less important became fraud and irregularities resulting from false declarations of value (13% of the cases in 2004 compared with 11% in 2003 – 11% of the amounts in 2004 compared with 9% in 2003).

The proportion of fraud and irregularity in the transit regime of all communicated cases has also increased significantly, accounting for 29% of the number of cases (16% in 2003) and 14% of the amounts communicated (compared with 2% in 2003). With regard to the customs warehousing arrangements, the proportion of fraud and irregularity however decreased slightly (2% of the number of cases compared with 4% in 2003 - 2% of the amounts communicated equal to 2003). The same is true for the inward processing regime where fraud and irregularities accounted for 1% of the number of cases in 2004 (2% in 2003) and 1% of the amounts noted in 2004 (equal to 2003).

The breakdown of frauds and irregularities by Member State shows the relative high contribution of the United Kingdom to fraud and irregularities as regards inward processing, of Italy with regard to processing under customs control, of Belgium, Germany and the Netherlands with regard to the customs warehousing arrangements, the Netherlands, the United Kingdom, Germany and France as regards to free circulation and Belgium, the Netherlands and Germany for Community transit.

b) The breakdown of cases by type of goods confirms the impact of fraud and irregularities on cigarettes.

Of the 25 goods most affected by fraud and irregularities, as in previous financial years, cigarettes were in the lead place both in terms of number of cases and amounts despite a decrease compared with 2003. A new trend was the appearance of poultry meat. The 2004 figures also highlight a continued fraud and irregularity trend relating to products under Chapter 85 of the Tariff (lamps, machines, appliances and electrical equipment, etc.) whereas the aluminum sector does not play a major role

any more. The number of cases of fraud and irregularities in the banana sector decreased significantly as well in comparison to 2003.

Analysis of the origin of goods subject to fraud and irregularity reveals that goods originating from China, the USA and South Korea remain most affected; similarly goods from Brazil. The steady increase in fraud and irregularity relating to goods originating from the Russian Federation from 2001 onwards did not continue (66 cases in 2001, 91 in 2002, 158 in 2003, but 92 in 2004). The number of cases in the category non-specified was further reduced.

c) General remark.

One should be prudent to draw conclusions based upon comparisons of data from different years, because there are several factors to be borne in mind.

A priori some notifications are communicated belatedly i.e. after the given deadline for the analysis of data for this report and will thus influence the comparison with the previous and the following year. In addition, updates are made daily – the situation therefore can change very markedly from day to day.

Secondly very often fraud and irregularities have already been committed some years earlier, before they are either subject to regular ex-post controls or in other cases regulatory intervals expire leading to their occurrence.

Agricultural expenditure (EAGGF-Guarantee)

In 2004 Member States reported 3,401 cases and a total amount affected by these reported irregularities of about € 82 million.

2.1.1. *Modus operandi*

Table 2.1 shows the most frequently used modus operandi (MO) of the irregularities that were reported in 2004.

The most frequently occurring irregularity is an incorrect or incomplete request for aid. As these types of irregularities occur mainly in the direct aid sector, they can be expected to remain the most frequently occurring in the near future. In almost 20%, i.e. 640 cases, of the reported irregularities the irregularity could already have been discovered before payment since the irregularity concerns an incorrect and/or incomplete request for aid. A thorough check of the request can in these cases limit the total amount unduly paid. Member States reported in only 152 of these cases that the irregularities were discovered before payment. The same counts, more or less, for the “declaration of fictitious land”.

**Table 2.1: Irregularities and most frequently used MO (year 2004)**

MODUS OPERANDI	Total	% OF TOTAL	CUMULATIVE %
incorrect or incomplete request for aid	640	19%	19%
failure to respect other regulations and/or contract conditions	417	12%	31%
irregular termination, sale or reduction	222	7%	38%
failure to fulfil commitments entered into	190	6%	43%
other irregularities to be specified	157	5%	48%
declaration of fictitious land	138	4%	52%
action not carried out in accordance with rules	98	3%	55%
inaccurate production declaration	86	3%	57%
absence of written proof	74	2%	59%
false or falsified request for aid	73	2%	62%
other irregularities concerning the right to aid	70	2%	64%
inexact quantity	69	2%	66%
falsified customs documents	64	2%	68%
action not completed	57	2%	69%
incorrect tariff heading	56	2%	71%
product not eligible for aid	54	2%	72%
refusal of payment	49	1%	74%
other irregularities concerning movements	47	1%	75%
failure to respect deadlines	46	1%	77%
variation in quality or content	42	1%	78%
absence of accounts	36	1%	79%
misdescription of the holding	33	1%	80%
other	683	20%	100%
<b>total</b>	<b>3,401</b>		

### 2.1.2. Measures affected

#### Direct Aid

Chart 1.6 gives an overview of the number of cases reported in 2004 and the amounts involved per type of measure. As already mentioned, this graph illustrates the new trend: direct aid has a higher number of reported irregularities and the total amount affected by these irregularities is also higher than the other types of support measures as export refund, market support and other measures. Member States have reported a total of 1,740 cases affecting direct aid area (A). These cases alone amount to approximately € 29 million, which is approximately 35% of the total amount affected by irregularities.

One has to take in consideration that the total amounts affected by irregularities has decreased thanks to the introduction of direct aid/payment in 1992, the introduction of the Integrated Administration and Control System (IACS) and the modifications of the direct aid/payment in 2000. The introduction of the direct aid/payment also meant a decline in the total expenditure in the other types of measures/payment sections (export refunds and market support). The direct aid/payment now accounts for the large majority of total expenditure in the agricultural sector and it is therefore logical that a higher number of irregularities and a higher total amount are reported for this section. The average amount per irregularity however, is the lowest in direct aid/payment as compared to all other sections.

Table 2.2 presents the measures that were mostly affected by irregularities. The number of cases and the total amounts are presented and a distinction is made between irregularity and “suspected fraud” cases. The largest number of irregularities concerns “other direct aid”, which means that Member States did not specify the measure affected by the irregularity, and are mainly reported by Germany and Spain.

The measure “other direct aid” is followed by the measures “olive oil – production aid”, “rural development” and “cereals”.

**Table 2.2: Direct aid: measures affected by irregularities**

MEASURE	IRREGULARITY		SUSPECTED FRAUD		TOTAL	
	cases	amounts in €	cases	amounts in €	cases	amounts in €
other direct aid	418	7,833,970	55	724,176	473	8,558,146
olive oil - production aid	89	4,469,101	51	2,608,871	140	7,077,972
rural development	160	2,412,958	47	626,819	207	3,039,778
cereals	143	1,810,304	31	811,782	174	2,622,086
extensification premiums	133	1,338,460	19	201,778	152	1,540,238
suckler-cow premiums	142	1,277,223	10	99,732	152	1,376,955
set aside	55	942,080	22	340,884	77	1,282,964
ewe and goat premiums	48	552,146	13	435,837	61	987,984
aid for producers of maize	168	928,489	7	46,956	175	975,445
production aid for dried fodder	18	809,008	2	15,522	20	824,530
aid for producers for cereals not maize	27	202,295	23	254,953	50	457,248
other	53	564,945	6	36,101	59	601,047
<b>TOTAL</b>	<b>1,454</b>	<b>23,140,980</b>	<b>286</b>	<b>6,203,413</b>	<b>1,740</b>	<b>29,344,393</b>

Relatively high are the number of “suspected fraud” cases and the amounts affected by these cases, respectively 16.4% and 21%. Especially in the sectors “olive oil – production aid”, “set aside” and “aid for producers for cereals - not maize” is the level of “suspected fraud” cases rather high.

Table 2.3 gives an overview of the most frequently used modus operandi in the “suspected fraud” cases. In 42% (121 cases) of the “suspected fraud cases” the modus operandi can be summarised as “declaration of fictitious land”. The second most frequently used modus operandi can be summarised as “false or falsified request for aid”. For both count that already in the phase before granting the support measure the irregularity could have been discovered. As already mentioned before, Member States did not always discover these irregularities before payment. Paying more attention to the granting phase of a support measure could reduce the number and the impact of irregularities. However, considering the low rate of irregularities in this sector extra controls may not be costefficient.

**Table 2.3: modus operandi in “suspected fraud” cases (direct aid)**

DIRECT AID		CUMULATIVE %
MODUS OPERANDI	CASES	
declaration of fictitious land	121	42%
false or falsified request for aid	70	67%
absence of accounts	13	71%
non-existent operator	12	76%
falsified supporting documents	11	79%
other	59	100%
TOTAL	286	

**Export Refunds:**

Table 2.4 shows the support measures that are most often affected by irregularities in the export refund sector. The number of cases and the total amounts are presented and a distinction is made between irregularity and “suspected fraud” cases. The largest number of irregularities concerns “other export refund”, which means that Member States did not specify the measure affected by the irregularity. These irregularities are reported by Germany and the Netherlands. In a large number of these cases, the Member States reported the goods involved as “unknown”. This is remarkable, especially when they concern export declarations where the CN-code (Combined Nomenclature) is clearly stated. The second most affected measures are export refunds for bovine meat.

**Table 2.4: Export refunds: measures affected by irregularities**

MEASURE	IRREGULARITIES		SUSPECTED FRAUD		TOTAL	
	cases	amounts in €	cases	amounts in €	cases	amounts in €
other export refund	62	7,974,868			62	7,974,868
bovine meat	156	5,741,134	6	248,175	162	5,989,309
pig meat	56	2,393,463			56	2,393,463
products except for annex II	208	1,776,516	3	51,895	211	1,828,411
cheese	35	447,995	60	827,728	95	1,275,723
other processed agricultural products	13	380,173			13	380,173
poultry	7	318,765			7	318,765
cereals	2	83,685	9	217,450	11	301,135
other	51	939,011	3	64,153	54	1,003,164
TOTAL	590	20,055,610	81	1,409,401	671	21,465,011

Table 2.5 presents the most frequently used modus operandi in the “suspected fraud” cases in the export refund sector. In 75% (61 cases) the modus operandi was “falsified customs documents”.

**Table 2.5: modus operandi in “suspected fraud” cases (export refund)**

EXPORT REFUND		CUMULATIVE %
MODUS OPERANDI	CASES	
falsified customs documents	61	75%
non-arrival at final destination	9	86%
absence of accounts	3	90%
incorrect identity	2	93%
other	6	100%
TOTAL	81	

The customs documents were falsified by means of a false stamp and concerned mainly “cheese”. The modus operandi “non-arrival at final destination” is used in cases where there is a differentiated export refund. The level of the export refund is dependant on the (final) destination of the goods.

### Market Support

Table 2.6 shows the market support measures that are most often affected by irregularities. The number of case and the total amounts are presented and a distinction is made between irregularity and “suspected fraud” cases. The largest number of irregularities relate to “citrus fruits – financial compensation to assist processing”. The second most affected measures relate to “fresh fruit and vegetables”. These 2 measures cover almost 60% of the irregularities relating to market support.

**Table 2.6: Market support: measures affected by irregularities**

MEASURE	IRREGULARITIES		SUSPECTED FRAUD		TOTAL	
	cases	amounts in €	cases	amounts in €	cases	amounts in €
citrus fruit - financial compensation to assist processing	29	6,636,626	7	110,843	36	6,747,469
fresh fruit and vegetables	44	5,231,508	1	13,443	45	5,244,950
wine - other intervention for the wine industry	115	1,164,050	1	4,398	116	1,168,448
tomatoes - aid for production of processed products	3	24,432	1	1,094,396	4	1,118,828
wine - intervention wine and wine must storage	10	1,094,333			10	1,094,333
butterfat - other measures	23	547,402			23	547,402
tobacco	14	225,623	5	521,839	19	747,462
milk support - additional levy	16	370,636	1	11,402	17	382,038
cotton	1	26,008	1	279,843	2	305,851
milk and dairy produce support	4	281,741			4	281,741
fruit and vegetables - production of processed products	14	515,809	0	0	14	515,809
beef / veal support	12	118,028	2	96,427	14	214,455
other	90	1,921,688	6	82,418	96	2,004,106
TOTAL	375	18,157,883	25	2,215,009	400	20,372,892

Table 2.7 presents the most frequently used modus operandi in “suspected fraud” cases in the market support area. As in the direct aid sector, the modus operandi

“declaration of fictitious land” is most frequently used. The second most common is “refusal of control”.

**Table 2.7: modus operandi in “suspected fraud” cases (market support)**

MARKET SUPPORT		
MODUS OPERANDI	CASES	CUMULATIVE %
declaration of fictitious land	7	28%
refusal of control	7	56%
false or falsified request for aid	4	72%
absence of accounts	1	76%
fictitious use or processing	1	80%
other	5	100%
TOTAL	25	

2.1.3. *Detection method: controls based on Reg. 4045/89 and Reg. 386/90*

Member States are obliged to perform certain controls on the basis of Council Regulation (EEC) No. 4045/89<sup>9</sup> and Council Regulation (EEC) No. 386/90<sup>10</sup>.

Table 2.8 gives an overview of irregularities that have been detected on the basis of these controls. The table concerns the period 2001 – 2004, since the cases reported for 2004 do not give enough information to be able to produce any meaningful statistics.

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<sup>9</sup> Council Regulation (EEC) N° 4045/89: this regulation relates to the scrutiny of the commercial documents of those entities receiving or making payments relating directly or indirectly to the system of financing by the Guarantee Section of the EAGGF in order to ascertain whether transactions forming part of the system of financing by the Guarantee Section of the EAGGF have actually been carried out and have been executed correctly.

<sup>10</sup> Council Regulation (EEC) N° 386/90: this regulation sets down certain procedures for monitoring whether operations conferring entitlement to the payment of refunds on, and all other amounts in respect of, export transactions have been actually carried out and executed correctly.



**Table 2.8: Irregularities detected on the basis of Reg. 4045/89 or Reg. 386/90 controls in the period 2001 – 2004**

MS	CASES 2001 - 2004	LEGAL BASIS (5.5.)	
		Reg. 4045/89	Reg. 386/90
BE	188	25	16
DK	289	23	34
DE	2,678	354	24
EL	92	47	
ES	2,916	66	4
FR	2,073	380	22
IE	445	14	11
IT	623	21	3
LU	8		
NL	531	101	2
AT	419	134	16
PT	620	58	5
PL	5		1
FI	113	9	
SE	273	5	
UK	1,067	38	
<b>TOTAL</b>	<b>12,340</b>	<b>1,275</b>	<b>138</b>

The number of irregularities discovered on the basis of Regulation (EEC) N° 386/90 controls is very limited. Table 2.8 illustrates that only 138 irregularities have been discovered on the basis of Regulation (EEC) N° 386/90 controls and that 5 Member States reported a zero. Over a period of 4 years, these Member States did not report any irregularities on basis of Reg. 386/90 controls. Notable is also the (low) score of the Netherlands.

Chart 2.9 shows the control results for the period 2001 – 2004 by Member State, in total amount and in average amount per irregularity, on the basis of Regulation (EEC) N° 4045/89. Notable are the results from France and United Kingdom.

**Chart 2.9: Results of Regulation (EEC) N° 4045/89 controls**

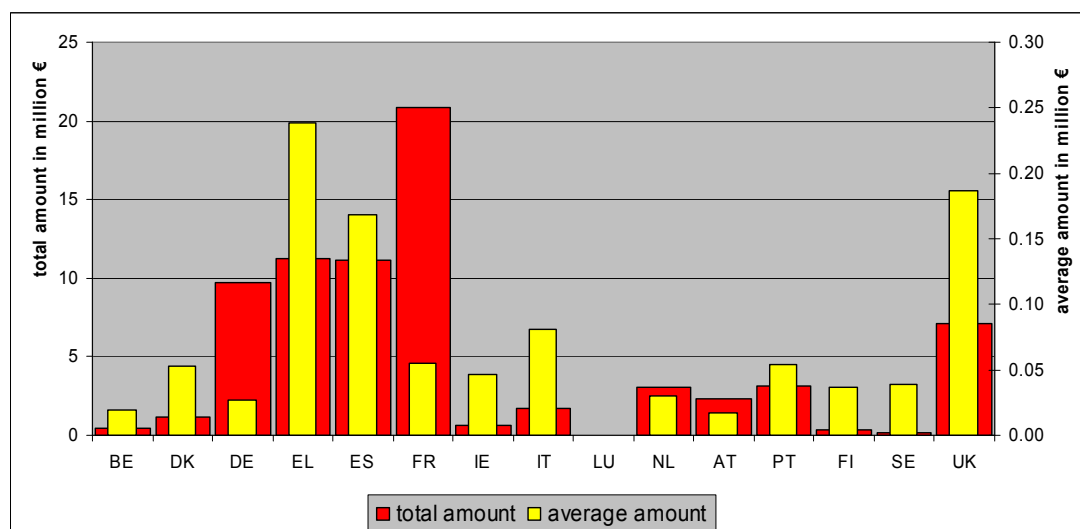


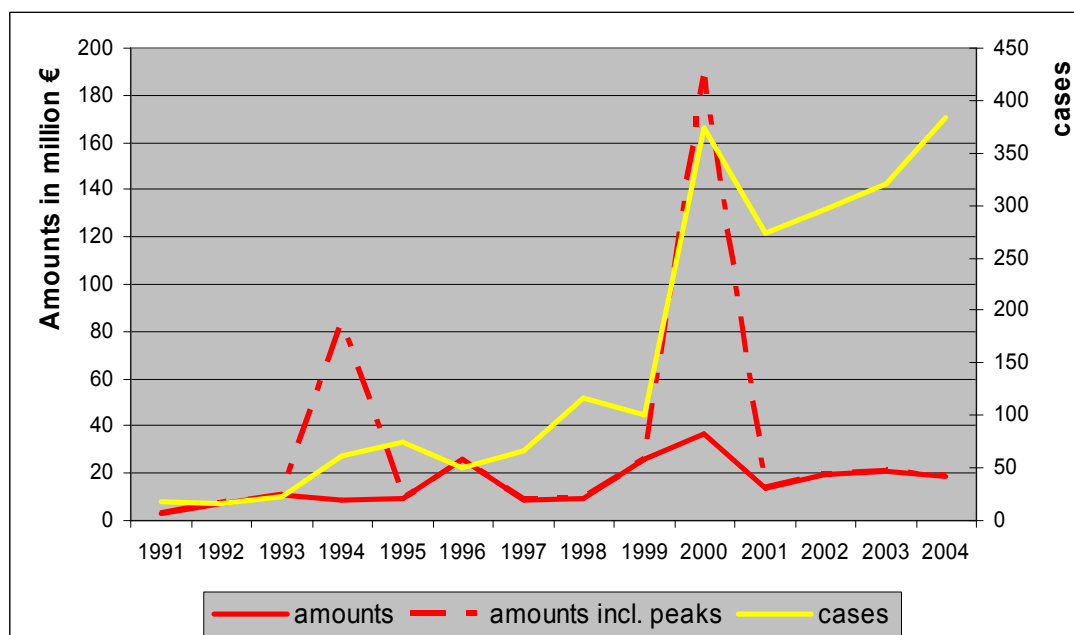
Chart 2.9 shows that France detects rather high total amounts affected by irregularities on the basis of controls under Reg. 4045/89. The average amount per detected irregularity, however, is low. The United Kingdom, on the other hand, has a

very high average amount per detected irregularity. This is also true for Belgium, Denmark, Greece, Spain, Ireland, Italy, Finland and Sweden. A high average amount per detected irregularity could be considered as an indicator of the effectiveness of risk analysis.

In terms of amounts, the irregularities discovered on the basis of controls under Regulation (EEC) N° 4045/89 in 2004 represent about 22% of total amounts affected by irregularities in 2004.

Chart 2.10 gives an overview of the number of controls on the basis of Regulation (EEC) N° 4045/89 for the period 1991 – 2004.

**Chart 2.10: Irregularities reported on the basis of Reg. 4045/89 controls**



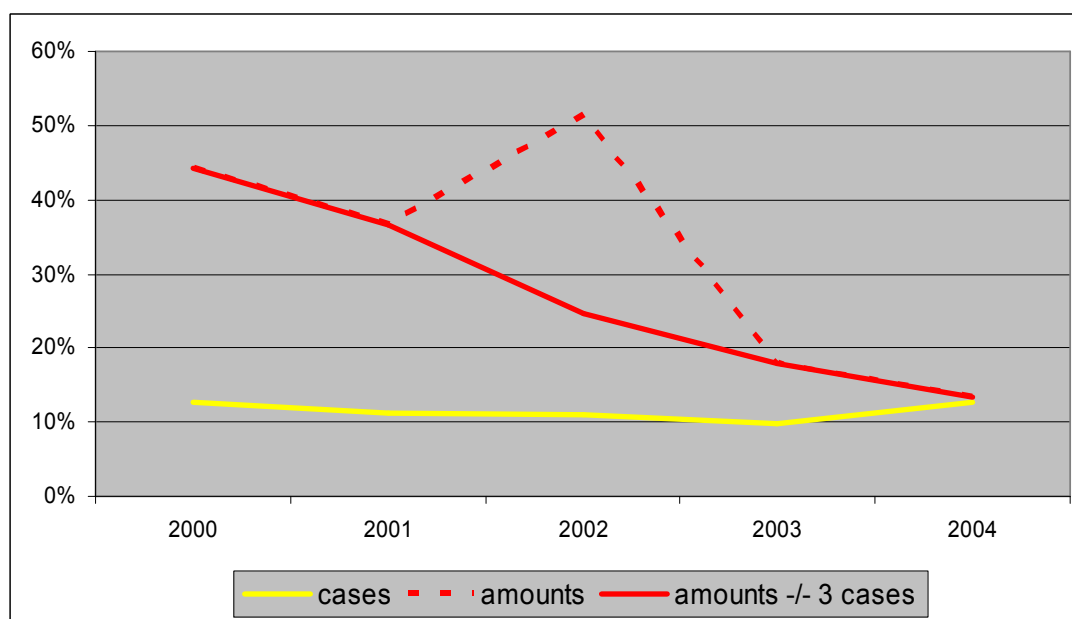
This overview demonstrates that the number of cases reported has increased but that the amounts affected by the irregularities is still at around the same level as it was in the first years after Regulation (EEC) N° 4045/89 came into force. The graph shows 2 peaks. The peak in 1994 is caused by 1 Italian case of € 75 million, whilst the peak in 2000 is the result of 3 large cases. Italy reported 2 cases which involved about € 120 million and Belgium reported 1 case with a total value of about € 31.5 million. When those 2 peaks are discounted the line is rather flat. The graph contains a broken line which represents the situation including the 2000 peak.

#### 2.1.4. Irregularity versus suspected fraud

With the introduction of the digital reporting system in mid 2001, Member States were asked to qualify the irregularities reported. To assist them an extra field was added to the module offering 4 possibilities: mistake, irregularity, (suspected) fraud and organised crime. With exception of Germany and Spain, all Member States have started to qualify the irregularities. Germany and Spain are also the two Member States that are still not using the Anti Fraud Information System (AFIS), which is a secured network, to report irregularities.

On the basis of the irregularities reported in the period 2000 – 2004, in particular the qualification by Member States, the modus operandi, the type of irregularity, the administrative state of an irregularity and the additional information given in text fields, a first attempt has been made to estimate the level of “suspected fraud” in the agricultural sector. Chart 2.11 reflects the results of this analysis and shows the percentage of irregularities which can be qualified as “suspected fraud” cases for both the number of cases and the amounts affected by the irregularities.

**Chart 2.11: Irregularities and “suspected fraud” cases**



Given that this was a first attempt to estimate the level of fraud in the agricultural sector the figures should be cautiously interpreted. Nevertheless the results of the analysis are in line with the results of those Member States that do qualify the irregularities.

An early conclusion is that the percentage of “suspected fraud” cases as a percentage of the total number of reported irregularities varies between 10% and 13% in the period 2000 – 2004. The chart shows that the level of “suspected fraud” cases, as a percentage of the total number of reported irregularities, is relatively stable.

The percentage “suspected fraud” cases as a percentage of the total amounts affected by the irregularities reported decreased in the period 2000 – 2004 from 44% to 13%. The red/dark line reflects the situation if 3 cases with extremely high amounts are not taken in to consideration. The broken line reflects the situation including the 3 cases with extremely high amounts. The trend is in line with the overall trend; the number of reported irregularities is increasing but the amounts affected by the irregularities are decreasing. A greater degree of difference between the percentage “suspected fraud” cases based on the amounts than the percentage based on the number of “suspected fraud” cases was to be expected: amounts differ per reported irregularity.

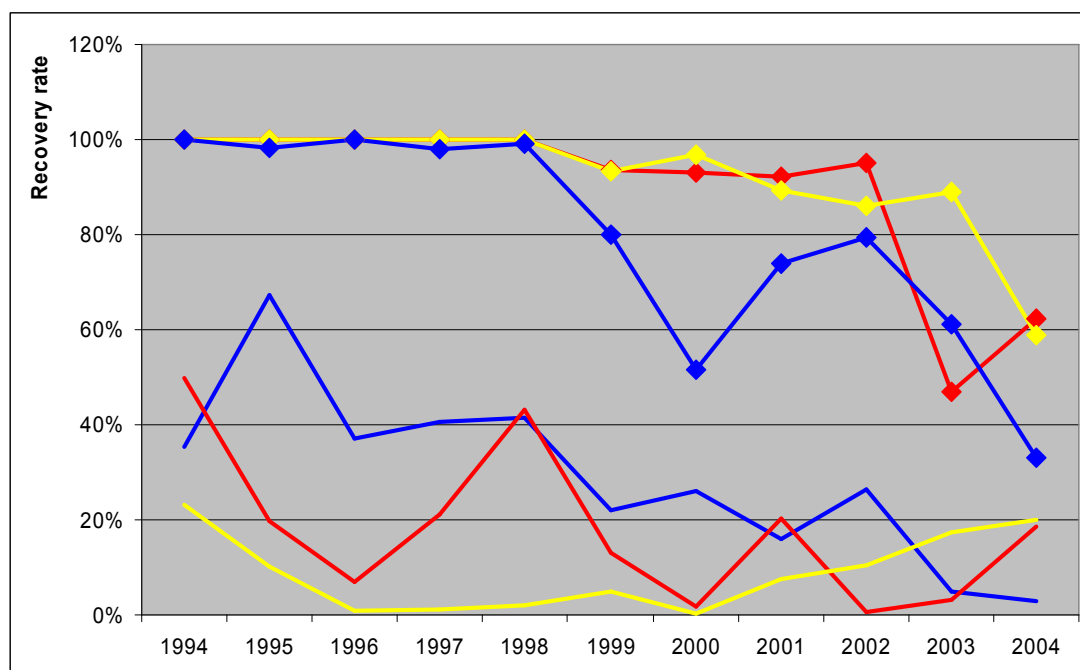
### 2.1.5. Recovery

In general, the recovery of unduly paid amounts is more successful if the recovery is started as soon as possible. The earliest possible moment is directly after the discovery of an irregularity.

On the basis of an analysis of the period 1994 – 2004, Member States can be divided into two groups: those that start the recovery immediately after the discovery of an irregularity and those Member States that wait a certain time before starting the recovery procedures.

Chart 2.12 shows the two groups of Member States. The lines with the marker represent the Member States that start recovery immediately after the discovery of an irregularity. These Member States are far more successful in the recovery than Member States that wait “x time” with the start of the recovery.

**Chart 2.12.: Recovery rate**



The graph shows clearly that Member States that start early with the recovery proceedings manage to recover almost (recovery rate > 95%) all amounts unduly paid.

#### *Conclusions*

- The most frequently occurring irregularity is an incorrect or incomplete request for aid;
- The most frequently occurring modus operandi in “suspected fraud” cases are “declaration of fictitious land”, “false or falsified request for aid” and “falsified customs documents”;
- Checks on basis of Reg. 386/90 only lead to the discovery of a small number of irregularities;

- The number of reported irregularities on basis of scrutinises of Reg. 4045/89 is increasing whilst the total amount affected by these irregularities stays the same;
- The number of “suspected fraud” cases as a percentage of the total number of reported irregularities varies between 10% and 13%;
- The recovery of unduly paid amounts is more successful when recovery commences directly after the discovery of an irregularity.

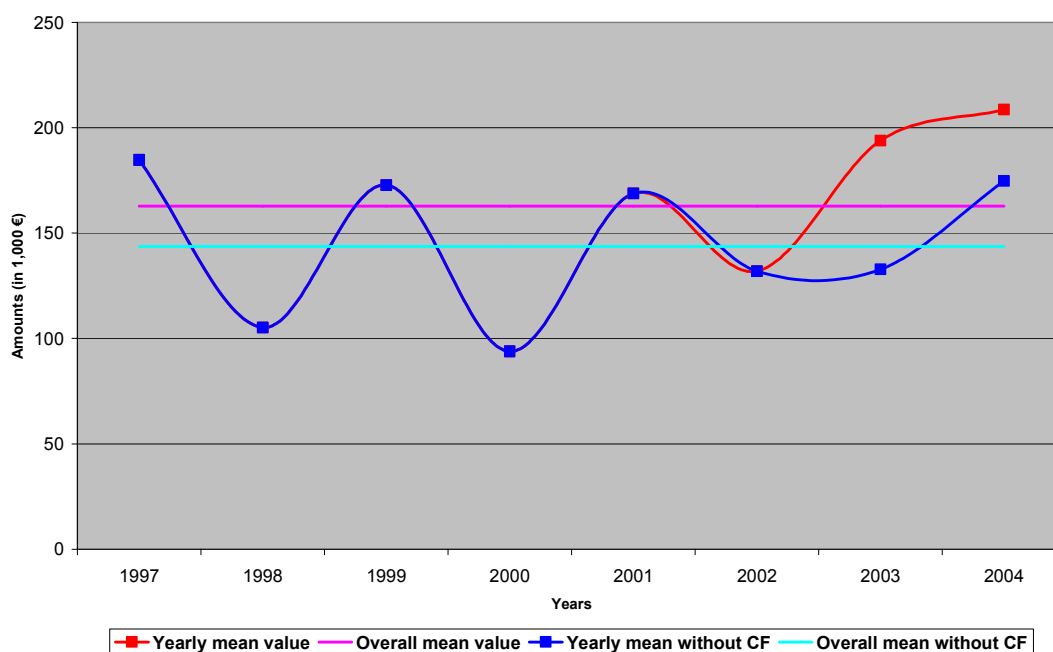
## 2.2. Structural measures

In 2004 Member States reported 3,339 cases and a total amount affected by these irregularities of about € 695.6 million.

### 2.2.1. Analysis of the reported irregularities

Chart 2.13 below represents the evolution of the overall average irregular amounts of EU funding per case in the last eight years.

**Chart 2.13: Trend of EU15 mean of irregular amounts per case 1997-2004 (amounts in 1,000 €)**



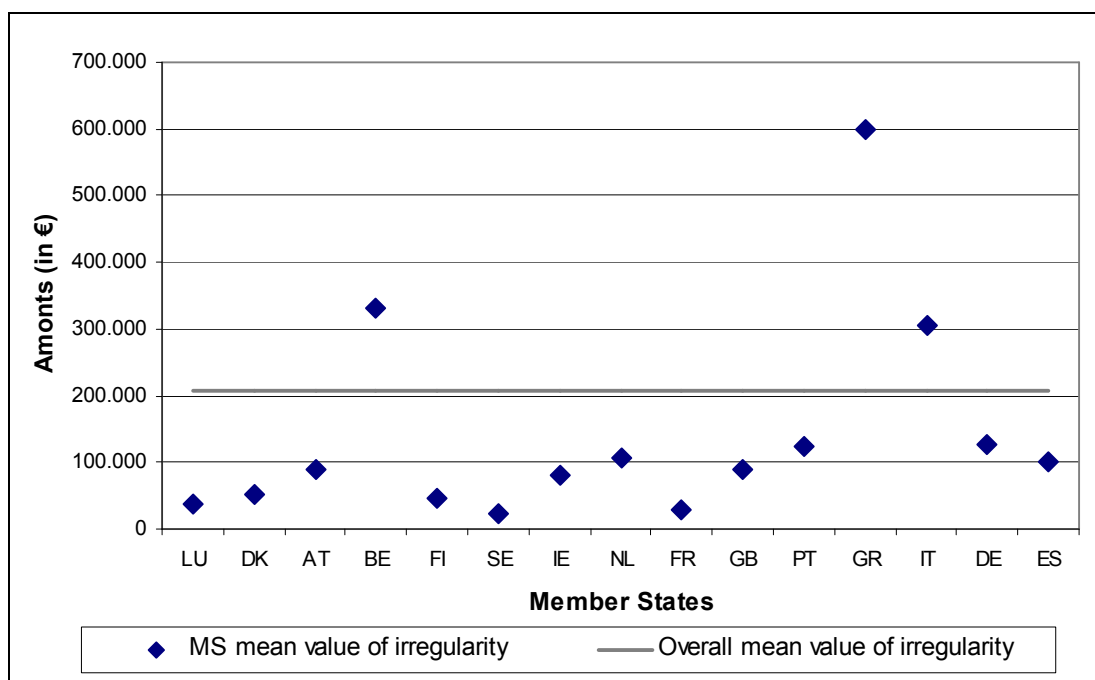
The chart shows two situations: including and excluding the irregularities relating to the Cohesion Fund. Irregularities affecting this fund are extremely high in value, because of the amounts involved in projects financed through this instrument, and therefore greatly affect the mean value. This is especially true of the last two years, when their number has been even more significant because of increased reporting from Greece. Even if the Cohesion fund irregularities are ignored, however, the trend shows an increase over the last two years. This is the result of the greater share of ERDF irregularities in the total number of irregularities reported. Infrastructure projects in Objective 1 regions are funded by the ERDF. This kind of project may

take longer to be initiated, because of more complex tendering procedures, and therefore audits may have started later than on other smaller projects. However this new trend needs to be monitored in the coming years and a more detailed assessment of its meaning and causes undertaken.

Though the first irregularities in the field of Structural and Cohesion Funds have been reported by four new Member States, they will not be taken into account in the following analysis, as they refer to a limited time span and are not statistically significant. However, the relevant information is included in annexes 6 - 9. For more details about reporting of irregularities from the new Member States see paragraphs 1.3 and 2.3 which are dedicated to the pre-accession funds.

Chart 2.14<sup>11</sup> shows the average amount of the irregularities in each Member State and how they are distributed in relation to the overall mean (straight horizontal line).

**Chart 2.14: Distribution of national average values in relation to EU15 mean**



A considerable difference still exists among Member States and especially the “distance” between the highest average value (Greece, €597,886) and the lowest (Sweden, €23,828). It is however interesting that, with three exceptions (Greece, Belgium and Italy), the average values of irregularities are much less spread than in the previous years.

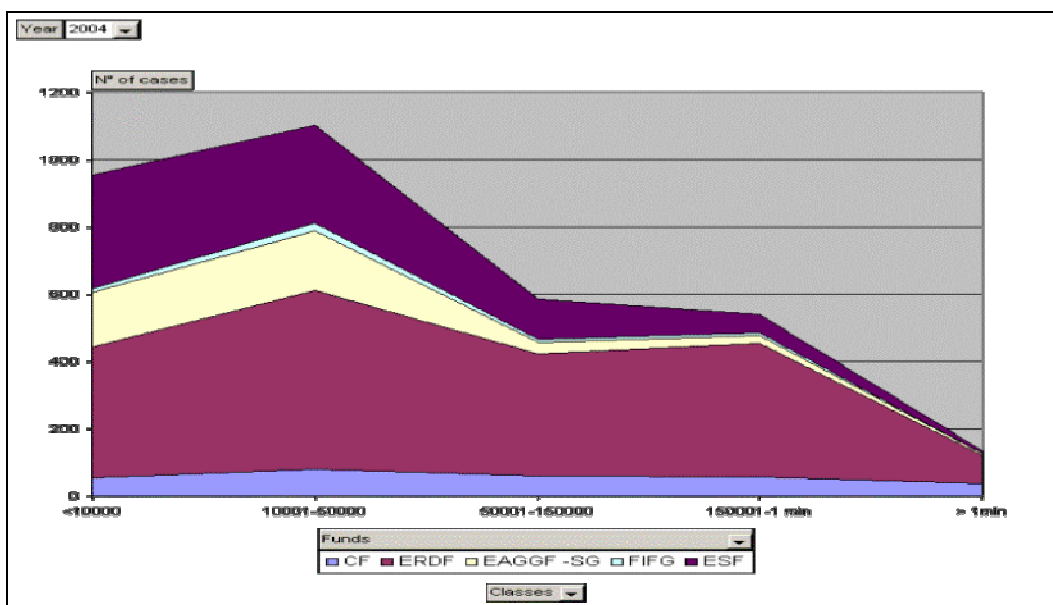
In charts 2.15 and 2.16, communications have been divided into five classes according to the amount affected by irregularities (€4,000 to 10,000; €10,001 to 50,000; €50,001 to 150,000; €150,001 to 1 million; over €1 million).

The charts also distinguish the proportion of the total of each fund. It is clear that the highest number of cases communicated relate to amounts between €4,000 and

<sup>11</sup> Member States are listed in order according to the Structural Funds allocation (programming period 2000-2006), Luxembourg the one with the lowest amount and Spain the one with the highest.

€50,000 (first two categories in chart 2.15) which account for 62% of the total number of cases reported to OLAF (953 cases in the first category + 1,104 of the second).

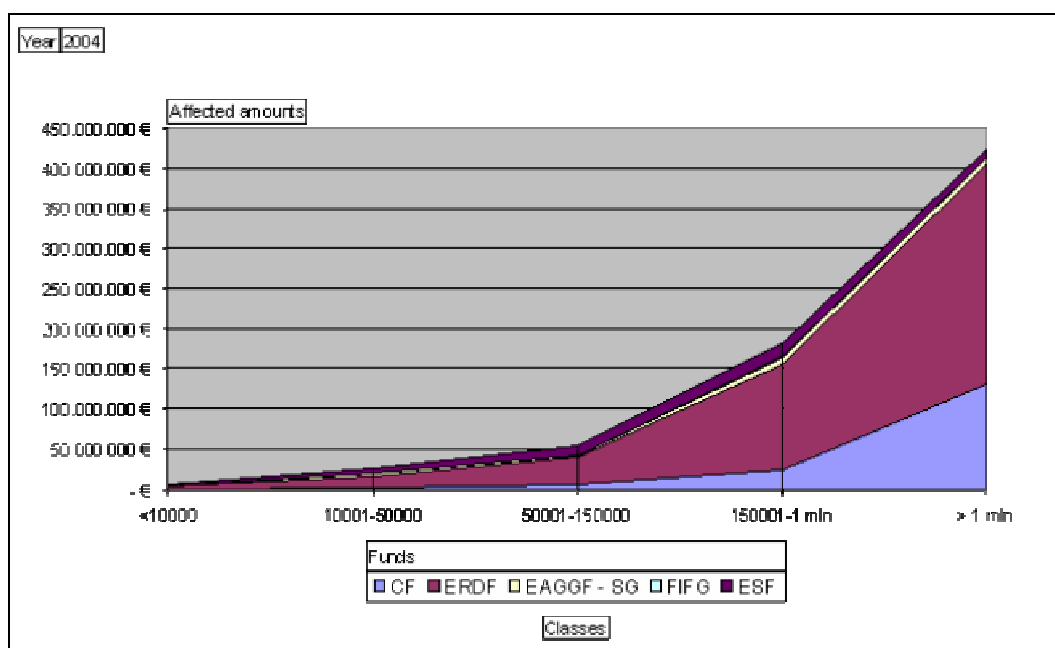
**Chart 2.15: Distribution of communications per category – number of cases**



Five countries reported no cases in the highest value category (> € 1 million): Denmark, Finland, France, Luxembourg and Sweden. The five countries which reported most cases in the highest category are Greece (60, of which 34 were from the Cohesion Fund), Italy (34) and Germany (21), followed by Spain (6), Portugal (4, all from Cohesion Fund) and United Kingdom (2).

If the amounts involved are taken into account, the situation is reversed, with the 133 cases in the highest category (>€ 1 million) accounting for 61% of the total amounts communicated to OLAF, as shown in chart 2.12 below.

**Chart 2.16: Distribution of communications per category – amounts**



### 2.2.2. Types of irregularities

Differences remain among Member States as to the types of irregularities reported and, to a certain extent, these are consistent with last year. The majority of cases involve irregularities of an “administrative” nature that are normally detected in the course of the routine documentary checks which are conducted before any payment of European money is made. To demonstrate this, among the most frequent types of irregularity reported by Member States are the “not eligible expenditure” and “missing or incomplete supporting documents”. Once again, Italy was the country where the most falsifications of documents were detected. The considerable increase in irregularities reported by Italy (638 cases in comparison to 175 in 2003) caused a consequent increase in the number of this type of irregularity reported. Italy was not the only MS to report this kind of situation (similar cases were also reported by Germany, Spain, France, United Kingdom, Portugal and Sweden), but it played a major role.

Table 2.17 shows the most frequent types of irregularities together with the amounts involved and the indicative average amount:



**Table 2.17: Most frequent types of irregularities reported by Member States**

Code	Description	Frequency (alone)	Frequency (with other codes)	Amounts involved	Indicative average amounts
(A)	(B)	(C)	(D)	(E) <sup>12</sup>	(F) = [E/(C+D)]
325	Not eligible expenditure	306	227	10,845,919	20,349
811	Action not completed	228	86	55,668,354	177,288
812	Action not carried out in accordance with rules	190	72	96,890,637	369,812
612	Failure to respect other regulation/contract condition	176	226	136,809,477	340,322
405	Irregular termination	153	37	15,971,523	84,061
601	Failure to respect deadlines	109	62	42,700,762	249,712
210	Missing or incomplete supporting documents	105	176	23,654,316	84,179
699	Other irregularities concerning the right to aid	94	11	9,395,077	90,337
213	False or falsified supporting documents	73	206	29,854,953	107,007
831	Over financing	64	65	7,205,835	55,859
999	Other irregularities	362	224	117,153,438	199,921

It should be noted that due to the reporting method a single case communicated to OLAF may contain more than one type of irregularity. Figures in table 2.17 are based on how many times the type of irregularity has been communicated alone and how many times it has been reported together with other types of irregularity. The amount involved sums up all the values related to that specified type<sup>13</sup>.

The “real” total amounts reported are those in annex 7.

<sup>12</sup> The amounts shown in this column refer to all the instances of the type of irregularities, either when they are reported alone or when they are reported together with other types.

<sup>13</sup> Therefore, as some irregularities have been counted more than once, the total value is distorted and this is why the ‘total’ row has been omitted. The values expressed under “indicative implicated amount” and “indicative average amount” columns are only “virtual”.

It is important to underline that the most frequent types of irregularities are almost the same as in the year 2001 and 2002 confirming a certain consistency in patterns and trends relating to structural measures.

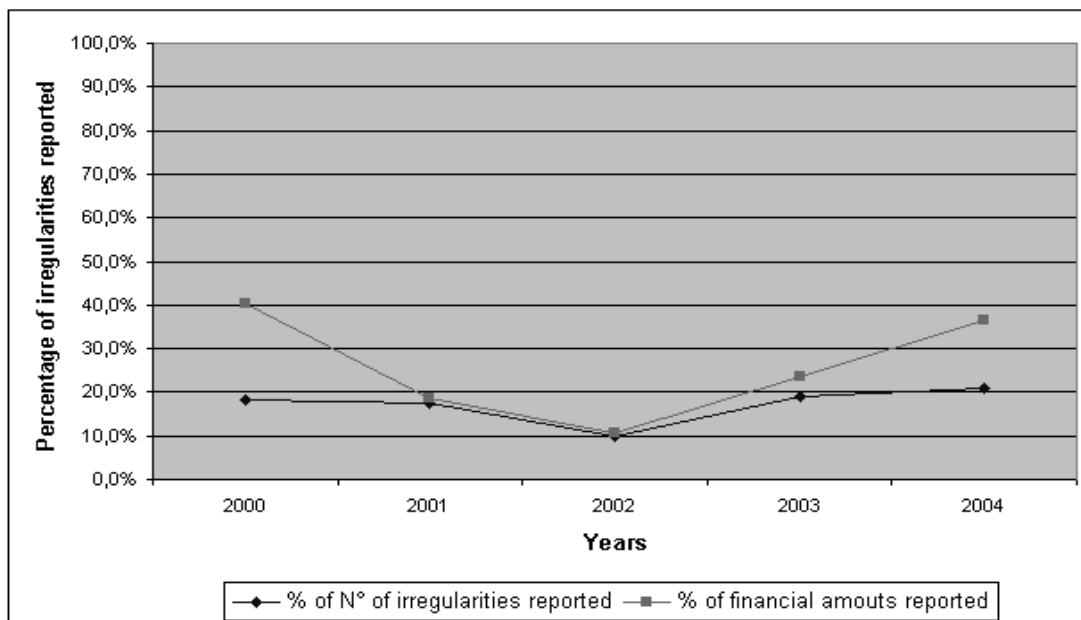
As in previous years, it should be stressed that the “999 – other irregularities” code has a significant impact on the overall evaluation. Irregularities communicated under this code do not fit any other description provided for by the reporting system.

However, their weight on the total has decreased in the last years (13% in 2004 compared to 15% in 2003, 23% in 2002 and 28% in 2001). This trend is encouraging, but it is necessary to strengthen this trend. In this view, OLAF will undertake a study in order to evaluate the possibilities of proposing new more comprehensive or adequate categories.

### 2.2.3. Irregularity versus suspected fraud

On the basis of the irregularities reported in the period 2000 – 2004, looking in particular at the modus operandi, the type of irregularity, the administrative state of an irregularity and the additional information given in text fields, a first attempt has been made to estimate the level of “suspected fraud” in the sector of structural measures. Chart 2.18 shows the percentage of irregularities which can be qualified as “suspected fraud” cases for both the number of cases and the amounts affected by the irregularities.

**Chart 2.18: “Suspected frauds” as a percentage of total reported irregularities 2000-2004**



The lowest level of suspected fraud as a percentage of total reported irregularities was registered in 2002. This was also the year in which the highest number of cases of irregularities was reported to OLAF, coinciding with the closure of the 1994-1999 round. As an overall result, considering all reports received between 2000 and 2004, the percentage of suspected frauds is about 15.9% of the number of irregularities and 24.2% of the reported financial amounts.

Again, a lot of caution should be taken in assessing the meaning of these figures, bearing in mind the nature of the projects financed by the structural funds and the fact that irregularities do not refer exclusively to the current programming period.

The following table 2.19 shows the “impact” of suspected frauds in relation to the Funds concerned and the programming period. Note that these irregularities were all reported in 2004.

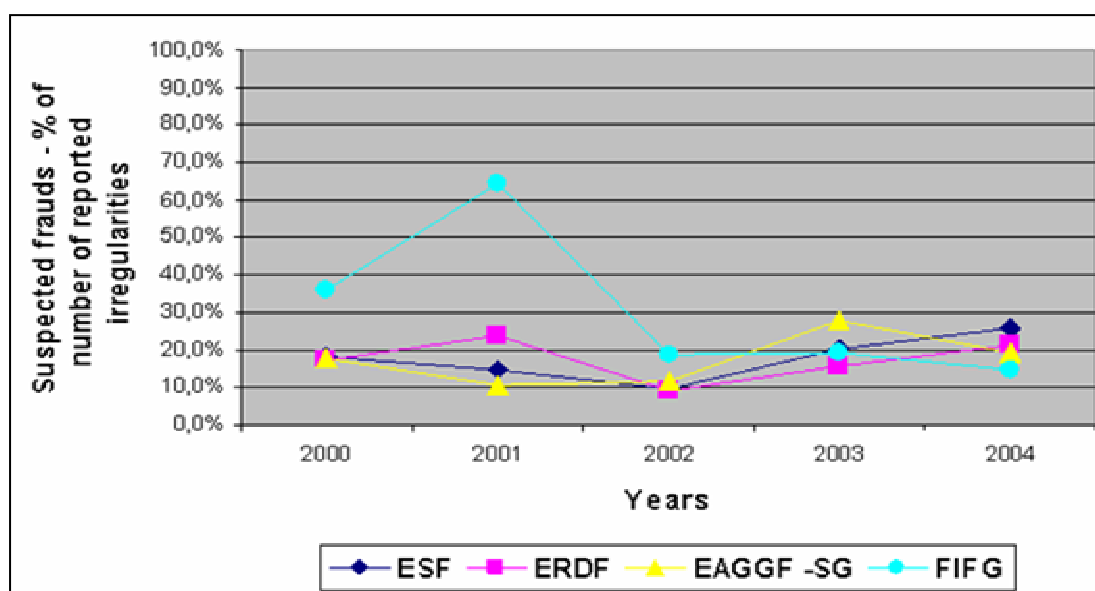
**Table 2.19: “Impact” of suspected frauds in relation to the Funds concerned and the programming period – N° of reported irregularities, 2004**

	Programming Period 1994-1999			Programming Period 2000-2006			Other		
	Irregularities	Suspected frauds	% of susp. frauds on total	Irregularities	Suspected frauds	% of susp. frauds on total	Irregularities	Suspected frauds	% of susp. frauds on total
ERDF	749	233	31,1%	998	140	14,0%	24	4	16,7%
EAGGF - SG	235	49	20,9%	147	27	18,4%	21	3	14,3%
FIFG	20	6	30,0%	36	2	5,6%	1		0,0%
ESF	78	33	42,3%	729	179	24,6%	11	2	18,2%
<b>TOTAL</b>	<b>1082</b>	<b>321</b>	<b>29,7%</b>	<b>1910</b>	<b>346</b>	<b>18,2%</b>	<b>57</b>	<b>9</b>	<b>15,8%</b>

It is significant that the Structural Fund persistently presenting the highest percentage of suspected frauds is the European Social Fund (ESF).

Chart 2.20 below shows how the situation has evolved in the last five years. The very high values in the first two years for the Financial Instrument for Fishery Guidance (FIFG) could be explained by improved reporting from 2002 on.

**Chart 2.20: Suspected frauds as percentage of reported irregularities per Fund – 2000-2004**



*Conclusions*

The most frequently occurring irregularity is “not eligible expenditure”;

The most frequently occurring modus operandi in “suspected fraud” cases are “false or falsified supporting documents”;

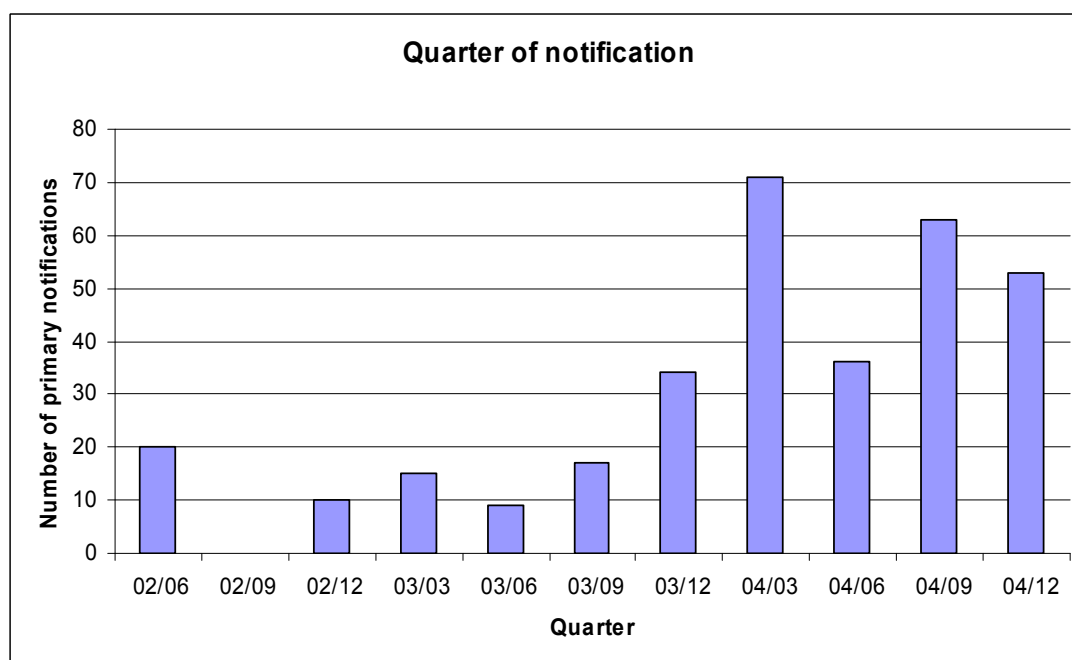
The number of “suspected fraud” cases as a percentage of the total number of reported irregularities is about 17%;

The European Social Fund (ESF) seems to present a higher percentage of cases of “suspected fraud” than the other funds, in the irregularities reported in 2004.

### 2.3. Pre-accession Funds

Chart 2.21 below gives an overview of irregularity reports since June 2002.

**Chart 2.21: Flow of communications of irregularities – June 2002-December 2004**



#### 2.3.1. Analysis of reported irregularities

The following table 2.22 shows the distribution of irregularities between Funds

**Table 2.22: Distribution of irregularities among the Funds**

Fund	Number	Amount at stake (eligible cost)	Average amount (eligible cost)	Projects above 1 M€ (number)
PHARE	123	1,117,642,523	9,086,525	33
ISPA	48	1,104,641,577	23,013,366	24
SAPARD	157	157,628,139	1,004,001	17
<b>TOTAL</b>	<b>328</b>	<b>2,379,912,239</b>	<b>7,255,830</b>	<b>74</b>

ISPA projects are less represented in number, but the average cost of related infrastructure projects is more than 20 times the average size of SAPARD projects (investments in agricultural holdings). An analysis of indicative allocations per fund

over the period 2000-2006 reveals an over representation of irregularities reported to OLAF concerning ISPA projects, and an under representation of SAPARD, as presented in table 2.23.

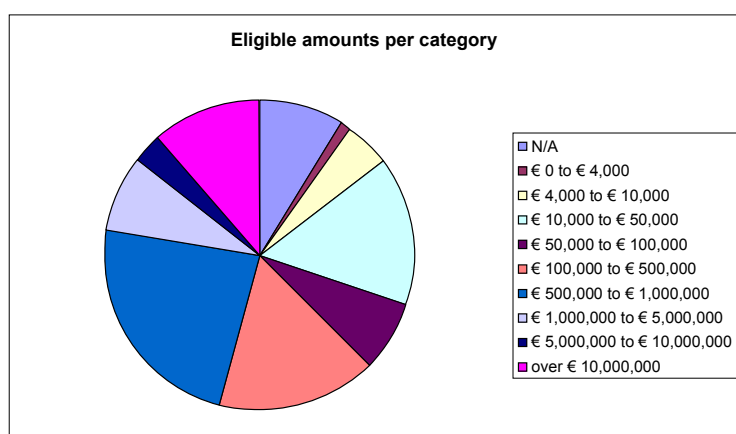
**Table 2.23: Financial amounts at stake in relation to financial allocations per Fund**

Fund	Notified irregularities – EU Amount at stake (50% of eligible cost) in M€	in %	EU allocation 2000-2004 (according to FP) in M€	in %
PHARE	558	47%	7,332	54.7%
ISPA	552	46%	4,000	29.8%
SAPARD	78	7%	2,080	15.5%
<b>TOTAL</b>	<b>1,188</b>	<b>100%</b>	<b>13,412</b>	<b>100%</b>

Estimating the real impact of the irregularities on the financial allocations of the three Programmes is not possible nor advisable at the present stage. One must take into account the fact that the exercise of reporting irregularities is very new to the beneficiary countries and the learning process risks biasing the statistical results. As a matter of fact, the ratio between EU amounts affected and financial allocation of EU funds over the period 2000-2004 is 8.8%, which very likely overestimates the real impact of irregularities, since for several large projects, national authorities considered in their first notifications that the whole EU support was affected. The real impact of EU Funds will only be known when the exact financial impact of irregularities is established.

The size of subsidised projects subject to notifications varies from some thousands of euros to € 355 million, with predominance (34%) of projects with eligible costs of between € 100,000 and 1,000,000, as showed in Chart 2.24 below.

**Chart 2.24: Size of projects affected by irregularities**



Eligible cost of project	Number
N/A	29
€ 0 to € 4,000	4
€ 4,000 to € 10,000	15
€ 10,000 to € 50,000	51
€ 50,000 to € 100,000	24
€ 100,000 to € 500,000	55
€ 500,000 to € 1,000,000	76
€ 1,000,000 to € 5,000,000	27
€ 5,000,000 to € 10,000,000	10
over € 10,000,000	37
<b>TOTAL</b>	<b>328</b>

The distribution of irregularity reports per country mirrors the amounts allocated<sup>14</sup> and the antifraud activity, but these data have to be considered cautiously given the (relatively) small quantity of notifications. Chart 2.25 provides an overview of the distribution of the notifications per country.

**Chart 2.25: Distribution of notifications according to reporting country**

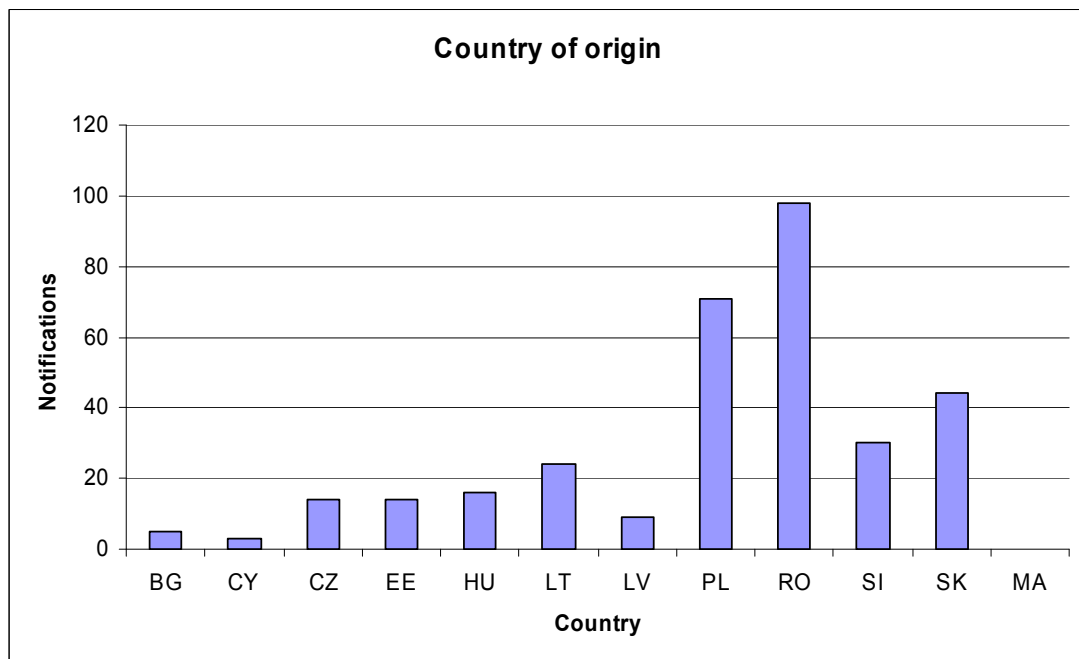
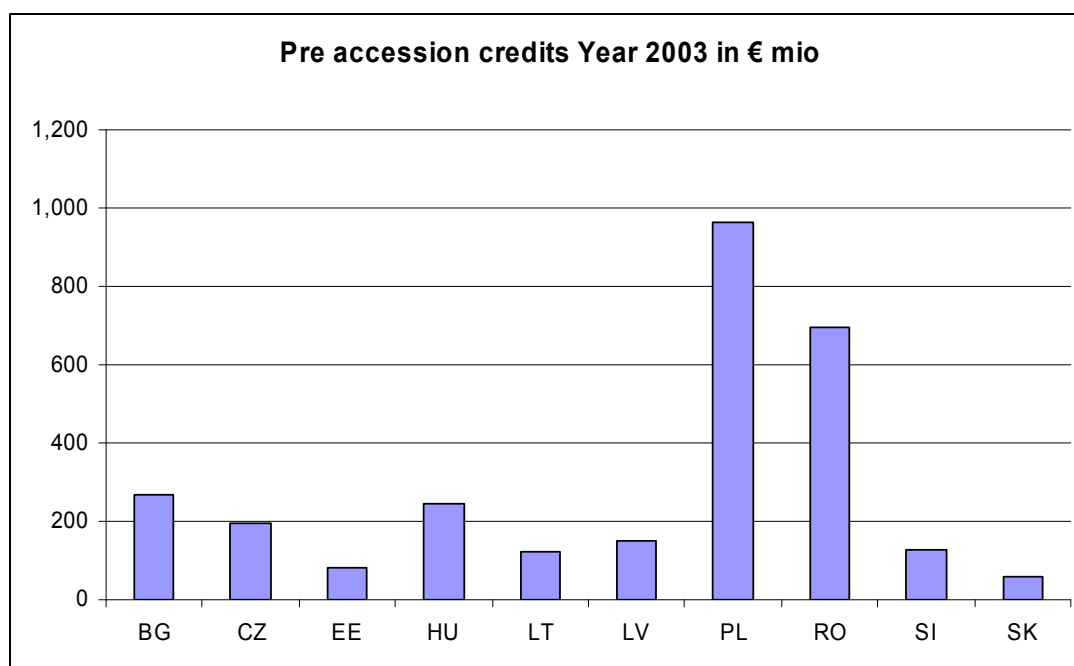


Chart 2.26 provides the distribution of the allocated resources (Reg 555/2000 not included) among the beneficiary States.

<sup>14</sup> See report from the Commission on pre-accession assistance for the year 2003 - COM(2005) 178.

**Chart 2.26: Distribution of financial resources among the beneficiary countries**



The reporting activity is particularly significant in Poland (corresponding with a large amount of available pre-accession credits), Romania, Lithuania, Slovakia and Slovenia.

### 2.3.2. *Methods of detection and types of irregularities*

Data indicate that the methods of detection of irregularities for pre-accession funds are broadly in line with the EU-15 countries' experience in the field of structural funds, with a strong predominance of "administrative and financial controls", as indicated in table 2.27.

**Table 2.27: Methods of detection**

Method of detection	Number
EC controls	4
Complaints	1
Control of documents	24
On the spot controls	46
Administrative or financial controls	295
Preventive check	2
N/A	52

As regards the description of irregularities by reporting authorities, it is worth noting that for 58 notifications, the motivation was described as "falsified documentation".

At the same time, only one notification out of 328 was qualified as genuine fraud. This discrepancy deserves further clarification from managing authorities. The full list of reported types of irregularity is presented in table 2.28.

**Table 2.28: Types of irregularity**

Type of irregularity	Number
N/A	63
action not carried out in compliance with rules	29
action not completed	5
corruption	1
expenditure not eligible	54
missing or incomplete documentation	59
falsified documentation	58
Infringement of public procurement rules	17
over financing	6
others	36

Financial Monitoring and Recovery Situation

#### 2.4. Traditional Own Resources

Decision 2000/597/CE<sup>15</sup> on own resources, and in particular Article 8, stipulates that the collection of traditional own resources is the responsibility of the Member States. This requirement relates both to established own resources or to amounts that should have been established. The Commission performs compliance audits to ensure that Member States respect their obligations to ensure the recovery of these resources under the Community provisions in the customs domain. To this end, the Commission uses an overall strategy<sup>16</sup> to evaluate Member States' actions and to take, where necessary, corrective measures.

Also in 2004, three main principles under lied this strategy: checking Member States' *follow-up of recovery in a sample* of current cases, dealing with the *procedure for writing-off* amounts of own resources higher than a certain threshold value which are considered irrecoverable and applying the principle of *financial responsibility* for certain errors made by the national administrations.

<sup>15</sup> Council Decision 2000/597/EC, Euratom of 29.9.2000 (OJ L 253 of 7.10.2000) which replaced Decision 94/728.

<sup>16</sup> For details of the strategy developed by the Commission, see the report on the protection of the financial interests and fraud prevention financial year 2000.



#### 2.4.1. *Checking follow-up of recovery by sample*

In order to evaluate the recovery actions taken by the Member States, the Commission used a procedure to sample data (Sample B). This sample consisted of a detailed examination of certain particularly difficult files which had been the subject of mutual assistance communications that involved several Member States and had an impact on the Community budget of more than one million euros. Like in similar reports in the past<sup>17</sup> the Commission, in 2004, followed, until the final outcome, the recovery measures pertaining to a number of representative cases<sup>18</sup> and drafted a report. This report covers 17 cases (analysis of 9 new files and monitoring of recovery procedures in 8 cases already treated in the B1998 report). Where the B reports of 1994 and 1998 referred to a recovery rate of 2% and 12% respectively, the new report shows a further improvement to a 15% recovery rate.

This B sample report is the last of the series. The Commission has decided that follow-up of recovery is better monitored via the scrutiny at EU level of the new write-off procedure for unrecovered debts > € 50,000. For smaller amounts the Commission will use its' inspections to see that Member States show due diligence in recovery.

#### 2.4.2. *Procedure for managing Member States' requests for write-off*

Member States are required to take the necessary measures to make traditional own resources available, except in cases of force majeure or where recovery proves to be impossible for reasons which can not be attributed to the Member State concerned. Cases of write-off are communicated to the Commission for examination (where the amount of duties involved exceeded €10,000 or – after the adoption of Regulation 2028/2004 of 16 November 2004 – where it exceeds €50,000). Where the Member State can demonstrate that the lack of recovery cannot be attributed to it, the demand for write-off is accepted. If not, the Member State bears financial consequences of failure in establishing own resources and making them available to the Commission on the basis of Article 8 of Decision 2000/597/CE and of Articles 2 and 17 of Regulation 1150/2000.

In 2004, 61 requests for exemption of provision were communicated to the Commission by 10 Member States under Article 17(2) of Regulation 1150/2000, relating to a total amount of €6,527,094.84<sup>19</sup>. But 63 files were examined in 2004. The result, in financial terms, of the treatment of those 63 files (4 cases AT, 3 BE, 5 DE, 1 DK, 1 EL, 13 ES, 2 F, 3 IE, 7 IT, 8 NL, 4 PT, 1 SE, 11 UK) is distributed as follows:

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<sup>17</sup> Two reports of this type, B94 and B98, were drawn up: Commission Reports on the Recovery of traditional own resources coming from the cases of fraud and of irregularities ("Sample B94", COM(1997) 259 final of 9 June 1997 and "B98 Sample", COM (1999) 160 final of 21 April 1999).

<sup>18</sup> In the meantime this report is adopted by the Commission on 4 February 2005: COM(2004) 850 final.

<sup>19</sup> On the 25 April 2005, the total number of requests for exemption of provision recorded since 1992 is of 612 cases representing a total amount of €190,674,698.92.

<b>Commission position</b>	<b>Number of cases</b>	<b>% cases</b>	<b>Amount in €</b>	<b>% amount</b>
<i>Non suitable exemption request</i>	8 cases	12,6 %	3,260,604.72	04,55 %
<i>Write-off refused</i>	13 cases	20,6 %	35,462,296.54	49,49 %
<i>Required additional information</i>	14 cases	22,2 %	452,728.99	00,63 %
<i>Write-off accepted</i>	28 cases	44,4 %	32,472,280.81	45,32 %
<b>Total</b>	<b>63 cases</b>	<b>100%</b>	<b>€71,647,911.06</b>	<b>100 %</b>

Examination of the diligence of the Member States constitutes a very effective mechanism not only for gauging Member States' activities in the field of recovery but it also encourages national administrations to intensify their recovery actions, since a lack of diligence leading to failure to recover will result in Member States being financially liable for these amounts.

Since Regulation 2028/2004 amending Regulation 1150/2000 is entered into force on 16 November 2004, Member States shall provide the Commission with information on cases exceeding €50,000 instead of the former €10,000. A Task Force created within the unit of the Commission department responsible (DG BUDGET) is dealing with the anticipated increase in the number of cases to be dealt with in the future.

#### 2.4.3. *Principle of Member States' financial responsibility for their administrative errors*

According to the Decision on own Resources, Member States are responsible for the collection of traditional own resources. For performing this task, and to support the sound and efficient management of public finances, they may keep 25% of the amounts recovered). Any negligence on the part of the Member States which results in a loss of own resources, however, gives rise to a financial liability. In this way the Commission holds the administrations financially responsible for their own errors<sup>20</sup>.

Certain Member States, whilst agreeing with the principle of financial responsibility, continue to claim that there is no legal basis to support the Commission's action. In order to settle this difference in interpretation of Community law, a pilot case on financial responsibility is the subject of infringement proceedings<sup>21</sup>. A ruling of the Court of Justice is expected later in 2005. The 29 new cases identified in 2004

<sup>20</sup> These cases are identified on the basis of Articles 220(2)b (non perceptible administrative errors) and 221(3) (time-barring resulting from the inactivity of the customs) of the Community Customs Code, of Articles 869 and 889 of the Provisions for application of the Code or on the basis of non-observance, by the customs administration, of articles of the Community Customs Code giving rise to a situation of legitimate expectations of the operator.

<sup>21</sup> For this case, the referral of the Court of Justice was carried out by the Commission (Case C-329/02) on 8 November 2002. In this procedure, hearings were held on 11 January 2005 while the Attorney-General has presented his conclusion on 10 March 2005. The decision is anticipated by the end of 2005.

represent a total amount of €20,485,772.12, while, in 2004, €1,100,156.6322 was made available to the Commission by Austria, France, the Netherlands, Spain and the United Kingdom.

## **2.5. (EAGGF Guarantee Section): Expenditure (Annexes 3, 4 and 5)**

In 2004, Member States communicated, pursuant to Regulation No. 595/91, 3,401 irregularities for a total amount of € 82,064,000 (see Annex 4).

The situation as regards recovery in 2004 (see Annex 5) is as follows:

- the overall sum to be recovered was € 2,077,638,664 for the communications prior to 2004;
- to this amount, € 63,763,695 was added which relates to the communications received during 2004;
- the amounts relating to the cases for which a legal procedure is on-going account for approximately € 810,883,795 for the period prior to 2004;
- finally in the same period, the amount declared irrecoverable pursuant to Article 5, par. 2 of Regulation No. 595/91, and which is awaiting a formal clearance of accounts decision is € 259,167,472.

## **2.6. Structural measures (annexes 6, 7, 8 and 9)**

In 2004, Member States communicated, pursuant to Regulation No. 1681/94, 3,037 irregularities for a total amount of € 531,744,438 (see Annex 7).

The situation as regards recovery in 2004 (see Annex 8) is as follows:

- the sum to be recovered was € 357,169,102;
- in the same period, the amount declared irrecoverable pursuant to Article 5, par. 2 of Regulation No. 1681/94, and which is awaiting a formal decision is € 15,527,749.

Pursuant to Regulation No.1831/94, Member States reported 290 irregularities for a total amount of € 162,912,125 (see annex 9), of which € 40,905,112 remain to be recovered.

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<sup>22</sup> Austria paid €6,515; France paid €980,761; the Netherlands paid €35,654; Spain paid €39,791; the United Kingdom paid €37,437.

## ANNEX

### ANNEX 1 - Traditional own resources: Number of cases of fraud and irregularity reported by the Member States<sup>23</sup> to the Commission 2000 – 2004 (updated 13.4.2005, amounts in euros)

Member States	2000 Cases	2000 Amounts established	2001 Cases	2001 Amounts established	2002 Cases	2002 Amounts established	2003 Cases	2003 Amounts established	2004 Cases	2004 Amounts established	Δ % Cases 2003- 2004	Δ % Amounts 2003- 2004
Austria	93	6 610 227	101	25 574 466	120	21 948 330	99	12 175 839	73	8 256 076	-26,26%	-32,19%
Belgium	306	7 341 737	296	7 329 390	485	27 035 181	480	10 330 871	756	24 205 346	57,50%	134,30%
Cyprus									2	53 117	n/a	n/a
Czech rep.									4	475 488	n/a	n/a
Denmark	106	9 112 839	67	5 063 802	94	5 493 185	68	8 091 172	79	7 642 455	16,18%	-5,55%
Estonia									3	198 940	n/a	n/a
Finland	36	1 598 820	20	3 140 752	18	782 783	24	1 160 029	28	1 604 081	16,67%	38,28%
France	257	27 602 120	219	16 499 406	209	24 696 682	194	16 918 123	252	24 470 309	29,90%	44,64%
Germany	515	53 696 658	396	28 452 413	426	109 606 584	366	58 939 951	262	17 108 099	-28,42%	-70,97%
Greece	6	748 707	17	11 697 803	30	8 265 776	35	1 460 704	38	1 771 977	8,57%	21,31%
Hungary									4	1 338 786	n/a	n/a
Ireland	38	1 882 401	34	1 303 005	44	4 089 892	33	2 340 846	10	401 444	-69,70%	-82,85%
Italy	230	38 160 483	208	96 895 210	310	39 442 639	226	75 697 603	193	35 464 698	-14,60%	-53,15%
Latvia									7	323 783	n/a	n/a
Lithuania									5	133 074	n/a	n/a
Luxembourg	2	35 620	0	0	1	23 666	1	1 013 477	0	0	100,00%	100,00%
Malta									0	0	0,00%	0,00%
Netherlands	329	21 558 565	489	32 672 980	291	80 384 224	507	60 663 773	514	44 170 117	1,38%	-27,19%
Poland									17	627 643	n/a	n/a
Portugal	19	1 306 757	11	1 489 355	15	2 004 205	22	2 197 568	14	981 844	-36,36%	-55,32%
Slovakia									2	300 110	n/a	n/a
Slovenia									7	463 642	n/a	n/a
Spain	116	8 510 205	134	29 824 254	121	11 647 708	213	18 595 747	111	7 908 902	-47,89%	-57,47%
Sweden	18	1 096 540	22	2 642 716	40	2 847 635	47	1 293 398	64	6 043 025	36,17%	367,22%
United Kingdom	508	330 706 777	252	23 643 106	214	6 126 353	344	5 573 794	290	21 749 230	-15,70%	290,21%
<b>Total</b>	<b>2 579</b>	<b>509 968 456</b>	<b>2 266</b>	<b>286 228 658</b>	<b>2 418</b>	<b>344 394 843</b>	<b>2 659</b>	<b>276 452 895</b>	<b>2 735</b>	<b>205 692 186</b>	<b>2,86%</b>	<b>-25,60%</b>

<sup>23</sup> Member States must notify cases of fraud and irregularity where the amounts exceed €10 000 in accordance with a Community obligation laid down in Article 6(5) of Regulation n° 1150/2000 of 22 May 2000.

**ANNEX 2 - Traditional own resources: Cases of fraud and irregularity reported by Member States for 2004 (updated 13.4.2005, amounts in euros)**

Member States	Number of cases notified for 2004	Amounts established	Cases as a % of EUR-25 total	Average amount per case	Amounts recovered in cases notified for 2004	% recovery of EUR-25 total
(1)	(2)	(3)	(4)	(5) = (3) / (2)	(6)	(7)
Austria	73	8 256 076	4.01 %	113 097	815 692	1.56 %
Belgium	756	24 205 346	11.77 %	32 018	1 516 508	2.89 %
Cyprus	2	53 117	0.03 %	26 559	53 117	0.10 %
Czech rep.	4	475 488	0.23 %	118 872	241 965	0.46 %
Denmark	79	7 642 455	3.72 %	96 740	5 585 026	10.65 %
Estonia	3	198 940	0.10 %	66 313	0	0.00 %
Finland	28	1 604 081	0.78 %	57 289	332 993	0.64 %
France	252	24 470 309	11.90 %	97 104	7 671 757	14.63 %
Germany	262	17 108 099	8.32 %	65 298	4 802 759	9.16 %
Greece	38	1 771 977	0.86 %	46 631	162 242	0.31 %
Hungary	4	1 338 786	0.65 %	334 697	829 008	1.58 %
Ireland	10	401 444	0.20 %	40 144	277 520	0.53 %
Italy	193	35 464 698	17.24 %	183 755	1 936 387	3.69 %
Latvia	7	323 783	0.16 %	46 255	62 593	0.12 %
Lithuania	5	133 074	0.06 %	26 615	33 913	0.06 %
Luxembourg	0	0	0 %	0	0	0 %
Malta	0	0	0 %	0	0	0 %
Netherlands	514	44 170 117	21.47 %	85 934	13 762 365	26.25 %
Poland	17	627 643	0.31 %	36 920	236 959	0.45 %
Portugal	14	981 844	0.48 %	70 132	480 718	0.92 %
Slovakia	2	300 110	0.15 %	150 055	0	0.00 %
Slovenia	7	463 642	0.23 %	66 235	0	0.00 %
Spain	111	7 908 902	3.85 %	71 251	607 320	1.16 %
Sweden	64	6 043 025	2.94 %	94 422	2 681 928	5.12 %
United Kingdom	290	21 749 230	10.57 %	74 997	10 338 060	19.72 %
<b>EUR-25 TOTAL</b>	<b>2 735</b>	<b>205 692 186</b>	<b>100.00 %</b>	<b>75 207</b>	<b>52 428 830</b>	<b>100.00 %</b>

ANNEX 3

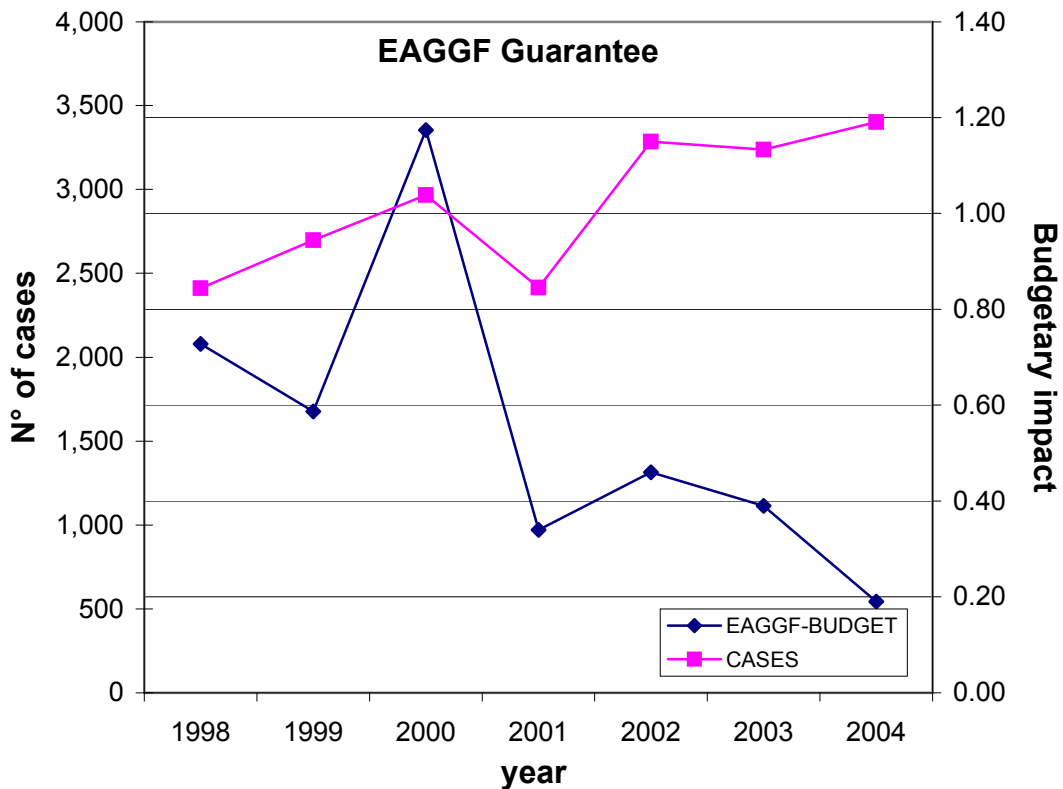
update 12/05/2005

EAGGF GUARANTEE

IRREGULARITIES COMMUNICATED BY THE MEMBER STATES  
YEARS 1998 - 2004

(amounts in € 1,000)

YEAR	CASES	AMOUNT	% OF BUDGET	EAGGF-BUDGET
2004	3,401	82,064	0.19	42,934,711
2003	3,237	169,724	0.39	43,606,858
2002	3,285	198,079	0.46	42,781,898
2001	2,415	140,685	0.34	41,866,940
2000	2,967	474,562	1.17	40,437,400
1999	2,697	232,154	0.59	39,540,800
1998	2,412	284,841	0.73	39,132,500



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

## ANNEX 4

update 12/05/2005

## EAGGF GUARANTEE

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

2004

(amounts in € 1,000)

<i>Member States</i>	<i>Number of cases</i>	<i>Amounts</i>	<i>% of EAGGF expenditure</i>
BE	34	572	0.05
DK	62	711	0.06
DE	813	18,659	0.31
EL	29	980	0.04
ES	651	34,926	0.55
FR	524	7,816	0.08
IE	105	912	0.05
IT	96	3,120	0.06
LU	3	17	0.04
NL	308	3,725	0.30
AT	133	1,270	0.11
PL	5	79	0.73
PT	232	3,751	0.46
FI	24	153	0.02
SE	75	827	0.10
UK	307	4,547	0.11
<b>TOTAL</b>	<b>3,401</b>	<b>82,064</b>	<b>0.19</b>

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

(amounts in € 1,000)

<b>Member States</b>	<b>To be recovered cases communicated before 2004</b>	<b>To be recovered cases communicated in 2004</b>	<b>In Justice before 2004</b>	<b>Amounts "irrecoverable" before 2004</b>
BE	61,192	278	56,209	1,923
DK	1,126	230	0	877
DE	133,183	14,350	12,956	10,989
EL	71,951	801	42,109	7,936
ES	269,431	32,754	117,776	65,349
FR	70,896	6,086	39,685	3,990
IE	2,513	461	623	617
IT	1,392,635	2,142	504,901	154,714
LU	72	9	0	0
NL	16,663	1,574	3,798	2,296
AT	2,969	185	312	629
PL		0		
PT	29,879	3,430	27,816	885
FI	177	19	16	0
SE	385	210	11	184
UK	24,566	1,235	4,671	8,778
<b>TOTAL</b>	<b>2,077,639</b>	<b>63,764</b>	<b>810,884</b>	<b>259,167</b>

\* *In justice: awaiting outcome of judicial proceedings in national courts*\*\* *Amounts irrecoverable: awaiting formal decision in Clearance of Accounts procedure*



## ANNEX 6

### STRUCTURAL MEASURES

#### IRREGULARITIES\* COMMUNICATED BY MEMBER STATES 1998-2004

<i>Year</i>	<i>N° of cases</i>	<i>Financial amounts (x € 1,000)</i>	<i>Total budget (x € 1,000,000)</i>	<i>Part of budget</i>
2004	3,339	695,611	35,665	1.95%
2003	2,487	482,215	30,764	1.57%
2002	4,656	614,094	30,556	2.01%
2001	1,194	201,549	29,823	0.68%
2000	1,217	114,227	25,556	0.45%
1999	698	120,633	30,654	0.39%
1998	407	42,838	28,366	0.15%

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

**ANNEX 7**

**STRUCTURAL FUNDS**

**IRREGULARITIES COMMUNICATED BY MEMBER STATES UNDER  
REGULATION N. 1681/94**

**2004 – NUMBER OF CASES**

MEMBER STATE	FUNDS				TOTAL
	ERDF	ESF	EAGGF - SG	FIFG	
<b>Belgique / België</b>	38	4		3	45
<b>Danmark</b>	31	15	1		47
<b>Deutschland</b>	736	185	56	8	985
<b>Eesti</b>		6	1		7
<b>Ellas</b>	79	26	42	3	150
<b>España</b>	59	164	28	12	263
<b>France</b>	37	66	4	3	110
<b>Ireland</b>	43				43
<b>Italia</b>	423	125	77	13	638
<b>Latvija</b>			2		2
<b>Luxembourg</b>	1	2			3
<b>Magyar</b>		1			1
<b>Nederland</b>	6	46	4	2	58
<b>Österreich</b>	25	8	5		38
<b>Polska</b>		2	1		3
<b>Portugal</b>	52	34	165	5	256
<b>Suomi Finland</b>	14	21	2		37
<b>Sverige</b>	67	47	4	1	119
<b>United Kingdom</b>	160	66	11	7	244
<b>TOTAL</b>	<b>1,771</b>	<b>818</b>	<b>403</b>	<b>57</b>	<b>3,049</b>

**2004 -AMOUNTS**

Amounts in € 1,000	FUNDS				TOTAL	
	MEMBER STATE	ERDF	ESF	EAGGF - SG		FIFG
<b>Belgique / België</b>	14,375	63			504	14,942
<b>Danmark</b>	1,456	1,009	10			2,475
<b>Deutschland</b>	107,783	12,052	6,013	1,624		127,472
<b>Eesti</b>		31	74			105
<b>Ellas</b>	104,027	4,834	2,992	486		112,339
<b>España</b>	19,904	4,728	866	377		25,875
<b>France</b>	1,774	1,227	52	51		3,104
<b>Ireland</b>	3,451					3,451
<b>Italia</b>	175,478	12,003	5,225	2,212		194,918
<b>Latvija</b>			361			361
<b>Luxembourg</b>	3	107				110
<b>Magyar</b>		6				6
<b>Nederland</b>	2,083	3,472	1,281	17		6,853
<b>Österreich</b>	2,813	302	309			3,424
<b>Polska</b>		12				12
<b>Portugal</b>	4,172	1,888	4,318	710		11,088
<b>Suomi Finland</b>	974	457	60			1,491
<b>Sverige</b>	1,969	641	90	40		2,740
<b>United Kingdom</b>	18,282	3,203	102	466		22,053
<b>TOTAL</b>	<b>458,544</b>	<b>46,035</b>	<b>21,753</b>	<b>6,487</b>		<b>532,819</b>

## ANNEX 8

### STRUCTURAL FUNDS

#### IRREGULARITIES COMMUNICATED BY MEMBER STATES UNDER REGULATION N. 1681/94

#### SITUATION OF RECOVERY

(amounts in € 1,000)

Member States	To recovered cases communicated before 2004	Amounts "irrecoverable" before 2004	To recovered cases communicated in 2004	Amounts "irrecoverable" in 2004	In justice before 2004	In justice 2004
BE	2,128	434	11,600	11,292	954	155
DK	7,446	6,207	1,598	950	35	111
DE	389,623	68,098	111,025	1,571	88,907	6,601
GR	8,469	844	38,101	0	1,091	460
ES	31,968	543	12,558	0	9,443	310
FR	15,297	2,273	2,340	43	2,573	62
IE	1,205	0	1,191	0	553	0
IT	146,038	70	148,025	60	129,356	142,853
LU	9	0	110	0	0	0
NL	6,121	1,049	1,152	0	544	0
AT	2,790	899	2,933	0	190	343
PT	18,182	160	7,973	39	7,980	1,892
FI	1,284	930	752	0	200	249
SE	556	187	397	380	0	0
UK	58,121	4,132	17,716	1,193	1,889	0
<b>TOTAL</b>	<b>689,236</b>	<b>85,826</b>	<b>357,471</b>	<b>16,009</b>	<b>243,715</b>	<b>153,036</b>

\*Amounts irrecoverable: awaiting formal decision according to the procedure set out in art. 5§2 of Regulation No. 1681/94.

\*\* In justice: awaiting outcome of judicial procedures in national courts.

**ANNEX 9****COHESION FUND****IRREGULARITIES COMMUNICATED BY MEMBER STATES UNDER  
REGULATION N. 1831/94****2004**

Amounts in € 1,000	<b>COHESION FUND</b>			
	<b>MEMBER STATE</b>	<b>N° OF CASES</b>	<b>IRREGULAR AMOUNTS</b>	<b>AMOUNTS TO BE RECOVERED</b>
	<b>Ellas</b>	271	139.370	19.483
	<b>España</b>	1	384	384
	<b>Latvija</b>	1	1	0
	<b>Polska</b>	5	802	23
	<b>Portugal</b>	12	22.234	20.635
	<b>TOTAL</b>	<b>290</b>	<b>162.792</b>	<b>40.525</b>

## ANNEX 10

### Irregularities communicated by Member States

2004

(Amounts in 1,000 €)

MEMBER STATES		EAGGF		STRUCTURAL FUNDS		COHESION FUND		OWN RESOURCES		TOTAL	
		Cases	Financial Amounts	Cases	Financial Amounts	Cases	Financial Amounts	Cases	Financial Amounts	Cases	Financial Amounts
AT	Austria	133	1,270	38	3,424	0	0	73	8,256	244	12,950
BE	Belgium	34	572	45	14,942	0	0	756	24,205	835	39,719
CY	Cyprus	0	0	0	0	0	0	2	53	2	53
CZ	Czech Republic	0	0	0	0	0	0	4	475	4	475
DE	Germany	813	18,659	985	127,472	0	0	262	17,108	2,060	163,239
DK	Denmark	62	711	47	2,475	0	0	79	7,642	188	10,828
EE	Estonia	0	0	7	105	0	0	3	199	10	304
EL	Greece	29	980	150	112,340	271	139,370	38	1,772	488	254,462
ES	Spain	651	34,926	263	25,875	1	384	111	7,909	1,026	69,094
FI	Finland	24	153	37	1,491	0	0	28	1,604	89	3,248
FR	France	524	7,816	110	3,104	0	0	252	24,470	886	35,390
HU	Hungary	0	0	1	6	0	0	4	1,339	5	1,345

IE	Ireland	105	912	43	3,451	0	0	10	401	158	4,764
IT	Italy	96	3,120	638	194,917	0	0	193	35,465	927	233,502
LT	Lithuania	0	0	0	0	0	0	5	133	5	133
LU	Luxembourg	3	17	3	110	0	0	0	0	6	127
	Latvia	0	0	2	361	1	1	7	324	10	686
MT	Malta	0	0	0	0	0	0	0	0	0	0
NL	The Netherlands	308	3,725	58	6,853	0	0	514	44,170	880	54,748
PL	Poland	5	79	3	12	5	802	17	628	30	1,521
PT	Portugal	232	3,751	256	11,088	12	22,234	14	982	514	38,055
SE	Sweden	75	827	119	2,740	0	0	64	6,043	258	9,610
SK	Slovakia	0	0	0	0	0	0	2	300	2	300
SL	Slovenia	0	0	0	0	0	0	7	464	7	464
UK	United Kingdom	307	4,547	244	22,053	0	0	290	21,749	841	48,349
<b>TOTAL</b>		<b>3,401</b>	<b>82,064</b>	<b>3,049</b>	<b>532,819</b>	<b>290</b>	<b>162,791</b>	<b>2,735</b>	<b>205,692</b>	<b>9,475</b>	<b>983,366</b>