



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.05.1997
COM(97) 199 final

PROTECTION OF THE COMMUNITY'S FINANCIAL INTERESTS

**FIGHT AGAINST FRAUD
WORK PROGRAMME 1997/8**

(presented by the Commission)

Introduction

The present work programme strengthens presence on the ground and continues the policy of partnership with national authorities. It also aims at strengthening antifraud legislation to ensure compatibility of national judicial norms, and transnational cooperation.

The efforts will focus on 6 themes:

- *detection of irregularities;*
- *recovery of the amounts concerned;*
- *fraud-prevention and proof-fraud legislation;;*
- *administrative sanctions and deterrence;*
- *a judicial area for the protection of the Union's financial interests;*
- *the preparation for enlargement and relations with non-member countries.*

In each of these themes the SEM 2000 principles on financial management will be supplemented. The accent will be put on the prevention aspect, especially the quality and applicability of legislation as well as their correct and homogeneous application. In the customs area, the principles identified in the "customs 2000" programme will be implemented.

A few priorities merit to be highlighted. The European Parliament's recommendations to strengthen custom cooperation in the transit field will be given priority. Priority will also be given to an improvement of preferential regimes so as to better prevent and combat fraud.

In the field of indirect taxes, strengthened cooperation with Member States at Union level will be put in place so as to improve the functioning of VAT and excise systems in the internal market.

Targeted anti-fraud actions will be developed in certain non-member countries, in particular the new independent States as well as the accession candidate countries in Central and Eastern Europe. This is particularly important in view of enlargement.

The most recent improvements in the legal framework for the fight against fraud are essentially :

- *provisions concerning notifications of frauds which now cover all Community areas;*
- *a regulation for the protection of the financial interests of the Community adopted in December 1995;*
- *the on the spot checks and inspections regulation adopted in November 1996;*
- *A Convention and Protocol on the approximation of norms and strengthening of cooperation and penal protection signed in July 1995 and September 1996. These two texts remain to be ratified and transposed in Member States.*

Since 1994 some Member States have set up specialized structures for the protection of EU finances while others have introduced provisions to strengthen cooperation with the Commission. These are positive and encouraging signs. The success of the anti-fraud policy relies on a continued effort by Member States in improving measures at national

level to protect financial interests more efficiently. Some aspects of action in Member States, such as close collaboration and networking, also form part of the work programme.

1. REINFORCING THE DETECTION POLICY AND IMPROVING ANALYSIS OF INFORMATION

Combating Community fraud effectively is based on operational activity and requires a firmer grasp of the phenomenon on the ground. It is a question of emphasizing the policy of detecting fraud cases by improving investigative techniques in a legal framework strengthened in particular by the adoption of EC Euratom Council regulation 2185/96. This regulation represents an important step forward for work on the ground. It establishes conditions for on the spot checks and inspections carried out by the Commission in close cooperation with the competent authorities in the Member States, in principle, in all the fields of activity of the Communities. Also, the Member States and the Commission will from 1998 be able to use the improved mutual assistance mechanism in the customs and agricultural fields (EC regulation 515/97)¹ which introduces the legal base for the establishment of a database in the customs information system.

It is now up to the Commission and the Member States to concentrate their efforts and bring together the means which are indispensable to put into practice this new legislative framework. These instruments and those being finalized in the framework of penal protection will allow the investigative work carried out in the framework of the Commission/Member State strengthened partnership to be developed. It is on the basis of the initial results that the qualitative steps necessary for protection of the European finances and taxpayer can finally be envisaged and realized.

The Commission and the Member States will have to do everything possible to improve prevention, detection and cooperation and develop a common approach at Union level.

The programme presented by the Commission for the setting up of a new common VAT system² and the report concerning administrative cooperation in the field of indirect taxes³ which point out the existing weaknesses and lacunae in the current framework for combating major international tax frauds will serve as a framework to define the guidelines for action.

With regard to the Commission's role, the accent will be put on the means intended to combat more effectively major financial crime, transnational fraud and the most serious

¹ OJ L 82 of 22.03.1997.

² COM(96)681final : second report on article 14 for the implementation of regulation 218/92 on administrative cooperation in the field of indirect taxes.

³ COM(96)328, 22.07.1996.

irregularities. These are the areas of activity where the Commission is also best placed to provide added value and support to the actions of all national authorities:

To accomplish this first set of activities, a number of initiatives must be undertaken in all the sectors of activity of the Union:

1.1. Effective implementation on the ground of regulation 2185/96 concerning on the spot checks and inspections with all the national authorities.

Presentation of practical means of application of the EC Euratom Council regulation n° 2185/96⁴ concerning on the spot checks and inspections carried out by the Commission for the protection of the European Communities' financial interests against frauds and other irregularities.

First assessment of experience of implementation of the on the spot checks and inspections regulation at the end of 1998. At this time, the Commission will envisage the possibility of providing for the application of fines or Community administrative sanctions with regard to economic operators who refuse the right of access to information and/or right of access to premises, with a view to strengthening the "on the spot checks and inspections" regulation.

1.2. Selective establishment of Task Groups and their use in high risk sectors where organized crime rings are involved.

Following the example of what has been successfully achieved in the areas of olive oil and cigarettes, the Commission will put in place where resources are available new Task Groups to intensify action against organized networks or rings, in particular in the alcohol sector.

1.3. Strengthening customs cooperation instruments.

• **Cooperation between customs investigation services.**

Joint investigation between specialized customs investigation services will be developed with the help of the Commission for more effective coordination, in particular where there are transnational aspects.

Operational activity will be increasingly focused (mutual assistance and where necessary on the spot checks and inspections regulation) on sensitive sectors and products (transit, preferential origin, anti-dumping ...) both with investigations within the Community as well as with investigations in non-member countries.

The customs services will be called upon to use more effectively the computerized instruments, at their disposal such as the early warning system for targeted checks on sensitive goods and the Customs Information System (CIS) with the technical assistance and operational aid of the Commission.

In the field of transit, reinforcement of the security of movements of goods will involve taking measures to limit the risks of diversion or substitution of products and facilitating surveillance, monitoring and checks on operations (c.f. point 3.3).

• **Establishment of a Community intelligence analysis cell.**

The establishment of such a "intelligence and forward planning" cell will enable a better Coordination of risk management to be ensured. Particularly in the sensitive textile sector, this cell could make use of the results of the statistical work already undertaken (and which must be

⁴ OJ L 292 of 15.11.1996.

strengthened in the future) so as to establish, on the basis of thorough analysis of the trade and the anomalies detected, "warning criteria" making possible the identification of cases which should be investigated. In general, the orientations resulting from this cell's work will also allow the necessary assistance to be provided to the Task Groups.

- Use of the "Early Warning System" (transit regimes).

Having shown its effectiveness, the use of this system will be systematic to make its application compulsory for transit movements involving high risk products. It will also be compulsory for countries participating in the common transit system (Visegrad 4 and EFTA)⁵

In the area of Community/common transit, future participants in the common transit system have to guarantee their capacity of ensuring the proper functioning of the transit procedures and its instruments of which the early warning system is an integral part.

- Setting up of a central database (CIS)⁶.

So as to improve the effectiveness of the use of information exchanged between Member States via an optimized AFIS⁷ network, the Council regulation on mutual assistance and the convention on the use of information technology in the field of customs⁸ provides in particular for the creation of a customs information system (CIS) comprising a central database which will be managed by the Commission. This will assist the Member States in the prevention, detection and prosecution of operations contrary to customs or agricultural regulations by strengthening by means of a more rapid dissemination of information the effectiveness of cooperation and control procedures by the competent authorities.

- 1.4. Increase in action in the field of direct expenditure -, in particular for the major regional development programmes.

See theme 6, "Enlargement".

- 1.5. Development of mutual assistance and cooperation between the Member States with the help of the Commission in the field of indirect taxes.

With regard to VAT; the Commission and the Member States must, in line with the guidelines identified in the report on implementation of regulation no. 218/92⁹ on administrative cooperation in the field of indirect taxes (VAT)¹⁰, must improve their efforts to develop cooperation in the areas of detection and prevention of fraud. The lack of information at Community level allied to the restrictions in the current framework for handling complex international fraud cases represents

Visegrad: Poland, Czech Republic, Slovakia and Hungary (cf point 6.5); EFTA: Switzerland, Norway and Iceland.

Customs Information System.

Anti Fraud Information System (formerly SCENT):

OJ C 316 of 27.11.1995. Convention to be ratified by the Member States.

OJ L 24 of 01.02.1992.

⁰ COM(96)681 final.

a risk which must be confronted. The Commission will continue the analytical work already started, together with the Member States, in the fraud prevention sub-committee of the Permanent Committee on Administrative Cooperation.

The Commission will continue to encourage and support contacts and cooperation between its investigation services and Member States investigation services. It will facilitate and contribute to the fight against fiscal fraud in cases involving Community interests. The Commission will assess the results of this cooperation and will take them into account where necessary in the detailed examination of Community regulations (EEC Council regulation n° 218/92 and Council Directive n° 77/799 and where necessary the regulation on protection of financial interests) so as to improve the tools and mechanisms of mutual assistance in the field of indirect taxes. All these activities will contribute to the FISCALIS¹¹ programme as well as to the programme for the new common VAT system¹².

With regard to excise, the Commission will work together with the member States, in the framework of the high level group, particularly focusing on the movement of products subject to excise duty (tobacco, alcohol), to define a common fraud prevention and cooperation strategy and to identify improvements including possible legislative amendments at national and Community level.

1.6. Strengthening the fight against economic crime.

Over and above areas in which own resources or Community finance are at risk, the Commission will use all means available for cooperation between customs authorities and the other national services responsible for reinforcing the fight against economic crime harmful to Community interests (intellectual property, counterfeiting ..., quotas, anti-dumping), in particular in sensitive sectors such as for example textiles where the coherence, the very credibility of the common commercial policy is largely based on the definition and implementation of an effective anti-fraud strategy.

On the basis of an assessment of legislation in these fields, legal instruments could if necessary be proposed, in particular in the area of action against counterfeiting¹³ to strengthen with the help of the Commission :

- reciprocal information
- cooperation between Member States' specialized services.

In this context, the Commission might envisage the proposal of a legal instrument enabling cooperation to be extended to cover the authorities responsible for combating economic and financial crime to improve coordination at Community level of all operational activities preceding the opening of judicial proceedings. This instrument could in this way contribute to strengthening the fight against counterfeiting and piracy which represent an ever growing scourge.

1.7. Improvement of equipment and tools for data processing; making use of follow up of notifications and development of risk analysis.

Cooperation with the JRC¹⁴ to improve the use of all relevant information, especially to strengthen methods of risk analysis. The pilot actions and use of risk analysis especially in the areas of

¹¹ COM(97)175 of 23.04.1997. Programme intended to improve the functioning of the internal market provisions concerning indirect taxation.

¹² COM(96)328 of 22.07.1996.

¹³ In particular for the protection of consumer health and safety and intellectual property.

activity of the customs services to target better documentary and/or physical checks will be continued.

In all sectors, particularly in the area of structural policies, this action will aim to facilitate the primary control work of the national authorities, follow up of cases under investigation, rationalization and exploitation of information on a real time basis to identify trends and monitor the development of sectors of interest to organized crime.

This work will have to be carried out regularly in a concerted manner in the ad hoc and specialized working groups (typology, fraud profiles, sensitive sectors, targeting of checks ...). The Commission will ensure in the specialized bodies of the advisory committee (forum for exchange of experience) the promotion of methods of detection based on modern technology. Use of notifications, results of risk analysis carried out by the JCR and information resulting from the work of the Court of Auditors will allow the sectors in which the discovery of fraud is highly probable to be identified.

1.8. Strengthening of the Commission/Member State¹⁵ cooperation at all stages of the investigation and follow up of inquiries.

To ensure a comprehensive follow up of cases, the Commission's technical and operational assistance will be carried out at all stages of the administrative inquiry and prosecution (cf point 5.5). This assistance should facilitate operations involving prosecution and seizure in cases of illicit traffic going beyond the single area of national sovereignty (cf points 5.4 and 5.6).

1.9. Establishment of relations between UCLAF and Europol.

Organization of regular contacts, in particular in the area of analysis of the phenomenon of economic and financial crime and its development contrary to Community interests. Pooling of technical knowledge, especially in training and gathering of information, processing and analysis of data.

1.10. Targeted training action, development of exchange of officials

Organization of targeted training action for the authorities responsible for the fight against economic and financial crime (customs, police and judicial authorities) and in the fiscal field (Matthaeus-Tax¹⁶).

The exchange of officials should also be extended for officials of accession candidate countries in the framework of the provisions on customs cooperation provided in the Europe agreements (cf. point 6.4).

2. FINANCIAL FOLLOW UP OF FRAUD CASES AND OTHER IRREGULARITIES AND RECOVERY OF MONIES

To complement its anti-fraud strategy and develop its actions, the Commission has opted clearly for a strengthening of financial management. The dynamic effect of operation SEM 2000 allowed a series of measures to be undertaken to strengthen financial management. The Commission has therefore made substantial progress in developing

¹⁴ Joint Research Centre of Ispra.

¹⁵ On the spot checks and inspections regulation, Convention and protocols concerning protection of financial interests, CIS Convention..

¹⁶ See "Fiscalis".

new instruments and financial management procedures. This work is to be continued, care will have to be taken with the implementation of these strengthened provisions.

Recovery is the logical consequence of action on the ground. It constitutes a simply reparatory measure whereby the European taxpayer's money is justifiably returned. Recovery is therefore an equitable measure and a fundamental element in the fight against fraud. It is also one of the parameters for identifying success in the fight against fraud. It is fully in line with the content of the horizontal regulation concerning protection of the Community's financial interests¹⁷ which establishes a general framework at Union level.

2.1. Area of own resources

- *Implementation of new provisions of regulation 1552/89 which allows the monitoring of the recovery carried out by member States of cases of fraud and irregularity;*
- *Strengthening of the recovery provisions of regulation no. 1552/89 (cf. point 3.4).*
- *Strengthening of mutual cooperation of recovery in the fiscal and traditional own resources areas¹⁸.*

2.2. Agriculture

Establishment of separate so-called B accounts for debts identified but not yet recovered in the EAGGF-Guarantee sector¹⁹

2.3. Area of structural policies

Ensure better continuity of financial follow up (cf. point 3.6);

2.4. Area of direct expenditure

Ensure and reinforce continuity of the financial follow-up of regional aid programmes to certain non-member countries on the basis of a clear separation between the management structure and the beneficiaries to avoid conflicts and confusion of interests; better general evaluation of the impact of decentralized programmes; concentration of responsibility for the execution of projects intended for multiple beneficiaries.

2.5. Assessment of the coherence of legislative systems and recovery procedures

The Commission will organize a comprehensive follow up of exemplary and selected cases from the stage of the inquiry up to the final financial settlement.

¹⁷ Article 4 of EC Euratom regulation no. 2988/95 O.J. L 312 of 23 December 1995.

¹⁸ EEC Directive 76/308 O.J.L. 73/18 of 19.03.1976.

¹⁹ In the area of own resources, B accounts have existed since 1989; in this framework the Member States have the obligation to account on the one hand for duties detected and recovered and on the other hand duties detected but not yet recovered or not covered by guarantees. It should be noted that this separate accounting system will allow the Commission to check recovery of own resources including where frauds or irregularities have been notified by the Member States. The implementation of such a system in the EAGGF area is planned for 1997.

Comparison of these cases with the analysis of all information communicated will allow an assessment of the need for legislative action to be carried out so as to put in place mechanisms at national and/or Community level to avoid the confluence of conditions favourable for the organization of the insolvency of the beneficiaries and debtors (period of limitation, provisional measures, protective measures, preferential credit, appeal systems, centralization of cases handled by several Member States, ...).

3. IMPROVEMENT OF LEGISLATION AND PREVENTIONS

In this context, the need to add to sectoral legislation especially in the area of checks will be examined. In parallel, the Commission will take the provisions necessary to examine and assess, especially by way of their actual application, legislative texts with a view to whether they should be strengthened or simplified.

The guidelines laid down in SEM 2000 will allow measures to be taken to facilitate the setting up of mechanisms to adapt legislation better to the risks of fraud and other irregularities.

3.1. Practical application of the measures taken concerning assessment of regulations

This assessment will be carried out on the basis of ex-ante mechanisms as well as on the basis of an ex-post checks system both for existing legislation and for new legal instruments.

In the framework of joint initiatives, qualitative assessment of regulations will be carried out, taking account of the results of inquiries (cf. point 1.7), observations of the Court of Auditors and the budgetary authority (discharge). This exercise also encompasses a particular follow-up of the evolution of texts from the point of view of their vulnerability to fraud including in the course of negotiations with the Council and European parliament.

3.2. Complete the comparative analysis on the position on application of article 209A (checks)

In line with the request of the European Council, a supplementary questionnaire was produced. The additional information refers to measures taken at national level to combat waste and misuse of Community revenue and expenditure and should add to the summary report submitted to the Madrid European Council by concentrating on checks and administrative sanctions implemented by the member States.

The summary of the results will give a better picture of the situation in the different Member States with regard to the "checks" aspect. On this basis, the provisions required to achieve the objective of equivalent protection throughout the Community can be envisaged. The results of this work will be submitted to the Council.

A Commission regulation concerning the financial controls to be made by the member States in the area of Structural Funds based on article 23 of regulation 4253/88 will be presented to the committees concerned.

3.3. Reinforcement of transit regimes

As the Commission set out in its communication entitled "Action plan for customs transit in Europe" and with the advantage of recommendations from the Parliamentary Committee of Enquiry, the Commission is undertaking a thorough-going reform of the transit regimes. In addition to computerisation, which is already in progress, the reform highlights both the legislative

and operational aspects of preventing and suppressing fraud, in particular by strengthening cooperation between customs services, adopting a common approach at European level to the management of risks in this area, and developing a partnership with commercial operators. Special attention will be paid to effective recovery from the debtors concerned. The Commission will ensure that the security of the common/Community transit regimes will be a major concern to be taken into account in the context of contacts concerning enlargement (cf. point 1.3).

3.4. Presentation of a communication on preferential regimes

Following on from the work which it has undertaken in the fight against fraud and irregularities, the Commission has noted that for some time the principle of mutual trust on which preferential agreements and autonomous regimes are based is in practice being called into question. It is important consequently for the Commission's partners to provide a better assurance of their obligations and responsibilities. This situation affects own resources and common policies whose objectives are not met. Competition between Community operators is also affected. The regimes established for the benefit of non-member countries are therefore diverted away from their political and economic objectives.

The Commission will present a communication on the existing situation in the area of preferential agreements. This communication aims to raise awareness of economic operators on risks linked to trade with non-member countries in the context of these agreements and to draw the attention of countries which benefit from Community preferences to the obligations arising from acceptance of these agreements. These initiatives will take into consideration certain elements including :

- *the possibility of simplifying Community legislation;*
- *improvement of provisions for checks in non-member countries and procedures laid down in preferential agreements and arrangements (conventional and autonomous regimes);*
- *strengthening in the areas of training, provision of information and follow-up action;*
- *putting in place means of raising awareness including the use of appropriate sanctions (horizontal legal instrument; see 1996 anti-fraud work programme, point 1.6. 5th indent).*

3.5. Production of a new proposal for amendment and strengthening of provisions in EEC, Euratom Council regulation 1552/89 concerning the Community's own resources system.

This proposal will aim strengthen the regulatory mechanism allowing the Commission either to grant discharge to the Member States in respect of their management of Community own resources or, if necessary, to hold them financially responsible for their lack of diligence in ensuring recovery of amounts due. To this end, it is intended to introduce a maximum time limit by which the amounts not recovered exceeding a set limit are to be communicated to Commission.

3.6. Application of articles 23 and 24 of EEC Council regulation 4253/88

The Commission intends to clarify the respective responsibilities of the Member States and their competent authorities in the area of Structural Funds.

4. REINFORCEMENT OF THE DETERRENCE POLICY : ADMINISTRATIVE SANCTIONS

A coherent anti-fraud policy requires an organized system of effective sanctions to achieve a deterrent effect. It is essential to ensure the greatest possible homogeneity in such an effect that measures envisaged in this area take account of the objective of

equivalence laid down by the European Council. EEC Euratom Council regulation no. 2988/95²⁰ concerning the protection of the Community's financial interests represents an important and concrete stage in the global and horizontal approach preferred by the Commission. It defines and specifies the categories of person who may be considered responsible for acts prejudicial to the sound application of Community financial provisions and provides a general framework reference for Community legislation in the area of administrative sanctions. On this basis, it is appropriate to develop initiatives in all areas. Action will also be continued to approximate national enforcement instruments to ensure greater effectiveness and homogeneity in penal sanctions (cf. point 5)

4.1. Complete the comparative study on the position concerning application of article 209A (Sanctions)

The summary of the results of the comparative analysis (cf. point 3.2) will give a better picture of the situation in the different Member States with regard to the aspects concerning "administrative sanctions". On this basis, the provisions required to achieve the objective of equivalent protection throughout the Community can be envisaged. The results of this work will be submitted to the Council.

4.2. Put in place on the basis of the results of the comparative analysis mechanisms for administrative sanctions in the area of structural policies

The results of the comparative analysis (see points 3.2 and 4.1) will enable the Commission to plan the production of mechanisms in the framework laid down by EC Euratom regulation no. 2988/95 for administrative sanctions adapted to the particularities of the structural policies.

4.3. Design a system of Community administrative sanctions for direct expenditure

It is appropriate in the horizontal legal framework of regulation no. 2988/95 to follow a global approach to be put in place together with the updating of the programmes in question in the different fields concerned.

4.4. Continue actions started in the area of traditional own resources to put in place a homogeneous system of administrative customs sanctions

The work undertaken following the "customs sanctions" study will be continued. The Commission will produce on the basis of the work of the "customs policy group" measures laying down guidelines specified in the general framework of regulation no. 2988/95.

4.5. Continue activities on a regular and systematic basis in the area of the common agricultural policy

5. TOWARDS A EUROPEAN JUDICIAL AREA IN THE FIELD OF THE PROTECTION OF THE UNION'S FINANCIAL INTERESTS

The particular responsibility of the Community in financial matters necessitates a rapprochement of national enforcement systems to achieve, in line with the guidelines of the Madrid European Council of 15 and 16 December 1995, an equivalent level of

²⁰ O.J. L 312 of 23 December 1995.

protection throughout the Community. This will allow, beyond the principle of assimilation contained in EC article 209A :

- *greater homogeneity in checks and inspections;*
- *a more equitable recovery of amounts evaded or unjustly received;*
- *the uniform application of Community or national penalties having an effective, proportionate and dissuasive effect in all Member States.*

The level of integration of the internal market requires a corresponding development of a coherent and integrated area in the criminal law field to allow the judicial authorities to confront the challenges posed by organized crime operating on a transnational basis.

The recommendations of the study requested by the European parliament for a European judicial area ("CORPUS JURIS") may help in deciding the approach to be followed on this question. The Commission will examine the concrete conclusions to be drawn from this initiative in the light of its experience of fraud on the ground in the framework of judicial cooperation²¹.

5.1. Finalization of the second protocol on penal protection of financial interests

The debates in Council on the adoption of this protocol (responsibility of legal persons, laundering, Commission assistance in criminal prosecutions) will be continued with the active cooperation of the Commission so as to reach an agreement during the Dutch Presidency.

5.2. Setting up of a "liaison and criminal law expertise interface" at Community level

Establishment of an "ad hoc cell" (to follow proceedings/cases) within UCLAF. This cell must fulfil the function of coordinating and assisting teams who carry out administrative investigations as well as where necessary the national judicial authorities. It should facilitate exchanges of information and contacts between competent authorities and provide expertise.

It will provide expertise and contribute to increased knowledge of the law and the national procedures applicable. It will participate in targeted training action for judicial authorities.

5.3. Finalization of the Convention on corruption

This Convention, which broadens the scope of the partnership concerning corruption linked with protection of financial interests, was signed in September 1996. The mechanisms concerning the Court of Justice's competence regarding the Convention must be completed.

This text will need to take account of the fact that the Court's jurisdiction will have to apply equally to actions taken by Community and national officials which, over and above protection of financial interests, may prove to be prejudicial to other Community interests.

²¹ This need is regularly highlighted by the European parliament. The result of public hearings organized by the latter serve to mobilize opinion on these questions. In defining its objectives in this area, the parliament starts from the acceptance that instruments of international judicial cooperation are not adapted to the needs of combatting major financial crime. Therefore the European parliament directs its thoughts towards the establishment of a Community structure, as a preliminary to a European prosecution liaison service, ensuring at the very least functions of coordination, consultation and exchange of information on judicial cooperation.

5.4. Assessment of the need to resume work at the Council on the points which featured in the initial Commission proposal

It is important to identify the follow up action to be taken on certain elements of criminal law protection which were withdrawn from the parent Convention and the second protocol. This concerns in particular elements regarding mutual recognition of evidence, direct judicial cooperation, centralization of proceedings and a fraud register.

These themes²², as well as the rights and obligations concerning seizure, on land, at sea and on the high seas, could be included in a third protocol or other appropriate instrument (cf. points 1.8 and 5.6).

5.5. Monitoring of ratification of conventions, in particular the protection of financial interests Convention and the additional protocols.

In this regard, the Commission may provide its assistance in the preparation of acts to transpose the Convention in line with the explanatory report, in particular to introduce a criminal offence appropriate for the Union context, for the needs of the fight against fraud and for the obligation to achieve an equivalent level of enforcement throughout the Community.

5.6. Optimal exploitation of international Conventions to improve the fight against major economic crime

So as to improve the effectiveness of investigations and prosecutions, existing international instruments will be assessed to exploit further this potential; in particular, to stop illicit traffic linked with navigation outside territorial waters²³ (cf item 19).

5.7. Detailed examination of the themes covered in the "CORPUS JURIS"²⁴.

Selection of themes to be examined in detail: setting up of a common reading grid and preparation of precise and oriented terms of reference for the collection of information and data indispensable for the inventory; comparative analysis of the inventory in the fifteen Member States; summary report for the budgetary authority (Council, European parliament); Commission proposals to the Council.

6. PREPARATION FOR ENLARGEMENT AND RELATIONS WITH NON-MEMBER COUNTRIES

With regard to actions in non-member countries, particular stress will be placed on the development of relations with accession candidate countries. These initiatives are fully in

²² It should be noted that some of these points feature as recommendations in the parliamentary committee of inquiry into transit.

²³ see e.g. Convention of 10.12.1982 on maritime law, currently being concluded by the European Community, COM (97) 37, 4.2.1997, on the application of Community law for activities on the high seas.

²⁴ Study carried out at the request of the European parliament by researchers from the association of European lawyers for the protection of the Communities' financial interests under the aegis of the European Commission : Towards a European judicial area. Corpus Juris introducing penal provisions for the purpose of the financial interests for the European Union.

line with the framework of new guidelines for the PHARE programme in the pre-accession context²⁵.

The preparation of candidate countries from central and eastern Europe for accession responds to a common concern of the Community and these countries. The pre-accession strategy is a major priority of the European Union. It is important to continue the reinforcement of the Community acquis and Community anti-fraud provisions in this perspective. The process of preparation of the countries of central and eastern Europe for membership status will include assistance with putting in place institutions equipped with efficient administrative and judicial structures and well trained staff, a pre-requisite for a successful accession encouraging mutual trust. The initiatives aim to develop the anti-fraud services; training of specialized staff (officials, investigators, magistrates) in this area and the reinforcement of systems of specific cooperation. In particular, the provisions on customs cooperation (technical assistance) in the bilateral agreements signed with these countries will be fully exploited and where necessary enhanced

- *to improve exchange of information*
- *to reinforce customs cooperation*
- *to develop police and judicial cooperation.*

The implementation of major regional development programmes (PHARE, TACIS, MEDA) as well as the appropriations of the European Development Fund (EDF)²⁶ mobilize important Community budget resources for the benefit of non-member countries. This expenditure requires specific and appropriate action, given the economic and social situation and institutional capacity at administrative and judicial level in non-member countries, to provide for a degree of protection which is as effective as for expenditure within the Union.

The following initiatives will be taken in close cooperation with the services responsible for the programmes including their financing:

- 6.1. Setting up of a specialized investigation body within UCLAF for anti-fraud checks on major regional programmes.

Strengthening of the Commission's assistance and operational cooperation on the ground.

- 6.2. Establishment of contact points in the countries concerned (cf point 1.3).

Nomination of liaison officers in certain non-member countries to ensure direct contact with the competent authorities and institutions; development of contacts with Commission delegations and networks of officials from the Member States working in these non-member countries.

²⁵ New guidelines for the PHARE programme in the context of pre-accession assistance, communication from Mr. VAN DEN BROEK [COM (97) 112].

²⁶ Appropriations allocated to humanitarian aid (ECHO) are also concerned.

6.3. Extension of customs cooperation to improve the protection of financial interests and the fight against fraud.

Customs cooperation will be developed:

- *in the framework of protocols of mutual assistance in the Europe agreements;*
- *in the framework of protocols on mutual administrative assistance in commercial agreements concluded with non-member countries;*
- *on the basis of the "origin of goods" protocols in the same agreements and analogue provisions in the autonomous preferential regimes.*

This type of cooperation will have to be extended to all investigation services specialized in the fight against economic crime in the countries concerned (cf point 6.6 hereafter). The Commission will consider the possibility of setting up for this purpose a network of computerized information aimed at developing structured exchanges of information in the framework of these protocols.

6.4. Targeted training actions for the authorities responsible for the fight against fraud (customs, police, justice, ...) in the accession candidate countries.

Promotion of training activities and exchange of officials involved in the fight against fraud. In the context of these actions, the guidelines in the communication on the new PHARE guidelines which form part of the pre-accession assistance aimed at training officials of these countries in taking on the Community acquis ("institution building") should be taken into account. The training could where appropriate be organized together with corresponding actions for the competent authorities of the Member States.

6.5. Technical assistance for the accession candidate countries to help them to equip themselves with administrative structures of effective financial and judicial protection.

The development of this assistance will allow the achievement of the objective aimed at organizing a fairer share of the financial responsibilities between the Community and the non-member countries concerned. This assistance will take the form of technical support in the setting up of the computer hardware and software necessary for rapid, operational connection into the mutual assistance framework, and the extension of the early warning system (cf. point 1.3). These actions will also have to take account of the guidelines of the above mentioned communication so as to set up the administrative structures essential for taking on the acquis ("institution building").

6.6. In parallel with the reinforcement of the Community acquis, the Commission will take initiatives to improve the compatibility of legislation in the non-member countries concerned with the objectives of legal protection of the Communities' financial interests (pre-accession phase).

Regular consultation on the state of national legislation, the putting in place, functioning and experiences of the services responsible for the fight against fraud will be organized in an ad hoc institutional framework. These contacts could take place in the appropriate fora provided for association agreements where Member States, candidates countries and the Commission meet; (cf informal COCOLAF).

In this context and on the basis of the Europe agreements, the following are to be planned:

- *the possibility of extending to these countries the systems of notification of cases of fraud and irregularity against the Community budget which have been the subject of an initial administrative or judicial report (anticipated application of notification regulations);*

- *assistance in the framework of investigations carried out into irregularities or frauds along the lines of the "on the spot checks and inspections" Council regulation no. 2185/96 (if necessary establishment of a legal base in the framework of these regulations allowing for the possibility of negotiation of cooperation protocols with all the competent authorities in the non-member countries concerned).*
- *the need to provide for a legal base for administrative cooperation and mutual assistance between authorities in the non-member countries concerned. Where necessary, the Commission will present proposals in this direction.*

*

*

*

ISSN 0254-1475

COM(97) 199 final

DOCUMENTS

EN

09 02 10

Catalogue number : CB-CO-97-206-EN-C

ISBN 92-78-19619-3

Office for Official Publications of the European Communities

L-2985 Luxembourg