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PROTECTION OF THE COMMUNITIES' FINANCIAL INTERESTS

**FIGHT AGAINST FRAUD
WORK PROGRAMME 1998/1999**

(presented by the Commission)

Introduction

The protection of Community financial interests and policies is a constant priority for the authorities of the Member States and the European institutions. Since 1989, the Commission has rationalised its initiatives within the framework of its annual work programme, which takes account of the major strategy guidelines of its anti-fraud policy¹ supported by the European Parliament and the Council.

In this context, the 1998/99 work programme will be marked by a series of new and important initiatives in particular in the framework of preparation of accession candidate countries, protection of consumers against the risks of counterfeiting, defence of the single currency against counterfeiting, laundering of the product of fraud against the Community budget as well as adaptation of the Commission's anti-fraud structure to the demands of its tasks. At the same time, it is appropriate to continue preventive action already commenced, to ensure reinforcement of presence on the ground with the task groups set up in high risk sectors and to strengthen further customs cooperation.

All the actions planned in this programme are split into four priority sectors.

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1. Development of operational actions and strategic activities.

The 1998/99 work programme reiterates in its **first section** the initiatives already taken in previous years to continue action on the ground and intelligence activities so as to define new guidelines in the fight against fraud on the basis of a consolidated acquis and reinforced cooperation between the Member States and the Commission.

Since 1994 work on the ground together with the national authorities has brought about significant results, particularly in sensitive sectors involving organised trafficking. It is important to continue this policy, which has moreover been supported by the Council in its work on all types of organised crime. Reinforcement of the Community approach, which was achieved by working together with specialised services, including the judicial authorities, will make it possible to improve both the detection of fraud and the prosecution of fraudsters. The development of the Commission's operational activities with multi-disciplinary teams and the "task group" system is in line with this approach.

Improvements to data-processing equipment and tools and to the follow up to notifications is aimed at strengthening the use of intelligence in risk analysis to enhance knowledge of the fraud phenomenon, in particular where transnational criminal networks exploit weaknesses in trade, import or export regimes to escape surveillance by the authorities of considerable quantities of highly taxed products² at national and Community level or to benefit unduly from favourable commercial policy measures. This

¹ Protection of financial interests: anti-fraud strategy. COM(94)92 final of 23.4.1994:
reinforcing the presence on the ground and support for operations, concentrating on high-risk sectors;
strengthening the partnership between the Commission and the Member States, extending information networks and improving the exploitation of intelligence;
improving the Community legislative framework in every sector of activity.
securing greater compatibility between national legislation.

² In particular cigarettes and alcohol.

progress in the analysis of information will, with the Commission's help, make for better targeting of controls and greater effectiveness in joint surveillance operations.

2. Strengthening institutional structures and the legal framework.

The results in 1997 clearly confirm the presence of criminal organisations which target European finances by exploiting disparities and even incompatibilities between the different national legal systems. The objectives pursued by the Commission for the protection of Community interests contained in the **second section** of the work programme include this criminological reality of fraud and major crime. It is in response to these concerns and those expressed by the Council and the European Parliament in the discharge procedure on implementation of the budget that the Commission intends to reinforce its internal organisation and to transform its anti-fraud structure into a "Task Force" directly answerable to the Secretary General.

To energise and strengthen the fight against fraud and illegal activities on the ground and reinforce cooperation at every stage of the investigation and follow-up of inquiries, the Commission intends to consolidate current practices in the existing legal framework by means of agreements, protocols, arrangements or memoranda of understanding with all the competent institutions or authorities. By routinely going beyond the stage of ad hoc cooperation, all the authorities concerned and the Commission will succeed in improving the prevention of and fight against economic and financial crime, organised crime and certain irregularities in financial management and corruption.

Following ratification of the Treaty of Amsterdam, the Community will have a new legal base (Article 280) for the protection of financial interests and the fight against fraud, which will benefit the development of a new dynamic and will allow the Council and the European Parliament, on a proposal from the Commission "to take the necessary measures to afford effective and equivalent protection in the Member States".

It is also important to continue the "Corpus Juris" study; this will enable progress to be made to strengthen criminal law protection at Union level and open a path to new effective initiatives to approximate national enforcement systems and combat more effectively fraud and other illegal activities harmful to Community financial interests.

3. Launching of targeted actions against certain types of economic crime harmful to specific Community interests.

Major organised crime does not confine its attacks to European finances but also damages the Union's economic and commercial interests and may in future damage monetary interests. It is therefore important to strengthen the response of authorities and raise the level of protection of Community interests. Specific action included in the **third section** of this action plan is in line with this perspective.

Essentially this will consist of mobilising and concentrating the Community effort on protection of intellectual property and anti-counterfeiting action, in particular where there are risks to the safety and health of European consumers. The commencement of the third stage of Economic and Monetary Union (EMU) and the introduction of the euro currency on 1 January 1999 and the putting into circulation of euro notes and coins on 1 January 2002 represent essential deadlines for the Community and the European Union.

Consequently, it is important to put in place all the necessary legal instruments for the legal protection of the single currency in particular for the fight against counterfeiting.

In addition to using instruments which are already available,³ the organisation of cooperation between the Commission, the future European central bank (ECB), the national authorities concerned (analysis units, police services) and the other Union or international bodies responsible for combating counterfeiting, will require the establishment of an appropriate legal framework to lay down the principles of mutual assistance and cooperation between these bodies to prevent and investigate offences and combat illegal activities harmful to the euro.

4. Putting in place conditions favourable for the protection of European finances in the framework of the enlargement of the Union and cooperation with non-member countries.

The practical integration of the anti-fraud dimension into the pre-accession strategy presupposes a specific reinforcement of the relations between the different authorities and specialised services involved in the fight against fraud and major economic and financial crime so as to anchor cooperation with the Commission (UCLAF) in daily practice.

Consequently, the development of specific cooperation and partnership in the area of protection of financial interests and the fight against fraud with applicant countries, which was launched in the 1997/98 work programme, must be continued in the concrete actions detailed in the **fourth section** of this work programme. The objective aimed for consists of making available to applicant countries the technical assistance and support needed both to ensure better protection of own resources and the sound application of commercial policy and to achieve an equivalent level of protection of Community finances so that enlargement can take place on the necessary sound basis.

Cooperation with the authorities in non-member countries should also be strengthened in the framework of relations with the Community's partners.

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1. Section 1: Development of operational actions and strategic activities

The Commission will concentrate its activities on the ground and its analytical work on countering major economic and financial and organised crime.

1.1 Strengthening presence on the ground

1.1.1 On the-spot-checks and inspections: Council Regulation No 2185/96 of 11 November 1996.

On the basis of its initial experience of the actual implementation on the ground of this Regulation, the Commission:

³ National instruments, EC, EU, international instruments (Geneva Convention of 20 April 1929).

will carry out a first assessment of the Community provisions for on-the-spot checks and inspections carried out by authorised UCLAF inspectors;

will continue, in partnership with the responsible national authorities, its approach to make optimal and targeted use of this new instrument.

1.1.2 Task groups: development of investigations in high risk sectors.

Stepping up of action against organised rings and networks in close cooperation with the specialised national services, in particular in sensitive sectors (cigarettes ...alcohol).

1.1.3 Technical assistance

Development of action to coordinate in investment in technical equipment and aids to investigations, in particular to ensure greater compatibility in national systems used (e.g. tools for management of databases).

1.2 Strengthening control mechanisms and cooperation in the customs and tax fields

1.2.1 Building on the action plan for customs transit in Europe,⁴ the Commission will continue, in partnership with the Member States and the partners to the common transit convention, to implement action aimed at improving targeted controls on goods and close and regular cooperation between customs authorities.

Improvement in the early warning system and computerisation of the transit regime:

Improve and apply the early warning system for all countries which use the Community transit regime until the establishment of the NCTS.⁵

Improvement in recovery and guarantee procedures:

Continuation of work under way to improve identification of debtors as well as recovery of amounts owed by persons responsible for irregularities or offences and only in their absence from the principal.

Adaptation of the guarantee systems with a view to targeted application based on the reliability of the operator and the risks involved.

1.2.2 Following on from the Commission's communication in the area of preferential agreements,⁶ the Commission will put forward proposals to close current loopholes.

Production of a horizontal Community system to harmonise recovery action by Member States (measures to safeguard duties, publication of information intended to warn importers of specific risks regarding irregular certificates ...).

⁴ "An action plan for transit in Europe - a new customs policy". COM(97)188 final, 30 April 1997.

⁵ New, Computerized Transit System.

⁶ COM(97)402 final, 23 July 1997, "Communication from the Commission on the management of preferential tariff arrangements".

Reflection on the introduction into the preferential arrangements of the possibility of applying temporary restrictive or suspensive measures of certain preferences without prejudice to existing objectives which have the same purpose while complying with the Community's international commitments.

1.2.3 Following on from the work of the high-level group⁷ on fraud in the alcohol and tobacco sector, the Commission intends :

to carry out a feasibility study concerning computerization of the systems for control and movement of products subject to excise duties. In the short term, dependent on the resources available, the Commission will work with the Member States to introduce an early warning system for movements of sensitive products;

to organize FISCALIS seminars with the Member States to establish a code of best practice for the granting and withdrawal of licences for those responsible for excise warehouses and the control of excise products produced and stored in bonded warehouses;

to work to develop an effective system of excise liaison offices in the Member States to channel the administrative cooperation effort.

With regard to the recovery of debts, the Commission will continue its work on reinforcing mutual assistance in this area:

Commission proposal to amend Directive 76/308 (mutual assistance between Member States on recovery).

The Commission will continue its efforts to improve the application of administrative mutual assistance and administrative cooperation in the area of indirect taxation :

Implementation of the FISCALIS programme (OJ L 126 of 28.4.98) on administrative cooperation in indirect taxation (computer systems, exchanges, seminars, multilateral controls, common training initiative);

Production and follow up of Commission report on the application of current legislation in the area of mutual assistance and administrative cooperation on V.A.T. in accordance with article 14 of Council Regulation (EEC) No 218/92.

1.2.4 The Commission will continue, within available resources, to play its role in joint customs surveillance operations (air, sea, rail, road) carried out at European Union level and aimed at combating organised crime with selective, targeted actions, in particular in areas of Community interest.

1.3 Strengthening the exploitation and analysis of intelligence

1.3.1 Establishment of a customs intelligence section in the intelligence, information and evaluation of legislation unit to:

Improve strategic and operational analysis to support and guide control and investigation activity and to improve the quality of legislation from the point of view of the vulnerability of regulatory mechanisms to illegal activities (ex-ante and ex-post SEM 2000 examination):

⁷ Group established on 26 March 1997 by a decision of the directors-general of customs and indirect taxes.

use of notifications and other data available. Risk analysis. Making available information to all authorised partners;

cooperation with national bodies and Europol and international bodies (Interpol). Comparative analysis of situations and concrete cases;

development of studies aimed at improved analysis of different situations, a better assessment of the extent and development of the phenomenon of fraud and illegal activities and study of their causes and consequences;

development of control or investigation methods or techniques adapted to developments in crime;

Continue the analysis in the Fraud Prevention Sub-committee (SCAF) of serious V.A.T. fraud cases, particularly those involving intracommunity transactions.

Make use of the results of cooperation under the interinstitutional agreement with the Joint Research Centre at Ispra (study on statistical analysis, "Integrated Intelligence and Information Management" project, "Intelligence Tools" project ...).

Implement the CIS database⁸ to ensure the sound application of customs and agricultural regulations;

Present the 2nd evaluation report on the functioning of the "black list" regulation⁹ and propose possible amendments to strengthen the information system.

1.4 Cooperation in the framework of the fight against money-laundering

In the light of the second evaluation report on Directive 91/308/EEC¹⁰ and taking account of the provisions contained in the second protocol¹¹ to the Convention on criminal protection of the Communities' financial interests:

Definition of the Commission's role in combating counterfeiting with regard to information concerning the laundering of the products of fraud against the Community budget.

2 Section 2: strengthening institutional structures and the legal framework.

2.1 Following its communication,¹² the Council recommendation¹³ and the discharge decision of the European Parliament to ensure optimal protection against fraud,

⁸ Following the entry into force of Council Regulation (EC) No 515/97 of 13.3.1997 concerning administrative mutual assistance in the areas covered (OJ L 82, 22.3.1997).

⁹ Council Regulation (EC) No 1469/95 of 22 June 1995 concerning measures to be taken with regard to certain beneficiaries of operations financed by the Guarantee Section of the EAGGF (OJ L 145, 29.6.1995).

¹⁰ Council Directive of 10 June 1991 concerning prevention of the use of the financial system for the purposes of laundering of capital (OJ L 166, 28.6.1991)

¹¹ Council Act of 19 June 1997, OJ C 221, 19.7.1997.

irregularities in financial management, corruption and organised crime,¹⁴ the Commission intends to strengthen its anti-fraud service and transform UCLAF into a Task Force directly answerable to the Secretary General.

The status, procedures, areas of action and competencies of this "Task Force" will be defined so as to confer on it greater independence of action both as an investigation service and as a service combating economic and financial crime. These arrangements will take account of the needs relating to legal security and transparency.

An anti-corruption cell will be set up within the "Task Force". This cell will be called to act in cases of suspicion of irregularities.

The liaison and criminal law expertise interface, henceforth more clearly identified, will bring the Commission's technical and operational assistance, both in legal and practical terms, to the responsible national authorities at all stages from the initial inquiry up to recovery (contribution to the preparation of investigations, the submission of cases to the judicial authorities and transnational cooperation in the criminal law area and strengthening of recovery procedures).

A specialised investigation unit for "external actions" will be established.

Computer support to exploitation of intelligence and intelligence activities are henceforth the responsibility of two separate units.

2.2 Consolidation of cooperation practices.

The Commission will continue with his reflection in order to :

On the one hand, establishment of agreements, arrangements and memoranda of understanding with national bodies, the European institutions and bodies and intergovernmental bodies.

On the other hand, authorising the "anti-fraud coordination task force" to offer technical advice on investigations in other institutions.

Without amending the existing legal framework, these initiatives will allow practices followed on a daily basis between services to be better established over time.

2.3. Improvement in prevention

In the framework of the guidelines retained for sound and efficient management, the Commission :

¹² Commission communication of 19.11.1998 on sound and efficient financial and administrative management (COM(97)2198, 19.11.1997).

¹³ Council recommendation of 9 March 1998 on the discharge to be given to the Commission on implementation of the general budget of the EC for 1996 (SN 2017/98, 9.3.98).

¹⁴ Resolution concerning the discharge decision on implementation of the general budget of the European Union for the 1996 financial year (EP 268.230/29, 31.3.1998).

will continue to ensure ex-ante and ex-post checks on legislation taking account of the strategic and operational analysis carried out by the new "Intelligence, information and evaluation of legislation" unit

will reinforce the continuity of financial follow-up of regional aid programmes to certain non-member countries (framework contract).

2.4 Administrative penalties

A policy of efficient detection of cases of fraud and irregularity presupposes the strengthening of systems of administrative penalties to achieve an equivalent level of deterrence throughout the Community.

Continuation of actions already begun:

in the area of traditional own resources, to put in place a system of administrative customs penalties in accordance with the legal framework laid down in Council Regulation (EC) No 2988/95;¹⁵

in the area of direct expenditure.

2.5 Completion of the comparative study on the implementation of Article 209a of the EC Treaty.

Analysis of responses provided by the Member States to the Commission questionnaire.

Production of a summary report on checks carried out by the Member States and the administrative penalties applied; avenues to be explored in the light of the entry into force of the Amsterdam Treaty (Article 280 EC), particularly regarding administrative penalties in the area of the Structural Funds.

2.6 Convention and protocols concerning protection of the Communities' financial interests¹⁶

Follow up of implementation and ratification of third pillar instruments by the Member States.

In application of Article 10, comparative examination by the Commission of the communication from Member States concerning provisions for the transposal of the Convention on protection of financial interests and its protocols.

2.7 Follow-up of the "Corpus Juris"

As requested by the European Parliament, the Commission has undertaken a feasibility study on the "Corpus Juris". The aim is to assess its impact with regard to the current situation of national law so as to identify the extent to which its recommendations are feasible.

¹⁵ Council Regulation (EC) No 2988/95 of 18 December 1995 concerning protection of the financial interests of the European Communities (OJ L 312, 23.12.1995).

¹⁶ Convention on the criminal protection of the European Communities' financial interests of 26 July 1995; see in particular the programme concerning organized crime (recommendation 14) OJ C 251, 15.8.1997.

Detailed examination of the themes covered in the corpus juris, interim report (2nd half of 1998) and finalisation of the study by July 1999.

Exploitation of the results of the study and examination of the appropriateness of amplifying the Community or Union legislative framework.

3 Section 3: Launching of targeted actions against certain types of economic crime harmful to specific Community interests

3.1 Industrial, agricultural and commercial counterfeiting

The Commission intends to strengthen its action¹⁷ against infringements of intellectual property (Community trademarks, product names) as long as there is a risk to the health and security of consumers, particularly when organised networks or rings are involved.

In the context of the consolidation of the internal market, the Commission announced the publication of a green paper on protection of intellectual property and the fight against counterfeiting. On the basis of the responses provided to the green book, the Commission will examine:

the role which it could play in improve coopération from the competent authorities to counter traffic in counterfeit products on the internal market more effectively (communication and exchange of information, setting up and management of database, establishment of a central cell and networks of contact points);

the appropriateness of strengthening its technical and operational assistance and support role in the investigation of offences.

3.2 Protection of monetary union and the euro

3.2.1 Information systems and mechanisms; cooperation between the competent authorities; support and assistance of the Commission.

The protection of the new European currency against counterfeiting requires the immediate setting up of a strategic and operational analysis system.

Continuation of work started in the expert group¹⁸ of the Advisory Committee for the Coordination of Fraud Prevention with the aim of completing the evaluation of action required and subsequently to put forward legislative proposals at Community or Union level.

On the basis of work started and the interim report produced by the expert group,¹⁹ the Commission will continue to examine the conditions, framework and support required:

¹⁷ Without prejudice to reinforcement of actions in the framework of Council Regulation (EC) No 3245/94 of 22 December 1994 on counterfeiting (OJ EC L 341 of 30 December 1994) and Council Regulation (EC) No 515/97 of 13 March 1997 (OJ EC L 082 of 22 March 1997).

¹⁸ In close cooperation with the future European Central Bank (ECB), Europol and the International Criminal Police Office (ICPO/Interpol).

for the setting up of communication networks and a system of instantaneous exchange of information for strategic and operational purposes;

to ensure the compatibility of technical (ECB) and police databases for the processing and optimal exploitation of information.

This work will be carried out in full cooperation with the ECB and the national issuing agencies (notes and coins) to ensure the best operating conditions and the necessary compatibility in all information systems.

The Commission will also continue to reflect on:

the conditions and demands required to put in place a framework of mutual assistance and cooperation for the responsible national authorities, involving them and the Commission as well as other Union bodies (Europol) or international bodies (Interpol);

the initiatives to be taken to provide the means essential for the protection of the euro (training, financial support, the Commission's technical assistance to the national authorities, technical protection and security.

3.2.2 Regulatory framework and system for the protection of EMU

To ensure equivalent protection for the euro throughout the Economic and Monetary Union, it is essential to design and set up an appropriate legal framework²⁰ focusing more particularly on:

exchange of information and establishment of a database,

close and regular cooperation and mutual assistance,

a definition of counterfeiting activities,

legal protection of the single currency.

4. Section 4: Putting in place conditions favourable for the protection of European finances in the framework of the enlargement of the Union and cooperation with non-member countries

4.1 The effective implementation of the "partnerships" in integrating the anti-fraud and anti-corruption dimension to facilitate the accession of the European Union candidate countries must take account of the divergent situations in these countries. The Commission will consequently adapt its approach, partnership methods and programme timetables (road maps).

¹⁹ SG/UCIAF meeting paper of 17 March 1998 and Commission staff working document (SEC(98)624, 3 April 1998).

²⁰ The protection of the single currency in the framework of the rapid introduction of the euro comes mainly under "first pillar" initiatives. This does not, however, rule out a reflection on the possibility of adding to the provisions taken in the Community framework measures under the third pillar for the criminal law protection of the single currency.

Concerning protection of Community funds intended for rapprochement and cohesion of economies, it is essential to draw lessons from the experience of the Community's fight against fraud policy to:

establish with each of the applicant countries the priorities on which efforts will be focused to achieve accession objectives;

integrate immediately the anti-fraud dimension into the short and medium term pre-accession strategy initiatives;

establish as a daily practice cooperation between the competent authorities and the Commission in both the sharing of information and operational action on the ground.

4.2 For this purpose, a series of concrete measures are or will be envisaged and planned:

4.2.1 "Institution building"

Effectively taking on the Community acquis in the area of the protection of financial interests will require a special effort from the applicant countries, in particular in establishing administrations which meet the European Union's objectives.

Initiation of action in applicant countries to raise awareness of Community policy concerning the protection of financial interests in accordance with the guidelines recommended by the European Council to achieve an equivalent level of protection (legislative and operational aspects).

Exchange of views with the applicant countries on the appropriateness of setting up a multi-disciplinary anti-fraud structure at national level for the protection of the Communities' financial interests:

Development of the Commission's technical assistance with applicant countries for the protection of the Communities' financial interests.

4.2.2 Partnership

The establishment of a public administration adapted to the Union's objectives requires appropriate assistance from the Commission in the areas of protection of financial interests and anti-fraud policy. Following this approach, the "Anti-fraud coordination Task Force" envisages making available experts to the responsible authorities of the applicant countries so as to:

offer these countries the consultancy services necessary to integrate the Community acquis into their own legal systems and the assistance needed to facilitate the practical implementation of these provisions by the services responsible;

to contribute to the technical evaluation and reflection linked to the development of specific structures such as the training of officials in the area of the protection of the Communities' financial interests;

to facilitate operational cooperation in investigation aimed at uncovering criminal networks involved in frauds committed against the Community's financial interests.

In order to prepare officials in specialised services in applicant countries and raise their awareness of the Community dimension of the fight against fraud and major economic and financial crime²¹, the Commission will propose:

traineeships in services responsible for protection of financial interests and the fight against fraud;

the establishment of specific partnership with national bodies responsible for combating counterfeiting to contribute to the protection of the future European single currency from the pre-accession phase.

4.2.3 Approximation of legislation and taking on the acquis in the area of protection of financial interests

Full acceptance of the Community acquis presupposes a number of progressive adaptations during the pre-accession period and in particular the drafting of anti-fraud provisions (financial control protocols) for the implementation of regulations concerning pre-accession funds with a view to:

the application by applicant countries of obligations equivalent to those contained in the Community regulations concerning notification of irregularities;

the application of principles and detailed arrangements of the same type as those contained in the on the spot checks and inspections regulation.

Preparation and adaptation of the national legislation of candidate countries for the implementation of the Community and Union acquis with a view to:

guaranteeing a level of protection in accordance with the EC treaty (Article 280);

ensuring criminal law protection in accordance with the provisions of the legal instruments adopted in the framework of justice and home affairs cooperation.

4.3 Strengthening of customs cooperation.

Given the future extension of the Customs Union to candidate countries and, in particular, the Visegrad countries (Poland, Czech Republic, Slovakia and Hungary), it is important to consolidate customs cooperation between the customs administrations and between the latter and the Commission to:

raise the level of surveillance and cooperation

carry out monitoring of the transit regime.

4.4 Establishment of the specialist investigation unit within the "anti-fraud coordination Task Force"

This unit will have the task of carrying out on-the-spot checks and inspections in partnership with the responsible authorities in cases of suspicion of fraud in the area of direct expenditure, in particular in the area of the financial support which is expected to grow significantly in the years leading up to accession.

²¹ Complementary initiative to the continuation of technical assistance action in the customs area in the framework of the PHARE programme.

4.5 Cooperation with non-member countries.

Development of agreements or arrangements or administrative memoranda of understanding with the bodies concerned.

Improvement and strengthening of practical cooperation.

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