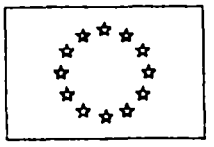

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.11.1995
COM(95) 556 final

PROTECTION OF THE COMMUNITY'S FINANCIAL INTERESTS

SYNTHESIS DOCUMENT

of the comparative analysis of the reports supplied by the Member States on national measures taken to combat wastefulness and the misuse of Community resources

---

COMPARATIVE ANALYSIS

of the reports supplied by the Member States

(presented by the Commission)

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.12.1995
COM(95) 556 final /2

CORRIGENDUM

Nouvelles pages :A4, A5 et 9.
Annulent et remplacent celles du
COM(95)556 final
du 14.11.1995
CONCERNE UNIQUEMENT LES VERSIONS : FR. et En.

PROTECTION OF THE COMMUNITY'S FINANCIAL INTERESTS

SYNTHESIS DOCUMENT

of the comparative analysis of the reports supplied by the Member States on national measures taken to combat wastefulness and the misuse of Community resources

---

COMPARATIVE ANALYSIS

of the reports supplied by the Member States

(presented by the Commission)

PROTECTION OF THE COMMUNITY'S FINANCIAL INTERESTS

SYNTHESIS DOCUMENT

of the comparative analysis of the reports supplied by the Member States on national measures taken to combat wastefulness and the misuse of Community resources

The remit

On 11 July 1994 the Council (Ecofin) asked the Commission to 'produce a progress report no later than the end of 1995 on the application of Article 209a of the EC Treaty' which enshrines the 'principle of assimilation' and aims to strengthen 'the principle of co-operation'.

Subsequently, the Essen European Council on 9 and 10 December 1994 called on the Member States to `submit reports on the measures they are implementing to combat wastefulness and the misuse of Community resources', to be examined by the Council (Ecofin) in June 1995 and submitted to the European Council in December 1995.

The reports were submitted for presentation to the Council (Ecofin) on 19 June. The Council concluded that subsequent action should proceed along three lines - national, Community and partnership - to increase the effectiveness of protection of the Community's financial interests.

The Cannes European Council (26 and 27 June) 'took note of the Member States' reports' and 'requested the Commission to prepare a comparative summary for the European Council in Madrid' and called on 'the Member States and all institutions to persevere in the battle against fraud and waste'.

The methods used

The comparative analysis accompanying this document has been prepared on the basis of the national reports. It takes stock of progress in applying Article 209a on proteotion of the Community's financial interests and summarizes the measures taken by the Member States to combat the misuse of Community resources.

The structure is the logical sequel of the structure of the Article, which sets an objective (assimilation) to be attained and prescribes the means to be deployed to counter misappropriation of Community funds (close and regular co-operation). The very existence of the single market and the transnational nature and dimension of financial

crime demand counter measures transcending the national arena and proceeding from enhanced partnership at Community level.

To ensure that national reports followed a standard pattern facilitating the comparative summary, the Commission, as requested by The Council, devised a general layout to be used in preparing the national reports which was approved by the Council (Ecofin) on 20 February.

By and large the Member States have adhered to the proposed layout. Even so, their reports are highly dissimilar. Some are only a few pages long; the longest has 78 pages. Above all, their content varies widely, as the emphasis is not placed on the same items.

Some Member States highlight recent changes to their anti-fraud laws. Others highlight the administrative organization and distribution of functions in verifying the use made of funds. Some were more precise than others as to the results obtained from the action taken and the follow-up to checks undertaken or observations made by the European Court of Auditors. For example, VAT fraud was often left out even though the fact of having texts and information on VAT fraud would allow a comparison of the methods of control and recovery for this tax with those of traditional own resources.

The explanation may lie partly in the short time available to the Member States for carrying out an ambitious exercise. Those responsible for compiling the reports may have found it impossible to gather all the requisite information and therefore concentrated on those items which struck them as particularly important. The Commission was unable to engage in the dialogue with the Member States which would have facilitated the exercise and yielded a balanced set of contributions.

This analysis follows the scheme suggested to the Member States. It contains comparative tables setting out the information to hand and revealing, *a contrario*, those areas where it was not possible to produce the summary. The utility of pursuing and amplifying the exercise in conjunction with the Member States will then have to investigated so that the fullest benefit of the analysis can be enjoyed.

Tables are given at various places in this report to summarize certain comparable categories of information taken from the national reports; they are designed to constitute an objective basis for the comparative analysis. The Commission has endeavoured to reproduce the national contributions as faithfully as possible, but the risk is that there may be gaps in what is reproduced here. Readers seeking access to exhaustive information on any particular point are accordingly referred to the national reports annexed to this summary report.

Each part and section contains a commentary illustrating the points that appear most significant. In addition, guidelines or avenues to be explored reflecting the Ecofin Council's conclusions of July 1994 and June 1995 are offered as a means of laying a basis for action to pursue the fight against fraud and wastefulness and to improve the effectiveness of the protection of the Community's financial interests, as called for at Cannes.

This synthesis is a resumé of the comparative analysis, highlighting the guidance emerging from them and which the Commission intends to examine in response to the invitation of the European Council to persevere in the battle against fraud with the utmost vigour.

*
* *

Part I: Compliance with the first paragraph of Article 209a of the Treaty on European Union (assimilation principle)

The first paragraph of Article 209a EC reads: 'Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests'.

This writes into the Treaty the principle of assimilation enunciated by the Court of Justice which in 1989 specified the scope of the first paragraph of Article 5 of the

Treaty which established the European Community by declaring Member States' obligations to penalize infringements of Community law 'under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive'. The principles enunciated by the Court and by the Union Treaty, though not identical, overlap and amplify each other.

The Member States' reports suggest that this is how they see their obligations and that they apply Article 5 as interpreted by the Court of Justice and Article 209a of the EC Treaty in combination with each other. Most of them accordingly cover both the measures they have taken to assimilate fraud against the Community's and their own financial interests and the effectiveness of the penalties for which they have made provision.

1.1 Description of national provisions (regulatory provisions, organisation of services) which satisfy the principle of assimilation

This part aimed on the one hand to offer a panorama of national instruments to combat fraud against the Community budget from two angles - prevention (provisions for checks) and enforcement (provisions for penalties) and on the other hand to provide a description of the various ways in which their services are organized.

1.1.1 Description and evolution of the legislation

It has been found that preventive measures received little attention in the national reports. In some cases they are considered in the sections relating to the organization of services; in others they are in the section on the law, with enumerations of instruments presented without further comment. In most cases, however, the preventive mechanisms are simply ignored.

The reports reveal that most Member States treat revenue and expenditure through quite separate sets of rules. The rules governing resources are usually to be found in specific instruments of tax or customs law. The rules governing fraud on the revenue side,

which are to be found in general normative provisions, only rarely make distinctions between different revenue categories.

On the resource side, the assimilation principle for enforcement purposes is not appreciated as regards revenue categories taken individually but in terms of the legal frameworks for the different resources and must therefore be seen in the broad sense as a comparison between the framework for purely Community resources (the traditional own resources) and for the national resources that provide the bulk of the revenue in the national budgets (V.A.T., excise).

On the expenditure side, where the reports do mention changes in the law, they most commonly announce the creation of new specific offences of fraud in relation to grants, with Community expenditure being included. It should be noted that the enforcement of penalties may be linked by the Member States to the existence of Community rules providing for specific obligations.

Finally, in the item on historical background, money-laundering legislation, which provides a means of tracing money obtained fraudulently from the Community budget, was mentioned by some Member States.

Progress in introducing the assimilation principle on the expenditure side has also to be considered in relation to the effectiveness of measures taken on the revenue side. The existence of areas of distortion in the efficacy of both prevention and enforcement (administrative and criminal penalties) should be highlighted so that standards can be raised where they are visibly lowest.

Several Member States state that their general criminal law is adequate to give effect to the assimilation principle in legal terms. Most Member States believe that the ordinary criminal offences are adequately defined to protect the Community's financial interests. Assimilation for enforcement purposes is implied in provisions creating offences and penalties that are applicable in like manner to Community and national interests. Even so, it is clear from some of the reports that there is trend towards making fraud against the Community's financial interests an offence in its own right.

The trend has gathered momentum with the Convention on the protection of the Community's financial interests on which an agreement was reached at Cannes and which was signed on 26 July 1995.

The objective to be achieved for some Member States in addition to assimilation remains the general raising of the level of protection throughout the Community. Differences in schemes of penalties, whether administrative or criminal, are likely to lead to fraudsters moving their operations to the areas where enforcement is the least severe.

The comparative analysis highlights that only part of the data has been gathered and that some complementary information in particular on the prevention aspect would prove useful in consolidating the basis on which the fight against fraud and wastefulness must be waged in accordance with the wishes of the European Council of Cannes. Consolidation of information in this area is a fundamental requirement if the objective set by the European Councils of Essen and Cannes of combatting fraud with the utmost vigour and persevering with the action necessary to raise the level of protection of the financial interests of the Community is to be achieved. On the basis of this assessment and the information gathered it is possible to perceive a number of guidelines whereby the objectives set by the Council may be achieved.

Avenues to be explored (point 1.1.1)

What is clear from this initial stage of the comparative analysis is that most Member States have preferred the differentiated approach to the revenue and expenditure sides. This situation of fact raises questions as to the degree of assimilation of rules governing expenditure and revenue and their respective degrees of efficacy. Finally, the question arises as to how to achieve the objective set by the European Council.

A/ In aiming for a coherent and global approach to the protection of financial interests, the question must be put as to whether this difference in the level of harmonisation can be justified. Perhaps, up to this point, insufficient account has been taken of the similarity in the actions and resources used by organised financial crime in attacking the Community budget in both the revenue and expenditure areas. This view is undoubtedly equally valid for the prevention aspect which remains an area not yet fully

analysed. This falls in line with the wish for regular assessment of national control systems expressed in some reports.

B/ Regarding administrative penalties, the reports suggest that national provisions are more sophisticated on the revenue side than the expenditure side. A clear policy of tougher administrative penalties on the expenditure side is an obvious necessity. It might be based on the common guideline adopted by the Council on 29 June 1995, in particular with regard to setting up schemes of penalties in the different areas of expenditure.

C/ The Convention on protection of the Community's financial interests in the Member States, once transposed into national law, will provide the legal tool which the Member States need for creating a specific offence. Rapid attainment of this objective would generate a practical possibility of prosecuting individuals committing the acts specified by the Convention. Progress here would lay an effective basis for the Community institutions and the Member States to mobilize all the resources needed for uniform enforcement throughout the Community.

D/ In addition to the question of the definition of the offence itself, the further question is raised in some reports of harmonizing the levels of penalties. Excessive variations produce areas of tougher and lighter enforcement and deflect business flows towards the "softer" Member States. The levels of penalties should therefore be more homogeneous to achieve satisfactory assimilation and guarantee equivalent protection throughout the Union territory.

1.1.2 Brief description of departmental organization

Alongside the traditional control bodies, most Member States specify that they have specific investigation structures and some also mention the existence of multidisciplinary bodies with extended powers responsible for the control of all public funds, thereby including the protection of Community finances.

Some Member States have specific structures responsible for all own resources. These structures are sometimes directed more particularly to investigation and fraud prevention. In general, the Member States highlight the existence of a serious level of

protection of Community own resources ensuring a high degree of assimilation with the protection of their national finances.

For the Structural Funds, the description of administrative bodies outstrips the structures charged with both internal or external checks and it would be extremely dangerous to compare the Member States' systems of management of the Structural Funds. Three special features may be discerned. On the one hand, internal controls (accounting, documentary) carried out by the body responsible for implementing Community programmes are predominant. On the other hand, the local administration has an often important autonomy which must be taken into account by the central State. This may result in a wide complexity and diversity of control systems in the Structural Funds. Finally, the participation of Member States' authorities in the financing of structural programmes achieves de facto assimilation which is easy to demonstrate. Numerous reports mention the existence of external controls carried out by control bodies with very broad competence (Court of Auditors, inspection bodies).

Avenues to be explored (point 1.1.2)

The Commission draws two main conclusions from this comparative analysis of the national organizations for fraud prevention.

A/ There is a trend towards the development of multidisciplinary control structures with responsibility for all areas of fraud prevention and with wide-ranging investigative powers. In this way the Member States hope that more effective steps can be taken to combat organized financial crime which is not necessarily confined to one particular sector.

This trend is interesting in that it indicates how national measures are being adjusted to combat national and Community fraud which is not confined to one particular sector. It takes account of the special nature of fraud prevention, which requires long, specialized inquiries, calling for very special operational methods and the implementation of significant countermeasures not available to all authorities. Such inquiries can hardly be undertaken by those responsible for routine controls, let alone those responsible for the administrative side, that is, those whose main task is to implement a programme of

expenditure. Inquiries of this kind must be undertaken by departments with wide territorial powers and specialist investigators who can establish operational links with their colleagues in other Member States and with the Commission's fraud prevention staff.

B/ As regards the administrative organization of fraud prevention, the national reports indicate on the whole that there is a great contrast between the protection of revenue and the protection of expenditure. Where revenue is concerned, customs and tax authorities have had long experience of fraud prevention and apply to Community revenue the same control methods as have proved their worth in decades of use at national level. Both national and Community revenue may thus be said to enjoy a high level of protection.

Where expenditure is concerned, the "assimilation" principle is observed in that the protection available to Community expenditure is the same as that for national expenditure. The rules on public accounts, which protect government spending in all Member States, also apply to Community spending, the great bulk of which is channeled through the national budgets. The protection given to Community interests in this case is, however, less satisfactory than the protection given to revenue. The organization of controls is often the responsibility of the fund administrators themselves or of departments which are relatively unfamiliar with the techniques for combating organized crime. According to the national reports, controls tend to be the responsibility of bodies whose work involves the general auditing of government departments and the verification of accounts rather than detailed checks on Community expenditure.

There appears to be room for specific fraud-prevention controls carried out by specialists in the fight against organized financial crime, who should be independent of the officials administering funds and should hold wide-ranging powers of investigation. If the controls applicable to expenditure could be raised to the level of those currently applied to revenue, the protection of both national and Community finances would be considerably enhanced.

1.2. Assessment of measures taken

The objective pursued by the Commission is not only to establish a panorama of the systems used by the Member States in the application of Article 209 A (texts applicable, organization of services) but also to assess the results of the measures adopted.

1.2.1 Intelligence, control and investigation measures

It is to be noted that only half the Member States have supplied statistics on checks undertaken. Given the difficulty in gathering these statistics and the tightness of the deadlines set, the figures supplied are generally incomplete without any accompanying analysis. The improvement in the level of the quality of the controls, when it is mentioned, is not based on actual figures. If reference is sometimes made to administrative and judicial enquiries, neither the difference nor the link between traditional controls and enquiries is developed.

Some reports insist on the international dimension of fraud and emphasise that a strictly national fraud network has never been uncovered.

Interest in risk analysis based on intelligence is when indicated mentioned in counterbalance to quantitative controls.

1.2.2 Results: frauds and irregularities detected (statistics, case study, typology)

The Member States have endeavoured to provide significant quantitative elements (statistics). On the other hand, the two other themes covered in this point (case study, typology) have been dealt with too succintly for any useful results to emerge from their analysis. The relation between the number of controls and the number of irregularities discovered is only made exceptionally and only in the agricultural field.

The case which has to be taken in analysing figures on frauds discovered is well known. Assessments made may indicate an improvement in the notification of statistics or an increase in the activities of the anti-fraud services or a growth in the phenomenon itself. It is only with hindsight that comparative data on fraud cases can be usefully

examined. Some Member States have attempted to identify certain risk sectors but the production of relevant typology at Community level requires a detailed examination of homogeneous information which goes beyond what is shown in the periodic regulatory notifications.

The production of meaningful typology requires the gathering of specific information on actual anti-fraud problems in particular those of a transnational nature which may involve organised crime so as to adapt approaches and strategy to what is actually needed to protect the financial interests of the Community. In this way the Member States and the institutions could set up and have at their disposal operational instruments to deal with current problems.

Analysis based on what is happening on the ground will have to be in-depth and systemised by the Commission and the Member States acting in concert if we are to be in a position to direct the action to be taken in such a way as to take account of the demands linked to the particular dimension and development of the phenomenon to be curbed.

1.2.3 Results: financial impact

In terms of assimilation, recovery of Community funds must be carried out with the same vigour as national funds, a matter which the reports fail to confirm. With the occasional exception, the texts which show preferential treatment to public creditors are not mentioned and it is not therefore possible to establish if the Community creditor is treated on an equal footing with the national creditor.

Questions on recovery procedures have therefore neither been fully answered nor in a uniform manner. The question of the link between services responsible for recovery and those responsible for investigation is not dealt with. The link would facilitate the financial follow up at Community level to enable the Commission to provide support.

To avoid any discrimination in the settling of debts, the limitation periods and rules for their suspension should be harmonised and improvements should be effected in the way in which mutual assistance arrangements for recovery matters are carried out.

Likewise, the rules for setting up and enforcing guarantees should be specified and harmonised.

Cross checks between Member States of entry or departure and Member States of final destination or of departure must be used to advantage to ensure a better overall functioning of external border controls. In this perspective, all the potential uses of mutual assistance in customs, agriculture and own resources must be exploited.

In general, the links between control and investigation services and those responsible for recovery should be developed. The Member States have certainly in most cases mentioned a service responsible for recovery procedures. However, this service should know the outcome of any investigation as early as possible. Failing this, frauds and irregularities are updated but the implementation at a late stage of binding procedures does not allow the money to be recovered (limitation periods, debt settlement).

As for compounding the amounts involved, the Commission has not always found the principle of the impossibility of compound action to be confirmed but rather items in the description likely to cause confusion between compounding of the amounts involved and compounding of penalties.

1.2.4 Follow up measures given to cases of fraud and irregularity

National and Community administrative penalties

The Member States have only supplied few indications on these questions (competent authorities, number of cases ...). A wide variety of situations is to be found in the field of national administrative penalties with the result that there is no general system for them in the Member States. In most cases, penalties are used for the protection of revenue. Too great a disparity may be avoided by developing the use of Community administrative penalties and moving towards greater homogeneity in national administrative penalties, including on a systematic basis the protection of Community expenditure.

Criminal penalties

On the basis of the available information, no truly homogeneous comparison can be made. A number of reports agree on the need for the use of more effective statistical tools for the follow up of proceedings. This would enable the outcome of criminal proceedings (case closed, compounding, prosecution, convictions, recovery etc.) to be monitored and to ensure that the budgetary authority, which rightly demands this type of information, is correctly informed. Analysis must therefore be developed on this aspect.

Relationship between administrative and judicial proceedings

Some national reports justify the coexistence of administrative and criminal penalties which fulfil different functions, the latter penalizing serious action and the former ensuring sound financial management by the Community. However, the parallelism of proceedings and cumulation of penalties do not preclude the precedence of the judge. Little information is given on the connection between preliminary and judicial phases in the national reports. The objective is to optimize the use of means available in the criminal area in the fight against fraud. It is interesting to mention on this point that some Member States have raised in the part on co-operation the particular importance which they attach to the organization of collaboration between the services working in the preliminary and judicial stages.

Referral of case to judicial authorities

Some Member States have an obligation to refer cases to their judicial authorities while others prefer compounding. However, statistical data is absent from national reports.

There is only one area in which, on the basis of the national reports, some elements of a comparative approach may be traced, that is the principles for compounding in the field of traditional own resources. Compounding in expenditure is not covered. In Member States which do not use compounding, knowledge of an offence leads to judicial action being started.

As in the other parts of the report, little mention is made of V.A.T. in the part on compounding. Two Member States confirm its use in the same conditions applying for

traditional own resources therefore achieving assimilation of treatment for two types of Community resources.

The small number of specific replies found in the national reports does not enable any judgment to be made on the use of compounding with regard to the principle of assimilation. It is impossible to conclude that Community resources and expenditure are subject to the same compounding procedures as national resources and expenditure. It can only be seen that it is necessary to improve transparency both on the principles, conditions of application and the extent of compounding. In the light of the results of the specific study under way, the Commission will return to this problem of compounding, in particular from the aspect of the principle of assimilation and effectiveness of systems of penalties, both in the administrative and penal area.

With regard to the Commission's role in the event of criminal proceedings, some reports mention that it can participate in cases by indicating either that it never uses this possibility or that it ought to use it more frequently. Others mention the role of the national Treasury for asset compensation in representing the financial interests of the Community in criminal cases. This point should be analysed in greater depth. For the rest, the initiatives which the Commission could bring about are limited to the area of providing support in the detection and demonstration of the facts of a fraud which is the subject of a criminal case.

Avenues to be explored (1.2)

This part devoted to the results achieved in the fight against fraud is based on the practice put in place by the budgetary authority (the European Parliament) and the Commission. It is a question of using to best effect actual knowledge on the ground, based on information gathered and the examination of typical cases. Questions of principle are highlighted before deciding on the type of action to be undertaken to reduce the risk of fraud.

Consideration of these results gives a first idea of the level of assimilation. Improvements in the standard of information are however required. It is impossible to judge the concrete application of Article 209 A (EC) without the relevant data for

analysis (results of checks and investigations, follow up action on cases established, recovery of sums due, administrative and judicial penalties). To complete analysis and provide guidelines, comparable figures of homogeneous items are needed (rates of recovery of different revenue and expenditure, the number and amounts of compounded cases, the numbers of checks and detailed investigations) relating to both national and Community financial interests.

From its analysis, the Commission is able at this stage of the study to deduce three guidelines.

A/ To facilitate the direction of its actions and their planning as close to the reality on the ground, the level of detail, the extent and the homogeneity of the information must be improved at all practical stages. The degree of assimilation of the Community's financial interests will therefore be more appropriate and the rapprochement to be achieved at national level will be facilitated.

The information mechanisms and the harmonisation of the elements to be communicated must be improved. It is a question for the Commission of being in a position to develop "the exploitation of intelligence" so as to make best use of the information at Community level, direct anti-fraud activities and strategy, develop risk analysis and finally be capable of providing the budgetary Authority with all the details on the follow up of an investigation.

B/ In certain areas, improvements will not only be able to be achieved by means of a rapprochement at Community level of national practices. This applies in particular to control schemes and risk analysis methods so that an equivalent level of monitoring throughout Community territory is achieved, to recovery rules (limitation and interruption in limitation, interest for late payments, recovery by means of compensation ..), to public Treasury privileges applying to Community debts and to administrative penalties and the conditions in which they are applied. A strong and constant Community impetus is indispensable to achieve such progress and transpose it in concrete form into the appropriate framework.

C/ The wish for simple and effective regulations also emerges from the national contributions. Major financial crime slips more comfortably into the labyrinth and maze of over complex regulations which paradoxically provide less protection for operators of good faith for whom they can be source of errors and omission. The priority actions undertaken by the Commission to raise the level and quality of the control of Community finances coincide broadly with these objectives. The wish expressed by certain Member States to conduct regular national audits to assess national control systems could provide the support and the appropriate framework to enable significant progress to be made in the field of simplification and effectiveness of texts.

1.3 Action to follow up Court of Auditor's reports

The European Councils of Essen and Cannes requested the Member States and the institutions to set up a base on which to fight fraud relentlessly. The comparative analysis of the action taken to follow up the reports of the Court of Auditors, mentioned in the Essen declaration, seemed to be a useful complement in carrying out this exercise.

The information supplied, while insufficient to carry out a true comparative analysis, does nevertheless allow the existing convergences between the follow up of the Court's recommendations, the Commission's missions and the Member States' tasks in the field of protection of Europe's financial interests to be emphasised.

Avenues to be explored (point 1.3)

In accordance with the Essen mandate, the institutions and the Member States must endeavour to follow up the recommendations of the Court which represent a useful tool in improving financial management.

The achievement of this objective could undoubtedly be taken into account in national audits undertaken on a periodic basis to ensure the reliability of national control systems. Some Member States who already do this have suggested the practice be repeated in all Member States.

Some of the approaches which the Commission intends to use to strengthen its own financial management could easily fit into the same partnership framework.

Part II: Application of article 209A, second paragraph (co-operation)

The obligation for the Member States to combat fraud which results from the first paragraph of article 209A is amplified by a provision of the treaty mentioned in its second paragraph with the aim of implementing with the help of the Commission close and regular co-operation. To counter the financial crime which is developing in an organized manner and which has targeted the Community budget, improved co-operation must be established and function on a regular basis. It is in this perspective that the Commission set up the Advisory Committee for the Co-ordination of Fraud Prevention (COCOLAF) which is the appropriate body to organize this collaboration between the competent services.

2.1.1 Administrative co-operation and assistance on the basis of non-Community instruments

The information notified is not always comparable but does show that the instruments of co-operation between Member States are not left unused. Co-operation with third countries is sometimes the aim although this does not result strictly speaking from article 209A.

Avenues to be explored (2.1.1)

This type of co-operation which exists for the protection of national finances is a means of improving assimilation and making the protection more homogeneous. From an examination of the information provided, some guidelines emerge to direct the action to be carried out at Community level and improve the effectiveness of these mechanisms

A/ Several reports recognize the need to develop co-ordination and co-operation between Member States. There is a need for a more structured co-operation at this level

where it does not already exist. It is necessary to broaden and increase the existing regulatory structure for co-operation to achieve the level of collaboration required by E.C. article 209A. Within this framework, a common solution could be sought to resolve the different grievances with the mutual assistance mechanisms (deadlines for answers, insufficient justification for the requests).

B/ It is also necessary to improve the operational links between the services responsible for prosecution of serious and complex fraud, involving major organized financial crime, as well as the links between these same services and the Commission for transnational fraud cases where the current framework is inadequate. This supposes the implementation of procedures to develop the assistance which the Commission may supply to these services to realize these missions.

C/ The development of personal contacts, exchanges of officials, liaison officers, seems an equally effective means of achieving progress with co-operation between the Member States. In addition to the instruments in which contacts between experts must be legally introduced (to be implemented over time) the importance of results from co-operation depends in fact also on the quality of relations between the investigators and other officials.

D/ It is appropriate to examine the question raised by several Member States as to whether the Commission should continue or intensify its work on concluding mutual assistance agreements with third countries.

2.1.2 Co-operation in criminal matters

The provisions laid down in paragraph 2 of E.C. Article 209A are not limited to purely administrative co-operation. This paragraph also calls on the Member States to set up a broader co-operation if that proves to be necessary to combat fraud, in particular if the latter takes the form of organized cross border crime.

Indeed, organized crime must not be allowed to take advantage of disparities in judicial treatment to organize its own immunity. The need for a thorough, effective,

direct and rapid co-operation is clear from the national reports even if this necessity is not always clearly set out.

Although few reports have dealt with these subjects exhaustively, it is to be noted that police co-operation is not clearly distinguished from judicial co-operation. Several national reports highlight the usefulness of administrative co-operation, from the stage of the preliminary investigations to exchange information, on an institutional basis with the other Member States and the Commission and very concrete proposals are put forward to strengthen co-operation on penal matters such as for example the possibility of giving comparable powers to national investigators.

Avenues to be explored (2.1.3)

The items of information available show that it is imperative to make available to the national authorities responsible for enforcement effective means to respond to the need for an improved and a homogeneous protection of the Union's finances.

A/ To improve co-operation between the competent national authorities on the one hand and between the latter and the Commission on the other hand, it is necessary to develop, from the point where initial investigations commence, exchange of information between the preventive services in the Member States and the competent services of the Commission. To this end, the Commission will continue its work and consider the possibility of achieving a legal instrument which is likely to extend co-operation to all the operational activities which precede the opening of judicial proceedings.

B/ It would be useful to continue the examination of the resources and the control powers of the officials responsible for fraud prevention and to consider the possibility, advocated in certain reports, of giving control powers comparable to those enjoyed by all national investigators.

C/ To ensure that all the elements resulting from Community action carried out in co-operation with the Member States are taken into account, in particular with regard to prosecution, it is also necessary to examine the role of the Commission and its activities

with national authorities and to draw the conclusions in terms of regulations to be adapted.

D/ In the field of criminal law, the measures necessary for the effective entry into force of the Convention on penal protection of the financial interests of the Community must be adopted as quickly as possible. This first step must, to achieve its full effect, be extended with the setting up of improved and direct judicial co-operation at Union level targeted at the protection of the financial interests of the Community built in particular on networks of magistrates and/or prosecutors. The setting up of such networks will facilitate the application of the principle recognized in the Convention for centralizing proceedings in one jurisdiction.

2.1.3 Administrative co-operation and mutual assistance under existing Community instruments

Community regulations setting up co-operation between the Member States in agriculture, own resources or structural actions foresee an obligation on the part of each Member State to provide mutual assistance on their own initiative without the Commission necessarily being involved.

It seems that even if the Community co-operation instruments are used and most Member States have produced a satisfactory report on this type of co-operation, difficulties exist with regard to deadlines for replies which may slow down investigations and enforcement action. At the same time, all sorts of disparities (administrative, legal, technical) obstruct circulation of information between the Member States.

The suggestions put forward to improve this type of co-operation are quite numerous and show the interest which the Member States attach to it. The Commission is obliged to provide its assistance in accordance with the second paragraph of article 209A. It must be in a position to exploit the existing potential tools of co-operation or to adapt them for this need.

Avenues to be explored (2.1.3)

The panoply of existing instruments at Community level is not ignored by the Member States even if the potential for co-operation seems not to be fully used. Given the central role of co-operation recognized by all the Member States, the objective to be pursued must be to develop existing mechanisms to raise their level of effectiveness and usefulness.

A/ The information systems must evolve and be adapted to take account of the reality of certain constraints such as the level of priority, the presentation of information and the appreciation of risk. The bodies responsible for the functioning of these different co-operation instruments must quickly consider these questions to define clearly the needs and introduce appropriate rules (adaptation of texts, production of procedural guides, guides for access to notifications, methods of co-operation, production of files especially at central level).

B/ Certain forms of co-operation highlighted in the national reports must be explored and developed such as for example the organization of follow up action on cross checks on goods in free circulation. Holding regular meetings between competent services as well as rapid organization of **ad hoc** meetings for urgent and serious cases must be encouraged. The development of databases including information on economic operators (risk criteria) advocated by some Member States which have established a central register (or who suggest it) must be examined at Community level.

C/ Mutual assistance on recovery must be made more effective. The directive on these mechanisms must be adapted to the needs of the single market by giving the Member States, which are alone responsible for recovery, the legal means and the necessary information to accomplish their mission. The potential for mutual assistance in agriculture, customs or own resources should be better exploited by involving the Commission systematically as soon as an area of Community interest such as recovery arises. This interest may moreover be of a fundamental nature when a revelatory case is discovered showing the way a particular fraud has been organized (a textbook case) which must not be repeated in other parts of the Union territory.

D/ It is generally appropriate to ensure a full and proper application of Community regulations on co-operation. The Advisory Committee for the Co-ordination of Fraud Prevention (COCOLAF) in its specialist format must meet regularly to assess results, identify the possibilities of the system and, if necessary, determine rules for both presentation and level of detail of institutional co-operation with regard to the provision of uniform data. In its plenary sittings the Advisory Committee will then put forward the essential adjustments to be made and will provide the impetus required and where necessary will inform the competent bodies of its conclusions.

Part III: Report on equivalence between measures to protect national finances and those to protect the Community's financial interests

It cannot be denied that this type of demonstration is quickly confronted with important methodological obstacles. However, to leave completely aside this aspect of the report or to limit matters to the claim that equivalence is obtained by definition, given that Community monies are filtered through the public purse and are therefore transformed into national funds or even that equivalence has always existed and goes even further (Community finances are better protected) since before the entry into force of the TEU, all of this stems from the affirmation of principle and comes back to a reassessment of the soundness of the initial request of the European Council.

Compliance with the principle of assimilation has therefore been shown in most reports by repeating aspects considered previously in the form of conclusions.

The absence of comparative national and Community budget fraud results makes any comment on the true extent of assimilation into the Union most delicate. At most a set of indicators may be noted. Analysis of the systems in place (texts, organization) gives the appearance that revenue is better protected than expenditure. In the latter area, agricultural expenditure seems to be better organized than expenditure on structural activities. In general, the Member States state once and for all that assimilation has been achieved but the assimilation relationship is never made from one area to another nor

through comparative results. The exact measure of the degree of assimilation through comparative results is moreover most often absent.

A number of considerations modify the contours of the principle of assimilation. It is often maintained that Community agricultural legislation on checks is so detailed that Community expenditure is better controlled than national expenditure (this view is sometimes exemplified).

Compliance with article 209A includes adaptation of national actions to the demands of the protection of Community finances and the equivalence relationship, often set up as a theorem of equality by the Member States, must in fact be brought about progressively through concrete measures which have to be assessed on a continuous basis to make progress both in improving the Community's financial management and the protection of its financial interests.

If national contributions do not always lend themselves to a full and detailed comparative analysis and have not always allowed all the segments of national action to comply with the principle of assimilation to be confirmed, they nevertheless all bring out avenues to work on and ways of making progress. Often moreover they coincide or merge in more than one report. Most national reports come to the conclusion of the need to progress in all aspects from prevention to enforcement including co-operation.

The need to act at Community level to amplify in certain areas the monitoring systems on the basis of objective criteria to harmonise checks carried out by the Member States is often put forward as a priority.

Likewise some Member States recommend the systematic and regular assessment of these systems to adapt constantly the level of protection of Community finances so as to optimize the national and Community monitoring frameworks taking account of the needs perceived at the time and the actual risks. On this point it is often recommended that an audit structure should be set up bringing together all areas of expertise.

The wish to simplify texts is often put forward as an indispensable permanent feature in achieving coherent legislation which takes account of cost-benefit factors.

Co-operation is adorned with numerous virtues and is often presented as the essential catalyst for national and Community effectiveness in countering sophisticated transnational fraud and organized financial crime. The need to develop its possibilities both in strengthening work on the ground and in optimizing the exploitation of information seems to be a commonly shared aim whether in improving existing procedures or in extending the institutional forms of co-operation beyond administrative assistance.

For some the optimum position will only be achieved when the Community level has specific and obligatory systems of administrative penalties and adequate measures to raise the level of compatibility and equivalence of national legislation in penal matters.

In any event, as the Community achieves the necessary convergence between its Member States' economies to enter into the decisive phase of economic and monetary Union and integration is further achieved by increasing financial intervention, it would seem surprising to make strong declarations of intent at the highest levels without adopting the necessary measures to translate these declarations into concrete progress in all the areas of protection of its financial interests.

An improvement in the fight against fraud, in addition to actual assimilation, involves a voluntarist policy of prevention ensuring a more effective and equivalent level of control in all Member States but also by means of a stronger and homogeneous enforcement policy in the Union. The affirmation of the monitoring and financial control obligation of the collector or administrator of Community funds obviously stems from the main principles of management of public finances . Amplifying this obligation by setting up specific and obligatory rules and criteria for each area to improve monitoring and ensure an equivalent level of control throughout the Community remains a necessity for prevention. It is not enough either to bring about a rapprochement of the definitions of the fraudulent actions or behaviour which it is intended to combat. It is also necessary to make enforcement action homogeneous to counter the movement of fraudsters to lower risk judicial areas. The obligations set by the Court of Justice in 1989, demanding "effective, proportionate and dissuasive" penalties, remain an objective to be reached in a homogeneous manner throughout the territory of the Union to combat the development of organized financial cross border crime which uses its own risk analysis.

The protection of the assets of the European taxpayer involves the very credibility of both the Union's institutions and the Member States. The Community is committed to improving its financial management and must logically be even more attentive to the complete protection of its financial interests against any misappropriation. This is the object of the exercise. It is on this basis that it will undoubtedly be possible to make progress to satisfy the mandate of the Cannes and Essen Councils.

PROTECTION OF THE COMMUNITY'S FINANCIAL INTERESTS

COMPARATIVE ANALYSIS

of the reports supplied by the Member States on national measures taken to combat wastefulness and the misuse of Community resources

SUMMARY

- Preface -

The remit

On 11 July 1994 the Council (Ecofin) asked the Commission to produce a progress report on the application of Article 209a of the EC Treaty no later than the end of 1995.

The first paragraph of that Article reads: `*Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests*'. This enshrines what has come to be known as the `principle of assimilation'.

Article 209a has a second paragraph reading: `*Without prejudice to other provisions of this Treaty, Member States shall coordinate their action aimed at protecting the financial interests of the Community against fraud. To this end they shall organize, with the help of the Commission, close and regular cooperation between the competent departments of their administrations*'.

Subsequently, the Essen European Council on 9 and 10 December 1994 called on the Member States to `*submit reports on the measures they are implementing to combat wastefulness and the misuse of Community resources*', to be examined by the Council (Ecofin) in June 1995 and submitted to the European Council in December 1995.

The Member States' reports were presented within the time allowed - in May 1995 - for presentation to the Council (Ecofin) on 19 June. The Council concluded that subsequent action should proceed along three lines - national, Community and partnership - to increase the effectiveness of protection of the Community's financial interests.

The Cannes European Council (26 and 27 June) requested the Commission to study and analyse the reports. It took note of the Member States' reports on the measures they are implementing to combat wastefulness and the misuse of Community resources, requested the Commission to `*prepare a comparative summary for the European Council in Madrid*' and `*call[ed] on Member States and all institutions to persevere in the battle against fraud and waste*'.

The methods used

This document is an interim report based on the comparative analysis of the national reports. It takes stock of progress in applying Article 209a on protection of the Community's financial interests and summarizes the measures taken by the Member States to combat the misuse of Community resources.

The structure is the logical sequel of the structure of the Article, which sets an objective to be attained and prescribes the means to be deployed. Measures taken to give effect to the Article are evidence of the Member States' determination to combat Community fraud in the same way as purely national fraud (assimilation); and the very existence of the single market and the transnational nature and dimension of financial crime demand counter-measures transcending the national arena and proceeding from enhanced partnership at Community level (cooperation).

To ensure that national reports followed a standard pattern facilitating the comparative summary, the Commission, as requested by the Council (Ecofin) on 16 January 1995, devised a general layout to be used in preparing the national reports. It was entitled `Subjects to be covered in the reports to be presented by the Member States'. It was discussed by the Advisory Committee for the Coordination of Fraud Prevention (COCOLAF) on 1 February 1995 and approved by the Council (Ecofin) on 20 February.

By and large the Member States have adhered to the proposed layout. Even so, their reports are highly dissimilar. Some are only a few pages long; the longest has 78 pages. Above all, their content varies widely, as the emphasis is not placed on the same items.

Some Member States highlight recent changes to their anti-fraud laws. Others highlight the administrative organization and distribution of functions in verifying the use made of funds. Some were more precise than others as to the results obtained from the action taken and the follow-up to checks undertaken or observations made by the European Court of Auditors.

The explanation may lie partly in the short time available to the Member States for answering an ambitious survey. Those responsible for compiling the reports may have

found it impossible to gather all the requisite information and therefore concentrated on those items which struck them as particularly important. The Commission was unable to engage in the dialogue with the Member States which would have facilitated the exercise and yielded a balanced set of contributions.

The Member States give political reasons to explain the absence of certain aspects. VAT fraud, for instance, was left out of several reports. True, the collection of the Community share of the tax is an integral part of the national system, but more details of the problems specific to this sector would have provided a basis for comparing relative effectiveness in the various fields. This is particularly important in the context of the single market and rules of procedure which have enhanced the independence of the Member States' authorities.

Lastly, the differences may be explained by differences in the remits given by the Ecofin Council on 11 July 1994 and by the Essen European Council. Some reports focus on the legal and institutional approach, demonstrating the application of the assimilation principle and the existence of cooperation. Others are embellished by further, more precise data as to the results achieved in the protection of the Community's financial interests.

This report proceeds from the layout suggested to the Member States. It contains comparative tables setting out the information to hand and revealing, *a contrario*, those areas where it was not possible to produce the summary. The utility of pursuing and amplifying the exercise in conjunction with the Member States will then have to be investigated so that the fullest benefit of the analysis can be enjoyed.

Tables are given at various places in this report to summarize certain categories of information taken from the national reports; they are designed to constitute an objective basis for the comparative analysis. It is obviously not possible to tabulate all the details supplied by the Member States. The Commission has endeavoured to reproduce the national contributions as faithfully as possible, but there are inevitably risks in any selection process. Readers seeking access to exhaustive information on any particular point is accordingly referred to the national reports annexed to this summary report.

Each part and section contains a commentary illustrating the points that appear most significant. In addition, guidelines or avenues to be explored reflecting the Ecofin Council's conclusions of July 1994 and June 1995 are offered as a means of laying a basis for action to pursue the fight against fraud and wastefulness and to improve the effectiveness of the protection of the Community's financial interests, as called for at Cannes.

The first part of this report is on the application of the assimilation principle enshrined in Article 209a of the EC Treaty.

The second part takes stock of the cooperation arrangements introduced by the second paragraph of Article 209a of the EC Treaty.

The third part evaluates the degree of equivalence of measures to protect national and Community finance.

Part I: Application of the first paragraph of Article 209a of the EC Treaty (assimilation principle)

The first paragraph of Article 209a of the EC Treaty reads: `Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests'.

This writes into the Treaty the rule enunciated by the Court of Justice in 1989 when it declared in relation to the Member States' obligations under the first paragraph of Article 5 of what was then the EEC Treaty (`Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks') that they were under an obligation to penalize infringements of Community law `under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive'.

The principles enunciated by the Court and by the Union Treaty, though not identical, overlap and amplify each other.

The assimilation principle is expressed in stronger terms in the Union Treaty, for Article 209a requires the Member States to take the `same measures' and not just `analogous' measures. Its scope is broader since it concerns not only penalties for infringements but all `measures' (principal and subordinate legislation, administrative organization and scales of penalties) to combat fraud against the Community's financial interests.

The Court, on the other hand, unlike the Treaty, sets a definite objective as to the result to be attained in terms of penalties (which must be effective, proportionate and dissuasive), which is thus part of the *acquis communautaire*.

The Member States' reports suggest that this is how they see their obligations and that they apply Article 5 as interpreted by the Court of Justice and Article 209a of the EC Treaty in combination with each other. Most of them accordingly cover both the measures they have taken to assimilate fraud against the Community's and their own financial interests and the effectiveness of the penalties for which they have made provision.

Following the layout suggested to the Member States, the part of this report devoted to progress in the application of the assimilation principle describes national measures to combat fraud against the Community budget (section 1.1), evaluates their results (section 1.2) and tracks the action taken in response to the report of the European Court of Auditors (section 1.3).

1.1. National measures in the assimilation context (normative provisions, organization of services)

There are two types of measure - legislation (1.1.1) and departmental organization measures (1.1.2).

Point 1.1.1 ought to have made it possible to offer a panorama of national instruments to combat fraud against the Community budget from two angles - prevention (provisions for checks) and enforcement (provisions for penalties). Point 1.1.2 highlights the various organizational approaches, distinguishing departments responsible for traditional checks and those responsible specifically for countering fraud which operate according to their own logic given their own mission.

1.1.1. Summary description and evolution of the legislation

The layout suggested to the Member States called for a brief description (with historical background) of (a) legislation, (b) subordinate instruments and (c) administrative instructions, circulars, etc. One Member State saw no need to describe the various instruments on the grounds that Article 209a is directly applicable and specific legislation is nugatory and that Community funds transit via the national treasury and are treated in the same way as national funds.

This is an isolated case. The other reports cite or reproduce the main provisions of principal and other legislation.

It has been found that preventive measures received little attention in the national reports. In some cases they are considered in the sections relating to the organization of checks; in others they are in the section on the law, with enumerations of instruments presented without further comment. In most cases, however, they are simply ignored, as the reports on point 1.1.1 tend to focus on the enforcement angle. Preventive measures might therefore deserve studying in greater depth at a subsequent stage of the comparative survey.

The reports reveal that most Member States treat revenue and expenditure through quite separate sets of rules. This was the approach taken when the convention on the protection of the Community's financial interests was approved at Cannes; it does not preclude an all-inclusive approach to the fight against organized financial crime but distinguishes fraud on the expenditure side and on the revenue side in the definitions of fraudulent conduct.

The rules governing resources are usually to be found in specific instruments of tax or customs law (a). The rules governing fraud on the revenue side only rarely make distinctions between different revenue categories (b). But there is a discernible trend in the Member States for legislation to contain specific provisions expressly countering fraud against the Community's financial interests (c).

(a) The resources side

Provisions to counter fraud against Community revenue				
Member State	General criminal offences	Specific criminal offences	Administrative penalties	Historical background
B	Forgery, uttering forged documents, fraudulent conversion, receiving, laundering	Customs and Excise (General) Act (sections 114, 115, 157, 202, 237, 238, 220, 233, 234, 256): fines and custodial sentences	No provisions in the Customs and Excise (General) Act for administrative penalties	Far-reaching reform of the Act by the Act of 27.12.1993 with regard to the amount and enforcement of fines; to boost their deterrent effect

DK	Fraud, forgery, uttering forged documents, etc.	Aggravated smuggling offences (Crim. Code section 289). Penalties determined by Chapter 11 of the General Customs Code and the Community Imports and Exports Act	Fines set below the level required to trigger criminal prosecution	None
D	Forgery and false accounting (obtaining by deception only on the expenditure side)	Tax criminal law (tax fraud); offences formally extend to Community revenue	Administrative penalties provided for each type of Community revenue (agricultural levies by reference to customs and tax legislation)	None
EL	The information in the reports does not provide a basis for comparative analysis			
E	Crim. Code section 349 protects public revenue; although the assimilation is not explicit, Community revenue is included. Also sections 403, 528 (obtaining by deception) and 302 (forgery)	Institutional Act on smuggling; no explicit assimilation	Administrative penalties provided for by Tax (General) Act and Tax Budgets (General) Act	Reforms announced to make assimilation explicit
F	Offences under the general criminal law apply to Community revenue	Customs criminal legislation		
IRL	Report contains insufficient information	Legislation defining customs fraud offences applies to agricultural levies, excise duties and VAT	What can be considered administrative penalties are provided for by specific legislation	None
I	No information on the applicability of provisions defining general offences to the revenue side	Criminal offences defined by customs legislation (customs duties and agricultural levies)	Administrative penalties provided for by customs legislation	None
L	Forgery, uttering forged documents and false accounting	Customs legislation	Administrative penalties provided for by specific legislation	

NL	False accounting (Crim. Code section 225), relevant to all forms of EC fraud, and organized crime (Crim. Code section 140)	Customs and Excise (General) Act, section 171 and provisions on smuggling (sections 169 and 170); Import and Export Act section 18; Agricultural Produce Act section 12	In the Import and Export Act and the Agricultural Produce Act	Community Customs Code (1.1.1994) amplified by national legislation
ÖS	Information on applicability of criminal law not in report	Tax criminal law applies to the three revenue areas (customs duties, agricultural levies, VAT)		Tax legislation amended following accession
P	Forgery, obtaining by deception, fraudulent conversion, corruption	Decree-Act 376/89, section 21 (import and export smuggling). Apparently no specific legislation for agricultural levies. VAT legislation not supplied	Provided for in Customs Code	Apparently none
SU		Customs Act and Excise Act contain provisions for criminal penalties	No indication of nature of penalties	Legislation in own resources matters amended following accession
SV	Fraud provisions of Crim. Code	Smuggling Act		Legislation relating to customs and VAT amended following accession
UK		Customs and Excise Management Act 1979 determines offences and penalties; Common Agricultural Policy Act 1991 with less severe penalties; VAT Act 1994	Administrative penalties provided for by specific legislation	VAT legislation reformed in 1994; no details given

On the resource side, the problem of the assimilation principle is not appreciated as regards revenue categories taken individually but in terms of the legal frameworks for the different resources.

For the traditional Community own resources - customs duties and agricultural levies - there is no longer a national set of rules to which the Community scheme could be assimilated. For VAT, as was stated at the beginning of this report, there is full assimilation in the way the national and Community shares are established and collected.

Some information is given on developments since the *Yugoslav Maize* case and the entry into force of the Union Treaty.

The Belgian Act of 27 December 1993 amending the Customs and Excise (General) Act toughened the criminal law components of customs law in a number of respects, and particularly by raising the amounts of fines, hitherto not sufficiently deterrent, quite substantially.

The Luxembourg report does not state whether the tougher provisions enacted in Belgium were taken over in Luxembourg in the context of customs union between the two countries. Nor does it confirm whether Luxembourg, where there are no provisions for criminal offences in the VAT legislation, is planning to remedy the deficiency.

The Member States that acceded to the Union in 1995 have adjusted their legal instruments to the assimilation principle. These Member States do not on the whole highlight changes in their criminal law for the purposes of Article 209a, but it would be worth studying the more recent provisions (notably criminal law provisions in Finland), and the national reports do point to explicit assimilation in some areas.

Austria, for instance, has changed its criminal tax legislation to treat fraud in respect of Community levies and taxes in the same way as fraud in respect of the national equivalents. Customs legislation has been extended to cover offences committed outside Austria but within the Community's customs territory. The Finnish report mentions amendments to customs law (definition of customs offences and related penalties) alongside the description of its agricultural and VAT legislation.

The question of assimilation on the revenue side (in the enforcement context) must therefore be seen in the broad sense as a comparison between the legal framework for purely Community resources (the traditional own resources) and for the national

resources that provide the bulk of the revenue in the national budgets. Another worthwhile comparison would be between national schemes *inter se*, to confirm (or not) the existence of distortions, notably in relation to administrative and criminal penalties, that might be such as to facilitate fraudulent transactions between Member States or to deflect trade within the internal market, or even to prompt firms to relocate towards the places where the enforcement risk is felt to be lighter.

(b) The expenditure side

Provisions to counter fraud against Community expenditure				
Member State	General criminal offences	Specific criminal offences	Administrative penalties	Historical background
B	Forgery, uttering forged documents, fraudulent conversion, obtaining by deception, receiving, laundering, misappropriation of funds	Fraud in relation to grants (Act of 7.6.1994), same penalties as for obtaining by deception; Act of 28.3.1975 on trade in agricultural, horticultural and sea fisheries produce (EAGGF Guarantee)	Definitive or temporary disqualification from Agricultural Fund grants; confiscation of benefits received	Act of 7.6.1994 - specific offence of fraud in relation to grants and much heavier penalties
DK	Obtaining by deception, forgery, uttering forged documents, false statements to public authorities	No specific offence except in agriculture (EAGGF Guidance and Guarantee) (fines and custodial sentences)	Interest on late payment; flat-rate surcharges	April 1994: provisions for flat-rate surcharges made in legislation relating to EAGGF (Guarantee)
D	Obtaining by deception	Offence of fraud in relation to grants extends explicitly to Community funds	Administrative penalties provided for explicitly by the legislation relating to agricultural markets	None

EL	Obtaining by deception, forgery, uttering forged documents, fraudulent bankruptcy, receiving etc. Act 2172/93 imposes penalties for fraud against the Community's financial interests	Heavier fines for offences to the detriment of the public authorities, the European Community being explicitly included	Administrative penalties provided for different EAGGF sectors (olive oil, fruit and veg.,sheepmeat, goatmeat, tobacco, cotton). No information on the Structural Funds	Assimilation principle in section 36 of Act 2172/93
E	Offences against the Crim. Code (obtaining by deception, forgery, misappropriation of public funds) and fraud in relation to grants (section 350 Crim. Code)	No. Plans to introduce blanket assimilation by specific offence of fraud against the Community's financial interests	Administrative penalties provided for EAGGF Guarantee, Structural Funds and Cohesion Fund in Budget (General) Act section 82; fines and disqualification from benefits	Budget (General) Act extended to Community funds in 1991; administrative penalties introduced
F	Obtaining by deception, fraudulent conversion, forgery, uttering forged documents	Specific criminal provisions for EAGGF Guarantee and SIGC		
IRL	General criminal law (Larceny Act 1916; Forgery Act 1913; Falsification of Accounts Act 1875; Conspiracy to Defraud, Bribing & Corruption - Criminal Justice Act 1951	No. A Bill to create a general offence of fraud against the Community's financial interests is in preparation	National administrative fines in EAGGF matters	None
I	No information on applicability of general criminal offences to fraud against the Community	Crim. Code section 640 (aggravated deception to obtain public grants) and section 316bis (misappropriation of State funds)	Administrative penalties provided for in relation to EAGGF Guarantee *inter alia*	Act No 142 of 19.2.1992, replacing Act No 898 of 23.12.1986, explicitly assimilates
L	Forgery, uttering forged documents, misappropriation, fraudulent conversion, receiving	Crim. Code section 496-1 (obtaining by deception) explicitly protects Community expenditure	For EAGGF Guarantee and the Structural Funds	1993 Act extends Crim. Code section 496 to Community fraud

NL	False accounting, forgery - Crim. Code sections 140 and 215	No specific offence in relation to Community expenditure	CAP - penalties provided for by specific legislation; none for Structural Funds	None
P	Forgery, obtaining by deception, fraudulent conversion, corruption	Decree-Act 28/84 of 20.1.1984 sections 36 to 38 - specific offences of fraud in relation to grants	For the ESF	None
ÖS	Crim. Code (unspecified)	Criminal offences defined in agricultural markets legislation; tax evasion provisions apply to fraud in relation to export refunds		Criminal tax law amended following accession
SU	No information on applicability of general criminal offences to expenditure			
SV	Crim. Code provisions on fraud	Criminal penalties (up to 6 months' imprisonment) for infringements of Community agriculture legislation	Disqualification by way of national penalty; may be ordered by agricultural control authorities	Legislation on agriculture and structural assistance amended following accession
UK	Common-law offences of conspiracy to defraud; Theft Acts contain provisions on fraud	None	Administrative penalties provided for in Agriculture Act 1957	None

The layout proposed by the Commission, which called for a description in each area, was not generally followed. A trend for each area of expenditure is given for Austria, where fraud in relation to export refunds has been assimilated to tax evasion by amendments to the agricultural markets legislation.

Where the reports do mention changes in the law, they most commonly announce the creation of new specific offences of fraud in relation to grants, with Community expenditure being included.

Section 264 of the German Criminal Code, introduced in 1976, creates an offence of deliberate or negligent fraud in relation to grants; by subsection 264(6) this includes payments made under Community schemes.

The Member States often make penalties subject to the existence of relevant Community rules imposing specific obligations. The German report raises this question and cites its Grants Act, which provides that penalty provisions relating to Community grants depend on the existence and substance of relevant Community instruments. The Council adopted its common position on the Commission proposal for a Regulation on administrative penalties on 29 June 1995, after the national reports had been produced, to meet their concerns in this respect.

Since the Union Treaty came into force, Belgium and Luxembourg have changed their legislation to assimilate the rules governing expenditure in a comprehensive fashion. In Belgium, the Act of 7 June 1994 extended the scope of the Royal Decree of 1933 that was confined to grants from the Belgian State itself. Henceforth, the offence of fraud in relation to grants extends to grants from international institutions. Penalties have been made heavier and adjusted to the offence, reference being made in Parliament to the Court of Justice's decisions. In Luxembourg, legislation enacted on 15 July 1993 extended the definition of obtaining by deception (Criminal Code section 496) to cover fraud in relation to grants from all sources, including grants from international institutions.

In the item on historical background, the money-laundering legislation, which provides a means of tracing money obtained fraudulently from the Community budget, was mentioned by some Member States (Belgium - Act of 17.7.1990; Ireland - Criminal Justice Act 1994; Italy - Criminal Code section 648).

Progress in introducing the assimilation principle on the expenditure side has also to be considered in relation to the effectiveness of measures taken on the revenue side. The existence of areas of distortion in the efficacy of both prevention and enforcement (administrative and criminal penalties) should be highlighted so that standards can be raised where they are visibly lowest. The position is the same as on the revenue side: in

addition to general assimilation, there is the objective of raising standards of protection throughout the Community.

(c) General criminal law

Several Member States state that their general criminal law is adequate to give effect to the assimilation principle in legal terms.

The national Criminal Codes or equivalent bodies of legislation all make provision for offences that can embrace both the Community's and the Member States' financial interests - obtaining by deception, forgery and uttering forged documents and fraudulent conversion are the most important. Some Member States (the Netherlands, for example) list dozens of provisions to be found in a great number of separate enactments that can be used against fraudsters, depending on the form the fraud takes.

Most Member States believe that the ordinary criminal offences are adequately defined to protect the Community's financial interests. Assimilation for enforcement purposes is implied in provisions creating offences and penalties that are applicable in like manner to Community and national interests.

Even so, it is clear from some of the reports that the trend is towards making fraud against the Community's financial interests an offence in its own right. The trend has gathered momentum with the Convention on the protection of the Community's financial interests on which an agreement was reached at Cannes and which was signed on 26 July 1995. Article 1(2) requires Member States to take the necessary and appropriate measures to transpose into their criminal law the provisions of Article 1(1) (defining what constitutes fraud against the Community's financial interests) so as to make the conduct described therein a criminal offence. The purpose, as is clear from the explanatory report, is that Member States should make fraud either a specific or an express offence or at least bring it within the general definition of the offence of fraud.

There is reportedly a general blanket offence of fraud in Greece, whose report states that Act No 2172/93 (section 36) extends the scope of criminal penalties to cover fraud to the detriment of the Community. Other Member States have announced their plans to provide

for a general offence in their legislation shortly. Spain announces a Bill to amend the Criminal Code by providing expressly for fraud against the Community. Ireland's introductory report, after stating the traditional position that there is no single offence of fraud but a multitude of forms of fraudulent conduct, likewise announces that a Bill is in preparation to consolidate the existing provisions in respect of dishonesty and define new offences, including an offence of fraud against the Community's interests.

Lastly, mention must be made of Italy, where fraud offences are defined by a series of enactments, mostly predating the Union Treaty, relating to different areas of Community finance. The Customs (Consolidation) Act (sections 34 and 282) establish specific offences of fraud in relation to 'import and export duties, levies and other charges on imports and exports provided for by Community instruments'. On the expenditure side, sections 640bis and 316bis of the Criminal Code prohibit and penalize the unwarranted obtaining of grants from public funds and their misappropriation to wrongful purposes and have been made applicable to Community funds. Act No 55/90 already specified grants from the European Communities among the areas to which section 640bis (aggravated cases of obtaining public funds by deception). As regards section 316bis, Act No 181/92 puts national and Community funds on the same footing. The Italian report adds that administrative penalties may be imposed in addition to criminal penalties and that the Commission has been accorded a stronger status in criminal proceedings.

The two tables summarizing the position on this point regarding the revenue and expenditure sides show that only part of the requisite information is to hand and that further research will be needed to consolidate the basis for pursuing the intensive fight against fraud and wastefulness called for by the Cannes European Council.

Consolidating the information base is vital for a full picture of the political climate in which further progress is to be made towards attaining the objective set at Cannes of vigorously combating fraud and raising the level of protection of the Community's financial interests.

Most Member States have preferred the differentiated approach to the revenue and expenditure sides. This approach has been confirmed at Community level by the twofold definition of fraud in Article 1 of the Convention on protection of the Community's

financial interests approved at Cannes and signed on 26 July 1995. It is the logical consequence of the differing definitions and scope of obligations in Community and national law. As the Spanish report stresses, the Member States are responsible for the bulk of the procedural rules in the law governing own resources in general and VAT in particular (rights and obligations of administrations and taxpayers, establishment and recovery procedures, limitation periods and conditions, powers and obligations of inspection officers, penalties, etc.). By contrast, the bulk of the rules governing agricultural expenditure, representing half the budget, are enacted by the Community and must be applied directly by the Member States.

This situation of fact raises questions as to the degree of assimilation of rules governing expenditure and revenue and their respective degrees of efficacy. The analysis should be continued in this direction.
Beyond the further analysis to be based on amplification of the answers supplied by the national reports, four major guidelines may help to bring the objective set by the European Council within reach.

Avenues to be explored (point 1.1.1)

What is clear from this initial stage of the comparative analysis is that most Member States have preferred the differentiated approach to the revenue and expenditure sides. This situation of fact raises questions as to the degree of assimilation of rules governing expenditure and revenue and their respective degrees of efficacy. Finally, the question arises as to how to achieve this objective in response to the mandate from the European Council.

A. There is good reason for wondering whether this difference in the degree of harmonization is truly warranted when a coherent horizontal approach to protection of the Community's financial interests is required, given that it does not adequately reflect the general similarity of the conduct and techniques of organized financial crime against the Community budget on both the revenue and the expenditure sides. Without doubt this consideration applies also to prevention which is an area which still requires analysis. There there is a convergence with the regular evaluation of national control systems suggested in some reports.

B. Regarding administrative penalties, the reports suggest that national provisions are more sophisticated on the revenue side than on the expenditure side. The information supplied in them does not indicate that there are national administrative penalties, either autonomous of or additional to those provided for by the Community in agriculture. A clear policy of tougher administrative penalties on the expenditure side is an obvious necessity. The common position adopted by the Council on 29 June 1995 on the proposal for a Regulation setting a legal basis for Community administrative penalties could provide a useful reference framework for this purpose, particularly as regards the establishment of penalties in the various expenditure areas. The memorandum produced by the French Presidency and Spain's scheme of administrative penalties for offences relating to national and Community public funds (Budget Act 1991) are also useful discussion material.

C. The transposal of the Convention on protection of the Community's financial interests in the Member States will provide the legal basis the Member States need for creating at least a specific offence of fraud. Rapid attainment of this objective would generate a practical possibility of prosecuting individuals committing the acts specified by the Convention and of organizing judicial cooperation to that end. Progress here would lay an effective basis for the Community institutions and the Member States to mobilize all the resources needed for uniform enforcement throughout the Community. The subjects to be gone into, apart from judicial cooperation (to be considered in Part II) include the liability of individuals and bodies corporate, raised by the Belgian and Spanish reports. There must be a possibility for prosecuting directors and managers of companies and firms even where it is the company or firm that is theoretically responsible for the conduct constituting the offence. And where it is the company that enjoys the benefit of Community funds, it makes sense for the company to incur the penalties in the event of fraud.

D. In addition to the question of the definition of the offence itself, the further question is raised by the Belgian and Italian reports of harmonizing the levels of penalties. Excessive variations produce areas of tougher and lighter enforcement and

deflect business flows towards the "softer" Member States. Penalties should therefore be more homogeneous if a satisfactory assimilation and decent degree of protection are to be guaranteed throughout the Union.

* *
*

1.1.2. Brief description (with background) of departmental organization

The departments whose organization is described below are responsible for applying the rules outlined above and for the proper management of Community funds.

The Commission suggested a layout whereby answers would be grouped together on a sectoral basis. The various control structures mentioned (traditional structures, specific investigation structures, and horizontal or multidisciplinary structures) are analysed in each case.

The description of departments occupies a large part of the Member States' reports. The complexity of the organizations responsible for Community funds is such that even a brief description will usually run to ten or more pages. For this reason a schematic presentation has been adopted, each section consisting of summary tables followed by comments.

This report describes the control structures for each sector, treating in turn (a) own resources, (b) agricultural expenditure, (c) the Structural Funds and (d) the departments which assist the Commission with the direct execution of expenditure.

(a) Own resources

The following table shows the national bodies responsible for controls on own resources. The first column shows the (frequently separate) administrative bodies responsible for basic checks on traditional own resources and VAT. The second column lists the fraud

prevention bodies and the third column the multidisciplinary bodies which may intervene in this area.

Bodies responsible for own resources			
	Traditional control structures (for traditional own resources (TOR) and the VAT resource)	Specific investigation structures (customs and/or taxation)	Horizontal and multidisciplinary structures
B	TOR: Customs and Excise Administration VAT: not specified	-	-
DK	TOR: Customs and Tax Administration VAT: idem	-	-
D	TOR: OFD (Regional Finance Directorate) - Customs and Excise Directorate VAT: special departments of the OFDs	Zollkriminalamt	Court of Auditors
EL	TOR: Customs Directorates of the Ministry of Financial Affairs VAT: VAT Directorates	Special unit for the cooordination of enquiries (Ministry of Financial Affairs)	Directorate for the Prevention of Economic Crime (Ministry of Financial Affairs)
E	TOR: Government Tax Office - Customs and Excise Department VAT: not specified	General Audit Office (for government bodies)	Inspectorate-General (of government bodies) - Court of Auditors
F	TOR: DGDDI (Directorate-General for Customs and Indirect Taxes) VAT: not specified	-	IGF (Inspectorate-General of Finances), an interministerial body
IRL	TOR: Customs departments of the tax authorities VAT: not specified	Investigation Bureau	-
I	TOR: Customs administration VAT: financial departments	-	Guardia di Finanza
L	TOR: Customs and Excise Administration VAT: not specified	-	-
NL	TOR: Directorate-General for Customs VAT: Tax authorities and FIOD	FIOD (Fiscale Inlichtingen en opsporingsdienst)	ECD (Economische Centrale Dienst)
P	TOR: DGA (Directorate-General for Customs) VAT: not speicifed	Fraud Prevention Division (Customs Directorates)	Inspectorate-General of Finances
ÖS	TOR: Customs Administration VAT: not specified	-	Court of Auditors

SU	TOR: Directorate-General for Customs VAT: Directorate-General for Taxation	Steering Committee of the Customs and Tax Authorities	Steering Committee of the "Project East" Working Group
SV	TOR: Directorate-General for Customs VAT: National Tax Office	-	-
UK	TOR: HM Customs and Excise, which is responsible for both customs duties and VAT	Investigation Division	Serious Fraud Office

In two Member States, the United Kingdom and Denmark, traditional own resources and VAT are handled by the same departments. In Ireland the customs are part of the tax authority.

The other national reports either disregard VAT for the reasons already stated ("assimilation" is achieved in practice if a tax is paid both to the Member State and to the Community) or indicate that the control of traditional own resources is distinct from the controls on VAT. This does not in itself call for any observations but reference should be made to part 1.2 for the results obtained by such controls.

Alongside the traditional controls applied by the administrative bodies listed in the first column, most Member States claim to have control and investigation structures for the monitoring of Community resources.

Some of these are specific structures (listed in the second column), with responsibility for all own resources. Some are mainly concerned with investigations and fraud prevention, e.g. the FIOD (Fiscale Inlichtingen en Opsporingsdienst) in the Netherlands, the Zollkriminalamt in Germany or the Investigation Divisions in the United Kingdom and Ireland. Other bodies are concerned with ensuring a consistent level of protection for Community resources, e.g. the General Audit Office of the Spanish central government, the Steering Committee of the customs and tax authorities in Finland or the Special Unit for the Coordination of Controls in Greece.

Lastly, several Member States mention the existence of multidisciplinary bodies responsible for controls on all public funds, including the Community's own resources. Such bodies include the Inspectorate-General of Finance (France, Portugal) and the Court

of Auditors (Germany, Spain). Some multidisciplinary bodies enjoy wide powers, such as Italy's Guardia di Finanza, the Belgian OCDEFO and the Serious Fraud Office in the United Kingdom. Where revenue is concerned, these bodies also have powers to carry out general inspections or to initiate special large-scale investigations.

Notice is given of similar developments in the reports from Belgium, where the Customs and Excise Administration is to be restructured, and from the Netherlands, where coordination and consultative bodies are to be set up to combat Community fraud.

The above table shows that, in terms of organization, the Member States have considerable means at their disposal for the protection of Community own resources and that, to a great extent, this protection is equivalent to that given to their own national revenue.

(b) EAGGF Guarantee Section

The information provided in the national reports has been condensed into the following table, which distinguishes between traditional control structures, specific investigation structures and multidisciplinary structures. As a rule the Member States distinguish between intervention measures, direct aids and trade-related measures. To simplify presentation, however, the latter (which give rise to export refunds subject to separate customs controls) have been omitted.

Organization of EAGGF Guarantee controls				
Member State	Separation of payment/inspection (traditional controls)	Independence and powers of officials responsible for traditional controls	Specific investigation structures	Horizontal and multidisciplinary structures
B	Intervention: no Direct aids: yes	Intervention: yes (economic affairs and health), seem to have extensive powers	Intervention: IMP (Raw Materials Inspectorate) Direct aids: -	IGE (Economic Inspectorate-General)
DK	Intervention: no Direct aids: -	-	-	-

D	Intervention: - Direct aids: -	Intervention: yes (BALM) Direct aids: yes (Länder)	-	
EL	-	Intervention: yes (Nomos) Direct aids: yes (Nomos)	-	Special body for the coordination of controls
E	Intervention: no Direct aids: no	Intervention: yes (agencies) Direct aids: yes (Regional authorities)	-	IGAE (Inspectorate-General of the Central Government) Inspectorates-General of the Autonomous Communities
F	Intervention: no Direct aids: yes	-	Inspectors employed by ACOFA (Agence centrale des organismes d'intervention dans le secteur agricole)	Inspectorate-General of Finances; Inspectorate-General for Agriculture
IRL	Intervention: no Direct aids: no	Intervention: yes (Min. of Ag.) Direct aids: yes (Min. of Ag.)	Intervention: yes (in certain sectors) Direct aids: -	-
I	Intervention: no Direct aids: yes	Intervention: no Direct aids: yes (Min. of Ag.)	-	Guardia di Finanza
L	-	-	-	-
N	Intervention: no Direct aids: no	Intervention: powers delegated to sectoral bodies Direct aids: yes (Min. of Ag.) Trade: yes (customs)	CCG (Control Coordination Group) AID (Inspectorate-General for Agriculture)	PBO (Special investigation service)
P	Intervention: no Direct aids: no	Intervention: yes (agency) Direct aids: yes (Min. of Ag.)	Intervention: - Direct aids: yes	Inspectorate-General of Finances
ÖS	-	-	-	-
SU	-	-	-	-
SV	-	-	-	-
UK	Intervention: no Direct aids: no	Intervention: powers delegated to sectoral bodies Direct aids: yes (Min. of Ag.) Trade: yes (customs)	AFU (the Agency's Anti-fraud Unit)	SFO (Serious Fraud Office)

Most of the national reports discuss trade-related measures, which essentially mean export refunds in the EAGGF Guarantee context. For such expenditure the control bodies in each Member State are independent of those responsible for examining applications and making payments. They form part of the customs authorities and apply centralized controls, operating quite separately from the payment agencies and employing officials who generally enjoy extensive powers.

On the other hand, much less information is available on intervention measures or direct aids.

Where direct aids are concerned, the reports from Germany, Spain, Italy and Austria indicate that primary controls are decentralized in these countries. Details are not provided on how the local administrative units responsible for such aid are supervised, except for references to bodies with very wide powers. In all Member States, however, centralized controls are applied to intervention and trade.

Physical controls are carried out in all Member States in accordance with the Community rules. The quantitative targets are criticized in some reports, which place the emphasis on risk analysis and targeted controls rather than random checks (Netherlands report) or intelligence gathering (Italian report).

Apart from the customs' role in checking export refunds, controls are usually carried out by the payment agency. In a typical situation the controls will be applied by a division or directorate responsible for internal audits or for checks within the agency making EAGGF Guarantee payments. Examples of this are provided by Ireland, where an audit department of the administrative unit concerned carries out the controls required under the Community rules, by Spain, where this task is performed by a control subdirectorate of the payment agencies such as SENPA, and by the United Kingdom, where an Internal Audit Unit has been set up within the payment agency, alongside the sectoral controls carried out by Heads of Policy Division.

Recent developments in the Member States follow this typical pattern. In Greece a Presidential Decree (No 385/1994) altered the organization of the Ministry of Agriculture

by making the Directorate monitoring EAGGF Guarantee expenditure part of the Secretariat-General for Agricultural Policy and International Relations; at the same time, an internal audit division, responsible for sample checks, was set up within the Directorate-General for the Management of Agricultural Markets. Control programmes have been introduced for various sectors (olive oil, fruit and vegetables, tobacco, cotton). Similarly, in Portugal the special fraud-prevention services were made part of the Customs Administration and the National Agricultural Intervention Guarantee Institute in 1993. Luxembourg, for its part, states that a start has been made on establishing a system of controls, which should be completed by the end of 1995.

The French report provides useful information on staff numbers. For example, the physical and administrative controls carried out by the agricultural payment agencies require the equivalent of 200 full-time staff to deal with expenditure on price support and 34 full-time staff to handle direct aids to farmers. Undertakings which have received funds from one of the payment agencies (there are ten government agencies, each specializing in a different production sector) are subject to checks by a central agency (ACOFA) which employs about thirty investigators. A comparative analysis of these structures could usefully be supplemented by similar data on the numbers of staff available to the inspectorates and the powers delegated to them.

Some Member States have control structures which are independent of the payment agencies. This is the case in Belgium, where the IGE (Economic Inspectorate-General) monitors farms and intervention measures, working independently of the inspectorate employed by the BIRB (the Belgian payment agency). In Italy secondary controls are carried out by experts from the Guardia di Finanza, who do not however enjoy the wide-ranging investigative powers of the tax police. In the Netherlands a Control Coordination Group lays down a work programme for the Dutch customs (who deal with export refunds) and for the AID (the Inspectorate-General for the Ministry of Agriculture).

Other bodies mentioned include the Inspectorate-General of Finances (Portugal, France), the Inspectorates-General of the central government and the autonomous communities (Spain) and the various national Courts of Auditors (Austria, Sweden).

Some Member States point out that the reform of the common agricultural policy and the introduction of direct aids have meant changes in the way that controls are organized. In France, for example, about a million files have been fed into the computerized data base used for the purposes of IACS (the integrated administration and control system for agricultural aid schemes). A special CICC training course on the EAGGF Guarantee Section is provided for this purpose. In the Netherlands, the controls in question are the responsibility of the department which implements the rules issued by the Ministry of Agriculture. In addition to the IACS checks, physical checks have to be made on income aids. In France this is done by the payment agencies and the Ministry of Agriculture, while in the Netherlands this task falls to the Inspectorate-General (AID).

The organization of controls on agricultural expenditure, as described by the Member States, is essentially designed to achieve the quantitative targets set by the Community rules but the controls in question are seldom conducted independently of the payment agency.

(c) Structural Funds

The descriptions provided by most Member States were at least as detailed on the management of the Structural Funds as on the controls applied. The bodies administering the funds were described rather than the control structures (internal or external).

No attempt will be made here to compare the various national arrangements for the administration of the Structural Funds; the reader is referred to the national reports, which vary widely. For example, the administration of the European Regional Development Fund (ERDF) may be centralized in a single body which allocates sums to each geographical area or it may be shared out among several ministries under a management-by-objectives scheme which determines the overall allocation to each type of programme, or it may be decentralized to local authorities which enjoy varying degrees of independence.

The controls on the Structural Funds present three distinct features which are not so pronounced in the case of other Community resources or expenditure.

The first of these features is the dominant role of internal audits by the body responsible for implementing Community schemes. The auditing of accounting records is the most common of these controls.

A second feature is the importance of the local authorities, to whom powers may have been delegated or decentralized. Where local authorities enjoying a degree of autonomy are involved in the administration of the Structural Funds, the control arrangements have to be adapted so that the central government respects these powers. As a result, the controls on the Structural Funds are governed by very complex and diverse arrangements.

A third feature is that because the national authorities help to finance structural programmes, "assimilation" is achieved de facto, as can be easily demonstrated: if a programme is jointly financed, the Community share and the national share of expenditure are obviously subject to the same management and control principles.

The following table provides first of all a summary of traditional control structures (i.e. the controls applied by the department responsible for implementing the Community rules and executing the budget) and provides details on three important points. The first of these is whether the funds, which are frequently managed at local level, are subject to centralized or decentralized controls. The second point concerns whether the administration of funds is kept separate from the controls applied. The third point concerns the powers held by the control officials, e.g. whether they may carry out physical controls on the spot and not simply checks on the accuracy of accounting records. The table also contains a column showing whether there are any specific structures for the investigation of frauds and irregularities and gives a list of horizontal and multidisciplinary control structures.

	Fund	Traditional control structures			Specific investigation structures	Horizontal and multidisciplinary structures
		Centralized or decentralized	Separation of payment/inspection	Physical controls/powers of officials		

B	ESF	Centralized/ decentralized 5 departments	No	Physical controls in most cases	No	Court of Auditors - Financial Inspectorate in certain cases
	ERDF	Decentralized - partial description (Flanders)	No			High-Level Control Committee
	EAGGF FIFG	Decentralized	No			
DK	ESF	Centralized	No	Physical controls		Court of Auditors: accounting experts
	ERDF	Centralized Decentralized	No			
	EAGGF FIFG	Centralized Decentralized				
D	All	Decentralized	No	Possible physical controls		Federal Court of Auditors; Länder Courts of Auditors
EL	ESF	Centralized	Yes	Yes, specialist officials		Court of Auditors, Ministry of Financial Affairs
	ERDF	Centralized	Yes	Physical controls by intermediate bodies: sometimes private firms under government supervision	- officials of the Ministry of Financial Affairs - officials of the Inspection Directorate of the Ministry of Economic Affairs	
	EAGGF	Centralized/ decentralized	Yes	Special control structures	Financial Control Directorate and Ministry of Agriculture Inspectorate	
	FIFG	Centralized				
E	All	-	Yes	Special control structures	-	Court of Auditors
F	ESF	100% assimilation with nat. subsidy (1/10 EEC - 9/10 FR)		- physical controls - CICC (1993), controls and systems audits		

	ERDF EAGGF (and 5b)	regional prefects regional prefects				
	5a + FIFG	Decentralized				
IRL	All	Centralized	No			
I	All	Decentralized	Yes, centralized	Tax inspectors	Criminal investigation and tax authorities	1992: Interministerial Anti-fraud Committee (209a)
L	-	-	-	-	-	-
N	ERDF	Decentralized	No		AID (Inspectorate-General)	
	FSE	Decentralized				
	EAGGF FIFG	Centralized/ decentralized				
P	All	Centralized, except autonomous regions	No	No		- audits at ministerial level - Inspectorate-General of Government Departments (Audit)
OS	ESF EAGGF	Centralized and decentralized				
SU	ESF ERDF EAGGF	Very exhaustive description of the various Ministries' powers	Yes	On-the-spot controls by inspectors with special status		
SV	All	in preparation				
UK	ESF	Centralized + Northern Ireland	No	Special Audit Department (92)		National Criminal Intelligence Service Serious Fraud Office
	ERDF EAGGF	Decentralized Centralized	No No	No No		

The table shows that in most cases the controls are essentially of the traditional kind and are carried out by the fund administrators themselves; the documentary checks are not

accompanied by external on-the-spot checks. In some Member States such as Portugal, specific structures have been established so that controls are applied to all aspects of subsidized projects, up to and including payments to the recipient. The United Kingdom has such an audit department to deal with the ESF. In Denmark the introduction of such controls is being considered by an interministerial working party responsible for administering the Structural Funds.

The reports from Greece, Italy and Finland indicate that in those countries the payment and control agencies are separated, the fund administrators at local level being subject to controls by a centralized authority.

In recent years Greece has altered its central control structures. Presidential Decree No 394/1991 set up an Inspection Directorate within the Ministry of National Economy, which is quite separate from the same Ministry's Financial Control Division (ERDF management and payments). For the ESF Greece has established a Secretariat-General for the Management of Community Resources (Act No 2224/94), which includes a Control and Assessment Directorate responsible for physical and administrative controls. In the case of the EAGGF Guidance Section, the Financial Control and Inspection Directorate of the Ministry of Agriculture carries out specific controls if a fraud has been reported or is suspected.

Italy, for its part, gives greater responsibility for controls to the Guardia di Finanza, a multidisciplinary body within which (according to a bill before Parliament) a special Community fraud prevention unit is to be set up. Community fraud prevention sections have already been set up at all regional centres of the tax police and have wide-ranging investigative powers to assist the monitoring committees in their supervision of Structural Fund expenditure at local level.

Finland, which submitted a very detailed report, has set up national control bodies which check on compliance with the instructions issued to the district authorities on the management of the various Funds. The Internal Audit Office of the Ministry of the Interior is chiefly responsible for the ERDF, whilst the Ministry of Agriculture's Control and Surveillance Department handles the EAGGF Guidance Section and the FIFG, and

the Ministry of Employment deals with the ESF (a specialized department may make on-the-spot checks on ESF expenditure).

Lastly, the Spanish report mentions the existence of a control agreement with the Commission. Such agreements, which are provided for by Article 23 of Regulation (EEC) No 425/88, have been concluded with other countries but Spain is the only recipient of aid from the Cohesion Fund which provides useful information on the organization of controls in this area.

Many reports indicate that the Member States entrust external controls on the Structural Funds to bodies such as a Court of Auditors or an Inspectorate-General. It is unlikely, however, that the controls carried out by such national bodies with very wide-ranging powers can be as frequent and as detailed as is required. These bodies are therefore listed only for the record, where no specialized structures exist. Besides, there is seldom any mention of these high-level structures in the context of own resources or agricultural expenditure, although these areas do fall within their field of competence.

(d) Provision of assistance to the Commission

This section deals with assistance provided "when the Commission is responsible for certain expenditure in direct contact with the beneficiary (research, environment...)". Three reports provided information on this matter.

The French report stated that the Commission would first of all have to provide relevant information on the expenditure to be paid directly to the beneficiary. Similarly, the Swedish report indicates willingness to cooperate with the Commission but asks for the information needed for cooperation on fraud prevention. Lastly, the United Kingdom report singles out three areas (training, research, overseas development) where broader cooperation would be desirable with a view to improving the effectiveness of direct

expenditure, with closer coordination of Community and national spending.

Avenues to be explored (point 1.1.2.)

The Commission draws two main conclusions from this comparative analysis of the national organizations for fraud prevention.

A. There is a trend towards the development of multidisciplinary control structures with responsibility for all areas of fraud prevention and with wide-ranging investigative powers. In this way the Member States hope that more effective steps can be taken to combat organized financial crime which is not necessarily confined to one particular sector.

There are many examples of this. In the United Kingdom the SFO (Serious Fraud Office) has multidisciplinary investigation teams; in 1992 the NCIS (National Criminal Intelligence Service) was set up to combat serious crime, including economic crimes. In Belgium the OCDEFO (Central Office for the Prevention of Organized Economic and Financial Crime) consists of members of the Criminal Investigation Department, the Gendarmerie and the CSC (a high level control committee) and, since the Tax Act of 30 March 1994, officials responsible for customs, direct taxation and VAT. A general directive states that the Office's powers extend to all serious financial, economic or tax offences involving organized crime, and in particular fraud to the detriment of the financial interests of the European Union.

Similarly, Italian legislation should shortly assign to the Guardia di Finanza the essential task of monitoring and investigating Community fraud, thus making it a key instrument of a policy laid down at the highest level, namely the Interministerial Committee for the Prevention of Community Fraud. This Committee was set up, in the spirit of Article 209a of the Treaty on European Union, by Act No 142 of 19 February 1992 and answers to the Prime Minister's own department for the coordination of Community policies, where the operational unit of the Guardia di Finanza established by Decree of the Prime Minister dated 11 January 1995 is located.

This trend, of which many other examples could be given, is interesting in that it indicates how national measures are being adjusted to combat national and Community fraud which is not confined to one particular sector, although the level of protection differs from one sector to another. It reflects the special nature of fraud prevention work, calling for large-scale investigations and employing highly specific operational techniques with recourse to substantial powers of coercion, which are not available to all levels of authority. Such lengthy investigations, which require the services of experts in major financial crime, frequently reveal the transnational ramifications of behaviour seriously prejudicial to the Community's financial interests. Investigations of this kind can hardly be undertaken by those responsible for routine controls, let alone those responsible for the administration of funds, that is, those whose main task is to implement a programme of expenditure. They must be undertaken by departments with wide territorial jurisdiction and with expert investigators who can establish operational links with their colleagues in other Member States and with the fraud-prevention departments at the Commission. Of the multidisciplinary units which now exist, several have been established as part of a fundamental reorganization of national government departments. Any such reorganization has to take account of budgetary constraints and the problems of resource allocation (and in particular the availability of staff). This has meant the redeployment of experts from the traditional control departments within the new multidisciplinary units. In the present context this trend is bound to provide greater protection for the Community's financial interests.

B. As regards the administrative organization of fraud prevention, the national reports indicate on the whole that there is a great contrast between the protection of revenue and the protection of expenditure. Where revenue is concerned, customs and tax authorities have had long experience of fraud prevention and apply the same control methods to Community revenue as have proved their worth in decades of use at national level. Both national and Community revenue may thus be said to enjoy a high level of protection.

Where expenditure is concerned, the "assimilation" principle is observed in that the protection available to Community expenditure is the same as that for national expenditure. The rules on public accounts, which protect government spending in all Member States, also apply to Community spending, the great bulk of which is channelled through the national budgets. The protection given to Community interests in this case

is, however, less satisfactory than the protection given to revenue. The organization of controls is often the responsibility of the fund administrators themselves or of departments which are relatively unfamiliar with the techniques for combating organized crime. The staff and the real powers available to inspectors (who are sometimes private bodies) are not specified. There is no information on their powers of investigation (other than those conferred by court order) or the action which inspectors may take on their findings when making on-the-spot checks. The verification of accounts and checks on compliance with formal requirements are more common than on-the-spot checks by experts, particularly in the case of the Structural Funds. It might be worth considering an obligation for inspection bodies to establish programmes of controls like those already operating in some areas of Community policy (e.g. foodstuffs, under Regulation No 4045/89), on the basis of a risk analysis, subject to Commission approval.

There are few examples of departments responsible for the monitoring of Community expenditure which are both independent of the administrative authorities and experienced in the field of fraud prevention. According to the national reports, controls tend to be the responsibility of bodies whose work involves the general auditing of government departments and the verification of accounts rather than detailed checks on Community expenditure.

Between the forces of dissuasion represented by high-level institutions, on the one hand, and the primary checks carried out by the administrator himself, on the other, there is room for specific fraud-prevention controls carried out by specialists in the fight against organized financial crime, who should be independent of the officials administering funds and should hold wide-ranging powers of investigation. If the controls applicable to expenditure could be raised to the level of those currently applied to revenue, the protection of both national and Community finances would be considerably enhanced.

1.2. Evaluation of measures taken

The Commission's aim is not only to obtain an overview of the ways in which Member States apply Article 209a of the Treaty on European Union (legislation applicable, approach adopted to the prevention of Community fraud) but also to evaluate the results achieved by the measures taken. The two years following the Treaty's entry into force (1993 and 1994) have been used as a reference basis.

In accordance with the layout suggested by the Commission, this report evaluates the intelligence, control and investigation measures adopted (1.2.1), analyses the results, i.e. the frauds and irregularities detected (1.2.2), examines the financial impact of these frauds and irregularities (1.2.3) and then considers the administrative and legal measures taken in response (1.2.4).

1.2.1. Intelligence, control and investigation measures

The following table summarizes the replies which the national reports provided concerning four key issues:

- the existence of statistics on the physical or documentary controls carried out;
- the use of risk-analysis methods for control purposes;
- the administrative or judicial inquiries conducted into the irregularities detected by controls;
- initiatives for gathering intelligence relevant to fraud prevention.

Only half the Member States provided statistical data on the controls carried out. Given the difficulty of obtaining such data and the short time available, the figures provided are usually partial, covering only one or two sectors and not broken down in any particular way. They make no distinction between controls and investigations.

In the following table the answers have been condensed to a simple yes or no to provide an overall picture of the situations described in the reports. In the case of Sweden and Finland the replies relate to national finances.

Controls, investigations and intelligence				
Member State	Statistics provided on physical or documentary controls	Use of risk analysis for selection of control targets	Reference to administrative or judicial inquiries	Initiatives for the gathering of intelligence
B	No	No	No	Establishment of a specialized division
D	No	Yes	No	
DK	Yes	Yes	Yes	Coordination of audits in the case of the Structural Funds
EL	No	No	Yes Structural Funds	
E	Yes	Yes	Yes Own resources	
F	Yes	Yes	No	Alerting of customs staff
IRL	No	No	No	
I	Yes		Yes	Introduction of a freephone service. Call for more exchange of information between Member States
L	No	No	No	
N	Yes	Yes	No	Preparation of sectoral profiles
ÖS	No	No	No	
P	Yes	Yes	Yes	Systems audit
SU	Yes Own resources	Yes Customs administration	No	Interdepartmental cooperation initiated whenever necessary
SV	No		Yes	Establishment of an Anti-Fraud Committee within the Ministry of Financial Affairs

UK	Yes VAT and ESF	Yes	Yes	Establishment of a National Fraud Working Group. Introduction of a freephone service (Customs). Use of informers (CAP)

The Spanish report provides relatively detailed statistics not only on customs (targeting of controls on goods in free circulation) and agricultural matters (e.g. olive oil agencies) but also on the Structural Funds, which is unusual. These statistics show that between 1993 and 1994 there was a sharp increase in the number of controls following implementation of the work programme laid down by the National Audit Office. The actual sums controlled increased by 75% in the case of the EAGGF Guidance Section and more than doubled in the case of the ERDF and the ESF.

The Portuguese report states that, to achieve greater effectiveness, a systems audit now precedes the application of controls, the numbers of which have also increased (8 000 external controls in 1993 but 10 500 in 1994, with a significant increase from 2 000 to over 5 000 in the case of the EAGGF Guarantee Section as a result of more frequent checks on cereals).

The report from the Netherlands, for its part, throws light on how traditional customs controls are changing. Whereas the controls which the Community rules require in the sphere of the common agricultural policy have remained at much the same level (e.g. Regulation No 386/90 stipulates that 5% of goods eligible for export refunds must be subjected to checks; this meant a total of 21 753 controls in 1992 and 20 552 in 1993), the number of physical controls on imports fell by more than one third between 1992 and 1993 (157 716 in 1992 and 94 911 in 1993).

According to the Netherlands report, this decrease is attributable both to the establishment of the single market, which has reduced the total number of customs operations, and to wider use of risk-analysis techniques, to which the UK and Netherlands reports are particularly favourable, although the use of risk analysis is also mentioned by several other Member States (see table above).

Germany claims to have improved its control system since it introduced risk analysis with the Commission's assistance in 1993 (for use in the agricultural sector: export refunds, controls pursuant to Regulation No 4045/89). The Belgian customs now have a special risk-analysis division within the DNR (National Investigation Directorate).

France and Denmark emphasize the international aspects of fraud. Denmark has altered its routine physical checks on goods transiting through its national territory, relying on closer international cooperation to keep track of individuals and companies who have already committed irregularities. France points out that no purely national fraud network has ever been discovered and has launched a campaign to raise awareness of this among its customs staff.

Three other Member States (Spain, Portugal, United Kingdom) attach great importance to the training of inspectors, who are required to have followed a special course or to have a university qualification.

Risk analysis is based on the gathering of intelligence, as is particularly clear from the United Kingdom report: a National Fraud Working Group has been set up to improve contact between the banking and financial sector, on the one hand, and investigators, on the other, with a view to setting up a data bank on fraud. In the customs field several sources of information are mentioned: the business world, informers and Commission contacts (SCENT messages). Customs have a specialist VAT intelligence team whose tasks include the analysis of new VAT registrations. In agriculture, mention may be made of the computerized checks on direct aids under the IACS system and the trials of satellite monitoring as a control tool. To sum up, it would appear that in this part of their national reports the Member States have been more willing to describe qualitative changes than to provide data on the frequency, thoroughness and planning of their respective controls and investigations. Although reference is occasionally made to administrative and judicial inquiries, the statistics do not indicate any link between controls and investigations. Words rather than figures are used to demonstrate that the quality of controls has been improved.

The layout suggested by the Commission made a distinction between controls and investigations to ensure that Member States would provide a description of the methods

used in each case. For example, investigations may be initiated once controls have revealed irregularities (i.e. the investigation is a continuation of the control operation) or as a result of the processing of intelligence (i.e. direct action is taken without any controls intervening).

1.2.2. and 1.2.3. Results: frauds and irregularities detected; financial impact

In almost all the national reports these two sections of the layout proposed by the Commission have been treated as one. There is some logic in discussing the frauds and irregularities detected under the same heading as the sums involved (a), but the question of the recovery/collection of the amounts concerned (b) will be discussed separately from out-of-court settlement (c).

(a) Frauds and irregularities discovered and amounts concerned (statistics, case study, typology)

The Member States have endeavoured to provide a substantial range of statistics. The other two subjects (case study, typology), however, have been given such superficial treatment that no worthwhile conclusions have been drawn from the analysis of exemplary cases e.g. those presenting special problems (transnational fraud) and no typology has been drawn up, although this could be done on the basis of Member States' experience of risk analysis (identification of high-risk sectors, assessment of sectoral variability, offender profiles). The statistics should have accounted for only one third of the information provided in this section. The table below summarizes the information contained in the national reports.

Statistics, typology, recovery				
Member States	Description of results in each sector	Attempt at typology	Provision of statistics on frauds and irregularities	Provision of statistics on collection and recovery
			If Yes, comparison with IRENE base	If Yes, comparison with IRENE
B	YES	YES except Structural Funds	YES except Structural Funds	YES except Structural Funds
			Comparable data	Comparable data

D	YES except Structural Funds	YES	YES	YES EAGGF Guarantee
			Comparable data for EAGGF Guarantee Different data for own resources	Comparable data
DK	YES	NO	YES except own resources	YES except own resources
			Comparable data	Different data
EL	YES	NO	YES	YES
			Identical data	Different data
E	YES	YES	YES	YES
			Different data	Different data
F	YES	YES	YES	NO
			Different data	
IRL	YES except Structural Funds	YES	YES own resources	YES own resources
			Different data	Different data
IT	YES	YES	YES	YES
			Data taken from this base	Data taken from this base
L	NO	NO	NO	NO
N	YES	NO	YES (EAGGF Guarantee)	NO
			Comparable data	
ÖS	NO	NO	NO	NO
P	YES	YES	YES	YES
			Comparable data	Different data
SU	YES	YES	YES	YES
			Data not comparable	
SV	NO	NO	NO	NO
UK	YES General description	YES	YES except Structural Funds	YES except Structural Funds
			Comparable data	Comparable data for EAGGF Guarantee Different data for own resources

The distinction between frauds and irregularities has not been made by the Member States, which treat irregularities (and notify them to the Commission) in terms of the sums involved rather than in terms of the seriousness of the offence and whether it was intentional or organized. In the EAGGF context, however, Portugal does refer

to the Commission document which points out the importance of whether the irregularity is intentional or not (Doc. VI/680/89). The Netherlands report also raises this point in connection with the Structural Funds, emphasizing that it is sometimes difficult to make a distinction between a fraud and an incorrect application of the rules.

The United Kingdom, which does not record frauds separately from irregularities, explains its high total by the fact that most of the irregularities were minor offences involving small sums. The United Kingdom accounts for between 13% and 14% of all irregularities notified by the Twelve in 1992 and 1993: 131 of the 1028 reported in 1992 and 180 of the 1297 reported in 1993. In terms of value, however, the proportion is much smaller (between 4% and 7%).

In all other respects the descriptions provided by the Member States were less than complete. Cross-checks with the Commission's IRENE base (which is fed the data reported by the Member States) are revealing: sometimes the data are identical or highly comparable, although in two cases there are significant discrepancies. In the case of own resources the data are difficult to check because the report which the Commission receives on the total amounts outstanding does not provide a breakdown showing the sums defrauded. In the case of EAGGF Guarantee expenditure, on the other hand, homogeneous results are available, since the precise amounts involved have to be notified. Lastly, in the case of the Structural Funds, several Member States point out that Regulation No 1681/94, which lays down the rules for declaring expenditure to the Commission, came into force only recently (1 July 1994) and that, as a rule, there has been insufficient time to collect the relevant data.

Where a comparison can be made between the sums defrauded (and detected) in 1993 and 1994, the figures show a rise, ranging in some cases up to a threefold increase. Caution must, of course, be exercised when analysing the statistics on detected frauds, which might indicate an increase in the activities of fraud prevention departments or an improvement in the reporting of statistics rather than any real increase in fraud itself.

The German report, for example, states that the sums involved in frauds to the detriment of the EAGGF Guarantee Section increased from ECU 20.3 million to ECU 33.7 million and that the sums defrauded from traditional own resources rose from ECU 23 million

to ECU 86.4 million. The number of cases reported was also on the increase, but it is reasonable to assume, like the German report itself, that these figures are attributable to closer targeting of controls as a result of the risk-analysis techniques introduced in 1993. Generally speaking, one has to allow for more accurate recording of detected fraud, as the higher figures are unlikely to indicate a spectacular expansion of fraudulent activities detrimental to Community interests. Only some years from now will it be possible to make any proper assessment of the fraud statistics, hence the need to present and analyse case studies and to record any facts on which a typology of Community fraud could be based.

No link is made between the number of controls carried out and the number of irregularities discovered, except occasionally in relation to the agricultural sector. The Netherlands report states that under the national control programme for 1993/94, provision was made for 336 controls, of which 289 were seen through to a conclusion, most of them (227) involving the inspection of accounts in excess of ECU 200 000. The number of irregularities reported under Regulation No 595/91 was 59. The French report also establishes a link (in the EAGGF Guarantee context) between the controls carried out and the irregularities discovered: 15% of controls led to 178 firms being asked to make repayments; in three quarters of these cases, the amounts concerned were less than ECU 10 000 (1994 figures). In France the number of corrections has been on the decrease, falling from 274 in 1992 to 220 in 1993 and 178 in 1994. Under the IACS system, penalties were imposed on 13 000 beneficiaries of aids for crop-growing, i.e. a quarter of all the farmers inspected. One tenth of this number (1 300) were penalized by the total withdrawal of aid. Among livestock farmers the percentage of those penalized was lower (4%).

The report from Portugal indicates that in 1994 the number of EAGGF Guarantee controls was higher than in 1993 (5 000 as compared with 2 000); the number of irregularities detected was down, however, from 193 to 103 whilst the amounts involved remained stable at roughly ECU 4.5 million.

Turning from the agricultural sector, one might compare the 180 000 detailed controls carried out by the French customs with the number of fraud cases reported in the field of traditional own resources (151 cases involving ECU 27.5 million in 1993 and 221

cases involving ECU 72.4 million in 1994, although these figures include the sums defrauded in export refunds).

Certain Member States (shown in the table as having attempted to provide a typology) identify particular types of fraud. The French report, having mentioned the main fraud cases in 1994, outlines a method of risk analysis which could be developed from objective bases such as product levies, high levels of aid, or products or neighbouring countries to which different tariff rates apply. The other reports mention the products and procedures with which fraud is particularly associated.

The most frequent type of fraud is that involving tobacco and cigarettes. It is mentioned in the reports from Germany, Belgium, Spain, France, Ireland and Italy. The agricultural products singled out in national reports include beef (mentioned by Belgium, Germany, France and the United Kingdom), sheepmeat (Germany, Italy and Portugal), milk products (Germany, Spain, Italy and the United Kingdom), cereals (Germany and Portugal) and olive oil (Spain, Italy and Portugal). Industrial goods are rarely mentioned, with the exception of textiles. Customs offences receive the most frequent mention, with several reports dwelling on frauds affecting Community or international transit (Belgium, Spain, France and Italy).

The Commission would have preferred closer attention being paid to typology and case studies so that guidelines could have been worked out for fraud prevention on the basis of specific cases, with explanations for any successes achieved and observations on the difficulties encountered and needing to be overcome. In the Commission's view, there is a need not only for statistics based on mandatory reports but also for accurate information on the real problems of fraud prevention, particularly in the transnational context (including organized financial crime) so that the Commission can adapt its strategy to the needs of the Member States and ensure that they have the appropriate instruments at their disposal.

The Commission and the Member States will have to work together on this material, which reflects the real situation, so that a multiannual action programme can be drawn up which is commensurate with the extent of the problem and takes account of trends in fraudulent activities.

(b) Collection and recovery of sums due

On the basis of the national reports the Commission has drawn up two summary tables, one concerning the recovery of Community own resources and the other concerning the recovery of undue expenditure.

· Recovery of own resources

(all amounts are expressed in millions of ecus; conversions from national currencies to the ecu are based on the rate for September 1995; the data taken from the IRENE base reflect the situation as known at 31 August 1995; where boxes have been left empty, there has been insufficient accurate information to answer the questions posed)

Recovery of own resources			
Member States	Amounts involved in frauds and irregularities	Amounts recovered (in brackets: rate of recovery according to national report)	IRENE base: amounts recovered in 1991-94 (rate of recovery)
B	1993: 25 (115 cases involving over ECU 10 000) 1994: 66.1 (138 cases)	1993: 2.2 (8.8%) 1994: 0.967 (1.5%), for 48 files closed	8.3 (8.3%)
DA	Revenue 1993: 585 repayments demanded, totalling ECU 7.4 million Checks on travellers: 7 574 customs reports, corresponding to ECU 9.8 million Control of declarations 1993: 24.9 repaid 1994: 10.9 repaid		2.8 (41%)
D	1993: 23 (202 cases) 1994: 86.4 (790 cases)		8.2 (4%)
EL	1991-94: 3.2 (66 cases)		0
E	Total duties reassessed: 1993: 16.9 1994: 17.2	1993: 11.1 (66%) 1994: 10.3 (60%)	1 (7.3)
F	1993: 5 513 infringements in agriculture: duty involved: 14.4 21 188 infringements relating to industrial goods; duty involved: 13.1 1994: 3 461 infringements in agriculture; duty involved: 25 27 127 infringements involving industrial goods: 40.4		5 (5.5%)

IRL	1992/93: 2.4 (import duties evaded) January-June 1994: amounts unpaid: 0.6	50% of this amount was recovered 40% of this amount was recovered	1.5 (12%)
I	1991-94: 92.5 (408 cases)	0.7 (0.8%), corresponding to 41 files closed	0.7 (0.6%)
L			
N	Report states total amount of duty reclaimed without separate indication of fraud cases		0.12 (1.3%)
ÖS			
P	1993: 1.3 (of which 0.8 in cases involving over ECU 10 000) 1994: 1.8 (of which 1 in cases involving over ECU 10 000)	1993: 0.55 (42%) 1994: 0.5 (29%)	0.74 (24%)
SU			
SV			
UK		1993-94 Rate of recovery in cases concluded: 98.86%, corresponding to ECU 46.4 million ECU 0.533 million (1.14% of final figures) was deemed irrecoverable and written off	1.95 (1.8%)

Meaningful comparisons are often difficult to make since the data provided are not homogeneous. In the case of the United Kingdom a very high rate of recovery (98.86%) was obtained by considering only those recovery procedures which had been taken to a conclusion, leaving only 1.14% of own resources deemed irrecoverable and thus written off. The balance has not, in fact, been recovered but is still to be recovered. On the other hand, the low Italian rate (0.8%) was obtained by considering the number of cases wound up in relation to the total amount of own resources due. Belgium, Spain, Ireland and Portugal, however, provide a basis for comparison between the total own resources to be collected and the corresponding amounts recovered. The rate of recovery falls short of 50% in all cases except Spain, where all reassessed duties are taken into account (and not simply the amounts defrauded).

The data are more reliable where the sums defrauded are in excess of ECU 10 000, for such cases have to be reported to the Commission every six months (Regulation No 1552/89), whereas there is no such obligation to report the sums actually recovered.

The national reports devote only a few lines to the recovery of own resources, even though it is essential to the implementation of the "assimilation" principle. Traditional own resources must be collected with the same efficiency as national resources, but the reports do not demonstrate that this is so. In most cases the facts on which any opinion could be based have been omitted.

No mention is made of the legislative texts which give priority to public creditors (e.g. in cases of fraudulent bankruptcy), with the result that it cannot be ascertained whether the Community creditor is treated in the same way as the national creditor (with the exception of the Netherlands). The assimilation principle requires, however, that Community tax entitlements (such as customs duties) must be given the same priority as entitlements that are purely national (direct taxation) or primarily national (VAT).

The question concerning recovery procedures has thus gone unanswered. The replies should have given a picture of the structures responsible for recovery (indicating whether they were singular or dual in nature and whether identical procedures were used for traditional own resources and VAT). The links between the departments responsible for recovery and other investigative departments have not been described. If these links were known, it would be easier to gauge (in the course of financial monitoring at Community level) what stage of the recovery procedure had been reached by the Member State.

To prevent the cancellation of debts, the periods of limitation and the rules on the suspension of time limits should be harmonized.

Denmark, for its part, would like to see improvements in the mutual assistance arrangements relating to recovery, which are governed by Council Directive 76/308. This Directive should be amended to take account of the single market and so that Member States can provide mutual assistance with the recovery of own resources.

France draws attention to the active contribution which it is making to the smooth operation of the single market. It notifies the country of entry, which is competent to recover amounts and prosecute offences, of the outcome of its checks on goods in free circulation. This approach could be adopted by all concerned as part of the harmonization of recovery procedures. It helps to ensure that controls at external frontiers are more effective overall.

Similarly, the rules on the lodging and forfeiture of securities should be clarified and harmonized.

- **Recovery of undue expenditure**

(all amounts are expressed in millions of ecus and relate to the EAGGF Guarantee Section unless otherwise specified; conversions from national currencies to ecus are based on the rate for September 1995; the data taken from the IRENE base relate to the EAGGF Guarantee Section and reflect the situation as known at 31 August 1995; any boxes left empty indicate that insufficient accurate information was available to answer the questions posed)

Recovery of expenditure			
Member States	Amounts involved in frauds and irregularities	Amounts recovered (in brackets: rate of recovery as a percentage of the total amounts to be recovered, according to national report)	IRENE base: amounts recovered in 1991-94 (rate of recovery)
B	1993: 6.1 (21 cases involving more than ECU 4 000) 1994: 7.1 (42 cases)	1993: ECU 50 332 (0.8%), 15 files still open, including 12 relating to export refunds (5.9 at stake) 1994: 0.250 (3.5%), 18 files closed	0.866 (5%)
DA	1993: 5 (73 cases involving over ECU 4 000) 1994: 3.3 (91 cases) **EAGGF Guidance** 1993: 35 cases detected 1994: 47	1993: 52%	5.4 (51%)
D	1993: 20.3 (177 cases) 1994: 33.7 (226 cases)	1993: 3.8 for 99 cases (18.7%) 1994: 3.3 for 109 cases (9.8%)	12.6 (19%)
EL	**EAGGF Guarantee and Structural Funds** 1991-94 figures taken from Commission's last annual report	**EAGGF Guarantee and Structural Funds** idem ESF - amounts recovered: 1.2 (1990-93 programmes) 1.8 (8%) for 69 cases (ECU 0.14)	58.3 (67.5%)

E	1992/93: 5.8 (175 ex post checks) 1993/94: 28 (96 ex post checks) **Structural Funds:** 1993: EAGGF Guidance and Fisheries: 0.6 (21 cases); ERDF: 1.9 (18 cases); ESF: 6.6 (80 cases). 1994: EAGGF Guidance and Fisheries: 2.8 (105'; ERDF: 11.6 (17); ESF: 15 (397)	1992/93: 0.6 (10.3%) 1993/94: 0.2 (0.7%) **Structural Funds:** 1993: EAGGF Guidance and Fisheries: 0.14 (23%); ESF: 1.4 (21.2%) 1994: EAGGF Guidance and Fisheries: 0.12 (4.3%); ERDF: 1 (8.6%); ESF: 0.3 (20%)	2.4 (2.9%)
F	**Structural Funds**: corrections amounting to: 1993: 26 1994: 33		17.6 (32.5%)
IRL			2.34 (38%)
I	1991-94 figures taken from Commission's last annual report	1991-94 figures taken from Commission's last annual report	93.3 (16.7%)
L			
N			11.4 (50%)
ÖS			
P	1993: 4.5 (17.2 in expenditure) 1994: 4 (5.3 in expenditure) **Structural Funds (1994):** ERDF: 0.51 (0.95 in expenditure) ESF: 0.06 (0.11 in expenditure) EAGGF Guidance: 0.02 (0.03 in expenditure).	1993: 0.7 (15.3%) 1994: 0.5 (29%) **Structural Funds (1994):** ERDF: 0.27 (52.6%) ESF: 100% EAGGF Guidance: 0%	1.23 (8.7%)
SU			
SV			
UK	1991-94: 26.4	1991-94: 12.7 (48%)	11.6 (43.3%)

The reports provide very little information on how expenditure unduly incurred is recovered. The Finnish report mentions a procedure whereby the body responsible for the administration of funds is given the task of recovering expenditure under the EAGGF Guarantee Section or Structural Funds. In Portugal the payment agencies have to call in the securities if an irregularity is detected before their release; otherwise the recovery of expenditure is delayed by the slowness of judicial proceedings.

Broadly speaking, for the purposes of both repayment (expenditure) and recovery (revenue), stronger links should be developed between the departments responsible for controls and investigations and those responsible for repayments or recovery. Although

in most cases the Member States claim to have a department responsible for collection and recovery procedures, it is essential that such departments are informed of any investigations as soon as possible. Otherwise frauds and irregularities are detected but the amounts defrauded cannot be recovered because proceedings have been initiated at too late a date (periods of limitation, cancellation of debts).

Information channels must be improved and the details to be provided must be harmonized. The Commission, for its part, must be in a position to provide the budgetary authority with all the facts and figures relevant to an investigation. These cannot be obtained by the investigation teams alone, for they relate essentially to the financial consequences and the eventual fate of the amounts concerned.

(c) Out-of-court settlement of the amounts concerned

This type of settlement is not clearly described in all the national reports. It appears to have been omitted by five Member States or else treated in a wider context together with the question of the out-of-court settlement of penalties.

The purpose of this section was to check whether the various national systems observed the principle that no compromise was possible on sums due (the settlement of penalties was to be dealt with below, under point 1.2.4). Several reports did deal with settlement at this stage, although in most cases the wording cast doubt on the scope and purpose of this exercise.

Italy and Portugal were the only Member States which made it clear that out-of-court settlements were not part of their legal system. Finland explicitly ruled out any such settlement in the customs context. France, for its part, stated that one of its chief concerns was to safeguard the effectiveness of its existing criminal law as applied to customs matters, but the French report did not mention the concept of "settlement". Luxembourg and Belgium completely ruled out any settlement of the principal (the duty evaded), although this did not include fines. The Commission had hoped for reaffirmation of the principle that no deals could be struck on the amounts involved but the descriptions given in the reports indicate that confusion still reigns as regards settlement of the amounts concerned and settlement of the fine. To avoid any departure

from the layout proposed, further consideration will be given to these matters in point 1.2.4 below.

1.2.4. Follow-up measures

(a) National and Community administrative penalties

The Member States did not reply to the question on national and Community administrative penalties. In particular, they failed to give any information on which authorities could impose such penalties or on the number of cases.

According to the reports, the national authorities make effective use of Community CAP penalties, designed to ensure that the system of subsidies and intervention measures is implemented in strict accordance with the rules and in a uniform manner. However, with the exception of a few pieces of information in the Danish report on Community penalties in connection with the integrated management system, there were no statistics showing how widely Community administrative penalties were used in practice.

There is a wide variety of national administrative penalties, which are simply not mentioned in some of the reports. However, there are administrative penalties for the majority of cases, most of them geared towards safeguarding revenue.

The Spanish report mentions a system of national administrative penalties covering all cases of fraud concerning subsidies, whether at national or Community level. These penalties, provided for by the Spanish law on public spending (1991), are complemented by other penalties under general tax legislation. The Portuguese report also describes certain national penalties regarding expenditure, e.g. removal of entitlement to subsidies, withdrawal of approval for olive oil producers, refusal to acknowledge good repute, needed to qualify for assistance etc.

The United Kingdom does not use national administrative penalties for the Guarantee Section of the EAGGF or the Structural Funds, but does for VAT (more specifically for irregularities involving small sums, failure to register, failure to present accounts etc.) and customs (civil penalties, provided for by the Finance Act 1994) and will start

imposing them in 1996 for breaches of customs regulations. The same goes for the Netherlands: when the tax is recovered, the collector or customs representative may fine the debtor an amount equal to or greater than the tax due.

There are no general systems of administrative penalties in any of the Member States. Instead, the rules on penalties tend, as in Belgium, to be split between a number of measures, each covering a specific area.

The conclusions set out in part 1.1.1 are also true of administrative penalties. If we wish to prevent the various approaches to dealing with fraud from diverging too much, we must push for greater harmonization and homogeneity of national administrative penalties, ensuring that Community expenditure is systematically covered.

(b) Criminal penalties

According to the information available, several dozen prosecutions are brought each year for fraud affecting the Community budget. It is difficult to make a direct comparison given the diversity of the reference bases. For example, Portugal took the number of cases opened (34 in 1993 and 46 in 1994) and the number closed in the same years (59 and 100 respectively). The United Kingdom took 1992 and 1993 as its reference years and gave figures for the Guarantee Section of the EAGGF (20 prosecutions in 1992 and 31 in 1993) and VAT (136 and 109 respectively). Belgium provided statistics on cases brought by the customs authorities (47 in 1993 and 24 in 1994). In the cases which were settled in those years (11 in 1993 and 8 in 1994), only 1% of the total amounts in question were actually recovered. The Spanish report gave details of cases pending (17) and referred to the prison sentences passed in certain fraud cases affecting the Guarantee Section of the EAGGF. It also contained information on a number of cases concerning the Structural Funds which had been referred to the legal authorities by the relevant management bodies or inspectorates. The majority of reports did not refer to the Structural Funds in the section on follow-up measures.

The Netherlands reported higher figures (447 in 1992 and 369 in 1993), but these referred to all cases brought to the attention of the public prosecutor by the tax information and inquiries department (customs and tax fraud, with no separate figure for

fraud affecting the Community Budget). Only the Italian report quoted a higher figure than this. At the end of 1993, there were 1489 prosecutions pending for fraud affecting the Community budget. In the course of that year, 287 verdicts had been delivered, with 61 convictions. Following a clamp-down, 66 convictions had been secured by the end of the first half of 1994. The Italian and the Belgian reports both called for more effective statistics to help them monitor prosecutions.

We support this idea as a way of providing information on the outcome (dismissal, out-of-court settlement, prosecution, conviction, recovery etc.) of criminal cases of fraud affecting the Community budget. It would also satisfy the Budget Authority's reasonable requests for this type of information. A more detailed analysis is needed here.

(c) Link between administrative and judicial procedures

The reports reveal that, in most Member States, administrative and judicial procedures exist side-by-side. The UK's report gives the most detailed explanation of why both administrative and criminal penalties are needed: they serve different functions, with the former being used to ensure sound management of the Community's finances and the latter to punish serious offences. The French report, on the other hand, admits on the very first page that the co-existence of two parallel procedures is a major cause for concern. The Spanish report indicates quite clearly that national administrative penalties are not imposed in cases where criminal proceedings are brought.

However, the fact that there are two procedures and two sets of penalties does not prevent the courts from taking precedence. In Luxembourg, for example, administrative proceedings can be suspended when a case involving financial resources is referred to an examining magistrate. Similarly, the Greek report reveals that administrative proceedings may be suspended until the criminal proceedings have been closed.

The principle of the precedence of the courts is particularly strong in Italy. When a fine is not paid, the criminal court has jurisdiction over the criminal offence and the administrative penalty, and will adjudicate on both in a single judgment. In Germany, an administrative penalty imposed in a case involving customs or taxes may be contested in

the criminal court, which must suspend proceedings if a preliminary ruling is required from the administrative or tax courts.

The UK report suggests that Member States be allowed under Community legislation to defer the imposition of administrative penalties until legal proceedings have been closed. This would enable them to impose a harsher administrative penalty if it was shown that the offence was committed with intent.

At the other end of the spectrum, the Dutch report takes the *non bis in idem* principle to mean that it is not possible to press criminal charges against someone and impose an administrative fine. Consequently, tax or customs fines are lifted when criminal proceedings relating to the same facts are finally closed, even if the outcome is an out-of-court settlement.

(d) Link between preliminary and judicial stages

The national reports contain little information in this section. In the United Kingdom there are no official preliminary proceedings, though the Criminal Justice Act 1987 deals with preliminary matters more formally. Most of the reports avoid the issue.

The Dutch report reveals that, in 1993, notification, settlement and prosecution guidelines were introduced with the aim of clarifying what action should be taken in response to tax and customs offences. The public prosecutor and the investigation service are to cooperate to consider factors such as the amount involved, previous offences, forgery and the implications for other transfers of Community revenue. The purpose is to use the criminal justice system to the best effect in dealing with fraud. The Portuguese report describes yet another approach. Three authorities are involved when fraud is detected: the disbursing authority, the relevant committee within the central administration and the public prosecutor.

In the section on cooperation, some Member States have chosen to stress how important it is for the departments involved in both the preliminary and the judicial stages to work together.

(e) Referral of case to judicial authorities

The Member States divide into two categories: those which require that the case be referred to the legal authorities (e.g. Greece, Italy, Spain and Portugal) and those which encourage out-of-court settlements (e.g. Belgium, Ireland and the Netherlands). The reports do not give statistics, except the UK report, which discloses the amounts recovered through out-of-court and amicable settlements in connection with the common agricultural policy and own resources. The Spanish clearly states that national administrative penalties are not applied when criminal proceedings are also in course.

There is really only one area where the reports provide enough information to enable a rough comparison to be drawn: out-of-court settlements relating to traditional own resources. The results are summarized in the table below.

Principles governing out-of-court settlements: traditional own resources			
Member State	Possibility of out-of-court settlement for customs fraud	Authority responsible for out-of-court settlement	Discretionary powers or criteria for using out-of-court settlement
B	Yes, under section 263 of the General Customs and Excise Act	Customs administration	Out-of-court settlement not permitted for premeditated fraud or in case where there is sufficient evidence for legal action.
DK	Yes, for customs duties (not specified for agricultural levies)	Customs administration	Possible for amounts too small for prosecution under criminal or customs law
D	Point not dealt with		
EL	Point not dealt with		
E	No out-of-court settlement allowed		
F	Point not dealt with		
IRL	Yes (in connection with own resources, according to report)	Customs administration	Discretionary powers
I	No		
L	Yes	Information not given	Out-of-court settlement possible for fine, not for amount due.
NL	Yes (through legal procedure)	Public prosecutor	No particular criteria (Article 167 of the criminal code applies - principle of appropriateness of legal action

P	No		
Ö	Point not dealt with		
SU	No: no out-of-court settlement possible for customs		
SV	Point not dealt with		
UK	Yes	Customs and Excise	Out-of-court settlement used as secondary option. Legal action is taken wherever possible.

Three other pieces of information can be extracted from the reports: the Dutch report reveals that amicable settlements are rare in the case of irregularities relating to the common agricultural policy; the Irish that criminal proceedings are uncommon in cases involving own resources and the Belgian that 5% of customs fraud cases reach the courts.

Belgium, Denmark and the United Kingdom explain that certain criteria relating to the seriousness of the offence are taken into account. Out-of-court settlements are possible only where there was no intention to defraud or where the amounts involved were to small for prosecution or other legal action.

As in other parts of the report, little mention is made of VAT cases in the section on out-of-court settlements. Two Member States report that there is provision for out-of-court settlements and that the rules are the same as for traditional own resources - evidence of a parallel approach for two different types of Community own resources. In Denmark, the customs and VAT authorities use out-of-court settlements in their respective areas of activity where the amount in question are too small for prosecution. In the Netherlands, the public prosecutor may opt for an out-of-court settlement for VAT (as for customs duties) if legal action is deemed inappropriate. Only the UK report gives figures for the amount of VAT recovered through amicable settlements. These relate to 1991-94.

The other Member States gave no reply or provided information on traditional own resources only, making it impossible to assess the similarities between the various types of own resources or to conclude whether out-of-court settlements are used for irregularities affecting one source of revenue more than for another.

More often than not, the reports neglected to deal with out-of-court settlements for fraud affecting expenditure. These are not allowed in principle under Italian, Spanish or Portuguese law. In the Netherlands, on the other hand, out-of-court settlements (which are themselves legal procedures) are possible for fraud affecting expenditure. The UK also has a procedure for making out-of-court settlements with recipients of CAP funding but its use by Customs and Excise is restricted to cases of administrative error. The Finnish authorities have discretionary powers to settle out of court but the report indicates that compromise solutions are rare.

In Member States where there is no provision for out-of-court settlements, the responsibility for bringing legal action lies with the authority which discovered the offence. In the UK, which does allow out-of-court settlements, the head of the Serious Fraud Office may, on his own initiative, investigate cases which he thinks involve serious or complex fraud. He may also prosecute.

The lack of detailed replies in the national reports makes it impossible to assess whether or not the rules governing out-of-court settlements for fraud affecting Community revenue and expenditure are the same as those for fraud affecting public funds at national level. The only clear conclusion that can be drawn is that there is a need for greater clarity and openness with regard to the guiding principles, the more detailed, practical rules and the scope for out-of-court settlements. In view of the results of the study, the Commission intends to raise the issue of out-of-court settlements again at a later date. In particular, it wishes to examine the principle of bringing the "assimilation principle" and the effectiveness of administrative and criminal penalties.

(f) *Partie civile* or equivalent measures

Italy's report points out that the Commission is entitled to be party to criminal proceedings and encourages it to play a more active role. The Commission enjoys the same right in Spain, though it has never exercised it according to the Spanish report. Like Spain, where the Advocate-General is party to civil proceedings in cases of fraud affecting the Community's financial interests, the UK also uses civil actions to recover funds. The motivation is financial. It should be possible to carry out a more detailed

analysis of the role of the Treasury, which represents the Community's financial interests in criminal proceedings.

In other cases, the purpose of the Commission's involvement would be to help prove in the criminal courts that the alleged fraud had been committed.

(g) National measures taken or planned to avert risk of repetition

The aim here was to collect information on which to base ideas for action at Community level. However, the heading was often taken to refer to measures against recidivism (double penalty under the General Custom and Excise Act of 7 July 1994 in Belgium and heavier fines in Luxembourg). The target is systematic fraud, committed by people for whom it is their main activity.

Italy and Portugal both draw attention to the effectiveness of precautionary measures such as suspending payments or restricting access to certain schemes. This approach presupposes that the authorities responsible for making payments are informed when a fraud offence has been committed so that it can stop payments to the businesses in question.

The UK reports that it has undertaken a study on the methods used by the perpetrators of fraud. Information on VAT and customs-fraud techniques has been distributed within the relevant departments to help them with prevention. Liaison officers working on tax fraud have been sent on exchanges to Belgium, France and the Netherlands.

(h) Suggestions for Community measures

The measures suggested by the Member States can be broken down into three basic groups, summarized by three words: simplification, harmonization and cooperation.

Legislative simplification is mentioned in a number of reports (e.g. France, Luxembourg and the Netherlands). Exactly what such simplification should entail has yet to be specified - separately for each area no doubt. For example, the Spanish report refers to the need for further reforms to agricultural rules in order to arrive at a simple, uniform

system of offences and penalties. The Dutch report suggests paying greater attention to problems with implementation, monitoring and application. It recommends that the Commission launch study programmes to examine the application of standards (including an examination of the cost of application as a proportion of the overall cost of a policy) and, at the same time, assess programmes already implemented. This suggestion ties in with the Dutch authorities' idea of carrying out regular audits to measure the effectiveness of Community arrangements. Taking part in these national activities would be one way for the Commission to become involved in assessment.

Harmonization is called for in a number of areas: harmonization of penalties to ensure that the perpetrators of fraud are dealt with in the same way in all Member States (Belgian report) or to ensure that intra-Community tax fraud is dealt with in a uniform manner (UK report) and harmonization of prevention measures - the French report suggests that the Community adopt a regulation on monitoring of the Structural Funds and standard administrative penalties, and raises the issue of uniform status of inspectors arrangements. The UK also suggests considering the possibility of giving investigators similar powers.

There is actually a separate section of the report on cooperation but we will summarize the suggestions made in this part of the report. Portugal wanted to see stronger links between the national authorities and the Commission, especially UCLAF, in the shape of exchanges of information on businesses, training at Commission level on Community regulations and risk analysis techniques, and exchanges between the Member States. Greece called for the creation of special investigation and prosecuting units in all the Member States. These would be in direct contact with the relevant Commission departments. Spain wanted controls on Community transit operations to be more coordinated and called for greater coordination between national and Community controls.

Avenues to be explored (1.2.)

This section on the effectiveness of anti-fraud measures is based on the practices established by the budgetary authority (Parliament) and the Commission. The aim is to extract the maximum benefit from the knowledge we have of the field based on

information collected and studies of model cases. We must first deal with the questions of principle before putting forward ideas on the type of measures which might be taken to reduce the risk of fraud.

The Member States report an increase in the figures for fraud between 1993 and 1994, the two reference years, though it is hard to say whether the figures reflect a genuine increase in fraud, better statistics, more effective controls or improved detection. There is also evidence of a growing awareness of the transnational character of fraud, with many of the Member States citing this as the motivation behind the measures they are taking (transit controls in Denmark, checks on goods in free circulation in France, exchange schemes for tax liaison officers in the UK etc.)

The results give a broad idea of the level of assimilation. Better information is needed however. It is impossible to assess how well Article 209a is being implemented in practice without certain key data, such as the number of controls carried out in each area, the number of in-depth inspections carried out following on from the controls (or as a result of information from other sources), without the results of the controls and investigations (into simple irregularities and cases of fraud) and without the most basic information as to the measures taken (e.g. recovery and appropriate administrative and legal penalties). The Community is quite obviously only part-informed at present; it needs to know about all the links in the chain before it can measure the effectiveness of the anti-fraud measures taken and assess alterations as they are made.

The Commission's thoughts on these findings, at this stage of the study, can be broken down into three strands.

A. To make it easier to plan measures and tailor them as closely as possible to the situation on the ground, a greater amount of more detailed information is required and we need better statistics on the results of anti-fraud measures at every stage from controls to recovery and ordering of penalties. This will make it easier to assess the level of assimilation of the Community's financial interests with the nations' and this, in turn, should prompt the national authorities to make the necessary adjustments. To improve the quality of the analysis even further, we need information which will enable us to compare recovery rates for the various types of tax revenue, the number of out-of-court

settlements and the amounts involved, the number of controls and in-depth investigations relating to national finances on the one hand and Community finances on the other.

B. In certain areas the only way of making improvements is to alter national practices to make them more similar at Community level. This goes for controls (comparable level of monitoring throughout the Community), recovery rules (time-limits, interruption of time-limits, interest on late payments, recovery through offsetting etc.), privileges granted to the national treasuries in respect of Community debts, administrative penalties and rules governing their imposition. The Commission agrees with the view expressed in some of the national reports that the Community must provide a strong and steady impetus if the above improvements are to be made and incorporated into the regulatory framework.

C. The national reports reveal a desire for simpler, more effective rules. The Commission feels exactly the same way. A maze of excessively complex regulations just makes it harder to root out fraud. They actually provide less protection for honest traders, who can be lead into errors and omissions by them. The measures taken by the Commission to improve the quality of financial management are largely geared towards dealing with these problems. And the Commission has made better management of the Community's finances a priority. Some Member States mentioned the desirability of regular national audits to assess national control systems. This idea could provide a good foundation for decisive progress on the road to simpler and more effective instruments.

1.3. Action to follow up the Court of Auditors' reports

The European Council meetings in Essen and Cannes called on the Member States and the Community institutions never to let up in the fight against fraud and the comparative study of the action taken in response to the reports from the Court of Auditors (referred to in the Essen conclusions) seemed to be a useful complement to the Commission's work.

The third sub-section gave the Member States an opportunity to inform the Commission of its reactions to the Court of Auditors' reports and the follow-up measures taken. It was felt that, in addition to the Council's regular analyses of the Court's annual and special

reports, it would be useful to assess the action taken by the Member States in response to the Court's comments relating directly to them. Clearly, the comments of an experienced outside audit are to be welcomed as a way of filling any gaps in the control system.

The sheer scale of the exercise probably explains why the results were somewhat disappointing. Leaving aside the three new Member States which joined in 1995 and to which this section did not apply, four Member States either omit to deal with the matter entirely or give only general replies (on the follow-up measures or the national audit body). Not enough information is given for a comparative table.

Some of the Court's comments are criticized for being irrelevant or are played down. The German report criticizes the timing of an inquiry into the Guarantee Section of the EAGGF, which coincided with a general reorganization of the agricultural payment agencies. The Belgian authorities are unhappy because the preliminary reports were not sent out or were sent out too late. Most of the reports make do with general comments to the effect that appropriate follow-up measures have been taken, or cite a few carefully chosen examples to show how zealously they are implementing the Court of Auditors' recommendations.

The UK report is exceptional in answering all 35 of the criticisms made in the Court's annual reports for 1992 and 1993 and the five special reports. Some of the Court's findings are challenged but, apart from a few inevitable differences of opinion, the UK has clearly heeded the Court's comments and, where necessary, taken appropriate action (for example, it has made changes to the systems of ESF controls and improved the methods of identifying beef and veal and agricultural control techniques).

Some other reports also contain interesting information, albeit less systematically. Ireland reports on the measures it had taken to make controls on customs entries more effective and to tighten up post-clearance document controls. It has also simplified procedures for goods in free circulation (in response to the 1992 and 1993 reports). Denmark has also made changes to its system of post-clearance controls on imports and exports, raising the number of inspection visits and introducing new methods to show up high-risk cases (as requested by the Court in 1994). The Netherlands were also asked to improve their

method of establishing import duties and, following the comments made in 1992 and 1993, drew up instructions for more detailed customs inquiries. Spain reports that it has developed new tools (particular date-processing tools) to help it monitor Structural Funds audited by the Court.

Avenues to be explored (1.3.)

The Essen conclusions require the institutions and the Member States to do their best to act on the recommendations of the Court of Auditors, which constitute a very valuable tool in the drive to improve financial management.

The measures taken to achieve this objective could be assessed as part of the national audits carried out periodically to monitor the reliability of national controls. Some of the Member States which already do this have suggested that the others should join them.

Some of the guidelines the Commission intends to draw up to tighten up financial management in cooperation with the Member States, could be included in the same framework.

Part II: Application of second paragraph of Article 209a of the EC Treaty (cooperation)

The second paragraph of Article 209a of the EC Treaty as amended by the Treaty on European Union reads as follows:

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

In addition to requiring the Member States to take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests (see the first paragraph of Article 209a) the EC Treaty contains this provision aimed at bringing about close and regular cooperation, with the help of the Commission.

This provision is particularly aimed at international fraud. Financial crime is increasingly an organized activity and one of the targets is the Community budget, which cannot be defended by the individual Member States acting alone. Better and more regular cooperation is needed if the Community's interests are to be properly protected.

The second paragraph of Article 209a is confirmation that the fight against fraud is primarily the Member States' responsibility. To carry out this task, they need to cooperate more as partners, with the Commission's help. It was with this in mind that the Commission set up the Advisory Committee for the Coordination of Fraud Prevention (COCOLAF) to organize cooperation between the relevant departments - a move welcomed by the Council (Economic and Financial Affairs) on 11 July 1994.

The Commission asked the Member States to comment on three types of cooperation; the first two arranged by the Member States on a non-Community footing, i.e. administrative cooperation (2.1.1) and cooperation in criminal matters (2.1.2), and the third based on Community instruments (2.1.3).

2.1.1. Administrative cooperation and assistance under non-Community instruments

All the reports quote non-Community cooperation instruments. The table below gives a summary of the various cooperation activities mentioned in the national reports, dividing them into the five general categories suggested by the Commission.

Administrative cooperation and assistance under non-Community instruments				
	Inventory of cooperation measures (and legal bases) (a)	Assessment of results (b)	Problems encountered (c)	suggestions/reasons for placing on Community footing
B	Naples Convention	1993 and 1994: requests received: 1797 transmitted: 1010		
DK	Reference to administrative cooperation on fraud affecting the Structural Funds Council of Europe Conventions			
D	12 bilateral agreements (3 new MSs(*), 9 non-member countries Naples Convention	1993: requests received: 1912 transmitted: 299 (detailed breakdown by country). Results generally positive	Time taken sometimes excessive, insufficient justification for requests and number of requests	Personal contact useful Conclusion of MA(*) agreements *de facto* Gradually transfer to Community
EL		Examples of good cooperation (Lebanon, Cyprus)	Difficulties with some countries (Kuwait, Bulgaria)	
E	Contacts on basis of national instruments Role of General Audit Office of State Administration	19 instances of cooperation (Poland, Argentina)	Problem with authenticity of documents from non-member countries	
F	Customs cooperation with MSs (83%) and non-member countries (17%)	Increase in cooperation: 16% offences detected following information exchange	Powers of customs officials differ between countries	More exchanges for officials and more vigorous approach to implementation of agricultural MA
IRL	Naples Convention CCC recommendation No specific bilateral agreements	1992 and 1993: requests received: 16 transmitted: 12 (non-member countries)		Support for conclusion of MA agreements by Community

I	Naples Convention Bilateral agreements (Member States and non-member countries) Informal cooperation	331 instances of cooperation with non-member countries	Occasional failure to respond to requests Evidential value of documents received	More spontaneous cooperation Support for conclusion of MA agreements by Community
L	Naples Convention Benelux Convention 1959 Convention on Mutual Assistance in Criminal Matters Schengen agreements			
NL	Naples Convention Benelux Convention Bilateral agreements (Scandinavian countries) CCC recommendation	1992-93 requests received: 502 transmitted: 192 (detailed breakdown by country)		Present situation satisfactory. No suggestions. No reason to put on Community footing
P	CCC recommendation Bilateral agreements with Morocco	1993 and 1994 requests received: 15 transmitted: 14	No problems to report	No reason to put on Community footing, unless problems arise in direct contacts between MSs and non-member countries
Ö	Bilateral agreements with non-member countries (US, countries of central and eastern Europe)			Support for conclusion of MA agreements by Community Need to involve customs administrations of non-member countries
SU	17 bilateral agreements (MSs and non-member countries) CCC recommendation Nairobi Convention			Cooperation projects with countries of central and eastern Europe (VAT)
SV	Bilateral agreements with MSs and non-member countries			Support for conclusion of MA agreements by Community
UK	Naples Convention CCC recommendation	No record of MA requests		MA arrangements essential in fight against fraud

(*) MS: Member State; MA: mutual assistance

With the exception of the Austrian and French reports, which did not deal with the three types of cooperation separately, and the Danish report, which covered administrative cooperation on fraud affecting the Structural Funds only, the reports provided sufficient information on non-Community administrative cooperation.

A number of reports gave figures - sometimes very detailed - on requests for inquiries into offences. While it was hard to draw any comparison between these figures, they at least show that the cooperation mechanisms are used. Information is exchanged frequently. The importance of spontaneous and personal contact with the relevant people and agencies in other countries is often highlighted, especially in the Belgian, German and Portuguese reports. Such contacts are facilitated by databases (Belgium), training (Portugal) and a mutual-assistance information centre set up by the Member States (UK).

The cooperation dealt with in this section (2.1.1) relates primarily to customs matters - the Naples Convention for cooperation between the Member States and recommendations of the Customs Cooperation Council (CCC) and bilateral customs cooperation agreements for cooperation with non-member countries.

However, the requests for information do not all relate to own resources. Some of them concern other areas of the Community's activities. The Benelux countries have a cooperation agreement providing for administrative assistance on matters going beyond customs cooperation.

The attention devoted to cooperation with non-member countries varies from one report to another. In most cases it is based on bilateral agreements and is more common in some Member States, such as Germany, than others. Strictly speaking, the second paragraph of Article 209a does not require cooperation with non-member countries, only cooperation between the Member States. But this form of cooperation does help achieve assimilation where there are similar bilateral agreements to protect the Member States' national interests. Agreements with non-member countries also help to achieve a standard level of protection at the Community's external borders.

The Member States have adopted no new cooperation instruments since the Union Treaty entered into force, but have continued to use existing instruments. Many Member States

mention the 1967 Naples Convention, which is part of the *acquis communautaire* which all Member States must accept. Sometimes figures are given too. The Naples Convention contains provisions covering areas outside the Community's jurisdiction, similar to those found in Regulation (EEC) No 1468/81 on mutual assistance (see point 2.1.3 below). The fact that the Convention is mentioned in the reports suggests that the two instruments are sometimes used simultaneously for a single exchange of information or that the Convention is invoked instead of the Community regulation.

Avenues to be explored (2.1.1.)

The reports reveal how important cooperation instruments are for the Member States. On the basis of the information in the reports, we have formulated some ideas as to what action needs to be taken at Community level and what can be done to make cooperation mechanisms more effective.

A. A number of reports acknowledge the need to increase the level of cooperation between the Member States. A more structured approach is required where structures do not yet exist. The existing regulatory framework for cooperation must be extended in order to achieve the level of cooperation required by Article 209a. Perhaps there is scope for a common approach to solving the various problems mentioned in connection with the mutual assistance mechanisms (e.g. time taken to reply and insufficient justification for requests).

B. Closer operational links must be developed between the various departments responsible for prosecuting the perpetrators of serious and complex fraud (part of the phenomenon of large-scale organized financial crime). The links between these departments, combating international fraud, and the Commission also need to be strengthened in certain areas where the existing framework is inadequate. For example, new procedures must be devised to enable the Commission to develop the support which it can give these departments in carrying out their duties.

C. Building up personal contacts and increasing the number of exchanges for officials and liaison officers are also good ways of strengthening cooperation between the Member States. The effectiveness of cooperation depends not only on the instruments providing

for contacts between experts (with the long-term in mind), but also on the quality of relations between investigators and other officials.

D. Some consideration must be given to the question raised by a number of Member States as to whether the Commission should continue or indeed step up work leading up to the conclusion of mutual assistance agreements with non-member countries.

2.1.2. Cooperation in criminal matters

The second paragraph of Article 209a is not confined to purely administrative cooperation. It requires the Member States to engage in wider-ranging cooperation where that is necessary to counter fraud against Community revenue and expenditure, especially where transnational organized crime is involved.

Organized financial crime cannot be allowed to exploit divergences in enforcement facilities as a means of securing impunity for itself. The need for deep-seated, effective, direct and rapid cooperation is clearly revealed by the analysis of the national reports, even if it is not always explicitly stated as such.

To gain an overview of the reality here, the question of police and judicial coordination was to be considered in terms of the following topics: legal basis (conventions, bilateral agreements, exchanges of letters, informal approaches); description of procedure, channels and time factor; inventory of the number of police cooperation cases relating to fraud in the two reference years; results, evaluation, difficulties encountered, limits to this type of cooperation and suggested improvements.

Few of the reports deal with these topics exhaustively. The information they yield is set out in summary form in the table below.

Cooperation in criminal matters				
Member State	(a) Police cooperation	(b) Judicial cooperation	(c) Difficulties encountered	(d) Suggestions
B	Cooperation with UCLAF mentioned	Item not covered; reference to Third Pillar		

DK	Existing agreements listed			
D	Existing agreements (Schengen)			
EL	Extradition and judicial cooperation agreements			Third pillar mentioned
E	Bilateral contacts			
F	Cf. Table 2.1.1			
IRL	Not covered			
I	- Conventions and Treaties listed - Reference to informal cooperation via UCLAF			Further work within Council (Third pillar) desired
L	Ad hoc cooperation under Schengen	Existing agreements listed		Neutral remark about further work within Council (Third pillar)
NL		35 requests for judicial cooperation (customs) received	- Occasional hold-ups as between administrative and criminal approaches (ref to Third pillar) - Delays with letters rogatory	
P	Not covered			
ÖS	Cf. Table 2.1.1			
SU	Cf. Table 2.1.1 National Investigation Bureau coordinates	- Existing agreements listed - Specific legislation on investigation jurisdiction and procedures - detailed description given		
SV	Police cooperation needs no specific basis; is based on legislation of country concerned	- Existing agreements listed (with national transposal legislation) - Foreign Ministry centralizes	Legislation on judicial cooperation is pending	

UK	- Cooperation based on European Convention on judicial cooperation in criminal matters 1959 (Protocol of 1978) - Interpol Central Bureau (in the National Criminal Intelligence Service) coordinates - European Extradition Convention signed	Delays; refusal of certain Member States to extradite their own nationals	1. Registers of companies and firms 2. Stronger procedures for cooperation between central authorities 3. Changes to banking secrecy legislation; tougher legislation against laundering 4. Prioritize investigations

It can be seen that there is little difference between police cooperation and judicial cooperation. Existing legal bases apply specifically to judicial cooperation whereas police cooperation is handled either on an ad hoc informal basis or under the judicial cooperation arrangements. There can be hold-ups at both levels, as is clear from the report on the Netherlands, where there is both an administrative approach and a criminal law approach to enforcement coordination.

Several national reports highlight the value of administrative cooperation beginning at the initial investigation stage so that information can be exchanged on an institutionalized basis between Member States and between them and the Commission. Such is the case of the Belgian OCDEFO, which is empowered to maintain contacts with counterpart services in other Member States and the Commission. Greece supports the establishment of investigative and enforcement agencies maintaining contacts with each other and with the Commission. Ireland, Portugal and the United Kingdom take a similar view.

However, none of the reports looks at the relationship between fraud against the Community budget and police cooperation in any precise fashion. Apart from figures as to the number of requests for investigation received by the Dutch customs, no data on cooperation on the enforcement side are given.

The United Kingdom is the only Member State to offer practical suggestions for stronger cooperation in enforcement, such as the possibility of conferring comparable powers on national investigators (this idea is shared by France), developing new tools such as

information files and meetings between relevant services, giving priority to criminal investigations and easing access to bank data.

Most reports deal with the question by listing existing instruments, which commonly include the European Extradition Convention 1959 (and the additional protocols of 1975 and 1978), the European Convention on judicial cooperation in criminal matters 1959 (and the additional protocol of 1978) and the Schengen Agreement of 1990. Only two reports mention Third pillar cooperation in the Council.

The conclusion must be that on the enforcement side most Member States have not been at pains to show that they are willing to give priority to the duty to cooperate of their own motion. The Commission will have to pursue its work in order to provide the Member States with the assistance required by the second paragraph of Article 209a in developing the tools needed for effective cooperation in the fight against fraud. The Ecofin Council on 11 July 1994 confirmed the Commission's role in operational action and in coordinating investigations, notably in areas that are particularly vulnerable to transnational fraud.

Avenues to be explored (2.1.2.)

The information to hand reveals the vital importance of equipping the national enforcement authorities with efficient means of meeting the need for a high and uniform level of protection for the Community's finances.

A. To improve cooperation between national authorities and between them and the Commission, there is a need to develop facilities for exchanging information between national enforcement authorities and the relevant Commission departments at the initial investigation stage. The Commission will accordingly pursue its work of looking into the possibilities and bringing about a legal instrument to extend cooperation to the full range of pre-litigation activities.

B. It would be worth pursuing the investigation of the means and powers available to fraud investigators so as to consider at a later stage the possibility suggested by some of the national reports of conferring comparable powers on all national investigators.

C. To ensure that all findings from action undertaken by the Community with the Member States are used to full effect, notably in the event of criminal proceedings, it will also be necessary to review the Commission's role and its activities in relation to the national authorities and to see what action must be taken in terms of adjustments to the arsenal of legal instruments.

D. As for the criminal law itself, the measures needed to transpose the Convention on the protection by the criminal law of the Community's financial interests must be taken as quickly as possible. This first step on the road will be fully effective only if accompanied by enhanced judicial cooperation operating direct at Community level, targeted on the protection of the Community's financial interests and based on networks of courts and prosecutors. The implementation of such networks will facilitate the application of the principle enshrined in the Convention of centralizing proceedings at a single court.

2.1.3. Administrative cooperation and mutual assistance under Community instruments

A number of Community regulations impose a cooperation obligation on Member States. They are:

- in the field of own resources, Regulations 1468/81 and 218/92 (VAT);
- in the agricultural field, Regulations 4045/89 and 595/91;
- for Structural Funds, Regulations 1681/94 and 1831/94.

Specific provisions in these regulations require individual Member States to assist each other, acting on their own initiative and without the Commission necessarily being involved. Member States must, for instance, exchange any facts in their possession. Such exchanges cover matters such as the findings of inspections in multinational firms, information about specific operations or suspected or established cases of fraud where, to quote the regulations applying to agriculture and structural operations, "it is feared that they may very quickly have repercussions outside its territory".

As the regulations are directly applicable in the Member States, fairly comprehensive coverage of this aspect could have been expected in the national reports (with the exception of the three new Member States, which as yet have no practical experience in the matter). Three Member States, however, mention none of the regulations and five of them omit at least three of the seven cited by the Commission. Some Member States also mention others; Denmark and the Netherlands quite rightly refer to the difficulties in cooperation on recovery (Directive 76/308).

However, some reports contain sufficient information for a comparative analysis as summarized in the following table.

Administrative cooperation and mutual assistance under Community instruments			
Member State	Inventory of bilateral or multilateral cooperation activities	Results and evaluation of these cooperation activities; identification of practical difficulties	Any suggestions for improvements to this type of cooperation
B	**1468/81**: 1993: 122 mutual assistance messages received; 1994: 114 received **4045/89**: 1993: 4 requests received and 3 sent; 1994: 6 received and 5 sent	Results of cooperation dependent on personal contacts between Member States' officials	Maintenance and intensification of contacts between officials Development of data bases
DK	**1468/81**: 1993: 114 mutual assistance requests received, 4 sent; 1994: 65 requests received, 23 sent **218/92**: Tax cooperation	No reply in some cases, which can be an obstacle to court proceedings	Legal basis satisfactory, but faster and more elaborate information exchange system desirable. Improvements required in the field of recovery (Directive 76/308)
D	Requests based both on Regulation **1481/81** and on the Naples Convention. No separate statistics; total 1993: 4 316 received, 4 668 sent **4045/89**: 8 requests sent in 1993, 44 in 1994	Difficulties in taking part in the inspections of other Member States (problem of foreign inspectors) Problem with time taken for replies	Impose time limits for replies in the regulations
EL	No data	Cooperation with Commission departments and national authorities is improving	Closer cooperation with the Commission On-going training and exchanges of officials

E	**1468/81**: 1993: 62 mutual assistance requests received, 22 sent; 1994: 59 received, 68 sent	Cooperation and mutual assistance very positive Problem of availability of information required for judicial proceedings	Cooperation to be extended
F	No data	Checks on products in free circulation, the results of which are sent to the Member States concerned	Generalisation of cross-checks
IRL	**1468/81** (SCENT) 1992: 167 mutual assistance requests received, 182 sent; 1993: 90 received and 162 sent	Use of the Scent network to inform the Commission of the findings of enquiries. Smooth operation, good spirit of cooperation	
I	**1468/81**: 1 004 cases **218/92**: 21	Positive trends: cooperation resulting in the identification of fraud or attempted fraud against the Community budget	Cooperation activities to be brought to the notice of UCLAF (possibly via Scent)
L	Instruments mentioned: **1468/81** (customs) **218/92** (indirect taxation)		
N	**1468/81**: 1992: requests received: 81; 1993: 256 1992/93: 75 items of information supplied to other Member States Directive 76/308 on recovery	Establishment of fraud or irregularities in certain cases. Because of their number and content mutual assistance messages could not be handled with sufficient attention. Recovery: no emergency measures to guarantee recovery; no simultaneous recovery measures in different Member States	Mutual assistance reports should be reserved for complex fraud cases
ÖS	Instruments mentioned: 1468/81, bilateral agreements with a number of Member States		
P	**1468/81**: 1993: 88 requests received (44 requests satisfied) 30 requests sent 1994: 137 requests received (112 requests satisfied) 28 requests made **4045/89**: 1994: 8 requests received, 11 sent	Difficulties in obtaining information involving personal data	Harmonization of the areas covered by the various authorities in order to facilitate cooperation
SU		Practical difficulties: language problems, time lag and differences in computerized systems	Harmonization norms in the field of risk assessment

SV	Instrument applicable: 1468/81 (customs)		
UK	**1468/81** 77 requests for information handled; 138 requests concerning own resources (outside CAP)	No compulsory transmission of findings Dual customs and VAT agency involvement Lack of common entry processing systems across Community Time taken to respond to mutual assistance requests Differences in legislation Community-wide	Installation in each Member State of national intelligence and research centre for commercial fraud Notification by Commission of specific cases and legal decisions on current issues Request for regular meetings with other Member States and specific meetings (particular urgent problems)

The Community cooperation instruments are clearly not ignored and Member States find this type of cooperation satisfactory.

The main difficulties mentioned concern the response times, which can slow down investigations and judicial proceedings, and differences of all kinds (administrative, legal, technical) which hamper the movement of information between Member States.

It is also noted that the mutual information arrangements under Regulations 595/91 in agriculture and 1681/94 for the Structural Funds are hardly ever mentioned, which could indicate that no real use is being made of them.

A fairly substantial number of suggestions are made to improve this type of cooperation and demonstrate the interest that Member States have in it. They are summarized in the right-hand column of the table above and taken up in part in the "avenues to be explored". The relevant sections of the national reports show that new requirements are emerging in the Member States for combating fraud, in particular a basic requirement for rapid information on transnational fraud. It was stressed that fraud rarely developed in isolation in a single country. The Commission is required by the second paragraph of Article 209a to provide its aid. It must therefore be placed in a position to make use of the potential of the existing cooperation tools or to adapt them to this requirement. The Council (Ecofin) of 11 July 1994 called on the Commission to step up its operational role and its role of coordinator of Member States' investigations, in particular for

transnational operations. It also called for greater cooperation with the organization of suitable procedures between the Commission and the Member States to enable the Commission to provide assistance in the field of recovery.

Avenues to be explored (2.1.3.)

The panoply of instruments available at Community level has not been neglected by the Member States, even though it would appear that the potential of this cooperation has not been used to the full. Given the key role of cooperation, recognized by all the Member States, the objective must be to develop existing mechanisms to make them more efficient and so increase the use made of them.

A. The information systems must develop and be adapted to reflect the reality of certain constraints such as the level of priority, the presentation of information and the assessment of risk. The cooperation forums provided for in the operating rules for all these instruments must consider these matters quickly in order to produce a clear definition of requirements and introduce appropriate rules (redrafting of instruments, production of guides to procedures, access to reports, cooperation methods, and creation of files at central level).

B. Certain forms of cooperation spotlighted in the national reports need to be explored and developed, an example being the organization of action to be taken on cross-checks on goods in free circulation. Regular meetings between the relevant departments must be encouraged, as must the rapid organization of ad hoc contacts on urgent and serious cases. Thought should be given at Community level to the development of databases containing information about economic operators (risk criteria) recommended by certain Member States which already have a central register (or which suggest that one be created).

C. Mutual assistance in recovery must be made more effective. The directive relating to these mechanisms must be adapted to the needs of the single market by giving the Member State, which has exclusive responsibility for recovery, the legal resources and the information required to perform its task. Better use must be made of the potential for mutual assistance in agricultural, customs or own resources matters by systematically

associating the Commission whenever a Community interest is involved, as is the case in recovery matters. This interest may not, in fact, be immediately apparent when a case arises revealing the organization of a fraud system which must be prevented from spreading to other areas of the Union.

D. Generally speaking, the Community regulations on cooperation must be applied properly and fully throughout the Community. The Advisory Committee for the Coordination of Fraud Prevention (COCOLAF) must meet regularly in its specialized formations to evalute results, develop the full potential of the system and if necessary lay down rules for the presentation and degree of detail of institutional cooperation in order to secure uniform data. The full committee will then recommend the necessary adjustments, will provide the necessary impetus and will submit any conclusions it reaches to the appropriate authorities.

Part III: Equivalence between measures to protect national finances and those to protect the Community's financial interests

Member States were asked to ascertain, by a comparative analysis of the controls applied and the administrative and judicial measures taken in the event of irregularities, whether the measures to protect the Community's financial interests were in fact equivalent to those taken to protect national finances.

Inevitably, such an exercise quickly encounters serious methodological problems. On the one hand, it cannot be based exclusively on quantitative data, the accuracy of which can hardly be guaranteed in any case. On the other hand, a clear distinction cannot always be made between the protection of national and Community interests.

It would be presumptuous, however, and might even be tantamount to questioning the validity of the European Council's original request, if one were totally to neglect this aspect of the report or simply to claim that equivalence is guaranteed by definition, since Community funds are channelled through national accounts and thus become national funds, or to claim that equivalence has always been guaranteed or even that Community funds receive better protection and indeed enjoyed such protection even before the Treaty on European Union came into force.

Most of the reports in fact make no attempt to demonstrate that equivalence has been achieved. As can be seen from the following table, little or no precise information has been provided on the staff allocated to control duties or on the administrative and judicial action taken in response to irregularities.

Equivalence between the protection of national and Community financial interests			
Member State	3.1. Controls/measures	3.2. Administrative follow-up	3.3. Judicial follow-up
B	Powers of the Belgian Court of Auditors aligned on those of the European Court of Auditors	No meaningful information	
DK	No details given		Problem of recording court decisions on frauds against the Community budget

D	- increase in staff (20% in 6 years) and resources available for control purposes	No details given
EL	No details given	
E	No meaningful information	
F	No details given (number of staff allocated to agricultural controls: see 1.1.2)	
IRL	EAGGF Guarantee: 90 full-time fraud prevention officials. More controls than for national revenue (tobacco, beer). Same number of officials (500) responsible for traditional own resources as for national resources (500), although the latter are 7 times greater	No meaningful information
I	No meaningful information	
L	No details given	
N	Evidence to show that such an exercise is impossible and pointless.	
P		Not discussed (conclusion: point 3)
ÖS	5 800 customs officials	Not discussed.
SU	EAGGF Guarantee: EEC controls (5%) more intensive than national controls (1%)	Not discussed.
SV	No meaningful information	
UK	HM Customs and Excise (traditional own resources): 21 man/years assigned to investigation duties and 59.5 to control duties (1993/94)	No meaningful information.

Most of the reports thus repeat the answers given earlier, but this time in the form of conclusions to demonstrate that the country concerned complies with the "assimilation" principle. The Irish report is the exception here, since it provides a comparative analysis of the staff assigned to control duties (point 3.1).

Since no comparative figures are given for fraud against the national and Community budgets, it is difficult to comment on the true degree of assimilation within the Union. At most, the reports provide some clues to the real situation. An analysis of the existing arrangements (legislation, organization) indicates that revenue is better protected than expenditure and that agricultural expenditure is more closely supervised than expenditure on structural measures. As a rule, the Member States simply assert that assimilation has been achieved, although the degree of assimilation in this or that sector is not specified or borne out by a comparison of results. Besides, in most cases there are no comparable results by which the degree of assimilation could be accurately measured.

A number of factors tend to blur the meaning of "assimilation". It is often claimed that the Community's legislation on controls in the agricultural sector is so detailed that Community expenditure is more closely monitored than national expenditure (and in some cases this has been shown to be true). It is also frequently claimed that the proper use of risk analysis can achieve more than an increase in the number of inspectors; theoretically this should apply irrespective of the nature (Community or national) of the resources or expenditure concerned.

These are valid suggestions, but one must not lose sight of the fact that efficient protection presupposes both adequate levels of controls and the prosecution of any infringements discovered. This point, which was made in the *Yugoslav maize* case, is essential to any assessment of how far Member States are prepared to go to ensure full assimilation.

What is the point of expanding departments and developing control procedures, in full compliance with the assimilation principle, if this is followed at the recovery and penalty stages by the tacit acceptance of differences in treatment? One wonders how far assimilation has actually progressed when Member States react to fraudulent import transactions by implementing the VAT recovery procedures without any thought for traditional own resources.

Compliance with Article 209a means that national behaviour has to take account of the need to protect the Community's financial interests and that full equivalence, which Member States often claim to have achieved, must in fact be gradually brought about by specific measures which should be subject to continuous assessment, so that the improvement in the management of Community finances goes hand in hand with better protection of its financial interests.

*
* *

Although the national reports do not always lend themselves to a detailed and exhaustive comparative analysis and although they do not always indicate that the assimilation principle is being observed in all areas of national life, they do suggest avenues to be explored and ways in which progress could be achieved. Moreover, the points made in one report are often similar or identical with those made in another.

Most of the reports reach the conclusion that progress needs to be made on all fronts, with cooperation at all stages from prevention to prosecution.

In many cases the reports recommend that priority should be given to action at Community level so that in certain areas the monitoring arrangements could be strengthened on the basis of objective criteria, with a view to harmonizing the controls carried out by Member States.

Similarly, some Member States recommend the systematic and regular evaluation of these arrangements so that constant adjustments can be made to the level of protection afforded to Community finances, thus making for optimum national and Community supervision and reflecting the needs of the moment and the real risks involved. One frequent suggestion is for the introduction of auditing structures combining all levels of expertise.

Ongoing simplification of the rules is often said to be essential if the legislation is to be consistent and take account of the cost-effectiveness aspects.

Numerous virtues are ascribed to cooperation, which is in many cases seen as the necessary catalyst for effective national and Community action to counter sophisticated transnational fraud and organized financial crime. All seem to agree on the need for greater cooperation so that more effective work is done in the field and the intelligence available is fully utilized. This might entail improvements to existing procedures or institutional cooperation which went beyond mere administrative assistance.

Some take the view that the optimum arrangement would be for the Community itself to apply a mandatory system of set administrative penalties and for appropriate measures to be taken to improve the compatibility and equivalence of national systems of criminal law.

Be this as it may, the Community is currently endeavouring to achieve the necessary convergence between the economies of its Member States so that it can enter into the decisive phase of economic and monetary union and is currently stepping up the volume of financial assistance for such integration. In this context it would be surprising if firm declarations of intent were made at the highest levels but the necessary steps were not then taken to translate these declarations into specific improvements in the protection of the Community's financial interests.

Improvements in fraud prevention require not just "assimilation" but also a voluntarist policy of stronger preventive measures so that all Member States apply more effective and equivalent controls. Improvements will also require the application of stricter penalties within the institutional framework of the Union. It is obviously a basic principle of the management of public finances that those collecting or administering Community funds have an obligation to ensure surveillance and financial control. Fulfilment of this obligation must, however, go hand in hand with the adoption of clear

and binding rules and criteria for each sector, to provide a more solid foundation for surveillance work and to achieve equivalent levels of control throughout the Community.

Nor is it sufficient to have greater compatibility in the types of fraudulent activity or behaviour which one hopes to combat. It is also necessary to harmonize enforcement action to counter fraudsters who move from one Member State to another in order to take advantage of less stringent laws. In 1989 the Court of Justice held that penalties must be made "effective, proportionate and dissuasive", and this remains the objective which must be achieved homogeneously throughout the Union if we are to halt the expansion of organized and transnational financial crime, the exponents of which carry out their own risk analysis.

The property of the European taxpayers must be protected if the institutions and Member States of the Union are to maintain their credibility. The Community, which has taken steps to improve its financial management, must logically take even greater care to ensure that its financial interests are fully protected against all forms of abuse. Such is the purpose of the exercise. It is surely on this basis that progress can be made towards satisfying the requirements of the Essen and Cannes European Councils.