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PROTECTING THE COMMUNITY'S FINANCIAL INTERESTS

THE FIGHT AGAINST FRAUD:

1993 ANNUAL REPORT

(presented by the Commission)

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FOREWORD

Conscious of the need for the greatest possible clarity regarding the use of Community funds, the Commission presents its fifth annual report on the fight against fraud in line with the declaration made by the Council (Economic and Financial Affairs) on 13 March 1989.

Fraud affecting the Community budget is a matter which not unnaturally attracts wide public attention and is a subject regularly discussed in depth by the political authorities of the Union. The public hearing held by Parliament on 9 and 10 June 1993, the declaration adopted by the European Council in Copenhagen and the reports delivered by the Court of Auditors are the most visible reflections of this.

The size of the Community budget (ECU 65.6 billion in 1993) calls for the utmost rigour and tight surveillance at every level of both national and Community responsibility. The specific inclusion of anti-fraud measures among the special responsibilities of the Commission's Members highlights the political will to make the fight against fraud a lasting priority. Safeguarding the Community's finances is now at the heart of the Commission's economic and financial decision-making system, so ensuring the highest level of protection.

The fight against fraud to the detriment of the Community budget is primarily the responsibility of the Member States; they alone have the necessary means, through their financial policing authorities, to monitor, detect, prosecute and punish fraud. Nevertheless it is essential for the Commission to play its full part in the crucially important role of coordinator, watchdog and provider of impetus, support and backup.

With the entry into force of the European Union Treaty, the political stakes are greater than ever. The Commission continues to make every effort it can with the support of Parliament and its Committee on Budgetary Control, the Council and the Court of Auditors.

This year's report focuses more closely on specific information (cases notified, enquiries), departing from the more traditional sector-by-sector approach in an attempt to make it easier to establish relationships and draw comparisons and so foster the emergence of a new, broader, intelligence-based strategy. This approach is vital for a proper understanding of the sophisticated mechanisms employed in large-scale economic and financial crime and to combat new developments more effectively as the removal of internal frontiers makes Community finances a tempting target.

SUMMARY

This report takes stock of the highlights of 1993⁽¹⁾. It was a year which, beyond any doubt, marked a major milestone in the European venture. Not only did internal frontiers come down from the 1st of January, but on 1 November the Treaty on European Union entered into force, adding a new dimension to the endeavour.

Besides the effort made to increase the quantity and quality of information on fraud committed (amendments to Regulations 1552/89 and 1468/81, notification procedures in connection with the Structural Funds), special attention was given to adapting certain regulations on controls, above all so that they better fulfil the need for the same level of controls in all the Member States -- a need that has been accentuated by the single market. With this end in mind, the Commission attaches the utmost importance to the preventive aspects of the rules.

The new Article 209a EC confirms the Member States' obligation to treat the Community's financial interests in the same way as their own in combating fraud. With this in mind, work continued to achieve greater consistency of national provisions for the legal protection of the Community's financial interests.

In the light of the second paragraph of Article 209a, the Commission put forward the idea of setting up an advisory committee for the coordination of fraud prevention. It would formally take over the mantle of the existing committee (COCOLAF), constituting the principal forum for discussing horizontal problems to do with the protection of the Community's financial interests and for organizing close and regular cooperation between the Commission and the authorities responsible in the Member States.

Assisted by the "intelligence" gathered and a rapidly growing computer architecture, the Commission's anti-fraud departments' aim is to develop consultations and partnership with the Member States in this forum in order to optimize results on the ground in the fight against fraud affecting the Community budget.

The chapter on enquiries covers a range of initiatives in which the Commission was actively involved, but it cannot claim to cover every operation conducted, especially in the Member States.

The new enquiries covered in this year's report demonstrate the high level of cooperation which is developing between the different national and Community authorities involved in combating fraud. Besides helping to

(1) The report describes the main events and developments between 1 January and 31 December 1993.

uncover fraud on an increasingly large-scale, action in this direction holds out greater prospect of securing the punishment of those responsible, at the same time reducing the differences of approach and so closing the loopholes that favour the spread of financial crime.

The 1993 figures are encouraging as far as detected irregularities are concerned, but they also highlight the continuing difficulties surrounding recovery of the sums in question.

The report also gives an account of the utilization of fraud prevention appropriations in 1993. Special attention was paid to the appropriations earmarked for co-financing schemes to strengthen control structures in the Member States. The report also sets out the position as regards the 1994 appropriations for fraud prevention.

Although in some places this year's report gives an outline of future prospects and raises some new ideas, it is primarily concerned with the past year's work and, unlike previous reports, does not include the action programme, which will now be presented separately.

CHAPTER 1 : LEGAL FRAMEWORK FOR FRAUD PREVENTION

SECTION 1 : BASIC REGULATIONS AND DEVELOPMENTS IN 1993

This section deals essentially with the presentation of prominent developments in the year 1993 which have contributed to the strengthening of regulatory mechanisms forming the legal reference framework for fraud prevention activities presented in greater detail in previous reports⁽¹⁾.

1. Reporting

Action to combat fraud affecting the Community budget is primarily the responsibility of the Member States, since it is they that have the means at their disposal, through their authorities, for detecting, monitoring, countering and penalizing fraud against the Community budget. The Commission plays an important coordinating and monitoring role, which rests on the information supplied by the Member States. So the flow and quality of information are a crucial factor guiding the direction of the work done by the Commission's specialized departments. This is the reason why there are specific regulations for each separate area of the budget.

The Member States are under a statutory obligation to notify the Commission of cases of fraud and irregularity, as laid down in:

- . Article 6(3) of Council Regulation (EEC, Euratom) No 1552/89⁽²⁾ as regards own resources (customs duties and agricultural levies);
- . Articles 3 and 5 of Council Regulation (EEC) No 595/91⁽³⁾ as regards the EAGGF Guarantee Section;
- . the amended Article 23(1) of Council Regulation (EEC) No 4253/88⁽⁴⁾ as regards the Structural Funds.

Using the information supplied in this way, the departments in question are able to monitor actual cases and use them as a basis for a programme of action. For this reason, in order to pinpoint difficulties that might be encountered in the course of such action, solutions are sought by harmonizing Community provisions on the content of the information to be supplied.

- . As far as the Community's own resources are concerned, the proposed amendment to Regulation No 1552/89⁽⁵⁾ is intended:
 - to specify in greater detail the conditions for the establishment of cases of fraud or irregularity;

(1) See previous annual reports on the fight against fraud: SEC(90)156 final, SEC(91)456 final, SEC(92)943 final and COM(93)141 final.

(2) OJ L 155, 7.6.1989.

(3) OJ L 67, 14.3.1991.

(4) See Council Regulation (EEC) No 2082/93 of 20 July 1993; OJ L 193, 31.7.1993.

(5) COM(92) 519, 11.12.1992.

- to obtain from the national authorities in the Member States the information needed to improve the monitoring of cases from detection to recovery.

As far as Community expenditure is concerned, the Commission's aim in the draft regulation which it is discussing with the Member States is to align the notification obligations relating to the Structural Funds with those that apply to the EAGGF Guarantee Section, especially in terms of providing details of the provision violated, the nature and volume of the expenditure, the possibilities for recovery and the interim protective measures taken by the Member States.

The regulation is to apply not only to the ERDF, the Social Fund, the EAGGF Guidance Section and the Financial Instrument for Fisheries Guidance (FIFG) but also to the Cohesion Financial Instrument.

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* *

Generally speaking, effective monitoring at Community level and the development of a coherent strategy based on firm and constructive partnership between the Member States and the Commission depend on the quality of the information supplied, the regularity with which it is transmitted⁽¹⁾ and its exploitation by modern techniques.

2. Administrative cooperation

Council Regulation (EEC) No 1468/81⁽²⁾ establishes the mechanisms for mutual assistance between the authorities responsible in the Member States in agricultural and customs matters and the conditions for cooperation between them and the Commission. It also provides for the exchange of information on cases where no material facts have yet been established but are already, or shortly will be, under investigation.

The Commission has approved a proposal to amend the Regulation⁽³⁾ with a view to obtaining improved information for its departments along the same lines as in cases of fraud or irregularity. The proposal also seeks to speed up the exchange of information by setting up the Customs Information System (CIS)⁽⁴⁾.

In parallel with the mutual assistance arrangements in agriculture⁽⁵⁾, the Commission is proposing the same type of arrangements for the notification and exchange of information in relation to the structural policies.

(1) Communication of data on cases of fraud and irregularity as early as possible and notification of the follow-up measures taken by the Member States.

(2) OJ L 144, 2.6.1981.

(3) COM(93) 350 final, 1.9.1993.

(4) See "Infrastructures and new sources of information — Data-processing structures", p.18.

(5) Article 4 of Regulation No 595/91.

Going beyond mutual assistance in the strict sense, Council Regulation (EEC) No 218/92⁽¹⁾ lays down arrangements for administrative cooperation in the field of indirect taxation.

Finally, in 1994 the Commission is planning to transform the informal Committee for the Coordination of Fraud Prevention (COCOLAF) into an institutional committee⁽²⁾.

3. Controls

The Member States are responsible for the proper application of Community measures in respect of both revenue and expenditure. It is up to the national authorities to ensure the reality and regularity both of operations to recover revenue and of expenditure operations financed by the Community budget (EAGGF Guarantee, structural policies).

They are thus responsible for preventing and prosecuting fraud and irregularity offences and for recovering amounts evaded or wrongly paid out.

The Commission has been given the task of monitoring the smooth working of the Community revenue and expenditure procedures. The regulations give it the power to conduct direct on-the-spot inspections on its own initiative or to ask the national authorities to conduct special inspections, in which Commission officials may take part, covering own resources,⁽³⁾ the EAGGF Guarantee Section⁽⁴⁾ and the Structural Funds⁽⁵⁾. It may also undertake administrative cooperation and enquiry missions in non-member countries, acting in coordination and close cooperation with the authorities responsible in the Member States⁽⁶⁾.

The Commission has sought to improve the existing basic regulations⁽⁷⁾ to stimulate anti-fraud action by the Member States and improve its coordination. Partnership with the Member States is directly in line with the principles set out in the Union Treaty, particularly in Article 3b.

Another guiding principle behind the Commission's activities is risk analysis.

(1) OJ L 24, 1.2.1992.

(2) See "Cooperation - Advisory Committee for the Coordination of Fraud Prevention, p.21.

(3) Article 18(2) and (3) of Regulation No 1552/89.

(4) Article 9 of Council Regulation (EEC) No 729/70; OJ L 94, 28.4.1970; and Article 6 of Regulation No 595/91. See also Council Regulation (EEC) No 2048/89 on controls in the wine sector; OJ L 202, 14.7.1989; and Council Regulation (EEC) No 1319/85 on controls in the fruit and vegetables sector; OJ L 137, 27.5.1985.

(5) Article 23(2) of Council Regulation (EEC) No 4253/88, as amended by Regulation No 2082/93.

(6) Article 15b of Regulation No 1468/81.

(7) See previous annual reports.

Application of this principle, together with a systems audit⁽¹⁾, makes it possible to confine inspections to sensitive areas and "high-risk" operators and/or recipients, while still revealing control structures in the Member States which ought to be strengthened⁽²⁾. The Commission also advocates the use of risk analysis for controls by the Member States.

In the agricultural sector an effort was made to heighten awareness of this method in the Member States through the meetings of the working parties on Irregularities and mutual assistance under the EAGGF and Regulation (EEC) No 4045/89.

The meetings helped to:

- . alert all departments to the method;
- . analyse the elements that the method should involve;
- . provide further information that needs to be taken into account in the analysis;
- . allow an exchange of views on the experience gained in this area in some Member States.

The EAGGF produced a number of papers on the subject and its implementation at sectoral level. Besides a general paper on the principles of risk analysis and the elements which it should involve, several others were prepared showing how the method should be applied in specific sectors (refunds for beef and veal, cereals, milk products, ex post accounting checks, etc.).

In the area of own resources and customs controls, the 1992 Maastricht report on the organization of the Member States and customs administrations in 1992 set in notion a whole sequence of work. This was conducted in the Committee on Customs Matters, which held numerous discussions. Working from the information they hold, Commission departments can play a part in establishing selection criteria valid for the entire Community and the TARIC 2 database can be used to alert the appropriate authorities to specific risks calling for special attention. A study was launched to target these selection criteria.

The most notable feature about the Structural Funds is that expenditure is co-financed by the Member States. Before approving projects submitted, the Commission's departments consult with the Member States to check whether the rules on controls are adequate. The Commission has prepared a guide to controls on operational programmes for local operators. A vade-mecum on controls has also been produced for the Social Fund.

From the legislative point of view, attention was concentrated on agriculture. The main developments are set out below.

(1) Audit conducted by the Commission departments responsible, to produce a critical analysis of the operation of control systems in the Member States (authorities responsible, physical organization, accounting and records system).

(2) See "Fraud prevention appropriations — Financial analysis, p.51.

3.1 Controls on the export of products for which refunds or other payments are granted⁽¹⁾

Physical inspections are essential where the specific nature of the products generates entitlement to aid on the basis of export declarations. The deterrent effect, in response to the need to check the identity of products, is sought by introducing a minimum level of physical checks. A report⁽²⁾ was presented on the application of Regulation No 386/90, supplemented by a further report⁽³⁾ leading to a proposal for amendments in two important areas:

- . applying a 5% rule for controls covering all sectors taken together, where they are based on a risk analysis, with a minimum scrutiny rate of 2% for each product sector;
- . providing for a minimum level of checks by customs offices at the point of exit to counter the risk of product substitution where declarations have already been submitted and accepted at an inland office.

The Council reached agreement on these proposals on 16 and 17 December 1993⁽⁴⁾.

3.2 Post-payment administrative controls (EAGGF Guarantee Section)⁽⁵⁾.

The controls performed by the Member States on the basis of business documents from the firms receiving aid are a vital component of the fight against fraud.

These controls supplement the checks made prior to payment. In 1993 -- the third year since the current rules came into force -- the Commission examined the application of the Regulation by the Member States.

As a result of its review the Commission has:

- . formulated proposals for amending the Regulation, in particular to include the use of risk analysis techniques;
- . drawn attention to existing computer facilities in all the Member States (except Luxembourg) to help plan and optimize controls;

(1) Council Regulation (EEC) No 386/90; OJ L 42, 16.2.1990.

(2) COM(93)13 final, 25.1.1993.

(3) COM(93)339 final, 19.7.1993; OJ C 218, 12.8.1993.

(4) Council Regulation (EEC) No 163/94; OJ L 24, 29.1.1994.

(5) Council Regulation (EEC) No 4045/89; OJ L 338, 30.12.1989.

drawn attention to possible ways of strengthening mutual assistance between the Member States.

The on-the-spot visits made in the Member States served to check the quality of the work being done in terms of the correct application of the rules and to assess the adequacy of the structures chosen and the measures adopted for planning, conducting and implementing controls.

3.3 Integrated administration and control system (Common Agricultural Policy)

The integrated administration and control system set up as part of the reform of the CAP⁽¹⁾ covers a number of Community aid schemes. Its implementation reflects the will to rationalize their management and administrative control as much as possible, from the moment aid applications are submitted (data are stored in a specially designed, easy-access database).

In particular, the integrated system involves the identification of parcels of farmland, which is crucial for the proper application of a scheme linked to surface area, and the identification and registration of livestock for the premium schemes for producers (sheepmeat, beef and veal).

Commission departments have carried out controls in all the Member States to check the internal organizational arrangements worked out prior to the system's introduction.

The initial impression of the arrangements made to set up the integrated system in the Member States is quite positive. Meetings with those in charge showed great motivation in most cases, despite the difficulties they face.

Some substantial problems still have to be resolved, however, in particular in relation to the creation of the land parcel register and the application of Directive 92/102/EEC on the identification and registration of animals.

3.4 Identification and registration of animals

Under Article 10 of Directive 92/102/EEC of 27 January 1992 laying down rules on the identification and registration of animals, the Council must review the Directive by the end of 1996 with a view to defining a harmonized Community identification and registration system and is to decide on the possibility of introducing electronic identification arrangements in the light of progress achieved in this field by the International Organization for Standardization (ISO).

⁽¹⁾ Council Regulation (EEC) N° 3508/92; OJ L 355, 5.11.1992.

The Commission consequently decided to co-finance a project drawn up by three research institutes to study and perform large-scale experiments in electronic livestock identification (cattle, sheep and goats) to assess whether the current state of the technology would allow its general introduction to allow every animal entitled to an individual Community premium to be identified individually.

The project, which will run for twelve months and involves experiments with 10 000 animals (5 000 sheep, 3 000 cattle and 2 000 goats), is due to be completed towards the end of November 1994.

3.5 Remote sensing (controls of surface area)

The controls carried out in 1993 were based on specifications published by the Commission in December 1992⁽¹⁾. The controls were co-financed, with plans elaborated jointly by the Member States and the Commission. The contracts were signed by the Member States, unlike in 1992 when only the Commission awarded contracts.

The number of controls was far greater than in 1992 since implementation of the CAP reform affected many more producers.

3.6 Control agencies

In 1993 the Commission sought to tighten the rules on follow-up action in the wake of findings by national control agencies⁽²⁾ by laying down penalties to be applied where irregularities are found⁽³⁾. In addition, suppliers of firms receiving Community aid have been made directly responsible, enabling agencies to make much more effective cross-checks.

4. Simplification and revision of agricultural legislation

In the spring of 1993 the Commission decided to extend the life of the working party on simplification (Lachaux working party) for a further three years, at the same time clarifying its remit and method of working. The aim of its simplification work is not only to combat fraud but also to make it easier to understand and apply the measures taken under the reform of the CAP.

The working party therefore examined at considerable length the question of how to clarify and simplify the Community rules governing the granting of export refunds.

(1) See the 1992 annual report; COM(93)141 final.

(2) See previous annual reports.

(3) Commission Regulation (EEC) No 643/93, 19.3.1993; OJ L 69, 20.3.1993.

At the same time work went ahead to simplify the provisions implementing the CAP reform (both the Council regulations and the implementing rules adopted by the Commission).

The working party subsequently proposed the following simplifications in the area of crop products:

- . greater flexibility in taking account of certain cases of rotation of permanent crops;
- . an easing of the prescribed two-year period during which land must be farmed before it can be subject to compulsory set-aside;
- . an easing of the method of determining the size of areas taken into account for compensatory payments;
- . harmonization of the time limits for payment of premiums for oilseeds and other crop products.

There were also wide-ranging discussions on the requirements as regards set-aside in the context of crop rotation and the quality requirements for oilseeds.

The Commission incorporated the working party's main proposals both in the measures it adopted and in its proposals to the Council.

The Council adopted the Commission's proposals, principally at its meeting on 16 and 17 December 1993.

The working party also devoted a number of meetings to the regulations on wine⁽¹⁾.

The Commission considers that the working party needs to be given a new impetus. It will shortly be putting proposals before the Council.

SECTION 2: TREATY ON EUROPEAN UNION

The entry into force of the Treaty on European Union on 1 November 1993⁽²⁾, and in particular the new Article 209a EC and Title VI, provide a renewed impetus and establish a new institutional framework for the fight against fraud.

. The objective of combating fraud is now formally enshrined in specific provisions in the three Community Treaties which constitute the first pillar of the institutional structure of the Union (Articles 209a EC, 78I ECSC and 183a Euratom). They clearly state the Member States' obligation⁽³⁾ to treat the Community's financial interests in the same way

(1) Following the Commission's discussion paper to the Council on the development and future of wine sector policy; COM(93)380 final.

(2) OJ C 224, 31.8.1992.

(3) See Case 68/88 Commission v Hellenic Republic (1989) ECR 2985, at para 24.

as their own when combating fraud⁽¹⁾ spelling out explicitly how they are to collaborate to achieve that end⁽²⁾.

Article 209a thus places the objective and the means for combating fraud at the highest institutional level. The Union Treaty sets the objective of maintaining the *acquis communautaire* (Title I, Common provisions, Articles B and C), fully confirming the Member States' duty to protect the financial interests of the Community by effective, proportionate and dissuasive means, to use the Court's own words:

As guardian of the Treaties by virtue of Article 155, the Commission keeps careful watch to ensure that this obligation is complied with.

. At the same time, Title VI of the Treaty on European Union makes provision for various forms of cooperation in the fields of justice and home affairs (third pillar).

This Title deals with several matters of common interest, notably combating fraud on an international scale (Article K.1(5)). The Member States are to inform and consult one another within the Council with a view to coordinating their action. To that end they are to establish collaboration between the relevant departments of their administrations. The Council may adopt joint positions, approve joint action and draw up conventions on the initiative of any Member State or the Commission (Article K.3). The Commission intends to make full use of the new provisions and exercise its right of initiative to secure the highest level of protection for the Community's financial interests. The Council's discussions are prepared by a coordinating committee of senior officials (K.4 Committee), assisted by three steering committees that have been set up on asylum and immigration, police and customs cooperation, and judicial cooperation. Under the action programme approved by the Council (Justice) on 29 and 30 November 1993, working parties have been set up for police cooperation (in particular, on drugs and organized crime, customs and Europol) and for judicial cooperation (including groups on international organized crime and criminal/Community law).

The closer cooperation provided for under the third pillar got under way very swiftly once the Maastricht Treaty came into force. The Commission intends to make full use of its powers in this area. Such cooperation is likely to play a key part in securing the necessary adjustments to the operational and legislative context and so complement the Member States' obligation under Article 209a to combat fraud.

(1) "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." Articles 78i ECSC and 183a Euratom are identical.

(2) "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." Articles 78i ECSC and 183a Euratom are identical.

SECTION 3: LEGAL PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITY UNDER THE TREATY ON EUROPEAN UNION

In response to the Council (Ministers of Justice) Resolution of 13 November 1991, the Commission called in a group of senior researchers to produce a study on the laws, regulations and administrative provisions of the Member States applicable to fraud against the Community budget.

The findings of this study and of the study on the systems of administrative and criminal penalties in the Member States were sent to the Council and Parliament on 16 July 1993⁽¹⁾.

The Commission's departments have examined the findings to identify loopholes and conflicts in the legal protection afforded to the Community's financial interests. The Commission itself held an initial general discussion on the subject on 17 November 1993. The issues posed by legal protection brought to light some awkward institutional problems which the Commission will have to consider in greater depth. But in its statement at the Council meeting on 29 and 30 November 1993 it already undertook to put forward proposals for action in response to the request made by the Council (Economic and Financial Affairs) on 7 June in Luxembourg and by the Copenhagen European Council on 21 and 22 June.

Quite independently of the Commission's deliberations and intentions, the Council took note of this work with interest and considered it necessary to examine, without prejudice to the division of competence between the Community and the Member States, the measures which should be taken to achieve a greater degree of compatibility in national provisions, with particular attention being given to the following points:

- . offences;
- . liability;
- . penalties;
- . settlements and the like;
- . extra territorial application and mutual assistance in criminal matters;
- . limitation.

Consideration should also be given to questions such as the definition of fraud against the Community budget, abuse of the law and the effectiveness of financial monitoring.

⁽¹⁾ SEC(93)1172, 16.7.1993.

CHAPTER 2 : INFRASTRUCTURE AND NEW SOURCES OF INFORMATION

This chapter presents the human and computing resources available to the Commission to respond to the missions with which it has been charged in conjunction with the Member States.

The reinforcement begun in 1993 has already borne fruit and has allowed useful benefit to be drawn from the expertise of the Member States. Within the framework of the institutional advisory committee⁽¹⁾ cooperation will be strengthened through partnership and exchange of expertise with the Member States.

SECTION 1: INTERNAL ORGANIZATION OF COMMISSION DEPARTMENTS

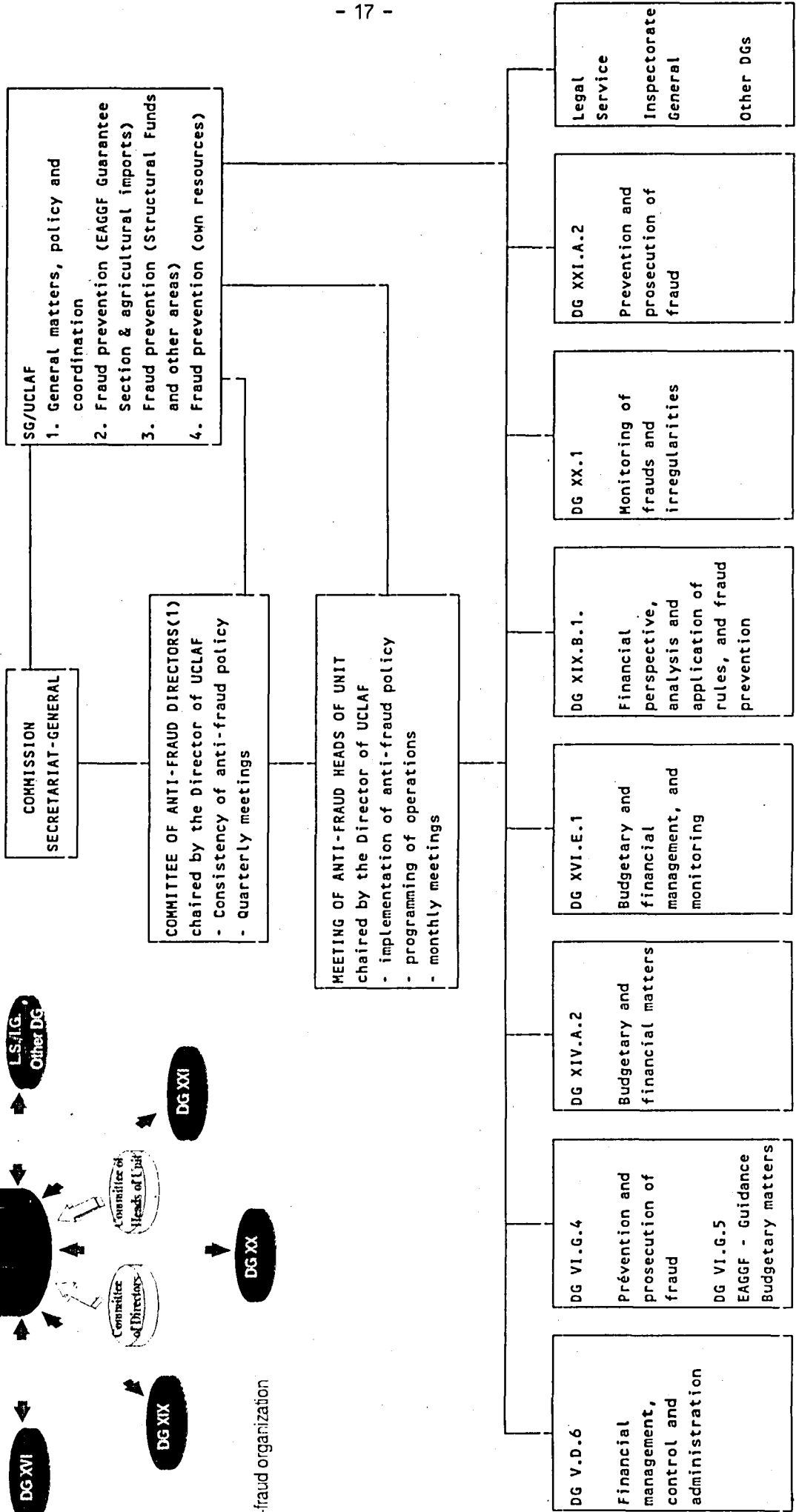
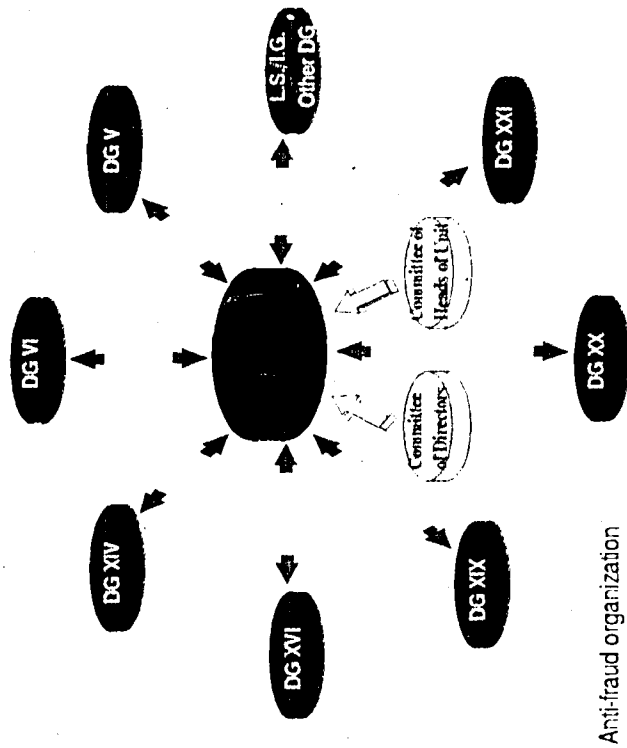
As announced in its communication of 4 November 1992 on the fight against fraud⁽²⁾ and in order to ensure its departments' tasks continue to complement one another, the Commission has decided to reorganize its anti-fraud operations. The SG/UCLAF now consists of four units, three of which are directly concerned with fraud enquiries (EAGGF Guarantee Section and agricultural imports, Structural Funds and other areas, and own resources), with the fourth unit (general matters, policy and coordination) providing back-up.

DGs VI (Agriculture), XIX (Budgets), XX (Financial Control) and XXI (Customs and Indirect Taxation) all have operational units dealing with the prevention, prosecution or monitoring of fraud in their respective fields. The financial units of other Directorates-General, such as DGs V, XIV and XVI, also have specialist staff or teams covering this area.

(1) See Cooperation/Advisory Committee for the Coordination of Fraud Prevention page 21.

(2) SEC(92)2045 final.

ORGANIZATION CHART FOR ANTI-FRAUD OPERATIONS



(1) UCLAF and DG V, VI, XIV, XVI, XIX, XX and XXI.

In the context of this organization, the staff designated to the specialist administrative units which are specifically assigned to anti-fraud tasks, are broken down as follows:

Table 1

Department Category	SG/ UCLAF	DG VI (1)	DG XIX (2)	DG XX	DG XXI	TOTAL
Permanent staff	28	27	13	4	18	90
Other staff	23	13	3	-	9	48
% permanent staff	55%	67%	81%	100%	66%	65%

Parliament's reaction to the reorganization has been favourable and it has voted an amendment providing for 50 new posts for regular staff, 35 of which are temporary, to strengthen the Commission's expertise in this area and restore the balance in favour of regular staff.

SECTION 2: DATA-PROCESSING STRUCTURES

The Commission is eager to expand its databases and information networks and develop a more rational and integrated approach to fraud prevention.

1. DAF

Work on the general anti-fraud documentation database, DAF, continued during 1993 with the emphasis on adapting the project to the resources available without being over-ambitious. Consultations will be held with Member States to check the quality of the data provided by the countries which have completed data-gathering. A decision will then be taken concerning further action, resource allocation and timetabling.

(1) Including staff active in other areas covered by the unit in question; only twelve staff can deal with the investigations referred to in "Enquiries concerning the EAGGF Guarantee Section", p. 28.

(2) Of which 2 permanent staff and 1 external official are designated for fraud prevention tasks.

2. IRENE

The IRENE database (IRregularities, ENquiries, Exploitation) has been in operation since 1 December 1992⁽¹⁾. It contains details of 11 000 cases of fraud or irregularities (some 8 200 under the EAGGF Guarantee Section, 2 900 under own resources and 60 under the Structural Funds) based on notifications received from Member States concerning own resources, the EAGGF Guarantee Section, the Structural Funds and mutual assistance⁽²⁾.

Judging by initial analysis of the contents of the database after its first year of operation, there are four main points which stand out:

- All mutual assistance cases have been input. Although only a third of them contain financial information, we can already gain an idea of the amounts involved. From the evidence, this could well prove to be the most productive part of the database.
- There is considerable potential for comprehensive financial monitoring.
- The great scope of the database. Generally speaking, the information received will not only be of much better quality, it will be more accurate and provide extensive coverage of all budgetary areas.
- In addition to providing a complete inventory of frauds and irregularities, the database makes it possible for data to be both analysed and interpreted from a qualitative perspective, helped by clear and accurate methods of communication [see footnote 1, page 7].

3. Pre-IRENE

A working party has been set up to develop a data-processing facility (pre-IRENE) for information which does not go into the IRENE database. It will cover cases of fraud still under investigation as well as information from new sources⁽³⁾.

By making it easier to correlate information, the pre-IRENE database will improve programming of the Commission's operations in the field and help in framing an intelligence strategy with a view to obtaining a better picture of the fraud prevention scene and of economic and financial crime.

4. SCENT, Fiscal SCENT, CIS

These networks were set up to promote the exchange of information in the field of customs and tax fraud.

The SCENT system, which has been operational since 1987, is to be backed up by the fiscal SCENT system⁽⁴⁾ now being developed.

(1) Most of the figures and diagrams in this report clearly illustrate the potential of IRENE.

(2) In the total of cases communicated (and analysed), no distinction is made between organized deliberate fraud and mere infringements of the rules.

(3) See "New Sources of Information", page 20.

(4) See previous annual reports.

The CIS message system is now operational. By the end of 1993, 250 terminals had been installed to link up offices at points of entry and exit and allow them to communicate with their own central authorities and with Commission departments. A database covering customs or agricultural fraud is planned for the project's second stage; however, this will have to await the Council's adoption of the ad hoc legal framework⁽¹⁾.

SECTION 3: NEW SOURCES OF INFORMATION

Like organized crime with its trans-border networks, the fight against fraud must be taken beyond national boundaries. An integrated approach is needed at Community level based on properly organized and protected information networks.

In this context, the Commission is currently looking into the possibility of setting up a central contact number with an automatic answering system in order to strengthen direct information sources.

CHAPTER 3 : COOPERATION

The emergence of the European Union gives a new dimension to cooperation between the Member States and with the Commission⁽²⁾. The second paragraph of Article 209a states that action aimed at protecting the financial interests of the Community against fraud is to be coordinated, with the help of the Commission, by the competent departments of national administrations. At the same time, the authorities in the Member States are to set up administrative structures at an inter-ministerial level with pluridisciplinary operational resources and a remit that extends to all forms of financial crime, whether organized or not, including fraud against the Community budget. Contact has already been established between the Commission and these departments and good progress is being made. A new push has thus been given to cooperation to protect the Community's financial interests. The Commission is now preparing a decision to give official status to the Community Committee for the Coordination of Fraud Prevention (COCOLAF) and is pursuing its policy of training and awareness raising among national officials responsible for fighting fraud.

An example of the high level of cooperation with the Member States in the area of fraud prevention is illustrated by the Commission initiative in the textiles sector (TAFI Programme).

(1) Proposal for a Council Regulation replacing Regulation (EEC) No 1468/81. COM(93)350 final of 1 September 1993.

(2) See "Legal Framework for Fraud Prevention/Treaty on European Union", page 13.

It should not be forgotten that cooperation with non-member countries is equally important.

SECTION 1 : ADVISORY COMMITTEE FOR THE COORDINATION OF FRAUD PREVENTION

This official fraud prevention body is to have the task of advising the Commission on all horizontal matters relating to the prevention and prosecution of fraud as well as the legal protection of the Community's financial interests.

The Committee is made up of representatives from the Member States and chaired by the Commission; it will have the power to set up its own working parties to look into any specific question relating to fraud prevention and the protection of the Community's financial interests.

SECTION 2 : TRAINING ACTIVITIES

As part of its training policy, the Commission organizes seminars to acquaint national anti-fraud services with the Community dimension of fraud.

In 1993, the following seminars were organized :

- two general seminars (Italy : Florence, 6 and 7 May; Denmark : Alborg, 15 and 16 September) on anti-fraud policy and developments in combating fraud against the Community budget, and on new control and fraud investigation measures;
- one seminar in Portugal (Evora, 14 and 15 June) for staff at the Agriculture and Fisheries Financial Institute (IFADAP) and senior civil servants. The seminar covered the management and control of measures financed under the EAGGF Guidance Section and was organized at the request of the President of IFADAP;
- one seminar in Brussels (9 November 1993) on the use of remote sensing for agricultural controls;
- two seminars in Brussels on the setting-up of an integrated administration and control system in the agricultural policy area (plot register and plot measurements);
- one seminar in Brussels on the subsequent scrutiny of accounts (Regulation (EEC) N° 4045/89 relating to the EAGGF Guarantee Section);
- one seminar in Germany (Bonn, 22 and 23 November) on the planning, implementation and evaluation of VAT controls (own resources), two seminars having previously been held in Brussels on the management and recovery of VAT debts (1 and 2 April) and on traditional own resources (29 and 30 June);

- one seminar in Belgium and one seminar in Italy with associations of European lawyers, attended by eminent politicians, academics and lawyers.

In addition to these Commission seminars, officials and specialist departments take part, at the invitation of the competent national authorities in an increasing number of activities aimed at presenting and developing the Community strategy against fraud.

SECTION 3: TAFI PROGRAMME (Textile antifraud initiative)

The TAFI programme, set up in July 1993, is another illustration of an action based on strengthened co-operation between the Member States, the Commission and the manufacturers in a particular sector, in this instance the textile sector.

In this way the programme brings together in a specific structure the services of the Commission and the representatives of the Community's textile and clothing industry in order to analyse together on the ground commercial flows.

New initiatives have been taken to make the fight against fraud more effective in this sector : market analyses produced together with the operators concerned, exchanges of experience with the main commercial partners of the Community, setting up of a pilot project on the electronic transmission of import statistics of products subject to quotas or tariff ceilings etc...

The resources mobilised in 1993 (500.000 ecus) will be increased in 1994 to 800.000 ecus and should enable the strengthening of the fraud prevention and investigation measures set up and also consolidate the international co-operation which has just commenced.

SECTION 4: AGREEMENTS WITH NON-MEMBER COUNTRIES

If the Community is to be successful in combating fraud against its financial interests, it has to develop its administrative cooperation network with its commercial partners, for which it needs to obtain the proper legal basis. In 1993, therefore, agreements were signed with various countries or communities of states, such as Bulgaria, the Andean Pact countries and the Central American countries. Other agreements also came into force with Romania (association and mutual assistance protocol); the Baltic States (commercial and economic cooperation), San Marino and Andorra (customs union).

The Commission has been given a negotiating brief by the Council to hold discussions with six countries -- Canada, South Korea, the United States, Japan, Hong Kong and Vietnam. The process for ratifying the agreement on the European Economic Space (scheduled for 1 January 1994) continues.

Taking advantage of the mutual assistance protocol, which was part of the agreements concluded with Hungary, Slovakia, Poland and Romania, the Commission has requested permission from the authorities in these countries to carry out an investigation. In addition, missions to Argentina and Uruguay⁽¹⁾ have been organized in accordance with the provisions on customs cooperation contained in the agreements signed with these countries in 1990 and 1992.

CHAPTER 4 : INVESTIGATIONS AND OTHER OPERATIONS

This chapter covers a range of operations in which the Commission was actively involved. It does not include investigations carried out by Member States alone. The chapter does not give an exhaustive picture of the Commission's activities but it does serve to illustrate:

- the mechanisms of fraud and the sophisticated means employed by its perpetrators;
- investigation methods;
- the financial impact on the Community budget and/or other negative consequences for economic operators within the Community;
- enforcement aspects (legal proceedings, recovery/collection) although these tend not to be uniform and are therefore difficult to deal with succinctly;
- the Commission's conclusions, with special emphasis on regulatory developments.

The investigations come under the following headings:⁽²⁾

- transnational import/export fraud investigations;
- EAGGF Guarantee Section investigations;
- activities of Community control bodies (EAGGF Guarantee Section);
- mutual assistance investigations;
- operations relating to the Structural Funds.

Under each of these headings, a distinction is made between new cases opened in 1993 and earlier ones described in previous annual reports but in respect of which there were interesting developments during the course of the year.

Some significant results have been achieved. They do, however, show that the Commission should not rely simply on the IRENE database, which contains notifications from Member States regarding cases of fraud and irregularities, but should itself enter information concerning ongoing

⁽¹⁾ See "Investigations and Other Operations", page 23.

⁽²⁾ See "Legal Framework for Fraud Prevention/.../Controls", page 8; see also "Cooperation/Agreements with Non-Member Countries", page 22.

Investigations into an ad hoc base (pre-IRENE)⁽¹⁾, since these cases do not necessarily overlap. In so doing, it would contribute to the development of a coherent and operational intelligence strategy.

SECTION 1: TRANSNATIONAL IMPORT/EXPORT FRAUD INVESTIGATIONS

The substantial sums involved in Community trade (customs duties, levies, export refunds) have attracted the interest of big-league financial criminals who are always on the look-out for the maximum profit at the least risk. Whole networks have been set up to take systematic advantage of distortions in the Member States' legal systems and the lack of a genuine "Community" criminal law.

These networks are much more varied than their stereotypes might suggest and they employ extremely imaginative and sophisticated methods. With the removal of internal frontiers, they have been trying to identify where they can most safely set up their transnational fraud circuits. Besides the unfairness of the transactions, professional crime of this type has social and fiscal implications every bit as disturbing as the financial harm done to the Community budget.

If this type of crime is to be fought effectively, cooperation must be improved at all stages of operation from the detection of illegal practices through to recovery of the amounts. This entails cooperation not just between the various administrations in the Member States, but also with the competent authorities in non-member countries. Here, the Commission's role is crucial. Cooperation must be strengthened and systematic use made of all available information if progress is to be made in the fight against transborder fraud.

The transborder fraud cases outlined below illustrate the importance of this problem. The Commission for its part will be taking advantage of the institutional importance attached to the objectives and instruments for combating fraud set out in the Union Treaty, both those under the first pillar (Article 209a) and those under the third pillar (Article K.1.5)⁽²⁾.

1. New cases

- Refined Sugar

The investigation began when the Commission received a tip-off from the Belgian authorities that refined sugar purchased in Rotterdam and

⁽¹⁾ See Infrastructure and New Sources of Information/Data-processing Structures, page 18.

⁽²⁾ See "Legal Framework For Fraud Prevention/Treaty on European Union", page 13.

officially bound for Croatia and Slovenia would be diverted to Italy after first passing through Belgium, Luxembourg and France.

The investigation involved the Commission in cooperation with national legal authorities and also the Dutch customs, the Belgian gendarmerie, the French police and the Italian Guardia di Finanza.

The lorries transporting the sugar from Rotterdam were tailed until they reached their final destination, the initial aim being to identify the transshipment points and the authors of the fraud. A series of searches was carried out and people questioned in the Netherlands, Italy and France so as to obtain evidence that there had never been any intention to export the goods to Croatia and Slovenia, to establish that the goods had effectively been sent to Italy and to identify the recipients of the goods.

Further checks are being carried out to establish the tax implications of reselling the sugar without an invoice and establish whether the sugar was for sweetening wine.

The success of this textbook operation was only made possible because the various national authorities and the Commission's departments were able to coordinate properly. As a result, the entire fraud was unravelled and the perpetrators brought in for questioning. The network was a very well organized one designed to exploit Community mechanisms using techniques more commonly seen in organized crime. The financial impact of the fraud is estimated at ECU 1.6 million (unpaid compensatory levy on the 3 000 tonnes of contraband sugar placed on the Community market).

Other points to emerge during the investigations were:

- the main offenders may reside in a Member State (in this particular case, Italy and France) other than that where the procedure is centralized (here, the Netherlands);
 - the search for evidence should not be restricted to the Member States where the offence has been committed (Netherlands and Italy) but should involve larger and more coordinated investigations extending to transit Member States;
 - where the Community is the injured party, the fact that Community fraud is not a specific criminal offence, coupled with the present state of international legal cooperation, may hamper proceedings (in this case, the transmission and use of evidence obtained by France), while the severity of the penalty meted out to perpetrators and their accomplices may vary according to their nationality.
- Meat carousel

This fraud involved importing live cattle into Italy from Eastern Europe under the inward processing arrangements. The animals were re-sold on the Italian market without an invoice. The inward processing arrangements were

discharged by exporting low quality meat and offal to Malta. After the labels were changed, the meat was sent from Malta to Austria via Italy. In Italy the documents were fraudulently discharged and the meat remained on the Italian market before being re-exported to non-member countries to obtain a refund.

This type of fraud damages the Community in two ways:

- . the unfair competition it brings to Community production of cattle (live animals bought cheaply in Eastern Europe and sold without an invoice);
- . the damage to the image of Community beef in non-member countries (re-export of low-quality meat labelled as coming from the Community).

The amount of own resources eluded is still being assessed but the fraud netted ECU 15-20 million in export refunds. Criminal proceedings are under way and several people have been questioned.

- Milk powder and cheese

As a result of investigations carried out chiefly at the port of Antwerp, a large contraband network was identified. Community milk powder and cheese were exported to Poland and refunds claimed. No import declaration was made in Poland and the goods were re-imported into the Community from Poznan, accompanied by 90 documents drawn up in several German customs offices showing their destination to be Sierra Leone, via Antwerp.

The milk powder and cheese exported to Poland was sent to a Warsaw company which was also a supplier of goods that were shipped officially to Sierra Leone. The company only received a commission on the value of the goods and acted on the instructions of a Belgian national.

Once the goods were re-imported into the Community, they were sold and perhaps re-exported again to claim further refunds. Whether this in fact occurred is still being investigated.

The quantities involved were 2 300 tonnes of milk powder and 150 tonnes of cheese, representing ECU 4.5 million in export refunds and ECU 5 million in unpaid levies. The case as a whole highlights the need for the Commission to clarify Article 5 of Regulation (EEC) No 3665/87.

2. Old cases

The information below summarises the most important developments in 1993 in respect of :

- Olive oil

This fraud was uncovered in 1992 and is currently the subject of legal proceedings against the principals. In Italy, where the false documents of Community origin were discovered, proceedings are already in motion and the legal authorities have obtained all the necessary financial security to recover the sums due (about ECU 18.3 million). In Greece, the captains of the two ships involved in the fraud are the subject of proceedings for forging ships' papers, transport documents and loading and unloading manifests.

In 1993, there were other instances involving the import of vegetable oil into the Community and marketing it as olive oil to obtain consumption aids. The Commission was involved in coordinating the various Member States to gather evidence of the fraud and notify it to the relevant national authorities, close the investigations and commence proceedings against the authors of the fraud. The criminals were well organized both in the importing Member States and the supplying non-member countries.

Legal proceedings have also been opened in Spain as a result of the active cooperation the Commission has received from the Dutch authorities in gathering the necessary evidence.

Such unfair practices harm Community producers by damaging the good name of the product and its quality image (through the use of substitutes) and highlights yet again the need for the Commission to strengthen cooperation with the assistance of Member States.

- Milk powder

Investigations carried out by the Commission in 1992 in Italy and Austria resulted in the detection of:

- . ECU 40 million in uncollected revenue (variable components) in Italy arising from the import of feedingstuffs;
- . ECU 15 million unduly paid in aid for skimmed milk (for processing into compound feedingstuffs) and for skimmed milk powder (for feeding calves).

The company Nutral SA (cases T-492/93 and T-492/93R) applied to the Court of First Instance in Luxembourg to have the following declared void:

- . the Commission's request to the Italian authorities to recover the amounts unduly paid in respect of skimmed milk aid;
- . the report of the Commission's investigation.

On 21 October 1993 the Court held the application to be inadmissible since it was for Member States to decide how to recover sums unduly paid and any challenge to these decisions should be made through the normal channels provided for under national law.

The Court ruled that even if national law made no provision for suspending the execution of a payment order issued by a national authority, "this circumstance would not be sufficient to alter the distribution of powers between the Community and the Member States as set out in the EEC Treaty". Nutral SA has lodged an appeal.

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All these cases serve to illustrate how much cooperation has improved between the various Member State authorities, assisted by the Commission, and that there is now a basis for a global approach to combating new types of professional crime targeted against the Community budget. The Commission's experience shows that it is possible to strengthen the fight against fraud using the new tools provided by the Treaty on European Union and it is now preparing to launch a new anti-fraud strategy which will be marked by closer cooperation and frequent contacts between the Commission and Member States, and between Member States themselves.

SECTION 2: ENQUIRIES CONCERNING THE EAGGF GUARANTEE SECTION

The Member States, which are responsible for the execution of payments from the EAGGF Guarantee Section, must take every precaution to ensure that intervention agencies do not approve irregular or fraudulent applications and make payments on that basis.

As part of the clearance-of-accounts procedure the Commission reviews the administration and control systems used in each Member State for administrative and physical checks on aid applications; it makes recommendations for improvements to such systems if it considers that the risks of fraud or irregularity have not been adequately identified and preventive action taken.

Commission staff also carried out several on-the-spot inspections with the assistance of the Member States.

In 1993 these enquiries were particularly fruitful (amounts totalling some ECU 250 million were detected); for comparison the total amount involved in cases of fraud and irregularity notified under the EAGGF Guarantee Section in IRENE was over ECU 1 billion⁽¹⁾.

1. New cases

- Durum wheat : Intervention stocks and Pre-financing

Following the reform of the CAP and the subsequent fall in intervention prices for durum wheat between 1992/93 and 1993/94, the Commission checked the physical presence of intervention stocks in several Member States. In the Commission's opinion there was a risk that durum wheat might be sold from intervention stocks before the new marketing year and replaced by wheat harvested early in 1993/94. In Italy the quantities in storage were found to be 25% smaller than those declared. In France, despite shortcomings in the present administration and control system, no significant irregularities were detected. In Greece on-the-spot checks by Commission staff and the national authorities revealed that certain warehouses were unfit for the storage of cereals and that certain quantities had deteriorated and/or gone missing.

Sums involved:

Italy: ECU 76 million

Greece: ECU 15 million

France: ECU 0.5 million.

In Italy the investigations also revealed irregularities in the pre-financing arrangements for export refunds (quantities which did not exist had wrongfully qualified for the pre-financing of refunds worth almost ECU 99 million).

- Olive oil in Intervention

An investigation into the quantities and qualities of olive oil in Italy showed that, broadly speaking, the quantities declared were in fact being held in storage. Samples representing 90% of the oils in intervention storage (particularly those from 1992/93) were taken for analysis, however. Initial results indicate that 93% of these oils are of a lower quality than was stated at the time when they entered into storage. One third of the oils were not even eligible for intervention. The total sums involved are put at ECU 33.6 million.

- Olive oil: false export declaration

Enquiries were launched into exports of olive oil for which refunds had been granted. It emerged that the product had never arrived at the declared destinations. Moreover, the goods in question were not olive oil

(1) See Table 3, p. 52.

which qualifies for a high refund) but soya oil (on which a smaller refund is payable). Investigations were carried out in several non-member countries. In all, the amount involved is estimated to be ECU 3 million. The enquiries are continuing.

- Stocks of dried figs

In Greece enquiries were made into the quantities of unprocessed dried figs held in Community storage. The figs in question were found unfit to be processed for human consumption. Under the Community rules, such products must be removed from storage at the expense of the storage agency and do not qualify for Community financing (estimated sum involved: ECU 0.4 million).

- Re-imported Community sugar

In Antwerp a quantity of sugar was declared for export to the Republics of the former USSR. It was then, however, re-imported into Spain under cover of forged customs documents. The quantity fraudulently imported is estimated at some 13 000 tonnes of white sugar. Of this quantity, approximately 7 300 tonnes was French sugar exported with a refund, about 3 200 tonnes was French C-quota sugar and 2 700 tonnes was German C-quota sugar. In Spain 2 000 tonnes were seized and the national authorities initiated criminal proceedings against the individuals involved. Legal proceedings have also been initiated in Belgium. The case is still in progress (estimated sum involved: ECU 5.8 million).

- Export of beef

Enquiries made in Mersin (Turkey) revealed that some 2 000 tonnes of beef declared as for export to Lebanon and thus qualifying for additional refunds had been re-routed to Turkey and released for consumption on the Turkish market. Forged Lebanese import documents had been presented to the German payment agency, whose task it will be to recover the ECU 4 million wrongfully claimed.

- Export and re-import of Community beef

In the course of investigations by the Belgian authorities into imports of beef and pigmeat from Romania it was found that in some cases the same lorries were used for transport to and from Romania. This suggested that a team of operators were practising the following fraud scheme: export the goods to certain Eastern European countries and re-export the same goods to the Bahamas and the Netherlands Antilles. However, the documents issued by the German customs authorities were not cleared and the goods were entered for home use on the Community market.

The Community enquiry carried out in Romania, with the participation of the Belgian authorities, revealed that the goods were imported into Romania under the drawback arrangement, whereby goods re-exported are exempted from import duty. Documents seized at the importer's premises made it possible to place a figure on the quantities exported to and from Romania and so to establish rightful recovery of export refunds and import duties. The amount involved is estimated at ECU 0.7 million.

- Export of beef as food aid

Enquiries revealed that canned meat intended as food aid had not been properly sterilized. In all, 3 000 tonnes of beef were to be canned and then shipped to the former USSR. Some of this beef (400 tonnes) was analysed at various laboratories and the results confirmed that the meat had not been adequately sterilized. The Commission notified the various Republics concerned, asking them to destroy the goods already delivered but not yet consumed. The sum involved is estimated at approximately ECU 11.5 million.

- Swine fever

Special Community measures were taken to support the pigmeat market in Germany and Belgium following an outbreak of classical swine fever and the imposition of health restrictions. The Commission initiated an inquiry to ascertain whether the administration and control system used by the national authorities could ensure that the operations in question were properly carried out and in accordance with the Community rules.

On-the-spot checks revealed that the system used by the German authorities was inadequate. The case is still in progress.

2. Existing cases

The following information illustrates the most important developments in 1993 in cases described in previous reports.

- Production aid for cotton

A discrepancy having been found between the Greek authorities' estimate of the August 1991 harvest and the actual quantities grown, investigations were commenced in 1992 and continued in 1993. It was discovered that certain intermediaries were using growers' declarations to cover quantities of cotton ineligible for aid and that aid had been claimed for non-existent deliveries of cotton.

The national system for checking aid applications is currently under scrutiny.

- Financial consequences of earlier enquiries⁽¹⁾ undertaken in connection with the clearance of the 1990 EAGGF Guarantee Section accounts

Two types of correction were made to Member States' accounts.

- . One type of correction arose from shortcomings in national control procedures:

- . quality of durum wheat in intervention storage in Italy: LIT 943.3 million;
- . withdrawal of pigmeat following the outbreak of swine fever in Belgium: BFR 110.7 million;
- . intervention storage of "Nizo" butter in the Netherlands: HFL 82.6 million. This flat-rate correction reflects the gravity of the shortcomings discovered and the period over which irregularities were committed;
- . processing of butter into butteroil in Belgium: BFR 47.7 million;
- . withdrawal of fruit and vegetables in Italy: LIT 1 840.3 million.

The second type of correction arose from irregularities where the sums wrongly paid were not recovered:

- . beef exports (Zimbabwe): UKL 0.7 million in the case of the United Kingdom and HFL 0.4 million in the case of the Netherlands.

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In addition to the inspections conducted by the Member States themselves, Commission staff carried out several on-the-spot inspections and additional checks in close cooperation with the national authorities to ascertain whether transactions financed by the EAGGF Guarantee Section were in accordance with the rules. This partnership with the national authorities responsible for agriculture proved highly effective, and the results obtained were extremely satisfactory. A detailed examination of the results shows that the principles of risk analysis can be applied and future inspections targeted more closely on large-scale fraud.

It is still difficult, however, to categorize the various frauds and irregularities thus detected, mainly because of the diversity of the operators involved (small-scale arable or stock farmers, cooperatives, exporters, etc.) and of the fraud techniques employed.

SECTION 3: ACTIVITIES OF COMMUNITY INSPECTION TEAMS (EAGGF GUARANTEE SECTION)

In the wine and the fruit and vegetables sectors, where a high level of standardization has been achieved, Commission officials have special powers

⁽¹⁾ See earlier annual reports on the fight against fraud.

to conduct inspections. The shortage of staff poses a real problem in setting up the teams, however.

1. Wine sector

in 1993 the inspectors focused their attention on the annual harvest and production declarations, the definitive abandonment of vineyards, annual stock declarations and long-term storage contracts.

These inspections raised doubts as to the reliability of the information supplied by several Member States on areas under vines and yields per hectare, such information being derived from a system of declarations. Certain irregularities affecting grubbing-up premiums were also discovered (grubbing-up claimed despite the prior absence of any vines on the land concerned; over-valuation of the areas grubbed-up; grubbing incorrectly carried out). The rules now give a closer definition of grubbing as "the complete removal of all vine stocks"⁽¹⁾. The market organization will shortly be overhauled to take account of all these factors.

2. Fruit and vegetables sector

In 1993 checks were made on citrus fruit (quality of products presented for withdrawal or delivered to processors, in the light of the legal requirements) and on withdrawals of peaches and nectarines. Since the end of the year a number of on-the-spot checks have also been made on consignments of fresh fruit and vegetables to verify compliance with the quality control rules.

SECTION 4: MUTUAL ASSISTANCE

To gather evidence on frauds or irregularities involving goods imported into the Community, some 15 joint investigations⁽²⁾ were conducted in third countries by Commission staff and representatives from the Member States (together forming a Community delegation) and by the relevant authorities in the country in question. Responsibility for the frauds thus detected lay both with exporters in the non-Community countries and with Community importers, but in no case should the non-Community country itself be regarded as responsible for the fraud, since the Community rules hold the importer to be entirely responsible vis-à-vis the authorities of the Member State of importation.

It should be said, however, that certain shortcomings in the checks carried out by the Community's partners under the various preferential agreements have sometimes placed Community traders in a very difficult position and could disrupt trade relations between the Community and the countries in question.

⁽¹⁾ Council Regulation (EEC) No 1990/93, OJ L 182, 24.7.1993.

⁽²⁾ Including preparatory visits.

1. New cases

1.1 Industrial products

- Car radios

Several Member States and the Commission conducted enquiries into the importation into the Community of car radios from Indonesia. These investigations established that certain products which seven companies had been exporting since 1991 were not eligible for preferential treatment because of the origin, value and nature of the raw materials used (large-scale use of Korean components).

The own resources involved are currently estimated at ECU 18.96 million, comprising ECU 7.93 million in customs duties and ECU 11.03 million in anti-dumping duties.

- Television sets

An inspection visit to Turkey revealed that television sets exported into the Community between January 1991 and November 1993 contained components originating in third countries, including Korea. These components did not enter into free circulation in Turkey and were not subject to the offsetting levy applicable to such components when the finished product is exported to the Community. The television sets in question did not, therefore, qualify for the preferential treatment available under the agreement with Turkey, since the export licences were wrongfully issued.

The duty payable is estimated at approximately ECU 45 million.

- Textiles

Investigations are in progress into the fraudulent importation of textile products into the Community. The products in question fall into three categories. First, there are textile products declared as originating in the United Arab Emirates but believed to originate in India, Pakistan or China. Second, there is bedding of Pakistani origin accompanied by forged certificates issued by a Swiss Chamber of Commerce and giving the Emirates as the country of origin. Third, there are T-shirts which are thought to originate in India, Pakistan and China but are loaded in the Emirates under cover of certificates specifying various origins, including African countries enjoying preferential treatment.

The unpaid own resources are still being evaluated. The T-shirts alone, however, totalled almost 20 million items, on which some ECU 5 million is payable.

1.2 Agricultural and fishery products

- Beef

An inspection visit to Argentina and Uruguay revealed that 325 authenticity certificates presented in 1992 for the import of some 3 000 tonnes of Argentine hilton beef into Germany, the United Kingdom, Spain and the Netherlands had been forged. The duty evaded is currently estimated at more than ECU 10 million. Further investigations are planned to ascertain whether beef imports in 1991 and the first quarter of 1993 were in accordance with the rules.

The entry into force (with effect from 1 May 1993) of a new system for issuing authenticity certificates, including a tightening of administrative procedures, should put an end to such irregularities in future.

- Canned tuna

An inspection visit to the Philippines with the excellent cooperation of the local authorities revealed that some canned products exported to the Community as bonito (which is eligible for the Generalized System of Preferences or GSP) were in fact tuna (which is not). The duty evaded totals between ECU 4 million and ECU 5 million, and the Member States are to collect the difference between the rate of duty applicable to canned bonito under the GSP (18%) and the rate for canned tuna (24%). Recovery procedures are now in progress.

2. Existing cases

The following information illustrates the most important developments in 1993 in cases described in previous reports.

2.1 Industrial products: textiles

This case is a good example of the action which can be taken once enquiries within the mutual assistance framework have revealed that duty is being evaded.

Commission staff visiting Bangladesh in 1992 discovered that in all ECU 10 million in duty had been evaded. Of this total some ECU 8 million has already been recovered (Germany and Denmark).

2.2 Fishery products: canned tuna

The 1992 inspection visit had revealed that a certain quantity of canned tuna from the Seychelle Islands (one third of the quantity exported over the period investigated) had not been eligible for the preferential treatment granted under the Lomé Convention, and that the payment of more than ECU 1 million in own resources had been evaded. The Seychelles authorities applied to the Commission for temporary suspension of the recovery procedure, given the difficulties facing their canning industry.

In its reply the Commission pointed out:

- . that it was the sole responsibility of the customs authorities in the Member States to take appropriate measures to recover duty from those liable;
- . similarly, the granting of the payment facilities available under the Community rules is solely a matter for the national authorities, who must of course ensure that the limitation period does not run out.

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* *

Several of these cases show just how far the protection of the Community budget by proper application of preferential import schemes within the Community depends in actual fact on the proper management of these schemes in the non-member countries covered by the various preferential agreements and arrangements and on the administrative cooperation which these countries are supposed to provide to the Community. In some cases the government authorities in non-member countries are cooperating fully in accordance with the obligations laid down as a condition for the granting of preferences; in other cases, however, they have claimed that administrative, political, legal or economic difficulties were preventing them either from providing the necessary cooperation for on-the-spot enquiries or from accepting the outcome of such inquiries and withdrawing the certificates wrongly issued. The Commission and the budgetary authority must draw their conclusions from such incidents when granting (or continuing to grant) preferences to certain countries in future, and when considering their need for technical assistance in this area.

In 1993, in addition to the specific Community inquiries referred to above, the Commission continued to coordinate the numerous enquiries conducted by Member States into frauds whereby goods subject to customs duties, agricultural levies and/or indirect charges which are particularly high in the Community (livestock, meat, milk products, cigarettes, etc.) are withdrawn from the Community transit arrangements or from the common EC-EFTA transit arrangements. In many cases the products in question come from Central or Eastern Europe and are placed under the transit arrangements in order to cross Community territory to a third country. In other cases they may arrive at a Community port (e.g. from South America) and transit southwards or towards Central or Eastern Europe⁽¹⁾. Numerous visits have been made under the mutual assistance agreements with Poland, Hungary, the Czech Republic, Slovakia and Romania to try to identify, with the help of traders in those countries, those individuals (usually Community nationals) who are organizing and profiting from frauds committed within the Community.

(1) See "Transnational Import/export fraud investigations", p.24.

At the same time the Commission continued its work on tightening the legal and administrative rules and on improving operational efficiency, including exchanges of information under the agreements with Switzerland and Austria.

SECTION 5: ENQUIRIES RELATING TO THE STRUCTURAL FUNDS

The Commission is pleased to report that it has received excellent cooperation, particularly from the judicial authorities in the Member States, in the investigation and prosecution of irregularities committed to the detriment of the Structural Funds. The Commission intends to take active steps to encourage such cooperation in future. An update of the cases presented in previous annual reports on the fight against fraud is also given below.

1. European Social Fund

1.1 New cases

. On the basis of statements made by a repentant offender in Italy, the Naples Court instigated inquiries which led to the arrest of several individuals in Rome and Naples for a fraud which had begun in 1985 and involved training courses for the pilots and ground staff employed by an airline. No such course ever took place and the registers were forged (forged signatures of teachers and students, forged invoices). Cost estimates had also been inflated to roughly ECU 22 million (50% paid).

. Cooperation between the Belgian judicial authorities and the Commission revealed that possible irregular use had been made of subsidies from the Social Fund in Belgium.

A company had submitted 16 applications to the Social Fund between 1984 and 1988 and had received subsidies totalling some ECU 2.7 million. The sums relating to these projects had been paid by the Commission directly. Charges of forgery and embezzlement have been brought, and the Commission has joined a civil action to the criminal prosecution as *partie civile*.

1.2 Existing cases

. Following preliminary findings in 1992 in Lombardy, the Commission cooperated closely with the Italian judicial authorities (Milan Court) in 1993. The irregularities related to inflated or fictitious expenditure on the lease of data-processing equipment and the holding of training courses

1988-91). In all, seven individuals were arrested, including civil servants and businessmen.

The Commission brought a civil action in which five of its officials testified as experts on such matters as the arrangements for the scrutiny and selection of aid applications to the Social Fund and the arrangements for the appraisal and monitoring of projects (supporting documents and on-the-spot inspections with the Italian Ministry of Labour).

As a result of this fruitful cooperation and the Commission's civil action, various ESF subsidies were recovered from some of those prosecuted (the irregularities were on a considerable scale and involved an estimated ECU 112 million).

The Commission brought to a conclusion a number of cases, with the assistance of the Portuguese authorities within the working party set up in 1992. The working party is continuing its deliberations, which should come to an end in 1995⁽¹⁾. This will not, however, affect the cases which are still pending before national courts and to which the Commission remains a party.

2. EAGGF Guidance Section

In this new case concerning Calabria cooperation with the Italian judicial authorities and Ministry of Foreign Affairs provided the Commission with information on the misappropriation of some ECU 0.5 million. The sums in question were taken from Community funds granted for the construction of an olive-oil storage and marketing centre and from Ministry of Agriculture funds paid over for the same purpose.

3. Multi-fund operational programme

The ongoing case in Abruzzi is of interest because in 1993 it gave rise to cooperation not only between the Italian judicial authorities and the Commission but also between the Commission, the European Parliament and the Court of Auditors.

On 16 December 1993 Parliament passed a Resolution concerning the management and monitoring of the Structural Funds in Italy⁽²⁾, emphasizing the need to give priority to structural policies in the fight against fraud and to draw up an inspection programme. None of the three Structural Funds has made any payment in respect of the 1991 instalment, which is currently *sub judice*.

*
* *

(1) As required by Council Regulation (EEC) No 2052/88, as amended by Regulation (EEC) No 2081/93, OJ L 193, 31.7.1993.

(2) OJ C 342, 20.12.1993.

CHAPTER 5 : INVENTORY OF CASES COMMUNICATED BY MEMBER STATES

The Commission's information on frauds and irregularities derives solely from the reports sent in by Member States. Unlike in chapter 4 where the facts related mostly to action taken by the Commission in cooperation with the member States, this chapter deals with the information officially communicated to the Commission under the specific regulations relating to the different sectors⁽¹⁾.

As a result not all the information in the preceding chapter is necessarily incorporated into an official communication, either because the investigation is in its early stages or because Member States have not fulfilled the obligation to communicate. This is particularly true for the Structural funds where the implementing provisions relating to Article 23 of Council Regulation (EEC) N° 4253/88 were annulled by a decision of the Court of Justice⁽²⁾. Action taken by the Commission in 1993 has been aimed at rectifying this situation⁽³⁾.

This system, which is based on the rules in force, has led the Commission to acquire suitable computer facilities for the storage and, more importantly, the analysis of the data supplied.

Using the IRENE⁽⁴⁾ database inaugurated in 1993, a list of reports will first of all be compiled, followed by an analysis providing a more detailed interpretation and using diagrams to show that strategic policy guidelines can already be drawn up.

SECTION 1: STATISTICAL SUMMARY OF THE 1993 DATA

The information gathered concerns cases of fraud or irregularity for which it is not possible, at this stage, to distinguish between irregularities for example resulting from material errors, and those which represent intentional fraud or acts of negligence. In fact the intentional nature and the seriousness of the irregularity only become apparent as administrative and judicial procedures, which can be particularly lengthy, progress.

Table No 2 summarizes the cases of fraud and irregularity notified by Member States in 1993⁽⁵⁾.

(1) See "Legal framework for fraud prevention/...Reporting", page 6.

(2) See annual report Fight against fraud 1992, COM(93) 141 final.

(3) See "Legal framework for fraud prevention/.../Reporting", page 6.

(4) See "Infrastructure and new sources of information/Data-processing structures", page 17.

(5) The "mutual assistance" cases may be treated separately from the frauds and irregularities, since they are often based on suspicions, no specific irregularity having been detected. See "Legal framework for the fight against fraud Administrative cooperation", page 7.

Table N° 2

Member State	A) Own resources Art. 6(3) Reg. N° 1552/89 (cases involving EDU 10 000+)		B) EAGGF - Guarantee Section Art. 3 and 5 Reg. N° 595/91 (cases involving EDU 4 000+)			C) Structural Funds Art. 23(1) Reg. N° 4253/88 (cases involving EDU 4 000+)			Member State + COMMISSION	Mutual assistance Art. 14/14b Reg. N° 1468/81		M.A. Art 4/Reg 595/91
	1993 - 1st half		1993			1993				1993		1993
	N° of cases	EDU million	N° of cases	EDU million	EDU million recovered	N° of cases	EDU million	EDU million recovered		N° of cases	of which own res	N° of cases
BE	40	10,3	21	6,1	0,1	-	-	-	BE	14	13	-
DA	-	-	75	4,2	1	1	0,02	0	DA	0	0	3
DE	121	32,8	176	19,9	2,6	4	0,04	0,02	DE	12	11	1
EL	-	-	211	24,9	1,3	0	0	0	EL	5	5	-
ES	51	5,8	251	7,7	0,2	-	-	-	ES	8	7	-
FR	80	9,5	118	34,4	8,1	-	-	-	FR	11	10	-
IR	4	1,4	16	1,1	0,3	-	-	-	IR	5	4	-
IT	85	34,9	47	134,7	19,9	-	-	-	IT	16	14	1
LU	0	0	0	0	0	0	0	0	LU	2	2	-
NL	2	0	61	3,5	0,6	0	0	0	NL	15	13	-
PO	9	0,1	141	7,5	0,8	-	-	-	PO	2	1	-
UK	137	10,5	180	4,3	1,3	0	0	0	UK	12	10	1
TOTAL	538	105,3	1297	248,3	36,2	5	0,06	0,02	COM	52	45	1
									TOTAL	154	135	7

In the table:

- (a) a zero indicates that the reports recorded zero cases of fraud or irregularity;
- (b) a dash indicates that no reports were sent.

The figures show a significant increase not only in the number of reports received in 1993, but also in the amounts involved.

It can be noted that the increases over 1992 in the number of cases reported concerning own resources and the EAGGF Guarantee Section were 13% and 25% respectively in the period under consideration (1st half-year in respect of own resources), while the corresponding amounts increased by an even greater percentage (more than double).

With regard to the EAGGF Guarantee Section, the amounts recovered in 1993 in respect of cases reported during the year were also higher, accounting for 14% of the total (compared with 8% in 1992).

SECTION 2: GRAPHIC ANALYSIS OF REPORTS

The data supplied by the Member States are recorded and then analysed, sector by sector, in the Commission's various departments⁽¹⁾. The IRENE database put into operation at the end of 1992, has made it possible to run a comparative analysis, illustrated by computer-generated diagrams which reveal its potential (Figures 1 to 7). As techniques are refined, it will become possible to acquire a fuller understanding of the data and to devise an anti-fraud strategy on the basis of more closely targeted and relevant analysis.

For the purposes of this statistical section, the year 1990 to 1993 have been selected as a reference period because usable data is available on both resources and expenditure, although in the case of own resources only the figures for the first half of 1993 are available and usable.

Figure 1

This shows the number and size of reported frauds involving revenue and reported frauds and irregularities involving expenditure. In each case it shows the changes recorded over the reference period. A comparison between revenue and expenditure will not be possible until the reporting of cases is standardized⁽²⁾.

Figure 2

This provides a breakdown by Member State of the number of cases reported and the sums involved (revenue and expenditure). Under the existing rules it is not possible to draw any general conclusions regarding the steps taken at national level to combat fraud.

Figure 3

This shows the various categories of own resources covered by the reports received. Obtaining high-quality data is already emerging as a priority, since the "Indeterminate" category represents 42% of the cases reported and 56% of the sums involved. The bulk of the "Identified" categories are accounted for by cases relating to customs duties (other than anti-dumping duty).

(1) See "Infrastructures/Internal organization of Commission departments", page 16.

(2) See "Legal framework for fraud prevention /Reporting", page 6.

Figure 4

When the same breakdown is applied to EAGGF Guarantee Section expenditure on export refunds, aids for crop production and aids for stock farming, it is clear that refunds account for a large percentage of the sums misappropriated (22% of reported irregularities but 50% of the sums involved). From one year to another, however, these sums may vary even if the number of cases reported shows little change (see "aids for crop production" in 1990 and 1992). Thus, there is no definite link between the trend in the number of cases and that in the sums concerned, irrespective of category.

Figure 5

This shows side by side the export refunds paid by the EAGGF Guarantee Section and the agricultural import levies collected as own resources. Only cases involving sums greater than ECU 10 000 have been taken into account in the period 1990 - 1st half 1993.

Figure 6

Irregularities in connection with the structural policies are significantly fewer than those involving EAGGF Guarantee Section expenditure: 58 cases reported, representing less than ECU 2 million. Changes in the rules should clarify the position, since under the Union Treaty and the new financial perspective, the structural policies will account for more than 30% of budgetary expenditure, whereas Guarantee Section expenditure will fall to around 50%.

Figure 7

This summarizes the IRENE data on administrative cooperation⁽¹⁾. It shows the preponderant role which Commission notifications play in the implementation of Regulations (EEC) No 1468/81 and No 595/91. The number of cases notified under the latter Regulation remains comparatively small (30 cases over the period 1990-93).

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* * *

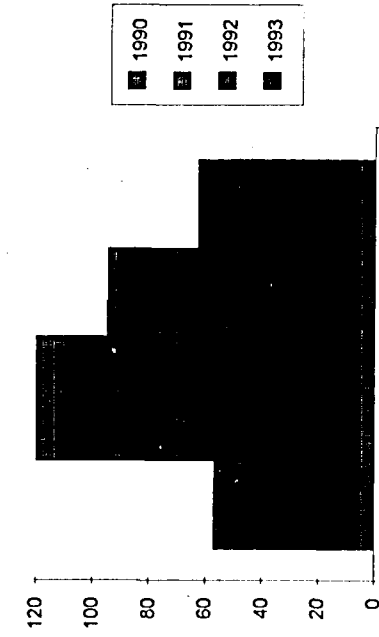
This preliminary analysis of the data, for which no grand claims are made at this stage, is intended simply to serve as a basis for discussion on certain points and, more importantly, to demonstrate that some resources should be set aside, as soon as possible, for the methodical processing of "intelligence". This will provide a better understanding of the various types of fraud and fraudster and should help to ensure that Community finances are protected on the optimum cost-efficiency basis.

(1) See "Legal framework for fraud prevention/.../Administration cooperation", page 7.

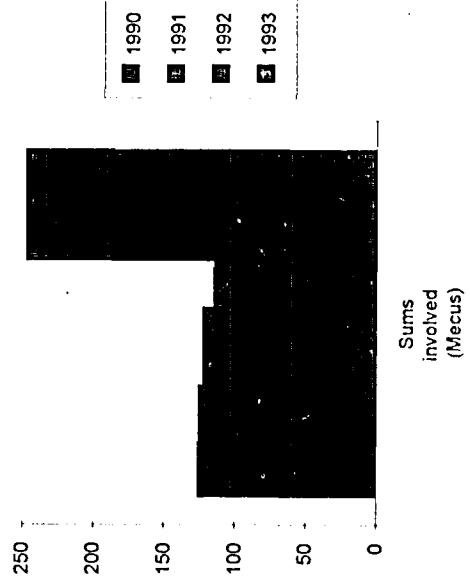
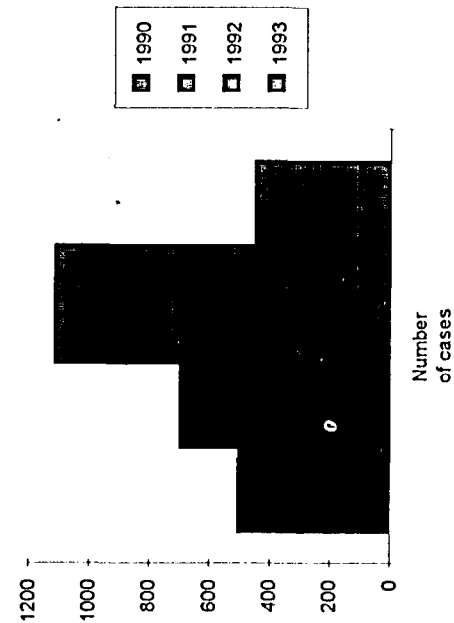


Figure 1
OWN RESOURCES AND EXPENDITURE
1990 - 1993 reports (*)

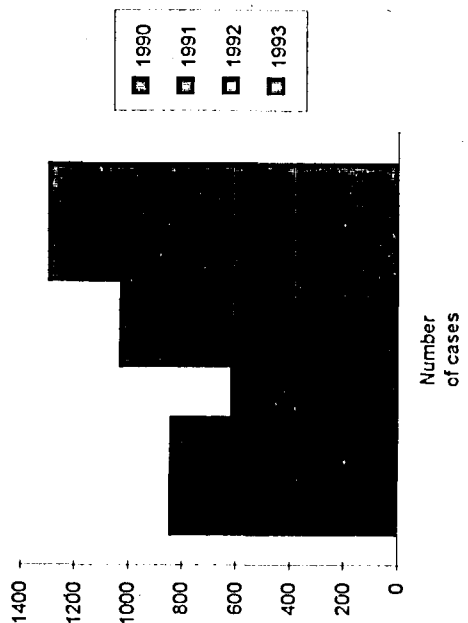
14/03/1994



YEAR	Number of cases	Sums involved (ECU million)
1990	507	57
1991	702	117
1992	1116	95
1993	452	95
TOTAL	2777	364



YEAR	Number of cases	Sums involved (ECU million)
1990	849	126
1991	622	123
1992	1036	115
1993	1303	248
TOTAL	3810	612



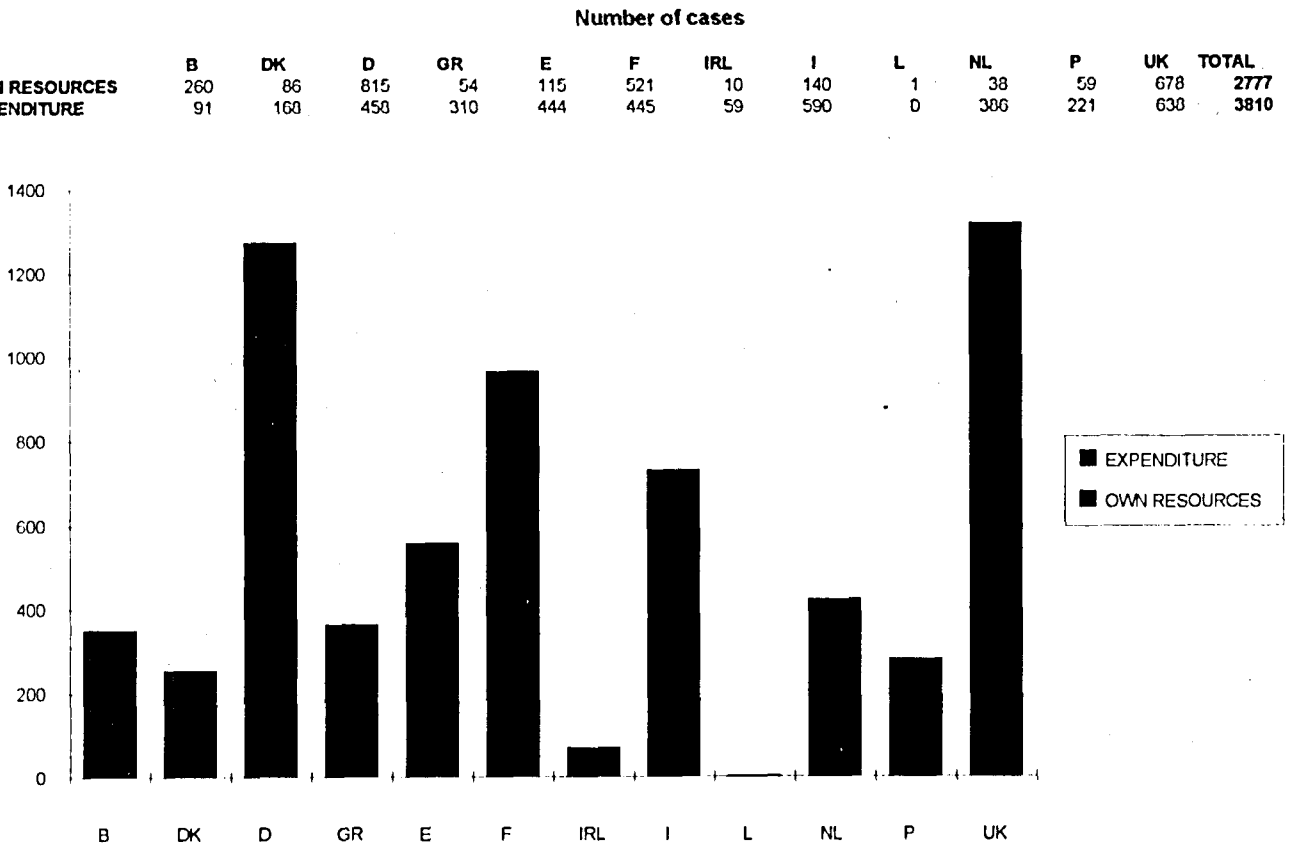
(*) 1993: figures for own resources cover only the first six months.

Figure 2

OWN RESOURCES AND EXPENDITURE
1990-93 reports (*)

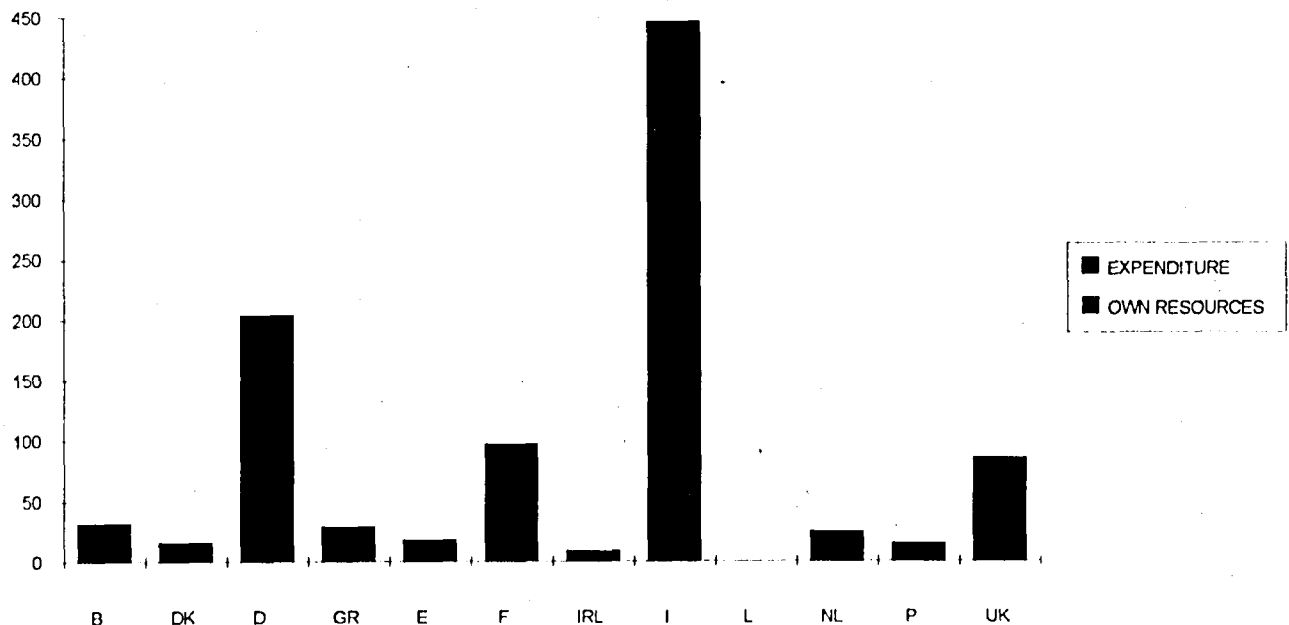
14/03/94

	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK	TOTAL
OWN RESOURCES	260	86	815	54	115	521	10	140	1	38	59	678	2777
EXPENDITURE	91	160	450	310	444	445	59	590	0	306	221	630	3810



Sums Involved (ECU million)

	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK	TOTAL
OWN RESOURCES	23	6	144	2	3	47	6	66	0	2	2	63	364
EXPENDITURE	9	10	60	27	15	50	3	380	0	23	13	22	612



(*) 1993: figures for own resources cover only the first six months

Figure 3

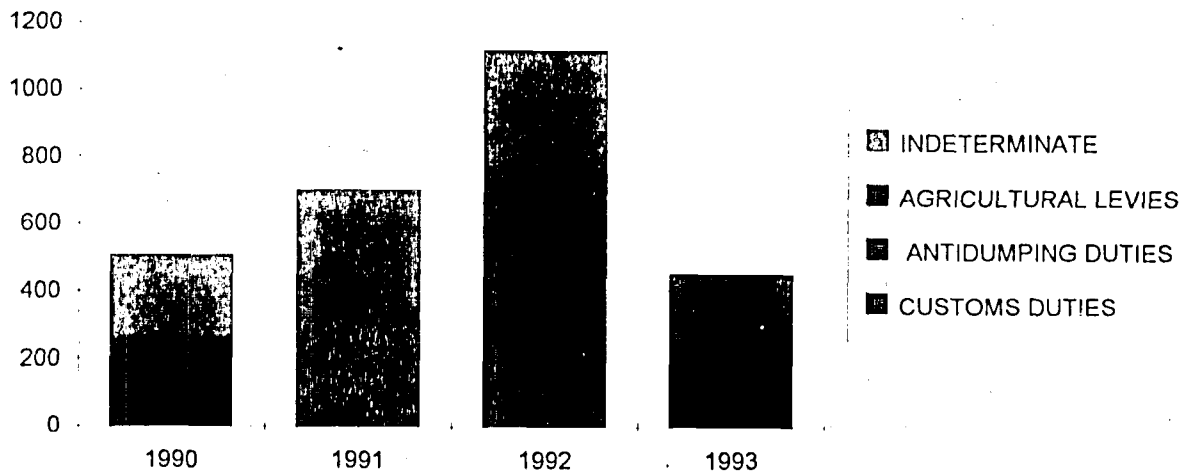
OWN RESOURCES

1990 - 1993 reports (*)

14/03/94

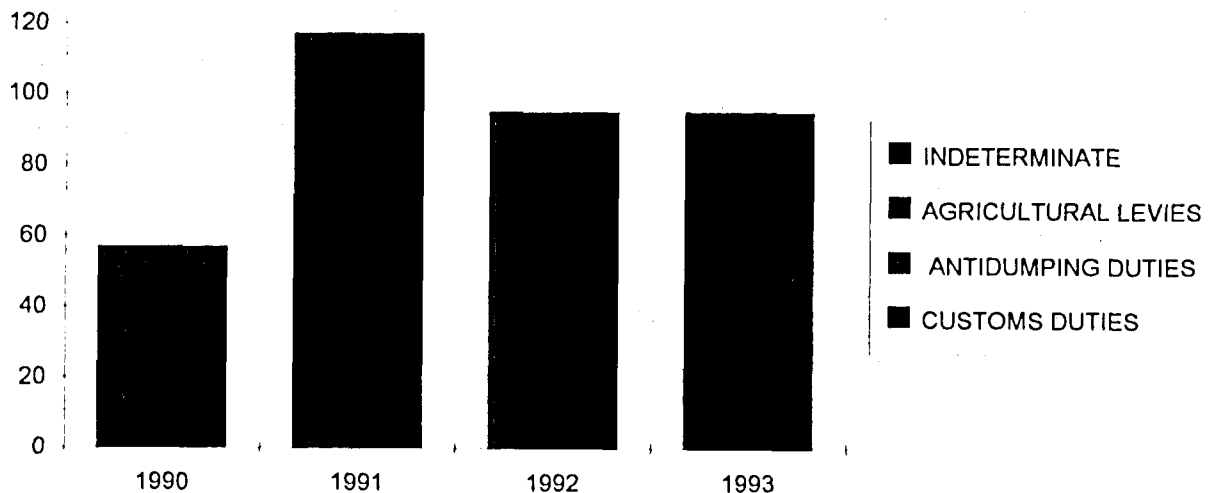
Number of cases

YEAR	CUSTOMS DUTIES	ANTIDUMPING DUTIES	AGRICULTURAL LEVIES	INDETERMINATE	TOTAL
1990	211	24	24	248	507
1991	246	25	9	422	702
1992	522	28	215	351	1116
1993	225	25	56	146	452
TOTAL	1204	102	304	1167	2777



Sums involved (ECU million)

YEAR	CUSTOMS DUTIES	ANTIDUMPING DUTIES	AGRICULTURAL LEVIES	INDETERMINATE	TOTAL
1990	20	3	2	32	57
1991	15	3	2	97	117
1992	24	8	35	28	95
1993	40	2	7	46	95
TOTAL	99	16	46	203	364



(*) 1993: figures cover only the first six months.

Figure 4

EAGGF GUARANTEE SECTION

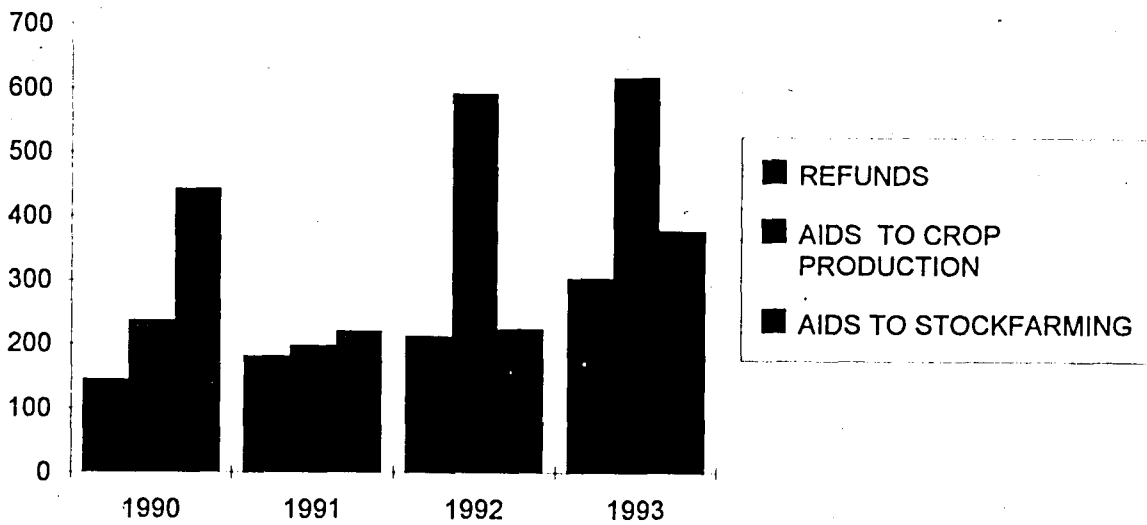
1990 - 1993 reports

14/03/94



Number of cases

YEAR	REFUNDS	AIDS TO CROP PRODUCTION	AIDS TO STOCKFARMING	TOTAL
1990	145	237	444	826
1991	181	198	221	600
1992	213	591	224	1028
1993	304	616	378	1298
TOTAL	843	1642	1267	3752



Sums involved (ECU million)

YEAR	REFUNDS	AIDS TO CROP PRODUCTION	AIDS TO STOCKFARMING	TOTAL
1990	37	70	18	125
1991	81	35	7	123
1992	20	89	5	114
1993	168	45	35	248
TOTAL	306	239	65	610

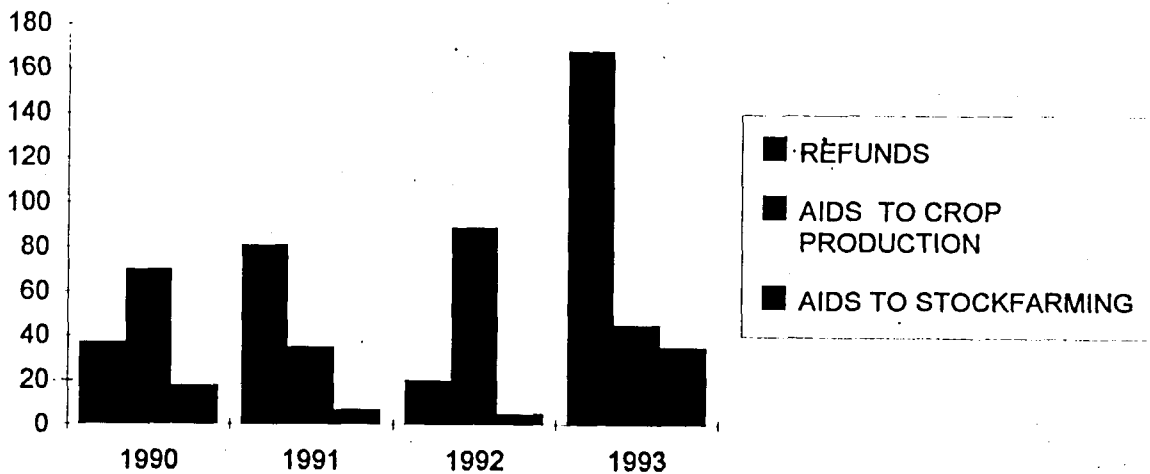
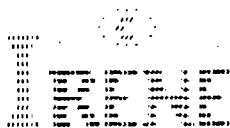


Figure 5

REFUNDS / LEVIES

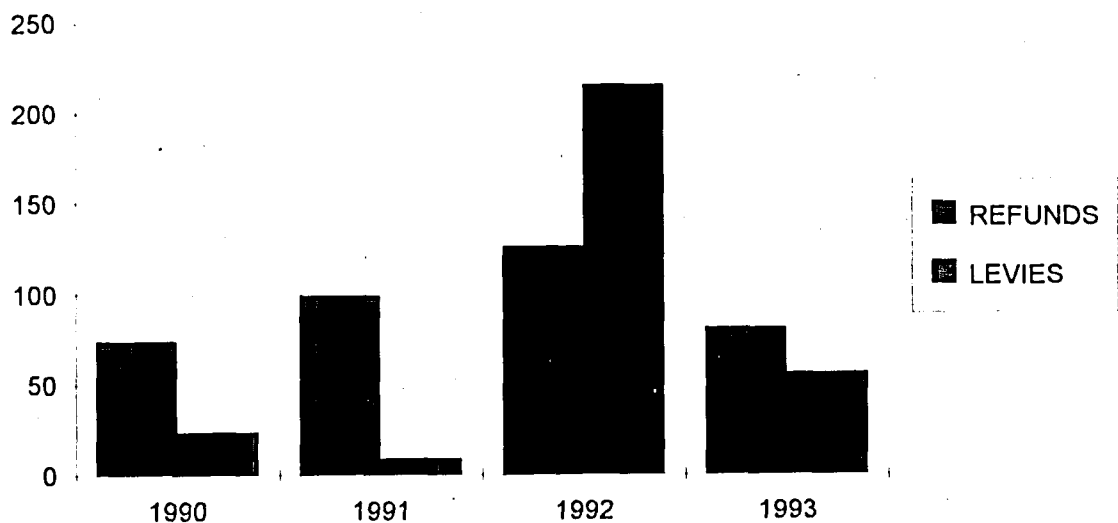
1990 - 1993 reports for cases over 10000 ecus (*)

11/3/94



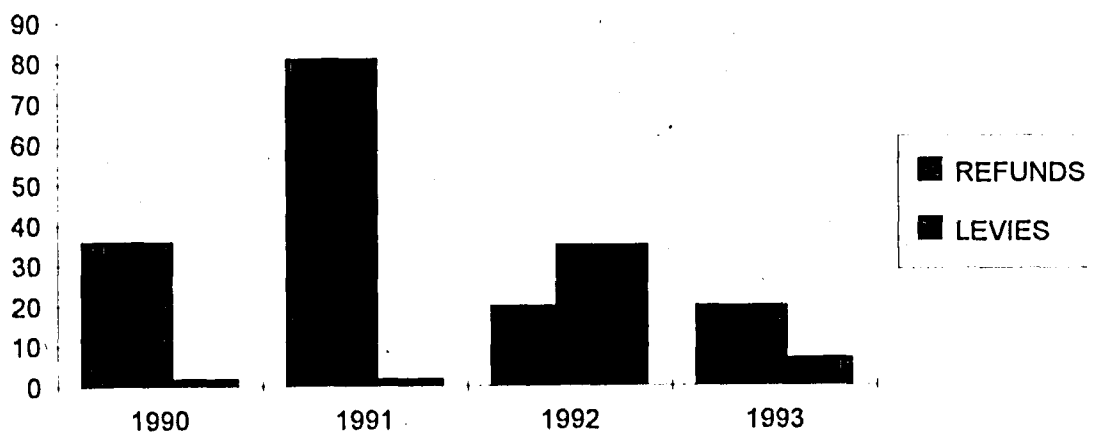
Number of cases

YEAR	REFUNDS	LEVIES
1990	74	24
1991	99	9
1992	126	215
1993	81	56
TOTAL	380	304



Sums involved (ECU million)

YEAR	REFUNDS	LEVIES
1990	36	2
1991	81	2
1992	20	35
1993	20	7
TOTAL	157	46



(*) 1993: figures cover only the first six months.

Figure 6

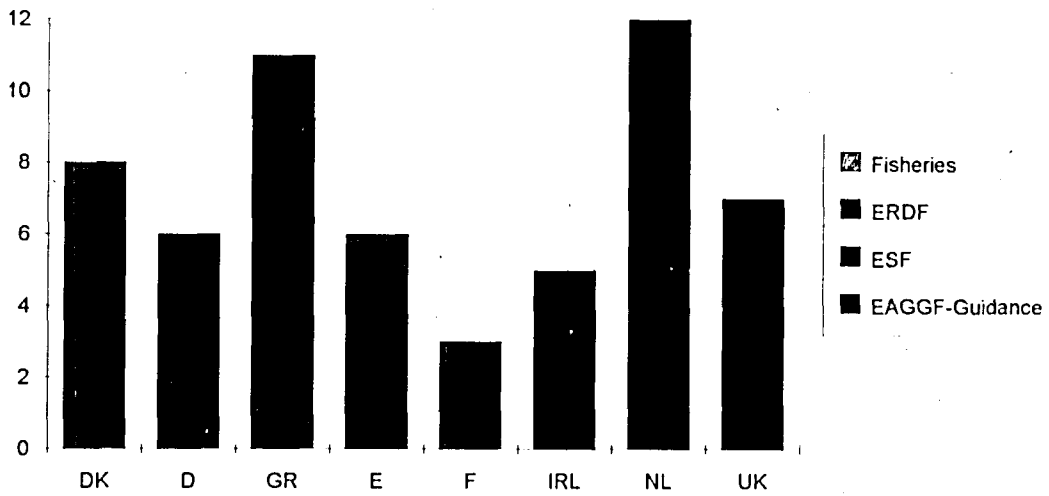
STRUCTURAL FUNDS

1990 - 1993 reports

14/03/94

Number of cases

Member State	EAGGF-Guidance	ESF	ERDF	Fisheries	TOTAL
DK	0	0	0	0	0
D	0	0	0	0	0
GR	11	0	0	0	11
E	0	6	0	0	6
F	0	3	0	0	3
IRL	0	0	5	0	5
NL	0	0	12	0	12
UK	0	0	7	0	7
TOTAL	11	9	17	0	37



Sums involved (ECU thousand)

Member State	EAGGF-Guidance	ESF	ERDF	Fisheries	TOTAL
DK	112	0	0	0	112
D	10	169	0	0	179
GR	39	86	0	0	125
E	62	12	0	0	74
F	248	349	251	0	848
IRL	13	0	0	0	13
NL	128	0	0	0	128
UK	269	0	89	0	358
TOTAL	883	566	251	0	1699

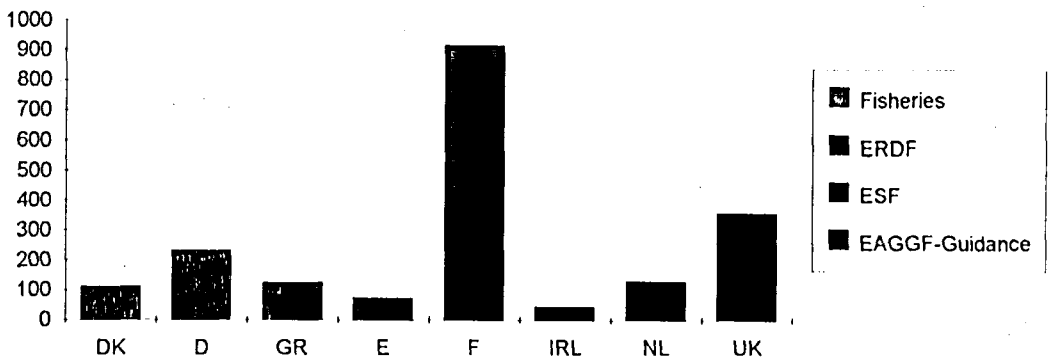
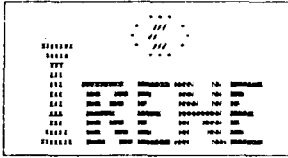


Figure 7

MUTUAL ASSISTANCE
1990 - 1993 reports

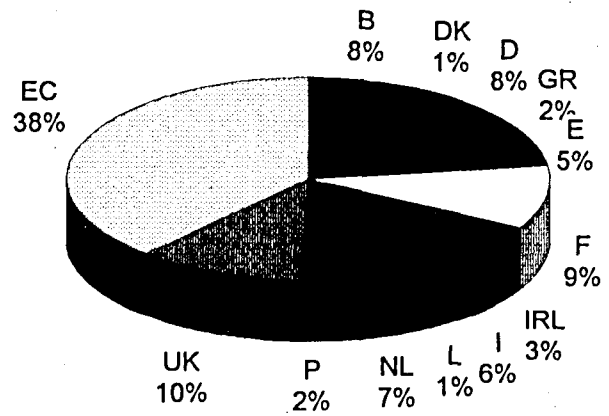
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Number of cases under Reg. No 1468/81

Member State Number of cases

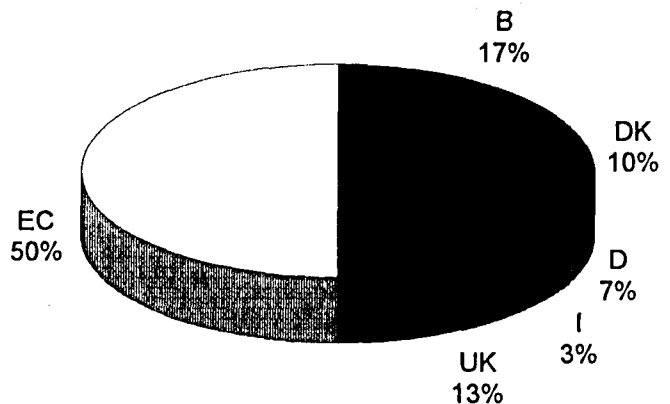
B	29
DK	2
D	32
GR	6
E	18
F	39
IRL	11
I	22
L	3
NL	25
P	6
UK	42
EC	145
TOTAL	380



Number of cases under Reg. No 595/91

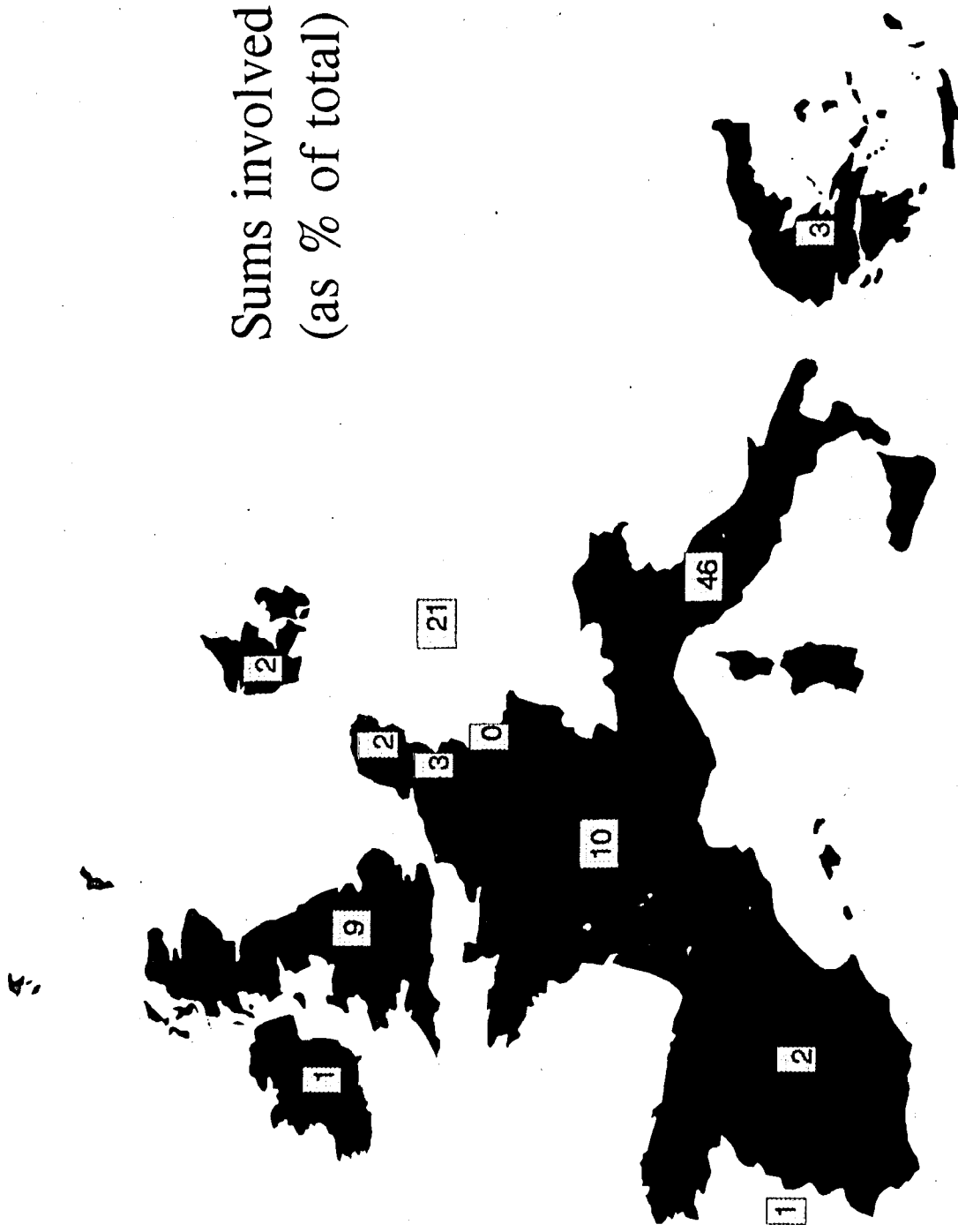
Member State Number of cases

B	5
DK	3
D	2
I	1
UK	4
EC	15
TOTAL	30



Reports from the Members States 1990-93

own resources (*) and expenditure



(*) 1993: only the first six months for own resources.

SECTION 3: FINANCIAL FOLLOW-UP

Cooperation between the Commission's specialized departments and the national authorities has enabled many frauds and irregularities to be detected and prosecuted. The substantial sums which are often involved can be recovered only by the Member States acting under their national laws. The Community must therefore ensure that Member States make regular reports to the Commission under the agreed procedures so that appropriate action can be taken at Community level.

In this context it should be remembered that the European Parliament, as is its right, keeps a close watch on such financial matters and that recommendations are made by the Court of Auditors in its annual reports.

The Commission has the legal means to ensure the recovery of unpaid revenue or any amounts wrongly paid. Its staff make full use of the new scope for action on frauds against the EAGGF Guarantee Section (Regulation (EEC) No 595/91) and hope to take similar action on frauds against the Structural Funds. In the same way, the proposed amendment of Regulation (EEC, Euratom) No 1552/89 should make it easier to collect unpaid own resources⁽¹⁾.

Some progress has already been made over the last financial year (particularly as regards the EAGGF Guarantee Section). Table No 3 illustrates the Commission follow-up to various categories of fraud, particularly as regards cases now "closed", i.e. cases where the Member State has recovered all the sums payable or the Commission has decided to charge to the Member State⁽²⁾ or the Community those sums which cannot be recovered (although this applies only to the EAGGF Guarantee Section).

Of 8 243 cases relating to the EAGGF Guarantee Section, 5 111 involving ECU 113.35 million have been closed.

Of these ECU 113.35 million, ECU 104.91 million (92.5% of the total) were recovered, and ECU 7.60 million (6.7% of the total) were charged to the Community. It should be pointed out, however, that these cases involved relatively small sums and that, where large sums are involved, recovery takes a very long time because of the judicial procedures followed.

Here again, even with the Irene database only in its first year of operation, the advantages of computerized systems have become clear. From now on they will be used in cooperation with the departments concerned and to the full extent of their capacities, thanks to the refinement and the quantitative and qualitative improvement of input procedures.

(1) See "Legal framework for fraud prevention/... /Reporting", page 6.

(2) Such decisions may be taken in connection with the clearance of accounts. The procedure is laid down in Article 8(2) of Council Regulation (EEC) No 729/70 and in Article 5(2) of Council Regulation (EEC) No 595/91.

EXTRACTS FROM IRENE 3 DATABASE (amounts in ECU '000)	EAGGF - GUARANTEE		STRUCTURAL FUNDS		OWN RESOURCES	
	Cases	Amounts	Cases	Amounts	Cases	Amounts
(1) TOTAL : CASES CLOSED	5.111	113.351	16	232	210	8.365
Of which - without financial consequences*	987	0	3	39	4	0
- full recovery of amounts due	3.855	104.915	13	193	206	8.365
- recovery impossible **	269	8.436	-	-	-	-
Of which (charged to Member State)	(22)	(832)	-	-	-	-
(charged to EC)	(247)	(7.604)	-	-	-	-
(2) TOTAL : CASES ONGOING	2.742	954.448	28	1.531	1.593	265.667
Of which - recovery in progress	244	76.657	3	31	-	-
- repayment of expenditure or collection of revenue pending	2.498	877.791	25	1.500	1.593	65.667
(3) <u>SUB-TOTAL : CASES CLOSED OR ONGOING</u> (1) + (2)	<u>7.853</u>	<u>1.067.799</u>	<u>44</u>	<u>1.763</u>	<u>1.803</u>	<u>274.032</u>
(4) <u>CASES WHERE RECOVERY OF ALL OR PART OF</u> <u>THE AMOUNTS DUE IS IMPOSSIBLE ***</u>	73	<u>14.620</u>	5	<u>174</u>	-	-
(5) <u>CASES ON WHICH FINANCIAL DATA ARE</u> <u>LACKING</u>	<u>317</u>	-	5	-	-	-
(6) <u>INTERPRETATION IN PROGRESS(****)</u>	-	-	-	-	<u>972</u>	<u>84.569</u>
<u>GRAND TOTAL : REPORTED CASES</u> <u>(3) + (4) + (5) + (6)</u>	<u>8.243</u>	<u>1.082.419</u>	<u>54</u>	<u>1.937</u>	<u>2.775</u>	<u>358.601</u>

(*) Frauds or irregularities reported but not proven or confirmed.
(**) Sums definitively lost, unless chargeable to the Member State as EAGGF Guarantee Section expenditure.
(***) Sums lost but not yet charged to the Member State as EAGGF Guarantee Section expenditure. Sums lost under other headings are usually charged to the Community budget.
(****) Cases relating to own resources or the EAGGF Guarantee Section where contradictory data have been supplied by the Member States.

In the case of own resources, the financial data sent to the Commission for analysis include statements showing the duties which have not been collected. These statements can be compared, in the course of on-the-spot checks with the frauds or irregularities which figure in the legal records kept by the Member States. Cases involving sums in excess of ECU 500 000 are investigated in detail; other cases are the subject of random checks.

In the case of expenditure, there is no statutory requirement to keep or supply extracts from accounts of the type used for own resources.

* In the case of the EAGGF Guarantee Section, any sums recovered are specified in accordance with an annual procedure (annual clearance of accounts) and are deducted from the Fund's expenditure. The Commission may decide to charge any amounts lost to the Member State if it has failed to do everything possible to recover the sums in question or has shown itself to be negligent.

* In the case of the Structural Funds, any improper behaviour or negligence which has resulted in the misappropriation or unlawful use of payments is examined with the Member States under the partnership arrangements⁽¹⁾. In practice, repayments are a rare occurrence and the amounts lost may be redeployed or reprogrammed, again under the partnership arrangements.

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Lastly, Table No 3 shows that the rules do not apply in a uniform manner to all the areas which they cover and that the content of the reports from the Member States may vary according to the nature of the funds in question (revenue or expenditure) or even according to the nature of the expenditure (EAGGF Guarantee Section or Structural Funds).

In this context the Commission is aware of the improvements needed to the legislation now in force, in particular with a view to:

- . standardizing the contents of the reports from the Member States⁽²⁾ and harmonizing recovery procedures, for although different bodies authorize different types of expenditure, they nevertheless perform the same function, i.e. taking the decision to recover amounts due, since they alone are empowered to commit expenditure;
- . defining a consistent framework within which the standardization of reports and the harmonization of recovery procedures (and of procedures for the collection of own resources) can be put to optimum use and provide the basis for an effective follow-up;
- . making provision in the financial follow-up, in certain well-defined cases and in agreement with the Member States, for a procedure whereby long-outstanding amounts which are impossible to recover may be definitively written off, existing procedures being used in the case of the EAGGF Guarantee Section and new procedures being introduced in other sectors.

⁽¹⁾ Article 24 of Council Regulation (EEC) N° 2082/92 amending Regulation (EEC) N° 4253/88.

⁽²⁾ See "Legal framework for fraud prevention/... /Reporting", page 6.

CHAPTER 6 : FRAUD PREVENTION APPROPRIATIONS

SECTION 1: EXECUTION OF THE 1993 BUDGET

In 1993 the appropriations allocated for fraud prevention totalled ECU 133.24 million (including ECU 60 million entered in the reserve).

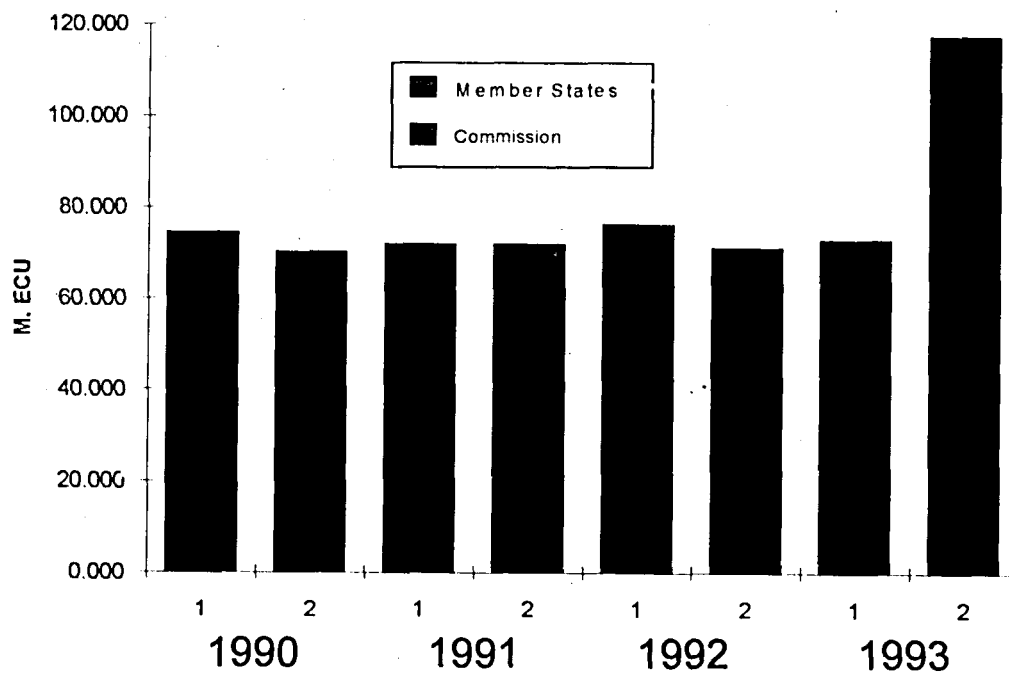
Figure 8 shows how the amount of the appropriations has changed over recent years.

Figure 8

FRAUD PREVENTION APPROPRIATIONS (million ECU)	1990		1991		1992		1993	
	1	2	1	2	1	2	1	2
	Commission	3.115	3.115	6.398	6.806	8.894	9.404	2.060
Member States	71.580	67.302	65.733	65.325	67.662	61.995	71.182	115.792
TOTAL	74.695	70.417	72.131	72.131	76.556	71.399	73.242	117.852

1: appropriations entered in the budget (outside the reserve)
2: appropriations available after transfers

Allocation of fraud prevention appropriations



These appropriations were allocated for the direct benefit of the Member States to finance national control structures (in agriculture in particular), to support training expenditure (seminars, training courses), and to co-finance certain programmes for setting up new control methods (remote sensing, vineyard register).

The chart also shows that the volume of appropriations approved in the budget rose to ECU 117.85 million after transfers within the chapter, in particular boosting the operational Article B1-360 (Measures to combat fraud affecting the EAGGF guarantee Section).

In general terms the operating appropriations (Part B of the expenditure side of the budget) are meant to cover technical assistance from the Commission to the Member States both for the organization of their specialist anti-fraud departments and to help them conduct enquiries and carry out effective controls⁽¹⁾. The fraud prevention appropriations are used by the Member States more for preventive than for punitive purposes. Above all, the Member States are bound to ensure that Community funds are properly employed, and the fraud prevention appropriations help them to fulfill that obligation.

1. Utilization of appropriations

Details of the utilization of appropriations by the Member States are shown in Table 4. The following comments relate only to the main headings carrying substantial sums.

. A-3531 (controls, studies, analyses in connection with the fight against fraud). A review of the utilization rate and the way in which the Member States use the appropriations to which they are entitled⁽²⁾ prompts the following remarks :

Since Regulation (EEC) N° 4045/89 was introduced, Community appropriations have clearly been underutilized. To help counteract this, the appropriations needed to co-finance the measures provided for in the Regulation -- which is now in its fourth year of application -- have been fixed on the basis of Member States' own estimates at the time of the annual programming exercise and on their previous utilization record, rather than on the total amounts mentioned in the regulations as was the case in the past.

This being so, total commitments now stand at ECU 1.71 million, and not the ECU 2.58 million provided for in the Regulation, a figure considered to be too high in relation to Member States' own forecast expenditure.

The reason for this decision was to improve the way the Community's financial contribution under the Regulation was managed and to avoid the danger of appropriations lapsing as in the past.

(1) Specific controls which they are under an obligation to undertake by virtue of existing legislation.

(2) Under Regulation N° 4045/89.

. B1-360 (Measures to combat fraud affecting the EAGGF Guarantee Section).

* Under Regulation (EEC) N° 307/91⁽¹⁾. With the Regulation entering its third year of application, it was difficult to establish in advance how Member States' actual expenditure would compare with the estimates arrived at during the annual programming exercise, especially as the Regulation's timetable is such that the end use of appropriations for the previous year cannot be known until well after appropriations for the current year have been estimated and committed. Consequently, the whole financial allocation provided for in the Regulation (ECU 20 million) has been committed.

* Under Regulation (EEC) No 3508/92 -- Expenditure amounting to ECU 50 million has been committed. It covers all appropriations made available to Member States to implement the integrated administration and control system⁽²⁾ for the period 1992-93. From the very beginning, heavy calls have been made on the co-financing facility provided for in the Regulation and there have been none of the start-up problems that normally characterize the introduction of new regulations.

* Remote sensing -- Appropriations to co-finance controls using remote sensing by Member States (ECU 10 million) have been committed in their entirety.

. B2-5110 (Measures to control and combat fraud in agriculture). The initial allocation stood at ECU 33.5 million, but the amount available was reduced to ECU 18.11 million. The transfer decision was based on the fact that it was impossible to commit all the appropriations as planned, in particular for the vineyard register (the Member States failed to apply for funds).

The utilization of appropriations can therefore be regarded as satisfactory.

2. Payments

Payments in respect of expenditure are made either in the course of the year or by the end of the following year (Part A: non-differentiated appropriations), or they may be spread over several years (Part B: differentiated appropriations) following a mandatory schedule, the principle being that appropriations not paid out in the course of the financial year subsequently lapse.

Payments, then, are a reflection of the Commission's activities as a whole. If, when discussing the scheduling of expenditure, a Member State indicates that it needs funds to which it is entitled under the regulations, the Commission will take a decision committing the expenditure in question. If the Member State does not then submit a payment request (for instance because the programme due to be financed is not carried through), no actual payment is made. This is what happened with the vineyard register under Item B2-5110 [where commitments for ECU 23 million were made in 1992 to be

(1) Council Regulation (EEC) N° 307.91 of 9 February 1991 on reinforcing the monitoring of certain expenditure chargeable to the EAGGF Guarantee Section.

(2) See Legal Framework for Fraud Prevention/.../Controls, page 8.

paid in 1993, but only ECU 13.5 million were actually paid out -- so that appropriations of more than ECU 9 million are in danger of lapsing⁽¹⁾]. This computerized sectoral register is intended to establish the link between vineyards and the operators so as to be able to control planting and harvest declarations⁽²⁾. Among the countries concerned (Germany, France, Luxembourg, United Kingdom, Spain, Italy, Greece and Portugal) the actual implementation of the programme has not proceeded as planned (especially in Greece, Spain and Portugal).

Other headings concerned:

. A-3531 (Regulation (EEC) No 4045/89)

The utilization rate for appropriations made available to Member States rose from 42% in 1990 to 54% in 1992. Analysis of forecast expenditure for 1993 shows a rate of 90% compared with the appropriations committed under the rule described above, although the final position will not be known until after Member States have presented their statements of actual expenditure on 15 May 1994.

What we know concerning the utilization of Community appropriations indicates that the situation varies considerably from one country to another: the utilization rate is high in Denmark, Germany, Spain, France and Portugal, average in Belgium and the Netherlands, and low in Ireland, Greece, Italy and the United Kingdom.

As for the Community financial resources provided for in the Regulation, the main increase over the years has been in appropriations to cover the salaries of the extra staff taken on (18% up in 1992 compared with 1990). On the training front, however, Member States have less and less resort to Community appropriations, which is paradoxical to say the least in view of the fact that they are continually asking to be instructed about Community regulations. There is also a low level of utilization in respect of expenditure on computerization, despite its being wholly chargeable to the Community budget.

. B1-360

* Under Regulation (EEC) No 307/91 -- The co-financing system provided for in Regulation (EEC) No 307/91, for which the utilization rate for Community appropriations was 46% in 1992 (an increase of 10% over 1991), could register another slight improvement in 1993 if Member States' expenditure forecasts are respected.

The forecasts suggest a utilization level of 55% in respect of the amount available (ECU 20 million), although it is only when the actual expenditure figures are presented on 15 May 1994 that it will be possible to ascertain the actual utilization rate for Community appropriations.

(1) There is still a possibility of a transfer, which must be submitted for explicit approval by the budgetary authority.

(2) Controls which the Member States have to carry out.

At the moment, forecasts vary according to Member State: three countries (Denmark, Spain and the Netherlands) could well utilize all the appropriations available to them, but the utilization rate for other countries could be anything between 6% and 71%.

Even those Member States whose control authorities are in greatest need of reinforcement (Greece, Italy) make little or no use of the financial resources made available to them by the Community.

Generally speaking, Member States seem to prefer co-financing when it is for strengthening controls pertaining to export refunds rather than for controls in respect of intervention measures, as is shown by the fact that their respective utilization rates are running at 57% and 43% of total eligible amounts.

* Under Regulation (EEC) No 3508/92 -- Member States have evinced considerable interest in the financial incentive set out in Article 10 of the Regulation (scheduled to last for three years from 1992); the utilization rate here is extremely high, at 96% of the amount available.

As regards 1993, only the forecast expenditure figures are available, as the final ones will not be known until after Member States have presented their actual expenditure statements; however, it is almost certain that the percentage will be similar, since most Member States have presented forecasts considerably in excess of their overall allocation.

So although the figures are provisional, they appear to show a satisfactory situation across the board, with the exception of Portugal and Luxembourg.

Payments made so far (1992 final and 1993 advanced) amount to ECU 37.5 million, which is 75% of the ECU 50 million committed.

* Remote sensing -- So far the utilization rate is 41% in respect of commitment appropriations although, bearing in mind the time lag in presenting payment requests, the final rate will probably be considerably higher.

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Table 4 gives a breakdown of the execution of fraud prevention appropriations in 1993 by budget heading and operation financed.

TABLE N° 4

IMPLEMENTATION OF APPROPRIATIONS 1993

BUDGET ARTICLE, ITEM	HEADING	MEASURES FINANCED	APPROPRIATIONS AVAILABLE	APPROPRIATIONS COMMITTED	UTILIZATION (%)	CARRYOVERS FROM 1992	PAYMENTS AGAINST CARRYOVERS FROM 1992
A2554	Conferences, congresses and meetings in connection with the activities of the associations of European lawyers for the protection of the financial interests of the Community	Seminars, meetings training courses in the Member States	200,000	199,155	99.6		
A3530	Unit to coordinate action against fraud	- Meetings, seminars investigations - COCOLAF	99,000	90,491 50,491 40,000	91.4	324,924	268,573 82.6 %
A3531	Controls, studies, analyses in connection with the fight against fraud	- Reg. N° 4045/89 - Meetings, investigations, seminars, missions - Studies on customs and indirect taxation - Other studies and report on the fight against fraud - Computer systems (IRENE) - RTC	4,341,000	3,799,028 1,706,000 1,422,048 365,080 113,000 103,400 89,500	87.5	3,375,585	1,260,104 32.5 %
A3532	Fraud suppression in the textiles sector (TAFI)	- Seminars, investigations - Study - Co-financing a research unit	500,000	494,315 161,000 180,315 153,000	98.9	p.m. in earlier years	

BUDGET ARTICLE, ITEM	HEADING	MEASURES FINANCED	APPROPRIATIONS AVAILABLE	APPROPRIATIONS COMMITTED	UTILIZATION (%)	CARRYOVERS FROM 1992	PAYMENTS AGAINST CARRYOVERS FROM 1992
A-355	European documentation, coordination and study net-work to control cross-border crime and fraud	Establishment of a foundation under Dutch law (legal structure of the network) involving 5 countries : D. I. GR. L. NL	<u>375,000</u>	<u>375,155</u>	100	245,000	240,500 98.2%
B1-360	Measures to combat fraud affecting the European Agricultural Guidance and Guarantee Fund, Guarantee Section	- Reg. N° 307/91 - Remote sensing - Integrated administration and control system	<u>82,000,000</u>	<u>80,120,800</u> <u>20,000,000</u> <u>10,000,000</u> <u>50,120,800</u>	97.7	15,718,320	4,877,509 31%
B2-5110	Measures to control and combat fraud (inspection in agriculture)	- Vineyard register - Studies - Missions - Controls on fruit and vegetables in Portugal - Remote sensing (software) - Olive oil agencies - Miscellaneous	<u>18,110,000</u>	<u>17,979,427</u> 389,052 555,815 103,251 4,400,000 467,423 12,000,000 63,886	99.3	23,069,727	13,491,392 58.5%
B5-3051	Community action programme concerning vocational training for customs officials (Matthaeus programme) and tax officials	- Matthaeus - Matthaeus-Tax	<u>2,427,000</u>	<u>2,426,953</u> <u>1,900,707</u> <u>526,246</u>	99.9		
B5-3052	Indirect taxation and customs networks	Feasibility studies, pilot projects	<u>9,800,000</u>	<u>9,800,000</u>	100		
	TOTAL		117,852,000	115,285,169	97*	-	-

(*) The percentage of utilization of appropriations voted (excluding transfers) reaches 88.4%.

SECTION 2 : FINANCIAL ANALYSIS ASPECTS

Now that the partnership provided for in the regulations⁽¹⁾ is drawing to an end, the Commission should take advantage of the situation to look at the quality of Member States' budgetary implementation⁽²⁾ and decide whether the financial partnership policy should be continued. In so doing, the Commission will put itself in a position to address the problem of underutilization of some appropriations.

The specialist national departments that carry out controls in Member States bear the primary responsibility for the quality and effectiveness of measures. With the protection of the Community's financial interests in mind, the Commission, which is responsible under the Treaty (Article 205) for ensuring that the budget is properly implemented, has to apply sound financial management principles, taking into account the Council's wish for a partnership with Member States (Article 209a of the Treaty on European Union).

Given also the situation in respect of actual payments, the question arises as to what to do with the unutilized appropriations. One solution might be to channel this money to Member States with the weakest control systems. The proportion of unutilized appropriations has evened out in the last few financial years⁽³⁾, and requesting Member States need to be clear about their appropriations requirements and their intention to utilize them⁽⁴⁾.

The completion of the internal market and the resultant dismantling of customs barriers has created a new situation in which Community trade needs to be properly monitored with the help of the various controls prescribed in Community regulations.

Member States are duty-bound to carry out these controls, and the aim of the partnership with the Commission is to strengthen the control structures for which they are responsible. In cases where appropriations to which Member States are entitled are underutilized, other ways of achieving the same goal should be looked into.

(1) See Legal Framework for Fraud Prevention/.../Controls, page 8.

(2) See Budgetary Implementation 1993/Utilization of Appropriations, page 54.

(3) Since the entry into force of Regulations (EEC) N° 4045/89 and n° 307/91.

(4) This "guarantee of utilization" should be given to the Commission in the form of a detailed timetable.

SECTION 3: 1994 APPROPRIATIONS

One of the Commission's budgetary priorities for 1994 will be to allocate additional human and financial resources to its fraud prevention programme.

The amount allocated in the 1994 budget is ECU 139.14 million [an increase of 18% over the 1993 outturn]⁽¹⁾.

Mention should be made here of the continuing role played by Parliament through its Committees on Budgets and Budgetary Control in clarifying the appropriations allocated to fraud prevention. Examples are the allocation of new appropriations to the Structural Funds headings (EAGGF Guidance Section, FIG, ERDF, ESF)⁽²⁾ which had previously only been given token entries, and the creation of new fraud prevention headings in the fields of agriculture, research and cooperation.

In 1994, the focus will be on two areas in particular: firstly, the Structural Funds, where Parliament intends to allocate the various programming instruments (Community support frameworks and other operational programmes) sufficient funds to pay for proper controls, with the Commission stepping in to provide increased technical assistance to help national authorities ensure that Community funds are properly used (control of actual expenditure); secondly, there will be three new headings (B2-519 for agricultural controls; B6-840 for research and B7-500 for cooperation) which Parliament hopes will make the utilization of fraud prevention appropriations more transparent by allocating money to specific measures on the basis of a detailed programme drawn up by the Commission.

The breakdown of fraud prevention appropriations for 1994 is given in Table 5 and Figure 9.

(1) See Execution of the 1993 Budget, page 53.

(2) Items B2-102, B2-111, B2-121 and B2-131 respectively.

Table n° 5

FRAUD PREVENTION APPROPRIATIONS - 1994 BUDGET

ITEM	DESCRIPTION	AMOUNT (ECU)
A-2554	Conferences, congresses and meetings in connection with the activities of the associations of European lawyers for the protection of the financial interests of the Community	240.000
A-3530	Unit to coordinate action against fraud	104.000
A-3531	Controls, studies, analyses in connection with the fight against fraud	4.145.000
A-3532	Fraud suppression in the textile sector (TAFI)	800.000
A-355	European documentation, coordination and study network to control cross-border crime and fraud	p.m.
B1-360	Measures to combat fraud affecting the European Agricultural Guidance and Guarantee Fund, Guarantee Section	86.000.000 ⁽¹⁾
B2-102	Measures to combat fraud affecting the European Agricultural Guidance and Guarantee Fund, Guidance Section	200.000 ⁽¹⁾
B2-111	Measures to combat fraud affecting the Financial Instrument for Fisheries Guidance	50.000 ⁽¹⁾
B2-121	Measures to combat fraud affecting the European Regional Development Fund	300.000 ⁽¹⁾
B2-131	Measures to combat fraud affecting the European Social Fund	200.000 ⁽¹⁾
B2-511	Inspection in agriculture	28.500.000
B2-519	Campaign against fraud in agriculture	2.500.000
B5-3051	Community action programme concerning vocational training for customs officials (Matthaeus programme) and tax officials (Matthaeus tax programme)	2.900.000
B5-7212	Indirect taxation and customs networks	12.900.000
B5-800	Cooperation in the field of justice and home affairs justice et des affaires intérieures.	p.m.
B6-840	Measures to combat fraud in the shared-cost research sector	50.000 ⁽¹⁾
B7-5096	Development Cooperation Inspectorate	250.000
B7-530	Measures to combat fraud in the cooperation sector	p.m.

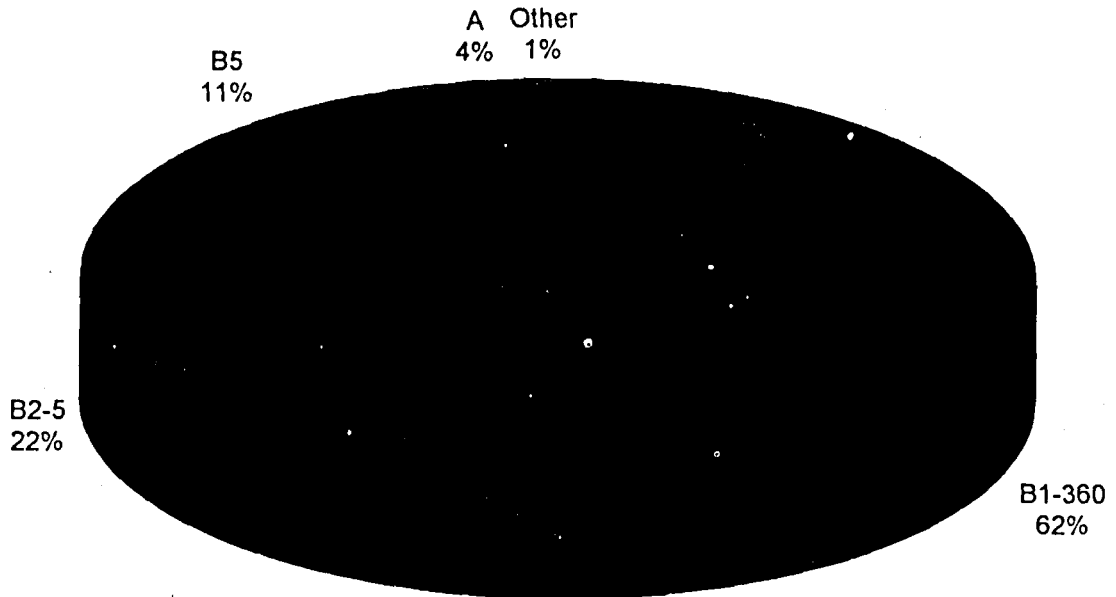
⁽¹⁾ Appropriations entered wholly under Chapter 80-40 (except item B1-360 : ECU 15 million out of a total of ECU 86 million).

Figure 9

FRAUD PREVENTION APPROPRIATIONS - 1994

broken down by main area

Area	Budget heading	Amount (ECU 1000)
EAGGF-Guarantee Section	B1-360	86000
Agriculture (inspection)	B2-5	31000
Customs and indirect taxation	B5	15800
Training, various	A	5289
Structural Funds, other areas	Other	1050
	TOTAL	139139



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