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REPORT FROM THE COMMISSION

PROTECTION OF THE EUROPEAN COMMUNITIES' FINANCIAL INTERESTS AND THE FIGHT AGAINST FRAUD

- ANNUAL REPORT 2003 -

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INTRODUCTION

The Treaty establishing the European Community calls on the Commission in cooperation with the Member States, to transmit each year to the European Parliament and the Council a report on the measures taken to implement Article 280 concerning the protection of the Communities' financial interests. In accordance with the principle of shared responsibility in this field, the 2003 report presents successively the activities of the Community during the year and the measures taken by the Member States.

The priorities of the Community to protect its financial interests and to fight against fraud were established by the Overall Strategic Approach of 28 June 2000[1] for the period 2000-2005 and implemented by the 2001-2003 Action Plan[2]. The first part of the report highlights some significant Community activities in 2003, without mentioning all of the tasks achieved to implement the 2001-2003 Action Plan and to follow up the Resolutions of the European Parliament[3] and the Annual Report of the Court of Auditors for the financial year 2002[4].

The second part of the report presents a summary of the measures taken in 2003 by the Member States to implement the EC treaty. Two aspects were favoured in 2003: the structural measures and recovery in the field of direct expenditure.

The report is accompanied by two staff working documents[5]: on the one hand, the implementation of the 2001-2003 Action Plan and an inventory of the measures taken by the Member States, on the other hand the relevant statistical information.

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1 Commission Communication on "the Protection of the Financial Interests of the Communities and the Fight against fraud – For an overall Strategic approach", (Doc. COM(2000) 358 final).

2 See the Action Plan 2001-2003 on the protection of financial interests (COM(2001) 254 final of 15.5.2001) for the implementation of the Overall Strategy 2001-2005.

3 Resolution of 27 March 2003 on the Green Paper of the Commission concerning the Penal Protection of the Communities' financial interests and the creation of a European Public Prosecutor and Resolution of 13 March 2003 on the Protection of the financial interests of the Communities and the fight against fraud – 2001 Annual Report.

4 OJ C 286, 28.11.2003.

5 Commission Staff Working Documents (SEC(2004)1058) "Implementation of Article 280 of the Treaty by the Member States and the Community in 2003- Follow up to the Action Plan 2001-2003 and measures taken by the Member States" and (SEC(2004)1059) "Statistical Evaluation of Irregularities: Agricultural, Structural & Cohesion funds and Own resources- Year 2003".

TITLE I – THE COMMUNITIES' ACTIVITIES FOR THE PROTECTION OF THE EUROPEAN COMMUNITIES' FINANCIAL INTERESTS AND THE FIGHT AGAINST FRAUD: MAJOR DEVELOPMENTS IN 2003

The Commission established its political and general objectives in its overall strategic Approach adopted on 28 June 2000[6] for the 2001-2005 period. The implementation of this overall strategy by the Commission, including by the European Anti-Fraud Office in its non operational functions, is given concrete expression in the 2001-2003 Action Plan[7].

Major developments achieved in 2003 by the Commission, are highlighted in this annual report. They are in line with the four main themes of the Overall Strategic Approach. The report refers to certain horizontal topics such as the results of the audits in the Structural Funds. It also refers to the Commission Report evaluating the activities of OLAF[8] and the commitments made before the European Parliament on 18 November 2003. A summary is made of progress in the criminal law protection of the financial interests of the Communities, in particular with regard to the European prosecutor project and relations between the Commission and the judicial and police cooperation bodies.

1. THE DEVELOPMENT OF AN OVERALL CONSISTENT ANTIFRAUD POLICY

1.1. Overall Evaluation of the Measures adopted by the Community in the area of structural funds:

Regulation (EC) n° 1681/94[9] of 11 July 1994 provides a framework for the communication and the follow up of the irregularities detected. In accordance with Article 2 (1), Member States communicate to the Commission the provisions which they have taken with a view to ensuring the regularity of operations financed by the Community, the prevention of irregularities and the recovery of the lost funds, and the description of the management control systems in force.

In 2001, the European Court of Auditors published its special report[10] concerning in particular the implementation of this Regulation, in six Member States[11]. It noted numerous failures on the part of the Member States and in particular recommended that the Commission carry out the evaluation and control of the operation of systems of detection and communication of irregularities in the Member States, in order to ensure the communications

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6 See previous note.
7 See previous note.
8 COM(2003) 154 final of 2 April 2003.
9 OJ L 178, 12.7.1994, p. 43.
10 Special report n°10-2001 concerning the financial control of the Structural Funds, Regulations (EC) n° 2064/97 and 1681/94 – OJ C 314,8.11.2001.
11 Germany, Spain, France, Italy, the United Kingdom and Portugal.

reported were up to date and the process of drawing up of the reports was both exhaustive and relevant.

The Commission[12] carried out an analysis of the description of the systems in the 15 Member states. Secondly, it proceeded to carry out verifications, made jointly by the DG REGIO and OLAF, at national or regional level to check the effectiveness of the system in question. A report was drafted following each mission and a synthesis of the main results, conclusions and recommendations were sent to the authorities of each Member State.

Overall, these audit missions show that undeniable progress has been made since 2001. However, a number of the comments which had been made in the 10/2001 Report of the Court of Auditors are still relevant.

The Commission noted that problems persisted in the interpretation of Regulation (EC) n° 1681/94 since half the Member States did not communicate the irregularities to the Commission (OLAF) within the time limits, or did not provide the necessary information[13]. The examination also revealed that even when irregularities were notified, the way in which certain Member States carried out the follow up of cases and their communication did not allow the Commission database to be updated[14].

On the other hand, the internal follow up of irregularities and the procedures for recovery were judged satisfactory in the majority of the Member States – which leads to believe that the latter organise themselves better regarding their responsibilities related to sound management of the Structural Funds, as well as dealing with irregularities and recovery, and that they generally assume their tasks in an appropriate way.

It is necessary, then, for Member States to improve their interpretation of the concept of irregularity so as to have a more complete and reliable image of the protection of financial interests and the fight against fraud on the basis of complete, coherent, precise and up to date data. The Commission sent to the various Member States specific recommendations to be implemented.

Moreover, a summary report of the 15 audit reports[15] draws a number of conclusions regarding the possibilities for improvement of the system of notification and follow up of the irregularities. A proposal for amendment of the regulatory mechanism (Regulation (EC) n° 1681/94) will be tabled for 2005.

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12 In the context of the discharge 2000 (COM(2002) 696, item 71), the Commission committed itself to carrying out these controls.

13 Germany, Spain, France, Greece, Italy, United Kingdom and Walloon region in Belgium. In 2 cases (Luxemburg and Flemish region in Belgium), the Commission noted that no system of notification of irregularities had been set up.

14 Austria, Denmark, Finland, Ireland, the Netherlands, Portugal, Sweden.

15 "Examination of the systems and procedures of communication and follow up of irregularities within the framework of the Structural Funds" (Commission staff working paper of 19.12.2003).

1.2. Task Force on recovery work in the field of the EAGGF Guarantee Section

With regard to Community policies carried out by way of decentralised management (EAGGF-Guarantee, structural funds), it is up to the Member States to carry out the recovery of the funds unduly paid to the final recipients and to repay the amounts to the Community budget. For its part, the Commission is required to follow the recovery procedures carried out by the Member States and to apply, if necessary, the clearance procedures. The slowness of these procedures and the accumulation of Community debts is a subject of concern both for the Commission, the Court of Auditors and the Budgetary authority.

In its communication of 3 December 2002[16] which aims in particular to strengthen recovery, the Commission decided to set up a Recovery Task Force in the area of EAGGF Guarantee Funds, made up of agents of OLAF and the DG Agriculture. The total arrears of irregularities due to be recovered were estimated in 2002 at € 2.2 billion, according to the data communicated by the Member States under the terms of Articles 3 and 5 of Regulation n° 595/91.

With regard to cases of irregularity communicated before 1999, the subject of the work of the Task Force, the amount is more than € 1 billion. With regard to the cases from the years 1995 to 1999 and the cases prior to 1995 relating to Italy, the Task Force examined in detail 433 cases (of which 343 concern Italy), each of which involved an amount higher than 500.000 €. Once this analysis was completed, the total to be recovered was fixed at 700 million € for nine Member States (including 550 million for Italy), instead of the initially communicated one billion €. Moreover, in almost all the Member States concerned, it arises from these audits that there were serious cases of "negligence" by the services and authorities which did not take precautionary measures or ensure an appropriate financial follow-up. It also follows that the slowness and inefficiency of the national administrative and judicial procedures and the absence of a clear attribution of the responsibilities endanger the effective recovery of the Community funds.

After dealing with the cases above 500,000 euros, the Task Force will also examine the other cases where the amounts are lower.

1.3. A Prevention Policy: A more visible Procedure for Fraud proofing Legislation

In its overall strategic approach as regards protection of the Community's financial interests, the Commission defined prevention as one of the four major priorities of its action. This priority is implemented by the action of fraud

[16] Commission communication of 3 December 2002 (COM (2002) 671 final)"for a better recovery of EC funds resulting from the direct and shared management of Community expenditure".

proofing defined in the Communication of 2001[17] which became effective in 2003.

The Commission thus set up a consultation process involving the European Anti Fraud Office as far upstream as possible, so as to benefit from its operational experience from the stage of the drawing-up of the legislative proposals.

This procedure in particular strengthens the cooperation between the lead Directorates-General who propose legislative initiatives and the European Anti-Fraud Office. It involves also the other institutions because the Commission draws its information not only from its own experience but also from the reports of the European Court of Auditors and the supervisory authorities in the Member States, and from the resolutions of the Council and the European Parliament.

This mechanism entered its active phase in 2003 and was, however, for this first full year of operation, of a primarily experimental nature.

The consultations addressed to the Office by the Commission departments concerned in particular the agricultural, customs, and also macro financial assistance to third countries fields, as well as the area of direct expenditure, such as education, where OLAF took part at an early stage in the preparation of texts authorising the subsidy programmes.

2. COOPERATION WITH THE MEMBER STATES AND THIRD COUNTRIES

A strategy of cooperation and mutual assistance between all the public partners is particularly necessary to fight efficiently against organised criminality, in particular transnational criminality, affecting the Community's financial interests. The Commission assumes its responsibilities, in particular by giving its assistance in the field of intelligence and in the operational field.

2.1. Analysis of intelligence in the framework of mutual assistance.

In operational matters, the observation of frauds or irregularities prejudicial to the Community interests is essential in order to better direct the activity on the ground. The Commission contributes by making available to the Member States information exchange systems.

Member States and candidate countries can already exchange information among themselves and with the Commission (OLAF) by a secure and powerful communication network, named "Anti-fraud information System". In 2003, this AFIS network was extended to the candidate countries and some third countries.

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[17] Commission communication of 7.11.2001 on fraud proofing of Community legislation and the management of contracts – document SEC(2001) 2029 final.

The AFIS system is able to support several operational functionalities, among which:

- generic information exchanged within the framework of mutual assistance (messages, communications on suspicions of irregularity or fraud);

- structured information conveyed by the early warning system on sensitive goods within the framework of the customs transit procedure;

- joint monitoring operations in customs matters: these were extended to non maritime operations, and particularly to operations relating to containers. The Council, in its resolution of 2 October 2003[18] on a strategy relating to customs cooperation, stressed the importance of these actions and the logistical and technical support provided by the Commission.

- An instrument of communication of information concerning cigarette seizures (CIGinfo) between the competent authorities and OLAF. On 19 May 2003, OLAF and the World Customs Organisation agreed to allow a systematic transfer of information on cigarette seizures from the AFIS network towards the specific application "CEN" (Customs Enforcement Network).

- an instrument of registration of electronic communications (ECR) on fraud and irregularities in the Member States, necessary for a subsequent analysis.

- a mutual information system with Russia (electronic follow up of export refunds allowing the simplification and acceleration of procedures).

However, as the AFIS network does not make it possible to store sensitive information at European level, the Customs Information System (CIS) fills this gap. It has made it possible, since 24 March 2003, for the competent authorities for the application of customs and agricultural legislation, to query directly a central database on goods, means of transport, persons and companies, when there are real indications of infringements of regulations in these fields. The aim of this information system is to allow a Member State which enters data into the system to ask another Member State to take one of the following actions: study and report, discreet surveillance or specific control.

The Customs Information System is based on Council Regulation (EC) n°515/97[19] and on the Convention on the use of information technology in the

[18] OJ C 247 of 15.10.2003.
[19] OJ L 82 – 22.3.1997, p. 1.

field of customs[20], which came into provisional force on 1st November 2001. It also comprises strict rules on data protection of a personal nature. 14 Member States[21] deposited the ratification instruments of the CIS Convention and are in a position to use the third pillar database. A handbook of operational procedures and a user guide were translated into official languages and training courses were organised for the implementation of the system.

In addition, Member States agreed to the setting up of an identification file for customs investigations (FIDE), a cooperation instrument between specialised national services within the framework of intergovernmental customs cooperation[22]. The management of this third pillar instrument, which has to be supplemented by a similar instrument intended to cover the fields of Community jurisdiction, was entrusted to OLAF. The Commission included the amendment of Regulation (EC) n°515/97 in its 2004 work programme.

2.2. Cooperation against certain forms of crime prejudicial to the interests of the Communities: protection of the European currency

The protection of euro notes and coins is the responsibility of the competent national authorities, the European Central Bank, Europol and the Commission. The Commission (OLAF) carries out this responsibility in several respects: coordination of action by the Member States for the technical protection of euro coins against counterfeiting, including the European Technical & Scientific European Centre (ETSC), training and technical assistance thanks to the "Pericles" programme[23], legislation[24] on the protection of euro notes and coins with the related sanctions.

The second Commission Report[25] concerning the implementation by the Member States of the Council Framework decision of 29 May 2000 was also adopted in 2003; this report concludes that there was a generally satisfactory implementation and, overall, conformity with the national provisions with the system relating to the penal protection of the euro against counterfeiting.

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20 Convention of 26.07.1995 (OJ C 316 of 27.11.1995). See the report of the provisional Committee envisaged in art.3 of the agreement on the provisional application of the CIS Convention (Doc. n° 7361/04 of 12 March 2004).

21 Austria, Germany, Denmark, Spain, Finland, France, Greece, Ireland, Italy, Luxemburg, the Netherlands, Portugal, Sweden, United Kingdom.

22 Council Act of 8 May 2003 drawing up a protocol amending the Convention on the use of information technology in the field of the customs, with regard to the creation of a database for the identification of Customs files (OJ C 139 of 13.06.2003).

23 Council Decision 2001/923/EC of 17.12.2001 drawing up an action programme on exchange, assistance and training for the protection of the euro against counterfeiting. (OJ L of 21.12.2001).

24 (EC) Regulation of the Council N°1338/2001 of 28 June 2001 (OJ L 181 of 4.7.2001) and Council Framework Decision 203/861/EC of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (OJ L 140 of 14.6.2000).

25 Report based on Article 11 of the Framework Decision of 29 May 2000 (COM(2003) 532 final, of 3.9.2003).

In the field of the fight against counterfeiting, the protection of the euro in its metal form is entrusted to the ETSC, managed by two agents of the Commission. In 2003, the Council formally assigned[26] to the Commission the responsibility for ensuring the smooth operation of this Centre and the coordination of the actions carried out with a view to protecting euro coins against counterfeiting.

The statistics and analyses drawn up by the Centre in 2003 indicate a strong increase in the activity of counterfeiting coins. This appears not only in the largest number of counterfeit coins detected in circulation (from 2,339 in 2002 to 26,191 in 2003) but also in the sharp increase in the types of counterfeit and their variations (26 and 97 respectively).

This development has not attacked the credibility of euro coins as feared. The number of counterfeit coins found in circulation and even the quantity of counterfeits in circulation and potentially produced is very low, compared with the 49 billion coins in circulation. Moreover, all the known counterfeits should be rejected by the machines to be sorted or the distributors, once they have been equipped and regulated in an appropriate way.

2.3. Programme for the promotion of actions in the field of the protection of the Communities' financial interests: Hercules

On 27 May 2003, the Commission proposed establishing a Community programme for the promotion of actions in the field of the protection of the financial interests of the Community, the "Hercules" programme[27]. This programme covers subsidies granted to training activities, actions of technical assistance and exchanges of data as regards protection of Community financial interests, or to actions contributing to the design and dissemination of information in this area, such as for example studies, conferences or publications. It also makes it possible to grant operating subsidies to organisations active in this field in the Member States, the countries of EFTA/EEA and the three applicant countries (Bulgaria, Romania and Turkey).

The decision of the European Parliament and the Council drawing up the Hercules programme was adopted on 6 April 2004[28]. It proposes that the Hercules programme be given a multiannual budget of 11,775,000 €, for a three-year period, as from 2004.

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26 Council Decisions 2003/861 and 2003/862 of 8.12.2003 concerning analysis and cooperation with regard to counterfeit euro coins. (OJ L 325, 12.12.2003).

27 COM(2003) 278 final.

28 Council Decision n° 804/2004/EC of the European Parliament and of 21 April 2004 drawing up a Community action programme for the promotion of actions in the field of the protection of the financial interests of the Community (OJ, L. 143 of 30.4.2004).

3. AN INTER-INSTITUTIONAL APPROACH TO PREVENTING AND FIGHTING AGAINST FRAUD AND CORRUPTION

Since May 1999, the Community has had an overall legal framework to fight against fraud, corruption and any other illegal activity affecting its financial interests and to investigate irregular behaviour[29] inside the institutions, bodies and offices. Reflections on the reinforcement of this mechanism, which frames OLAF's activities, advanced in 2003, including on the basis of the Commission's progress report (article 15) and experience in the Eurostat case.

3.1. Deepening of the Antifraud Reform

In accordance with Article 15 of Regulations 1073/99 and 1074/99[30], the Commission adopted, on 2 April 2003, a progress report on the activities of OLAF, targeted on the evaluation of the legal framework.

The report puts into perspective the development of the anti-fraud policy of the Commission up to the reform carried out in 1999 with the creation of OLAF, in accordance with the high-level priority given to the fight against fraud, corruption and any other irregular activity against the Community budget. It examines the manner in which OLAF with its specific statute carries out its different functions. In addition to its principal task of carrying out internal and external investigations under its functional independence, OLAF as a Commission department ensures coordination with the national administrative and judicial authorities and police responsible for preventing and fighting against fraud, provides technical assistance to the Member States, contributes to the design of the anti-fraud strategy of the European Union and takes the initiatives necessary to strengthen existing legislation.

The report shows that there is a strong complementarity between the operational activities of the Office and those of its partners at national, inter-institutional and international level and concludes that cooperation with the Commission departments and the partnership with the Member States has to be studied in greater detail in future. It demonstrates the synergy which results from the proximity of the operational missions and the general assignments of the Commission, such as the design and implementation of anti-fraud policy and legislation. The report also points out that the mixed statute of OLAF may complicate its administrative and budget management and make communication with the institutions difficult.

The Commission has made 17 recommendations whose implementation concerns the overall anti-fraud policy and will involve the drawing-up of legislative proposals with a view to strengthening the structure and functionality of the Office. The total organisational independence of OLAF is,

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[29] Commission Decision n°1999/352 EC, ECSC, Euratom of 28.04.1999 instituting the Office, Council Regulations (EC) n°1073/1999 of the European Parliament and (Euratom) n°1074/1999 of the Council, inter-institutional Agreement concerning the internal investigations carried out by the Office and model Decision (OJ L136 of 31.5.1999).

[30] COM(2003) 154 final of 2.4.2003.

however, in the opinion of the Commission, a prospect to be studied within the framework of a future amendment of the EC treaty and of a strengthening of the penal dimension of the fight against fraud.

The European Parliament, while critical of the functioning of the Office, has at the same time expressed support for the wish to concentrate on the investigative function and to improve the information flow between OLAF and the institutions[31]. It stressed the importance of the guarantees with regard to the rights of the defence, the judicial control of these activities and the role of OLAF's Supervisory Committee. Moreover, it doubted the adequacy of the corrective measures introduced by the Commission, after the Eurostat case, its policy of decentralisation of responsibilities in financial matters and the measures intended to implement a zero tolerance policy as regards fraud and corruption.

In its opinion[32] of 18 June 2003, the Supervisory Committee concluded that the provisions of Regulation 1073/99 had not had a full effect yet. The Council in its conclusions of 22.12.2003[33] asked, in addition to the evaluation of the legal framework of the Office, for an evaluation of its operational activity while considering a stabilisation phase to be necessary before envisaging a modification of its statute or missions.

In addition to the intermediate assessment envisaged by the legislator, the anti-fraud reform is progressing in a complex institutional environment where current events also bring their share of unforeseen events. Drawing the lessons from the Eurostat case in his speech of 25 September 2003 and his State of the Union Address on 18 November 2003 before the European Parliament, the President of the Commission presented an Action Plan aimed at going further than the 17 recommendations in the progress report of the Commission.

A code of conduct[34] drawn up between the Commission and OLAF in July 2003 provided a first solution to one of the principal gaps revealed by the current practice by ensuring and improving the exchange in good time of information on internal investigations within the Commission. It however appeared necessary to use the legislative approach to guarantee the consistency of these rules in all the institutions and to improve the substance of the information.

The main points of the proposal for a regulation of the European Parliament and of the Council adopted by the Commission on 10 February 2004 are, for the Office:

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31 Resolution of 13 March 2003 on the protection of the financial interests of the Communities and the fight against fraud – 2001 Annual Report. Resolution of 8 April 2003 on the discharge decision for 2001 and Resolution of 4 December 2003 on the Commission Report concerning the evaluation of the activities of the European Anti-Fraud Office.

32 Opinion N° 2/03 accompanying the Commission Report "Progress report on the activities of the European Anti-Fraud Office (OLAF)" of 18.6.2003.

33 Doc.16280/03 FINAL 644.

34 SEC(2003) 871.

– the re-focusing of its activities on anti-fraud investigations and its operational priorities

– the improvement of the flow of information with the institutions, bodies and agencies concerned in order to enable them to carry out their political responsibility and to take preventive measures

– the definition of procedural guarantees for persons during investigations

– the reinforcement of the effectiveness of external investigations by specifying responsibilities with respect to economic operators,

– moreover, without interfering with the investigations progress, this new framework for the governorship of OLAF enhances the Supervisory Committee's role in the control it exerts on the execution of the investigations function.

3.2. Progress in the implementation of the Reform within the Commission

The modernization of the European public service continued to progress during 2003[35], in parallel to the work relating to the deepening of the anti-fraud reform of May 1999. In particular, the financial and administrative reform conceived in the White Paper of March 2000 on the internal reform of the Commission is being completed with the entry into force of the new Financial Regulation on 1 January 2003 which changes in particular the internal control system, and the decision of July 2003 on the Specialised Financial Irregularities Panel. As a result of the political agreement reached on 19 May 2003 in the Council and the opinion of the European Parliament of 19 June 2003, the Commission adopted an amended Proposal for the Staff Regulation[36]. As from its entry into force on 1st May 2004, this Staff reform will have a major impact on the managing practices of departments and will contribute in particular to the prevention of irregularities.

In response to the irregular practices detected at Eurostat, the Commission adopted complementary horizontal reinforcement measures: the September 1999 Code of conduct on the relations between the Commissioners and their services was revised in order to improve the information transmitted to Commissioners and to enable them to assume their political responsibility.

To this end, a group of Commissioners including the President ensured that all the relevant information and/or allegations of fraud, irregularity and other reprehensible acts coming in particular from OLAF, IDOC[37] and the Internal Audit Service are the subject of a rigorous follow-up. The group of commissioners is assisted by a high-level interdepartmental group.

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35 Report from the Commission on the follow up of the reform and the measures to be implemented in 2004 (COM(2004) 93 final).

36 COM(2003) 721 final.

37 Investigation and Disciplinary Office – Commission.

4. STRENGTHENING OF THE CRIMINAL LAW PROTECTION OF THE COMMUNITIES' FINANCIAL INTERESTS

4.1. Towards concrete proposals on the creation of a European Prosecutor

The requirement to prosecute in a more effective way the authors of criminality undermining the Communities' financial interests, a fortiori under an enlarged Europe, led the Commission to propose the creation of a European Prosecutor[38]. In 2001, the Commission had adopted a Green Paper[39] on the penal protection of the communities' financial interests and the creation of a European Prosecutor and led a wide-ranging debate throughout 2002 with all the interested parties. The year 2003 will have been marked by the follow up of this debate and its concrete expression in the proposals of the European Convention on the establishment of a European Public Prosecutor, on which the decision is to be made by the Intergovernmental Conference (IGC).

Assessment of the public consultation on the creation of a European Prosecutor

In March 2003, the Commission presented a summary of some 200 reactions in response to the Green Paper[40]. It has, for this reason, informed the Convention on the future of the Union about this report. Basically, reactions are for the most part favourable to the principle of the creation of a European Prosecutor, the government authorities on this point remaining overall more reserved than the experts and the representatives of civil society. A minority has firmly opposed the project.

The general evaluation gives an account of the opinions on the need for the creation of a European Prosecutor and reaffirms in detail the added value which it would bring to the fight against criminality undermining Community finance. The thematic evaluation, for its part, highlights the institutional and legal affairs which have henceforth to be studied in greater detail to facilitate the carrying out of such a project: articulation with the existing European authorities, rights of defence and administration of the evidence, integration into national criminal law systems.

In this report, the Commission reaffirms that an amendment of the treaties establishing the European Communities is, on this point, essential in order to guarantee effective and equivalent protection of the financial interests while respecting the basic rights of individuals.

In addition, the Commission, by adopting the progress report on the activities of the European Anti-Fraud Office, on 2 April 2003[41], set out its vision of the development of OLAF from the point of view of the creation of a European

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38 COM(2000) 608.

39 COM(2001) 715.

40 COM(2003)128: The follow up report, and all the answers gathered are available on the Internet (http://www.europa.eu.int/comm/anti fraud/green paper/index).

41 COM(2003) 154.

Prosecutor, the former having the task of becoming an auxiliary of justice in the service of the latter. The Commission also reiterated its intention to actively promote this idea within the IGC.

For its part, in a resolution of 27 March 2003, the European Parliament welcomed the Green Paper and supports the idea of the creation of a European Prosecutor.

Proposal of the European Convention concerning the European Prosecutor's Office

These efforts led to a first recognition of the project aiming to endow the Community with a criminal prosecution function. Under the constitutional draft treaty submitted on 18 July 2003, the European Convention proposed a legal basis allowing the creation of a European Prosecutor's Office (article III-175), whose functions will be similar to those proposed by the Commission[42]. The European Prosecutor's Office would be qualified to detect, prosecute and refer for judgment in court the authors and accomplices of the offences falling within its competence. It would carry out before the competent courts of the Member States the public action concerning these offences.

On the other hand, the organisation of this Prosecutor's Office, created "from Eurojust", and its field of material competence, extended beyond the protection of the Community's financial interests to serious and transnational crimes, show a development in the debate since the first Commission proposals, starting with the follow-up report of the Green Paper.

It is however to be feared that the unanimous decision method retained for the implementation of these proposals may not allow them to be achieved, a fortiori in an enlarged Europe. Instead of envisaging the establishment of the European Prosecutor's Office in the constitutional treaty itself, as the Commission proposed, the Convention referred this choice back to the Council which will be able to decide, without any obligation or deadline, unanimously and after the approval of the European Parliament.

This is why, by sending its opinion to the IGC on the basis of Article 48 EUT[43], the Commission recommended an additional extension which would be subject to qualified majority decision in relation to the constitutional draft treaty, including with regard to the decision to create the European Prosecution Service for the sole protection of the Community's financial interests. Unanimity would remain necessary to establish a Prosecutor's Office with broader competence. By the end of 2003, the IGC had not dealt with the question.

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42 OJ C 169 of 18.7.2003.

43 COM(2003) 548.

4.2. Cooperation with Eurojust and Europol

The Tampere Council of October 1999, in the framework of the project of a European area of freedom, security and justice, recommended strengthening the partnership between the bodies set up within the framework of the third pillar and the Community authorities responsible for the protection of financial interests. As a result of the extension of the mandate of Europol on 1 January 2002[44] to all the serious forms of international criminality, among which fraud and corruption, and of the creation of Eurojust[45], there have been significant developments in the cooperation between the Commission and the judicial and police bodies, in 2003.

An administrative cooperation arrangement was signed, between the Commission and Europol on 18 February 2003, for consultation, mutual assistance and exchange of information in fields of common interest, which also covers the protection of Community financial interests. On the basis of these provisions, Europol and OLAF, in its investigative function, concluded an administrative agreement on 8 April 2004 which stresses the strengthening of the exchanges of strategic and technical information (the exchange of data on persons being excluded) and the evaluation of threats and the analysis of risks in the areas of common interest.

The memorandum of agreement signed on 14 April 2003 between OLAF and Eurojust envisages close coordination between OLAF's Magistrates Unit and Eurojust members in order to articulate the cooperation provided for in Article 280 (3) of the EC treaty (i.e. between the competent authorities and with the Commission) and cooperation between national authorities organised via the Eurojust members within the framework of the third pillar[46].

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44 Council Decision of 6.12.2001 (OJ L C 362 of 18.12.2001).

45 Council Decision N° 2002/187/JAI of 28.2.2002 (OJ L 63 of 6.3.2002).

46 The Council Decision indicates in its recital 8 that "the Eurojust competences are without prejudice to the competences of the Community as regards protection of the financial interests".

TITLE II – IMPLEMENTATION OF ARTICLE 280 BY THE MEMBER STATES IN 2003 - MEASURES TAKEN TO PROTECT THE COMMUNITY'S FINANCIAL INTERESTS

In accordance with Article 280 of the EC Treaty, the second part of the Commission's Annual Report relates to the action taken by the Member States in the course of 2003 to combat fraud and other illegal activities adversely affecting the Community's financial interests.

The Member States' contributions are based on a questionnaire agreed with them in Cocolaf (the Advisory Committee for the Coordination of Fraud Prevention) and amended each year in the light of past experience, so as to facilitate the monitoring of measures taken by the Member States. This year the questions were more detailed than in previous years, which has also meant that the Member States have provided more detailed answers, although there is still room for improvement on this front.

The Commission was keen to put the emphasis on structural measures, as it was in this area that the Court of Auditors' special report No 10/2001 found certain shortcomings in the national systems for detecting, communicating and following up irregularities. Audit visits carried out by the Commission in a number of Member States between November 2002 and January 2003 revealed significant improvements, but also some persistent failings. In the light of these reports, the new legislative, regulatory and administrative measures adopted by Member States in 2003 concerning structural measures warrant particular scrutiny.

The specific subject area and the more detailed questionnaire made for a more meaningful comparison of the new measures taken by the Member States. It would therefore seem wise to continue using this method in the future, although the subject area and the questions asked would vary from year to year.

Title II was drawn up in the form of a summary of the major developments based on the responses given by the Member States. Simultaneously with the present report, the Commission published a document containing the full text of the Member States' responses available in the form of a staff working document.

As in last year's report, the first chapter summarises the new legislative, regulatory and administrative developments relating to the protection of Community financial interests against fraud and irregularities in the Member States. To make for ease of comparison, the analysis focuses on a few key issues, such as tougher penalties and improved notification of irregularities.

The second chapter concerns the organisation of the departments responsible for protecting the Communities' financial interests in terms of staff handling structural measures (ERDF, ESF, EAGGF-Guidance, FIFG and the Cohesion Fund). The Commission's analysis of the data provided by the Member States seeks to provide a snapshot of the state of play as regards national measures designed to protect Community financial interests.

The third chapter of the report concerns developments in coordination between national departments in 2003. Under the 2001-2003 anti-fraud action plan, cooperation between all the relevant authorities is the key to deploying resources effectively. This can be achieved only through effective coordination between authorities at both national and European level.

The final chapter discusses the issue of recovering amounts wrongly paid in respect of direct expenditure. Here the emphasis is on whether and in what circumstances the European Communities can seek recovery by joining a civil action to criminal proceedings and also on the arrangements for national authorities to take protective measures (such as seizing or confiscating assets) in order to safeguard recovery.

5. TEXTS CONTRIBUTING TO THE IMPLEMENTATION OF ARTICLE 280 OF THE EC TREATY - PRINCIPAL LEGISLATIVE, REGULATORY AND ADMINISTRATIVE DEVELOPMENTS

The provisions set out below are a representative selection of measures taken by the Member States to combat fraud against Community financial interests in 2003 in respect of own resources, agricultural expenditure and structural funds .

This summary indicates that, beyond a simple implementation of the Community legislation, recourse to the national law remains essential to ensure effective and equivalent protection of the financial interests of the Communities.

Since the Commission report is produced every year, the fact that a Member State has not taken any new measures over the period in question should not be taken as indicative of the general level of protection of financial interests in that Member State. It may simply be that the country had done more in the previous period.

5.1. Horizontal developments

France reported its adoption of the Internal Security Act on 18 March 2003, significantly toughening the criminal penalties laid down in the Customs Code for the offences of undeclared importation or exportation and smuggling when committed by an organised group. This represents a considerable strengthening of criminal enforcement in respect of customs offences, since the Act also applies to own resources and EAGGF-Guarantee. Significantly, the Act also inserts a number of articles into the Code of Criminal Procedure providing a legal framework for searches and access to computer data.

France adopted an order setting up a computerised anti-fraud support system, known as the SILCF, at the Directorate-General for Customs (DGDDI). The system is intended to assist in the smooth operation of the fraud investigation, identification, prosecution and enforcement work for which the DGDDI is responsible as part of its powers in the fiscal and economic fields and the protection of national and Community interests, including fraud affecting the Community budget.

In Germany, the Federal Ministry of Finance, in conjunction with the *Länder*, drew up a new guide for reporting irregularities in line with Regulation (EEC) No 595/91 and Regulation (EC) No 1681/94. The guide takes account of amendments to the rules as well as developments in this field since the adoption of the Regulations and brings national directives up to date. The competent authorities now have up-to-date instructions on reporting irregularities and dispatch the reports to the Ministry in the form of a simple Excel table. This has made the administrative procedure more straightforward.

In Spain, Law No 11/2003 governs the setting-up of joint investigation teams between two or more Member States of the European Union. This Law also applies to joint investigation teams set up under the auspices of OLAF.

Since the audit conducted in 2003 by the Commission under Regulation (EC) No 1681/94, the Dutch system of reporting irregularities and recovering amounts wrongly paid has undergone further administrative and contractual improvements.

In Portugal, further to the modification introduced by Decree-law No 38/2003, the Penal Code envisages from now on penalties against a debtor who avoids the repayment of claims by third parties. The Decree-law No 93/2003 regulates the conditions for cooperation, access and analysis of the relevant information for the purposes of initiating an investigation into tax offences, by the judicial police and the tax administration.

5.2. Own resources

Noteworthy developments include Greece and Portugal's transposition into national legislation of Directive 2001/44/EC on mutual assistance for the recovery of claims in respect of certain levies, customs duties and other measures. The provisions adopted define the scope of mutual assistance, which also applies to claims in respect of administrative penalties and fines.

The 2003 Finance Act introduces into UK legislation a new system of civil penalties applicable to contraventions of national and Community customs legislation. The penalties primarily apply to less serious cases of evasion of customs duties and/or import VAT. Customs retains the right to investigate such cases with a view to prosecution. The penalties also apply to contraventions of national and Community laws covering imports and exports where evasion is not a factor. These penalties should provide an effective and proportionate sanction.

In Portugal, Decree-Law No 93/2003, of 30 April 2003 regulates the form, scope and limits of the cooperation between the Judicial Police, the DGCI (Directorate-General of Taxes) and the DGAIEC (Directorate-General of Customs and Special Taxes on Consumption) in a coordinated manner, in the fields of the access to and processing of information.

It is also worth mentioning that in June 2003 the WCO Mutual Assistance Project Group, chaired by the UK, presented a final draft of the new Mutual Administrative Assistance Convention. The work involves modernising the multilateral Naples II Convention. The draft is due to be approved in June 2004. Member States, such as the Netherlands, France, Spain and the United Kingdom, as well as Cyprus, have been actively involved in this work. Certain EU good practice will be extended on a global scale.

In Belgium, an “international customs cooperation” division is from now on responsible for assuming the role of central coordination service and where necessary providing the interface between the foreign coordination services and the Belgian judicial authority.

Ireland passed a legislative amendment to the Criminal Justice Act of 1994, which came into force on 5 May 2003, requiring suspicious transactions to be reported to the relevant authorities.

5.3. Agricultural expenditure

Major developments include Italy's approval of a legislative decree whereby companies in receipt of EAGGF-Guarantee funding may be subject to an administrative fine equal to the payments received, if they fail to produce, claim they do not have or conceal from inspection documents required to be produced in the course of an inspection carried out under Regulation (EEC) No 4045/89. The decree also provides for a fine of up to €10 500 for third parties who refuse to produce the requisite documents in the course of cross-checks.

A Greek law provided for administrative penalties to be imposed for animal feed, in accordance with Community and national rules, by way of a decision of the Secretary General of the Ministry of Agriculture. The penalties are based on the seriousness and duration of the infringement, the size of the undertaking, and whether the breach is deliberate or involves a repeat offence.

In Portugal, the Decree No 193/2003 clarifies a number of concepts referred to in the Regulations in the field of EAGGF-Guarantee, and particularly regarding sanctions to be applied in case of non-fulfilment.

A Spanish law on tax, administrative and social measures amended the infringements and applicable penalties in relation to the milk quota regime.

5.4. Structural measures

Among developments affecting all the funds, Greece highlighted the adoption of a joint ministerial decision introducing a new national system for financial corrections to recover amounts unduly or unlawfully paid to implement part-financed programmes in the context of the Community Support Framework (CSF), Cohesion Fund and Community Initiatives for the programming period 2000-06. The decision governs recovery following audits carried out on three levels by the managing authorities, paying authorities and Fiscal Control Committee.

France adopted a decree conferring a new power on the CICC-Structural Funds (the Interministerial Commission for Coordination of Controls in respect of operations part-financed by European Structural Funds) to supervise management and payment authorities. Such supervision applies to local authorities, but also to any individual or corporate body involved in implementation which receives the corresponding funds, the organisations through which such funds have passed and the various administrations. The Interministerial Commission may make recommendations directly to local authorities when the latter act as management and payment authorities.

In relation to the ERDF, Finland reported the entry into force in 2003 of an Act and a Decree on the financing of regional development measures. They regulate matters relating to the granting, payment, follow-up, audit and recovery of aid. They also

enable the recovered amount to be increased in certain deliberate and extreme cases. They have a deterrent effect as well as consolidating ex-post measures.

6. ORGANISATION OF DEPARTMENTS FOR THE PROTECTION OF THE COMMUNITIES' FINANCIAL INTERESTS IN THE FIELD OF STRUCTURAL ACTIONS

Protection of the Communities' financial interests is largely based on the primary responsibility of the Member States, which have the task of managing more than 80% of expenditure and of collecting all the traditional own resources. The different types of control provided for by the sectoral regulations involve a wide range of actors and staff at various levels of the national administration (payment agencies, management authorities, central and decentralised national departments, local authority departments).

The Member States are required to ensure effective and equivalent protection of the European Communities' financial interests by taking the same measures to protect them as they take to protect their own financial interests. As structural measures are the main focus of this year's report, the review of the organisation of departments will also concentrate on this field. It is an area where Member States are all the more concerned by the fight against fraud and irregularities since it involves part-financed programmes.

The sectoral regulations lay down the main control arrangements which the Member States have to implement. They consist on the one hand of what are known as regularity controls, required by the sectoral regulations, and on the other of controls that are more targeted to the fight against fraud, as required by Article 280 of the EC Treaty.

Regularity controls comprise documentary checks, sometimes called "first-level" or "ex ante" checks, aimed at assessing compliance with the procedures and the criteria laid down by the legislation for the granting of funding or of benefits (see endnote 2).

They also include "second-level" or "ex post" checks made after payment of the funds, the aim of which is to check that the work has really been done, that the financed projects exist or that the control system is reliable. They are often based on risk analysis, as required by Community legislation.

In addition, Member States are required to take more targeted measures to combat fraud. These checks (anti-fraud investigations) are conducted on the basis of suspected fraud established by different authorities, depending on the Member States: police, financial authorities, or the judicial authorities at an advanced stage.

Since the organisation of departments is the Member States' sole responsibility, they were asked to describe their control activities in functional terms according to the above classification. This starts from the sector audited rather than the organisational entity to which the staff concerned are assigned[1] (notes relating to Title II are situated at the end of the document).

A number of tables set out the Member States' estimates of the manpower assigned in 2003 to each type of check (ex ante, ex post and anti-fraud) in the five sectors

covered (ERDF, ESF, EAGGF Guidance Section, FIFG, Cohesion Fund). To arrive at comparable data, the types of information sought and the control concepts were spelled out as clearly as possible.[2]

The two last columns of each table connect this manpower with the amount of the budget which has to be controlled. This data will enable Member States to make an initial assessment of their efforts to afford effective and equivalent protection to the Community's financial interests and assign them the same status as their own, as required by Article 280 of the Treaty. Due to the fact that consolidated figures were not available at the time of drafting this report, the figures used were those that correspond to the provisional data of the execution report 2003 of DG Budget, as at April 28, 2004.

Nonetheless, since the data involves estimates based on possibly divergent definitions of control and of manpower, they should be interpreted with caution and treated only as a guide. Their main value is to reveal some overall trends, which would have to be looked at in more detail in a structured dialogue with the Member States.

6.1. European Regional Development Fund (ERDF)

The European Regional Development Fund (ERDF) contributes mainly to assisting regions whose development is lagging behind and those undergoing economic conversion or experiencing structural difficulties.

Table 6.1 — ERDF: manpower assigned by each Member State to the three types of control

	(1) Ex ante	(2) = (1)/(7) %	(3) Ex post	(4) = (3)/(7) %	(5) Anti-fraud[3]	(6) = (5)/(7) %	(7) = (1)+(3)+(5) Total (three types of control)	(8) Budget to be checked (€ million)	(9) = (8)/(7) Budget to be checked per control officer (€ million)
BE	105[4]	*94.26. %*	6[5]	*5.74%*	-[6]	*0.00%*	112	64.04	*0.57*
DK	30	*95.19%*	1	*4.00%*	0.25	*0.80%*	32	25.42	*0.81*
DE	869[7]	*88.49%*	113[8]	*11.51%*	-[9]	*0.00%*	982	1818.68	*1.85*
EL	81	*79.41%*	21	*20.59%*	-	*0.00%*	102	1005.36	*9.86*
ES[10]	314	*70.40%*	132	*29.60%*	-	*0.00%*	446	4394.96	*9.85*
FR[11]	313	*84.37%*	58	*15.63*	-	*0.00%*	371	1268.69	*3.42*
IE	344	*56.39%*	266	*43.61%*	-	*0.00%*	610	294.30	*0.48*
IT[12]	531	*60.14%*	208	*23.56%*	144	*16.30%*	883	2869.57	*3.25*
LU	3	*60.00%*	1	*20.00%*	1	*20.00%*	5[13]	0.25	*0.05*
NL	1	*50.00%*	1	*50.00%*		*0.00%*	2[14]	116.97	-[15]
AT	98	*90.74%*	10	*9.26%*	-[16]	*0.00%*	108	151.85	*1.41*
PT	684	*58.26%*	246	*20.95%*	244[17]	*20.78*	1174	2392.51	*2.04*
FI[18]	107[19]	*81.31%*	22[20]	*16.72%*	3[21]	*2.27%*	132	116.85	*0.89*
SE	100	*83.35%*	18.5	*15.40%*	1,5[22]	*1.25%*	120	195.36	*1.63*
UK[23]	204[24]	*49.67%*	143	*34.75%*	64	15.50%	411	938.39	*2.28*
Total	**3,784**	***68.95%***	**1,247**	***22.72%***	**457**	***8.33%***	**5,489**	**15,653. 20**	***2.85***

For the ERDF, ex ante controls appear to be assigned the most manpower in the majority of Member States (for all Member States, ex ante checks: 68.95%; ex post checks: 22.72%; anti-fraud investigations: 8.33 %). However, there is little uniformity between the Member States as regards the allocation of staff between the three types of control.

The case of Austria, Denmark and Belgium should be underlined as they all devoted more than 90% of their staff to ex ante checks in a preventive approach focusing resources on detecting potential problems very early on in the control chain.

According to the data provided, only four Member States (Luxemburg, Italy, Portugal and the United Kingdom) can confirm that they devote more than 15% of their manpower to anti-fraud investigations.

However, it should be noted that some Member States found it difficult to break down their data by type of control, while others stated that their staff worked on more than one sector, thereby preventing a more in-depth analysis.

Moreover, several Member States were unable to give any figures on the manpower assigned to anti-fraud investigations. The reason for this is either that there is no specific anti-fraud unit (e.g. in Austria) or that investigators are not restricted to working in one specific field. As their activities overlap, it is difficult to state categorically how many staff are assigned to each fund.

Despite these caveats, the figures appear to indicate that the Member States are implementing different control strategies based to a greater or lesser extent on one or other methodology.

6.2. European Social Fund (ESF)

The European Social Fund (ESF) comes into play mainly in the context of the European Employment Strategy.

Table 6.2 — ESF: manpower assigned by each Member State to the three types of control

	(1) Ex ante	(2) = (1)/(7) %	(3) Ex post	(4) = (3)/(7) %	(5) Anti-fraud[25]	(6) = (5)/(7) %	(7) = (1)+(3)+(5) Total (three types of control)	(8) Budget to be checked (€ million)	(9) = (8)/(7) Budget to be checked per control officer (€ million)
BE	38[26]	*71.70%*	15[27]	*28.30%*	- [28]	*0,00%*	53	33.34	*0.63*
DK	20	*28.57%*	40	*57.14%*	10[29]	*14.29%*	70	44.49	*0.64*
DE	596[30]	*84.90%*	106[31]	*15.10%*	-[32]	*0.00%*	702	1,392.42	*1.98*
EL	38	*71.70%*	15	*28.30%*	-	*0.00%*	53	684.39	*12.91*
ES[33]	1,292	*84.17%*	243	*15.83%*	-	*0.00%*	1,535	1,738.36	*1.13*
FR[34]	120	*63.83%*	68	*36.17%*	-	*0.00%*	188	579.97	*3.08*
IE	16	*71.11%*	6.5	*28.89%*	-	*0.00%*	22.5	113.85	*5.06*
IT[35]	589	*67.80%*	215	*24.81%*	64	*7.37.%*	869	1,078.73	*1.24*
LU	2	*50.00%*	2	*50.00%*	-	*0,00%*	4	5.28	*1.32*
NL	40	*72.73%*	14	*25.45%*	1	*1.82%*	55	77.72	*1.41*
AT	264	*99.44%*	1.5	*0.56%*	-[36]	*0.00%*	265.5	112.92	*0.42*
PT	486	*77.64%*	140	*22.36%*	-[37]	*0.00%*	626	740.27	*1.18*
FI[38]	85.5[39]	*87.51%*	10[40]	*10.34%*	2	*2.15%*	98	172.06	*1.76*
SE	108	*83.72%*	19.5[41]	*15.12%*	1.5[42]	*1.16%*	129	167.29	*1.29*
UK[43]	70	*48.61%*	64	*44.44%*	10	*6.94%*	144	357.61	*2.48*
Total	**3,764**	***78.21%***	**960**	***19.95%***	**89**	***1.84%***	**4,813**	**7298. 70**	***1.52***

Once again, there is little uniformity between the Member States as regards the allocation of staff between the three types of control (ex ante and ex post checks and anti-fraud investigations). The staff assigned by the Member States to ex ante checks far exceeded the staff assigned to the other two types of control in 2003 (for all Members States, ex ante checks: 78.21% ; ex post checks: 19.95%; anti-fraud investigations: 1.84%).

Only four Member States diverged significantly from the average. Denmark assigned less than half of its staff to ex ante checks, Luxemburg and the United Kingdom assigned some 50% of their human resources to such checks. At the other end of the scale, Austria assigned more than 99% of its staff to ex ante checks.

For most Member States, anti-fraud investigations took up a very low number of staff (less than 10%). However, one Member State was an exception to this (Denmark: 14.29%).

The data shows that, as with the ERDF, the protection of the Communities' financial interests in the area of the ESF focused primarily on ex ante control.

6.3. European Agricultural Guidance and Guarantee Fund (EAGGF) - Guidance section

The European Agricultural Guidance and Guarantee Fund (EAGGF) - Guidance Section helps in both the development and the structural adjustment of rural areas whose development is lagging behind by improving the efficiency of their structures for the production, processing and marketing of agricultural and forestry products.

Table 6.3 — EAGGF Guidance section: manpower assigned by each Member State to the three types of control

	(1) Ex ante	(2) = (1)/(7) %	(3) Ex post	(4) = (3)/(7) %	(5) Anti-fraud[44]	(6) = (5)/(7) %	(7) = (1)+(3)+(5) Total (three types of control)	(8) Budget to be checked (€ million)	(9) = (8)/(7) Budget to be checked per control officer (€ million)
BE	11[45]	*92.52%*	1[46]	*7.48%*	-[47]	*0.00%*	12	16.22	*1.32*
DK	1	*31.25%*	2	*68.75%*	-[48]	*0.00%*	3	1.04	*0.33*
DE	332	*57.24%*	248	*42.76%*	-[49]	*0.00%*	580	545.41	*0.94*
EL	40	*71.43%*	16	*28.57%*	-	*0.00%*	56	136.28	*2.43*
ES[50]	299	*85.43%*	51	*14.57%*	-	*0.00%*	350	810.06	*2.31*
FR[51]	55	*94.83%*	3	*5.17%*	-	*0.00%*	58	102.36	*1.76*
IE	113	*85,93%*	15,5	*11.79%*	3	*2.28%*	131.5	16.61	*0.13*
IT[52]	179.5	*61.90%*	46.5	*16.03%*	24	*8.28%*	250	577.76	*2.31*
LU	6[53]	*75.00%*	2[54]	*25.00%*	-	*0.00%*	8[55]	0.105	*0.01*
NL	3	*34.15%*	5	*59.76%*	0.5	*6.10%*	8	4.20	*0.51*
AT	14	*66.67%*	7	*33.33%*	-[56]	*0.00%*	21	25.93	*1.23*
PT	559	*93.95%*	36	*6.05%*	-[57]	*0.00%*	595	294.15	*0.49*
FI[58]	40[59]	*91.11%*	4[60]	*8.89%*	-	*0.45%*	44	23.43	*0.53*
SE	42	*90.67%*	3	*6.07%*	1.5[61]	*3.25%*	46	22.24	*0.48*
UK[62]	60[63]	*48.78%*	33	*26.83%*	30	*24.39%*	123	37.00	*0.30*
Total	**1,755**	***76.75%***	**472**	***20.66%***	**59**	***2.59%***	**2,286**	**2612.80**	***1.14***

For the EAGGF Guidance Section, most of the Member States' inspection staff (76.75%) were likewise assigned to ex ante checks. Similar disparities as for the other sectors exist between Member States as regards the division of staff between the three types of control.

Belgium, France, Portugal, Finland and Sweden assigned more than 90% of their staff to ex ante checks, while Denmark again gave priority to ex post checks (68.75%) over ex ante checks (31.25%).

The Netherlands also assigned more staff to ex post than ex ante checks in this sector in 2003.

Relatively few resources (2.59%) were assigned to anti-fraud investigations. Some Member States indicated that anti-fraud investigations were included in the data on the other types of control.

Fewer staff (2 286) were assigned by the Member States to this sector overall (all types of control) than to the ERDF (5489) and the ESF (4813) while remaining proportional to the Budget to be controlled. Each control agent controls a bigger share in the budget of ERDF (2.85 Million €/agent) and a smaller one in EAGFF (1.14 Million €/agent).

6.4. Financial Instrument for Fisheries Guidance (FIFG)

The Financial Instrument for Fisheries Guidance (FIFG) supports structural developments in the fisheries sector.

Table 6.4 — FIFG: manpower assigned by each Member State to the three types of control

	(1) Ex ante	(2) = (1)/(7) %	(3) Ex post	(4) = (3)/(7) %	(5) Anti-fraud[64]	(6) = (5)/(7) %	(7) = (1)+(3)+(5) Total (three types of control)	(8) Budget to be checked (€ million)	(9) = (8)/(7) Budget to be checked per control officer (€ million)
BE	1	*62.50%*	1[65]	*37.50%*	-	*0.00%*	2	1.44	*0.90*
DK	5	*79.03. %*	1	*20.97%*	-[66]	*0.00%*	6	25.51	*4.11*
DE	27	*52.94%*	24	*47.06%*	-[67]	*0.00%*	51	34.78	*0.68*
EL	212[68]	*100.00 %*		*0.00%*	-	*0.00%*	212	42.01	*0.19*
ES[69]	87	*64.44%*	48	*35.56%*	-	*0.00%*	135	281.72	*2.08*
FR[70]	27	*93.10%*	2	*6.90%*	-	*0.00%*	29	19.42	*0.67*
IE	3	*60.00%*	2	*40.00%*	0	*0.00%*	5	6.94	*1.38*
IT[71]	46	*52.38%*	28	*31.75%*	14	*15.87%*	88	12.68	*0.14*
LU[72]	-	-	-	-	-	-	-	0.150	-
NL	2	*66.67%*	1	*33.33%*	0	*0.00%*	3	10.09	*3.25*
AT	5.5	*52.38%*	5	*47.62%*	-[73]	*0.00%*	10.5	0.22	*0.02*
PT	39	*76.47%*	12	*23.53%*	-[74]	*0.00%*	51	36.95	*0.72*
FI[75]	12[76]	*82.76%*	2.5[77]	*17.24%*	-	*0.00%*	14.5	8.94	*0.62*
SE	10	*74.07%*	2	*14.81%*	1.5[78]	*11.11%*	13.5	3.83	*0.28*
UK[79]	10[80]	*46.51%*	0	*0.00%*	11	*52.33%*	11[81]	10.19	*0.47*
Total	**487**	***77.01%***	**129**	***20.38%***	**16.5**	***2.61%***	**632**	**494. 87**	***0.78***

For the FIFG, as with the other Structural Funds, most of the Member States' inspection staff (77.01 %) were assigned to ex ante checks.

Again, there are disparities between the Member States as regards the division of staff between the three types of control, with Germany, Ireland and Austria assigning approximately equivalent manpower to ex post and ex ante checks, while Finland

and Denmark deployed about 80% of their staff on ex ante checks, France more than 90%, and Greece 100%.

6.5. Cohesion Fund

The purpose of the Cohesion Fund is to provide a financial contribution to projects in the fields of the environment and of trans-European networks in the area of transport infrastructure.

Table 6.5 — Cohesion Fund: manpower assigned by each Member State to the three types of control

	(1) **Ex ante**	**(2) = (1)/(7)** **%**	**(3)** **Ex post**	**(4) = (3)/(7)** **%**	**(5)** **Anti-fraud**[82]	**(6) = (5)/(7)** **%**	**(7) = (1)+(3)+(5)** **Total (three types of control)**	**(8)** **Budget to be checked (€ million)**	**(9) = (8)/(7)** **Budget to be checked per control officer (€ million)**
EL	16	*61.54%*	10	*38.46%*	-	-	26	40.08	*1.54*
ES[83]	90	*72.58%*	34	*27.42%*	-	-	124	1724.73	*13.91*
IE	18	*69.23%*	8	*30.77%*	-	-	26	172.09	*6.62*
PT	20	*62.50%*	12	*37.50%*	-[84]	-	32	258.12	*8.01*
Total	**144**	***69.23%***	**64**	***30.77%***	**-**	**-**	**208**	**2195. 02**	***10.55***

The budget to be checked per control officer is far higher than in the other sectors (€10.55 million as opposed to €2.85 million for the ERDF and €1.52 million for the ESF). Cohesion Fund projects tend to be broader in scope than projects under the other Structural Funds. This could create economies of scale for the control procedures and therefore could explain that the number of agents is lower compared to the amount of budget concerned.

Once again in this sector, most staff in the Member States were assigned to ex ante controls (for all Member States, ex ante checks: 69.23%; ex post checks: 30.77%).

The distribution of staff among the three types of control (ex ante, ex post and anti-fraud) is fairly similar for all Member States: two thirds on ex ante and one third on ex post checks.

In this field, no staff were assigned solely to anti-fraud investigations.

Conclusions

In interpreting the table, the various caveats set out by the Member States and included in Tables 6.1 to 6.5 should be borne in mind.

Table 6.6. - Structural measures: manpower assigned by each Member States to the three types of control

	(1) Ex ante	(2) = (1)/(7) %	(3) Ex post	(4) = (3)/(7) %	(5) Anti-fraud investigations	(6) = (5)/(7) %	(7) = (1)+(3)+(5) Total (three types of control)	(8) Budget to be controlled (M. €)	(9) = (8)/(7) Budget to be controlled (M. €)
BE	155	*87.06%*	23	*12.94%*	-	*0.00%*	178	115.04	*0.64*
DK	56	*50.27%*	45	*40.46%*	10	*9.27%*	111	96.46	*0.87*
DE	1,824	*78.79%*	491	*21.21%*	-	*0.00%*	2,315	3,791.29	*1.64*
EL	387	*86.19%*	62	*14.32%*	-	*0.00%*	449	1,908.12	*4.42*
ES	2,082	*80.39%*	508	*19.61%*	-	*0.00%*	2,590	8,949.83	*3.46*
FR	515	*79.72%*	131	*20.28%*	-	*0.00%*	646	1,970.44	*3.05*
IE	494	*62.14%*	298	*37.48%*	3	*0.38%*	795	603.79	*0.76*
IT	1,346	*64.40%*	498	*23.83%*	246	*11.77%*	2,090	4,538.74	*2.17*
LU	11	*64.71%*	5	*29.41%*	1	*5.88%*	17	5.79	*0.34*
NL	46	*67.06%*	21	*30.75%*	1.5	*2.20%*	68	208.98	*3.07*
AT	381.5	*94.20%*	23.5	*5.80%*		*0.00%*	405	290.92	*0.72*
PT	1,788	*72.15%*	446	*18.00%*	244	*9.85%*	2,478	3,722.00	*1.50*
FI	245	*85.03%*	38	*13.27%*	5	*1.70%*	288	321.28	*1.11*
SE	2,600	*84.19%*	43	*13.86%*	6	*1.94%*	309	388.72	*1.26*
UK	344	*49.43%*	240	*34.83%*	105	*15.24%*	689	1,343.19	*1.92*
Total	**9,934**	*73.98%*	**2,872**	*21.39%*	**622**	*4.63%*	**12,535**	**28,254.59**	*2.25*

It can be seen from the summary table that, in all the Member States and all the areas covered, the vast majority of human resources were assigned in 2003 to ex ante checks (ex ante checks: 73.98%; ex post checks: 21.39%; anti-fraud investigations: 4.63%).

This tends to show that, in general, priority was given to supervision and prior verification mechanisms that come into play when requests for funding are vetted.

From a quantitative standpoint, checks on the use of funds or on project implementation (ex post checks) usually require fewer resources since they are carried out on the basis of programming, sampling techniques or risk targeting.

Without making judgement on the type of controls organisation chosen, which falls within the exclusive competence of the Member States, the Commission finds regrettable that only nine Member States were able to provide an evaluation of the manpower devoted to the anti-fraud investigations.

On the whole, Member States assigned most manpower to controls carried out in the field of the ERDF: 5,489 agents, against 4,813 for the ESF, 2,286 for EAGGF Guidance Section, 632 for the FIFG and 208 for the Cohesion Fund. This remains proportional to the budget to be controlled , since it is also higher for the ERDF than for the other funds. The amount to be checked by agent is 2.85 Million euro for the ERDF, 1.52 for the ESF, 1.14 for the EAGGF Guidance Section and 0.78 for the FIFG. In the field of the cohesion fund, this amount is largely higher, namely 10.55 Million euro by agent.

Comparing the data by Member States, the amount of the budget to be checked for all the funds ranges between euros 0.34 and 4.42 Million by control agent. When analyzing the figures of each fund separately, accentuated differences have to be considered, for example, for the ERDF: euros 0.05 to 9.86 Million by agent, for the ESF: euros 0.42 to 12.91 Million by agent.

In general, it seems that most Member States focused heavily on prevention, which is why human resources were concentrated on ex ante checks. Only a few Member States chose to divide staff relatively uniformly between the three types of control, reflecting a deterrent approach centred on repeated checks and anti-fraud investigations. Trends identified in the 2002 annual report have been confirmed once again this year.

7. COORDINATION BETWEEN DEPARTMENTS WITHIN THE MEMBER STATES[85]

The effectiveness of checks and investigations covering Community funds and expenditure depends on good coordination between the various departments involved. The Court of Auditors' special report No 10/2001[86], as well as audits performed by the Commission in a number of Member States between November 2002 and January 2003, revealed various shortcomings in this area. Since then, new developments have taken place which the Member States sought to highlight in their replies to the Article 280 questionnaire.

Some significant general developments are worth pointing out. In Italy, the regions, autonomous provinces and regional headquarters of the *Guardia di Finanza* concluded new memoranda of understanding with a view to coordinating checks and exchanging information on structural measures. Moreover, the Structural Funds were the subject of specific activities by a Central Committee and 20 regional financial

coordination Committees, comprising representatives of the previously mentioned financial police, *the Ragioneria Generale dello Stato and the Agenzia delle Entrate.*

Various instructions were also issued by the central authorities with a view to ensuring uniform application of control procedures and communication of irregularities. They took account of the lessons learned from the closure of the 1994-99 Structural Funds programmes and the audit reports by the Court of Auditors and the Commission. Instructions of this kind issued in the course of 2003 were reported by Italy (regions of Veneto, Tuscany and Campania), the UK (guidance from the newly created Compliance Group, which brings together the various departments responsible for the management of the Structural Funds in England), and France (new control instructions drawn up by customs and a procedural guide for paying agencies and control bodies responsible for the EAGGF Guidance Section).

Almost all the Member States reported measures designed to improve information exchange and facilitate cooperation, such as the creation of coordination units, meetings, training and the development of IT systems. Since the purpose of these improvements is primarily to facilitate the reporting of irregularities to the Commission (OLAF), they warrant particular attention.

Belgium referred to the creation of a coordinating body for the EAGGF Guarantee Section paying agencies. A cooperation agreement was signed between the Federal State and the regions in the field of agriculture and fisheries. Certain tax and customs and excise officials were granted the status of auxiliary officers of the public prosecutor's criminal investigation department with a view to facilitating anti-fraud investigations.

Some Member States set up units bringing together the control managers from the different sectors. In Denmark, for example, the managers of the control function for the ESF and ERDF were brought together within the same unit under the same Ministry (Ministry of Economic and Business Affairs). Likewise, the UK grouped the paying agency function for the two sections of the EAGGF within the same agency of the Department for Environment, Food and Rural Affairs. In Ireland, a formal mechanism for the exchange of views and information on ESF financial management and control issues (ESF Financial Control Steering Group) has been created.

A large number of Member States reported the introduction in 2003 of regular meetings between audit managers from the different sectors (such as the EURONET group in Northern Ireland) or between those responsible for the different types of control within the same sector (such as in Denmark with respect to the FIFG), in order to promote the exchange of information and methodology.

Training courses and seminars designed to improve coordination and cooperation between departments were organised for the staff of the different departments in France and Finland.

The Greek Ministry of Economic and Financial Affairs and the paying agency (OPEKEPE) signed a memorandum of understanding laying down an information exchange framework for irregularities affecting export refunds. A similar agreement

was signed by the authorities in Ireland on the carrying out of ex post controls and systems audits in accordance with the rules applicable to agriculture.

Still on the subject of improving information exchange, mention must also be made of improvements to IT systems in order to enhance data transfer. Developments of this kind were reported by the UK (modernisation of the Management Information System used by the Scottish Executive for administration of ERDF and ESF), Belgium (comparison of data files at national level in order to avoid wrongly paid VAT refunds; exchanges of information between the managers of European programmes with the aim of reducing the risks of double part-financing, and Italy (Valle d'Aosta's IT system for the rural development plan).

8. RECOVERY BY JOINING A CIVIL ACTION TO CRIMINAL PROCEEDINGS UNDER MEMBER STATES' LEGISLATION

Recovery of Community entitlements arising from expenditure directly managed by the Commission itself ("direct expenditure") is an important issue in the framework of improving the protection of the financial interests of the Community.

Within the context of this framework the Commission has adopted two Communications on improving recovery (2000 and 2002[87]). In these Communications, the Commission highlighted OLAF's supportive role in ensuring that the Commission launches 'Civil action within criminal proceedings' following OLAF investigations in the area of direct expenditure.

Civil action within criminal proceedings: With regard to 'Civil action within criminal proceedings' this is considered an efficient instrument to protect the financial interests of the Community. It leads to the shortening of legal proceedings by combining criminal proceedings with civil action. This combined procedure offers several advantages and will therefore, in general, facilitate the Commission's efforts to recover debts in the field of direct expenditure.

Against this background it was considered important to assess the conditions under which the Commission, on behalf of the Community, is legally entitled in national law to launch such civil action or comparable measures in cases of fraud concerning direct expenditure.

In order to assess this recovery possibility, Member States were asked to provide an initial description of the legal basis for such actions within their legislation.

The *Member States' responses*[88] provide the Commission with a general overview of the possibilities to conduct 'Civil action within criminal proceedings' under the various Member States legal systems.

With the exception of Member States with *common law* systems[89], all other Member States[90] allow the Community, as represented by the Commission, to initiate 'Civil action within criminal proceedings', providing that the prerequisites of national law are met.

In those Member States where such actions are allowed, the request for 'Civil action within criminal proceedings' must be initiated by the 'damaged party' with the competent court or prosecution authority. Additionally, in certain Member States[91], the prosecutors are also given the authority to initiate such a procedure.

The Member States[92] indicated that the timing of the initiation of 'Civil action within criminal proceedings' was vital for the successful introduction of the civil claim. In some Member States[93] 'Civil action within criminal proceedings' is only possible before the beginning of a court trial. . Other legal systems[94] however, require that criminal proceedings have been already opened. In these legal jurisdictions a claim for 'Civil action within criminal proceedings' must be launched at the latest during the main hearing, and in any event before the closing speeches begin.

In Member States having *common law* systems, although the Commission would not be entitled to launch 'Civil action within criminal proceedings, it would nevertheless, be entitled to make a request for compensation.

As far as the national judicial authorities in charge are concerned, in most Member States it was found that the judge and/or the criminal court plays a key role. The Member States' responses show a variety of conditions which apply to the 'Civil action within criminal proceedings', however, the Commission did not receive enough information from all Member States on this aspect to make a more detailed analysis.

In all Member States statutes of limitation apply, however the overview indicates a great variety exists in the duration of the time-bar. In many Member States civil law contains the relevant time-bar provisions. Time-bar provisions vary in general between long limitation periods of 20-30 years[95] and shorter ones of only 3-5 years[96].

Safeguarding measures: in addition to 'Civil action within criminal proceedings' there also exists the possibility of initiating 'Safeguarding measures' during criminal proceedings. In this regard, the Member States' legal systems provide various instruments, such as the confiscation or seizure of assets while penal proceedings are going on. These instruments might already apply, in certain instances, at the preliminary 'pre-court' action stage.

The complexity of the national legal systems shows, in principle, the need for the Commission to have close co-operation with national judicial authorities in order to provide for an effective protection of the Communities' financial interests, also in cases when these funds are directly managed by the Commission.

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[1] In case certain staff are responsible for the performance of several types of control (ex-ante, ex post and/or anti-fraud), Member States were asked to base their figures on an estimate of the relative time spent by the staff concerned on each type of control.

Similarly, should certain staff be responsible for the execution of controls covering several funds, Member States were invited to base their figures on an estimate of the relative time spent by the staff concerned on each sector.

If the performance of particular control tasks has been delegated to outside (private) agencies or bodies, Member States were asked to include the manpower affected by these agencies or bodies for the performance of these tasks in the figures submitted.

Figures are rounded off to the next whole number. Therefore, there might be some discrepancies in the total column between actual figures and rounded off figures.

[2] "Ex ante" controls consist:

- for the Structural Funds, of checks and inspections on projects or actions, carried out at the various levels (managing authority, payment authority, delegated or intermediate authorities, final beneficiaries) to verify the delivery of the products and services co-financed and the reality of expenditure claimed (checks of service done) in accordance with Articles 4 and 9(2), (3) and (4) of Regulation No 438/2001;
- for the Cohesion Fund, of checks and inspections carried out at different levels (implementing bodies, managing authority, payment authority, intermediary authorities) in order to verify the authenticity of expenditure claimed and execution of the project, from the preparatory phase through the entry into service of the financed investment in accordance with Articles 4 and 8(2), (3) and (4) of Regulation No 1386/2002.

In the meaning of the present report, "Ex post" controls consist:

- for the Structural Funds, of "sample checks" which cover at least 5% of the total eligible expenditure, under Article 3 of Regulation (EC) No 2064/97 (for the 1994-1999 programming period) and Article 10 of Regulation (EC) No 438/2001 (for the 2000-2006 programming period);
- for the Cohesion Fund, of "sample checks" which cover at least 15% of the total eligible expenditure, under Article 9 of Regulation (EC) No 1386/2002, allowing verification of the effectiveness of management and control systems in place and expenditure declarations related to projects.

Anti-fraud investigations include all investigations conducted on the basis of suspected fraud.

[3] Member States capable of doing so were also requested to include the manpower which criminal prosecution authorities (police services, judicial authorities) assigned to this type of investigation.

[4] 4 Flemish Community staff, 95 Walloon Region staff, 6 Brussels Capital Region staff (0.42 of which for the programming period 1994-99).

[5] 3 Flemish Community staff, 2 Walloon Region staff, 1.4 Brussels Capital Region staff (0.4 of which for the programming period 1994-99).

[6] Included in the first two columns.

[7] Germany commented that given the variety of actions and large number of departments involved, a considerable number of people dealt with controls, which meant that only an estimate could be given.

[8] On account of the overlapping of ex post controls for the programming periods 1994-99 and 2000-06 which occurred in 2003, the independent agency data are based on an estimate of the time which the individual staff members spent during the period under review on the respective programming periods.

[9] No data can be given on the number of people working in the field of judicial investigations in criminal proceedings. These people are responsible for a large number of cases which mainly extend beyond the field concerned.

[10] Some institutions consulted by the Spanish authorities did not submit complete information on manpower. No data could be communicated concerning police force and justice manpower. This is why the column of anti-fraud manpower was not completed, but the figures available were added to those of the first two columns.

[11] France underlines the lack of reliability of such statistics which explains the caution it takes in its communication.

[12] The data for Italy relate to the programming periods 1988/1993, 1994/1999 and 2000/2006 for the authorities which replied to the questionnaire.

[13] Excluding Interreg and the former Objective 5b.

[14] On account of the decentralised nature of the programmes concerned, the number of officials actively involved in control work is not known by each ministry.

[15] Figures communicated by the Netherlands are incomplete in the area of ERDF, therefore the part of budget to be controlled by agent could not be calculated in order to make the overall result more reliable.

[16] There are no staff or departments specifically assigned to anti-fraud investigations in Austria.

[17] Including 195 PJ officers, 18 DCIAP (Central Department for Penal Investigation and Action) agents, and 31 DIAP (Departments for Penal Investigation and Action) officers. These agents have a role in anti-fraud investigations in all areas (ERDF, ESF, EAGGF, FIFG and Cohesion Fund).

[18] For Finland, the data do not include figures on the use of police resources.

[19] 5 of whom in the Åland Islands.

[20] Including 3 staff for the Åland Islands regional executive audit department (2 administration auditors and 1 internal auditor).

[21] According to the statement by the Ministry of the Interior, the contribution of public prosecutors is 0.1 person/work-year. This figure cannot be broken down by fund, i.e. it covers all funds. According to the statement by the Finnish Ministry of the Interior, the contribution of the police is 1.5 person/work-year for all funds (the figure cannot be broken down). For the Åland Islands, the staff have been counted among the staff assigned to the first two types of control.

[22] All criminal investigations relating to the Structural Funds are investigated by the Economic Crimes Bureau. Manpower totalling 6 full year equivalents was allocated to EU fraud investigations, comprising 2 prosecutors, 2 police officers and 2 auditors. It is not possible to state how the workload is distributed between the funds. 1.5 full year equivalents are distributed equally between the four funds.

[23] The UK pointed out that 32 staff for ex ante controls, 19 for ex post controls and 8 for anti-fraud investigations, making 59 in total, work on all funds, mainly in the devolved administrations. They have been counted among the staff assigned to the ERDF.

[24] 122 staff carrying out ex ante checks on the ERDF in England also work on the EAGGF.

[25] Member States capable of doing so were also requested to include the manpower which criminal prosecution authorities (police services, judicial authorities) assigned to this type of investigation.

[26] Including 8 agents of the Flanders, 3.69 of the region of Brussels and 26 of the ESF Agency.

[27] Including 8 agents of the Flemish Community, 2 in the Walloon region, 1,14 in the Brussels-Capital region and 4 of the ESF Agency.

[28] Included in the first two columns.

[29] Denmark estimates that the Public Prosecutor for Special Economic Crimes had 1 person engaged in anti-fraud investigations in the area of the Structural Funds in 2003.

[30] Germany commented that given the variety of actions and large number of departments involved, a considerable number of people dealt with controls, which meant that only an estimate could be given.

[31] On account of the overlapping of ex post controls for the programming periods 1994-99 and 2000-06 which occurred in 2003, the independent agency data are based on an estimate of the time which the individual staff members spent during the period under review on the respective programming periods.

[32] No data can be given on the number of people working in the field of judicial investigations in criminal proceedings. These people are responsible for a large number of cases which mainly extend beyond the field concerned.

[33] Some institutions consulted by the Spanish authorities did not submit complete information on manpower. No data could be communicated concerning police force and justice manpower. This is why the column of anti-fraud manpower was not completed, but the figures available were added to those of the first two columns.

[34] France underlines the lack of reliability of such statistics which explains the caution it takes in its communication.

[35] The data for Italy relate to the programming periods 1988/1993, 1994/1999 and 2000/2006 for the authorities which replied to the questionnaire.

[36] There is no staff or departments specifically assigned to anti-fraud investigations in Austria.

[37] All agents mentioned in ERDF manpower also have a role in anti-fraud investigations in this area.

[38] The ESF figures communicated by the Finnish Ministry of Labour do not include the work of police and judicial authorities.

[39] Including 3 staff for the Åland Islands.

[40] Including 3 staff for the Åland Islands regional executive audit department (2 administration auditors and 1 internal auditor).

[41] Of which five staff are assigned to administrative investigations.

[42] All criminal investigations relating to the Structural Funds are investigated by the Economic Crimes Bureau. Manpower totalling 6 full year equivalents was allocated to EU fraud investigations, comprising 2 prosecutors, 2 police officers and 2 auditors. It is not possible to state how the workload is distributed between the funds. 1.5 full year equivalents are distributed equally between the four funds.

[43] The UK pointed out that 32 staff for ex ante controls, 19 for ex post controls and 8 for anti-fraud investigations, making 59 in total, work on all funds, mainly in the devolved administrations. They have been counted among the staff assigned to the ERDF.

[44] Member States capable of doing so were also requested to include the manpower which criminal prosecution authorities (police services, judicial authorities) assigned to this type of investigation.

[45] Of which 11.3 in the Walloon Region and 0.08 in the Brussels Capital Region (for the 1994-99 programming period).

[46] Of which 0.8 in the Walloon Region and 0.12 in the Brussels Capital Region (for the 1994-99 programming period).

[47] Included in the first two columns.

[48] Denmark estimates that the Public Prosecutor for Special Economic Crimes had 1 person engaged in anti-fraud investigations in the area of the Structural Funds in 2003.

[49] No data can be given on the number of people working in the field of judicial investigations in criminal proceedings. These people are responsible for a large number of cases which mainly extend beyond the field concerned.

[50] Some institutions consulted by the Spanish authorities did not submit complete information on manpower. No data could be communicated concerning police force and justice manpower. This is why the column of anti-fraud manpower was not completed, but the figures available were added to those of the first two columns.

[51] France underlines the lack of reliability of such statistics which explains the caution it takes in its communication.

[52] The data for Italy relate to the programming periods 1988/1993, 1994/1999 and 2000/2006 for the authorities which replied to the questionnaire.

[53] Not assigned full-time to the checks concerned.

[54] Not assigned full-time to the checks concerned.

[55] Not assigned full-time to the checks concerned.

[56] There is no staff or departments specifically assigned to anti-fraud investigations in Austria.

[57] All agents mentioned in ERDF manpower also have a role in anti-fraud investigations in this area.

[58] The EAGGF Guidance Section figures communicated by the Finnish Ministry of Agriculture and Forestry do not include the work of police and judicial authorities.

[59] Including 2.75 staff for the Åland Islands.

[60] Of which 0.5 staff in the Åland Islands assigned to the control department and 0.5 assigned to the Åland Islands agriculture department.

[61] All criminal investigations relating to the Structural Funds are investigated by the Economic Crimes Bureau. Manpower totalling 6 full year equivalents has been allocated to EU fraud investigations, comprising 2 prosecutors, 2 police officers and 2 auditors. It is not possible to state how the workload is distributed between the funds. 1.5 full year equivalents are distributed equally between the four funds.

[62] The UK pointed out that 32 staff for ex ante controls, 19 for ex post controls and 8 for anti-fraud investigations, making 59 in total, work on all funds, mainly in the devolved administrations. They have been counted among the staff assigned to the ERDF.

[63] 122 staff carrying out ex ante checks on the ERDF in England also work on the EAGGF. They have been counted among the staff assigned to the ERDF. The figure for staff assigned to ex ante controls for the EAGGF includes 6 Scottish Executive staff whose duties cannot be split between the categories.

[64] Member States capable of doing so were also requested to include the manpower which criminal prosecution authorities (police services, judicial authorities) assigned to this type of investigation.

[65] 0.4 Flemish Community staff, 0.2 for the Walloon Region.

[66] Denmark estimates that the Public Prosecutor for Special Economic Crimes had 1 person engaged in anti-fraud investigations in the area of the Structural Funds in 2003.

[67] No data can be given on the number of people working in the field of judicial investigations in criminal proceedings. These people are responsible for a large number of cases which mainly extend beyond the field concerned.

[68] This figure comprises 200 auditors serving with prefectural government authorities to monitor Fisheries OP projects (2000-06), 6 staff for the CSF and 6 other fisheries auditors.

[69] Some institutions consulted by the Spanish authorities did not submit complete information on manpower. No data could be communicated concerning police force and justice manpower. This is why the column of anti-fraud manpower was not completed, but the figures available were added to those of the first two columns.

[70] France underlines the lack of reliability of such statistics which explains the caution it takes in its communication.

[71] The data for Italy relate to the programming periods 1988/1993, 1994/1999 and 2000/2006 for the authorities which replied to the questionnaire.

[72] Not applicable to Luxembourg.

[73] There are no staff or departments specifically assigned to anti-fraud investigations in Austria.

[74] All agents mentioned in ERDF manpower also have a role in anti-fraud investigations in this area.

[75] The FIFG figures communicated by the Finnish Ministry of Agriculture and Forestry do not include the work of police and judicial authorities.

[76] Including 1.5 staff for the Åland Islands.

[77] Including 2 staff for the Åland Islands regional executive audit department.

[78] All criminal investigations relating to the Structural Funds are investigated by the Economic Crimes Bureau. Manpower totalling 6 full year equivalents has been allocated to EU fraud investigations, comprising 2 prosecutors, 2 police officers and 2 auditors. It is not possible to state how the workload is distributed between the funds. 1.5 full year equivalents are distributed equally between the four funds.

[79] The UK pointed out that 32 staff for ex ante controls, 19 for ex post controls and 8 for anti-fraud investigations, making 59 in total, work on all funds, mainly in the devolved administrations. They have been counted among the staff assigned to the ERDF.

[80] FIFG figures do not include Northern Ireland staff who also work on the EAGGF (they are included in the EAGGF figures: 54 staff on ex ante controls, 6 on ex post controls).

[81] This figure also includes one member of the Scottish Executive staff whose duties cannot be split between the categories.

[82] Member States capable of doing so were also requested to include the manpower which criminal prosecution authorities (police services, judicial authorities) assigned to this type of investigation.

[83] Some institutions consulted by the Spanish authorities did not submit complete information on manpower. No data could be communicated concerning police force and justice manpower. This is why the column of anti-fraud manpower was not completed, but the figures available were added to those of the first two columns.

[84] All agents mentioned in ERDF manpower also have a role in anti-fraud investigations in this area.

[85] The Member States' replies can be consulted in full in Tables 2.1 and 2.2 of the Commission Staff working document.

[86] Special Report No 10/2001 concerning the financial control of the Structural Funds, Commission Regulations (EC) Nos 2064/97 and 1681/94 (OJ C 314, 8.11.2001).

[87] See Commission Communications on:

- Action 96 of the White Paper: "More effective management of recovery of unduly paid funds" (SEC(2000)2204/4, 12.12.2000, point 4.4) and

- "Improving the recovery of Community entitlements arising from direct and shared management of Community expenditure" (COM (2002) 671 final, 03.12.2002).

[88] See Commission staff working document, simultaneously published with the present report.

[89] Ireland, United Kingdom.

[90] Austria, Belgium, Denmark, Finland, France, Italy, Germany, Greece, Luxembourg, Netherlands, Portugal, Spain, Sweden.

[91] Finland, Portugal, Sweden.

[92] Austria, Belgium, Denmark, Finland, France, Italy, Germany, Greece, Luxembourg, Netherlands, Portugal, Spain, Sweden.

[93] Austria, Finland, Netherlands.

[94] Germany, Greece and Italy (where it is only possible after the beginning of court proceedings and until the opening of the first instance hearing).

[95] Belgium, Denmark, Netherlands and Spain (where in accordance to the Spanish Supreme Court judgement the limitation for civil action arising from a criminal offence is 15 years).

[96] France, Greece, Luxembourg.