

PROTECTING THE COMMUNITIES' FINANCIAL INTERESTS THE FIGHT AGAINST FRAUD ANNUAL REPORT 1999

(presented by the Commission)

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INTRODUCTION

In 1999 the Community reorganised its anti-fraud operations. From 1 June, the Task Force for the Coordination of Fraud Prevention (UCLAF) made way for the new European Anti-Fraud Office (OLAF). With this reform, instigated at the highest political level, the institutions sought to establish a structure that would serve as a springboard for a major qualitative leap in the fight against all forms of fraud or any other illegal activity, as well as serious acts liable to result in disciplinary proceedings which damage Community financial interests and the credibility of the European integration process.

The Commission's report for 1999 not only gives an account of OLAF's "non-operational" activities [1] but, like previous reports, records the measures taken by other Commission Directorates-General and services to protect Community financial interests and crack down on fraud. The new legislative package on fraud prevention, [2] which entered into force on 1 June 1999, extends and strengthens OLAF's responsibilities not only in operational tasks such as investigation and

coordination, but in tasks connected with safeguarding Community financial interests against misconduct liable to result in administrative or criminal proceedings.

[1] OLAF's first report on its operational activities was published on 23 May 2000. This report is to be published annually from the date when OLAF was set up (the next report will cover the period from 1 June 2000 to 31 May 2001 and be published in the second half of 2001).

[2] The legislative package (OJ L 136, 31.5.1999) comprises Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-Fraud Office (OLAF), a Regulation (EC) of the European Parliament and of the Council concerning investigations conducted by OLAF and an Interinstitutional Agreement on OLAF's internal investigations .

Thus, 1999 marked an important milestone, and establishing the new Anti-Fraud Office was a major priority for the Commission that meant not only assigning staff but also laying down a new anti-fraud strategy, which it formally adopted on 28 June 2000. [3] One of the aims of the new policy is to forge closer partnership with the Member States, in keeping with the spirit of Article 280 EC, which confers on the Commission a special role in enhancing cooperation with national authorities specialising in the protection of financial interests and the fight against fraud.

[3] Commission Communication, The fight against fraud - for an overall strategic approach, COM(2000) 358 final.

Thus, in accordance with Article 280(5) EC, the next Commission's report for 2000 will give an account of the measures taken by the European Community (Community institutions) and the Member States to protect the Community's financial interests since the entry into force of the Amsterdam Treaty on 1 May 1999. [4] The Member States' contributions will be considered in the Advisory Committee for the Coordination of Fraud Prevention (CoCoLAF) at its regular meetings to establish close cooperation with the national authorities, notably in the preparation of the Article 280 report. The main novelty resides in the regular reporting of activities undertaken by the Community to protect its financial interests, particularly measures taken by the Member States.

[4] The next report, covering 2000 and incorporating these national contributions, should be published in the spring of 2001.

The Community budget for 1999 [5] amounts to EUR84.9 billion (implementation of payment appropriations). It is financed from traditional own resources (EUR13.8 billion), VAT (EUR31.1 billion) and the fourth resource paid directly into the Community budget, which is its main receipt (EUR37.5 billion). Expenditure still goes chiefly to agriculture (EUR39.5 billion, or 47% of the total). Structural policies account for EUR30.4 billion (36% of the total) and expenditure directly managed by the Commission (external action, research and development, etc.) for EUR10.9 billion (13% of the total, excluding administrative and staff expenditure).

[5] Source: The Community budget: the facts in figures (European Commission), 2000 edition, SEC(2000) 1200.

It must be borne in mind that it is up to the Member States and the Commission, working closely together, to detect cases of fraud and other irregularities detrimental to the Community's financial interests. The principal obligation is on the Member States, since they collect traditional own resources on behalf of the Communities and administer around 80% of Community budget expenditure. As in previous years this report makes a distinction between "fraud" and "irregularities" on the basis of the Member States' regulation reporting activities. And again, the interpretations presented must be taken with caution as the finding that an irregularity is actually fraudulent may take some time to reach after detailed investigation.

Broadly speaking, the rate of established or suspected frauds and irregularities is comparable to previous years (the annexed tables give details of the cases reported by the Member States in 1999, and the graphs offer comparisons with the three preceding years in aggregate terms, without distinguishing frauds and irregularities). The only significant new trends, in terms of cases reported and amounts involved, concerned structural measures (Structural Funds and Cohesion Fund); this reflects the greater efforts made by the Member States to inspect and detect.

The report sets out the main events of 1999, highlighting recent trends wherever possible. First, there is a presentation of the reforms of anti-fraud strategy and of developments in the horizontal legal arsenal (first and third pillars) for the protection of the Community's financial interests, referring particularly to protecting the euro against counterfeiting, in the sectoral regulations (own

resources, customs and indirect taxation, agricultural and structural expenditure, and direct expenditure administered by the Commission and in cooperation with the Member States and non-member countries, including the candidate countries. A second part sets out a number of statistical analyses; the third part describes the current position regarding protection of the Community's financial interests in terms of Article 280 of the EC Treaty and lays the basis for a new modus operandi within existing structures (e.g. CoCoLAF) to be established in 2001, in time for the next report.

Title I: The Community's activities

1. Developments in the legal system (first and third pillars)

1.1. Reform in the fraud prevention field and the creation of the European Anti-Fraud Office

1.1.1. Background to the reform

The budgetary authority (the European Parliament and the Council) demanded improvements in UCLAF's effectiveness [6] and tougher measures to crack down on fraud and irregularities within the Community institutions. At the beginning of 1999, a high-level interinstitutional group, consisting of representatives of the Commission, Parliament and the Council, was set up at the initiative of the President of the European Council.

[6] Most notably following publication of the Court of Auditors' Special Report No 8/98 on the workings of UCLAF (OJ C 230, 22.7.1998). See also Parliament's resolution of 7 October 1998 (OJ C 328, 26.10.1998) and the conclusions of the Council (Ecofin) of 23 November 1998 on the fight against fraud.

In June 1999 the Cologne European Council welcomed in particular the exemplary, close and constructive cooperation between Parliament, the Council and the Commission which had made it possible to establish quickly the legal bases needed for OLAF to begin its work on time on 1 June 1999 (as requested by the Vienna European Council in December 1998). In its conclusions, the Cologne European Council declared that the establishment of the European Anti-Fraud Office and the accompanying legal machinery constituted a strong political signal that the Union was capable of acting to combat fraud, corruption and mismanagement. [7]

[7] On 15 March 1999 the Committee of Independent Experts issued its First Report on allegations regarding fraud, mismanagement and nepotism in the European Commission. On 10 September 1999 it delivered its Second Report on reform of the Commission - Analysis of current practice and proposals for tackling mismanagement, irregularities and fraud.

1.1.2. The new legal framework

The new legal framework for protecting the Community's financial interests and combating fraud and any other illegal activity likely to harm Community interests was adopted on the basis of a Commission proposal presented on 17 March 1999. [8] It comprises the following instruments:

[8] OJ C 131, 12.5.1999.

- On 28 April 1999, the Commission adopted Decision 1999/352/EC, ECSC, Euratom establishing the European Anti-Fraud Office (OLAF); [9]

[9] OJ L 136, 31.5.1999, p. 20.

- On 25 May 1999, Parliament and the Council adopted Regulation (EC) No 1073/99 concerning investigations conducted by OLAF. [10] Parliament took part in the decision-making process under the codecision procedure, as the Amsterdam Treaty had entered into force on 1 May 1999;

[10] OJ L 136, 31.5.1999, p. 1. On the same day, the Council adopted, on the basis of Article 203 of the Euratom Treaty, Council Regulation (Euratom) No 1074/1999 concerning investigations conducted by the European Anti-Fraud Office, which shares the same aims as Regulation (EC) No 1073/99.

- Also on 25 May 1999, Parliament, the Council and the Commission adopted an Interinstitutional Agreement concerning internal investigations by OLAF, incorporating in an annex a model internal decision. [11] The Community institutions and bodies were asked to adopt internal decisions, based on the Regulation and on the Interinstitutional Agreement and the annex thereto, laying down the

rights and obligations of officials and other servants of the Communities concerned by internal investigations by OLAF.

[11] OJ L 136, 31.5.1999, p. 15.

1.1.2.1 The Decision of 28 April 1999

Under the Commission Decision of 28 April 1999, OLAF took over all of UCLAF's tasks, in particular the preparation of legislation and regulations in OLAF's fields of activity.

OLAF also enjoys real operational independence (Article 3 of the Decision). It is headed by a Director, who is responsible for the carrying out of investigations and may neither seek nor take instructions from the Commission, any government or any other institution or body.

The Director is appointed by the Commission for a five-year term, after consultations with the European Parliament and the Council, and exercises his or her investigation duties under the supervision of a special committee, the composition and powers of which are laid down by Regulations 1073/99 and 1074/99.

OLAF's Supervisory Committee, established by the Decision of 28 April 1999, is composed of five highly-qualified independent persons. [12]

[12] See point 0 below.

1.1.2.2. Regulations 1073/99 and 1074/99

OLAF's operational independence, as set out in the Commission Decision of 28 April 1999, is strengthened by Regulations 1073/99 and 1074/99, Articles 5 and 6 of which provide that investigations (whether external investigations in the Member States or internal investigations in Community institutions, bodies, offices or agencies) are opened and directed by OLAF's Director under his or her own responsibility. [13]

[13] In its other activities, OLAF behaves in the same way as any other Commission department.

Thus, the legislator took pains to lay down rules guaranteeing OLAF's operational and functional independence. Two tangible aspects of that independence - the Supervisory Committee and the statutory position of Director - are given a central role in the reform: neither may seek or take instructions from governments or institutions. The Supervisory Committee assists the Director in this independent role and together they ensure that all the guarantees relating to the rights of individuals and the guarantees on data protection and the confidentiality of information are duly observed in accordance with the rules in force. The reforms are in keeping with the principles of subsidiarity and proportionality. Based within the Commission, OLAF takes part at departmental level in the legislative process. In its operational functions it has independent and interinstitutional status, and must be able to carry out investigations, exchange information and conduct operational analyses in an objective and impartial manner.

1.1.2.3. The Interinstitutional Agreement of 25 May 1999

The Interinstitutional Agreement (between Parliament, the Council and the Commission) concerning internal investigations by OLAF lays down common rules consisting of the implementing measures required to ensure the smooth operation of investigations conducted by OLAF for the purposes of combating fraud, corruption and any other illegal activity detrimental to the Community's financial interests, or bringing to light serious situations relating to the discharge of professional duties [14] which are liable to result in disciplinary or criminal proceedings.

[14] Situations which may constitute a failure to comply with the obligations of members, managers or members of staff of the institutions, bodies, offices and agencies of the Communities.

Within this new legal framework, the Commission adopted, on 2 June 1999, Decision 1999/396/EC, ECSC, Euratom concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests.

[15] The Decision lays down the conditions under which OLAF staff carry out internal investigations at the Commission and is designed to guarantee the rights of any persons who may be concerned by administrative investigations. The Decision was published in the Official Journal of the European Communities at the same time as the Council Decision on the same subject [16] (discussions concerning the other Community institutions and bodies are still under way [17]).

[15] OJ L 149, 16.6.1999, p. 57.

[16] Council Decision 1999/394/EC, Euratom of 25.5.1999, OJ L 149, 16.6.1999, p. 36.

[17] By the end of 1999, only the European Central Bank and the European Investment Bank had still to adopt such provisions. The applicability of the new provisions was contested by these two Community bodies and proceedings are at present pending before the European Court of Justice (cases C-11/00 and C-15/00).

1.1.3. Consequences of the reform

With regard to actual investigations, the new arrangements confer on OLAF the operational functions and resources enjoyed by the Commission and extend the internal investigation function inherited from UCLAF to all the Community institutions and bodies. OLAF can decide autonomously to launch an internal investigation in a Community institution or body and to transmit files to the national judicial authorities.

1.1.4. Getting OLAF up and running

For administrative and budgetary purposes, OLAF is attached to the Commission. Under the Decision of 28 April 1999, its Director has the power to recruit and appoint its staff. He or she draws up a preliminary draft budget, which is duly submitted to the Director General of Budget and covers expenditure on staff, miscellaneous operating expenses (including buildings and IT equipment) and expenditure connected with the performance of OLAF's operational tasks (OLAF is now clearly identified in the general budget of the European Union).

OLAF's planned organisational structure is essentially designed to give it a versatile, operational team of experienced investigators working in close cooperation with a "policy and legislation" unit, which will carry out the important task of using findings in the field as the basis for improving legislation.

It was decided in numerical terms that OLAF would have 300 staff by the end of 2001. A total of 224 posts are included in the establishment plan for 2000, the Commission having asked the budgetary authority for 76 extra posts for OLAF in the draft budget for 2001. [18] Recruitment procedures are under way: the Member States' national services, which have the right numbers of qualified staff, are a natural hunting-ground in which to seek experienced investigators. OLAF's aim is to set up teams capable of conducting anti-fraud investigations right up to their conclusion and to pave the way for the vital judicial follow-up to both external and internal investigations, in coordination with the competent national agencies. [19]

[18] OLAF had 119 staff at the end of 1999; the Commission requested 30 additional posts for 1999 in two supplementary and amending budgets which were accepted by the budgetary authority.

[19] The qualifications required will therefore focus on specific knowledge, particularly in intelligence, anti-corruption work and criminal law.

1.1.5. OLAF's Supervisory Committee

The Supervisory Committee was set up by the Commission Decision of 28 April 1999 establishing OLAF. Parliament and the Council laid down the Committee's role and detailed working arrangements in Regulation (EC) No 1073/99 of 25 May 1999.

Under Regulation 1073/99, the Supervisory Committee is composed of five members, who must be qualified to exercise senior posts in their own countries and are appointed for a renewable three-year term by common accord of the European Parliament, the Council and the Commission. [20]

[20] Cf. Decision 1999/C 220/01 of the European Parliament, the Council and the Commission of 19 July 1999 appointing the members of the Supervisory Committee of OLAF, OJ C 220, 31.7.1999, p. 1. The members of the Committee are Ms Mireille Delmas-Marty (F), appointed to the Chair by her peers, Mr Edmondo Bruti-Liberati (I), Mr José Narciso da Cunha Rodrigues (P), Mr Raymond Kendall (UK) and Mr Harald Noack (D). The Committee must meet at least ten times a year.

1.2. Activities in the first pillar

1.2.1. Protection of the euro

In its communication of 22 July 1998 to the Council, Parliament and the European Central Bank, [21] the Commission declared it was necessary to make the initiatives for the protection of the euro part of an overall approach. The priority measures established at European level to ensure effective protection of the euro include training, the exchange of information, cooperation and mutual assistance, and combating counterfeiting through the approximation of national criminal law.

[21] COM(1998) 474 final.

Europol, whose mandate has been extended by the Council to include counterfeiting, [22] has been instructed to help investigation services in the field protect the euro against counterfeiting.

[22] Council Decision of 29.4.1999, OJ L 149, 28.5.1999.

A draft framework decision designed to strengthen the criminal-law protection of the euro was examined by the Justice and Home Affairs Council on 2 December 1999. [23] This is a preliminary instrument which needs to be supplemented. Following the work done and the consultations held in 1999 with the Member States' experts in the field, the European Central Bank and the other bodies concerned (including Europol), a proposal for a Regulation on the protection of the euro against counterfeiting was presented by the Commission on 26 July 2000. [24] The proposal provides for:

[23] Framework Decision adopted on 29 May 2000 (OJ L 140, 14.6.2000).

[24] COM(2000) 492 final.

- the gathering of technical data;
- the setting-up of a strategic and operational information system and a communication network on euro counterfeiting;
- the obligation to communicate all data concerning forgeries;
- access by national authorities and competent institutions and other bodies to such information;
- enhanced mutual assistance with regard to combating counterfeiting of the euro, including with third countries and, in particular, the countries applying for accession.

1.2.2. Fight against money laundering

The advantage of having information on suspect financial transactions in order to protect the Communities' financial interests has been demonstrated many times by the practice of UCLAF and OLAF. [25] Such information makes it possible to establish a link between perpetrators and organisers, so that the latter can be prosecuted under criminal law. This is why the laundering aspect of a Community fraud case should be covered by the same duty cooperation as the original infringement. [26]

[25] See the Commission's annual reports on the fight against fraud - especially, with regard to alcohol smuggling, the 1997 and 1998 reports, COM(1998) 276 final and COM(1999) 590 final respectively.

[26] The Ecofin Council of 17 July 2000 was "in favour, in principle, of Commission participation in information-sharing on cases of fraud and corruption affecting the Communities' financial interests" (point 5 of the conclusions of the Council's general policy debate on the proposal for an amending directive).

The Commission presented a proposal amending Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering. [27] The aim was to take account of the change in the financial circuits used for laundering purposes and their extension to trafficking that involves organised crime in illegal acts adversely affecting the financial interests of the Communities, over and above drug trafficking, which is of course already covered by the Directive. The Commission wanted to extend the obligations in the original Directive to certain non-financial activities and professions. A duty on national authorities to cooperate in combating laundering activities adversely affecting the financial interests of the Communities was also imposed.

[27] COM(1999) 352 final.

1.3. Criminal-law protection

1.3.1. Corpus Juris

Following the Commission's comparative-law study, embarked on at Parliament's request, of all the possibilities of reinforcing the criminal-law protection of European financial interests, [28] the study on the follow-up to the corpus juris was completed in September. The criminal-law research group presented a final report based on four summary reports. The study is a thorough examination of the need for the corpus juris introducing penal provisions for the purposes of the financial interests of the European Union and its legitimacy and feasibility. It analyses the impact of all the recommendations from the standpoint of the criminal law of each Member State. It has been published [29] and has been presented to Parliament's Committee on Budgetary Control.

[28] See 1998 Annual Report, Chapter 3, point 5.

[29] The implementation of the Corpus juris in the Member States, M. Delmas-Marty / J.A.E. Vervaele, Intersentia, Antwerpen, 2000.

1.3.2. Fight against organised crime: negotiation of a cooperation agreement with Switzerland [30]

[30] See 1998 Annual Report, Chapter 4, point 3.

Economic relations between the Communities and Switzerland will shortly be strengthened by the seven bilateral agreements (signed but not yet ratified). [31] But they contain no measures to improve cooperation in the fight against fraud and financial crime.

[31] COM(1999) 229 final.

Despite the advance which the 1997 protocol on mutual assistance represents, its practical application is still being frustrated. A bilateral group of experts from the Commission and Switzerland met throughout 1999 to discuss the difficulties arising over cooperation on fraud organised by residents operating from Swiss territory.

On the basis of these discussions the Commission accordingly asked the Council for negotiating directives to improve the legal framework for cooperation on protection of the Communities' financial interests against organised financial crime. [32]

[32] SEC(2000) 1883 final.

A statement of conclusions was signed by the Director of the European Anti-Fraud Office and the Director of the Integration Office in Berne on 1 December 1999 with a view to setting up central contact points.

2. Key developments in the protection of the Community's financial interests

This chapter describes how the sectoral legislation associated with the Union's major policies concerning aid to the Member States and the part-financing of measures to assist them has developed, given that it now incorporates provisions for the protection of the Communities' financial interests.

The main developments concern own resources, agriculture and structural measures.

The protection of the Communities' financial interests is one of the Commission's priorities. The process of administrative reform, which the institution launched at the start of 2000 as regards the general administration of the appropriations for whose management it is responsible (whether or not through the intermediary of the Member States), has been one of its foremost activities since the new Commission took office on 16 September 1999. The reform is currently leading to a thorough recasting of the Commission's management and financial control methods and of its administrative practices. The revision of the Financial Regulation, the creation of an internal audit department and a central financial service are all steps which will strengthen the protection of the Communities' financial interests. A section of this chapter is devoted to the progress of the reform of financial management in the Commission, known as "SEM 2000", which began in 1995-96; this reform is continuing within the wider framework of the internal reform of the Commission.

2.1. Customs and indirect taxation

2.1.1. Transit regimes

A set of initiatives was launched, in close cooperation with the 22 national customs administrations concerned [33], as part of the action plan [34] in order to restore the confidence of Community operators in the system.

[33] The 15 Member States as well as the 7 non members parties to the "Common transit" Convention of 20.5.1987: Iceland, Norway, Switzerland, Hungary, Poland, Czech Republic and Slovenia.

[34] Commission Communication, Action plan for transit in Europe - A new customs policy, COM(97) 188 final, 30.4.1997; OJ C 176, 10.6.1997. See previous annual reports, in particular the 1998 Report, Chapter 3, point 1.

The main initiatives are of a legislative nature and concern the amendment of the Community transit system and the Common Transit Convention.

The amendments to the Community Customs Code [35] were adopted by Parliament and the Council and came into force in 1999. [36] These new provisions clarify and improve the basic rules concerning clearance in the transit system and the responsibilities of the member of this system, the financial guarantees, the Community management of simplified procedures and recovery procedures for debts resulting from a Community transit operation.

[35] Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 302, 19.10.1992).

[36] Parliament and Council Regulation (EC) No 955/1999 of 13 April 1999 amending Council Regulation (EEC) No 2913/92 with regard to the external transit procedure (OJ L 119, 7.5.1999).

As regards the necessary amendments to the provisions for the implementation of the Community Customs Code [37] and the Common Transit Convention, 1999 was a year for the fine tuning of existing instruments. The Commission, the Member States and the contracting parties, for instance, came to a common position on the use of a fuller guarantee for the movement of certain sensitive goods.

[37] Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993).

In the framework of the Customs 2002 programme [38], the Commission is financing fully the computerization of the Common and Community transit regime, in particular to speeding the procedure of clearing transit operations, a procedure which is currently based on "paper" transmission of the relevant data between the customs office of departure and arrival. As soon as this computerized procedure has been implemented, it will also contribute to identifying more quickly the anomalies and irregularities committed in the transit regime which, by its very nature, is susceptible to fraudulent manoeuvres.

[38] Decision of the Council and Parliament 105/2000 of 17.12.1999, OJ L, 19.1.2000.

The reform of the transit systems is therefore being finalized but its lasting success will depend on the continues commitment of the 22 national customs administrations in its implementation. The Council has therefore in a resolution dating from 21 June 1999 indicated its support for the Commission's action plan and invited the Member States to give it the status of a priority matter in particular at operational level and for the computerization.

2.1.2. Preference systems

In its communication on the management of preferential tariff arrangements, [39] the Commission drew up an action programme for renewing the conditions under which these arrangements are applied. As a follow-up to the communication, the amendment of the Customs Code (Regulation No 2913/92) has been started with a view to defining the concepts of error by the customs authorities and the good faith of the person liable to make payment.

[39] COM(97) 402 final, 23.7.1997.

To protect both the good faith of operators and the Communities' financial interests, Parliament, the Council and the Commission finally reached agreement, after long and difficult discussions, on the

limits of the commercial risk normally incurred by an importer applying for a preferential tariff arrangement.

However, such protection cannot be relied on in the absence of diligence or where a notice informing operators of the existence of reasonable doubt has been published in the Official Journal.

Accordingly, given the need to improve the transparency of the Community customs treatment of European importers, the principle was established that the early warning system for importers would be used more systematically. In line with this strategy, the Commission will inform economic operators of cases brought to its knowledge which constitute "reasonable doubt" as regards the origin of goods. [40]

[40] Communication from the Commission to the Council and the European Parliament setting out conditions, in the context of preferential tariff arrangements, for informing economic operators and Member States administrations of cases of reasonable doubt as to the origin of goods, COM(2000) 550 final.

2.1.3. Indirect taxation

2.1.3.1. VAT

An ad hoc Council Working Party on Tax Fraud was set up in 1999. The Commission played an active part in its discussions, which were aimed at analysing and intensifying administrative cooperation in the fight against tax evasion (direct and indirect taxation). [41]

[41] Work continued in the first half of 2000. The Working Party's report was made available on 22 May 2000 (Council reference: 8668/00) and discussed at the Ecofin Council on 5 June 2000.

During 1999 the Commission examined the results of its own inquiry into the functioning and effectiveness of administrative cooperation and mutual assistance in the VAT sector, after six years of operation of the transitional arrangements. The conclusions of the report, which was published in January 2000, [42] are as follows:

[42] COM(2000) 28.

- Member States are not allocating sufficient resources to VAT controls;
- Member States have no real strategy for VAT controls, and targets are rarely selected on the basis of risk analysis techniques;
- Member States are not taking full advantage of administrative cooperation and mutual assistance, and the procedures involved are unsatisfactory as far as combating organised fraud is concerned.

To combat fraud more effectively, the report recommends that the following measures be taken:

- the fight against fraud and the improvement of cooperation should become a priority for the Member States;
- Member States should coordinate their strategy and adopt a common anti-fraud policy;
- Member States and the Commission should reflect on how they can make the monitoring and analysis of the frauds they detect more effective;
- Member States should understand the importance of new technology in this respect;
- the Commission, for its part, should undertake to present a proposal strengthening legislation on administrative cooperation and mutual assistance.

In the Subcommittee on Anti-Fraud Matters (SCAF), the Member States and the Commission continued and stepped up their study of fraud mechanisms. The study resulted in a number of recommendations being drawn up, some of which were prepared in the abovementioned ad hoc Council Working Party.

The Commission announced in its communication to the Council and the European Parliament aimed at improving the functioning of the VAT system in the internal market [43] that it will present in the years 2000 and 2001 proposals strengthening the existing Community legal instruments of administrative cooperation and mutual assistance.

[43] COM(2000) 348 final of 7.6.2000.

As far as intra-Community VAT fraud is concerned, VAT carousels (complex intra-Community fraud mechanisms taking advantage of the exemption from VAT on intra-Community supplies) are more than ever the mechanism which criminal gangs prefer. A further finding is that such frauds are tending to be used for a greater variety of goods than previously. Accordingly, the Commission organised, as part of the Fiscalis programme, two specific seminars on methods of detecting and controlling VAT carousels.

2.1.3.2. Excises

Following the report by the high-level group chaired by the Commission on fraud relating to excise duties on tobacco and alcohol, approved by the Directors-General of customs and indirect taxation in the Member States in April 1998 and endorsed by the Council on 19 May 1998, [44] the Commission had a feasibility study carried out on setting up a computerised system for the movement and control of excisable goods. The study will be completed in 2000.

[44] See 1998 Annual Report, Chapter 3, point 3.

In addition, a prior information system relating to this kind of trade has been set up in several Member States on the basis of a master plan approved by the Directors-General of customs and indirect taxation. The system, which is based on the use of simple means of communication, may be improved at a later stage. In this connection, the work being done on risk analysis and the targeting of goods was continued.

The Commission also continued its work on drawing up a recommendation on the preparation of guidelines for the granting and withdrawal of licences to authorised warehouse keepers and registered traders, in order to strengthen the control of warehouses and increase the awareness of those responsible for managing stocks.

2.2. Agriculture

The steps taken by the Commission to strengthen the fight against agricultural fraud and irregularities are part of the Agenda 2000 initiative. [45] Accordingly, the legislation in several sectors was revised.

[45] Berlin European Council, 24 and 25 March 1999; see the conclusions of the Presidency concerning in particular the financing arrangements for 2000-2006, the draft rules on the allocation of structural assistance in accordance with three new, simplified objectives (see point 3.1.3, page 21), the common agricultural policy and the three pre-accession instruments for the applicant countries (the agricultural instrument (Sapard), the pre-accession structural instrument (ISPA), and the strengthened Phare programme for the applicant countries). See also point 3.2, page 22. The legal expression of these instruments was achieved through Council Regulations (EC) Nos 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy, 1267/1999 of 21 June 1999 establishing an Instrument for Structural Policies for Pre-accession, and 1268/1999 of 21 June 1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period (OJ L 161, 26.6.1999).

In the wine and wine products sector, for example, a new organisation of the market was adopted [46] which contains anti-fraud rules on the description, naming and presentation of goods, coupled with penalties at Community level; in the flax and hemp sector, producers were required to achieve a minimum yield [47] - failure to do which would be sanctioned by the loss of 65% of the amount of aid - and to conclude contracts with processors. [48] In the case of arable crops, the rules on support for producers and on set-aside were revised, [49] and quota arrangements were introduced for certain crops (in particular potato starch [50]). In olive oil, the common organisation of the market was amended in 1998 for a transitional period pending a wider reform. (The distinguishing feature being the abolition of the old consumption aid, the amount of which could not be increased without a risk of fraud and whose abolition would considerably improve checks on the production arrangements.) In the beef and veal sector, a wide-ranging reform was introduced with the adoption of Council Regulation (EC) No 1254/99 on the common organisation of the market [51] - the procedures for implementing the reform provide in particular for transitional management and control arrangements, [52] pending the amendment of Council Regulation (EEC) No 3508/92 establishing an integrated administration and control system [53].

[46] Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine (OJ L 276, 14.7.1999).

[47] Commission Regulation (EC) No 2183/97 (OJ L 299, 4.11.1997) for flax; Commission Regulation (EC) No 452/1999 (OJ L 54, 2.3.1999) for hemp.

[48] Council Regulation (EC) No 154/97 (OJ L 27, 30.1.1997); Council Regulation (EC) No 1420/98 (OJ L 190, 4.7.1998).

[49] Council Regulation (EC) No 1251/99 (OJ L 160, 26.6.1999, p.1); Commission Regulation (EC) No 2316/99 laying down detailed rules for the application of the foregoing (OJ L 280, 30.10.1999) and Commission Regulation (EC) No 2461/99 laying down detailed rules for the application of Council Regulation (EC) No 1251/1999 as regards the use of land set aside for the production of raw materials for the manufacture within the Community of products not primarily intended for human or animal consumption (OJ L 299, 20.11.1999). See also Commission Regulation (EC) No 2081/99 amending Regulation (EEC) No 3887/92 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes.

[50] Council Regulation (EC) No 1252/99 (OJ L 160, 26.6.1999, p. 15).

[51] OJ L 160, 26.6.1999, p. 21.

[52] Commission Regulation (EC) No 2714/99 (OJ L 327, 21.12.1999).

[53] This Regulation amending Regulation (EEC) No 3508/92 establishing an integrated administration and control system for certain Community aid schemes was adopted on 17 July 2000 [Council Regulation (EC) No 1593/2000, OJ L , 21.7.2000].

In addition, the Commission's Agriculture Directorate-General, proceeded to simplify agricultural legislation, also with the aim of securing better protection of the Community's financial interests.

[54] The export refund arrangements, too, were simplified: the old regulation, which had been amended several times, was finally replaced by Commission Regulation (EC) No 800/99 of 15 April 1999. [55] Likewise with the common organisation of the market in the milk and milk products sector. [56]

[54] Council Regulation (EC) No 1258/1999 on the financing of the common agricultural policy, OJ L 160, 26.6.1999, p.103, which replaced the old basic Regulation (EEC) No 729/70 with effect from 1 January 2000.

[55] OJ L 102, 17.4.1999.

[56] Council Regulation (EC) No 1255/99 (OJ L 160, 26.6.1999, p. 48).

2.3. Structural policies

Following its agreement on 21 June 1999 on the Agenda 2000 package, [57] the Council definitively approved nine regulations on Structural Fund management. These simplify the regulatory framework for the management of the Structural Funds: a general regulation (Regulation No 1260/99) lays down the major principles relating to the Structural Funds (objectives, programming methods, financial management, evaluation and monitoring), and new specific regulations determine the scope for each fund.

[57] Council Regulation (EC) No 1260/99 laying down general provisions on the Structural Funds (OJ L 161, 26.6.1999, p. 1).

As far as protection of financial interests is concerned, these new rules spell out the concept of having a "management authority" designated by the Member States for each programme and which is responsible for both implementing the programme and ensuring that it is efficient and correctly managed (ensuring sound financial management). More specifically regarding the financial management of the programmes, the commitments for expenditure and actual payments are dissociated. For payments, an advance is paid out when the first commitment of expenditure is made, subsequent payments reimburse expenditure actually made and certified by the Member State; the balance is paid only when the Commission has received and approved all the required documents. Any request for payment must be accompanied by a "payment authority" certificate which ensures the regularity of the Commission's statements. The new rules also clearly indicate that the Member States are responsible in the first instance for financial control, and detail their

responsibilities, notably for prevention, detection and correction of irregularities. [58] When the programme is closed, a certificate drawn up by an independent body which details the checks carried out and guarantees the validity of the request for payment as well as the legality and regularity of transactions, must be presented to the Commission. For its part, the Commission carries out on-the-spot checks, ensures that the Member State concerned carries out regular checks itself, and, in the event of any irregularity, it can send recommendations and requests that corrective measures be taken to remedy management shortcomings or correct irregularities.

[58] The previous rules stated that the Member States should take the necessary steps to prevent and deal with irregularities.

A meeting between the Member States and the Commission departments is held each year to coordinate the programmes and monitoring methods and to draw the necessary conclusions from the checks carried out. If the Member States fail to act or if there is any financial irregularity on their part, and if the conciliation previously undertaken on the Commission's initiative is not successful, the financial corrections which exist are activated by reducing or abolishing all or part of the Community's participation in the offending programme. The correction may therefore either correspond to the exact amount of the irregularity found or it may be a flat-rate amount in the event of a general weakness in the management or monitoring system of the Member State concerned.

2.4. Public procurement

Following the work carried out in 1999, the Commission presented two proposals for directives for the recasting of four existing directives in the field of public procurement (dated from 1992 and 1993), the object being to simplify and clarify the existing rules in this field. The first proposal concerns the procedures for awarding public supply, services and works contracts [59]. The second relates to the recasting of the Utilities Directive (water, energy, transport).

[59] COM(2000) 275 final.

The protection of the Communities' financial interests entails protecting public procurement from activity by criminal gangs and adopting measures to this end. The aim of this first proposal for a directive is to provide the option for a Member State to exclude a non-viable economic operator from a public tender, even if there is no definitive judgement. [60] Henceforth, the obligation to exclude any economic operator found guilty in a definitive judgement of certain serious misappropriation exists.

[60] If the Community legislator automatically limited this possibility to the existence of a definitive judgement, any operator who was the subject of a judgement that is not yet definitive, for example because of an appeal, would have the right to participate in a public tender without the national authorities concerned having the slightest possibility of excluding them.

2.5. Reform of financial management (SEM 2000)

The Commission sent two new balance sheets on Stage III (improvement of cooperation with the Member States) of the reform of financial management to the Council on 25 May and 29 November 1999. [61]

[61] SEC(1999) 708/2, 11 May 1999, fifth progress report on the work of the Personal Representatives Group on Sound Financial Management - see also the annual reports for 1996, chapter 1, section 2, page 15 and 1998, chapter 3, section 4, page 43. The sixth progress report on the work of the PRG was submitted to the Council on 29 November 1999.

These state that, for the protection of the Community's financial interests in the field of the Structural Funds, the Commission has taken about 45 formal decisions to make financial corrections under Article 24 of Regulation (EEC) No 4253/88 (for the first half of 1999), representing an amount of EUR26 million. The responsibility for these financial corrections lies with the Member States, which are also responsible in the first instance for dealing with any irregularities detected. Thus, if the Member States fail to make any financial correction, the Commission may reduce or abolish all or part of the Community's participation in the programme which it considers irregular.

In any case, the Commission still plans to propose a stricter, faster system of correction, in accordance with the initial proposals made to this end as part of Agenda 2000 [62] (new rules for the Structural Funds).

[62] See point 3.2 below and the 1997 annual report, chapter 4, section 1, page 47.

1.6. Internal reform of the Commission

Following the work launched in 1999, the Commission approved the objectives of the internal administrative reform of its administration. [63] Apart from redefining the system of management, audit and financial control, which had been heavily criticised by the Court of Auditors and the committee of independent experts, several programmes have been put together, incorporating the specific dimension of the protection of the Community's financial interests. Work is under way to improve efficiency in preventing irregularities and to ensure that the legislation, rules and procedures on financial management lend themselves to fraud as little as possible. There has been extensive consultation within the Commission and with the other institutions. The following measures are envisaged:

[63] White Paper on Reform, COM(2000) 200 final of 1 March 2000 and COM(2000) 200 final/2 of 5 April 2000, volumes I and II (http://europa.eu.int/comm/reform/index_en.htm).

- * Better coordination of the interaction between the independent Anti-Fraud Office (OLAF) and other Commission departments;
- * Closer involvement of OLAF in the fraud-proofing of legislation and systems for tender and contract management;
- * Optimisation of the central early warning system for beneficiaries of EU funds;
- * More effective management of the recovery of unduly paid funds.

In addition, cooperation (between Commission departments and between the Commission and Member States), particularly in the area of the Structural Funds and the EAGGF clearance procedure, will be better defined to ensure that more effective action is taken to improve the prevention and detection of irregularities, fraud and corruption.

3. Cooperation and partnership

3.1. With the Member States

The Commission hopes to benefit from and share the experience of the Member States and thus improve the protection of the Community's finances. These exchanges will continue to take place within the Advisory Committee for the fight against fraud (CoCoLAF), which the Commission intends to convene more regularly. This committee is a horizontal one and therefore gives an overall view of the fight against fraud. It brings together top officials from the Member States and will be more closely involved in forward planning. The Commission will amend its 1994 decision on the setting up and operation of this committee to this end and also to take account of the changes related to the reform of the fight against fraud. [64]

[64] Cf. point 1.1, from page 8.

3.1.1. Commission initiatives vis-à-vis the Member States to protect the Community's financial interests

The first point to be made here is that the state of ratification of the legal instruments on protecting the Community's financial interests has evolved as follows: on the date on which this report appeared, eight Member States had totally or partially ratified the conventions and protocols drawn up on the basis of Title VI of the TEU. [65]

[65] France, Spain and the UK have ratified all the instruments concerned, while Germany has so far only ratified the 1995 convention and its first protocol; Greece has ratified all of them except the "corruption" convention and Austria, Sweden and Finland have not yet ratified the second protocol to the 1995 convention. Cf. table annexed to this part.

As regards relations between the specialised national services and the Commission (OLAF), it should be noted that a protocol, signed on 17 February 2000, was the outcome of the discussions, following up the contacts initiated and maintained in 1999, between the Direzione Nazionale Antimafia (DNA) [66] and the Commission (OLAF) on putting in place practical arrangements establishing permanent ties of cooperation between the two services and thus organising the

exchange of information for the purpose of the prevention and repression of illegal activities involving organised crime in all its forms committed to the detriment of the Community finances.

[66] Italian anti-mafia public prosecutor, cf. 1998 annual report, chapter 4, point 1.

3.1.2. Judicial cooperation: the European Judicial Network

The Justice and Home Affairs Council, which met in Brussels on 2 December 1999, adopted a report [67] assessing the operation of the European Judicial Network (EJN), which was set up following the adoption of a joint action by the Council [68] on 29 June 1998, with the necessary aim of improving judicial cooperation between the Member States and the Union, particularly in cases combating serious types of crime (generally the work of transnational organised networks). There are contacts in each Member State, available to the local judicial authorities; these are generally judges, whose role is to facilitate judicial cooperation between the Member States, in particular by providing the necessary information to the designated interlocutors at national and Community level. Developing these direct contacts remains essential in order to better target OLAF's operational activities and to make the international fight against crime more effective.

[67] Council references: 12393/99, report adopted on 2.12.1999.

[68] OJ L 191, 7.7.1998.

3.1.3. Training activities concerning the protection of financial interests

If it is to protect the Communities' financial interests, the Union absolutely must equip itself with tools (in particular, specific knowledge of methods) similar to those used by the perpetrators of fraud at international level. Such tools must exist not only at national level in each Member State, but also at Community level, in order to plug the gaps and bridge the differences that exist in approaches to this phenomenon by developing Community-wide, multisectoral, multilingual training.

In 1999, the objective pursued by the Commission (OLAF) in terms of anti-fraud training was to pursue a proactive policy, while respecting the subsidiarity principle, to improve the knowledge of national staff responsible for combating fraud. This concerns:

- * the services responsible for protecting the financial interests of the European Communities and the fight against corruption and currency forgery;
- * more specifically, the police and the judges from the Public Prosecutor's Office of the Member States and certain third countries.

In 1999, 18 training courses took place. These were targeted courses for staff of the national judicial authorities dealing with the protection of the Communities' financial interests. It is essential that these departments be motivated and that they fully cooperate if the fight against fraud is to be successful on the ground.

The means used to achieve these objectives have consisted either of granting financial aid to the national administrations of the Member States to organise training courses on the subject of the protection of the finances of the European Communities or the fight against corruption, or making those actively involved at the Commission (OLAF) available to Member States that request them in order to share their experience.

3.2. With the candidate countries

The countries that have applied to join the European Union must, in addition to taking over the Community legislation on combating fraud, take all the measures necessary to fight fraud on the ground, in accordance with Article 280 of the EC Treaty, including those involving cooperation between the Member States and the Commission, particularly in the case of transnational operational activities which, amongst other things, require vital changes in terms of their administrative organisation.

Since Poland is one of the biggest candidate countries and the chief beneficiary of PHARE funds, it was logical that the Commission should concentrate its efforts on and direct its activity towards it. [69] Following the contacts made by the UCLAF Task Force with the Polish authorities and the various meetings organised, notably with the Polish Prime Minister, it was decided to set up a central multidisciplinary structure specialising in combating fraud and organised crime. This

structure should be part of the IGD (Polish general customs inspectorate) and receive funding under the 1999 PHARE programme.

[69] Cf. 1998 annual report, chapter 5, point 1.

The IGD thus drew up a specific project which, after it was accepted by the Polish authorities, was submitted to the Commission. This project provides EUR3.5 million in the first stage. In addition to the secondment of four officials from the Member States, it also provides for the financing of databases, telecommunications networks, office equipment, and also technical assistance (for example, the funding of specially equipped cars for surveillance purposes), training courses and work placements. This sum, EUR3.5 million, represents roughly 1.4% of the total PHARE programme for Poland. The programme was accepted on 7 May 1999 by all the Member States and then by the Commission. Like every PHARE programme, it contains a clause requiring cofinancing from the beneficiary candidate country. The Polish authorities thus undertook to supply the necessary premises in which this new service, which will comprise about 30 people, will be based (the provisional cost of this operation is about EUR1.9 million [70]).

[70] 7 633 200 zloty.

1.3. Mutual administrative assistance in customs matters between the Community and third countries

An administrative arrangement between the European Anti-Fraud Office and the State Customs Committee concerning a "mutual information system" on movements of goods between the Member States of the European Union and the Russian Federation is currently being drawn up. This draft refers to the protocol on mutual administrative assistance for the proper application of Community customs rules and is intended to facilitate exchanges of information on trade in goods that are particularly susceptible to fraud, such as beef or pork exported to Russia with payment of export refunds. This administrative arrangement provides, in essence, for the extension of the direct data exchange system to other types of heavily taxed products as soon as it enters into force (i.e. when it is signed).

In addition, by 31 December 1999, the Community had concluded agreements including provisions on mutual assistance on customs matters with 33 third countries including almost all its geographical neighbours and its most important trading partners. These were both comprehensive agreements including, in customs matters, a protocol on mutual assistance and specific agreements on cooperation and mutual administrative assistance.

The specific provisions of these agreements and protocols provide the contracting parties responsible for customs investigations with a legal basis to request and provide administrative assistance during investigations intended to ensure the proper application of customs rules, either the Community's or the partner country's.

Several agreements including a mutual assistance protocol signed before 1999 entered into force in 1999. These agreements are with the following countries: Armenia, Azerbaijan, Georgia, Hong Kong, Kazakhstan, Kyrgyzstan, Slovenia and Uzbekistan. A specific agreement on cooperation and mutual assistance in customs matters was concluded with Hong Kong.

Also in 1999, four agreements on trade in textile products entered into force. These agreements are with Laos, Cambodia, Vietnam, Nepal, China, Japan and the ASEAN countries [71]. An agreement with Vietnam on trade in shoes entered into force.

[71] Association of South-East Asian nations.

Negotiations for comprehensive agreements (including a protocol on mutual assistance in customs matters) or specific agreements (agreement on cooperation and mutual assistance in customs matters) are under way or planned with other third countries, including Cyprus and Malta (candidate countries), Chile, Mexico, Switzerland and the Mercosur countries (Argentina, Brazil, Uruguay and Paraguay).

The provisions on customs cooperation included in the agreements with third countries also cover technical assistance in customs matters. As far as enlargement is concerned, [72] the basic objective of this assistance (provided under the PHARE programme) is to contribute to the effective application by these countries, when the time comes, of Community rules and hence, by extension,

of the Community provisions on fraud prevention and the protection of the enlarged Union's financial interests.

[72] Cf. point 3.2, p. 22.

State of ratification by the Member States of the "Protection of financial interest" (third pillar) instruments

>TABLE POSITION>

R = ratification notified

Source : <http://db.consilium.eu.int/accords/default.asp-lang=fraude>

Up to date on 11.10.2000

Title II: Statistics and analyses

4. Fraud and other irregularities

The fight against fraud involves all forms of illegal conduct that affect the budget of the European Union. It can cover a whole range of such conduct, from negligent or accidental failure to comply with a rule of Community law to criminal acts perpetrated by organised groups. While, at first sight, the loss for the European Union budget (and thus, in practice, for the European citizen and taxpayer) is the same, irrespective of the form of the irregularity committed, the measures to be taken in response to such loss must be assessed in the light of the seriousness of the irregularity. Mere errors must be rectified and steps taken to prevent them happening again. By contrast, irregularities committed intentionally not only need to be rectified from a financial angle but also call for appropriate penalties and much more specific preventive measures for the future, perhaps even including an amendment to the relevant legislation.

Fraud as strictly defined, and a fortiori criminal conduct, has a particularly destabilising impact on the economy and on public life and must be prosecuted rigorously and resolutely.

It is important not to confuse the different categories of irregularity and not to treat mere error in the same way as fraud. OLAF deliberately focuses its attention primarily on the most serious irregularities, i.e. those involving fraud, both in its own investigations and within the framework of the assistance it provides to Member States' specialised departments.

It is though very difficult to identify accurately the real nature (fraudulent or otherwise) of an irregularity that has been detected or is merely suspected. In the case of criminal conduct, the final judgment, which in many cases is made only after a considerable period of time, rests with the competent courts, which base their decision on the evidence gathered during the investigation. Something which seemed initially to be a mere irregularity may turn out to be a premeditated and organised criminal act, while the initial suspicion of criminal conduct may prove to be unfounded after a more detailed investigation.

In accordance with the wish expressed by the Council, [73] OLAF makes a distinction in this report between fraud and irregularities, but the figures must be treated with caution. This distinction is based on the information supplied by Member States (the transmission of a case to the prosecutor's office is indicative of fraud, as are certain types of irregularity or certain ways in which an irregularity has been committed). Yet it has been found that the Member States' reports that they differ from one another, not only in terms of the degree of detail provided on cases detected but also in terms of their determination to take full administrative or criminal proceedings.

[73] Conclusions of the Ecofin Council on 17.7.2000, point 7.

In order to quantify the proportion of cases reported by Member States that can be classified as "fraud", OLAF entrusted the Joint Research Centre with a technical and scientific project to analyse the reports made by Member States in the period 1993-97. The analysis provided the following results:

- In the area of own resources, 32% of cases representing 45% of the amounts involved were classified by Member States as "fraud".
- In the area of EAGGF Guarantee Section expenditure, 21% of cases representing 37% of the amounts involved were described by Member States as "fraud".

- In the area of structural measures, 18% of cases representing 33% of the amounts involved were classified by Member States as "fraud".

As matters stand, the distinction between fraud and irregularities cannot, therefore, be made with any real precision. Closer analysis of the typology of irregularities and amounts involved confirms that the Member States' current practice is not in line with the objective of securing equivalent protection of financial interests throughout the European Union. The Commission is duty-bound to call on the Member States to follow a more closely harmonised approach make a clearer distinction between fraud and other irregularities.

5. The situation in 1999

5.1. The overall level of fraud and other irregularities

Taking the number of new cases and their budgetary impact, the level of fraud and other irregularities detected or suspected in 1999 is comparable to that recorded in recent years.

5.2. Fraud

5.2.1. Fraud cases notified by the Member States

For 1999 the Member States notified on the basis of the sectoral rules in force 1.235 cases that can be classified as fraud within the meaning of Article 1(1) of the Convention on the protection of the financial interests of the European Communities. These cases break down as follows: [74]

[74] For details, see Tables 1 to 3.

>TABLE POSITION>

1.1.2. Cases under investigation at OLAF

OLAF reports that in addition to the cases notified by the Member States, it handled 252 new cases in 1999, the large majority of which, according to the Office's provisional assessment, involved criminal conduct. Generally speaking, it is the suspicion of fraud that prompts OLAF to initiate an investigation. At the end of the investigation, it will, of course, be for the national courts to decide what type of conduct is involved. In such cases a provisional estimate is made of the budgetary impact and, except in the area of direct expenditure whose management is the responsibility of the Commission, this estimate must be confirmed by the competent national authorities, which are required to address the recovery order to the operators concerned.

The investigations opened in 1999 break down as follows:

>TABLE POSITION>

* Exclusive of VAT.

** Part B of the budget.

The table does not show the cases involving excise duties, since the impact of this kind of fraud shows up first in the national budget. However, it is no longer possible to turn a blind eye to the growing amounts involved in suspected fraud in this area. A summary estimate simply of the cases under investigation at OLAF since 1999 and until the time of writing puts the impact of alcohol trafficking on the budget of the Member States at over EUR500 million. Alcohol trafficking and cigarette smuggling now vie with one another as the most serious form of fraud, although some Member States do not yet seem prepared to draw the necessary conclusions.

1.3. The other irregularities

For 1999 the Member States notified on the basis of the sectoral rules 4 912 cases of irregularities. The cases break down as follows: [75]

[75] For details, see Tables 1 to 3.

>TABLE POSITION>

6. Trends

Overall, the tendency noted in previous years for the number of new cases to stabilise has been confirmed for 1999, at least as regards cases notified by Member States. The number of new cases detected by the Member States is still climbing, [76] but the amounts involved are scarcely higher than previously. The impact of fraud and other irregularities is declining in the area of agricultural expenditure but is continuing to rise in the area of structural measures. And there is a decline in the area of traditional own resources.

[76] For the number and impact of cases notified by Member States, see Graphs 1 to 3.

The situation is somewhat different for the cases under investigation at OLAF. In any particular investigation, an assessment of the actual budgetary impact can be made on the basis of "convincing evidence" (amounts detected) while an assessment of the probable budgetary impact can be based on an extrapolation of the findings. This is particularly true of complex cases involving organised economic crime, notably cigarette smuggling. While OLAF has calculated a minimum impact of some EUR17 million (figure given in the table above) for the new cases involving cigarettes that were opened in 1999, the total loss could amount to EUR325 million. It will be for the competent authorities in the Member States to provide an accurate figure for the budgetary impact once the investigations have been terminated.

1.1. Traditional own resources

In order to assess the impact of fraud and other irregularities on own resources, the Commission has, in addition to the findings of investigations conducted by OLAF, two further sources of information:

- notifications by Member States in accordance with Article 6(4) of Regulation No 1552/89 [77] ("fraud descriptions");

[77] Now Article 6(5) of Council Regulation (EC, Euratom) No 1150/2000 (OJ L 130, 31.5.2000), which replaces Council Regulation (EEC, Euratom) No 1552/89.

- the annual activity reports and the results of their inspections which Member States present to the Commission in accordance with Article 17(3) of Regulation No 1552/89. [78] The reports also provide details enabling the results of the fight against fraud and the scale of fraudulent practices to be quantified and categorised [79]. Specific information (notification of cases of fraud and other irregularities) can thus be compared with more general information on the results of inspections carried out and with the accounting data also provided by Member States (recording of own resources not yet recovered) so as to give a more accurate picture of the statistical trend.

[78] Now Article 17(3) of Regulation No 1150/2000.

[79] Cf. report in annex.

Taken together, all this information shows that the number of cases of fraud and other irregularities detected has risen once again (by 17%) while their budgetary impact has remained relatively stable compared with the previous year, when there was a return to the 1995 level. If the information reported by Member States in their annual reports on their inspection activities are also taken into account, it is above all the number of "small cases" (below EUR10 000) that is still rising.

As regards the products affected by fraud and other irregularities, cigarettes head the list (accounting for 14% of notified cases and amounts involved), followed by dairy products (cheese and butter), which account for only 0.5% of cases but for close on 12% of amounts involved, and cars (1.6% of cases and 6.2% of amounts involved). In 1998 the top three product categories on the list were dairy products (23%), cigarettes (8%) and textile products (4%).

As regards customs arrangements, the most vulnerable are still those for releasing goods onto the market. However, the fraud situation does differ significantly. In 1999 smuggling and similar practices (non-declared imports) accounted for around 18% of cases notified by Member States (above the EUR10 000 threshold). Problems associated with administering preferential arrangements [80] (false or erroneous declarations of origin) accounted for some 8% of cases.

[80] In this respect, see also the traditional own resources inspection report on preferential arrangements presented by the Commission to the Advisory Committee on Own Resources in December 1999 (doc. BUDG/501/99).

Against this, on the basis of notifications by Member States (cases exceeding the EUR10 000 threshold), the transit procedure accounted in 1999 for only around 6% of cases and less than 4% of the amounts involved. This would seem to confirm the deterrent effect of the early warning system for sensitive products but certainly does not mean that the problem can be regarded as having been resolved.

1.2. Agricultural expenditure (EAGGF Guarantee Section)

The number of fraud cases and other irregularities detected by Member States in 1999 is up on the previous year (+12%), while their budgetary impact is much lower (-18%). This is due primarily to the increasing number of cases involving direct aid as these are easier to monitor and their average budgetary impact is much less marked than that of cases involving other categories of agricultural expenditure.

For all that, the category of expenditure most affected is still export refunds. In 1999 these cases accounted for 38% of the overall budgetary impact (28% in 1998) while export refunds made up only 14% of total EAGGF Guarantee Section expenditure. This sharp increase is attributable primarily to a worrying increase in the number of cases involving beef and veal exports.

The products most affected are, therefore, beef and veal along with cattle, accounting as they do for over a third of the overall budgetary impact of fraud and other irregularities, followed by fruit and vegetables (fresh or processed), accounting for over 15% of the overall budgetary impact, and flax, which appears for the first time among the top three products, accounting as it does for more than 8% of the overall budgetary impact. By contrast, olive oil, which was the product most affected by fraud and other irregularities in 1997 and 1998, appears only in fifth position in 1999 (with 5% of the overall budgetary impact), behind cereals.

The new investigations opened by OLAF in 1999 are concerned primarily with dairy products and with beef and veal.

1.3. Structural measures

As regards structural measures, the substantial increase is continuing, both in terms of the number of new cases reported by Member States and in terms of their budgetary impact. Compared with the previous year, the number of cases reported has risen by 70% while their overall budgetary impact has increased almost threefold.

The cases reported concern mainly the Structural Funds (EAGGF Guarantee Section, ESF, ERDF, FIG). As in 1998, the largest proportion of cases reported (in terms both of the number of cases, 59%, and of the amounts involved, 50%) concern the Social Fund, followed by the Regional Fund (18% and 39% respectively). These figures still mask enormous variations between Member States. As regards expenditure under the Cohesion Fund (which after all has an annual budget of some EUR3 billion), the four Member States benefiting from financing reported only three cases.

OLAF reports that the number of new investigations opened in 1999 in cooperation with the Member States is down sharply on previous years. This reflects the increased efforts made by the Member States, as witnessed by the formal notifications, since OLAF concentrates on the most serious cases, which being transnational are not investigated by the national authorities (emphasis has been placed on the EAGGF Guarantee Section and the ERDF).

Notwithstanding the small number of new investigations opened in 1999, the estimated budgetary impact of cases dealt with by OLAF in cooperation with the Member States is therefore highly significant. It has increased more than threefold compared with 1998, to more than EUR24 million, but has not yet reached the level recorded in 1996 and 1997 (when cases reported by Member States were still fairly few and far between).

1.4. Direct expenditure

As regards direct expenditure (which is managed by the Commission), OLAF opened in 1999 107 new investigations with an estimated overall budgetary impact of EUR73 million. Almost three quarters of them concern "external policies". [81]

[81] PHARE and TACIS programmes, development aid, etc.

7. Financial monitoring

Effective recovery of the amounts involved in cases of fraud and other irregularities remains unsatisfactory.

In 1999, in cooperation with the competent authorities in the Member States, the Commission stepped up measures to ensure more rapid and efficient recovery procedures.

1.1. Own resources [82]

[82] Cf. Table 4.

Under the Community Regulations, [83] the collection of traditional own resources is delegated to the Member States, which are under an obligation to take all requisite measures to establish these own resources, enter them in the accounts and recover them in the best possible conditions.

[83] Council Decision 94/728/EC, Euratom of 31.10.1994 on the system of the Communities' own resources; Council Regulation (EC, Euratom) No 1150/2000 of 22.5.2000.

The fact is, however, that the Member States encounter a number of problems in recovering debts. Recovery is possible only if the debt has been entered in the accounts as such on the basis of their origin. For that purpose, it is necessary to identify the debtor and the amount involved. Where goods (such as cigarettes or alcohol) are smuggled, for instance, it is difficult and in many cases impossible to determine the duties that have been evaded on goods imported clandestinely and then sold in the Community market.

And once duties have been assessed, practical experience shows that the recovery process undertaken by the Member States is often extremely slow, partly because of the time required by administrative or judicial proceedings. The divergent interpretations of Community law by national authorities are further barriers to uniform recovery of these resources.

These conclusions encourage the Commission to pursue measures to monitor the collection of traditional own resources, in particular the conditions for the establishment of entitlements. It is also looking into the usefulness of refining the indicators in order to make it easier to gauge the impact of national administrative and legal procedures on collection.

The Commission monitors recovery processes by the following means in particular:

- the report summarising reports from Member States on their inspection activities and the results, in accordance with Article 17(3) of Regulation No 1150/2000 (annexed to this report);

- statistical analysis of fraud reports (the "A" sample) to present the broad lines of the recovery position. The first of these reports went to the budgetary authority in 1995. [84] A second is scheduled for 2001;

[84] Report from the Commission on the recovery of traditional own resources in cases of fraud and irregularities (methodology and sample A 94), COM(95)398 final, 6.9.1995.

- the "B" sample reports, [85] which consider the recovery of traditional resources involved in certain particularly significant and complex fraud and irregularity cases.

[85] Reports on the recovery of traditional own resources in cases of fraud and irregularities (Samples B94 and B98), COM (97) 259 final, 9.6.1997, and COM(1999) 160 final, 21.4.1999. They related to traditional own resources evaded estimated at a total of ECU 124 million for sample B94 and ECU 136 million for sample B98. A B sample report for 2000 is planned in 2001.

Cases are selected from among those reported by the Member States as being particularly important in terms of criteria defined by the Commission.

Regulation No 1150/2000 requires the Member States to take the measures needed to make traditional own resources available, unless recovery is impossible for reasons beyond the Member State's control.

Cases where more than EUR10 000 are to be written off must be notified to the Commission.

If the Member State has exercised all due diligence in seeking to recover the amount due, in full compliance with Community and national rules and regulations, the writing-off is accepted. Otherwise, the Member States is financially liable: it must then pay the debt in place of the original debtor.

But only half the Member States report requests for writing-off; the others simply believe it is enough to report the case when recovery has become definitively impossible.

The Commission has accordingly been reflecting on the way Article 17(2) is applied by all the Member States. It then, in 1997, proposed an amendment of the Article. To improve the effectiveness of procedures, it proposed a cut-off date (five-year deadline) by which all Member States should withdraw unrecovered amounts from the accounts, after which it would be for the Commission to decide whether the Member State was actually released from its obligations. It also proposed raising the threshold for reporting cases within Article 17(2) to the Commission from EUR10 000 to EUR50 000.

The new amendment of Regulation No 1150/2000 to take account of the new own resources Decision will provide the Commission with an opportunity to reactivate the debate on this proposal.

1.2. EAGGF Guarantee Section expenditure

In this field, the Commission (OLAF) called on the Member States to check the recovery situation, in particular for cases notified several years ago, to identify the amounts considered to be non-recoverable or to justify the delay in effective recovery, where appropriate. On the basis of the case law of the Court of Justice [86] and in consultation with the competent authorities of the Member States, it has laid down acceptable time limits for recovery procedures.

[86] See judgment in Case C 34/89 Italy v Commission [1990] ECR 3603.

These measures are beginning to bear fruit. A large number of cases notified before 1995 have been closed. The amount still to be recovered in cases notified between 1973 and 1994 is EUR 947 million and the amount still to be recovered in cases notified between 1995 and 1999 is EUR 842 million. [87] Some EUR 49 million cannot be recovered. Where the reason for this can be attributed to the Member State concerned, the national budget will be called upon to make up the loss to the EAGGF Guarantee Section. Around one third of the recovery orders still to be carried out are being challenged before the courts. [88]

[87] I.e. 75% of sums involved in irregularities and fraud.

[88] For details, see Table 5.

1.3. Structural measures

In the field of structural measures, financial monitoring is governed by the fact that the final decision on the balance to be recovered cannot be taken until the multiannual operational programme (or similar form of assistance) has been closed. Member States that discover an irregularity during the course of the operational programme can redress the financial situation at the latest at the time of the final payment (recovery of the undue payment already made or reduction of a later payment) and, if there is time, reallocate the funds thus freed to another project not affected by any irregularity.

At the end of 1999, the total amount still to be recovered in respect of cases reported by the Member States under Council Regulation (EC) No 1681/94 was EUR 234.8 million (for the notification period 1994 to 1999). The amount effectively recovered in respect of those same reports was EUR 87 million, or one quarter of the amounts declared to be affected by irregularities.

Title III: Measures taken by the Member States to protect the Community's financial interests

8. The new objective set by the Amsterdam Treaty

Looking beyond the Commission's annual reports on the protection of the Community's financial interests, the implementation of the new Article 280(5) EC now also entails reporting on the Member States' activities in this field. This report now has a new Title, not present in previous years.

But in the rather brief period from 1 May 1999, when the Amsterdam Treaty came into force, to 31 December 1999, it was not possible to complete this part of the report. More time is needed on account of the establishment of OLAF and the need to seek out new forms of cooperation with the Member States.

The Commission none the less wishes to honour its commitment to presenting the ECOFIN Council on 27 November 2000 with the first report produced on the basis of Article 280 EC, and must therefore renounce its attempt to report on the Member States' activities this time as the Member States' contributions were received too late to be incorporated. To remain as faithful as possible to the spirit of the Treaty, the activity of the Member States under the terms of regulation 1552/89 (henceforth regulation 1150/2000) is set out in the annex [89].

[89] See points 0, page 29 and 0, page 32. "Summary report of the comments by the Member States on the activity and the results of their controls as well as the questions of principle as regards traditional own resources - Financial year 1999 - (Article 17(3) of the Regulation (EC, Euratom) n°1150/2000 of the Council)".

9. The establishment of new working methods with the Member States

The important item to report for 2000 is that a new working method was established with the Member States; this should bear fruit in time for the next report.

9.1. A stronger role for the Advisory Committee for the Coordination of the Fight against Fraud

The Commission, acting in accordance with its new anti-fraud strategy, [90] now mobilises the Advisory Committee (CoCoLAF) when preparing its report, "in cooperation with the Member States", as required by Article 280 of the EC Treaty.

[90] COM(2000) 358, point 1.1.2.

9.2. Preparation of a questionnaire in cooperation with the Member States

The Commission and the Member States have devised a questionnaire. Shortly after the Director of OLAF as appointed, the Commission laid an initial draft before CoCoLAF on 5 May 2000. The proposed objective was to evaluate the application of Article 280 by the Member States, in the light of, in particular, the principles of assimilation of national and Community financial interests and of equivalence of the protection of such interests as between Member States. This meant embarking on a statistical analysis of actual activity, i.e. checks and inspections carried out, irregularities detected and penalties imposed on the basis of them. The Commission proposed that for this purpose conclusions could be drawn from the comparative law study done in 1995 (and amplified in 2000) as regards the application of the former article 209a of the EC Treaty. [91]

[91] Protection of the Community's financial interests: Synthesis document of the comparative analysis of the reports supplied by the Member States on national measures taken to combat wastefulness and the misuse of Community resources. Comparative analysis of the reports supplied by the Member States, COM(95) 556 final; Supplement on inspections and administrative penalties, Commission working document, SEC(2000) 843 final, 24.5.2000.

Discussions proceeded with the Member States on the basis of the proposed questionnaire between May and July 2000. A final slimmed-down questionnaire was sent to the Member States on 18 July 2000. The objective now is no longer to evaluate but to describe the means deployed by the Member States in the protection of the Community's financial interests. These include the adoption of new legal provisions and organisational changes in inspection services, as well as new practical measures to promote cooperation and training and the different working methods of the various authorities involved. This year, recovery was a topic covered in greater depth.

The questionnaire can be further refined in the future, and its objectives will gradually be reassessed.

9.3. The prospect of a summary report for 1999-2000

Working on the basis of the contributions received between September 2000 and the date of publication of this report, the Commission has undertaken an initial analysis of the Member States' replies, as and when they became available. The structure and method of the Title reporting on the Member States' activities were discussed when CoCoLAF met on 24 October 2000.

Once the text is completed and has been translated, it will be laid before CoCoLAF before the end of 2000. The plan is to incorporate it in the next Article 280 report, which will thus relate not only to the activities of the Community in protecting its own financial interests in 2000 but also to the Member States' activities in 1999-2000.

GLOSSARY

Agenda 2000: Commission Communication on enlargement - horizon 2000

CAP: Common Agricultural Policy

CoCoLAF: French acronym for Advisory Committee for the Coordination of Fraud Prevention

CPCA: French acronym for Standing Committee for Administrative Cooperation (indirect taxation). The Committee, chaired by the Commission's Directorate-General for Taxation and Customs Union (DG TAXUD), deals with questions relating to the implementation of the transitional intra-Community VAT system.

EAGGF: European Agriculture Guidance and Guarantee Fund:

EC: European Community (name used since entry into force of the Treaty on European Union)

EDF: European Development Fund

ERDF: European Regional Development Fund

ESF: European Social Fund

GSP: Generalised System of Preferences

IRENE: French acronym for database managed by UCLAF - Irregularities, Inquiries, Use

OJ: Official Journal of the European Communities (OJ L: L series; OJ C: C series)

OLAF: European Anti-Fraud Office

PHARE: Programme of economic-reconstruction aid for central and east European countries

SCAF: French acronym for Anti-fraud Sub-committee of the CPCA, dealing with indirect taxation.

SEM 2000: Commission Programme for improving management of Community appropriations in the run-up to 2000 (Sound and Efficient Management)

VAT: Value-added tax

Table 1

TRADITIONAL OWN RESOURCES

Fraud cases and other irregularities reported by the Member States

under Regulation No. 1552/89

1999

>TABLE POSITION<

Table 2

EAGGF - Guarantee

Fraud cases and other irregularities reported by the Member States

under Regulation No. 595/91

1999

>TABLE POSITION<

Table 3

STRUCTURAL ACTIONS

Fraud cases and other irregularities reported by the Member States

under Regulations No. 1681/94 and 1831/94

1999

>TABLE POSITION>

* Payments, including Community initiatives

Table 4

TRADITIONAL OWN RESOURCES

State of play of recovery in cases communicated by the Member States

under Regulation No. 1552/89

(Amounts in 1.000 EUR)

>TABLE POSITION>

* Figures based on OWNRES communications only, thus incomplete

** The Member State did not send an update to the communications for the years up to 1995

Table 5

EAGGF GUARANTEE

State of play of recovery in the cases communicated

under Regulation No. 595/91

(Amounts in 1.000 EUR)

>TABLE POSITION>

Graph 1

>TABLE POSITION>

>REFERENCE TO A GRAPHIC>

Graph 2

>TABLE POSITION>

>REFERENCE TO A GRAPHIC>

Graph 3

>TABLE POSITION>

COMMISSION REPORT

Summary report on the communications by the Member States on their inspection activities and findings and questions of principle as regards traditional own resources - Financial year 1999 - (Article 17(3) of the Regulation (EC, Euratom) N°1150/2000 of the Council)

1. Introduction

1. Regulation 1150/2000 [92] delegates to the Member States the responsibility for collecting "traditional" own resources with the obligation to take all the steps so that debts due to the European Community budget (mainly import duties) are established, entered in the accounts, recovered and made available to the Commission.

[92] Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 replacing Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ L130 of 31.05.2000).

The Commission is kept informed of these activities by a number of communications that it receives from the Member States. More particularly with regard to their inspection activities, Article 17 (3) of this regulation provides that Member States inform the Commission by means of an annual report

and that the Commission establishes a synthesis of the communications intended for the information of the budgetary Authority.

2. These summary reports aim to review the inspection activities and the findings at the national level and to provide an overall picture of the volume of frauds and irregularities in the field of the European Communities' traditional own resources. They also enable the Commission to carry out an additional documentary check and to optimise the risk analysis it uses for drawing up its own inspection programme.

Following the amendment of Regulation N°1552/89 in 1996 [93], it had been agreed that a solution should be found for the considerable discrepancies between the national reports as well as to the differences in the interpretation of various basic concepts. A harmonised model annual report was made available to the Member States in March 1997 [94] in order to set out the overall data to be provided as regards frauds and irregularities and to aim at greater consistency in the accounting information provided.

[93] Council Regulation (EC, Euratom) N°1355/96 of 8 July 1996 amending Regulation N°1552/89 of the Council at its meeting on 29 May 1989.

[94] Commission Decision N°97/245 of 20.03.97 (Doc. C (97) 800 final).

3. The analysis of the reports for the financial year 1998 [95] had concluded that results largely failed to live up to expectations, the Commission considering not to be fully in a position to draw valid conclusions, in the absence of coherent and homogeneous data.

[95] Document COM (2000) 707 final of 29.02.2000.

In relation to 1998, the Commission has to note a similar lack of comparability of information. However, this fourth analysis of the annual reports makes it possible to identify more precisely the existing deficiencies and the difficulties in the collection of own resources and to observe some progress. Its publication encourages the Member States to further their efforts to improve their evaluation system of the inspection activity.

In addition, it was planned that there should be an analysis questions of principle relating to the problems encountered in applying Regulation 1150/2000, including those raised in the event of contentious matters. From past experience, however, the Commission concludes that any problems reported by the Member States, as well as the problems of data consistency pointed out in the body of the report, will be better dealt with by being following up on a separate bilateral basis. Moreover, they will be reported to ACOR. This body encourages indeed the dialogue and common reflection necessary to improve the overall performances of the system.

This analysis, the fourth of kind, takes up again and tabulates the key elements of the model report made available by the Commission. Each table is accompanied by a the necessary explanations and clarifies the reasons for the production of the indicator.

2. The analysis of the national reports

The analysis of national reports is intended to reveal two main types of information: an image of the inspection activity of the Member States, an appraisal of the fight against fraud and irregularities. To this end, the data on the inspection activity is first compiled in the form of the number of entries processed by each national administration, at the import stage and at the time of inspection (ex post), as well as the number of staff assigned to inspections. This provides an image of inspection activity in relation to the volume of the traffic for each Member State.

The national reports then provide the information needed to quantify and categorise the results of activities to combat fraud and fraudulent practices. Given the cross-border nature of fraud, and with a view to illustrating the patterns of fraud on the Community's customs territory, the national figures (number of cases, amounts) are expressed in terms of the total for all the Member States. In this analysis, the distinction is made in the data between the various stages of fraud prevention: research and detection of the cases, determination and registration of the amounts, recovery of duties.

The data are also compared with other information also reported by the Member States on the entry in the accounts of own resources not collected and on the fraud forms. This comparison aims to throw light on disputes involving own resources and reveal any discrepancies in the

establishment and making available of these resources. Finally, the analysis categorises frauds and irregularities by customs arrangement and by type of fraud.

To produce this analysis of the national reports, the Commission used some of the data reported in the national reports for previous years, with due consideration for the fact that some of them were incomplete and that the information supplied by the Member States was not readily comparable.

The comparison between the financial years concerned allows certain conclusions to be drawn on the development of the Member States' inspection activity and findings and the main trends which affect the collection of own resources.

2.1. Inspections by Member States

The Member States' inspection activity is here presented by reporting, for each Member State, the number of entries accepted and the entries checked after customs clearance (ex post checks).

Annex 1 provides this data and also shows the number of staff assigned to this activity in each Member State. It produces the percentage of entries inspected and the ratio of entries checked per person, though the statistical methods are not identical from one Member State to another (see the comments of the table). At the same time, it gives an idea of the volumes of transactions on the Community's customs territory.

Annex 2 places these indicators of inspection activity in a pluriannual perspective by comparing the figures of the financial years 1996 with 1999.

The following comments can be made on the two tables in Annexes 1 and 2:

2.1.1. Number of entries accepted

In 1999, a total of 79 182 850 entries were accepted. This number has decreased considerably in all the Member States after several years of increase.

There are slight declines in transactions. However, Finland records a drop in the number of entries accepted for the third consecutive year and the drop in the number of accepted entries appears considerable in Germany and especially in the Netherlands (50% in the latter case).

>REFERENCE TO A GRAPHIC>

The comparison of the number of entries and of the amounts established [96] by Member States (in proportion of the total of the fifteen) reveals important discrepancies between the two indicators in the case of Germany, the Netherlands and the United Kingdom. This observation is strictly the same as in the previous years, even if the difference is reduced in the case of the Netherlands: this country processes 20% of the entries accepted in the Community but records 12% only of the amounts. This situation is comparable to that of Germany (27% of the entries and only 23% of the establishments). The observation is opposite in the British case since this state adds up 7% of the entries but 21% of the established amounts: it could be connected to the fact that the United Kingdom accepts a large number of summary statements within the framework of the simplified customs clearance arrangements.

[96] This involves the total of the amounts established in account « A » and in account « B » of the own resources.

2.1.2. Post-clearance checks

1999 is the first year when the data on the post-clearance checks was provided by all the Member States. This improvement cannot mask the fact that the data remains imperfectly homogeneous, as the comments in Annex 1 show: some Member States do not have specific statistics (Denmark for example), others enter only inspections carried out in company or on the spot (France).

The ex post inspection rates reflect the heterogeneity of the administrative organisations, in particular the degree of computerisation of the customs transactions, as well as of the inspection methods: from this rate (more than 21%), it is indeed impossible to compare the performances of Greece and Spain, with comparable total staff (258 and 300 respectively) while the number of entries quadruples from one country to another. One can only postulate that inspections are organised differently and that the degree of thoroughness varies from one customs administration to the other.

From a multiannual point of view, 1999 also is the second year to record a very sharp increase in the number of inspections after customs clearance: the volume of entries checked is threefold in Spain, in Ireland, in the Netherlands, doubles in Italy and rises again in Germany.

These increases can be explained by an important reorientation of the inspection activity or by a possible change in the recording methods which does not appear explicitly in the reports. This would deserve a more detailed analysis, in particular to check the possible impact of the computerisation of the procedures. In several countries, the tendency is reversed, either in line with a falling number of entries processed by customs, or yet unexplained: this is the case in France and especially Sweden.

The Commission is unsure how to interpret these at first hand favourable developments when they are not explained by a variation in customs transactions (Spain, Ireland, Italy, Luxembourg, Sweden in particular). These questions will be discussed within ACOR.

2.1.3. Staff assigned to post-clearance verifications

As for the relationship between staff specialising in post-clearance checks and the number of entries inspected, the figures also reflect the differences in internal organisation between national administrations.

It is observed that the total of customs officers in the European Union amounts to 93 859 persons (against 84 116 in 1998). On the other hand, specialised staff is 12 853, i.e. a slight fall in relation to the previous financial year (13 306). Some countries record a considerable fall, in particular Belgium, Italy, Portugal and Sweden. In contrast, Denmark, Greece very appreciably, and Ireland increase their capacity while overall staff assigned to customs increases very sharply in Germany.

The Commission notes that the sharp drop of the number of specialised staff in some Member States is not explained by a corresponding reduction in the transactions processed by the Member State concerned. This fall could be explained by a redefinition of the methods or an administrative reorganisation. The potential impact of computerisation on these apparent productivity gains in post-clearance checks is yet to be determined. Failing the means to interpret this development, the Commission considers the question should be discussed within ACOR.

2.2. Frauds and irregularities

2.2.1. Amounts established and recovered in 1999

The annual reports contain two types of statistics on the fight against frauds and irregularities: on the one hand, the volume of cases detected, and, on the other hand, accounting data on the various stages of the recovery of the customs debt.

The table in Annex 3 therefore sets out three series of figures: the number of detected cases, the established amounts of duties and the amounts recovered during the financial year. This gives an indication of the patterns of fraud and irregularities on the Community customs territory as well as the efforts deployed in combating fraud.

The table shows, for each Member State, the percentages of the amounts established and recovered in relation to the totals established and recovered in the Community and provides a crude "recovery rate".

Regarding the interpretation of the figures, it first is advisable to observe that the number of cases of frauds and irregularities appearing in column (2) has hardly comparable. Germany's figures for example are not in line with its very important traffic in third country goods and are the third of the number of cases detected by Belgium, Spain or France. Some Member States will have reported all the cases of infringements processing during the year by their national administration. For others, on the other hand, figures seem to show that only part of the infringements were reported. The Netherlands, for example, explicitly reported only partial figures, owing to problems involved in new computer application.

Column (5) of Annex 3 reveals that the average amount per case varies in considerable proportions from one Member State to another (with a ratio of 1 to 10 between Germany and the United Kingdom): the impact of the methods of recording of the cases of fraud must be recognised here, unrelated to cyclical variations in the profile of fraud. Some Member States probably tend to

globalise the cases of fraud (Denmark, Germany, or even Ireland), as did Sweden until 1996 and Austria in 1997.

The Commission will ask further detail from the Member States concerned on what looks like an anomaly. These questions will be discussed in ACOR.

As far as amounts established are concerned, the figures are slightly decreasing as compared with the preceding year (339 million euro in 1999, 374 million euro in 1998). Besides, they diverge greatly: in particular, the United Kingdom accounts for more than one fourth of established amounts (though it reported amounts less than 10000 euro only), that is twice the amounts established by Germany. The latter establishes less than Belgium and hardly more than the Netherlands. This is an anomaly, as observed in 1998 already.

The amounts recovered in 1999 decrease slightly as well, as compared with 1998 (119,4 million euro instead of 140,7 million). The results have improved in Germany, in Greece, in Austria and in Finland [97] (the amount recovered in Finland is twice that of 1998). Consequently their share in the collection of duties rises.

[97] Finland recovers twice as much as in 1998 but the Member State indicates that recovery data on amounts of less than 10 000 euros are not available and that these amounts are deemed recovered.

The "crude" recovery rate indicated in column (7) of the table does not take into account corrections and writeoffs made, following revisions of the debt or non recovery. It does not take into account either the duration of administrative or judicial appeals which make it, essentially, a statistical indicator of the recovery situation of amounts which were often established years before the current financial year. This rate is stable: approximately 36% of amounts established in 1999 were recovered.

The strong variations between Member States which were observed in the preceding year continue: two profiles emerge between Member States with a 20% or so recovery rate and those with a rate verging on 80-90% (which raises the general average).

This observation raises questions as to how assess the diligence of the administrations. On the one hand, recovery depends on certain factors (resolution of heavy cases involving important amounts of duties which characterise fraud-related files). On the other hand, recovery rate might also reflect diverging practices, as the Member States establish amounts at earlier or later stages in the procedure.

Comparing the relative weight of the Member States in the amounts established by the Fifteen and in the global recovery of duties reveals divergences: this highlights the fact that some Member States with important establishments have a recovery rate that sags in proportion (Belgium, United Kingdom), and that other Member States with apparently low levels of establishment and a particularly high recovery rate (Netherlands).

The percentages appearing in Annex 3 encourage the Commission to continue its inspection actions of the collection of the traditional own resources, in particular of the conditions of observation of the rights. It also wonders about usefulness to refine the indicators in order to grasp better the impact of the administrative and legal procedures on this collection. This question will be mentioned if necessary in ACOR.

2.2.2. Variation in established amounts and the rate of recovery

Annex 4 aims to identify the major trends in combating fraud and irregularities by placing the indicators of this activity of inspection in a multiannual perspective (1996 to 1999). Whether the number of fraud cases, established amounts or the recovery rate, it must be observed however that variations can have varied causes which are due either to effective improvement of inspection, or of a momentary development of fraudulent or irregular operations. Of course, no figure is available with regard to non detected fraud.

2.2.2.1. Case of fraud and irregularities

The number of cases of fraud appears in the first series of columns of Annex 4. In two thirds of the Member States, this figure rises. The increase has been continuous for several financial years in Belgium, in Italy, in the Netherlands, in Austria, Finland and Sweden. This has been confirmed by

the development observed for the fifteen Member States since 1995: the cases detected in the customs territory of the Community are 141 834 in 1999 (against 125 654 in 1998, 100 258 in 1997 and 80 584 in 1996).

This could result from an improved capacity for the detection of frauds and irregularities.

2.2.2.2. Amounts established

Establishments in 1999 diverge from the volume of the cases. After a summit in 1997 with 480 million euro in established duties, these figures decrease for the second financial year in 1999: with euro 374 million in 1998 and euro 339 million in 1999, frauds and irregularities would seem to mark time. It is however difficult to distinguish what could result from fraudulent activities in themselves of what can result from efforts in detecting and pursuing detected infringements, or even from more or less restrictive interpretation of the conditions defined by Article 2 of Regulation 1150/2000 for the establishment of own resources.

The apparent inconsistency between this reduction in the amounts and the observed increase in the number of the cases could be explained by another hypothesis, the relative fall of the major fraud cases combining with a larger effort on the part of the Member States to report via the annual report all the cases concerned with fraud or the irregularities. Before such a conclusion can be drawn however, one should resolve certain preliminaries which are approached in item 2.2.3.

2.2.2.3. Rate of recovery

Without prejudging the impact of administrative or legal appeal procedures which may last more or less, as already evoked, the average rate of recovery fluctuates from year to year but stabilises around 36-37% of the established amounts. As was seen as in item 2.2.1, it reflects as much the level of establishment of the debts as the diligence of the customs administrations to recover duties.

By Member State, the evolution of the recovery rate from one year to the other elicits some comments: on the one hand, in 1998 and 1999, this rate takes a jump in relation to the previous financial years in Portugal and in Austria (respectively from 10% to almost 50% in a case, from 2.5% to almost 85% in the second case). There is such a rupture also, though slighter, in Germany and Greece in 1999 (the rate of recovery thus rises from approximately 5% in 1998 to 49% in 1999).

Conversely, particularly high rates tend to be brought into line with the average: this is observed in Ireland with a regular fall over four years and also in the Netherlands over the same period. Such phenomena cannot be explained by the mere variability of the activity of fraud.

These overall favourable developments of the recovery rate suggest that certain Member States have adapted their accounting methods, or even their methods to process fraud and irregularity cases.

2.2.3. Amounts established and amounts entered in the accounts

As regards traditional own resources, any established amount has to be entered in the accounts. This is done either in account "A" (Article 6 (4)a of Regulation N°1150/2000) for amounts recovered or guaranteed and non disputed, or in account "B" (Article 6(4) b of the same regulation) when amounts are not recovered and, though security has been provided, are contested. As regards detected frauds and irregularities, a large part is contested or is not covered by a security, and are therefore entered in account "B".

It is therefore worthwhile comparing, as in Annex 5, for the financial year 1999, the amounts established and reported by the Member States in their annual reports regarding frauds and irregularities and the rough amounts registered in account B (not taking account of cancellations or corrections).

In 1999, for 6 Member States, the total established amount for frauds and irregularities is lower than the total amount registered in account B (which records established, but not yet recovered amounts). Germany, Austria and the United Kingdom reported, contrary to the indications of the annual [98] report model, only the cases of fraud and of irregularity covering amounts higher than euro 10 000.

[98] Annex 6, item 2 of Commission Decision of 20.03.1997 establishing the communication methods by the Member States of certain information within the framework of the system of the

own resources of the Communities (Doc. C (97) 800 final) specify that cases are communicated out of value threshold.

The following table shows more precisely for the financial years 1995 to 1999 the negative differences resulting from the comparison between the amounts established and reported by certain Member States in their annual reports under frauds and irregularities and the rough amounts registered in account B.

Amounts established (frauds and of irregularities) <Amounts in the B account

(Amounts in Euro)

>TABLE POSITION>

In the case of Germany, Austria, Portugal and the United Kingdom, this negative difference is recurring. Such a situation is by nature abnormal since the total amount established under frauds and irregularities cannot be lower than the amount registered in the separate account. Not all the amounts concerned with fraud and the irregularities indeed are contested or without a security.

The Commission considers that this anomaly is due to an erroneous interpretation on the part of certain administrations of the concepts of "fraud and irregularity". In particular, it recalls that the Community has been endowed since December 1995 with a broad definition of the concept of « irregularity » which takes into account the objective impact of anomalies on the Community budget.

It has repeatedly asked the Member States to apply the definitions of these two concepts set out Council Regulation (EC, Euratom) N° 2988/95 of 18 December 1995 [99] relating to the protection of the Community's financial interests or in the Convention on the protection of the financial [100] interests of 27.11.1995. France, as well as Germany, had objected to this interpretation [101] while pointing out that not all the amounts registered in the B account are irregular or fraudulent.

[99] OJ N° L 312 of 23.12.1995, p. 1. Irregularity: "Any violation of a provision of Community law resulting from an act or from an omission of an economic operator who has or would mean harming the general budget of the Communities".

[100] OJ N° C 316 of 27.11.1995, p. 49. Fraud: "Any act or omission by an economic operator involving:

[101] Letter dated 9 September 1998 in reaction to the examination of the analysis of the 1996 annual reports in the ACOR meeting of 8 July 1998.

The Member States concerned are again requested to revise their position and report all amounts related to frauds and irregularities, in order to comply with their regulatory obligations and in order to improve the comparability of data with the other Member States.

2.2.4. Annual reports and fraud forms

Article 17(3) of Regulation 1150/2000 provides for a comparison between the totality of the frauds and irregularities currently reported and those reported via fraud forms in compliance with Article 6(5) of the aforementioned regulation. The table appearing in Annex 6 presents this comparison.

It appears, and this is normal, that outstanding amounts contained in the fraud forms (amounts higher than euro 10 000) are lower than the total amount of establishments related to frauds and irregularities submitted by the Member States under the annual report on inspection activity (all amounts included). Except for Luxembourg, Portugal, Sweden and the United Kingdom, which highlights an accounting problem.

Germany reports the number of cases, and this nullifies the impact of the individual amounts lower than euro 10 000. This confirms that Germany does not communicate all the cases, contrary to the indications of the model annual report.

The Commission will request from the Member State concerned that it adapt its accounting methods in order to comply with Community regulations (see Item 2.2.3).

2.3. Frauds and irregularities broken down by customs procedure and by type of fraud

2.3.1. The vulnerability of the customs procedures to frauds and irregularities

The susceptibility of each customs arrangement to fraud and to irregularities is assessed each year under this summary report: the relative situation of the customs arrangements can indeed develop in the time, as shown by transit in the past.

The table appearing in Annex 7 presents a quantitative picture of how frauds and irregularities break down by Member State and by customs procedure in order to demonstrate the respective vulnerability of these arrangements in 1999. It is illustrated by the graph which follows.

Just as in previous financial years, it shows that in 1999, release for free circulation is particularly affected (86% of the cases of fraud, 79.5% of the established amounts). In this broad category, problems connected with the origin weigh more than 7% of the total amount and 6.6% of the cases. Except transit (7.9% of the cases, 11.6% of the amounts), the other arrangements are affected in a marginal way.

With regard to the breakdown of infringements by Member State, and the data of the United Kingdom and the Netherlands in particular, the table deserves some explanations. The United Kingdom indeed provided only overall data, without differentiating between arrangements. This explains the volume of the cases established in free circulation with a total established amount more than three times that of Spain and France, for a comparable number of cases. The data provided by the Netherlands is not very significant, owing to the introduction of a new computer [102] application.

[102] The only data available on frauds and irregularities were those of the Ministry of agriculture.

>REFERENCE TO A GRAPHIC<

The table demonstrates in addition the weight of transit in Belgium: with more than euro 16 million, this state notes amounts three times higher than France and doubles in relation to Germany.

Main customs arrangements concerned

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The comparison of the multiannual data on the vulnerability of the customs procedures (Annex 8) demonstrates that the release for free circulation is gradually more affected by frauds and irregularities while transit drops (from 27% of the amounts in 1996 to less than 12% in 1999). For the latter, the number of the cases fall, at a slower pace however than overall amounts which remain stationary below euro 40 million for the second consecutive year.

In absolute figures, the figures relating to inward processing are stable in relation to 1996 and 1997. This can result from a partial reorientation of detection efforts or from rebalancing of fraudulent activities between arrangements.

2.3.2. Typology of frauds and irregularities

Annex 9 breaks down by type of infringement the cases and the amounts reported by the Member States in 1999. A third of the cases and 40% of the amounts are not differentiated and appear in the column « Others ».

This reserve being made, irregular entry into the territory of the Community comes first, with 21.5% of the reported cases, followed by inaccuracies in the description of goods or the tariff classification (19.47%) then false declarations of value (almost 19% of the cases).

In established amounts, the image changes slightly since the greatest total (euro 64.3 million) refers to inaccuracies in the description of goods or tariff classification. The amounts pertaining to the non-declaration (euro 35 million) are followed by inaccuracies in the value (euro 29.5 million) and by erroneous indications of the origin (euro 24.2 million).

Annex 10 compares the number of the cases and the amounts established under the various types of infringements since 1996.

Typology of the cases of fraud and of irregularity

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From this table one can infer that:

- the amounts resulting from smuggling operations are virtually stable, although the number of the cases tends to increase;
- amounts (and cases) concerned by inaccuracies in the description or the tariff classification of goods have increased significantly over several years;
- in contrast, amounts related to false indication of the origin tend to decrease (but not in number of cases) as well as those connected with inaccurate statements of the weight or of the quantity;
- the cases related to inaccurate value declared increase without affecting the total amount which has regularly fallen since 1997.

This is not likely to modify the overall image of fraud and of the irregularities, as detected on the customs territory of the Community in 1999: it seems that this activity is globally stable from the point of view of the financial masses processed by the administrations, but that on the other hand, infringements occur in a larger number of transactions with more limited financial impact.

3. Application of Article 17(2) of Regulation (EC, Euratom) n°1150/2000

3.1. Use of the procedure

Article 17(2) of Regulation 1150/2000 is the only exception to the rule that any duty established in accordance with Article 2 of the aforementioned Regulation has to be made available to the Commission. When recovery proves impossible, the Member State proceeds to writing off the entitlement. Article 17(2) provides that the Commission examines the diligence of the Member State in its recovery actions, this examination covering only debts established which prove definitively irrecoverable. Write-off files subject to this obligatory examination exceed exceeds euro 10 000.

17(2) of Regulation 1150/2000 indicates two categories of reasons which can exempt the Member States from their obligation to make available the established rights as provided in article 17(1): (a) the force majeure or (b) specific cases.

Regarding the individual reasons which can justify the exemption from making available the established duties ("specific cases"), the Commission checks the diligence shown by the national authorities, in the observance of Community customs and financial regulations. This examination also takes into consideration, if necessary, the way in which the administrative and regulatory national provisions on recovery (forced) were implemented. If compliance is observed, the Commission expresses its agreement on the exemption from making available.

Annex 11 presents the files submitted to the Commission under this procedure. During the financial year 1999, five Member States reported to the Commission fifteen write-off cases (total amount of euro 2.6 million). In addition, forty-five cases related to 1999 were reported by also five Member States. These cases are examined by an interservice group created in 1997 with a view to adopting a common position.

During 1999, Member States reported fifteen files which referred to 1998. Out of these fifteen files, (first table of Annex 11), twelve were accepted by the Commission which considered, following a detailed analysis of all the elements reported, that the recovery of the own resources proved impossible for reasons not ascribable to the Member State. On the other hand, two requests were rejected because it appeared that the Member State concerned had not shown due diligence and had not taken all the steps allowed by national and Community law for protecting the financial interests of the Community. As for the last case, additional information has been requested and the case will be finalised as soon as the information requested is received.

In 2000, but relating to 1999, Member States submitted 45 write-off files which is currently being dealt with for a total amount of euro 4.5 million. Among these files, 35 were reported by Germany for an overall amount of euro 2.2 million. This is a sharp increase in such reporting because it appears that seven Member States have been making more or less regular use of this procedure (Belgium, Germany, Denmark, Spain, France, the Netherlands and the United Kingdom).

Overall practical application of the current mechanism by Member States is not very satisfactory: Member States stated that 26 cases in 1997-1999 compared with 32 for the previous period. The 26

cases reported during the period 1997-1999 represent a total amount of EUR 5 064 864, including 60% by the United Kingdom alone. It appears that certain Member States are forced by national recovery regulations to continue, for the Community, recovery actions without hope of result.

The Commission considers consequently that there is a genuine problem concerning, on the one hand, the recovery measures deployed by the national administrations and, on the other hand, the harmonised use of the mechanism of Article 17 (2) of Regulation N° 1552/89.

This is why the draft amendment of Article 17 (2) [103] introduces a clear distinction between the amounts declared irrecoverable by reasoned decision of the administrative authority and the amounts deemed irrecoverable at the end of a five-year deadline.

[103] COM (97) 343 of 3.7.1997.

This amendment aims to introduce a 5-year-old deadline applying to all the Member States to withdraw the non recovered amounts of accountancy B and to examine the conditions which led to their non recovery. The Commission also proposed raising from euro 10 000 to euro 50 000 the threshold beyond which the Member States have to report write-offs.

3.2 Comparison of writeoffs

Among various checks, the Commission proceeds to a comparison of amounts written off and included the annual report and of amounts removed from the separate account under Article 6(4) b of Regulation 1150/2000.

Annex 12 presents the results of this comparison as well as comparison with the amounts reported written off in compliance with Article 6(5) of Regulation 1150/2000 relating to frauds and irregularities.

In 1999, Member States reported 45 write off files to be examined by the Commission (amounts higher than euro 10 000) for a total of euro 4.5 million. They had also reported in the separate account a total amount of euro 12 57 million written off (all amounts included). This discrepancy should be appreciated with prudence, yet the impact of the small amounts as it results from the separate account appears disproportionate: this could confirm the impression that certain Member States do not use the write-off as they are expected to.

Furthermore, the Netherlands mentions 2 writeoffs for a total of euro 1.6 million without mentioning any such amount in the separate account, which is an anomaly; conversely, Belgium, Spain and Italy register important amounts in the separate account yet report no amount higher than euro 10 000 in the 1999 annual report.

In addition, in the fraud forms provided for in Article 6(5) of Regulation 1150/2000, Spain reported an amount of euro 386 131 which was written off in 1999, without registering any similar amount in the separate account.

The Commission considers this situation as an anomaly. It will invite the Member States to adapt their separate account so that it complies with the regulations and to provide additional information so as to ensure that the procedure provided for in Article 17(2) is applied correctly.

In addition, the Commission compared amounts corresponding to corrected establishments in the separate account (82,6 million euro) with amounts written off (125 million euro). In some Member States, the amounts are found to be very high (B, E, F, I, A, UK).

The Commission considers that difficulties should be concentrated in recovering, more than in establishing duties. This tends to demonstrate that two procedures are being confused: a mechanism for revising established amounts as provided for in Article 8 of Regulation 1150/2000 and writing off of Community assets that cannot be recovered in compliance with Article 17(2) of the regulation.

This divergence justifies further inspections of the collection of own resources, in particular of the procedures of repayment/remission or recovery as applied by the Member States.

4. Conclusions and Prospects

On the basis of the data supplied, the Commission can conclude to progress in the the Member States' reporting of their inspection activity and findings. It notes in particular a slight improvement in the production and the communication of the data as compared with the previous financial years.

The data concerning the inspection activity thus makes it possible to note an overall fall in the number of the customs transactions (about 7%). The analysis reveals that the efforts for post-clearance verification were stepped up: although the heterogeneity of the administrative organisations and of the methods applied (degree of computerisation for example) can hardly be appreciated, an overall productivity gain seems to result, despite a slight reduction in the staff assigned to the latter activity.

As regards frauds and irregularities, the field records a paradoxical development: an increase in the number of the reported cases and a fall of the established amounts which could justify the hypothesis of a fall of the major cases of fraud. This would tend to denote an increased overall capacity of detection by the administrations.

Among customs procedures, frauds and irregularities shift slightly from external transit towards the release for free circulation. As regards infringements, smuggling appears stable, though high, while the most important infringements involve the inaccuracies in the description or the tariff classification of goods.

The application of Article 17(2) is still unsatisfactory, according to the Commission, this could stem from insufficient comprehension, by the Member States, of the procedure, or even from a confusion between Articles 8 (corrections of established amounts) and 17(2) (official report of non recovery for reasons not ascribable to the Member State). It does seem moreover that accounting practices diverge with the regulatory obligations and that confusions remain in the keeping of the separate account (mention of all amounts written off).

However, the comparability of the data is too imperfect to allow final interpretations. These weaknesses in the quality and reliability of reported information result from several factors:

- the global figures which are communicated on the number of entries, staff and post-clearance verifications do not account for the differences in the organisation of the inspections or drawing up of statistics by the Member States. These figures give no indication as to the degree of computerisation of the operations, or even the administrative restructuring, and cannot help explain variations from one financial year to another,

- the data concerning frauds and irregularities should be mitigated by the observation that three Member States do not communicate the amounts below euro 10 000, and that some countries do not have finer statistics on risk analysis by customs procedure. The recovery rate in this field highlights two main categories of Member States: countries with a recovery rate close to 20%, of others to which the rate is close to 80%, which tends to confirm that the practices for establishing and recording of the results vary as much as the organisation of the customs and legal administrations,

- Member States do not always communicate coherent data, as shown by comparing amounts established and the number of cases. The Commission notes the same inconsistency in reporting write offs, depending on whether they are reported via the annual report, via the statements of the separate account or by the fraud forms under Article 6(5) of Regulation 1150/2000.

The Commission underlines the fact that the annual report provided for in Article 17(3) aims to give an account of the Member States' efforts in the pursuit of the common objectives: not only to respect the obligations which are theirs in the collection of traditional own resources, obligations which were strengthened in particular by the amendment of former Article 209A in the treaty of Amsterdam, but also to monitor and improve the performances of their customs administrations.

This report, by establishing indicators, aims to assist the Member States in the definition of evaluation procedures and to enable each one of them to compare its results with those of other national administrations in the same activity, seeking to improve them and to overcome the possible difficulties as noted above. This aim complies with the objective of developing a culture of cooperation between the national level and the Community level in the management of traditional own resources.

In addition, to improve the quality of the monitoring of the Member States' inspection activity while minimising the extra work for the national administrations, DG Budget plans to coordinate its work

more closely with the specific actions of other services: on the one hand, to use and contribute to the ideas adopted by the Member States and the Commission under the new Decision on Customs 2002 [104] on the measurement of the results of customs inspections and recovery, on the other hand, in the context of the protection of the financial interests of the Community, and in particular the annual report drawn up by the OLAF with the Member States under the new Article 280 of the Treaty.

[104] Council Decision N° 210/97/EC of the European Parliament and of 19 December 1996 on adoption of an action plan for the customs in the Community (« 2002 Customs », OJ N°L 33 of 4.2.1997), amended by the decision N° 105/2000/EC of 17 December 1999, in particular its Articles 7 and 12.

ANNEXES [105]

[105] The footnotes in the tables are the comments made by the Member States

>TABLE POSITION>

themselves in their annual report.

ANNEX 2

>TABLE POSITION>

nspections by the Member States

Inspections by the Member States

>TABLE POSITION>

continued)

ANNEX 3

Frauds and Irregularities : Amounts established and recovered

(Amounts in euro)

>TABLE POSITION>

(the euro exchange rate is the average rate for 1999)

ANNEX 4

Frauds and Irregularities: Amounts established and rate of recovery - Variation

>TABLE POSITION>

Amounts in euro)

ANNEX 5

Frauds and irregularities :

Amounts established in B/ Amounts entered

>TABLE POSITION>

ANNEX 6

Annual Reports/ communicated Fraud forms

(Amounts in euro)

>TABLE POSITION>

(1) Net amount to be recovered, after deducting corrections, writeoffs, etc.

ANNEX 7

Vulnerability of customs arrangements to frauds and irregularities (amounts established)

(Amounts in euro)

>TABLE POSITION>

ANNEX 8

Vulnerability of customs arrangements to frauds and irregularities

(Amounts in euro)

>TABLE POSITION>

ANNEX 9

Free circulation: Typology of the cases of frauds/irregularities

>TABLE POSITION>

Amounts in euro)

ANNEX 10

Free circulation: Typology of the cases of frauds/irregularities

>TABLE POSITION>

Amounts in euro)

ANNEX 11

Writeoffs - Annual report 1999 (reported in 1999)

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Writeoffs - Annual report 1999 (reported in 2000)

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ANNEX 12

Amounts corrected and amounts written off in 1999

(Amounts in euro)

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