

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.7.2007
COM(2007)390

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**Protection of the financial interests of the Communities – Fight against fraud – Annual
report 2006**

[SEC(2007)930]

[SEC(2007)938]

TABLE OF CONTENTS

Introduction	4
1. Results of the fight against fraud: statistics on fraud and other irregularities.....	5
1.1. Statistics on fraud and other irregularities reported by the Member States in 2006....	5
1.1.1. Traditional own resources	6
1.1.2. Agricultural expenditure (EAGGF Guarantee Section).....	7
1.1.3. Structural measures	8
1.1.4. Pre-accession funds.....	9
1.2. Statistics on OLAF's activities	10
2. Fraud prevention	11
2.1. Risk analysis and management, control systems	11
2.1.1. Measures relating to expenditure	11
2.1.2. Customs.....	12
2.2. Debarment, early-warning and reliability databases	13
2.2.1. At EU level.....	13
2.2.2. In the Member States	14
2.3. More transparent EU decision-making in financial management at EU level.....	17
2.4. Improving accounting and control rules for a positive statement of assurance	18
2.5. Hercule action programme to promote activities in the field of the protection of the Community's financial interests	19
3. Combating fraud.....	19
3.1. Detection of fraud: warning systems involving internal informants (whistleblowing)	19
3.1.1. European institutions.....	19
3.1.2. Member States.....	20
3.2. The European Anti-Fraud Office (OLAF)	22
3.3. Developing mutual assistance	22
3.4. Combating cigarette smuggling and counterfeiting	23
3.5. Protecting the euro	23
3.6. Initiatives taken by certain Member States in 2006.....	24
4. Recovery	24

4.1.	Agriculture	24
4.1.1.	The work of the Task Force Recovery	24
4.1.2.	Financial corrections	26
4.2.	Structural Funds	26
4.3.	Own resources	27
4.4.	Recovery following an OLAF investigation	27
4.5.	National legislation on the recovery of EU funds	28

INTRODUCTION

The protection of the Community's financial interests and the fight against fraud are areas of shared responsibility between the Community and the Member States. Each year the Commission, in cooperation with the Member States, produces a report presenting the new measures they have taken to meet their obligations in this field, in accordance with Article 280 of the EC Treaty. The report is addressed to Parliament and the Council and is published.

The Commission and the Member States jointly decided that, as well as giving a general overview of the measures taken in various areas, the report should deal with four specific issues: risk analysis and risk management; debarment databases and warning systems involving internal informants and mechanisms for recovery by offsetting.

The **first part** of the report gives a summary of the **statistics concerning irregularities** reported by the Member States in accordance with sectoral regulations and provides some figures relating to the operational activities of the European Anti-Fraud Office (OLAF).

The **second part** concerns the measures taken by the Member States and the Commission to **prevent fraud** and to deal with other irregularities. It also examines the topic of **risk analysis and risk management and debarment databases and warning systems**. The **third part** gives an account of the anti-fraud measures taken. It also contains a section on warning systems involving internal informers.

The **fourth part** presents the steps taken to **improve recovery** of amounts not collected or wrongly paid. It contains a section on mechanisms for recovery by offsetting under national law.

The report provides only a summary of the measures taken and the results obtained. Alongside it, the Commission publishes two working papers, one detailing the Member States' contributions¹ and the other containing statistics on the irregularities reported by the Member States².

Previous years' reports are available on OLAF's website³.

¹ "Implementation of Article 280 of the Treaty by the Member States in 2006", SEC(2007)930.

² "Statistical Evaluation of Irregularities", SEC(2007)938.

³ http://ec.europa.eu/anti_fraud/reports/anti-fraud_en.html.

1. RESULTS OF THE FIGHT AGAINST FRAUD: STATISTICS ON FRAUD AND OTHER IRREGULARITIES

1.1. Statistics on fraud and other irregularities reported by the Member States in 2006

The protection of financial interests is an area of shared responsibility. In the fields where the Member States implement the budget (agricultural policy, Structural Funds and pre-accession funds) and for the collection of the Community's own resources, Community legislation requires the Member States to report suspicions of fraud and other irregularities affecting Community financial interests. Expenditure managed by the Member States accounts for some 80% of the Community budget.

The Commission's working paper on "Statistical evaluation of irregularities", published at the same time as this report, presents an in-depth analysis of the statistics derived from the information received. Though this report does not include statistics on irregularities detected in connection with expenditure directly managed by the Communities, the Commission has taken steps to ensure that they are provided in future.

Table 1 shows the number of irregularities reported and the amounts involved for each area.

Table 1 – Number of irregularities and amounts – 2006

TOTAL 2006			
Area	Number of irregularities reported	Total estimated financial impact of irregularities, including suspected fraud (€million)	Estimated financial impact of suspected fraud (€million)
Own resources	5 243	353	134.39 (~0.94% of the total amount of own resources in 2006 ⁴)
EAGGF Guarantee Section	3 249	87	29.8 (~0.06% of the total allocations)
Structural Funds and Cohesion Fund	3 216	703	157.56 (~0.41% of total allocations)

⁴ This percentage is calculated on the basis of an estimate of traditional own resources in the 2006 general budget, and not on the basis of accounts.

Pre-accession funds	384	12.32	1.57 (~0.03% of total allocations) ⁵
Total	12 092	1 155.32	323.32(~0.94% of own resources and ~0.2% of the total expenditure in the three areas ⁶)

1.1.1. Traditional own resources

In 2006, the number of cases of fraud and irregularities reported (exceeding €10 000) was down 12% on 2005 (from 5 943 to 5 243), but the amount affected by irregularities rose by over 7% (from €28 million to €53 million⁷). Suspected fraud accounts for approximately 22% of the cases of irregularities reported, with an estimated financial impact of €134.39 million, equivalent to approximately 0.94% of the total amount of own resources in 2006. This compares with €105.3 million (around 0.85% of own resources) in 2005. Graph 1 shows the trends in the number of irregularities reported over the last five years and their estimated financial impact.

The increase in the total number of cases since 2003 can be accounted for by an increase in the number of cases reported by the Member States, the inclusion of transit operations discharged late and the accession of new Member States. The number and proportion of transit operations cleared late has fallen compared with 2005 (by over a third)⁸.

The goods most affected by irregularities in 2006, as in previous years, are tobacco products and TVs. The figures for sugar, fish, glass and glassware and optical instruments were down on 2005, whereas meat, engines and parts, inorganic products and oils and fats were all up. The textile sector remained relatively stable, involving €10.3 million in duties.

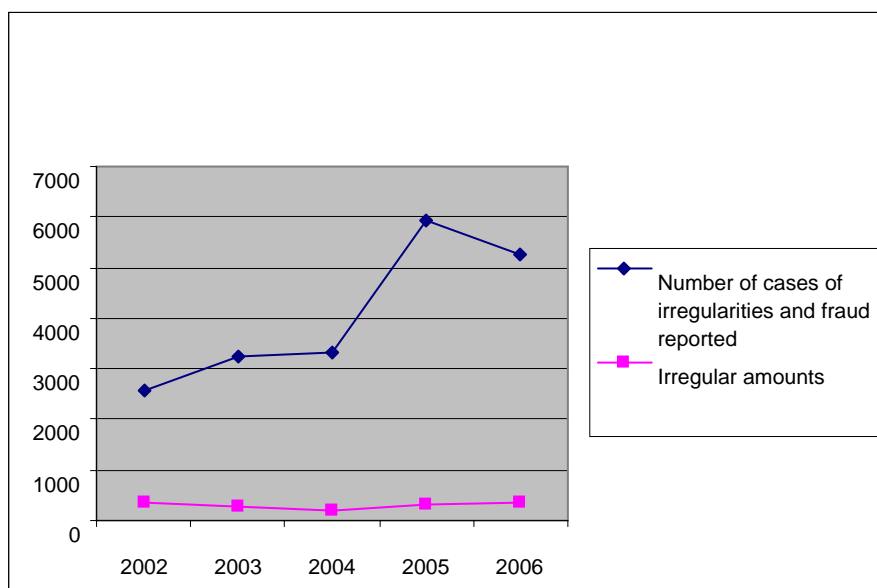
⁵ Percentage of suspected fraud during 2000-06 period for all funds allocated during the period.

⁶ The pro rata for 2000-06 has been taken into account for the pre-accession fund.

⁷ The figures published in the 2005 report have been updated.

⁸ In 2005, 2 313 transit operations were cleared late, compared with 1 381 in 2006.

Graph 1: Number of irregularities reported and estimated financial impact in the area of traditional own resources – 2002-06 (€million)



1.1.2. Agricultural expenditure (EAGGF Guarantee Section)

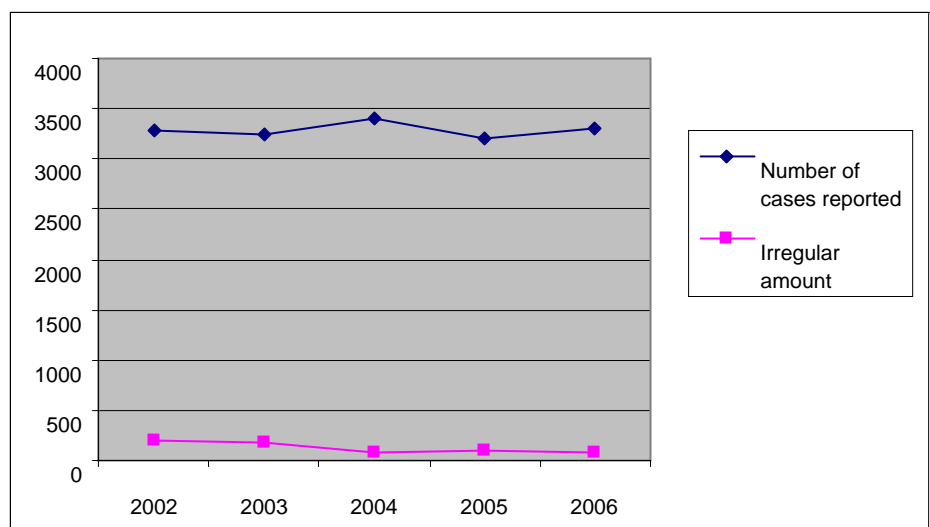
In 2006 the number of irregularities reported was up 3% on the previous year (3 249 cases in 2006). The total amount involved in 2006 was 15% down, at €87 million, accounting for almost 0.17% of total appropriations for the EAGGF Guarantee Section (€49 742 million for 2006). Suspected fraud accounted for around 10% of all irregularities reported (€29.8 million, 0.06% of total appropriations, compared with €21.5 million, or 0.05% of total appropriations in 2005).

The highest number of irregularities reported related to rural development, bovine sector, and fruit and vegetables. Together these three groups accounted for almost 60% of the total number of reported irregularities and almost 70% of the total amount affected by irregularities.

A Regulation adopted by the Commission in 2006⁹ simplifies the procedures for reporting irregularities in the area of agricultural expenditure from 2007. The threshold above which Member States are required to report irregularities to the Commission has now been brought into line with the threshold for the Structural Funds (€10 000).

⁹ Precise references to the Regulations mentioned in this chapter are given in the Commission's working paper "Statistical evaluation of irregularities", referred to above.

Graph 2: Number of irregularities reported and estimated financial impact in the area of agricultural expenditure - years 2000-06 (€million)



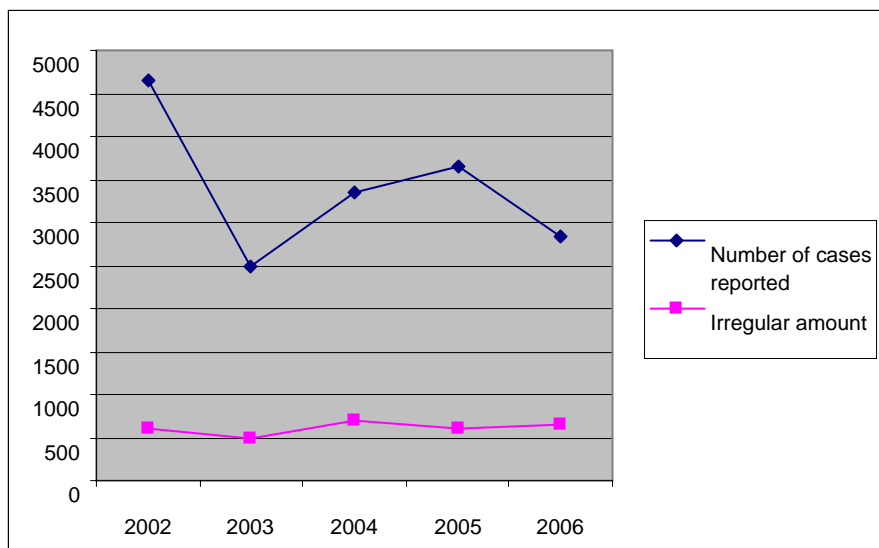
1.1.3. Structural measures

The European Parliament and the Council adopted a series of Regulations for the Structural Funds, for the new 2007-13 programming period. The rules on reporting irregularities to the Commission have been retained. The old Regulations continue to apply for former programming periods.

In 2006 the number of irregularities reported (3 216 cases, including the Cohesion Fund) was down 10% on the previous year (3 750 cases) whereas their financial impact increased by 17% to €703 million in 2006. The estimated financial impact of the irregularities reported in 2006 accounts for around 1.83% of the Structural and Cohesion Fund appropriations (€38 430 million) for 2006, and suspected fraud for approximately 16.6% of irregularities reported (€157.56 million, around 0.41% of total appropriations, against €205 million, or 0.53% of total appropriations for 2005). The final impact will not be known until the programmes have been wound up.

As in previous years, the ERDF and ESF account for the most irregularities (around 75%). The number of irregularities reported for the Guidance Section of the EAGGF increased by 38%; for the Cohesion Fund and the FIG it remained stable.

Graph 3: Number of irregularities reported and estimated financial impact for structural measures 2002-06 (€million)



1.1.4. Pre-accession funds

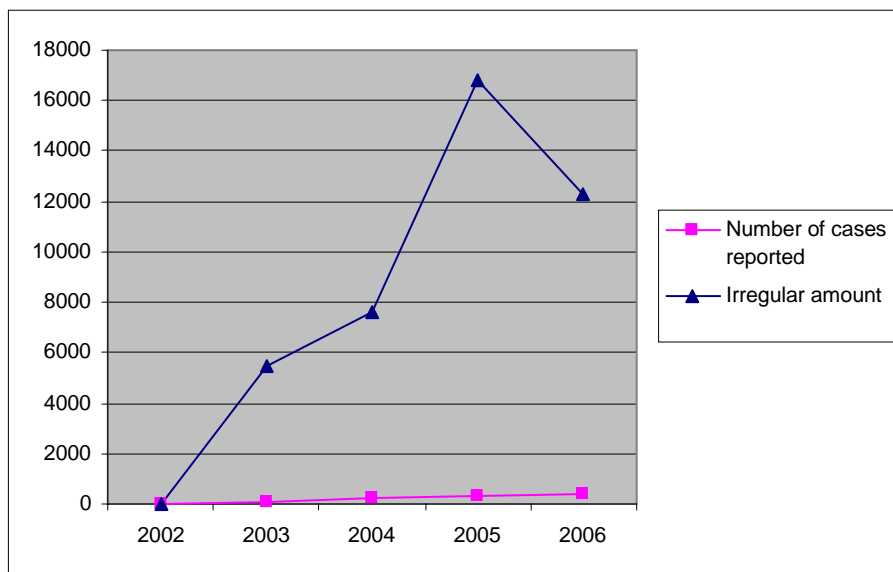
The number of irregularities concerning PHARE, SAPARD and ISPA funds for 2006 increased by 13.6% (384, compared with 338 in 2005). The presumed financial impact of the irregularities increased for PHARE and SAPARD but fell for ISPA (from €6.9 million in 2005 to €1.2 million in 2006). For 2006, the total amount of irregularities reported was down 26% to €2.318 million (from €6.7 million in 2005), approximately 2.8% of the total eligible amounts for the three funds. Suspected fraud accounted for approximately 14.63% of the irregular amounts reported. The financial impact is estimated at €1.57 million. The financial impact of reported fraud for 2000-06 amounts to 0.03% of total allocations to the three funds in that period.

The most frequently reported type of irregularity for each of the pre-accession funds was “non-eligible expenditure”¹⁰. For the PHARE fund, the second most common irregularity was “unjustified expenditure”¹¹.

¹⁰ Expenditure is "ineligible" when the commitment criteria laid down by the Member States are not met or it is not paid in accordance with the relevant Community and national rules.

¹¹ Expenditure is "unjustified" when it is eligible but there are no supporting documents or when the money is used for purposes other than those for which it was granted.

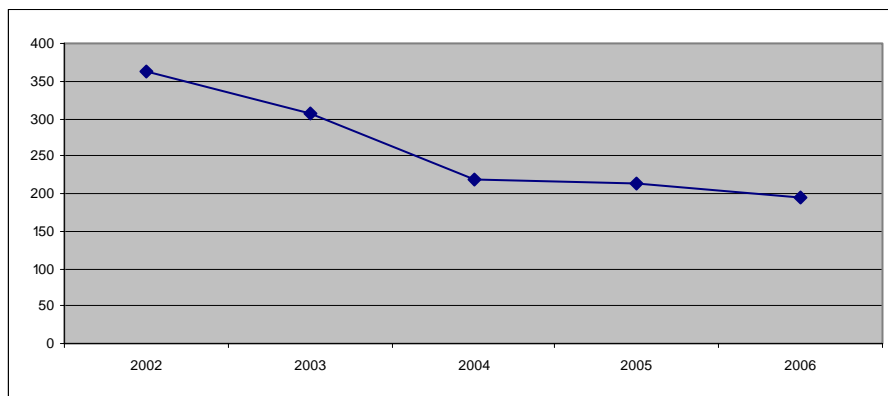
Graph 4: Number of irregularities reported and estimated financial impact for the accession funds – 2002-06 (€million)



1.2. Statistics on OLAF's activities

The number of investigations opened by OLAF following evaluation of information received fell (195 in 2006 against 214 in 2005). The decision to open a case is based on a preliminary assessment.

Graph 5: Cases opened following evaluation of information received



At 31 December 2006 there were a total of 430 investigations in progress, which is comparable with the 2005 figure (452 at 31 December 2005).

Table 2 : Cases ongoing at 31 December 2006 by sector, and their financial impact

Sector	Cases pending at 31 December 2006	Estimated financial impact (€million)
Agriculture	65	202.7

Structural Funds	46	192.9
Customs	111	748.9
Direct Expenditure	118	293.4
Internal Investigations	91	301
Total	431	1 738.8

For more details concerning OLAF investigations and comparison with previous years, see the OLAF Report¹².

2. FRAUD PREVENTION

2.1. Risk analysis and management, control systems

As part of a sound control system, appropriate assessment and management of risk help ensure that taxpayers' money is spent properly when implementing policies. This area is currently being developed within the Commission as well as in Member States, to ensure proactive protection of financial interests, prevention and targeted action.

2.1.1. Measures relating to expenditure

For some years the Commission has used risk management not just in relation to expenditure but more generally too. Acknowledging the need for a common approach to risk management¹³, the Commission has taken a number of steps since 2006¹⁴. The objective is to improve the decision-making process, to increase effectiveness and to strengthen the reliability of management systems. In this context, Commission departments now have a common methodology for analysing risk and choosing the right response. In the latter part of 2006, a pilot study was carried out to test a structure meant to improve risk management for several departments and bring about more effective management by grouping services. That structure is to be put on a permanent footing in 2007.

At national level all Member States have rules in their budgetary procedures to help managers to assess and manage the financial risks involved in awarding grants and public contracts, in particular to verify the reliability of potential beneficiaries¹⁵.

The new financial rules introduced in 2006¹⁶ require to national administrations establish effective internal control systems and perform the necessary inspections on

¹² http://ec.europa.eu/comm/anti_fraud/reports/index_en.html.

¹³ Communication concerning a roadmap for a framework of integrated internal control, COM(2005) 252.

¹⁴ Communication to the Commission from Ms Grybauskaitė in agreement with the President and Vice-president Kallas, "Towards an effective and coherent risk management in the Commission services", SEC(2005) 1327.

¹⁵ These rules were established some years ago but have been evolving. Thus, for example, the Spanish authorities reported that a 2006 law on subsidies enabled a criminal penalty to be imposed for failure to lodge a guarantee when required to do so.

the EU funds they manage. This means providing information and reporting each year on controls and audits.

Approximately half of the Member States have general national guidelines (instructions or good practices)¹⁷ or rules on risk assessment and management in specific fields¹⁸.

Nine Member States have special tools for assessing the risk posed by new recipients of public funds. For example, in Ireland additional information not yet available on new applicants may be sought at the grant assessment stage. In Poland first-time CAP beneficiaries are more likely to be referred for on-site inspection.

When a beneficiary is identified as posing a risk, this may result in tighter checks by the managing authority¹⁹ or in a systematic requirement for special guarantees²⁰.

When a (national or Community) grant or public contract is awarded, applicants are required by managing authorities to submit relevant documents declaring that they fulfil the criteria. In some Member States the managing authorities have access to specific databases to check the accuracy of the declarations by applicants; these include databases on tax (accessible in more than half of the Member States²¹), on financial institutions²² and on persons and corporate bodies ordered to pay penalties in either administrative²³ or criminal proceedings²⁴. In Hungary, a 2006 law establishes a new creditor protection register to provide full and up-to-date information on creditworthiness and measures to be taken by the courts against registered companies.

2.1.2. Customs

The national customs authorities have for a long time been using risk analysis to identify potential illegal activities and to target controls more effectively. Over the years coordination at European level has improved the effectiveness of actions taken by the national authorities.

¹⁶ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 making the financial regulation applicable to the general budget of European Communities, OJ L248/1, 16.9.2002, lastly modified by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006, OJ L 390, 30.12.2006.

¹⁷ The Czech Republic, Denmark, Poland, Finland and the United Kingdom.

¹⁸ Public procurement: Ireland, the Netherlands, Poland and the United Kingdom. Grants and subsidies (including Structural Funds, the Cohesion Fund, pre-accession and Transition Facility programmes): Belgium, the Czech Republic, Malta, the Netherlands, Poland and Slovakia. Agriculture: Ireland, France and Luxembourg.

¹⁹ Belgium, Denmark, Germany, Ireland, France, Italy, Latvia, Lithuania, Malta, the Netherlands, Austria, Poland, Portugal, Slovenia, Slovakia, Finland, Sweden and the United Kingdom.

²⁰ Germany and France. Under Maltese law, the authorities may require a guarantee from a person whose VAT registration may give rise to a particular risk.

²¹ The Czech Republic, Denmark, Greece, Spain, France, Italy, Latvia, Lithuania, Hungary, Austria, Poland, Finland and Sweden. In Portugal the law on the 2006 budget provides for publication of the main tax debtors.

²² Denmark, Greece (indirect), France, Lithuania, the Netherlands, Finland and the United Kingdom.

²³ Greece, France, Italy, Latvia, Lithuania, Austria, Poland, Portugal and Finland.

²⁴ The Czech Republic, Denmark, Greece, France, Italy, Latvia, Lithuania, Hungary, Austria, Poland, Portugal and Finland.

In 1997 the Commission presented an action plan for transit in Europe²⁵ to combat transit fraud more effectively and in 2001 it drew up a revised regulatory framework which included the introduction of a new computerised transit system (NCTS). Following the special report of the Court of Auditors No 11/2006, the Commission took the necessary measures to ensure that, from 2007 onwards, it could access NCTS data concerning sensitive goods for the purposes of risk analysis, so that it could promote strategies for targeted physical controls of goods in transit.

The Commission also continued to improve the ConTraffic system, which provides an overview of container traffic. The system enables a container's itinerary to be monitored so that suspicious consignments can be identified. With a new web interface launched in 2006 and a database with over 220 million entries relating to more than 4.4 million containers, the system has been used by national authorities to help them combat fraud more effectively, particularly through joint customs operations carried out in 2006.

In December 2006 the Commission adopted a Regulation²⁶ amending some of the implementing provisions of the Community Customs Code. The Regulation also provides for the application of common risk criteria and common priority control areas and sets out standards for the harmonised application of customs controls in specific cases.

2.2. Debarment, early-warning and reliability databases

2.2.1. At EU level

In 2006 the Commission reviewed the European early-warning and debarment systems²⁷ with a view to improving the management of certain risks associated, in particular, with public procurement systems and the protection of the Communities' financial interests. In this framework, OLAF and Transparency International (TI) organised a round table in January 2006 on ways to protect the EU's financial interests with debarment systems²⁸.

Article 95 of the Financial Regulation, as amended in 2006, provides for the introduction of a central database of organisations excluded from contracts and grants financed by the EU budget. It is a common database of the institutions, executive agencies and bodies covered by Article 185 of the Financial Regulation. This database will contain all relevant information on entities convicted of fraud or corruption in the Member States and in third countries involved in the implementation of EU programmes. The system will be supplied with information

²⁵ COM(97) 188 final, OJ C 176, 10.06.1997.

²⁶ Commission Regulation (EC) No 1875/2006 of 18 December 2006 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 360, 19.12.2006).

²⁷ The debarment systems are administrative sanction systems whereby economic operators who find themselves in one of the situations covered by the exclusion criteria are debarred from certain procedures or advantages, such as participation in a public tender or subsidies. The debarred operators are listed in a database accessible to the competent authorities.

²⁸ Following the meeting, TI drew up a number of recommendations for improving the debarment systems within the Commission and on the introduction of a centrally managed European debarment system covering all Community expenditure, including funds under shared management.

from partners authorities involved in implementing the Community budget in the Member States will also be able to consult it²⁹.

The Commission already has an internal Early Warning System (EWS) database containing information on funds managed directly by the Commission, in compliance with the rules on personal data protection.

The Commission also manages a database for risk identification in relation to economic operators in the specific field of the EAGGF Guarantee Section. Information for this database is supplied by the Member States. In the second report on the application of the Regulation setting up this system³⁰, the Commission refers to problems with application, such as the limited number of irregularities reported, problems with the interpretation of legal concepts, or Member States' fear of having legal proceedings brought against them in the national courts by operators entered in the database.

As well as the debarment databases, there are also databases on reliable beneficiaries, which help to improve risk assessment. The Regulation amending the provisions implementing the Community Customs Code³¹ provides for the status of approved economic operator to be granted to reliable operators who meet certain criteria. These approved operators then benefit from simplifications under customs legislation and/or customs control facilities.

2.2.2. *In the Member States*

The two Directives on public procurement adopted in 2004³² require that Member States debar any economic operator who has been found guilty of participating in a criminal organisation, of corruption, of fraud detrimental to the financial interests of the European Community or of money laundering, once a definitive court judgement has been handed down. The Directives also provide for the possibility of excluding an economic operator who is bankrupt or being wound up, who has suspended trading, whose affairs are being administered by the court, who has been convicted of a criminal offence affecting his professional standing, committed serious professional misconduct or not paid social security contributions or taxes.

In connection with the recent developments in the field of early-warning and debarment (blacklisting) systems, Member States were asked to indicate what databases of risky beneficiaries they had (if any) and to describe one in greater detail. It must be stressed that the fact that half of Member States³³ do not have this kind of

²⁹ This database will be created at the latest by 1 January 2009.

³⁰ Report from the Commission to the European Parliament and the Council on the application of the Regulation (EC) No 1469/95 (« blacklist »), COM(2005) 520; SEC(2005) 1333 of 20.10.2005.

³¹ See footnote 26.

³² Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, OJ L 134, 30.4.2004.

³³ Belgium, the Czech Republic, Estonia, Ireland, Greece, Spain, Hungary, France, Cyprus, Luxembourg, the Netherlands, Portugal, Finland and the United Kingdom.

database does not mean that they do not have measures or rules in place to identify risky beneficiaries (see point 2.1.1.).

Almost all the databases described aim at prevention (early-warning system)³⁴. Entry in the database leads, for example, to special guarantees being required or tighter controls. Seven of these databases³⁵ are also (or purely) punitive, i.e. entry in the database entails or may entail penalties such as exclusion from public procurement or public grants for a limited period.

All the databases include information on the legal person responsible for the irregularity in question, and most of them also on the natural persons involved (such as the person who committed the irregularity or the manager of the firm)³⁶. Six databases also contain information on legal persons linked to the legal person responsible for the irregularity (holding company, subsidiary, etc.)³⁷.

In all the countries with tax databases³⁸, not being up to date with taxes or social security contributions is considered a ground for inclusion in the database. Some databases also register beneficiaries who are in debt³⁹, those against whom administrative penalty proceedings have been brought⁴⁰ or who have been ordered to pay an administrative penalty⁴¹, those prosecuted for alleged financial offences⁴² or convicted of a financial offence (at first or final instance)⁴³. In most cases the tax authority decides on inclusion of beneficiaries in or removal from the database⁴⁴.

Regarding databases in the area of public procurement⁴⁵, in Austria beneficiaries are entered in the database if they are ordered to pay an administrative penalty. In Germany beneficiaries are entered in the corruption register if they are ordered to pay an administrative penalty or are convicted of financial offences at final instance. The most extensive database seems to be the public works database in Italy, for which all of the situations referred to above are grounds for inclusion. Beneficiaries are also included in the database if they have failed to comply with the obligations attaching to the award of a grant or a public contract.

The main ground for entering a beneficiary in the databases relating to subsidies⁴⁶ is failure to comply with the obligations attaching to the award⁴⁷. Possible grounds

³⁴ Denmark, Slovenia and Slovakia (tax databases). Germany, Italy and Austria (public procurement databases). Lithuania and Poland (Structural Funds and Cohesion Fund).

³⁵ Germany, Italy, Austria, Poland, Slovakia and Sweden.

³⁶ Except for Poland.

³⁷ Germany, Italy, Lithuania, Austria, Slovakia and Sweden.

³⁸ Denmark, Slovenia, Slovakia and Sweden.

³⁹ Slovakia and Sweden.

⁴⁰ Slovenia and Slovakia.

⁴¹ Denmark, Slovenia and Slovakia.

⁴² Slovenia and Slovakia.

⁴³ Denmark and Slovakia.

⁴⁴ Denmark, Slovenia and Sweden. In Slovakia inclusion or removal is automatic.

⁴⁵ Germany (Berlin), Italy and Austria.

⁴⁶ Structural and Cohesion Funds: Lithuania, Malta and Poland. Agriculture: Latvia.

⁴⁷ Latvia, Lithuania and Poland.

include ongoing prosecution for alleged financial offences⁴⁸ or final conviction of financial offences⁴⁹.

Amongst the main grounds for removing a beneficiary from the database are that a given time period has elapsed⁵⁰, that the initial situation has changed⁵¹ or that exploratory proceedings have proved that no irregularity has occurred⁵². In two instances removal from the database is not possible⁵³.

Concerning the right of defence, in six Member States beneficiaries are informed when they are entered in the database⁵⁴. Sometimes they can appeal against the decision to enter them⁵⁵. Such appeal proceedings can be either administrative⁵⁶ or judicial⁵⁷.

Most of the databases are centralised⁵⁸, others are managed locally. Four databases are accessible to authorities other than the one which manages them⁵⁹. In three Member States the database is also accessible to the authorities of other Member States, non-EU countries or international organisations which abide by equivalent data protection rules and apply for access to it⁶⁰. With the exception of Sweden, the databases are not accessible to the public.

More than half of Member States⁶¹ indicated that they have to comply with rules on personal data protection in addition to the Community regulations on the matter (e.g. Constitutional guarantees).

Member States mentioned several problems with establishing or operating the databases, e.g. inappropriate legal basis⁶², the need to demonstrate a specific legal purpose to justify the existence of a database⁶³, doubts about which data relating to legal and natural persons could be published in the system⁶⁴, technical problems with linking the database to other databases⁶⁵, problems with identification of companies if they change legal form⁶⁶ and seeking out all the available information to deal with the complexity of risk assessment⁶⁷. The problems cited are similar to the ones

48 Poland.

49 Latvia.

50 Denmark, Germany, Austria, Slovenia and Sweden.

51 Germany. Article 8(2) of the Corruption Register Act.

52 Poland.

53 Latvia and Lithuania.

54 Denmark, Germany, Italy, Latvia, Lithuania and Sweden.

55 Denmark, Germany, Italy, Latvia and Sweden.

56 Denmark, Italy and Latvia.

57 Germany and Sweden.

58 Denmark, Germany (centralised at *Land* level), Italy, Lithuania, Malta, Austria, Poland, Slovenia and Sweden.

59 Germany, Malta, Austria and Sweden.

60 Denmark (in exceptional cases), Italy and Sweden.

61 Germany, Ireland, Greece, Spain, Italy, Latvia, Malta, Austria, Poland, Portugal, Slovenia, Slovakia and Sweden.

62 Slovakia.

63 Austria.

64 Lithuania.

65 Malta.

66 Austria.

67 Slovakia.

described in the Commission's second report on implementation of the Regulation establishing a system for identifying operators presenting a risk in connection with the EAGGF Guarantee Section⁶⁸.

There are also measures (instruments) for reliable beneficiaries, such as a specific database on reliable beneficiaries (“whitelist”), certification scheme or qualitative evaluation of results.

In Germany (Berlin), firms which have proved their technical capacity, efficiency and reliability may apply to be entered in a register of construction contractors and construction suppliers. Firms that have committed offences are removed from the register for a limited period and can be disqualified from being awarded public contracts.

In Italy any firm performing public works contracts worth more than €150 000 must hold a certificate. Qualified firms are entered in a computerised register at the Observatory for Public Works. A certificate (clearance) is also issued under anti-Mafia legislation.

Though it is not possible to discern a dominant model in the Member States amongst the range of databases described above, the examples show what is possible in this field. This overview also allows the Commission to consider whether the European early-warning and blacklisting policy needs improving and to look at ways of making the rules and procedures clearer and more transparent.

2.3. More transparent EU decision-making in financial management at EU level

Following the European Transparency Initiative⁶⁹, the new Article 30(3) of the Financial Regulation provides for transparency concerning the beneficiaries of funds deriving from the Community budget, irrespective of how those funds are managed. An annual retrospective publication will be produced on beneficiaries of the Structural Funds starting in 2008. This applies also for the common agricultural policy, for the expenditures of the European Agricultural Guarantee Fund (EAGF) from the financial year 2008, and for those of the European Agricultural Fund for Rural Development (EAFRD) from the 1st January 2007. Some Member States⁷⁰ applied this principle of transparency even before the reform of the Financial Regulation. The Commission hosts a central web portal with links to the relevant websites in Member States⁷¹. The Commission itself already publishes information on the beneficiaries of programmes which it manages directly⁷².

Providing the public with access to this financial information enables them to exert indirect control on the way in which the European funds are spent which helps ensure a better protection of the Communities’ financial interests.

⁶⁸ Report from the Commission to the European Parliament and the Council on the application of Regulation (EC) No 1469/95 (“blacklist”), COM(2005) 520; SEC(2005) 1333 of 20.10.2005.

⁶⁹ COM(2006) 194 final.

⁷⁰ For example, in 2006 information on the beneficiaries of the common agricultural policy was made available to the public in Belgium, Denmark, Estonia, France, the Netherlands, Portugal, Spain, Slovenia, Sweden and the United Kingdom.

⁷¹ http://ec.europa.eu/grants/beneficiaries_en.htm.

⁷² http://ec.europa.eu/public_contracts/beneficiaries_en.htm.

2.4. Improving accounting and control rules for a positive statement of assurance

In January 2006, the Commission adopted an action plan for an integrated internal control framework⁷³ taking account of the European Court of Auditors' opinion No 2/2004⁷⁴. This action plan is a contribution to the Barroso Commission's objective of achieving a positive statement of assurance by the Parliament on budget implementation.

Within this framework, the Commission's 2005 Report on the protection of the financial interests of the Communities and the fight against fraud⁷⁵ brought together some information on systems for certifying proper implementation of public expenditure in the Member States.

A number of the more significant developments that occurred in 2006 are described below⁷⁶.

The new Council Regulation on the Structural Funds adopted in July 2006 for the period 2007-2013, as well as the Council Regulation (EC) No 1290/2005⁷⁷ on the financing of the CAP, introduces several improvements to simplify and clarify the rules, which should provide the Commission, the Court of Auditors and the Parliament with better guarantees that the money has been well spent. An evaluation of the Member States' control components, as well as indicators of legality and irregularity, have been set up.

The monitoring of payment bodies has been strengthened where management is shared, and provision has been made for a regular revision mechanism with regard to agriculture and the Structural Funds.

The Welsh and Austrian authorities signed a "contract of confidence" with the Commission in 2006. This is a voluntary arrangement between the Commission and the authorities of a Member State to guarantee the quality of audit work on current programmes under the Structural Funds until 2008. The conclusion of such a contract indicates that the Commission has obtained assurances regarding the proper functioning of the management and control system, the audit strategy and the quality of the annual audit report. Negotiations on "contracts of confidence" with other Member States are well advanced.

In 2006, the Netherlands adopted an initiative for the provision of a national declaration of assurance at political level on Community funds in line with the

⁷³ Communication from the Commission to the Council, the European Parliament, and the Court of Auditors: Commission Action Plan towards an Integrated Internal Control Framework, COM(2006) 9 and SEC(2006) 49. The framework of integrated control means monitoring systems and complementary control that are sufficient to give a reasonable assurance that the risk of error is properly managed at all operational levels.

⁷⁴ Opinion No 2/2004 of the Court of Auditors of the European Communities on the "single audit" model (OJ C 107, 30.4.2004).

⁷⁵ COM(2006) 378 final.

⁷⁶ See also the first report on the progress of the Action Plan, COM(2007) 86 final.

⁷⁷ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ L 209, 11.8.2005).

European Parliament and Commission proposals. The Commission thinks that this initiative could pave the way for other similar initiatives.

2.5. Hercule action programme to promote activities in the field of the protection of the Community's financial interests

The programme is intended to help to promote activities relating to the protection of the Community's financial interests⁷⁸. In June the Commission proposed amending the Hercule programme and extending it to the end of 2013⁷⁹.

In 2006, the programme awarded cofinancing grants to eleven training projects, five seminars, one study on comparative law and 23 technical-assistance projects.

The Commission proposed increasing the programme's financial allocation by €44 million for the period 2007-13 (€6 million for 2007), in particular to finance training measures and equipment purchases to combat cigarette smuggling under the cooperation agreement signed with the cigarette manufacturer, Philip Morris International.

3. COMBATING FRAUD

3.1. Detection of fraud: warning systems involving internal informants (whistleblowing)

Civil servants and other staff of administrative authorities are the best placed to realise what the risks are and thus to prevent and combat fraud. The treatment of whistleblowers has changed considerably in recent years in some Member States, as it has in the European Union and various international organisations.

3.1.1. European institutions

In 1999, the European institutions introduced rules requiring any official or other staff member who suspects serious wrong-doing to inform their head of department or Director-General or, if appropriate, to go direct to the Secretary-General of the Commission or to OLAF⁸⁰.

In 2004, a new article was added to the Staff Regulations of officials of the European Communities and Conditions of Employment of other servants of the European Communities. Article 22a of the Staff Regulations incorporates the obligation laid down in the 1999 decision⁸¹.

⁷⁸ http://ec.europa/anti-fraud/programmes/index_en.html.

⁷⁹ COM(2006) 339. At the time of writing, this proposal had not yet been adopted by the Council and the Parliament.

⁸⁰ Article 2 of the inter-institutional agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission concerning internal investigations by OLAF (OJ L 149, 16.6.1999).

⁸¹ "Any official who, in the course of or in connection with the performance of his duties, becomes aware of facts which gives rise to a presumption of the existence of possible illegal activity, including fraud or corruption, detrimental to the interests of the Communities, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of

The Staff Regulations also provide for the protection of whistleblowers, providing that: "an official shall not suffer any prejudicial effects [...] as a result of having communicated the information [...] provided that he acted reasonably and honestly."

Amongst its measures relating to good conduct on the part of officials and other servants of the European Communities, the Commission provided its staff with training on how to pass on information about any potential fraud or other irregularities which they may detect.

In 2006, no OLAF investigations were launched as the result of information received direct from a whistleblower.

3.1.2. *Member States*

In their contributions to this report, all Member States indicated that they had adopted legal provisions or practices entitling or requiring civil servants and other public administration employees to pass on information discovered in the course of their duties if they suspect that an irregularity, fraud, corruption or malpractice may have been committed in the organisation where they work. These provisions and practices help to protect public funds, including European funds.

In most Member States⁸², it is primarily criminal law provisions which require civil servants to report infringements detected in the course of their duties. In addition there are also often⁸³ provisions in codes of conduct, circulars and manuals which set out rules and procedures for the application of this duty to inform. In eleven Member States⁸⁴, there is no obligation under criminal law to inform the authorities of irregularities detected or suspected; the obligation is imposed only by administrative law.

The obligation to inform is often very general and relates to any suspicion of irregularity. In some circumstances it is limited to the most serious cases, such as criminal offences. One Member State⁸⁵ said that the obligation to inform was greater for offences affecting public finances and EU financial interests in particular.

In all systems but two⁸⁶, when a staff member becomes aware of a fact that must be reported, the information must be passed first to his/her direct superior (or indirect superior where the circumstances justify it⁸⁷). It is this superior who passes the information on to the competent authorities where necessary. In some cases the staff member may also report the facts directly to an independent internal department,

the Communities shall without delay inform either his immediate superior or his Director-General or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or the European Anti-Fraud Office (OLAF) direct."

⁸² Belgium, the Czech Republic (where the Labour Code also contains relevant provisions), Estonia, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Poland, Portugal, Slovenia and Slovakia.

⁸³ Belgium, Estonia, Spain, Italy, Luxembourg, the Netherlands, Austria, Poland, Slovenia and Slovakia.

⁸⁴ Denmark, Germany, Ireland, Cyprus, Latvia, Lithuania, Hungary, Malta, Finland, Sweden and the United Kingdom.

⁸⁵ Spain.

⁸⁶ Greece and Sweden.

⁸⁷ Latvia, the Netherlands and Slovenia.

such as the internal audit department⁸⁸ or internal supervisory authority⁸⁹, without going via his/her superior. In other cases, as well informing his/her superior, the staff member may also inform an external authority such as the police⁹⁰, the public prosecutor's office⁹¹, the fund-managing authorities⁹² or an external supervisory authority⁹³.

The information may be communicated in different ways: by letter, telephone, e-mail or fax. In one Member State, the informant must be identifiable when there is an obligation to report the offence⁹⁴. In two others, information can be provided anonymously⁹⁵. In five Member States information must be submitted in writing⁹⁶. Two Member States have Internet⁹⁷ notification systems, another one has a specific e-mail for informants⁹⁸ and five Member States have set up a free-phone system⁹⁹.

In many cases, staff who discover a serious irregularity within the administration may fear reprisals from the people involved. To lessen this fear and encourage informing, various kinds of protection are offered: protection against dismissal¹⁰⁰, non-liability for financial damage caused by informing¹⁰¹, non-disclosure of the identity of the informant¹⁰², protection by the ombudsman on request¹⁰³. Standard employment law may also offer some protection: the requirement that unfavourable decisions against an employee be justified¹⁰⁴, the requirement that administrations protect their staff against any form of injustice or violence¹⁰⁵.

When a judicial procedure is underway, the informant may ask for witness protection under the procedure provided for by the law¹⁰⁶, particularly where he/she or another person is in serious danger. One Member State¹⁰⁷ said that an informant has the right to be informed within a reasonable period of the action taken on his report and the right to appeal to an independent authority if he/she is not satisfied with the action taken. Some legal systems impose further conditions for protecting the informant in

88 Belgium (Flemish Region), Ireland (for agriculture) and Malta. In Sweden, staff of the Swedish National Audit Office must report to the internal audit unit.

89 Denmark, Lithuania ("irregularities inspector") Hungary ("person responsible for irregularities within the organisation") and Austria (an official responsible for combating corruption).

90 Denmark, Italy.

91 France, Italy and Slovakia. In Greece, civil servants must report offences to the public prosecutor's office.

92 Latvia, Malta and Poland.

93 The Netherlands and Portugal (disciplinary authority).

94 Belgium.

95 Germany and Slovenia.

96 Greece, Italy, Cyprus, Luxembourg and Malta.

97 Lithuania (Structural Funds and Cohesion Fund). In Germany, Lower Saxony and Hanover already have such a system and a national system is due to be set up soon.

98 Poland.

99 The Czech Republic, Latvia, Austria, Portugal and the United Kingdom.

100 Spain and Ireland.

101 Ireland.

102 Ireland and Finland.

103 Belgium, Flemish Community.

104 Denmark and Latvia.

105 France and Austria.

106 Czech Republic, Luxembourg, Portugal, Slovenia and Slovakia.

107 The Netherlands.

addition to his/her having acted reasonably and in good faith – for example that the irregularity gives rise to a real risk of harm¹⁰⁸.

3.2. The European Anti-Fraud Office (OLAF)

OLAF was established in 1999 to protect the financial interests of the European Union and the reputation of the European institutions. The office was restructured in 2006 on the basis of experience acquired in the first years of its operation, in order to strengthen its effectiveness.

In May 2006, the Commission adopted a proposal for a Regulation amending the Regulations on OLAF investigations¹⁰⁹ replacing a proposal dating from February 2004¹¹⁰. This new proposal takes account of the recommendations of the Court of Auditors and aims at improving the governance and the effectiveness of OLAF, and procedural laws. The proposal was transmitted to the Parliament and the Council for examination under the co-decision procedure.

3.3. Developing mutual assistance

A proposal for a Regulation amending the Regulation on mutual assistance on agriculture and customs matters¹¹¹ adopted by the Commission in December 2006 proposes extending the customs information system database¹¹² to enable it to be used in national analysis systems so that controls on goods can be targeted and action coordinated at Community level. The only way to prevent crime growing in these fields is to constantly improve the available instruments or innovate. The proposal aims to improve operational cooperation on customs matters and provide an interface between customs authorities, regional and international organisations (Interpol, the WCO¹¹³ and Europol etc.) and EU bodies and agencies. It provides for the creation of a customs file identification database¹¹⁴ and a European central directory of data from the principal service providers worldwide for the international carriage of goods and containers¹¹⁵. It establishes a legal basis for the management of a permanent infrastructure for coordinating joint customs surveillance operations, making it possible for representatives or liaison officers of the Member States to be hosted at OLAF during the operational phase.

An amended proposal adopted in September 2006¹¹⁶ aims to establish a new, more complete and multidisciplinary mutual administrative assistance framework for the protection of the financial interests of the European Community against fraud and

¹⁰⁸ Latvia and Austria.

¹⁰⁹ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti Fraud Office (OLAF) COM(2006) 244 final.

¹¹⁰ COM(2004) 103 and 104.

¹¹¹ COM(2006) 866 amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, OJ L 82, 22.3.1997.

¹¹² CIS - Customs Information System.

¹¹³ World Customs Organisation.

¹¹⁴ FIDE – Customs File Identification Database.

¹¹⁵ EU Container Targeting System.

¹¹⁶ COM(2006) 473.

any other illegal activities. For this purpose, the proposed Regulation requires Member States and the Commission to cooperate, coordinate and assist each other and exchange information to allow swift investigations and appropriate action. The proposal does not give the Commission any investigative powers of its own, but offers Commission assistance to the Member States (service platform) for cases of cross-border fraud, like carousel frauds with VAT. The proposal sets out to optimise the use of information available, for example by using financial information from anti-money laundering for the fight against fraud detrimental to the Community's financial interests.

3.4. Combating cigarette smuggling and counterfeiting

In 2006, six more Member States¹¹⁷ signed up to the Agreement concluded in 2004 between the Commission, ten Member States¹¹⁸ and the cigarette manufacturer, Philip Morris International (PMI); by the end of December 2006, twenty-four Member States were parties to the Agreement¹¹⁹. The United Kingdom is now the only Member State which has not signed up to the Agreement. The Agreement provides for an effective system to combat cigarette smuggling and counterfeiting. It improves the exchange of information between the parties on seizures of smuggled or counterfeited cigarette consignments (bearing Philip Morris trademarks) and day-to-day communication between them on operations covered by the Agreement.

Among the principal aspects of the Agreement are the “tracking and tracing” protocols on cooperation between OLAF and the Member States on one side and PMI on the other. This cooperation involves tracking and tracing cigarettes to determine where they left the supply chain and fell into the hands of smugglers.

Under the agreement, approximately USD 1 billion will be paid over a period of twelve years to the European Communities and the ten Member States that signed the Agreement in July 2004. Between the signing of the agreement and the end of 2006 PMI paid out approximately USD 425 million. In October 2006 the original ten signatory Member States and the Commission, acting for the EC, confirmed their agreement on the distribution of these payments. The amount paid into the Community budget is 9.7% of the amount received, the rest being transferred to the Member States' budgets.

3.5. Protecting the euro

The Commission continued to coordinate the efforts of the Member States to protect the euro against counterfeiting in close cooperation with Europol and the European Central Bank.

OLAF also manages the Pericles action programme for exchanges, assistance and training intended to protect the euro against counterfeiting¹²⁰. This programme co-finances trans-national and multidisciplinary projects. It is intended to raise awareness among the staff concerned with the Community dimension of the euro, to

¹¹⁷ Cyprus, the Czech Republic, Estonia, Latvia, Hungary and Sweden.

¹¹⁸ Belgium, Germany, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Portugal and Finland.

¹¹⁹ With Romania and Bulgaria, which joined the Agreement in March 2007, the number is twenty-six.

¹²⁰ http://ec.europa/anti-fraud/programmes/pericles/2006/index_en.html.

bring the structures and staff concerned closer together and to develop a climate of mutual trust, to achieve similar high standards of training for trainers and to expand general knowledge, particularly with regard to relevant Community and international law and instruments. In 2006 twelve projects were launched, including nine proposed by the competent authorities of the Member States and three by the Commission/OLAF.

In view of its success, the programme was extended to the end of 2013¹²¹.

3.6. Initiatives taken by certain Member States in 2006

Several Member States stated that they had adopted new laws to combat VAT fraud in 2006. In Denmark, stricter rules are now applied for the activation of guarantees and liquidation of companies involved in carousel-type fraud. Italy adopted a law imposing more severe criminal penalties for VAT fraud. In Slovenia, a "missing trader" may now be penalised by cancellation of its VAT registration. A new Portuguese law introduces measures to combat VAT fraud in the waste sector. Some Member States have taken measures to reinforce joint liability for non-payment of VAT¹²².

The Czech Government adopted a resolution on the anti-corruption strategy for 2006-11.

Some Member States adopted bilateral agreements on mutual assistance in customs matters with other Member States or with third countries in 2006¹²³.

4. RECOVERY

4.1. Agriculture

4.1.1. The work of the Task Force Recovery

In 2002, the Commission announced the setting-up of a Task Force Recovery (TFR) to examine the considerable backlog of recovery cases concerning the EAGGF Guarantee Section.

The Agriculture and Rural Development Directorate-General and OLAF's joint TFR was responsible for 463 cases involving more than €500 000 each and 3 227 cases involving less than €500 000 each, following an irregularity reported to the Commission prior to 1999. The situation with regard to TFR's work at 31 December 2006 can be summarised as follows.

(a) Cases involving more than €500 000 each.

¹²¹ Council Decision 849/2006 of 20 November 2006 modifying and extending the Decision 2001/923/EC establishing an action programme for exchanges, assistance and training in order to protect the euro against counterfeiting (Pericles programme).

¹²² Belgium and Denmark with regard to the liability of company directors, and Spain regarding the joint liability of consortia.

¹²³ Belgium signed agreements with Belarus and Congo, Portugal with Spain, and Slovakia with Slovenia, Albania and Israel.

On 3 October 2006, a first formal Commission Decision¹²⁴ was taken concerning financial liability in 349 cases of non-recovery totalling approximately €895 million. This Decision cleared from the debtors' lists:

- 41 cases involving €176 million, charged to the Community budget because the Member States had taken all necessary measures, which meant that the non-recovery could not be attributed to them;
- 164 cases involving €317 million, charged to the relevant Member States as a result of negligence on their part in the recovery procedure;
- 144 cases involving approximately €402 million, removed from the debtors' list as non-cases or double entries.

Clearance has yet to take place for the 114 cases remaining.

- 59 cases, involving €11.9 million, in which the Commission found that the Member States concerned had shown due diligence in the recovery procedure, which was still ongoing;
- 55 cases totalling €28.6 million in which the clearance of accounts procedure is still ongoing but should be completed in 2007.

In addition, on 13 October 2006, the Commission adopted a decision¹²⁵ concerning €6 653 487 for 50 cases concerning Belgium, Germany, Ireland, France, the Netherlands, Portugal and the United Kingdom. This sum was charged to the Community budget as the Member States had shown due diligence in their recovery efforts.

(b) Cases involving less than €500 000 each. Regulation (EC) 1290/2005 introduced an automatic clearance mechanism for irregular payments not recovered within four years of the primary administrative or judicial finding or within eight years where recovery action is taken in the national courts. In that case, 50% of the financial consequences of non-recovery are borne by the Member State in question and 50% by the Community budget.

The new mechanism has been in operation since 16 October 2006 and covers all cases of non-recovery open at that date, including the 114 cases referred to above and cases reported by the Member States before 31 December 1998 involving less than €500 000 each. Accordingly, all irregularities from before 2003 (1999 where recovery action is taken in the national courts) involving money not recovered by 16 October 2006 were cleared in 2007 using the 50%-50% rule. The Commission applied the rule for the first time in the account-clearance decision adopted in April 2007¹²⁶.

¹²⁴ Commission Decision 2006/678/EC of 3 October 2006 (OJ L 278, 10.10.2006, p. 24).

¹²⁵ C(2006) 4801.

¹²⁶ Commission Decision 2007/327/EC of 27 April 2007, OJ L 122, 11.5.2007.

4.1.2. *Financial corrections*

In addition to the recovery activity described above, the Commission also excluded certain expenditure incurred by Member States' approved paying agencies from financing under the EAGGF-Guarantee section, because they were not in conformity with Community rules. Following checks and bilateral meetings between the Commission and the competent authorities of thirteen Member States, the Commission excluded expenditure of some €75.5 million from European financing in three 2006 decisions¹²⁷.

The Commission also excluded expenditure of more than €00 000 from Community financing with regard to the SAPARD agencies of two countries¹²⁸.

4.2. **Structural Funds**

In the area of the Structural Funds, the recovery of unduly paid amounts due to irregularity or fraud is carried out by Member States. The recovery of those amounts at Commission level can be done by reduction or cancellation of the financial contribution with the possibility of a transfer of funds to other operations.

The programmes co-financed by the Structural Funds are multi-annual and based on interim payments. Recovery of amounts unduly paid may take place before or after conclusion of the programme. For the 1994-99 programming period, the deadline for presentation of the request for final payment to the Commission was 31 March 2003. In that period, the Community cofinanced around 1 000 programmes worth around €159 billion in total¹²⁹. The Commission's authorising and managing departments (DGs REGIO, EMPL, AGRI, FISH), assisted by the European Anti-Fraud Office, are responsible for administrative and financial follow-up once these programmes have been concluded. This follow-up is based in particular on the reports of irregularities sent in by the Member States in accordance with Regulation No 1681/94¹³⁰ and recorded in the External Communications Registry database.

In the 1994-99 programming period, the Member States communicated 11 573 cases of irregularities with a financial impact of approximately €1.452 billion¹³¹ for the Community contribution.

Of these cases, 5 488 have been closed definitively at Commission level and the amount of €600 million was taken into account during final payment. Member States informed the Commission that administrative and judicial procedures had been concluded at national level for a further 2 016 cases relating to the same period, with a financial impact of €173 million. The Commission departments have started reconciliation procedures with a view to closing these cases.

¹²⁷ Decision 2006/334/EC, 2006/554/EC and 2006/932/EC, OJ L 124, 11.5.2006, OJ L 218, 9.8.2006 and OJ L 355, 15.12.2006.

¹²⁸ Commission Decisions C(2005)3702 and C(2006)2405, not published in the Official Journal.

¹²⁹ These are multiannual programs. This figure does not include projects directly financed under the Structural Funds and projects co-financed under the Cohesion Fund.

¹³⁰ OJ L178, 12.7.1994.

¹³¹ Situation according to the data contained in the ECR database at 18 May 2007.

Concerning the 2000-06 programming period, the Member States have so far communicated 8 733 cases of irregularities with a financial impact of approximately €1.156 billion for the Community contribution.

Member States have informed the Commission that administrative and/or judicial procedures have been concluded at national level for 3 686 of these and that some €345 million has been recovered.

In 2006, the financial correction figure was €02 million for the 1994-99 programming period and €21 million for the 2000-06 period. The financial corrections are the result of audits by the Commission and the Court of Auditors and the closure procedure for programmes from the 1994-99 period. They consist of official financial correction decisions following the detection of an irregularity, decommitments on programme closure resulting in a reduction in Community financing because the Member State did not declare sufficient eligible expenditure, and reimbursement of amounts recovered following the completion of court cases still pending when the programmes in question were closed. The figures do not include financial corrections that did not result in recovery, such as corrections made when a Member State detected an irregularity or accepted the financial correction proposed by the Commission and the irregular amount was reallocated to another project.

4.3. Own resources

The Member States must recover established amounts relating to irregularity cases registered in the OWNRES system. On 30 March 2007, the recovery rate for cases communicated in 2006 was 32% (approximately €13 million).

For various reasons, it is possible that the amount initially established may not be recovered in full, in spite of the Member States' efforts, for example when the amount becomes irrecoverable because of the insolvency of the debtor, or when it is modified because of new information received or following judicial proceedings.

When non-recovery of an established debt is not attributable to a Member State, the Member State may request that the irrecoverable amount be written off. In 2006, the Commission refused Member States' write-off requests in 59 cases, worth approximately €4.6 million, because it deemed that non-recovery was attributable to the Member States.

Moreover, certain Member States were held financially responsible for a total of some €3.4 million because they did not establish customs debts where they should have.

4.4. Recovery following an OLAF investigation

Where an OLAF investigation finds that certain sums have probably been paid to a beneficiary against the rules or that sums that should have been collected have not been, the relevant authorities (generally the authorities in the Member States or third countries concerned) must recover the amounts in question. In 2006, almost €14 million was recovered following OLAF investigations.

Table 4: Recovery following an OLAF investigation

Sector	Recovery 2006
Customs	0.1
Agriculture	1.2
Structural Funds	17.2
Direct expenditure	93.1
Internal investigations	2.2
Total	113.8

4.5. National legislation on the recovery of EU funds

The last annual report gave an overview of the Member States' recovery procedures. Analysis of the contributions showed that recovery by offsetting, generally understood to mean clearing a claim and a debt which cancel each other out, is possible in nearly all the Member States for public funds. Offsetting is a very effective way of recovering public funds, which is why the 2006 questionnaire set out to clarify some aspects of the mechanism.

In principle, all legal systems provide for the offsetting of a debt and a claim which fall under the same Community fund¹³². However, this does not apply where the debt and the claim fall under different Community funds; in this case offsetting is only possible in half of the Member States¹³³.

Within the Guarantee Section of the EAGGF, offsetting a debt and a claim relating to different agricultural sectors is possible under nearly all the national legal systems¹³⁴. Those Member States which use offsetting for the Structural Funds and Cohesion Fund generally only apply it within the same programme. Offsetting is possible between different programmes in just ten Member States¹³⁵. It is possible between different programming periods in just ten Member States¹³⁶. In four Member States, offsetting is possible even where the recovery and the payment do not come under the same paying agency¹³⁷.

¹³² However, in some Member States (Czech Republic, Greece, Luxembourg, Hungary and Malta) offsetting is limited to the agricultural sector.

¹³³ Belgium (Flemish Government), Denmark, Germany, Ireland (between the two sections of the EAGGF, but not used in practice), Spain, France (between the two sections of the EAGGF), Italy, the Netherlands, Poland (where the funds are managed by the same body), Portugal, Slovakia and Sweden.

¹³⁴ Exceptions: Estonia, Malta and Slovenia. In Austria, offsetting is possible, but only within the same paying agency.

¹³⁵ Belgium, Denmark, Germany, Ireland, Spain, Italy, the Netherlands, Poland, Portugal and the United Kingdom.

¹³⁶ Belgium, Denmark, Germany, Ireland, Spain, Italy, the Netherlands, Poland, Finland and the United Kingdom.

¹³⁷ Belgium (Flemish Region), Denmark, Germany and Italy.

In most Member States a Community debt and a national claim can be offset and vice versa¹³⁸.

Some Member States have statistics on their recovery practices, which they communicated to the Commission in the context of this report. They show that some Member States use offsetting regularly. For example, over the last three years recovery by offsetting accounted for between 75% and 90% of all public funds recovered in the agricultural sector in Ireland, between 73% and 94% for livestock premiums in France, approximately 90% in the agricultural sector in Austria, more than 50% in the agricultural sector and between 21% and 93% for the European Social Fund in Sweden¹³⁹. These figures include national funds but a considerable proportion is accounted for by European funds recovered by offsetting.

While offsetting is used extensively in some Member States to recover Community funds, it is used much less in other Member States, even though it would be legally possible under certain conditions. The Commission can only encourage the use of this very effective instrument for recovering Community funds wherever possible. To increase the use of offsetting, the authorities responsible for recovery could be given access to databases, such as those belonging to other paying agencies or central databases, as is already the case in some Member States¹⁴⁰.

¹³⁸ It is not possible in Greece, Latvia, Lithuania, Malta, the Netherlands, Austria, Finland, Sweden or the United Kingdom. In some Member States, this type of offsetting is confined to the agricultural sector. In Slovenia and Slovakia it is possible to offset a debt to the Community budget with a national claim, but not the other way round.

¹³⁹ For all the statistics provided by the Member States, see SEC(2007)930.

¹⁴⁰ Belgium (Walloon Region), Czech Republic, Denmark, Estonia, Greece, France, Italy, Latvia, Lithuania, Poland, Sweden and the United Kingdom.