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**COMMISSION STAFF WORKING DOCUMENT**

*Annex to the*

**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**

**Implementation of Article 280 of the Treaty by the Member States in 2006**

[COM(2007) 390]

[SEC(2007) 938]

This document is intended to accompany the Commission's Annual Report for the year 2006<sup>1</sup> on the protection of the European Communities' financial interests and fight against fraud which is drafted in accordance with Article 280 of the Treaty.

In this document the services of the Commission make available all the answers given by the Member States to a questionnaire sent to them in preparation for the 2006 Annual Report.

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<sup>1</sup> COM(2007)390.

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## IMPLEMENTATION OF ARTICLE 280 OF THE EC TREATY BY THE MEMBER STATES IN 2005

### INTRODUCTION

The protection of the European Communities' financial interests and the fight against fraud is an area in which responsibility is shared between the Community and the Member States. Consequently, each year the Commission draws up a report in cooperation with the Member States on the measures taken to implement this obligation, according to article 280 of the EC Treaty. This report is addressed to the European Parliament and the Council and is published.

The Commission bases its report on the measures taken by Member States described in their replies to the "Article 280" questionnaire. This questionnaire covers the period from 1 January to 31 December 2006.

The present document lists all the answers of Member States to the 2006 questionnaire.

Over time the report had become more and more voluminous. Both the Council and the European Parliament were concerned that its size was increasing and that it's being annual, horizontal and multisectoral hampered a detailed assessment of all the aspects of the protection of the Community's financial interests by the Member States. Since 2003, the Commission has therefore applied a new approach. After the traditional question asking Member States to report on new measures taken in 2006, the questionnaire focuses on a few major themes. The aim is to gather information on topics which go beyond the measures taken in the course of a calendar year, thereby allowing a more detailed analysis of these topics. The topics change from year to year.

As always, the **first part of the questionnaire** asks Member States to list the legal **instruments that give effect to Article 280**, i.e. measures to combat fraud and all illegal activities affecting the financial interests of the Community in the areas of own resources, agricultural expenditure and structural measures. The Member States has been asked to list only national measures and not those which simply transpose Community legislation, and to do so in brief so as to reduce the volume of the staff working document which incorporates the replies from the 25 Member States. At the end of this first question, Member States have the opportunity of giving a more detailed description of a few measures which they consider to have been the most important in the calendar year. As in the 2005 report, also this year the question on own resources covers not just traditional own resources but also VAT. Some Member States indicated to have a reservation about the inclusion of VAT in the questionnaire, so it has been agreed that it is open to Member States to answer this question. This year the United Kingdom expressed a reservation on the inclusion of VAT in the questionnaire.

The **second question** concerns a specific topic, covering certain aspects of the **analysis and management of financial risks** in the Member States. The protection of the financial interests of the Communities, as provided for by Article 280 of the EC Treaty, also comprises a preventive aspect. By identifying risks of fraud and other illegal activities potentially threatening Community expenditure in advance, the (national and Community) authorities managing Community expenditure can take the requisite measures to ensure that expenditure is not diverted from its original objective. Given the breadth of the topic of risk assessment and management, this questionnaire addresses more specifically two aspects – the

**establishment of databases on risky beneficiaries** (“black lists”) and the **rules governing the use of internal whistleblowers** in administrative authorities.

The **third part** of the questionnaire concerns the second specific theme for the year, namely the **recovery of sums wrongly paid**. Where a fraud or other irregularity has been committed in relation to Community expenditure, the relevant administrative authority must recover the amount lost. The Member States provided information on this subject in the 2005 report. Analysis of that information has revealed that recovery by offsetting is practised in nearly all Member States. A number of practical issues concerning offsetting which were not dealt with specifically in last year’s questionnaire are covered in more detail this year.

<p><b>1.1. Horizontal developments:</b></p>	<p><b>Have there been any significant new legislative horizontal developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.</b></p>
	<p><b>If so, please indicate below:</b></p> <ul style="list-style-type: none"> <li>– <b>Type of instrument</b> (e.g. law, regulation, decree),</li> <li>– <b>References of the legal instrument</b> (number/date of publication in Official Gazette, etc.),</li> <li>– <b>References of the legal instrument or code that is amended</b> (if any),</li> <li>– Title of the legal instrument or a brief description (no longer than one or two sentences).</li> </ul>
<p><b>BE</b></p>	<p><b>Federal Public Services (FPS)PUBLIC FINANCE DEPARTMENT</b></p> <p><b>I. Customs</b></p> <p>1. The Act of 22 August 2006 (Moniteur belge / Belgisch Staatsblad, 6 December 2006) assented to the Convention on Mutual Administrative Assistance in customs matters between the Government of the Kingdom of Belgium and the Government of the Russian Federation, signed at Brussels on 2 October 2001.</p> <p>The Convention came into force on 1 December 2006.</p> <p>2.The Act of 5 August 2006 assented to the Bilateral Agreement on Mutual Administrative Assistance in customs matters between the Government of the Democratic Republic of the Congo and the Government of the Kingdom of Belgium, signed at Brussels on 12 February 2004.</p> <p>The Agreement has not yet been published and is not yet in force.</p> <p>3. On 27 October 2006 the Moniteur belge / Belgisch Staatsblad published the Royal Order of 5 October 2006 laying down measures for the control of cross-border transport of cash, which will apply from 15 June 2007.</p> <p>The first Chapter of the Order simply transposes Parliament and Council Regulation (EC) No 1889/2005 of 26 October 2005 on controls of cash entering or leaving the</p>

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The second Chapter transposes Special Recommendation IX of the Financial Action Task Force to combat money laundering and terrorist financing (FATF) as regards the cross-border transport of cash within the Community. FATF Special Recommendation IX requires Member States to introduce effective controls on cross-border cash movements above a specified threshold and to provide for penalties for breaches. It includes provisions implementing the Legislative Decree of 6 October 1944 organising the control of all transfers of goods and securities between Belgium and foreign countries.

**II. Direct taxes**

A. Measure to improve the use made of results of checks and inspections from abroad

Addition of a subsection 3 in section 358 of the Income Tax Code (Programme Act of 20 July 2006, section 4, Moniteur belge / Belgisch Staatsblad, 28 July 2006) extending the period within which the tax or surtax must be established for results of checks and inspections from abroad. The time allowed is now 24 months from the date on which the Belgian authorities acquired knowledge of the results of the checks and inspections.

B. Measure to allow firms to be closed down for a specified period in certain specific circumstances

Addition of a section 421bis in the Income Tax Code 1992 and a section 88ter in the Value Added Tax Code (Programme Act of 27 December 2006, section 9, Moniteur belge / Belgisch Staatsblad, 28 December 2006).

C. Measure introducing a system of joint liability of business managers in the event of specific breaches committed by the managers of their firms

Addition of a section 442quater in the Income Tax Code and a section 93undecies C in the Value Added Tax Code (Programme Act of 20 July 2006, sections 14 and 15, Moniteur belge / Belgisch Staatsblad, 28 July 2006).

D. Measure introducing a system of joint liability of company shareholders in certain specific circumstances



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	<p>Addition of a section 442ter in the Income Tax Code 1992 (Programme Act of 20 July 2006, section 23, Moniteur belge / Belgisch Staatsblad, 28 July 2006.)</p> <p>E. Measure to combat international fraud and boost international exchanges of information, in relation to undeclared commissions</p> <p>Adaptation of section 57(1°) of the Income Tax Code 1992 so that commissions, price reductions, trade discounts etc., paid or given on or after 01.01.2006, cannot be treated as professional costs unless they are vouched for by presentation of individual vouchers and a summary account drawn up in the form and within the period prescribed by His Majesty (Miscellaneous Provisions Act, 20 July 2006, sections 42 to 46, Moniteur belge / Belgisch Staatsblad, of 28 July 2006)</p>
<p><b>CZ</b></p>	<p>An Act No 575/2006 amending Act No 353/2003 on excise duties was adopted. The aim of the amended act is to prevent tax evasion in respect of mineral oils, alcohol, beer and tobacco products.</p> <p>Czech Government Resolution No 1199/2006 on the Government's Anti-Corruption Strategy for the period 2006-2011</p>
<p><b>DE</b></p>	<p>The Land of Berlin enacted the Act to introduce and maintain the register of corrupt firms in Berlin (Corruption Register Act – KRG) of 19 April 2006, published in the Berlin Law Gazette, Vol. 62, No. 16, 3.5.2006.</p> <p><a href="http://www.kulturbuch-verlag.de/Online/Gvbl/pdf/2006/heft16/16re.pdf">http://www.kulturbuch-verlag.de/Online/Gvbl/pdf/2006/heft16/16re.pdf</a>.</p> <p>The purpose of the Act is to establish a central information point and thereby gather and present information on the reliability of natural and legal persons in a register to support the efforts of public procurement authorities in the exercise of their duty to verify the reliability of tenderers, applicants and actual and potential contractors.</p>
<p><b>EL</b></p>	<p>Law 3481/06 (Government Gazette 162/31-08-2006) “Amendments to the legislation on the national land and property register with regard to the awarding and implementation of contracts for works and studies and other provisions”</p>
<p><b>ES</b></p>	<p>- LAW 36/2006 of 29 November 2006 on measures for the prevention of tax fraud (Official State Gazette No 286 of 30 November 2006).</p> <p>- ROYAL DECREE 887/2006 of 21 July 2006 adopting the Regulation under Law 38/2003 of 17 November 2003, the General Law on Grants (Official State Gazette</p>

<p><b>1.1. Horizontal developments:</b></p>	<p><b>Have there been any significant new legislative horizontal developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.</b></p>
	<p>of 25 July 2006).</p> <ul style="list-style-type: none"> <li>- LAW 16/2006 of 26 May 2006 regulating Spain's status as a national member of Eurojust and relations with Eurojust as an EU body (Official State Gazette No 126 of 27 May 2006).</li> <li>- LAW 18/2006 OF 5 June 2006 on the efficacy within the European Union of freezing orders and orders for the securing of evidence in criminal proceedings (Official State Gazette No 134 of 6 June 2006).</li> <li>- ORGANIC LAW 5/2006 of 5 June 2006 supplementing the Law on the efficacy within the European Union of freezing orders and orders for the securing of evidence in criminal proceedings, amending Organic Law 6/1985 of 1 July 1985 (Official State Gazette of 6 June 2006), promulgated by the judiciary.</li> </ul>
<p><b>IT</b></p>	<p><b>Law No 286 of 24 November 2006</b> amending and converting into law Decree Law No 262 of 3 October 2006 establishing urgent provisions on taxation and financial matters, published in the Official Gazette of the Italian Republic (GURI), general series, No 223/L, ordinary supplement to No 277 of 28 November 2006:</p> <ul style="list-style-type: none"> <li>– <b>Article 1:</b> Assessment, tackling tax evasion and avoidance, and strengthening the Financial Economic Administration.</li> <li>– <b>Article 2, paragraph 9:</b> inserted Article 48a into Presidential Decree (DPR) No 602 of 29.09.1973.</li> </ul> <p>In addition, <b>Law No 296 of 27 December 2006</b> on provisions for establishing the annual and multiannual state budget (2007 Finance Act) published in GURI No 299 of 27 December 2006, ordinary supplement No 244, states in paragraphs 1213 to 1222 that any financial consequences arising from the infringement of Community legislation are subject to state compensation from the non-state public bodies responsible, referring in particular to the following situations:</p> <ul style="list-style-type: none"> <li>– judgment handed down by the European Court of Justice within the meaning of Article 228(2) of the Treaty establishing the European Community;</li> <li>– financial regulations applied by the European Commission on the basis of specific supranational rules in cases of gross negligence detected in the national management of Community structural funds.</li> </ul>

<p><b>1.1. Horizontal developments:</b></p>	<p><b>Have there been any significant new legislative horizontal developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.</b></p>
<p><b>LV</b></p>	<p><b>Act on the European Union's Financial Instruments: the PHARE Programme and the Transition Facility</b>, adopted on 15 June 2006. This Act lays down:</p> <ol style="list-style-type: none"> <li>1) the officials responsible for the PHARE Programme and the Transition Facility, their rights and obligations;</li> <li>2) provision for the management of the PHARE Programme and the Transition Facility;</li> <li>3) adoption of and appeal against decisions by officials responsible for the PHARE Programme and the Transition Facility within the framework of a grant scheme;</li> <li>4) other issues related to the management of the PHARE Programme and the Transition Facility (restrictions on persons involved in managing the PHARE Programme and the Transition Facility; information accessibility; State fees).</li> </ol> <p>Pursuant to the delegation under the Act the following Cabinet regulations have been approved:</p> <ul style="list-style-type: none"> <li>– procedures for determining priorities and for drawing up and selecting project applications;</li> <li>– procedures for the implementation, monitoring and assessment of the PHARE Programme and the Transition Facility;</li> <li>– procedures for preparing and submitting reports aimed at providing for the implementation of the PHARE Programme and the Transition Facility;</li> <li>– procedures for notifying incompatibilities in the management of the PHARE Programme and the Transition Facility.</li> </ul>
<p><b>LV</b></p>	<p><b>The Public Procurement Act</b>, adopted on 6 April 2006, in force from 1 May 2006. The Act consolidates the principles of openness in public procurement and free competition among suppliers as set out in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004, and the principle of the efficient use of State and local authority funds. (This Act replaces the Act on Procurements for State and Local Authority Requirements).</p>
<p><b>HU</b></p>	<p>Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings This new act contains various provisions designed to ensure that companies are run transparently: These provisions include the following:</p>

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	<ul style="list-style-type: none"> <li>- the court of registration may take legal compliance measures to force a company to file (publish) its annual report;</li> <li>- the <i>Cégszolgalat</i> (Company Service) keeps a public creditor protection register that is accessible to all.</li> </ul>
<p><b>PL</b></p>	<p>Act of 17 December 2004 on liability for a breach of public finance order (Journal of Laws 2005, No. 14, item.114)</p> <p>The amendments to the Act on liability for a breach of the public finance order (Article 2) facilitate the cross-referencing of the terms used in the Act and the terms used under the Public Finances Act (Journal of Laws No. 249, item 2104, as amended). On this basis, the Act on liability for a breach of public finance order applies also to funds from the European Agricultural Guarantee Fund and the European Agricultural and Rural Development Fund. In addition, as a result of the amendment, the general scope of application of the Act also includes processes relating to settlements with the European Union budget.</p>
<p><b>PT</b></p>	<p><b>Law 60-A/2005 of 30 December 2005</b> (State Budget 2006) amending the <b>General Tax Act</b>, in particular the following measures:</p> <ul style="list-style-type: none"> <li>– Official accounting officers jointly assume secondary responsibility for tax debts when they are found to have been in breach of their duties to assume responsibility for technical adjustments. Previously such officers jointly assumed secondary responsibility only when an <b>intentional</b> breach of duties was detected.</li> <li>– Publication of the list of main debtors by tax debt.</li> </ul> <p><b>Agreement</b> between the Portuguese Tax Administration and the Spanish Tax Administration allowing information to be exchanged directly between regional departments in Portugal and Spain without having to pass through central departments.</p> <p><b>Decree-Law No 205/2006 of 27 October 2006</b>, approving the framework law for the Ministry of Finance and Public Administration as part of the PRACE restructuring programme, reaffirms the IGF's remit to “<i>act as the national partner of the European Commission in the fields of audit, financial control and financial irregularities</i>”.</p>
<p><b>SK</b></p>	<p>Slovak National Council Act No 261/2006 amending Act No 39/1993 governing the Supreme Audit Office of the Slovak Republic (in force from 20 April 2006)</p> <ul style="list-style-type: none"> <li>- extending the remit of the Supreme Audit Office to cover auditing of municipalities and larger territorial units;</li> </ul>

<b>1.1.</b>	<p><b>Horizontal developments:</b></p> <p><b>Have there been any significant new legislative horizontal developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.</b></p>
	<ul style="list-style-type: none"> <li>- making it a requirement for the entities audited to provide the Supreme Audit Office with a direct connection to the computer systems they operate and access to the data processed using these systems, across the full range of the Supreme Audit Office's powers;</li> </ul> <p>Supreme Audit Office directly connected to the computer system of the State Treasury.</p>

<b>1.2.</b>	<p><b>Own resources (including VAT):</b></p> <p><b>Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.</b></p>
	<p><b>If so, please indicate below:</b></p> <ul style="list-style-type: none"> <li>- <b>Type of instrument</b> (e.g. law, regulation, decree),</li> <li>- <b>References of the legal instrument</b> (number/date of publication in Official Gazette, etc.),</li> <li>- <b>References of the legal instrument or code that is amended (if any),</b></li> <li>- <b>Title of the legal instrument or a brief description</b> (no longer than one or two sentences)</li> </ul>
<b>BE</b>	<p><b>FPS Public Finance Department</b></p> <p>a) Programme Act of 20 July 2006, Moniteur belge / Belgisch Staatsblad, 28 July 2006, 2nd edition)</p> <p>Sections 18, 19, 20, 21 and 22 of this Programme Act amend sections 1, 51bis, 59, 70(1bis) and 79 of the VAT Code to introduce measures to combat unfair practices and establish joint liability where the tax is not paid. The provisions that are amended concern the definition of the concept of unfair practice, evidence of an unfair practice and the consequences regarding the deduction of upstream tax. The measure to combat abuse of rights established by section 128 of the Programme Act of 27 December 2005 (Moniteur belge / Belgisch Staatsblad, 30 December 2005, 2nd edition) was repealed.</p>

<p><b>1.2. Own resources (including VAT):</b></p>	<p><b>Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.</b></p>
	<p>Section 15 of that Programme Act adds section 93undecies C in the VAT Code to make business managers jointly liable where VAT is not paid by the company they manage (see above).</p> <p>b) Programme Act of 27 December 2006 (Moniteur belge / Belgisch Staatsblad, 28 December 2006, 3rd edition</p> <p>Sections 2, 4, 5, 6 and 7 of this Programme Act add sections 52bis, 88bis, 88ter, 89bis and 93undecies D respectively to the VAT Code, and section 3 replaces section 87(1) of the Code. These are measures to combat tax fraud and improve tax recovery rates. They concern the possibility of administrative provisional seizures of assets to guarantee the payment of VAT, of calling for security <i>in rem</i> or <i>in personam</i>, of ordering firms to be closed down in certain circumstances and of seizing assets in relation to tax bills that are challenged.</p> <p>Section 93undecies D provides for personal liability to tax in certain circumstances for public servants and officers of court responsible for public sales of movable property.</p> <p>Section 51 amends section 79(2) of the VAT Code. The taxable person is now obliged to repay to the State any VAT that was wrongfully deducted if at the time of the transaction he was aware, or should have been aware, that the tax payable in the chain of transactions was not paid or was not to be paid to the State out of a tax-evasion intention.</p>
<p><b>DK</b></p>	<p>Act No 408 of 8 May 2006 amending various taxation acts, the Trading Authorisations for Foodshops. Act etc. The Act contains new rules on joint and several liability for VAT and reporting of firms and more stringent rules on the lodging of securities and forced liquidation of firms involved in VAT roundabout fraud.</p>
<p><b>IE</b></p>	<p>No new developments. Ireland maintains its reservation about the inclusion of VAT in this questionnaire in line with the Cocolaf meeting in October 2005.</p>
<p><b>ES</b></p>	<p>LAW 36 of 29 November 2006 introducing measures for the prevention of tax fraud (Official State Gazette No 286 of 30 November 2006). The Law amends, <i>inter alia</i>, Law 37/1992 of 28 December 1992 on value-added tax.</p>

	<p><b>1.2. Own resources (including VAT):</b></p> <p><b>Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.</b></p>
<p><b>IT</b></p>	<p><b>Law No 248 of 4 August 2006</b> amending and converting into law Decree Law No 223 of 4 July 2006, published in GURI No 186 of 11 August 2006 establishing urgent provisions for economic and social recovery, the containment and rationalisation of public expenditure and measures on the revenue side and to tackle tax evasion:</p> <ul style="list-style-type: none"> <li>– <b>Article 35:</b> measures to tackle tax evasion and tax avoidance;</li> <li>– <b>Article 37:</b> provisions on assessment, simplification and other measures of a financial nature;</li> <li>– <b>Article 38:</b> measures to tackle illegal gaming.</li> </ul> <p><b>Law No 286 of 24 November 2006 – Article 1,</b> paragraphs 2 and 9 and <b>Article 2,</b> paragraph 9 (see above)</p> <p><b>Law No 296 of 27 December 2006 – Article 1,</b> paragraph 44 (see above)</p>
<p><b>LV</b></p>	<p>Cabinet Regulation No 239 of 28 March 2006 on procedures by which the State Revenue Service removes persons from the State Revenue Service register of persons subject to value added tax. This Regulation expedites the exclusion of dishonest taxable persons who fail to meet the liabilities to which taxable persons are bound from the State Revenue Service register of persons subject to VAT.</p>
<p><b>HU</b></p>	<p><b>Act LXXIV of 1992 governing VAT.</b> In the case of release for free circulation, as of 1 September 2006 a tax bond must be furnished if the recipient of the goods is in another Member State.</p>
<p><b>PL</b></p>	<p>Act of 18 October 2006 amending the Act on the Agricultural Market Agency and the organisation of certain agricultural markets and certain other legislative acts (Journal of Laws 2006, No. 208, item 1541).</p> <p>Pursuant to the abovementioned Act, the catalogue of receivables determined by the President of the Agricultural Market Agency (AMA –Agricultural Market Agency- the paying agency for CAP funds) by way of an administrative decision, in respect of which the AMA may apply the provisions of the Tax Ordinance, has been expanded to include new categories of outstanding receivables arising from payments in connection with regulation of the sugar market. The Act stipulates that receivables in respect of sugar payments are recovered by the President of the AMA.</p>

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<p><b>PT</b></p>	<p><b>Law No 33/2006 of 28 July 2006 (VAT Code)</b> introduced a <i>reverse charge</i> mechanism to trade in waste, residues and scrap in order to minimise fraud and tax evasion in this branch of activity. It established a self-billing requirement in cases where taxable persons carry out transactions with individuals.</p> <p><b>Decree-Law No 211/2005 of 7 December 2005</b> amending Article 22 of the VAT rules for intra-Community transactions: in 2006 the Directorate-General for Customs and Excise was given responsibility for assessing and recovering the VAT payable on intra-Community purchases of new means of transport not subject to vehicle tax carried out by individuals, exempt taxable persons, the State and other legal persons governed by public law. This measure will prevent non-payment of VAT in such cases.</p> <p><b>Legislative Order No 53/2005</b> of the Ministry of Finance, which entered into force in 2006, lays down new procedures and inspections for VAT repayments, introducing risk-analysis techniques, the cross-checking of data and the selection of taxpayers for inspection.</p>
<p><b>SI</b></p>	<p><b>Act Amending the Value Added Tax Act</b> (Official Gazette No 108/2005; in effect since 1.1.2006).</p> <p>A new Article 59a was added to the existing law so that the tax administration can decide <i>ex officio</i> to suspend identification for VAT purposes if it finds that there is no longer any reason for it. This provides a legislative opportunity for cancelling identification for VAT purposes in the case of "missing traders".</p> <p><b>Tax Procedure Act – UPB2 No</b> (Official Gazette No 21/2006; valid from 1.1.2006)</p> <p>The practice of a guarantee for VAT repayments is introduced into law in cases in which the tax authority doubts whether repayment of the tax is justified by the circumstances of the case. On the basis of these provisions, the tax authority may demand that a sufficient guarantee be furnished by the taxable person in these cases before the VAT is repaid.</p>
<p><b>SK</b></p>	<p>International agreements, which are a means of protecting the financial interests of the Slovak Republic and the European Union and a tool for combating customs fraud:</p> <ul style="list-style-type: none"> <li>- International Treaty No 2/2006 – Agreement between the Government of the Slovak Republic and the Government of the Republic of Slovenia on mutual assistance on customs matters;</li> <li>- International Treaty No 70/2006 – Agreement between the Government of the Slovak Republic and the Government of the Republic of Albania on mutual assistance on customs matters;</li> <li>- International Treaty No 635/2006 – Agreement between the Government of the Slovak Republic and the Government of the State of Israel on mutual assistance on customs matters.</li> </ul>



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<b>UK</b>	The United Kingdom has a reservation on the inclusion of VAT in this questionnaire.

<p><b>1.3. Agricultural expenditure (expenditure financed by EAGGF - Guarantee Section):</b></p> <p><b>Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.</b></p>	
<p><b>If so, please give a brief description below. Please indicate:</b></p> <ul style="list-style-type: none"> <li>– <b>Type of instrument</b> (e.g. law, regulation, decree),</li> <li>– <b>References of the legal instrument</b> (number/date of publication in Official Gazette, etc.),</li> <li>– <b>References of the legal instrument or code that is amended (if any),</b></li> <li>– <b>Title of the legal instrument or a brief description</b> (no longer than one or two sentences),</li> <li>– <b>Whether the measures are general or apply to a specific sector of the EAGGF-Guarantee Section, and which one.</b></li> </ul>	
<b>BE</b>	<ul style="list-style-type: none"> <li>– Ministerial Order (Flemish Minister of Institutional Reform, Agriculture, Fisheries and Rural Affairs);</li> <li>– C – 2006/35523 / published in the Belgisch Staatsblad on 19.04.2006 / 176th year N° 124, p. 21047;</li> <li>– Ministerial Order of 15 March 2006 on the autonomous management of farms and small-holdings and the artificial generation of payment terms;</li> <li>– Guarantees for farmers' unique identifiers;</li> <li>– Valid generally throughout the Flemish Region.</li> </ul>
<b>IT</b>	<b>Law No 81 of 11 March 2006</b> amending and converting the Decree Law of 10 January 2006 establishing urgent measures for the agriculture, agro-industry and fisheries sectors and in the field of business taxation, published in GURI No 59 of 11 March

<p><b>1.3. Agricultural expenditure (expenditure financed by EAGGF - Guarantee Section):</b></p>	<p><b>Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.</b></p>
	<p>2006 - Ordinary Supplement No 58:</p> <p>Article 4(4), paragraph 4: (requirement for the State Forestry Corps and the Central Anti-Fraud Inspectorate to carry out the checks laid down by Regulation (EEC) No 4045/89.</p>
<p><b>LV</b></p>	<p><b>Cabinet Regulation No 203 of 14 March 2006 amending Cabinet Regulation No 1002 of 30 November 2004 on procedures for applying the programming document:</b> the Latvian Rural Development Plan for the Implementation of the 2004-2006 Development Programme. The new version of the programming document referred to in paragraph 1 of this Regulation is not applicable to aid applicants who submitted applications before the Regulation came into force. It relates to specific aid measures under the Latvian Rural Development Plan for the Implementation of the 2004-2006 Development Programme. This Regulation amends the conditions for receipt relating to aid for less-favoured areas and defines the conditions for receipt relating to the agri-environmental sub-measure on the restriction of erosion.</p> <p><b>Cabinet Regulation No 221 of 21 March 2006 on the procedure for granting State and European Union aid for agriculture and rural development.</b> This Regulation lays down the procedure by which State and EU aid for agriculture and rural development is granted. It relates to a specific branch of the European Agricultural Guidance and Guarantee Fund Guarantee division: to single area payments, complementary national direct payments and individual payments for sugar, agri-environmental measures (development of organic agriculture, maintenance of organic diversity in grasslands, establishment of buffer zones, restriction of erosion and the preservation of the genetic resources of livestock) with the aim of supporting less-favoured areas and areas with environmental protection restrictions.</p> <p><b>Cabinet Regulation No 406 of 16 May 2006 on the procedure for administering and monitoring State and European Union aid for agriculture and rural development.</b> This Regulation lays down the procedure for administering and monitoring State and European Union aid from the European Agricultural Guidance and Guarantee Fund Guarantee division for agriculture and rural development measures, and the procedure for publishing information on beneficiaries of State and EU agricultural aid and the amount of aid received. It relates to a specific branch of the European Agricultural Guidance and Guarantee Fund Guarantee division: to single area payments, complementary national direct payments for areas under crops and forage areas, agri-environmental measures (development of organic agriculture, maintenance of organic diversity in grasslands, establishment of buffer zones, restriction of erosion and the preservation of the genetic resources of livestock) with the aim of supporting less-favoured areas and areas with environmental protection restrictions.</p>

	<p><b>1.3. Agricultural expenditure (expenditure financed by EAGGF - Guarantee Section):</b></p> <p><b>Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.</b></p>
	<p><b>Cabinet Regulation No 576 of 11 July 2006 amending Cabinet Regulation No 1002 of 30 November 2004 on procedures for applying the programming document:</b> the Latvian Rural Development Plan for the Implementation of the 2004-2006 Development Programme. This Regulation lays down the procedure for implementing the programming document the Latvian Rural Development Plan for the Implementation of the 2004-2006 Development Programme. It relates to specific aid measures under the Latvian Rural Development Plan.</p> <p><b>Cabinet Regulation No 903 of 31 October 2006 amending Cabinet Regulation No 1002 of 30 November 2004 on procedures for applying the programming document:</b> the Latvian Rural Development Plan for the Implementation of the 2004-2006 Development Programme. This Regulation relates to specific aid measures under the Latvian Rural Development Plan.</p>
<p><b>MT</b></p>	<p>The only new significant legislative development in this regard during 2006 is Legal Notice 52 of 2006 - Income Tax Act (Cap. 123) Agricultural subsidies (Income Tax Exemption) Rules 2006. This was published in Government Gazette Malta No. 17884.</p> <p>An amendment relating directly to the Paying Agency (EAGGF – Guarantee Section) is in the process of being formally published; this concerns the composition of the Appeals Board where the Paying Agency had proposed a number of auxiliary board members. (see 1.5)</p>
<p><b>PL</b></p>	<p>Act of 18 October 2006 amending the Act on the Agricultural Market Agency and the organisation of certain agricultural markets and certain other legislative acts (Journal of Laws 2006, No. 208, item 1541)</p> <p>Pursuant to the abovementioned Act, the catalogue of receivables determined by the President of the Agricultural Market Agency (AMA) by way of an administrative decision, in respect of which the AMA can apply the provisions of the Tax Ordinance, has been expanded to include new categories of receivables, i.e.:</p> <ol style="list-style-type: none"> <li>1. outstanding payments in the form of the restructuring fee collected as part of the sugar industry restructuring mechanism,</li> <li>2. outstanding payments in the form of penalty charges for failing to dispatch exports, and failing to issue a refund on potato starch manufactured in excess of the allocated production quota,</li> <li>3. wrongly released securities paid in by undertakings involved in foreign trade.</li> </ol> <p>Regulation of the Council of Ministers of 21 July 2006 as regards the detailed terms of</p>

<p><b>1.3. Agricultural expenditure (expenditure financed by EAGGF - Guarantee Section):</b></p>	<p><b>Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.</b></p>
	<p>and procedure for writing off, deferring or dividing into instalments the repayment of sums obtained from the European Agricultural Guidance and Guarantee Fund and national funds allocated for implementation of the Common Agricultural Policy (Journal of Laws No. 134, item 941)</p> <p>The Regulation sets out detailed rules governing the writing off, deferring or dividing into instalments of sums due as referred to in Article 208(1)2 of the Public Finances Act. The beneficiary of any aid from the above-mentioned funds may not count on amounts owed being written off or divided into instalments if it obtained the funds as a result of a crime (Paragraph 2 of the regulation).</p>
<p><b>PT</b></p>	<p><b>Animal identification/public and animal health</b></p> <p><b>Decree-Law No 142/2006 of 27 July 2006</b> (D.R. (Portuguese Official Gazette), I Series, No 144 of 27 July 2006) set up a National Animal Information and Registration System (SNIRA), which lays down rules for the identification, registration and movement of bovine, ovine, caprine and porcine animals and establishes the legal framework for assembly centres, dealers and transporters and operating rules for the recovery of the carcasses of animals which have died on the farm (SIRCA).</p> <p><b>Conditionality</b></p> <p><b>Decree No 438/2006 of 8 May 2006</b> (D.R. I Series-B of 8 May 2006) identifies the specialised control bodies and the national bodies responsible for new areas of conditionality.</p> <p>Under the programme for restructuring the central government administration (PRACE), <b>Decree-Law No 209/2006</b>, approving the framework law for the Ministry of Agriculture, Rural Development and Fisheries (published in DR, I series – No 208 of 27 October 2006) conferred on the Inspectorate-General for Agriculture and Fisheries (IGAP) responsibility for:</p> <ul style="list-style-type: none"> <li>– carrying out the duties of "special department" under Council Regulation 4045/89 and implementing the <i>ex post</i> controls provided for in that Regulation, which had previously been carried out by a number of bodies, in particular the paying agency;</li> <li>– along the same lines, carrying out <i>ex post</i> controls on operations financed by the EAFRD.</li> </ul>

2 Expenditure relating to the implementation of programmes financed from the funds referred to in Article 5(1)(3) and 5(3) (2), (3a) and (4) is incurred in accordance with procedures set out in an international agreement or other procedures applicable during the implementation of such programmes.

**1.3. Agricultural expenditure (expenditure financed by EAGGF - Guarantee Section):**

**Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.**

**SI**

**Agriculture Act (ZKme – UPB 1) –**, Official Gazette No 51/06 of 18.5.2006

Articles 3f and 3g of this Act are directly related to the elimination of irregularities in the agricultural sector:

Article 3f (overruling of decisions in accordance with the right of inspection) The control authority may overrule a decision in accordance with the right of inspection subject to the conditions, deadlines and grounds set out in the European Union regulation establishing the beneficiary's repayment obligation when excessive funds have been granted under the decision. Unless the European Union regulation fixes a different deadline of the type referred to in the previous sentence, the competent authority may overrule the decision within five years of its notification.

Article 3g (renewal of procedure) A procedure which has been terminated by a decision against which there is no proper legal redress by administrative procedure may be renewed within five years of the decision being terminated if it is found that the beneficiary was issued a favourable decision on the basis of untruthful statements.

**1.4. Structural operations:**

**Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.**

**If so, please give a brief description below. Please indicate:**

- **Type of instrument** (e.g. law, regulation, decree),
- **References of the legal instrument** (number/date of publication in Official Gazette, etc.),
- **References of the legal instrument or code that is amended (if any),**
- **Title of the legal instrument or a brief description** (no longer than one or two sentences),
- **Whether the measures are general or whether they apply to a specific fund and, if so, which one.**

<p><b>1.4. Structural operations:</b></p> <p><b>Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.</b></p>	
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<b>EL</b>	<p>Joint Ministerial Decision No 15954/11.8.2006 (Government Gazette 1266/B/8.9.2006) of the Minister for Economic Affairs and Finance and the Minister for Development: “Procedure for the recovery of amounts unduly or illegally paid from national or EU resources for the implementation of programmes under the Third Community Support Framework for the 2000-2006 programming period”</p> <p>This Joint Ministerial Decision lays down the procedure to be followed, after a control has been carried out, to recover amounts unduly or illegally paid from the resources of the Public Investment Budget for the implementation of programmes co-financed by the ERDF and the ESF under the Third CSF (where the control is carried out by the departments of the Ministry of Development’s General Secretariat for Research and Technology, acting as final beneficiaries) and concerns the 2000-2006 Competitiveness Operational Programme, the Regional Operational Programmes and Community Initiatives.</p>
<b>LV</b>	<p><b>Act on the Management of the European Union Structural Funds</b>, adopted on 8 December 2005, in force from 1 January 2006. This Act lays down the rights and obligations of institutions involved in the management of the Structural Funds, the status of decisions adopted by the monitoring committee and the management committee, and procedures for adopting, contesting and appealing against decisions by institutions involved in the management of the Structural Funds.</p> <p>Pursuant to the delegation under the Act the following Cabinet regulations have been approved:</p> <ul style="list-style-type: none"> <li>– the procedure by which institutions involved in managing the Structural Funds provide for the amendment of planning documents and the exploitation of the Structural Funds (preparation, submission and assessment of Structural Funds project applications or grant scheme project applications, and implementation of Structural Funds projects or grant scheme projects);</li> <li>– procedures by which institutions involved in managing the European Union Structural Funds provide for the financial control and auditing of the Structural Funds;</li> <li>– procedures for notifying incompatibilities in the implementation of</li> </ul>

**1.4. Structural operations:**

**Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.**

projects financed by the Structural Funds and for adopting decisions on the exploitation of allocated finances;

- procedures by which institutions involved in managing the Structural Funds publish information on Structural Funds projects;
- procedures by which institutions involved in managing the Structural Funds generate publicity and ensure compliance with visual identity requirements;
- procedures by which institutions involved in managing the Structural Funds provide for the monitoring and evaluation of the Structural Funds;
- procedures by which provision is made in the State budget for the implementation of projects financed by the Structural Funds and for making payments;
- procedures by which institutions involved in managing the Structural Funds draw up and approve the national Structural Funds programme;
- procedures providing for the financial management of the Structural Funds;
- procedures by which institutions involved in managing the Structural Funds provide for the implementation, financial control and auditing of the activity "aid to producers' organisations" under the planning document measure "development of coastal fishing, socioeconomic measures, support for the acquisition of market outlets, and aid to producers' organisations";
- application form for Structural Funds projects;
- project application guidelines for open competitions;
- grant schemes.

**Act on the management of European Union Cohesion Fund projects**, adopted on 8 December 2005, in force from 1 January 2006. This Act provides for the preparation, approval, implementation and monitoring of environmental infrastructure and transport infrastructure projects financed through the Cohesion Fund and technical assistance projects linked to their implementation and management. The Act is applicable to projects financed through the Cohesion Fund and approved by the European

**1.4. Structural operations:**

**Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.**

Commission up to 31 December 2006.

Pursuant to the delegation under the Act the following Cabinet regulations have been approved:

- procedure by which institutions involved in managing the Cohesion Fund notify infringements and incompatibilities in the implementation of projects;
- procedures for the calculation and reimbursement of incompatible expenses incurred within the framework of projects financed through the Cohesion Fund;
- procedures by which institutions involved in managing the Cohesion Fund carry out on-the-spot checks;
- procedures by which institutions involved in managing the Cohesion Fund carry out random checks of project expenses;
- procedures by which institutions involved in managing the Cohesion Fund prepare and put forward proposed amendments to financial memoranda or European Commission decisions.

The following Cabinet regulations were adopted in 2006 on the basis of the Act on the Management of the European Union Structural Funds, in relation to all EU Structural Funds:

**Cabinet Regulation No 494 of 20 June 2006 on procedures providing for the financial management of the European Union Structural Funds** (published in the official journal *Latvijas Vēstnesis* No 102 (3470) on 30 June 2006). This Cabinet Regulation replaces the State Treasure Order providing for compliance with the provisions of the Government Act and harmonising Latvian State legislation. Among other provisions, the Regulation stipulates a reduction in total eligible project expenditure where a second level intermediate authority has approved a smaller amount of requested eligible Structural Funds expenditure than was requested by the beneficiary of the Structural Funds because the beneficiary has incurred incompatible expenses.

**Cabinet Regulation No 538 of 27 June 2006 on the procedures by which institutions involved in managing the European Union Structural Funds provide for the financial control and auditing of the Structural Funds** (published in the official journal *Latvijas Vēstnesis* No 112 (3480) on 18 July 2006). This Regulation



**1.4. Structural operations:**

**Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.**

replaces the Ministry of Finance Order providing for compliance with the provisions of the Government Act and harmonising Latvian State legislation. The Regulation lays down financial control and auditing measures for projects financed by the Structural Funds.

**Cabinet Regulation No 546 of 27 June 2006 on the procedures by which provision is made in the State budget for the implementation of projects financed by the Structural Funds and for making payments** (published in the official journal *Latvijas Vēstnesis* No 102 (3470) on 30 June 2006). Among other provisions, the Regulation provides for the regulation of applications for the Structural Funds, for the checking of documents submitted in such applications and for the procedure by which payments are made to Structural Funds beneficiaries; it also lays down that the Cabinet of Ministers, the State Control Department and the central Government authority under whose budget State financing for a project's implementation was planned must be informed of any incompatibility with legislative provisions of expenses set out in a Structural Funds application, where the beneficiary of Structural Funds and grant financing is an institution under the State budget.

**Cabinet Regulation No 544 of 27 June 2006 on procedures for notifying incompatibilities in the implementation of projects financed by the Structural Funds and for adopting decisions on the exploitation of allocated finances** (published in the official journal *Latvijas Vēstnesis* No 102 (3470) on 30 June 2006). This Regulation replaces Ministry of Finance Orders providing for compliance with the provisions of the Government Act and harmonising Latvian State legislation. Among other provisions the Regulation lays down provisions for intermediate authorities to provide the managing authority and the paying agency with reports listing all established incompatibilities. The Regulation lays down that the Cabinet of Ministers must be notified of any incompatible expenditure where the beneficiary of Structural Funds or grant financing responsible for the incurrence of incompatible expenditure is an institution under the State budget and it is not possible to withhold the incompatible expenditure incurred by the beneficiary of the Structural Funds or grant financing.

**HU**

**Government Decree 202/2006. (X.5.)** amending Government Decree 360/2004 (XII.26) setting up financial settlement, accounting and control systems in connection with the receipt of assistance under National Development Plan operational programmes, the EQUAL Community Initiative programme and Cohesion Fund projects (Hungarian Gazette No 2006/122).

**Joint Decree 8/2006 (X.20.)** amending Joint Decree 14/2004. (VIII.13.) TNM-GKM-FMM-FVM-PM on the general procedural rules governing utilisation of the structural funds and the Cohesion Fund (Hungarian Gazette No 2006/129).

**Government Decree 102/2006 (IV.28)** governing the setting up and operation of

<p><b>1.4. Structural operations:</b></p>	<p><b>Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.</b></p>
	<p>monitoring systems for programmes implemented using certain types of financial assistance granted by the European Union or financed on the basis of certain international agreements (Hungarian Gazette No 50, vol. I).</p>
<p><b>MT</b></p>	<p>There were no new significant legislative developments during 2006. It is pertinent to point out that the Managing Authority takes due responsibility in terms of financial management and control in the course of programming and implementing the EU Structural Funds Program as well as in the monitoring of projects that have been approved for funding. Subsequently, it rigorously applies both national legislation as well as EU Commission Regulations to counter fraud affecting the financial interest of both national as well as EU financial interests.</p>
<p><b>PL</b></p>	<p>The Public Finances Act and the Act of 8 December 2006 amending the Public Finances Act and other legislative acts (Journal of Laws of 29.12.2006 , No. 249, item 1832)</p> <p>Two solutions have been introduced in order to protect monies from the structural funds, the Cohesion Fund, the European Fisheries Fund, and the European Agricultural Guidance and Guarantee Fund, Guarantee Section:</p> <ul style="list-style-type: none"> <li>- an administrative enforcement procedure has been introduced for the recovery of monies owed. This solution guarantees effectiveness and the possibility of faster recovery of monies owed than under the currently applicable civil law procedure.</li> <li>- the sanction consisting in a 3-year ban on granting new monies has been modified; if the funds are utilised in a manner contrary to their intended use, the beneficiary will be deprived of the possibility of obtaining monies from any of the above-mentioned funds for 3 years.</li> </ul> <p>Act of 13 July 2006 amending the National Development Plan Act and certain other legislative acts (Journal of Laws No. 149, item 1074)</p> <p>Pursuant to the Act of July 2006, amendments were made to the National Development Plan Act of 2004 (Journal of Laws No. 116, item 1206 and of 2005, No. 90, item 759 and No. 267, item 2251), which regulates all significant issues relating to implementation of the Structural Funds and the Cohesion Fund in Poland in relation to funds granted to Poland for 2004-2006. The amendments to the above-mentioned Act aimed to improve the flexibility and the operation of the systems for the management, implementation and control of programmes co-financed under the Structural Funds and the Cohesion Fund. The most significant amendment is the introduction of an entity</p>

<p><b>1.4. Structural operations:</b></p> <p><b>Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2006? Member States are asked to list only national measures and not those which simply transpose Community legislation.</b></p>	
	<p>ensuring the coordination of control actions under the Community Support Framework, i.e. the Committee for the Control and Audit of Structural Funds and the Cohesion Fund. The Committee was established pursuant to the regulation of the Minister for Regional Development of 4 October 2006 and, as the legislator intended, has become a forum for all entities participating in the Structural Funds and Cohesion Fund control system and other, independent State control authorities, as regards the coordination of methods and plans for exercising controls, as well as the summarising and exchange of inspection results. Experience to date regarding the Committee's operation indicates that it contributes in a measurable way to improving the control process carried out in connection with the implementation of Structural Funds and the Cohesion Fund.</p>
<b>SI</b>	<p><b>Act Amending the Motor Vehicles Tax Act /ZDMV-B/, Official Gazette No 47/06, 9.5.2006</b></p> <p>The amendment to the Act introduced an obligation to pay motor vehicle tax on used motor vehicles registered for the first time in Slovenia before a certificate of type approval is issued. This directly rules out the possibility of evading or not paying motor vehicle tax on used motor vehicles acquired from other EU Member States; at the same time the data on the motor vehicle tax assessed helps the tax authority in its analyses and controls of the accuracy of the VAT accounts in this sector.</p> <p>For the agricultural sector, see point 1.3.</p>
<b>FI</b>	<p>The Structural Funds Act (No 1401/2006) of 29 December 2006 entered into force on 1 January 2007. This amended Act No 1353/1999. The Structural Funds Act is largely concerned with Structural Funds.</p>

<p><b>1.5. Description of key developments:</b></p> <p><b>Member States are invited to describe the most important two or three measures (whether <u>legislative or administrative</u>) taken in the course of 2006 about which they would wish to provide more detailed information. These should be measures adopted on Member States' own initiative and not measures which simply transpose Community legislation.</b></p>	
<p><b>In particular, Member States are asked to indicate:</b></p>	

**1.5. Description of key developments:**

**Member States are invited to describe the most important two or three measures (whether legislative or administrative) taken in the course of 2006 about which they would wish to provide more detailed information. These should be measures adopted on Member States' own initiative and not measures which simply transpose Community legislation.**

- Type of measure (law, regulation, etc.) and references (number, date of adoption and/or publication, name of programme, etc.),
- Its scope (horizontal scope, specific field),
- Why it was needed,
- Improvements made to the existing system.
- 

**BE**

On 27 April 2006 the Walloon Government adopted an updated version of the circular on the administrative and financial management of programmes co-financed by the Structural Funds in the Wallonia and coordinated by the European Programmes Directorate. Provision is made in particular for the following:

a) all checks and inspections are routinely entered in the Structural Funds management database, including all (documentary) checks on statements of claim and on-the-spot inspections. Where the repayment of subsidies is demanded as a result of the conclusions, the European Programmes Directorate must be informed of the follow-up action taken within two months so that it can comply with Regulation (EC) No 1681/1994 as amended by Regulation (EC) No 2035/2005;

b) the authorities responsible on a functional basis send the European Programmes Directorate a detailed record of invoices or equivalent documents recording certified expenditure and the date of payments to final recipients in a specified electronic format.

On 16 March the Walloon Government adopted an updated circular on the general principles of the concept of irregularity, chiefly in order to incorporate the changes made by Regulation 2035/2005 to Regulation (EC) No 1681/1994.

In June and December 2006 the European Programmes Directorate of the Ministry of the Walloon Region updated the CD-ROM for functional authorities. The CD-ROM contains the Community provisions (general matters, eligibility, publicity, use of the Euro, management and control), the regional provisions (implementing rules and controls), programming documents, records of meetings, annual reports, list of useful web-sites. The CD-ROM was issued to the functional authorities (intermediate

1.5.	<p><b>Description of key developments:</b></p> <p><b>Member States are invited to describe the most important two or three measures (whether <u>legislative or administrative</u>) taken in the course of 2006 about which they would wish to provide more detailed information. These should be measures adopted on Member States' own initiative and not measures which simply transpose Community legislation.</b></p>
	agencies) and the offices of the Ministers to whom they report.
<b>CZ</b>	The Financial Control Bill was submitted to the Czech Chamber of Deputies in 2006.
<b>IE</b>	A new computerised system (iFORIS) was introduced by the Department of Agriculture and Food (DAF), Forest Service in March 2006. The enhancements built into this system will further strengthen the financial controls of the Forest Service.
<b>EL</b>	<p>A. Circular No 13417/EYS/2488-28/3/2006 of the Special Service for the Coordination and Implementation of OPs containing “instructions on procedures for completing operations”</p> <p>B. Law 3481/06 (Government Gazette 162/31-08-2006) “Amendments to the legislation on the national land and property register with regard to the awarding and implementation of contracts for works and studies and other provisions”</p> <p>C. Decision No D17a/01/127/FN.443 (Government Gazette 1184/B/31.08.06) “Approval of improvement of model documents for public works tenders”</p>
<b>ES</b>	<p>1. Law 36/2006 introducing measures for the prevention of tax fraud. The Law amends a number of laws. The following amendments are particularly significant:</p> <ul style="list-style-type: none"> <li>- redefinition of the concept of a swap between companies.</li> <li>- new taxation standards for non-residents on revenue from tax havens or low-tax states or territories.</li> <li>- in the field of VAT, new standards for the modification of the tax base for transactions between related persons or entities and a new set of arrangements governing the secondary liability responsibility of groups of entities.</li> <li>- new tax control guarantees for transactions authorised by notaries.</li> </ul> <p>2. ROYAL DECREE 887/2006 of 21 July 2006 adopting the Regulation under Law 38/2003 of 17 November 2003, the General Law on Grants (Official State Gazette, 25 July 2006) which, <i>inter alia</i>:</p> <ul style="list-style-type: none"> <li>- develops the National Grants Database set up by Law 38/2003, the General Law on Grants, which will help to improve efficiency and enable checks to be carried out on the accumulation and overlapping of grants, thereby facilitating planning, monitoring</li> </ul>

**1.5. Description of key developments:**

**Member States are invited to describe the most important two or three measures (whether legislative or administrative) taken in the course of 2006 about which they would wish to provide more detailed information. These should be measures adopted on Member States' own initiative and not measures which simply transpose Community legislation.**

and checks;

- sets up an Advisory Grants Council, a body with advisory powers as regards grants to public sector bodies and entities and potentially to bodies responsible for the administration of autonomous communities and local authorities, in order to standardise the applicable criteria, given the diversity of standards and differences of interpretation in this area;

- develops procedures for refunds and the imposition of penalties.

This national database has yet to be developed.

**IT Law No 286 of 24 November 2006:**

– Article 1

**paragraph 2:** new requirements for taxable persons that also use customs and excise warehouses as VAT warehouses;

**paragraph 9:** identification of the documentation certifying the payment of VAT for vehicles purchased in the Community and outside it.

– Article 2

**paragraph 9:** this inserted Article 48a into DPR No 602 of 29 September 1973. It requires all public administrations and companies in majority public-ownership to check before paying any sums in excess of €10 000 whether the beneficiary has failed to fulfil payment obligations deriving from tax assessments totalling at least the same amount and if so, to inform the collection agent of this situation. The Ministry for Economic Affairs and Finance will issue a Regulation establishing detailed implementing arrangements.

**Law No 248 of 4 August 2006:**

– Article 35

**paragraph 7:** provision for a criminal penalty (6 months to 2 years imprisonment) in cases of failure to pay VAT for amounts of more than €50000;

**paragraph 11:** vehicles for which the VAT rebate is not allowed when,

**1.5. Description of key developments:**

**Member States are invited to describe the most important two or three measures (whether legislative or administrative) taken in the course of 2006 about which they would wish to provide more detailed information. These should be measures adopted on Member States' own initiative and not measures which simply transpose Community legislation.**

irrespective of the type-approval category and following adaptation, they are used for private passenger transport. This is, however, without prejudice to the exercise of the right to the rebate if the taxpayer can demonstrate that the purchase relates to the activity performed;

**paragraph 12:** traceability of payments made to those in the craft and professional sectors, by making it obligatory to pay with electronic money, cheques, credit transfers or other bank or postal payment means, except when the unitary amounts are below a certain ceiling set on a sliding scale, starting at €1 000 on 1 July 2007 and ending at €100 as of 1 July 2009;

**paragraph 27:** requirement for taxable persons referred to in Article 7 of DPR No 605 of 29 September 1973, to notify the Tax Inspectorate by electronic means of the amounts paid under insurance contracts, and the beneficiaries' tax code and VAT number;

**paragraph 35:** possibility for the Tax Agency to obtain data and documents, under the provisions of Article 51 of DPR No 633 of 1972, in order to identify the normal value declared for import, export or warehousing;

**paragraph 35a:** requirement to send the Revenue Agency by electronic means the copy of the contracts for acquiring the professional services of professional athletes.

– Article 37

**paragraphs 8 and 9:** requirement for the holders of VAT numbers to present customer and supplier lists;

**paragraph 18:** as an amendment to Article 35 of DPR 633 of 1972, a provision is introduced whereby the allocation of a VAT number gives rise to automated feedback in order to identify the risk elements connected with the issuing of the said VAT number;

**paragraph 33:** electronic transmission to the Revenue Agency of daily fees by retail traders and the like;

**paragraph 49:** requirement to use computerised procedures for the payment of tax by holders of VAT numbers as of 1 January 2007.

– Article 38: Measures to tackle avoidance and evasion in the illegal

	<p><b>1.5. Description of key developments:</b></p> <p><b>Member States are invited to describe the most important two or three measures (whether <u>legislative or administrative</u>) taken in the course of 2006 about which they would wish to provide more detailed information. These should be measures adopted on Member States' own initiative and not measures which simply transpose Community legislation.</b></p>
	<p style="text-align: center;">gaming sector.</p> <p><b>Law No 296 of 27 December 2006:</b></p> <p style="text-align: center;">– Article 1</p> <p><b>paragraph 44:</b> application, subject to prior Community authorisation, of the reverse-charge procedure to supplies of terminal equipment for the public land mobile communications service liable to concession tax, supplies of personal computers and their components and accessories and supplies of stone materials and products direct from quarries and mines.</p>
<b>CY</b>	<p>No legislative measures were taken in the course of 2006.</p> <p>As regards administrative measures, the circular of the Paying Authority on dealing with irregularities arising from Structural Fund and Cohesion Fund projects was revised on 8 November 2006.</p> <p>Purpose: Implementation of a specific procedure enabling the various parties involved to report irregularities to the Paying Authority, which is responsible for notifying them to OLAF.</p> <p>This circular was issued to institute a common policy/common procedures, establish a timetable for providing information and lay down how to report (standardised reports) instances of irregularities to the Paying Authority so that it is in a position to inform the European Commission (OLAF).</p>
<b>LV</b>	<p><b>The Public Procurement Act.</b> The Act consolidates the principles of openness in public procurement and free competition among suppliers as set out in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004, and the principle of the efficient use of State and local authority funds.</p>
<b>HU</b>	<p><b>Government Decree 202/2006 (X.5)</b> amending Government Decree 360/2004 (XII.26) setting up financial settlement, accounting and control systems in connection with the receipt of assistance under National Development Plan operational programmes, the EQUAL Community Initiative programme and Cohesion Fund projects (Hungarian Gazette No 2006/122).</p> <p>Under Article 47(3) of Government Decree 202/2006 (X.5) the OLAF Coordination Office is required to draw up and publish a manual for the handling of irregularities</p>



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within 60 days of the entry into force of the Decree. A methodological manual on the procedures for handling irregularities in respect of Union resources was drawn up by the OLAF Coordination Office and the Finance Ministry's control system development directorate (CHU) and the parties concerned made arrangements for its publication on the Finance Ministry website.

The methodological manual lays down detailed procedures for the examination and handling of irregularities committed by beneficiaries in connection with Union resources.

The manual provides assistance for work in connection with irregularities in three areas:

1. creation of a requisite uniform procedure right from when an irregularity is first suspected up until measures are taken;
2. a procedure requiring the reporting of irregularities in accordance with EU rules;
3. a set of examples of typical instances of irregularities."

**MT**

**A. Own resources (including VAT)**

In November 2006, Parliament approved the first reading of a bill aimed at implementing budget measures for the financial year 2007.

The title of the Act is the Budget Measures Implementation Act, 2007. The Scope of this Act is to secure the implementation of measures taken as part of the Budget 2007.

Part V of this Act amends the VAT Act. Sub-article (5) of Article 63 provides that in cases where a person's registration for VAT may create a risk for the revenue, the Commissioner may ask for the payment of a security by that person under the conditions approved by the Minister of Finance.

These conditions will specify in which situations such security may be applied and provides for a flexible administrative control by the Minister in case such conditions need to be changed.

Further to this measure, an amendment to Article 77 provides for criminal action against a person who is requested to submit a security under specific conditions as outlined in Article 63(5) and who operates his business without furnishing the required

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security.

Another amendment to the VAT Act is that of sub-article (4) of Article 56 which provides for the sharing of information between the VAT Department, the authority for Eco-Contribution and the Customs Department.

This measure will give access to more information.

The amendment to Article 77 of the VAT Act is a measure to introduce an obligation on commercial banks to submit quarterly information to the VAT Department regarding payments they make directly to third parties on behalf of their clients who have loan facilities.

This measure aims to curb abuses by suppliers in the construction industry.

**B. Paying Agency – EAGGF (Guarantee Section)**

As referred to in answer 1.3, an amendment which is in the process of being formally published concerns the composition of the Appeals Board, where the Paying Agency had proposed a number of auxiliary board members. The selection will be effected according to the issue to be tackled by the Appeals Board.

The time-frames for the submissions of contestations by third parties with respect to the Paying Agency's decisions will also be considered.

The objective of these proposals is to attain a more effective and efficient appeals process.

**NL**

The Ministry of Agriculture, the Natural Environment and Food Quality (LNV) reports that the number of paying agencies in the Netherlands has been reduced: there are now only two. One paying agency for rural development measures (POP 2) (Rural Areas Service - DLG) and one for other schemes (Schemes Service - DR). (Paying agency status was withdrawn from PZ (Dairy Products Marketing Board), PT (Horticulture Marketing Board), HPA (Marketing Board for Arable Products) and PVE (Marketing Boards for Livestock, Meat and Eggs) with effect from 15 October 2006. These former paying agencies now operate on behalf of the DR paying agency as "delegated bodies". The reasons for the change are tied up with the need to reduce the number of paying agencies under Article 6 of Regulation (EC) No 1290/2005.

The new structure with two paying agencies became operational on 16 October 2006, when a series of schemes were adapted to the new structure and agreements were

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entered into at a variety of levels regarding the interaction between paying agencies and delegated bodies (memoranda of understanding etc.).

**PL**

Regulation of the Minister of Agriculture and Rural Development of 18 April 2006, amending the regulation as regards the Supplement to the Sectoral Operational Programme "Restructuring and modernisation of the food sector and development of rural areas in 2004-2006" (Journal of Laws of 2006, No. 69, item 488)

The Regulation introduced changes relating to, among others, the criteria of access as regards measures 2.2 "Land consolidation" and 2.5 "Management of agricultural water resources". The abovementioned changes consist in the introduction of a requirement that "a person seeking co-funding for the implementation of a project must not be in arrears with the payment of any taxes or social and health insurance contributions". Therefore, in order to confirm or supplement the information which would have a material impact on the final evaluation of the project (Section 5.3.) "Assessment of the application for co-financing the implementation of a project", it is necessary for the implementing authorities to require (at the stage when applications for the co-financing of the implementation of a project are being considered) the applicants to whom the provisions of the abovementioned Regulation apply to submit an up-to-date certificate issued by the head of the tax office, confirming lack of any tax arrears, and an up-to-date certificate from the Social Insurance Office, confirming lack of any arrears as regards social and health insurance contributions. The amendment made facilitates the elimination of any entities which are potentially risky due to their uncertain financial position and which do not guarantee the correct implementation of the project.

**PT**

**Legislative Order No 1/2006** of the Ministry of Finance and Public Administration, published in D.R. II Series of 11 July 2006, implementing a computer system for the completion of declaration formalities on the export or re-export of goods from the Community customs territory. The new system, known as STADA – Exportação (system for the automatic processing of customs export declarations), interacts with other systems and databases belonging to the **Directorate General of Customs and Special Taxes** (DGAIEC, Direcção-Geral das Alfândegas e Impostos Especiais), in particular the SSA (automatic selection system), to allow the computerised sorting of the declarations to be submitted for action/inspection by customs.

Implementation of the **SDS – Summary Declaration System**, which carries out the computerised processing of means of transport and of goods presented to customs. At the same time a protocol was signed between the DGAIEC and the port authorities at the Ports of Lisbon, Douro and Leixões and Sines, to establish a link between the SDS and the Centralised Port System in order to allow traders to send electronically through

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this system the information required to complete formalities for the customs clearance of means of transport and the presentation of goods at customs.

**DGAIEC Circular No 65/2006, Series II**, which lays down the methods to be used to implement accounting checks on the existence of "production materials" under Article 3 of Commission Regulation (EC) No 2315/92 and Article 2a of Commission Regulation (EC) No 1591/95 (export refunds for sugar added to products processed from fruit and vegetables).

**DGAIEC Circular No 34/2006, Series II**, which lays down the procedures to be adopted where there are suspicions of counterfeit goods or other semi-public crimes under Articles 321 to 328 of the Industrial Property Code.

**Clean-up of the taxpayers' register (corporation tax and VAT):** identification of legal persons which have been inactive since 2002, so that taxes shown on invoices of taxpayers not included in the active tax register cannot be taken into consideration, thereby curbing the practice of issuing false invoices.

In connection with the EAGGF Guidance Section and the FIGG, the development and operational implementation at the Inspectorate-General for Agriculture and Fisheries (IGAP) of a database known as **SISPAC (information system to support the planning of 1st and 2nd level inspection activity)**, which serves:

- to detect overlapping controls by cross-checking the data used as a basis for selecting the sample against the inspections (planned and implemented) in the SIGIFE (information system for managing Structural Funds and instruments, developed by the IGF);
- to select risky beneficiaries (using the tax identification number (NIF)) by cross-checking the data used as a basis for selecting the sample against the records of irregularities notified to the European Commission.

After the test phase, a User's Guide was produced and the application was installed at managing authorities and 2nd level inspection bodies in the Autonomous Regions, which, as a rule, use it to select inspection samples for the 2007 annual plan.

**SI**

For the agricultural sector, the **Agriculture Act** had to be amended to obtain a legal base for abolishing decisions in respect of which funds had to be repaid when there had been irregularities and the funds had been wrongly disbursed.

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**SK**

Principles for coordinating the planning and performance of ex post financial controls of European Union resources and resources from other financial assistance instruments from abroad (adopted by Slovak Government Resolution No 206 of 1 March 2006):

- establishing a uniform procedure for planning, performing and monitoring controls;
- coordination of the performance of *ex post* financial control with other audit bodies.

The setting up of an Audit Body in the department for the control of EU financial resources as part of the public internal financial control system section of the Ministry of Finance of the Slovak Republic as a central body functionally independent of the management body and the certifying body (adopted by Slovak Government Resolution No 494 of 24 May 2006):

- entrusted with the job of carrying out independent verification functions at level II (verification of the management, control and declared expenditure systems) and the job of issuing declarations of winding-up of assistance and partial declarations of winding-up of assistance (level III);
- improving the effectiveness of the performance, procedures and overall quality of the independent verification and evaluation of management, procedures and all activities in the implementation of foreign assistance programmes in the Slovak Republic;
- responsible for the performance and coordination of the auditing of all entities involved in conducting auditing.

Slovak Ministry of Finance guideline No 2/2006-NF on irregularities in the financial management of pre-accession and post-accession EU funds and other financial instruments

**UK**

Guidance notes to Government Offices in the Regions for ERDF in England.

GN1.19 (issued in April 2006) on the Completion of Article 9 Certificates. DG Regio audits declared non-compliance with Regulation 438/2001. This note clarifies the arrangements for compiling and signing the certificate of expenditure and introduces a further level of management control.

GN2.6 (amended and issued November 2006) on the Article 4 Monitoring Assurance Framework. It introduces some important changes to elements of the framework that provides a comprehensive approach to the monitoring of projects so as to ensure compliance with the Regulation. This amendment has been necessary, following concerns by auditors from DG Regio.

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GN4.17 (issued in October 2006) on the closure of the ERDF funded elements of the 2000-06 round of structural funds programme and to be read in conjunction with the Regulation and the EC's "Guidance on the closure of assistance (2000-2006) from the Structural Funds".

**2. RISK ASSESSMENT AND RISK MANAGEMENT IN THE MEMBER STATES**

When an economic operator makes a payment, he takes account of the associated risks: what is the likelihood that the payment will produce the desired effect? What is an acceptable degree of risk for the transaction concerned?

A public administration should ask itself the same questions when granting any kind of benefit (financial or other). Proper risk assessment and management help to ensure that taxpayers' money is spent as efficiently as possible on implementing policies.

As the topic is a complex one, this questionnaire is confined to certain specific aspects of risk assessment and management, namely early-warning and blacklisting systems and mechanisms for the use of internal whistleblowing. An analysis of the replies from Member States should contribute to a joint debate on these two aspects. It should also enable us to make a list of the best practices reported by Member States, which could serve as a source of inspiration for any future reforms at Community or national level.

The Commission/OLAF is currently reviewing European early-warning and blacklisting systems 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. We need to consider whether European early-warning and blacklisting policy needs improving and look at making the rules and procedures clearer and more transparent, while respecting individual rights.

Whistleblowing has increased in importance in recent years in a number of Member States, within the European Union and in various international organisations. Information supplied by a person working within an administrative authority can sometimes help to cast light on illegal acts that would otherwise have gone unnoticed by the authorities. Internal whistleblowing can help to reduce the risk of abuse and as such constitute an effective risk-management tool. We intend to outline the various systems that exist in the Member States as part of the 2006 report in order to give an overview of this topic.

## 2.1. Guidelines for risk assessment and management

### 2.1.1. Does your Member State have national guidelines (instructions or good practice guidelines) or rules specific to certain fields to help managers in assessing and managing the financial risks associated with awarding a benefit or a public contract? If so, in which fields?

Definition: Risk is understood to mean the likelihood that the award of a benefit (grant, administrative authorisation, etc.) or a public contract will be diverted from its objective by the beneficiary or will fail to achieve its objective for other reasons.

<b>2.1.1. Guidelines for risk assessment and management: Does your Member State have national guidelines (instructions or good practice guidelines) or rules specific to certain fields to help managers in assessing and managing the financial risks associated with awarding a benefit or a public contract? If so, in which fields?</b>	
<b>BE</b>	<p><b>FPS Economic Affairs (EAGGF Guarantee Section):</b></p> <p>Belgian Office for Intervention and Restitution (BIRB): Customs keep a list of fraud cases, of which a copy is sent to BIRB every quarter. Some of the fraud cases concern sums paid out by BIRB. For past cases checks are made as to whether the relevant sums have been recovered. For the future account is taken of the information to hand.</p> <p><b>FPS Budget and Management Control:</b></p> <p>In matters within the remit of the FPS Budget and Management Control, there are ex ante checks organised by the Royal Order of 16 November 1994 on administrative and budgetary controls, and a posteriori checks at the initiative of the Court of Auditors.</p> <p>Section 55(2) of the Consolidated State Accounts Act provides that any person who receives a grant must vouch for the use made of the relevant sums unless the law releases him from that duty.</p> <p><b>Walloon region:</b></p> <p>The European Programmes Directorate notifies the authorities responsible on a functional basis of a vade-mecum setting out the procedures for management and control of projects co-financed by the Structural Funds. The vade-mecum particularly concerns the definition of eligible areas, project management, information to be sent to the European Programmes Directorate, first-level controls, eligibility of expenditure, working parties, definitions and main legal instruments.</p>
<b>CZ</b>	<p>Act No 320/2001 on financial control in public administration (the Financial Control Act), as amended, governs the duty of heads of public administration bodies to promptly identify, assess and minimise operational, financial, legal and other risks arising in connection with the handling of public resources.</p> <p>Internal rules (methodological instructions, internal guidelines and manuals) provide for the analysis of developing risks. However, the risk analysis is not an analysis of the risks associated with the beneficiary, but an analysis of the financial risks of the</p>

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	granting body.
<b>DK</b>	<p>The Finance Ministry's Financial and Administrative Guidance Division (ØAV) issues information and guidance about the Finance Ministry's rules governing civil servants performing tasks in the areas of authorisation, accounting and financial management. Guidance also covers a range of questions concerning risk assessment and management, grant management, public contracts etc.</p> <p>Guidance is available on line at <a href="http://www.oav.dk/">http://www.oav.dk/</a></p>
<b>DE</b>	<p>The provisions in the federal and Land budgetary procedure legislation and the verifications they demand offer an adequate basis for risk analysis or the proper approval of grants. National rules do not basically proceed from the assumption that applicants for grants from public funds are likely to be acting dishonestly. German authorities therefore take a thoroughly critical stance on the approach taken in the questionnaire that served as the basis for drafting this Report. Applicants for grants should not automatically be regarded as potential fraudsters.</p>
<b>EE</b>	<p>In Estonia the Competition Act is in force. Procurement is dealt with on the basis of the Public Procurement Act. Pursuant to the Structural Assistance Act aid applications are subject to multi-level checks and assessments. These laws do not regulate risk assessment and management.</p>
<b>IE</b>	<p><b>National guidelines:</b></p> <p><b>The National Public Procurement Policy Unit (NPPPU)</b> circulates and publishes general guidance on public procurement issues. This guidance is published on the national public procurement website <a href="http://www.etenders.gov.ie">www.etenders.gov.ie</a> under Guides / General Procurement Guidance covering items such as:</p> <ul style="list-style-type: none"> <li>– Candidates or tenders who have been convicted of involvement in organised crime, of fraud, corruption or money laundering must be excluded from performing a public contract.</li> <li>– All contracting authorities are reminded of the need for tax clearance of contractors as outlined in Department of Finance ‘<i>Circular 22/95 Tax Clearance Procedures - Public Sector Contracts</i>’.</li> </ul> <p>In terms of Risk Assessment national guidelines include:</p> <ul style="list-style-type: none"> <li>– Peer review of Information Communication Technology projects in excess of €5million;</li> <li>– There are formalised contract reviews by Departments and Agencies of projects over €30 million with the provision for audit by the Department of Finance;</li> </ul>



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	<p>– There is a general guidance for Capital Appraisal that projects be kept under review by a Project Manager and Project Board.</p> <p><b>Departmental guidelines:</b></p> <p><b>The Department of Agriculture and Food (DAF)</b> compiles and updates Procedures Manuals on Financial Procedures, Accreditation and Irregularities. These are made available in hard copies and on the DAF intranet site for use by DAF paying divisions and other staff. The manuals gather together all the relevant EU and DAF requirements and procedures in these areas, thereby <i>inter alia</i>, contributing to sound financial management, including the prevention of financial irregularities.</p> <p><b>The Department of Enterprise, Trade and Employment (DETE)</b></p> <p>As paying authority for the ESF, the DETE follows the guidelines issued by the National Public Procurement Policy Unit.</p>
<b>EL</b>	<p>There are legislative frameworks for risk assessment and management which operate in parallel with the Community framework on the basis of which all subsidies and public contracts are implemented.</p>
<b>ES</b>	<p><b>General note on this section:</b> although there are a number of individual databases at regional level (in one autonomous community or another), <b>this section has been dealt with within the general framework.</b></p> <p>In addition, <b>the National Grants Database</b> set up by Law 38/2003, the General Law on Grants, has yet to be developed. Any information on its exact content and scope cannot therefore be provided.</p> <p>There are no specific national risk assessment and management guidelines which would enable risky beneficiaries to be identified and monitored. There are, however, rules in both the field of public contracting and the set of regulations on grants to prevent a contract being signed with or a grant being awarded to a company or entity which has failed to meet its obligations in the past. However, the award of a grant is subject in each individual case to an objective assessment of the project's viability; if a beneficiary has committed an irregularity, the case is followed up.</p>
<b>FR</b>	<p>1) The customs administration has long had a risk management framework for revenue which applies at all levels of customs activity to ensure that all regulations within its remit are respected in full, and more especially to ensure that taxes and duties are levied correctly. This risk management came into being as a result of the growth in electronic customs declarations and clearance. See below.</p> <p>2) As regards the Ministry of Agriculture and the administration and monitoring of grants, circulars, operating manuals and manuals of procedure are provided for the administrator or controller of such instruments. These are drawn up by either the central administration or by the training departments of the paying bodies in</p>

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	<p>conjunction with the Ministry of Agriculture.</p> <p>3) Regarding structural measures, national policies are implemented using regulatory texts of the appropriate hierarchical level.</p> <p>Public aid is granted subject to controls under domestic law covering the area concerned.</p> <p>Teaching material for public administrators is drawn up and updated regularly.</p> <p>Administration and control guides for structural measures are drawn up at the beginning of the programming period by the administrative authorities in conjunction with national authorities, and improvements are made in the light of experience and developments in practice.</p>
<p><b>IT</b></p>	<p>The national legislation for the performance of public works contracts, the area of operation of the <b>National Operational Programme Transport (PON Trasporti)</b> and the <b>Community Initiative Programme (PIC) Urban II Italy – 2000/2006</b>, is mainly found in <b>Law No 109 of 11 February 1994</b> published in GURI No 41 of 19 February 1994 - Framework law on public works contracts and amendments and additions thereto and in the recent Single Text on works and services contracts, <b>Legislative Decree No 163 of 12 April 2006</b>, published in GURI No. 100 of 2 May 2006.</p> <p>This legislation is the reference framework for the public works manager and the administration in assessing and managing the financial risks associated with publicly transparent procedures for the tendering of contracts or services.</p> <p>In order to simplify the statutory requirements and following the conclusion of appropriate agreements and/or memoranda of understanding, the works Supervisory Authority has developed both the Business Register, established pursuant to <b>DPR No 34 of 25 January 2000</b>, and a computerised system for acquiring all information about public contracts, which uses enforcement cooperation criteria, known as SINAP – National public procurement information system.</p> <p>Under <b>DPR No 34 of 25 January 2000</b>, published in GURI No 49 of 29 February 2000, qualification is compulsory for anyone who executes public works contracts for an amount in excess of €150 000. The certificate of qualification issued under the above Regulation is a necessary and sufficient condition for proving the existence of the technical and financial capacity requirements for the award of public works contracts. The contracting authorities cannot require competitors to demonstrate qualification by any other means or procedures than those provided for in the DPR cited. In particular, Article 27 provides for the setting up of the computerised register of qualified firms at the Observatory for public works.</p> <p>In addition, there is the anti-Mafia legislation and the corresponding "certificate" which is a document certifying entry in the business register and containing the following wording – <i>Clearance for the purposes of Article 10 of Law No 575 of 31 May 1965 and subsequent amendments. This certificate is issued by the C.C.I.A.A. using the Rome</i></p>

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	<p><i>Prefecture's information system.</i></p> <p>Under Article 1, paragraph 1 of <b>DPR No 252 of 3 June 1998</b>, anti-Mafia documentation is required by the public sector bodies concerned and therefore, public administrations, bodies and undertakings supervised by the state or by another public body and companies or firms controlled by the State or by another public body and public works agents.</p> <p>The managing authorities of the <b>National Operational Programme Security (PON Sicurezza)</b> have an operating manual codifying the programme's whole management and control system.</p> <p>The purpose of the document, distributed to everyone involved in carrying out cofinanced activities, is to codify and harmonise processes in order to ensure sound financial management of projects. The manual recalls the legislation governing all types of goods and services contracts, including public procurement. The annex also contains checklists for control measures in preparation both for conclusion of the contract and the financing stage.</p> <p>The Second Level Control Authority drafts annual guidelines that describe the procedures for carrying out audit activities, as laid down in the "Manual for random checking of operations financed by the Community Structural Funds for the period 2000-06" drawn up by the Ministry for Economic Affairs and Finance, via the General Inspectorate for Financial Relations with the European Union of the General National Accounts Department.</p>
<b>CY</b>	There are no such national guidelines.
<b>LV</b>	<p>Project managers are familiar with the legislation regulating procurements (the Public Procurement Act, the Act on Procurements for State and Local Authority Requirements and other legislative acts). Pursuant to Cabinet Regulation No 546 of 27 June 2006 on the procedure by which provision is made in the State budget for the implementation of projects financed by the Structural Funds and for making payments, second level intermediate authorities review applications for the Structural Funds and assess the eligibility of expenditure. Compliance with the relevant procurement procedure is one of the prerequisites for expenditure to be acknowledged as eligible. The obligation to comply with public procurement legislation is also included in financing contracts.</p> <p>Some authorities have drafted risk management guidelines as an instrument to further the improvement of quality management system processes and the monitoring of procedures in EU co-financed projects.</p> <p>The following documents have been drawn up in relation to State aid: Cabinet Regulation No 103 on procedures for project submission and financing under the grant scheme "investment aid for business development in areas eligible for special assistance", and guidelines for the EU Structural Funds grant scheme "investment aid for business development in areas eligible for special assistance".</p>

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<p><b>LT</b></p>	<p>In Lithuania aid from EU Structural Funds is allocated in accordance with Lithuania's 2004-2006 Single Programming Document (SPD). General monitoring procedures relating to the allocation, evaluation and selection of projects to be financed under the SPD, payment of expenses in respect of these projects and their implementation (and also to public procurements run by project implementing agencies) are laid down in the rules on the administration and financing of Lithuania's 2004-2006 SPD measures and projects funded through these measures.</p>
<p><b>LU</b></p>	<p>Yes: rules specific to the integrated management and control system for direct aid under the CAP.</p>
<p><b>HU</b></p>	<p>There is no national framework for dealing with risks, although the legislation in force does lay down a requirement to set up a risk-handling procedure also covering various areas involving Union assistance.</p> <p>The budget legislation requires heads of budgetary agencies to set up a risk-analysis procedure at agencies coming under the scope of the budget.</p> <p>As regards assistance from the various structural funds and the Cohesion Fund, there are provisions at government decree level requiring the competent management authority and bodies involved to carry out on-the-spot checks, involving risk-analysis-based sampling, in respect of the utilisation of the assistance.</p>
<p><b>MT</b></p>	<p><b>Aid Schemes (Structural Funds)</b></p> <p>In the selection of final recipients with respect to aid schemes (Structural Funds), relevant checklists are utilised to assess, amongst others, the economic viability and sustainability of the applicants.</p> <p><b>Pre-accession and Transitional Facility Programmes for Malta</b></p> <p>In the ambit of the pre-accession and transitional facility programmes for Malta, the National Authorising Office has prepared a 'Risk Management Analysis.' This has been prepared in view that the National Authorising Office wanted to identify the risks involved in the system in place and to take the necessary action to mitigate these risks.</p> <p>The Part V of the <b>Budget Measures Implementation Act</b>, which amends the VAT Act, provides in Sub-article (5) of Article 63 that in cases where a person's registration for VAT may create a risk for the revenue, the Commissioner may ask for the payment of a security by that person under the conditions approved by the Minister of Finance. These conditions will specify in which situations such security may be applied and provides for a flexible administrative control by the Minister in case such conditions need to be changed.</p>
<p><b>NL</b></p>	<p>The Ministry of Social Affairs and Employment (SZW) reports that the national grant award schemes for ESF3 and EQUAL and the Project Administration Manual of the relevant schemes serve as the framework. SZW also uses reference frameworks for the</p>

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	<p>schemes, and the reference framework for embezzlement and misappropriation in relation to the schemes is updated every year.</p> <p>The Ministry of Economic Affairs (EZ) takes the following documents as its framework:</p> <ol style="list-style-type: none"> <li>1) Letter dated 20-12-2006 to the management authorities concerning advice on tendering procedures incases below the threshold for the ERDF;</li> <li>2) Scenario regarding irregularities in the Structural Funds (2000-2006).</li> </ol> <p>The Ministry of Agriculture, the Natural Environment and Food Quality (LNV): checks and inspections proceed as prescribed by the Community regulations.</p>
<b>AT</b>	<p>In case of public procurement the bidder has to prove his or her reliability by extracts from registers of verdicts and the tax administration. It is based on the Act of public procurement. The target is to exclude bidders who have not complied with the rules in the past. In other areas there is no specific framework.</p>
<b>PL</b>	<p>Entities from the public finance sector in Poland should operate on the basis of the Financial control standards issued by the Ministry of Finance. This obligation arises (Article 47(3) from the Public Finances Act. These standards have been based, amongst others, on the COSO (The Committee of Sponsoring Organisations) internal control model. In accordance with the Financial control standards, one of the five basic elements of the internal control system is Risk management.</p> <p>In the case of SOP-ICE (Structural Operational Programme" Improvement of the Competitiveness of Enterprises"; ERDF), each of the institutions participating in the implementation of the structural funds uses risk analysis in order to select projects for inspections on site (unless 100% of projects implemented are being inspected). The main risk factors in the risk analysis are: type of project, type of project company, total project budget, percentage of Community funds, complexity of the project, type of payment (advance payment, reimbursement), irregularities found and experience in the use of EU funds.</p> <p>In accordance with the principles of project selection under the IROP (ESF and ERDF), at the project evaluation and selection stage, the project and the documents attached to the application for co-funding are analysed in terms of the objective and subjective feasibility of the project. The project is assessed for, amongst others, compliance with the Programme and the Measure, eligibility of expenditure, the remaining budget of the project, the applicant's financial condition (financial documents: balance sheet, profit and loss account, financial statements). The purpose of the analysis is to ascertain whether the potential Beneficiary will be able to implement the project and to determine the appropriate security for the correct implementation of contracts. This relates in particular to cases where the applicant is not an entity from the public finances sector. Projects the implementation of which requires the application of the Public Procurement Act are considered to be of higher risk. As from 2 June 2006, the</p>

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	<p>“Guidelines of the IROP Managing Authority as regards the control over the application of public procurement provisions to the implementation of projects co-funded under the IROP”, entered into force. In order to minimise any potential risk of a public procurement order being awarded in gross breach of the Public Procurement Act, the IROP Managing Authority would recommend that a public procurement inspection be carried out, both in the form of ex ante and ex post inspections.</p> <p>In addition, from July 2006, the “Guidelines of the IROP Managing Authority as regards the monitoring/control inspection on site”<sup>3</sup> became effective. The purpose of the guidelines is to enhance and organise the measures relating to the performance of inspection duties by the control teams at the institutions carrying out inspections under Article 4. The guidelines specified the risk areas which must be taken into account during the risk analysis carried out for the purposes of the inspection.</p> <p>The HRD (Human Resources Development) Managing Authority (ESF fund) uses the procedure for the selection of projects to be co-funded which restricts the possibility of granting additional financing for the implementation of uncertain projects. This procedure consists of two stages and is carried out each time by the institution granting co-funding. During the first stage (formal evaluation), the application is verified for compliance with the provisions set forth in the Supplement to SOP-HRD (Structural Operational Programme "Human Resources Development"), e.g. compliance with the objectives of the Programme and types of projects, completeness of all the enclosures required, eligibility of the beneficiary and of the type of project, and as regards compliance with all the registration requirements. During the second stage (topical assessment), the contents of the application are verified (e.g. the budget of the project and the project implementation schedule).</p>
<p><b>PT</b></p>	<p>Decree-Law No 54-A/2000 of 7 April 2000 defines the organisational structure responsible for managing, monitoring, assessing and verifying implementation of CSF III and structural measures under Community initiatives for Portugal in accordance with Council Regulation (EC) No 1260/99 of 21 June 1999. Article 17 of the Decree-Law provides that the (computer-based) CSF III information system includes an <b>information subsystem for the management, monitoring and verification of implementation of CSF III</b> and also an <b>information subsystem for dissemination</b>, which serves to provide the various recipients with relevant information through a variety of media.</p> <p>Responsibility for the continued existence, organisation and operation of the information system rests with the CSF III Management Committee, which also has the task of developing a module integrating the information systems of the various Community funds that provides a clear, integrated and updated view of CSF III.</p>

3 Based on Article 4 of Commission Regulation (EC) No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds, and annexes to the said guidelines.

**2.1.1. Guidelines for risk assessment and management: Does your Member State have national guidelines (instructions or good practice guidelines) or rules specific to certain fields to help managers in assessing and managing the financial risks associated with awarding a benefit or a public contract? If so, in which fields?**

The IGFSE (European Social Fund Management Institute) is responsible for managing the information system for the European Social Fund. Its Information Systems Unit has the task of developing an information system which incorporates the physical and financial indicators required to manage, assess and verify the funds granted by the ESF. This system includes a database designed to provide information on the debt situation and suitability of bodies applying for ESF funding, which is used to assess and manage the financial risks involved in awarding a grant.

It is up to the managers of the operational measures to examine and approve funding applications and take duly substantiated decisions to suspend, reduce or revoke funding already approved. One of the manager's duties is to ask the IGFSE, before a funding application is approved, for information on the applicant's suitability and any debts it has in the ESF field. In turn, the applicants' access to funding depends on meeting *inter alia* the following conditions:

- they do not have debts relating to taxes, social security contributions or the repayment of ESF funding;
- they have not been convicted by a final judgment in criminal proceedings for acts involving Structural Funds resources; otherwise they are barred from the right of access to public finance under the ESF for two years or for a period laid down in the court sentence;
- they are not charged in ongoing criminal proceedings, nor has serious evidence of financial, accounting or organisational irregularities been detected in inspections or audits; otherwise they may have access to public financial support only on condition that they produce a bank guarantee corresponding to the payment authorisation or the part of the payment authorisation in question, which must be valid until the final balance is approved.

In short, the granting of European Social Fund assistance by the Portuguese Government depends in particular on verification of the requirements relating to the suitability and debt situation of applicants and existing beneficiaries. It can therefore be said that, in the granting of European Social Fund assistance, rules and procedures are in place that are designed to help the manager of a project to assess and manage the financial risks involved in awarding a grant.

**SI** There are no national guidelines for risk assessment and management, but some national departments carry out risk analyses in their specific fields.

The following national guidelines do exist for the assessment and management of **tax risks** in the Slovenian Tax Administration:

- standard operating instructions for carrying out the tax departments' tasks;
- standard instructions clarifying the actual tax regulations and other regulations for

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	<p>which the tax authority has the responsibility of control:</p> <ul style="list-style-type: none"> <li>- standard methodological instructions and manuals for individual tax-sensitive areas;</li> </ul> <p>NB: the supervision of public procurement does not come within the Tax Administration's responsibilities.</p>
<p><b>SK</b></p>	<p>Customs:</p> <ul style="list-style-type: none"> <li>- Regulation of the Director-General of the Customs Directorate of the Slovak Republic No 82/2005 – Methodology for the performance of <i>ex post</i> controls, related measures, additional assessment of tax debts and levying of the tax difference</li> <li>- For the purposes of risk assessment and management, the customs authorities have put in place a separate module within the customs information system, called the Risk Profile Record (ERP). The ERP communicates with other parties using the application software used for customs supervision and the administration of excise duties. The information obtained from external or internal sources and the results of the analyses are incorporated into Risk Profiles in the system. The ERP system has a built-in "entity risk assessment" module, which will be used to collect and record the information on entities that will be used to assess how risky they are.</li> </ul> <p>Financial control:</p> <ul style="list-style-type: none"> <li>- The financial control procedures for the structural funds and the Cohesion Fund</li> </ul> <p>Controls conducted by the Supreme Audit Office of the Slovak Republic</p> <ul style="list-style-type: none"> <li>- For the purposes of risk assessment the Supreme Audit Office uses the internationally accepted audit standards ISAs (IFAC) and INTOSAI.</li> <li>- Risk assessment methods are laid down in the Supreme Audit Office's Audit Standards (bases on IFAC and INTOSAI) and practical risk assessment procedures have been drawn up in manuals and guidelines for the various areas and type of control.</li> </ul> <p>Implementation of EU assistance (Management bodies and implementing agencies)</p> <p>Risk assessment and management is included in these bodies' in-house manuals.</p>
<p><b>FI</b></p>	<p>In December 2005, the Ministry of Finance published a recommendation for authorities and public bodies on good practice with regard to internal control and risk management. The recommendation lays down general principles for the organisation of internal control and risk management in the relevant departments of public organisations. It identifies, in general terms, what effective internal control and risk management consist of.</p> <p>It describes the component parts that, together, make for effective internal control and risk management. The recommendation contains sections on risk identification and assessment and good practices relating to them. The framework for internal control and</p>



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	<p>risk management is largely based on the Committee of Sponsoring Organisations (COSO) Enterprise Risk Management Framework.</p> <p>A business-support handbook is used, with instructions and guidelines concerning the granting and payment of support available under the Aid to Business Act (No 1068/2000). The Ministry of Trade and Industry issues the handbook to Employment and Economic Development Centres (TE-Centres), which come under its responsibility. The handbook contains instructions and guidelines relating to the processing of applications for business support, the assessment of projects and applicants, the various checks required during processing and the granting and payment of support. The purpose of the handbook is: to provide better documentation and to improve the quality of funding and of the preparatory work that goes into it; to improve the effectiveness of funding; and to help manage the risks associated with the granting and payment of funding. Employment and Economic Development Centres must adhere to the rules laid down in the handbook unless the Ministry gives written instructions to the contrary.</p>
<b>SE</b>	No
<b>UK</b>	<p>HM Treasury publishes general guidelines for the UK in "The Orange Book: Management of Risk - Principles and Concepts". More specific guidelines for use in the appraisal and evaluation process will be found in Annex 4, "Risk and Uncertainty" of the Green Book ("Appraisal and Evaluation in Central Government").</p> <p>Specific guidelines on the risks of procurement are published by the Office of Government Commerce ("Management of Risk: Guidance for practitioners"). Guidelines on grant-awarding risk in the Third (Voluntary) Sector are in "Improving financial relationships with the third sector: Guidance to funders and purchasers".</p> <p>Different Government departments have guidelines on compliance, for example in the Scottish Executive, all new organisations applying to run Structural Funds projects are sifted. All organisations deemed unsuitable to run Structural Funds are sifted out at this time. It therefore follows that all successful organisations are monitored in the same manner.</p> <p>In the Department for Communities and Local Government, all applications for grant are subjected to an appraisal system, which includes approval, by an independent panel of local experts. Projects must sign an 'offer letter' signifying their legally binding agreement to the terms and conditions of the grant. All large projects (in particular, those in receipt of £250k ERDF, or over) must provide an annual independent statement of grant expenditure.</p> <p>In addition, all projects in receipt of total grant of £20k (private sector) and £50k (public sector) must, on finalisation, provide an independent final statement of grant expenditure. Those receiving grant below the thresholds are required to maintain documentation for inspection at any time during the retention period.</p>

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	<p>All 9 regions of England have management systems in place to deal with risk.</p> <p>Individual systems vary depending on local circumstances i.e. knowledge, but all provide as a minimum a risk banding of approved projects into High, Medium and Low.</p> <p>All regions implement tighter checks on high and medium risk projects. In specific cases, if the regional authorities think it appropriate, assurances (special guarantees) would be sought by the Structural Funds Strategy Group Review Board at its quarterly meetings.</p>
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**2.1.2. Optional question: please describe your national risk assessment and management system very briefly below, describing only the main elements<sup>4</sup>.**

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<p><b>BE</b></p>	<p>In the Walloon region the functional authorities are directly in charge of checking expenditure by final recipients. The checks must be conducted before the expenditure item is certified in the database, which may under no circumstances record ineligible expenditure. Sending a broadcast (message to the Structural Funds database) thus means that the functional authority certifies that proper checks and inspections have been carried out. Each authority must have a documentary check procedure to certify these checks and inspections, recording:</p> <ul style="list-style-type: none"> <li>- the procedure for checks on documents;</li> <li>- the procedure for on-the-spot checks.</li> </ul> <p>French community, the ESF Agency: The Audit Unit of the Tax Inspectorate can call for an exchange of information between the levels of sections 4, 9 and 15 of ESF, ERDF and Interreg programmes enabling each level to identify risks attaching to a particular operator.</p>
<p><b>CZ</b></p>	<p>The general rules are put in place by the Ministry of Finance in its methodological instructions. For the structural funds and the Cohesion Fund the Ministry of Regional Development issued a risk management manual. However, responsibility for putting the risk management system in place lies with the heads of the individual public</p>

<sup>4</sup> This question was inserted at request of delegations which considered that in their legal system there were no databases of risk beneficiaries (questions 2.2, 2.3 and 2.4) and wanted to present the alternative methods used. Member States answer the questions 2.2, 2.3. and 2.4 need not therefore answer this question, though they may do so.

<b>2.1.2. Optional question: please describe your national risk assessment and management system very briefly below, describing only the main elements.</b>	
	administration bodies, who adapt the system in accordance with the specific requirements and features of their work.
<b>DE</b>	In one of the federal Länder the administrative authorities and paying agencies are supported by an audit unit that checks that all is in order on the basis of a 15% sample survey. All programme measures and all bodies involved are covered. If errors appear to be unusually frequent, the checks are intensified.
<b>EE</b>	The objective is to come up with – during the first half of 2007 – a risk management method which may be used for all aspects of structural fund administration and which will help identify general factors jeopardising the institution’s objectives rather than individual risky aid recipients.
<b>IE</b>	<p><b>The Department of Finance and the Department of Enterprise Trade and Employment as ESF paying authority</b> has issued Circulars setting out the financial management and control responsibilities for the implementation of ERDF and ESF co-funded operations in Ireland as required by Regulation 1260/99 and supplemented by 438/01 and 448/01.</p> <p>The key areas addressed in the Circulars are:</p> <ul style="list-style-type: none"> <li>– Segregation of duties;</li> <li>– Certification of expenditure;</li> <li>– Control (management) check requirements;</li> <li>– Audit requirements;</li> <li>– Eligibility of expenditure.</li> </ul> <p>The above control check and audit requirements carried out on beneficiaries are selected based on a risk assessment approach as required by Article 4 and Article 10 of 438/01.</p> <p><b>The Department of Agriculture and Food (DAF) as the CAP paying authority</b> fully complies with the various EU regulatory requirements concerning risk analysis in the context of controls implementation, e.g. on the spot checks of aid recipients. The effectiveness of risk analysis parameters used are assessed on an annual basis and adjusted where necessary.</p> <p><b>The Department of Agriculture and Food (DAF) Risk Management System</b></p> <p>The DAF operates an enterprise Risk Management System, where the complete range of possible risks facing the Department, including financial risks, are identified and where appropriate, measures are adopted to mitigate them.</p>
<b>EL</b>	For the selection of contractors to carry out works or provide goods and services and for simple subsidies and at the initial, intermediate and final payments stage,

**2.1.2. Optional question: please describe your national risk assessment and management system very briefly below, describing only the main elements.**

	<p>supporting documents from the authorities (administrative, legal, tax etc.) are submitted to demonstrate the solvency and the financial profile of the tenderer, as well as bank guarantees for percentages of the works budget as laid down by law. Under Greek law the bodies that issue these supporting documents (public services, banks, chambers of commerce, etc.) are responsible for their validity. When works are being implemented provision has been made to amend, as appropriate, the physical object of the works, especially as regards the use of amounts from contracted works not performed (Law 3481/06 Article 4). Payments are checked, both before and after they are made, by the Financial Control Services (YDE) and the National Audit Office. Also, all works contracts are checked by the National Audit Office before being signed. Therefore, under the Greek legal framework, beneficiaries that pose a risk are excluded therefore it is not necessary to answer questions 2.1.3 and 2.1.4.</p>
<p><b>FR</b></p>	<p>1) The French customs authorities do not have a national database of "risky beneficiaries" because in French law, under the principle of the presumption of innocence, files may not be drawn up identifying natural or legal persons who have not committed any irregularity or fraud but are "liable to do so".</p> <p>Traditionally, however, the risk of fraud is taken into account in IT customs clearance programmes to facilitate immediate physical checks and ease trade flows: customs officers can therefore integrate selection profiles (warning systems) into the system for some commercial operations, goods and/or flows where the risk of fraud is greater. These profiles are created using objective criteria tied to trade and national and community legislation applicable to some goods imported into the Community (such as, for example, anti-dumping measures, tariff quotas and so forth), or exported outside the Community.</p> <p>Customs departments also carry out traditional audits for operators who request simplified customs procedures or special agreements such as a TIR to ensure that they meet the necessary conditions and possess the necessary solvency margin. When this happens, customs agents may consult an IT application called the "Information system for the fight against fraud" (SILCF) which records all irregularities noted by customs agents, provided they follow the guidelines that have been set (the application is intended to facilitate customs missions researching, investigating, uncovering or punishing fraud, especially in economic or tax matters, and the protection of national and community space).</p> <p>Risk management of this type has in the past also been applied as a regular risk analysis of "sensitive" sectors to facilitate a posteriori checks to identify trade operations open to fraud, which are difficult to identify using immediate physical checks.</p> <p>In the judicial sphere, existing databases that may be consulted directly or indirectly by judicial customs officers are of a general nature and not specific to "risky beneficiaries". They do however, if necessary, enable natural or legal persons who have committed an offence as regards the protection of the financial interests of the European Union to be identified, provided the judicial customs officers have the power to perform such a search.</p>

**2.1.2. Optional question: please describe your national risk assessment and management system very briefly below, describing only the main elements.**

	<p>To sum up, the French customs administration has developed its own risk management methods which involve the consultation of databases but are not intended to identify "risky beneficiaries". The French authorities are therefore not in a position to answer questions 2.2, 2.3, 2.4 and 2.5.</p> <p>2) Regarding agricultural direct aid, the national risk assessment system is an extension of the IACS (integrated administration and control system) provided for in Community Regulation No 1782/2003.</p> <p>3) The national system for evaluating structural measures involves assessing projects and the capability and trustworthiness of operators by means of economic and financial expertise missions to the regional General Payment Agencies (TPG).</p> <p>If the opinion is not favourable, public aid is not granted (this also applies to Community aid).</p>
<b>CY</b>	No.
<b>LV</b>	<p>The Cabinet Regulations referred to in section 1.1 of this questionnaire (Regulation No 79 of 24 January 2006, Regulation No 114 of 7 February 2006, Regulation No 380 of 9 May 2006, Regulation No 381 of 9 May 2006, Regulation No 796 of 21 September 2004) and Cabinet Regulation No 382 of 9 May 2006 on project application guidelines for the open competition "modernisation of heating supply systems in line with environmental requirements and improvement of energy efficiency with regard both to heating supply system manufacture and distribution and to end users" lay down conditions relating to project applicants that represent a risk and set out cases in which infringements preclude commercial operators from submitting project applications.</p> <p>Pursuant to Section 81 of the Public Procurement Act, the Procurement Monitoring Office, as the body responsible for monitoring Government and local authority procurements, assesses the legislative compatibility of procurements made by these authorities as laid down in legislation, and where infringements are established prohibits the conclusion of procurement contracts. Such decisions may be contested before the Administrative Court. Where incompatibility with legislative provisions is established during the course of a public procurement or where there are indications of potential corruption in the award of a contract, the Office notifies the relevant authorities under which the monitored authorities operate. Notification is also sent to other competent authorities, including the Corruption Prevention and Combating Bureau (KNAB), the Competition Council and law enforcement agencies.</p> <p>Risk analysis and management on a national level are implemented and maintained with the assistance of external consultancy firms. State authorities are under an obligation to undertake risk management, monitor risk surveillance measures and apply internal control mechanisms. These provisions are laid down in Cabinet Regulation No 466 of 19 August 2003 on basic requirements for the establishment of internal control systems.</p> <p>Applicants participating in public procurement proceedings for Cohesion Fund projects and Structural Funds competitions are requested to submit certification showing that</p>

**2.1.2. Optional question: please describe your national risk assessment and management system very briefly below, describing only the main elements.**

	<p>they are duly registered, for instance in the Commercial Register, that they do not have tax debts and that they have not been declared insolvent.</p> <p>The handbooks on PHARE project administration procedures and Structural Funds project administration procedures describe all identified risks in the entire project administration cycle and set out control measures for reducing identified risks.</p>
<b>LT</b>	<p>The implementing authority must assess the applicant's and/or their partner's suitability. In general the applicant is not eligible for aid in the following cases: a bankruptcy case has been brought against the applicant or the applicant is in liquidation; the applicant's liabilities have not been met relating to the settlement of taxes or social security payments in accordance with Lithuanian legislation (this rule may not apply in the case of institutions whose activities are financed from the State or local government budget, and legal persons in respect of whom the payment deadline for taxes or social security payments has been extended under procedures laid down in Lithuanian legislation); an application or its annexes contain incorrect information; a court decision is in force concerning an infringement by the applicant of any other agreement relating to the granting of aid from EU or Lithuanian State funds; the applicant has attempted to acquire confidential information or to exert an influence on the assessing authority, the project selection committee or the authority responsible for adopting decisions on the granting of aid during the assessment or selection procedure for current or previous applications.</p>
<b>MT</b>	<p>Although there is no overall national risk assessment and management system applicable across all programmes and all entities, each stakeholder (Managing Authority, National Authorising Office, etc.) has its own risk assessment and management system applicable to the programmes/funds it manages and this assessment is based on the relevant risk factors.</p> <p>The Department of Contracts maintains a register of exceptions. Any exceptions noted during the drafting of tenders and awarding of contracts are registered in a log book. Each exception/deviation contains a cross reference to the individual project file.</p>
<b>NL</b>	<p>With Action 3 of the National ERDF Action Plan (systems varying hitherto from region to region) the Ministry of Economic Affairs (EZ) has taken the measures needed to establish a uniform set of administrative checklists.</p>
<b>AT</b>	<p><b>Only with respect to the special case of employment of foreigners:</b> The aim of the Act on employment of foreigners is to protect the Austrian labour market. Offences against this law are regulated very strictly and in a detail. A company that commits such an offence is identified as risky in public procurement after two findings in one year.</p>

**2.1.2. Optional question: please describe your national risk assessment and management system very briefly below, describing only the main elements.**

<b>PL</b>	<p><b>Common Agricultural Policy:</b></p> <p>An element of the risk assessment and management is a mechanism providing for the selection for on-site inspection of the applicants submitting applications under CAP. During the selection process for on-site inspections, the risk analysis method is used. The risk factors used during that analysis also include the following criterion: “have any irregularities been found in previous years”, which has an appropriate weight attached to it. Consequently, the beneficiaries that had any irregularities ascertained during earlier inspections on site are more likely to be selected for inspection again.</p> <p>Every time a decision is made to grant co-funding, it is preceded by the complete course of the prescribed procedure. This procedure includes in-built mechanisms allowing for the assessment of the risk relating to a given mechanism, and aimed at minimizing such risk. These include, amongst others, the technical inspections incorporated into the course of the procedure, the results of which affect the decision to grant the co-financing. The financial security system is designed to enhance the guarantee of the proper fulfilment by the beneficiaries of their obligations. In addition, the functional control mechanisms provided (such as the “two pairs of eyes” principle, checklists), financial eligibility grading, employee rotation, possibility of an independent verification of the information received from the CAP participants, limit the risk that a wrong decision can be made. In the case of markets with a limited number of participants (entities cooperating with the paying agency - AMA), such as the sugar or potato starch markets, great significance is attached to the long-term experience of the AMA, which used to cooperate with these entities even before Poland joined the EU. Another important element of the risk management process is the correct documentation, since it facilitates an independent evaluation of the process, a systematic implementation of the process, the creation of the information database relating to risks identified earlier and methods of controlling the same, a more efficient transfer to the participants of the process of information on risk management, and the creation of an audit path.</p> <p><b>Structural funds:</b></p> <p>One of the fundamental elements of risk assessment and management under IROP (ERDF and ESF) is the control system set forth in Article 4 of Regulation 438/2001. Within the IROP control system, the following can be distinguished: management and control system inspections carried out by the Managing Authority and the Intermediary Bodies, and inspections at project sites, as well as monitoring visits, carried out by the Managing Authority, the Intermediate Bodies and the Implementing Institutions. The monitoring and reporting system is designed for risk assessment and management; at the Managing Authority level, this system is used mainly for the monitoring of the topical and financial progress in the implementation of the Programme. On the other hand, the Intermediate Bodies and the Implementing Institutions monitor the implementation of projects on an on-going basis. An important element of the risk assessment system is the system for reporting irregularities under IROP (ERDF and ESF), which allows for the collection of information relating to irregular practices and the entities whose actions have resulted in such irregularities.</p>
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**2.1.2. Optional question: please describe your national risk assessment and management system very briefly below, describing only the main elements.**

The system for reporting irregularities is closely connected with the **regular meetings relating to fraud and misuse of funds**, organised every quarter by the IROP Managing Authority. The meetings are attended by the employees of all the institutions involved in the implementation of IROP – inspectors and persons responsible for the process of reporting irregularities at the regional and national levels. In addition, the Managing Authority has implemented an initiative consisting in the cooperation with the prosecution bodies (the police).

Every year, the HRD and EQUAL Managing Authority (ESF) prepares a **risk analysis**, as a result of which the level of risk has been determined for processes such as: accounting, monitoring and reporting, expenditure monitoring, project finance, financial management, public procurement, project control, SIMIK (the Information Technology System for Monitoring and Financial Control for Structural Funds and Cohesion Fund) and PEFS (European Social Fund Monitoring Subsystem) systems, irregularities, evaluation, information and promotion, and archiving. The abovementioned processes have been analysed under the Sectoral Operational Programme – Human Resources Development and the EQUAL Community Initiative Programme.



**2.1.2. Optional question: please describe your national risk assessment and management system very briefly below, describing only the main elements.**

**PT**

**Risk assessment and management system for the ESF:**

In view of the legal requirements laid down for applicants for funding and the manager's duty to request, before the funding application is approved, information on the applicant's suitability and whether it has any debts in the field of ESF funding, the IGFSE system (integrated information system for the ESF (SIIFSE)) supplies the following information, which is sufficient for the manager to perform his duty of managing the risks:

**1. Information on the debt situation** - the applicant falls into one of two categories here:

- it is in order as regards repayments of ESF funding, or
- it is not in order as regards such repayments, under the applicable legal provisions.

If the applicant's situation is in order, the only possible reason for suspending payments and ultimately revoking the approval decision is the subsequent emergence of a debt relating to the ESF. However, if the applicant is in an irregular situation, as described above, it is barred access to ESF financial assistance.

**2. Information on suitability:** four cases may arise here:

- the applicant is unknown or there is no evidence of irregularities of any kind: in this case there are no implications for funding;
- evidence has been detected during inspections or audits that the applicant has been involved in financial, accounting or organisational irregularities which require only administrative or financial corrections; in this case the manager must check the facts of the case and carry out accounting/financial checks on the applicant;
- the applicant has been charged in criminal proceedings for acts involving financial resources from the Structural Funds or serious evidence of financial, accounting or organisational irregularities has been detected in inspections or audits; in such cases access to public financial assistance under the ESF will depend on production of a bank guarantee corresponding to the payment authorisation or, where implementation of measures is under way, the part of the payment authorisation in question;
- the applicant has been convicted in criminal proceedings by a final judgment for acts involving financial resources from the Structural Funds; the consequences in this case are a bar on access to public funding under the ESF for two years or for a period laid down in the court judgment.

**2.1.2. Optional question: please describe your national risk assessment and management system very briefly below, describing only the main elements.**

If an applicant already in receipt of ESF funding is convicted in criminal proceedings, the funding granted may be reduced or revoked under Articles 21 and 23 of Decree No 799-B/2000 of 20 September 2000.

For the purpose of investigating the above cases, applicants are assigned "suitability codes".

**3. Description of procedures relating to the database on the “Suitability and Debts” function of the SIIFSE:**

**3.1 Entry and registration:** Applicants access the IGFSE's webpage (<https://siifse.igfse.pt>) and sign in; they are given a login and password if they send in their tax identification number and, in the case of individuals, the number of their identity card and taxpayer's number. Once the documents have been submitted and assessed by the IGFSE's Information Systems Unit, the applicant is informed of its access codes and becomes an active party in the SIIFSE.

**3.2 Application:** The applicant submits an application form to the operational programme manager, who must, by dint of the duties conferred on him, check:

- whether or not the applicant is active in the system;
- if it is not, he must tell the applicant to follow the procedure described above;
- if the applicant is duly registered, the manager submits model 2 (Request for information on suitability and debts) to the SIIFSE. If the applicant is an individual, the answer to the query will be simply whether or not there are debts relating to the ESF;
- the SIIFSE receives the request online and it is up to the Legal Unit to inform the manager of the situation regarding suitability and debts, also online, but confirmed on paper using model 2-A, which is also sent to the manager.

**3.3 Registration of changes:** Every time there is a change in one of the fields, whether it relates to debts or suitability, the Legal Unit changes the registration in the SIIFSE and notifies the managers dealing with the applicant, using model 2-A. The Legal Unit is informed by the Management Unit of changes in the debt situation occurring during the current programming period. Such changes occur:

- when the applicant has not refunded an amount unduly received by the deadline prescribed by law; in this case the Legal Unit initiates proceedings with a view to tax enforcement by the relevant finance departments;
- when the debt situation has been rectified.

**2.1.2. Optional question: please describe your national risk assessment and management system very briefly below, describing only the main elements.**

Circumstances likely to cause changes in suitability come to the attention of the Legal Unit in the following ways:

- notices of irregularities detected during 1st and 2nd level inspections, passed on by the Inspection Unit, where the amount at stake in the financial irregularity is equal to or more than €10 000 or, where there is evidence of a criminal offence, in accordance with Article 15 of Decree 684/2001 of 5 July 2001 and Regulation (EC) No 1681/94 of 11 July 1994, as amended by Regulation (EC) No 2035/2005 of 12 December 2005;
- notifications sent by the Public Prosecutor's Office;
- information from managers, under Articles 4 and 13 of Decree No 684/2001 of 5 July 2001.

Changes in suitability are always the subject of an administrative decision by the President of the IGFSE. Furthermore, in cases where the suitability rating is downgraded because serious evidence of financial, accounting or organisational irregularities has been detected in inspections or audits or there are criminal charges or a criminal conviction, the applicant is always notified of the decision in question in accordance with the Code of Administrative Procedure.

It is worth noting that, whenever the suitability rating is downgraded to one where funding is more restricted or barred, the SIIFSE contains mechanisms for alerting managers, for example by preventing them from issuing payment authorisations without registration of a bank guarantee if the applicant falls under the category described at Article 23(3) of Regulatory Decree No 12-A/2000 of 15 September 2000.

Risk is systematically taken into account in defining samples of funding applications for inspection, either in 1st level inspections, where it is the responsibility of the managers of the operational programmes, or in 2nd level inspections, in accordance with the Inspection Manuals issued by the coordinating body, the IGFSE. As laid down in the Inspection Manuals, the risk is determined on the basis of the following criteria:

- the existence of complaints;
- the existence of evidence of financial, accounting or organisational irregularities;
- materiality (volume of financing connected with application);
- the fact that the applicant in question is unknown;
- the frequency of applications;
- the fact that the applicant has submitted funding applications under different operational programmes.

**2.1.2. Optional question: please describe your national risk assessment and management system very briefly below, describing only the main elements.**

It must be stressed that these criteria are reflected in the SIIFSE inspection module.

**2.1.2. Optional question: please describe your national risk assessment and management system very briefly below, describing only the main elements.**

<p><b>SI</b></p>	<p>Under the <b>Decree on the implementation of procedures for the use of structural policy funds in the Republic of Slovenia</b> (Official Gazette No 7 – 268/2006 of 25.1.2006) the direct spending agencies are responsible for carrying out the controls referred to in Article 4 of Commission Regulation No 438/2001.</p> <p>Under Article 26(1) of the Decree the managing authority may organise additional controls before and after disbursing structural policy funds from the budget. Moreover, the managing authority and paying authority may at any time ask any department involved in the implementation of Structural Funds for access to documents relating to implementation.</p> <p>Tighter checks are carried out at ministry level on a case-by-case basis but not systematically by the Budget Supervisory Office of the Republic of Slovenia.</p>
<p><b>FI</b></p>	<p>In Finland, government agencies are result-oriented bodies with wide-ranging powers and the responsibility to organise their activities in an appropriate manner. This responsibility includes a legal obligation to ensure that internal control and risk management are properly organised, both in relation to the agency's own activities and the activities for which the agency is responsible (e.g. management of the Structural Funds).</p> <p>Agencies must account for their performance, their use of resources and for the organisation of internal controls and risk management. Agencies' annual reports must contain a statement on the effectiveness of internal control and risk management. The statement must be drawn up on the basis of a comparison of the agency's procedures with the generally approved framework for internal control and risk management. The agency's senior management is responsible for organising internal control and risk management and for the statement relating to it.</p> <p>The State Audit Office checks that the statement is accurate as part of its audit of the agency's annual accounts.</p> <p>Furthermore, the Ministry of Agriculture uses the following to process applications for support:</p> <ul style="list-style-type: none"> <li>- accounts for the last three years (profit and loss account, balance sheet, audit report and annual report);</li> <li>- statement of debts from bank or elsewhere (no older than three months, also including any tax debts);</li> <li>- copy of commercial register, declaration registering a trade or extract from the register of associations;</li> <li>- copy of articles of association;</li> <li>- proof that the firm is registered for the prepayment of tax;</li> </ul>

**2.1.2. Optional question: please describe your national risk assessment and management system very briefly below, describing only the main elements.**

	<p>- profitability calculation for large investments.</p> <p>The person making the decision on support may use these documents to assess the ability of the applicant to carry out the project or measure in question. If, once support has been granted, the recipient is seen as belonging to a risk group, e.g. because of previous infringements of the rules, this will increase the likelihood of checks. This is thus one of the factors in the risk analysis.</p> <p>The Ministry of Trade and Industry's business-support handbook requires Employment and Economic Development Centres to consult a credit-rating-company register before making a financing decision, in order to check certain information regarding the firm in question (including payment arrears, and firms and bankruptcies in which the applicant-firm's owners or executives are involved). When the applicant-firm's financial situation warrants it, Employment and Economic Development Centres must ask the tax authorities for information on any tax arrears and take account of that information in assessing the application. The Employment and Economic Development Centres use analysis and design software for assessment and design in relation to a firms' financial situation.</p>
<p><b>UK</b></p>	<p>In the United Kingdom, Government departments (and other public sector bodies as appropriate) are strongly encouraged to appoint a Risk Improvement Manager. There is no specific standard or system for risk management, but the recommended principles of Risk Management Assessment Framework includes identification of risk, assessment of risk, addressing risk and reviewing and reporting risk.</p> <p>Organisations may also choose to adopt particular standards such as the "Risk Management Standard" produced jointly by the Institute of Risk Management (IRM), Association of Local Authority Risk Managers (ALARM) and Association of Insurers and Risk Managers (AIRMIC) in the United Kingdom, or Committee of Sponsoring Organisations (COSO) etc.</p> <p>Even if no particular standard or guideline is followed, organisations are expected to be able to demonstrate that they manage risk in their particular circumstances in a way that effectively supports the delivery of their objectives.</p>

<p><b>2.1.3. If you identify a beneficiary as posing a risk,<sup>5</sup> does this result in tighter checks by the managing authority?</b></p>	<p><b>2.1.4. If you identify a beneficiary as posing a risk, does this result in a requirement for special guarantees?</b></p>
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<sup>5</sup> The concept of risk recipient must be interpreted according to the Member State's risk assessment and management system. It may be a recipient who is in debt or has failed to fulfil his obligations or has committed irregularities in the past.

	a) Yes, systematically	b) Yes but not systematically	c) No	a) Yes, systematically	b) Yes but not systematically	c) No
<b>BE</b>	FPS Economic Affairs  Flemish Government  BIRB  Walloon Region  French community: ESF Agency	Brussels capital region  German speaking community			FPS Economic Affairs  BIRB  Walloon Region  German speaking community	FPS Economic Affairs  Flemish Government  Ministry of the Walloon Region  Brussels capital region  French community: ESF Agency
<b>CZ</b>			no			no
<b>DK</b>	yes (agricultural expenditure)	yes (structural measures)			yes (structural measures)	no (agricultural expenditure)
<b>DE</b>	yes			yes		
<b>EE</b>			no			no
<b>IE</b>	the National Public Procurement Policy Unit /  Department of Enterprise Trade and Employment	the Department of Agriculture and Food (DAF) <sup>6</sup>			the Department of Enterprise Trade and Employment	the National Public Procurement Policy Unit /  The Department of Agriculture and Food
<b>EL<sup>7</sup></b>			no			no

<sup>6</sup> As regards the DAF, beneficiaries identified as posing a risk receive particular attention, including extra weighting for risk analysis and/or greater scrutiny of their claims, as appropriate.

<sup>7</sup> Because risky beneficiaries are excluded from the selection proceedings.

<b>2.1.3. If you identify a beneficiary as posing a risk,<sup>5</sup> does this result in tighter checks by the managing authority?</b>				<b>2.1.4. If you identify a beneficiary as posing a risk, does this result in a requirement for special guarantees?</b>		
	<b>a) Yes, systematically</b>	<b>b) Yes but not systematically</b>	<b>c) No</b>	<b>a) Yes, systematically</b>	<b>b) Yes but not systematically</b>	<b>c) No</b>
<b>ES</b>		yes <sup>8</sup>				no
<b>FR</b>	yes, in customs matters <sup>9</sup> and structural measures.	yes, in agriculture <sup>10</sup> .		yes, in structural measures.	yes, in customs matters.	yes, in agriculture.
<b>IT</b>		yes			yes	
<b>CY</b>	N/A			N/A		
<b>LV</b>	yes				yes	
<b>LT</b>	yes (on the spot checks are carried out)					no
<b>LU</b>			no			no
<b>HU</b>	No answer.			No answer.		
<b>MT</b>		In the case of structural and cohesion funds.	In the case of EAGGF – Guarantee Section funds.			no

<sup>8</sup> There is no overall risk assessment and management system. However, where specific risks associated with a particular beneficiary are identified, the case is followed up and taken into account when the control plans are drawn up.

<sup>9</sup> "Risky beneficiary" is taken to mean an operator who has recently committed irregularities or fraud in a recurrent manner with regard to the rules to be enforced by customs authorities.

<sup>10</sup> The decision to carry out checks may be taken randomly, as a result of guidelines, or as a result of computerised risk analysis. The "risky beneficiary" criterion is essential for the second of these. However, in view of the proportion of controls to be carried out (20 to 25% according to the Regulation), not all "risky beneficiaries" are systematically checked.



<b>2.1.3. If you identify a beneficiary as posing a risk,<sup>5</sup> does this result in tighter checks by the managing authority?</b>				<b>2.1.4. If you identify a beneficiary as posing a risk, does this result in a requirement for special guarantees?</b>		
	<b>a) Yes, systematically</b>	<b>b) Yes but not systematically</b>	<b>c) No</b>	<b>a) Yes, systematically</b>	<b>b) Yes but not systematically</b>	<b>c) No</b>
<b>NL</b>	yes (agriculture).	yes (other fields).			yes (agriculture)	no (other fields).
<b>AT</b>	yes (in case of employment of foreigners, see 2.1.2.)		No (others)		Yes	
<b>PL</b>	yes <sup>11</sup>					no
<b>PT</b>	yes (ESF)	yes (ERDF, CFG)			yes	
<b>SI</b>		yes <sup>12</sup>				no
<b>SK</b>	yes					no
<b>FI</b>	yes (in some administrative sectors)	yes (in some administrative sectors)				no
<b>SE</b>	yes					no <sup>13</sup>
<b>UK</b>	yes <sup>14</sup>					no

<sup>11</sup> In the case of the majority of institutions, the methods of selecting projects for inspections mean that beneficiaries posing a higher risk of misuse of funds are more likely to be selected for inspection. In the case of some institutions, the selection of projects for inspection does not always take into account this risk factor.

<sup>12</sup> If a specific beneficiary poses a risk, he has to undergo a control. He will receive a high risk analysis weighting which will require him to be controlled again the following year or years until he loses his risky beneficiary status.

<sup>13</sup> The vast majority of beneficiaries are public project owners and no special guarantees are required. Project owners (the Lead Partner) often have good liquidity. If irregularities are detected in a project, careful checks are generally made and supplementary documentation is requested. Should a project owner be unable to justify its costs, these will be deducted from future payments. A factor to bear in mind, given the Swedish system, is that there are still significant restrictions on advance payments to beneficiaries.

<sup>14</sup> See 2.1.5.

**If you answer a) or b) to question 2.1.4., please specify the type of special guarantee that is or can be required.**

<b>BE</b>	<p><b>FPS Economic Affairs (EAGGF Guarantee Section):</b> Belgian Office for Intervention and Restitution (BIRB): Payments and securities are blocked.</p> <p><b>Walloon region:</b> Regarding assistance to firms, certification as to compliance with legislation in a variety of matters (environment, social etc.).</p> <p><b>German speaking community:</b> Constitutional documents, balance-sheets from earlier years</p>
<b>DK</b>	<p>The administrative authority will be very reticent about awarding any grant to a person or firm deemed to represent a risk. If the administrative authority awards such a grant, individual conditions will be imposed on the beneficiary. An example of this might be that the grant could not be paid out until the whole project is complete and paid for, possibly with the addition of a condition whereby the management of the project over a given period of years must also be secured in the form for example of a management guarantee from a bank.</p>
<b>DE</b>	<p>By and large additional guarantees are not required. In specific cases guarantees <i>in personam</i> or <i>in rem</i> may be demanded.</p>
<b>IE</b>	<p><b>The Department of Enterprise Trade and Employment:</b> The beneficiary may be requested to provide a written guarantee and/or accountant certificate for a specific issue which cannot be fully confirmed (e.g. double co-financing has not occurred from Structural Funds for the same project/expenditure).</p>
<b>FR</b>	<p><b>Regarding structural measures:</b> additional tax, legal or accounting documentation.</p> <p><b>In customs matters,</b> this involves precautionary measures set out in the Community customs code, if evidence or material facts point to fraud. Under Article 248 of the CCIP, where the customs authorities consider, at the time of customs clearance, that the checks which they have undertaken may enable an amount of customs duties higher than that resulting from the particulars made in the declaration to be assessed, precautionary measures may be taken. The security is calculated as the difference between the amounts.</p>
<b>IT</b>	<p><b>Law 109/94, DPR No 554 of 21 December</b> published in GURI No 98 of 28 April 2000, <b>Legislative Decree No 163/06, DPR 34/2000</b> and the anti-Mafia legislation establish a complex guarantee system to protect those who take part in a contract tendering procedure, including guarantees to protect the public interest.</p> <p>This system of guarantees is laid down by the above legislation as part of the normal tendering procedure for public works and services contracts. Bank guarantees or additional documentation may also be required.</p>

**If you answer a) or b) to question 2.1.4., please specify the type of special guarantee that is or can be required.**

<p><b>LV</b></p>	<p>New commercial operators or operators whose financial statements do not comply with the criteria laid down in Cabinet regulations on the implementation of the Structural Funds must submit a financial statement audited by a certified auditor. Certain groups of project applicants represent a risk and may not submit project applications (those declared insolvent by means of a court decision (those undergoing reorganisation proceedings or, in accordance with information available in the Commercial Register, who are in liquidation, or whose economic activities have been terminated); those who have failed to pay taxes and other compulsory Government or local authority payments in full and by the due dates; those who have submitted incorrect (or misleading) information when making project applications).</p> <p>Within the framework of the EQUAL programme initiative where a beneficiary who represents a risk is a non-governmental organisation and requires an advance payment during project implementation, the contract sets out that additional documents (an indemnity or letter of guarantee) must be attached to the advance payment invoice as a certification that the legal person concerned (who is registered in the Republic of Latvia) undertakes to reimburse the advanced sum to the EQUAL managing authority if the beneficiary fails to meet the legal obligations set out in the contract. This provision safeguards State budgetary funds and prevents any negative impact on the European Community budget.</p> <p>In certain cases financial guarantees are requested from Structural Funds beneficiaries. The guidelines for the 2004 ESF project competition set out that where a project application gains fewer than 15 points under the evaluation criterion "Capacity" (which assesses the potential beneficiary's managerial and practical experience, financial resources, human resources and material technical resources) (maximum 20 points), the Social Integration Fund shall request a financial guarantee from the beneficiary when concluding the financing contract. Since the start of the 2006 ESF project competition financial guarantees are no longer requested since the Social Integration Fund no longer makes advance payments, rather it makes payments on the basis of invoice copies submitted or unpaid by the beneficiary.</p>
<p><b>NL</b></p>	<p>The Ministry of Social Affairs and Employment gives the example of annual accounts and auditors' statements attached to accounts. The Ministry of Agriculture, the Natural Environment and Food gives the example of bank guarantees being called in.</p>
<p><b>AT</b></p>	<p>The Act of Public Procurement demands the proof of reliability in tax compliance.</p> <p>European Social Fund (ESF), European Regional Development Fund (ERDF): the administrative bodies can require beneficiaries to provide bank guarantees only in special cases.</p> <p>Employment of foreigners (see 2.1.2.): guarantees are required.</p>

**If you answer a) or b) to question 2.1.4., please specify the type of special guarantee that is or can be required.**

<b>PT</b>	<p>In relation to the ESF, specific guarantees are required from applicants who have been charged in criminal proceedings for acts involving financial resources from the Structural Funds or regarding which serious evidence of financial, accounting or organisational irregularities has been detected in inspections or audits. Guarantees are also required in cases where the decision is revoked when it is found that the same funding application has been submitted to more than one manager and also where applicants refuse to undergo an inspection to which they are subject by law.</p> <p>Bank guarantee corresponding to the amount of each payment to be made.</p>
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**2.1.5. Do you have special tools for assessing the risk posed by new recipients of public funds or by small entities (SMEs)? If so, please give a brief description.**

<b>BE</b>	<p><b>FPS Economic affairs (EAGGF Guarantee Section):</b> There are no special tools at the Belgian EU Guarantee payment bodies.</p> <p><b>Brussels capital region:</b> No</p> <p><b>Walloon region:</b> Balance-sheet Centre at the Belgian National Bank (publication of annual accounts).</p> <p><b>French community:</b> ESF AGENCY: The Audit Unit of the Tax Inspectorate can call for an exchange of information between the levels of sections 4, 9 and 15 of FSE, FEDER and Interreg programmes enabling each level to identify risks attaching to a particular operator.</p>
<b>CZ</b>	<p>No distinction is made between new or small applicants; this is so as to comply with the requirements of the Public Procurement Act stipulating that public contract award procedures must be transparent and non-discriminatory.</p>
<b>DK</b>	<p>In the area of the Social Fund, aid beneficiaries are required to obtain previous approval for their procedures from an auditor/inspector, without which subsidy resources cannot be paid out.</p>
<b>DE</b>	<p>In one of the federal Länder information on credit status is normally requested from ESF applicants where the sum applied for exceeds €50 000 and there is no credit rating or other evidence of unsatisfactory business management.</p>
<b>EE</b>	<p>No</p>
<b>IE</b>	<p><b>The Department of Enterprise Trade and Employment:</b> If there is a new recipient of public funds then additional information not previously available (e.g. financial/management background and expertise in the area being funded) may be sought at the grant assessment stage.</p>

<b>2.1.5. Do you have special tools for assessing the risk posed by new recipients of public funds or by small entities (SMEs)? If so, please give a brief description.</b>	
<b>EL</b>	Yes, there is a system for assessment and selection by type of project.
<b>ES</b>	No
<b>FR</b>	This is the case for structural measures, cf. point 2.1.2.
<b>IT</b>	No answer.
<b>CY</b>	No
<b>LV</b>	<p>New commercial operators are asked to submit financial statements audited by certified auditors.</p> <p>In some institutions particular attention is paid to new clients with regard to risk analysis.</p> <p>When assessing a given potential beneficiary's (applicant's) project application, section 1 of the quality evaluation assesses the applicant's "financial management capacity", i.e. the level of funding the applicant or project implementation personnel has administered in the past. If the degree of public financing which the applicant has administered previously to this project application is not proportionate with the level of funding being requested, the applicant's financial management capacity may be considered insufficient to receive financing under the Structural Funds being administered.</p>
<b>LT</b>	No
<b>LU</b>	No
<b>HU</b>	No answer.
<b>MT</b>	As explained in 2.1.1 above, it is emphasised that at the selection stage of the final recipients, particular care and attention is given to the economic viability and sustainability of the applicants by the use of checklists and related points system.
<b>NL</b>	No
<b>AT</b>	No

**2.1.5. Do you have special tools for assessing the risk posed by new recipients of public funds or by small entities (SMEs)? If so, please give a brief description.**

**PL**

**Common Agricultural Policy** (Procedure applied at the Agriculture Restructuring and Modernisation Agency (ARMA):

A standard mechanism includes the verification of the business plan and the technical and economic assessment. In addition, beneficiaries applying for the first time are more likely to be referred for on-site inspection. During the selection for on-site inspection by means of the risk analysis method, the “first application” criterion is used, weighted as appropriate.

**Structural funds:**

SOP ICE (ERDF): At the time of submitting the application for co-funding, the beneficiary, e.g. the undertaking as regards Measure 2.3 of SOP-ICE, is obliged to submit the project business plan, together with the financial documentation in the form of financial statements, i.e. the balance sheet and the profit and loss account for the last 2 years, or copies of the management report and copies of the auditor’s opinion for the last 2 years, copies of the PIT (Personal Income Tax) or CIT (Corporate Income Tax) declarations bearing the seal of the Tax Office, a credit facility promise or a promise to enter into a lease agreement (if applicable). The application for co-funding includes the applicant’s declaration as to the possession of funds for the implementation of the project, and the beneficiary’s statement confirming the lack of any tax or social insurance (ZUS) arrears. During the technical and economic assessment, the beneficiary is assessed, amongst others, as regards its financial condition (based on the application for co-funding and the abovementioned documents), and the project is assessed following the verification of, amongst others: the level of funds necessary to complete the project, including the proportion of funds obtained under credit facility agreements, investment fund or lease (if applicable), and the degree of preparedness for implementation, i.e. whether the project has all the required and necessary permits, concessions, licences, etc. and whether they are legally valid. During the topical evaluation, a detailed analysis of the cashflow ratios and the debt ratio is carried out. Prior involvement in aid projects and the quality management level (possession of certificates such as ISO 9000, ISO 1400) are taken into account. In addition, the beneficiary submits a statement of no criminal record in the case of individuals, or, in the case of applicants other than individuals, a declaration on the lack of grounds for any misuse of public aid to be ascertained. At the time of execution of the agreement, the beneficiary submits the registration document (an up-to-date extract from the relevant court register or an up-to-date certificate of registration in the business register, copy of the information relating to the business registration number (REGON) and current (i.e. issued no earlier than 3 months before the date of submission of the application) certificates from the Tax Office and the Social Insurance Office (ZUS), confirming lack of arrears.

Furthermore, under other programmes, the financial situation of the applicant is analysed, based on the document submitted by the applicant: aid beneficiary’s balance sheet for the last two years preceding the year in which the application is being submitted or, if the beneficiary has been operating for a shorter period, for such period of operation, and, in the case of firms which do not prepare balance sheets, a copy of the PIT or CIT declaration, respectively, depending on the type of taxation.

**2.1.5. Do you have special tools for assessing the risk posed by new recipients of public funds or by small entities (SMEs)? If so, please give a brief description.**

<b>PT</b>	No.  However, one of the criteria used in determining the sample of applicants to be audited in a 2nd level inspection concerns the risk factor associated with the fact that the applicant is unknown to the system.
<b>SI</b>	No
<b>SK</b>	No
<b>FI</b>	See 2.1.2.
<b>SE</b>	No
<b>UK</b>	The great bulk of ERDF grant beneficiaries are in the UK public sector and are therefore subject to additional public scrutiny. New recipients of grant or those identified as having less experience in managing grant-aided projects would normally be subject to additional checks and advice/support.

**2.1.6. When a (national or Community) grant or public contract is awarded, do the managing authorities have access to specific databases to check the accuracy of the facts declared by the applicant?**

N.B. Access to a database can be either direct or indirect, i.e. by means of a request to the authority managing the database which that authority must answer.

**2.1.6. When a (national or Community) grant or public contract is awarded, do the managing authorities have access to specific databases to check the accuracy of the facts declared by the applicant?**

	<b>a) Tax databases?</b>		<b>b) Databases of credit establishments?</b>		<b>c) Databases on persons and bodies corporate ordered to pay penalties in administrative proceedings?</b>	
	Yes	No	Yes	No	Yes	No
<b>BE</b>		no		no		no
<b>CZ</b>	yes			no		no
<b>DK</b>	yes		yes			no, there is no actual database in this field
<b>DE</b>		no		no		no

**2.1.6. When a (national or Community) grant or public contract is awarded, do the managing authorities have access to specific databases to check the accuracy of the facts declared by the applicant?**

a) Tax databases?		b) Databases of credit establishments?		c) Databases on persons and bodies corporate ordered to pay penalties in administrative proceedings?	
<b>EE</b>	Yes, indirect.		Yes, indirect.		Yes, indirect.
<b>IE</b>		no		no	no
<b>EL</b>	yes, indirect		yes, indirect		yes
<b>ES</b>	yes <sup>15</sup>			no	no
<b>FR</b>	yes		yes		yes
<b>IT</b>	yes			no	yes
<b>CY</b>		no		no	no
<b>LV</b>	yes			no	yes
<b>LT</b>	yes		yes		yes
<b>LU</b>		no		no	no
<b>HU</b>	yes			no	no

<sup>15</sup> Access to tax databases is indirect; it must first be authorised by the State Tax Administration Agency.



**2.1.6. When a (national or Community) grant or public contract is awarded, do the managing authorities have access to specific databases to check the accuracy of the facts declared by the applicant?**

a) Tax databases?		b) Databases of credit establishments?		c) Databases on persons and bodies corporate ordered to pay penalties in administrative proceedings?		
<b>MT</b>		no, however, relevant information such as tax and NI outstanding balances are verified via a tax clearance certificate issued by the Inland Revenue Department. This certificate is required to be submitted at application stage.		no		no (in the case of structural and cohesion funds)
<b>NL</b>		no	yes <sup>16</sup>	no		no
<b>AT</b>	yes (in case of employment of foreigners, see 2.1.2.)	no (in other cases)		no	yes (in case of employment of foreigners, see 2.1.2.)	no (in other cases)
<b>PL</b>	yes			no	yes	
<b>PT</b>		no <sup>17</sup>		no	yes <sup>18</sup>	

<sup>16</sup> Ministry of Agriculture, the Natural Environment and Food Quality sometimes has access to databases of credit establishments

**2.1.6. When a (national or Community) grant or public contract is awarded, do the managing authorities have access to specific databases to check the accuracy of the facts declared by the applicant?**

a) Tax databases?		b) Databases of credit establishments?		c) Databases on persons and bodies corporate ordered to pay penalties in administrative proceedings?	
<b>SI</b>		no		no	no
<b>SK</b>		no <sup>19</sup>		no <sup>20</sup>	N/A
<b>FI</b>	yes, it varies according to administrative sector.		yes, it varies according to administrative sector.		yes, it varies according to administrative sector.
<b>SE</b>	yes			no	no
<b>UK</b>		no	yes		no

**2.1.6. When a (national or Community) grant or public contract is awarded, do the managing authorities have access to specific databases to check the accuracy of the facts declared by the applicant?**

d) Databases on persons and bodies corporate ordered to pay penalties in criminal proceedings?		e) Other databases? (please specify)	
	Yes	No	–
<b>BE</b>		no	

<sup>17</sup> There is indirect access in that applicants for funding are required to present an attestation that their situation is in order as regards taxes and social security contributions. The information contained in such declarations is entered in the SIIFSE by the managers of the operational programmes. The date of validity of the certificates is taken into account as a prior condition for payments to applicants in respect of funding applications.

<sup>18</sup> The managers of operational programmes receive and request information from the administrative courts in cases involving them and pass on this information to the IGFSE, as the 2nd level coordinating body and paying authority. However, this information is not directly accessible via computerised databases.

<sup>19</sup> The management body may require applicants to produce documents from these databases.

<sup>20</sup> The management body may require applicants to produce documents from these databases.

<b>2.1.6. When a (national or Community) grant or public contract is awarded, do the managing authorities have access to specific databases to check the accuracy of the facts declared by the applicant?</b>			
<b>d) Databases on persons and bodies corporate ordered to pay penalties in criminal proceedings?</b>		<b>e) Other databases? (please specify)</b>	
	Yes	No	
<b>CZ</b>	yes		CEDR (central register of grants), ARES (administrative register of economic entities), information system on public contracts Central address, Information server of the Ministry of Justice (internet portal with information from the Commercial Register and the Bankruptcy Register)
<b>DK</b>	yes, however, actual access to the database depends on the precise circumstances of the case		The Central Business Register (Centrale Virksomhedsregister – CVR) from which data on firms can be obtained. The register is managed by the Commerce and Companies Agency.  The special Inspection Information Register (Kontrolinformationsregister – KINFO), which covers all persons found guilty of criminal offences in matters of import duty, tax or excise duty. The register is managed by the tax authorities (SKAT).
<b>DE</b>		no	
<b>EE</b>	yes, indirect.		In Estonia, all structural fund information is in the Structural Fund register, which contains all data regarding projects having applied for or received aid.
<b>IE</b>		no	Utility companies engage a service provider to maintain a list of contractors with their qualification status for contract awards kept up to date.
<b>EL</b>	yes, indirect.		Chambers of commerce and industry, Radio and TV Council, Register of Public Works Contractors, Register of Project Studies.
<b>ES</b>		no	Social Security database, registers mentioned in the Law on public administration contracts.
<b>FR</b>	yes		

<b>2.1.6. When a (national or Community) grant or public contract is awarded, do the managing authorities have access to specific databases to check the accuracy of the facts declared by the applicant?</b>			
<b>d) Databases on persons and bodies corporate ordered to pay penalties in criminal proceedings?</b>		<b>e) Other databases? (please specify)</b>	
	Yes	No	
<b>IT</b>	yes		Databases managed by: Bankruptcy Secretariats of the Courts, Chambers of Commerce, social security institutions, Public Works Supervisory Authority.
<b>CY</b>		no	
<b>LV</b>	yes		<p>The following sources provide information on the signatory status of commercial operators' representatives, company branches, financial indicators and insolvency: LURSOFT, which provides public access to the registers maintained under the Register of Companies (the commercial register, the register of annual company statements, the register of commercial loans, the insolvency and bankruptcy database); the register of persons subject to VAT; the Ministry of Economics' register of construction enterprises; the register of construction and architectural practice certification; the joint State computerised land register.</p> <p>In addition, information may be requested from construction authorities, regional environmental authorities, the State Labour Inspectorate and other State authorities.</p>
<b>LT</b>	yes		Interservice tax data bank; State social security fund database, the Registry Centre
<b>LU</b>		no	no
<b>HU</b>	yes		Records of the customs authority and the tax offices, creditor protection records.
<b>MT</b>		no, in the case of structural and cohesion funds.	Database of the Malta Financial Services Authority containing details of registered companies.

<b>2.1.6. When a (national or Community) grant or public contract is awarded, do the managing authorities have access to specific databases to check the accuracy of the facts declared by the applicant?</b>			
<b>d) Databases on persons and bodies corporate ordered to pay penalties in criminal proceedings?</b>		<b>e) Other databases? (please specify)</b>	
	Yes	No	
<b>NL</b>		no	<p>The Ministry of Social Affairs and Employment (SZW) further refers to the SIOD (Social Information and Investigation Service). SZW has an agreement with SIOD allowing it to ask for data from a variety of databases. SZW can also consult the companies register.</p> <p>Ministry of Agriculture, the Natural Environment and Food Quality (LNV) adds the Chamber of Commerce (companies register), commercial databases (credit ratings).</p> <p>The Ministry of Economic Affairs (EZ): no.</p>
<b>AT</b>	yes (in case of employment of foreigners, see 2.1.2.).	no (in other cases).	ERDF: company statements of accounts; Register of Associations; also the implementing bodies may request the aid applicant to supply references, bank guarantees, etc., on submission of the application.

<b>2.1.6. When a (national or Community) grant or public contract is awarded, do the managing authorities have access to specific databases to check the accuracy of the facts declared by the applicant?</b>			
<b>d) Databases on persons and bodies corporate ordered to pay penalties in criminal proceedings?</b>		<b>e) Other databases? (please specify)</b>	
	Yes	No	–
<b>PL</b>	yes		<p>The institutions involved in the implementation of SOP „Restructuring ...” use databases indirectly, by using the documents submitted by the applicants and beneficiaries. During the verification process of the application for the co-financing of a project, and the beneficiary’s application for payment, the implementing institutions check the information in order to confirm that the applicant/beneficiary is eligible to receive aid, pursuant to the documents issued by the relevant institutions keeping databases. These include, but are not limited to: certificates relating to the public law obligations, i.e. certificates from the Social Insurance Office (ZUS), Agricultural Social Insurance Fund (KRUS) or any other pensions authority (such as the pension authority at the Ministry of Internal Affairs and Administration, the Military Pensions Bureau); certificates from the Tax Office, the Local Municipality Office, extracts from land and mortgage registers, excerpts from land registry, certificates confirming the national official business activity register number (REGON), extract from the business register within the National Court Register, certificate issued by the head of the local council (mayor), confirming the size of the farm and the lack of tax arrears, etc.</p> <p>The paying agencies (AMA and ARMA ) exchange data relating to debtors who have collected undue or excessive funds allocated for the implementation of the Common Agricultural Policy.</p> <p>Other databases: NIP database (Tax Identification Number), REGON database (National Official Register of National Business Entities), KRS (National Court Register), Business Activity Register</p>

<b>2.1.6. When a (national or Community) grant or public contract is awarded, do the managing authorities have access to specific databases to check the accuracy of the facts declared by the applicant?</b>			
<b>d) Databases on persons and bodies corporate ordered to pay penalties in criminal proceedings?</b>		<b>e) Other databases? (please specify)</b>	
	Yes	No	
<b>PT</b>	yes <sup>21</sup>		The databases at the National Register of Legal Persons and the Register of Company Instruments, which are important for the SIIFSE module used to register applicants, are directly and widely accessible to the public on the Internet.
<b>SI</b>		no	
<b>SK</b>		no <sup>22</sup>	Property Register, Commercial Register, Register of Traders
<b>FI</b>	yes, it varies according to administrative sector.		Commercial register; national project-management systems; the official business information system (BIS); paying business information registers; private web-based customer-information register.
<b>SE</b>		no	The Enquiry Point, and the databases of the Swedish National Tax Board and the Enforcement Authority.
<b>UK</b>		no	Companies House – statutory information database of public limited companies. Information held is comprehensive and details company information including company accounts, identity of directors etc. They are also accessible to the public.

<b>Comments to question 2.1.6.</b>	
<b>BE</b>	Section 127 of the General Customs and Excise Act (Moniteur belge / Belgisch

<sup>21</sup> Whenever the IGFSE and managers are party to criminal cases brought by the Public Prosecutor's Office as a result of their inspection activities, they receive and may request information from the court with jurisdiction regarding the state of play in the proceedings. In both cases, this type of information is never directly accessible through computerised databases, but is obtained through the notification of the decision to bring charges and of verdicts and judgments delivered by the court.

<sup>22</sup> The management body may require applicants to produce documents from these databases.

**Comments to question 2.1.6.**

	<p>Staatsblad, 21 September 1977) provides that no-one may make it his occupation to complete import, export or transit customs formalities for other persons if he is not entered in a special register kept as prescribed by the Minister of Finances.</p> <p>Entry in the register may be treated as being the award of a benefit as the grant of an administrative authorisation.</p> <p>Registration is withheld from those who have been convicted and sentenced to a non-suspended penalty for fraud involving direct, indirect or similar taxes, theft, handling stolen property, fraud, embezzlement, simple or fraudulent bankruptcy, misappropriation of public funds or corruption of public servants (section 129(1) of the Act).</p> <p>The application for registration must contain a statement that the individuals, managers or directors making the application are subject to none of these disqualifications.</p> <p>The statement is verified by reference to the Central Criminal Record on the basis of the Act of 8 August 1997 on the Central Criminal Record and the Royal Order of 19 July 2001 on access by certain public authorities to the Central Criminal Record.</p>
<b>EE</b>	<p>Access to databases is granted independently by the authorities processing the application and, if need be, these authorities enter into a contact for use with the organisations administering the databases. The managing authority does not give access to databases.</p>
<b>SI</b>	<p>The managing authority does not have direct access to specific databases to check the accuracy of the facts declared by applicants for financial support. The law allows interdepartmental and interinstitutional cooperation so that the managing authority can obtain specific information indirectly from the databases on request. However, the managing authority virtually never does so or, if so, only exceptionally and very rarely. Normally, in tendering procedures this type of information (taxation, credit, etc.) and evidence has to be obtained from the department responsible and submitted by the applicants themselves.</p>
<b>DK</b>	<p>A specific legal basis is required for the administrative authority's access to a database, i.e. register-coordination or on-line inquiry access.</p> <p>Typically the administrative authority has indirect access for exchanging data with other authorities pursuant to the rules of the Administration Act, especially §§27, 28(2) and 31.</p>
<b>SK</b>	<p>The Slovak National Council Act No 25/2006 governing public procurement lays down special requirements that must be met by people applying for public contracts. They must demonstrate their good standing with information from various databases (for example, the criminal records, the database of debtors, database of compulsory insurance debtors etc.).</p>



**Comments to question 2.1.6.**

	Each database (for example, the criminal records, the database of debtors, database of compulsory insurance debtors etc.) has a specific legal basis, i.e. the Public Procurement Act No 25/2006, tax laws, the Criminal Records Act, documents adopted by government resolution etc.
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**2.2. Specific databases for risky beneficiaries (which are different from or broader in scope than the databases required by Community law)****2.2.1. Apart from your obligations under Community law, in which fields does your legal system require a specific database to be set up for risky beneficiaries?**

<b>BE</b>	No such requirement.
<b>CZ</b>	No such requirement.
<b>DK</b>	No such requirement.
<b>DE</b>	See 1.2 (Berlin).
<b>EE</b>	No answer.
<b>IE</b>	No such requirement.

<b>2.2. Specific databases for risky beneficiaries (which are different from or broader in scope than the databases required by Community law)</b>	
<b>2.2.1. Apart from your obligations under Community law, in which fields does your legal system require a specific database to be set up for risky beneficiaries?</b>	
<b>EL</b>	<p><b>Questions 2.2.1, 2.2.2, 2.2.3, 2.3.1-2.3.13 have been answered by the Greek Union of Banks only, as the public sector does not have such databases.</b></p> <p><b>Banking sector:</b> With the steady growth of the Greek economy and banking system, Greek banks recognized the need for access to accurate and reliable credit-related data, as it became clear that <b>such information helps to protect credit institutions and to reduce risks related to insolvency, for the benefit of the banking system and of clients themselves.</b> To this end, almost all Greek banks got together to set up a company called <b>Tiresias</b> to develop and manage a reliable credit profile database.</p> <p><b>Credit Profile Database (CPD):</b> Information on the credit profile of firms and private individuals (uncovered cheques, bills of exchange unpaid at maturity, termination of consumer/housing loan agreements and card contracts, administrative penalties, information from courts and registries of deeds).</p> <p><b>Risk Consolidation System (RCS):</b> Information on informed debts and debts arising from delays in repaying consumer and housing loans. The information is registered only after the data subjects have given their consent.</p> <p><b>Terminated Merchants System (TMS):</b> Termination of agreements between banks and firms on acceptance of credit cards as a means of payment for a specific reason (14 termination codes included).</p> <p><b>Lost or stolen identity card and passport databank:</b> Declarations by individuals of lost or stolen identity cards or passports. The database is updated with relevant information from the Ministry of Public Order every two months.</p>
<b>ES</b>	No answer.
<b>FR</b>	No such requirement.
<b>IT</b>	The Italian legal system requires databases to be set up in fields concerning works, supplies and service contracts (business register, the National public procurement information system called SINAP and other registers that can be consulted as part of the procedure under the anti-Mafia legislation).
<b>CY</b>	No such requirement.
<b>LV</b>	Latvian legislation does not require the creation of specific databases at present; however the Rural Support Service has set up a client blacklist.
<b>LT</b>	The EU Structural Funds and Cohesion Fund computerised information management and monitoring system (SFMIS) gathers data on infringements that have arisen during the implementation of projects, reimbursable funding, etc.

<b>2.2. Specific databases for risky beneficiaries (which are different from or broader in scope than the databases required by Community law)</b>	
<b>2.2.1. Apart from your obligations under Community law, in which fields does your legal system require a specific database to be set up for risky beneficiaries?</b>	
<b>LU</b>	The legal system does not require setting up of such a database.
<b>HU</b>	No specific databases for risky beneficiaries.
<b>MT</b>	No such requirement.
<b>NL</b>	No such requirement.
<b>AT</b>	Every authority can set up databases concerning risks; however it is not obligatory to do so.
<b>PL</b>	<ul style="list-style-type: none"> <li>– The granting of subsidies under operational programmes: Act of 6 December 2006 on the principles of implementing the development policy (Journal of Laws No. 227, item 1658) provides that the Minister responsible for regional development must keep a list of entities excluded from applying for additional financing.</li> <li>– Control and management of aid from funds.</li> <li>– Database kept by the Polish Agency for Enterprise Development (PAED) – list of entities defaulting under their obligations.</li> <li>– Local databases under IROP: two institutions (Regional Office in Łódź and Regional Employment Office in Poznań.) have initiated the creation of local lists/registers of beneficiaries at an increased risk of funding misuse.</li> </ul>
<b>PT</b>	There is no specific database for risky beneficiaries (black lists) in the national legal system; nor are there any plans to set up such a database.
<b>SI</b>	<p>There isn't such an obligation.</p> <p>As regards use of Community funds, no specific databases on risky beneficiaries have yet been set up. The case mentioned below (see 2.3.1.) is a database which has a legal base and, amongst other things and under certain conditions, may also include information of this type.</p>
<b>SK</b>	No such requirement.
<b>FI</b>	-
<b>SE</b>	It is possible to set up a specific database in connection with subsidy by the authority. In Sweden however there are no specific databases set up.

<b>2.2. Specific databases for risky beneficiaries (which are different from or broader in scope than the databases required by Community law)</b>	
<b>2.2.1. Apart from your obligations under Community law, in which fields does your legal system require a specific database to be set up for risky beneficiaries?</b>	
<b>UK</b>	<p>No public authorities that operate a specific database for risky beneficiaries were identified. But to aid decisions on contracting, the Department for Works and Pensions (DWP) considered setting up a list that would alert them of organisations with poor track records regarding issues such as insolvency, bankruptcy, disqualified directors, and bad experiences with previous projects. However, it was felt that the requirements of the Data Protection Act and the Freedom of Information Act could make it difficult to record this type of information.</p> <p>The Department for Communities and Local Government (CLG) on the other hand, holds informal databases/lists of organisations with poor track record (risk register).</p>

<b>2.2.2. For the fields listed at 2.2.1, is there a general legal basis, or does each database require a specific legal basis?</b>	
<b>DE</b>	See 1.2 (Berlin).
<b>EL</b>	<p>The general legal basis is Law 2472/97 which incorporated Directive 95/46/EC into Greek law and which can be adapted to specific circumstances by special decisions and regulatory acts of the Data Protection Authority. Below are decisions and regulatory acts of the Data Protection Authority that concern the operation of the above Tiresias databases:</p> <p>109-31.03.1999: Requirements for proper maintenance of the credit profile database by Tiresias SA.</p> <p>523-13.10.1999: Rules on the classification of data of Tiresias SA and the creation of a database for identity cards/passports [see Article 40 of Law 3259/2004 (Government Gazette A-149) amending the period for keeping data].</p> <p>86/2002: Tiresias – Risk Consolidation System.</p> <p>68/2005: Risk Consolidation System – withdrawal of consent and entry of relative note in the Tiresias database.</p> <p>6/2006: Opinion of the Data Protection Authority on the setting up and operation of the Terminated Merchant's System by Tiresias SA.</p> <p>11/2006: Sending by the Ministry of Public Order of data on lost or stolen ID cards/passports - Terms and conditions for the sending of data.</p>
<b>IT</b>	See 2.1.4. above.

**2.2.2. For the fields listed at 2.2.1, is there a general legal basis, or does each database require a specific legal basis?**

<b>LV</b>	The Rural Support Service's lists have a separate legal basis. The blacklist has been developed to provide for more effective risk analysis pursuant to Regulation (EC) No 796/2004 but there are no legislative provisions stating that such a list is compulsory; it has been established by the Rural Support Service.
<b>LT</b>	No specific legal basis is required; the legislative acts governing general EU Structural Funds activities are applicable.
<b>AT</b>	A specific legislation is necessary for every database, also according to the Act on Data Protection.
<b>PL</b>	The Act on the principles of implementing the development policy (Journal of Laws No. 227, item 1658) and the Public Finances Act of 30 June 2005 provide the basis for creating a database of entities excluded from the possibility of receiving additional financing from EU funds. There is no general legal basis for creating local databases of beneficiaries posing a higher risk of irregularities.
<b>SE</b>	The general legal basis for setting up such a database is the Personal Data Act (SFS 1998:204).
<b>UK</b>	No

**2.2.3. What is the purpose of the databases? (Please reply for each of the fields enumerated at point 2.2.1)**

	<b>Are they preventive (early-warning system)? For example: entry in the database entails special guarantees being required or tighter controls</b>		<b>Are they punitive? For example: entry in the database entails or may entail exclusion from public procurement or public grants for a limited period</b>	
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>
<b>DE</b>	yes		yes	
<b>EL</b>	yes			no
<b>IT</b>	yes		yes	
<b>LV</b>		no	yes	
<b>LT</b>	yes			no
<b>AT</b>		no	yes (in case of employment of foreigners, see 2.1.2.)	no (in other cases)

**2.2.3. What is the purpose of the databases? (Please reply for each of the fields enumerated at point 2.2.1)**

	Are they preventive (early-warning system)? For example: entry in the database entails special guarantees being required or tighter controls		Are they punitive? For example: entry in the database entails or may entail exclusion from public procurement or public grants for a limited period	
	Yes	No	Yes	No
PL	yes		yes <sup>23</sup>	
SK	yes, tighter controls		yes	
UK		no		no

**2.3. Specific example of a risky beneficiaries database**

With a view to contributing to an inventory of best practices, please choose one risky beneficiaries database (if you have one) to reply to the following questions. If there are several of them, please select whichever database strikes you as most advanced.

If your legal system has no databases on financially risky beneficiaries but there is a database used for other types of risk and it is highly developed, you may describe that example (e.g. a database on transport companies that have committed employment law offences).

**2.3.1. What is the legal basis for the database?**

<sup>23</sup> National databases can be used for punitive purposes, however local databases are not designed for this purpose.

### 2.3.1. What is the legal basis for the database?

<p><b>DK</b></p>	<p>An <b>Inspection Information Register (KINFO) managed by the tax authorities (SKAT)</b> was set up on the legal basis of §6F of the Tax Inspection Act of 2 June 1999. The Act specifies judgments, final administrative decisions and various other administrative decisions as the basis for registration.</p> <p>Act No 408 of 8 May 2006 introduced rules on reporting of businesses/group of persons behind a business and stipulating that notification decisions may serve as the basis for registration.</p> <p>The following requirements are laid down as general conditions:</p> <ul style="list-style-type: none"> <li>- the purpose of registration must be to prevent infringements of the law on tax and other contributions to the public authorities;</li> <li>- the person concerned has caused or tried to cause the public authorities a considerable loss in tax, labour market contributions or duty of not less than DKK 50 000, and</li> <li>- the person concerned has caused or tried to cause the loss either deliberately or through gross negligence (This does not however apply to notifications).</li> </ul>
<p><b>DE</b></p>	<p><b>Corruption Register in the Land of Berlin</b>; maintained by a central information point; established on the basis of Corruption Register Act adopted in 2006.</p>
<p><b>EL</b></p>	<p><b>Credit Profile Database (CPD)</b> set up by Greek <b>banks</b>.</p> <p>The general legal basis is Law 2472/97, which incorporated Directive 95/46/EC into Greek law, and the following special regulatory acts of the Data Protection Authority concerning the operation of the CPD:</p> <p>109-31.03.1999: Requirements for proper maintenance of the credit profile database by Tiresias SA</p> <p>523-13.10.1999: Rules on the classification of data of Tiresias SA [see Article 40 of Law 3259/2004 (Government Gazette A-149) amending the period for keeping data]</p>
<p><b>ES</b></p>	<p>The <b>"Argos Penal" database</b> stores data on what happens with <b>criminal cases/judicial actions</b> (offences concerned include offences against public finances and Community finances, i.e. cases to which the Tax Agency is party).</p> <p>Spanish law allows public administration bodies to set up databases designed to enable them to carry out the duties assigned to them under the Spanish legal system.</p>

<b>2.3.1. What is the legal basis for the database?</b>	
<b>IT</b>	<p>The Supervisory Authority has developed both the <b>Business Register</b> (established pursuant to DPR 34/2000) and a computerised system for acquiring all information about public contracts, which uses enforcement cooperation criteria, known as <b>SINAP – National public procurement information system</b>. Also a computerised register of qualified firms at the <b>Observatory for public works</b> was set up.</p> <p>Legal basis: Framework law on public works contracts 109/94 (concerning Public Works Observatory), DPR 34/2000 (which established the business register) and anti-Mafia legislation.</p>
<b>LV</b>	<p>The <b>Rural Support Service</b> has developed a <b>client blacklist</b> containing the names of persons to whom special attention is paid with regard to the receipt of subsidies in the area of agriculture.</p> <p>The blacklist has been developed to provide for more effective risk analysis pursuant to Regulation (EC) No 796/2004.</p>
<b>LT</b>	<p><b>The EU Structural Funds and Cohesion Fund computerised information management and monitoring system (SFMIS)</b> was established on the basis of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds; it is managed by the Ministry of Finance.</p>
<b>HU</b>	<p>There is no database for risky beneficiaries.</p> <p><b>Database relating to taxation</b> set up on the basis of Act XCII of 2003 governing the taxation system is described in the following points.</p>
<b>MT</b>	<p>Though in the ambit of EU Funding there is no database of financially risky beneficiaries as such, the <b>Managing Authority has developed a Structural Funds Database (SFD)</b> which is used both for Structural Funds as well as the Cohesion Fund.</p> <p>The reports that are issued by the SFD can be categorised into two main groups: (i) Reports required by the European Commission, and (ii) Reports to facilitate the local process particularly with respect to payments and monitoring purposes.</p> <p>With respect to the Reports required by the European Commission, the legal basis is Article 18.1 and Annex IV to Commission Regulation (EC) No 438/2001.</p> <p>The purposes of the SFD are basically:</p> <p>(i) to maintain adequate records on projects which are available to the Commission as and when required, and</p> <p>(ii) to facilitate the local process with respect to implementation of projects particularly with respect to payments and monitoring purposes.</p>
<b>AT</b>	<p><b>A register of verdicts (findings) which relates to employment of foreigners and has implications for public procurement</b> is a database of the Federal Ministry of Finance. Legal basis: the Act of employment of foreigners.</p>



<b>2.3.1. What is the legal basis for the database?</b>	
<b>PL</b>	Database kept by the <b>Polish Agency for Enterprise Development (PAED)</b> – it is a <b>list of entities defaulting under their obligations</b> (an example of a database including SOP-ICE beneficiaries). It was created pursuant to the Decision of the President of PAED No. 120 of 11 October 2004 as regards the list of entities in default of their obligations.
<b>SI</b>	<b>Records on infringements of tax regulations and other regulations for the implementation of which the tax administration is responsible</b> kept by tax administration, created on the basis of the Tax Administration Act – ZDS-1 (Official Gazette No 17/05 – UPB1 and 114/06);  Under point 5 of Article 26(1) of ZDS-1, the tax administration keeps and maintains "records on infringements of tax regulations and other regulations for the implementation of which the tax administration is responsible".
<b>SK</b>	<b>Database relating to taxes and charges</b> set up on the basis of Slovak National Council Act No 150/2001 governing tax bodies, amending Slovak National Council Act No 440/2000 on financial control authorities, as amended.
<b>SE</b>	No database on financially risky beneficiaries has yet been set up. However, the <b>Swedish National Tax Board</b> does have a <b>database</b> of public data which competent authorities can use for targeted tax-related searches.

<b>2.3.2. To which sector does the database relate? (tax, agriculture, transport, etc.)</b>	
<b>DK</b>	The register was set up to prevent infringements of the law on tax and other contributions to the public authorities. It contains information on natural and legal persons who have caused or tried to cause the public authorities a considerable loss in tax, labour market contributions or duty.
<b>DE</b>	Public procurement (The aim of the register is to support the efforts of public procurement authorities in the exercise of their duty to verify the reliability of tenderers, applicants and actual and potential contractors.) See 1.2 (§3 Corruption Register Act - KRG)
<b>EL</b>	Banking sector
<b>ES</b>	Criminal cases to which the Tax Agency is party. The offences concerned include offences against public finance and Community finance against which the Tax Agency's legal representative brings a civil action, together with the Public Prosecutor's Office.
<b>IT</b>	Performance of public works (all sectors).
<b>LV</b>	Agriculture
<b>LT</b>	EU Structural Funds and the EU Cohesion Fund

<b>2.3.2. To which sector does the database relate? (tax, agriculture, transport, etc.)</b>	
<b>HU</b>	Tax
<b>MT</b>	The Structural Funds and the Cohesion Fund.
<b>AT</b>	Employment of foreigners: It includes offences in case of employment and public procurement.
<b>PL</b>	The database includes the data of legal persons and individuals carrying out business activity and using programmes financed from structural funds, implemented by the Polish Agency for Enterprise Development (PAED).
<b>SI</b>	Tax sector
<b>SK</b>	Taxes and charges
<b>SE</b>	Taxation

<b>2.3.3. What type of transaction is covered (payment of taxes, public contracts, grants, other)?</b>	
<b>DK</b>	Payment of taxes under conditions listed at point 2.3.1.
<b>DE</b>	Award of public contracts.
<b>EL</b>	<ul style="list-style-type: none"> <li>– Uncovered cheques;</li> <li>– Bills of exchange unpaid at maturity;</li> <li>– Termination of consumer/personal/housing loan agreements;</li> <li>– Termination of credit card contracts;</li> <li>– Bankruptcy (filed for, declared);</li> <li>– Payment orders;</li> <li>– Auctions;</li> <li>– Mortgages – mortgage prenotations – conversion of prenotations into mortgages;</li> <li>– Foreclosure – writs of payment under Presidential Decree 1923;</li> <li>– Infringement of tax laws.</li> </ul>
<b>ES</b>	Various kinds of transaction. All transactions which may give rise to a criminal action in which a party is accused of committing one or more of the offences referred to above.

<b>2.3.3. What type of transaction is covered (payment of taxes, public contracts, grants, other)?</b>	
<b>IT</b>	Award of public contracts.
<b>LV</b>	The blacklist relates to the following forms of aid: - single area payments; - complementary national direct payments for areas under crops and forage areas; - aid for less-favoured areas; - agri-environmental measures.
<b>LT</b>	Project expenditure where an infringement has occurred, the amount of reimbursable funding etc.
<b>HU</b>	Payment of taxes
<b>MT</b>	The Structural Funds Database (SFD) is currently intended to cover the processes from the development of Priorities and Measures, through to Project, Component, Commitment, Contract preparations and management.  All data in relation to the projects is inputted, maintained and retained in the SFD with respect to forecasting, payments, indicators and monitoring. (Structural and Cohesion Funds)
<b>AT</b>	Employment of foreigners: Only verdicts.
<b>PL</b>	Participation in public procurement, granting additional financing from structural funds, granting the status of an accredited contractor.
<b>SI</b>	Correctness and punctuality of the entry in the accounts and payment of legally defined tax obligations.
<b>SK</b>	Payment of taxes and charges
<b>SE</b>	Taxation

<b>2.3.4. What is the purpose of the database?</b>				
	<b>Is it preventive (early-warning system)? For example: entry in the database entails special guarantees being required or tighter controls</b>		<b>Is it punitive? For example: entry in the database entails or may entail exclusion from public procurement or public grants for a limited period</b>	
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>
<b>DK</b>	Yes			no

<b>2.3.4. What is the purpose of the database?</b>				
	<b>Is it preventive (early-warning system)? For example: entry in the database entails special guarantees being required or tighter controls</b>		<b>Is it punitive? For example: entry in the database entails or may entail exclusion from public procurement or public grants for a limited period</b>	
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>
<b>DE</b>	yes		yes	
<b>EL</b>	yes <sup>24</sup>			no
<b>ES<sup>25</sup></b>		no		no
<b>IT</b>	yes		yes	
<b>LV</b>		no	yes	
<b>LT</b>	yes			no
<b>HU</b>	yes		yes	
<b>MT</b>	N/A		N/A	
<b>AT</b>	yes		yes	
<b>PL</b>	yes		yes	
<b>SI</b>	yes			no
<b>SK</b>	yes		yes	
<b>SE</b>		no	yes	

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24 In accordance with point 1 of Decision 24/2004 of the Data Protection Authority on “requirements for the maintenance of the database by Tiresias SA: “The purpose of keeping and processing the data is to minimise the risk of contracting credit agreements with non credit-worthy customers and the risk of creating bad debts in general and to protect commercial good faith and ensure sound financial transactions. Keeping and processing the data is in fact “absolutely necessary” to meet this objective, and it may be said that, compared with the interests of data subjects, the protection of commercial good faith is “clearly paramount”, within the meaning of Article 5(2)(e).”

25 The database’s purpose is to store information on what happens with judicial actions, not to deprive sentenced parties of the right to obtain grants and tax benefits. Serving the sentence imposed, a stay of proceedings or an acquittal are data recorded in the database, not reasons for removing an individual from it. However, dates are included which can be used to establish the length of the sentences and to determine when the right to obtain grants and tax benefits is restored.

**2.3.5. Is it a centralised database, or is it managed locally? If it is decentralised, is it accessible to other authorities besides the one which manages it?**

<b>DK</b>	A centralised database.
<b>DE</b>	<p>There are databases managed at the level of the Lands.</p> <p>One of the federal Länder established a central information point to maintain the Corruption Register. All the (public-sector) contract awarders specified in §98 of the Competition Act are required, before deciding to award a public contract worth €15 000 or more, to check with the information point whether there are entries in the Corruption Register concerning tenderers, applicants and actual and potential contractors.</p> <p>In another federal Land a Directive on Measures to Combat Corruption was issued in 2006, and corruption officers were designated in a number of authorities. A facility has also been set up so that anonymous postings can be made on a web database. There is no experience to report yet.</p>
<b>EL</b>	<p>It is a centralised database and the recipients of the credit profile data are:</p> <ul style="list-style-type: none"> <li>– Credit institutions,</li> <li>– Card issuing and managing companies (credit or debit cards),</li> <li>– Leasing companies,</li> <li>– Factoring companies,</li> <li>– Public agencies with an obvious legitimate interest.</li> </ul> <p>Credit provisioning companies under the control of the Central Bank of Greece or other Central Banks in accordance with the 2nd Banking Directive and Law 2076/1992</p>
<b>ES</b>	It is a centralised database which is not currently accessible to any public body other than the Tax Agency.
<b>IT</b>	<p>Under Law 109/94, the Public Works Observatory is made up of a central section and regional sections, with headquarters in the regions and the autonomous provinces (Article 4, paragraph 14). It operates via IT procedures, on the basis of appropriate agreements and also via links with the corresponding systems of the General National Accounts Department and the Ministries concerned (Article 4, paragraph 15).</p> <p>The business register is established on the basis of Article 27 of DPR 34/2000.</p> <p>The National public procurement information system (SINAP) is intended to simplify the statutory requirements as regards the compiling and analysis of data on public works contracts.</p>
<b>LV</b>	The blacklist developed by the Rural Support Service is only accessible to the Service's employees.

**2.3.5. Is it a centralised database, or is it managed locally? If it is decentralised, is it accessible to other authorities besides the one which manages it?**

<b>LT</b>	<p>The data base is managed by the Ministry of Finance, which sets out the information system's objectives, and orders, creates or acquires and manages the EU Structural Funds and Cohesion Fund computerised information management and monitoring system (SFMIS).</p> <p>The Ministry of Finance, State institutions and authorities assigned to administer EU Structural Funds and Cohesion Fund finances are responsible for processing the database. The database is not accessible to other authorities.</p>
<b>HU</b>	<p>It is a centralised database. Access is possible where authorised by the aid applicant on the basis of a declaration to this effect (in accordance with Section 13/A(5) of the Budget Act XXXVIII. of 1992). However, certain data can be accessed by anybody on the tax authority's website.</p>
<b>MT</b>	<p>It is a centralised database managed by the Managing Authority (Malta). However, it is accessible by the following stakeholders:</p> <ul style="list-style-type: none"> <li>A. To update data – Managing Authority, Line Ministries, Intermediate Bodies (where applicable), Project Leaders within the Final Beneficiaries, Paying Authority, Treasury and Department of Contracts. (This depends on which data needs to be updated.)</li> <li>B. To view data – Managing Authority, Line Ministries, Intermediate Bodies, Final Beneficiaries, Paying Authority, Treasury, Department of Contracts and Internal Audit and Investigations Directorate.</li> </ul>
<b>AT</b>	<p>It is a central database of the Federal Ministry of Finance to which authorities with responsibilities for labour permits and social insurance have access.</p>
<b>PL</b>	<p>The database has been created and is managed by the Polish Agency for Enterprise Development (PAED). It is also accessible to the Regional Financing Institutions, whose employees have access to the information held in the database.</p>
<b>SI</b>	<p>The data base (records) is centralised.</p>
<b>SK</b>	<p>Decentralised database – offices other than the office that administers the database do not have access to it.</p>
<b>SE</b>	<p>It is a centralised database.</p>

### 2.3.6. Which beneficiaries are included in the database?

#### (a) Nature of the entity:

	The legal person responsible for the irregularity		Legal persons linked to the legal person responsible for the irregularity (holding company, subsidiary)		natural persons implicated, such as the person who committed the irregularity or the manager of the firm	
	Yes	No	Yes	No	Yes	No
<b>DK</b>	yes			no	yes	
<b>DE</b>	yes (in Berlin)		yes (in Berlin)		yes (in Berlin)	
<b>EL</b>	yes			no	yes	
<b>ES</b>	yes			no	yes	
<b>IT</b>	yes		yes		yes	
<b>LV</b>	yes			no	yes	
<b>LT</b>	yes		yes		yes	
<b>HU</b>	yes			no		no
<b>MT</b>	N/A		N/A		N/A	
<b>AT</b>	yes		yes		yes	
<b>PL</b>	yes			no		no
<b>SI</b>	yes			no	yes	
<b>SK</b>	yes		yes		yes	
<b>SE</b>	yes		yes		yes	

**(b) Grounds for including a beneficiary in the database:**

	Beneficiary is indebted		Beneficiary is not up-to-date with taxes or social security contributions		Beneficiary failed to comply with obligations when receiving a grant or a public contract		Beneficiary against whom administrative penalty proceedings have been brought		Beneficiary ordered to pay an administrative penalty		Beneficiary prosecuted for alleged financial offences	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
<b>DK</b>		no	yes			no		no	yes			no
<b>DE</b>		no (in Berlin)		no (in Berlin)		no (in Berlin)		no (in Berlin)	yes (in Berlin)			no (in Berlin)
<b>EL</b>	yes			no <sup>26</sup>		no		no	yes			no
<b>ES</b>	No answer		No answer		No answer		No answer		No answer		yes	
<b>IT</b>	yes		yes		yes		yes		yes		yes	
<b>LV</b>		no		no	yes			no		no		no
<b>LT</b>		no		no	yes			no		no		no
<b>HU</b>		no	yes		N/A		N/A		N/A		N/A	
<b>MT</b>	N/A		N/A		N/A		N/A		N/A		N/A	
<b>AT</b>		no		no		no		no	yes			no
<b>PL</b>		no		no	yes			no		no	yes	
<b>SI</b>		no	yes			no	yes		yes		yes	
<b>SK</b>	yes		yes			no	yes		yes		yes	
<b>SE</b>	yes		yes			no		no		no		no

<sup>26</sup> Only indirectly, if subject to foreclosure or auction procedures or administrative penalties.



<b>(b) Grounds for including a beneficiary in the database:</b>					
	<b>Beneficiary convicted of a financial offence at first instance</b>		<b>Beneficiary finally convicted of financial offences</b>		<b>Others? (please specify)</b>
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	
<b>DK</b>	yes		yes		Registration may be based not only on judgments and final administrative decisions but also on decisions taken by administrative first instances concerning fines, tax arrangements, VAT roundabout fraud, asset-stripping on the buyer side, withdrawal of authorisation for special terms of credit for duty or excise, estimates, bankruptcy/forced liquidation and reporting.
<b>DE</b>		no (in Berlin)	yes (in Berlin)		An entry is made in the database when:  there is an enforceable sentence to pay a fine in administrative offence proceedings (in Berlin).  there is a final stage of proceedings in accordance with §153a of the Code of Criminal Procedure,  there are no reasonable grounds for suspicion in all the circumstances of the case that an act to which §3(1) KRG applies has been committed.
<b>EL</b>		no		no	The database contains persons (debtors) with whom the following factors are associated: payment orders, auction proceedings, foreclosure, filing for bankruptcy, declared bankruptcy [information from courts] – mortgage, conversion into mortgage, mortgage prenotation [information from registries of deeds]
<b>ES</b>	yes		yes		

**(b) Grounds for including a beneficiary in the database:**

	Beneficiary convicted of a financial offence at first instance		Beneficiary finally convicted of financial offences		Others? (please specify)
	Yes	No	Yes	No	
<b>IT</b>	yes		yes		Winding up or termination of activity; insolvency proceedings pending; episodes of gross negligence in the performance of works or serious breaches of contract also as regards compliance with safety regulations and obligations deriving from the employment relationship, reported to the tendering authorities. Final judgments or convictions under Article 444 of the Code of Criminal Procedure of legal representatives, managing directors or technical directors for offences against the public administration, public order, public confidence or the state. Measures adopted by the tendering authorities for exclusion from public procurement contracts under Article 8 paragraph 7 of the law. False declarations made in respect of the requirements and conditions for participation in the tendering procedure, detected as a result of the procedure referred to in Article 10 paragraph 1c of the law.
<b>LV</b>		no	yes		no
<b>LT</b>		no		no	no
<b>HU</b>	N/A		N/A		N/A
<b>MT</b>	N/A		N/A		
<b>AT</b>		no		no	no
<b>PL</b>		no		no	The PAED database includes data of beneficiaries who have committed irregularities within the meaning of Regulation 1681/1994 (also in the case of suspected irregularities).

<b>(b) Grounds for including a beneficiary in the database:</b>					
	<b>Beneficiary convicted of a financial offence at first instance</b>		<b>Beneficiary finally convicted of financial offences</b>		<b>Others? (please specify)</b>
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	
<b>SI</b>		no		no	Includes taxable persons who have infringed tax and other laws which the tax authority is responsible for supervising.
<b>SK</b>	yes		yes		-
<b>SE</b>		no		no	Beneficiaries who have been issued with an injunction.

<b>c) Grounds for removing a beneficiary from the database (effluxion of time etc.):</b>	
<b>DK</b>	The registration period cannot exceed five years.
<b>DE</b>	An entry can be deleted after the time-limit (§8(1) Corruption Register Act - KRG) or even earlier, on application, if it is established that the person concerned is now reliable (§8(2) KRG). If entries are found to be erroneous, immediate deletion can be applied for (§5(2) KRG).
<b>EL</b>	Data is deleted only in specific cases that are laid down by law or where information is no longer of interest for the purposes of the database.
<b>ES</b>	There are no grounds for removing a beneficiary from the database.
<b>IT</b>	No answer
<b>LV</b>	Beneficiaries are not removed from the database at present.
<b>LT</b>	None.
<b>HU</b>	N/A
<b>MT</b>	N/A
<b>AT</b>	Acquaintance because of elapsed time limit.
<b>PL</b>	Data is removed from the register if the explanatory proceedings have proved that the irregularity due to which the entity was included in the register had not occurred or if 3 years have lapsed since the date of such irregularity.

<b>c) Grounds for removing a beneficiary from the database (effluxion of time etc.):</b>	
<b>SI</b>	Article 32 of ZDS-1 states that data in the tax records are, as a rule, to be kept for ten years and that after ten years the data is to be kept in accordance with the regulations governing archives and archives material. The data in the tax records are to be kept until the sentence or punishment has been expunged or, barring this, until prosecution has become time-barred. On expiry of this time-limit, the tax administration must always keep the data separate from other records.
<b>SK</b>	N/A
<b>SE</b>	If the tax debt has been paid or if the time period elapses.

<b>d) If you have statistics, please indicate how many beneficiaries are entered in the database each year.</b>	
<b>DE</b>	There are so far no entries in the Corruption Register as it has been open since 1.6.2006.
<b>EL</b>	New financial units in <b>Credit Profile Database (CPD)</b>  2004108.726  2005158.538  2006219.176
<b>ES</b>	There are not yet any comparative statistics on the number of individuals entered in the database each year.
<b>LV</b>	According to Rural Support Service data, on average 600-700 per year.
<b>LT</b>	No statistics available as a new version of the SFMIS was only introduced on 20 December 2006.
<b>AT</b>	3.500 verdicts

<b>2.3.7. Who decides whether to include a beneficiary in the database? Who decides to remove him from the database?</b>	
<b>DK</b>	The tax authorities (SKAT).
<b>DE</b>	The decision to make an entry is taken by the notifying office. The central information point itself takes no decisions.

**2.3.7. Who decides whether to include a beneficiary in the database? Who decides to remove him from the database?**

**EL**

A subject is included strictly on the basis of the Regulation governing the Credit Profile Database, approved by the Data Protection Authority.

Who decides to remove him from the database?

The database manager (Tiresias SA), in accordance with the Regulation governing the Credit Profile Database approved by the Data Protection Authority, and any specific decisions or regulatory acts issued by the Authority.

The data sources and the Credit Profile Databank categories of Tiresias SA are as follows:

<b>DATA SOURCES</b>	<b>CATEGORIES</b>
<b>Banks</b>	Uncovered cheques (referred to the drawer)
	Bills of exchange unpaid at maturity
	Termination of consumer/personal loan agreements
	Termination of credit card contracts
<b>Courts of first instance</b>	Filings for bankruptcy
	Declarations of bankruptcy
	Payment orders
<b>District courts</b>	Auctions of immovable property
	Auctions of movable property
	Payment orders
<b>Registries of deeds</b>	Mortgages – mortgage prenotations
	Conversion of prenotations into mortgages
	Foreclosure – writs of payment under Presidential Decree 1923
<b>Ministry of Economic Affairs and Finance</b>	Administrative penalties for infringement of tax laws

**2.3.7. Who decides whether to include a beneficiary in the database? Who decides to remove him from the database?**

<b>ES</b>	"Argos penal" is a database which is restricted to storing data on what happens with criminal cases. The decision taken by the Legal Service to include a beneficiary in the database is therefore a mechanical one. It is limited to checking that the charge or the sentence handed down for a criminal financial offence has been agreed by a judicial authority in a resolution, a copy of which is received.
<b>IT</b>	No answer
<b>LV</b>	Beneficiaries are included on the blacklist by the system (IAKS). There are currently no provisions for removing names from the database.
<b>LT</b>	Institutions designated by means of decisions: intermediate bodies and implementing agencies (when funding is granted from the EU Structural Funds) and intermediate bodies, implementing agencies and paying and management agencies (when funding is granted from the EU Cohesion Fund).
<b>HU</b>	N/A
<b>MT</b>	N/A
<b>AT</b>	The authority that is obliged to fill out the register of verdicts.
<b>PL</b>	The decision is made by the relevant team employee, under the supervision of the director in charge.
<b>SI</b>	Tax inspector, tax controller.
<b>SK</b>	automatically
<b>SE</b>	The Swedish National Tax Board.

**2.3.8. Rights of defence:**

	Are beneficiaries informed when they are entered in the database?		Can they appeal against the decision to enter them?		If so, is this an administrative or a judicial procedure?	
	Yes	No	Yes	No	Administrative	Judicial
<b>DK</b>	yes		yes		yes	
<b>DE</b>	yes		yes			yes
<b>EL</b>	yes		yes		yes	yes
<b>ES</b>		no	No answer			
<b>IT</b>	yes		yes		yes	

<b>2.3.8. Rights of defence:</b>						
	<b>Are beneficiaries informed when they are entered in the database?</b>		<b>Can they appeal against the decision to enter them?</b>		<b>If so, is this an administrative or a judicial procedure?</b>	
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	<b>Administrative</b>	<b>Judicial</b>
<b>LV</b>	yes		yes		yes	
<b>LT</b>	yes			no		
<b>HU</b>	N/A		N/A		N/A	
<b>MT</b>	N/A		N/A		N/A	
<b>AT</b>		no		no		
<b>PL</b>		no		no		
<b>SI</b>		no		no	N/A	N/A
<b>SK</b>		no		no	N/A	N/A
<b>SE</b>	yes		yes			yes

<b>2.3.9. In addition to rules laid down in Community law, are there additional guarantees relating to personal data protection, and if so, what are they?</b>	
<b>DK</b>	No, personal Data Act implements Community law.
<b>DE</b>	Security concept in accordance with the Berlin Data-protection Act
<b>IE</b>	National Data Protection Acts (1988-1998)

**2.3.9. In addition to rules laid down in Community law, are there additional guarantees relating to personal data protection, and if so, what are they?**

<b>EL</b>	<p>In general, the guarantees concerning protection of the personality of the subject as laid down by the Constitution and the Civil Code (Article 57 “right to personality”). If the unlawful conduct causes financial loss, there is an obligation to provide full compensation. If moral damage is caused, there is an obligation under Article 932 of the Civil Code to make financial reparation.</p> <p>More specifically, Tiresias SA bases its operation on the principle of respect and protection of the rights of the citizen, as well as on faithful application of the relevant provisions on the protection of the individual with regard to the processing of personal data (Law 2472/97, which incorporated Directive 95/46/EC into Greek law), including the specific decisions and regulations issued by the Data Protection Authority concerning its databases.</p> <p>The data on natural persons registered in the Tiresias SA systems are personal, and therefore must be processed in accordance with the provisions of Law 2472/97. However, they do not fall within the category of “<b>sensitive personal data</b>” as defined in that Law.</p> <p>Tiresias SA, fully conscious of its responsibility for the public interest service it provides, has developed and operates the <b>Credit Profile Database (CPD)</b> in such a way as to ensure that the individual is protected with regard to the processing of these data. The company has notified the <b>Data Protection Authority</b> of its <b>Data Processing Regulation (DPR)</b> and, following its approval, keeps interested parties informed via regular statements to the press.</p>
<b>ES</b>	<p>Spanish Constitution (Articles 18(4), 53 and 161(1)).</p> <p>Organic Law 15/1999 of 13 December 1999 on the protection of personal data.</p> <p>General Tax Law 58/2003 of 17 December 2003.</p>
<b>IT</b>	<p>Privacy Act: <b>Legislative Decree No 196 of 30 June 2003</b> (personal data protection code) published in GURI No 174 of 29 July 2003.</p>
<b>LV</b>	<p>Freedom of Information Act, Natural Persons' Data Protection Act, Commercial Act</p>
<b>LT</b>	<p>No</p>
<b>HU</b>	<p>The provisions of Act LXIII of 1992 governing the protection of personal data and the disclosure of information of public interest; the Data Protection Commissioner.</p>
<b>MT</b>	<p>The provisions of the (national) Data Protection Act are followed.</p>
<b>AT</b>	<p>National Act on Data Protection.</p>



**2.3.9. In addition to rules laid down in Community law, are there additional guarantees relating to personal data protection, and if so, what are they?**

<b>PL</b>	In accordance with Polish law, personal data is limited only to information relating to individuals and is protected pursuant to the Personal Data Protection Act of 29 August 1997 (Journal of Laws of 2002, No. 101, item 926, as amended). Therefore, the protection granted to personal data does not extend to the information relating to legal persons or unincorporated legal entities. The protection of personal data does not extend to individuals carrying out business activity, as regards the information relating to such activity. Therefore, as a rule, the indicated information is not subject to the protection granted to personal data.
<b>PT</b>	The protection of personal data is enshrined in domestic law in the Portuguese Constitution and Law No 67/98 of 26 October 1998. The processing of personal data by administrative bodies requires authorisation from the National Data Protection Commission, the organisation and operation of which are governed by Law No 43/2004 of 18 August 2004.
<b>SI</b>	Personal Data Protection Act (Official Gazette No 86/04), 5.8.2004.
<b>SK</b>	Slovak National Council Act No 90/2005 governing tax bodies, amending Slovak National Council Act No 428/2002 on the protection of personal data, as amended  Confidentiality in respect of matters under investigation is laid down in separate acts.
<b>SE</b>	Yes, the Personal Data Act (SFS 1998:204).

**2.3.10. Are there mechanisms which reduce the impact of the system and are designed to encourage compliance with the rules? For example: rules on removal, codes of conduct or other soft-law rules, voluntary disclosure, leniency programmes.**

<b>DK</b>	No
<b>DE</b>	See 2.3.6(c)

**2.3.10. Are there mechanisms which reduce the impact of the system and are designed to encourage compliance with the rules? For example: rules on removal, codes of conduct or other soft-law rules, voluntary disclosure, leniency programmes.**

<b>EL</b>	<p>Yes, there are mechanisms which reduce the impact of the system, as provided for in the system Regulation. These are:</p> <ul style="list-style-type: none"> <li>- Data is corrected if it is demonstrated that it is incorrect or incomplete.</li> <li>- A development in the financial transaction or financial profile to which a piece of data relates, provided it is demonstrated to Tiresias SA as the body responsible for processing, is included as a new piece of data in the database, in direct correlation with the original piece of data, to supplement the relevant picture. Exceptional cases that are not provided for and that cannot be provided for and included in the Data Processing Regulation are examined on an individual basis.</li> <li>- Data is deleted only in specific cases that are laid down by law or where information is no longer of interest for the purposes of the database.</li> <li>- In order to ensure that data is as accurate as possible, Tiresias SA, in accordance with its Data Processing Regulation (DPR), adds an indication such as “paid”, “settled”, “cancelled”, etc. or deletes data, provided adequate documentation is made available to the company. To this end Tiresias SA advises interested parties not to destroy cheques and bills of exchange that have been paid.</li> </ul>
<b>ES</b>	No
<b>IT</b>	yes
<b>LV</b>	No
<b>LT</b>	No
<b>HU</b>	N/A
<b>AT</b>	No
<b>PL</b>	No
<b>SK</b>	No
<b>SE</b>	No

**2.3.11. Access to the database: Who has access to the database? N.B. Access to a database can be either direct or indirect, i.e. by means of a request to the authority managing the database which that authority must answer.**

	Only the administrative authority managing it		The Member State's national authorities		The authorities of other Member States, third countries or international organisations who abide by equivalent data protection rules and apply for access to the database		Accessible to the public	
	Yes	No	Yes	No	Yes	No	Yes	No
<b>DK</b>	yes		yes, only exceptionally		yes, only exceptionally			no
<b>DE</b>		no	yes <sup>27</sup>			no		no
<b>EL</b> <sup>28</sup>		no	yes			no		no
<b>ES</b>	yes							
<b>IT</b>	yes		No answer		yes		No answer	
<b>LV</b>	yes			no		no		no
<b>LT</b>	yes			no		no		no
<b>HU</b>	N/A		N/A		N/A		N/A	
<b>MT</b>		no	yes, see 2.3.5.		N/A			no
<b>AT</b>		no	yes			no		no
<b>PL</b>	yes			no		no		no
<b>SI</b>	yes			no		no		no
<b>SK</b>	yes			no		no		no

<sup>27</sup>

<sup>28</sup>

If they are designated in §7 of the Corruption Register Act - KRG.

The recipients of the data of the credit profile database are: Credit institutions; Card issuing and managing companies (credit or debit cards); Leasing companies; Factoring companies; Public agencies with an obvious legitimate interest (on request); Credit provisioning companies under the control of the Central Bank of Greece or other Central Banks in accordance with the 2nd Banking Directive and Law 2076/1992; The Committee under Article 7 of Law 2331/95.

**2.3.11. Access to the database: Who has access to the database? N.B. Access to a database can be either direct or indirect, i.e. by means of a request to the authority managing the database which that authority must answer.**

	Only the administrative authority managing it		The Member State's national authorities		The authorities of other Member States, third countries or international organisations who abide by equivalent data protection rules and apply for access to the database		Accessible to the public	
	Yes	No	Yes	No	Yes	No	Yes	No
<b>SE</b>		no	yes		yes		yes	

**2.3.12. Does the database have any means of identifying an entity which ceases trading as a legal person but continues its business under cover of another legal person?**

<b>DK</b>	No
<b>DE</b>	No
<b>EL</b>	No
<b>ES</b>	No
<b>IT</b>	No
<b>LV</b>	No
<b>LT</b>	No
<b>HU</b>	N/A
<b>MT</b>	N/A
<b>AT</b>	No
<b>PL</b>	No
<b>SI</b>	No
<b>SK</b>	Yes
<b>SE</b>	Yes

<b>2.3.13. What problems have been encountered in establishing or operating this database?</b>	
<b>DE</b>	No experience to report due to first brief period of operation.
<b>EL</b>	- Data in courts and registries of deeds not computerised - Difficulty of access to courts and registries of deeds (restrictions, lack of infrastructure, etc)
<b>LV</b>	No problems as yet.
<b>LT</b>	When the database was being established questions were raised as to which data relating to legal and natural persons could be published on the SFMIS (EU Structural Funds and Cohesion Fund computerised information management and monitoring system).
<b>MT</b>	Only minor problems such as linking of the database with another related database at the Treasury and usual initial access problems of certain stakeholders.
<b>AT</b>	Employment of foreigners: To identify the company (in case of changes of the legal form of the company).
<b>SI</b>	There have been no specific problems.
<b>SK</b>	Seeking out all the available information to deal with the complexity of the assessment of the risk.
<b>SE</b>	There are no problems to report.

**2.4. Problems encountered in general in establishing or operating the risk beneficiaries database**

Please describe the problems encountered in general in establishing or operating the risky beneficiaries database.

Examples:

- no legal basis or inadequate legal basis;
- judgment given against administrative authorities for violation of data protection rules or the presumption of innocence;
- excessive cost for modest benefit.

<b>ES</b>	Difficulty or delay in obtaining information when it is to be contributed by the bodies responsible for management.  For databases centralised at national level, legal or management problems arising from the contribution of information by different levels (regional and local) within the state.
<b>LV</b>	The Rural Support Service has not encountered any problems.
<b>LT</b>	None
<b>AT</b>	Data bases must be justified by a concrete legal purpose and restricted to its legal scope.
<b>SK</b>	inadequate legal basis, seeking out all the available information to deal with the complexity of the assessment of the risk
<b>SE</b>	There are no problems to report.

**2.5. Databases for reliable beneficiaries**

**Does your legal system provide for the establishment of a specific database for reliable beneficiaries (“white list”), such as a certification scheme or a qualitative evaluation of results? If so, please give a brief description.**

<b>BE</b>	No
<b>CZ</b>	The Czech Republic does not keep any records of reliable beneficiaries. However, in the EAGGF guarantee section, the paying agency's information system known as the "main ledger of debtors" can also identify "reliable" beneficiaries. The State Agricultural Intervention Fund, which is the paying agency for EAGGF-Guarantee, keeps record of all receivables and these records could be used to identify reliable beneficiaries as well. In the case of the structural funds no such records are kept.
<b>DK</b>	No such requirement.

## 2.5. Databases for reliable beneficiaries

**Does your legal system provide for the establishment of a specific database for reliable beneficiaries (“white list”), such as a certification scheme or a qualitative evaluation of results? If so, please give a brief description.**

<b>DE</b>	<p>In the Land of Berlin there is a register of construction contractors and construction suppliers (ULV) in which firms who, without reference to public contracts, have proved their technical capacity, efficiency and reliability may apply to be entered. Firms in business as general or specialised contractors, including site-management firms, can be entered in the ULV. In the event of minor offences being committed, the ULV operates as a penalisation instrument. Where offences are proved to have been committed, e.g. against the Competition Act, the Act requiring employees to be transferred with their firms in the event of a merger or takeover, the Undeclared Labour Act, fraud, embezzlement, forgery, giving undue advantages, corruption, collusive pricing, repeated violation of environmental regulations or failure to comply with current scales of fees and charges under the Berlin Public Procurement Act of 9 July 1999 (VgG Bln) and in the event of repeated unlawful subcontracting, the offending firm is removed from the ULV for a limited period and can be disqualified from being awarded public contracts. By means of specific inquiries for ULV data the ULV also serves as a preventive instrument against anti-competitive agreements between tenderers/applicants under common management.</p> <p>Where construction contracts are awarded in the Land of Berlin, information from the ULV is used in about 80% of checks on eligibility.</p> <p>The terms for entry in the ULV are accessible at:</p> <p><a href="http://www2.senstadt.verwalt-berlin.de/ULVAuskunft/bedingungen_2-04.pdf">http://www2.senstadt.verwalt-berlin.de/ULVAuskunft/bedingungen_2-04.pdf</a></p>
<b>EE</b>	In Estonia, all structural fund information is in the Structural Fund register, which contains all data regarding projects having applied for or received aid.
<b>IE</b>	No
<b>EL</b>	No
<b>ES</b>	To receive grants and to be able to enter into a contract with the public administration, a certificate must be submitted showing that the party concerned has met its tax and Social Security obligations.
<b>FR</b>	No

## 2.5. Databases for reliable beneficiaries

**Does your legal system provide for the establishment of a specific database for reliable beneficiaries (“white list”), such as a certification scheme or a qualitative evaluation of results? If so, please give a brief description.**

<b>IT</b>	<p>In the customs field, economic operators that so request can undergo a preventive audit in order to obtain a reliability certificate giving them concessions and advantages in the application of the customs legislation and facilitating verification activities.</p> <p>As regards training and guidance activities, there is currently a system of prior identification of those qualified to propose and carry out measures financed with public resources, whose original legislative basis is Article 142, paragraph (1)(d) of <b>Legislative Decree No 112 of 31 March 1998</b> and specifically Ministerial Decree No 166 of 25 May 2001 on the accreditation of training and guidance institutions. The aim of the accreditation of training and guidance institutions is to guarantee the quality of the training service and to assure the public administrations of the stakeholders management reliability. Accreditation means that the public administrations (autonomous regions and provinces) recognise a potential beneficiary's capacity to propose and manage measures, after having checked that the requirements are met, according to standards that are predefined and selected by the Ministry for Employment and Social Security in agreement with the State/Regions Conference. The regions and the autonomous provinces responsible for accreditation are required to assess: management and logistical capacity; economic situation; professional skills; levels of effectiveness and efficiency in previous activities; links developed with the national social and production system.</p>
<b>CY</b>	No
<b>LV</b>	No
<b>LT</b>	No
<b>LU</b>	No
<b>HU</b>	No
<b>MT</b>	No
<b>NL</b>	No
<b>AT</b>	No
<b>PL</b>	The national legal system does not provide for the creation of a specific database of reliable beneficiaries. Local institutions keep local databases pursuant to internal regulations.
<b>PT</b>	No such database exists and there are no plans to set one up.
<b>SI</b>	No



<b>2.5. Databases for reliable beneficiaries</b>	
<b>Does your legal system provide for the establishment of a specific database for reliable beneficiaries (“white list”), such as a certification scheme or a qualitative evaluation of results? If so, please give a brief description.</b>	
<b>SK</b>	No
<b>FI</b>	No
<b>SE</b>	Yes. No such databases have however been set up.
<b>UK</b>	No

**2.6. Risk Management: reduction in risk through establishment of an early-warning mechanism using internal whistleblowers**

Internal whistleblowers are among the information sources that can be used to prevent and combat fraud and manage risks of irregularities within administrative authorities. Civil servants and other staff of administrative authorities are the best placed to realise what the risks are.

Definition: for the purposes of this questionnaire, “early-warning mechanism using internal whistleblowers” means the right or obligation for civil servants and other staff of an organisation to transmit or report within that organisation any illegal acts which have come to their knowledge in the exercise of their functions.

In the Community institutions, Article 22a of the Staff Regulations provides that “Any official who, in the course of or in connection with the performance of his duties, becomes aware of facts which give 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 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.”

The Staff Regulations also provide for a degree of protection for whistleblowers, stating in particular that “An official shall not suffer any prejudicial effects ... as a result of having communicated the information ... provided that he acted reasonably and honestly.”

There are also situations in international law where international instruments protect whistleblowers. An example is Article 22 of the Council of Europe Criminal Convention on Corruption, to which most EU Member States have acceded, whereby protection must be given to those who report criminal offences within the scope of the Convention or give testimony concerning them.

### 2.6.1. Legal status of internal whistleblowers:

a) In your legal system is there a provision or a practice whereby civil servants or other staff of public authorities have a right or obligation to pass on information obtained in the course of their duties in cases where they suspect that irregularities, fraud, corruption or embezzlement may have been committed within the organisation for which they work?

b) If so, please give the reference for the legislation concerned.

<b>BE</b>	<p>Broadly speaking, section 29(1) of the Code of Criminal Investigation (CIC) provides that every civil servant acting in the exercise of his functions must report to the Prosecution Service any major or serious criminal offence that comes to his knowledge and transmit all material information to the relevant Prosecutor.</p> <p>In tax matters, on the basis of section 29(2) of the CIC, civil servants in tax authorities (VAT, income tax), excluding those at the Customs and Excise Administration (who have prosecuting powers), may not lay before the Royal Prosecutor reports of offences against the tax legislation and implementing instruments without authorisation from their regional director.</p> <p>Notwithstanding section 29(1) and (2) of the CIC, on the basis of section 93bis of the Value Added Tax (VAT), section 337 of the Income Tax Code and section 320 of the General Customs and Excise Act, the staff of those authorities remain in the exercise of their functions for the purpose of professional secrecy purposes when transmitting information to other state administrative authorities, prosecution services and court registries, the Communities and Regions and public agencies or establishments.</p> <p>Such authorities etc. are notified of information if they need it to perform the duties imposed on them in tax or customs matters by the relevant statutes and regulations.</p> <p>At the federal level, a draft to establish a Belgian legal system is in preparation.</p> <p>Flemish Staff Regulations (VPS), 13.1.2006 (Art. II 2(2)) impose a duty to report irregularities. There is also a Decree of 7 July 1998 establishing the Flemish Ombudsman Service, as amended by the Decree of 7 May 2004, regarding protection of civil servants who report irregularities.</p> <p>Ministry of the Walloon Region: Code of the Walloon Public Service contains also some provisions relating to this area.</p> <p>German speaking community: Royal Order of 22 December 2000 determining the general principles of the administrative and financial status of state servants applicable to the staff of the Community and Regional Governments, the Colleges of the common Community Commission and the Commission of the French Community and the public bodies that depend on them.</p>
<b>CZ</b>	The Labour Code and the Criminal Code
<b>DK</b>	In accordance with the principles of administrative law, the official must immediately notify the management where he/has knowledge of or reason to suspect the existence of corruption or other irregularities involving the public authorities. The management

### 2.6.1. Legal status of internal whistleblowers:

a) In your legal system is there a provision or a practice whereby civil servants or other staff of public authorities have a right or obligation to pass on information obtained in the course of their duties in cases where they suspect that irregularities, fraud, corruption or embezzlement may have been committed within the organisation for which they work?

b) If so, please give the reference for the legislation concerned.

	<p>must then take steps to address the situation. Alternatively, the official may, depending on the circumstances, bring the matter to the attention of the police or relevant inspection or supervisory authorities.</p> <p>There is also the National Audit Office's factual memorandum to national auditors of 13 September 2006 concerning the point at which fraud and irregularities etc. must be brought to the attention of the National Audit Office. The memorandum indicates why, how and when fraud and irregularities must be brought to the knowledge of the National Audit Office. The memorandum has been circulated to the ministries and published on:</p> <p><a href="http://www.folketinget.dk/?/samling/20061/MENU/Statsrevisorerne.htm">http://www.folketinget.dk/?/samling/20061/MENU/Statsrevisorerne.htm</a></p>
<b>DE</b>	<p>The Standing Orders of the Review Group on Corruption in the Central Administration provide that in every Berlin government department there must be a Review Group on Corruption. An internal Code of Conduct for the municipal development department provides that all suspicious circumstances must be reported to the Review Group.</p>
<b>EE</b>	<p>“Anti-corruption Act” § 23 <a href="https://www.riigiteataja.ee/ert/act.jsp?id=12788430">https://www.riigiteataja.ee/ert/act.jsp?id=12788430</a></p> <p>“Civil Service Act” <a href="https://www.riigiteataja.ee/ert/act.jsp?id=1036249">https://www.riigiteataja.ee/ert/act.jsp?id=1036249</a></p> <p>“Penal Code” <a href="https://www.riigiteataja.ee/ert/act.jsp?id=12775031">https://www.riigiteataja.ee/ert/act.jsp?id=12775031</a></p> <p>“Disciplinary Action Act” <a href="https://www.riigiteataja.ee/ert/act.jsp?id=22242">https://www.riigiteataja.ee/ert/act.jsp?id=22242</a></p>
<b>IE</b>	<p>There is no national legislation concerning whistleblowers. Examples of legislation where whistle-blowing provisions have been adopted on a sectoral case by case basis include:</p> <p>Section 4 - Protections for Persons Reporting Child Abuse Act 1998</p> <p>Section 50 Competition Act 2002</p> <p>Section 5 – Standards in Public Office Act 2001</p> <p>In addition to this, the Ethics Acts (i.e. the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001) while not containing what is commonly understood as a ‘whistle blowing’ provision provides that any person (and this would include a civil servant) can make a complaint to the Standards in Public Office Commission where the complainant considers that a specified person (the definition of which includes an office holder), or a connected person (i.e. a person connected by a family or business relationship) may have undertaken a “specified act”(i.e. an act that</p>

**2.6.1. Legal status of internal whistleblowers:**

**a) In your legal system is there a provision or a practice whereby civil servants or other staff of public authorities have a right or obligation to pass on information obtained in the course of their duties in cases where they suspect that irregularities, fraud, corruption or embezzlement may have been committed within the organisation for which they work?**

**b) If so, please give the reference for the legislation concerned.**

is, or the circumstances of which are, inconsistent with the proper performance of the functions of the office or position occupied or held by the specified person), and the matter is one of significant public importance.

There is also the Civil service Code of Standards and Behaviour and the Code of Conduct for local authorities.

Departments also have their own internal guidelines. For example the Department of Agriculture and Food (DAF) has a set of rules and guidelines for reporting internal fraud, which all staff must follow, this is set out at Section 7 of the DAF publication 'Policy Statement on Fraud : Information and Guidelines for Staff'.

**EL**

Article 37 of the Criminal Procedure Code :

1. Investigating officers are obliged to communicate without delay to the Public Prosecutor any information obtained by every means for criminal actions persecuted ex officio.

2. The other civil servants and those entrusted temporarily with public service, have the same obligation as mentioned in par.1, if the information has obtained during the performance of their duties.

3. The communication should be in a written form and contain all the available data concerning the criminal act, the perpetrators and evidence.

**ES**

This is a general duty which does not apply only to civil servants, although there are special provisions for them (Sections 259, 262 and 264 of the Law on Criminal Prosecution), which lay down a penalty for those who witness the commission of any public offence but fail to report it and stipulate that there is a general duty to report offences which must automatically be prosecuted, especially those of which an official knows through his post, function or work.

Civil servants are obliged to report behaviour which constitutes misconduct.

The 1964 Law on civil servants makes the following stipulations:

- Section 90. "Not only the persons guilty of misconduct, but also bosses who tolerate misconduct, civil servants who cover it up and those who encourage its commission, are responsible for such conduct.

- Section 81. "Civil servants are responsible for the sound management of the departments in their charge."

Law 30/1984 on civil service reform:

### 2.6.1. Legal status of internal whistleblowers:

a) In your legal system is there a provision or a practice whereby civil servants or other staff of public authorities have a right or obligation to pass on information obtained in the course of their duties in cases where they suspect that irregularities, fraud, corruption or embezzlement may have been committed within the organisation for which they work?

b) If so, please give the reference for the legislation concerned.

	<p>- Section 35. Disciplinary rules: entering into agreements which are manifestly illegal and which seriously harm the administration or citizens constitutes very serious misconduct.</p> <p>Law 30/1992 on the Legal Framework for Public Bodies and the Common Administrative Procedure:</p> <p>- Responsibility of authorities and staff in the service of public bodies. Financial responsibility (Section 145) and criminal responsibility (Section 146).</p> <p>The regulations applicable in certain specific areas (tax and the budget) also lay down this obligation:</p> <p>- Section 145 of Law 58/2003 of 17 December 2003 (the General Law on Tax) stipulates that civil servants with control responsibilities have a duty to report acts which may constitute infringements of administrative procedure, auditors' liability or offences.</p>
<b>FR</b>	<p>Article 40 of the Criminal Procedure code: "Every constituted authority, every public officer or civil servant who, in the performance of his duties, has gained knowledge of the existence of a crime or of a misdemeanour is obliged to notify forthwith the Public Prosecutor of the offence and to transmit to this prosecutor any relevant information, official reports or documents."</p>
<b>IT</b>	<p>Obligation for public officials or public service employees to report offences provided for in the Code of Criminal Procedure (Article 331) and penal sanctions for failure on the part of public officials or public service employees to report offences provided for by the Code of Criminal Procedure (Article 361-362).</p> <p>In addition, as far as the judicial role of the Italian Court of Auditors is concerned: obligation to report a loss of revenue (either Community or national) laid down in many primary and secondary legal sources (Article 53 of RD No 1214 of 12 July 1934 – approval of the Consolidated Law on the Court of Auditors; Article 20 of DPR No 3 of 10 January 1957 - Consolidated provisions concerning the regulations for civil servants; Article 1(3) of Law No 20 of 14 January 1994 – provisions on the jurisdiction and control of the Court of Auditors.</p>
<b>CY</b>	<p>The Public Service (Amendment) (No 3) Act of 2003, Article 69A</p>
<b>LV</b>	<p>State Civil Service Act, Act on the Prevention of Conflicts of Interest in the Activities of Government Officials.</p> <p>Section 20(6) of the Act on the Prevention of Conflicts of Interest in the Activities of Government Officials lays down that the head of a State or local authority institution is</p>

**2.6.1. Legal status of internal whistleblowers:**

**a) In your legal system is there a provision or a practice whereby civil servants or other staff of public authorities have a right or obligation to pass on information obtained in the course of their duties in cases where they suspect that irregularities, fraud, corruption or embezzlement may have been committed within the organisation for which they work?**

**b) If so, please give the reference for the legislation concerned.**

obliged to notify immediately the Corruption Prevention and Combating Bureau or in cases specified in this Act the director of the Office for the Protection of the Constitution of any open infringements of this Act carried out by Government officials working in the respective institutions. Pursuant to Section 81(1) and (2) of the Labour Act an employee has a duty within the framework of his or her functions where possible to endeavour to ensure the prevention or diminishment any obstacles which have or may have a negative impact on the normal course of work, and where possible to prevent or diminish potential or existing losses. An employee has a duty to notify immediately his or her employer of the aforementioned obstacles, potential losses or existing losses. Detailed notification procedures relating to information which has emerged while an employee's duties were being performed is laid down in staff regulations and other internal normative acts (for instance, the Central Finance and Contracts Agency has laid down procedures for notifying and assessing potential fraud).

Section 9(4)(5) of the Internal Auditing Act, paragraph 12 of Cabinet Regulation No 306 of 10 June 2003 on the procedure by which an internal audit is performed within an institution.

Section 9 of the Labour Act provides for employees' rights to inform the competent authorities of any suspected criminal act or administrative infringement in the workplace.

The Corruption Prevention and Combating Bureau has drafted the Act on the Prevention of Conflicts of Interest, under the provisions which Government officials are obliged to notify immediately any conflicts of interest or other acts of corruption involving other Government officials or employees that become known to them. The Act also lays down provisions for the protection of these Government officials and sets out procedures by which Government officials notify conflicts of interest.

Cabinet Regulation No 544 of 27 June 2006 on procedures for notifying incompatibilities in the implementation of projects financed by the Structural Funds and for adopting decisions on the exploitation of allocated finances.

The Act on the Prevention of the Waste of State and Local Authority Finances and Property.

**LT**

Yes. Rules for the establishment and elimination of infringements in the use of EU financial aid and limitations on obtaining such aid, approved under Ministry of Finance Order No 1K-307 of 17 October 2005 (Official Gazette No 127-4588, 2005) (hereinafter, "the Infringement Rules").

**2.6.1. Legal status of internal whistleblowers:**

**a) In your legal system is there a provision or a practice whereby civil servants or other staff of public authorities have a right or obligation to pass on information obtained in the course of their duties in cases where they suspect that irregularities, fraud, corruption or embezzlement may have been committed within the organisation for which they work?**

**b) If so, please give the reference for the legislation concerned.**

<b>LU</b>	<p>(a) At present, Luxembourg law contains only a few general provisions regarding the protection of witnesses and offenders who cooperate with the authorities. They apply generally to all criminal offences. On 20 May 2003, with a view to reforming Luxembourg's legislation in this field, the Government tabled draft Law No 5156 strengthening the rights of victims of criminal offences and enhancing the protection of witnesses.</p> <p>Article 282 of the Criminal Code currently stipulates that physical or verbal abuse of witnesses on account of their statements is punishable by imprisonment and a fine.</p> <p>Article 326 of the Criminal Code stipulates that the penalties laid down in the chapter of the Criminal Code on conspiracy and criminal association will not apply to offenders who, before any attempt to commit the crimes concerned and before the start of any legal proceedings, reveal the existence of the gang and the names of the leaders or their subordinates.</p> <p>The draft Law on victims and witnesses stipulates that, in certain conditions and with the agreement of the person concerned, the court can decide to hear witnesses who have been threatened or witnesses or experts residing abroad by means of videoconferencing or any other appropriate means of remote audiovisual communication, if it is not advisable or possible for the person concerned to appear in person at the hearing. The draft Law defines witnesses under threat as witnesses who, it is recognised, may consider themselves or their family members serious risk of injury as a result of their statement and who have indicated that they do not wish to make a statement on account of this threat.</p> <p>(b) Under the draft Law on victims and witnesses, protection measures would be available as of the preliminary inquiry stage and during the inquiry into the facts by the investigating judge and the trial on the merits.</p> <p>Where a civil servant considers that an order is irregular or that carrying it out may have serious negative consequences, he must inform the superior who issued the order in writing and through the official channels. If his superior confirms the order in writing, the civil servant must carry it out unless doing so would make him liable to criminal prosecution. If circumstances so require, the order can be contested and confirmed verbally. In such cases, each party must confirm his position in writing without delay.</p>
<b>HU</b>	<p>Article 37(3) of Government Decree 281/2006 (XII.23.).</p> <p>Government Decree 360/2004 (XII.26.).</p>

**2.6.1. Legal status of internal whistleblowers:**

**a) In your legal system is there a provision or a practice whereby civil servants or other staff of public authorities have a right or obligation to pass on information obtained in the course of their duties in cases where they suspect that irregularities, fraud, corruption or embezzlement may have been committed within the organisation for which they work?**

**b) If so, please give the reference for the legislation concerned.**

	Customs and Finance Guard Order 49/2004 (IV.26.).
<b>MT</b>	<p>Though no formal provisions exist in the law, the Manual of Procedures related to Structural Funds (SF) and to the Cohesion Fund (CF) and the Manual of Procedures for Pre-Accession and Transition Facility Programmes under EDIS provide for reporting of irregularities in the ambit of these funds.</p> <p>i. Manual of Procedures for Structural Funds Malta 2004 to 2006 – Chapter 15 Section 15.2.5</p> <p>ii. Manual of Procedures for the Cohesion Fund Malta 2004 to 2006 – Chapter 14 Section 14.2.4</p> <p>The Manual of Procedures SF and CF provide that any one of the key players (the Managing Authority, the Paying Authority, the Treasury, the Department of Contracts, the Intermediate Bodies, the Line Ministries, Final Beneficiaries, the Internal Audit and Investigations Directorate or any other relevant entity) who, at any stage of contracting, implementation and payment, becomes aware of an irregularity is duty bound to immediately report the irregularity in accordance with the procedures specified in same Manuals.</p> <p>iii. Manual of Procedures and Checklist for Pre-Accession and Transition Facility Programmes under EDIS – Chapter Section I General</p> <p>The Manual of Procedures for Pre-Accession and Transition Facility Programmes stipulate that any person who, at any stage of contracting, implementation and payment, becomes aware of an irregularity, is duty bound to report it according to the procedures as laid down in same Manual.</p> <p>iv. Internal Audit and Financial Investigations Act (Chapter 461) – Article 16</p> <p>It is to be noted that article 16 of the Internal Audit and Financial Investigations Act (Cap. 461) provides that if an entity has reason to suspect any irregularity and, or a suspected case of fraud of public funds, it shall refer the matter forthwith to the Director Internal Audit and Investigations and shall supply to him/her also all information in its possession relating thereto.</p>
<b>NL</b>	<p>The Ministry of Justice: under Article 162 of the Code of Criminal Procedure not only investigation officers but all civil servants and all judicial authorities (established by or under legislation and operating in the public interest) are required to report to the prosecution service whenever they detect misconduct, including corruption, in public</p>



### 2.6.1. Legal status of internal whistleblowers:

a) In your legal system is there a provision or a practice whereby civil servants or other staff of public authorities have a right or obligation to pass on information obtained in the course of their duties in cases where they suspect that irregularities, fraud, corruption or embezzlement may have been committed within the organisation for which they work?

b) If so, please give the reference for the legislation concerned.

office. See also 2.6.2.

The Ministry of Social Affairs and Employment: staff of the Agency are national civil servants and they are bound by the civil service Staff Regulations. The Agency has internal instructions on how staff are to act if they detect suspected fraud. And under the agreement with Social Information and Investigation Service (SIOD) suspected fraud cases may be reported to SIOD for investigation.

Since 1 January 2001 there have been whistleblowers' regulations for central government involving a procedure for a civil servant to report suspected misconduct and the action that must follow such reports. Suspected misconduct refers to:

- a serious criminal offence;
- a gross violation of regulations or rules of conduct;
- misleading Justice;
- a serious threat to public health, security or the environment; or
- knowingly withholding information about such facts.
- If a civil servant observes or suspects that one of these facts has occurred, he is under a duty to report it.

**AT** Articles 45 and 109(1) of the national law for civil servants (Beamtendienstrechtsgesetz/BDG 1979)

Articles 2, 3, 84(1), Articles 87, 88, 96, 206, 254 of the national law on penal procedure (Strafprozessordnung/StPO 1975).

Article 54 of the law on the repression of financial crime (Finanzstrafgesetz/FinStrG)

The principle of the material obligation to establish the truth applies in criminal law (see Articles 2, 3, 87, 88, 96, 206, 254 of the Criminal Code (Strafprozessordnung – StPO)).

In particular, under Article 86(1) of the StPO, anyone who becomes aware of behaviour that would ex officio be liable to legal sanctions may report it. The state prosecutor, examining magistrate, district court and security authorities must accept the complaint and transmit it to the state prosecutor. Private individuals generally have the right but not the duty to report offences. Under Article 86(2), anyone may restrain someone in an appropriate manner if there are adequate grounds for so doing, e.g. if the

**2.6.1. Legal status of internal whistleblowers:**

**a) In your legal system is there a provision or a practice whereby civil servants or other staff of public authorities have a right or obligation to pass on information obtained in the course of their duties in cases where they suspect that irregularities, fraud, corruption or embezzlement may have been committed within the organisation for which they work?**

**b) If so, please give the reference for the legislation concerned.**

person is carrying out, has just carried out or is wanted for an act that is punishable by law.

If knowledge comes to an authority or public administration of commission of an act concerning its legal sphere of activity which would ex officio be liable to legal sanctions, under Article 84(1) StPO it must report it to the state prosecutor or security authority. Under Article 84(2), no such obligation exists if reporting the offence would impede an official activity whose effectiveness requires a personal relationship of trust, or if there are sufficient grounds to assume that punishment of the act is to be dispensed with via compensatory measures. However, under Article 894(2)(a) StPO, the authorities or public administration must do everything necessary to protect an injured person or other persons from danger; where necessary, an offence is also to be reported in the cases referred to in Article 894(2). The security authorities' reporting obligation remains unaffected (Article 894(3)).

The person directly or indirectly responsible for administrative supervision must, in the case of any well-founded suspicion of misconduct, make the necessary inquiries to clarify the matter and thereupon file a disciplinary report through the appropriate administrative channels of the departmental executive. If the suspicion of misconduct also gives rise to that of commission of an act that would be ex officio liable to court proceedings, the person must refrain from investigating and immediately inform the departmental executive in the manner laid down in Article 84 of the 1975 Code of Criminal Procedure.

Under Article 54 of the Financial Crime Repression Act (FinStrG), if after initiating criminal proceedings the finance authorities become aware that the court is responsible for implementing them, it must report the matter to the state prosecutor.

**PL**

The Penal Code (Journal of Laws of 1997, No. 88, item 553 - art. 297(2))

The Code of Criminal Procedure (Journal of Laws of 1997, No. 89, item 555 - art.304)

Civil Service Professional Code of Ethics

In addition, the whistleblowing procedure operates as part of implementation of the Phare/Transition Facility Programme, consisting in enabling every employee employed at an institution involved in the implementation of the Phare programme, to submit directly to the Undersecretary of State at the Ministry of Finance, acting as the National Authorising Officer (NAO), the information on any suspected irregularity or fraud, consisting in an action, failure to act or unethical conduct of the employees of the

**2.6.1. Legal status of internal whistleblowers:**

**a) In your legal system is there a provision or a practice whereby civil servants or other staff of public authorities have a right or obligation to pass on information obtained in the course of their duties in cases where they suspect that irregularities, fraud, corruption or embezzlement may have been committed within the organisation for which they work?**

**b) If so, please give the reference for the legislation concerned.**

institution involved in the implementation of Phare.

**Paying Agencies:**

- Each employee of the ARMA must prepare Information relating to any justified suspicion of an irregularity. Such information must be prepared if the employee is convinced that an irregularity or an offence may be committed by the beneficiary. Such information is sent to the relevant entity which, as part of its duties, is obliged to consider the matter (and to ascertain whether or not the irregularity has occurred). The above issues are regulated in the ARMA irregularity investigation procedure.
- The AMA has a Procedures Book relating to the implementation of the “Internal control” process and the AMA Employment Rules (which impose on employees the obligation to protect AMA’s interests, its property and image).

**PT**

A. General rule: Article 242(1)(b) of the Code of Criminal Procedure and Article 46 of Decree-Law 511/99: “*The reporting [of a crime] is an obligation - even if the perpetrators are unknown - ...for officials ... with regard to crimes which came to their attention during and as a result of the performance of their duties*”.

Definition of an official – Article 386 of the Criminal Code:

1 – For the purposes of criminal law, the term "official" covers:

- civil servants;
- administrative staff; and
- anyone who, even provisionally and temporarily, against remuneration or in an unpaid capacity, voluntarily or by obligation, has been called on to perform - or take part in the performance of - an activity forming part of the administrative or judicial civil service or, in the same circumstances, to perform duties in public utility bodies or to take part in such activities.

2 – The following are deemed equivalent to officials: managers, heads of audit bodies and employees of public, nationalised, publicly-owned or majority publicly-owned undertakings and undertakings granted a concession to operate public services.

### 2.6.1. Legal status of internal whistleblowers:

a) In your legal system is there a provision or a practice whereby civil servants or other staff of public authorities have a right or obligation to pass on information obtained in the course of their duties in cases where they suspect that irregularities, fraud, corruption or embezzlement may have been committed within the organisation for which they work?

b) If so, please give the reference for the legislation concerned.

	<p>3 – The following are also deemed equivalent to officials for the purposes of Article 372 and 374:</p> <ul style="list-style-type: none"><li>– judges, officials and servants of the European Union and persons equivalent thereto, irrespective of their nationality and place of residence;</li><li>– national officials of the other EU Member States, where the infringement was committed entirely or partially in Portuguese territory;</li><li>– all persons performing the duties described at point 1 in connection with any international organisation governed by public law of which Portugal is a member, where the infringement was committed entirely or partially in Portuguese territory.</li></ul> <p>4 – Rules on the equivalence to an official of anyone who exercises political duties are, for the purposes of criminal law, regulated by special law.</p> <p>B. Additional clarification: Failure to comply this obligation is punishable by disciplinary proceedings – Article 23 of the Disciplinary Rules.</p>
<b>SI</b>	<p>Failing to report criminal conduct constitutes a criminal offence. All State bodies and organisations with a public mandate are obliged to report criminal offences for which the offender is prosecuted <i>ex officio</i> if they are informed of them or learn about them in any other way.</p> <p>Legislation concerned: Penal Code of the Republic of Slovenia Criminal Procedure Act (ZKP) Civil Servants Act (ZJU) Civil Servants Code</p>
<b>SK</b>	<p>Slovak National Council Act No 300/2005: Criminal Code – general duty of citizens to report unlawful conduct</p> <p>Slovak National Council No 301/2005: Code of Criminal Procedure</p> <p>Slovak National Council Act No 200/1998 governing the customs service and amending certain other acts</p> <p>Slovak National Council Act No 312/2001 governing the civil service and amending</p>

**2.6.1. Legal status of internal whistleblowers:**

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**b) If so, please give the reference for the legislation concerned.**

	<p>certain other acts</p> <p>Slovak National Council Act No 552/2003 governing the performance of work in the public interest</p> <p>Slovak National Council Act No 39/1993 governing the Supreme Audit Office of the Slovak Republic, as amended</p>
<b>FI</b>	Sections 16 and 17 of the Act on the State Audit Office (No 676/2000).
<b>SE</b>	Sweden's Supreme Audit Institution (SAI) has issued a guide to irregularities and serious infringements for auditors employed only by the SAI.
<b>UK</b>	The Civil Service Code of Conduct of 2006 and the Public Interest Disclosures Act (PIDA) of 1998.

### 2.6.1. Legal status of internal whistleblowers:

**c) What type of unlawful conduct must or may be reported under this obligation or right? (Examples: irregularity, fraud, corruption, failure to comply with professional obligations or other.)**

<b>BE</b>	<p>Any major offence or other offence classified as such on account of the severity of the penalty (section 1 of the Criminal Code).</p> <p>Every public authority and every public official or civil servant acting in the exercise of his functions must report any major or serious criminal offence that comes to his knowledge to the Royal Prosecutor at the court within whose jurisdiction the offence was committed or the suspicion arose and must convey to the relevant prosecutor all relevant information, reports and documents.</p> <p>Under the procedure approved on 25.3.2004, all irregularities within the meaning of Regulation (EC) No 1681/94 of which OLAF must be notified.</p>
<b>CZ</b>	<p>Employees of public administration bodies are under a duty to report any suspicions of irregularities and suspicions that a criminal offence has been committed, in particular serious criminal offences including fraud, receiving and offering bribes, suspected collusion etc.</p>
<b>DK</b>	<p>Corruption or other irregularities involving the public authorities.</p>
<b>DE</b>	<p>All irregularities and suspected offences connected with corruption, fraud and embezzlement must be reported.</p>
<b>EE</b>	<p>All types of irregularity (fraud, corruption, failure to comply with professional obligations, etc.) must be reported.</p>
<b>EL</b>	<p>Any criminal act.-</p>
<b>ES</b>	<p>In general terms, any public offence, that is, any act defined as an offence by the Criminal Code. In concrete terms, where civil servants are concerned, this means acts which adversely affect the sound management of the departments for which they are responsible; conduct relating to, detected through and identified with the exercise of the civil servant's duties may be reported or denounced.</p> <p>Particular emphasis is placed on offences against public finance, defined in Articles 305 ff. of the Criminal Code, notably offences relating to European Union finance.</p> <p>Civil servants responsible for control must, in particular, report acts which may constitute infringements of administrative procedure or auditors' liability.</p>
<b>FR</b>	<p>Any crime or misdemeanour which corresponds in French law to any criminal offence punishable by imprisonment.</p>

### 2.6.1. Legal status of internal whistleblowers:

**c) What type of unlawful conduct must or may be reported under this obligation or right? (Examples: irregularity, fraud, corruption, failure to comply with professional obligations or other.)**

<b>IT</b>	<p>Offences within the jurisdiction of the ordinary judicial authorities: in particular fraud against the Community budget (Article 640a of the Penal Code; Article 2 of Law No 898 of 23 December 1986 and Article 316a and 316b of the Penal Code); embezzlement, corruption or misappropriation of public funds (Articles 314 – 317 and 318 to 322 of the Penal Code).</p> <p>Loss caused to public, Community and national revenue (Article 1 of Law No 20 of 14 January 1994) under the jurisdiction of the Court of Auditors, in the form of either deliberate fraud or irregularity, as defined by the Community legal framework, or corruption that damages the standing of the public administration.</p>
<b>CY</b>	Corruption / Bribery
<b>LV</b>	Corrupt activities, fraud, failure to comply with professional obligations, non-compliance and other infringements that may bring about losses must be notified.
<b>LT</b>	<p>Where the project beneficiary:</p> <ol style="list-style-type: none"><li>1) fails to submit payment requests, reports on the implementation of a project and/or other documents in accordance with the procedure laid down in the conditions for granting and using assistance;</li><li>2) when submitting a project application, requesting payment of aid, reporting on the implementation of the project or other documents, submits incorrect information or withholds information which is crucial to the decision on granting assistance or the proper control of the project;</li><li>3) while implementing the project, breaches the provisions of legislative acts of the Republic of Lithuania or the European Union as far as they are related to the implementation of the project;</li><li>4) ceases implementation of the project, deviates from the approved expenses category of the project by more than 10%, or is unable to attain the objectives and goals of the project as laid down in the aid agreement, but fails to notify the implementing agency of this inability;</li><li>5) fails to inform the implementing agency of any income gained during project implementation and in the year following implementation which has arisen as a result of the project;</li><li>6) within a period of five years from the date the agreement is signed alters the nature of the activities supported under the agreement;</li><li>7) within a period of five years from the date the agreement is signed transfers assets acquired as a result of the financial aid;</li><li>8) within a period of five years from the date the agreement is signed sells assets</li></ol>

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**c) What type of unlawful conduct must or may be reported under this obligation or right? (Examples: irregularity, fraud, corruption, failure to comply with professional obligations or other.)**

	<p>acquired using the financial aid (in this case an amount of aid is to be reimbursed equal to the residual value of the initial investment made using the aid, taking into account the useful life of the type of assets which have been sold and the applicable depreciation rate of the assets);</p> <p>9) delegates to third parties its obligations or rights related to the aid without consulting the implementing agency;</p> <p>10) does not comply with the conditions concerning insurance of assets, reports on insurance events and insurance payments received;</p> <p>11) does not create conditions for or precludes persons specified in paragraph 210 of the administrative and financial regulations from checking on the spot or inspecting the implementation of the project and/or the activities conducted after the receipt of aid;</p> <p>12) does not comply with the conditions requiring the beneficiary to maintain accounting records for the project whereby accounting information must be relevant, objective, comparable, presented on time, comprehensive and useful to internal and external users;</p> <p>13) infringes the procedures laid down in legislative acts and in the agreement for the storage of documents;</p> <p>14) does not start implementing the project within the timeframe laid down in the agreement or fails to observe the implementation schedule;</p> <p>15) is forced into bankruptcy or liquidation during the project implementation period;</p> <p>16) systematically infringes environmental, fire-prevention, hygiene, veterinary or other regulations governing the project implementer's activities;</p> <p>17) infringes the principles of compatibility laid down in Council Regulation (EC) No 1260/1999 of 21 June 1999 during project implementation;</p> <p>18) violates other conditions laid down in the agreement.</p>
<b>HU</b>	Suspicion of irregularity.
<b>MT</b>	<p>With respect to Structural and Cohesion Funds and Pre-accession and Transition Facility Programmes, irregularity is defined in terms of Article 2 of Council Regulation (EC, Euratom) No 2988/95 on the protection of the European Communities financial interests.</p> <p>Irregularity in terms of Article 16 of the Internal Audit and Financial Investigations Act is defined in Article 2 of the same Act as 'whichever act or omission which unlawfully diminishes public funds and whatever is not consonant with the proper</p>



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	management thereof.’
<b>NL</b>	<p>Embezzlement, corruption etc. See section 162(1)(b) and (c) of the Criminal Code.</p> <p>According to whistleblowers’ regulations for central government suspected misconduct refers to:</p> <ul style="list-style-type: none"> <li>– a serious criminal offence;</li> <li>– a gross violation of regulations or rules of conduct;</li> <li>– misleading Justice;</li> <li>– a serious threat to public health, security or the environment; or</li> <li>– knowingly withholding information about such facts.</li> </ul>
<b>AT</b>	<p>Private individuals: duty to report any acts that would be ex officio liable to legal sanctions.</p> <p>Authorities or public bodies and their employees: acts concerning their legal sphere of activity which would ex officio be liable to legal sanctions, hence only offences carried out by persons acting in their official capacity (restricted to the areas of public administration and jurisdiction) are concerned. Official activities based on a personal relationship of trust may release an individual from the duty to report an offence, without prejudice to every individual's right to report an offence provided for by Article 86 StPO (weighing of interests).</p>
<b>PL</b>	<p>Irregularities and suspected financial fraud, including corruption or non-ethical conduct of employees involved in the implementation of Phare/Transition Facility.</p> <p>In accordance with the procedures aimed at clarifying the irregularities, the following suspicious cases must be reported: committed irregularities, corruption, failure to fulfil professional duties and any other actions which fulfil the criteria of an offence. The submission of a forged, altered, untrue or incorrect document, or an incorrect written statement relating to circumstances of material significance to the obtaining of financial support, a payment instrument or a contract.</p> <p>The Paying Agency:</p> <p>The AMA employee should have the relevant knowledge to enable him to recognize the characteristic features of a fraud/offence, although he would not be expected to have any specialist knowledge required from a person in charge of detecting and investigating cases of fraud/offences.</p> <p>If, during the audit, the internal auditor notices any characteristic features of the actions which, in his assessment, are sufficient for commencing the public finances</p>

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	<p>disciplinary procedure, criminal proceedings or proceedings in a case relating to a fiscal offence or a fiscal petty offence, he must notify that fact to the manager of the unit.</p> <p>If, during the implementation of the process, any circumstances relating to the commission or detection of an act bearing the characteristic features of an offence are revealed, the Director of the organisational unit secures the evidence relating to the suspicion and notifies the fact to the Director of the Internal Control Team. The bodies appointed to investigate offences are notified of the suspected offence by the President of the AMA.</p> <p>If, during the implementation of the process, any events are identified in the CAP mechanisms which bear the characteristic features of fraud/misuse of funds, a special report must be prepared and sent to the organisational unit of the AMA responsible for reporting on the irregularities.</p>
<b>PT</b>	Irregularities, fraud, corruption, failure to comply with professional or other obligations.
<b>SI</b>	<p>Anyone may report criminal offences which are prosecuted <i>ex officio</i> (Article 146(1) of the Criminal Procedure Act). All State bodies and organisations with a public mandate are obliged to report criminal offences for which the offender is prosecuted <i>ex officio</i> if they are informed of them or learn about them in any other way (Article 145(1) of the Criminal Procedure Act).<sup>29</sup></p> <p>As regards the type of criminal offence, all the examples listed apply, as well as any other unlawful activity (e.g.: the private interests of officials and civil servants must not prevail, unethical conduct, etc.)</p>
<b>SK</b>	Any unlawful conduct
<b>FI</b>	Notwithstanding the rules governing confidentiality, authorities, public bodies, public corporations and state funds are required to report to the Audit Office all abuses committed in the course of their operations and affecting funds which they manage or for which they are responsible. Furthermore, all criminal acts except those considered of minor importance must be reported. Similarly, the Audit Office must report any crimes it detects in the course of its auditing work, if they have not already been reported by the body being audited. The relevant legislation also

<sup>29</sup>

Criminal offences are unlawful activities which the law defines as criminal offences because of their danger and at the same time determines their characteristics and the punishment for them. Depending on the manner of prosecution, under our legislation criminal offences are divided into: criminal offences for which the offender is prosecuted *ex officio*; criminal offences for which the offender is prosecuted privately; chargeable misdemeanours are criminal offences for which an application from an entitled person is necessary for a prosecution and which are included with criminal offences prosecuted *ex officio*.

**2.6.1. Legal status of internal whistleblowers:**

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	<p>contains provisions concerning the authorities' duty to report matters to the police.</p> <p>However, authorities are not under any general obligation to report crimes that come to their attention. In Finland, there is no general obligation to take the initiative in reporting crimes to the police or to the prosecutor. Only the failure to report certain planned serious crimes is an offence under Section 10 of Chapter 15 of the Criminal Code. Authorities, such as the tax authorities for instance, are however entitled to report suspected crimes.</p>
<b>SE</b>	<p>All these examples, i.e. irregularity, fraud, corruption, failure to comply with professional obligations or other, are covered by the abovementioned guide.</p>
<b>UK</b>	<p>The Civil Service Code states that evidence of criminal or unlawful acts must be reported to the police or other appropriate authorities. This will include all of the above examples including fraud, corruption and malpractices involving criminal offences, breaches of legal obligation, miscarriages of justice, danger to the health and safety of any individual, damage to the environment and deliberately covering up any information relating to any of these.</p>

<b>2.6.1. Legal status of internal whistleblowers:</b>		
	<b>d) How are civil servants informed of this right or obligation by the organisation? (Examples: staff rules, code of ethics or other.)</b>	<b>e) Is there a definition of “internal whistleblower” in your legal system? If so, please give it below.</b>
<b>BE</b>	<b>FPS Public finance</b>  Every member of staff of the tax and/or customs administrations in the exercise of his function is aware of the foregoing provisions (Tax Codes, General Customs and Excise Act – Criminal Code, Code of Criminal Investigation).	<b>FPS Public finance</b>  In the Federal Public Finance Service there is currently no definition of “internal whistleblower”.
	<b>FPS Economic affairs</b>  Flemish Government: Rights and duties in the Flemish Staff Regulations are amplified in the code of professional ethics of 6 July 2006 for Flemish Administration Personnel (circular PEBE/DVO/2006/6). The code of professional ethics is accessible via Intranet. In 2006 integrity training schemes began.  Ministry of the Walloon Region: Direction générale de l'agriculture (DGA) website  <b>FPS Economic affairs: General Directorate of Control and Mediation (ADCB, De Algemene Directie Controle en Bemiddeling):</b> Inspectors’ manual.	
	<b>Brussels capital region</b>  The obligation to report fraud under section 29 of the CIC is a legal requirement, and since it is presumed that nobody is ignorant of the	<b>Brussels capital region</b>  No, there is no definition of “internal whistleblower” in our legal system

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<p>law, staff are not specifically reminded of it. Alongside the Staff Regulations there is a code of professional ethics, but it has no mandatory status and imposes no obligations in this respect.</p> <p>Under the procedure concerning irregularities of which OLAF must be notified, information is transmitted by internal memoranda.</p>	<p>(Staff Regulations).</p>
<p><b>Flemish community</b></p> <p>Flemish Staff Regulations and code of professional ethics.</p>	<p><b>Flemish community</b></p> <p>The following definition of “internal whistleblower” is in the Decree on the Ombudsman Service: “members of staff of administrative authorities of the Flemish Community and the Flemish Region, who in the exercise of their functions detect cases of negligence, misappropriation or criminal conduct in the administrative authority for which they work.”</p>
<p>Walloon region</p> <p>The Standing Orders of the OLAF working party, distributed to all members, state that the relevant Directorates-General are to report all irregularities detected to the European Programmes Directorate.</p>	

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	<b>d) How are civil servants informed of this right or obligation by the organisation? (Examples: staff rules, code of ethics or other.)</b>	<b>e) Is there a definition of “internal whistleblower” in your legal system? If so, please give it below.</b>
	<b>German-speaking community</b> Staff Regulations and code of professional ethics.	<b>German-speaking community</b> No.
<b>CZ</b>	The Conditions of Employment and Code of Ethics for civil service staff	No.
<b>DK</b>	General principles of administrative law	No.
<b>DE</b>	Internal Code of Conduct.	No.
<b>EE</b>	The obligations deriving from the Anti-corruption Act are binding on all public-sector officials. Private-sector officials’ obligations and responsibilities are laid down in their work contract or in the company’s internal work procedure rules.	No.
<b>IE</b>	The Civil Service Code of Standards and Behaviour sets out the principles which govern the behaviour of civil servants and the values which the Civil Service espouses. The Code was issued to all civil servants and forms part of their terms and conditions. The Code requires all civil servants to respect the law. Civil servants, who have doubts about the legality of any action they are required to take in the course of their official duties, are required to refer the matter to their superiors. A similar Code of Conduct is in place in the Local Authority sector.	No.

<b>2.6.1. Legal status of internal whistleblowers:</b>		
	<b>d) How are civil servants informed of this right or obligation by the organisation? (Examples: staff rules, code of ethics or other.)</b>	<b>e) Is there a definition of “internal whistleblower” in your legal system? If so, please give it below.</b>
<b>EL</b>	It is included in the Criminal Procedure Code, which civil servants should be familiar with.	No.
<b>ES</b>	Through the above-mentioned rules which lay down obligations on civil servants. A draft law on the Basic Rules applicable to Public Employees which introduces, <i>inter alia</i> , a code of conduct, has been placed before Congress; this may be adopted and come into force in the future.	No.
<b>FR</b>	Officials are regularly reminded of this obligation, both during initial training and in-service training. Frequent reminders are also sent in the form of circulars, and it is recalled at meetings between prosecution services and the administrations in question.	The French legal system does not identify "internal whistleblowers" directly. Article 40 of the Code of Criminal Procedure does however cover a wide range of public authorities, referring to "Every constituted authority, every public officer or civil servant, etc."

<b>2.6.1. Legal status of internal whistleblowers:</b>		
	<b>d) How are civil servants informed of this right or obligation by the organisation? (Examples: staff rules, code of ethics or other.)</b>	<b>e) Is there a definition of “internal whistleblower” in your legal system? If so, please give it below.</b>
<b>IT</b>	<p>In criminal matters, as this is an obligation deriving directly from the law and as these also subject to sanctions for failure to report, every civil servant must be aware of it by virtue of the general principle of the rule "<i>ignorantia juris non excusat</i>".</p> <p>As regards the obligation to report events causing losses to national and Community revenue that comes under the jurisdiction of the Court of Auditors, an interpretative circular has been issued by the Prosecutor-General of the Court of Auditors. For the purposes of coordinating information and investigations, the Prosecutor-General of the Italian Court of Auditors signed a protocol on cooperation with OLAF on 23 June 2006.</p>	No.
<b>CY</b>	Civil servants have an obligation to be aware of the provisions of the Public Service Act. In addition, relevant seminars are held by the Academy of Public Administration.	No.



<b>2.6.1. Legal status of internal whistleblowers:</b>		
	<b>d) How are civil servants informed of this right or obligation by the organisation? (Examples: staff rules, code of ethics or other.)</b>	<b>e) Is there a definition of “internal whistleblower” in your legal system? If so, please give it below.</b>
<b>LV</b>	<p>State Civil Service Act, Act on the Prevention of Conflicts of Interest in the Activities of Government Officials, seminars on the application of these Acts.</p> <p>Institutions' codes of ethics.</p> <p>Institutions' internal regulations.</p> <p>Orders by heads of institutions.</p>	<p>There is no such definition, but measure 53 of the 2004-2008 programme for the prevention and combating of corruption gives the following definition: "an informer is a person who, on the basis of ethical, moral or personal considerations, provides information on illegal activities within an organisation which are not evident within the organisational structure because of a lack of control or managerial involvement in such activities."</p>

<b>2.6.1. Legal status of internal whistleblowers:</b>		
	<b>d) How are civil servants informed of this right or obligation by the organisation? (Examples: staff rules, code of ethics or other.)</b>	<b>e) Is there a definition of “internal whistleblower” in your legal system? If so, please give it below.</b>
<b>LT</b>	<p>No specific information is provided but all intermediate and implementing institutions are required to familiarise themselves with the Infringement Regulations.</p> <p>Infringement controllers are assigned by means of an order issued by the head of the relevant authority.</p>	<p>There is no exact definition of "internal whistleblower", but every civil servant who works in an institution and is responsible for administering aid is in a position when managing, controlling or auditing aid to ascertain or suspect that an infringement has been committed. When an infringement has been ascertained or is suspected the civil servant informs the infringement controller. Paragraph b of the aforementioned Regulations defines the infringement controller as follows: a civil servant appointed by the head or authorised deputy of an aid administration authority who is responsible for the activities of the aid administration authority with regard to the ascertainment, investigation, restriction and prevention of infringements, and who oversees coordination and cooperation with other aid administration authorities and the Financial Crime Investigation Service under the Ministry of the Interior.</p>

<b>2.6.1. Legal status of internal whistleblowers:</b>		
	<b>d) How are civil servants informed of this right or obligation by the organisation? (Examples: staff rules, code of ethics or other.)</b>	<b>e) Is there a definition of “internal whistleblower” in your legal system? If so, please give it below.</b>
<b>HU</b>	By announcement.	No.
<b>MT</b>	<p>The Manual of Procedures is made available to all relevant stakeholders involved in the project contracting, implementation or payment.</p> <p>The Internal Audit and Financial Investigations Act is available for download on the official website of the Government of Malta and on the website of the Internal Audit and Investigations Directorate itself.</p>	No.
<b>NL</b>	Civil servants are not actively informed. The explanatory notes to the whistleblowers’ rules refer to section 162 of the Code of Criminal Procedure.	No.
<b>AT</b>	<p>Education according to the national law for civil servants (official civil service regulations examination along with the compulsory official examination – legal obligation for public officials)</p> <p>Further education – professional ethics seminars.</p> <p>Anti corruption folders.</p>	No. Austrian criminal law does not refer to the concept of "internal whistleblower". Under Article 84 StPO, all authorities and public bodies together with their employees are required to make a complaint in the case of suspicion of commission of an act concerning their legal sphere of activity which would ex officio be liable to legal sanctions.

<b>2.6.1. Legal status of internal whistleblowers:</b>		
	<b>d) How are civil servants informed of this right or obligation by the organisation? (Examples: staff rules, code of ethics or other.)</b>	<b>e) Is there a definition of “internal whistleblower” in your legal system? If so, please give it below.</b>
<b>PL</b>	<p>This right (obligation) arises from the Civil Service Act.</p> <p>In accordance with the recommendation of the National Authorising Officer, all employees of the institutions involved in the implementation of the Phare/Transition Facility have been acquainted with the whistleblowing procedure. All the employees have confirmed in writing that they have read the said procedure. Information relating to the procedure is published on the websites of the institutions implementing the Phare/Transition Facility. The employees of the ARMA must comply with the irregularity investigating procedures, and therefore are obliged to inform the relevant units of any suspected irregularity (offence) committed.</p> <p>The Paying Agency (AMA.):</p> <p>Employees of the Internal Audit Bureau – internal auditors have the relevant knowledge in this respect, confirmed by the successfully passed internal auditor examination.</p> <p>Employees of the Internal Control Team know and apply the internal rules of the AMA, including the principles and methods of conduct when carrying out inspections (the Procedures Book relating to the implementation of the “Internal Control” process).</p> <p>Employees of the AMA are acquainted with the AMA internal rules, including the principles and methods of conduct during the implementation of processes (Procedures Books).</p>	No.

<b>2.6.1. Legal status of internal whistleblowers:</b>		
	<b>d) How are civil servants informed of this right or obligation by the organisation? (Examples: staff rules, code of ethics or other.)</b>	<b>e) Is there a definition of “internal whistleblower” in your legal system? If so, please give it below.</b>
<b>PT</b>	<p>Civil servants are subject to a set of legal and ethical rules - many of which must be met as a requirement for admission to the service. These rules stem from:</p> <ul style="list-style-type: none"> <li>– the Portuguese Constitution;</li> <li>– the Criminal Code;</li> <li>– the Civil Service Charter on Ethics, distributed by the Government to all civil servants in 1977, which sets out ten ethical principles of the civil service and is available on the Internet.</li> </ul> <p>In addition, some professional groups/careers have their own code of conduct, for example in the case of the security forces - the Police Service Code of Ethics.</p> <p>In 2005 the Criminal Police published a set of recommendations aimed at all civil servants, which is also available on the Internet.</p>	<p>No.</p> <p>However, see the reply to question 2.6.3; civil servants who report fraud or corruption may be eligible for witness-protection measures.</p>
<b>SI</b>	<p>The official or civil servant is informed of this on entry into service or in the course of the State public administration examination which is compulsory for all civil servants. The Code of conduct for civil servants sets out and explains the matter in greater detail.</p>	<p>No.</p>

<b>2.6.1. Legal status of internal whistleblowers:</b>		
	<b>d) How are civil servants informed of this right or obligation by the organisation? (Examples: staff rules, code of ethics or other.)</b>	<b>e) Is there a definition of “internal whistleblower” in your legal system? If so, please give it below.</b>
<b>SK</b>	<p>Training for new recruits</p> <p>Staff regulations</p> <p>In Slovakia this obligation is laid down in various laws and universally binding legal provisions published in the Official Gazette; for this reason, there is also an irrefutable presumption that people have familiarised themselves with and are aware of what this obligation entails.</p>	No.
<b>FI</b>	-	No.
<b>SE</b>	The guide is included in the Supreme Audit Institution’s (SAI) policy document.	No.
<b>UK</b>	<p>The Code is part of the terms and conditions of employment for all civil servants. Civil Servants sign up to the Code when they sign their letters of appointment and the detail is explained to them as part of the induction process.</p> <p>Departments' own guidance is supplementary and should follow the procedures set out in the Code.</p>	No.

## 2.6.2. Procedure for early warning by internal whistleblowers

a) When, in the course of his duties, a civil servant or other staff member detects unlawful conduct within the institution and intends to report it, what procedure does your legal system lay down? To whom must civil servants make their allegations? Specifically, is there an internal department to which such information must be reported?

**BE**

### **FPS Public finance**

If the illegal act committed in the institution (SPF Finance) is a major or serious criminal offence attracting a criminal penalty under the Criminal Code and/or the CIC (e.g. corruption of public servants, organisation of fraudulent bankruptcy) or tax provisions providing for criminal penalties (in particular violations of the tax codes and implementing orders committed with fraudulent criminal intent, forgery and false accounting, refusal to testify, false testimony, influencing witnesses, experts or interpreters in the course of a tax inspection or the investigation of a challenge, acting in breach of a disqualification from an occupational activity ordered under the tax codes), section 29(1) and (2) of the CIC, section 93bis of the Value Added Tax (VAT), section 337 of the Income Tax Code and section 320 of the General Customs and Excise Act apply.

In the SPF Finances, there is no specific internal or ad hoc department responsible for receiving information from civil servants who detect an illegal act committed in the institution.

### **FPS Economic affairs (EAGGF Guarantee Section)**

Flemish Government: Flemish Staff Regulations, Art. 2(II)(2): A member of staff who in the exercise of his function detects an irregularity must immediately inform his line manager. He may also inform the Internal Audit Unit of the Flemish administrative direct.

If he has good reason to suspect or detect that his line manager will forbid or hinder him from reporting offences, he may report the case direct to the Royal Prosecutor.

Ministry of the Walloon Region: Inform hierarchical superiors (Civil Service Code).

### **Brussels capital region**

All that is provided for is transmission to the Royal Prosecutor under section 29 CIC (see 2.6.1 b).

In the procedure concerning irregularities to be reported to OLAF, a quarterly internal note is sent to the Ministry that receives reports.

### **Flemish community**

## 2.6.2. Procedure for early warning by internal whistleblowers

a) When, in the course of his duties, a civil servant or other staff member detects unlawful conduct within the institution and intends to report it, what procedure does your legal system lay down? To whom must civil servants make their allegations? Specifically, is there an internal department to which such information must be reported?

	<p>Initially, report to hierarchical superiors, unless they are suspected or involvement or reprisals are feared, in which case direct report to the Internal Audit Agency or the Flemish Ombudsman (in the event of criminal offences, direct report to the Royal Prosecutor).</p> <p><b>Walloon region</b></p> <p>OLAF working party (see above).</p>
<b>CZ</b>	Reports are made either through official channels (via the superior) to the internal audit departments or to the control department.
<b>DK</b>	See 2.6.1. b)
<b>DE</b>	The Review Group on Corruption has jurisdiction and must be informed.
<b>EE</b>	Civil servants and other staff members should inform their immediate superior of any problems. They may also turn to the head of the institution. A competent entity (e.g. an internal auditor, the police) deals with solving the problem.
<b>IE</b>	<p>Some departments and offices have risk assessments and management systems in operation. An example from the Department of Agriculture and Food is outlined below.</p> <p><b>The Department of Agriculture and Food (DAF):</b> Internal notification procedures are set out in the DAF publication ‘Policy Statement on Fraud: Information and Guidelines for Staff’. Civil servants who detect unlawful conduct within the Department must contact their supervisory officer in the first instance. If for any reason this is not possible or appropriate, the matter is to be reported to the Head of Internal Audit and/or the Personnel Officer.</p>
<b>EL</b>	Public Prosecutor
<b>ES</b>	No procedure is laid down and there is no specific department or body responsible for receiving this type of information. In all cases the whistleblower must present his evidence to his line manager so that it can be forwarded, if appropriate, to the Legal Department, the Public Prosecutor or, in the event of auditors' liability, the Spanish Court of Auditors.
<b>FR</b>	Under Article 40(1) of the Criminal Procedure Code, the Public Prosecutor receives complaints and denunciations directly, and decides whether to pursue them. Information passed on under Article 40 of the Criminal Procedure Code thus goes directly to the prosecuting authority. The Article does not however require the denunciation to be made by the official who uncovered the wrongdoing: it can also be



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	made by a hierarchical superior (Cass. Crim., 14 December 2000, Bull. Crim. No 380), without any specific form (Cass. Crim, 28/01/1992, No 90-84940 and 90-84941, bull. crim. No 34, p. 82).
<b>IT</b>	<p>Offences are reported, without delay, to the Public Prosecutor's Office or to an officer of the Criminal Investigation Department (Article 331(II) of the Code of Criminal Procedure).</p> <p>For damage arising from failure on the part of employees of the state administration to comply with service obligations, the legal basis is Article 20 of DPR No 20 of 10 January 1957 on consolidated provisions concerning the regulations for civil servants (information reported to the Prosecutor-General of the Court of Auditors).</p>
<b>CY</b>	In accordance with Article 69A, they must report their allegations in writing to the competent authority concerned to which they are subject, giving all the necessary details to support their allegations.
<b>LV</b>	<p>An employee who has identified illegal activities notifies the head of the institution. If the head of the institution is suspected of carrying out the illegal activities, the head of a superior institution is notified.</p> <p>Pursuant to paragraph 12 of Cabinet Regulation No 306 of 10 June 2003 on the procedure by which an internal audit is performed within an institution, where an internal auditor identifies an infringement he or she is obliged to notify immediately in writing the head of the internal audit unit, who, in accordance with Section 9(4)(5) of the Internal Audit Act notifies the State secretary and the next hierarchical superior of the infringement identified during an internal audit.</p> <p>The Act on the Prevention of Conflicts of Interest in the Activities of Government Officials lays down that the head of an institution is responsible for conflict of interest infringements in that institution. The head of the institution is obliged to inform immediately the Corruption Prevention and Combating Bureau or the Office for the Protection of the Constitution of any identified infringements of this Act carried out by Government officials working at the institution in question.</p> <p>Pursuant to institutions' codes of ethics, where there is an infringement of ethics rules, including any conflict of interest, employees submit a complaint to the head of the institution. If the problem cannot be resolved objectively by this individual, an order establishing an ethics committee is issued by the head of the institution. If an employee's activities are in conflict with the standards of behaviour laid down in the code of ethics and there are indications that a disciplinary infringement may have been committed, an official investigation is launched in respect of the employee concerned in accordance with procedures laid down in the State Civil Service Act or the Labour</p>

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	<p>Act.</p> <p>Pursuant to Section 9 of the Labour Act, an employee may notify the competent authorities or officials. Where necessary information may be forwarded as applicable.</p> <p>Institutions' internal procedures provide for the submission of information to the direct institutional head. In the case of the Structural Funds, including EQUAL, the specific department involved is notified – the Structural Funds department which, where necessary with the assistance of other competent specialists, evaluates each individual case. Infringements or reasoned suspected infringements identified during the application of Structural Funds are notified to the Structural Funds department by the officials involved in the application of the Structural Funds and ministerial units within the scope of their responsibilities and pursuant to regulations.</p>
<b>LT</b>	<p>The procedure for reporting infringements is laid down in paragraph b of the aforementioned Regulations. These Regulations state that a civil servant working in an aid administration authority who ascertains or suspects the existence of an infringement shall notify the infringement controller. Where an infringement controller ascertains, suspects or obtains information relating to an infringement he or she shall investigate the infringement or organise its investigation within ten days working days. Where illegal activities are suspected as a result of the investigation into the infringement, the infringement controller immediately informs the Financial Crime Investigation Service under the Ministry of the Interior (the contact for OLAF, hereinafter the FCIS).</p>
<b>HU</b>	<p>Yes.</p> <p>In the case of utilisation of assistance from structural funds and the Cohesion Fund:</p> <p>At any point in the assistance process, any member of an organisation who suspects an irregularity or is made aware of an irregularity immediately records the suspicion in writing and sends it without delay to the person in the organisation responsible for handling irregularities. Without delay the person responsible for handling irregularities sends the head of the organisation the notification received concerning the suspected irregularity, any documents relating to it and his or her opinion on the matter, with a proposal for the matter to be examined or shelved.</p> <p>The head of the organisation then takes a decision on whether to accept or reject the proposal to launch an irregularity investigation.</p> <p>If the head decides to launch an irregularity investigation, at the same time he or she designates a person to head the investigation and the experts who are to participate in it.</p>

## 2.6.2. Procedure for early warning by internal whistleblowers

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MT

See 2.6.1 a) above.

In addition, the procedure for reporting irregularities in the ambit of Structural and Cohesion Funds *and* Pre-accession and Transition Facility Programmes set out in the Manuals is as follows:

### **Structural and Cohesion Funds**

The person/organisation detecting an irregularity at any stage of the implementation of the projects shall prepare the Structural Funds Irregularity Report A (SFIR A) or the Cohesion Fund Irregularity Report A (CFIR A) as the case may be giving the details on the relevant irregularity. The SFIR A/CFIR A must be drawn up as soon as the irregularity is detected and immediately sent (via the EU Affairs Director) to the Managing Authority copying the Internal Audit and Investigations Directorate and the Paying Authority.

There might be isolated circumstances where the relative officials feel constrained to by-pass the normal system of reporting irregularities e.g. where the EU Affairs Director is himself involved in the irregularity. Whenever this situation arises, the official is given the opportunity to bypass the EU Affairs Director and report any irregularity directly to the Managing Authority by filling in form Structural Funds Irregularity Report B (SFIR B) or Cohesion Fund Irregularity Report B (CFIR B) as the case may be. In such cases, the report has to be copied to the Internal Audit and Investigations Directorate and the Paying Authority just the same.

### **Pre-accession and Transition Facility Programmes**

When an irregularity is observed, the official making the observation is to report in writing to the Project Leader and submit all the necessary details he/she is aware of. If the Project Leader detects the irregularity himself/herself then the procedure starts from this juncture.

Following receipt of the report, the Project Leader is to complete the NAO-04A and include details of remedial actions taken if any. He/she then forwards the document to the Senior Programming Officer (SPO) who, in turn, adds his/her signature and comments. The original form NAO-04A duly completed is to be forwarded immediately to the Internal Audit and Investigations Directorate (IAID) and copied to the Accounting Officer of the Implementing Authority and the National Authorising Office (NAO).

There might be isolated cases where the relative official feels constrained to by-pass the normal system of reporting irregularities described above. Whenever this situation arises, the official is given the opportunity to report any irregularity to the IAID directly.

## 2.6.2. Procedure for early warning by internal whistleblowers

**a) When, in the course of his duties, a civil servant or other staff member detects unlawful conduct within the institution and intends to report it, what procedure does your legal system lay down? To whom must civil servants make their allegations? Specifically, is there an internal department to which such information must be reported?**

NL

Since 1 January 2001 there have been whistleblowers' regulations for central government involving a procedure for a civil servant to report suspected misconduct and the action that must follow such reports. Suspected misconduct refers to:

- a serious criminal offence;
- a gross violation of regulations or rules of conduct;
- misleading Justice;
- a serious threat to public health, security or the environment; or
- knowingly withholding information about such facts.

If a civil servant observes or suspects that one of these facts has occurred, he is under a duty to report it. The regulations proceed from the assumption that a suspicion of misconduct will first be reported to the civil servant's superior, unless he is involved in the misconduct, in which case the report will be made to the next highest level. A superior who receives such a report is responsible for seeing that proper action is taken on it. He records the report in writing and informs the appropriate authorities by the usual procedures. They send the author of the report an acknowledgment of receipt and then decide whether the report should be made known at the highest political level. An investigation is then opened.

If a civil servant is reluctant to report suspected misconduct to his superior, he can also report it to a person he trusts and whose integrity is not in doubt. That person can report the suspicions to a higher level. The civil servant must agree to this.

If a civil servant reports suspected misconduct, he must be informed within a reasonable period of the response to his report and of the action taken on it.

If the civil servant disagrees with the conclusions of the superior authority or has to wait for more than a reasonable period, he can transmit his report to the external Commission for Integrity in the national public service (CIR). This independent Commission investigates the case and informs the competent authority.

It is also possible to report suspected misconduct direct to the CIR if there are serious obstacles to internal reporting. An example might be if one or more of the civil servant's superiors are involved. The CIR considers whether the direct report is justified. If the direct report is not justified, the CIR advises the civil servant to begin by raising the issue internally. If the direct report is justified, it investigates the report and advises the competent authority.

Failure to comply with the reporting obligation is not penalised under these regulations,

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	but failure to report can be treated as dereliction of duty, which is punishable as a disciplinary offence on the basis of the civil servant's status as such.
<b>AT</b>	<p>The obligation to file a complaint derives from the principle of unity of overall enforcement. Every official must inform the office head of any offence (as long as private criminal indictment is not concerned) that has become known to him in the course of his duties (i.e. in his legal sphere of activity), so that the head can file a report or, if the official is himself the office head, make the complaint on behalf of the office (SSt 26/44, JUS 6/3331; see: Fabrizy, StPO<sup>9</sup> Article 84).</p> <p>The officers have to provide their superior officers with the information respectively an officer in charge for anti corruption.</p> <p>Furthermore, within the Federal Ministry of Finance and the Federal Ministry of the Interior, Offices for Internal Affairs (Büro für Interne Angelegenheiten) are established. At least at the Federal Ministry of Finance they can be contacted directly – i.e. anonymously – by every civil servant. The head of this office acts as the abovementioned officer in charge for anti corruption.</p>
<b>PL</b>	<p>In accordance with the Civil Service Act, an employee should report this fact to his direct supervisor. Pursuant to Art. 304(2) of the Code of Criminal Procedure: (...) State and local government institutions, which in connection with their activities have become aware of an offence prosecuted ex officio, must immediately notify the public prosecutor or the Police and must take the necessary steps until the arrival of the authority appointed to prosecute offences or until the issue of a relevant order by such authority, in order to prevent any cover-up of the traces or evidence of the offence.</p> <p>Under the Phare/Transition Facility, information may be submitted directly to the National Authorising Officer. The abovementioned tasks of the NAO are carried out by the Counsel to the Phare Irregularity Officer, who reports directly to the Undersecretary of State acting as a NAO.</p> <p>Within the paying agency:</p> <ul style="list-style-type: none"> <li>– At the ARMA, there is a special department, i.e. the Audit and Control Department, including the Irregularity Investigation Team, responsible for examining information of this type. In addition, Internal Control Sections operate within the Regional Branches of the ARMA, which consider any irregularities arising at the Poviatic (Local) Office level.</li> <li>– The employee is obliged to observe the reporting order and the hierarchical subordination, arising from internal organisation and detailed division of duties, and therefore the information must be submitted via the official route. In special circumstances, in which it is</li> </ul>

## 2.6.2. Procedure for early warning by internal whistleblowers

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	<p>justifiable to omit the official route for fear of the appropriate handling of the disclosed event, the information must be submitted to the top management of the AMA. One of the duties of AMA's Internal Control Team is the coordination of matters relating to such disclosed events, in accordance with the Internal Control Implementation Procedure.</p> <p>Within the ministries: Complaints Officers</p> <p>Other institutions: Central Anti-corruption Bureau, Public Prosecutor's Office.</p>
<b>PT</b>	<p>Situations which must be reported and constitute criminal offences (of fraud or corruption) under national law may be notified to the Public Prosecutor's Office or branches of the criminal police (<i>Polícia Judiciária</i>).</p> <p>An irregularity may be reported direct to the competent disciplinary authority.</p>
<b>SI</b>	<p>Unlawful conduct may be reported to the hierarchic superior, the director of the institution, the internal audit service or any other internal supervision department in the institution or direct to the law enforcement authority.</p> <p>However, the law states that the allegations must be sent to the regional public prosecutor responsible (they must also be received by another public prosecutor, the police or a court which will forward them immediately to the public prosecutor responsible).</p> <p>Anyone may report criminal offences for which the offender is prosecuted ex officio.</p> <p>If the police receive information or allegations about suspected criminal conduct which may be officially prosecuted, it is sufficient to note this on the prescribed forms which are also called reporting documents and may be divided into four basic groups depending on the type of criminal conduct reported:</p> <p>records of verbal allegations received,</p> <p>official notice of the receipt of allegations or proposal for prosecution,</p> <p>official notice of the report of criminal conduct, and</p> <p>written report/ allegation of criminal conduct.</p>
<b>SK</b>	<p>Their superior or directly to the relevant law enforcement authorities</p>
<b>FI</b>	<p>The person in question should report the matter to his or her line manager.</p>

## 2.6.2. Procedure for early warning by internal whistleblowers

a) When, in the course of his duties, a civil servant or other staff member detects unlawful conduct within the institution and intends to report it, what procedure does your legal system lay down? To whom must civil servants make their allegations? Specifically, is there an internal department to which such information must be reported?

<b>SE</b>	The auditor employed by SAI should report the matter directly to an internal unit within the SAI, responsible for handling suspected irregularities.
<b>UK</b>	<p>In the UK, each Ministry or Administration is required to set its own procedures to comply with the Public Interest Disclosure Act but generally, allegations must be made:</p> <ul style="list-style-type: none"><li>– In good faith to the worker’s employer;</li><li>– to a legal adviser in the course of obtaining legal advice;</li><li>– in good faith to a Government Minister by a worker employed in a Government-appointed organisation such as a non-departmental public body; or</li><li>– to a person or body prescribed in Statutory Rule 1999 No. 401 (“a prescribed person”), e.g. the Health and Safety Executive for Northern Ireland.</li></ul>

## 2.6.2. Procedure for early warning by internal whistleblowers

b) What means do civil servants have to report any misconduct? (Examples: fax, e-mail, free hotline, database accessed through the Internet.)

<b>BE</b>	<p><b>FPS Public finance</b></p> <p>Public servants may make their reports either by electronic means or in paper forms (subject to proper identification).</p> <p><b>FPS Economic affairs (EAGGF Guarantee Section):</b></p> <p>Flemish Government: Flemish Staff Regulations, Art. 2(III)(1). Staff may report irregularities to the Flemish Ombudsman orally or in writing in the circumstances specified in section 3(2) of the Decree of 7 July 1998 on the establishment of the Flemish Ombudsman.</p> <p>Ministry of the Walloon Region: No specific means.</p> <p><b>Brussels capital region</b></p> <p>Nothing specific is provided for except in the procedure concerning irregularities to be</p>
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## 2.6.2. Procedure for early warning by internal whistleblowers

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	<p>reported to OLAF, where an internal note is sent (report).</p> <p><b>Flemish community</b></p> <p>Orally (in person or by telephone) or writing (letter, fax, e-mail).</p> <p><b>Walloon region</b></p> <p>Information is currently sent to the working party by conventional mail or e-mail.</p>
<b>CZ</b>	By telephone on the green anti-corruption line; electronically by e-mail; in writing by letter or fax.
<b>DK</b>	In principle all means. There are no generally applicable guidelines for this.
<b>DE</b>	Information may be reported orally in person, in writing, by fax or by e-mail. There is a web-based reporting system on line in Niedersachsen, Hannover (Landeskriminalamt Business Keeper Monitoring System). A national system is to come on line shortly. Information can be given anonymously.
<b>EE</b>	Information can be given by all ways mentioned as example. For instance, an official may send a memorandum to the head of the institution on the basis of the information (s)he has, a formal letter may then be send to the police, and so on.
<b>IE</b>	Email, letter, phone, meeting in person
<b>EL</b>	Only in written form.
<b>ES</b>	<p>As this is a duty incumbent on civil servants, they have at their disposal the usual means used in the administrative body where they work.</p> <p>Section 265 of the Law on Criminal Prosecution states that misconduct may be reported orally or in writing.</p>
<b>FR</b>	There are no special means. All denunciations to the prosecuting authorities follow hierarchical channels, usually in the form of a letter.
<b>IT</b>	Written statement.
<b>CY</b>	It has to be reported in writing and, for this purpose, all means are available and acceptable.
<b>LV</b>	Service reports, fax, e-mail, free hotline.



**2.6.2. Procedure for early warning by internal whistleblowers**

**b) What means do civil servants have to report any misconduct? (Examples: fax, e-mail, free hotline, database accessed through the Internet.)**

<b>LT</b>	<p>The EU Structural Funds and Cohesion Fund computerised information management and monitoring system (SFMIS)</p> <p>Information of this kind may also be submitted in writing or by registered letter (where funds are reimbursable).</p>
<b>HU</b>	<p>Telephone, in writing to their immediate superior, fax, e-mail.</p>
<b>MT</b>	<p>Irregularities with respect to Structural and Cohesion Funds and Pre-accession and Transition Facility Programmes – by post or by actually delivering the report by hand.</p> <p>Irregularities with respect to the Internal Audit and Financial Investigations Act – by post, fax, e-mail or by actually delivering the report by hand.</p>
<b>NL</b>	<p>See 2.6.2. a). The regulations require civil servants to report to their superiors.</p>
<b>AT</b>	<p>e-mail, fax, hotline</p> <p>Duty to report: official channels.</p> <p>Right to report, which concerns everyone: also anonymous.</p>
<b>PL</b>	<p>The relevant information can be reported by traditional post, e-mail, telephone or in person.</p> <p>Under the whistleblowing procedure, information can be reported in writing, by e-mail to the following address: <a href="mailto:alert.phare@mofnet.gov.pl">alert.phare@mofnet.gov.pl</a> or at a face-to-face meeting with the informer.</p> <p>Paying agencies:</p> <p>The main data carrier is the IUP form (Information on a justified suspicion of irregularities), set out in the applicable procedures. In addition, in accordance with the ARMA's order, the Director of the ARMA must be able to receive, on specified days, complaints, suggestions etc. from applicants, beneficiaries, manufacturers and ARMA employees.</p> <p>In the case of CAP mechanisms, the employee must prepare a special report. The employee may use all the reporting methods. It is advisable to report the information in writing, e.g. by drafting an official note containing the description of the event.</p>
<b>PT</b>	<p>Fax, mail, free hotline, in person, through official channels ...</p> <p>Directly to the criminal police or the Public Prosecutor's Office, or to the disciplinary authority, depending on the case and on the nature of the information passed on.</p>

### 2.6.2. Procedure for early warning by internal whistleblowers

**b) What means do civil servants have to report any misconduct? (Examples: fax, e-mail, free hotline, database accessed through the Internet.)**

<b>SI</b>	The allegations may be made in writing, verbally, by telephone (also anonymously) or any other method (e-notices of criminal conduct). If the allegation is made verbally, the informer must have his attention drawn to the consequences of false allegations. Unsigned (anonymous) allegations or allegations made under a pseudonym may also serve as a basis for the start of the pre-trial procedure to be conducted by the police.
<b>SK</b>	By any available means (telephone, fax, e-mail, ordinary mail)
<b>FI</b>	Examples: fax, e-mail.
<b>SE</b>	There is no such system.
<b>UK</b>	Nationally, through the Whistleblowers hotline, Email, in writing to Regulatory Bodies, Police, Legal Bodies, Employers, and Managers.

## 2.6.2. Procedure for early warning by internal whistleblowers

### c) How is the information processed by the authority receiving it?

	Investigation by the authority receiving the information	Information checked and then transmitted in appropriate cases to another authority for investigation (independent administrative authority, criminal investigation police, prosecution service, etc.)
	Yes	Yes
<b>BE</b>	yes <sup>30</sup>	yes <sup>31</sup>
<b>CZ</b>	yes	yes
<b>DK<sup>32</sup></b>	yes	yes
<b>DE</b>	yes	yes, there is close cooperation between the Review Group on Corruption and the prosecution service in Berlin.
<b>EE</b>	yes, generally	yes, if need be
<b>IE</b>	yes	yes
<b>EL</b>	yes	yes
<b>ES</b>	yes	yes
<b>FR</b>	yes	yes
<b>IT</b>	yes	yes
<b>CY</b>	yes	yes
<b>LV</b>	yes	yes
<b>LT</b>	yes	yes
<b>HU</b>	yes	yes
<b>MT</b>	yes	yes
<b>NL</b>	yes	yes

<sup>30</sup> FPS Public finance, FPS Economic affairs (EAGGF Guarantee Section): Ministry of the Walloon Region, Brussels capital region, Flemish community, Brussels capital region, Flemish community, German speaking community.

<sup>31</sup> FPS Public finance, FPS Economic affairs (EAGGF Guarantee Section), Flemish community, Walloon region, German speaking community.

<sup>32</sup> Actual processing depends on the precise circumstances of the case.

## 2.6.2. Procedure for early warning by internal whistleblowers

### c) How is the information processed by the authority receiving it?

	Investigation by the authority receiving the information	Information checked and then transmitted in appropriate cases to another authority for investigation (independent administrative authority, criminal investigation police, prosecution service, etc.)
	Yes	Yes
<b>AT</b>	by competent authority (see below)	yes
<b>PL</b>	yes	yes
<b>PT</b>	yes <sup>33</sup>	yes <sup>34</sup>
<b>SI</b>	yes	yes
<b>SK</b>	yes	yes
<b>FI</b>	yes	yes
<b>SE</b>	N/A	N/A
<b>UK</b>	yes	yes

<sup>33</sup> If the body has the authority to investigate, depending on the nature of the facts reported - disciplinary or criminal investigations.

<sup>34</sup> If the report is submitted to a body or to a branch of the criminal police which has no authority to conduct an investigation.

<b>Comments to question 2.6.2. c)</b>	
<b>IE</b>	<b>The Department of Agriculture and Food (DAF):</b> The Supervisory Officer (or Head of Internal Audit and /or the Personnel Officer if applicable) will examine the allegation. If the matter is deemed serious enough, it will be referred to the Police
<b>MT</b>	<p>Inquiry by the Paying Authority with the assistance of the Managing Authority in the case of Structural and Cohesion Funds.</p> <p>Inquiry by the National Authorising Office in the case of Pre-accession and Transition Facility Programmes.</p> <p>Investigation of a financial / administrative nature by the Internal Audit and Investigations Directorate (IAID) in the other cases. It should be noted that the IAID reserves the right to conduct investigations with respect to irregularities reported in the ambit of Structural and Cohesion Funds and of the Pre-accession and Transition Facility Programmes.</p> <p>As per Article 18 of the Internal Audit and Investigations Act, whenever and as soon as the Director Internal Audit and Investigations firmly establishes the existence of suspected cases of irregularities and/or fraud concerning the responsibilities of the auditee being investigated or audited, the Director is to immediately inform the Attorney General if he/she is of the opinion that the irregularity if proved would constitute a criminal offence. Otherwise, if the Director is of the opinion that the irregularity is of an administrative nature, he/she is to inform the Permanent Secretary of the auditee.</p>
<b>AT</b>	Investigation by the competent authorities, usually with reporting to the state prosecutor (for security authorities, e.g. the Office for Internal Affairs)

<b>2.6.3. Protection for internal whistleblowers</b>	
<b>a) Are there any provisions or other legal bases in your legal system for protecting whistleblowers against reprisals?</b>	<b>b) What conditions must whistleblowers meet in order to benefit from protection? (Examples: serious evidence to found a belief that an offence has been or is going to be committed, etc.)</b>
<p><b>BE</b> The Flemish Staff Regulations provide that staff who report irregularities during an investigation may not be subject to disciplinary measures or covert penalties (such as transfers). The Decree of 7.5.2004 provides for special additional protection by the Flemish Ombudsman (if the staff member so requests). If it appears from the Ombudsman's preliminary investigation that the irregularity report is admissible and is not manifestly unfounded, the Ombudsman informs the staff member that he is placing him under his protection. He informs the line manager accordingly.</p> <p>Ministry of the Walloon Region: Yes (complaint to prosecution service).</p>	<p>FPS Economic affairs (EAGGF Guarantee Section): Flemish Government: No protection in the event of unjustified or false statements that harm a person or department.</p> <p>Ministry of the Walloon Region: No prior conditions.</p> <p>Brussels capital region: See above (2.6.3.a) (no arrangements).</p> <p>Flemish community: The Flemish Ombudsman investigates whether statements are admissible and well founded.</p>

<b>2.6.3. Protection for internal whistleblowers</b>	
<b>a) Are there any provisions or other legal bases in your legal system for protecting whistleblowers against reprisals?</b>	<b>b) What conditions must whistleblowers meet in order to benefit from protection? (Examples: serious evidence to found a belief that an offence has been or is going to be committed, etc.)</b>
<b>CZ</b> There is no legal definition of "whistleblower" in Czech law. In criminal proceedings, where a witness or a person close to a witness is at risk of harm to their person or in some other serious danger of their fundamental rights being violated in connection with giving evidence, the law allows measures to be taken to conceal and disguise the witness's identity. Other arrangements for protecting witnesses and other persons under threat are governed by the Act on Special Protection for Witnesses and Other Persons in connection with Criminal Proceedings. There is no corresponding arrangement for protecting witnesses or whistleblowers in administrative proceedings.	For witnesses or other persons to be granted protection in criminal proceedings, it must be established that they are at risk of harm to their person or in some other serious danger and that there is no other way of guaranteeing their safety.
<b>DK</b> Yes – Negative employment measures (See also requirements for decisions under administrative law) must be objectively justified. Consequently the fact that an official has in good faith informed the management/police/authorities of his knowledge/suspicion of corruption or other irregularities will not result in his being exposed to penalties/negative employment measures.	Good faith.
<b>DE</b> No. But the department meets its general duty to care for staff and does what it can with its resources in specific circumstances.	Whistleblowers enjoy the protection available under the general law. There are no specific schemes.

<b>2.6.3. Protection for internal whistleblowers</b>		
	<b>a) Are there any provisions or other legal bases in your legal system for protecting whistleblowers against reprisals?</b>	<b>b) What conditions must whistleblowers meet in order to benefit from protection? (Examples: serious evidence to found a belief that an offence has been or is going to be committed, etc.)</b>
<b>EE</b>	There is no protection for whistleblowers.	-
<b>IE</b>	<p><b>The Ethics Acts</b> (i.e. the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001) while not containing what is commonly understood as ‘whistle blowing’ provisions contain the following sections:</p> <p><b>Section 5 of the Standards in Public Office Act – 2001</b> Provides protection against dismissal in certain circumstances where a person makes a complaint in good faith to the Standards in Public Office Commission</p> <p><b>Section 8 of the Standards in Public Office Act – 2001 -</b> Allows the Standards Commission, if it saw fit, to restrict the disclosure of the identity of the complainant</p> <p>Furthermore, <b>Section 50 of the Competition Act 2002</b> provides that a person “shall not be liable in damages in respect of the communication, whether in writing or otherwise, by him or her to the Competition Authority”.</p>	Measures to protect the whistleblower are considered and adopted on a case-by-case basis. The provisions of other legislation such as the Unfair Dismissals Act may also be invoked.
<b>EL</b>	No such provision.	-



<b>2.6.3. Protection for internal whistleblowers</b>		
<b>a) Are there any provisions or other legal bases in your legal system for protecting whistleblowers against reprisals?</b>		<b>b) What conditions must whistleblowers meet in order to benefit from protection? (Examples: serious evidence to found a belief that an offence has been or is going to be committed, etc.)</b>
<b>ES</b>	<p>Those covering all civil servants in the exercise of their duties.</p> <p>Indirectly, there are judgments (Constitutional Court judgment No 57/1999 and the judgment of the Spanish Central Labour Tribunal of 12 November 1981, <i>inter alia</i>) which protect workers against dismissal as a result of reporting unlawful conduct affecting their companies.</p>	No answer.
<b>FR</b>	<p>French law does not contain any specific provisions to protect officials who have implemented Article 40 of the Code of Criminal Procedures.</p> <p>Under Article 11 of the Law No 634-83 of 13 July 1983, all officials are however placed under the protection of the public body that employs them. More specifically, under the third indent of the Article in question, "the local authority is required to protect civil servants from intimidation, violence, assault and battery, injury, defamation or insulting behaviour, which they can be subjected to in the course of their duties, and to remedy, where appropriate, the resulting damage".</p>	There are no specific conditions set out in law. The necessary condition is that the civil servant is aware that a criminal act may be committed.

<b>2.6.3. Protection for internal whistleblowers</b>		
<b>a) Are there any provisions or other legal bases in your legal system for protecting whistleblowers against reprisals?</b>		<b>b) What conditions must whistleblowers meet in order to benefit from protection? (Examples: serious evidence to found a belief that an offence has been or is going to be committed, etc.)</b>
<b>IT</b>	No answer.	-
<b>CY</b>	Discretion is exercised in such cases.	No specific conditions.
<b>LV</b>	<p>Pursuant to Section 9(2) of the Labour Act in the case of a dispute where an employee points to circumstances indicating that the employer is giving rise to negative repercussions, the employer is obliged to prove that the employee has not been penalised or subjected to repercussions for taking legitimate advantage of his or her entitlements within the context of his or her employment contract.</p> <p>The 2004-2008 programme for the prevention and combating of corruption includes a section on the protection of witnesses and informers. The list of planned measures includes the drafting of legislation on this subject.</p> <p>Civil service regulations also provide for certain protection for informers, namely "an official who has notified... information, may not be subjected to repercussions if he or she has acted on a reasonable basis and in an honest manner."</p> <p>The Act on Criminal Procedures.</p>	<p>Pursuant to Section 9 of the Labour Act an employee may notify any suspected criminal activity or administrative infringement in the workplace.</p> <p>Any real threat, implied threat or information that gives sufficient grounds to believe there may be a real threat to a person's life, wellbeing or property arising from this person's witness statement.</p>
<b>LT</b>	No	-

<b>2.6.3. Protection for internal whistleblowers</b>		
	<b>a) Are there any provisions or other legal bases in your legal system for protecting whistleblowers against reprisals?</b>	<b>b) What conditions must whistleblowers meet in order to benefit from protection? (Examples: serious evidence to found a belief that an offence has been or is going to be committed, etc.)</b>
<b>HU</b>	Yes. Sections 141-143 of Act XIX of 2004 governing the protection of persons informing in the public interest.	There are no conditions that have to be met for the informer to benefit from protection.
<b>MT</b>	No	-
<b>NL</b>	The Civil Service Act provides for protection for whistleblowers who report misconduct in good faith and in accordance with the proper procedure. Whoever makes a report cannot be made to suffer harmful consequences either during or after the procedure. In good faith means that he was not involved in the misconduct that he reports. Nor may the person he trusts suffers any consequences. This is provided by the whistleblowers' regulations themselves.	Good faith and compliance with the procedure.
<b>AT</b>	No.  Under Article 84(2a) of the national law on penal procedure (StPO) the authorities or public administration must do everything necessary to protect an injured person or other persons (i.e. also a whistleblower) from danger.	A risk or danger must be present.

<b>2.6.3. Protection for internal whistleblowers</b>	
<b>a) Are there any provisions or other legal bases in your legal system for protecting whistleblowers against reprisals?</b>	<b>b) What conditions must whistleblowers meet in order to benefit from protection? (Examples: serious evidence to found a belief that an offence has been or is going to be committed, etc.)</b>
<p><b>PL</b> ARMA – There is no full protection, however the following principles can be regarded as elements of such protection:</p> <ul style="list-style-type: none"> <li>– The IUP form is considered by the senior authority, which supervises the authorising authority,</li> <li>– The Director of the Audit and Control Department (ACD) receives complaints, suggestions etc. from ARMA employees,</li> <li>– The IUP form can be submitted to the ACD other than via the official route.</li> </ul>	<p>The whistleblower does not have to meet any conditions, since in accordance with the procedures, every employee is obliged to prepare the IUP Information at the time when he becomes aware of the suspected irregularity (offence).</p>

<b>2.6.3. Protection for internal whistleblowers</b>	
<b>a) Are there any provisions or other legal bases in your legal system for protecting whistleblowers against reprisals?</b>	<b>b) What conditions must whistleblowers meet in order to benefit from protection? (Examples: serious evidence to found a belief that an offence has been or is going to be committed, etc.)</b>
<p><b>PT</b> There are two legal mechanisms which may be applied here:</p> <p>Legal rules governing covert crime prevention and investigation activities – Law No 101/2001 of 25 August 2001 – which are admissible for among other things the offences of corruption, embezzlement, financial participation in a business, trafficking influence, fraud in obtaining or diverting grants or subsidies.</p> <p>Legal rules laid down by Decree-Law No 190/2003 of 22 August 2003 governing the application of witness-protection measures in criminal proceedings, in accordance with international moves towards the recognition of witnesses' rights – Recommendation No R (97) 13 of the Council of Europe.</p>	<p>The condition is that, where reliable participants generate a credible basis for criminal investigations, they may at the same time trigger an examination of the other requirements and formalities set out in the Witness Protection Act.</p>
<p><b>SI</b> Persons at threat are given protection in the pre-trial procedure and during and after criminal proceedings for (serious) criminal offences, under certain conditions and in respect of criminal offences set out in the Witness Protection Act, Official Gazette No 113/2005. The Act lays down the conditions and procedures for protecting witnesses and other persons who are at threat for cooperating in the criminal proceedings.</p>	<p>When a person reports a matter for sound reasons and in good faith, the Witness Protection Act (Official Gazette No 113/2005) again lays down the conditions and procedures for protecting witnesses and other persons who are at threat for cooperating in the criminal proceedings. The Act states that a person at threat is a witness whose inclusion in the protection programme is justified by the circumstances laid down in this Act and the Criminal Procedure Act. The following conditions must be met if the person at threat is to be protected under this Act:</p> <p>1) pre-trial or criminal proceedings are under way for criminal</p>

<b>2.6.3. Protection for internal whistleblowers</b>	
<p><b>a) Are there any provisions or other legal bases in your legal system for protecting whistleblowers against reprisals?</b></p>	<p><b>b) What conditions must whistleblowers meet in order to benefit from protection? (Examples: serious evidence to found a belief that an offence has been or is going to be committed, etc.)</b></p>
	<p>offences for which secret investigative measures may be decided by court order under the Criminal Procedure Act;</p> <p>2) the witness is able to give information on the criminal offences referred to in the previous paragraph, the person committing these offences or other important circumstances;</p> <p>3) the criminal offences cannot be investigated or proved or they cannot be prevented from continuing without the cooperation of this witness in the pre-trial or criminal proceedings;</p> <p>4) in view of this cooperation, there is a real danger to the witness's life or limb or to that of other persons at threat;</p> <p>5) this danger cannot be averted and the cooperation of the threatened witness secured without adopting the necessary protective measures or the protection programme under this Act, and</p> <p>6) the unit considers that the protection programme can be successfully implemented.</p> <p>The condition that the witness is able to give information on the criminal offences (the basis for obtaining this status), on the person committing these offences or on other important circumstances must be demonstrated in the record of the declaration which the</p>

<b>2.6.3. Protection for internal whistleblowers</b>		
	<b>a) Are there any provisions or other legal bases in your legal system for protecting whistleblowers against reprisals?</b>	<b>b) What conditions must whistleblowers meet in order to benefit from protection? (Examples: serious evidence to found a belief that an offence has been or is going to be committed, etc.)</b>
		witness makes to the public prosecutor responsible. The record must show what the witness knows about the criminal offences, the person committing these offences or other important circumstances.
<b>SK</b>	<p>Yes, for example:</p> <ul style="list-style-type: none"> <li>- Slovak National Council Act No 256/1998 governing witness protection, amending certain other acts: in justified cases, where required by the circumstances a decision to provide witness protection may be taken either by a committee made up of members of the police force and appointed by the Slovak Ministry of the Interior or by the chair of that committee acting independently</li> <li>- Slovak National Council Act No 311/2001: Labour Code, as amended – ban on discrimination</li> </ul> <p>Slovak National Council Act No 152/1998 governing complaints</p>	This is not laid down in general (for example, under the Witness Protection Act - subjective decision by a committee)
<b>FI</b>	The whistleblower's name is not disclosed, if confidentiality is considered necessary for the investigation.	See 2.6.3. a)
<b>SE</b>	There are no such provisions.	-

<b>2.6.3. Protection for internal whistleblowers</b>		
	<b>a) Are there any provisions or other legal bases in your legal system for protecting whistleblowers against reprisals?</b>	<b>b) What conditions must whistleblowers meet in order to benefit from protection? (Examples: serious evidence to found a belief that an offence has been or is going to be committed, etc.)</b>
<b>UK</b>	Yes, in the Public Interest Disclosure Act.	The Public Interest Disclosure Act details specific tests of WHAT (eligibility of the subject matter) and HOW (who the disclosure is made to) and that disclosure must be made in good faith.



### 3. RECOVERY BY OFFSETTING

The Commission's 2005 report on the protection of the European Communities' financial interests gave an overview of the various recovery procedures that exist in the Member States. The replies showed that recovery by offsetting was possible in almost all Member States<sup>35</sup>. This topic could be covered in more depth in the 2006 report.

Recovery by offsetting is governed at Community level by Article 73 of the Financial Regulation and Article 83 of the Implementing Rules, which lay down a requirement to recover amounts by offsetting them against equivalent claims that the Communities have on any debtor who himself has a claim on the Communities that is certain, of a fixed amount and due.

At national level, where offsetting is possible, it is done in accordance with the national law of each Member State.

<b>3.1. Offsetting an amount due and a Community claim</b>				
<b>Can the following be offset?</b>				
	<b>a) a debt and a claim under the same Community fund</b>		<b>(b) a debt under one Community fund and a claim under a different Community fund</b>	
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>
<b>BE</b>	yes <sup>36</sup>	no (Walloon region, German speaking community)	yes (Flemish government)	no <sup>37</sup>
<b>CZ</b>	yes, in agriculture			no
<b>DK</b>	yes		yes	
<b>DE</b>	yes		yes	
<b>EE</b>	yes			no

<sup>35</sup> For the purposes of this questionnaire, offsetting is understood to mean clearing a claim and a debt which cancel each other out.

<sup>36</sup> FPS Economic affairs (EAGGF Guarantee Section): For the three Belgian EU Guarantee Fund paying agencies; Brussels capital region: There is no offsetting in relation to national public funds but it has been used for Community funds on the basis of a recommendation by the external auditor as between the debts and claims of one and the same Community Fund (ERDF) managed by the same agency; Flemish community (EFRD, ESF, FIFG, Leader+); French community: ESF AGENCY.

<sup>37</sup> Brussels capital region; Flemish community (EFRD, ESF, FIFG, Leader+); Walloon region; German speaking community; French community: ESF Agency.

### 3.1. Offsetting an amount due and a Community claim

Can the following be offset?

	a) a debt and a claim under the same Community fund		(b) a debt under one Community fund and a claim under a different Community fund	
	Yes	No	Yes	No
<b>IE</b>	yes		yes, between EAGGF Guarantee and Guidance sections, but not used.	
<b>EL</b>	yes, in agriculture			no
<b>ES</b>	yes		yes	
<b>FR</b>	yes, in agriculture and for structural funds if the same project.		yes, in agriculture.	
<b>IT</b>	yes		yes	
<b>CY</b>	yes			no <sup>38</sup>
<b>LV</b>	yes, in agriculture and for structural funds if the same project.			no
<b>LT</b>	Yes (if the same project)			no
<b>LU</b>	yes (in agriculture)			no
<b>HU</b>	yes (in agriculture)	no (structural funds and Cohesion fund).		no
<b>MT</b>	yes (in EAGGF Guarantee section).			no
<b>NL</b>	yes		yes	

<sup>38</sup> For administrative purposes.

### 3.1. Offsetting an amount due and a Community claim

Can the following be offset?

	a) a debt and a claim under the same Community fund		(b) a debt under one Community fund and a claim under a different Community fund	
	Yes	No	Yes	No
<b>AT</b>	yes <sup>39</sup>			no
<b>PL</b>	yes		yes, if implemented by the same institution	
<b>PT</b>	yes		yes	
<b>SI</b>	yes			no
<b>SK</b>	yes		yes	
<b>FI</b>	yes, varies according to administrative sector.			no
<b>SE</b>	yes		yes (SF)	no (EAGGF Guarantee section)
<b>UK</b>	yes			no

<sup>39</sup>

In accordance with general civil law principles, offsetting with public means is possible where claims and obligations of a civil nature are concerned. A prerequisite for offsetting is the mutuality of claims, i.e. each of the parties must have a claim against and an obligation towards the other party involved in the set-off. A debt can therefore be offset by a claim on one and the same Community fund.

### 3.2. Offsetting between agricultural sectors and between programmes.

Can offsetting be applied to a debt and a claim under different areas of expenditure or different programmes? Or must the debt and the claim come under the same area/programme for offsetting to be applied?

	EAGGF Guarantee Section	Structural Funds and Cohesion Fund		
	Offsetting possible between different agricultural sectors	Offsetting possible between different projects under different programmes	Offsetting possible within the same programme	Offsetting possible between different programming periods
<b>BE</b>	yes	yes	yes	yes
<b>CZ</b>	yes	no	no	no
<b>DK</b>	yes	yes	yes	yes
<b>DE</b>	yes	yes	yes	yes
<b>EE</b>	no		yes	
<b>IE</b>	yes <sup>40</sup>	yes	yes (except agriculture)	yes
<b>EL</b>	yes	no	no	no
<b>ES</b>	yes	yes	yes	yes
<b>FR</b>	yes	no	yes	no
<b>IT</b>	yes	yes	yes	yes
<b>CY</b>	yes		yes	
<b>LV</b>	yes	no	yes, within the same programme if the same project..	no
<b>LT</b>	yes	no	no	no
<b>LU</b>	yes	no	no	no
<b>HU</b>	yes	no	no	no

<sup>40</sup> The Department of Agriculture and Food: The offsetting does not take place between all schemes; it depends on the offsetting rules decided for a given scheme by the administering division.

### 3.2. Offsetting between agricultural sectors and between programmes.

Can offsetting be applied to a debt and a claim under different areas of expenditure or different programmes? Or must the debt and the claim come under the same area/programme for offsetting to be applied?

	EAGGF Guarantee Section	Structural Funds and Cohesion Fund		
	Offsetting possible between different agricultural sectors	Offsetting possible between different projects under different programmes	Offsetting possible within the same programme	Offsetting possible between different programming periods
<b>MT</b>	no	no	no	no
<b>NL</b>	yes	yes	yes	yes
<b>AT</b>	Offsetting is possible where various measures are concerned, e.g. honey aid/aid for producer organisations. It is difficult or impossible where export refund/ inland refund are concerned, because different paying agencies are responsible for these.	Difficult, since there is a separate paying agency account for each programme.  ESF: impossible	Yes, it is possible, as the same paying agency account is concerned.	no
<b>PL</b>	yes	yes	yes	yes
<b>PT</b> <sup>41</sup>	yes	yes	yes	no

<sup>41</sup> Under national law, it is possible to offset against claims established within the same operational programme or against other claims established in connection with the ESF, i.e. between different operational programmes of the same Structural Fund. It is worth noting that, although it is legally possible to offset debts and claims between different management bodies (different operational programmes), only in exceptional cases has the paying authority (IGFSE) encouraged this method, with a view to implementing the first sentence of Article 8 of Regulation No 438/2001 (EC) of 3 March 2001, which states that “The managing or paying authority shall keep an account of amounts recoverable from payments of Community assistance already made, and ensure that the amounts are recovered without unjustified delay.”

In the EAGGF there are technical limits resulting from the existence of two separate computer systems (that of the INGA and the IFADAP).

**3.2. Offsetting between agricultural sectors and between programmes.**

**Can offsetting be applied to a debt and a claim under different areas of expenditure or different programmes? Or must the debt and the claim come under the same area/programme for offsetting to be applied?**

	<b>EAGGF Guarantee Section</b>	<b>Structural Funds and Cohesion Fund</b>		
	<b>Offsetting possible between different agricultural sectors</b>	<b>Offsetting possible between different projects under different programmes</b>	<b>Offsetting possible within the same programme</b>	<b>Offsetting possible between different programming periods</b>
<b>SI</b>	no	no	yes	no
<b>SK</b>	no	no	yes	no
<b>FI</b>	no		yes	yes
<b>SE</b>	yes		yes	
<b>UK</b>	yes (some instances)	yes (in some areas)	yes (in some areas)	yes (in some areas)

<b>3.3. Offsetting between paying agencies: Can an amount owed by one paying agency be offset against a claim held by another paying agency?</b>		
	<b>Yes</b>	<b>No</b>
<b>BE</b>		no
<b>CZ</b>		no
<b>DK</b>	yes	
<b>DE</b>	yes	
<b>EE</b>		no
<b>IE</b>		no <sup>42</sup>
<b>EL</b>		no
<b>ES</b>		no
<b>FR</b>		no
<b>IT</b>	yes	
<b>CY</b>		no
<b>LV</b>		no
<b>LT</b>		no
<b>LU</b>		no
<b>HU</b>	No answer.	
<b>MT</b>		no
<b>NL</b>	yes	no (since 16. 10. 2006 when the new structure of paying agencies was established)
<b>AT<sup>43</sup></b>		no
<b>PL</b>		no
<b>PT</b>		no

<sup>42</sup> The Department of Enterprise Trade and Employment, The Department of Agriculture and Food.

<sup>43</sup> Set-off of an amount owed to an EU paying agency by a claim on another EU paying agency with its own legal personality is therefore not possible, as there is no reciprocity.

<b>3.3. Offsetting between paying agencies: Can an amount owed by one paying agency be offset against a claim held by another paying agency?</b>		
	<b>Yes</b>	<b>No</b>
<b>SI</b>		no
<b>SK</b>		no
<b>FI</b>		no
<b>SE</b>		no
<b>UK</b>		no



<b>3.4. Offsetting between national and Community sums:</b>				
<b>Does your legal system allow offsetting between<sup>44</sup>:</b>				
	<b>(a) an amount under the national budget and a Community claim?</b>		<b>(b) an amount due under Community legislation and a claim under the national budget?</b>	
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>
<b>BE</b>	yes, for EAGGF Guarantee section		yes, for EAGGF Guarantee section	
<b>CZ</b>	yes, for EAGGF Guarantee section		yes, for EAGGF Guarantee section	
<b>DK</b>	yes		yes	
<b>DE</b>	yes		yes	
<b>EE</b>	yes		yes	
<b>IE</b>	yes (in agriculture)		yes (in agriculture)	
<b>EL</b>		no		no
<b>ES</b>	yes		yes	
<b>FR</b>	yes		yes	
<b>IT</b>	yes		yes	
<b>CY</b>	yes		yes	
<b>LV</b>		no		no
<b>LT</b>		no		no
<b>LU</b>	yes		yes	

<sup>44</sup> In accordance with the case law of the Court of Justice, which has ruled that Community law does not preclude a Member State from effecting set-off between an amount due to a beneficiary of aid payable under Community legislation and an outstanding debt to that Member State provided this does not interfere with the proper functioning of the market.

**3.4. Offsetting between national and Community sums:**

**Does your legal system allow offsetting between<sup>44</sup>:**

	<b>(a) an amount under the national budget and a Community claim?</b>		<b>(b) an amount due under Community legislation and a claim under the national budget?</b>	
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>
<b>HU</b>	yes (in agriculture)		yes (in agriculture)	
<b>MT</b>		no		no
<b>NL</b>		no		no
<b>AT<sup>45</sup></b>		no		no
<b>PL</b>	yes (in agriculture)		yes (in agriculture)	
<b>PT</b>	yes		yes	
<b>SI</b>	yes			no
<b>SK</b>	yes			no
<b>FI</b>		no		no
<b>SE</b>		no		no
<b>UK</b>		no		no

<sup>45</sup> The basic prerequisite for offsetting is the mutuality of claims, so that the offsetting party is at the same time creditor and debtor of the other party involved in the set-off. A Community claim on an aid beneficiary cannot therefore be offset by an amount owed by the beneficiary to the state budget.

<b>3.5.</b>	<b>Please indicate the amount of Community funds recovered by offsetting in absolute terms and as a percentage of the total amount recovered in 2003, 2004 and 2005?</b>
<b>BE</b>	<p>Belgian Office for Intervention and Restitution (BIRB): All that can be given is an estimate, since the data systems record merely that the debtor has cleared the debt, not the way in which it was done (payment by the debtor, offsetting or calling in the security). Retrieving all debtors' files for the relevant years manually would not be feasible. The estimate ranges from 1% to 5%, depending on the year.</p> <p>Ministry of the Walloon Region (EAGGF Guarantee Section):</p> $\frac{\text{Community}_\text{ funds}_\text{ recovered}_\text{ by}_\text{ offsetting}_\text{ in}_\text{ 2003}}{\text{total}_\text{ amount}_\text{ recovered}_\text{ in}_\text{ 2003}} = \frac{314.553,59}{6.262.923,58} = 5\%$ $\frac{\text{Community}_\text{ funds}_\text{ recovered}_\text{ by}_\text{ offsetting}_\text{ in}_\text{ 2004}}{\text{total}_\text{ amount}_\text{ recovered}_\text{ in}_\text{ 2004}} = \frac{299.891,33}{1.551.091,36} = 19\%$ $\frac{\text{Community}_\text{ funds}_\text{ recovered}_\text{ by}_\text{ offsetting}_\text{ in}_\text{ 2005}}{\text{total}_\text{ amount}_\text{ recovered}_\text{ in}_\text{ 2005}} = \frac{433.796,13}{6.134.361,5} = 7\%$
<b>EE</b>	<p>Amounts recovered from recipients nationally (not necessarily repaid):</p> <p>2004:</p> <p>Structural Funds: EEK 148 311.76 recovered nationally</p> <p>Cohesion funds: EEK 2 649 179.04 recovered nationally</p> <p>2005:</p> <p>Structural Funds: EEK 636.98 recovered nationally</p> <p>Cohesion funds: EEK 326 632.00 recovered nationally</p> <p>National adjustments for the situation at the end of 2005 have not been made.</p>
<b>IE</b>	<p><b>The Department of Agriculture and Food</b></p> <p>Recovery of public funds (both Community and national) by offsetting accounted for between 75% and 90% of public funds recovered in the agricultural and rural development sectors in Ireland for the years 2003, 2004 and 2005</p>

**3.5. Please indicate the amount of Community funds recovered by offsetting in absolute terms and as a percentage of the total amount recovered in 2003, 2004 and 2005?**

**FR**

Figures provided by the Stock Farming Bureau:

Milk sector:

Offsetting 2003: €29 438.45

Offsetting 2004: €117 229.67

Offsetting 2005: €45 871.79, i.e. 27.16 % of the total amount recovered.

**Meat sector:**

**a) offsetting by advances on export repayments:**

Offsetting 2003: €530 136.75, i.e. 18.42 % of the total amount recovered

Offsetting 2004: €524 355.46, i.e. 89.06% of the total amount recovered

Offsetting 2005: €134 764.31, i.e. 8.49% of the total amount recovered

**Livestock premiums sector:**

Offsetting 2003: €24 015 516.2, i.e. 93.75% of the total amount recovered

Offsetting 2004: €11 318 374.96, i.e. 81.35% of the total amount recovered

Offsetting 2005: €8 574 763.87, i.e. 73.28% of the total amount recovered (recovered amounts which also include, for 2005, national amounts). The percentage is therefore calculated in the light of the national amounts recovered, cf. the heading below).

Figures from the National Inter-professional Office for Cereals (ONIGC, Office National Interprofessionnel de Cereales):

Amounts recovered by offsetting represent 10% of the total amount recovered in the 2003 EAGGF year, 84% in 2004 and 66% for 2005.

**Figures from VINIFLOR** (the accounting office of the Libourne regional delegation):

Amounts recovered by offsetting in 2003, 2004 and 2005 total €1 138 058, i.e. 32%.

**3.5. Please indicate the amount of Community funds recovered by offsetting in absolute terms and as a percentage of the total amount recovered in 2003, 2004 and 2005?**

<b>IT</b>	<b>Amounts recovered 2003 EAGGF Guarantee exercise</b>			
	<b>Body</b>	<b>compensation</b>	<b>total</b>	<b>%</b>
	AGEA	-	25.919.342,25	0,00
	AVEPA	14.256,62	77.026,65	18,51
	AGREA	24.471,58	64.398,89	38,00
	ARTEA	60.582,26	116.883,65	51,83
	OP LOMBARDO	233.057,68	331.991,00	70,20
	ARBEA			
	FINPIEMONTE			
	SAISA	9.918.488,73	17.711.587,02	56,00
<b>total</b>	<b>10.250.856,87</b>	<b>44.221.229,46</b>	<b>23,18</b>	
	<b>Amounts recovered 2004 EAGGF Guarantee exercise</b>			
	<b>Body</b>	<b>compensation</b>	<b>total</b>	<b>%</b>
	AGEA	35.558.598,93	53.931.993,52	65,93
	AVEPA	2.055.372,28	2.330.852,42	88,18
	AGREA	1.086.447,65	1.278.173,71	85,00
	ARTEA	40.212,24	90.098,88	44,63
	OP LOMBARDO	870.951,25	1.849.153,40	47,10
	ARBEA			
	FINPIEMONTE			
	SAISA	221.847,71	1.584.626,50	14,00
<b>total</b>	<b>39.833.430,06</b>	<b>61.064.898,42</b>	<b>65,23</b>	
	<b>Amounts recovered 2005 EAGGF Guarantee exercise</b>			
	<b>Body</b>	<b>compensation</b>	<b>total</b>	<b>%</b>
	AGEA	7.795.150,28	19.095.642,23	40,82
	AVEPA	378.131,04	1.874.199,05	20,18
	AGREA	291.546,59	747.555,36	39,00
	ARTEA	281.103,28	453.488,10	61,99
	OP LOMBARDO	870.951,25	951.859,29	91,50
	ARBEA	-	-	-
	FINPIEMONTE	-	-	-
	SAISA	9.381,62	2.132.186,36	0,44
<b>total</b>	<b>9.626.264,06</b>	<b>25.254.930,39</b>	<b>38,12</b>	
<b>LV</b>	2005: LVL 20 090.84 or 15.9% (according to Rural Support Service data relating to the European Agricultural Guidance and Guarantee Fund Guarantee division).			
<b>HU</b>	The EAGGF agency has been applying offsetting only since 2006, which is why Hungarian authorities have no data going back to earlier years.			
<b>AT</b>	Austrian agricultural market 2003-2005: around 10 million euros/year, of which about 90% was recovered by offsetting.			

<b>3.5. Please indicate the amount of Community funds recovered by offsetting in absolute terms and as a percentage of the total amount recovered in 2003, 2004 and 2005?</b>	
<b>PL</b>	<p><b>Agriculture:</b></p> <p><b>ARMA</b></p> <p>Community funds recovered by offsetting 0.6 thousand zlotys.</p> <p>Percentage of funds recovered by offsetting by reference to:</p> <p>-total funds recovered under the Community aid programmes: 0.028%</p> <p>-total Community funds recovered: 0.038%</p> <p><b>AMA:</b></p> <p>Recovered</p> <p>2003 – not applicable</p> <p>2004 – 0.00</p> <p>Budget year 2005 – <b>PLN 10,970.70</b></p> <p>% value – <b>2.63</b></p> <p>No data relating to structural funds and the Cohesion Fund</p>
<b>PT</b>	<p>For the ESF the statistics from the paying authority reflect amounts recovered by the managing authorities by offsetting within the same operational programme. See table below.</p> <p>In 2005 the National Institute of Intervention and Agriculture Guarantee (INGA, Instituto Nacional de Intervencao e Garantia Agricola) recovered by offsetting, in respect of the EAGGF Guarantee Section, a sum of at least €1 891 087, which represents 40% of amounts recovered by the INGA and 30% of amounts recovered by IFADAP and INGA.</p> <p>No information is available for the ERDF or the Cohesion Fund.</p>
<b>SK</b>	0 EUR

**3.5. Please indicate the amount of Community funds recovered by offsetting in absolute terms and as a percentage of the total amount recovered in 2003, 2004 and 2005?**

**SE**

**EAGGF GUARANTEE**

Year 2003 2004

Recovered by offsetting SEK 15 443 000 SEK 17 584 000

% of total recovered funds 51 % 57 %

**Structural funds, social funds**

Year 2003 2004 2005

Recovered by offsetting SEK 3 210 395 SEK 3 067 614 SEK 621 538

% of total recovered funds 93 % 75 % 21,62 %

**Regional funds**

As regards regional funds, no exact information is available as settlement is effected by offsetting.

## Portugal

Operational programmes	SUMS ESF COMPENSATED BY MANAGING AUTHORITIES					
	2003 (1)	2004 (2)	2005 (3)	2006 (4)	Total Compensations (5)	
PRODEP III	1.035.657,00	51.206,90	0,00	0,00	1.086.863,90	
POEFDS	0,00	477,42	997.718,63	572.216,17	1.570.412,22	
POCI 2010	0,00	0,00	15.179,93	0,00	15.179,93	
POSC	0,00	0,00	0,00	149.781,56	149.781,56	
POSAÚDE	0,00	0,00	10.207,15	10.208,09	20.415,24	
POAGRO	24.094,74	35.387,98	4.341,60	6.039,36	69.863,68	
PRIME	0,00	0,00	0,00	0,00	0,00	
PONORTE	0,00	193.414,57	1.852.564,49	547.178,83	2.593.157,89	
PORCENTRO	0,00	498,74	393.776,66	269.659,47	663.934,87	
PORLVT	0,00	7.398,27	308.553,19	3.894,67	319.846,13	
PORALENTEJO	0,00	3.375,88	337.339,34	6.386,36	347.101,58	
PORALGARVE	0,00	2.559,77	59.828,40	50.592,73	112.980,90	
POPRAM	0,00	0,00	1.030.629,92	233.435,55	1.264.065,47	
PRODESA	0,00	0,00	230.785,56	901.612,43	1.132.397,99	
POAT	0,00	267.224,55	464.512,28	221.180,14	952.916,97	
EQUAL	0,00	0,00	0,00	0,00	0,00	
PO AP	0,00	0,00	0,00	0,00	0,00	
<b>TOTAL</b>	<b>1.059.751,74</b>	<b>561.544,08</b>	<b>5.705.437,15</b>	<b>2.972.185,36</b>	<b>10.298.918,33</b>	
Operational programmes	SUMS ESF RECOVERED BY THE PAYING AUTHORITIES					Total FSE Recovered (5)+(10)
	2003 (6)	2004 (7)	2005 (8)	2006 (9)	Total Recuperations (10)	
PRODEP III	623.647,58	1.001.761,23	438.031,18	2.755.598,11	4.819.038,10	5.905.902,00
POEFDS	1.744.609,22	1.531.011,71	1.789.066,75	3.666.396,53	8.731.084,21	10.301.496,43
POCI 2010	0,00	232,70	0,00	0,00	232,70	15.412,63



POSC	0,00	0,00	0,00	23.242,19	23.242,19	173.023,75
POSAÚDE	12.913,64	73.538,25	91.445,28	183.832,84	361.730,01	382.145,25
POAGRO	36.385,72	55.576,20	129.517,40	94.789,39	316.268,71	386.132,39
PRIME	38.641,23	11.141,77	252.061,47	146.216,49	448.060,96	448.060,96
PONORTE	46.001,49	111.497,31	171.103,11	464.015,78	792.617,69	3.385.775,58
PORCENTRO	41.433,61	10.654,77	11.398,77	25.824,07	89.311,22	753.246,09
PORLVT	136.263,66	458.971,63	650.968,89	413.532,64	1.659.736,82	1.979.582,95
PORALENTEJO	0,00	21.549,48	24.470,92	6.890,05	52.910,45	400.012,03
PORALGARVE	7.449,87	17.427,22	16.323,25	2.314,48	43.514,82	156.495,72
POPRAM	12.435,73	28.742,87	275.032,60	121.466,95	437.678,15	1.701.743,62
PRODESA	28.256,86	74.019,17	13.456,27	217.091,89	332.824,19	1.465.222,18
POAT	38.312,17	17.202,79	53.039,82	154.624,12	263.178,90	1.216.095,87
EQUAL	51.834,54	11.570,03	186.477,21	113.103,74	362.985,52	362.985,52
PO AP	0,00	0,00	0,00	0,00	0,00	0,00
<b>TOTAL</b>	<b>2.818.185,32</b>	<b>3.424.897,13</b>	<b>4.102.392,92</b>	<b>8.388.939,27</b>	<b>18.734.414,64</b>	<b>29.033.332,97</b>

Operational programmes	TOTAL % OF COMPENSATIONS TO SUMS RECOVERED IN A YEAR				
	2003 (1)/(1)+(6)	2004 (2)/(2)+(7)	2005 (3)/(3)+(8)	2006 (4)/(4)+(9)	TOTAL (5)/(5)+(10)
PRODEP III	62,4%	4,9%	0,0%	0,0%	18,4%
POEFDS	0,0%	0,0%	35,8%	13,5%	15,2%
POCI 2010	-	0,0%	100,0%	-	98,5%
POSC	-	-	-	86,6%	86,6%
POSAÚDE	0,0%	0,0%	10,0%	5,3%	5,3%
POAGRO	39,8%	38,9%	3,2%	6,0%	18,1%
PRIME	0,0%	0,0%	0,0%	0,0%	0,0%
PONORTE	0,0%	63,4%	91,5%	54,1%	76,6%
PORCENTRO	0,0%	4,5%	97,2%	91,3%	88,1%
PORLVT	0,0%	1,6%	32,2%	0,9%	16,2%
PORALENTEJO	-	13,5%	93,2%	48,1%	86,8%
PORALGARVE	0,0%	12,8%	78,6%	95,6%	72,2%
POPRAM	0,0%	0,0%	78,9%	65,8%	74,3%
PRODESA	0,0%	0,0%	94,5%	80,6%	77,3%
POAT	0,0%	94,0%	89,8%	58,9%	78,4%
EQUAL	0,0%	0,0%	0,0%	0,0%	0,0%
PO AP	-	-	-	-	-
<b>TOTAL</b>	<b>27,3%</b>	<b>14,1%</b>	<b>58,2%</b>	<b>26,2%</b>	<b>35,47%</b>

<b>3.6. Please indicate what proportion of the total amount of Community funds recovered by offsetting was offset against national funds in 2003, 2004 and 2005?</b>	
<b>BE</b>	<p>Belgian Office for Intervention and Restitution (BIRB): None</p> <p>Ministry of the Walloon Region (Garantie FEOGA):</p> $\frac{\text{total\_amount\_offset\_by\_national\_funds\_in\_2003}}{\text{total\_amount\_recovered\_by\_offsetting\_in\_2003}} = \frac{76.631,29}{6.262.923,28} = 1\%$ $\frac{\text{total\_amount\_offest\_by\_national\_funds\_in\_2004}}{\text{total\_amount\_recovered\_by\_offsetting\_in\_2004}} = \frac{16.296,49}{1.551.091,36} = 1\%$ $\frac{\text{total\_amount\_offset\_by\_national\_funds\_in\_2005}}{\text{total\_amount\_recovered\_by\_offsetting\_in\_2005}} = \frac{41.396,88}{6.134.361,50} = 0,6\%$ <p><b>Flemish community:</b></p> <p>→ EFRD: /</p> <p>→ FIG: 0</p> <p>→ Leader+: 0</p>
<b>EE</b>	No funds were offset between the State and recipients as there were few recoveries and offsetting procedures are still being developed.
<b>IE</b>	<p><b>The Department of Agriculture and Food 2003 2004 2005</b></p> <p>% of Community amounts recovered by offsetting</p> <p>against National amounts due 16% 17% 9%</p>

<b>3.6. Please indicate what proportion of the total amount of Community funds recovered by offsetting was offset against national funds in 2003, 2004 and 2005?</b>	
<b>FR</b>	<p><b>For the Stock Farming Bureau:</b></p> <p>In the livestock premiums sector in 2005, €34 712.10 was offset by an advance on the domestic claim.</p> <p><b>For the ONIGC,</b> no community claim was offset from domestic funds.</p> <p>For VINIFLHOR, Community funds offset by domestic funds totalled €219 159 for 2003, 2004 and 2005.</p>
<b>HU</b>	The EAGGF agency has been applying offsetting only since 2006, which is why Hungarian authorities have no data going back to earlier years.
<b>PL</b>	PLN 0.00
<b>SK</b>	0 EUR
<b>SE</b>	No.

<b>3.7. Please indicate the amount due under Community legislation used to offset national claims in 2003, 2004 and 2005?</b>	
<b>BE</b>	<p>Belgian Office for Intervention and Restitution (BIRB): N/A</p> <p><b>Flemish community:</b></p> <p>→ EFRD: /</p> <p>→ FIG: 0</p> <p>→ Leader+: 0</p>
<b>EE</b>	<p>2004:</p> <p>Structural Funds: EEK 148 311.76 due under Community legislation offset</p> <p>Cohesion funds: EEK 2 649 179.04 due under Community legislation offset</p> <p>2005:</p> <p>Structural Funds: EEK 636.98 due under Community legislation offset</p> <p>Cohesion funds: EEK 325 802 due under Community legislation offset</p>
<b>IE</b>	<p><b>The Department of Agriculture and Food 2003 2004 2005</b></p> <p>% of National amounts recovered by offsetting against Community amounts due 33% 36% 36%</p>
<b>FR</b>	<p><b>For the Stock Farming Bureau:</b></p> <p>a) Meat sector: offsetting by advances on export repayments:</p> <p>2003: €53 340.42</p> <p>2004: €107 235.44</p> <p>2005: €53 493.47</p> <p>b) Livestock premiums sector:</p> <p>2005: €673 069.74</p> <p><b>For the ONIGC and VINIFLHOR, no amount due under a Community act was offset against domestic claims.</b></p>

<b>3.7. Please indicate the amount due under Community legislation used to offset national claims in 2003, 2004 and 2005?</b>	
<b>HU</b>	The EAGGF agency has been applying offsetting only since 2006, which is why Hungarian authorities have no data going back to earlier years.
<b>PL</b>	PLN 0.00
<b>SK</b>	0 EUR
<b>SE</b>	Social funds: EUR 10 265 311 was deducted in 2004 in agreement with the Commission. Regional funds: 0 Not applicable to EAGGF Guarantee.

<b>3.8. Access to databases:</b>					
<b>Does the recovering authority have access to specific databases (direct or indirect, i.e. by means of a request to the authority managing the database) to recover amounts for European funds by offsetting?</b>					
	<b>Other paying agencies' databases?</b>		<b>Tax databases?</b>		<b>Other databases? (please specify)</b>
	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	
<b>BE</b>	yes <sup>46</sup>	no <sup>47</sup>		no <sup>48</sup>	Walloon region:  GCOM Expenditure database and GCOM Revenue database

<sup>46</sup> Walloon region.

<sup>47</sup> FPS Economic affairs (EAGGF Guarantee Section): For the three Belgian EU Guarantee Fund paying agencies; Brussels capital region; Flemish community: EFRD, ESF; German speaking community; French speaking community: ESF AGENCY.

<sup>48</sup> FPS Economic affairs (EAGGF Guarantee Section): For the three Belgian EU Guarantee Fund paying agencies; Brussels capital region; Flemish community: EFRD, ESF; German speaking community; French speaking community: ESF AGENCY.

**3.8. Access to databases:**

**Does the recovering authority have access to specific databases (direct or indirect, i.e. by means of a request to the authority managing the database) to recover amounts for European funds by offsetting?**

	Other paying agencies' databases?		Tax databases?		Other databases? (please specify)
	Yes	No	Yes	No	
<b>CZ</b>		no		no	EURLEX, CEDR (central register of grants), ARES (administrative register of economic entities), information system on public contracts Central address, Information server of the Ministry of Justice (internet portal with information from the Commercial Register and the Bankruptcy Register) – see also answer to point 2.1.6 (e).
<b>DK</b>		no	yes		Tax authorities' (SKAT) collection department keeps a register of repayment cases where the beneficiary does not have the option of repaying the amount in one instalment but enjoys a deduction arrangement instead. The administrative authority regularly receives copies of this register.
<b>DE</b>		no		no	

**3.8. Access to databases:**

**Does the recovering authority have access to specific databases (direct or indirect, i.e. by means of a request to the authority managing the database) to recover amounts for European funds by offsetting?**

	Other paying agencies' databases?		Tax databases?		Other databases? (please specify)
	Yes	No	Yes	No	
<b>EE</b>	yes		yes		As regards offsetting, it was not necessary to request information from any other registers. Checks can be made by various national institutions, upon written request, for further information from existing databases kept. These written requests must be replied to within one month.
<b>IE<sup>49</sup></b>		no		no	
<b>EL</b>		no	yes		no
<b>ES</b>		no		no	
<b>FR</b>		no		no	The <b>Stock Farming Bureau</b> uses the Legal Information Database, which enables the paying agency to monitor the legal situation of undertakings. The database is not specifically intended to enable offsetting but the information it provides on undertakings can speed recovery by offsetting if such undertakings run into financial difficulties or change their legal status in a manner liable to have an impact on recovery.

<sup>49</sup> The Department of Enterprise Trade and Employment/ The Department of Agriculture and Food.



**3.8. Access to databases:**

**Does the recovering authority have access to specific databases (direct or indirect, i.e. by means of a request to the authority managing the database) to recover amounts for European funds by offsetting?**

	Other paying agencies' databases?		Tax databases?		Other databases? (please specify)
	Yes	No	Yes	No	
<b>IT</b>	yes			no	
<b>CY</b>		no		no	no
<b>LV</b>		no		no	LURSOFT, the register of persons subject to VAT.
<b>LT</b>		no		no	The EU Structural Funds and Cohesion Fund computerized information management and monitoring system (SFMIS).
<b>LU</b>		no		no	no
<b>HU</b>	No answer.		No answer.		No answer.
<b>MT</b>		no		no	
<b>NL</b>		no		no	no
<b>AT</b>		no		no	no
<b>PL</b>	yes		yes		Structural Funds Common Database (SFC).

**3.8. Access to databases:**

**Does the recovering authority have access to specific databases (direct or indirect, i.e. by means of a request to the authority managing the database) to recover amounts for European funds by offsetting?**

	Other paying agencies' databases?		Tax databases?		Other databases? (please specify)
	Yes	No	Yes	No	
<b>PT</b>		no		no	<p>In the case of the ESF, the managing authority offsets using a special module which, although incorporated in the SIIFSE, is a specific, independent database to which the paying authority has no access. The paying authority learns of the offsetting operation only after it has been made available in the system by the managing authority through presentation of the relevant management models.</p> <p>In the case of the EAGGF Guarantee Section, the paying agency's databases are available, in particular those relating to the calculation and payment of aid.</p>
<b>SI</b>		no		no	no
<b>SK</b>		no		no	
<b>FI</b>		no, in Finland there is only one paying agency administering the EAGGF.		no	no

**3.8. Access to databases:**

**Does the recovering authority have access to specific databases (direct or indirect, i.e. by means of a request to the authority managing the database) to recover amounts for European funds by offsetting?**

	Other paying agencies' databases?		Tax databases?		Other databases? (please specify)
	Yes	No	Yes	No	
<b>SE</b>		no		no	As regards structural funds, the national finance system, Agresso, gives details of the recoveries ordered by the relevant recovery authority. The main principle is that recovery is affected by offsetting in the subsequent payment.
<b>UK</b>		no		no	Companies House Database of registered companies.