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Comparative analysis of the reports supplied by the Member States on national measures taken to combat wastefulness and the misuse of Community resources

Supplement on inspections and administrative penalties

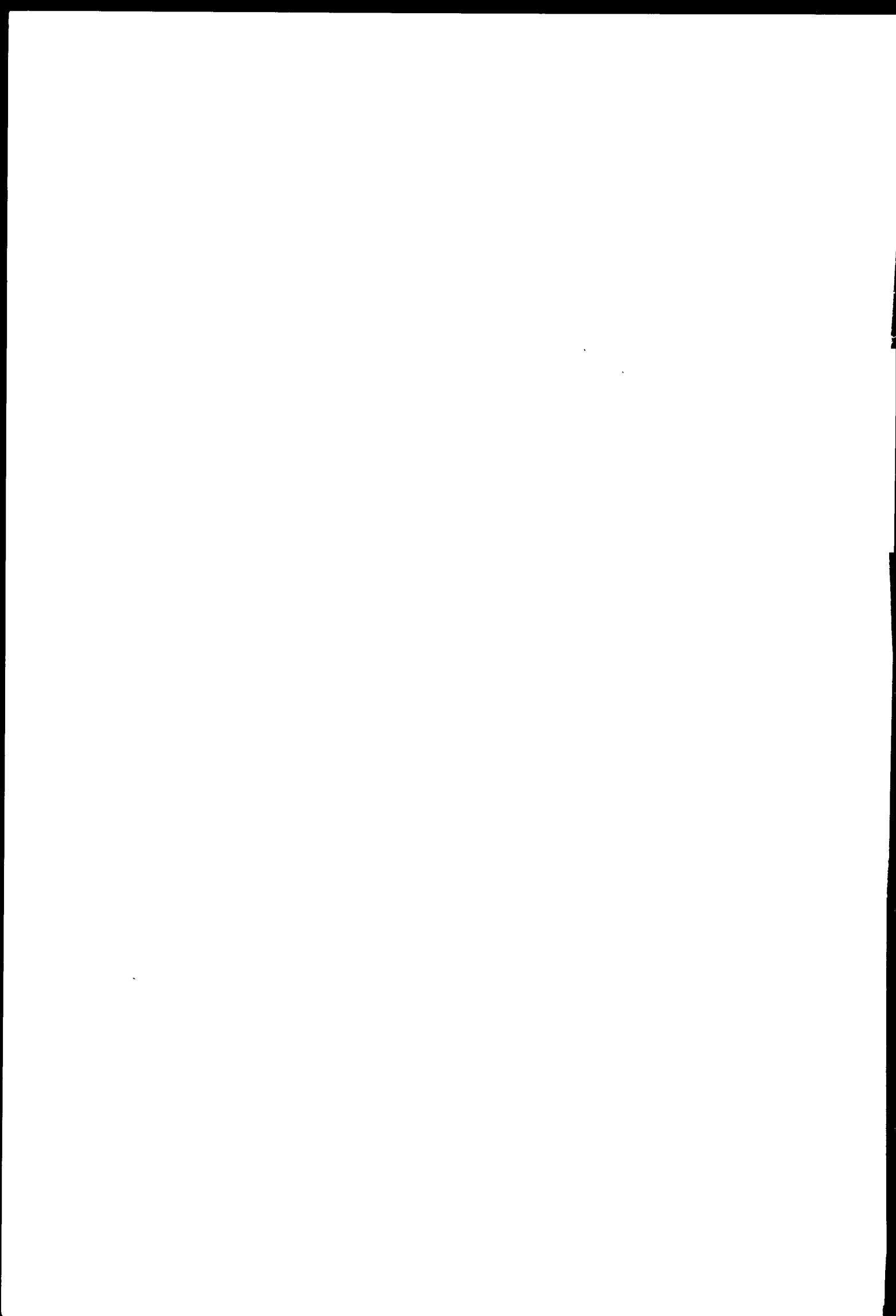


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INTRODUCTION

Background and methodology

In November 1995, on the basis of contributions from the Member States, the Commission drew up an initial comparative analysis¹ of the measures taken by the Member States to combat fraud and of the application of Article 209a of the EC Treaty.

This document was presented in the form of a basic report, and raised the question of whether there was any point in continuing and completing the analysis in liaison with the Member States. The Council took note of this document and its main conclusions,² and accepted the Commission's suggestion that the work begun be continued.

At the start of the following year,³ the Commission presented a working document summing up the situation on the follow-up action to be taken on the comparative analysis. The Ecofin Council of 8 July 1996 confirmed the "need to complete the comparative analysis of national anti-fraud systems", referring to "the objective of an equivalent level of protection of the Communities' financial interests throughout Community territory".

On this basis, the Commission sent an additional questionnaire to the Member States in November 1996.⁴ Among the points for which it was decided to request further information were the issues of checks and administrative penalties, so that both the prevention and enforcement of fraud were covered.

The subject of checks carried out by the Member States on the expenditure and revenue of the Union was only touched on in the first phase of national reports, particularly as regards quantitative data. This was mainly due to the short time limits for replies set in the spring of 1995. As the subject had, however, been at least partially addressed by some of them, an initial methodological basis was available to build on.

The subject of administrative penalties, however, was somewhat neglected in the first phase of the study. It was felt that it would be useful to take another look at this aspect of combating fraud through non-criminal penalties.

The emphasis was laid on the quantitative aspects (number of checks, rate of checks, rates of irregularity, number of penalties effectively applied), since the qualitative elements (development of legislation and administrative organisation to improve the fight against fraud) had been studied in detail in the first stage.

¹ *Comparative analysis* of the reports supplied by the Member States on national measures taken to combat wastefulness and the misuse of Community resources, and *Synthesis Document*, COM(95) 556 final.

² In two stages: at the Ecofin Council on 27 November 1995, and then the Madrid European Council on 15 and 16 December 1995.

³ At the meeting of the Community Committee for the Coordination of Fraud Prevention (COCOLAF) on 15 January 1996.

⁴ In the form of a letter from the Commission's Secretary-General dated 20 November 1996, accompanied by a supplementary questionnaire (document SEC(96) 9436).

Area of study

The scope of the study excludes checks on the Community's direct expenditure in order to concentrate on the expenditure for which the Member States are responsible for implementation, checks and penalties. It also excludes checks on agricultural expenditure, apart from the penalties applied in this field, in order to avoid asking the Member States for data which are already available and to take account of current Community legislation, which sets out in detail the procedures for checking EAGGF Guarantee Section expenditure.

As for revenue, the questionnaire confines itself to those traditional own resources, checks and penalties which are governed by a specific approach.

An effort was therefore made to tighten up the questionnaire by steering the analysis towards figures which show the level of protection of the Community's finances and to look for new ideas to move towards more effective and uniform protection. In doing this, the Commission was following the aim laid down in the Madrid European Council conclusions⁵ and subsequently crystallised in the new Article 280 of the Treaty of Amsterdam.⁶ This document takes the same approach and may, if necessary, serve as a reference for the institutions in making the best possible use of the new legal basis set up to combat fraud.

Chronology of work and plan selected

After the additional questionnaire was sent at the end of 1996, the Commission started to receive replies from some Member States in the first quarter of 1997, often in the form of an supplementary report to the first one, sent in the spring of 1995. However, it took until the first quarter of 1998 for all the replies to come in, at which point the Commission carried out a comparative analysis. Since they were relatively incomplete, the Commission tried to supplement the study by means of other sources, notably some of its annual reports⁷ and European Court of Auditors' reports.

The comparative analysis report takes up the two subjects of the questionnaire, checks and administrative penalties, but it is structured by budget area: first traditional own resources, then the Structural Funds, and lastly, and only for the penalties component, the EAGGF Guarantee Section.

The advantage of presenting it this way is to highlight the link between checks carried out, irregularities discovered and penalties applied in each field: this link is behind any assessment of anti-fraud activity. This is the way the additional questionnaire

⁵ The Madrid European Council calls upon the Member States and the Institutions to "adopt the necessary measures to ensure an equivalent level of protection throughout the Community and in the Community budget ... as a whole".

⁶ The new Article 280(4) of the Treaty of Amsterdam provides that "the Council, acting in accordance with the procedure referred to in Article 251, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Community with a view to affording effective and equivalent protection in the Member States".

⁷ Summary report on the communications by the Member States under Article 17(3) of Regulation No 1552/89.

was presented, and most Member States followed the same presentation in their contribution.

So as not to form an appendix separate from the rest of the Article 209a study, and for the sake of readability, the supplementary report includes what was said about these two subjects in the initial responses, and puts them back into the correct perspective of the reference period for the whole of the study (1993-1994-1995). This improves the comparability of the data.

1. OWN RESOURCES

1.1. Initial data

It may be useful to review what was written on this point as avenues to be explored in the summary report presented in 1995 (which included a component on VAT).⁸

"As regards the administrative organisation of fraud prevention, the national reports indicate on the whole that there is a great contrast between the protection of revenue and the protection of expenditure. Where revenue is concerned, customs and tax authorities have had long experience of fraud prevention and apply the same control methods to Community revenue as have proved their worth in decades of use at national level. Both national and Community revenue may thus be said to enjoy a high level of protection".

This paragraph relates to administrative organisation, from the point of view of the principle of assimilation,⁹ without assessing the operational impact of the checks. However, adherence to the assimilation principle in administration does not answer the question of how effective anti-fraud systems are, how results of operational arrangements are measured, etc. Yet these are particularly important since recent trends have shown a significant increase in detected cases of fraud and irregularities in own resources.

The value of irregularities detected¹⁰ in the field of own resources rose from €577 million in 1994 to €1 billion in 1997. This represents 3.6% of own resources revenue collected in 1995, 5.8% in 1996 and 6.5% in 1997. It remains at 3.81% in 1998. However it is presented, known fraud has increased in this field since the comparative analysis report presented in 1995.

This fact may be interpreted in various ways, but one cannot deduce from it a 50% reduction, or even an erosion, in the effectiveness of own resources protection. On the contrary, the increase in cases of known irregularities is the positive result of cooperation between the departments responsible for the fight against fraud having been improved over several years. And this can be seen even more clearly since the

⁸ *Comparative analysis* mentioned above, note 1, point 1.1.2 a) description of departmental organisation - own resources - avenues to be explored p. 37.

⁹ The principle laid down in Article 280(2) (ex-Article 209a) of the EC Treaty: "Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests".

¹⁰ Amount of irregularities detected in the field of own resources; figure for 1994-97 presented in the Commission's 1997 annual report on the fight against fraud, page 57.

concentration of enforcement activities in risk sectors, which are also those where the amounts at issue are the highest, is increasing all the time.

An analysis of the data supplied by the Member States to the Commission allows a more precise definition of the issue. During the first phase of the study, the reports provided by the Member States dealing with qualitative aspects already showed a tendency to increase own resources checks, along with a rise in detected fraud.

Among the Member States which have given precise figures since the initial phase, an increase in checks and in the cases of fraud detected can be seen in three cases. France mentioned 180 000 comprehensive checks on imports carried out each year by Customs, together with 3 500 post-clearance checks, and discovered an increase in infringements (for industrial products, 21 188 infringements in 1993, concerning €13.1 million, then 27 127 infringements in 1994, concerning €40.4 million, due to large-scale fraud in the transit procedure in the cigarette sector).

In 1995, the Dutch report showed a reduction of one third in the number of physical checks on imports (from 157 716 in 1992 to 94 911 in 1993), while the amount of irregularities notified was increased threefold.¹¹ There too, the notification of important cases goes some way towards explaining the variations, but the general trend shown by the Netherlands is indeed towards more detailed checks, which may be fewer in number but take more time, on the basis of a better risk-assessment.

Finally, in addition to a rate of physical checks on goods of 10 000 a year, Portugal indicated an increase in detailed post-clearance checks (67 in 1993, 105 in 1994), while Spain mentioned, in addition to the checks on release into free circulation and post-clearance checks, an increase in the investigations carried out by the central departments (241 investigation procedures in 1993 and 320 in 1994).

Less quantifiably, several reports highlighted the development of risk analysis (for example, Belgium cited a special department created to this end within the *Direction nationale des recherches* of the Customs administration).

To close this brief review, it should be pointed out that administrative penalties imposed following checks carried out in the field of own resources were barely touched on in the first phase of the study.

The Member States which indicated that they used out-of-court settlements or a system of administrative penalties for own resources did not provide quantitative data on this subject.¹²

Denmark's report was an exception to this in that it indicated the number and the amount of administrative fines imposed in 1993 and 1994 following checks on declarations, while noting that the vast majority of irregularities discovered were simply

¹¹ Between 1992 and 1993, a transition year for the entry into force of the single market, the rate of physical checks on goods in the Netherlands dropped from 7.7 to 5.1%, while the amount of irregularities notified rose from €1.3 million to €5.8 million (Commission's 1994 annual report on the fight against fraud, p. 95).

¹² *Comparative analysis* cited above, p. 55, and comparative table, p. 59.

the result of errors and were not subject to fines. As a result, there was a relatively low level of administrative fines, less than 0.5% of the amount of the duties concerned.¹³

1.2. Checks made on own resources

Following the same model used by most of the national reports, the first table summarises the data notified for 1995. Some data for comparison over several years are then set out.

Table 1 gives the information essential to determine an inspection rate as applied by the Member States: number of declarations accepted, checks on import of the goods, post-clearance checks. In line with the presentation used by most of the national contributions, the data are presented by number of operations and not by value.

.../...

¹³ The figures presented by Denmark in 1995 were as follows: 60 fines in 1993 for an amount of €24 158, compared with €23.8 million in repaid duties (a little over 0.1%). In 1994 the proportion is slightly higher: 76 administrative fines for an amount of €46 159, compared with €10.6 million in repaid duties (0.43%).

Table No 1: own resources inspection, reference year 1995				
Member States	Import declarations	Import checks	Post-clearance checks	Rate of checks (aggregate)
B	-	-	-	between 2 and 5% (1)
DK	-	-	-	-
D	-	1 921 469	36 459 (2)	-
EL	-	-	-	-
E	-	-	-	-
F	-	150 852	4 673 (3)	16.6% (4)
IRL	319 419	62 064	- (5)	19.4%
I	911 208	70 892	15 611	9.5%
L	59 385	4 362	9 300	23%
NL	-	116 011	3 339	-
A	567 551	148 706	2 346	26.6% (6)
P	207 584	18 500	50	8.9%
FIN	511 163	64 999	211 (7)	12.7%
S	1 245 000	168 578	573	13.6%
UK	4 068 313	58 176 (8)		1.43%

(1) Belgium states that it does not have detailed statistics on the frequency of checks carried out. However, the customs administration ensures that inspection standards are adhered to, for example for physical checks on goods on release into free circulation or the transit procedure.

(2) Figures including checks on own resources, import turnover tax and expenditure on the common organisation of export markets.

(3) In addition to these 4 673 post-clearance checks, there are 844 320 deferred checks (documentary checks after removal of the goods).

(4) The rate of checks shown by France in relation to the number of declarations is 5.23% on release into free circulation and 11.42% on post-clearance checks, including deferred and post-clearance checks.

(5) Ireland states that the rate of post-clearance checks must reach 5%, according to its internal instructions, and that an estimate of this rate at certain customs offices would be 10%.

(6) 8% of which, according to the Austrian report, applies to checks on the Union's own resources (the majority of the checks carried out in 1995 relate to the period prior to accession).

(7) Post-clearance checks carried out in 1995 related to the period prior to accession, with an inspection rate evaluated at 13.7%.

(8) The United Kingdom gives an overall figure covering physical or documentary checks on entry of the goods or post clearance.

A certain disparity in the data collected, explained in the footnotes to the table, is not surprising. It results from the fact that the Member States are free to decide both how their systems for protecting own resources are organised (both from the point of view of checks and prevention, and from that of penalties) and how their results are presented to the Commission, apart from the most important cases notified under Community legislation.

The disparity noted is also due to the considerable leeway in interpreting the Commission's requests. The Commission asked for the number of checks carried out, distinguishing those made on release into free circulation from post-clearance checks, and the rate of inspections in number and value. Most Member States gave the answer in

number; it appears that the inspection rate in value is more difficult to obtain, several Member States mentioning the administrative cost of a reliable answer on this subject.

The table above therefore sets out the data in a number of operations, bearing in mind that the rate of checks by value is often higher, since the amount of post-clearance operations is one of the most obvious criteria for risk analysis.

The result is that the rates of checks carried out are, in most cases, close to or in excess of 10% of the declarations accepted on import, a result attained in the absence of any binding Community rule. Where national inspection rate norms are indicated (Belgium, Ireland), they tend to be lower than the rates actually carried out.

The Member States have sometimes supplied additional information, making analysis over several years possible. It shows that checks have basically risen since the reference period 1993-95, a transition period after the single market came into force and the task of the customs services in the Member States was redefined.

Germany thus shows an increase in checks and verifications carried out on imports from 1 623 380 to 1 921 469 (data provided for 1993 to 1996), and an increase in post-clearance checks on firms (from 9 698 to 35 847 over the same period).

While import declarations have increased considerably (266 641 in 1993, 319 419 in 1995), Ireland states that the number of physical checks has remained stable though the number of documentary checks has risen (from 21 410 in 1993 to 27 582 in 1994) which means that it is possible to maintain a stable inspection rate of around 20%.

Portugal's report, supplementing the information supplied during the first phase of the study, shows that there has been a near doubling of the level of checks on release into free circulation (9 500 in 1993, 18 500 in 1995) which, compared with the total number of operations checked, increases the inspection rate from 3.2 to 9%.

Lastly, the Dutch case is somewhat specific: the reduction in the number of physical import checks, already mentioned above, appears in the 1993-95 figures (dropping from 139 232 in 1993 to 116 011 in 1995) but at the same time the number of detailed post-clearance checks carried out doubled (from 1 665 to 3 339 over the same period).

1.3. Link between checks carried out and the detection of irregularities

The point of establishing such a link goes beyond studying cases of irregularities, which must be notified if they involve amounts of more than €10 000. It is rather to evaluate the different ways of protecting own resources by establishing a correlation between types of checks and results in the detection of irregularities. As in the previous table, the data given do not relate to value but to the number of checks carried out and irregularities detected, as per the information supplied by the Member States.

.../...

Table No 2: irregularities detected through own resources checks, 1995

import checks // post-clearance checks

Member States	import checks	irregularities detected	rates of irregularity	Post-clearance checks	irregularities detected	rates of irregularity
B	-	3 019	-	-	2 917 (1)	-
DK	-	-	-	-	-	-
D	1 921 469 (2)	-	-	36 459	189 (3)	-
EL	-	11 050 (4)	-	-	-	-
E	-	-	-	-	-	-
F	150 852	24 121 (5)	15.4%	4 673	- (5)	-
IRL	62 064	395	0.6%	-	470	-
I	70 892	3 291	4.6%	15 611	3 453	22.1%
L	4 362	12	0.3%	9 300	154	1.7%
NL	116 011	29 561	25.5%	3 339	540	16.2%
A	148 706	-	-	2 346	-	-
P	18 500	5 (6)	-	50	22 (6)	-
FIN	64 999	6 500	10% (7)	-	-	3.6% (8)
S	166 578	29 136	17%	573	6 390 (9)	-
UK	58 176 (10)				11 003 (10)	18.9%

(1) In addition to these 2 917 customs infringements there are 517 cases of undeclared imports. The number of irregularities, including the 3 019 discovered on import, therefore comes to a total of 6 507.

(2) These figures include checks on own resources, import turnover tax and expenditure on the common organisation of export markets.

(3) Germany shows that the findings of the post-clearance checks led to repayments of €12.5 million and recoveries of €80.2 million in 1995. The figure of 189 cases, involving a total of €38.5 million in 1995, is an overall figure concerning the cases notified, of over €10 000, found following the various checks carried out by the federal finance administration.

(4) Simple customs infringements plus 1 047 cases of smuggling.

(5) This is an estimate of the total of the irregularities relating to own resources (2/3 of the 36 181 irregularities discovered in commercial operations).

(6) Only irregularities over €10 000.

(7) 4.3% of which relate to an incorrect tariff classification.

(8) This is an estimate of the post-clearance checks during the 1992-94 period preceding Finland's accession to the European Union.

(9) Sweden's figures include simple errors detected in the customs documents; it is not, therefore, possible to assess the rate of detection of irregularities in the strict sense.

(10) As before, the figures provided by the United Kingdom for the period 1995-96 refer to the total number of physical or documentary checks, on import or post-clearance; the irregularities included are over €610.

The disparities between the data presented in this second table are more surprising. There are substantial discrepancies between the replies of certain Member States to this survey and the information that they supplied subsequently on the basis of Article 17(3) of Regulation No 1552/89. Of the ten Member States which provided information on the number of irregularities in both cases, only Belgium presents comparable data. This inconsistency casts serious doubt on the reliability of the replies given. It is true that progress has been made since 1995 in reducing the marked disparity between national communications on the activity and results of controls on traditional own resources: after detailed work in the own resources committee, a harmonised annual report model was made available to the Member States in 1997.¹⁴ However, "*analysis of the reports for 1998 shows that the results have largely failed to live up to expectations: the Commission feels that it cannot yet reach any completely valid conclusions in view of the absence of comparable or, in some cases, reliable data. ... this is the case with the inspection activity indicators, the results of inspections (establishment and recovery) and interpretation of the concept of 'cases of fraud and irregularities'*".¹⁵

The following developments should therefore be read with this inconsistency in mind. Only a few conclusions can be drawn from such data, and they must be considered with the greatest of caution. This proviso notwithstanding, the part of the questionnaire on the success of checks in detecting irregularities suggests a more positive finding on the effectiveness of the checks made than on expenditure. Risk analysis, information and targeting of post-clearance checks mean that the system is relatively effective at detecting irregularities. A calculation of the average result puts it at 12%, which is one irregularity per nine checks.

Obviously this is only an approximate number, the field being one in which the counting of checks may be disputed (but that of irregularities may not, in principle, now that a definition has been laid down in Community law.¹⁶) For its part, the European Court of Auditors regularly observes that Community legislation is not applied by the customs authorities in an effective and homogeneous manner and that the checks carried out on this basis do not give equivalent results across the territory of the Community.¹⁷ The responses to this survey thus vary from one Member State to another and depending on the type of check. On this last point, the data presented show rates of detection which are generally higher, better targeted and more detailed in the case of post-clearance checks.

¹⁴ Commission Decision No 97/245 of 20 March 1997 (C(97) 800 final).

¹⁵ Commission Report (No BUDG/688/99) – *Summary report on the communications by the Member States on their inspection activities and findings and questions of principle relating to traditional own resources, 1998, (Article 17(3) of Council Regulation [EEC, Euratom] No 1552/89 of the Council.*

¹⁶ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests, OJ L 312, 23/12/1995. Article 1(2): "Irregularity' shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure."

¹⁷ See: Court of Auditors, *Annual Report for 1995*, para 1 45; *Annual Report for 1996*, paras. 1.10, 1.41, 1.66, 1.83 and 1 118; *Annual Report for 1997*, para. 1.18

The discrepancy can be seen more clearly when the results are expressed both in number and in amount. Thus, it is found in France's report that the post-clearance checks represent only 3% of the total number of checks¹⁸ and 18.7% of the number of irregularities detected, but 87% of the amount of the duties at issue. A similar finding emerges from Italy's report: post-clearance checks represent 18% of the total number of checks but 85% of the irregularities detected, expressed as an amount (€15.5 million out of a total of €18.1).

In contrast, when the data relating to the results of the controls are provided by amount (e.g. Belgium, Germany), they are particularly difficult to interpret because of the exceptionally high value of certain cases which can significantly distort the figures. For example, Belgium's report shows an 18% increase in cases of own resources irregularities detected between 1994 and 1995 (from 5 502 to 6 507), while the amounts concerned almost doubled (from 40 to 74 million euros).

The Commission, which studied the differences in losses of own resources between 1995 and 1996 by amount and presented them to the Advisory Committee on Own Resources, gives the same explanation for the large differences between the two years,¹⁹ highlighting the notable fraud cases which emerged during one or other year. The entry into force of Regulation No 2988/95, cited above, was also mentioned: it introduces a broader concept of irregularity.

In the Dutch report, which shows an increase in the number of irregularities detected, the period 1993-95 shows a stable rate of detection, particularly marked for controls on release into free circulation. The rate of detection remains close to 25%, whatever the number of physical checks on import.²⁰ Maintaining such detection levels shows the value of increasing controls at the Union's borders.

The other comparison data requested by the Commission relating to the different types of customs arrangements (e.g. Community transit, inward processing, temporary admission etc.) were provided by too few Member States for a meaningful synthesis to be produced.

1.4. Administrative penalties in own resources

The final component of the comparative study related to administrative penalties. Until now there has been very little information on Member States' practice. The Commission and the Council therefore wanted to look at this subject in greater depth, while bearing in mind the diversity of the legal arrangements for the punishment of irregular behaviour, and the variety of Member States' administrative practices in a field

¹⁸ The French report gives the comparable data, i.e. the 4 673 post-clearance checks and 150 852 physical checks on import, without taking account of the 844 320 deferred checks, which consist of verification of the papers (declarations and attached documents) after collection of the goods by specialised sections of the regional customs directorates.

¹⁹ Working document No XIX/24329/98, *Analysis of annual reports for 1996 submitted by the Member States under Article 17(3) of Regulation 1552/89*, pages 9-10. Document presented to the Advisory Committee on Own Resources on 8 July 1998.

²⁰ The total number of physical checks on imports cited by the Netherlands is 139 232 in 1993, 106 993 in 1994, 116 011 in 1994. The irregularities detected are growing in parallel (34 551 in 1993, i.e. a rate of 24.8%; 26 958 in 1994, i.e. 25.2%; and 29 561 in 1995, i.e. 25.5%) For post-clearance checks, the detection rate is 14% in 1994 and 16.2% in 1995.

where there is no common legislation. As the Court of Auditors points out regarding the Community's internal VAT arrangements. "*Differences between the national definitions of fraud and, therefore, between the penalties applied, may undermine their deterrent effect. Differences in the legal and administrative frameworks are further risk factors that can be fraudulently exploited*".²¹

The data provided by the Member States - more substantial than in the first phase of the study - can be summarised as follows, distinguishing penalties (as requested by the supplementary questionnaire) in accordance with the type of checks which led to them. The data are provided in the form of the number of irregularities and penalties imposed, and not in the form of value (except where the national contributions have taken a different approach).

Table No 3: checks and administrative penalties, 1995				
Member States	irregularities detected during import checks	administrative penalties	irregularities detected during post-clearance checks	administrative penalties
B	3 019	-	2 917	-
DK	-	-	-	-
D	-	-	-	-
EL	11 050	€6.88m (1)	-	-
E	-	-	-	-
F	19 610 (2)	8 085	4 511 (2)	1 847
IRL	395	-	470	-
I	3 291	2 616	3 453	2 240
L	12	12	154	-
NL	29 561	-	540	14 479 (3)
A	-	-	-	-
P	5	-	22 (4)	-
FIN	6 500	-	-	€0.16m (5)
S	29 136	335	6 390	843
UK	-	11 033	-	303 (6)

(1) Amount of fines imposed for cases of simple customs infringements, plus €51 million in fines imposed in the 1 047 cases of smuggling.

(2) This is an estimate, and the 24 121 irregularities detected can therefore be broken down as follows: 18.7% of the irregularities found are in the field of own resources (themselves evaluated at 2/3 of the irregularities detected in commercial operations, i.e. 36 181).

(3) The number of administrative fines provided is an overall figure, relating to the checks carried out on release into free circulation and post-clearance checks.

(4) Includes only irregularities over €10 000.

(5) Finland's report states that the application of administrative penalties applied as a result of inspection operations has been curbed, as it is the first year of membership of the European Union.

(6) Overall figure for irregularities of over €610, whatever the type of check which led to their discovery. These 303 penalties represent €0.9 million.

²¹ Court of Auditors, *Annual Report for 1997*, para. 1.31; see also *Annual Report for 1995*, para. 1.89 et seq

The information provided in this table is not exhaustive. However, it can be seen that the application of administrative penalties in own resources, while not systematic, is not negligible. This is particularly true since several of the other Member States which do not give a result in figures apply administrative penalties without drawing up precise statistics (e.g. Portugal or Finland, regarding penalties imposed on the basis of physical checks).

Ireland indicates that many cases of irregularities are settled out of court by a flat-rate increase in the duties at issue, generally of around 125% of the own resources and other unpaid duties.

More generally, having described several cases of own resources fraud, Germany states that almost all the cases that it mentions have been, or are, the subject of administrative or legal proceedings, because of the seriousness of the acts or the amounts at issue.

Others, such as Belgium, point out that, as indicated in the first phase of the study, their legal system has no system of administrative infringements with general scope; Austria says it does not normally impose administrative penalties (except in international travel), but rather criminal penalties which are imposed for tax infringements.

As regards the Member States which have provided figures, France evaluates the amount of penalties corresponding to 9 932 infringements discovered in the field of own resources, essentially in the course of customs operations, at €9 million in 1995. However, this is an estimate and not a centralised figure, especially since the infringements may involve Community own resources and national resources, though it is not possible to specify what proportion of the fine actually relates to the own resources at issue.

These data are provided once again for 1995, since too few reports provided findings over several years. No hypothesis can therefore be formulated on the basis of an increase in the administrative penalties found in the reports of the Netherlands²² and Sweden.²³

This brief survey of the various national systems clearly reveals a meaningful system of penalties in certain Member States, but serious questions remain on the equivalence of administrative penalties across the Community. A rather marked diversity of situations is becoming established between Member States which explicitly exclude recourse to administrative penalties, those which apply them, but at very variable levels and frequencies, and those which have not provided data on the matter (which leads to the assumption, in the absence of clear indications to the contrary, that administrative penalties do not play a key role in their system of national measures to protect the Community's own resources).

²² Administrative fines in own resources in the Netherlands: 10 223 in 1993, then 11 349 in 1994, and 14 479 in 1995. The rate of punishment of the irregularities discovered rose from 31 to 53% between 1993 and 1995.

²³ In Sweden, the number and value of notices to pay an additional amount trebled between 1995, the first year of membership, and the following year (1996): 1 178 notices (€172 000) in 1995; 3 063 notices (€625 000) in 1996.

This disparity would seem un conducive to the consolidation of an equivalent protection of Community finances and probably requires an alignment of practices in the area of administrative customs penalties. The implementation of the provisions on administrative customs penalties, adopted since then within the framework of the action programme for customs in the Community (Customs 2002), should contribute to this in the future.²⁴

1.5. Conclusion on own resources

This is a sensitive area where the Member States, following the implementation of the single market, have generally stepped up checks or redeployed their inspection activities to improve the performance of the services concerned. As a result, the number of irregularities discovered has increased. The closer cooperation specified in Article 280 (ex-Article 209a) of the EC Treaty and implemented with the help of the Commission is an essential tool against own resources fraud, especially since remedies are currently applied in an uncoordinated fashion.

The Commission's conclusion from this is that the development of cooperation with the Member States and the targeting of anti-fraud activities on sectors at risk must be continued. Harmonisation of administrative customs penalties, which has been coming up against legal and political problems for a number of years, should be the logical next step after this attempt at aligning practices in inspection and the fight against fraud and irregularities. In view of the strongly national character of law enforcement legislation, harmonisation between the Member States can only be achieved in practice through an overall approach to all financial penalties.

With the entry into force of the Treaty of Amsterdam, the criteria set by the new Article 280 require more for the protection of Community finances than simple assimilation with the measures taken to protect national finances: from an objective as to the means to be deployed (implementing the same measures to combat national and Community fraud), we move to an objective as to the result to be attained - effective, equivalent protection based on dissuasive measures to combat fraud.

To the extent that the Member States have taken the trouble to notify significant data, and with reference to the only year considered (1995), the information given above does not show an abnormally low control rate, but does show considerable divergence between Member States. The Commission therefore considers that there is insufficient proof of the equivalence of checks, even if progress has since been made by the Member States in sending information,²⁵ pursuant to Commission Decision No 97/245 of 20 March 1997.²⁶ In order to measure this equivalence, the different types of checks carried out in the Member States need to be more closely defined.

²⁴ Decision No 210/97/EC of the European Parliament and of the Council of 19 December 1996 adopting an action programme for customs in the Community (Customs 2000), Article 13.

²⁵ Summary report on the communications by Member States on their inspection activities and findings and questions of principle in the field of traditional own resources - 1997 - Article 17(3) of Council Regulation (EEC, Euratom) No 1552/89, COM(1999) 110 final, pp.13-14.

²⁶ Doc C(97) 800 final

The rate of detection of irregularities is much more variable and difficult to analyse. However, the information provided seems to indicate greater overall efficiency than in checks on expenditure.

In terms of penalties, however, too few contributions show a clear dissuasive use of administrative penalties. The Member States follow policies of dissuasion which are based on their own institutional considerations and legal traditions, and which are not coordinated and are moving away from the aim of equivalence. The new provisions of Article 280(5) of the EC Treaty offer the possibility of monitoring year on year the checks carried out and evaluating their results in terms of protection of the Community's financial interests.

2. STRUCTURAL EXPENDITURE

2.1. Initial data

On structural expenditure (Structural Funds: ERDF, ESF, EAGGF Guidance Section, Cohesion Fund, Financial Instrument for Fisheries Guidance), it became clear in the course of the first stage of the comparative analysis that further information was urgently needed, since insufficient statistical data was available regarding the checks carried out. The Commission made the following assessment regarding expenditure, largely on the basis of the descriptions of how the services were organised:

*"The protection given to Community interests is less satisfactory than the protection given to revenue. The organisation of controls is often the responsibility of the fund administrators themselves The verification of accounts and checks on compliance with formal requirements are more common than on-the-spot checks by experts, particularly in the case of the Structural Funds."*²⁷

It is therefore particularly important, on the basis of the new data submitted as additional information by the Member States, to define checks on the Structural Funds, since the data centralised by the Commission in the last few years is insufficient to permit easy identification of a reliable trend in anti-fraud activity in this area. In its annual report,²⁸ the Commission pointed out that the setting up in 1996 by the Member States of detailed procedures for the communication of frauds and irregularities resulted in a significant increase in the number of cases in comparison with 1995. There was also a four-fold increase in the amounts involved. This statistical effect, which inflated the result for 1996, was repeated, in reverse this time, in 1997, when the amounts concerned were halved.²⁹

As with own resources, we shall take as our starting point the information provided during the first stage of the analysis before moving on to examine the checks carried out, the irregularities detected and the administrative penalties imposed on the basis of the latest national reports.

²⁷ *Comparative Analysis*, pages 39 and 40.

²⁸ *The fight against fraud: Annual Report (1996)*, page 7.

²⁹ *The fight against fraud: Annual Report (1997)*, page 68.

The first stage of the analysis brought together a few fairly sparse details on the checks carried out; administrative penalties were not discussed. Most national reports took great care over the description of the administrative control system.³⁰ By definition, the Structural Funds involve a wide range of inspection bodies and types of inspection, depending on the methods used (departmental audits or inspection of projects and operations), the role played by local and regional authorities and bodies with local responsibility for inspections, the place of external inspections entrusted to organisations with general responsibilities along the lines of a court of auditors or financial inspectorate, or the stage in the project at which the checks are carried out (selection, implementation, completion).

Nevertheless, it was possible to use the quantitative information provided by some Member States in drawing up the additional questionnaire.

This was particularly true of Spain, which in its first report included inspection plans and irregularities detected, by Fund (and by category of expenditure, making it possible to analyse some fields in greater detail). Between 1993 and 1994, the report noted a marked increase in the amounts checked and for a similar number of cases found a sharp rise in the results of irregularities. In the case of the ERDF,³¹ the sharp increase in the sums involved could be attributed to a number of cases recorded under the heading "local authorities" and representing €8 million, or two thirds of the total accounted for by the irregularities. Within the ESF there was a sharp rise in the number of checks and irregularities, particularly in relation to employment measures.³² Finally, in the EAGGF Guidance Section, the increase in checks and irregularities detected³³ related to "marketing" and "agricultural structures", while a very sharp (six-fold) rise in inspections in the field of compensatory allowances led to the detection of only a small number of irregularities.

The link between checks and irregularities was also clear in the report from Portugal. The number of projects inspected for the two reference years of 1993 and 1994 fell, as did the number of irregularities detected,³⁴ as a result of the development of a system audit which could be used to evaluate complete systems incorporating dozens of measures, as well as individual projects.

Two other Member States provided a number of isolated details: as regards the EAGGF Guidance Section, France mentioned the number of annual inspections concerning compensatory allowances (approximately 15 000 a year) and the control rate for the material improvement plans (3% a year); for the ESF, the number of bodies to be inspected in 1995 was to increase, bringing it closer to the target figure of 100. On the matter of

³⁰ Cf. the study presented in 1995, *Comparative analysis*, pages 24 to 36.

³¹ 1993: 74 ERDF control operations (total sum involved €82.64 million), leading to the detection of 18 irregularities (sums involved €1.9 million).

1994: 70 control operations (total sum involved €198 million), leading to the detection of 17 irregularities (sums involved €11.7 million).

³² 1993: 156 ESF control operations (total sum involved €100.7 million), leading to the detection of 80 irregularities (sums involved €6 55 million).

1994: 127 control operations (total €226 million) / 67 irregularities (€14.9 million).

³³ EAGGF-Guidance and Fisheries; the amounts checked rose from €12.1 million (1993) to €30 million (1994), and irregularities detected rose from € 0.5 to 2.8 million (1994).

³⁴ ERDF, ESF and EAGGF-Guidance Section: 5887 controls in 1993, followed by 4733 in 1994. Irregularities detected (recorded before the entry into force of Regulation 1681/94): €1.6 million in 1993, €1 million in 1994.

results, the French report noted the substantial recovery payments under the ESF (26 million euros in 1993 and 33 million euros in 1994), but did not identify the Community share separately.

Lastly, the United Kingdom gave a number of details about ESF controls (76 organisations visited in 1993/94 and 106 in 1994/95, with a target of 150 a year, which would represent an inspection rate of 10% of all bodies applying for funds).

The above examples show that it is possible to evaluate the controls carried out and the results obtained with a view to shedding light on the findings set out in the reports from the Member States, which can be difficult to interpret, in view of the recent establishment of an overall communication system.

The establishment of a direct link between checks (principally those external to the organisation which requests and pays for them) and the detection of irregularities was worth studying in greater depth. Similarly, a study of the application of administrative penalties also seemed appropriate, given the shortage of information in this area.

The information requested by the Commission in its additional questionnaire was therefore intended to provide it with an overview of the situation as regards Structural Fund controls and enable it to make a preliminary assessment of the effectiveness of the various national systems. It had also led to the adoption of Regulation No 2064/97 of 15 October 1997 on the financial control by Member States of operations co-financed by the Structural Funds, which provides for a minimum inspection rate for the Funds as a whole, and the concentration of the checks on a representative sample of the programmes

2.2. Checks on structural expenditure

The concept of inspection applied by the Member States was, logically enough, that of external auditing, excluding checks inherent in the processing of cases and the payment of the aid. The reference period is still 1995, and the following table sets out the gist of the information provided on the checks carried out and the resulting inspection rate, in terms of both the number of checks and the sums involved.

.../...

Table 4 : controls carried out into Structural Fund measures, 1995		
Member States	Controls carried out: number / value	Inspection rate: number / value
B	(1)	-
DK	ERDF: 13 controls / €2 m	4 % / 8 %
	ESF: 181 controls / €15.1 m	34 % / 41 %
	EAGGF-Guidance -	8 - 11 %
D	ESF:	25 % (2)
	EAGGF-Guidance: 27 729 controls / €115 m (3)	-
EL	-	-
E	- (5)	-
F	ESF: 1 body in 10 (1995) / control covering €32.5 m (1993/96)	10 % (number)
IRL	ERDF: 49 controls / €284 m	-
	Cohesion Fund: 5 controls / €21.3 m	-
	ESF: 41 controls / €6.2 m (6)	12 % / 34 %
	EAGGF-Guidance (7)	27% - 100 % (number)
I	-	-
L	EAGGF-Guidance: 817 controls / >€3.3 m	12.9 %
NL	(8) ERDF: 134 controls / €316 m	69 % / 74 %
	(9) ESF: 30 controls / €13.8 m	68.3 % (value)
	(10) EAGGF-Guidance: 375 controls / €6.9 m	40% / 67 %
A	ERDF: 3 controls with EU (1996)	-
	EAGGF-Guidance: 6998 controls (compensatory)	-
P	All Funds: 4 553 controls	24 % / 58 %
FIN	FIFG: 35 controls	66 %
S	FIFG: 143 controls / € 7.9 m (1996)	48 % / 92 %
	EAGGF-Guidance: 2 576 controls (compensatory)	11.1 % (number)
UK	ERDF: 782 controls	10 % (number)
	ESF: 61 controls	-

(1) Belgium states only that this is a matter for the language Communities and the Regions.

(2) As Germany did not provide a standardised summary of data from the Länder, this figure is an estimate based on the statistics provided.

(3) Checks carried out on compensatory allowances (approximately a fifth of agricultural expenditure on guidance) carried out on the spot or using remote sensing, as part of the integrated administration and control system - area (IACS-area), in 1995.

(4) Greece listed reports of irregularities on the basis of Regulation 1681/94, without linking them to controls.

(5) Spain provided data for 1993 and 1994 (analysed below), but not for 1995.

(6) Data for October 95-September 1996.

(7) In its very comprehensive reply, Ireland submitted a series of ten tables, which cannot be reproduced here, indicating a high level of controls, ranging from 27% (per capita aid) to 100% (systematic checks).

(8) For this entire ERDF heading, the data cover all the Dutch regions concerned, with the exception of South Limburg and Twente.

(9) The figures for this ESF heading cover the period 1994-1997.

(10) The figures for this EAGGF, Guidance Section, heading cover the period 1993-1995.

NB: most of the questions did not apply to Austria, Finland and Sweden, as 1995 was the year in which the Structural Funds were established in these countries following accession.

The disparities which emerge on studying this table are largely the result of differences in the way control of the Structural Funds is organised. It is a statistical representation of features specific to the various national administrations, already referred to in the first stage of the analysis.³⁵ In the absence of Community rules which would oblige the Member States to keep exactly the statistics asked for, the data supplied are patchy, do not relate to all the Funds or reference periods, or are provided by district with no national summary, which makes comparisons between the 15 Member States difficult. Particularly regrettable is the lack of information from the four Member States which in 1995 received over 50% of the funds allocated for structural measures.

Some reports nevertheless provided information that could be compared over more than one year. For example, the Danish report mentions a stepping-up of physical checks of ERDF projects between 1993 and 1995 (checks covering a value of 2 million euros instead of 0.8 euros, equivalent to an increase in inspection rate from 3% to 8%). France refers to an increase in controls in connection with the ESF measured either by the number of days needed for the checks (up 58% between 1995 and 1996) or by the number of controls initiated (66 in 1995 and 96 in the following year). Ireland gives figures covering several years which show that inspection rates are stable at a very high level (90% - 100%) but which include on-the-spot checks and checks on documents relating to projects by the departments responsible for carrying them out. The Dutch report refines this presentation, making a distinction, in the case of the ERDF, between administrative checks, for which the inspection rate is close to 100%, and physical inspections of projects, which cover three-quarters of the amounts concerned and a total of 134 projects in 1995 (compared with 60 in 1994).

Finally, the Spanish report includes a large number of tables from which it is possible to evaluate the increase in the number of checks carried out between 1993 and 1994, as already referred to in the first part of the comparative study. The implementation of the national inspection plans, principally in the area of the ESF, is compared with the original targets, with a high implementation rate in the training sector (target achieved in 1993 and exceeded in 1994 with the completion of a large system audit relating to half total expenditure), and more modest achievements in the employment sector (four-fifths of target achieved in 1993 and three-fifths in 1994). The number of inspections carried out rose in 1994.

The information collected therefore generally indicates an increase in activity in controlling the Structural Funds. In the absence of a Community framework prior to the introduction of Regulation 2064/97, however, the Member States were free to set national standards or to leave the task of deciding on the checks to be carried out to local officials. The European Court of Auditors often raises the question of insufficient checks on structural expenditure, however.³⁶ Many question-marks remain and only a few of the reports include, as the Commission would have liked, data relating to the audit of all the Structural Funds, accompanied by essential methodological details on the nature of the controls carried out and the organisation responsible for them.

³⁵ *Comparative analysis*, p. 31-32 and table p. 33-34.

³⁶ Cf.: Court of Auditors, *Annual Report concerning the financial year 1995*, § 4.83, 4.84, 6.59, 6.62, 6.65, 6.67 and 6.69 ; *Annual Report concerning the financial year 1996*, § 6.20, 6.39, 7.49, 8.71 and 9.38 ; *Annual Report concerning the financial year 1997*, § 3.39 and 3.41.

2.3. Irregularities detected in the Structural Funds

Set out below are the earlier data on controls (in terms of number and value), plus the number of irregularities detected in the course of these checks. Where possible, a detection rate for irregularities has been calculated.

.../...

Table 5 : controls carried out and irregularities detected, Structural Fund measures, 1995			
Member States	Controls carried out: number / value	irregularities detected	rate
B	-	-	-
DK	ERDF: 13 controls / €2 m	0	0
	ESF: 181 controls / €15.1 m	0	0
	EAGGF-Guidance: -	52 cases / €88 000	-
D	ESF: -	- (1)	-
	EAGGF-Guidance: 27 729 controls / €115 m	14 610 (2)	52.7 %
EL	-	(3)	-
E	- (4)	-	-
F	ESF: 1 body in 10 (1995) / control covering € 32.5 m (1993/1996)	€ 5.2 m (5)	16 %
IRL	ERDF: 49 controls / €284 m	€3.9 m	1.4 %
	Cohesion Fund: 5 controls / €21.3 m	0	0
	ESF: 41 controls / €6.2 m	0	0
	EAGGF-Guidance: -	737	-
I	-	17 (6)	-
L	EAGGF-Guidance: 817 controls / > €3.3 m	-	-
NL	ERDF: 134 controls / €316 m	0	0 (7)
	ESF: 30 controls / €13.8 m	-	- (8)
	EAGGF-Guidance: 375 controls / € 6.9 m	17 cases/€68 000	1 % (9)
A	ERDF: 3 controls with the EU (1996)	0	0
	EAGGF-Guidance: 6998 controls (compensatory	564	8 %
P	All Funds: 4 553 controls	44 (cases < €4000)	-
FIN	FIFG: 35 controls	-	-
S	FIFG: 143 controls/€7.9 m (96)	-	-
UK	ERDF: 782 controls	4	0.5 %
	ESF: 61 controls	3 cases / €1.5 m	-

(1) Germany did not provide a standardised summary of data from the Länder. The number of irregularities reported per Land is not significant (4 in Rhineland-Westphalia, 1 in Saxony).

(2) Checks carried out on compensatory allowances (approximately a fifth of agricultural expenditure on guidance) carried out on the spot or using remote sensing, as part of the integrated administration and control system - area (IACS-area), in 1995. Cf. the considerably smaller number of cases reported by Germany for all structural measures, i.e. 21 cases in 1995.

(3) Greece listed reports of irregularities on the basis of Regulation 1681/94, without linking them to controls.

(4) Spain provided data for 1993 and 1994 (analysed below), but not for 1995.

(5) Data for October 95-September 1996.

(6) Italy quotes references to 17 cases of irregularities reported in relation to 1995 (12 in the ESF, 4 in the ERDF, 1 in the EAGGF Guidance Section)

(7) For this entire ERDF heading the data cover all the Dutch regions concerned, with the exception of South Limburg and Twente.

(8) The figures for this ESF heading cover the period 1994-1997.

(9) The figures for this EAGGF, Guidance Section, heading cover the period 1993-1995.

NB: most of the questions did not apply to Austria, Finland and Sweden (1995 was the year in which the Structural Funds were established in these countries following accession).

This table reveals an even more disappointing level of knowledge of the findings of the inspections carried out into the Structural Funds. The findings listed here are confined to a few dozen cases, presented by some Member States only. The connection between checks and the detection of irregularities is seldom made. The Member States usually confine themselves to providing the information which has been made compulsory by Community legislation introduced in the meantime.³⁷ It should be noted, moreover, that not all countries comply with these provisions, some Member States notifying the European Commission only of minor fraud cases.³⁸ Nor do the figures reported in accordance with the legislation always correspond to those provided for the purposes of this enquiry. This raises doubts as to the reliability of some of these figures.

Although an assessment is sometimes made of the effectiveness of the structural programmes, there is no methodical evaluation of the checks carried out. Only the Spanish report shows any interest in evaluating inspections carried out between 1993 and 1994, as already mentioned in the first stage of the comparative analysis. In addition to the implementation of the national audit plans, referred to above, a comparison of the checks carried out and irregularities detected shows that in 1994, when Structural Fund inspections were stepped up, the irregularities detected increased substantially, either in number and in value alike (ESF,³⁹ EAGGF-Guidance Section and FIG⁴⁰), or only in value (ERDF).⁴¹

Unfortunately, the information available is far too incomplete to allow a more accurate assessment. The national reports still fall far short of the original aim of a multiannual evaluation, in terms both of number and value, of the checks carried out and the irregularities detected.

2.4. Administrative penalties in the field of structural expenditure

The first point to bear in mind is that the reference period (1995) pre-dates the entry into force of the "protection of financial interests" Regulation (No 2988/95), which lays down horizontal rules for administrative penalties under Community law.

The national reports which dealt with administrative penalties in the context of the Structural Funds usually included under this heading requests for reimbursement, described merely as "measures" by the above Regulation.⁴² The Commission has

³⁷ Regulation (EC) No 1681/94.

³⁸ Court of Auditors, *Special Report n°4/95 of 22 December 1995*, § 10.11.

³⁹ ESF : the inspection rate (in terms of value) increased from 22% to 35% between 1993 and 1994; the number of irregularities detected increased five-fold and represented a sharp increase in value (from €40 million to € 70.4 million).

⁴⁰ EAGGF Guidance Section and fisheries: the inspection rate (in terms of value) increased from 3% to 11% ; the number of irregularities detected increased four-fold and tripled in value (from €0.9 to € 2.8 million).

⁴¹ ERDF: the inspection rate (in terms of value) increased from 14% to 40% between 1993 and 1994; the number of irregularities detected remained stable but the amounts concerned were eight times greater (€2 million in 1993, € 17 million in 1994).

⁴² Article 4(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests states: "As a general rule, any irregularity shall involve withdrawal of the wrongly obtained advantage by an obligation to pay or repay the amounts due or wrongly received ..." and Article 4(4) : "The measures provided for in this Article shall not be regarded as penalties."

therefore omitted such information; the remaining contributions from the Member States are summarised in the table below.

Table 6 : Administrative penalties in the field of structural expenditure		
Member States	Irregularities detected	Administrative penalties applied
B	-	-
DK	ERDF: 0	-
	ESF: 0	-
	EAGGF-Guidance: 52 cases/€88 000	[18 requests for reimbursement (conversion aid)]*
D	ESF: -	[432 requests for reimbursement (Thuringia)]*
EL	-	-
E (1)	ERDF: 21 cases / €17 m	19 cases / €14.7 m
	ESF: 90 cases / €40.2 m	21 cases / €1 m
	EAGGF-Guidance, FIGG; 89 cases, €2.9 m	52 cases / €0.14m
F	ESF: -	amount < € 5.2 m (2)
IRL	ERDF: €3.9 m	-
	Cohesion Fund: 0	-
	ESF: 0	-
	EAGGF- Guidance: 737 cases	-
I	-	-
L	EAGGF-Guidance: -	12 penalties relating to compensatory allowances
NL	ERDF: 0	0
	ESF: -	-
	EAGGF- Guidance: -	[17 projects giving rise to reimbursements / €68 000]*
A	ERDF: 0	0
	EAGGF-Guidance: 564	(compensatory allowances)
P	All funds: 44 cases (only cases < €4000)	ESF : 15 prohibitions for the following year / refusals
		EAGGF-Guidance : 177 terminations of contract
FIN	EAGGF-Guidance: -	863 financial penalties relating to compensatory allowances
S	-	-
UK	ERDF: 4 cases	[1 request for repayment]*
	ESF: 3 cases / €1.5 m	-

(1) Data for 1994.

(2) For the entire period 1993-1996. France states that the final amount is less than this figure of €5.2 million, which corresponds to the proposals for rectification drawn up by the authority responsible for inspection.

(*) As with reduction, suspension and cancellation of assistance (Article 24 of Regulation (EEC) n° 4253/88), the obligation to repay sums received unduly is not regarded as a penalty within the meaning of Article 4 of Regulation (EC, Euratom) No 2988/95.

This table illustrates the difficulty of obtaining an overall picture of the administrative penalties applied in the field of structural expenditure. Some national reports refer to several dozen penalties imposed in connection with one or other of the Structural Funds. If a summary document were produced covering the information

requested by the Commission, and relating only to the first part of the question (for the reference period, "for each Fund," point 2.2 of the additional questionnaire: administrative penalties actually applied, number of cases in which penalties were applied), it would be nine-tenths empty and there would be virtually no multi-annual data.

Here, as elsewhere, several Member States refer to the administrative cost of gathering this data. This argument is perfectly understandable, even though it must be seen in relation to the clear political requirement imposed as a result of the request from the Council (Economic and Financial Affairs) for a reliable comparative analysis on the question of administrative penalties.

The Commission's operation has shown that, with one or two exceptions, the national authorities do not possess all the information on irregularities detected as a result of checks and still less on administrative penalties actually applied. Knowledge of the conditions for implementing the sequence "checks carried out/irregularities detected/penalties imposed" is only very patchy compared with the information gathered in connection with own resources, in particular.

2.5. Conclusions concerning the Structural Funds

In the absence of Community rules on checks and penalties in the field of structural expenditure prior to 1997,⁴³ it was rare for a Member State to introduce binding subsidiary rules on numerical inspection targets. Irregularities are not listed over and above the obligation imposed by Community legislation relating to the most serious cases. Finally, there is almost no monitoring of the application of administrative penalties.

A legislative initiative on the part of the Commission was needed in this context to ensure an equivalent level of protection of Community finances based on deterrent measures to combat fraud, in accordance with the objectives laid down by the Madrid European Council of December 1995 and subsequently confirmed in the Treaty of Amsterdam.

Commission Regulation (EC) No 2064/97 of 15 October 1997 on the financial control by Member States of operations co-financed by the Structural Funds stipulates that checks must cover at least 5% of the total eligible expenditure. It should make it possible for the Commission to ensure that Member States' inspection systems are set up in a uniform way. The transmission by the Member States of their annual report on the application of this Regulation, as required by Article 9, is not sufficiently regulated. The information obtained is often difficult to use. A major effort must now be made to apply these provisions.

Finally, the question of the absence of a Community framework for administrative penalties is still unresolved.

⁴³ With the exception of framework Regulation (EC) 2988/95, which deals with administrative penalties in Community law.

3. EAGGF GUARANTEE SECTION

3.1. Initial data

The Commission has intentionally simplified the comparative analysis as regards farm spending under the EAGGF Guarantee Section. As many Member States have pointed out, there was no need to repeat the information relating to checks carried out and irregularities detected when this topic is already more than adequately covered by Community legislation (rules on checks and the obligation to report irregularities involving sums of more than €4 000).

Still relevant, on the other hand, was the section of the additional questionnaire dealing with the application of administrative penalties in the area of agricultural expenditure, to which the comment made in 1995 in the section dealing with administrative penalties was still entirely applicable, i.e. as a whole the Member States did not reply to the question on national and Community administrative penalties, which authorities could impose such penalties or the number of cases.⁴⁴ The Commission wrote in 1995 :

"According to the reports, the national authorities make effective use of Community CAP penalties, designed to ensure that the system of subsidies and intervention measures is implemented in strict accordance with the rules and in a uniform manner. However, with the exception of a few pieces of information ... on Community penalties in connection with the integrated management system, there were no statistics showing how widely Community administrative penalties were used in practice".

Only the Danish and French reports mentioned penalties actually applied, citing several hundred cases in which administrative penalties were imposed for the most serious irregularities.⁴⁵

3.2. Analysis of administrative penalties in the EAGGF Guarantee Section

The data collected in the course of the second stage of the survey are more extensive and allow a much better approach to the question of administrative penalties in the agricultural sector.

Unfortunately, in some cases certain Member States only mentioned the checks carried out. Thus, in the case of the *ex post* checks carried out on the basis of Regulation No 4045/89, some Member States gave total amounts without specifying the penalties imposed in respect of the irregularities detected on this basis. The Commission's request was quite different and related principally to all national or Community administrative

⁴⁴ *Comparative analysis*, p. 55.

⁴⁵ Denmark indicated in the integrated control system 341 cases in which aid was withdrawn and 647 cases in which it was reduced, and national penalties in the form of a fine in 6 cases (1993 figures); in the field of export refunds 22 fines were imposed in accordance with national legislation.

France gave the following figures in connection with the IACS: a penalty rate of 25% in aid to arable crops (52 000 checks, 13 000 penalties, of which one tenth (1 300) exceeded the threshold for total withdrawal of aid, namely 2.5%), and a rate of 4% in livestock premiums, of which 1% led to total withdrawal of aid.

penalties imposed for the reference period (1993-1995), which should have been broken down according to the nature of the checks which had led to the imposition of the penalties.

Certainly, this study apart, Regulation 595/91 requires the Member States to communicate to the Commission irregularities relating to sums of more than €4000 and action taken on them.⁴⁶ However, this requirement was not complied with during the reference period of the analysis. The information in question was not sent to the Commission.

The table below sets out the principal data provided by the Member States as part of this analysis, and is confined, as we have seen, to the information relating to penalties, without reference to the statistics which are concerned only with the checks carried out.

⁴⁶ Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field and repealing Regulation (EEC) No 283/72, Articles 3, 5 and 12.

Table 7 : Administrative penalties in the EAGGF-Guarantee Section, 1995

Member States	Area concerned / legal bases for checks	Administrative penalties applied
B	-	- (1)
DK	IACS-area, R 3508/92	988 (2)
D	IACS-area: 27 729 controls (3)	14 610 (penalty rate 52.7%)
	Export refunds, R 3665/87	128 (4)
EL	Cotton (94/95 marketing year)	12 producers fined a total of €58 305
	Olive oil	8 (5)
E	-	-
F	IACS-area: 52 000 controls	13 000 penalties imposed, of which 1 300 withdrawals
IRL	IACS-livestock production	265 (6)
I	EAGGF-Guarantee as a whole	1 115 cases totalling € 49.5 m (7)
L	IACS-area	78 (8)
	IACS-livestock production	186 (8)
NL	AID inspections (9): 10 370	23 reports
	produktschap "agricultural produce"	128 cases, amount: €647 790
	produktschap "livestock, meat, eggs"	133 cases, amount: €63 642
	produktschap "milk products"	326 cases, amount: €188 120
A	IACS-area	676 cases
	IACS-livestock production	1 493 cases
P	EAGGF-Guarantee as a whole	757 penalties (10)
FIN	IACS-area	2 244
	IACS-livestock prod (sheep and	1 153
	Rural environment (R 2078/92)	235
S	IACS-area: 7493 controls	1 137 (penalty rate 15.2 %)
	IACS-livestock production: 4 839	507 (penalty rate 10.5 %)
UK	IACS (R 3508/92 and 2887/92)	1 156 (11)
	Other (Intervention Board)	12 fines, amount € 88 232

(1) Belgium mentions the B.I.R.B., the EAGGF Guarantee Section payment agency responsible for imposing the fines referred to in Article 11 of R 3665/87, without specifying the penalties imposed.

(2) Figure for 1993, already mentioned above; Denmark does not provide any additional data, pointing out that there are no records from which a systematic list of penalties can be drawn up.

(3) Checks carried out on the spot and by remote sensing, relating to 413 161 applications.

(4) Based on information from the central anti-fraud unit of the main customs office at Hamburg-Jonas.

(5) Eight food processing plants penalised by reduction in aid. The Greek report states that all food processing plants and 37% of oil mills were inspected for the 1994/95 marketing year.

(6) Exclusion from premiums for dairy cows, beef and veal, ewes. Most penalties added together in this way relate to irregularities totalling less than € 4 000.

(7) Italy also quotes the number of cases closed without an injunction : closure (archiviazioni) in 329 cases representing a total of €38.34 million.

(8) Luxembourg lists the penalties imposed following administrative or on-the-spot checks and relates them to the total number of applications : 11 penalties imposed following administrative checks and 67 following on-the-spot checks on arable crops, for a total of 2182 applications (3.6 % of applications) ; in the case of stock-rearing this rate is as high as 5% : 186 penalties (incl. 101 following administrative checks and 85 following on-the-spot checks) for a total of 3718 applications.

(9) Checks carried out by the Ministry of Agriculture general inspectorate (AID) into levies and refunds, operations and aid schemes.

(10) Portugal confirms that these are penalties within the meaning of Regulation 2988/95. This figure should be compared with the 31 698 checks carried out (penalty rate of 4.1%) rather than the 374 irregularities mentioned in Portugal's report, stating that they referred only to cases involving more than €4 000. Most of the 757 penalties (661 cases) involved exclusion from the aid scheme for one marketing year

(11) Compared with a total of 77 786 cases, making a penalty/applications rate of 1.5%, including 826 reductions for making false statements of between 3% and 20%, and 136 withdrawals of aid for making false statements of more than 20%.

Most administrative penalties are imposed by the Member States in the context of the integrated administration and control system (IACS). The existence in Community legislation of obligations in relation to the carrying out of checks, the listing of irregularities according to their seriousness, reporting of the most serious irregularities, and the resulting application of penalties, leads to a more or less uniform system for the detection and penalising of irregularities. Where Member States have not supplied information under this heading questions arise as to whether administrative penalties are properly applied in the agricultural sector and hence whether Community finances are uniformly protected.

In the other areas of the EAGGF Guarantee Section, few relevant details were provided which could be used to follow the application of administrative penalties by the Member States. Only the Netherlands quotes expenditure on such operations, and the number of penalties imposed run to several dozen.⁴⁷ The reports from Italy and Portugal, which give an overall figure for the whole of the EAGGF Guarantee Section, do not specify the place of administrative penalties outside the IACS. As for the administrative penalties in the agricultural customs field, these are rarely mentioned with the exception of the reports from Denmark, Sweden⁴⁸ and the Netherlands.

3.3. Conclusion concerning the EAGGF, Guarantee Section

The general point to emerge from the study of administrative penalties in connection with the EAGGF, Guarantee Section, is the difference actually within the agricultural guarantee expenditure: the information available on the penalties imposed reveals a discrepancy between direct aid, on the one hand, and intervention, on the other. Obviously, this reinforces the impression that the application of administrative penalties in the different areas of the Community budget depends very much on the way in which they are integrated into the actual administration of expenditure, and into the inspection policy of the Member States.

Thus, direct aid to farmers provides an example of the fairly consistent and uniform monitoring within the Union of the sequence controls/detection of irregularities/application of administrative penalties. Where the Community legislation is less binding, on the other hand, the Member States occasionally lose sight somewhat of the action taken on the checks laid down by the various regulations. Some are unable to provide even a brief description of the administrative penalties applied and, apart from

⁴⁷ For the 10 000 checks recorded for each year of the reference period by the AID (General Inspectorate), the number of reports was 70, then 68, then 23.

⁴⁸ In the case of Sweden, the report gave the total number (177) of refund applications rejected in 1995 (first year following accession) - which should not be confused with an administrative penalty.

the judicial action to which some cases may of course lead, confine themselves to submitting the obligatory report to the Commission on the most serious cases.

Consequently, the targets set by Article 209a of the Maastricht Treaty and the principle of assimilation are not met. With the entry into force of the Amsterdam Treaty, and in particular the provisions of the new Article 280, the work on harmonisation which remains to be done to ensure equivalent protection in all the Member States is all the greater.

Admittedly, a picture of a reasonable degree of uniformity emerges from the data on the integrated administration and control system, which is part of the trend towards a common definition of the rules on administration, inspection and penalties. The equivalence of inspection systems is also ensured by the Community rules on the checks to be carried out, including *ex post* checks, on recipients of Community aid, and on the findings of these checks, which ensure that irregularities will be detected and the most serious cases reported in accordance with fairly clear common legislation.

On the other hand, the deterrent nature of the measures undertaken, or the equivalence of the penalty systems, is not always clearly apparent, depending on the areas of expenditure particularly. In the field of direct aid, the penalty is incorporated into the control and management system and produces definite effects, whereas in the other areas of EAGGF Guarantee Section expenditure administrative penalties are not clearly monitored at national level. This leaves legal action, which is very cumbersome, and the rectification of irregular situations by means of clearance of the accounts; but this does not tie in with the Union's anti-fraud strategy, which is directed towards penalising the offenders not the Member States.

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4. GENERAL CONCLUSION

Although the Union's anti-fraud strategy is based on a policy of criminal law enforcement directed against those who defraud the budget, it is also concerned with the uniform management of less serious irregularities in order to afford the effective and equivalent protection of Community finances now embodied in the Treaties. Whether we are considering structural or agricultural policies, there is a prevailing feeling, following an analysis of the national reports, that discussions should begin on the application of administrative penalties as a management tool and as a means of regulating aid schemes for which the reporting of the most serious dysfunctions should not be the only policy of deterrence.

The way in which checks are carried out in the two areas under consideration here (own resources and Structural Funds) shows the differences in treatment and knowledge which can develop between the different areas of the Community budget, in direct opposition to the principle of equivalence embodied in the Amsterdam Treaty. It is not even in the spirit of Article 209a of the Maastricht Treaty, and its "assimilation" principle. Whatever the organisational reasons given, the degree of responsibility of local departments and more generally of public authorities, there is no denying that the information provided on the checks carried out into structural expenditure and especially the results of these checks (about ten cases in the entire Union) is extremely thin. Is there any area of a national budget involving comparable sums of money in which such a small proportion of replies would be received as followed the Commission's additional questionnaire on the Structural Funds? The shortcomings uncovered by this comparative analysis demonstrate the need for a detailed discussion and new initiatives on the part of the Union if we are to come close to achieving the objectives of effective and equivalent protection of Community finances.