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COMMUNICATION FROM THE COMMISSION

concerning the fraud-proofing of legislation and contract management

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Annex

1. PART ONE: THE POLITICAL IMPORTANCE OF PREVENTION CONCERNING PROTECTION OF THE COMMUNITY'S FINANCIAL INTERESTS AND FIGHT AGAINST FRAUD

1.1. Objectives

The purpose of this memorandum¹ is to achieve the objectives of the White Paper on the internal administrative reform of the Commission and of the overall strategic approach in the fight against fraud,² with a view to developing a culture of prevention and strengthening the basic legal instruments in terms of proofing against fraud or any other illegal activity.

Prevention is a constant concern of the institutions with a view to protecting *the Community's financial interests*. It is primarily the responsibility of each Commission department; OLAF can contribute its own expertise without overburdening the interservice consultations. The planned cooperation system will have to be targeted on *new draft legislation* in the various areas of Community activity seen, on the basis of predefined criteria, as the most prone to fraud and irregularities. In parallel, the Office will continue to provide regular support to the other departments when, in its operational activities, it detects weaknesses in *existing legislation* vulnerable to fraud.

The same prevention effort will be made by DG Budget, jointly with OLAF, in contract management.

1.2. The context

1.2.1. *The reform of the Commission (White Paper)*

Within the reform, the Commission proposed a series of measures to make better use of the expertise available within the Commission with a view to improving the prevention of irregularities and fraud. The implementation of these measures also falls within a context involving a change of behaviour in the way departmental activities are programmed and priorities are defined³.

To be more precise, Action 94 stipulates "To render the present system of fraud-proofing more effective, Commission services will be required, when proposing new legislation with a potential impact on the Community budget, to submit draft proposals to OLAF for a risk assessment during inter-service consultations. DG

¹ This memorandum reflects the work of an informal interdepartmental group set up at the urging of the Task Force on Administrative Reform. This group, chaired by OLAF, brought together representatives of the Task Force, the Secretariat-General and DGs AGRI, AUDIT (Financial Control), BUDG, EMPL, JAI, REGIO, RELEX and TAXUD, with input from the Legal Service.

² Sources: White Paper *Reforming the Commission*, Part II (Action Plan), Chapter V – Audit, financial management and control, Section XXX – Protection of the Community's financial interests (COM (2000) 200 final/2, 5.4.2000); Commission communication *Protection of the Communities' financial interests - The fight against fraud - For an overall strategic approach* (COM (2000) 358 final, 28.6.2000).

³ Activity-Based Management (ABM), actions 12 to 16 of the White Paper on reform, combines the themes of defining political objectives, planning and programming activities, preparing the budget and allocating the resources.

Budget will be assisted by OLAF in the review of the Commission's systems for contract management (e.g. standard contracts, central contracts database, management tools). OLAF will also provide advice on fraud-proofing throughout the legislative process."

1.2.2. The overall strategic approach as regards protection of financial interests and the fight against fraud (Commission communication of 28 June 2000)

The Commission, in its overall strategy, specifies the objectives of preventive action as being the existence of clear and easily applicable Community legislation, with sustainable improvements, based on real-life experience and the permanent evaluation of difficulties encountered. To implement this strategy, the Commission proposed, in its 2001-03 action plan of 15 May 2001⁴, flexible co-operation mechanisms involving departments in a full use of anti-fraud expertise very early in the process of drafting proposed legislation or measures.

1.3. Current situation

To minimise the risks of fraud, a Commission decision⁵ provided for systematic prior consultation of DG Financial Control on all draft agricultural legislation containing control and penalty provisions ("48-hour procedure"). In this connection, and for all areas rather than just agriculture,⁶ the financial statement was revised to include an anti-fraud section relating to the specific anti-fraud provisions provided for in the proposed text (section 9 of the legislative financial statement).

OLAF is specifically consulted on sensitive items, but experience has shown that it is not always possible to react at the right time in the course of such consultations and suggestions made are often regarded as slowing down the decision-making process. The financial statement is a useful tool for analysing the fraud-proofing of draft legislation, but the use made of it in inter-service consultations has not been satisfactory.

As far as contracts are concerned, Directorates-General are looking for tools to allow them to manage possible difficulties effectively. Contractors themselves are looking for greater consistency and legal certainty to avoid being subjected to divergent practices from one project to another. This is the line taken in the White Paper on administrative reform.

⁴ COM (2001) 254 final.

⁵ E/478/90 of 30.4.1990. See also annex, point 1.1.

⁶ Application of this procedure during the inter-service consultation has not produced truly satisfactory results; that is a further argument in favour of replacing the procedure by other, more effective mechanisms.

1.4. Immediate prospects

Carrying out both the administrative reform and the action plan for the implementation of the overall strategic approach involves all Commission departments in the prevention effort to protect financial interests (a new culture of prevention). Synergies need to be found in order to increase the Commission's knowledge of prevention matters and make it possible for departments to act proactively. Likewise, OLAF will assist DG Budget in examining contract management systems.

The prevention exercise as envisaged by both the White Paper on administrative reform and the overall strategic approach stresses action on two fronts – legislation⁷ and contracts⁸. On the contract side, standard contracts with standard clauses are possible, whereas for legislation there is no such repetitive character and so fraud-proofing will have to be examined by means of a specific procedure. Even so, there is a link between the two aspects: there is generally a legal basis to underpin the establishment of a contract, and the preventive action undertaken on one side is therefore found on the other.

In concrete terms this means implementing a proactive joint working method with all actors involved to combine expertise in relevant policy and anti-fraud matters. This complementarity between the various levels of knowledge, while associating on a close and regular basis the expertise of the services and anti-fraud experience, will, by its very nature, enhance the effectiveness of prevention.

⁷ “Legislation” means any Community act or measure with general scope (regulations, including implementing regulations, directives, decisions addressed to the Member States, framework programmes, international conventions and agreements) having financial implications.

⁸ DG Budget is establishing a full typology for the purposes of action 74 of the White Paper on the administrative reform of the Commission within the framework of the establishment of a central database of contracts and contracting parties and in conformity with the measures contained in the proposal for recasting the financial regulation. “Contracts” means first public procurement contracts, which are *contracts subject to payment* concluded with a view to obtaining the supply of goods or real property, performance of work or provision of services (financing is then ensured as to 100% by the Commission); and then *subsidies* which are direct financial contributions granted on a non-refundable basis either to finance the operation of a body pursuing an aim of general European interest or an objective which comes within the framework of a Union policy or to finance an action intended to promote the attainment of such an objective.

Transfers of funds to the Member States, which apply in the field of structural measures (but also, in a different way, in the common agricultural policy) and in the field of Cooperation and Development, in particular EDF funding, are subsidies but are not contractual within the meaning of this document. In that case, projects cofinanced by the Community are not selected by the Commission, amounts are paid under multiannual decisions (covering currently the 2000-06 period) and are not directly managed by the Commission.

OLAF has experience both of action on the ground and of preparing legislation. It will also bring its analysis expertise⁹ (*summary sheet* on the weaknesses noted in the regulations in the sector concerned, which will appear in the investigation reports). The anti-fraud investigation reports can then be used for prevention purposes in the same way as the mission reports on the checks carried out by the strengthened control departments of the Directorates-General.

Interservice co-operation will thus operate to combine several different levels of knowledge. Those involved would be:

- lead departments responsible for legislation and contracts;
- departments responsible for control within the Directorates-General (in particular as regards on-the-spot checks of the beneficiaries of a measure or regulation);
- horizontal Commission services and Directorates-General (DG Budget, Internal Audit Service, Financial Control, Secretariat-General, Legal Service), which, either by their own functions or by their co-ordination activities, have specific knowledge that should be disseminated as widely as possible;
- OLAF, which is responsible for the design and implementation of the strategy for the protection of financial interests and the fight against fraud.

The reform clearly established the responsibilities of the Directorates-General as regards internal audit (compliance with standards decided on by the Commission on 13 December 2000) and strengthened those connected with on-the-spot checks of recipients to ensure compliance with the rules. Audit capacities were increased and, at the same time, internal audit units were created in the Directorates-General. This gives the Directorates-General the capacity to identify all aspects connected with day-to-day reality, applied to the regulations, which is essential for the preparation of legislative drafts in accordance with the work programme and the priorities defined at political level in terms of fraud-proofing.

A fraud-proofing unit in OLAF will have the task of analysing cases of fraud and irregularities, in particular from the point of view of the weaknesses or the loopholes identified in legislation, from a prevention angle. These specific analyses will be conveyed to the different departments (see point 2.1.1.3 below) responsible for legislation in their sectors and to departments responsible for administering and managing finance (programmes, subsidies) and contracts and DG Admin and DG Budget.

⁹ In its communication of 10 February 1995 on the organisation of the fight against fraud, SEC (95) 249, the Commission decided to bring together, within UCLAF, the main operational activities and the formulation of Community anti-fraud policy, over and above the pure protection of financial interests (customs policy, trade policy, agricultural policy). The Commission Decision of 28 April 1999 (OJ L 136, 31.5.1999) establishing OLAF takes over the general tasks of the Office and spells them out.

2. PART TWO: DESCRIPTION OF THE PREVENTIVE PROCEDURES TO BE SET UP WITH REGARDS TO LEGISLATION OR CONTRACT MANAGEMENT

2.1. The legislative aspect

The proposed prevention mechanism (fraud-proofing) will be limited to the most sensitive items of legislation. The preliminary identification of sensitive fields of Community policy on the basis of precise criteria will make it possible to avoid overburdening the inter-service consultation.

The attached diagram illustrates the specific co-operation procedure to be put in place for legislation, providing for consultation with OLAF upstream of the interservice consultation.

DIFFERENT PHASES

WHO?

HOW?

Phase 1

Definition of criteria to help identify higher risk sectors

First identification of these areas

Work basis: audit reports, Member States, authorising officers, anti-fraud reports, investigation reports.

OLAF

By establishing an internal unit in OLAF comprising members of the horizontal, operational and Intelligence directorates

Phase 2

Validation of results obtained in phase 1

Work basis: auditors' reports, Member States, authorising officers, anti-fraud reports, investigation reports.

Update of criteria

*OLAF and working group with SG and Legal Service
DG Budget, Financial Control, IAS
and some operational DGs*

*By establishing a working group by decision of the Commission
By establishing a dialogue with operational and horizontal DGs*

Phase 3

Identification of legislative drafts covering high-risk sectors

Work basis drawn up from Commission work programme and annual management plans

Follow-up of Commission work programme and DGs' annual management plans

Incorporation of new sensitive sectors into the process

*OLAF and working group
DG responsible*

By appointing (possible from phase 2) fraud-proofing correspondents (DGs own decision)

*By establishing and updating (OLAF) a guide for authorising departments
By training (organised by OLAF)
By work carried out jointly with OLAF on the financial statement (section 9)*

Phase 4

Consultation of OLAF upstream

*OLAF
DG responsible*

interservice consultation
Article 21 of the Rules of Procedure

*DG responsible
OLAF*

OLAF reply to interservice consultation

2.1.1. *A specific co-operation process in four phases*

2.1.1.1. First phase: the definition of criteria to help with preliminary identification of high-risk areas

Areas of Community activity entail varying levels of risk from the point of view of susceptibility to irregularities and fraud. The definition of the risk level in these various areas thus requires a preliminary identification of a number of criteria. For that purpose, OLAF will rely on its own operational experience on the ground and on the material available (annual reports on the fight against fraud, investigation reports, audit reports from the Court of Auditors and from other Commission operational Directorates-General, etc.) to establish an initial identification of sensitive sectors on the basis of certain indicators (for example, number of checks and investigations carried out, controls carried out on the basis of risk analysis, number of actual fraud cases detected). The Office will also contact the departments concerned at this stage. Thus, it will be in a position to define *clear criteria* (on both the revenue and the expenditure sides), so that *the most sensitive sectors* can be determined, targeted and reviewed in fraud-proofing terms.

2.1.1.2. Second phase: the identification of high-risk sectors of Community legislation

The criteria and initial findings of the Office, together with departments concerned, to identify risk sectors will be validated by a *specific working group*. This group will be chaired by OLAF and will include representatives of the Secretariat-General, the Legal Service, DG Budget, DG Financial Control and the Internal Audit Service, as well as a limited number of operational Directorates-General selected by the Director-General of OLAF on the basis of their experience as regards risk analysis and especially since their areas of activity can be considered to be at risk, and in the interests of ensuring a degree of representativeness in the group in relation to the various categories of expenditure. The Directorates-General which are not part of the group but which are concerned by virtue of the fact that their sector of activity can be viewed by the group as being of high risk, will be fully involved in the exercise and will contribute to it in the same way as the group members as to final choice of high-risk areas to be agreed by common accord.

2.1.1.3. Third phase: the identification of legislative drafts covering high-risk sectors that need a fraud-proofing opinion

This will be done in a dialogue between OLAF, with the involvement of the specific working group, and the lead Directorates-General, who, to this end, will have to designate a correspondent or contact person for OLAF and the group.

Drafts will be selected on the basis of the Commission's work programme and the annual management plans of the Directorates-General. An examination of the programme and these plans will make it possible to determine, in agreement with every DG concerned, the projects which call for upstream co-operation with OLAF. Any decision not to submit to upstream consultation of OLAF any drafts identified by the group as requiring submission to OLAF will be taken on the sole responsibility of the Directorate-General which is the author of the draft.

At the end of this phase, the Office will invite the departments concerned to consult it upstream on drafts identified by the group.

2.1.1.4. Fourth phase: upstream consultation of OLAF

The lead Directorates-General will involve OLAF in the preparation of drafts selected by the specific group as early as possible, by communicating to OLAF a preliminary draft.

The Directorate-General concerned will initiate the first contacts with OLAF's fraud-proofing unit. OLAF will be associated as far upstream as possible in the process of creation of the draft, with the evaluation of the fraud-proofing quality of texts from the very first stages and with the possible drafting of anti-fraud provisions if the inclusion of such provisions is deemed necessary and appropriate in this context. If there is no agreement between the Office and the lead DG on the provisions whose aim is to ensure the fraud-proofing of the draft, whatever the reason may be, the ISC may still be initiated. OLAF will state its point of view as will all the DGs concerned. The arguments of each will be evaluated within this ISC framework, final arbitration going to the College if necessary.

Without prejudice to any conclusions drawn under the second and third phases of the mechanism nor to the principles relative to the follow-up foreseen by point 2.1.3, the Directors-General must be encouraged to consult OLAF upstream on all new sensitive drafts arising from a high-risk sector not foreseen in the initial programming as well as on any draft considered particularly sensitive arising from any sector which is considered to be of average risk.

2.1.2. *Interservice consultation*

Interservice consultation (under Article 21 of the Commission's Rules of Procedure) will enable the Office to intervene in all relevant cases. This will be even more important as far as sensitive drafts which have not been submitted to the mechanism foreseen above are concerned (see point 2.1.1.3) and which arise from those sectors considered to be high-risk. It will also allow OLAF to give its view on drafts judged to be non-sensitive but which arise from those sectors considered to be high-risk. The consultation will also serve as a last filter to ensure that the procedure for upstream consultation of OLAF has functioned well (see point 2.1.1.4). It will also be an opportunity for OLAF to comment on drafts considered not sensitive but belonging to high-risk sectors. However, if projects concerning areas which have not been identified as risk sectors prove to be sensitive, the operational Directorate-General concerned may, if it has not done so upstream within the framework of Office's consultation procedure, which it has the opportunity to do, decide to consult the Office within the interservice consultation procedure. The model sheet used for the inter-service consultation could be adapted in such a way as to show that OLAF has in fact been consulted upstream if this was necessary or else within the ISC procedure.

2.1.3. *Follow-up*

OLAF and the specific working group reserve the right at any time to review the criteria and elements for identifying high-risk sectors and to revise the list of these sectors in collaboration with the Directorates-General concerned. It will be a matter of either identifying new sectors or of removing some from the list drawn up (this could be for instance because of changes in Community policies and in the susceptibility of certain legislation to fraud). OLAF and the specific working group

will proceed then to a regular review of the position of the Directorates-General's programming.

The Directorates-General responsible will have to take care that decisions and measures are followed up from the point of view of fraud-proofing when the Commission proposal goes to the legislator in accordance with the usual internal decision-making procedures. The anti-fraud provisions in Commission proposals should be preserved as far as possible during the negotiation.

The Commission will devote a chapter of its annual anti-fraud report to the results of the specific procedure (Fraud-proofing).

2.2. The contracts aspect

As regards contract management, the aim of preventing fraud and irregularities has hitherto been pursued on two levels:

- at central level, the harmonisation of clauses and procedures for contracts and the award of subsidies has been started for each defined category of contract:¹⁰ establishment of contracts and standard agreements suitable for use by all Commission departments, publications of guides and guidelines (Vade-mecums, circulars etc.);
- at local level (contract management departments), various instruments have been developed, to be used by the issuing departments alone, some of which are of individual interest, such as standard contracts that have been adopted by the Commission, which testifies to their legal reliability in particular, and local databases whether or not interfaced with SINCOM.

Efforts still need to be made here, based on good practice and taking care to ensure both overall consistency and the necessary diversity.

2.2.1. The mechanism envisaged: provision of a central database of contracts and contractors, establishment of standard contracts

Two main directions were indicated and appear in actions 73 and 74 of the White Paper. First, the *adoption of standard contracts for the Commission*¹¹, and second, the *introduction of a central database of contracts and contractors*.

These actions, primarily of a *preventive* and *dissuasive* nature, aim in particular at:

- harmonisation and consistency based on best practice and best models, leading to a contractual policy for and by the Commission as a whole: this entails making an inventory of types of contracts and clauses currently used, establishing a typology of contracts, defining “universal” clauses, consolidating and enhancing the guidelines given to departments, strengthening existing standard contracts and, if necessary, drawing up new standard contracts.

¹⁰ Regarding the general legislative framework, mention should be made of the Financial Regulation and its implementing rules, the proposed recasting of which covers both categories [COM(2000) 461 final, 26.7.2000].

¹¹ The standard contracts already introduced for external assistance may offer a useful model for that purpose.

The concern for precision will have to be permanent here. Close attention will be paid to the terms used (a single term per concept), to the drafting of clauses (to avoid contradiction and leave no room for doubt or interpretation) and to the overall configuration of the standard contract;

- centralisation of information so that all Commission departments can have access to the same tools: the central database (“Interactive Contract Network database”: ICON DB) will enable all Commission departments to be informed very quickly via the Intranet of the developments which interest them whatever their geographical situation (e.g. the delegations).

Within the limits envisaged by Community law,¹² it will thus be possible to check the background of a potential contractor as a single legal entity before the signing of a contract or, if he is already listed, his reliability in the light of his previous or current contractual relations with the Commission (losses due to bankruptcies, serious misconduct, risks of double financing etc). With the re-working of the Financial Regulation, cases of conflict of interest, fraud and corruption and the possibility of the exclusion of offending contractors for up to five years will be added.

The experience of one Directorate-General with respect to a contractor will thus be able to benefit another Directorate-General;

- easier traceability and increased control of contractors and contractual operations: here too, the central database will make it possible to gather together all the contractual information by contractor and to follow its development, as far as his relations with the commission are concerned, whether it be facts relevant to the contractor (change of business name, for example) or to each of the contracts (endorsements, bank guarantees...).

More specifically, this tool will make it possible to check the link between the contractor and a specific bank account.¹³ This data will be filed and could be linked with the data for each contract, the standard contracts comprising systematically a clause for insertion of bank account particulars. All contractual documentation will be scanned and will be stored centrally, which can prove decisive in the event of suspicion of fraud;

- more financial and legal certainty: The aims and results to be achieved under a contract as well as the means of achieving them have to be set upstream, precisely in order to avoid any error.

In the event of substandard or incomplete performance of the contract, the Commission should be able to act effectively by means of the contract: suspension of payment, activation of financial guarantees, recovery with an extension of the field of application of Article 256 of the European Treaty and recourse, as far as

¹² European Parliament and Council Regulation (EC) No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, (OJ L 8, 12.1.2001).

¹³ Commission Regulation (EC) No 1687/2001 of 21 August 2002 amending Regulation No 3418/93 of 9 December 1993 laying down detailed rules for the implementation of certain provisions of the Financial Regulation of 21 December 1977 [SEC (2000) 1890 final, Article 81a].

possible, to a compensation procedure, penalties, as a last resort cancellation and inclusion of clauses allowing the Commission to effectively defend its rights¹⁴.

In addition to this strengthening of standard contracts, the central database of contracts and contractors will constitute valuable protection if problems are detected: all the accounts of the contractor concerned could quickly be flagged. All the departments in the Commission would be informed of it immediately, which would allow them to react in a rapid and detailed way.

2.2.2. *The conditions for setting up the mechanism*

The mechanism envisaged (the establishment of *harmonised standard contracts* and the provision of a *central database* for the Commission departments of *contracts and contractors*) has different development phases.

The existing standard contracts are reviewed, updated and supplemented, by DG Budget, in cooperation with OLAF, the Legal Service and other relevant Commission departments, via in particular the networks of correspondents in the financial units. OLAF, via its internal fraud-proofing unit, and the Legal Service will be involved very early in the process of defining and drafting clear clauses for the protection of the Community's financial interests but also for the protection of beneficiaries' interests. From a legal point of view, the clauses of the contract (even drafting of the contract) will have to be examined or designed so that any ambiguity is removed. Contracts will have to contain standard clauses concerning controls and penalties to make them directly applicable, tending towards enhanced protection of financial interests. New standard contracts will also be proposed (contracts for the provision of services, contracts for the provision of office equipment etc). These various standard contracts will be submitted for inter-service consultation to ensure they have a solid and consensual base.

OLAF will disseminate the information in its possession (whatever its form and within the limits envisaged by Community law) relating to fraud and irregularities connected with the use of contracts for goods or services and grant decisions (information connected with investigations, analyses etc.). This information will be used as input for the database of contracts and contractors and will thus be available to all Commission departments.

3. **PART THREE: ADDITIONAL TOOLS, EFFORTS TO PROMOTE PREVENTION**

To facilitate the development of a culture of prevention, the fraud-proofing exercise will be supported by *awareness and training* campaigns to give departments continuous access to information on the risks of fraud connected with the complexity of legislation or the vulnerability to fraud of legislative drafts. Regarding management of contracts, it will be possible to supply administrative departments with precise guidelines (update of existing circulars for example).

¹⁴ See recasting of the Financial Regulation concerning markets and subsidies. The current Early Warning System is being reinforced along these lines (Action 95 of the White Paper on Administrative Reform of the Commission).

OLAF, in liaison with the specific working group, will organise this awareness-raising by producing a manual during the first half of 2002 for circulation to all associated departments to be available on the Intranet sites of DG Budget and OLAF. The manual will be regularly updated by the Office in agreement with the specific working group.

OLAF will also take part, so far as resources allow, in the development of training modules initiated by departments on anti-fraud issues.

4. CONCLUSIONS

The procedures envisaged (points 2.1 and 2.2) are designed, by reinforcing prevention, to facilitate the work of the operational and managerial Directorates-General with the available resources. They are also intended to enable OLAF to contribute as effectively as possible to the tightening up of fraud proofing of legislation and contract management. An internal fraud-proofing unit will be set up with existing resources in OLAF, comprising experts in the legislative and operational areas and in intelligence.

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Annex: Summary of practices and results obtained

1. Practices

- 1.1. In 1990, in response to an invitation from the European Parliament, the Commission launched a procedural initiative, prepared at its request by UCLAF, consisting of analysing legislation from the point of view of its vulnerability to fraud before its adoption (*the "48-hour procedure"*¹⁵). At the time, Financial Control was asked to set up this procedure. Under this procedure the Commission was to adopt, for each new legislative draft, a revised model of a financial statement including an anti-fraud section relating to the specific provisions provided for in the proposed text or indicating how the legislative proposal in question answered these criteria (henceforth section 9 of the legislative financial statement).
- 1.2. In addition to this procedure, there were several Commission *working parties* responsible for examining the possibilities of simplifying existing sectoral regulations (the Lachaux group in agriculture; development of new control methods – remote sensing, audits; harmonisation of customs legislation; reform of the transit procedure, etc).
- 1.3. In agriculture, trade and customs, a *team of specific-profile staff* was set up to examine the legislation concerned, mainly from the point of view of its controllability. This team, set up in 1978,¹⁶ was instructed to conduct co-ordination activities with regard to the customs aspects of the various Community policies. This initially involved a prevention exercise in the drafting of legislation and in strengthening administrative co-operation between the departments of the Member States and between them and the Commission. Good results were obtained, to the satisfaction moreover of the national customs, finance and agriculture authorities who had requested this - the Council had several times called on the Commission and the Member States "to improve co-ordination between all the bodies concerned with the preparation and implementation of the agricultural legislation"¹⁷ and "to ensure that the provisions of Community law which the customs authorities are required to implement can be applied without excessive difficulties".¹⁸ These experts were present from the first phases of the drafting of new legislation, and they prepared the appropriate provisions and defended their cogency at the discussions and negotiations in meetings of groups of experts and in management committees.
- 1.4. On 16 October 1996 the Commission adopted a *SEM 2000* recommendation on the fraud-proofing of legislation. This recommendation (No 7 of SEM 2000, phase 2) relates to the prevention of fraud and irregularities, and its implementation began at the end of 1996 driven by DG XX and UCLAF. It aimed to develop awareness of the risks of fraud among authorising officers and to maintain a state of vigilance among drafters/authorising officers on the known and foreseeable risks in the light of the experience gained by strengthening, in particular, co-operation between the departments where it had been lacking.

¹⁵ So called because the examination of new draft legislation had to be carried out within this deadline.

¹⁶ Commission decision of 15 February 1978 on the reorganisation of the management of the Customs Union Department (SEC (78) 513).

¹⁷ Cf. resolution of 23 November 1976 (OJ C 287, 4.12.1976).

¹⁸ Cf. resolution of 27 June 1974 (OJ C 79, 8.7.1974).

Despite certain positive results (cf. item 2 below), in particular in the field of structural measures, it must be said that this experiment was not concluded successfully and the recommendation No 7 action plan was not completed.

2. Main results obtained as regards prevention

2.1. *Structural measures*

Simplification of the regulatory structure for the management of the Structural Funds with a general regulation – Council Regulation (EC) No 1260/99 laying down general provisions on the Structural Funds, which enacts the major principles connected with the various Structural Funds (objectives, programming, financial management, evaluation and control methods) – and specific regulations for each fund, which determine their respective field of intervention, and new implementing regulations concerning the management and control of the systems (Commission Regulation No 438/2001) and financial corrections (Commission Regulation No 448/2001).

As regards protection of financial interests and “fraud-proofing”, the new general and implementing regulations determine the clear primary responsibility of the Member States as regards control, prevention, detection and correction of irregularities and introduce the application of financial corrections in the event of individual or systemic irregularities in management and control systems.

2.2. *Agricultural area*

Adoption of a new financial framework with, in particular, a new legal instrument on financing the CAP, Council Regulation (EC) No 1258/99 on the financing of the common agricultural policy, replacing the old Regulation dating back to 1970, which had been amended many times. Commission Regulation No 1663/95 set up the procedure for the clearance of the accounts of the EAGGF Guarantee Section, and a similar system will be set up for the programme known as SAPARD for the applicant countries in Central and Eastern Europe. These changes were accompanied by the reworking of most of the sectoral regulations (arable crops, milk and milk products, wine, for example).

At the same time, particularly important implementing regulations, such as those governing the common rules for the application of the export refund scheme, have also been reworked.

2.3. *Customs area*

The reform of the Customs Code and the Transit regime (notably the adoption of a new Regulation (EC) No 955/99, additional amendments to the implementing provisions of the Customs Code, i.e. Commission Regulation (EC) No 2787/2000) was designed to reduce the risks associated with the operators benefiting from the transit regimes and the risks associated with goods moving under these regimes. A further Regulation amending the Customs Code – European Parliament and Council Regulation (EC) No 2700/2000 was adopted with the aim of computerising and simplifying the economic Customs regimes.

2.4. *Direct expenditure*

The guidelines produced by the working party (1996-98) responsible for determining to what extent the direct expenditure arrangements should be reviewed to allow the inclusion of Community administrative penalties were not adopted by the Council.

There are new measures for improving management in this expenditure sector, in particular under actions 74 and 95 of the Commission White Paper on administrative reform.

* * *