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REPORT

drawn up on behalf of the Committee on Budgetary Control
on frauds against the Community budget

Rapporteur: Mr V. GABERT

PE 80.370/fin.

At its sitting of 11 March 1981, the European Parliament referred the motion for a resolution tabled by Mr COSTANZO and others, on financial frauds against the Community caused by misuse of financial mechanisms (Doc. 1-973/80), to the Committee on Budgetary Control.

At its meeting of 23-25 November 1981, the Committee decided to draw up a report and appointed Mr GABERT rapporteur.

The Committee considered the draft report at its meetings of 9-10 November 1981, 3-4 December 1981, 28-29 January 1982, 23-24 February 1982, 17-18 May 1982, 23-24 June 1982, 21-22 September 1982, 2 November 1982, 15-16 February 1983, 24-25 February 1983, 23-25 March 1983, 24-25 May 1983, 26-28 September 1983, 29-30 September 1983, 21-22 November 1983 and 24-25 January 1984.

At its meeting of 25 January 1984, the Committee adopted the draft report by 8 votes to nil, with one abstention.

The following took part in the vote:

Mr AIGNER, chairman; Mrs BOSERUP and Mr PRICE, Vice-Chairmen; Mr GABERT, rapporteur; Mr ARNDT (deputizing for Mr WETTIG), Mr BATTERSBY, Mr GONTIKAS, Mr KELLETT-BOWMAN, Mr LANGES (deputizing for Mr NOTENBOOM), Mr SABY and Mr Konrad SCHÖN.

The report was tabled on 30 January 1984.

The deadline for tabling amendments to this report is shown on the agenda of the part-session at which it will be considered.

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A

The Committee on Budgetary Control hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

on frauds against the Community budget

The European Parliament,

- having regard to the motion for a resolution (Doc. 1-973/80),
 - having regard to the report of the Committee on Budgetary Control (Doc. 1-1346/83),
 - whereas frauds against the Community budget are often closely related to other cases of fraud and criminal activities such as frauds relating to the quality of products, tax evasion at national level, etc.,
1. Expresses its concern at the fact that, because of inadequacies in Community legislation, the lack of harmonization of national laws and regulations and, in many cases, the lack of administrative machinery, large sums of money have been lost as a result of fraud against the Community;
 2. Stresses that this form of criminal activity is particularly concentrated in areas where
 - (a) the administrative structure is weak,
 - (b) the prosecution of fraud is less rigorous,
 - (c) the Community financial mechanisms constitute an additional incentive to fraud,
 3. Expects the Member States to monitor Community finances with the same care as they monitor national financing as it is a question of taxpayers' money in both cases;
 4. Draws the attention of the Council to the fact that Community financial legislation should take account not only of the balance between national interests but primarily of Community interests. These include effective controls;

5. Strongly deplores the excessive length of time needed by the Council of Ministers to adopt legislation to combat fraud;
6. Calls on the Council to adopt immediately the Commission proposals before it which have been endorsed by Parliament, particularly in the field of mutual aid between the Member States and the Commission in carrying out checks and recovering Community monies wrongly paid out;
7. Deplores the fact that the Council and the Member States have so far been unable to plug various loopholes in the Treaties and have thus prevented Community resources being treated as public monies in all Member States so that in cases of violations of Community interests responsibility would be allocated on the basis of the same principles of civil and criminal law throughout the Community;
8. Notes that the Commission is endeavouring to harmonize the national interpretations of concepts of Community law but regrets that the work on such harmonization is taking so long;
9. Supports the efforts by the Commission to standardize regulations and define responsibilities for combating frauds and applying controls in all sectors;
10. Stresses that in cases where immediate measures are needed to protect Community interests, the Commission should be empowered to carry out on-the-spot checks in the Member States without prior notification and asks the Commission to submit proposals to this effect; calls once again for what might be termed a 'flying squad', consisting of officials from the Commission and national administrations, to be set up;
11. Notes that in countless cases the Community has only been able to recover payments wrongly made as a result of fraud after considerable time and with great difficulty and urges that the Commission's powers in this respect should be strengthened;
12. Points out that the delay in controls and investigations by the Community may prevent prosecution in criminal and civil courts; calls therefore for instances of fraud to be identified promptly;
13. Calls on the member States to make every effort to harmonize their criminal law in this field and their respective provisions concerning the period within which actions must be brought;
14. Requests the Commission when submitting the 1985 budget to increase the resources and staff to combat fraud; welcomes the willingness of national courts of auditors to work together with Community institutions to combat fraud;

15. Believes that the Court of Auditors of the European Communities should be consulted systematically to ensure greater account of monitoring aspects when legislation concerning the various financial mechanisms is being adopted;
16. Welcomes the special report of the Court of Auditors on the financial management of Community activities (OJ No. C 287, 24 October 1983) and believes that this study has made a major contribution to combating fraud against the Community budget;
17. Calls on the Commission and Council to embark on negotiations with those third countries which in practice offer a sanctuary to organizers of economic crime by virtue of their extradition regulations;
18. Stresses that tax evasion in Member States concerning VAT affects the distribution of the tax burden between citizens in the various Member States and further exacerbates the problem of financing the Community budget;
19. Calls on the Commission together with national authorities to produce with the assistance of the Community Statistical Office estimates of the level of fraud involving VAT in each Member State, on the basis of which the Community's share of the proceeds of VAT levied in each Member State could be revised,
20. Instructs its President to forward this resolution and the report of its committee to the Court of Auditors, the Council and the Commission and the Governments of the Member States.

EXPLANATORY STATEMENT

1. The European Parliament has been concerned for some time at frauds against the Community budget, for two reasons:
 - Firstly, these frauds, the extent of which is often exaggerated, have an impact on public opinion; they aggravate doubts about the effectiveness of Community financing and its objectives.
 - Secondly, certain features of the Community's administrative system have given rise to a specific type of fraud, against which the institutions responsible are often powerless.
2. This report covers the roles of the Commission, the Council of Ministers and national governments in identifying and pursuing frauds. The European Court of Auditors sometimes uncovers irregularities and frauds in monitoring implementation of the budget. It does not however conduct any special investigations. A special investigation is only undertaken in particular cases if a special report of the European Court of Auditors is called for, as for example in the so-called 'Como Affair'.
3. The Committee on Budgetary Control, which has been continuously confronted with this problem since it began its work, has decided initially to submit a report on the extent of frauds, and subsequently to propose a set of measures to combat them more effectively.

I. Special features of fraud in the Community

4. There have always been people who have tried to take advantage of the mechanisms of public finances. They have done so by seeking out and abusing weaknesses in monitoring systems. Fraud is thus a permanent problem. The financial activities of the Community have, however, given rise to a type of fraud that displays certain peculiar characteristics:

5. The first characteristic of fraud obviously relates to the sector in which it takes place. Some 70% of Community financial activity relates to agricultural policy. It mostly consists in measures to support and regulate markets. Fraud in the Community is thus often bound up with the complexities of the Common Agricultural Policy.
In fact, most frauds against the Community budget that are reported to the institutions of the Community relate to the EAGGF Guarantee Section, price-adjustment levies, monetary compensatory amounts, refunds, intervention, subsidies, etc.

6. Other areas of Community activity are of course also affected. The fact that there is less publicity surrounding these other frauds can be accounted for inasmuch as Community activities in these areas are less prominent, and that the relevant information-systems and counter-measures are less highly developed than in the agricultural sector.

7. A further characteristic of Community fraud is its transfrontier character. One of the Community's major objectives has of course been to establish a common market, thereby reducing or eliminating differences between national markets. This has given rise to highly complicated legislation. AS distinct from old-fashioned smuggling, these forms of Community fraud are characterized by a series of cases that are sometimes known as the Community 'roundabout'.

8. One form of fraud relates to the subsidies that are granted in many areas for structural policy measures. These frauds, which have in fact long been known to the Member States, take advantage of the fact that objectives and procedures are determined centrally at European level. Here, too little account is taken of the fact that the resources and administrative structures necessary for implementing these measures are not entirely appropriate or adequate at national level. The measures taken under the EAGGF Guidance Section are an exception to this. Differences in national administrative structures will continue to be an obstacle to uniform application of Community legislation for some time.
9. Finally, fraud in the Community is highly technical. It presupposes a thorough knowledge of both legislation and administrative structures, as well as of markets and market movements. Irregular gains on a large scale can only be achieved through large-scale organization.
10. The Commission departments concerned collect and analyse in detail all reported cases of fraud. National monitoring authorities have also accumulated extensive experience in this area in conjunction with the European Court of Justice. Most techniques of fraud are therefore familiar.

(a) Small-scale fraud

The most widespread frauds involve submission of false declarations. They are difficult to analyse if the amount involved is under ECU 1,000, since the Member States are not then required to report.

11. If fraud on this scale is not rigorously combatted, it can spread rapidly. A typical example is given by fraud involving the payment of premiums to restrict milk production and stabilize the market in beef and veal. This mainly concerns premiums for

slaughter and for the non-marketing of milk. Numerous cases of fraud have been reported in various Commission reports since 1976¹. There were press reports at the time of up to 1,000 cases, in particular in Ireland and in the Federal Republic of Germany. Premiums were paid repeatedly for slaughtering the same animal, or were paid in respect of animals not eligible for them under Community legislation, or slaughter premiums were paid in respect of animals sold into intervention.

12. Reports by the Commission and by the special investigation team² have identified the loopholes giving rise to these frauds:

- inadequate methods and resources on the part of national administrations implementing and monitoring the measures;
- discrepancies in the arrangements for implementing payment of premiums as between Member States;
- loopholes or inadequacies in Community legislation.

13. The Community departments informed the Member States of the risk of fraud and proposed measures necessary to combat it³. In the course of 1980 numerous cases of fraud were again reported in the same areas and with approximately the same causes as irregularities committed over the preceding three or four years. In the interim some programmes had expired. But funds were still being paid out in respect of these programmes. The reasons were:

- discrepancies in arrangements for authorizing payment of premiums as between the Member States;

¹ COM(76) 131

² The role of this investigation team has been taken over by Financial Control

³ COM(76) 370 final, p. 90
COM(77) 220 and 221

- national administrations poorly prepared for duties in implementing Community legislation;

- Community legislation is too complicated.

14. The reports by Mr Patterson for the European Parliament's Committee on Budgetary Control outline the difficulties of carrying out monitoring procedures on the Irish border, and estimate the extent of frauds in this connection in 1980 as some ECU 10 million¹.
15. Fraud is not, of course, confined to slaughter premiums, but applies also to monetary compensatory amounts for almost all agricultural products, and to aid for butter consumption. Mr Patterson's forceful approaches to the relevant departments in the Member States concerned appear to have halted these practices.
16. The Court of Auditors of the Federal Republic of Germany refers in its annual report for 1979² to payments of premiums for non-marketing of milk between July 1977 and March 1981 on the basis of a Commission report. It notes that malpractices in certain Länder (the same ones as some years before, namely Lower Saxony and Schleswig-Holstein) affected some 80% of premiums paid.

¹ Doc. 1-100/82, p. 139

² p. 98 ff.

17. As a consequence of these manoeuvrings, not only premiums but also subsidies and loans were granted in respect of animals or farms excluded not eligible under the legislation in force. The Federal Court of Auditors in the Federal Republic of Germany considered that these irregularities were essentially attributable to inadequate preparation of the departments responsible for the administration of these premiums. Lack of clarity in the objectives of Community legislation also played a major part. It was for example not sufficiently clearly stated whether priority should be given to reducing milk production or securing farmers' incomes. Measures supported by the Member States when the legislation is being drafted cannot then be implemented because of inadequate preparation by national administrations.
18. At its meetings in November 1981 in Munich and Frankfurt the Committee on Budgetary Control heard all the parties concerned and continued its work in cooperation with the European Court of Auditors. It too came to share the view of the German Federal Court of Auditors that the national administrations could not be expected to implement the relevant measures strictly and accurately if there were difficulties with the overall objectives and purposes. The solution to the problem should be a global one, as Mr Key stated in his report on the discharge for 1980:

'The checks carried out by Parliament and by the ECA (European Court of Auditors) show that a series of EAGGF measures are partly or totally ineffective. ... This comes about in the context of the annual price-fixing for agriculture when less account is taken of the interest of the EEC than of transfers between Member States. This gives rise to criticism - not of the CAP - but of the way it is managed. The Committee on Budgetary Control is convinced that Parliament should have available to it an ECA study which would indicate clearly

- (i) which are the measures which could be more effective if a more rigorous system of management were applied;
- (ii) which measures are so pointless as to warrant being eliminated completely; and
- (iii) what are the mechanisms that cause loss for the EAGGF guarantee sector.'¹

19. The Commission has since submitted proposals for the reform of European Agricultural Policy. The results are still not available to the rapporteur.

¹ This has now been published: OJ No. C 287, 24 October 1983

The European Court of Auditors has also conducted an investigation into the problem of slaughter premiums for beef and veal which will eventually be considered by the Committee on Budgetary Control.

(b) Organized frauds

20. If the situation where national government departments have neither the means to implement legislation and monitor its application, nor a clear conception of the objectives to be pursued, continues over a number of years, not only will there be multiple frauds, they will become systematically organized. There will be a move into wholesale economic crime.
21. Since 1975 the Commission's special investigation party¹ has stressed for example the difficulties of monitoring in the olive oil aids sector. A study carried out by the Commission in 1972 estimated that 20% of Community aid in this area had been granted irregularly. The difficulties of monitoring lay principally in the large number of producers and mills. The working party made the following recommendations²:
- abolition of payment of premiums to third parties;
 - stepping up controls on oil production in mills and on producers' premises;
 - improved administration and book keeping by producer cooperatives.
22. These recommendations had little success, for the situation in 1980/81 was little changed. The Italian authorities had to investigate frauds on a grand scale. A number of producers had arranged with certain mills to receive higher aid payments by submitting exaggerated data for quantities of oil and olives.
23. In August 1983 the Commission asked the Council of Ministers to provide it with the necessary legal basis to bring fraudulent olive oil producers to heel. The Council of Ministers has still not reached a decision. The Commission has adopted the European Parliament's proposals. The Commission has determined that Italy, for example, with 1.2 million olive producers, 200 million olive trees and 8,000 oil mills to monitor, is completely overwhelmed. In 1981/82 applications were made for production aids initially for 800,000 and subsequently for 650,000 tonnes of harvested olive oil,

¹ COM(75) 37

² Ibid p. 9

whereas recorded Community consumption amounted to only 450,000 tonnes. The experts assume that 200,000 tonnes of this olive oil exist only on paper. The chief culprit is the system of global estimates introduced by the Member States.

24. The same basic situation is repeated in tomatoes and in fruit and vegetable production generally (see Gabert report Doc. 1-27 /83). A recent investigation was concluded with the arrest of 52 producers. It was established that Community aid had been granted to a large number of farms on the basis of falsified documents following oral agreements between producers and dealers.
25. Irregularities have also been established in the organization of the market in wine. Some types of organized fraud require a prior agreement between two firms, and in France for example two firms did in fact cooperate in 'converting' cheap wine into quality wine.
26. Occasional fraud is often committed by those who have daily contact with European legislation and therefore have first-hand knowledge of its loopholes and weaknesses. There is thus a great temptation to take advantage of the latter. A classic case is that of a major firm in the cereals trade which exported cereals from Denmark to the Federal Republic of Germany via the United Kingdom in order to take advantage of variations in compensatory amounts between Denmark and Britain.

The European Court of Justice has condemned this practice in a recent judgment.

(c) European organized crime

27. A new level of criminality is reached when a large organization is set up in order to make irregular gains at the Community's expense. The worst example of this is the so-called 'Como-Butter' affair. This operation was conducted in a number of countries including the Member States France, Italy and the Netherlands. During 1974/75 large quantities of butter were dispatched from the German Democratic Republic or other East-bloc countries to Rotterdam, sometimes by the direct route and sometimes via Switzerland or Belgium. A person resident in Switzerland who managed two Swiss firms arranged for the butter to be delivered to various destinations in the

north of Italy in French lorries. Since the butter originated outside the Community, price-adjustment levies should have been payable. This was avoided by the use of forged certificates and customs documents. A total of nearly 7,000 tonnes of butter was involved representing a loss to the Community budget of ECU 8.25 million. The European Court of Auditors delivered a detailed opinion on this case in its special report RS 7/82, and also gave instructions as what action should be taken to prevent similar frauds from being perpetrated in the future.

28. A notorious method of perpetrating these frauds against the Community is the so-called 'roundabout' where the same goods cross a frontier repeatedly collecting a subsidy or a customs exemption each time. The experience of Community and Member-state departments consulted by the rapporteur show that this kind of European-organized crime can spread, because it can take advantage of the weaknesses of European legislation such as:
- loopholes and lack of clarity in legislation;
 - inadequate pursuit of offenders;
 - insufficient cooperation between the Member States;
 - the extremely favourable situation of bordering third countries;
 - inadequate administrative and monitoring provisions, e.g. frontier controls in Ireland and the Benelux countries.
29. Experience shows that the Community's agricultural policy has no monopoly of frauds, and that many other sectors of the Community are also hit. These include the Social Fund, the Regional Fund, the ECSC, food aid, customs duties, etc.

Compared with frauds in the agricultural sector, it is typical of frauds in the social and regional policy sectors that virtually all cases uncovered are at national level, and that controls by the Community have scarcely ever revealed any irregularities.

30. Frauds in the areas of food aid and development aid generally display different features. These problems are dealt with specifically in a report by the European Court of Auditors of October 1980¹. Where third countries

¹ Special report on Community food aid, 30 October 1980

are concerned, the responsibility and monitoring capacity of Community departments is obviously limited. Yet in the view of the Court of Auditors, some on-the-spot monitoring activity is necessary. Monitoring of this kind by the Community would ensure that losses and embezzlement of sometimes considerable portions of Community food aid could be curtailed. One monitoring operation by the European Court of Auditors in a recipient country revealed, for example, that of 1,000 tonnes of cereals delivered free of charge by the Community, 44% had disappeared in transit or had spoilt in storage. Some was sold at reduced prices to the armed forces, and some was used to pay motor-vehicle maintenance bills. In another country visited a major part of aid was diverted from humanitarian purposes and used for the personal enrichment of certain prominent personalities. One of these personalities was ordered to repay ECU 6.8 million. The need for monitoring applies equally to routine aid, and not merely to emergency food aid. The Irmer report adopted by Parliament calls on the Council to take all necessary measures.

31. Combating VAT fraud poses a number of special problems for the Community that will be dealt with later. Cases of tariff frauds are reported regularly to the Community. On a visit to the main Hamburg customs office the chairman of the Committee on Budgetary Control, Mr Aigner, learned that importers were taking advantage of ambiguities in the common customs tariff by making false statements and, for example, adding token quantities of, say, pepper in order to have turkeymeat classified under a more favourable tariff heading.

32. Statistics on the extent of frauds are difficult to compile and must be used with caution. Firstly, undiscovered cases of fraud can obviously only feature in statistics as estimates of doubtful value. In individual Member States the categories of 'fraud' and 'discovered fraud' are defined differently. This leads to major discrepancies in the statistics that are submitted to the Commission. In particular the fact that the Federal Republic of Germany reports the largest number of cases is far from meaning that economic crime involving EEC funds is more prevalent there than in the other Member States. On the contrary, it means that fraud is combatted there more intensively and the category of 'fraud' is more strictly defined there than elsewhere.

33. If the official figures submitted by the Member States to the Commission are taken as the basis for an estimate, a very low fraud-rate of 0.14% emerges for the EAGGF Guarantee Section (70% of the Community budget). In other words, on a total expenditure of ECU 10,950 million in 1981, the Member States reported frauds totalling ECU 15 million.

Even if the reported figures from the Federal Republic of Germany - whose monitoring procedures are widely acknowledged - is taken as the basis for the estimate, the resultant fraud rate is only 0.61%. This figure is matched by the results of yet another estimate calculated on the basis of a method set out in a study by the Ministry of Justice in France, according to which known cases of fraud account for 0.67% of expenditure.

These figures are thus lower than those for tax evasion against national revenues. The fundamentally different nature and composition of national budgets as compared with the budget of the Community means however that such comparisons have little value.

34. In contrast to activities in the Member States, frauds and irregularities at European level bring the objectives and indeed the very existence of the Community policy concerned into question. It is not long before the quite justified question is being asked as to whether these frauds and irregularities are - at least partly - attributable to inadequacies in legislation. This can then give rise to a conflict over the desirability of such legislation, or over the content of the policy concerned as a whole, or indeed over the whole institutional set-up of the Communities.
35. Frauds committed against the Community budget in fact serve to highlight the basic difficulties facing Europe and European statesmen:
- how is a common market to be established and administered if national economies and currencies keep tending in the contrary direction?
 - how can legislation be created for the Community if it is implemented by national administrations using different methods, principles and structures?

36. Efforts to combat fraud keep running up against these difficulties. Whereas responsibility for implementing the Community budget rests with the Commission, administration and monitoring of measures financed from its appropriations have been entrusted to the Member States. To help resolve this ambiguity, the Commission, sometimes with the support of judgments of the European Court of Justice, has acted to determine, in combatting fraud, whether the Member States have, in accordance with their own principles and procedures

- (a) secured legally and organizationally satisfactory implementation of the measures financed;
- (b) prevented and pursued cases of fraud;
- (c) called for amounts owed to be repaid.

37. Unfortunately the Commission has little facilities to enable it to live up to its responsibilities for implementing the budget even at this modest level. As in many other areas, the Member States have evacuated this responsibility of all content, since the authority for implementation lies with them.

II. Means available to the Community to combat frauds and irregularities

38. The measures available to the Community to combat irregularities, like the powers of the Commission, vary considerably from sector to sector. In the best case - EAGGF - the Member States are required to inform the Commission regularly of cases of fraud that they have discovered. The Commission then has the option of calling for additional investigations, or of pursuing further investigations itself jointly with the national authorities.
39. The Commission can also discover irregularities on the basis of documents submitted under the procedure for the closing of the annual accounts, but this only takes place some years after the financial operations themselves. Demands for arrears going back a number of years can however have an extremely destructive impact on those concerned, so that this method is not recommended. The European Court of Auditors has also taken a highly critical view of this method. The procedure could be expedited without undermining the system itself.
- In other areas such as own-resources, and regional or social policy, the obligation on the Member States to report is much less precise, or indeed non-existent, and the Community depends totally on monitoring by national departments.
40. A further obstacle to combating frauds against the Community budget arises from the division of responsibilities between the national administrations and the Community departments concerned: although the Commission has final responsibility for implementation of the Community budget, and is therefore under an obligation to supervise the correctness of implementation measures, responsibility for combating fraud lies, in the first instance, with the Member States. This arrangement has some advantages:
41. This method allows best use to be made of the vast experience of national administrations in combating fraud without having to create a new and cumbersome administrative structure. It had also been hoped that this would avoid overlapping of monitoring procedures. However, since monitoring is ultimately carried out on behalf of and in the interests of the Community, an additional Community procedure had to be introduced to monitor national monitoring. The Community monitoring service endeavours, with scant resources, to reduce the disadvantages of location of responsibility for monitoring at national level.

- Differences between national administrative and legal structures lead to considerable discrepancies in the application of Community financial mechanisms.
- Differences in the intensity and effectiveness of national monitoring procedures have a negative impact on the willingness of national administrations to apply strict monitoring procedures that could put their own country at a disadvantage.

42. Efforts to combat fraud at Community level are also compromised by the division of responsibilities within the Commission. Monitoring duties - verification of authorization of measures, verification of their suitability, prevention and combating of irregularities, systems monitoring, pursuit and collection of amounts owed - are spread over different departments. Even if there is good coordination and cooperation between these departments, they still have their different standpoints and priorities, whereas measures to combat fraud can only be effectively pursued as a joint objective.

An overall view of the resources available to the Community to combat fraud is nevertheless possible, subject to these reservations, under the headings of prevention, pursuit, and collection of amounts owed.

A. Prevention

43. The Commission has relatively more resources at its disposal for prevention than for the pursuit of frauds. The priorities thus established are in line with its responsibilities as the guardian of Community law and as the institution holding the right of initiative.

44. The Commission's central position clearly makes it the most suitable body for collecting all information on frauds against the Community budget. Information is collected more or less systematically sector by sector:
45. In the EAGGF sector the Member States are required to report known cases of fraud to the Commission and to inform the latter regularly as to current procedures for the recovery of amounts owed. The Commission analyses and evaluates these reports.

The Commission's Financial Controller carries out pointed monitoring in the EAGGF and other sectors in an effort to identify weaknesses in the system. The information secured in this way is of value to the Commission principally in preparing appropriate proposals to improve legislation. The Commission has used this method - in the EAGGF sector - in setting up a number of special investigating parties on the organization of the market in different products, such as olive oil, beef and veal, dairy products, or cereals, to determine the main causes of the most widespread frauds in each sector. These investigating parties, composed jointly of Commission and Member-State officials, have performed an extremely valuable task and have made a significant contribution to ensuring that legislation concerning the relevant sectors has increasingly come to be considered from the point of view of its vulnerability to fraud, and increasing priority has been given to this viewpoint.

46. In the sector of own resources the Commission has much less detailed information on fraud than in the EAGGF sector, since Regulation 2891/77 requires the Member States to report twice yearly in general terms to the Commission on problems that have arisen.¹

¹ The Commission has proposed that the EAGGF information system should be applied also to the own-resources sector (see Notenboom report, Doc. 167/79). The Council has not yet reached a decision.

47. The data and experience gathered by the Commission are systematically classified and used, in the first instance, to brief Commission and Member-State officials on the most recent problems in implementing Community legislation, on the techniques of fraud being perpetrated, and on the sectors most at risk.

Contacts between Commission officials and those from the national administrations are held regularly in the different departments. The Commission has also for some years been running a programme to train national officials involved in monitoring and implementing EAGGF legislation. The rapporteur emphasizes the value of these measures if they are carried out thoroughly.

48. This accumulated experience is naturally also used by the Commission in preparing legislation concerning implementation of the different Community financial instruments. This in fact takes place systematically on the basis of a proposal by the special investigating party.

49. For some years the financial controller has been consulted on all proposals concerning legislation with financial consequences, in order that the impact and experience of control procedures could be evaluated. It is still too early to say whether this procedure has been successful. Its limitations are however obvious as soon as the Commission seeks any particular legislation, for there it can only make proposals. The decisions are taken by the Council on the basis of political considerations where the requirements of monitoring procedures and their effective implementation can play only a secondary role.

B. Pursuit

50. Although responsibility for investigating and pursuing cases of fraud against the Community budget is basically entrusted to the national administrations, it nevertheless remains a duty of the Community. The national administrations carry it out on behalf of the Community. The Commission must in particular meet its general responsibility for implementation of the Community budget, and ensure, or at least try to guarantee, that cases of fraud are pursued by the national authorities in such a manner as to give full weight to the Community's interests. If necessary, the Commission must intervene directly. The means available to it for doing so however vary widely from sector to sector. The Commission exercises this responsibility at three levels:

1. Coordination of monitoring by the Member States

51. The Community and the Member States came early to the realization that this extreme decentralization of monitoring procedures had a highly unfavourable impact on the full and due implementation of Community financing arrangements, and could give rise to repeated frauds¹.
52. In order to reduce this risk at least partly, it was decided that the national departments responsible for monitoring would cooperate with each other and with the Commission, and that the Commission would assume a coordinating function and collect and distribute the information obtained.

This involved the so-called mutual support:

- in collecting amounts owed in the EAGGF and customs-duty sectors (Directive 76/308)

¹ See second recital of Directive 76/308, OJ L 73, 19 March 1976, p. 18

- in implementing EAGGF and customs-duty legislation (Regulation 1468/81)

53. These texts are confined to certain aspects of implementation of Community legislation. It is clear however that national legislations themselves, and national legal and administrative structures, must be harmonized if effective implementation of Community financial instruments is sought. If necessary, appropriate legal structures must be established at Community level.

54. Even if national administrations are responsible for implementation and monitoring of Community financial mechanisms, Community funds are not distributed without a minimum of formalities and monitoring at Community level. The Commission thus has the option of preventing Community funds from being disbursed for purposes not provided for or on account of irregularities. This monitoring takes place in particular when

- (a) the Commission's financial controller endorses the various stages of the budget, although he only checks the availability of resources, and
- (b) the appropriate Commission department processes the documentation for the release of appropriations.

Monitoring is particularly intensive just before the measures to be financed are implemented as, for example, in the case of the EAGGF, where Community financing takes the form of advances.

This kind of prior monitoring by the Community departments can be based both on documents submitted and on on-the-spot investigations. Unfortunately these intensive monitoring procedures only take place some years after payments have been made, which detracts significantly from their effectiveness.

2. Additional monitoring in the Member States

55. Since the Commission has final responsibility for implementing the Community budget, it must have the option of initiating additional monitoring itself, of taking part in the procedures or even carrying them out directly, if it has determined that some national monitoring has been inadequately applied. The relevant legislation gives it this option, but the circumstances in which it applies unfortunately vary from sector to sector.
56. In the EAGGF sector the Commission has extensive scope for carrying out these additional investigations. Its officials can carry out additional on-the-spot investigations, although the Member States must be informed of them in advance so as to allow national officials to take part in the monitoring procedures. The Commission has more than once proposed that its officials should be allowed to carry out monitoring procedures unannounced as a kind of quality control. The Council of Ministers has unfortunately not yet reached any decision on this. The central responsibility now lies with it. The Commission also has the option of requiring the national authorities to conduct additional monitoring, in which its own officials can take part.
57. In the sector of own-resources the Commission's authority is weaker. All it can basically do is to require the national authorities to carry out additional monitoring, with the right to take part in the procedures. Beyond this it can only call for additional documents in exceptional cases.

C. Recovery of amounts owed (see Annex I)

58. Here too, the basic authority lies with the national departments. The Commission ensures that cooperation between the Member States is

such as to secure the best possible recovery of amounts owed or the refund of irregular payments. It must also guarantee that national departments fulfil all their commitments to the Community's interests.

In the case of the EAGGF the Community basically carries the full consequences of irregularities, except in cases where it can establish that the national authorities have acted irresponsibly, negligently or in error.¹

In the case of own resources the Member States are basically required to make established revenues available to the Commission, unless circumstances of force majeure have prevented this revenue from being collected.

The burden of proof in the case of the EAGGF lies therefore with the Commission but in the case of own-resources it lies with the Member States. Both systems have caused problems.

59. Where the EAGGF is concerned the Commission has great difficulty in making it clear to the Member States that they are responsible for irregularities and that they owe any amounts outstanding. The European Court of Justice puts debts in this connection at between ECU 1.6 and ECU 7.5 million.

In the case of own resources there have been major differences between the Member States in the interpretation of the terms 'established revenues' and 'force majeure'.

Problems also arise where the national courts hearing proceedings for fraud against the Community budget obviously take a more indulgent view than they do of fraud against the national tax system. The Commission is however powerless to intervene in such cases.

¹ Refunds of wrongful payments are covered by the provisions of Article 9 of Regulation 1697/79

III. Systematic organisation of measures to combat
fraud at Community Level-----

60. Decentralization of implementation and monitoring of Community financial instruments means, in the first instance, that Community finances are generally as efficiently monitored as national financial operations.

The second consequence however is that monitoring operations can only be carried out in accordance with the different procedures laid down in each Member State, a situation that can lead to inequities, and are implemented in isolation from each other, a fact that obviously increases the danger of fraud against transnational financial instruments. Decentralization of monitoring is a political and technical necessity that cannot be called into question. Its disadvantages are however so fundamental that they must be thoroughly clarified jointly by the Commission and the Member States if the effectiveness of Community financial operations is to remain credible.

61. The Community has already made several attempts to reduce the adverse effects on fraud control of this division of monitoring procedures. Some reforms have been implemented and have already produced satisfactory results. To achieve complete equity in this area however a number of other fundamental steps must be taken. There is often a lack of national infrastructures, clearly defined responsibilities and the necessary administration. On the other hand, the Community's interest in effective monitoring of its financial operations would be inadequately represented if legislation were simply shaped according to the financial instruments. The relevant decisions are taken, in particular in the Council, so as to secure a balance between national interests, and there is no intention of calling these into question on account of 'secondary' considerations such as the effectiveness of monitoring and the economic effectiveness of the operations. Procedures must be built in to ensure that the monitoring aspects are duly considered.

62. The present system has the following disadvantages, which obviously call for clarification:

- The transnational character of many Community financial instruments has given rise to much transnational economic crime, with which the present decentralized investigation system is unable to cope.
- The irregularities and frauds against the Community budgets tend to be concentrated in certain countries, in particular countries where :
 - a) the administrative structure is weaker,
 - b) legal judgements are less strict,
 - c) the geographical location favours fraud.
- In some countries investigation and punishment of frauds against the Community budget is less rigorous than in cases of national fraud.
- Countries that apply strict monitoring procedures feel themselves at a disadvantage compared with countries where monitoring is looser, because a disproportionate burden is placed on their nationals.
- Many Community financial instruments, e.g. the monetary compensatory amounts, are an open provocation to fraud, nor is there a clear justification for their existence.
- The extradition laws of certain third countries have created conditions favourable to the growth of organised economic crime.

63. To overcome these disadvantages a number of measures have already been taken, in particular concerning mutual assistance between the Member States and the Commission. Other Commission proposals have been unsuccessful however, because the Council and the Member States were not prepared to grant the necessary authority to the Community.

64. In general, the overall impression has arisen that the Community is still not in a position to take responsibility for systematic efforts to combat fraud against the Community budget. After having constantly confronted this problem for four years, the Committee on Budgetary Control feels under an obligation to propose systematic reform of legislation and administrative structures concerned in combating fraud .

A. Legislation

65. In 1976 the Commission proposed that fundamental loopholes in the pursuit of frauds, such as the fact that offences committed in one Member State cannot automatically be brought to justice in the other Member States, or that Community funds are not treated as public monies in all Member States, should be closed by amendment to the Treaties. The problem of responsibilities of Community officials in cases of irregularities could also have been resolved. This reform should finally be implemented, and the Council of Ministers and the Member States must make an effort to reach a decision. Criminal law in the Member States must be harmonized if effective measures are to be taken against fraud.

Under the Belgian Presidency, an ad-hoc working party considered a draft Agreement to amend the Treaties in terms of joint legislation on the the matter of legal protection of the Community's financial interests and of legal proceedings against infringements of the Treaties. Where the definition of irregularities concerning Community funds is concerned, this legislation will make it possible for infringements to be brought to justice directly in any Member State. This is of major importance. ¹

66. Routine procedures show that conflicting interpretation by national authorities of such terms as 'force majeure', or 'establishment of revenue' not only cause major problems in themselves, but also lead to inequities. This can even encourage irregularities. Procedures to harmonize these national interpretations should be concluded immediately.

¹ OJ C222, 22.9.1976

67. Experience has also shown that some national procedures are particularly effective and are clearly adapted to the peculiarities of the Community financial instrument, such as the law on the pursuit of fraud concerning subsidies in the Federal Republic of Germany (Paragraph 264 of the Penal Code). This experience should be applied at Community level.
68. The Commission's responsibility for combating fraud and implementing monitoring procedures should as far as possible be standardized in all areas. The Commission's proposal to extend the procedure for combating frauds in the EAGGF sector to the own-resources sector (COM (79)11 final) should now be adopted by the Council.
69. The Commission should have the option of conducting unannounced on-the-spot monitoring operations in the Member States and not only in the EAGGF sector, and not simply as a quality and control procedure, but also in cases where rapid action is needed to safeguard Community interests, as for example in relation to developments in the olive sector and in the fruit and vegetables sector. Here too the Commission should immediately submit relevant proposals to the Council, and the latter should take a decision at once.
70. The Commission should have the option of establishing, jointly with the national departments responsible during current procedures in the Member States concerning frauds against the Community budget, whether all available resources have been devoted to investigation and pursuit. Any outstanding legal bases should be created at Community level.

B. Administrative Structure

71. The Commission's establishment plans for pursuing and combating frauds bear no relations to the size of the task. The budgetary authority should approve the necessary establishment.

72. The Commission has begun to set up a system for the centralization, systematization and distribution of information on measures to combat fraud. These efforts should be continued, and the relevant departments should be allowed to acquire the necessary legal and staffing resources. A decision should also be taken as to whether these departments should have decision-making powers.

73. If the Commission is given the option of carrying out unannounced monitoring procedures in the Member States, a 'flying squad' should be set up for these duties.

C. Taking account of the monitoring aspects in drawing
up Community legislation-----

74. The Commission regularly consults its Financial Controller before submitting any proposals on legislation concerning the different financial instruments. This procedure is inadequate however, because the decision is taken by the Council. A procedure should be established whereby the Court of Auditors would be empowered to draw attention to the monitoring aspects of such provisions.

75. Experience has shown that a whole series of financial instruments are more or less ineffective and sometimes even harmful, such as monetary compensatory amounts. Financial instruments of this kind should be abolished.

The Commission should, acting jointly with the Court of Auditors, draw up a list of measures

- whose instruments could be improved,
- that should simply be abolished,
- that are particularly conducive to fraud.

D. Negotiations with third countries on the abolition of
circumstances that favour economic crime-----

76. Negotiations should be opened with countries who apply their extradition procedures in response to requests for extradition in such a way as to offer effective support to organised economic crime.

E. Monitoring of Value Added Tax

77. The problem has been summarised as follows :

Existing methods of collecting value added tax necessarily entail that the Member States in which tax evasion is a less significant problem are obliged to make a disproportionately high contribution to financing Community expenditure. Where a Member State pays too little into the joint kitty because its value-added-tax revenue has been reduced by tax evasion, the citizens of the other Member States must contribute correspondingly more. The taxpayer is penalised for being honest.

78. This problem is more than just a question of the fair distribution of the burden of financing the Community among the different Member States. In as much as evasion of value added tax means a lower joint base for the calculation of own resources from VAT at the same time as the Brussels value-added rate is limited to a maximum of 1% of the base, this can only mean a reduction in the own-resources potential of the Community thereby aggravating existing problems of Community budget financing.¹

79. The Commission should, acting jointly with the national authorities and with the assistance of the Statistical Office, draw up estimates of the incidence of value-added-tax fraud in each Member State, on basis of which the budget estimates could be adjusted.

80. The Commission should also complete the measures referred to in its answer to written question 1966/81 (Croux-Malangré-Notenboom)².

1 See info-rapid, 16.6.1981, p.96

2 OJ C188, 22.7.1982, p.3

RAGOP GUARANTEE SECTION - 1992
IRREGULARITIES REPORTED AND AMOUNTS RECOVERED

R = Refunds
I = Interventions

SECTOR	BELGIUM		DENMARK		GERMANY		FRANCE		IRELAND		ITALY		LUXEMBOURG		NETHERLANDS		UNIT. KINGDOM		TOTAL ECU			
	No of:	Amount:	No of:	Amount:	No of:	Amount:	No of:	Amount:	No of:	Amount:	No of:	Amount:	No of:	Amount:	No of:	Amount:	No of:	Amount:	No of:	Amount:		
Cereals R					19	2.067.536:							2	26.245:					21	2.093.581:		
I					17	91.492:					6	14.979:							23	106.472:		
Tot.					36	2.159.028:					6	14.979:							44	2.200.053:		
Milk and milk products R			2	36.500:	6	631.674:									2	4.091:			10	672.265:		
I			6	38.410:	34	1.489.125:	10	144.537:											50	1.521.062:		
Tot.			8	74.910:	40	2.040.809:	10	144.537:							2	4.091:			60	2.264.247:		
Pigment R					4	13.526:	2	12.359:							2	3.354:			7	29.241:		
I							7	102.458:											7	102.458:		
Tot.					4	13.526:	9	114.817:							2	3.354:			14	131.699:		
Eggs R							3	19.971:											3	19.971:		
Poultry-meat R																						
I																						
Beef/veal R	1	210.074:	1	6.091:	1	1.010.055:	3	38.705:											6	1.274.525:		
I							11	944.149:										12	25.617:	23	969.737:	
Tot.	1	210.074:	1	6.091:	12	1.942.992:	3	38.705:										12	25.617:	29	2.244.282:	
Oils and fats R																						
I																						
Tot.																						
Fruit & vegs. R					0		1	20.076:												1	20.076:	
I							1	207.914:			20	27.152.997:							21	27.360.811:		
Tot.							1	207.914:			20	27.152.997:							20	27.380.887:		
Sugar R																						
I																						
Tot.																						
Non-Annex II products R			4	19.000:	1	441.631:											1	14.571:	6	475.210:		
I																						
Tot.			4	19.000:	1	441.631:											1	14.571:	6	475.210:		
Other R			1	13.729:	0															1	13.719:	
I																			2	3.218:		
Tot.			1	13.729:	0	29.279:													2	3.218:		
MSA's R			1	3.201:	3	26.647:	4	29.110:									3	25.475:	0	94.044:	20	209.049:
I									1	29.722:												
Tot.			1	3.201:	3	26.647:	4	29.110:	1	29.722:							3	25.475:	0	94.044:	20	209.049:
TOTAL R	1	210.074:	12	89.644:	32	4.191.026:	4	58.701:							6	33.692:	1	14.571:	56	4.590.500:		
I			6	38.410:	74	2.785.316:	10	144.537:			34	27.167.976:					14	28.035:	138	30.165.074:		
Tot.	1	210.074:	18	128.054:	106	7.076.342:	14	203.238:			34	27.167.976:			6	33.692:	15	42.606:	194	45.755.574:		
of which:																						
1. amounts recovered or exp. justified					13	91.045:	37	473.647:	9	141.509:					2	4.399:	10	19.530:	71	731.050:		
2. amounts being recovered	1	210.074:	6	38.410:	77	6.325.162:	5	67.169:			34	27.167.976:			4	29.293:	5	23.046:	123	34.424.524:		