Protection of the Communities' financial interests – Fight against fraud – Annual report 2009

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PURPOSE: Protection of the EU's financial interests-fight against fraud- Annual Report 2009.

CONTENT: the Commission's annual report presents statistics and the new measures taken by Commission and Member States to meet their obligations in the protection of the EU's financial interests. This year's report also analyses two special topics: 'Cooperation between the Commission and the Member States concerning on-the-spot checks' and 'Measures taken by the Member States for the recovery of irregular amounts'. Both topics are of particular relevance for the EU institutions as well as for the national competent authorities.

The contents of the report may be summarised as follows:

Part I gives asummary of the statistics on irregularities reported by Member States in those areas where Member States implement the budget (agricultural policy, cohesion policy and pre-accession funds, i.e. around 80% of the budget) and for the collection of the EU's traditional own resources. It also gives an estimate of irregularities in the field of expenditure managed directly by the Commission and an overview of the operational activities of the European Anti-Fraud Office (OLAF). All the irregularities presented are being dealt with and are subject to different forms of follow-up, as described in the report.

Revenues: with regard to traditional own resources, the number of cases of irregularities reported in 2009 was 23 % lower than in 2008 while the estimated amount is also 8.5 % lower. The number of communications from the ten new Member States showed continued growth since their accession in 2004 until 2007.

In 2008 the growth stopped and 2009 shows 2 % less communicated cases compared with 2008 although the amount of TOR increased by 20 % from 2008 to 2009. Suspected fraud accounted for approximately 19 % of cases of irregularities reported, with an estimated financial impact of approximately EUR 99 million.

Expenditure: the report analyses four main headings on the expenditure side of the EU budget: agriculture, cohesion policy, pre-accession assistance and direct expenditure, covering different policies ranging from research and development to humanitarian aid. In general, regarding the reporting of irregularities for the expenditure part of the EU budget, 2009 should be regarded as a transition year due to the introduction of the internet based reporting system (IMS- Irregularity Management System) which may have caused problems in relation to the reporting, registration and migration of irregularities into the new system. However, the new reporting system has improved the overall conditions for irregularity reporting. It is therefore welcomed by the majority of the Member States which have already used it for the 2009 reporting year. All Member States should fully implement the IMS and be ready to use the system for the 2010 reporting exercise.

Part II focuses on theinternational dimension of the protection of the EU's financial interests and presents the state of ratification of the protection of financial interests (PFI) instruments. The report notes that negotiations continue for a cooperation agreement between the EC and its Member States and Liechtenstein, to combat fraud and any other illegal activity to the detriment of their financial interests. This agreement would bring considerable added value in so far as its scope covers not only tax evasion, tax fraud and any other illegal activities affecting the financial interests of the parties, but also the

exchange of information on tax matters, in line with the OECD standard, thereby preventing banking secrecy being relied on as an exception that would prevent information exchange. The agreement is of the utmost importance as it should also serve as a model for anti-fraud agreements with other third countries (Andorra, Monaco, San Marino and the Swiss Confederation). In addition, the Commission, through OLAF, is currently leading several Partnership and Cooperation Agreements and Association Agreement negotiation processes with respect to financial cooperation and protection of the EU's and its partner countries' financial interests. The financial cooperation chapter within the EU-Ukraine Association Agreement could be used as a solid basis for future negotiations, since the provisions in the financial cooperation chapter negotiated with Ukraine represent the most comprehensive and broadest set of anti-fraud and control provisions in relation to the Commission's competences in this area.

In **Part III the** report deals with administrative measures taken by the Commission to fight fraud and irregularities in the customs area. Further progress was achieved in 2009 in the customs area, with the deployment, in accordance with the new Regulation 766/2008/EC, of a new customs database and the joint customs operation Diabolo II. The operation's success is due to cooperation and effective work involving customs officials from 13 Asian countries and 27 EU Member States and constitutes an encouragement for the conduct of further common operations.

The report goes on to invite Member States that are not yet using the FIDE database to do so in order better to coordinate their investigations.

Part IV gives an overview of the results of the questionnaire regarding **cooperation between the Commission (OLAF) and the Member States concerning on-the-spot checks**. Cooperation is vital, starting with the pre-operational phase of the inspection, when the competent national authority has to be notified by OLAF of the object, purpose and legal basis of the check that OLAF intends to conduct. For that, OLAF needs to correctly identify the competent national authority and this has at times proved challenging, particularly in the field of direct expenditure. To solve this problem Member States have communicated to OLAF the complete contact details of national authorities for all expenditure fields, including direct expenditure, thus enabling the OLAF investigators to contact the competent authority in good time before the check. The designation of a national administrative and judicial authority with competences extended to the field of direct expenditure in all Member States is strongly recommended.

The report considers that Member States have taken a number of measures to consolidate the implementation of Regulation 2185/1996. However, in practice, some improvements can still be made in that area, including in cooperation between OLAF and the national authorities. These include the need for the national inspector participating in an OLAF on-the-spot check to sign the OLAF report, thus avoiding the risk of it being nonadmissible or having lower evidentiary value in administrative or judicial proceedings.

Part Vof the report deals with **recoveries** made in 2009 in all budget areas and presents the measures that Member States take for securing the recovery of irregular amounts. As regards the recovery of illegal amounts the legal instruments against financial loss or damage and the registration of irregularities and recovery of debts are incorporated within the national legislative systems. The report states that Member States' legislation should give priority to the enforceability of recovery orders, which has an important role in speeding up recovery procedures. To secure the recovery of irregular payments included in contracts involving EU funds, all Member States should provide for legal instruments, such as different types of guarantees, promissory notes, security deposits, personal or joint sureties, offsetting, bank bonds, mortgages or insurances, in the contracts. To support speedy recovery procedures additional binding and precautionary elements should be considered for future EU legislation concerning shared management.

Lastly, with regard to pre-accession funds, the report notes that, as recovery rates are low, safeguard measures should be implemented for suspected fraud cases (in the form of seizure of assets, suspension of payments, bank guarantees, etc) to ensure that recovery can still take place after the final court ruling. The Member States concerned should pay special attention to the recovery of pre-accession funds.