Fight against fraud and protection of the European Communities' financial interests

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PURPOSE : to present the 2003 Annual Report on the protection of the European Communities' financial interests and the fight against fraud.

CONTENT : the 2003 report recently issued by the Commission illustrates the continued efforts to improve the fight against fraud, in terms of structures and procedures, both within the European institutions and at national level. The report highlights the significant efforts undertaken to audit the structural funds following recommendations by the Court of Auditors, develop information sharing with the Member states and improve recovery in the area of direct expenditure such as agriculture. The Commission remains concerned that Member States do not notify irregularities on a sufficiently consistent basis and that their efforts to safeguard the Communities financial interests and claw-back funds are not always adequate, although organisational improvements are progressively bringing about an improvement of the situation. The report also reveals a decrease in the overall number of cases and amounts of irregularity reported in the fields of own resources, CAP and structural funds. Likewise, the Commission is continuing its own efforts through the final stage of implementation of its 2000-2005 strategy, through further improvements in OLAF's regulatory and organisational environment; enhanced information flows with Member States; and the preparations for the future establishment of an European Public Prosecutor.

More specifically, the Commission established its political and general objectives in its overall strategic Approach adopted on 28 June 2000 for the 2001-2005 period. The implementation of this overall strategy by the Commission, including by the European Anti-Fraud Office in its non operational functions, is given concrete expression in the 2001-2003 Action Plan. Major developments achieved in 2003 by the Commission, are highlighted in this annual report. They are in line with the four main themes of the Overall Strategic Approach. The report refers to certain horizontal topics such as the results of the audits in the Structural Funds. It also refers to the Commission Report evaluating the activities of OLAF and the commitments made before the European Parliament on 18 November

2003. A summary is made of progress in the criminal law protection of the financial interests of the Communities, in particular with regard to the European prosecutor project and relations between the Commission and the judicial and police cooperation bodies.

The first part of the report highlights some significant Community activities in 2003, without mentioning all of the tasks achieved to implement the 2001-2003 Action Plan and to follow up the Resolutions of the European Parliament and the Annual Report of the Court of Auditors for the financial year 2002. The second part of the report presents a summary of the measures taken in 2003 by the Member States to implement the EC treaty. Two aspects were favoured in 2003: the structural measures and recovery in the field of direct expenditure.

The report is accompanied by two staff working documents: on the one hand, the implementation of the 2001-2003 Action Plan and an inventory of the measures taken by the Member States, on the other hand the relevant statistical information.

- As regards the overall Evaluation of the Measures adopted by the Community in the area of structural funds: the internal follow up of irregularities and the procedures for recovery were judged satisfactory in

the majority of the Member States - which leads to believe that the latter organise themselves better regarding their responsibilities related to sound management of the Structural Funds, as well as dealing with irregularities and recovery, and that they generally assume their tasks in an appropriate way.

It is necessary, then, for Member States to improve their interpretation of the concept of irregularity so as to have a more complete and reliable image of the protection of financial interests and the fight against fraud on the basis of complete, coherent, precise and up to date data. The Commission sent to the various Member States specific recommendations to be implemented.

- With regard to Community policies carried out by way of decentralized management (EAGGF-Guarantee, structural funds), it is up to the Member States to carry out the recovery of the funds unduly paid to the final recipients and to repay the amounts to the Community budget. For its part, the Commission is required to follow the recovery procedures carried out by the Member States and to apply, if necessary, the clearance procedures. The slowness of these procedures and the accumulation of Community debts is a subject of concern both for the Commission, the Court of Auditors and the Budgetary authority. In its communication of 3 December 2002 which aims in particular to strengthen recovery, the Commission decided to set up a Recovery Task Force in the area of EAGGF Guarantee Funds, made up of agents of OLAF and the DG Agriculture. The total arrears of irregularities due to be recovered were estimated in 2002 at EUR 2.2 billion, according to the data communicated by the Member States under the terms of Articles 3 and 5 of Regulation 595/91.

With regard to cases of irregularity communicated before 1999, the subject of the work of the Task Force, the amount is more than EUR 1 billion. With regard to the cases from the years 1995 to 1999 and the cases prior to 1995 relating to Italy, the Task Force examined in detail 433 cases (of which 343 concern Italy), each of which involved an amount higher than EUR 500.000. Once this analysis was completed, the total to be recovered was fixed at EUR 700 million for nine Member States (including 550 million for Italy). It should be noted that the Commission set up a consultation process involving the European Anti Fraud Office as far upstream as possible, so as to benefit from its operational experience from the stage of the drawing-up of the legislative proposals. This mechanism entered its active phase in 2003 and was, however, for this first full year of operation, of a primarily experimental nature.

- A strategy of cooperation and mutual assistance between all the public partners is particularly necessary to fight efficiently against organised criminality, in particular transnational criminality, affecting the Community's financial interests. The Commission assumes its responsibilities, in particular by giving its assistance in the field of intelligence and in the operational field.

- Since May 1999, the Community has had an overall legal framework to fight against fraud, corruption and any other illegal activity affecting its financial interests and to investigate irregular behaviour inside the institutions, bodies and offices. Reflections on the reinforcement of this mechanism, which frames OLAF's activities, advanced in 2003, including on the basis of the Commission's progress report (article 15) and experience in the Eurostat case.

- The requirement to prosecute in a more effective way the authors of criminality undermining the Communities' financial interests, a fortiori under an enlarged Europe, led the Commission to propose the creation of a European Prosecutor. The year 2003 will have been marked by the follow up of this debate and its concrete expression in the proposals of the European Convention on the establishment of a European Public Prosecutor, on which the decision is to be made by the Intergovernmental Conference (IGC). Lastly, as a result of the extension of the mandate of Europol on 01/01/2002 to all the serious forms of international criminality, among which fraud and corruption, and of the creation of Eurojust, there have been significant developments in the cooperation between the Commission and the judicial and police bodies, in 2003.