Protection of the Communities' financial interests: fight against fraud. Annual report 2005

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PURPOSE: the presentation of the 2005 Annual Report on the “Fight against Fraud”.

CONTENT: in accordance with Article 280 of the EU Treaty the Commission is expected to prepare an annual report on the protection of the Community’s financial interests and the measures taken in the fight against fraud. This report is a summary of the measures taken. For a more detailed assessment, plus Member States’ contributions to the presentation of this report, see SEC(2006)911 and SEC(2006)912.

Section 1: In this section, the Commission presents an assessment on the overall strategic approach taken to protect the Community’s financial resources between 2001-2005. During this period, the Commission has sought to follow a horizontal, cross-pillar approach to anti-fraud policy through the integration of all sectors potentially affected by fraud and corruption. The new Financial Regulation, which entered into force in 2003 has considerably enhanced the Community’s financial interests. The Regulation, for example, makes recovery more effective; it moves the Community away from a “cash-based” approach towards a system of accrual accounting; and it provides for the removal of unreliable candidates from public contracts.

In 2005:

- the Commission adopted a second report on the “Black List Regulation”. This Regulation identifies those economic operators, working within the boundaries of the EAGGF Guarantee Section, that could pose a potential threat to the economic interests of the Community. The report’ s conclusion was that the success of the Regulation is modest. Based on these conclusions the Commission hopes to provoke a wide-ranging debate, with all of the institutions, on the need for a potential reform of the exclusion mechanism.

- the ten new EU Member States, along with Romania and Bulgaria, have established national anti-fraud co-ordination services (AFCOS), which have proved very useful. AFCOS have been specifically designed to take responsibility for all of the legislative, administrative and operational aspects relating to the protection of the Community’s financial interests.

- OLAF launched a permanent technical support infrastructure (POCU) which co-operates with and supports joint customs operation by the Member States. The first operation to take place in 2005 was “Operation Fake” on counterfeit goods stemming from China. This operation, according to the Commission Report, produced very satisfactory results.

- considerable attention was given to both preventing and combating corruption. A memoranda of understanding which was signed between OLAF, the Internal Audit Office (IAF) and IDOC, describing their respective areas of activity, has created the right conditions for a fruitful co-operation between these bodies.

- in the context of administrative reform, measures have been taken to make Commission officials aware of sound project management, conflicts of interest and the correct procedure in cases where a case of serious wrong-doing, which could affect the Community's interests, is suspected.

On the matter of criminal judicial enhancement, the Commission remarks on a landmark ruling delivered by the European Court of Justice in 2005 on criminal-law provisions relating to the first and third pillars and the proposal for a Directive *on the criminal-law protection of the financial interests of the Community*, in particular. According to this judgement, when recourse to a specific criminal-law provision is necessary to guarantee the effectiveness of Community law, it must be adopted exclusively under the first pillar. This system has put an end to the dual-text mechanisms – i.e. Regulation, or Directive or Framework Decision.

Section 2: This section contains a statistical summary of on the number of irregularities reported under the sectoral regulations. The Report notes that in 2005:

- on the matter of the **Community's own resources**, suspicion of fraud accounts for approximately 20% of all irregularities notified in 2005 at a cost of some EUR 95.2 million.

- for **agricultural expenditure**, suspicions of fraud account for approximately 13% of the cases of irregularities notified, involving some €21.5 million, equivalent to 0.05% of the total EAGGF Guarantee Section appropriations.

- for the **structural funds**, approximately 15% of the irregularities notified (or some €205 million) were attributed to fraud – equivalent to some 0.53% of the total appropriations for the Structural Funds and the Cohesion Fund.

- for **pre-accession funds**, fraud accounted for approximately 18% of the irregularities notified involving an amount of some €1.77 million - equivalent to 0.06% of the total appropriations under the PHARE, SAPARD and ISPA funds.

These amounts are based on Member State estimates.

- on the matter of **traditional own resources**, the number of cases of detected fraud and irregularities communicated (in other words cases higher than €10 000) increased by 55 % compared to 2004.

- the amount affected by irregularities in 2005 is around €322 million, compared to €212 million in 2004, an increase of 52%. The Commission attributes this to enhanced Member States communication and that some Member States have joined the OWNRES system, which lists cases of un-discharged transit operations that were subsequently, although belatedly, discharged. One can not, therefore, conclude that the 55% increase relates to an actual increase in fraud and other irregularities.

Section 3: This section contains an illustrative selection of measures taken in 2005 by the Member States and the Commission. It also contains a description of measures taken to improve the effectiveness of the European Anti-Fraud Office (OLAF).

Section 4: This section sets out measures taken to improve the recovery of sums not collected or paid unduly.

Section 5: This section deals with the certification of Member States' accounts. The largest part of the EU budget is managed jointly between the Commission and the Member States. Thus, this section gives a

brief comparison of the control principles and standards and of the certification systems (where they exist) applied by the Member States.

To conclude, five years after the launch of the overall strategic approach, a positive assessment can be made of the actions undertaken. Significant progress has been made in each of the main guidelines for the protection of the Community's financial interests. The Report does, however, lament he slow progress on the establishment of a "European Prosecutor" – which is the result of the failed Constitution. Of all the actions planned for 2005, 75% were carried out in full, with a further 9% being partially carried out within the stipulated timeframe. 14% were postponed to 2006 and 10% have been provisionally suspended – largely for reasons beyond the Commission's control.