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Protection of the Communities' financial interests

**The fight against fraud
For an overall strategic approach**

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This communication follows up the conclusions of the Heads of State or Government who met in Helsinki on 10 and 11 December 1999 under the point “the fight against fraud”¹ according to which “The establishment of the European Anti-Fraud Office constituted an important new step in the fight against fraud. The Commission will present at the latest by June 2000 a communication on the development of the overall strategy which should allow the financial interests of the Community to be protected”.

The protection of financial interests is the business of everyone, the institutions and their members on a political level, the European public service as well as national civil services and their officials in the performance of their daily missions. It is a concern which takes shape from the stage of drawing up Community policies and is observed at all stages of the process of their implementation, in particular at the level of their budgetary or financial consequences.

To be in line with the conclusions of the Helsinki European Council, the orientations of this communication are complementary to the measures already taken to ensure good, sound and rigorous financial management of the different policies of the European Union and to prevent the risks of irregularities or misappropriation of funds. The White Paper on the reform of the Commission² made this objective a permanent concern for all the services of the institution required to implement these policies or to ensure their control and follow up. This concern must be in line with a dynamic to improve constantly existing measures on the basis of the regular evaluation of their effectiveness. The Commission has, moreover, in the framework of this reform, already begun a profound revision of its methods of financial management and audit as well as its administrative practices (amendment of the staff regulations of officials and servants of the Community, strengthening of disciplinary procedures etc.). In very concrete terms, the revision of the financial regulation, the establishment of an internal audit service and a central financial service in particular represent so many elements which come to strengthen protection of financial interests³.

This communication is in line with the same process of strengthening public finance and represents more particularly the approach which the Commission intends to present to the Council and the European Parliament on the fight against fraud, corruption and any other illegal activity detrimental to the Communities’ financial interests. It relies on the new institutional framework and the complementarity of the work of the Member States and the institutions.

FOR AN OVERALL STRATEGIC APPROACH

Community public finance is governed by provisions included in the EC Treaty.⁴ The preparation, implementation and protection of the Community budget is the responsibility of the European institutions and the Member States. The European Parliament and the Council, as well as the Commission, have particular responsibilities in this area. The European Parliament and the Council, as the budgetary authority, decide on the budget and it is for the Parliament to state for each exercise that it has been finally adopted. The European Parliament

¹ Conclusions of the Helsinki European Council of 10 and 11 December 1999; Point 24.

² White Paper on Reforming the Commission. COM (2000) 200 final of 5 April 2000.

³ These actions proper to the reform, outlined in detail in the White Paper, have been the subject of a specific action plan. They are not raised as such in this communication which intends, for its part, to complete the activity of all the services which work together to protect financial interests.

⁴ Articles 274 to 280 of the EC Treaty.

follows the Council in examining the accounts and the financial summary. It gives discharge to the Commission on the implementation of the budget. Moreover, the Court of Auditors examines the legality of revenue and expenditure and ensures sound financial management.

The new Article 280 of the EC Treaty sets an objective of effective and equivalent protection throughout the Community. It requires all the responsible authorities in the Member States to organise close and regular cooperation with the Commission. It introduces a new legal base to allow the European Parliament and the Council to adopt by codecision procedure the measures to prevent and combat attacks on the Communities' financial interests.⁵ Article 280 of the EC Treaty calls finally for a policy of permanent evaluation and transparency which must be implemented on the basis of the Commission's annual report drawn up in cooperation with the Member States.

SIGNIFICANT AND SENSITIVE FINANCIAL ISSUES FOR THE INSTITUTIONS AND THE MEMBER STATES

In the course of European construction, the Union's expenditure has developed considerably and represents €93 billion for 2000.

Over and above the budgetary aspects concerned with Community income and expenditure, the Communities' financial interests include all the assets held or managed by the Communities. These Community financial interests may also be exposed to crime, in particular cross-border crime, and it is important for national and Community authorities to cooperate on a close and regular basis to ensure their protection. In this way they also participate in ensuring the balance of competition conditions between economic operators and equality of treatment between Member States. The confidence of European citizens and economic operators in their institutions will henceforth be strengthened.

THE CURRENT INSTITUTIONAL AND LEGISLATIVE FRAMEWORK

Since 1994, the Community approach for the protection of financial interests and the fight against fraud had been based on a dynamic⁶ aiming to develop the legislative framework to cover all the areas of protection of financial interests⁷ and to increase the experience of the Commission on the ground in compliance with fundamental rights and data protection.⁸ Regarding the criminal law protection of financial interests, the legal framework will be completed once the Convention on protection of financial interests and its protocols have been ratified.⁹ This pragmatic step undertaken after Maastricht has led with the Treaty of Amsterdam to significant changes clarifying the shared responsibilities between the Community and the Member States (Article 280 of the EC Treaty).

⁵ Under Article 280 the European Court of Auditors also participates in the legislative process by giving its opinion.

⁶ The significant results obtained were presented in the Commission's annual reports and the summary report drawn up in 1996. Most recently: COM (1999) 590 final, 17.12.99; COM (97) 200 final, 6.5.97.

⁷ Council Regulation (Euratom, EC) No 2988/95 relating to the protection of the financial interests (OJ L 312, 23.12.95); Council Regulation (Euratom, EC) No 2185/96 relating to on-the-spot checks and inspections carried out by the Commission (OJ L 292, 15.11.96); sectoral regulations on reporting and control obligations.

⁸ Article 286 of the EC Treaty and EC Directive 95/46 (OJ L 281, 23.1.95).

⁹ Convention of 26.7.95, 1st protocol of 27.9.96, second protocol of 19.6.97, protocol on interpretation by the CJEC of 29.11.96 and Convention on corruption of 25.5.97.

In May 1999, the Community already drew the conclusions¹⁰ from the entry into force of Article 280 of the EC Treaty by adopting an ambitious reform of the fight against fraud and corruption, marked by the establishment of the European Anti-Fraud Office (OLAF).¹¹ The White Paper on the reform of the Commission completes these initiatives by mobilising the Commission services to improve protection of the Communities' financial interests. This is why the Commission will encompass in its strategic approach the reinforcement of actions already undertaken by its services, which imply significant staff resources, to make financial management more rigorous, in particular through the decentralisation of the financial control function and the setting up of an internal audit service as well as through the establishment of working groups and mixed teams involving the Office and all the Commission departments.

A CHANGE OF DIMENSION AND NEW OBLIGATIONS

The request of the European Council of Helsinki comes at the time when Europe enters a turning point in its history. The work on the Intergovernmental Conference (IGC 2000), the planned enlargement to new countries, the overall dimension of Community objectives, from the internal market to monetary Union, fall within an economic area which is freeing itself progressively from national barriers. Nevertheless, the maintenance of legal borders complicates the task of the police or the courts without hindering the activity of the criminals.

The Amsterdam Treaty set the objective of the progressive establishment of an area of freedom, security and justice. The priorities and the timetable for achieving this were specified by the Tampere European Council of October 1999. It is important until this new area is established to follow an approach based both on the first and third pillars¹² to prevent and combat fraud, corruption and any other activity harmful to the Communities' financial interests. It is in this way that the terms "fraud" or "corruption" included in the remainder of the document should be understood.

THE FOUNDATIONS AND OBJECTIVES OF A NEW OVERALL AND INTEGRATED APPROACH

To satisfy the objectives of the EC Treaty (Article 280), the new approach¹³ must be based on a strengthened culture of cooperation between the national and Community levels. It must include at the same time a prevention policy and an effective financial follow up and sanction policy. This step requires the mobilisation of all the administrative as well as the judicial resources.

Action at national and Community level must be complementary. The Commission should highlight and concentrate its efforts on a number of topics or actions, ensuring the convergence of the national and Community effort, both on the operational ground and in

¹⁰ Economic and Financial Affairs Council of 25 May and Cologne European Council of June 1999.

¹¹ Commission service, operationally independent, monitored by a Supervisory Committee (See Commission decision of 28 April 1999; EC Euratom Regulations Nos 1073/1999 and 1074/1999, OJ L 136, 31 May 1999).

¹² Community initiatives (1st pillar) to be amplified via a cross-pillar approach by actions undertaken under the EU Treaty (3rd pillar).

¹³ The summary report on the application of the former article 209a of the EC Treaty, the annual reports and the work undertaken by the Commission in the field of criminal-law protection of financial interests, the conclusions of the Committee of Independent Experts, the Dehaene, von Weizsäcker and Simon report on the institutional implications of enlargement and the work of the institutions, in particular Parliament, the Council and the Court of Auditors, constitute the bases for the reflections undertaken to define this new approach.

legislation, either in the first or third pillar. The Commission approach will also encompass the added value of strengthened cooperation with candidate countries in the pre-accession strategy and non-member countries in particular in the context of trade policies and development aid.

THE MAIN LINES OF THE OVERALL STRATEGIC APPROACH

To put this global strategy project in a longer term context and achieve tangible and measurable results, the Community and the Member States will have to act with determination and plan their efforts in a multi-annual strategy (2001 to 2005) around four main strategic guidelines:

- *an overall legislative anti-fraud policy*; (the development of the regulatory system towards more effectiveness and coherence)
- *a new culture of operational cooperation*; (full participation and concerted commitment of the national and Community authorities on the ground)
- *an inter-institutional approach to prevent and combat corruption*; (the strengthening of the credibility of the European institutions)
- *enhancement of the penal judicial dimension* (adaptation of national criminal prosecutions to the new obligations of the Treaty).

The main lines of this strategy represent major challenges to be faced around which will have to be organised all the initiatives and priorities to be implemented in the annual programme.

1. FIRST CHALLENGE: AN OVERALL ANTI-FRAUD LEGISLATIVE POLICY

Under the terms of its anti-fraud policy, the Commission has endeavoured since 1994 to follow a horizontal and cross-pillar legislative approach. To be complete and overall, the fight against fraud must include prevention (1.1), detection (1.2), follow up (1.3) and cooperation (1.4) aspects by integrating all the sectors where fraud and corruption may take place. It must be given concrete expression with the drawing up of specific rules, in particular for information exchanges, controls and close and regular cooperation between the Member States and between the latter and the Commission. This cooperation is an essential element to strengthen mutual trust. It is still far from perfect. It must be stepped up amongst others in the area of regulations to enable everyone to fulfil their obligations more effectively.

1.1. Develop a culture of prevention and strengthen regulations

To be permanently effective, a policy of defence of public interests and funds must rely on clear legislation, easily applicable and including provisions likely to strengthen sound financial management and effective control of Community policies. These provisions must be sufficiently dissuasive to deter irregular action as far as can be done. In addition, it is important on the basis of a permanent evaluation of the difficulties encountered and the reality on the ground to be able to improve the legislative texts regularly to anticipate the risk of non-compliance with or abuse of the rules. Such an approach must begin with the drafting of Community legislation and policies and continue throughout the legislative process. The protection of Community financial interests is a matter for all the Commission departments, the services responsible for drawing up Community policies and regulations but also the

management services responsible for their implementation and the control of the sound application of the rules.

The Commission, in its internal reform, will strengthen the accountability of management services and be organised in such a way that the audit capacity and the financial control function of Directorates-General will be more effective. In this perspective, each Director-General will express in a declaration in her/his annual activity report that adequate internal controls have been put in place and that resources have been used for the intended purposes. Internal control standards will be defined. In this context, an independent internal audit service and a group specialising in financial errors which do not constitute irregularities have just been set up. The responsibility of officials will also be strengthened.

The topic of crime prevention remains a major concern for the Commission; it was also covered by the conclusions of the Tampere European Council recognising the need to pursue a cross-pillar approach.

Moreover, to help the departments responsible for drawing up Communities policies or the management services in their mission of protection of financial interests, the Commission will ensure the setting up of cooperation systems to draw the necessary conclusions from the results obtained in the areas of the fight against fraud and corruption to ensure the best possible level of proofing against fraud or corruption and to improve the management procedures and measures.

1.1.1. Involving the European Anti-fraud Office in prevention

It is therefore important to mobilise the Commission departments and the legislator to plan, propose and adopt economic and financial legislation which is fraud proof in all areas. In accordance with the objectives of the reform, the Commission will ensure that the Office may be consulted at the stage of preparation and at the various stages in the decision making process of all the legislative initiatives which have a direct or indirect impact on the protection of the Community's financial interests to ensure a better proofing against fraud and corruption by exploiting the lessons drawn from a good knowledge on the ground and the results of operational work.

1.1.2. Involving the national authorities in anti-fraud actions

The experience of national authorities must be mobilised to strengthen protection of Community policies, including with regard to their financial incidence. The Commission has for this purpose the appropriate bodies with a sectoral mission in all the areas of Community policies. Regarding more specifically the protection of financial interests, the Advisory Committee for the Coordination of Fraud Prevention (Cocolaf), which has a horizontal mission, gives the possibility of an overall view of the problem of the fight against fraud. It brings together high-level representatives of the Member States, must be more closely involved in long-term reflection. The Decision establishing Cocolaf will be amended to take account of the changes linked to the anti-fraud reform. The Committee will be able to meet in a specific composition to find concrete solutions. The Commission will be thus better placed to make proposals for the necessary initiatives by integrating the added value arising from the work of the experts.

1.1.3. Involving professional circles in a policy of transparency

The way in which criminal organisations split their tasks, make light of borders and mix legal and black economy activities, in particular by using different firms involved in the market or certain professions (warehousing firms, processors, transporters, wholesalers... liberal professions, advisers and auditors, legal and accounting experts ...) as well as brass plate firms located in areas where enforcement is light, makes an overall grasp of the criminal acts and identification of the whole criminal structure difficult. Given organised crime's ability to exploit legal structures to carry out fraudulent activities, the fight against fraud must be the concern of everyone. The Commission will undertake a reflection and act to raise the awareness of the most vulnerable economic sectors. Apart from the existing regulations in the agricultural area¹⁴ which have hitherto been sources of difficulty at operational level, it might be worth encouraging the professions concerned to draw up their own regulations, subject, if necessary, to public supervision making it possible to sanction weaknesses in the systems thus set up. This exercise could be undertaken in the light of the work carried out in the framework of the charter with the professional associations.¹⁵

1.2 Strengthening means of detection, controls and sanctions

The protection of the Communities' financial interests presupposes from the start a sound application of Community regulations as well as sound management of Community policies and funds. These principles represent an essential concern for all the Commission departments responsible for the implementation of these policies who thus participate in the prevention effort.

It is important in the first instance to complete the management effort and the existing control provisions in the different areas of Community policies by more specific measures. The effectiveness of the fight against fraud and corruption, particularly in the most sensitive sectors, requires the strengthening of means and legal instruments of detection, controls and sanctions. It is important in particular to improve the legal framework for information exchange.

1.2.1. Defining precisely irregular conduct and illegal activities

When launching its anti-fraud policy, the Commission endeavoured to define the concepts of irregularity, abuse of law, fraud, corruption and laundering. This approach must be continued. As regards the definition of criminal offences, the fact that there are so many different legal systems and the fact that instruments have not been ratified mean that there are always great differences in the definition of activities which contribute to fraud or corruption. The creation of common definitions will facilitate information exchanges and cooperation. It will boost the effectiveness of the application of penalties. This is why the Commission announced in its work programme for the year 2000 a legislative proposal to include certain of the provisions of the Convention and the related protocols on protection under criminal law of financial interests. With regard to the question of investigations inside the Community institutions, bodies or agencies (internal investigations), it will be especially important to define irregular conduct more tightly in particular so that effective administrative inquiries can be carried out.

¹⁴ EC Regulations Nos 1469/95 and 745/96, OJ L 145, 29.6.95, and L 102, 25.4.96, which provide for different measures to be taken against certain beneficiaries of operations financed by the EAGGF Guarantee Fund. Commission report on the state of application of these regulations planned.

¹⁵ The charter with the professional associations to combat organised crime of 27 July 1999

1.2.2. Extending information exchanges and control measures

In the framework of its anti-fraud policy, the Commission has developed a specific legal framework for information exchanges¹⁶ and control measures. Today, all areas of the Community budget are covered. On the basis of the summary included in its annual report, the Commission will draw conclusions and propose improvements if necessary. Complementary initiatives are already under way in connected or especially vulnerable sectors such as for example in the area of money laundering¹⁷, public procurement¹⁸ or the granting of subsidies.

1.2.3. Extending Community administrative penalties

To avoid the development of irregular actions and strengthen compliance with Community legal provisions, it is necessary to add to the administrative control provisions a system of administrative penalties. This system of administrative penalties, which should in theory exist at national level and does exist in certain sectors such as agriculture at Community level, is of course without prejudice to the existing national legal provisions with regard to guilty actions liable to lead to criminal proceedings.

A system of administrative penalties¹⁹ is essential as an instrument of deterrence, to accompany a policy of detection and controls. The Commission will take the initiative to extend administrative penalties to the most sensitive sectors, in accordance with the framework established by Council Regulation No 2988/95, in the light of the existing system for the common agricultural policy.

1.3. Ensure a more effective management of administrative and financial follow-up

As the European Parliament and the Court of Auditors have emphasised on several occasions and in accordance with the guidelines in the Commission White Paper on reform, actions will be undertaken to improve the recovery of unduly received or evaded amounts. Apart from the legislative measures that need to be taken for this purpose, the Commission, in line with the guidelines in the White Paper, will strengthen cooperation between the services concerned. It is important in fact to recover from the fraudsters the sums unjustifiably granted or evaded

¹⁶ See in particular Regulations Nos 1150/2000 (OJ L 130, 31.5.2000), 515/97 (OJ L 82, 22.3.97), 595/91 (OJ L 67, 14.3.91), 1681/94 and 1381/94 (OJ L 178, 12.7.94, and L 191, 27.7.94).

¹⁷ The proceeds of fraud are recycled through laundering networks, a *sine qua non* for crime which it cannot organise itself on a large scale without it. Dismantling a network without destroying its financial resources is pointless. The fight against laundering must therefore be a full component of the fight against fraud. Whereas the regulations impose obligations as to the exchange of information between the Commission and the Member States on fraud, there is currently no provision with regard to operations of laundering of the proceeds of Community fraud. The Commission, in its proposal for amendment of the money-laundering Directive, incorporated a provision allowing the Commission to be involved in the information system. The links between laundering and the principal offences to which it is attached will facilitate the identification of networks and will make it easier to trace the principals and thus seize and confiscate assets. The Commission will examine the possibility of amplifying the system.

¹⁸ Public procurement is vulnerable to fraud and corruption. The proposed consolidated directive on public procurement adopted by the Commission in May 2000 provides that a tenderer who has been finally convicted of certain types of offence may be excluded from such contracts. Moreover, a development of information exchanges would also make it possible to have provisions to eliminate candidates or operators posing a threat to the proper running of the tendering process from access to Community subsidies. This identification would therefore allow the tendering authorities to eliminate these candidates in compliance with the right of appeal and the data-protection rules.

¹⁹ With regard to disciplinary sanctions, see the third challenge under 3.3.

before reverting where appropriate to the procedures bringing into play, according to the specific provisions laid down for this purpose in the different Community policies, the financial responsibility of the Community or the Member States.

In this context, the Community has financial correction instruments with regard to Member States. These corrections must be applied in particular with the aim of motivating Member States to put in place effective national control systems.²⁰

These financial corrections do not have the aim of replacing a policy of recovery or of administrative penalties with regard to economic operators when irregularities are detected. The Commission, in the annual summary drawn up in cooperation with the Member States in accordance with Article 280 of the EC Treaty, will ensure the proper application of administrative penalties which already exist at Community level in the Member States.

1.4. Clarifying cooperation rules

In the internal market and the different Community policies, the Commission has progressively developed administrative cooperation rules with the national authorities which allow for a better application of economic and financial rules. Article 280 of the EC Treaty advocates strengthening cooperation between the national authorities and the Commission. Specific provisions which will be decided in the area will have to allow the development of anti-fraud cooperation in a legally well founded framework based on an overall approach where Community interests are threatened by certain types of transnational or organised crime.

1.4.1. The protection of financial interests

As regards cooperation and on-the-spot checks involving the national authorities with staff from the Commission services, the existing provisions in Community legislation are adapted to the specific nature of each sector. It proves that in the area of the fight against fraud, the use by the staff of the Office of these different legal bases has not always contributed to facilitating cooperation with the authorities responsible for the fight against fraud; it could affect the reliability of operational work and the administrative, financial or criminal-law consequences that it entails. A reflection will be started on the possibility of establishing a single base to simplify and clarify rules on cooperation or participation in national anti-fraud or anti-corruption investigations, without prejudice to retaining these different legal bases which the other Commission departments are required to use for the protection of the Communities' financial interests.

1.4.2. The protection of Community interests connected to the fight against fraud

In certain areas (agricultural and customs policies²¹) the regulations provide a complete system in the area of cooperation and mutual assistance between the Commission and the Member States to combat fraud and irregularities. The Commission will examine the possibility of extending or providing an analogous system to make less random the support of the Office to improve the fight against organised crime, and in particular transnational crime

²⁰ Clearance of accounts of EAGGF Guarantee Section expenditure, area of own resources. Preparation under way of detailed implementing rules in the area of the Structural Funds in line with Regulation No 1260/99 (OJ L 161, 26.6.94).

²¹ The Commission will evaluate with the customs authorities of the Member States any possibility of extending customs cooperation on the basis of Article 135 of the EC Treaty.

affecting Community interests connected to the fight against fraud or corruption. Experience gained in the field of protection of financial interests could also be put to use to improve cooperation with the Member States, in particular targeted fields where the Commission has already developed a Community policy or basic legislation.²²

1.4.3. Strengthening cooperation with applicant countries and non-member countries

The policy of enlargement, as is the case for Community development aid policies or trade policy, may also be exposed to risks of misappropriation from its primary objectives, in particular where significant funds are involved. It remains therefore essential to improve the level of cooperation with the authorities of the countries concerned.

To facilitate information exchanges and the necessary checks, the Commission will systematically examine the possibility of concluding administrative cooperation agreements or memoranda of understanding with all the responsible authorities²³ to ensure the proper application of legislation and check on the eligibility and the correct use of funds in these countries. These agreements should include specific provisions and amongst other things provide the possibility for the Office to carry out anti-fraud checks on the spot.

To improve Community policies targeted at non-member countries, in particular with regard to development aid and trade policy, the Commission will pursue an approach in this direction, graded according to the priorities which will be defined, with the European Union's other partners.

2. SECOND CHALLENGE: A NEW CULTURE OF OPERATIONAL COOPERATION

In the operational area, the objective pursued is to bring the resources together to encourage a more proactive orientation of action on the ground. To respond to this second challenge, the Commission will have to have an overall view of the economic and criminal environment (2.1) and thus be in a position to develop a new culture of cooperation with the national authorities (2.2). This second challenge also concerns cooperation with the authorities in the applicant countries (2.3). The attainment of these objectives must be inspired by a perspective of transparency and permanent evaluation (2.4).

2.1. Enhanced exploitation and analysis of intelligence

Effective action against fraud and corruption inside numerous countries presupposes the best possible knowledge of their economic and criminal environment. The complexity and sophistication of illegal activities, their transnational dimension and their clandestine nature make them more difficult to detect.

To have a specialised anti-fraud service which is effective and proactive at transnational level, it is essential to extend gradually the range of sources of available information and to ensure that the specific data the Office needs to do its job are accessible to it or are transmitted to it²⁴

²² See work under way for protection of the euro and the action to combat piracy and counterfeiting (EC Regulations Nos 3295/94 and 1367/95) in OJ L 341, 30.12.94, and L 133, 17.6.95). See Green Paper on the fight against counterfeiting and piracy in the internal market (COM(98) 569 final).

²³ Such arrangements are already in place in the agricultural sector (SAPARD programme).

²⁴ From the Commission departments, other institutions, organs or agencies (ECB, Court of Auditors, etc.) national authorities or other bodies such as Europol, Interpol, the WCO, the WTO, the World Bank, the IMF, the OECD. This activity will be backed up by the work done under the customs 2002 programme

in agreement with the institutions or bodies which have it. The technology and the technical means for gathering, storing and exploiting information must moreover be developed in the light of best practice. The detailed arrangements for the realisation of this project will have to be assessed taking account of the provisions concerning data protection, in particular in Articles 287 and 296 of the EC Treaty. The gathering and processing of data on persons will be carried out under the control of the independent body referred to in article 286 of the EC Treaty.

To enjoy an overall relevant vision, two levels may be distinguished as regards intelligence. While requiring different specialities, these two levels must be capable of being interlinked in a single service equipped with the necessary means and resources.

By developing its knowledge of circumstances which are favourable to fraud or corruption, the Community will acquire genuine strategic intelligence. Close attention must be paid to information on the economic, administrative, social and legal environment at national, Community and international level. This work must extend to all the available information, statistical data, trade, accounting data, transactions involving Community finance and the results of the checks and audits carried out in this field by other services, authorities or institutions. This information will, of course, have to be analysed in the light of its impact on the Communities' financial interests.

Crime relies on the existence of persons and networks, structured or not, whose activity has to be known about if it is to be prevented. The operational intelligence function consists in gaining familiarity with fraud mechanisms and the structure of fraud networks whether or not they involve organised crime. Information in the area comes from open sources or more limited sources such as police or intelligence services or authorities who have elements of information covering illegal activities affecting the Communities' financial interests.

The combined processing of two levels of information, strategic and operational, is necessary to facilitate an orientation to establish operational priorities.

The Commission will ensure that the Office is in a position to serve as a crossroads for gathering and analysing information and data to become a true "observatory of fraud and corruption", so as to supply the logistical support to Member States and institutions. For its part, the Office will ensure the services concerned are informed of the results of operational work to allow where appropriate the measures or procedures of management, control or follow up aimed at preventing irregularities, frauds or corruption to be improved.

2.2. For a new operational partnership with the Member States: a Community platform of services

The fight against fraud and corruption is a shared responsibility. In the area of internal policies and external actions, the Commission, which has direct management responsibility, will arrange to take all the requisite measures to prevent and combat fraud or corruption. In the other areas it must be the constant concern of all the partners concerned (the institutions, the political, administrative and judicial authorities of the Member States and non-member countries, representatives of the professions, and economic and financial operators).

on risk analysis applied to customs controls as well as, in the area of the common agricultural policy, by the controls in the framework of the integrated administration and control system (IACS) and the Geographical Information System (GIS).

To follow up Article 280 of the EC Treaty and in accordance with Article 1 of Regulations Nos 1073/1999 and 1074/1999, the Office is to provide the Commission's support to the Member States, in organising close and regular cooperation between their responsible authorities to coordinate their action aimed at protecting the Communities' financial interests against fraud. With the resources available to it and the prerogatives assigned to it by the Commission and the legislator, the Office will organise its functions to represent a true platform of services. In this way, it will be in a position to provide services in all the areas of its expertise by making its know-how and multidisciplinary experience available to all the national bodies or authorities responsible for the fight against fraud or corruption. This platform of services will facilitate new operational cooperation in all the areas of the fight against fraud or corruption on a regular, sure and flexible basis. Member States will thus be able to adapt their organisational structure or take the necessary measures to ensure greater synergy with the Office.

Of course, the performance of this task by the Office does not affect the responsibility of the other Commission departments to control or follow up the application of the Communities' economic and financial policies and to ensure sound financial management. The Commission will aim to facilitate the task of the Office so that it can integrate the action of these services which participate in protection of the Communities financial interests, in particular the internal audit service, to improve the added value brought by the Community level, in particular by setting up working groups or mixed teams involving the Office and all the services in protection of the Communities' financial interests.

2.3. For strengthened cooperation with the applicant countries

Crime is not confined to the territory of the Community. The European Union must bring its assistance to the candidate countries to ensure the same level of protection of Community interests. This is a priority set by the Commission in the framework of negotiations with the candidate countries who must take account of the specific character of the fight against fraud for the protection of Community interests. In the framework of the pre-accession strategy, Poland has given concrete expression to this approach by establishing a multi-disciplinary structure similar to the European Anti-Fraud Office²⁵ which will be able to serve as a model to other applicant countries.

Beyond the applicant countries, cooperation with non-member countries and certain international organisations will be strengthened.

2.4. A policy of permanent evaluation of anti-fraud actions

A policy for the permanent evaluation of the result of the actions of the Community and the Member States will be conducted to measure the progress achieved. It will be based on scoreboards established. The Office's periodic reports to the institutions and the Commission's annual report (Article 280 of the EC Treaty) will be the favoured instruments of this policy. Moreover, it is important to recall that the Commission and the legislator have set up a Supervisory committee responsible for exercising a regular monitoring of the implementation of the operational function of the Office. This committee is regularly informed of the Office's activities, investigations, their results and the follow up given to

²⁵ A central and multidisciplinary structure (customs, police, justice) under the auspices of the Prime Minister of Poland is being set up for the protection of Community interests. It will enjoy support during the launch period (at least 2 years) from a team of experts from the Member States designated by the European Anti-fraud Office. This structure was co-financed under the Phare programme.

them. The committee produces at least once a year a report which it addresses to the institutions. The Commission expects the Member States to fully inform it of what is undertaken at national level. Partnership in communication must be a two-way exercise in a spirit of mutual trust in order to achieve the objectives of the Treaty.

3. THIRD CHALLENGE: AN INTERINSTITUTIONAL APPROACH TO PREVENT AND COMBAT CORRUPTION

The strengthening of the credibility of Community policies by ensuring a better protection of the integrity of the European public service and the members of the institutions is the third challenge to be faced.²⁶ The Community legislator has accordingly conferred on the Office an interinstitutional mission to protect the European public service against the risks of influence liable to affect the legitimacy of Community decisions, opinions or legislation. This mission is defined in Regulations Nos 1073/1999 and 1074/1999, in the Commission Decision of 28 April 1999 and in the interinstitutional agreement of 25 May 1999 and will be carried out in the spirit of the reform being undertaken by the Commission. The Office will have to cooperate closely and regularly with the Community institutions, bodies and agencies and contribute to training actions (3.1). It must also encourage transparency and the duty to communicate (3.2). Administrative investigation missions must be amplified by fair and effective penalties (3.3).

3.1. Develop a culture of cooperation at all levels

3.1.1. The Commission departments and the other institutions, bodies and agencies

To be effective, action in preventing and combating serious acts liable to affect the Communities' financial interests and the credibility of the institutions, bodies and agencies must be based on loyal cooperation between the institutions, bodies and agencies. It is therefore essential to ensure the consistency of the duties of the members and officials of public bodies, though individual rights must, of course, be respected.

In accordance with the obligations resulting from the new legislation,²⁷ the Office must consolidate close relations with all Commission departments and those of the other institutions, bodies or agencies. The evaluation of the results of the reform will be the subject of a detailed reflection within the Commission in the follow up to the White Paper to determine their scope and relevance.

3.1.2. Appropriate training and permanent awareness-raising among staff

The training and awareness-raising activities both at national and European level will have to concern all staff from entry into service and throughout their career. They will address more particularly the services responsible for the management procedures for procurement or granting subsidies. It must be integrated into the programmes drawn up by the Commission departments. This will make it possible to promote a system of values on which the administration of the institutions will be able to rely. The Commission will develop rules on ethics and conflicts of interests to aim for transparency and security so as to avoid Community decisions being affected by irregular influences.

²⁶ Of course, activity in this area is linked to preventive actions and legislative initiatives referred to in the framework of the first challenge and involving all the Commission departments.

²⁷ In particular, Article 4(6)a of (EC, Euratom) Regulations Nos 1073/1999 and 1074/1999.

3.2. Transparency, duty to communicate

The objective is to have a working environment where every official at every level is in a position to be aware of his responsibilities, in particular with regard to the obligation of loyalty to the institutions and the obligation to cooperate to prevent irregularities. Consequently, the new anti-fraud mechanism adopted on 25 May 1999 has been supplemented by internal decisions by the institutions, bodies and agencies for the implementation of the new regulations and the interinstitutional agreement in accordance with the calls by the Council of 25 May 1999 and the Cologne European Council.²⁸

3.3. Independent administrative investigations; fair and effective penalties

The legislator has given the Office the task of conducting administrative investigations within the Community institutions, bodies and agencies with a view to “bringing to light serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials and servants of the Communities liable to result in disciplinary or, in appropriate cases, criminal proceedings, or a failure to comply with the analogous obligations of the members, managers or members of staff not subject to the Staff Regulations”. The actions of the Office will have to aim for the objective of “zero tolerance” recommended in the Commission reform. However, not being required by its mission to carry out systematic controls which are the responsibility of other services, the effectiveness of the Office will rely on compliance with the information obligations which apply to all the members and agents of the institutions, bodies or agencies in accordance with their duty of loyalty. For its part, the Office will notify the findings of its investigations in accordance with the obligations which arise from the new system to the institutions, bodies or agencies. The Community institutions, bodies or agencies will have to give the Office’s investigations the appropriate disciplinary or judicial follow up. They retain nevertheless their own responsibilities to conduct administrative investigations falling outside the Office’s remit.

The revision of the rules in the Staff Regulations concerning disciplinary proceedings, including a clarification of Staff’s rights and obligations, as proposed in the White Paper on Reforming the Commission²⁹, should enable the share of responsibilities to be clarified and a fair and effective follow up of the Office’s investigations by the European institutions to be ensured.

4. FOURTH CHALLENGE: THE ENHANCEMENT OF THE PENAL JUDICIAL DIMENSION

The developments of crime as well as the development linked to the economic, social or political situation in the countries are important factors which play a far from negligible role in the process of drawing up or adapting national criminal legislation. It is not surprising in these conditions that the emergence of specific types of crime in a political context which goes beyond the solely national framework calls for the strengthening of action to integrate better the judicial dimension in the criminal law area into the definition of an overall strategic approach and thus prevent and combat fraud harmful to Community interests and corruption.

The adaptation of national criminal policies to the new obligations of the EC Treaty (Article 280) and the support of the European institutions to improve the cooperation mission of the

²⁸ At this stage, certain differences in the implementation of the interinstitutional agreement of 25 May 1999 by the different institutions, bodies or agencies have been noted.

²⁹ COM (2000) 200 final of 5 April 2000.

Office with the judicial authorities constitute the fourth challenge of this strategic approach. It is through the existing legal framework (4.1) and the means which it has with the Office (4.2) that the Commission intends to carry out new and reinforced action.

4.1. Current legal framework

The initiatives undertaken since 1995³⁰ have allowed an overall legislative dynamic for protection of the Communities' financial interests to be launched. The inclusion in the Treaty of Amsterdam of Article 280, the Regulations adopted in May 1999 under the co-decision procedure, the interinstitutional agreement and the establishment of the European Anti-Fraud Office bring about in a tangible manner the integration of the national judicial dimension in the fight against fraud and corruption. The significant mechanism put in place by the Convention on criminal-law protection of financial interests and the three protocols to it³¹ will complete the construction.

The instruments already exist at Community level to improve the detection of offences and to provide the national judicial authorities with the additional means to process cases of fraud under the criminal law.³² The use of these instruments will again come up against certain obstacles. It is these difficulties which it will be necessary to remove. They are most often linked to the non-compatibility of national legal systems, the handling of complex cases, the lack of resources or even special technical and linguistic features. They lead the national authorities to rely on the solely national aspects available to them whereas it is the overall grasp of the facts, thanks to a better overall vision and close and regular cooperation, which can allow these obstacles to be overcome and move towards a global system better adapted to protection of the Communities' financial interests.

4.2. Scope and means for Community action

The scope of the Community system has been set by the Community legislator under the codecision procedure. The areas of responsibility mainly cover the protection of financial interests and the fight against corruption.³³ All the forms of crime are concerned wherever the financial interests are affected in one or more Member States or even non-member countries³⁴ or institutions are involved. The scale of this scourge has been well known for the ten years during which the Commission has been developing its action in this area and its powers are determined by the legislation.

³⁰ See in particular (EC Euratom) Regulations Nos 2988/95 and 2185/96, Convention on the criminal-law protection of financial interests and its protocols.

³¹ See in particular Articles 7 *et seq.* of the second protocol, expressly providing for the Commission's (Office's) technical and operational support with prosecution authorities and the exchange of information between the latter and the Commission (Office); see explanatory report of the second protocol: OJ C 91, 31 March 1999.

³² Beyond the aspects concerned with detection of irregularities or cooperation, the legislator has provided for Community investigation reports to have evidential status in criminal proceedings under the same terms as national investigation reports.

³³ By the Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OJ L 136, 31.5.1999), this includes the protection of the Community's interests where they are threatened by unlawful conduct likely to lead to administrative or criminal proceedings.

³⁴ External actions or commercial policy.

As for means for action, as early as 1996 the Commission was given major powers to carry out investigations and the Office acts³⁵ to provide an added value to the national action in the detection of facts relating to fraud likely to lead to prosecution for criminal offences. The prosecution of these acts remains however governed by the law of the Member States, that is to say fifteen different national laws. To retain the objective of equivalent protection in the Member States, it is consequently essential to improve the means for cooperation and coordination using a pragmatic approach to overcome the weaknesses and lacunae of the current instruments of judicial assistance which are not yet adapted and do not correspond to the transnational and often organised dimension of fraud against the Community's financial interests and or to the illegal activities which attack the Communities financial interests.

Although the final solution to this problem of criminal proceedings lies in harmonisation of specific criminal offences for activities attacking Community financial interests and the establishment of appropriate criminal procedural rules, practical action must be taken without delay with the means currently available, and in particular the support and aid of the Office, to improve the conditions in which judicial assistance is provided. If cooperation is to be carried out on concrete, uniform and sound bases, it will be essential to produce a guide to good practice for cooperation between the Office and the judicial authorities of the Member States.³⁶ This pragmatic approach will support the process of mutual trust which is developing in particular through the establishment of a European judicial network³⁷ in which the Commission takes part. To strengthen this approach, the European Anti-Fraud Office will develop its mission of liaison and penal judicial expertise to bring practical support for the attainment of objectives in the fight against fraud and corruption. In doing this, it will improve its role of advice, assistance and coordination to support and supplement national action in the area of criminal prosecutions of serious offences harmful to the Communities' financial interests.

PROSPECTS

Meeting these four challenges will allow the Community to improve in a significant way the level of protection of the Communities' financial interests. The actions undertaken in this regard will be complementary to the efforts made for the sound application of regulations and for a sound and rigorous financial management in accordance with the objectives of the reform. In doing this, the implementation of these strategic orientations will allow the control provisions and the audit capacity of the Commission departments to be strengthened overall with the twin aim of effectiveness and transparency. The overall attainment of these objectives corresponds to the recurring request from the Heads of State or Government³⁸ that the institutions and Member States should adopt the measures necessary to ensure an equivalent high level of protection of financial interests throughout the Community and to fight fraud or corruption unrelentingly and with the utmost vigour.

³⁵ It acts or reacts, in theory, to information from various sources, in particular the national authorities concerned.

³⁶ On the basis of Article 280 of the EC Treaty, the new regulations and the Convention on criminal-law protection of financial interests, in particular the second protocol to it

³⁷ Joint action of 29 June 1998, OJ L 191, 7.7.1998.

³⁸ Cf. also the resolutions of the European Parliament on protection of financial interests and on the European Anti-fraud Office, the report of the Committee of Independent Experts, the opinions of the Supervisory Committee of the Office and the Dehaene, Von Weizsäcker and Simon Report on the institutional implications of enlargement.

It is on the basis of experience on the ground, results obtained, means of technical and operational assistance and implementation of these new prerogatives that the Commission and the legislator will then be able to develop the current status of the European Anti-Fraud Office.

Towards the establishment of a European Public Prosecutor for the protection of financial interests

With the strengthening of European integration, a political entity is developing progressively in such a way as to constitute a true “community of values” and an emerging community public order. When calling for a Charter of Fundamental Rights, the Cologne European Council stressed this new reality.

For their part, the European Parliament and the Commission have both already referred the matter to the Intergovernmental Conference (IGC 2000) in a resolution and an opinion to amend the Treaty so as to enable the establishment of a European public prosecutor responsible for the protection of the Communities’ financial interests. This objective also responds to the opinion of the European Court of Auditors, whose contribution to the IGC underlines the problems affecting the protection of financial interests in the absence of harmonisation of national legislation and of adequate cooperation instruments for the national judicial authorities.

Establishing the office of European Public Prosecutor would be a step forward to ensure the coherence of investigations throughout the territory of the European Community, this coherence being all the more difficult to ensure in the context of a significant increase in the number of Member States. It would enable the credibility of the institutions to be strengthened and the integrity of the members and officials of the institutions, bodies or agencies in the performance of their duties to be guaranteed against any external illegal act liable to influence Community decisions. Finally, it will strengthen the rights of the individual up to now guaranteed in a different way by way of national criminal law, by raising to the same level, that is to say Community level, the strengthening of judicial guarantees and the jurisdiction on a permanent basis of the investigation activity.

The Commission, with support from the Office, will ensure without delay the development of a solid *acquis* on which a future European judicial body will over time be able to rely for the protection of Community interests. To achieve this objective of the establishment of a European public prosecutor, the Community and the Member States still need the support of public opinion. It is appropriate to raise the awareness of public opinion to this change.

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