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(Information)

COURT OF AUDITORS

SPECIAL REPORT No 3/2004

**on recovery of irregular payments under the Common Agricultural Policy
together with the Commission's replies**

(pursuant to the second subparagraph of Article 248(4) of the EC Treaty)

(2004/C 269/01)

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SUMMARY

I. Member States are obliged to notify the Commission when they detect irregular payments over 4 000 euro made under the common agricultural policy (CAP) and to attempt to recover such payments. Where recovery is not possible the sums concerned are written off and the losses are borne by the Community unless non-recovery is due to the negligence of the Member State concerned. There is provision for a 'blacklist' to identify recipients of irregular payments in excess of 100 000 euro in any one year. Under separate arrangements Member States report all debts to the Community arising from the CAP.

II. At the end of 2002 total irregular payments reported since 1971 totalled 3,1 billion euro. Of this sum 537 million euro had been recovered from beneficiaries and 252 million euro written off at the expense either of the Community or of the Member State concerned. The remaining 75 % of reported irregular payments were still 'pending', neither recovered nor written off. Most reported irregular payments relate to intervention in markets: expenditure in the fruit and vegetable sector and on export refunds accounts for over half of the total.

III. The Court found that Member States provide information about irregularities as required but do so with varying delays. There are also inconsistencies in the data. There are discrepancies between the data supplied by Member States and the figures in the database drawn from them. The Commission's database on reported irregularities is not complete and accurate.

IV. The low rate of recovery of irregular payments (a cumulative recovery rate of only 17 % since 1971) is in part due to national administrative delays and practices (suspension of action to recover until related legal action concerning fraud has been completed, absence of preferred creditor status for CAP debts, no disincentive to frivolous appeals) and to the Commission's reluctance to accept offers of partial settlement.

V. Only 10 % of reported irregular payments have been written off, partly because Member States have put forward few cases as irrecoverable, partly because the Commission has been slow to take action on long-standing irregular payments. The Commission had no adequate criteria for deciding whether sums written off should be charged to the Member States or borne by the Community and has inadequate information on whether decisions written off are carried out correctly.

VI. Responsibilities for irregular CAP payments are shared between OLAF and the Directorate-General for Agriculture: formal and effective responsibilities differ; misunderstandings occur. The Commission does not make systematic use of the information it obtains about irregularities when managing and proposing changes in the CAP.

VII. The 'blacklist' does not work.

VIII. The separate arrangements by which Member States report all debts due to the Community in respect of the CAP have been improved in recent years but still have a number of weaknesses. It is not possible to reconcile the data produced with those for irregular payments.

IX. The Court recommends the Commission to consider changes in the arrangements for the reporting, recovery and writing off of irregular CAP payments to remedy the weaknesses set out above, and in the division of responsibilities between OLAF and the Directorate-General for Agriculture; and to consult with Member States on the future of the 'blacklist'.

INTRODUCTION

1. The European Union spends more than 40 billion euro annually on the common agricultural policy (CAP). Responsibility for managing this expenditure is shared between the Commission and Member States. This report examines one aspect of shared management: notification and recovery of sums irregularly paid to traders, farmers and other recipients of spending under the CAP.

2. Almost all payments under the CAP are made by paying agencies in the Member States. Member States are required to

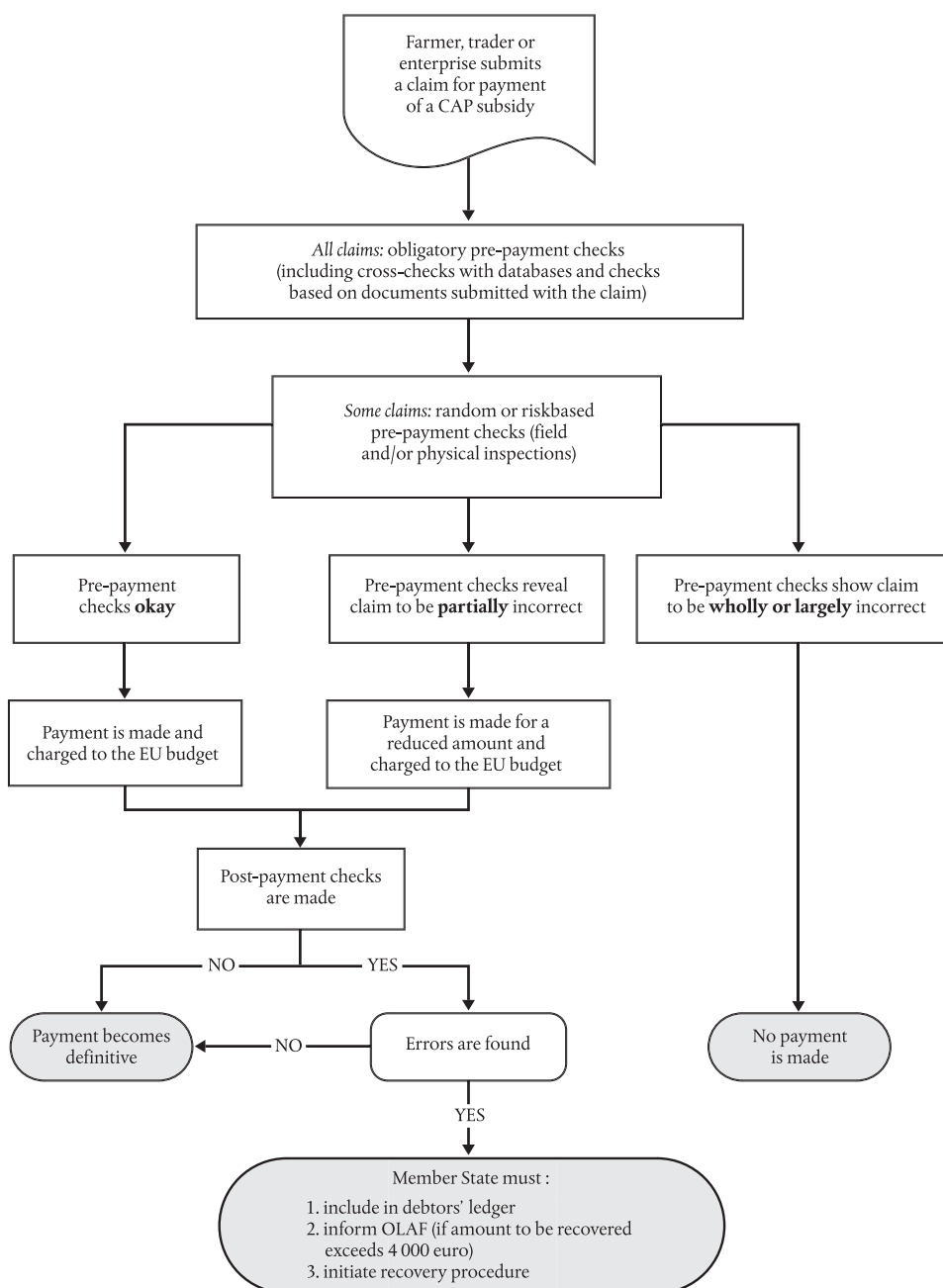
check that payments are properly made; to notify the Commission of irregular payments made and debts owing; and to recover sums improperly paid.

3. The cost of irregular payments which Member States do not recover is borne by the Community budget unless non-recovery is the result of negligence by the Member State concerned. In that case the cost of irregular payments lies with the Member State concerned. *Illustration 1* shows how the system works.

Illustration 1

Payment and checking procedure for CAP payments

A simplified description of the steps involved



Source: European Court of Auditors.

4. According to the Commission's Anti-fraud Office (OLAF), at the end of 2002 the cumulative total of irregular CAP payments notified by the Member States to the Commission since 1971 was 3,1 billion euro. *Table 1* details the composition of this amount and of the amount which remains to be recovered.

Table 1

Analysis of irregularities notified to the Commission since 1971

	(million euro)
Irregularities notified after payment	3 139
Amount recovered from claimants	538
Amount charged to Member States	142
Amount written off against the EAGGF	110
Amount to be recovered ^(A)	2 349

Position as at 31 December 2002.

^(A) Member States estimated that 46 % of this amount was realistically recoverable
Source: OLAF ECR database

5. Member States are also required to inform the Commission (OLAF) if any recipients of CAP monies have received irregular payments totalling over 100 000 euro in a year - the 'blacklist' ⁽¹⁾.

6. The objective of this audit was to assess the role of the Commission and Member States in the management and monitoring of recoveries of irregular CAP payments. This involved consideration of whether, once frauds and irregularities had been detected, Member States correctly notified cases to the Commission, established related debts and took recovery action. The audit did not examine how well Member States' control and fraud investigation agencies detect fraud and irregularities.

7. The Court examined:

- (a) what the information provided shows about the extent, nature and causes of irregularities;
- (b) whether Member States and the Commission take appropriate action to recover or write off irregular payments;
- (c) whether the arrangements for providing information about irregularities are satisfactory;
- (d) whether the 'blacklist' works effectively;
- (e) how the information on irregular payments compares with that on debts.

8. The audit was carried out at the Commission and in nine Member States: Denmark, Germany, Greece, Spain, France, Ireland, Italy, Portugal and the United Kingdom.

ANALYSIS**Reported irregularities**

9. As at 31 December 2002 irregular payments notified since 1971 and recorded in the relevant Commission database (External Communications Registry (ECR)) amounted to 3 139 million euro ⁽²⁾. The amount recorded as 'to be recovered' at the same date was 2 349 million euro. In other words 25 % of irregular payments made since 1971 had either been recovered from beneficiaries, charged to Member States or written off against the budget.

10. *Table 2* shows the value of irregular payments notified and the cumulative rate of recovery by Member States ⁽³⁾. The figures are dominated, and distorted, by those for Italy, which:

- (a) has reported 55 % of the irregular payments concerned (see however paragraph 24);
- (b) has the lowest cumulative rate of recovery (10 % of irregular payments made since 1971).

Table 2

Irregularities detected after payment and recovery rates (1971 to 2002)

Member State	Amounts detected after payment	Amount recovered	Cumulative recovery rate (%)
IT	1 735	173	10
DE	403	40	10
ES	264	35	13
BE	100	15	15
AT	8	2	22
PT	50	13	25
SE	1	0	36
FR	159	58	36
UK	122	49	40
EL	131	54	41
NL	84	47	56
IE	39	23	58
DK	40	28	71
FI	1	1	90
LU	p.m.	p.m.	p.m.
Total	3 139	537	17

Situation at 31 December 2002.

NB: Figures rounded to 1 000 000 euro.

Source: OLAF ECR database.

⁽¹⁾ Council Regulation (EC) No 1469/95 of 22 June 1995 (OJ L 145, 29.6.1995, p. 1).

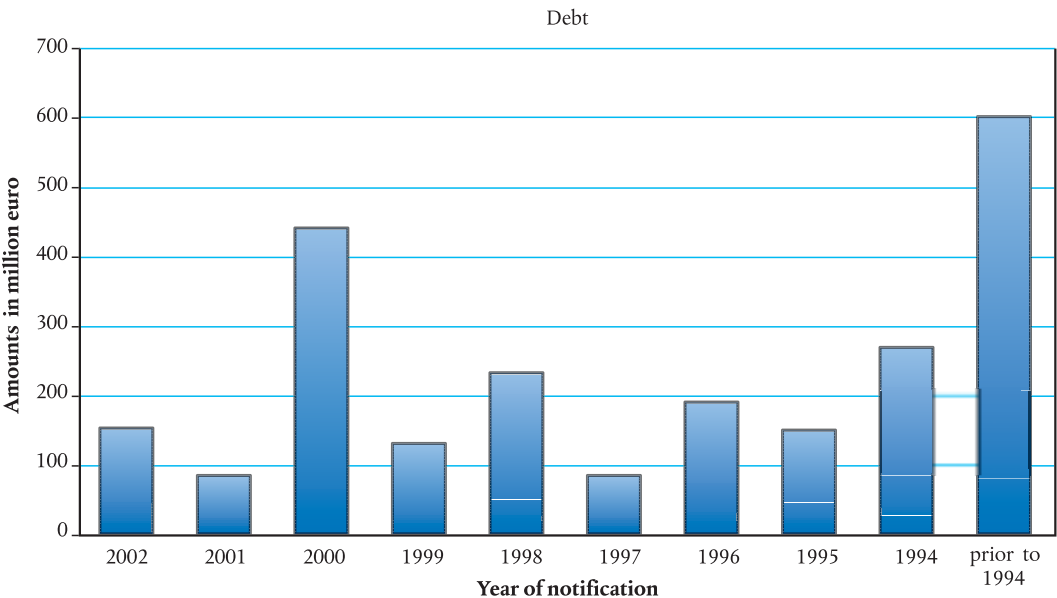
⁽²⁾ A further 1 144 million euro detected before payment (and unpaid) are also recorded in the ECR.

⁽³⁾ These figures should be treated with caution for the reasons detailed in paragraphs 21 to 32.

11. As at 31 December 2002, 21 % of the debts date back prior to 1994 (see *Illustration 2*).

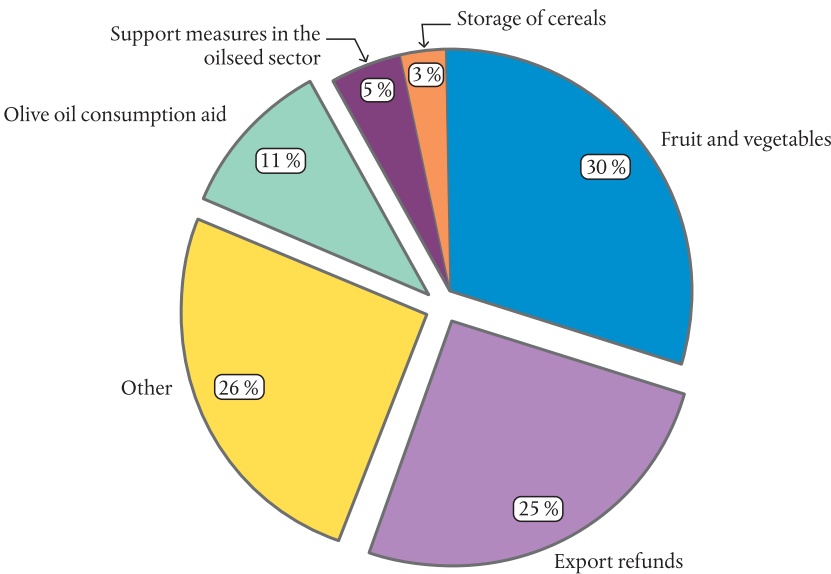
12. *Illustration 3* shows the main budget headings in which reported irregularities occur. Approximately a quarter are in the fruit and vegetable sector and between a quarter and a third in export refunds.

Illustration 2
Age of outstanding debts arising from irregularities



Situation as at 31 December 2002.
NB: Two high value cases, totalling 300 million euro, were reported by Italy in 2000.
Source: OLAF ECR database of irregularities reported under Regulation (EEC) No 595/91.

Illustration 3
Main budget headings for irregularities recorded in the ECR (1971 to 2002)



As at 31 December 2002.
Source: OLAF ECR database.

13. Irregular payments are relatively infrequently reported in the areas of spending subject to the Integrated Administration and Control System (essentially area aid and animal premium payments). This reflects the fact that:

- (a) IACS claims are subject to a 100 % check of all claims by means of computerised cross-checks and comparisons with independent data and sample checks on the spot, before payments are made. Discovery of an irregularity therefore means claims are blocked before payment;
- (b) where, exceptionally, irregularities are discovered after payment, the amount concerned will often be less than 4 000 euro and paying agencies can often make recovery by deduction from later claims; and
- (c) administrative penalties are built into the regulations, enabling paying agencies to take appropriate action when false claims are identified, without going to a court of law.

14. Irregularity cases, 29 notified, accounted for 40 % of the total amount to be recovered at 31 December 2002. They are listed in *Annex A*.

15. It is impossible to estimate accurately the rate of irregularities affecting the CAP. However on the basis of reported information:

- (a) the value of irregularities from 1994 to 2001 represents between 0,3 % and 1,4 % of the EU agricultural budget for the year in which they were notified. If Italy is excluded they represent 0,5 % or less (see *Table 3*).
- (b) irregularities in the budget headings most heavily affected (fruit and vegetables and export refunds - see *Illustration 3*) represent 1,7 % of spending on these headings in years 1994 to 2001.

Table 3

Trend in value of reported irregularities

	(million euro)								
	1994	1995	1996	1997	1998	1999	2000	2001	2002
Expenditure declared EAGGF Guarantee	33 593	35 654	39 062	40 884	38 857	40 726	40 411	41 594	42 711
Irregularities notified	461,2	227,6	251,7	154,6	263,1	224,0	467,3	104,1	198,0
Percentage of annual budget	1,4	0,6	0,6	0,4	0,7	0,6	1,2	0,3	0,5
EAGGF expenditure declared excluding Italy	30 000	31 285	34 631	35 559	34 708	35 709	35 874	36 124	37 022
Irregularities notified excluding Italy	136,6	139,5	86,6	124,1	100,4	163,9	166,6	65,3	134,1
Irregularities notified excluding Italy	0,5	0,4	0,3	0,3	0,3	0,5	0,5	0,2	0,4

Source: Table 4.6 of the 2002 ECA's annual report and OLAF ECR database as at 31 December 2002 (which is not consistent with figures given in the Commission Report 2002 on the Fight against Fraud).

Notification of irregularities: who does what?

16. Member States are required to notify the Commission quarterly ⁽¹⁾ of all irregular payments in excess of 4 000 euro which 'have been the subject of the primary administrative or judicial findings of fact' ⁽²⁾. The notification should contain a range of quantitative and qualitative information on the fraud such as the amount involved, budget heading, type of fraud and method of detection etc. All of this information is entered in the ECR.

17. The Commission has developed the notion of primary administrative or judicial findings in legislation and working documents. Despite this, Member States interpret the requirement differently.

18. Member States must also notify the Commission on a quarterly basis of the steps they have taken following notification of the irregularities including amounts recovered, reasons for abandonment of recovery etc ⁽³⁾.

19. Where a Member State considers that an amount cannot be totally recovered it must inform the Commission whether it considers that the charge should be borne by EU or by the Member State ⁽⁴⁾ and why.

20. OLAF enters the data on notifications into the ECR. The ECR database has been successively managed by the Commission's Directorate-General for Agriculture, the Commission's Anti-fraud Unit (UCLAF) and, since 1995, OLAF.

⁽¹⁾ In practice OLAF.

⁽²⁾ Article 3 of Council Regulation (EEC) No 595/91 of 4 March 1991 (OJ L 67, 14.3.1991, p. 11).

⁽³⁾ Article 5(1) of Council Regulation (EEC) No 595/91 of 4 March 1991.

⁽⁴⁾ Article 5(2) of Council Regulation (EEC) No 595/91 of 4 March 1991.

Notification of irregularities: delays, gaps and inconsistencies

21. Member States are required to report irregularities within two months of the end of each quarter; however, during 2002, some 65 % (2 147 communications) were not reported on time ⁽¹⁾.

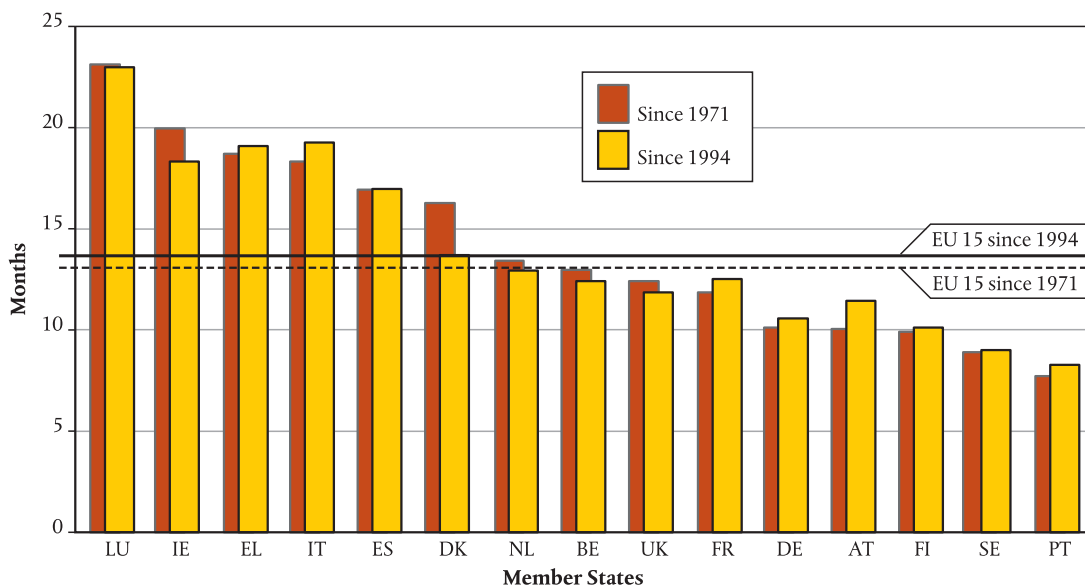
22. Member States have, on average, notified the Commission of irregularities more than one year after

discovery ⁽²⁾. Member States' individual average speed of notification ranged from eight months (Portugal) to 23 months (Luxembourg) (see *Illustration 4*).

23. Germany, Spain and France notified most cases in 2002 but Italy reported the highest value in that year, 80 million euro, followed by Spain with 59 million euro (see *Illustration 5*).

Illustration 4

Average delays from discovery to report of irregularity

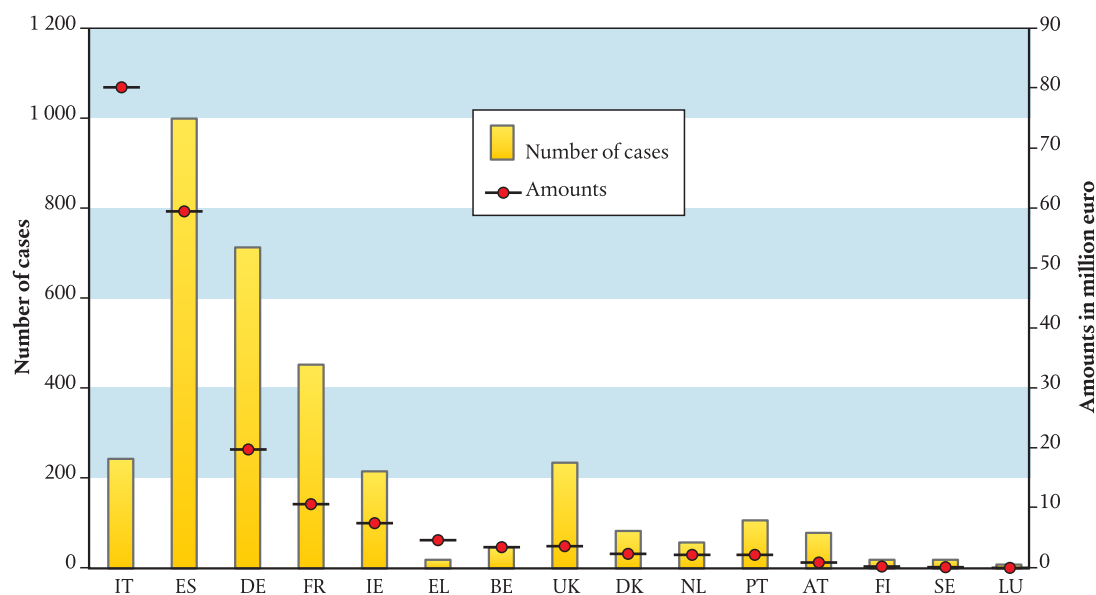


Situation as at 31 December 2002.

Source: OLAF ECR database of irregularities reported under Regulation (EEC) No 595/91.

Illustration 5

Irregularities communicated by the Member States in 2002



Source: Annex 2 to the OLAF annual report for 2002.

⁽¹⁾ Source: Paragraph 10.2 of the Annual Report for 2002 on the Protection of the Financial Interests of the Communities and the fight against fraud.

⁽²⁾ In 17 955 out of a possible 29 311 cases it is possible to establish the speed with which Member States notified irregular payments.

24. Italy notifies cases on the basis of the irregularity report from the control or investigation body. In some instances these bodies have not verified that the alleged irregular payments have been made. This has resulted in overstatements of amounts to be recovered in the ECR.

An Italian investigation agency reported a company for fraudulently obtaining CAP subsidies for processing tomatoes. The amount involved is 2,71 million euro. In fact the claims were made but never paid. There is therefore no debt.

25. For 91 of these cases in the ECR, Member States had not provided information on the amounts involved. Of which, 37 had been notified between 1979 and 1998. The Court brought this to the attention of OLAF in August 2002. A year later OLAF had not requested updated information from Member States for these cases.

26. The ECR provides for penalties and interest to be recorded separately ⁽¹⁾. Some Member States, however, included penalties and interest in the principal (Spain and Ireland). Information on penalties and interest was recorded in less than 4 % of the cases in the ECR. Only 5 % of cases reported or updated in 2002 contained information on penalties.

27. There were also some significant inconsistencies of definition and coverage in the information supplied. For example, the product description had not been completed in some 47 % of cases notified for 2002 ⁽²⁾. In 7 % of cases the type of irregularity had not been identified and in 4 % nor had the detection method.

Checks on data: unsatisfactory

28. Because there was no procedure for systematically checking the completeness and accuracy of the ECR database on the spot against information on irregularity cases held in Member States, in 2002 and 2003 OLAF asked Member States to verify that the data in the ECR was accurate. For the most part Member States did not address irregularities notified before 2002.

29. Most Member States drew attention to discrepancies between Member State data and the ECR. OLAF does not have an analysis of these discrepancies, of the reasons for them, of corrective action or of the changes made to the ECR. Nor has OLAF sought to check that Member States have notified all of the cases they should have notified, or verified whether Member States have improperly closed cases and written down the impact of the irregularity to zero.

⁽¹⁾ Article 3 of Council Regulation (EEC) No 595/91 of 4 March 1991 requires 'the financial consequences of the irregularity to be reported' and Article 5 'the judicial and administrative procedures instituted with a view to (...) applying sanctions'.

⁽²⁾ Source: paragraph 11.2 of the Annual Report for 2002 on the Protection of the Financial Interests of the Communities and the fight against fraud.

Quality of information about irregular payments: incomplete and inconsistent

30. For the reasons set out in paragraphs 21 to 29 and 31 and 32, the ECR database (and the figures relating to CAP irregularities and debts published in the Commission's 2002 Report on the fight against fraud) cannot be considered reliable, complete and accurate.

31. In addition to cases notified by Member States, OLAF itself initiates investigations of some irregularity cases in the CAP sector (as elsewhere in the Community budget). OLAF maintains a Case Management System (CMS) database to record the progress of these cases. The CMS does not show whether the case is recorded in the ECR nor, if appropriate, whether it has been charged to Member States under the clearance-of-accounts procedure (see paragraphs 34 to 37). Of a sample of 26 cases recorded in the CMS, only 13 could be traced satisfactorily to either an entry in the ECR or to closure of the case because no irregularity had been detected.

32. The Commission's 2002 Report on the fight against fraud significantly overstates the cumulative total for reported irregularities against the CAP. The sources of the overstatement are:

- (a) 844 million euro where amounts relating to irregularities detected before payment, notified in Italian lira, were recorded as the same number of euro;
- (b) at least 50 million euro for notifications double counted because they were shown as being detected both before and after payment in the ECR;
- (c) at least 19 million euro for amounts reported in national currency and recorded as euro without conversion.

Recovery and writing off: responsibilities of Member States and the Commission

33. Member States must:

- (a) satisfy themselves that CAP transactions are carried out and executed correctly;
- (b) prevent and detect irregularities;
- (c) recover sums lost as a result of irregularities or negligence, in which case they may retain 20 % of the amounts recovered ⁽³⁾;

⁽³⁾ Article 8(1) of Council Regulation (EC) No 1258/1999 of 17 May 1999 (OJ L 160, 26.6.1999, p. 103).

- (d) notify the Commission of sums which are outstanding; and
- (e) of sums which are unlikely to be recovered.

34. The Commission decides whether sums which cannot be recovered should be borne by the Community, or borne by the Member State concerned (on the grounds that non-recovery is the consequence of negligence or irregularity by that Member State ⁽¹⁾).

35. Where the Commission decides that the financial consequences of non-recovery should be borne by the Member State concerned, the decision is taken as part of the 'clearance-of-accounts procedure'. This is the procedure in which the Commission decides whether expenditure undertaken by paying agencies has been carried out in accordance with EC law and should be definitively charged to EU budget. If sums are to be charged to Member States the Commission deducts them from the monthly payments to finance the CAP which it makes to the paying agency concerned.

36. OLAF (and formerly UCLAF) is responsible for recommending whether the amounts should be written off to the budget (i.e. borne by the Community taxpayer) or in cases of negligence should be charged to Member States. The Directorate-General for Agriculture is responsible for the Commission decision.

37. Community law leaves it to the Commission to judge whether lack of recovery in a given case should be attributed to negligence by a Member State, and its costs borne by national taxpayers. There is, however, relevant European Court of Justice jurisprudence. The European Court of Justice ruled in 1989 ⁽²⁾ that in waiting four to 10 years before starting proceedings to recover amounts wrongly paid, the Italian authorities had not acted with the necessary diligence ⁽³⁾.

38. In a well-functioning system:

- (a) Member States will take all required action to recover sums irregularly paid;
- (b) the Commission will encourage Member States to operate effectively;
- (c) the Commission will make appropriate judgements about whether sums irregularly paid and not recovered are charged to the Community budget or to the individual Member State concerned;

- (d) the Commission will use information about the incidence of irregularities for the management of the CAP to improve control procedures.

39. The arrangements were unsatisfactory in all four respects.

Low rate of recovery

40. Table 2 shows that, at the end of 2002, the cumulative recovery rate was only 17 %.

41. The main reasons for the low rate of recovery are as follows:

- (a) some Member States' administrative and judicial systems are slow. This prejudices the likelihood of eventual recovery because assets disappear, companies are liquidated, individual beneficiaries disappear or die etc.;

False claims for aid for the production of concentrated wine led to irregular payments of 8,3 million euro.

The irregularity was first reported to the Greek paying agency in 1990.

The Greek Ministry of Agriculture did not classify it as an irregularity until December 1996.

The case, which has been referred to the Greek courts, has still not been heard and no monies have been recovered.

- (b) recovery is further delayed where recovery procedures are suspended until the outcome of any associated fraud case is decided (for example, in Italy). Fraud cases require proof of intent before someone can be found guilty which is not necessary for the recovery of a de facto irregular payment;
- (c) some Member States do not give CAP debts preferential status (there is no EU legislation requiring them to do so);

In early 1992 a combined UCLAF/German investigation proved skimmed-milk powder from intervention stocks, exported with refunds, had not been placed on the market outside the EU. Irregular payments of export refunds amounted to 24,9 million euro to a German company and 18,6 million euro to a Belgian one.

Despite a request from the Commission in February 1993, Germany did not issue recovery orders until August 1995.

In August 1996 an offer was made to pay 5,1 million euro (being the value of the available assets of the German company). This was rejected by the Commission in April 1997.

By December 1999 the assets had diminished to 1,5 million euro. None of the subsidies totalling 43,5 million euro has been recovered.

⁽¹⁾ Article 5(2) of Council Regulation (EEC) No 595/91 of 4 March 1991.

⁽²⁾ The Court of Justice ruled that Member States should respect the obligation of diligence which 'implies that the Member States must take steps to rectify irregularities promptly', adding that 'with the passage of time, recovery of sums wrongly paid is likely to become more complicated or impossible for reasons such as the fact that the undertakings may have ceased trading or accounting documents may have been lost'.

⁽³⁾ Case C-34/89 of 11 October 1990, *Italian Republic v Commission of the European Communities*.

- (d) there is inadequate use of procedures to offset debts against other CAP payments which are due. Offset procedures between paying agencies (for example in Spain, France, Italy and Portugal) or within the same paying agency (for example in Denmark) are not used by either because such offset is precluded under national law or because of inadequate communication channels;
- (e) national legislation in some Member States does not require a guarantee to be lodged, equivalent to the amount in dispute, before an appeal can be made (the Court made this observation in 2000 in the context of olive oil consumption aid irregularities ⁽¹⁾);
- (f) the Commission has, to date, refused to accept offers to settle for amounts referred to it by the Member States. These are calculated on the basis of the assets available to the debtor and are lower than the debt.

However, even if recovery procedures were faster and recovery possibilities maximised, some debts would still have to be written off because of insolvency, death, official error, equity, cost effectiveness etc. It is not possible to estimate how much would be written off for these reasons.

42. The Commission has limited powers to influence the way in which Member States carry out their responsibilities under the regulation. It cannot intervene in Member States, administrative or judicial procedures in order to speed them up. On the other hand:

- (a) the Commission can take action to recover the value of old debts from Member States, on the basis of the European Court of Justice ruling referred to in paragraph 37;
- (b) Community law provides an incentive to Member States to recover monies unduly paid in that they may retain 20 % of amounts recovered. In view of the cumulative recovery rate of 17 % this incentive cannot be considered to have achieved its objective. OLAF does not have a reliable record of amounts retained.

Commission decisions on who should bear the cost of irregular payments which are not recovered: no clear principles

43. According to the ECR, since 1971 a total of 110 million euro has been written off against the EU budget and 142 million euro charged to Member States. These amounts are small (10 %) in relation to the total amount to be recovered, partly because Member States have proposed few cases to be written off as irrecoverable and partly because the Commission action to clear up the old debts has not been timely.

Live bovine animals for slaughter, exported to Poland with refunds in 1990, were misdeclared as pure-bred animals with resulting irregular payments in three cases of 2,6 million euro.

These cases were excluded from a clearance-of-accounts financial correction in 1994 for similar cases pending the result of recovery action.

In 1999 the Court of Justice upheld the Commission's financial correction. The Commission has since however failed to follow up the three cases excluded.

44. The Commission had no adequate criteria for making recommendations for writing off nor on the nature of supporting evidence required. There was no systematic analysis in the files presenting the arguments and evidence in support of the recommendations.

45. Tests were carried out on a selection of 30 cases recorded in the ECR, where the Commission had decided that the cost should be charged to Member States. The selection concentrated on pre-1996 cases as there had been no clearance-of-accounts decision on cases since that year except for the special exercise mentioned below. Of the 30 cases examined, only three contained satisfactory evidence that the amounts had in fact been recovered from Member States ⁽²⁾.

46. Some 30 cases recorded as charged to the budget were also examined. In eight cases the files could not be found and in 15 cases there was insufficient evidence ⁽³⁾ that the amounts were irrecoverable. There were reasoned arguments for decisions in few ⁽⁴⁾ of the files examined.

47. There is a particular respect in which writing off procedures by Member States interact with the clearance of accounts. Under the clearance-of-accounts procedure, disallowance of expenditure normally takes the form of a 'flat-rate correction': the Commission judges that a Member State has failed to manage certain expenditure properly and disallows from EU financing (i.e. in effect charges to the Member State) a percentage of the expenditure concerned as a sanction for poor management and an incentive for improvement.

48. Some Member States have taken the opportunity of such flat-rate corrections to write off debts arising from irregularities committed in that same area of expenditure up to the value of the correction, rather than proposing writing off under the condition discussed in paragraphs 33 to 37. The Commission considers that this practice is not in conformity with the legal provisions relating to clearance of accounts. Neither OLAF nor the Directorate-General for Agriculture has maintained records of such accounts written off, nor reconciled them with the amounts of the related clearance-of-accounts corrections. The total amount written off in this way is therefore not known.

⁽²⁾ Five files could not be found; four cases had been treated as being already covered by flat rate corrections and in one case the amount had been charged to the budget not to the Member State.

⁽³⁾ For example, bankruptcy or winding up orders.

⁽⁴⁾ There were reasoned arguments in eight of the 30 files examined.

⁽¹⁾ Special Report No 11/2000, paragraph 101 (OJ C 215, 27.7.2000).

49. OLAF initiated a special exercise in March 1999 to examine pre-1996 amounts to be recovered. Old cases were defined as cases with administrative delays exceeding four years and/or judicial delays exceeding eight years ⁽¹⁾. All such cases with amounts outstanding of more than 50 000 euro were to be examined in depth. Those less than 50 000 euro were to be subject to a less rigorous review.

50. The Commission Decision ⁽²⁾ on these cases was published on 28 June 2003. The amount of 69,4 million euro was written off against the budget and 5,3 million charged to Member States. Italian cases, which account for 66 % (750 million euro) of the amount to be recovered for pre-1995 cases, were excluded from the recommendations and decision. No reason was given for this. Also excluded from consideration were 95 pre-1995 cases for a total value of 118,8 million euro.

51. As was the case for recommendations made under the normal procedure, there was no systematic analysis in the files of the reasons leading to the recommendations. The Commission has now set up a task force to examine pre-1999 cases for amounts in excess of 500 000 euro.

Division of responsibilities in the Commission

52. As explained above, OLAF manages the ECR database. The Directorate-General for Agriculture is responsible for clearance-of-accounts decisions. There are instances in which this division of responsibilities causes problems of communication:

- (a) there was no provision for the Directorate-General for Agriculture to transmit systematically to OLAF copies of all clearance decisions whereby Member States have been charged with the financial consequences of irregularities. Consequently there was no systematic evidence in the OLAF files that the amounts recorded as having been charged to Member States had actually been recovered under the clearance-of-accounts procedure;
- (b) the 1995 decision ⁽³⁾ to write off amounts against the budget was not reflected in the ECR database. As a result cases were examined again in 2003 and in some instances the decision was the opposite of that taken in 1995;
- (c) some Member States have written off amounts on the basis of OLAF's recommendations in advance of a Commission Decision.

In the framework of the clearance of accounts for 1993, the Commission proposed to charge Germany 8,2 million euro for 21 cases where it considered Germany to have been negligent in its recovery action. The financial correction was however not implemented because of inadequate bilateral consultation.

All but two of the cases were reconsidered for the 1995 decision and were charged to the EAGGF.

The Commission has not documented the reasons for reversing its original proposal.

53. Current arrangements split nominal and effective responsibility for this procedure in a way which reduces accountability. Recommending writing off is not a function that fits well the role of a fraud investigation and coordination body.

The Commission makes little use of its experience of irregularities

54. Notifications to OLAF for input to the ECR were intended, amongst other things, to intensify the campaign against fraud and irregularities.

55. In this context, the Council ⁽⁴⁾ requested the Commission to develop an investigation policy based upon strategic and operational analysis of information on fraud, irregularities and recoveries reported by Member States. Parliament ⁽⁵⁾ has criticised the fact that the debt arising from irregularities and fraud has built up to an unacceptable level and that the recovery procedures do not work. It called upon the Commission to submit a detailed analysis of the causes of this problem and proposals to remedy it. The Commission ⁽⁶⁾ submitted a communication on improving the recovery of Community entitlements in December 2002. Parliament expressed doubts that the recovery procedures could be improved without clarification of the division of responsibilities between OLAF and the Directorate-General for Agriculture.

56. The Commission has drawn attention to the poor quality of information provided by Member States in its Annual Report on the fight against fraud 2002. It quotes the example that in 47 % of cases reported, the products involved were not identified, which does not facilitate risk analysis and which makes it harder to draw appropriate lessons. It is attempting to improve the quality and timeliness of notifications by the introduction of direct input to the ECR by Member States, coupled with a programme of training courses and the provision of an ECR user manual.

⁽¹⁾ This definition is derived from the judgment in European Court of Justice Case No C-34/89.

⁽²⁾ Commission Decision 2003/481/EC of 27 June 2003 (OJ L 160, 28.6.2003, p. 83).

⁽³⁾ This was the last of the annual decisions dealing with cases recommended for writing off by Member States.

⁽⁴⁾ Council conclusions on protection of the financial interests of the Communities and the fight against fraud 13244/1/02 REV 1 of 6 November 2002.

⁽⁵⁾ Report of the Committee on Budgetary Control on the Annual Report on the fight against fraud 2001, PE 315.805 of 3 March 2003.

⁽⁶⁾ COM(2002) 671 final of 3 December 2002.

57. However there are other weaknesses to be addressed in the design of ECR information. There are too many descriptions for the type of fraud and irregularities, 79 in all, some of which are ambiguous (see Table 4); the budget headings have not been

entered in a consistent format and there are 46 codes for method of detection, some of which are again ambiguous (see Table 5). Rationalisation and simplification of these descriptions would facilitate meaningful interpretation.

Table 4

Types of irregularity

Type of irregularity	Value of irregularities reported (million euro)	Percentage of total reported value	Cumulative percentage
Fictitious use or processing	984	23	23
False or falsified commercial documents	379	9	32
Inexact quantity	270	6	38
False or falsified request for aid	208	5	43
Fictitious movement	201	5	48
Variation in quality or content	169	4	52
Other cases of irregular documents	148	3	55
Other irregularities	120	3	58
Trafficking in withdrawn or stockpiled products	97	2	60
Falsified customs documents	91	2	62
Change of destination	91	2	64
Non arrival at final destination	91	2	66
Failure to respect other conditions	71	2	68

Situation as at 31 December 2002.

Source: OLAF ECR database of irregularities reported under Regulation (EEC) No 595/91.

Table 5

Detection methods

Detection method	Value of irregularities reported (million euro)	Percentage of total reported	Cumulative percentage
Documentary checks	1 137	27	27
Judicial enquiry	950	22	49
National fiscal control	253	6	55
Routine control	237	6	60
Accounting control	180	4	64
EU initiative	153	4	68
Judicial enquiry	126	3	71
Interservice collaboration	123	3	74
Laboratory analysis of samples	92	2	76
National customs control	90	2	78
Control on the premises of the beneficiary	85	2	80
Other	81	2	82

Situation as at 31 December 2002.

Source: OLAF ECR database of irregularities reported under Regulation (EEC) No 595/91.

58. The Court also found that there were significant errors in the data recorded in the ECR and even the absence of financial data of any kind for 91 cases (see paragraph 25).

59. The ECR records the identities of persons consulting the database and the number of times it has been consulted. From October 2001 to September 2002 there were 11 direct consultations by Commission Directorates-General. OLAF, however, has not carried out an evaluation of the use of the ECR data to determine whether or not it has provided useful information and has thus contributed to the fight against fraud.

60. The Commission is required to study the information of which it has been notified and to inform Member States' representatives (meeting in the EAGGF Committee ⁽¹⁾) of any conclusions it intends to draw from them ⁽²⁾. Although some information has been provided to the 'Irregularities Group' ⁽³⁾, neither OLAF nor its predecessor UCLAF has made such a report to the EAGGF Committee ⁽⁴⁾.

The blacklist

61. Member States are required to notify the Commission of the identity of operators who have committed irregularities exceeding 100 000 euro over a period of one year, together with details of the measures taken against those operators. Member States have in general considered it impossible effectively to exclude entities found to have been involved in irregular or fraudulent operations from claiming further payments (e.g. the business can be transferred to another legal entity with the same shareholders etc).

62. Only six Member States have ever notified a company or individual under these arrangements (see also Special Report No 8/98, paragraphs 4.12 to 4.14 ⁽⁵⁾). Comments received from Member States visited indicated that the greatest hindrance to the regulation was the fact that placing a company or individual on the blacklist may leave them open to legal redress and possible damages. Until fraud is proven in a court of law (often a very lengthy process) it is uncertain whether a Member State can itself legally notify the names of companies and or individuals.

Recording of debts

63. Since 1996 Member States' CAP paying agencies have been required to establish a list of debts ⁽⁶⁾ due to the Community under the CAP (debtors' ledger). Since 2000, Member States have been required to inform the Commission (Directorate-General for Agriculture) twice yearly of the debt situation and progress of recoveries, as recorded in the debtors' ledger, in an account known as Table 105 ⁽⁷⁾. The amounts notified via Table 105 are included in the Commission's consolidated balance sheet ⁽⁸⁾.

64. Since 1996, certifying bodies ⁽⁹⁾ have had to evaluate whether the debtors' ledger, produced by CAP paying agencies which they audit, gives a correct and complete picture of the amounts to be recovered, the procedures for recovery are effective, and the amounts are correctly credited to the budget in good time.

65. So far as Table 105 material is concerned, the Directorate-General for Agriculture concluded in 1999, on the basis of audits carried out in Member States, that there were some doubts over the completeness and accuracy of some paying agencies' debtors' ledgers and that there was no guarantee that Member States were consistent in their approach to recording debt. The ensuing report recommended that Commission services, paying agencies' internal audit services and certifying bodies should make further efforts to improve the management of debts. Since 2001 certifying bodies have had to certify the accuracy of Table 105.

66. Certifying bodies do not use information held by the various control and fraud investigation bodies to check the completeness of debtors' ledgers. Using information held on debtors at paying agencies, three certifying bodies qualified their certificates and nine certifying bodies noted serious weaknesses in the procedures for recording and recovering debts (see *Annex B*). The Court also noted that, in nine cases, the scope of the certifying bodies' audits of debtors did not meet the Commission's guidelines.

67. All Member States have set up debtors' ledgers and since 2000 have submitted Table 105 to the Commission containing the required information. The audit did not reveal any material errors in the recording of new debts. The requirement to maintain a debtors' ledger was introduced with effect from 1996. However, some Member States (Denmark, Germany, Greece and the United Kingdom) have still not registered all debts incurred before that year in the debtors' ledgers. Member States have also written

⁽¹⁾ The EAGGF (European Agricultural Guidance and Guarantee Fund) Committee and Irregularities Group are advisory bodies to the Commission. They are chaired by a Commission official and consist of representatives from Member States.

⁽²⁾ Article 2(3) of Council Regulation (EEC) No 595/91 of 4 March 1991.

⁽³⁾ Group 'Irregularities and mutual assistance, agricultural products', Regulations (EEC) No 595/91 of 4 March 1991 (OJ L 67, 14.3.1991, p. 11) and (EC) No 515/97 of 13 March 1997 (OJ L 83, 25.3.1997, p. 1).

⁽⁴⁾ Irregularities and Mutual Assistance - Agricultural Products, Regulations (EEC) No 595/91 and (EC) No 515/97.

⁽⁵⁾ OJ C 230, 22.7.1998, p. 16.

⁽⁶⁾ Including irregularities and other amounts due, for example, irregularities less than 4 000 euro, official error, etc.

⁽⁷⁾ Article 3(6) of Commission Regulation (EC) No 296/96 of 16 February 1996 (OJ L 39, 17.2.1996, p. 5) as amended by Commission Regulation (EC) No 2761/1999.

⁽⁸⁾ Under heading VII (Short-term assets) B. (Current assets) 2. (Advances owed by Member States) (a) (EAGGF Guarantee).

⁽⁹⁾ Certifying bodies are appointed by Member States under the clearance-of-accounts procedures. They audit the CAP expenditure declared by Member States' paying agencies and certify (or qualify) the accounts of such expenditure. The Commission takes account of these certificates in arriving at its annual financial decision to clear CAP expenditure.

off amounts as irrecoverable without a Commission Decision that the debt cannot be recovered and whether the budget or the Member States should bear the cost. The total debt for 2002 is therefore understated by 43,8 million euro ⁽¹⁾.

68. The information provided in Table 105 distinguishes between cases which are notifiable to the ECR and other cases (not arising from irregularity or amounting to less than 4 000 euro). Although the reporting dates for the two sets of figures are different, it should be possible to reconcile, identify and correct the differences between them (the ECR showed a total of 2 349 million euro at 31 December 2002; the equivalent figure in Table 105 was 2 093 million euro at 15 October 2002). The Commission is unable to do so. OLAF and the Directorate-General for Agriculture are therefore working on the basis of different sets of data and have not reconciled them.

CONCLUSIONS

69. The European Union's arrangements for the notification, recovery and writing off of irregular payments provide for relevant information to be reported (type of irregularity, detection method, etc.) and encourage Member States to take recovery action by providing both an incentive (20 % retention of amounts recovered) and a sanction (amounts not recovered to be charged to Member States in cases of negligence).

70. However, in practice, of the irregular payments made and notified to the Commission since 1971, totalling 3,1 billion euro, 537 million euro had been recovered from CAP beneficiaries by the end of 2002; 110 million euro had been written off against the Community budget and 142 million euro had been written off at the cost of Member States. Three quarters of irregular payments reported remain 'pending', neither recovered nor written off.

71. No system will achieve 100 % recovery of irregular payments; and some backlog of cases is inevitable. But the Court's audit revealed a number of weaknesses in the design of the arrangements for recording, recovering and writing off irregular payments under the CAP and, in particular, in how these arrangements are operated by the Commission and the Member States.

- (a) Member States interpret the definition of the point when they should report irregular payments in different ways (see paragraph 17). Some of the data requirements for Member States are unclear (see paragraphs 56 and 57).
- (b) Member States have been slow, and some much slower than others, in reporting irregular payments (see paragraph 22). There are also significant gaps and inconsistencies in the data which they supply (see paragraphs 24 to 27).

- (c) There were significant weaknesses in Member States' arrangements for the recovery of irregular CAP payments (see paragraph 41).
- (d) Decisions on whether irregular payments should be written off and, if so, whether at Community or national expense must normally await a Member State proposal for write off. The Commission has only limited powers to intervene in this procedure. On the other hand European Court of Justice jurisprudence provides support for Commission action in the case of unreasonable delay by Member States. This is the background to the creation of the Task Force discussed in paragraph 51.
- (e) The Commission did not have clear criteria for deciding whether irrecoverable irregular payments should be charged to the Member States concerned or to the Community budget (see paragraphs 43 to 51).
- (f) The involvement of both OLAF and the Commission's Directorate-General for Agriculture in decisions of writing off is a source of confusion and inefficiency (see paragraphs 52 to 55).

72. The parallel arrangements for debtors' ledgers provide information for balance sheet purposes about a broader range of debts under the CAP. All Member States have set up debtors' ledgers and have submitted the required data. The Commission also provided guidelines for certifying bodies to audit debtors. The Court however noted a number of gaps and, in respect of debts arising from irregular payments, inaccuracies in these debtors' ledgers (see paragraphs 63 to 68).

73. The 'blacklist' has proved unworkable. Only six Member States have ever communicated names of individuals or companies and it has proved impossible to effectively implement the sanctions foreseen (see paragraphs 61 and 62).

RECOMMENDATIONS

74. The Court recommends the Commission to consider a number of possible changes in the arrangements discussed above, in order to:

- improve the information available to the Commission about CAP irregular payments and debts,
- improve recovery by Member States of sums irregularly paid,
- clarify the basis on which the Commission decides whether irregular payments written off should be borne by Member States or by the Community,
- clarify responsibilities within the Commission and improve communications,

⁽¹⁾ As Table 105 was introduced with effect from 2000, the amounts incorrectly written off from the debtors' ledgers in previous years will have to be established by Member States.

- make better use in managing the CAP of information obtained about irregular payments.

Some of the changes suggested for consideration would require legislation.

75. To improve information and facilitate its use, the Commission should consider:

- ensuring that Member States interpret the 'primary administrative or judicial findings of facts' in a consistent and harmonised manner when reporting irregular payments,
- increasing the 4 000 euro threshold for reporting cases in the ECR,
- simplifying and reducing the number of definitions of types of fraud and methods of detection in the arrangements for reporting irregular CAP payments,
- improving its own checks of the data supplied by Member States,
- taking action to reconcile the ECR figures and debtors' ledgers.

76. To encourage recovery by Member States of irregular payments under the CAP, the Commission should consider:

- charging to Member States irregular CAP payments which have been outstanding for longer than a specific period and in respect of which no proposal for writing off has been received,

- ensuring that irregular payments are offset against other EU payments due to the recipient,

- asking Member States to give at least the same priority to the recovery of CAP debts as to the recovery of national subsidies.

77. The Commission should establish clear criteria for deciding whether irregular payments written off should be charged to Member States or borne by the Community. The Commission should take action against Member States which have offset amounts to be recovered against flat-rate corrections.

78. The Commission should consider whether the present sharing of responsibilities for CAP irregularities between OLAF and the Directorate-General for Agriculture is appropriate.

79. The Commission should report each year on lessons learned from data on irregularities and the conclusions drawn for the management of the CAP. Such a report might be included in the annual report on the fight against fraud or in the Annual Report on the CAP.

80. In addition, the Commission should consult with Member States on the future of the 'blacklist'.

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 10 June 2004.

For the Court of Auditors
Juan Manuel FABRA VALLÉS
President

ANNEX A

LIST OF CASES REPORTED WITH THE HIGHEST VALUES

Member State	YEAR	Measure	(euro)
			Outstanding debt
IT	2000	Support measures in the oilseed sector	170 936 471
IT	2000	Export refunds on cereals	118 956 431
IT	1998	Olive oil consumption aid	65 710 432
IT	1993	Export refunds on cereals	63 933 593
IT	1994	Export refunds on cereals	41 760 653
IT	1998	Olive oil consumption aid	40 623 436
ES	1994	Export refunds on cereals	32 896 221
BE	2000	Export refunds on butter	31 547 680
IT	1994	Export refunds on beef	29 851 835
DE	1995	Export refunds on butter	24 926 886
IT	1994	Olive oil consumption aid	19 743 900
IT	1996	Export refunds on cereals	19 054 353
DE	1995	Export refunds on butter	18 630 965
IT	1998	Olive oil consumption aid	17 253 375
IT	1996	Support measures in the oilseed sector	17 196 270
IT	1988	Processing fruit and vegetables	16 860 045
IT	1988	Processing fruit and vegetables	16 296 644
IT	2002	Processing fruit and vegetables	15 805 670
IT	1996	Aid for cereals	15 774 830
IT	1994	Export refunds on beef	14 262 505
DE	1998	Export refunds on beef	14 023 242
IT	1988	Processing fruit and vegetables	13 944 336
ES	1994	Export refunds on wine	13 334 611
IT	1996	Storage of cereals	12 302 920
IT	2001	Processing fruit and vegetables	11 784 714
IT	1994	Olive oil consumption aid	11 445 839
IT	2002	Support measures for fresh fruit & vegetables	11 012 392
IT	1996	Storage of cereals	10 949 622
BE	1994	Export refunds on beef	10 121 398

ANNEX B

WEAKNESSES IN PROCEDURES FOR RECORDING AND RECOVERING DEBTS

Qualification raised by Certifying Bodies	Grounds for qualification
OPEKEPE (EL)	Accuracy/completeness/provision of doubtful debts' problems.
Vlaamse Gemeenschap (BE)	Unable to certify completeness of Table 105.
IFADAP (PT)	Unable to certify completeness of Table 105.
Significant weaknesses noted by Certifying Bodies	Reasons for weaknesses
Bayern StMLU (DE)	Delays in the recovery of debts, no interest charged on the capital amount of debt.
Brandenburg (DE)	Problems concerning completeness and accuracy aspects of Table 105.
DFFE (DK)	Backlog of debts pending recovery.
CATALUÑA (ES)	Long delays in the recording and recovery of debts, there was no consistent policy on charging interest.
AGEA (IT)	Problems noted in the recovery of debts.
SEERAD (UK)	Long delays in the recording and recovery of debts, no reconciliation between the accounting records and debtors' ledger.
SDE (FR)	Qualification was raised last year, recovery problems continued to be noted this year.
DAF (ES)	Lengthy intervals between the notification of irregularities and their recording in the debtors' ledger.
INGA (PT)	Debts understated by 3 %.
Lack of satisfactory work carried out by Certifying Bodies on debtors' section ⁽¹⁾	Reasons for unsatisfactory work
FAGA (ES)	Scope of CBs debtors' audit did not meet the requirements mentioned in the Commission guidelines.
Castilla la Mancha (ES)	
OFIMER (FR)	
OFIVAL (FR)	
BLE (DE)	
Baden-Württemberg (DE)	
DLG (NL)	
HPA (NL)	
PZ (NL)	
PVVE (NL)	

⁽¹⁾ Conclusions are based upon the Court's evaluation of the CB reports.

Source: Debtors' section in Certifying Body reports for EAGGF year 2002.

THE COMMISSION'S REPLIES

SUMMARY

I. For the protection of its financial interests, Community legislation lays down reporting requirements as regards Community fields of activity ⁽¹⁾. The Member States must send regular reports of irregularities which have been the subject of primary administrative or judicial findings of fact. Regulation (EEC) No 595/91 organises the system of communications of irregularities in the field of the expenditure by the EAGGF — Guarantee Section (European Agricultural Guidance and Guarantee Fund).

In order to facilitate exploitation of the information notified to the Commission, Community legislation contains a detailed list of the information to be provided, in particular the provision which has been infringed, the amounts in question, the practices used to commit the irregularity, and the natural or legal persons involved ⁽²⁾.

Member States have the obligation to prevent and deal with irregularities and to recover amounts lost as a result of irregularities or negligence ⁽³⁾. Regulation (EEC) No 595/91 provides for the communication of all irregularities above EUR 4 000 to the Commission, meaning that all behaviour, intentional or not, that results in the infringement of a provision of Community law has to be communicated. The Commission has taken different initiatives in order to ensure that cases should be identified as a fraud or an irregularity.

The mutual notification and information system thus established is the concrete expression of the mutual duties of sincere cooperation arising from Article 10 of the EC Treaty ⁽⁴⁾, on which the Commission's antifraud strategy, defined in July 2000 ⁽⁵⁾, rests. This partnership between the Commission and the Member States is also the guiding principle behind the provisions of secondary legislation.

As the Council has stressed on a number of occasions, it is essential that the information supplied be consistent and of high quality if the Commission is to make the best use of it in stepping up the fight against fraud and ensuring that cases are properly followed up ⁽⁶⁾, at both national and Community level.

The experience gained and the improvements realised will contribute to increasing the efficiency of the notification system and the reliability of the data.

II. According to the Commission Report on the Protection of the Financial Interests of the Community and Fight Against Fraud — Annual Report 2002 hereafter referred to as 'Commission Report 2002 on the fight against fraud', the highest amounts affected by the irregularities were reported in the fruit and vegetable sector. Member States were also informed of this trend in several meetings as Article 280 Working Group, Cocolaf and the Working Group 'Irregularities and Mutual Assistance — Agricultural Products'.

The electronic data base storing the bulk of communications of irregularities transmitted by Member States has been subjected to a thorough quality check in 2003 by the Commission with the participation of Member States, which resulted in an improved internal consistency of the data while at the same time the figures were updated. The updated figures (see paragraph 30) outstanding at 31 December 2002 should read as follows: the total irregular payments reported since 1971 represent EUR 2 983 million. Of this sum, EUR 603 million (20 %) have been recovered and EUR 297 million have been written off (10 %). The amount still pending represents EUR 2 083 million (70 %). These figures include also the updates which the Commission received in the year 2003 and the financial impact of Commission Decision 2003/481/EC (EUR 75 million).

III. Some Member States do not fulfil their obligation to report within two months of the end of the quarter in which an irregularity was detected and/or new information concerning an irregularity has become known (Regulation (EEC) No 595/91, Articles 3(1) and 5(1)). Among these Member States, Germany and Spain account for more than 50 % of the reported irregularities. The Commission has made Member States aware of this problem by reporting this in the Commission Report 2002 on the fight against fraud (paragraph 10.2.2) and discussing the problem in several meetings as Article 280 Working Group, Cocolaf and the Working Group 'Irregularities and Mutual Assistance — Agricultural Products'.

⁽¹⁾ See in particular Article 3(1) of Council Regulation (EEC) No 595/91 (OJ L 67, 7.3.1997), Commission Regulation (EC) No 1681/94 and (EC) No 1831/94 of 26 July 1994 (OJ L 191, 27.7.1994) for expenditure, and Article 6(5) of Council Regulation (EC, Euratom) No 1150/2000 for traditional own resources.

⁽²⁾ Except for Council Regulation (EC, Euratom) No 1150/2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ L 130, 31.5.2000), where this information is optional only.

⁽³⁾ See Article 8 of Regulation (EC) No 2988/95 (OJ L 312, 23.12.1995) and Article 8 of Regulation (EC) No 1258/1999 (OJ L 160, 26.6.1999).

⁽⁴⁾ As confirmed by the Court in the *Zwartfeld* and *Yugoslav maize* cases. Case C-2/88 [1990] ECR I-3365, 13.7.1990; Case C-68/88 *Commission v Greece* [1989] ECR 2965.

⁽⁵⁾ COM(2000) 358 final of 28 June 2000 and Action Plan 2001-2003 (COM(2001) 254 final of 15 May 2001).

⁽⁶⁾ Including the accounting and recovery aspects.

As regards inconsistencies, Member States have been informed of these and were asked to update these cases by sending digital updates. In meetings of Article 280 Working group, Cocolaf and the Group 'Irregularities and Mutual Assistance — Agricultural Products' explanation and 'training' concerning the ECR (Electronic Case Registry) database were given to Member States. In general it can be said that Member States have improved the reporting of irregularities, but not all obligations of Regulation (EEC) No 595/91 are completely complied with.

As regards discrepancies, the Commission will continue its efforts to oblige Member States to respect all provisions of Regulation (EEC) No 595/91 in order to receive within the delays provided for fully reliable data which contain homogeneous information from all Member States.

IV. The updated rate of recovery was established at 20,2 % in May 2004 (see paragraph 30).

The Commission is fully aware of the fact that the recovery rate in Member States is not optimal and has undertaken to improve it, in particular with the creation of the Task Force Recovery (see also answer to paragraph V).

Paying agencies and administrative bodies in charge of the recovery process in some Member States (Italy and Greece) have always claimed that they had to wait for the outcome of judicial criminal procedures before proceeding with the recovery, whereas the choice of a recovery process through a civil or administrative procedure is in some cases possible and does not preclude the launching of a parallel criminal judicial procedure.

Consequently, the initial choice of the Member State (administrative procedure, civil procedure, criminal procedure) will have consequences for the recovery delay. For a limited number of Member States, administrative recovery procedures can be launched only after a final decision in the criminal judicial procedure if any, bearing in mind that the latter might take 15 years or more.

In Italy, for the pre-1995 cases, 46 % were subject to a criminal procedure whereas this percentage represented 18 % only for the cases posterior to 1995, which could be explained by the Member States deciding to take the necessary administrative steps as early as possible and as soon as there was a notification of the irregularity.

In shared management, the Member State responsible is in direct contact with the debtors. The Commission is not in a position to write off debts. According to Regulation (EC) No 1258/1999 the Commission is legally obliged to exclude all expenditure from Community financing where that expenditure has not been executed in compliance with Community rules. Accepting compromise settlements and/or partial payments should be assessed on a case-by-case approach on the basis of national law and in conjunction with the criteria as laid down in Article 8 of Regulation (EC) No 1258/1999.

V. Following the Communication of the Commission entitled 'Improving the recovery of Community entitlements arising from direct and shared management of Community expenditure' of 3 December 2002 (COM(2002) 671 final), the Commission decided to set up a joint OLAF- Directorate-General for Agriculture Task Force Recovery in order to clear the burden of the past, i.e. all the irregularity cases prior to 1999 and still open in order to prepare a decision on whether the Community or the Member State bears the financial consequences.

As regards the Court's observation on the absence of adequate criteria for deciding whether sums written off should be charged to the Member States or borne by the Community, the Commission wishes to point out that it has developed, throughout time and on account of the acquired experience applied, four guiding principles and a number of procedural criteria documented in July 2002 (see also paragraph 44).

Since the creation of the Task Force Recovery in 2003, the Commission services have drawn up a list of detailed criteria with which all the cases are audited in order to have the amounts not recovered charged either to the Community or the Member State.

VI. Following the allocation of responsibilities stated in Annex 2 to Commission Document SEC(95) 249 dated 10 February 1995, OLAF/OLAF was to receive all communications notified by Member States under Council Regulation (EEC) No 595/91 and was responsible for the analysis and follow-up of the cases in question, including input of the data concerned into the irregularity database.

OLAF responsibility in matters of recovery action related to cases of fraud and irregularity includes the production of summary notes for each case containing a résumé of the procedures performed and the reasoning behind the proposals for possible financial correction within the clearance-of-accounts procedure undertaken under the responsibility of the Directorate-General for Agriculture as Authorising Officer. The clearance procedure is conducted by the Directorate-General for Agriculture, but throughout its different steps, this DG is assisted by OLAF. See also paragraph IX.

The Commission always draws the legal consequences for the fraud proofing and control capability of the existing CAP regulations, taking on board in particular the follow-up recommendations of the Office.

The Commission considers that the allocation of responsibilities between OLAF and the Directorate-General for Agriculture has been clearly defined: according to Annex 2 to the Communication of the Commission SEC(95) 249, OLAF is responsible in matters of recovery on reported irregularities. Any decision to write off irrecoverable amounts has to be taken by the Commission via the EAGGF clearance-of-accounts procedure that is conducted by the Directorate-General for Agriculture, in which OLAF assists throughout its different steps.

VII. Council Regulation (EC) No 1469/95 established, in the field of EAGGF Guarantee, a system for identifying economic operators who present a high risk for the Community Budget through a communication system via the Commission. After eight years of application of this Regulation, it appears that the number of communications is rather limited if not weak.

The Commission has extensively discussed the matter in the framework of the Irregularities and Mutual Assistance/Agriculture products group and is committed to presenting a second report to the European Parliament and to the Council containing comprehensive assessment of the blacklist Regulation and suggested options for action.

VIII. There is a difference between the amounts contained in Table 105 (receivable which is certain and not subject to any condition, receivable of fixed amount expressed precisely in cash terms, receivable due and not subject to any payment time) for the EAGGF financial exercise and the amounts embodied in the ECR database (amount of quarterly reported irregularities for one particular term, which can be at that stage mere estimates subject to subsequent refinements).

The Commission has asked the Member States to undertake a tentative reconciliation of the ECR database with data of Table 105, bearing in mind that both sets of data will never coincide. Until now, the first priority was to improve the quality of the data. The data in the ECR database has now reached a level of reliability where it will be possible to compare the data.

IX. Member States should shift in the near future to the electronic format for reporting of irregularities. The electronic format will increase the data quality and the on time reporting of irregularities and will avoid misunderstandings and misinterpretations.

The Commission is currently assisting Member States in this respect and is also considering an increase of the threshold from EUR 4 000 to 10 000 in order to reduce dataflow and focus on the most important cases.

The Commission has undertaken to bring forward draft proposals to modify Council Regulation (EEC) No 595/91 and Council Regulation (EC) No 1258/1999 to seek to remedy the weaknesses in reporting, recovery and write off of irregular CAP payments.

The Commission considers that the allocation of responsibilities between OLAF and the Directorate-General for Agriculture has been clearly defined: according to Annex 2 to the Communication of the Commission SEC(95) 249, OLAF is responsible in matters of recovery on reported irregularities. Any decision to write off irrecoverable amounts has to be taken by the Commission via the EAGGF clearance-of-accounts procedure that is conducted by the Directorate-General for Agriculture, in which OLAF assists throughout its different steps.

Finally, regarding the suggested abolition of the black list, the Commission, while sharing the view of the Court that the system does not work well, thinks there is room for improvement of the scheme and would rather see the application of the tool by the Member States being improved, than simply abolished. There is certainly room for improvement, and the mere existence of the regulation is designed to have a preventive impact which, admittedly, diminishes if not effectively applied. In this context, it is worth pointing out that clearance of accounts started to systematically include aspects regarding the application of the black list in its audits.

INTRODUCTION

4. During 2003, the Commission updated the figures for the cumulative total of irregular CAP payments. The updated figures are (see paragraph 30):

- irregularities notified after payment: EUR 2 983 million;
- amount recovered from claimants: EUR 603 million;
- amount written off against EAGGF: EUR 153 million;
- amount charged to Member States: EUR 144 million;
- amount to be recovered: EUR 2 083 million.

ANALYSIS

9. At the beginning of May 2004, the amount of irregular payments notified since 1971 stood at EUR 2 983 million while the amount to be recovered represented EUR 2 083 million. The updated percentage referred to by the Court represented therefore 30 %. (The quality and reliability of the data has improved during the year 2003 due to the quality checks, audits of the Task Force Recovery and feedback from Member States). This figure includes all updates of the year 2003 and the financial impact of Commission Decision 2003/481/EC.

11. During 2003, the Commission updated its figures for debts prior to 1994. The updated percentage is 22,4 % (see paragraph 30).

13. The latest CAP reforms have been conducted and adopted in particular with the aim of minimising the risks of fraud and other irregularities.

The IACS (Integrated Administration and Control System), which is acknowledged by the Court as having a major impact on the prevention of irregular payments, is now covering, directly or indirectly, 80 % of CAP expenditure.

15.(b) Additional developments are to be found in the Commission Report 2002 on the fight against fraud.

17. The Commission shares the view that Member States interpret differently the notion of primary administrative or judicial findings of facts; however, it has defined, on various occasions, in different documents and interpretative notes what is to be meant by this notion while a definition is given in the context of the black list in Commission Regulation (EC) No 745/96, Article 1(2) ⁽¹⁾.

21. Germany and Spain together account for more than 50 % of the reported irregularities and these two Member States seldom report on time. The Commission has informed Member States by discussing this problem in meetings as Cocolaf and Working Group 'Irregularities and Mutual Assistance — Agricultural Products' and by publishing the relevant figures in the Commission Report 2002 on the fight against fraud (paragraph 10.2.2).

22. The Commission has made Member States aware of the fact that the time between the discovery and the reporting of an irregularity is too long. In annual reports and presentations in meetings of Cocolaf, Member States have been informed that the reporting time could have an impact on the determination of the negligence of a Member State (see Commission Report 2002 on the fight against fraud, point 10.5).

Almost 90 % of irregularities are notified within two years of their discovery.

24. The Task Force Recovery (see paragraph V) in the course of its audit also found out that Italy has not yet notified the writing off of certain debts in spite of court orders establishing that there had not been any fraud committed.

The necessary corrections have been introduced in the ECR database after July 2003.

25. OLAF has informed Member States in several meetings that some cases still had a pending financial state, i.e. amounts were still to be calculated. Member States were asked to update these cases as soon as (new) information became available (see also point 28).

26. The Commission introduced an electronic reporting system in 2001. At the same time specific fields relating to 'Interest' and 'Penalties' were introduced. Some Member States started to

use this system as from 2002. For 2003, 30 % of the cases provide information concerning penalties and/or interest.

27. The Commission is aware of the problem of inconsistencies of definition and coverage in the information supplied and has already remarked on this problem (see Commission 2002 Report on the fight against fraud, paragraph 11.2). In addition, OLAF also informed Member States in several meetings that the non-reporting of the CN code (product description) would hinder the Commission in producing analyses.

28. The Commission has made substantial efforts to improve the quality of information supplied by Member States in the initial communication as well as in all updates on financial impact. In the framework of the Task Force Recovery, a first attempt has been made to audit the completeness and reliability of the communications and its updates by the Member States.

29. Efforts have been made to tackle the problem of discrepancies between Member State data and the ECR. Reasons for discrepancies can be due to the lack of human resources in order to monitor on a regular basis the constant flow of data provided by Member States. The number of staff has meanwhile been increased. The module has been translated into all languages of EU and a manual has been written.

30. The Commission asked Member States to verify the figures of draft Commission Report 2002 on the fight against fraud. Feedback of Member States was taken into account before the final version of the Commission Report 2002 on the fight against fraud was released; therefore, the figures in this Report have the agreement of Member States.

Cases and communications have been updated during the year 2003 on the basis of:

- quality checks by OLAF,
- findings of Member States concerning the data in the ECR database,
- updates of old cases by Member States,
- Commission Decision 2003/481/EC,
- audit findings by the Task Force Recovery,
- audit findings by the Court of Auditors.

Figures based on the data available in the ECR database on 2 May 2004 are in line with the figures as produced for the Commission Report 2002 on the fight against fraud. However, it was already mentioned in this Report that the 'figures must be handled with great caution' (p. 41) as 'there is no certainty that the total number of communications received represents the total frauds and irregularities detected by Member States' (p. 44).

⁽¹⁾ The preliminary administrative or judicial report shall mean the first written assessment, even if only internal, by a competent administrative or judicial authority, concluding on the basis of concrete facts that an irregularity has been committed, deliberately or through gross negligence, without prejudice to the possibility of this conclusion being revised or withdrawn subsequently on the basis of developments in the administrative or judicial procedure.' The same definition has been provided in different working documents among which the document 'Obligations to notify irregularities: practical arrangements' discussed with Member States in the XIXth meeting of Cocolaf on 11 April 2002.

The effects of the updates during 2003 and Commission Decision 2003/481/EC (EUR 75 million) have been taken into account.

31. The Commission recognises that there are deficiencies in the link between ECR and CMS (Case Management System). A request for a change in the ECR database was made in September 2003. An extra field will be added to the module to create a link between CMS and the ECR database, making it also possible to access the information on the financial recovery situation provided by the Member State.

32.(b) and (c) A large number of the cases were already closed.

36. The Commission considers that the allocation of responsibilities between OLAF and the Directorate-General for Agriculture has been clearly defined: According to Annex 2 to the Communication of the Commission SEC(95) 249, OLAF is responsible in matters of recovery on reported irregularities. Any decision to write off irrecoverable amounts has to be taken by the Commission via the EAGGF clearance-of-accounts procedure that is conducted by the Directorate-General for Agriculture, in which OLAF assists throughout its different steps.

37. In the absence of total recovery, the financial consequences of the irregularities shall be borne by the Member State in the event of irregularities or negligence attributable to administrative authorities or other bodies of the Member States. In other cases the burden shall be borne by the Community budget. The Commission has defined as early as 1996 the following guideline⁽¹⁾ that the recovery procedure should be launched as soon as possible after the irregularity had been detected and should be completed within four years after the date of the first communication of fraud or irregularity. In the opposite case, the Member State may be required to show that there was no negligence.

The four-year period is extended to eight years in case of judicial procedures, on the condition that the Commission is fully informed of the recovery procedure.

39. The Commission has identified a certain number of problems in this context. In its Communication COM(2002) 671 final of 3 December 2002, the Commission recommended the initiation of corrective measures, namely:

- setting up of the Task Force Recovery to speed up the treatment of the backlog,
- modifying Regulation (EC) No 1258/1999 and therefore Regulation (EEC) No 595/91 to prevent new backlogs in the future.

Such provisions on writing off irrecoverable Community entitlements should provide the regulatory basis to carry out this

operation prudently thanks to specific, clear-cut criteria and transparent legal procedure in particular based on:

- annual global communications by Member States regarding the stage of their national recovery procedures,
- attentive scrutiny of the files examined by the Task Force Recovery,
- approved criteria to determine whether the non-recovered amounts should be charged to the Community Budget or to the Member State.

40. During 2003, the Commission updated the cumulative recovery rate as at the end of 2002 at 20,2 % of the global financial impact of cases detected after payment (effectively recovered by the Member States).

Through the clearance-of-accounts procedure, a further EUR 144 million (4,8 %) has been charged to the Member States and EUR 153 million (5,1 %) to the EAGGF budget (see paragraph 4).

41. The Commission agrees that the recovery rate is low but this assessment can be explained by the fact that, in matters of shared management, recovery procedures are not uniform nor harmonised in Member States and this is an unexpected effect of the assimilation principle posed by Article 280 of the Treaty which jeopardises the uniformity of implementation of Community legislation because recovery of Community monies follows the national rules.

However, the Commission has undertaken to bring forward proposals to modify Regulation (EC) No 1258/1999 and Regulation (EEC) No 595/91 in order to improve the weaknesses of the actual situation (see paragraph 39).

- (a) In the absence of total recovery, the financial consequences of the irregularities shall be borne by the Member State in the event of irregularities or negligence attributable to administrative authorities or other bodies of the Member States. In other cases the burden shall be borne by the Community budget.

The case which the Court refers to was notified on 29 May 1991 and updated in 1997. The Commission wishes to point out that this case was not included in the TFR audit selection on account of the wrong amount reported in ECR.

- (b) The objective of the amendment of Regulation (EC) No 1258/1999 and Regulation (EEC) No 595/91 is, *inter alia*, to address the shortcomings pointed out by the Court by making Member States more responsible and by providing *ex post* controls in the clearance-of-accounts framework.
- (c) According to Article 280(2) of the EC Treaty 'Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests'. There is a

⁽¹⁾ Document VI/5330/97.

constant case law of the ECJ which stipulates that the rules applicable in cases where there are violations to Community law cannot be less favourable than the rules prevailing in cases where there are violations to national law. However this does not amount to conferring a preferential status on CAP debts.

(d) As regards the outcome of the combined UCLAF/German 1992 investigation, this case will be dealt with in the clearance-of-accounts procedure.

(f) According to Regulation (EC) No 1258/1999 the Commission is legally obliged to exclude all expenditure from Community financing where that expenditure has not been executed in compliance with Community rules. Accepting transactions or partial payments are conditions to be assessed on a case-by-case approach on the basis of national law and in conjunction with the criteria as laid down in Article 8 of Regulation (EC) No 1258/1999.

42. The Commission has undertaken to bring forward proposals to modify Regulation (EC) No 1258/1999 and Regulation (EEC) No 595/91, *inter alia*, to address the shortcomings pointed out by the Court by making Member States more responsible and by providing *ex post* controls in the clearance-of-accounts framework.

43. During 2003, the Commission has updated the figures on amounts written off as at the end of 2002. The updated figures are:

- charged to Member States: EUR 144 million,
- charged to EAGGF: EUR 153 million.

The Commission shares the concern of the Court about the management and recovery of EAGGF debt. It points to the efforts made through the reform of the clearance of accounts in 1996 together with the developments discussed in paragraphs 39 and 41 of the replies.

These cases will be dealt with in the clearance-of-accounts procedure.

44. The Commission has applied four guiding principles and a number of procedural criteria documented in July 2002. As regards the guiding principles:

- if the whole amount cannot be recovered for objective reasons and the Member State has done all it can to recover the amount on time without displaying any negligence, the unrecovered amounts are charged to the Community budget.
- in all other cases, where the irregularity is attributed to the Member State or where the recovery procedures have not been conducted with all the diligence required, the amounts in question are charged to defaulting Member States.

— the recovery procedure must be started as soon as possible after the irregularity has been detected and should be completed within four years of the fraud or irregularity first being reported. If not, the Member State must show there has been no negligence.

— the treatment of individual cases must be discussed in detail with all the Member States concerned.

As regards the procedural criteria, the questions to be answered are:

- Has the recovery procedure started? Can it be completed within a reasonable period?
- Has the recovery procedure not been completed for reasons of *force majeure* or for other compelling reasons?
- Was recovery not initiated because of the negligence of the Member State or its failure to take action?

Since the creation of the Task Force Recovery, the Commission services have refined the criteria and have drawn up a list of criteria upon which all files are audited in order to have a decision on whether the amounts at stake are charged to the Community budget or to the Member State. This audit concerns all outstanding files up to 31 December 1998.

48. There is no link between the financial corrections based on a system analysis and the individual cases of fraud for which amounts have not yet been recovered. Article 8(2) of Regulation (EC) No 1258/1999 and Article 5(2) of Regulation (EEC) No 595/91 provide clear procedural rules to be followed for the treatment of specific cases of fraud and irregularities.

49. As the Court mentioned it in an earlier report ⁽¹⁾, the Commission undertook in 1999 a review of all the pre-1995 cases still pending in order to take a decision on whether to charge them to the Community or to the Member States. The exercise was limited to six Member States ⁽²⁾, on account of the poor quality of the available data and also taking into consideration the limited human resources available.

50. Following the Commission decision mentioned by the Court, all cases involved were updated in the ECR database. This now contains the number of the Commission Decision, the authority who should bear the loss and the amounts involved.

⁽¹⁾ Special Report No 22/2000 on evaluation of the reformed clearance-of-accounts procedure (OJ C 69, 2.3.2001).

⁽²⁾ Belgium, Greece, Spain, Ireland, the Netherlands, Portugal.

The distribution of the costs of writes off between the Community budget and Member States budget in the June 2003 decision should not be taken as a precedent for future decisions. In respect of Italy, which appeared to be the largest debtor, due to the large number of Italian cases and the poor cooperation of the Member State, it was decided in 1999 to concentrate on the cases of other Member States and to postpone the scrutiny of Italian files.

51. The Commission set up a Task Force Recovery in 2003 in order to clear all the pending irregularity cases prior to 1999. In the framework of the audits carried out by the Task Force Recovery throughout 2003, the remaining pre-1995 files above a given threshold (EUR 500 000) were examined for nine Member States ⁽¹⁾. In total, 443 cases were examined in the course of this audit, among them 343 cases for Italy. The related clearance-of-accounts procedure for the bulk of examined files is ongoing.

52.(a) and (b) The Commission has taken the necessary steps to remedy this situation. Since July 2003 the number of the Commission Decision and the amounts involved are stored in the digital file and there is a reference to the Commission Decision in the paper file. A change request has been formulated to create an extra field in the ECR database in which the Commission Decision number can be saved. Since March 2004, the ECR database contains a specific field in which the Commission decisions are listed.

The 1993 clearance-of-accounts decision was proposed in 1997, and OLAF was responsible for the corrections proposed for inadequate follow up of irregularities. Due to the old clearance-of-accounts procedure, cases were not properly documented. However, these procedures are clear now.

(c) The Commission informs Member States of OLAF's recommendations, which are only mere proposals at that stage, the final decision being taken by the College. It is not excluded that some Member States already 'anticipate' these recommendations and take them for granted.

53. The Commission considers that the allocation of responsibilities between OLAF and the Directorate-General for Agriculture has been clearly defined: According to Annex 2 to the Communication of the Commission SEC(95) 249, OLAF is responsible in matters of recovery on reported irregularities. Any decision to write off irrecoverable amounts has to be taken by the Commission via the EAGGF clearance-of-accounts procedure that is conducted by the Directorate-General for Agriculture, in which OLAF assists throughout its different steps.

55. The competent Commission service (OLAF's intelligence units) had to improve the quality of the data before it could be used for analyses and intelligence-driven investigations. In the

year 2003 the first basic analyses on the basis of the data of ECR database have been presented to Member States in the framework of the Working Group 'Irregularities and Mutual Assistance — Agricultural Products'.

The developments discussed in paragraphs 39 and 41 of the replies should facilitate and speed up the recovery process.

57. The Commission endorses the Court's statement on the weaknesses of the ECR system and has performed some analyses in which the use and the frequency of codes were examined. The Commission has started a discussion with the Member States on the simplification of the reporting system.

58. The Commission has asked Member States to update these cases during the Article 280 Working Group meeting of 12 March 2003 and Working Group 'Irregularities and Mutual Assistance — Agricultural Products' of 11 March 2003 (see paragraph 25).

59. The Commission uses the data for operational and recovery follow-up purposes as well as strategic intelligence purposes. This is however done by analysts of OLAF itself, therefore no direct link between the ECR module and (other) users can be found.

Most of the time, data is prepared by OLAF staff on request of other users inside the Community services or outside in Member States such as Austria and Germany, which are using the data to prepare Regulation (EEC) No 4045/89 controls.

60. The Commission services have presented figures and analyses of the ECR modules in several meetings with the Member States.

62. The competent authorities of Member States are faced with some delicate legal interpretation of questions and this notwithstanding the guidance provided by the Commission for a uniform interpretation of the black list tool. Among the difficulties put forward by Member States are:

- the concept of 'serious negligence' is a legal concept unknown in certain Member States in civil law, having in some Member States more affinity with the criminal process,
- the absence of an explicit clause which regulates liability in the case of a consortium or associated operators,
- the risk of having to pay for damages for a blacklisting that was ultimately overturned, which could have serious financial consequences for the Member State involved.

⁽¹⁾ Belgium, Germany, Greece, France, Italy, Netherlands, Spain, Portugal, United Kingdom.

66. and 67. Certifying Bodies have been provided with detailed instructions in the framework of an ad hoc expert meeting in 2002 focused on the checks to be made with Table 105. Table 105 aims at:

- overseeing and control of amounts of liabilities held by Member States,
- reflection on the level of liabilities,
- a tentative reconciliation of the data of Table 105 and the Paying Agencies' debtors' ledgers, and Table 104 with the ECR data base managed by OLAF.

The Commission services are giving increased attention to this question through a scrutiny of the annual reports of the Certification Bodies.

67. The Commission informs Member States of OLAF's recommendations, which are only mere proposals at that stage, the final decision being taken by the College. It is not excluded that some Member States already 'anticipate' these recommendations and take them for granted. During the clearance-of-accounts procedure, the Commission has very substantial powers; firstly, it is responsible for auditing and evaluating the Member State's management of EAGGF Guarantee expenditure, and secondly, it is the institution which unilaterally decides which amounts to refuse for financing.

68. There is a difference between the amounts contained in Table 105 (receivable which is certain and not subject to any condition, receivable of fixed amount expressed precisely in cash terms, receivable due and not subject to any payment time) for the EAGGF financial exercise and the amounts embodied in the ECR database (amount of quarterly reported irregularities for one particular term, which can be at that stage mere estimates subject to subsequent refinements).

The Commission has asked Member States to undertake a tentative reconciliation of the ECR database with the data of Table 105, bearing in mind that both sets of data will never coincide. Until now, the first priority was to improve the quality of the data. The data in the ECR database has now reached a level of reliability where it will be possible to compare the data.

CONCLUSIONS

70. The Commission shares the concern of the Court about the management and recovery of EAGGF debt. In 2000, on the initiative of the Commission and based on the same observations as the Court, proposals were discussed with Member States to remedy the situation of the 'pending' cases. In 2003, following the creation of the Task Force Recovery after the Communication of the Commission of 3 December 2002, files representing more than EUR 500 000 notified before 1 January 1999 have been under scrutiny. The remaining cases will be dealt with in the near future.

See also answer to paragraphs II and 4 as regards the updated figures.

71.(a) The requirements of the Commission services are very well known to Member States authorities; but due to national communication and cooperation problems these requirements are not reflected in the communication and updating of irregularities.

(b) See answer to points 25. to 27. To encourage the communication of increasingly precise and up-to-date information, the Commission is redoubling its efforts regarding the gathering and analysis of data sent in by the Member States.

(c) The Commission shares the concern of the Court about the management and recovery of EAGGF debt, but believes that things are gradually improving.

(d) The creation of the Task Force Recovery in 2003 should enable the Commission to clear up the backlog. The Commission has undertaken to bring forward proposals to modify Regulation (EC) No 1258/1999 and Regulation (EEC) No 595/91 to prevent having a similar situation in the future.

(e) The Commission applied four guiding principles and a number of procedural criteria documented in July 2002. They are detailed in answer to point 44. Since the creation of the Task Force Recovery, the Commission services have refined a list of criteria upon which all files are audited in order to have a decision on whether the amounts at stake are charged to the Community budget or to the Member State. This audit concerns all outstanding files up to 31 December 1998.

(f) The Commission considers that the allocation of responsibilities between OLAF and the Directorate-General for Agriculture has been clearly defined: according to Annex 2 to the Communication of the Commission SEC(95) 249, OLAF is responsible in matters of recovery on reported irregularities. Any decision to write off irrecoverable amounts has to be taken by the Commission via the EAGGF clearance-of-accounts procedure that is conducted by the Directorate-General for Agriculture, in which OLAF assists throughout its different steps.

72. Detailed instructions on the audit of the debtors' ledgers have been provided to the Certifying Bodies. The Commission will increase its efforts in order to reach a better understanding of the problem.

73. The Commission has extensively discussed the application of the Black List in the framework of the Working Group 'Irregularities and Mutual Assistance — Agricultural Products' and is committed to presenting a second report to the European Parliament and to the Council containing a comprehensive assessment of the black list Regulation and suggested options for action.

RECOMMENDATIONS

74. The Commission takes note of the recommendations of the Court and considers that some of these recommendations of the Court address primarily Member States. Moreover the

Commission estimates that, in undertaking its tasks, it should primarily focus on the appraisal of the efficiency and adequacy of adopted and executed measures. Some of the changes welcomed by the Court are already in place.

- The quality of the available data related to CAP irregular payments should be improved.
- The recovery of irregularly paid amounts should be speeded up by the introduction by Member States of efficient measures. The Commission has undertaken to bring forward proposals to this effect (see paragraphs 39 and 41).
- The Commission has undertaken to put in place criteria in order to decide on the financial consequences of irregularities as to whether to charge the Community budget or the Member State.
- The Commission considers that the allocation of responsibilities between OLAF and the Directorate-General for Agriculture has been clearly defined: according to Annex 2 to the Communication of the Commission SEC(95) 249, OLAF is responsible in matters of recovery on reported irregularities. Any decision to write off irrecoverable amounts has to be taken by the Commission via the EAGGF clearance-of-accounts procedure that is conducted by the Directorate-General for Agriculture, in which OLAF assists throughout its different steps.
- The Commission takes into consideration the antifraud aspect in every piece of its CAP legislation through the so-called fraud-proofing examination of the draft regulations.

75.

- The question of the act generating the obligation to communicate (preliminary administrative or judicial report) is defined in Article 1(2) of Regulation (EC) No 745/96, and has been widely discussed with Member States (see reply to paragraph 17).
- The Commission is currently examining the question of increasing the threshold to EUR 10 000.
- The Commission has already performed some analyses in which the use and the frequency of codes were examined. A paper concerning the type of irregularity and the qualification by Member States has been produced and will be used in a discussion between the Commission and Member States to simplify the number of codes. The same procedure will be followed for other codes.
- Efforts have been made to tackle the problem of discrepancies between Member State data and the ECR database.

- The Commission has invited Member States to proceed to a tentative reconciliation of OLAF ECR/595 data and the debtors' ledgers data.

76.

- The Commission has undertaken to bring forward a proposal of modification to Regulation (EC) No 1258/1999 which aims at enhancing the efficiency of the recovery process.
- The offset of irregular payments against other EAGGF payments is legal and common in many Member States. The Commission will seek to promote this practice in all paying agencies.
- The Commission would like to recall the principle of assimilation enshrined in Article 280 of the Treaty. In this context, it wishes to add that there is a constant caselaw of the ECJ which stipulates that the rules applicable in cases where there are violations to Community law cannot be less favourable than the rules applicable in cases where there are violations to national law. However this does not amount to conferring a preferential status to CAP debts.

77. The Commission applied four guiding principles and a number of procedural criteria documented in July 2002. They are detailed in answer to point 44. The Commission has foreseen to take action in this field.

78. The Commission considers that the allocation of responsibilities between OLAF and the Directorate-General for Agriculture has been clearly defined: According to Annex 2 to the Communication of the Commission SEC(95) 249, OLAF is responsible in matters of recovery on reported irregularities. Any decision to write off irrecoverable amounts has to be taken by the Commission via the EAGGF clearance-of-accounts procedure that is conducted by the Directorate-General for Agriculture, in which OLAF assists throughout its different steps.

79. The Commission has started this process. The Commission Report 2002 on the fight against fraud can be considered as the first report in which first steps were made on lessons learned.

80. The Commission has extensively discussed the application of the Black List in the framework of the Working Group 'Irregularities and Mutual Assistance — Agricultural Products' and is committed to presenting a second report to the European Parliament and to the Council containing comprehensive assessment of the black list Regulation and suggested options for action (see also answer in paragraph IX).