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from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Brussels, 19.7.2012
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COMMISSION STAFF WORKING DOCUMENT

**Follow-up of recommendations to the Commission report on the protection of the EU's
financial interests - fight against fraud, 2010**

Accompanying the document

Report from the Commission to the European Parliament and to the Council

**Protection of the European Union's financial interests - Fight against fraud
Annual Report 2011**

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COMMISSION STAFF WORKING DOCUMENT

Follow-up of recommendations to the Commission report on the protection of the EU's financial interests - fight against fraud, 2010

Accompanying the document

Report from the Commission to the European Parliament and to the Council

Protection of the European Union's financial interests - Fight against fraud Annual Report 2011

SUMMARY

In the **2010** Report on the protection of the European Union's financial interests, the Commission made certain recommendations to the Member States. The Commission has followed up the implementation of these recommendations by the Member States as part of the 2010 reporting exercise. The complete answers of the Member States to the recommendations are included in the Fourth Accompanying Staff Working Document to this report.

The Commission and the Member States are also giving follow-up to the recommendations formulated by the European Parliament in its annual resolution on the protection of the EU financial interests.

FOLLOW-UP RECOMMENDATIONS TO THE COMMISSION REPORT ON THE PROTECTION OF THE EU'S FINANCIAL INTERESTS-FIGHT AGAINST FRAUD-YEAR 2010

1. REPORTED CASES ON FRAUD AND OTHER IRREGULARITIES

1.1. Revenues

Traditional own resources (TOR) In recent years the Commission has laid special emphasis on Member States' customs control strategies in its TOR inspections. The Commission is closely monitoring Member States' action in response to the observations made during Commission inspections . The Commission called **Member States via custom control strategies to continue to target high risk imports, thus further improving the detection rate of irregularities and of suspected fraud cases in the area of TOR.**

Most of the Member States¹ confirmed that their national strategies in place consistently assess the risks in the entire sphere of customs duties and necessary proactive and preventive measures will be taken to combat the potential frauds. The rest of Member States did not reply to the recommendation.

¹ BG, EE, IE, EL, CY, LV, LU, HU, MT, NL, PT, RO, SK, FI,

1.2. Expenditure

Agriculture: In 2010, Italy and EU-12 Member States have qualified more than 90% of the reported cases as "suspected fraud". Certain big spending Member States such as France, Germany, Spain and United Kingdom continue to report a very low number of suspected fraud cases. France did not classify any of its 2010-cases as suspected fraud. This raises the question whether the reporting of a low number of cases of suspected fraud is due to the non-respect of reporting principles or to the ability of the control systems in place to detect fraud in the Member States. The Commission called upon **France, Germany, Spain and United Kingdom** to explain the low number of reported suspected fraud cases, and to report about the way in which the control systems are adapted to target areas with a higher risk of fraud and irregularities.

Compliance with rules for reporting fraud and suspected fraud in the above mentioned big spending Member States seems questionable given their low rate of reporting of suspected fraud.

Germany replied that until now no fraud cases have been reported by the regional and central authorities. France replied that, in their view, there is no relationship between the amount of aid granted by the Member State and notified number of cases of fraud or suspected fraud without taking into account the framework of controls and its implementation, which France claims to be complying with Union regulatory framework. France is also pointing at national regulatory issues (proof of intent for fraud and suspected fraud) which they claim to be preventing a systematic notification of irregularities related to fraud or suspected fraud. Spain's reply is referring to the complexity of the agricultural sector, which calls for a wide variety of controls and claims that this close network of controls makes it difficult to perpetrate fraud. It stresses that fraud is being prosecuted. United Kingdom did not reply to the recommendation.

Bulgaria and Portugal also sent replies to the recommendation. Bulgaria replied in referring to improvements in the organization of responsible bodies, mainly paying agencies, with the aim of shortening reporting delays for fraud and suspected fraud to less than a week. Portugal replied with a general statement that it will continue with its previous efforts at all levels and in all fields in order to identify irregularities and to recover undue payments.

Cohesion policy: The Commission called upon **Spain and France** to complete the implementation of IMS by the end of 2011 and invites **Ireland** to fully implement the system. France replied that it encountered certain implementing difficulties in entering Cohesion policy related data in IMS but that it is currently working at solving this issue. Spain stressed in its reply that it is using the application since the 3rd quarter of 2011. Ireland confirmed its full implementation.

2. RECOVERY OF IRREGULAR AMOUNTS IN 2010

Cohesion policy: Cohesion policy shows the highest recovery rate in the expenditure area in 2010. The success improved procedures put in place for the programming period 2000-2006 is demonstrated by the fact that, only one year after the submission of the closure documentation by Member States to the Commission, 70% of unduly paid EU contribution has been recovered (or withdrawn from expenditure claims.) The Commission invited **Hungary, the Czech Republic and Slovenia** with a recovery rates around or below 20% to explain the reasons and to increase their efforts.

Improvements in procedures introduced last year resulted in a dramatic increase of the rate of recovery of irregular amounts to about 70%. Slovenia reported a recovery rate of 95%. The Czech Republic replied to the recommendation and pointed at the introduction of the single document for enforcement measures while Hungary reported as reasons of low recovery the economic crisis and the delays of detection in previous years.

Pre-accession funds: The analysis of recoveries throughout the programming period 2002-2006 confirms the need for improvements in this area. The pre-accession funds show the lowest recovery rates for expenditure. Recovery rate for the year 2010 is a lot lower than in the previous year. Even if the recoveries for the past years are taken into account, the recovery rate remains low and especially low for Bulgaria, Lithuania, Latvia and Slovenia. In cases of suspected fraud, procedures are becoming even lengthier and more complex, as showed by the lower recovery rate. Apart from the lengthy procedures linked to suspected fraud cases, another explanation for the low rates could be the failure by Beneficiary Countries to update the recovery information about irregularities. The Commission called **Bulgaria, Lithuania, Latvia and Slovenia to explain the reasons for low recovery rates, to improve their recovery performances and to update the missing information on completed recovery proceduret.** Those Member States confirmed their commitment to improve the recovery process.

Bulgaria reported as reasons of the low recovery rate the prolonged administrative and penal procedures where voluntary recovery was not possible. Other reasons are insufficient financial stability of the beneficiaries due to the financial and economic crisis, ceasing of their economic activity and lack of property to be seized.

Lithuania reported as main reasons why it takes a long time to recover EU assistance paid and/or used in breach of EU and Lithuanian legislation or international agreements the difficult financial situation in which project implementers find themselves and protracted court proceedings.

Latvia reported as reasons of the slow recovery rate, the lengthy and complex recovery procedures, including administrative procedures and criminal procedures, which mostly do not go hand in hand. In addition, Latvia replied recoveries and reimbursements to the Commission related to the undue paid amounts. Slovenia reported that all amounts have been recovered and reimbursed to the Commission.

3. RESULTS OF THE QUESTIONNAIRE ABOUT COOPERATION WITH THE MEMBER STATES CONCERNING THE RISK OF DOUBLE FINANCING OF PROJECTS IN THE AREA OF COHESION POLICY – RECOMMENDATION ON SETTING UP THE CENTRAL EXCLUSION DATABASE (CED)

In the framework of the questionnaire of 2011 about cooperation with the Member States concerning the risk of double financing of projects in the area of cohesion policy, on the use of the Central Exclusion Database (CED) under Article 95 of the Financial Regulation, only 5 Member States declared that are using it². The Commission called 10 Members States³ as well as those Members States⁴ who are using other kinds of national exclusion databases, to set the

² BG, CZ, MT, AT, PL

³ BE, DE, EE, EL, IT, CY, LU, NL, FI, UK

⁴ DK, IE, ES, HU, SI, SE

CED up, and to report on the progress made, whereas invited 6 Member States to report on the progress made regarding the full implementation of the CED.

As regards the follow-up of this recommendation, Germany, Estonia, Greece, Spain, Hungary and the Netherlands replied on measures taken to implement the CED. Cyprus, Ireland, Italy and Romania replied that they appointed the liaison point. Denmark and Sweden replied on the measures they are taking to make their existing systems comply with CED requirements. France, Portugal and Roumania provided a progress report on their way to full implementation of CED. Finland replied that, the added value provided by the CED database is not considered to be sufficiently significant nationally for us to introduce the database during the present programming period. Instead, resources should be used for the maintenance of the existing databases and for the preparation of the new programming period. Finally, Slovenia reported that according to the Public Procurement Act, the Ministry of Finance keeps the register of suppliers with negative references, indicating the full name and registration number of the entity date of entry in to the register, date of abolishment. The register is published on the web page of the Ministry of Finance.

The Commission would like to point out that, to this date, no cases were reported to the Commission to this respect.

The table below reflects the current state of play according to the available information at Commission level.

MS	Compliance with Central Exclusion Database (CED) - Source Commission *			
	Designation of liaison point	No designation of liaison point	Active Access	Non active Access
BE		x		
DK		x		
DE		x		x
EE	x			x
EL		x		
ES	x 2		x	
FR		x		
IE	x			x
CY	x 3		x 1	x
IT	x			
LT		x		
LV	x3			x
HU	x			x
MT	x3		x1	
NL		x		
PT	x3			x
RO	x3		x3	
FI	x2			x
SI		x		
SK				
SE		x		
UK		x		
* As of 21st May 2012				

ANNEX – REPLIES OF MEMBER STATES

1. REPORTED CASES ON FRAUD AND OTHER IRREGULARITIES

1.1. Revenues - Traditional own resources (TOR)

In recent years the Commission has laid special emphasis on Member States' customs control strategies in its TOR inspections. The Commission is closely monitoring Member States' action in response to the observations made during Commission inspections .

RECOMMENDATION 1

Member States' custom control strategies should continue to target high risk imports, thus further improving the detection rate of irregularities and of suspected fraud cases in the area of TOR.

BE	No comments.
BG	<p>Fraud/irregularities reporting with regard to the TOR done by the Customs Agency is carried out in due time and in accordance with the deadlines stipulated in Regulation EURATOM 1150/2000. The reported cases concern mainly fraud related to the infringement of the Customs legislation as well as illegal traffic of tobacco products.</p> <p>The Customs Agency Action Plan for 2010 includes a number of customs control measure of strategic character and the emphasis is on the checks of import goods with a high level of risk. As a result of the planned and undertaken measures in 2010 more cases of fraud and irregularities in the field of TOR have been revealed in comparison to 2009.</p>
CZ	No comments.
DK	No comments.
DE	No comments.
EE	<p>The working group dealing with customs duties and consisting of the representatives of all relevant departments of ETCB consistently assesses the risks in the entire sphere of customs duties and necessary proactive and preventive measures will be taken to combat the potential frauds.</p> <p>Exhaustive ex-post checks are carried out in case of a high risk. Effective but not so expensive measures are applied in case of medium and low risks. The following measures are applied: necessary information is provided to traders through the press, sending notification letters to traders, communicating with the traders by phone, declarations monitoring, direction of documents and goods into the selectivity channels (yellow or red channel), and examination of individual cases.</p> <p>New declarations lodged by the traders, who have not replied to the notification letters sent to them or who have not improved their behaviour, will be directed to the selectivity channels for further checks to be performed. According to the results of</p>

	controls performed in the selectivity channels it will be decided which additional control measures should be applied, including ex-post examinations of individual cases or full audits. Comprehensive risk analysis methods described in the Customs Audit Guide enable us to focus on non-compliance traders.
EL	<p>The Ministry of Finance's competent Directorate D33 sent us the following more recent information in its letter ref. D33A5007240 EX2012 of 17 February 2012 concerning the risk analysis which the customs control services incorporate into their control strategy:</p> <p>On 22 March 2011, the Ministry of Finance's competent Directorate D33 department issued new explanatory instructions on applying risk analysis, replacing those issued in 2010.</p> <p>These instructions are intended to achieve more effective implementation of targeted checks and to prevent and combat smuggling, safeguard the financial interests of Greece and the EU etc. On 17 February 2011, the above department also issued specific instructions to the customs control services to carry out physical checks on a percentage of customs declarations over and above that indicated by the information system (MIS). The aim of this practice is to cover the risk of illegal operations not yet recorded in the strategic risk analysis and catch potential offenders unawares.</p>
FR	No comments.
ES	No comments.
IE	Ireland's customs control strategy continues to target high risk imports, thus further improving the detection rate of irregularities and of suspected fraud cases in the area of TOR. To achieve this, we have established a programme of on-going development of our technology (including risk analysis systems) and our customs staff.
FI	In Finland, customs supervision is based on risk analysis. The EU common priority control areas and the Community risk management system database are used in risk-based monitoring for the exchange of information. Finnish Customs' National Risk Analysis Centre analyses the risks and sets national or EU-level risk criteria for the electronic customs system. Clearance cases selected for processing will be processed at an electronic service centre, which issues rules concerning the inspection of goods if necessary.
IT	No comments.
CY	<p>The Department of Customs and Excise, of the Republic of Cyprus continued to target high risk imports, thus further improving the detection rate of irregularities and of suspected fraud cases in the area of TOR.</p> <p>The Department of Customs and Excise, through the Intelligence and Risk Analysis Section, supported by the Information Systems available, has significantly enhanced the results of intelligence based risk analysis, profiling and targeting, while at the same time, making the most effective use of limited resources. Controls are based both on analyzing the available information with the assistance of analysis systems as well as documentary information.</p> <p>Customs controls exercised rely on risk analysis techniques that enable us to focus the controls on high-risk consignments, supported by random controls as necessary.</p>

	<p>Through the Risk Analysis Module of our electronic import system “THESEAS”, the Department of Customs and Excise is able to concentrate the control efforts on those shipments posing the highest risk while providing those with low level of risk as unhindered passage as possible.</p>
LT	<p>The Commission carried out an inspection of the customs control strategy in the Member States in 2009-10 and drew up a thematic report on the customs control strategy in the Member States (hereinafter ‘the report’). The report contains systematic information on the irregularities found during the inspection in the Member States and on progress made by Member States in 2011. The report identifies six irregularities that were detected in the Lithuanian customs service (based on Report No 09-20-1 on the inspection of traditional own resources carried out by the Commission in Lithuania on 15-19 June 2009). Five irregularities were remedied, i.e. procedures were amended or anomalies corrected, during the time that the report was being drawn up. One irregularity detected in the Lithuanian customs service was identified in the report as still not having been remedied, and additional information was requested in this connection. Lithuania submitted the information requested and the Commission informed the Lithuanian customs service by letter of 4 April 2011 (BUDG/B/03/K2/bh D(2011)368379) that the issue was considered closed.</p>
LU	<p>In the field of Traditional Own Resources (TOR), the Luxembourg Customs and Excise Agency Administration applies, in addition to an automated risk analysis, control methods targeting high-risk imports in order to increase the rate of detection of irregularities and fraud. The Commission (DG Budget) verifies this each year during its visits to Luxembourg to carry out joint inspections of the Communities' own resources under Article 18 (2) of Council Regulation (EEC, Euratom) No 1150/2000 of May 2000.</p>
LV	<p>Regarding customs controls in the field of own resources, according to Procedure No 45 “Procedure for drafting reports on identified fraud and violations or cases of cigarette smuggling, register information about reports in <i>OWNRES</i> system and receives <i>OWNRES</i> user’s rights”, adopted by the State Revenue Service of Republic of Latvia (SRS) on November 4, 2008, the Customs Criminal Board is responsible for drafting reports on identified cases of cigarette smuggling, i.e. drafting report “Report on identified fraud or violation” and sending the report to the SRS Customs Board Payment Accounting Section Traditional Own Resources Administration Division.</p> <p>SRS Customs Board Payment Accounting Section according to Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities’ own resources, Title II “Accounts for own resources” Article 6 informs the European Commission about fraud or violations of customs regulations exceeding EUR 10 000. Namely, it provides information but does not perform actions to eliminate and/or reduce possible fraud risks (<i>Recommendation 1 – “Member States’ custom control strategies should continue to target high risk imports, thus further improving the detection rate of irregularities and of suspected fraud cases in the area of TOR”</i>).</p> <p>In addition we would like to inform that the following have been developed: an action plan for the introduction of the SRS customs clearance standard, SRS tax liabilities implementation strategy for 2010-2013, and SRS operations development</p>

	strategy for 2011-2013, respective action plans including tasks for elimination of fiscal risks ensuring effective implementation of control functions and identification and preventions of crimes.
HU	<p><u>1. Checks built in to customs procedures</u></p> <p>An important element of customs control after goods have been presented to the customs authorities is to inspect the relevant documents and goods, and control methods have been developed for normal, paper-based procedures, simplified customs procedures, electronic customs procedures and facilitated procedures. The goods inspection measures are determined by the type of data to be inspected, e.g. quantity, quality, tariff classification, origin, customs value, etc. The risk analysis module of the customs data processing system, known as the ‘central e-reviewer’ (abbreviated to ‘risk analysis’), makes a recommendation regarding the goods and/or documents for inspection.</p> <p>Based on the data of the customs declaration produced, goods can be selected for inspection automatically using the mechanism built in to the computerised customs data processing systems (CDPS, NCTS (MCC), ÁRUREG (ICS, EVT), the E-FO system, ECN+, and the system that checks the documentary evidence produced for the customs procedure or activity, known as EBIR) or on the basis of a decision by the excise official carrying out the customs procedure.</p> <p>Processing procedures carried out in car parks allow the items of goods for inspection to be selected either automatically or on the basis of a decision by the relevant official. The risk analysis module of the customs data processing system, known as the ‘central e-reviewer’, makes a recommendation regarding the goods and/or documents for inspection, and the official takes the necessary measures on that basis.</p> <p>In addition to their risk-management and risk-analysis activities, and with due regard to local risks, the customs and excise directorates carrying out the base customs procedures must review the legality and professionalism of at least 0.5% of customs procedures each month, taking account of the customs body’s turnover and including paper-based and electronic customs procedures. To achieve this objective, the review must cover not only an inspection of the customs declaration and any annexes, but also a collation of the data contained in the relevant customs databases.</p> <p><u>2. Post-clearance checks</u></p> <p>For preventive reasons and on account of the large number of traders involved in foreign-trade activities subject to customs control, at least 5% of such traders must undergo post-clearance checks based on a risk analysis selection. This level of inspection is achieved by ex-post checks aimed at inspecting the foreign-trade activity subject to customs control (in-depth audits) and by individual ex-post checks of customs declarations on the basis of Article 78 of the Community Customs Code.</p> <p><u>2.1. Ex-post controls aimed at inspecting the foreign-trade activity subject to customs control (in-depth audits)</u></p> <p>The primary objective of ex-post control is preventive, to bring traders into line with the law and to ensure that as much revenue accrues to the EU and Hungarian budgets as they are due. The need for and frequency of ex-post controls are laid down in an annual control plan. The control plan lays down the use of audit capacity by the customs authorities in the light of current economic trends, forms of behaviour posing the greatest threat to budgetary revenue, and customs procedures</p>

presenting the highest risk to revenue from customs duties. To achieve the stated objectives, at least 5% of traders engaged in foreign-trade activities subject to customs control must be inspected each year based on a risk analysis selection. The primary basis for determining the minimum number of checks is the limitation period for notification of the customs debt (generally three years), focusing on Hungarian-based traders whose foreign-trade activities are subject to customs control, especially where a large part of their trade involves imports. The minimum rate of ex-post audits of foreign-trade activities subject to customs control is 5% of the abovementioned traders. Given the rate of ex-post controls that cannot be planned, some 60-65% of these checks are included in the control plan. The remainder cover control tasks (risks) arising during the course of the year. In line with the customs audit guide the ex-post customs control plan is compiled in such a way that the traders and transactions likely to pose the greatest risk are targeted, though to a certain degree it also covers traders presenting a medium or occasionally even low risk. A small number of the planned checks are selected on the basis of a random sample, i.e. they are selected regardless of the individual risks. When compiling the annual ex-post customs control plan, traders posing the greatest risk account for 90%, traders presenting a medium and low risk 5% and traders selected at random regardless of risk another 5% of all checks.

Ex-post customs controls are focusing on the following areas in 2012:

- checking the legality of goods classifications;
- checking the accuracy and thoroughness of antidumping or countervailing measures;
- checking the accuracy and calculation of customs values (focusing on factors increasing customs values);
- stepping up checks on imports of textiles, clothing and footwear;
- checking traders declaring their goods under the simplified procedure.

The low level of built-in checks in the case of local simplified customs procedures is offset by an increase in the number of post-clearance checks.

For that reason, as in previous years, the annual control plan places particular emphasis on checking traders declaring their goods under the simplified procedure. To ensure that traders are checked within the limitation period for notification of the customs debt (generally three years), the basic concept of the 2012 annual control plan was that one third of these traders should be covered by the control plan.

2.2. Individual checks aimed at inspecting customs declarations on the basis of Article 78 of the Community Customs Code

One of the tasks of the customs authorities is to ensure, for preventive reasons and on account of the large number of traders involved in foreign-trade activities subject to customs control, that at least 1 000 such traders undergo post-clearance checks each year. Roughly two thirds of these checks are carried out on the basis of Article 78 of the Community Customs Code, with an ex-post check of their customs declarations.

This type of check can be based on the risk analysis of either the central or

	<p>local/regional authority. This system helps to identify traders whose risk level justifies conducting a check under Article 78 of the Community Customs Code. The regional/local authorities are also responsible for carrying out risk searches and risk analyses throughout the course of the year, which may lead to checks being conducted. <u>3. Checks relating to authorised activities</u></p> <p>The depth and frequency of inspections of authorisations are determined on the basis of a risk analysis by the authorising customs authority. For authorisations considered to pose a high risk, the authorising customs authority is expected to check at least once per year that the conditions for the authorisation are met or that the conditions laid down in the authorisation are complied with in full. After the authorisation has been issued, the abovementioned built-in checks can be carried out on the goods to be notified for sale by the holder in accordance with the rules laid down by the authorising customs authority. We check the sales data electronically to see whether there is a match between the risk profile and the sales data. In addition to the automatic risk analysis, the competent customs officials may decide to carry out a physical/document check. Outside the working hours of the competent customs authority, this option is available to a central group operating at the airport customs authority on behalf of all competent customs offices. To ensure the authorised activity is suitably monitored, the authorising customs office has to draw up a written control plan for the following year by 15 December of the previous year. The control plan must state the planned time and method of inspection of the authorisations and authorisation holders as well as the type of goods to be inspected.</p>
MT	<p>Greater emphasis is being made by the Malta Customs Department on high-risk imports through the constant maintenance and updating of risk-profiles, thus allowing targeting to be improved. The number of containers scanned by the Department has also been augmented. This is being complemented by increased documentary checks and post-verification controls. All the Customs Department's efforts are geared towards ensuring that security is maximised without the imposition of undue burdens on legitimate traders. Scanning guided by risk profiling has proved itself to be an invaluable tool in this regard.</p>
NL	<p>It is The Dutch customs authority has an Enforcement Plan for 2012 which underpins the choices it makes with regard to its control strategy. As regards the prioritisation of enforcement areas, the following applies.</p> <p><i>Prioritisation of enforcement areas</i></p> <p>Risk management means making choices. Not all enforcement areas need equal attention; the customs authority focuses on those that are subject to the highest risks. In important enforcement areas, NL focuses on deploying a mix of enforcement tools that are designed to maximise impact. Less intensive attention is given to the other, less relevant enforcement areas. The relevant Enforcement Plan translates this into obligations, areas of social and/or political importance, priorities and risk detection.</p>
AT	No comments.
PL	N/A.
PT	<p>During 2011, a new system for declaring imports came on stream, which will allow an interface with the Automatic Selection System (SSA) and under which a fully automated risk analysis and assessment will be performed. This will enable customs</p>

	controls to focus more efficiently on high risk consignments and at the same time speed up customs clearance of regular consignments of goods.
RO	<p>The control strategy for traditional own resources includes checks carried out at the time when goods are assigned an approved customs use or destination and ex-post checks on customs declarations.</p> <p>Customs checks carried out at the time of the customs clearance are based on a centralised national risk management system administered by the Customs Information Centre of the Directorate for Monitoring Excise Duties and Customs Operations.</p> <p>The analysis and management of risks at the customs clearance stage is facilitated by the national risk analysis and management system, i.e. the Risk Management Framework ('RMF'), implemented on 1 August 2010. The national risk analysis and management system provides a range of facilities in terms of:</p> <ul style="list-style-type: none"> – setting national and/or EU risk profiles; – generating reports on the application of risk profiles (evaluation of risk profiles); – generating reports on customs operations carried out. <p>Risk profiles</p> <p>RMF allows for the creation of appropriate automatic risk profiles by setting risk criteria for multiple indicators (combined criteria) that cover almost all of the headings of the customs declaration, so that customs declarations assigned to a particular customs inspection channel are subject to risks that are as specific as possible.</p> <p>Automatic risk profiles also contain the following information:</p> <ul style="list-style-type: none"> – the procedure to be followed (clear instructions for the customs official to follow); – the risk factor (from 1-9); – the type of minimum inspection to be carried out; – the risk(s) targeted; – scenarios; – attached documents, photographs, regulations (identified by the customs official); – recommended inspection channel, including percentages; – application level (national, regional, local).

	<p>Risk profile reports</p> <p>The new risk analysis and management system RMF has a section for risk profile reports which makes it possible to generate reports for a set risk profile. The reports provide useful information for evaluating risks, specifically: the customs declarations assigned to the inspection channel corresponding to the risk profile in question, the measure applied, the result of applying that measure, the date, the customs office and the customs official who applied the measure. In accordance with the internal procedures of the National Customs Authority, all risk profiles are evaluated at the end of the period of validity and the results are published in a written report approved by the senior management of the National Customs Authority.</p> <p>Reports on customs operations carried out</p> <p>The national risk analysis and management system makes it possible to generate reports on the customs operations carried out, on the basis of customs declarations.</p> <p>Note: The automatic risk analysis implemented through the RMF applies to all customs declarations submitted in electronic format under the normal or simplified customs procedure using the electronic document ‘import arrival notification’ for documentary and/or physical checks and the electronic document ‘Z-procedure customs declaration’ for documentary checks.</p> <p>We would point out that these aspects were presented by a representative of the National Customs Authority on 7 July 2011, at the 152nd meeting of the Advisory Committee on Own Resources - Traditional Own Resources (ACOR-TOR), held pursuant to Article 21 of Council Regulation (EC, EURATOM) No 1150/2000 implementing Decision 94/728/EC, Euratom on the system of the European Communities’ own resources.</p> <p>As regards ex-post checks on customs declarations, they are scheduled quarterly and the declarations are selected taking into account the availability of specific information regarding the violation of customs rules, as determined on the basis of a prior risk analysis (based mainly on the following parameters: tariff classification, origin, customs value, terms and conditions applying to customs operations under customs suspensive arrangements).</p> <p>Ex-post checks target, at least every three years, businesses which do not comply in full with the rules and present high risk, in order to prevent situations where the debt can no longer be notified to the debtor in accordance with Article 221 of the Community Customs Code.</p>
SI	No comments.
SK	Customs Directorate Internal Control Department developed Customs Control Strategy in year 2010. This strategy is in compliance with Traditional Own Resources control recommendations, which has been carried out by European Commission Control Group. This strategy is based on recommendations of European Commission concerning customs control. All import and export hazard aspects have been taken into consideration. The strategy has involved different high-

	<p>risk goods, for example the following:</p> <p>PCA (priority control area) - international action focusing on goods undercharging</p> <p>Medicaments and pharmaceuticals (counterfeits import)</p> <p>Fasteners, welded tubes and pipes</p> <p>Protection of Intellectual Property Rights - power-balance bands, textile</p> <p>According to this strategy, a control plan for year 2011 has been developed. This plan was reviewed by European Commission Control Group during Traditional Own Recourses control which was carried out in September 2011. Due to Customs and Tax Administration inclusion, Department of goods control after release has been created. It is in charge of controls after goods release methodical administration as well as inspection plans preparation. This department has incorporated comments made by European Commission Control Group to the plan of inspections for year 2012 which is in process of authorization.</p> <p>Control plan will be sent to European Commission after authorization by Financial Directorate of Slovak Republic.</p>
SE	No comments.
UK	At the time of the Customs Control Strategy audit in 2009, the UK were achieving a hit rate of 27% in its targeting of importations. In 2011/12 the UK has improved its targeting of high risk importations and is now achieving a detection rate of 32%.

1.2. Expenditure

Agricultural expenditure

In 2010, Italy and EU-12 Member States have qualified more than 90% of the reported cases as "suspected fraud". Certain big spending Member States such as France, Germany, Spain and United Kingdom continue to report a very low number of suspected fraud cases. France did not classify any of its 2010-cases as suspected fraud. This raises the question whether the reporting of a low number of cases of suspected fraud is due to the non-respect of reporting principles or to the ability of the control systems in place to detect fraud in the Member States.

RECOMMENDATION 2

France, Germany, Spain and United Kingdom are invited to explain the low number of reported suspected fraud cases, and to report about the way in which the control systems are adapted to target areas with a higher risk of fraud and irregularities.

Finland, the Netherlands and Poland should report more consistently, in particular in relation to personal data on individuals who have committed irregularities and fraud.

In general, Member States should further improve the quality of reporting, given that in 2010 Member States took a step backwards in relation to the timely reporting of irregularities.

BG	The Executive Director of State Fund Agriculture has issued an order concerning the necessity to shorten the time gap between the detection of the irregularities and their reporting to OLAF. The adoption of this order resulted in an improved internal organization aimed at prevention of the undue delay when carrying out checks of cases of irregularities and suspected frauds under the schemes and measures of responsibility of the Paying Agency. When an irregularity or suspected fraud is
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	<p>detected by the internal control bodies they are obliged to implement the procedure for reporting of irregularities within three working days of detection, verification and completion of the case. When irregularity or suspected fraud is established by the authorization units of the Paying Agency, the implementation of the reporting procedure should be carried out within seven working days after detection, verification and completion of the case.</p>
DE	<p>Until now no fraud cases have been reported by the regional and central authorities.</p>
FR	<p>We should first remark that the framework for the agricultural funds was created by various Community regulations providing for various types and levels of controls, especially second-level controls, a minimum number of spot checks, depending on the measure concerned, and risk analysis.</p> <p>The control systems put in place by France fully comply with the Community regulatory framework. For all types of aid, the aid is calculated directly by the paying agency on the basis of data reported by the beneficiaries; payment is not made until the case has been thoroughly examined and all the required checks on the spot have been carried out.</p> <p>The number of irregularities that may be qualified as fraud or suspected fraud is not predictable or pertinent unless we are talking about a control programme pre-established on the basis of risk analysis, which applies to 485/2008 controls and controls provided for in various sectoral regulations. Note that for over 90% of direct aid the system is highly regulated and highly computerised, with many embedded controls in order to meet the obligation incumbent on Member States to set up an integrated administration and control system (IACS).</p> <p>We might stress that there is a much greater likelihood of detecting cases of fraud or suspected fraud in market interventions than in direct aid. But market aid accounts for only a small share of total aid (less than 10%). And although no cases of suspected fraud were declared in 2010, three cases were notified in 2011 (for all quarters of the year) and four in 2009.</p> <p>We shall cite France's answer to the 2008 questionnaire for the Article 280 (now Article 325) report: 'The procedure for applying the term "fraud" or "suspected fraud" is based on the definition given in the Council Act of 26 July 1995 drawing up the Convention on the protection of the financial interests of the European Communities (95/C 316/03). In practice, an irregularity is classified as 'fraud' or 'suspected fraud' if the actions could constitute criminal offences.'</p> <p>So, in order to classify cases as 'suspected fraud' or 'fraud', intent must be established by the inspection bodies on the basis of material facts.</p> <p>In countries with long-standing, well-structured judicial, administrative and land-registration systems, it is more difficult to perpetrate fraud. There is no justification for trying to establish a relationship between the amount of aid granted by a Member State and the number of cases of suspected fraud or notified fraud without taking account of the framework of controls laid down by Community law and their implementation at the national level.</p>
EE	<p>The compliance rate of EAGF and EAFRD irregularities reports submitted by</p>

	<p>Estonian authorities has been close to the maximum in recent years. In 2010 the EE compliance rate was 99%, 2009 – 99% and 2008 – 95% exceeding the EU average compliance rate. The Estonian authorities responsible for fulfilling the obligations of the irregularity reports have considered the importance of keeping up with the quality of notifications in the process of reporting. The authorities have contributed to the maintaining of the quality of reports by amending the guidelines and providing relevant training courses for the officials responsible for the irregularities area.</p>
ES	<ul style="list-style-type: none"> – The Spanish agricultural sector is extremely varied and complex, and it involves aid applications relating to a wide variety of measures. These include market-related measures, which are difficult to administer and subject to relatively high rates of error. – Owing to difficulties with the interpretation and application of this complicated and wide-ranging system of aid, recipients of aid make mistakes which are clearly unintentional irregularities, not fraud. – The sector's very complexity calls for a more highly-developed auditing strategy, with commensurate human and material resources. The very number and intensity of the necessary inspections provide a guarantee that irregularities and, where applicable, cases of suspected fraud, will be detected. <p>It may be seen from the above that the fact that Spain does not report many cases of suspected fraud does not mean that fraud is not prosecuted. Rather, it means that there are not many cases of fraud in relation to the total number of irregularities. Where a possible case of fraud is detected, the legal services attached to the units responsible for inspections are required to refer that case to the judicial authorities for confirmation, so that they can impose the appropriate penalties under criminal law where appropriate.</p>
EL	<p>At the COCOLAF meeting on 26 May 2011 and the presentation of statistics for 2010, Greece was not one of the Member States mentioned which had delayed the reporting of irregularities. The fact that there were no delays had been confirmed by direct contact with the competent department.</p>
FI	<p>MAVI, the Finnish Agency for Rural Affairs, has requested and received from the Commission replies concerning the use of personal data to be provided together with the irregularity report. The effect of data disclosure on the rights and obligations of Finnish natural persons however, will require further clarification with regard to national data protection legislation and coherent national interpretation. MAVI has been in contact with the other Finnish authorities producing irregularity reports to check that the most coherent practice possible is followed among the different Funds in Finland. As this matter concerns the legal situation of individual citizens, we wish to ensure that there are well-founded reasons for the solution chosen. MAVI aims to complete its investigation as soon as possible. Last year there was one case concerning a private individual, for which previous reporting practice was followed.</p> <p>In general, it can be stated that the situation regarding identification has improved as a result of guidance concerning legal persons and clarification of practices.</p>
HU	<p>According to the Commission's statistical report for 2010 Hungary's agricultural</p>

	<p>irregularity reports had a deadline-compliance rate of 6% compared with a 100% compliance rate for all other indicators. Hungary reported irregularities arising during intervention storage (104 out of 116 reported cases) in one go in 2010, including retroactively for previous years (2006-2008). (Since 2008 the competent authority has reported intervention irregularities on time. Due to a lack of clarity regarding the statistical method, however, these data were temporarily omitted from OLAF's irregularity figures, and were only restored in 2010.) This one-off event had an impact on the deadline compliance rate for reporting irregularities in 2010. By comparison, during the 2007-2010 period Hungary's deadline compliance rate stood at 80-90%. The procedure for drawing up agricultural irregularity reports and forwarding them to OLAF is governed by internal administrative arrangements, and in practice the competent authorities act accordingly.</p>
NL	<p>It is up to the certifying authority, the Regulations Service (<i>Dienst Regelingen</i>), to promote timely reporting. There are discussions under way between this service, the Inspectorate of the Dutch Food and Goods Authority (<i>Nederlandse Voedsel en Warenautoriteit</i>) and the delegated bodies concerning the establishment of a register of irregularities which would definitely include timely reporting. The deadlines to be met will also be laid down in the new plan. Since the strenuous efforts made in 2007 and 2008 to update all reports of irregularities filed in 2004, details of names, addresses and places of residence have been included in all Article 3 reports.</p>
PL	<p>Poland has never opposed passing the data concerning the economic operators (including the individuals) to EC. Before the introduction of the IMS system, such data was sent on paper by regular mail in order to deal with the existing doubts as regards data protection related issues and the information system. The clarification of non-inclusion of this data in the irregularity reports submitted to the EC by IMS system was presented by Poland in the letter No DO8/9013/1/JYB/10/3740 sent to OLAF on 22 July 2010. Another request concerning the same aspects was directed to OLAF by the letter No DO8/9013/2/AKQ/12/350 of 27 January 2012. Poland asks OLAF to analyze it and present a binding opinion of OLAF in relation to the conditions that would enable processing of personal data within IMS by the institutions of a Member State. Poland also informed OLAF that until the solution is proposed by OLAF such information may not be processed in the IMS system by the Polish authorities.</p>
PT	<p>As regards detecting irregularities and the subsequent recovery of undue payments, the competent national authorities will continue in 2011 – as in previous years - to take all appropriate action and measures of an administrative, judicial and/or enforcement nature to protect the EU's financial interests and to fight against fraud.</p>
UK	<p>To clarify the position, the introduction of the web-based reporting mechanism resulted in significant technical difficulties for the UK that prevented the transfer of electronic data between the Rural Payments Agency and OLAF. Therefore, although it may appear that the UK had failed to report suspected irregularities, there is no suggestion that the reporting procedure operated within the UK had failed. Upon discovery, OLAF was made aware of the problem and attempts were made to resolve the matter. Unfortunately a solution took longer than expected and, in the meantime, a considerable backlog of Irregularity Reports accrued in the UK and the situation was further compounded by the re-organisation of OLAF. Being the subject of on-going communication, the position was well-known to OLAF and was discussed at the 6-</p>

	monthly Irregularity and Mutual Assistance Experts Group held in Brussels.
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Cohesion Policy

RECOMMENDATION 3

The Commission supports Spain and France in their efforts to complete the implementation of IMS by the end of 2011 and invites Ireland to fully implement the system.

ES	Spain already started to use the application in late 2011; indeed, it used it in its reporting on the third quarter of 2011.
FR	France is having technical difficulties in extracting the data. Entries in the IMS base are therefore being done manually. The agricultural data is complete and the rest is under way.
IE	<p>The IMS is fully implemented in Ireland.</p> <p>Addition information supplied for the ERDF and Cohesion Funds states that</p> <p><u>2007-13 ERDF Fund</u> Quarter 3 2011 - report submitted on 30/09/2011 Quarter 4 2011 - irregularities will be reported by deadline of 29/02/2012</p> <p><u>2000-06 ERDF Fund</u> The ERDF irregularities in respect of two of the 2000-06 Operational Programmes (Urban II and Technical Assistance) are now on the OLAF IMS database.</p> <p><u>2000-06 Cohesion Fund</u> The Cohesion Fund irregularities are now all on the OLAF IMS database. This includes the irregularities identified in the Winding up Report for Dublin Solid Waste submitted on 31/01/2012.</p>

2. RECOVERY OF IRREGULAR AMOUNTS IN 2010

2.1. Cohesion policy

Cohesion policy shows the highest recovery rate in the expenditure area in 2010.

The success improved procedures put in place for the programming period 2000-2006 is demonstrated by the fact that, only one year after the submission of the closure documentation by Member States to the Commission, 70% of unduly paid EU contribution has been recovered (or withdrawn from expenditure claims).

RECOMMENDATION 4

Hungary, the Czech Republic and Slovenia have recovery rates around or below 20%. These Member States are invited to explain the reasons and to increase their efforts.

CZ The Czech comments: In order to strengthen the protection of EU financial interests on 18 March 2010, Council Directive 2010/24/EU on mutual assistance for the recovery of claims resulting from taxes, duties and other measures with effect from 1 January 2012 replaces Council Directive 2008/55/EC .. The new directive emphasizes the adoption of a single document that will be used for enforcement measures

HU Firstly it should be noted that the institutional system has all the legal and other resources necessary for recovery, and these resources are used consistently and adapted to changing circumstances. In many cases, however, circumstances arise which even an efficient system such as this has difficulty handling. The low rate of recovery for cases covered by the irregularity reporting obligation may therefore be due to the following factors:

- The economic crisis has had a negative impact on the beneficiaries of EU funds, e.g. small, not-for-profit or civil-society firms. Inability to implement or continue projects has led to the recovery of subsidies, yet due to insolvency most of the firms concerned by these recoveries have gone into liquidation, making it impossible to recover the sums due despite many ongoing debt claims procedures. During liquidation, due to the order of priority for the settlement of creditors' debts, the assets of the liquidated firm do not even cover the costs of the liquidation. The situation is aggravated by the fact that applicants for ESF projects do not have any reserves or other liquid assets to pay back debts, and since they were not obliged to provide security, the non-recovery rate for these projects is very high.

- Delays in detection in previous years with regard to agricultural subsidies should also be mentioned. These delays meant that most claims arose during the monitoring period, and the irregularities leading to withdrawals or recoveries often occurred when beneficiaries no longer had the means to repay the subsidies, the subsidies had been used up or the assets that could be sold during recovery had already been removed from the firm. Generally speaking, therefore, the low recovery rate is attributable to the fact that during insolvency proceedings, beneficiaries simply do not have the assets necessary to settle claims.

SI The Cohesion Policy in Slovenia demonstrates a considerable high recovery rate of 95,02% as per table below, according to the reports of the Slovenian Paying Authority. This information is also reported to the EC.

Updated	EU Co-financing due Recovery status	EU Co-financing recovered Recovery Rate in %
25.1.2012	16.322.994,28 95,02	15.510.787,41 Closed
	812.202,05	Open 4,98

2.2. Pre-accession funds

The analysis of recoveries throughout the programming period 2002-2006 confirms the need for improvements in this area. The pre-accession funds show the lowest recovery rates for expenditure. Recovery rate for the year 2010 is a lot lower than in the previous year. Even if the recoveries for the past years are taken into account, the recovery rate remains low and especially low for Bulgaria, Lithuania, Latvia and Slovenia. In cases of suspected fraud,

procedures are becoming even lengthier and more complex, as showed by the lower recovery rate. Apart from the lengthy procedures linked to suspected fraud cases, another explanation for the low rates could be the failure by Beneficiary Countries to update the recovery information about irregularities.

RECOMMENDATION 5

Bulgaria, Lithuania, Latvia and Slovenia are invited to explain the reasons for low recovery rates, to improve their recovery performances and to update the missing information on completed recovery procedures.

BG

Phare Programme

One of the main reasons for the low rate of recovery of the amounts unduly paid is that most beneficiaries of the programs managed by the Phare Implementing Agencies have insufficient financial stability due to the financial and economical crisis.

Providing a complete collection of receivables is hampered precisely as in most of the case the funded entities are mainly NGOs, educational and scientific institutions and organizations, socio-economic partners and other organizations.

Another main reason for the low recovery rates for 2010 is the contractors' disagreement with the recoverable amounts initially established by the Phare Implementing Agencies. A serious reason is also the contractors' financial shortage and in some cases the ceasing of their economic activity.

The assistance of the Economic Police and the respective local courts is requested by the responsible Phare Implementing Agencies when attempting to contact the contractors with ceased economic activities in order to collect the outstanding recoveries.

In the case of twinning contracts the outstanding amounts are not result of irregularities but due to the lack of established mechanism for coercive collection of debts (advances unused). In these cases the responsible Phare Implementing Agency /CFCU/ regularly sends reminders to the twinning partners from the EU member states.

All the responsible Phare Implementing Agencies undertake actions for coercive collection of debts in accordance with the rules set in the Tax and Social Insurance Procedure Code of the Republic of Bulgaria.

Following the national legislation the procedures for recovery are launched in close cooperation with the competent national authorities in the field of public prosecution and state revenue collection. Some of the recovery procedures are prolonged due to the appeals from the economic operators that committed irregularities before the respective courts.

Information about two recovery procedures with Phare funding completed in 2010:

Irregularity case No BG/09/036/PH under contract BG 919.04.01.0003 was closed in September 2010 due to the finalization of the OLAF investigation.

Irregularity case No BG/08/090/PH under contract BG 815-01-05-0001 was closed in second quarter of 2011 due to closure of the pretrial proceedings.

In both cases the outstanding amounts were recovered/deducted.

ISPA Programme

Most of the financial corrections/irregularities (2010 and 2011) under ISPA/CF (Regulation 1164/94), sector “environment” were imposed for violation of the public procurement rules. With minor exceptions the calculation of the financial corrections was based on the contract value (25 % of the contract value). The financial corrections were recovered through deduction from the respective payment certificates which were submitted by the Paying Authority to the EC in 2011. In this respect the recovery rate of 100 % was performed to the EC. Most of the contracts were not completed when the recovery to the EC occurred (25 % of the contract value). The irregularity cases (2010 and 2011) were updated during the first quarter of 2012.

SAPARD Programme

In view of the Bulgarian SAPARD Agency the low level of the recovered amounts is a result of suspected fraud cases, which were reported to the European Commission, and it is not due to omissions in the reporting obligations according to sub points 7.3, 7.3.1. and 7.5 of Section E in the Annex of the Multi-Annual Financing Agreement. All received and processed information in relation to the signals received as well as the stages of the judicial and administrative procedures for recorded irregularities is reported regularly and timely to OLAF.

The SAPARD Agency made a detailed analysis and a review of the reasons for the low level of recovery of the recorded irregularities due to suspicion of fraud, taking into account all the factors affecting the recovery of the debts.

The SAPARD Agency identified two main factors for the recovery issue. The first one is the amendment of 2009 of the procedure for recording of irregularities by SAPARD Agency aiming to prevent the fraud cases with European funding. As a result of this change all the projects for which State Fund Agriculture has received a signal for suspected fraudulent actions made by the final beneficiaries under the programme are entered in the Debtors ledger with the total amount of the paid financial aid. According to the procedure when the signal is not supported by documents verifying the irregularity and not allowing the calculation of the irregular amount by the experts, the SAPARD Agency does not undertake actions for recovery of the debts in the Debtors ledger, until the investigation by the competent authorities is not fully completed by issuing a final act. After the implementation of the procedure in 2009 a large number of debts were recorded in the Debtors ledger with the entire amount of the corresponding projects, which debts the SAPARD Agency was unable to recover. At the same time, under the rules of MAFA in relation to such debts, the term for recovery of the funds to EC cannot be suspended. After writing off of the recorded debts under art.14.2.8 of section A of the Annex to MAFA, SAPARD Agency suspends the reporting of irregularities to EC, but continues the actions for recovery of the funds and follows up the judicial proceedings.

In order to increase the recovery rate of the recorded debts in 2011, SAPARD Agency

started negotiations with EC regarding the possibility for correct and exact calculation of the irregular amount according to the suspected damages caused by the irregularity for debts recorded based on a suspicion of fraud. In December 2011 in SFA was received an official opinion signed by the general directors of DG Agriculture and Rural Development and OLAF, in which the EC states its favorable position about the possibility to calculate and recover only the expenses affected by the irregularity.

SAPARD Agency will closely monitor the judicial and administrative proceedings for all recorded debts in the Debtors ledger and in case of specific circumstances or receiving of additional information about any irregularity will proceed to immediate registration of the irregular amount.

SAPARD Agency believes that the proper definition of the established irregularities and the correct calculation of the affected amounts will lead to higher levels of recovery of the debts recorded in the Debtors ledger based on suspicion of fraud.

Measures concerning all the Pre-Accession Programmes

In compliance with its liabilities stipulated in the Bulgarian Tax and Social Security Procedure Code, the Civil Code of Procedures, the National Budget Act and the Council of Ministers' Decree No. 18/2003 the National Revenue Agency /NRA/ takes proper actions for priority recovery of state's receivables as well as for providing the national authorities administering the EU funds with feedback information on the amounts recovered. Also the NRA systemizes the information on the actions undertaken and provides it to the "Coordination of the fight against infringements affecting the financial interests of the EU (AFCOS)" Directorate on a monthly basis.

In the process of recovery of the unduly paid amounts under EU funds and programmes the NRA provides the last phase of public enforcement by exercising its powers for enforced recovery of "public" or "state's private receivables" emerged as a result of errors and omissions made by the "administering authorities" during the general process of funding, managing and controlling EU funds in Bulgaria.

The actions required from the Member States by Recommendation 5 "to improve their performances in the recovery of amounts unduly granted and spent" should be aimed primarily at the first 3 phases of the general process – the stages of contracts awarding, funding/payment, management and exercise of preventive control over the EU programmes beneficiaries in order to combine the national actions towards minimising the subsequent launch of the recovery and/or enforced recovery of the amounts unduly paid.

From 01.01.2010 to 31.12.2010 the National Revenue Agency has received recovery claims for 47 debtors under the PHARE programme and 54 debtors under the SAPARD programme. These numbers include: 9 municipalities, 3 associations, 25 individuals and sole proprietors and 64 companies, as per the legal personality of contract-based state's public receivables.

In accordance with the provisions of art. 519, para. 2 of the Civil Code of Procedures in 2010 the fieri faciae (enforcement orders/a writ of execution) issued against municipalities have been given to the respective municipalities, moreover – these faciae had to be paid from the credit provided for such purposes in municipalities' budget. In 2011 the aforementioned provisions were pronounced unconstitutional by

	<p>Decision No. 5/2011 of the Constitutional Court of the Republic of Bulgaria and currently the state's private receivables against municipalities are being collected under the ordinary procedure;</p> <p>Regarding the associations – the lack of economic activity, assets and property of such debtors in fact does not allow enforced recovery of the grants provided;</p> <p>In some cases there is unwillingness for voluntary compliance by individuals and sole proprietors who are PHARE and SAPARD beneficiaries – the recovery from such debtors is once again hindered by the lack of property different from the non-seizable property as per Art. 444 of the Civil Code of Procedures;</p> <p>It could be assumed also that the companies are affected by the consequences of the global economic crisis since some of the receivables emerged due to early recoverability of the amounts as a result of proceedings initiated for beneficiary's insolvency, and other debtors have accumulated insufficient income to service their debts. The business-to-business indebtedness is a problem too – often during enforced recovery it is established that beneficiary's property has been sold by bailiffs in order to satisfy other creditors or securities have been constituted in favour of such creditors. Actions have been undertaken against debtors in order to assess and recover the liabilities, but due to the lack of property or real securities provided when the grant was given, the recovery measures are seriously hindered and often the intended result could not be achieved;</p> <p>Another serious factor affecting the rate of recovery is the fact that some of the beneficiaries appeal the infringements and liabilities detected. These appellants apply the option stipulated in art. 414 of the Civil Code of Procedures for the debtors to appeal the warrant issued, which results in insecurity of the enforcement process because of the uncertain outcome of the court litigations. There are also cases when the distress warrants submitted to the Bulgarian State Fund "Agriculture" (SFA) are invalidated – some are invalidated due to enforced judgements rejecting the claim submitted by the SFA for a receivable emerged, and others – due to countermand of the order to execute the warrant immediately. In such cases the enforcement proceedings are ceased and all the distraints and bans on debtor's property are cancelled, incl. the state expenses made for the enforcement cannot be recovered.</p> <p>Since 2010 the NRA has taken proper measures to recover the amounts unduly paid and overpaid, as well as the resources unduly received or unduly spent under projects funded by the pre-accession financial instruments, but given the abovementioned circumstances the recovery is seriously hindered. It must be noted that the NRA is not participating in the selection of project offers for grants nor in the following control of projects' implementation, hence the NRA is not able to give a preliminary statement on the possibility for eventual subsequent enforced recovery of the amounts provided. Therefore taking preventive measures which guarantee recovery already at the stage when amounts are provided or in the course of monitoring of the projects' implementation appears to be crucial for the successful subsequent recovery of the amounts unduly paid</p>
<p>LT</p>	<p>Lithuania submits updated information to OLAF every quarter on irregularities detected in relation to SAPARD, PHARE and pre-accession programme projects and on the amounts to be recovered. Please note that, according to debt records sent by the European Commission, all funds indicated as being repayable (the EU share thereof)</p>

in relation to PHARE and Transition Facility projects have been repaid to the European Commission.

There were no repayments of recoverable funds in 2011 in relation to SAPARD projects (the last repayment into the Lithuanian Treasury's account was made on 8 September 2010, when the project implementer KB Daumantų skanėstai (Project No P13020014) transferred the funds shown as being repayable), and the implementers of Projects Nos P13020010, P33020081, P27010010, P27010007 and P33020089 have been wound up or are the subject of bankruptcy proceedings or judicial debt recovery proceedings (the funds recoverable in respect of these projects, as determined in 2008-09, amount to LTL 11 910 419 (EUR 3 449 496)).

The main reasons why it takes a long time to recover EU assistance paid and/or used in breach of EU and Lithuanian legislation or international agreements are the difficult financial situation in which project implementers find themselves and protracted court proceedings.

In view of this situation, amendments were made on 17 March 2010 to the Rules on the recovery of funds, the main purpose of which is to ensure that EU structural funds allocated for financing the Lithuanian Single Programming Document for 2004-06, EU funds 2007-13, the EC's EQUAL and INTERREG initiatives, the Cohesion Fund 2004-06, the Ignalina Programme 2004-06, the Ignalina Programme 2007-13, SAPARD, PHARE, the Transition Facility and the Schengen Facility, European territorial cooperation objective programmes, cross-border cooperation programmes under the European Neighbourhood and Partnership Instrument in the 2007-13 financing period, the External Borders Fund, the European Return Fund, the EEA and Norwegian financial mechanisms, the Republic of Lithuania Swiss Confederation Cooperation Programme aimed at reducing economic and social disparities in the enlarged European Union, financial assistance and co-financing, paid out of the programmes of managers of Lithuanian State budget appropriations and/or used in breach of EU and Lithuanian legislation or international treaties, are repaid into the Lithuanian State budget.

Moreover, by letter No Nr (24.16-01)-6K-1103376 of 29 March 2011 regarding projects financed from EU funds in 2007-13 in the context of which public procurement arrangements have been challenged before the courts, the Ministry of Finance contacted the National Courts Administration to draw the attention of Lithuanian courts to the fact that the examination of claims and appeals relating to public procurement arrangements in the context of projects was taking longer than laid down in Article 95(6) of the Lithuanian Public Procurement Law (Official Gazette 1996, No 84-2000; 2006, No 4-102; 2008, No 81-3179; 2009, No 93-3986, 2010, No 25-1174), which stipulates that claims and appeals must be examined within 45 days at the latest from the date on which they are received, and it provided a list of the projects concerned. By letter of 3 May 2011 (ref. 4R-679-(1.13)), the National Courts Administration informed the Ministry of Finance that Lithuanian courts and the Judicial Council had been informed of the risk of losing EU funding as a result of excessively lengthy examination of public procurement cases in the courts. At the Judicial Council's meeting of 29 April 2011, agreement was reached on a number of suggestions as to how the examination of public procurement cases in the courts could be speeded up, namely to propose to the President of the Lithuanian Court of Appeal and the presidents of the regional courts that a specialism be created for judges who examine public procurement cases; to recommend to the President of the Lithuanian Court of Appeal, the presidents of the regional courts and the presidents of the civil divisions of those courts that the work of the courts be organised in such a way that

	<p>between designated court sittings there are free days (hours) without court sittings, during which court sittings could take place to examine recently received public procurement cases; to recommend to the President of the Lithuanian Court of Appeal and the presidents of the regional courts that the time-limits for examining public procurement cases be continuously monitored by means of internal administrative measures; and to instruct the Commission for the Coordination of Judges' Training under the Judicial Council to start preparing a training programme for judges on the examination of public procurements cases (the Resolution of the Judicial Council on time-limits for the examination of public procurement cases has been published on the National Courts Administration website: http://www.teismai.lt/lt/teismu-savivalda/teismu-savivalda-teiseju-taryba/teiseju-tarybos-nutarimai/).</p> <p>The Ministry of Finance also informed the National Courts Administration by letter of 18 April 2012 (ref. (4.59-2408)-5K1207704)-6K-1203621) that judges examining cases relating to public procurement in the context of projects and cases relating to projects could take part in seminars/consultations which the Ministry of Finance organises for bodies that administer EU structural aid and which address matters related to public procurement in the context of projects and other topical issues.</p>
<p>LV</p>	<p>As regards PHARE/Transition Facility (TF), it is important to note that in the case of Latvia, based on the debit note issued by the Commission, all unrecovered irregular expenditure incurred from PHARE/TF funding have been fully reimbursed to the Commission from the Latvian state budget, including for the cases involving suspicion of fraud. Hence, at present, for Latvia there are no outstanding PHARE/TF recoveries payable to the Commission, and the recovery process will be continued solely on a national level to recover, to a feasible extent, the national state budget funds allocated for reimbursing to the Commission the irregular expenditure made from PHARE/TF funding.</p> <p>As for the reasons of the slow recovery rates, indeed, it is mainly due to the lengthy and complex recovery procedures, including administrative procedures and criminal procedures, which mostly do not go hand in hand, as it also has been observed in the Commission's report.</p> <p>In the case of Latvia, another major reason contributing to the slow recovery rate for PHARE/TF irregularities is the fact that the responsible final beneficiaries, according to their legal status, are all non-governmental organizations (foundations, etc.), and some of them have already been dissolved and/or declared insolvent, which, as a rule, causes even more legal obstacles and impedes any actual recoveries to be made.</p> <p>The lengthy and complex recovery process is well illustrated by the only new PHARE irregularity which was reported to OLAF by Latvia in 2010 (suspicion of fraud), and for which Latvia has already repaid to the Commission the full amount of the PHARE funding allocated for the project in question. The national legal proceedings, which were initiated against the beneficiary (a foundation) back in 2010, have been temporarily suspended by a ruling of the competent national court based on the claim submitted by beneficiary to the European General Court (submitted in May 2011). The ruling of the European General Court is still pending, and so far, no actual recoveries have been made in this case.</p> <p>The Ministry of Finance of Latvia, on behalf of the National Authorising Officer for PHARE/TF programmes, closely monitors the recovery process and ensures regular</p>

	<p>communication with the institutions involved incl. programme authorising officers responsible for continuing the ongoing recovery procedures.</p> <p>Also in the case of SAPARD Latvia programme, the slow recovery progress is due to the lengthy and complex recovery procedures. In some of the cases the litigations are still in progress, however, in order to avoid further losses, in 2011 all uncovered debts incurred by SAPARD beneficiaries were written-off by the competent Latvian authorities (the Commission was informed in writing in January 2012) given the fact that the debtors have either been legally dissolved or declared insolvent, or both, and their debts are practically irrecoverable.</p> <p>Nevertheless, the competent Latvian authorities will continue to monitor the on-going recovery proceedings and will inform the Commission accordingly, however, at present, there are no legal instruments to enhance the current recovery rate of SAPARD debts as well as the national funds allocated for reimbursement of irregularly paid PHARE/TF funds.</p>
SI	Regarding Pre-accession Funds Slovenia recovered and closed all but two cases within SAPARD.

3. RESULTS OF THE QUESTIONNAIRE ABOUT COOPERATION WITH THE MEMBER STATES CONCERNING THE RISK OF DOUBLE FINANCING OF PROJECTS IN THE AREA OF COHESION POLICY

With regard to the use of the Central Exclusion Database (CED) under article 95 of the Financial Regulation, only 5 Member States are using it (BG, CZ, MT, AT, PL).

In 2011, all MS which do not fully use the CED are requested to report about the progress made during the reporting year with regard to make use of the CED.

RECOMMENDATION 6

BE, DE, EE, EL, IT, CY, LU, NL, FI, UK are invited to set the CED up, and to report on the progress made.

DK, IE, ES, HU, SI, SE who are using other kinds of national exclusion databases, are invited to set the CED up, and to report on the progress made.

FR, LT, SK, PT, LV and RO are invited to report on the progress made regarding the full implementation of the CED.

BE	No comments.
DK	<p>The relevant follow-up recommendation for Denmark concerns recommendation 6 on the use of the Central Exclusion Database (CED).</p> <p>The Ministry of Finance is for the time being considering how Denmark could make a better and more systematic use of the Central Exclusion Database. For that purpose we will consult other ministries which have a responsibility to protect the Union's financial interests.</p>

	<p>After having discussed the case with relevant authorities, Denmark will designate a national liaison point which shall be responsible for issues concerning CED and the communication with the Commission in that respect, cf. Article 7 in Commission Regulation (EC, EURATOM) No 1302/2008 of 17 December 2008 on the Central Exclusion Database.</p> <p>The Ministry of Finance will contact the Commission about the designation of the relevant national liaison point before making our decision on the matter later this year.</p>
DE	DE the competent authorities in the regional and central government have been informed. Until now no notifications have been made by them.
EE	In Estonia the contact person has been designated. Currently it is under consideration how to designate the most appropriate range of users to the CED system.
EL	<p>In the search for a solution by the Greek State's departments, there were various views as to how to respond to the regulatory obligations.</p> <p>For this reason and in order to determine the appropriate liaison point, the Greek authorities contacted the European Commission directly concerning the scope of the relevant provisions and suggestions of examples of best practices in other Member States. Following completion of these clarifying consultations, the final decisions will be taken.</p>
ES	As soon as information concerning this database is available, it will be forwarded to OLAF.
FR	France expects to designate the contact point for the CED shortly.
IE	Ireland completed registration on the Central Exclusion Database on the 15/12/2011.
CY	<p>(a) The Liaison Point and persons with regards to the CED have been appointed in 2011</p> <p>(b) A Circular is currently being prepared in order to give guidance / instructions to all the bodies involved in the public procurement / grant award procedures with regards to the reporting process to be followed when an entry of exclusion warning needs to be registered in the database</p> <p>(c) Access to the database will be granted to authorised users from the various implementing authorities / bodies</p> <p>Points (b) and (c) above are expected to be completed during the first semester of 2012.</p>
IT	In accordance with Article 7 of Regulation No 1302/2008 (on the central exclusion database), the <i>Autorità di Vigilanza sui Contratti Pubblici di Lavori, Servizi e Forniture</i> (Authority for the Supervision of Public Contracts for Works, Services and Supplies) has been designated as the liaison point for relations with the European Commission on matters relating to the database.
LT	Pursuant to Article 7(2) of Commission Regulation (EC, Euratom) No 1302/2008 of 17 December 2008 on the central exclusion database (Regulation No 1302/2008)

	<p>(OJ L 344, 20.12.2008, p. 1) and having regard to Article 95 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2004, Special Edition, Volume 1, Chapter 4, p. 74), as last amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 amending Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, the Ministry of Finance has drawn up a draft government resolution designating the liaison point specified in Article 7(2) of Regulation No 1302/2008 and laying down a procedure for administering the central exclusion database in Lithuania and has submitted it to the authorities concerned for agreement.</p>
HU	<p>In 2009, during preparatory talks on implementation of the CED Decree, the Hungarian experts realised that further guidelines were needed for a proper understanding of the EU regulations, and to that end Hungary requested the Commission's assistance. The Commission sent guidelines clarifying several aspects of the CED Decree in 2011, after which the necessary preparations could be made to implement the CED Decree. Talks are currently underway between the competent ministries and the other relevant bodies in order to implement the CED Decree as soon as possible.</p>
NL	<p>The Netherlands has specific legislation on the transfer of information from the point of view of personal data protection. The Netherlands will work towards meeting the requirements of Article 95 of the current Financial Regulation on the basis of compliance with this specific legislation.</p>
PT	<p>A plan is being drafted on the collection and distribution of data to be included in the Central Exclusion Database, set up by Regulation (EC, EURATOM) No 1302/2008 of 17 December 2008.</p>
RO	<p>In 2011, DLAF was designated Liaison Point for CED. In this respect, DLAF has granted access to CED to managing authorities, paying agencies.</p>
FI	<p>The introduction of the Central Exclusion Database in Finland has been the subject of discussion at national level between public authorities. The possible introduction of the database touches upon matters affecting the legal protection of the beneficiary which require clarification, as the database might put this protection at risk. The Ministry of Employment and the Economy is of the view that at this stage in the current programming period (2007-2013), there is no justification for using resources to develop new systems. Instead, resources should be used for the maintenance of the existing databases and for the preparation of the new programming period. The national databases currently used (e.g. the EURA 2007 information system) provide data on high risk project implementers and projects, etc. In addition, information concerning cases of irregularities and possible fraud with regard to the Structural Funds is available from different authorities and registers, such as the Finnish judiciary, the tax administration, the police forces and the Business Information System (YTJ). The added value provided by the CED database is not considered to be sufficiently significant nationally for us to introduce the database during the present programming period.</p>
SI	<p>According to the Public Procurement Act (Off. J. No. 19/10), Art. 77.a, the Ministry of Finance keeps the register of suppliers with negative references, indicating the full</p>

	name and registration number of the entity, date of entry in to the register, date of abolishment. The register is published on the web page of the Ministry of Finance.
SK	<p>In August 2011 the Slovak Liaison Point (hereinafter „LP“) of the Central Exclusion Database (hereinafter „CED“) located at the Office of Government of the SR submitted a request to the Commission's Accounting Officer to insert e-mail extensions of the national authorities into the CED application in order to allow the access for authorized users to this database.</p> <p>During the year 2011 negotiations between the General Prosecutor Office of the Slovak Republic and the LP were conducted. In accordance with the Cooperation Agreement concluded between the General Prosecutor Office of the SR (hereinafter „GPO SR“) and the Office of Government of the SR in September 2011, the GPO SR will <u>quarterly</u> provide the LP with copies of the res judicata judgments in accordance with art. 93(1) point. e) Regulation no. 1605/2002. The GPO SR will also provide the LP with the copies of the judgments which have come into force since the 1st of January 2009.</p> <p>Working Group for the CED was established in order to set up a system at the national level for the submission of information to the CED / the Commission's Accounting Officer, which is expected to be finalised in the second half of the year 2012.</p>
SE	SE is currently reviewing the issue of what measures need to be taken to meet the requirements of Article 95 of the Financial Regulation on the setting up of a central database.
UK	The UK is in the process of formally setting up the CED.