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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.7.2006
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COMMISSION STAFF WORKING DOCUMENT

Annex to the

**2005 Report from the Commission on the protection of the European Communities'
financial interests and the fight against fraud**

**Follow-up of the Commission action plan 2004-2005 - Implementation of Article 280 of
the Treaty by the Member States in 2005**

{COM(2006) 378 final}

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COMMISSION STAFF WORKING DOCUMENT

This document is intended to accompany the Commission's Annual Report for the year 2005¹ on the protection of the European Communities' financial interests and fight against fraud which is drafted in accordance with Article 280 of the Treaty.

The first part contains a detailed description of the implementation of the 2004-2005 Action Plan for the protection of the Communities' financial interests and the fight against fraud in 2005. The Action Plan defines the priority actions for the protection of the Community's financial interests which are intended to implement the first phase of the overall strategic approach 2001-2005 adopted in June 2000. In the second section the services of the Commission make available all the answers given by the Member States to a questionnaire sent to them in preparation for the 2005 Annual Report on the Protection of the Financial Interests of the Member States.

¹ Report of the Commission (COM/2006).

FOLLOW-UP OF THE COMMISSION ACTION PLAN 2004-2005

In the strategic global approach adopted in the 28th of June 2001², the Commission has established the political objectives for the period 2001-2005. The Commission has identified 4 priority actions for the protection of the Community's financial interests:

- a global legislative anti-fraud policy;
- a new cooperation culture;
- an interinstitutional action for the prevention and fight against corruption;
- the reinforcing of the dimension of the penal field

The implementation of the global strategy has been achieved in the action plan 2001-2003³ and 2004-2005⁴.

The following table presents the objectives implementing actions foreseen in the 2004-2005 action Plan.

OBJECTIVES	Measure	LEAD DEPT. ⁵	IMPLEMENTATION AND FOLLOW-UP
1. AN OVERALL ANTIFRAUD LEGISLATIVE POLICY			
1.1. DEVELOPING A CULTURE OF PREVENTION AND TIGHTENING UP LEGAL TEXTS			
Consolidation of the structure and functions of OLAF by reinforcement of its legal framework	Proposals for amendment of Regulations No 1073 and 1074/1999.	OLAF, SG	Action completed. Proposals for amendment of Regulations No 1073 and 1074/1999 have been adopted by the Commission ⁶ .

² Communication from the Commission (COM/2000/358/Final, 28.6.2000).

³ Communication from the Commission (COM/2001/254/Final, 15.5.2001).

⁴ Communication from the Commission Action Plan 2004-2005, COM(2004)544 final.

⁵ Lead department, followed by associated departments.

			The Commission is preparing a consolidated proposal.
Cooperation between the Community and the Member States to protect the Communities' financial interests. Extension of cooperation mechanisms, exchange of information and assistance to new areas, especially to money laundering and VAT fraud	Proposal for a Regulation based on Article 280 of the EC Treaty on mutual administrative assistance, especially on money laundering and VAT fraud.	OLAF, TAXUD, MARKT, JAI	Action completed. Adoption of the proposal by the Commission ⁷ .
Assessment of Regulations No. 1469/1995 and No. 745/1996 ⁸ (Black list mechanism in EAGGF-Guarantee Section)	Second report on the application of Regulation (EC) No 1469/95 ("black list") in the EAGGF-Guarantee Section. Proposal for amendment of the regulations concerned. Examination of their field of application.	OLAF, AGRI, SJ	Action postponed to 2006. Adoption of the second report from the Commission to the European Parliament and the Council on the on the application of Regulation (EC) No 1469/95 ("black list") ⁹ .
Defining OLAF's objectives, taking into account the strategic guidelines and the contributions of the Institutions in the field of anti-fraud action	Preparation of a Commission communication on the main themes for strategic anti-fraud guidelines.	OLAF	Action temporarily withdrawn as far as the Commission communication is concerned. OLAF defines yearly its objectives in line with the SPP-ABM cycle and it reports on its achievements.

⁶ COM (2004) 103 and 104 final of 10.02.2004.

⁷ COM (2004) 509 final of 20.7.2004.

⁸ Council Regulation (EC) No 1469/95 of 22.06.95 (*OJ L 145, 29.6.1995*) and Commission Regulation (EC) No 745/96 of 24.4.96 (*OJ L 102, 25.4.96*).

⁹ COM(2005)520; SEC(2005)1333 of 20.10.2005.

Definitive setting-up of the European Technical and Scientific Centre (ETSC) to finalise Council Decisions 2003/861 and 862/EC ¹⁰	Commission decision.	OLAF, ECFIN	Action completed. The European Technical and Scientific Centre (ETSC) is established within the Commission, attached to the European Anti-fraud Office (OLAF)¹¹. The ETSC shall analyse and classify every new type of counterfeit euro coin in line with the provisions of Article 5 of Regulation (EC) 1338/2001. It contributes to the fulfilment of the objectives of the 'Pericles' programme pursuant to Article 4 of Council Decision 2001/923/EC of 17 December 2001. It assists the Coin National Analysis Centres (CNAC) and the law-enforcement authorities; and collaborates with the relevant authorities in the analysis of counterfeit euro coins and the strengthening of the protection.
Continuation and adaptation of the training, exchange and assistance action programme for the protection of the euro against counterfeiting (PERICLES programme ¹²)	Evaluation of the PERICLES programme with a view to a new legislative proposal. Communication on the adaptation of the PERICLES programme. Proposal for a Council Decision amending and extending the Council Decision of 17/12/2001 (PERICLES programme).	OLAF	Action completed. Communication on the implementation and continuation of the PERICLES programme¹³. Adoption of a proposal for a Council Decision amending and extending Council Decision of 17/12/2001 establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the "PERICLES" programme)¹⁴, proposal for a Council Decision extending to the non-participating Member States¹⁵. Adoption by the Council the 30.1.2006¹⁶.

¹⁰ Council Decisions of 8 December 2003 Nos. 2003/861/EC and 2003/862/EC (*OJ L 325, 12.12.2003*)

¹¹ Commission decision of 29 October 2004 (2005/37/CE).

¹² Council Decisions of 17 December 2001 Nos. 2001/923/EC and 2001/924/EC (*OJ L 339, 21.12.2001*).

¹³ COM (2005) 127/F3-1.

¹⁴ COM (2005) 127/F3-2.

¹⁵ COM (2005) 127/F3-3.

¹⁶ Council Decisions 2006/75/CE and 2006/76/CE, OJ L36 of 8.2.2006.

1.2. STRENGTHENING MEANS OF DETECTION, CONTROLS AND SANCTIONS

Clarification of fraud investigation powers at Community level, particularly in the area of direct expenditure	Proposals for amendment of Article 3(2) of Regulations 1073 and 1074/1999.	OLAF, SG	Action completed. Proposals for amendment of Regulations No 1073 and 1074/1999 have been adopted by the Commission¹⁷. The Commission is preparing a consolidated proposal.
Extension of the administrative penalty system to the following areas: - customs - direct expenditure - structural funds	Preliminary examination with a view to including administrative penalties in the regulations concerned. Examination of the need for a specific regulation on fraud and irregularities in connection with contracts involving Community financing	TAXUD, SJ, REGIO, EMPL, AGRI, FISH, OLAF	Action partially completed. Proposal for a Regulation of the European Parliament and the Council laying down the Community Customs Code¹⁸. The new Financial Regulation (Council Regulation No 1605/2002) provides for the possibility to impose administrative and financial penalties against candidates, tenderers or contractors.
- OLAF investigations (resistance to checks)	Proposals for amendment of Article 6(6) of Regulations 1073 and 1074/1999.	OLAF, SG	Action completed. Proposals for amendment of Regulations No 1073 and 1074/1999 have been adopted by the Commission¹⁹. The Commission is preparing a consolidated proposal.
Technical guidelines for competent authorities in the Member States which may wish to carry out or supervise the process of authenticating euro coins on their territory.	Commission recommendation on methods of authenticating euro coins.	OLAF	Action completed. Commission recommendation of 27 May 2005 concerning authentication of euro coins and handling of euro coins unfit for circulation²⁰.

¹⁷ COM (2004) 103 and 104 final of 10.02.2004.

¹⁸ COM (2005)608/final of 30.11.2005.

¹⁹ COM (2004) 103 and 104 final of 10.02.2004.

²⁰ C(2005) 1540 Final (2005/504/CE).

1.3. ENSURE A MORE EFFECTIVE MANAGEMENT OF ADMINISTRATIVE AND FINANCIAL FOLLOW-UP			
Improvement of the recovery of sums wrongly paid (EAGGF-Guarantee Section, Regulation No. 1258/1999 ²¹).	Proposal for amendment of Regulation No. 1258/1999, on financing of the CAP.	AGRI, OLAF	Action completed. The purpose of this proposal is to establish a single legal framework for financing the common agricultural policy. To that end, this proposal sets up two Funds: - European Agricultural Guarantee Fund (EAGF) - European Agricultural Fund for Rural Development (EAFRD) This Regulation creates the legal bases for financing the different measures covered by those two Funds, including the technical assistance necessary for the establishment and monitoring of the CAP²².
Handling the backlog of irregularities reported before 1.1.1999 under Regulation No. 595/1991 ²³ (EAGGF/Guarantee Section). Recovery Task Force ²⁴	Conclusion of work.	OLAF, AGRI	Action ongoing. The Task Force Recovery (TFR) continued its activities in 2005 in order to solve the backlog of all non recovered amounts of irregularity cases communicated before 1999. In 2005 with assistance of the TFR the formal bilateral meetings in the Clearance of Account procedures with all nine member states involved have been completed in order to define the financial liability for the non recovery for a total financial impact of ca. 765 million €. The TFR has also processed the information on 32 “missing” cases exceeding 500.000€ each not audited before. “Article 8 letters” with the proposal on the financial liability for 92 million € have been sent by DG AGRI to all Member States involved.

²¹ Council Regulation (EC) No 1258/99 of 17.5.99 (*OJ L 160, 26.6.99*).

²² COM (2004) 489 Final

²³ Council Regulation (EEC) No 595/91 of 4.3.91(*OJ L 067, 14.3.91*).

²⁴ COM (2002) 671 final of 3.12.2002.

			The “SAGE” (Système Automatisé de Gestion et Evaluation) application for in total ca. 3.250 remaining “smaller” cases (each under 500.000€) from before 1999 and a non recovered amount of ca. 200 million € has been completed by all Member States and returned to the TFR (electronic datasets and hardcopy checklists). However, in view of the new financial regulation (EC) nr. 1290/2005 coming into force already on 16th. October 2006, it has become impossible to finalise before that date the formal Clearance of Account procedures for these 3.250 cases. Beginning 2006 DG AGRI and the TFR will decide on the approach concerning processing the data received and define the financial consequences concerning the non recovered amounts.
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OBJECTIVES	Measure	LEAD DEPT.	IMPLEMENTATION AND FOLLOW-UP
2. NEW CULTURE OF COOPERATION			
2.1. ENHANCED USE AND ANALYSIS OF INFORMATION (“INTELLIGENCE”)			
Developing operational cooperation between customs administrations. Setting up the FIDE (Customs Investigations Information Files)	Proposal for amendment of Regulation No 515/97 ²⁶ Reinforced coordination to support and manage joint operations.	OLAF, TAXUD, JAI	Postponed to 2006.
Simplifying the procedure for notifying irregularities based on Regulation (EC) No 1681/94 ²⁷ concerning the Structural Funds	Proposal for amendment of Regulation No 1681/1994	OLAF, DGs authorising Structural Funds	Action completed. Adoption of Commission Regulation (EC) No 2035/2005 ²⁸
Simplifying the procedure for notifying irregularities based on Regulation (EC) No 1831/94 ²⁹ concerning Cohesion Funds	Proposal for amendment of Regulation No 1831/1994	OLAF, REGIO	Action completed. Adoption of Commission Regulation (EC) No 2168/2005 ³⁰
Simplifying the procedure for notifying irregularities based on Regulation (EC) No 595/91	Proposal for amendment of Regulation No 595/1991	OLAF, AGRI	Postponed to 2006.

²⁵ Règlement (CE) N° 2035/2005 de la Commission du 12 décembre 2005 « modifiant le Règlement (CE) N° 1681/94 concernant les irrégularités et le recouvrement des sommes indûment versées dans le cadre du financement des politiques structurelles ainsi que l'organisation d'un système d'information dans ce domaine », JO L328 du 15.12.2005.

²⁶ Council Regulation (EC) No 515/97 of 13.03.97 - *OJ L 082, 22.03.97*.

²⁷ Commission Regulation (EC) No 1681/94 of 11.07.94 - *OJ L 178, 12.07.94*.

²⁸ Règlement (CE) N° 2035/2005 de la Commission du 12 décembre 2005 « modifiant le Règlement (CE) N° 1681/94 concernant les irrégularités et le recouvrement des sommes indûment versées dans le cadre du financement des politiques structurelles ainsi que l'organisation d'un système d'information dans ce domaine », JO L328 du 15.12.2005.

²⁹ Commission Regulation (EC) No 1831/94 of 26.07.94 - *OJ L 191, 27.07.94*.

³⁰ Règlement (CE) N° 2168/2005 « modifiant le Règlement (CE) N° 1831/94 concernant les irrégularités et le recouvrement des sommes indûment versées dans le cadre du financement du Fonds de cohésion ainsi que l'organisation d'un système d'information dans ce domaine », JO L345 du 28.12.2005.

concerning EAGGF-Guarantee expenditure			
2.2. DEVELOPING A CLOSER PARTNERSHIP WITH MEMBER STATES AND NON-COMMUNITY COUNTRIES			
Strengthening relations with Member States	Update of Commission Decision 94/140/EC ³¹ establishing the COCOLAF.	OLAF, SG, SJ	Action completed³².
Improving information from Member States at Community level on the follow-up given to OLAF's investigations	Proposals for amendment of Articles 9 (3) of Regulations N°s 1073 and 1074/1999.	SG, OLAF	Action completed. Proposals for amendment of Regulations No 1073 and 1074/1999 have been adopted by the Commission ³³ . The Commission is preparing a consolidated proposal.
Enhancing cooperation structures and exploitation of possibilities for synergy	Inventory of the services that the Commission/OLAF can provide to the institutions and Member States. Implementation of multidisciplinary Service Platform	OLAF	Action temporarily withdrawn.
Assistance to new Member States to reinforce their own capacities for fighting fraud	Implementation of Transition Facility funds (2004-2006) for the protection of the Community's financial interests and the fight against fraud Deployment of OLAF Regional Assistants in the new Member States	OLAF, ELARG	Action completed. 2004: transition facility project. Poland: 2004-016-829.01.09 CRIS, EU financial Interests' protection; Slovenia: 2004-016-710.02.02 Public Internal Financial Control and antifraud coordination.

³¹ Commission Decision 94/140/EC of 23.02.94 - *OJ L 061, 04.03.94*.

³² Commission decision 2005/223/CE, OJ L 71/67 of 17.03.2005.

³³ COM (2004) 103 and 104 final of 10.02.2004.

Reinforcement of anti-fraud coordination services in candidate countries	Ongoing assistance to Bulgaria and Romania through the Multi-Countries Anti-fraud PHARE Programme for the protection of PHARE financial interests Assistance to anti-fraud coordination in the new candidate countries Deployment of OLAF Regional Assistants in certain candidate countries	OLAF, ELARG	Action completed. The PHARE multi-country anti-fraud programme targeted at protecting the Community's financial interests for almost all events went ahead as planned and its implementation ended by year 2005. A Networking programme was put in place for Bulgaria and Romania. OLAF contributed to the Inter-Service consultations on the establishment of the negotiating framework for Croatia and Turkey. Establishment of two liaison officers of OLAF in the EU delegations in Romania and Bulgaria to help those countries strengthen their action as regards protection of the Communities' financial interests.
Memoranda of understanding with candidate countries and third countries	Conclusion of administrative arrangements with Anti-fraud Coordination Services (AFCOS) of the candidate countries and, where appropriate, with competent services in third countries	OLAF	Action ongoing. Conclusion of administrative arrangements with Anti-fraud Coordination Services (AFCOS): 2004-2005: Romania, Poland, Lithuania, Malta. Before 2004 : Estonia, Slovakia, Czech Republic

Negotiations conducted with Switzerland on the fight against fraud	Conclusion of negotiations.	OLAF, RELEX	Action completed³⁴. The agreement binds the parties (EU and Swiss Confederation) to provide each other with full judicial and administrative assistance in all cases of fraud and other illegal activities, including customs and indirect taxation offences committed when trading goods and services.
Administrative cooperation and mutual assistance in customs matters with third countries	Negotiations of international mutual administrative assistance agreements in the customs area	OLAF, TAXUD, RELEX	Action completed. Two agreements entered into force in 2004 and 2005, one with India on customs cooperation and mutual administrative assistance in customs matters³⁵. A protocol on mutual assistance between administrative authorities in customs matters between the EU and Mexico was adopted on 17-12-2001 by the council and entered into force on 01-01-2005.
Analysis, cooperation and information exchanges on matters relating to the euro with third countries	Inclusion of anti-counterfeiting clauses in cooperation and association agreements, pursuant to Article 9(2) of Regulation No 1338/2001 ³⁶	OLAF, ECFIN	The action is ongoing.
2.3. POLICY OF ONGOING EVALUATION OF ANTI-FRAUD ACTIONS			

³⁴ COM (2004) 559 Final.

³⁵ OJ L 304 of 30-09-04

³⁶ Council Regulation (EC) No 1338/2001 of 28.06.2001 - *OJ L 181, 04.07.2001*.

Inventory of new measures at Community and Member State level in 2003 and 2004	2003 and 2004 Annual Report Article 280(5) of the EC Treaty.	OLAF	Action completed³⁷. Every year the Commission adopt a Report on the “Protection of the Communities financial interests – Fight against fraud” pursuant article 280 of the Treaty and reports on the measures taken by the member States to protect the Communities’ financial interests.
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COM (2004) 573 Final, SEC (2004) 1058, SEC (2004) 1059; COM(2005)323 Final, SEC(2005)973, SEC(2005)974.

OBJECTIVES	Measure	LEAD DEPT.	
3. AN INTERINSTITUTIONAL APPROACH TO PREVENT AND COMBAT CORRUPTION			
3.1. DEVELOP A CULTURE OF COOPERATION AT ALL LEVELS			
Possible definition of practical arrangements for cooperation between OLAF and other Commission departments	Examine the usefulness of adopting a memorandum of understanding (or another type of text)	OLAF, SG, other services	The action is ongoing and is expected to be completed in 2006. A draft memorandum of understanding has been prepared. Negotiations between OLAF and the Secretariat General were completed in October 2005, but the signature of the revised document was not possible until a decision was taken on appointment of OLAF's Director General. The action is expected to be completed in 2006.
Facilitate the conducting of internal investigations within other institutions and bodies	Examine the usefulness of proposing protocols / memoranda of understanding with other institutions	OLAF, SG, SJ	Action ongoing.
Possible definition of practical arrangements for cooperation between OLAF and IDOC	Appropriateness of re-examining the memorandum of understanding agreed upon in 2003, in the light of recent developments.	OLAF, IDOC, ADMIN	Action completed³⁸.
Improvement of transparency in the flow of information between OLAF and other DGs to assure an appropriate follow-up	Creation of high level interdepartmental group	SG, IDOC, ADMIN, IAS, (OLAF)	Action completed. Creation of high level interdepartmental group to ensure that pertinent information is collected from all sources, analysed rapidly and communicated to the College ³⁹ . The group meets

³⁸ Commission Decision C(2004) 1588 final/4 of 28.04.2004.

³⁹ COM(2004)93, point 4.2.

			regularly, the first meeting was held on 17.2.2004.
3.2. IMPROVE THE LEGAL FRAMEWORK FOR ADMINISTRATIVE INVESTIGATIONS			
Clarification of arrangements for performing internal/external investigations and related measures by precise rules	Proposals for amendment of Articles 6, paragraphs 7, 7(a) and 7(b) of Regulations N°s 1073 and 1074/1999	SG, OLAF	Action completed. Proposals for amendment of Regulations No 1073 and 1074/1999 have been adopted by the Commission⁴⁰. The Commission is preparing a consolidated proposal.
Compliance with and standardised application of information procedures with regard to the institutions, bodies and offices concerned and the persons involved	Proposals for amendment of Articles 6, paragraphs 5(a), 7(a) and 7(b) of Regulations N°s 1073 and 1074/1999	SG, OLAF	Action completed. Proposals for amendment of Regulations No 1073 and 1074/1999 have been adopted by the Commission⁴¹. The Commission is preparing a consolidated proposal.

⁴⁰ COM (2004) 103 and 104 final of 10.02.2004.

⁴¹ COM (2004) 103 and 104 final of 10.02.2004.

OBJECTIVES	Measure	LEAD DEPT.	IMPLEMENTATION AND FOLLOW-UP
4. ENHANCEMENT OF THE CRIMINAL-LAW JUDICIAL DIMENSION			
Reinforcement of the effectiveness of criminal prosecutions by establishing a European Public Prosecutor	Preparation of a White Book	OLAF, JAI	As the process of ratifying the Constitutional Treaty is still in progress, this action is temporarily withdrawn .
Follow up the application of the Convention and its protocols to the protection of the Community's financial interests	Report on the implementation of the Convention by the Member States.	OLAF, JAI, SJ	Action completed⁴².
Improvement of structured relations with Europol	Conclusion of a protocol	OLAF, Europol	Action completed. Administrative agreement was signed by OLAF and Europol on April 8, 2004 in order to fight international organised crime in the context of fraud, corruption or any other criminal offence. More specific the agreement indicates that OLAF and Europol should cooperate in areas of common interest, exchange strategic and technical information, cooperate in the field of intelligence and technical support, write common reports with mutual consultations, participate in joint investigation teams and cooperate in the field of professional training and working groups.
Development of the judicial dimension and the function of interlocutor of the police and judicial authorities	Establishment with Member States of a Practical Guide for cooperation with criminal prosecution authorities	OLAF	Postponed to 2006.

⁴² COM (2004) 709, SEC (2004) 1299.

IMPLEMENTATION OF ARTICLE 280 OF THE EC TREATY BY THE MEMBER STATES IN 2005

INTRODUCTION

The protection of the European Communities' financial interests and the fight against fraud is an area in which responsibility is shared between the Community and the Member States. Consequently, each year the Commission draws up a report in cooperation with the Member States on the measures taken to implement this obligation, according to article 280 of the EC Treaty. This report is addressed to the European Parliament and the Council and is published.

The Commission bases its report on the measures taken by Member States on the replies to the "Article 280" questionnaire. This questionnaire covers the period from 1 January to 31 December 2005.

The present document lists all the answers of Member States to the 2005 questionnaire.

Over time the report had become more and more voluminous. Both the Council and the European Parliament were concerned that its size was increasing and that it's being annual, horizontal and multisectoral hampered a detailed assessment of all the aspects of the protection of the Community's financial interests by the Member States. Since 2003, the Commission has therefore applied a new approach. After the traditional question asking Member States to report on new measures taken in 2005, the questionnaire focuses on a few major themes. The aim is to gather information on topics which go beyond the measures taken in the course of a calendar year, thereby allowing a more detailed analysis of these topics. The topics change from year to year.

As always, the **first part of the questionnaire** asks Member States to list the legal **instruments that give effect to Article 280**, i.e. measures to combat fraud and all illegal activities affecting the financial interests of the Community in the areas of own resources, agricultural expenditure and structural measures. The Member States has been asked to list only national measures and not those which simply transpose Community legislation, and to do so in brief so as to reduce the volume of the staff working document which incorporates the replies from the 25 Member States. At the end of this first question, Member States have the opportunity of giving a more detailed description of a few measures which they consider to have been the most important in the calendar year. This year, the question on own resources covers not just traditional own resources as in previous years but also VAT. Some Member States indicated to have a reservation about the inclusion of VAT in the questionnaire, so it has been agreed that it is open to Member States to answer this question. Ireland declared in its answer that as a matter of principle, Ireland will not be responding to the question in respect of VAT.

The **second question** concerns the recovery of sums unduly paid or not collected by the Communities. In 2003 and 2004, the questionnaire focused on joining civil actions to criminal proceedings. The 2005 questionnaire is dealing with certain aspects of **administrative and judicial recovery procedures**, but not with joining civil actions.

The **third part** of the questionnaire addresses the **procedures which exist in the Member States for certifying the proper implementation of public expenditure**. This question comes in the context of the Commission's efforts to obtain a positive statement of assurance on Community expenditure. With this goal in mind, it is useful for the Commission to know what systems for certifying the proper implementation of public expenditure are in place in the Member States.

1. LEGAL INSTRUMENTS THAT GIVE EFFECT TO ARTICLE 280 OF THE EC TREATY — PRINCIPAL DEVELOPMENTS

1.1. Horizontal developments: Have there been any <u>significant new</u> legislative horizontal developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2005? Member States are asked to list only measures <u>adopted on their own initiative</u> and not those which simply transpose Community legislation.
If so, please indicate below: – the type of legal instrument (e.g. law, regulation, legislative decree), – the references of the legal instrument (number/date of publication in Official Gazette, etc.), – the legal instrument or code which it amends (if any), – the title of the legal instrument or a brief description (no longer than one to two sentences).
BE With regard to customs, the law of 7 July 2005 (Moniteur Belge of 14 October 2005) approved the following international acts: 1. The Convention, drawn up on the basis of Article K.3 of the Treaty on European Union, on the use of information technology for customs purposes, done at Brussels on 26 July 1995; 2. The agreement on the provisional application between certain Member States of the European Union of the convention drawn up on the basis of Article K.3 of the Treaty on European Union on the use of information technology for customs purposes, done at Brussels on 26 July 1995; 3. The Protocol, drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the use of information technology for customs purposes, done at Brussels on 29 November 1996; 4. The Protocol, drawn up on the basis of Article K.3 of the Treaty on European Union, on the definition of money-laundering in the Convention on the use of information technology for customs purposes and the inclusion of the registration number of the means of transport in the Convention, and the Declarations, done at Brussels on 12 March 1999.
DK Within the remit of the Ministry of Justice, a new law was adopted: Act No 11 of 19 May 2005 amending, inter alia, Section 289a of the Criminal Code, which deals with fraud involving public funds, including EU fraud. The amended legal provision maintains the offences covered by the previous Section 289a on EU fraud and extends the provision to cover fraud involving national aid and grant funds. The provision seeks to establish uniform protection against fraud involving public funds, irrespective of whether they are EU or national funds or a combination of the two. The amendment also raises the maximum penalty for particularly serious violations from four to eight years.

1.1. Horizontal developments:

Have there been any significant new legislative horizontal developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2005? Member States are asked to list only measures adopted on their own initiative and not those which simply transpose Community legislation.

EL	Law 3316/2005 (Government Journal Issue 42/A/22.2.2005) governing the allocation and performance of public contracts for conducting studies and rendering relevant services, and other provisions. Law 3310/2005 (Government Journal Issue 30/A/14.2.2005) governing the measures to ensure the transparency and prevent infringements of the procedure for concluding public contracts as amended by Article 12 of Law 3414/2005. The provisions of this law are implemented in the procedure for concluding and performing public contracts, with a view to ensuring transparency and healthy competition as well as strengthening pluralism and the provision of objective information on equal terms. It amends Law 2328/2005 (Government Journal Issue 159/A). Law 3296/2004 governing natural and legal persons' income tax, tax inspection, and other provisions, which established the Special Audit Service (YPEE) and abolished the Economic Crimes Enforcement Agency (SDOE) set up by Law 2343/95 (Government Journal Issue 211/A/11.10.1995). Presidential Decree 85 (Government Journal Issue 122/A/25.05.2005) governing the organisation of the YPEE, by which : i) Two new regional business directorates (the Athens and Thessaloniki Special Affairs Directorates) have been set up, which are coordinated by the Staff Directorate for Special Affairs. There are units working in these directorates whose main responsibility is to research and eradicate all forms of fraud in respect of the EU budget. ii) Two new units have been added to the Administrative Support Directorate: a. The International Cooperation and Mutual Assistance Unit, whose responsibility is the coordination of the exchange of information and research within the framework of the implementation of Regulation No 515/97 and bilateral and multilateral agreements on customs cooperation; b. The Audit and Internal Audit Unit, whose responsibility is to discover omissions and errors in the implementation of national and Community legislation. Law 3424/3.12.2005 (Government Journal Issue 305/A/13.12.2005) introduces amendments to the legislation regarding money-laundering (amendment to Law 2331/1995 Government Journal Issue 173/A/24.08.1995). Besides the general focus on criminal activities related to money-laundering, special attention is given, among other aspects, to the protection of the EU's economic interests. Law 3399/2005 (Government Journal Issue 255/A/17.10.2005) governing the matters falling within the competence of the Department of Agricultural Development and Food - Conformity with the new CAP, and other provisions, ratified and brought into force from 1.01.2005 the joint decision No 324032/24.12.2004 by the Ministers of Finance and of the Economy, the Environment, Land Planning, Public Works and
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	1.1. Horizontal developments: Have there been any <u>significant new</u> legislative horizontal developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2005? Member States are asked to list only measures <u>adopted on their own initiative</u> and not those which simply transpose Community legislation.
	Agricultural Development and Food on the implementation of the regime of cross-compliance and other supplementary measures in the performance of Council Regulation No 1782/2003.
ES	Royal Decree 939/2005 of 29 July, adopting the General Collection Regulation (B.O.E. of 2 September, which entered into force on 1 January 2006). See point 1.5. Royal Decree 520/2005 of 13 May, adopting the general implementing Regulation of General Tax Law 58/2003 of 17 December, regarding administrative review (B.O.E of 27/5/2005). It lays down the main procedural aspects for the recovery of sums unduly paid. Furthermore, it regulates economic and administrative claims, general economic and administrative procedure, enforcement (general rules regarding administrative decisions and special rules on the implementation of economic-administrative and court decisions) and refund of guarantee costs. The second additional provision determines its supplementary application to the refund of unduly collected incomes from custom debts that will be governed in the first place by EU law, and to the refund of other unduly collected public incomes. Order 3987/2005 of 15 December, partially implementing the General Implementing Regulation of General Tax Law 58/2003 of 17 December, regarding administrative review. It governs the adequacy requirements that must be met by surety and fidelity bond insurances and other taxpayers' personal or joint guarantee for them to be given as guarantee with a view to obtaining a stay of execution of the challenged acts. Resolution of 14 November 2005 on VAT, regulating the right to tax deduction of grant recipients, pursuant to the European Court of Justice judgment
FR	Law No 2005-1549 of 12 December 2005 on dealing with criminal recidivism (Article 2): convictions handed down by the criminal courts in a Member State of the European Union are now taken into consideration in case of recidivism under the French Code of Criminal Procedure, in accordance with the provisions of this Law (Official Gazette No 289 of 13 December 2005).
IE	The legislative provisions governing cash seizures have been significantly extended in the Proceeds of Crime (Amendment) Act 2005 which came into effect on 12th February 2005. These provisions enable Customs and Revenue Officers to seize cash anywhere in the State, which is believed to be the proceeds of crime or intended for

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	criminal conduct. Crime/criminal conduct covers all forms of criminal behaviour including fraud in relation to Own Resources. An explicit power to search for cash at points of entry/exit from the State is also provided under the legislation.
IT	Act No 11 of 4 February 2005 laying down general rules on Italy's participation in the European Union's legislative process and on procedures for complying with Community obligations (Official Gazette No 37, 15 February 2005), modified the process of transposing legislation adopted by the institutions of the European Communities, the European Union and the Court of Justice of the European Communities. Article 280 of the EC Treaty will now be implemented by means of these new provisions. Section 3 of Act No 62 of 18 April 2005 on provisions for complying with obligations deriving from Italy's membership of the European Community (2004 Community Law Act, Official Gazette No 96, 27 April 2005), gave the Government powers to punish violations of Community law, while, with the aim of simplifying legislation, section 5 granted the Government powers to amend laws on matters covered by Community law. Under section 1(533) of Act No 266 of 23 December 2005 on rules for drawing up the national annual and multi-annual budgets (the 2006 Budget Act, Official Gazette No 302, 29 December 2005), "To receive Community grants and investment aid companies in all sectors shall be required to produce certification to the effect that contributions have been paid as required under section 2(2) of Decree Act No 210 of 25 September 2002, as converted into law and amended by Act No 266 of 22 November 2002."
LV	The Law "Amendments of the Criminal law" adds to the Criminal law Article 1771 „Fraud in an Automated Data Processing System” which defines liability of a person who knowingly enters false data into an automated data processing system for acquisition of the property of another person or rights to such property, or acquisition of other material benefits, in order to thereof influence the operation of resources. Article 177 „Fraud” of the Criminal law defines liability of a person who acquires property of another person, or rights to such property, by the use, in bad faith, of trust, or by deceit (fraud). Article 178 „Insurance Fraud” of the Criminal law defines liability of a person who commits intentional destruction, damage or concealment of their property for the purpose of receiving insurance money.
LT	Modification of the Penal Code of the Republic of Lithuania by Law No X-272. See point 1.5.

1.1. Horizontal developments: Have there been any <u>significant new</u> legislative horizontal developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2005? Member States are asked to list only measures <u>adopted on their own initiative</u> and not those which simply transpose Community legislation.	
HU	Government Decree No. 55/2005 (III.26.) on the recovery procedure of governmental assistance deriving from or related to the European Union's resources used illegally, improperly or contrary to an agreement is new legislation. See point 1.5.
MT	Counterfeiting of the Euro is sanctioned by Articles 49-49F of the Central Bank Act.
AT	The Legal Persons' Liability Act (Verbandsverantwortlichkeitsgesetz - VbVG), BGBl I No 151/2005. See point 1.5.
PT	Law No 55-B/2004 of 30 December 2004 (State budget for 2005): amends Article 63.B of the General Tax Act, approved by Decree-Law No 398/98 of 17 December 1998, on access to bank data and documents and, more specifically, the administration's exemption from banking secrecy rules. The amended article stipulates that the tax authorities are entitled to access any banking data or documents without the consent of the data subject where there is evidence that a tax-related crime has been committed and where there is specific evidence that false declarations have been made.
SI	The Tax Administration Act (Official Gazette of the Republic of Slovenia, Nos 57/2004, 139/2004, 59/2005), No 516/24.2.2005/17; brought into effect a new tax administration task – the performance of "tax investigations," and defined the concept of a tax investigation as the implementation of acts and measures when there are grounds for suspicion that a violation of taxation regulations has been committed.
SK	Act No. 300/2005 Coll., the Penal Act, as amended by Act No. 650/2005 Coll. of 2 July 2005, published in section 129/2005 of the Collection of Acts of the Slovak Republic. Act No. 301/2005 Coll., the Penal Code, as amended by Act No. 650/2005 Coll. of 2 July 2005, published in section 130/2005 of the Collection of Acts of the Slovak Republic. The Penal Act and the Penal Code are principle regulations of substantive and procedural law for penal law in the Slovak Republic, whereas damage to the financial interests of the European Communities is arranged as a separate body of a crime (Section 261 of Act No 300/2005, the Penal Act, as amended by Act No 650/2005 Coll.), for which a punishment of imprisonment for 6 months to 12 years can be imposed. Hearings and judgements are in the competence of a Special Court (Section 14 of the Penal Code). Act No 372/1990 Coll. on offences, as amended by Act No 650/2005 Coll. Act No 652/2004 Coll. on national customs bodies and amendments to some acts, as

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amended by Act No 331/2005 Coll., of 10 December 2004, published in section 276/2004 of the Collection of Acts of the Slovak Republic;

Act No 199/2004 Coll. on customs and amendments to some acts (the Customs Act) was amended; this act established the Customs Crime Authority with applicability from 1 January 2005 (Section 11 of Act No 652/04 Coll.), which fulfils tasks in the area of combating infringement of customs regulations or tax regulations and secures other tasks concerning prevention of illegal actions endangering the interests of the European Communities.

Act No 626/2005 Coll., amending Act No 473/2003 Coll. on the Agriculture Payment Agency, on support for agricultural trading, published in section 245/2005 of the Collection of Acts of the SR on 29 December 2005 (the amendment only relates to application of sanctions for infringement of the prohibition on illegal employment).

1.2. Own resources (including VAT):

Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2005? Member States are asked to list only measures adopted on their own initiative and not those which simply transpose Community legislation.

If so, please indicate below:

- the type of legal instrument (e.g. law, regulation, legislative decree),
- the references of the legal instrument (number/date of publication in Official Gazette, etc.),
- the legal instrument or code which it amends (if any),
- the title of the legal instrument or a brief description (no longer than one to two sentences).

BE

1) The following were the most significant new developments concerning own resources legislation in 2005:

-Article 128 of the programme law of 27 December 2005 (Moniteur Belge of 30 December

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2005 –2nd edition) introduced a measure to combat abuse of the law in the field of VAT.

It was felt that there was good reason to introduce a specific VAT provision, similar to what is provided for in Article 344 of the income tax code 92, incorporating into national law the concept of abuse of law in cases where the sole purpose of the legal status given by the parties to an act or several different acts executing the same transaction, even if this transaction is genuinely intended and performed, was to avoid VAT.

Article 128 of the aforementioned law inserts into Article 59 of the VAT code a paragraph (3) to read as follows:

“The authorities will not accept the legal status given by the parties to an act or to several different acts executing a single transaction where they have evidence, by presumption or other means of evidence provided for in paragraph (1), that the sole purpose of this legal status is to avoid VAT, unless the taxable person proves that this status is justified on the grounds of legitimate financial or economic needs”.

The aim of this new provision is to combat manoeuvres whose sole purpose is to avoid VAT by means of legal combinations, and to enable the authorities to be certain that VAT due or deductible is based on the normal legal status that should be assigned to the transaction performed between the parties.

However, since these are cases of tax avoidance, there is no infringement of the law and there can be no question of refusing the taxable person the right to opt for whichever solution carries the lightest tax burden.”

This provision applies to acts concluded from 1 November 2005.

2) The law of 10 August 2005 introduced a new Article 93 undecies (B) in the VAT 2 Code aimed at combating the organisation of insolvency in cases of fraudulent assignment of a set of assets.

This article states that:

“(1). Without prejudice to the application of Articles 93ter to 93 decies, the assignment of ownership, or beneficial ownership, of a set of assets, including assets needed in order to retain clients, relating to exercise of a profession, responsibility or office or an industrial, commercial or agricultural business, or the assignment of beneficial ownership of these assets, can only be accepted by the collector at the end of the month following that in which an authenticated copy of the act was submitted to the collector responsible for the assignor’s domicile or registered office.

(2). The assignee shall be jointly and severally liable for payment of the assignor’s tax debts on expiry of the time specified in (1) above, up to the amount already paid or contributed by him or the amount of the nominal value of the shares or units granted in exchange for the

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	assignment before the expiry of this time. (3). (1) and (2) shall not be applicable if the assignor attaches to the deed of assignment a certificate issued solely for this purpose by the collector referred to in (1) within the thirty days before notification of the creditors' arrangement is given. This certificate shall only be issued if the assignor submits a request in two copies to the collector responsible for the assignor's domicile or registered office. The certificate will not be issued by the collector if, at the date of the request, the assignor owes any taxes, interest, tax fines or additional payments or if the request is submitted after an inspection has been announced, during an inspection or after the assignor has sent a request for information on his tax situation. The collector must either issue the certificate or refuse to grant it within thirty days after the request is submitted by the assignor. (4) This article shall not apply to assignments made by a receiver, liquidator or as part of a merger transaction, an unbundling transaction, or the assignment of a totality of assets or of an activity carried on in accordance with the Companies Code. (5) The request and the certificate referred to in this article must be submitted using the standard models specified by the ministry responsible for finance." The aim of this new provision is, firstly, to prevent a natural or legal person from transferring his business assets without settling his VAT debts and, secondly, to prevent the fraudulent procedure whereby certain tax debtors hastily sell off their business assets as soon as they become aware that their tax situation is subject to special scrutiny. Circular No AREC 7/2005 (IR/I-1/76.268) of 05.12.2005, which is posted on the Fisconet site Federal Public Service for Finance comments on the new provision.
EL	1) Document No E799/857/A0034/4.03.05 giving instructions to the customs authorities to audit and make good any irregularities in their old cases in order to assess the related tariffs and fines inside the scheduled deadlines and prevent them from lapsing. 2) Document No L 159/32/A0034/8.06.05 giving instructions to the customs authorities to audit the documentation of own resources in the B accounts and to confirm that fraud and irregularity forms have been drawn up for documents above €10 000, as specified in Article 6(5) of Regulation No 1150/00. 3) Document No E1976/726/A0034/21.11.05 giving instructions to the customs authorities to monitor closely the results of subsequent investigations by the ELYTs (Customs Special Investigations Units) into the assessment of supplementary tax charges and the drawing up of fraud forms in cases where the requirements of Article 6(5) of Regulation No 1150/00 are met.

1.2.	Own resources (including VAT): Have there been any <u>significant new legislative developments</u> (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2005? Member States are asked to list only measures <u>adopted on their own initiative</u> and not those which simply transpose Community legislation.
IE	With regard to VAT, it was agreed at the Cocolaf meeting in October 2005, that it is open to Member States not to answer this question. Ireland has already indicated its reservation about the inclusion of VAT in this questionnaire. Ireland continues to maintain this reservation. As a matter of principle, Ireland considers that all tax matters must be taken under unanimity. As such, Ireland will not be responding to this question in respect of VAT.
IT	Act No 248 of 2 December 2005 amending and converting into law Decree Act No 203 of 30 September 2005 on measures to combat tax evasion and urgent tax and financial measures (Official Gazette No 281, 2 December 2005), stepped up the fight against tax evasion by involving the local authorities and supporting the work of the Revenue Agency, the Customs Service and the <i>Guardia di Finanza</i> by increasing their powers of investigation and enforcement.
LV	The amendments made to the Law on VAT adopted on 20 October 2005 were made in order to: 1) specify the definition of “a person taxable with the value added tax”; 2) to specify the procedure how persons are registered in and excluded from the State Revenue Service Register of Value Added Tax Taxable Persons; 3) define responsibility of persons who avoid presenting their VAT declarations to the State Revenue Service and do not submit documents for tax calculation control. Amendments to Article 10 of the Law On Value Added Tax specify that a taxable person registered with the State Revenue Service has the right to deduct input value added tax for the taxable transactions. This ensures a possibility to control validity of input value added tax deductions. The amendment in paragraph 12 of Article 12 expands possibility of tax authorities to evaluate cases of refund of the tax from the budget. The Regulation of the Cabinet of Ministers No 651 of 30 August 2005 “Procedures for application of the value added tax to import, delivery and acquisition of goods in the territory of the European Union and delivery of services financed by the foreign financial assistance”. The Regulation of the Cabinet of Ministers No 346 of 24 May 2005 “Amendments to the Regulation of the Cabinet of Ministers No 163 of 23 March “Procedure on European Community’s own resources system functioning”. Regulation defines procedure how functioning of European Community’s own resources system including definition, forecasting, collection, transfer and control of own resources and performance of related tasks is ensured. Regulation of the Cabinet of Ministers No 731 of 27 September 2005 “Amendments to the Regulation of the Cabinet of Ministers No 502 of 9 September 2003 “Procedure on how State Revenue Service excludes persons from the State Revenue Service Register of Value Added Tax Taxable Persons””. Regulation envisages a simplified procedure how persons are excluded from the said register of the State Revenue Service. Procedure No 46 approved by the Ministry of Finance on 14 October 2005 lays down

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	arrangements for administration of contributions paid to the budget of the European Community by the Republic of Latvia and procedure No 3 approved by the Ministry of Finance on 18 January 2005 defines procedure how annual report on VAT resource base is elaborated. Instructions of the State Revenue Service, adopted on the 16 May 2005. The aim of the instruction is to ensure performance of joint tax controls by the Member States as set by the EU law and international agreements signed by the State Revenue Service on administrative assistance and exchange of information.
HU	On 1 January 2005 Article 208 of Act CI of 2004 amending legislation on taxes, contributions and other payments to the budget entered into force, amending Article 88 (5) of Act XCII of 2003 on the rules of taxation. See point 1.5.
SI	The Act amending the Value Added Tax Act (ZDDV-F, Official Gazette of the Republic of Slovenia No 108/2005); No 434-02/96-13/86; date: 2 December 2005; in its new Article 59a stipulates that the tax administration decides ex officio on the cessation of identification for VAT purposes, if it finds there are no longer grounds for VAT identification. Main reason for supplementing the Act: tax evasion and increasing occurrence of so-called missing traders, as defined in Commission Regulation (EC) No 1925/2004.
SK	Act No 652/2004 Coll. on national customs bodies and amendments to some acts, as amended by Act No 331/2005 Coll. of 10 December 2004, published in section 276/2004 of the Collection of Acts of the Slovak Republic; Act No 199/2004 Coll. on customs and amendments to some acts (the Customs Act) was amended; this act established the Customs Crime Authority with applicability from 1 January 2005 (Section 11 of Act No 652/04 Coll.), which fulfils tasks in the area of combating infringement of customs regulations or tax regulations and secures other tasks concerning prevention of illegal actions endangering the interests of the European Communities. Act No. 650/2005 Coll. of 2 July 2005, see point 1.1.

1.3.	Agricultural expenditure (expenditure financed by EAGGF - Guarantee Section): Have there been any <u>significant new legislative developments</u> (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2005? Member States are asked to list only measures <u>adopted on their own initiative</u> and not those which simply transpose Community legislation.
	If so, please give a brief description below. Please indicate: – the type of legal instrument (e.g. law, regulation, legislative decree), – the references of the legal instrument (number/date of publication in Official Gazette, etc.), – the legal instrument or code which it amends (if any), – the title of the legal instrument or a brief description (no longer than one to two sentences), – whether the measures are general or whether they apply to a specific sector of the EAGGF-Guarantee Section and which one.
ES	Royal Decree 754/2004 of 24 June, regulating the milk levy scheme. (BOE nr 162, 8-07-2005). Its main purpose is to set up the basic operational requirements of the control system, to assess whether the milk quota's national reference quantities allocated to Spain have been exceeded and how to proceed with the appropriate assessments in case of quota overrun. Furthermore, an information system is set up to ensure harmonisation of all the information the public administrations concerned should have concerning the milk quota scheme. Besides, a coordination board, consisting of representatives of the Autonomous Communities and the Ministry of Agriculture, Fisheries and Food, has been established (with a view to laying down a transitional regime until the full entry into force of the new legal framework, at the end of the levy period 2006-2007). Under the provisions of this Royal Decree and of Regulation (EC) 595/2004, the following FEAGA General Instructions have been established: 14/2005 of 7 November, establishing the procedure for carrying out checks on milk deliveries by producers. 16/2005 of 1 December, establishing the procedure for carrying out controls on milk transport from farmers to buyers. It prevents the non-declaration of milk delivered outside the quota. 19/2005 of 2 December, establishing the most efficient control mechanisms over farmers, buyers and milk transport in order to manage the milk levy scheme. The scope of these measures covers the cow's milk sector. CIRCULAR 31/2005 of 23 December, coordinating the administrative and on-the-spot checks to be carried out on aids granted to producer organizations constituting an

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	operational fund. It lays down the minimum administrative and on-the-spot checks on applications for financial aid to producer organizations constituting an operational fund, as well as the criteria for implementing those checks. The scope of these measures covers the fruit and vegetables sector. It harmonises check criteria and optimizes coordination between paying agencies.
IT	Act No 231 of 11 November 2005 amended and converted into law Decree Act No 182 of 9 September 2005, introducing a series of provisions aimed at improving procedures to recover amounts unduly paid in the EAGGF Guarantee Section.
LV	Decree of the Cabinet of Ministers No 5 of 1 January 2006 „Amendments to the Decree of the Cabinet of Ministers No 5 of 7 January 2004 „Responsible bodies of the European Agricultural Guidance and Guarantee Fund Guarantee Section and Cohesion Fund”. The Decree specifies accreditation criteria for the Paying agency and states that the accreditation criteria are laid down in the Annex of the Commission regulation (EC) No 1663/95 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section. The measures laid down in the Decree shall be applied to the operation and accreditation of the Paying agency.
HU	The rules concerning the legal consequences included in Act LXXIII of 2003 on certain matters of procedures related to supports for agriculture and rural development and other measures and the related amendments of law were amended as of 6 May 2005. The most important new rules (Articles 37/A-37/B) are: – A default penalty of a maximum of one hundred thousand Hungarian forints may be imposed on private clients, while other clients may be liable to pay a default penalty of a maximum of two hundred thousand Hungarian forints if such clients, according to the legislation enacted on the basis of the present act, fail, in connection with using the assistance, to produce the receipts and keep the books and records prescribed by law, or if they issue receipts in a manner that is not in accord with the regulations and keep incomplete books and records in a manner that is not in accord with the regulations, [Article 37/B/c)] fail to fulfil their obligation to retain files, [Article 37/B/d)] obstruct auditing by failing to meet their obligation to appear, violating their obligation to cooperate or in any other way [Article 37/B/g)].

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	– If the client fails to meet its obligations to register, report, report changes or provide information, the Agricultural and Rural Development Agency (ARDA) sets a default penalty at the same time as it calls on the client to perform by a given deadline. Twice the amount of the penalty that had been imposed must be set along with a new deadline in the event that the client failed to meet the deadline prescribed in the previous decision compelling performance. In the event that the obligation is fulfilled, the penalty set on the basis of the present paragraph may be reduced freely. [Article 37/B (3)] – Any natural or legal person not qualifying as a client may be sanctioned for obstructing an inspection. [Article 37/B (4)] When imposing a default penalty, ARDA considers all the circumstances of the matter, the gravity and frequency of the client's illegal behaviour (activity or default) as well as whether the client or its representative, employee, member or agent who is handling the matter proceeded with due care in the given situation. On the basis of an assessment of the circumstances, ARDA imposes a penalty in accordance with the gravity of the default or decides not to impose a penalty. [Article 37/B (5)].
MT	Paying Agency Regulations, 2004 – A legal Notice issued under the AGRICULTURE AND FISHERIES INDUSTRIES(FINANCIAL ASSISTANCE) ACT, (CAP. 146) Government Gazette of Malta No. 17,551 – 12th March 2004 Establishes a Paying Agency, which has the function set out in these regulations. The Paying Agency performs the following three Functions: (a) the authorisation of payments from the aid scheme (b) the execution of payments from the aid schemes by issuing instructions to the bankers of the agency, or, in appropriate cases, a governments payments office, to pay the authorised amount to the claimant or his assignee; and (c) the accounting for payments made under the scheme Furthermore, the Agency shall provide two services, namely (a) an internal audit service, having the tasks referred to in paragraph 3 (i) of the Annex to Commission Regulation1663/95 (b) a technical control service, having the tasks referred to in paragraph 3 (ii) of the Annex of Commission Regulation1663/95. L.N. 389 of 2005, COMPANIES ACT (CAP.386). Art 8.

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	Companies Act (The Prospectus) Regulations, 2005. Government Gazette of Malta No. 17, 846 – 25.11.2005. L.N. 390 of 2005, COMPANIES ACT (CAP.386). Art 7, 8, 10 etc. Companies Act (Amendments to the Second Schedule) Regulations, 2005. Government Gazette of Malta No. 17, 846 – 25.11.2005 L.N. 401 of 2005, SET-OFF AND NETTING ON INSOLVENCY ACT (CAP.459). Financial Collateral Arrangements (Amendment) (No.2) Regulations, 2005. Government gazette of Malta No. 17 , 850 – 09.12.2005 L.N. 7 of 2005, ARBITRATION ACT (CAP.387). Arbitration Act (Amendment of Fourth Schedule) Regulations, 2005. Government Gazette of Malta No. 17, 707 – 14.01.2005. L.N. 414 of 2005, COMMISSIONERS FOR JUSTICE ACT (CAP.291). Petitions (Local Tribunals) Regulations, 2005. Government Gazette of Malta No. 17, 859 – 30.12.2005. L.N. 382 of 2005, FINANCIAL ADMINISTRATION AND AUDIT ACT (CAP.174). Public Contracts (Amendment) Regulations, 2005. Government Gazette No. 17, 845 – 22.11.2005. L.N. 49 of 2005. INCOME TAX ACT (CAP.123) INCOME TAX MANAGEMENT ACT (CAP.372). Sale of Agricultural Produce Rules, 2005. Government Gazette of Malta No. 17, 729 -18.02.2005. L.N.279 of 2005. ARBITRATION ACT (CAP.387). Arbitration Act (Amendment of Fourth Schedule) Regulations, 2005. Government Gazette of Malta No. 17, 799 – 29.07.2005
AT	Agricultural expenditure – Amendment to the specific Directive.
PL	On 10 February 2005 the Minister for Finance and the President of the Agricultural Market Agency signed a Memorandum of Understanding on the detailed rules governing cooperation between the Customs Service and the Agricultural Market Agency on the circulation of documents and information on work related to trade in goods which are covered by export refunds under the common agricultural policy and processed goods which are not caught by Annex I to the Treaty establishing the European Community. The Memorandum of Understanding is annexed to the Memorandum of Understanding dated 24 July 2003 between the Minister for Finance and the President of the Agricultural Market Agency on cooperation between the Customs Service and the Agricultural Market Agency on the import and export of goods covered by the common agricultural policy. The Memorandum of Understanding was concluded with a view to streamlining the circulation of documents and exchanges of information between the Customs Service and the Agricultural Market Agency. It also includes detailed arrangements for cooperation on producer authorisations, checks on registered formulae and checks on the pre-financing of export refunds and on food stores and planning

1.3.	Agricultural expenditure (expenditure financed by EAGGF - Guarantee Section): Have there been any <u>significant new legislative developments</u> (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2005? Member States are asked to list only measures <u>adopted on their own initiative</u> and not those which simply transpose Community legislation.
	procedures. On 16 February 2005 the Order laying down procedural rules for customs bodies under the common agricultural policy was amended. The information contained in the Order was updated as regards the horizontal rules and individual agricultural sectors.
PT	The following legislation was adopted on Portugal's own initiative in 2005 in certain specific sectors. The respective pieces of legislation contain provisions on control and associated systems, recovery of undue payments and for penalties for infringements: Cross compliance Ministerial Order No 36/2005 of 17 January 2005 (Official Gazette, Series I B, No 11, 17.1.2005) – lays down national rules for implementing the control system for cross compliance. Ministerial Order No 23/2005 of 7 April (Azores Region Official Gazette No 14, 7.4.2005) – lays down the rules for implementing the control system for cross compliance in the Autonomous Region of the Azores. Animal identification Order No 9133/2005 (2nd series) of 12 April 2005 (Official Gazette, Series II, No 80, 26.4.2005) – on the creation by INGA of a centralised national computerised database on the sheep and goat population, called Sistema Nacional de Identificação e Registo de Animais (SNIRA - O/C) (National System for the identification and registration of animals (sheep and goats)). Order No 10 178/2005 (2nd series) of 22 April 2005 (Official Gazette, Series II, No 88, 6.5.2005) – on the creation by INGA of a national computerised database containing a register of pig holdings and movements of pigs, called Sistema Nacional de Identificação e Registo de Animais (SNIRA - Suínos) (National System for the identification and registration of animals (pigs)). Olive oil Decree-Law No 231/2005 of 29 December 2005 (Official Gazette, Series I A, No 249, 29.12.2005) – abolishes the Control Agency for Community assistance to the olive oil sector (ACACSA) and assigns tasks relating to the Community olive oil aid scheme to the Financing and Supporting Institute for the Development of Agriculture and Fisheries (IFADAP) and the National Institute of Agricultural Intervention and Guarantee (INGA), in accordance with their respective responsibilities. The tasks of monitoring oil mills and the destination of the olive oil obtained from the

1.3. Agricultural expenditure (expenditure financed by EAGGF - Guarantee Section):

Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2005? Member States are asked to list only measures adopted on their own initiative and not those which simply transpose Community legislation.

processed olives and their by-products will be carried out by the Food and Economic Safety Authority (ASAE), which was set up by **Decree-Law No 237/2005 of 30 December 2005** (Official Gazette, Series I A, No 250, 30.12.2005).

Rural development

Ministerial Order No 176/2005 of 14 February 2005 (Official Gazette, Series I B, No 31, 14.2.2005) – approves the implementing rules for area plans as part of the "agri-environmental measures" scheme under the Rural Development Plan (RURIS).

Ministerial Order No 229/2005 of 28 February 2005 (Official Gazette, Series I B, No 41, 28.2.2005) – on cases where beneficiaries fall short on more than one commitment. It amends Ministerial Order No 1212/2003 of 16 October 2003 approving the implementing rules for the "agri-environmental measures" scheme and Ministerial Order No 46-A/2001 of 25 January 2001 approving the implementing rules for the compensatory payments scheme, both under the Rural Development Plan (RURIS).

1.4. Structural operations:

Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2005? Member States are asked to list only measures adopted on their own initiative and not those which simply transpose Community legislation.

If so, please give a brief description below. Please indicate:

- **the type of legal instrument** (e.g. law, regulation, legislative decree),
- **the references of the legal instrument** (number/date of publication in Official Gazette, etc.),
- **the legal instrument or code which it amends** (if any),
- **the title of the legal instrument or a brief description** (no longer than one to two sentences),
- **whether the measures are general or whether they apply to a specific fund and, if**

1.4. Structural operations:

Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2005? Member States are asked to list only measures adopted on their own initiative and not those which simply transpose Community legislation.

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EE	Regulation No 63 by the Minister of Finance of 19 September 2005 "Conditions and policies for the recovery and repayment of structural aid and the transmission of information concerning the illicit use of structural aid" (Appendix to the State Gazette, 04.10.2005, 101, 1556). The regulation governs the reporting of infringements of rules occurring during the provision or use of aid from Structural Funds and the Cohesion Fund and the recovery of aid. Subsection 10 of section 3 of regulation No 59 by the Minister of Finance of 19 August 2005 "General conditions and procedure for disbursement of structural aid" gives the paying agency the right to stop payments. The amendment to the Structural Aid Act came into force on 1 July 2005. Monitoring of Structural Fund resources became two-tiered – the implementing unit (<i>second level intermediate body</i>) monitors the final recipient and the implementing agency (<i>first level intermediate body</i>) monitors the implementation unit. Thus legal persons governed by private law – the implementing agencies – have been given the authorisation to carry out monitoring. 2) The bases were added for rescinding the decision to approve an application for aid, if the final recipient is not able to carry out the project.
EL	– 1) Joint Ministerial Decision No 190622/16.12.2005 (Government Journal Issue 1850/B/29.12.2005) by the Ministers of Employment and Social Protection and Finance and the Economy on the recovery of undue or illegal payments from national or EU resources within the framework of the European Social Fund. This Decision determines the recovery procedure for illegal or undue payments to final recipients from the national budget for the implementation of programmes funded by the ESF within the framework of the third CSF, where the obligation of recovery is determined by the Ministry of Employment and Social Protection's special ESF Co-funding Implementation Service, which is acting in its capacity as final beneficiary of the "Promotion of Employment and Continuous Training" OP.
LV	The Law on Management of European Union Structural Funds adopted on the 8 of December 2005 which sets up the procedure on appeal against decisions of administrative authorities to approve or reject projects. Field of application: European Union Structural Funds. The Regulation of the Cabinet of Ministers No 784 of 18 October, 2005 "Amendments to the Regulation of Cabinet of Ministers No 200 of 30 March, 2004 "Regulation on Management of the European Union Structural Funds"", which simplifies the procedure on how to amend projects.

1.4. Structural operations:

Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2005? Member States are asked to list only measures adopted on their own initiative and not those which simply transpose Community legislation.

HU

I) – In March 2005 the following Government Decrees were introduced to expedite payment of European Union funds:

Government Decree No. 53/2005 (III. 26.) on the amendment of Government Decree No. 1/2004 (I. 5.) on the institutions responsible for the utilisation of aids from the European Union's Structural Funds and Cohesion Fund.

Government Decree No. 54/2005 (III. 26.) on the regulations concerning guarantees applying to EQUAL Community Initiative Programme and the Operational Programmes of the National Development Plan.

The measures defined in Government Decree No. 55/2005. (III.26.) regard the Structural Funds, the Cohesion Fund, the Schengen Fund, temporary assistance and pre-accession instruments.

II) – The new or amended rules of **Government Decree No. 217/1998 (XII. 30)** on the operational order of the state budget (**Hungarian abbreviation: Ámr**) are the following:

Article 87 (2) a) of Ámr (the amendment entered into force on 29 March 2005)

‘With the beneficiary obtaining a subsidy for development – with the exception of the stipulations specified in Paragraph (12) – the precondition for concluding the contract is

a) the beneficiary's written statement in the form of a notarised private document that shows that the beneficiary does not have any overdue public debt owed to the local government's tax authority or duty-office (hereinafter collectively called tax authorities) with jurisdiction over the registered office and the place where the aid project is implemented and has no **debt under the title of the European Union's traditional own resources** or that it has received permission from the competent tax authority for payment relief (deferment, instalment payment)' [Article 87 (2) a) of Ámr]

(the amendment entered into force on 29 March 2005)

[Article 88 (2) of Ámr] (effective as of 29 March 2005)

‘In addition to the sanctions listed in Paragraph (1), the beneficiary can, by decision of the head of the agency supervising the chapter, be excluded for a specified period – of no more than five years – from the subsidy system of the affected appropriations if at least one of the following conditions exists:

a) the obligation or partial obligation stated in the contract is not implemented or is implemented only partly, in the case of numerically established obligations by a percentage of less than 75% (66% in case of an in-kind contribution for the site or a direct subsidy for purchasing the site),

1.4. Structural operations:

Have there been any significant new legislative developments (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2005? Member States are asked to list only measures adopted on their own initiative and not those which simply transpose Community legislation.

b) the beneficiary performs a task that is different from the approved objective,

c) the beneficiary failed to meet its reporting obligation specified in Article 87 (5) of the decree within the specified deadline.'

[Article 88 (3) of Ámr] (effective as of 8 June 2005)

'In the case of subsidies provided from the Structural Funds or the Cohesion Fund, exclusion from the subsidy system stipulated in Paragraph (2) shall cover all subsidy systems financed from the Structural Funds and the Cohesion Fund. In the case of a subsidy allocated from the Cohesion Fund, according to the decision of the head of the agency supervising the chapter, exclusion shall also apply if the European Commission withdraws the subsidy or a part of it awarded from the Cohesion Fund for reasons that can be attributed to the beneficiary.'

[Article 92 (4) of Ámr] (effective as of 1 January 2005)

'The Tax and Financial Control Administration, the Directorate General of the Hungarian Customs and Finance Guard and its agencies shall, in accordance with Article 8 (8) of this Decree, supply numerical data on the basis of information obtained from the Treasury to the remitting agent and the National Assistance Monitoring System (NAMS) in the event that the beneficiary has any expired and unpaid public debt more than 60 days overdue, if it has any debt under the title of the European Union's traditional own resources, or if it has paid such debt or received permission for payment relief (deferment, instalment). Information is provided electronically on a regular basis to the decision-making body and/or remitting agent and NAMS. Concerning operational programmes, data is provided directly to the Unified Monitoring and Information System (UMIS).'

III) – On the basis of Article 90 (4) of the Act CLIII of 2005 on the budget of the Republic of Hungary in 2006, Act XXXVIII of 1992 on public finances was supplemented by the following Article 13/C:

'Article 13/C (1) If an obligation to repay a European Union subsidy has been determined or if a direct deduction has been made from the account of some programme or project co-financed by the European Union, repayment or replacement shall be made from the budget of the chapter responsible for the irregularity or, if there is none, the chapter disbursing the irregularly used resource.

(2) Repayment or replacement as defined in Paragraph (1) shall be made from an appropriation that has an objective identical to that of the European Union subsidy that has been irregularly utilized. If this is not possible, repayment or replacement shall be made from an appropriation specified by the Government. The present provision is an exception to the provision described in Article 24 (9).

(3) In the event that the sum involved in the irregularity is subsequently recovered or refunded, this sum shall be refunded to the appropriation specified in Paragraph (2) of the chapter

1.4. Structural operations: Have there been any <u>significant new legislative developments</u> (not just implementing measures) contributing to the implementation of Article 280 of the Treaty in 2005? Member States are asked to list only measures <u>adopted on their own initiative</u> and not those which simply transpose Community legislation.	
	specified in Paragraph (1).’
MT	The Managing Authority takes due responsibility in terms of financial management and control in the course of programming and implementing EU Structural Funds Program, as also, in the monitoring of projects that have been approved for funding. Subsequently, it rigorously applies both National Legislation as well as EU Commission Regulations to counter fraud affecting the financial interest of both national as well as EU financial interests. To date, there has been only one development in terms of National Legislation that gives effect to Article 280 of the EC Treaty. This is Chapter 174 of the Laws of Malta relating to Financial Administration and Audit Act, as amended by Act I of 2004. This Act regulates the receipt, control and disbursement of public monies (this includes money that government pays out or disburses from funds received from the EU). It also provides for the audit of accounts in relation to public money. Part X of the Act entitled ‘ Audit and Inspection’ identifies measures to be followed to counter fraud and irregularities. This act applies to Public Money in general, and does not relate to specific structural funds.
PL	In 2005 the Ordinance of the Minister for Economy and Labour dated 22 September 2004 on how, what and when to report on implementation of the National Development Plan, the procedure for monitoring implementation of the National Development Plan, and the settlement procedure was updated. The proposed amendments clarified the powers of scrutiny of bodies involved in implementing programmes jointly funded by the EU Structural Funds and clarified monitoring procedures regarding the strategy for using the Cohesion Fund (type of legal instrument: Ordinance; references of the legal instrument: Official Gazette 2005/224, item 1926; title of the legal instrument: Ordinance of the Minister for Economy and Labour dated 31 October 2005 amending the Ordinance on how, what and when to report on implementation of the National Development Plan, the procedure for monitoring implementation of the National Development Plan, and the settlement procedure).
FI	Decree of the Ministry of Social Affairs and Health, issued in Helsinki 19 April 2005, concerning the powers of the State Provincial Office of Eastern Finland in Structural Fund matters. Entry into force: 1 May 2005. Decree No 260/2005 / published 29 April 2005 / Statute Book of Finland, issue No 50, acts N.258–263. The Ministry of Social Affairs and Health delegate powers in matters related to the structural funds to the State Provincial Office of Eastern Finland. The delegation concerns both the European Social Fund and the European Regional Development Fund in Eastern Finland’s Objective 1 area.

1.5. Description of key developments:

Member States are invited to describe the two or three most important measures (whether legislative or administrative) taken in the course of 2005 about which they would wish to provide more detailed information. These should be measures adopted on Member States' own initiative and not measures which simply transpose Community legislation.

In particular, Member States are asked to indicate:

- **- the type of measure (law, regulation, etc.) and its references (number, date of adoption and/or publication, name of programme, etc.),**
- **- its scope (horizontal scope, specific field),**
- **- why it was needed,**
- **- the improvements made to the existing system.**

BE	Circular COL 4/2005 of the Association of Public Prosecutors of the Court of Appeal (Brussels, 1 February 2005 – confidential document). On cooperation between the police and the customs and excise authorities concerning the application of special investigation methods. The circular provides for application of a uniform procedure in all districts and clarifies certain concepts relating to special investigation methods. In June and December 2005 the Department of European Programmes of the Ministry of the Walloon region updated the CD-ROM for functional administrations. This CD-ROM contains the Community provisions (general provisions, eligibility, publicity requirements, use of the Euro, management and control), regional provisions (implementing arrangements, control), programming documents, records of meetings, annual reports and a list of useful websites. The CD-ROM was distributed to the functional administrations (intermediate bodies) and the offices (cabinets) of the Ministers concerned. The European Social Fund Agency provides operators with an administrative and financial guide to the Community, national and regional legislation relevant to the handling of ESF financial dossiers. In 2005 the guide was updated for two administrative matters: the revaluation of EPA (Walloon Region) and publicity requirements. The ministers of justice and foreign affairs issued a framework memorandum on “integral security” concerning the best integral and integrated security policy, which was adopted by the Council of Ministers on 30 and 31 March 2004 and signed by all the members of the government. The strategic objectives of this security policy are set out in the introduction. Tackling fraud against the European Union’s financial interests is one of the priorities of this policy. In 2005 a network was set up for this purpose under the Federal Public Services for Justice and the Economy.
EE	Creation of the legal bases for the suspension of payments pursuant to the Minister of Finance’s regulation No 59 of 19 August “General conditions and procedure for disbursement of structural aid”. The aforesaid provision allows payments to be suspended if the paying agency has information on record that the control systems do not comply with the requirements of European Commission Regulation (EC) No 438/2001 or that the protection of the European Union’s financial interests is not guaranteed for the purposes of Council Regulation (EC) No 2988/95. In this case the paying agency may stop the aid payments, informing, without delay,

1.5. Description of key developments:

Member States are invited to describe the two or three most important measures (whether legislative or administrative) taken in the course of 2005 about which they would wish to provide more detailed information. These should be measures adopted on Member States' own initiative and not measures which simply transpose Community legislation.

	the implementation unit (<i>second level intermediate body</i>), the implementing agency (<i>first level intermediate body</i>) and the management authority. The provision is necessary so that in the event of shortcomings in the control systems the paying agency has the right to stop payments and to require the implementation of measures to correct the problem. The Minister of Finance's regulation No 63 of 19 September 2005 "Conditions and procedure for the recovery and repayment of structural aid and the transmission of information concerning the improper use of structural aid" imposed a duty on implementation units to inform the financial control department of the Ministry of Finance (AFCOS – OLAF's cooperation partner) within two weeks of the irregularity, the suspicion of fraudulent conduct or shortcomings in the control system. AFCOS oversees the paying agency and managing authority and, if necessary, other relevant agencies, whose competence includes contributing to the rectification of irregularities. With immediate reporting of irregularities it can be ascertained whether all necessary measures have been implemented and, if necessary, contributed to preventing irregularities and solving problems. The need for measures is because previously information concerning irregularities was provided only once per quarter, while several cases required a faster reaction at the level of the auditing authority and the paying agency. The regulation also laid down a national financial limit of 2500 EUR for infringement reports; a report does not have to be submitted if the infringement is under this limit. A copy of the decision to recover aid has to be submitted to the Ministry of Finance, regardless of the amount to be recovered.
EL	- Law 3316/2005 (Government Journal Issue 42/A/22.2.2005) on the allocation and performance of public contracts for conducting studies and rendering relevant services, and other provisions. This law governs the concluding and performance of all public contracts (horizontal scope) for conducting studies and rendering other services by engineering and other liberal professions where the studies are not conducted and the services not rendered by the staff of the appointed authority. - The measure was required to tighten the structure of the procedure, while simultaneously improving the quality of public works studies and completing the reform of the institutional framework governing public works. - The following improvements were made: a. Introduction of criteria of suitability for candidate consultants, in accordance with Community legislation. b. Introduction of strict prerequisites for the amendment of the study while the work is in progress. c. Allocation to the most advantageous tender applying the criteria.

1.5. Description of key developments:

Member States are invited to describe the two or three most important measures (whether legislative or administrative) taken in the course of 2005 about which they would wish to provide more detailed information. These should be measures adopted on Member States' own initiative and not measures which simply transpose Community legislation.

	d. Consolidation in one piece of legislation of the whole institutional framework for the award of contracts for studies and relevant services. e. The price bid is not to be a function of the budget for the work.
ES	Royal Decree 939/2005 of 29 July, adopting the General Collection Regulation (B.O.E. of 2 September, which entered into force on 1 January 2006). Its scope covers the European Union's and other international or supranational bodies' own resources (Article 5.2. of the Regulation). It lays down rules for the collection of public resources by the different administrations (state, regional and local, state's autonomous bodies and resources of other foreign public administrations and supranational institutions), putting the stress on the function and not on the institution that carries it out in order to be more flexible with a view to future organizational changes. Agreement between the Ministry of Finance and the Ministry of Justice of 3 October 2005, regarding the setting-up of a joint monitoring centre to improve efficiency in the fight against fiscal offences. It will improve coordination between the Finance and Justice Ministries in the fight against fiscal fraud. Internal restructuring at the Directorate General for Community Funds (Dirección General de Fondos Comunitarios) Through the Royal Decree 765/2005 of 24 June, a set of internal restructuring measures at the Community Funds DG have been implemented, integrating in the Inspection and Control Sub directorate General the Community funds' internal control tasks, thus ensuring a clearer distinction between the payment and control tasks.
FR	First, a decree was adopted on 15 September 2005 on the "customs information system" (CIS) (Official Gazette No 226 of 28 September 2005): the CIS is designed to increase the efficiency of the customs authorities' cooperation and control procedures within the meaning of the Convention of 18 December 1997 on mutual assistance and cooperation between customs administrations, by way of faster dissemination of information on fraud between the Member States. The system's purpose is to help prevent, detect and prosecute transactions which contravene Community customs or agricultural legislation and serious infringements of national laws. Second, export certificates in the milk products sector (EAGGF Guarantee Section) are to be made electronic: a supplementing agreement to the agreement between DGDDI and ONILAIT was signed on 18 February 2005 setting up an electronic export certificates pilot project. Certificates issued in the milk sector for presentation to the customs authorities will no longer be issued on paper. Before electronic certificates are phased in, a pilot project is being set up at customs offices and at the offices of participating traders. The aim is to make exchanges more secure and to counter the presentation of false export certificates, or of certificates with

1.5. Description of key developments: Member States are invited to describe the two or three most important measures (whether legislative or administrative) taken in the course of 2005 about which they would wish to provide more detailed information. These should be measures <u>adopted on Member States' own initiative</u> and not measures which simply transpose Community legislation.	
	falsified data. Instead of paper certificates, certificates will be stored on ONILAIT's database, to which customs officers, exporters and customs agents will have secure access.
IE	1. Further to last year's report, the Revenue Commissioners took delivery of a new Mobile Container Scanner on 27 October 2005 which was brought into service following a period of commissioning and testing. The deployment of this scanner is expected to significantly improve the effectiveness of the Irish Customs Service in detecting the smuggling of contraband in maritime traffic arriving at all Irish Ports, including traffic from 3rd Countries. 2. Ireland signed up to the Anti-Contraband and Anti-Counterfeiting Agreement between the EC, together with certain Member States, and Philip Morris International on 19 April 2005. It is expected that this agreement should assist the Irish Customs Service in tackling the smuggling of cigarettes and the evasion of duties and taxes.
IT	Sections 3 <i>et seq.</i> of Act No 248/05 (referred to in point 1.2) have radically changed the system for recovering tax revenue and revenue from assets payable to the public bodies in the area or the companies in which they have holdings. Different rules have been laid down regarding recovery procedures and recovery has been entrusted to the Revenue Agency, which acts through the company Riscossioni Spa. In accordance with directives issued by the Ministry of Economic Affairs and Finance, on 18 July 2005 the <i>Guardia di Finanza</i> (the body responsible for enforcing economic and financial law), the Revenue Agency and the Customs Service signed a Memorandum of Understanding concerning the fight against VAT fraud enabling them to set technical meetings to exchange information and coordinate operations at national and regional level. Furthermore, the <i>Guardia di Finanza</i> has been given a specific role in the fight against crime in this field.
CY	As far as administrative measures are concerned, a circular on "Irregularities reporting" has been issued by the Paying Authority on 25/07/2005 and has been addressed to the Internal Audit Service, the Managing Authority, and Intermediate Bodies & Final Beneficiaries. Scope: to set a standardized procedure for reporting cases of irregularities identified by the different players to the Paying Authority, which has the responsibility for subsequent reporting to OLAF The Circular was issued to ensure that a common policy is in place, setting reporting deadlines and standardized reports with the information required by OLAF
LV	- The Law "Amendments of the Criminal law" which amends The Criminal Law adopted on 8 July 1998. It adds to the Criminal law Article 177¹ „Fraud in an Automated Data Processing System”, as well as Article 177 „Fraud” and Article 178 „Insurance Fraud”. The amendments were necessary in order to define liability of persons who have committed illegal actions by means of fraud or insurance fraud in order to obtain the property of another or to receive insurance money. - Law on Criminal Procedure is adopted in order to speed up and simplify the criminal process

	1.5. Description of key developments: Member States are invited to describe the two or three most important measures (whether legislative or administrative) taken in the course of 2005 about which they would wish to provide more detailed information. These should be measures <u>adopted on Member States' own initiative</u> and not measures which simply transpose Community legislation.
	and the proceedings in courts. - The amendments made to the Law on VAT adopted on 20 October 2005 which specify the definition of "a person taxable with the value added tax" as well as the procedure how persons are registered in and excluded from the State Revenue Service Register of Value Added Tax Taxable Persons and they define responsibility of persons who avoid presenting their VAT declarations to the State Revenue Service and do not submit documents for tax calculation control. These amendments also specify that a taxable person registered with the State Revenue Service has the right to deduct input value added tax for the taxable transactions and expand possibility of tax authorities to evaluate cases of refund of the tax from the budget.
LT	The setting up of the work group (in 2005) for the development and improvement of the system for the management and analysis of risk related to the use of support from the EU Structural Funds under the Objective 1 Programme and from the EU Cohesion Fund and national co-financing funds. The work group was set up under Order No 1K-072 of the Minister of Finance of the Republic of Lithuania of 15 March 2005 (<i>Off. Gaz.</i>, 2005, No 45-1462). The work group was set up mainly for the purpose of presenting proposals on the development and improvement of the system for the management and analysis of risk related to the use of EU structural support. Law No X-272 amending Articles 48, 60, 145, 147, 157, 212, 213, 214, 215, 226, 249, 251, 252, 256, 267, 270, 272, 274 and 280 of and the Annex to the Penal Code of the Republic of Lithuania and supplementing it with Articles 147¹, 199¹, 199², 267¹, 270¹, 308¹ was passed on 23 June 2005. The Law was published in the Official Gazette <i>Valstybės žinios</i> No 81-2945 on 30 June 2005. Article 199¹ on customs fraud establishes criminal liability for failure to declare to the customs authorities of the Republic of Lithuania or any other EU Member State goods subject to declaration and brought into the Republic of Lithuania from an EU Member State worth more than 250 MSL or for avoidance of customs control in any other way. Article 199² on unlawful operations in dutiable goods establishes criminal liability for the acquisition, storage, transporting, dispatching, using or selling of dutiable goods worth more than 250 MSL by violating the established procedures.
HU	In this section, the following legal measures will be described: I) Government Decree No. 55/2005. (III. 26.) II) Act CXL of 2004 III) Act CI of 2004 IV) Amendment of Government Decree No. 217/1998 (XII. 30.) on the operational procedures of public finances

1.5. Description of key developments:

Member States are invited to describe the two or three most important measures (whether legislative or administrative) taken in the course of 2005 about which they would wish to provide more detailed information. These should be measures adopted on Member States' own initiative and not measures which simply transpose Community legislation.

I) - **Government Decree No. 55/2005** (III. 26.) on the procedure for recovering EU subsidies and the associated state subsidies improperly used or used contrary to the law or the terms of contract entered into force on 29 March 2005, but its provisions must also be applied – if the contract was concluded after 1 January 2003 – to the collection (in the form of taxes) of receivables arising from grant contracts made before the decree entered into effect, including contracts made using pre-accession instruments.

The Government Decree was issued pursuant to Article 13/A (10) of Act XXXVIII of 1992 on public finances (Hungarian abbreviation: Áht), and its objective is to provide a detailed description of the implementation of rules related to subsidies as set forth in Article 13/A (4)-(9) of Áht.

1) The scope of the act covers

- managing authorities and intermediary bodies specified in Government Decree No. 1/2004 (I. 5.) on the institutions responsible for the domestic utilisation of grants coming from the European Union Structural Funds and Cohesion Fund as well as the competent ministries and bodies with national jurisdiction,

- the competent authorities specified in Government Decree No. 179/2004 (V. 26.) on the establishment of the financial planning, implementation and control procedures for utilising the Schengen Fund, as well as the professional intermediary bodies and competent ministries and bodies with national jurisdiction,

- the institutions falling within the scope of Government Decree No. 119/2004 (IV. 29.) on the financial planning, implementation, audit and control procedures for the use of aids from EU pre-accession funds and transition facilities,

- the entities receiving subsidies (beneficiaries) from the programmes or projects,

and

- tax authorities responsible for the collection of payment liabilities qualified as public dues to be recovered in the form of taxes.

2) Key provisions:

a) Termination of contract

- If the competent authority establishes that the subsidy has been used illegally or in a manner differing from their intended purpose and terminates the contract for this reason, the competent authority (entitled to enforce the claim) shall proceed to enforce the claim relating to the repayment obligation to which the beneficiary is subject in accordance with the provisions of specific other legislation.

- The competent authority may also terminate the contract if bankruptcy, liquidation, dissolution, ex officio cancellation, or property settlement proceedings are initiated against the beneficiary or if enforcement or tax settlement proceedings against the beneficiary are in

1.5. Description of key developments:

Member States are invited to describe the two or three most important measures (whether legislative or administrative) taken in the course of 2005 about which they would wish to provide more detailed information. These should be measures adopted on Member States' own initiative and not measures which simply transpose Community legislation.

progress.

b) Repayment obligation

– If the beneficiary fails, entirely or in part, to meet its repayment obligation within the term set in the grant contract and the submitted prompt collection order fails to produce any result, measures must be taken to enforce the applicable guarantees in accordance with the grant contract.

– From among the guarantees defined in the grant contract, primarily those must be enforced by which the reclaimed amount can be most quickly collected. Collection of the claim by enforcing other guarantees may only be initiated if the above mentioned procedures fail to deliver any result.

– If the claim cannot be enforced from the guarantees, the body entitled to enforce the claim will refer to the competent tax authority to initiate recovery of the claimed amount in the form of taxes and concurrently notify the beneficiary that it has taken this step. If the tax enforcement turns into a court enforcement, the tax authority will notify the body entitled to enforce the claim of this.

– The body entitled to enforce the claim, as the referring party, is obliged to pay in advance the minimum enforcement cost specified in Article 161 (2) of Act XCII of 2003 on taxation procedures (hereinafter referred to as 'Art.').

c) Further procedures in case of failure to recover claimed amounts in the form of taxes

After receiving the tax authority's notice of unsuccessful collection in the form of taxes, the body entitled to enforce the claim is obliged to take further measures to enforce further security guarantees, if any exist. If these guarantees cannot be enforced either, the managing or competent authority will request that liquidation or tax settlement proceedings be ordered against the beneficiary.

– The organisation authorised to enforce the claim is obliged to participate in any bankruptcy, liquidation, dissolution, ex officio cancellation, and property settlement or enforcement proceedings that have already begun.

II) - Act CXL of 2004 on the general rules of administrative procedures and services (hereinafter referred to as 'Ket'), promulgated on 28 December 2004 in issue no. 203/2004 of the *Hungarian Official Gazette*, entered into force on 1 November 2005 and entailed the reform of national public administrative procedure.

The Hungarian Parliament adopted the act in order to strengthen and make transparent the service function of public administrative proceedings concerning citizens and organisations on the broadest base, to meet the requirements of operation as an EU Member State, to enforce the rights and obligations of clients as well as to provide a guarantee framework for the specific procedural rules by enforcing the primary character of the general rules. As we refer several times to Ket in the questions below, we will not describe any rule in detail here.

1.5. Description of key developments:

Member States are invited to describe the two or three most important measures (whether legislative or administrative) taken in the course of 2005 about which they would wish to provide more detailed information. These should be measures adopted on Member States' own initiative and not measures which simply transpose Community legislation.

	III) - Article 208 of Act CI of 2004 amending legislation on taxes, contributions and other payments to the budget, which entered into force on 1 January 2005, amended Article 88 (5) of Act XCII of 2003 on taxation procedures. The amendment was promulgated on 15 November 2004 in issue no. 169/2004 of the <i>Hungarian Official Gazette</i>. The Hungarian Parliament adopted the above mentioned amendment in order to ensure the rational utilisation of the control potential – namely, human resources deployed for controls by the customs authority and the state tax authority – of the authorities relating to taxes (particularly the valued added tax) that fall within the scope of the state tax authority in order to find and reduce various tax abuses and frauds as well as to improve the efficiency of audits. In conformity with the authorisation provided in the legislative measure referred to above, the customs authority and the state tax authority; in order to ensure and increase community and national revenues and find abuses (frauds), continuously aims at increasing the efficiency of control and the number and depth of tax audits as well as at widening the sphere of audit types. IV) - Pursuant to the authorisation provided for in Article 149 (2) c) of Government Decree No. 217/1998 (XII. 30.) on the operational procedures of public finances, Annex 23 containing the declaration relating to the accountability of executive officers was amended as follows: ‘A) I, the undersigned, head of the budget organisation, in full awareness of my legal liability, do hereby declare that pursuant to Article 97 of Act XXXVIII of 1992 on public finances, in the year in the budgetary organisation I manage, I have provided for the organisation and efficient operation of preliminary and follow-up executive control built into the process. I have provided for: - the organisation and efficient operation of internal control.’
MT	The Managing Authority has drafted a Manual of Procedure, available to the public, online. It has been designed as a guide to all key players involved in the management and implementation of Malta's Single Programming Document 2004-2006. This Manual of Procedures is continually updated with improved development and comprehensively addresses issues relating to: The roles and responsibilities of all entities involved; Compliance with Community Policies; Programming procedures; Aid schemes; Technical Assistance; Contracting; Monitoring; Reporting; Evaluation; Financial Management and Payments; Drawdown of Funds from the European Commission; Audit and Control; Reporting of Irregularities; Retention of Documents; Communication; and Delegation of Authority. The Ministry of Finance has continued to introduce measures related to the implementation of accrual accounting in Government. The introduction of accrual accounting will be a major change in the way the internal financial business of Government is conducted. This financial reform process will cross Ministerial and Departmental boundaries and have a major impact on the way each Department will conduct its day-to-day financial administration. Accrual Accounting will provide more meaningful financial information, so as to enhance the quality of the Government's financial decision-making process. It will provide a better and more comprehensive understanding of the overall

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	financial health of the Government, providing a basis for long term financial planning, in such areas as asset replacement planning, management of debtors and creditors and cash flow predictions. Furthermore, a comprehensive programme has been undertaken and consisted of some of the following activities: Training programs in accounting for employees, formulation of the Government accrual accounting standards and other management procedures. A minor amendment to the Paying Agency Regulations relating to the qualifications of Chairman of Appeals Board –Legal notice 195 Of 2005: Paying Agency (Amendment) Regulations, 2005. Date of adoption - publication in Government Gazette of Malta No. 17, 778 - 10.06.2005 By virtue of this amendment, the Chairman need not necessarily be an advocate but he/she may also be a person with at least three years' experience in the agricultural sector. Amendment was necessary as there was nobody at that that moment in time who could fulfil both criteria simultaenously – i.e. a person who was BOTH an advocate and with experience.
AT	The Legal Persons' Liability Act (<i>Verbandsverantwortlichkeitsgesetz - VbVG</i>), BGBl I No 151/2005 The Legal Persons' Liability Act is a new horizontal measure that entered into force on 1 January 2006 (VbVG, BGBl. I No 151/2005) and makes legal persons (under both private and public law) and partnerships under commercial law liable for criminal offences committed within their sphere of influence. The legal personal may be liable for any criminal act, including therefore offences detrimental to the Community budget. Criminal proceedings are to be conducted in accordance with the Code of Criminal Procedure.
PL	The Ministry of Finance's Customs Department has published and updated the Polish Customs Manual – a collection of documents dealing with the application of Community and national customs law, including, as regards the incurring of customs debt, the rules governing the collection of customs duty and so on. The main purpose of the Customs Manual is to help the customs authorities apply customs law in a consistent fashion. The document can be consulted on the Ministry of Finance website and via the Corintia portal, the Customs Service's network. The document is provided for guidance purposes. Its adoption shows that the Customs Service appreciates the scale of the problem.
SI	In 2005 Slovenia started preparing draft amendments to the Single Programming Document 2004–2006 (Commission Decision 18/VI/2004 approving the single programming document for Community structural funds in Slovenia under Objective 1). The draft amendments were passed by the Monitoring Committee for the SPD of the Republic of Slovenia at its session of 16 December 2005. The Single Programming Document of the Republic of Slovenia for the programming period 2004–2006 is a document approved by the European Commission and containing the strategy and priorities for the Republic of Slovenia, including multi-annual measures that can be implemented with aid from one or more structural funds. Slovenia amended the Single Programming Document because of the transfer of intermediate body functions for the

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	European Fund for Regional Development and the European Social Fund to the managing authority. The proposed amendments will ensure the more effective implementation of the Single Programming Document of the Republic of Slovenia for the programming period 2004–2006, particularly in relation to simplifying the structures and procedures for drawing structural funds in Slovenia. The Tax Administration Act (Official Gazette of the Republic of Slovenia, N. 57/2004, 139/2004, 59/2005); No 516/24.2.2005/17; brought into effect a new tax administration task – the performance of "tax investigations," and defined the concept of a tax investigation as the implementation of acts and measures when there are grounds for suspicion that a violation of taxation regulations has been committed.
SK	The Concept of the system of financial management of the structural funds (update) was approved by the Undersecretary of the SR Government and Minister of Finance on 15.02.2005 and on 15.09.2005, is binding for all subjects involved in management of the structural funds (SF), as well as for final beneficiaries in the area of financial management, including the procedure for irregularities, by updates, aside from other changes in the framework of SF financial management, it regulates the procedure of subjects involved in SF financial management for irregularities (procedure for return of resources, notification etc.).
FI	Beginning with 2005, the activity report to be included in the final accounts must contain a summary of any recovered state aid and government transfers. The new requirement is based on an amendment (7.4.2004/254) to the State Budget Decree (1243/1992). The amendment applies both to the national budget as a whole and to extra-budgetary State funds. The amendment tightens and harmonises requirements concerning information to be provided in the final accounts published by government agencies.
UK	Forestry Commission (FC) schemes are long standing and under constant review. Improvements are made as required. For example when the regulations change or as a result of audit recommendations and so on.
	In the Office of the Deputy Prime Minister (ODPM), administrative guidance notes to Government Offices in the Regions, numbers GN2.6 (issued in November 2005), GN4.14 and GN4.15 (draft) (both issued in October 2005) and applying to all ERDF programmes in England follows: GN2.6 on the Monitoring Assurance Framework. The intention of this note is to provide a comprehensive approach to the monitoring of projects in the context of the requirements of Article 4 of EC Regulation 438/2001. GN4.14 on Retrospection. This note is intended to clarify matters on the use of retrospection

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Member States are invited to describe the two or three most important measures (whether legislative or administrative) taken in the course of 2005 about which they would wish to provide more detailed information. These should be measures adopted on Member States' own initiative and not measures which simply transpose Community legislation.

in the delivery of 2000-06 programmes and gives additional guidance to supplement an earlier guidance note, with particular reference to financial control procedures, for assessing projects which are the subject of applications for retrospective ERDF funding.

GN4.15 on ERDF Overhead Calculations and Apportionments. This note (still having draft status) clarifies the basis on which overheads can be attributed to ERDF projects. Recent DG Regio and ECA audits have highlighted the fact that in many cases, particularly those involving Universities and other further education establishments, ineligible costs have been included in the calculation of overheads. This guidance note provides a framework in which project applicants and ERDF secretariats/executives can determine the eligibility of overhead calculations and acceptable apportionment methods.

At the end of 2005, it was too early to consider the improvements resulting from these notes. However, improvements are expected during 2006.

1.6. Complementary measures for the protection of the Community Financial Interests

Table : Dates of notification⁴³ an entry into force on completion of constitutional requirements for adopting the PFI Instruments per Member State :

Member State	PFI Convention (signed in Brussels on 26.07.1995 - entry into force 17.10.2002 – or between brackets)	1st Protocol (signed 27.9.1996 entered into force 17.10.2002)	ECJ Protocol (signed 29.11.1996 entered into force 17.10.2002)	2nd Protocol (signed 19.6.1997, not yet entered into force)
Belgium	12.03.2002	12.03.2002	12.03.2002	12.03.2002
Czech Republic				
Denmark	02.10.2000	02.10.2000	02.10.2000	02.10.2000
Germany	24.11.1998	24.11.1998	03.07.2001	05.03.2003
Estonia	03.02.2005 (04.05.2005)	03.02.2005 (04.05.2005)		03.02.2005
Greece	26.07.2000	26.07.2000	26.07.2000	26.07.2000
Spain	20.01.2000	20.01.2000	20.01.2000	20.01.2000
France	04.08.2000	04.08.2000	04.08.2000	04.08.2000
Ireland	03.06.2002	03.06.2002	03.06.2002	03.06.2002
Italy	19.07.2002	19.07.2002	19.07.2002	
Cyprus	31.03.2005 (29.06.2005)	31.03.2005 (29.06.2005)	31.03.2005 (29.06.2005)	31.03.2005
Latvia	31.08.2004 (30.11.2004)	31.08.2004 (30.11.2004)	31.08.2004 (30.11.2004)	19.10.2005
Lithuania	28.05.2004 (26.08.2004)	28.05.2004 (26.08.2004)	28.05.2004 (26.08.2004)	28.05.2004
Luxembourg	17.05.2001	17.05.2001	17.05.2001	13.07.2005
Hungary				
Malta				

⁴³ Date of notification: s the date when a party has notified the General Secretariat of the ratified/approved/concluded/acceded the agreement/Convention.

Netherlands	16.02.2001	28.03.2002	16.02.2001	28.03.2002
Austria	21.05.1999	21.05.1999	21.05.1999	Ratification process under way
Poland				
Portugal	15.01.2001	15.01.2001	15.01.2001	15.01.2001
Slovenia				
Slovakia	30.09.2004 (29.12.2004)	30.09.2004 (29.12.2004)		30.09.2004
Finland	18.12.1998	18.12.1998	18.12.1998	26.02.2003
Sweden	10.06.1999	10.06.1999	10.06.1999	12.03.2002
United Kingdom	11.10.1999	11.10.1999	11.10.1999	11.10.1999

Table : Dates of notification⁴⁴ an entry into force, per Member State, on completion of constitutional requirements for adopting the Convention drawn up on the basis of Article K.3 of the Treaty on the European Union, on the use of information technology for customs purposes of 26.07.1995

and

Protocol established in accordance with Article 34 of the Treaty on European Union, amending, as regards the creation of a customs files identification database, the Convention on the use of information technology for customs purposes, signed in Brussels on 08.05.2003

Member State	Notification (of the Convention)	Entry into Force(of the Convention)	Notification (of the Protocol)
Belgium	26.09.2005	25.12.2005	
Czech Republic	28.01.2005	25.12.2005	28.01.2005
Denmark	01.08.1996	25.12.2005	
Germany	30.04.2004	25.12.2005	30.04.2004
Estonia	18.03.2005	25.12.2005	18.03.2005
Greece	08.11.1999	25.12.2005	

⁴⁴ The date of notification is the date when a party has notified the General Secretariat of having ratified/approved/ acceded to the Convention.

Spain	22.07.1999	25.12.2005	23.05.2005
France	11.08.2000	25.12.2005	16.03.2006
Ireland	27.03.2002	25.12.2005	
Italy	21.12.1998	25.12.2005	
Cyprus	15.07.2004	15.12.2005	15.07.2004
Latvia	14.06.2004	25.12.2005	
Lithuania	27.05.2004	25.12.2005	27.05.2004
Luxembourg	31.01.2003	25.12.2005	21.06.2005
Hungary	31.08.2004	25.12.2005	31.08.2004
Malta			
Netherlands	21.11.2000	25.12.2005	16.12.2005
Austria	28.08.1998	25.12.2005	
Poland	18.11.2005	16.02.2006	18.11.2005
Portugal	04.05.1999	25.12.2005	
Slovenia	08.07.2004	25.12.2005	08.07.2004
Slovakia	06.05.2004	25.12.2005	06.05.2004
Finland	22.03.1999	25.12.2005	
Sweden	16.02.1998	25.12.2005	
United Kingdom	18.06.1997	25.12.2005	

2. RECOVERY OF SUMS UNDULY PAID OR NOT COLLECTED BY THE COMMUNITIES IN THE FIELD OF INDIRECT EXPENDITURE

The Member States are responsible for recovering sums disbursed by the Community in the field of indirect expenditure, i.e. funds managed by the Member States on behalf of the Communities, mainly under the Structural Funds and Cohesion Fund, and agricultural expenditure under the EAGGF Guarantee Section. Statistics obtained on the basis of the available information on irregularities communicated by the Member States appear to show that the effectiveness of recovery is often influenced by the complexity or the efficacy of national procedures and of rules for applying precautionary measures. The implications for the protection of the Community's financial interests are considerable, which is why the Commission would like to find out more about the key aspects of national recovery procedures. Member States are advised to reply as comprehensively and concisely as possible so as to enable the Commission departments to make a useful comparison.

2.1. Preliminary

(a) The possibility of citing legitimate expectations in order to avoid recovery of a sum unduly paid

The right to legal certainty means that citizens must be able to rely on the information provided by the administrative authorities on the procedures to be followed. Where a citizen has followed the instructions given by an administrative authority and the latter subsequently accuses him of irregular conduct, it is sometimes possible for that citizen to cite legitimate expectations to justify his actions.

In your legal system, can the citizen (debtor) cite legitimate expectations in order to oppose recovery of a sum unduly received? If so, on what conditions?

In your legal system, is the concept of legitimate expectations compatible with any offence committed intentionally or by gross negligence by the person citing it?

2.1. Preliminary questions				
Member State	a. Legitimate expectation			
	Possibility to cite it: Yes/No	Legal provisions	Conditions (excepted when legitimate expectation if regulated by Community law)	Possible if offence committed intentionally or by gross negligence by the person citing it

2.1. Preliminary questions				
Member State	a. Legitimate expectation			
	Possibility to cite it: Yes/No	Legal provisions	Conditions (excepted when legitimate expectation if regulated by Community law)	Possible if offence committed intentionally or by gross negligence by the person citing it
BE	Yes.	Not mentioned.	Error by the administration; conferring of an advantage on the member of the public as a result of that error, and lack of serious grounds for withdrawing the advantage from that person.	Not possible if serious or intentional negligence.
CZ	No, but compensation is possible.	Act. No 82/1998	Incorrect instructions provided by an administrative body could be deemed to be a negligent administrative act. If the beneficiary were required to pay back the grant, he could sue the State c) for compensation for the loss he sustained as a result of this negligent or unlawful administrative act.	Not applicable.
DK	Yes.	Not mentioned.	Whether the sum is repaid depends on an individual evaluation in which consideration of the addressee's legitimate expectations and subjective circumstances plays an essential role.	It will depend on an individual assessment of the extent to which gross or intentional negligence is compatible with legitimate expectations. In principle, however, it must be assumed that there is a right to take action to recover the payment in such situations.
DE	Yes.	Section 48(2) of the Administrative Procedures Act.	The recipient has relied on the validity of the administrative act.	No.
EE	Yes.	Not mentioned.	If decision has been made to approve an application for aid the final recipient has a legitimate expectation that he or she who makes the decision (IA or IU) has been guided by valid legislation. If the person committing irregularities is the person making the decision, in the event of recovery of aid one must take into consideration a person's trust that the administrative instrument will remain in force.	No. If the case involves the action of the debtor or the lack thereof, then he or she does not have the right to refer to legitimate expectations and trust, as they have not discharged their obligations.

2.1. Preliminary questions				
Member State	a. Legitimate expectation			
	Possibility to cite it: Yes/No	Legal provisions	Conditions (excepted when legitimate expectation if regulated by Community law)	Possible if offence committed intentionally or by gross negligence by the person citing it
EL	No.	Not applicable.	Not applicable.	No.
ES	No.	Not applicable.	Not applicable.	No.
FR	Yes.	Administrative case-law, especially when Community law is at issue (Conseil d'État, 3.12.2001, <i>Syndicat national de l'industrie pharmaceutique</i> ; CE, 9 May 2001, <i>entreprise personnelle de transports Freymuth</i> , No 210944 and CE, 8 July 2005, <i>fédération des syndicats généraux de l'éducation nationale et de la recherche publique SGEN CFDT</i> , No 266900)	The debtor must show first that his expectations have been "betrayed" (e.g. by a failure to keep promises or formal assurances, a change in the rules, etc.) and second that his expectations were genuinely "legitimate" (e.g. it was impossible for him to predict the change in the rules). France thinks it justified for the sums not recovered by the French authorities in accordance with this case law to be systematically deducted from the statements of expenditure sent to the European Commission.	To date, there is no case law on this issue. However, an offence committed intentionally or by gross negligence would not appear in itself to prevent the citing of legitimate expectations, although it would be taken into account in assessing respective liability.
IE	Yes.	No.	Only if the irregular conduct was shown to be as a direct result of the citizen following the actual instructions provided by the administrative authority and they were incorrect or negligently given. If the instructions are provided in a correct manner and not followed by the citizen then legitimate expectation could not be relied on. It is however open to a citizen to plead any defence, which may or may not be accepted by the court dealing with the matter.	No.

2.1. Preliminary questions				
Member State	a. Legitimate expectation			
	Possibility to cite it: Yes/No	Legal provisions	Conditions (excepted when legitimate expectation is regulated by Community law)	Possible if offence committed intentionally or by gross negligence by the person citing it
IT	Yes.	Law and case-law.	A person has unwittingly attributed importance to situations appearing but not actually corresponding to reality. Citizens/debtors may cite legitimate expectations when challenging the recovery of money unduly paid as long as their expectations were reasonable and they were unwitting, both circumstances to be decided by the court or the administrative authorities.	No.
CY	Yes.	“Law on General Principles of Administrative Law, (Mo. 158(I)/99)” and jurisprudence of the Supreme Court of Cyprus.	The citizen (debtor) has to prove that he was of the belief that he was entitled to the specific benefit.	Yes.
LV	Yes.	Article 10 “Principle of Confidence in Legality of Actions” of the Administrative Procedure Law.	An institution's error, for the occurring, of which a private person can not be held at fault, may not cause unfavourable consequences for the private person. The court evaluates the circumstances in each particular case.	No.
LT	No, but compensation is possible.	Not applicable.	In such cases the funds will not be disbursed to or will be recovered from the debtor (project implementer or beneficiary), who in defending his/her right to cite legitimate expectations will have a right to sue the allegedly guilty institution for damages.	No.
LU	No.	Not applicable.	Not applicable	No

2.1. Preliminary questions				
Member State	a. Legitimate expectation			
	Possibility to cite it: Yes/No	Legal provisions	Conditions (excepted when legitimate expectation if regulated by Community law)	Possible if offence committed intentionally or by gross negligence by the person citing it
HU	No, but compensation is possible.	Act CXL of 2004 Administrative Procedure Act (Ket).	The decision may not be modified or withdrawn if it prejudices rights acquired and practiced in good faith, except for erroneous information in official records, on official identification cards, or in official statements in the certificate of citizenship. The client may request the revision or withdrawal of the decision (of recovery) if the enforcement of the decision unfairly causes him serious detriment owing to reasons occurring after the final decision was made. Pursuant to the provisions of the Civil Code, the administrative authority shall compensate the client for damages arising from any procedure that is not compliant with the law . Thus, in the event the repayment obligation is established for the client despite the instruction and information he received from the administrative authority, the client must fulfil this obligation. However, he may claim compensation for the damage or loss of profit he has incurred from the administrative authority providing him with erroneous information or instruction.	All the parties involved are entitled to appeal against administrative decisions, whatever the reason might be; no grounds are required. The client will not be deprived of his right to appeal merely because he has proved to be negligent in the course of the basic procedure (in which a decision unfavourable to him had been made). The negligent or intentional behaviour of the client will be judged in the course of the appellate procedure.

2.1. Preliminary questions				
Member State	a. Legitimate expectation			
	Possibility to cite it: Yes/No	Legal provisions	Conditions (excepted when legitimate expectation if regulated by Community law)	Possible if offence committed intentionally or by gross negligence by the person citing it
MT	No but compensation is possible.	Not mentioned.	The principle is that what is paid without being due is recoverable as long as the action is commenced within two years from when the wrong payment was discovered or ought to have been discovered. However if a debtor received the undue payment only because he had followed the instructions given to him by the administrative authority then the position of that authority in an eventual court case where recovery is claimed will be complicated because it may be deemed not to have paid by mistake but to have granted its consent to such payment.	No.
NL	No, but compensation is possible.	Article 203 of Book 6 of the Civil Code; case law.	It has been established in the case law that the recipient may in good faith within the bounds of reasonableness request compensation from the payer for expenditure which would not have been incurred if it had not received the payment.	The recipient may in good faith within the bounds of reasonableness request compensation from the payer for expenditure which would not have been incurred if it had not received the payment. Any gross or intentional negligence may play a part in the assessment of what is reasonable.

2.1. Preliminary questions				
Member State	a. Legitimate expectation			
	Possibility to cite it: Yes/No	Legal provisions	Conditions (excepted when legitimate expectation if regulated by Community law)	Possible if offence committed intentionally or by gross negligence by the person citing it
AT	Yes.	Not mentioned.	Where the citizen acts in accordance with information provided by the authorities and is subsequently accused by the authorities of improper conduct, the citizen may cite legitimate expectations to justify his/her actions. Under the general principles of civil law a debtor required to repay sums may cite legitimate expectations only if the funds in question were spent in good faith. It is impossible to cite legitimate expectations if the funds were unlawfully obtained or used for some purpose other than that originally intended. In the case of the ERDF the final beneficiaries obtain ERDF funding under grant agreements concluded under private law.	No, legitimate expectations may not be cited in connection with any kind of negligence. The recipient may not even cite legitimate expectations where the debtor has any cause to doubt the lawfulness of the grant paid to him/her.
PL	Yes.	Case-law for public-law claims, Articles 14(a) and (b) of the Tax Ordinance (Tax Act of 29 August 1997, Official Gazette 2005/8, item 60).	Public-law claims: no details in the polish answer. In the tax law field, there is a well known principle that compliance by the taxpayer with the authorities' interpretation may not work to his detriment.	Polish law does not exclude the taking into account of negligence on the part of an individual citing legitimate expectation. However, how such negligence affects the obligation to repay the amount requested by the Member State will depend on the assessment made of all the circumstances of the case in question. For intentional negligence to exist, there must be a causal relationship between it and the amount wrongly paid.

2.1. Preliminary questions				
Member State	a. Legitimate expectation			
	Possibility to cite it: Yes/No	Legal provisions	Conditions (excepted when legitimate expectation if regulated by Community law)	Possible if offence committed intentionally or by gross negligence by the person citing it
PT	Yes.	Article 7 of the Code of Administrative Procedure (Código do Procedimento Administrativo or CPA). Article 204 of the Code on Tax Proceedings and Procedure contained in Decree Law No 433/99 of 26 October 1999.	The legal value accorded to the principle of good faith depends on each specific situation. Conditions: Legitimate expectations must exist – based on the good faith or ethics of the injured party; These expectations must be justified – i.e. there must be objective factors giving rise to a plausible belief; The expectations must have been acted on – legal actions must have taken on the basis of the firm belief ; and lastly, The legitimate expectations must be attributable – there must be someone responsible for creating the legitimate expectations of the member of the public. These conditions have been understood as not being ranked and as not all being indispensable: if one factor is particularly strong, this may compensate for another's not being present. In tax law field, enforcement proceedings, the principle of legitimate expectations does not constitute a ground for opposing recovery of sums unduly received.	No.
SI	No.	Not applicable.	Not applicable.	No. The fact that a party relied on allegedly false information obtained from the body does not provide exculpatory grounds.

2.1. Preliminary questions				
Member State	a. Legitimate expectation			
	Possibility to cite it: Yes/No	Legal provisions	Conditions (excepted when legitimate expectation if regulated by Community law)	Possible if offence committed intentionally or by gross negligence by the person citing it
SK	No, but possibility to cite action in good faith and under good intention, and possibility to ask for compensation.	Act No 71/1967 Coll. on administrative proceedings, Act No 99/1963 Coll., the Civil Procedure Code, and Act No 514/2003 Coll. on responsibility for damage caused by execution of public authority.	Not mentioned.	No.
FI	Yes.	Section 6 of the Administrative Procedure Act (434/2003).	There are therefore substantial differences in the various provisions on recovery. However, they generally include a provision against unreasonable recovery, which is closely related to the protection of legitimate expectation. The protection of legitimate expectations would not be warranted in the event of a deliberate breach of the law by a citizen or of a foreseeable change in the legal situation. Legitimate expectations must be assessed on the merits of the case, striking a balance between private expectations and public interest.	No legitimate expectations exist if the party concerned has provided inaccurate or materially incomplete information.

2.1. Preliminary questions				
Member State	a. Legitimate expectation			
	Possibility to cite it: Yes/No	Legal provisions	Conditions (excepted when legitimate expectation if regulated by Community law)	Possible if offence committed intentionally or by gross negligence by the person citing it
SE	Yes.	Not mentioned.	The rule governing recovery of sums unduly paid has traditionally been that the party who has paid the surplus amount has a right to recover it, but the rule has been modified several times in order to take account of the recipient's interests, especially in cases when the recipient has acted in good faith and has already spent the surplus amount or has adapted his situation accordingly . There are no limits to the debtor's right to cite legitimate expectations, either in proceedings with an authority or in court proceedings.	According to Swedish law the concept of legitimate expectations can always be cited, whether this is equitable or not. Normally it is not considered illegitimate to claim recovery of the full amount, when it has been proved that there has been gross negligence or the offence was intentional.
UK	Rural Payment Agency (RPA): Yes. Department of Trade and Industry (DTI): No. Scotland: No, excepted agriculture. Nord Ireland: as England.	Not mentioned.	Rural payment Agency: the operative representation by the Government authority should have been clear and unambiguous; the citizen should have changed his position in reliance upon the representation ; the citizen should have acted in good faith .	Such conduct by the citizen would generally have the effect of negating the good faith condition.

(b) The rights of third parties acting in good faith

What rights can third parties acting in good faith rely on to oppose recovery of a sum wrongly paid?

(c) In your Member State is there a system for coordinating recovery procedures as between authorities in the event of multi source financing? If so, please give a brief description.

Member State	2.1.b. The rights of third parties acting in good faith	2.1.c. Coordination of recovery exists
	Applicable rules	Coordination of recovery exists (Yes/No)
BE	Structural funds: No. Common Agricultural policy: Yes.	With the exception of the Wallonia Region there is no system in Belgium for coordinating recovery procedures as between authorities in the event of multi-source financing.
CZ	Third parties may seek compensation from the grant beneficiary for any loss they sustained as the result of the beneficiary having to pay the grant back. Acting on the basis of "legitimate expectations", the beneficiary could then seek compensation from the State (Czech Republic) for what he had had to pay to the third parties.	No answer to this question.
DK	The status of a third party acting in good faith as a contracting party does not entitle him to oppose the recovery of funding from the beneficiary.	From 1 November 2005, the Arrears Recovery Authority – which is identical with the customs and taxation administration (SKAT) – has been responsible for the recovery of all claims including interest, fees and other costs that are collected or recovered by state authorities (Act No 429 of 6 June 2005 on the collection and recovery of certain claims). As there is only one authority responsible for the recovery of state claims, there is no need for any coordination between authorities.
DE	None.	No.
EE	Pursuant to national law a relationship is formed between the state and the final recipient. Any obligations with regard to third parties are the final recipient's. The state recovers the aid, if necessary, from the final recipient.	The recovery procedure is coordinated, if necessary, by the person who made the decision to approve an application for aid.

Member State	2.1.b. The rights of third parties acting in good faith	2.1.c. Coordination of recovery exists
	Applicable rules	Coordination of recovery exists (Yes/No)
EL	Third parties can only cite the rights which arise as a result of their contractual relationship.	There is a system for coordinating recovery procedures as between authorities in the event of multi-source financing, arising from the general principles of the national administration.
ES	The only possible right of any third party acting in good faith could derive from ignorance of EU law provisions not compatible with national law, due to non transposition.	No. The recovery of sums unduly received is carried out in a decentralized manner by the bodies having intervened in co financing (end recipients of the system). These bodies receive instructions from the management body to fill in the Appendix to Annex II of the declaration of expenditure, with a view to reporting on their recoveries by computerised means.
FR	To oppose recovery of a sum wrongly paid, a third party acting in good faith could, if appropriate, cite the case law mentioned above regarding liability on account of inaccurate information or unkept promises, or the rules relating to the withdrawal of administrative acts which establish rights. France think it justified for the sums not recovered by the French authorities from third parties acting in good faith to be deducted from the statements of expenditure sent to the European Commission.	No.
IE	A third party acting in good faith, may seek to join the party at fault as a party to any recovery action taken and seek to pass on liability to the actual defaulter by way of indemnity and contribution from the party who is believed to be at fault.	No.
IT	The same rights as can be exercised by original contractor who received the money, as long as the third party was also acting in good faith.	No.
CY	Third parties acting in good faith can rely on Common – Law rights of “bona fide” third Parties. These rights are safeguarded and taken into account in the legal system of Cyprus, both in civil as well as in criminal proceedings.	There is no formal system; however, such coordination can take place on a case by case basis.

Member State	2.1.b. The rights of third parties acting in good faith	2.1.c. Coordination of recovery exists
	Applicable rules	Coordination of recovery exists (Yes/No)
LV	In legislation there are no direct and incontestable rights to rely on to oppose the mentioned recovery. In such cases third parties can rely on the civil rights. The third party according to the Administrative Procedure Law has the same rights as an applicant. The third party may rely on the following principles used in the administrative procedure: the principle of observance of the rights of private persons, the principle of equality, the principle of the rule of law, the principle of reasonable application of the norms of law, the principle of not allowing arbitrariness, the principle of confidence in legality of actions, the principle of lawful basis, the principle of democratic structure, the principle of proportionality, the principle of priority of laws, the principle of procedural equity.	Regarding Structural funds, where national public and/or private co-financing is provided such system is laid down by the law.
LT	Third parties acting in good faith, as any other manager, may defend their right of management (in this case, the management of the funds received) in a judicial procedure and require compensation for damages caused by the violation of their right to management.	The answer is not enough detailed.
LU	Article 220(2)(b) of the Community Customs Code established by Council Regulation (EEC) No 2913/92 of 12 October 1992 provides that except in the cases referred to in the second and third subparagraphs of Article 217(1), subsequent entry in the accounts shall not occur where the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration. The person liable may plead good faith when he can demonstrate that, during the period of the trading operations concerned, he has taken due care to ensure that all the conditions for the preferential treatment have been fulfilled.	Not mentioned.

Member State	2.1.b. The rights of third parties acting in good faith	2.1.c. Coordination of recovery exists
	Applicable rules	Coordination of recovery exists (Yes/No)
HU	The general rules of the Civil Code apply to third parties acting in good faith. There is no legal relationship between the third party acting in good faith and the provider of the subsidy. As there is only a legal relationship between the principal of the service or matter (the beneficiary) and the third party, it is not possible to reclaim the sum unduly paid from the third party acting in good faith by referring to the irregularity of the subsidy.	No.
MT	It is not necessary to prove the bad faith of the recipient when suing for the recovery of sums unduly paid. Strictly, third parties acting in good faith who have no direct juridical relationship with the administrative authority have rights only against the person with whom they contracted and they may not oppose the recovery of the sum due by the person to whom it was wrongly paid. Likewise the administrative authority may not recover from them since it has no juridical relationship with them. Such third parties are however likely to be allowed to intervene in proceedings where recovery is sought.	Such co-ordination does not have a legal basis and would have to be made on a case by case basis using 'cumulative' actions if necessary. It is more likely that each creditor will file its own separate claim in order to avoid the raising of procedural obstacles.
NL	None.	No.
AT	Claims based on conditions must be reduced where the provisions of the goods or services brought the recipient disadvantages as well as advantages and he/she appears to merit protection as the person providing the goods or services (making good financial prejudice). Case law holds that undue wage, salary or maintenance payments may not be recovered where the recipient acted in good faith, but this does not currently apply to agricultural subsidies provided by Austria. The third party who acted in good faith is entitled to cancel the contract and claim compensation from the contractual partner who failed to fulfil the contract or who must account for the fact that the payment could not be made or was responsible for the situation.	CAP: In administrative and civil law cases most recoveries are effected by Agrarmarkt Austria (the Austrian agricultural market organisation). Where, however, other authorities recover sums unduly paid in other sectors (e.g. export refunds), there is no coordination. ERDF: No.

Member State	2.1.b. The rights of third parties acting in good faith	2.1.c. Coordination of recovery exists
	Applicable rules	Coordination of recovery exists (Yes/No)
PL	Third parties with property rights or ownership rights for which enforcement proceedings are under way may apply to the enforcement agency for exemption from enforcement. In addition, third parties acting in good faith which receive amounts wrongly paid may apply for enforcement to be limited pursuant to Article 829 et seq. of the Code of Civil Procedure. A basic right of third parties is the right to obtain damages for losses incurred. It is also possible for third parties to obtain damages on the basis of legislation concerning the Treasury's liability for losses caused by action incompatible with the law or negligence when exercising power. A third party who is the spouse of a debtor may effectively oppose enforcement or limit its scope in so far as it concerns jointly owned property. Under part III of the Tax Act, third parties are liable for the debtor's arrears to the full extent of their assets, jointly and severally with the debtor or his legal successor. In such cases third parties may lodge a retrospective claim against the debtor under the general rules.	The Ordinance of the Ministry of Agriculture and Rural Development dated 1 September 2004 set up a system for exchanging information on debtors in respect of payments earmarked for the implementation of the CAP which were received unduly or the amount of which was excessive.
PT	Third parties, even when acting in good faith, are not considered part of the legal/administrative relationship and therefore cannot oppose recovery. Third parties acting in good faith have the right to oppose recovery of a sum wrongly paid under Act No 446/2002 Coll. on mutual assistance in the recovery of some kinds of financial receivables, as amended by Act No 223/2004.	In Portugal, even though a programme may be financed by more than one structural fund, specific actions and projects come under only one fund, so there is no need for coordination between authorities with a view to recovering sums unduly paid. As regards assistance under the EAGGF (Guarantee and Guidance Section) paid by IFADAP/INGA, the procedure for recovering/collecting sums unduly paid is the same in so far as it applies to all recovery proceedings irrespective of the fund concerned.
SI	The Execution of Judgments in Civil Matters and Insurance of Claims Act stipulates the right of a third party to lodge an objection against a decision of recovery, if that party can demonstrate as probable that it has a right pertaining to the subject of recovery that prevents said recovery.	Provisions of the Enforcement of Judgments in Civil Matters and Insurance of Claims Act. Tax Procedure Act.

Member State	2.1.b. The rights of third parties acting in good faith	2.1.c. Coordination of recovery exists
	Applicable rules	Coordination of recovery exists (Yes/No)
SK	If compulsory execution of a decision affects the right of a third party to a given thing which does not allow execution of the decision, that person may protect themselves by submitting a plaint to a civil court for exclusion of the given thing from enforcement of the decision. Third parties acting in good faith have the right to oppose recovery of a sum wrongly paid under Act No 446/2002 Coll. on mutual assistance in the recovery of some kinds of financial receivables, as amended by Act No 223/2004.	Yes, there is a system for coordinating recovery procedures between individual competent authorities. Initial tasks are performed by the competent administrative body.
FI	Third parties acting in good faith normally cannot oppose measures carried out under public law to recover sums from their co-contractors or, in certain cases in accordance with special legal provisions, from the third parties themselves. In many cases, the only legal remedy available to third parties is therefore to institute civil proceedings against their co-contractor with a view to annulling the contract and obtaining compensation. In situations involving administrative action to recover financial benefits from third parties, such parties naturally have a right of appeal against recovery. When a third party is excluded from recovery measures, its legal interest in the matter is not generally considered sufficient to give rise to the right of appeal. However, the possibility cannot be excluded in administrative proceedings that a third party might intervene on behalf of an appeal lodged by a recovery.	Finland has a nationwide register and data system for unpaid debts as well as various credit registers, but no separate system for coordinating recovery procedures between authorities in the event of multi-source financing.
SE	Claims for recovery cannot succeed against a third party. Sums wrongly paid can be recovered only from the formal recipient. A third party's right to seek performance of a contract through the courts does not turn on whether or not the other party has received the Community financing which he expected unless there has been a specific agreement to that end and thus does not depend on whether or not the recovery is effected on the other party's Community financing.	No.

Member State	2.1.b. The rights of third parties acting in good faith	2.1.c. Coordination of recovery exists
	Applicable rules	Coordination of recovery exists (Yes/No)
UK	In Scotland, there are various cases of potentially defective acquisitions of (rights in) things where the potential defect is cured by the good faith of the person acquiring. For example where a purchaser (P) fraudulently induces a seller (S) to transfer certain property, for example by paying with a worthless cheque. Here, in case of movables, (P), notwithstanding the fraud, will generally acquire a voidable or reducible title to the goods. If a third party (T) then in good faith acquires the goods for value from (P) before (S) has taken any steps sufficient to reduce or avoid P's voidable title, T's right to the goods is then indefeasible. By contrast, in a case of theft, the original owner retains unimpaired rights and no ulterior transactions between the thief and an honest purchaser or any subsequent purchaser, however good their faith, suffices to divest the owner of his or her rights. A third party receiving a payment in error might be able to resist a claim for repayment, or restitution on the ground.	Projects can only receive Structural Funds from one source therefore each fund usually operates their own recovery procedures. If there are different authorities involved, generally speaking the "lead" authority will handle recovery action on behalf of all the different authorities involved. This would be dealt with on a case-by-case basis. There is a pooling of resources and information, in so far as this is compatible with privacy and data rights of the individual. Various databases are accessible by Departments for recording allocations, expenditure and recoveries.

2.2. The administrative recovery procedure (or procedure for recovering amounts wrongly paid)

Where a claim has been established, the relevant authority launches the recovery procedure. Please give a brief outline of the rules applicable to the administrative recovery procedure as applied to the recovery of indirect Community expenditure (as defined at point 3 in the Introduction) after an irregularity is detected, by answering the following questions:

(a) Voluntary payment

In general, after establishing the claim, the administrative authority calls on the debtor to pay the amount to be recovered by issuing a debit note. Failing voluntary payment within a specified time limit, the administrative authority issues formal notice or an injunction to pay.

When the administrative recovery procedure is launched, is a debit note automatically sent to the debtor, requesting him to pay voluntarily the amount that is to be recovered? If so, is there a deadline stipulated in law after which it is considered that there has been no voluntary payment and that formal notice should be given? If so, what is it? If not, what deadline is generally applied in practice?

(b) Notice or injunction to pay

Is there a deadline stipulated in law for the issuance of formal notice or an administrative payment injunction, or is this determined on a case by case basis? What is the deadline (including deadlines for reminders)?

2.3. Enforcement

(a) Apart from cases of offsetting or where contractual guarantees are called in (see 2.3), are there situations in your legal system in which enforcement measures can be taken without the need for court action? If so, what conditions apply?

(b) Where court action must be taken to obtain enforcement measures, which courts have jurisdiction?

Member State	2.2. The administrative recovery procedure				2.3. Enforcement	
	a. Is a debit note sent?	Deadline for debit note	b. formal notice/administrative payment injunction	Deadline	a. Possibility without court action	b. Jurisdiction where court action needed
BE	An invitation to pay is systematically sent to the debtor.	Normally 30, 60 days.	An injunction to pay is sent to the debtor.	No deadline is stipulated in the Belgium law. The deadline normally applied varies between 2 months and 1 year.	In principle, there are no situations where enforcement measures can be taken without court actions.	The magistrate's court or the county court, whether the claim is less than €1860 or more.
CZ	There is a decision issued by the Tax Administration.	15 days, plus 8 days additional time-limit.	Valid decision of the relevant body.	The debtor has to pay within the deadline if he fails to pay an additional time-limit of 8 days is set. Once the additional time-limit is up the financial office proceed to effect recovery forthwith.	No need for court action to enforce recovery tax debts. Financial offices are authorised to carry out enforcement.	Where a financial office decides to conduct enforcement through a court or bailiff, the court with jurisdiction will be the civil court in whose district the debtor's place of residence or place of business is located in the case of natural persons or in whose district the debtor's registered offices are located in the case of legal persons

Member State	2.2. The administrative recovery procedure				2.3. Enforcement	
DK	The debtor receive a debit note or some other form of written notification.	No deadline stipulated in the law. It depends on the rules governing the grant, one or two months.	If there is a failure to repay, a set-off may be applied.	.There is no deadline stipulated in law for the issue of a formal payment demand or order.	Claims can be recovered by the bailiffs of the Arrears Recovery Authority by distraint. If there is no legal basis for such distraint, it must be levied by the Bailiff's court. Another possibility is an order for wage deduction which can be issued by the Arrears Recovery Authority, if there is a legal basis.	In the event of individual proceedings (distraint): bailiff's court (Section 487 of the Code of Civil Procedure, No 910 of 27 September 2005). In the event of universal proceedings (bankruptcy, etc): bankruptcy court (Bankruptcy Act, No 118 of 4 February 1997).
DE	No provision for formal payment notices.	Recovery orders often stipulate 4 weeks for the payment.	Recovery orders.	A period of four weeks for payment.	Under national law, the main custom's offices internal administrative execution departments must enforce the measures.	Not applicable.
EE	No voluntary payment, there is a decision for recovering aid.	No deadline mentioned.	A decision to recover aid is taken.	A decision to recover aid is taken within 20 days from the fact. It is sent to the recipient within 10 days. A decision to recover aid may be taken within 5 years after the last payment.	The law does not provide for enforcement of a decision to recover aid. A notarial agreement is possible and then based on this agreement enforcement measures can be taken.	As the granting and recovery of structural aid are subject to administrative proceedings, the recovery decision can be made by an administrative court. It is therefore possible to enforce the administrative court's decision in the case.

Member State	2.2. The administrative recovery procedure				2.3. Enforcement	
EL	There is a decision ordering the return of the illegally paid sum.	Structural Funds and Cohesion Funds 1 month deadline. Agriculture, deadline lay down by the competent department, if there is an objection, there is a report within 2 months issued by an audit.	After de confirmation of the debt, in accordance to the Public Revenue Collection Code, a formal notice is sent to the debtor.	In structural activities a financial rectification decision is issued and the deadline to pay is one month. In agriculture expenditure, after the decision of the service of Minister of agricultures the deadline is 30 days.	Yes, the public financial offices and the customs can take enforcement measures.	The authorities responsible for enforcement measures are the civil and administrative courts.
ES	Debit note send by the administrative authority.	A 50 days (maximum) deadline is established from the notification to collect within the voluntary payment, this is the general deadline. For grants the deadline is usually 1 month from the decision of the management body or payment injunction	Notificación de la providencia de apremio.	No existe plazo legal pero, en la práctica, el órgano competente para el cobro en vía ejecutiva emite y notifica la providencia de apremio de forma inmediata, una vez comunicada la situación de la deuda por parte del órgano competente para su gestión en periodo voluntario.	In the Spanish legal system, public administrations' acts are immediately enforceable, enforcement is carried out by the State tax Agency. No court action is necessary.	In the context of public debts, it is never necessary to resort to a court in order to proceed with the enforcement of claims and assets.

Member State	2.2. The administrative recovery procedure					2.3. Enforcement	
FR	Voluntary recovery procedure is not used systematically.	Reasonable deadline.	A collection order is issued.	At the end of adversarial proceedings, and in the absence of a legal deadline for issuing a collection order, a deadline of 15 days from receipt of the paying agency's letter is usually applied. This may be extended to one month in complex cases.	Collection orders are enforceable as soon as they are issued by authorising officer.	Paying agencies are exempt from the obligation, of having the debt confirmed by the relevant court before taking any enforcement measures. There is one exception: the URBAN, INTERREG III and URBACT Community initiatives, part financed by the ERDF, for which the role of paying authority has been entrusted to a financial institution, the "caisse des dépôts et consignations". If the voluntary procedure fails, the managing authorities for these programmes may refer the matter to the enforcement judge.	

Member State	2.2. The administrative recovery procedure				2.3. Enforcement	
IE	No. Generally once a debt has been established and posted to the computerised debtors ledger, a Recovery Notice/ Debit Note is sent to the debtor.	10 days in the case of Customs recoveries and between 14 and 50 days in other cases.	A recovery notice is sent to the debtor with a repayment deadline.	No formal deadlines. Debts are treated on a case-by-case basis.	Revenue (tax recovery) cases can provide for recovery without initial action to the courts, although court action may ensue as a result of attempts by Revenue Authorities to seek recovery by use of the Sheriff for non-payment of taxes.	The High Court has full original jurisdiction in civil cases for debt; the Circuit Court has jurisdiction in relation to civil actions for debt up to a limit of €38,092; the District Court has jurisdiction in relation to civil actions for debt up to a limit of €6,350.
IT	An Invitation to pay voluntarily is provided to the debtor.	15-30 days.	Payment order or administrative proceedings are expressly provided by law.	Generally speaking, section 3 of the Royal Decree of 14 April 1910 sets a deadline of 30 days for the recovery of the State's own assets.	Under Italian law, where the administration has a claim on a debtor it may register the claim. In private-law cases, to register the claim there must be an enforcement order.	The district court.

Member State	2.2. The administrative recovery procedure				2.3. Enforcement	
CY	A formal notice is issued through an official letter.	Period specified by each administrative authority.	Not specified in the Law. A formal notice is automatically issued.	The deadline is determined on a case-by-case basis.	According to the Cyprus customs code law of 2004, the Director may assess the amount of customs debt to the best of his judgement and shall communicate it to the person concerned. In the case any person fails to submit a customs declaration for example.	The district Criminal Courts or Civil courts depending on the action.
LV	Debit note is sent to the debtor and voluntary payment is requested.	The deadline is stipulated in the decision of the Managing Authority.	There is no deadline stipulated in the law for issuance of formal notice or an administrative payment injunction.	In practice a deadline to recover the sums wrongly paid is stipulated in the decision of the Managing Authority on the sums wrongly paid – usually it is one month following the deadline, stipulated in the decision. If the sum is not repaid a court action is initiated.	According to the Administrative Procedure Law, acts imposing a duty to pay a specific amount shall be compulsory executed by the bailiff without court action, if the administrative act has come into effect, if it has become non-disputable, and if the act has not been executed voluntarily.	Courts of general jurisdiction. Civil court. In the case of revision of the administrative act, imposing a duty on the addressee to pay a specified monetary amount, the competent court is the Administrative court.

Member State	2.2. The administrative recovery procedure					2.3. Enforcement	
LT	Decision notified by a registered letter within 5 working days.	Deadline set in the decision, 30 calendar days.	A formal notice is issued.	The deadline for issuance of a formal notice is stipulated in the Rules for Recovery to the State budget of the Republic of Lithuania. Usually the deadline is 30 days.	Yes, under the point 13 of the Rules for Recovery to the State Budget of Republic of Lithuania of the EU financial support, the funds issued in violation of legal acts can be enforced through Turto Bankas, which transfers the amount to the competent institution.	In such cases jurisdiction belongs to courts of general jurisdiction (art.22 of the Civil Procedure Code). But the enforcement is carried out by bailiffs.	
LU	An invitation to pay is sent to the debtor.	A deadline of 10 days is set, plus 5 days if there is still no answer.	A reasoned decision is taken by the Director in accordance with Article 212 of the General Law.	If within 100 days of the sending of the decision, the Director has not been notified of the lodging of an administrative appeal, he may consider the decision as final. The file is sent back to the recipient with an order to launch the summary execution procedure immediately.	The Director for Customs and Excise can make summary execution enforceable.	Except in the case of a special legislative procedure, forced execution is not possible without an enforcement order, i.e. without a court decision. .	

Member State	2.2. The administrative recovery procedure				2.3. Enforcement	
HU	No debit note but. Prompt collection order can also be sent to the debtor.	For EAGGF a decision for repayment is issued and the deadline for repayment is 30 days.	There is no debit note, but a notice to pay, in the case of EAGGF grants. If this fails to produce results, a prompt collection order is sent in order to enforce a claim for repayment of subsidies. Grant contracts stipulate that the beneficiary is obliged to give authorisations for prompt collection orders. If it fails to recover the funds a claim for the guarantees is specified in the contract.	There is no deadline stipulated in law (legal regulation) for issuing a formal notice. Specific contract provisions lay down the circumstances and conditions giving reason for repayment requests, and these include the deadline for fulfilling the repayment obligation.	A first-instance administrative decision may be enforced if it has become final in the absence of an appeal or if the dilatory effect of the appeal has been disqualified. In the case of EAGGF Guarantee Section these are collected by the state tax authority, and there is no need for a court ruling to collect them.	A court can intervene during the enforcement of the administrative recovery order if the debtor submits a request for court review of the decision. County courts have jurisdiction over administrative actions (Chapter XX) with the exception of the actions defined in Article 349 (5).’ [Article 23 (1) i) of the Civil Procedure Act. If there is an appeal the Metropolitan Court of Appeal has sole jurisdiction.
MT	In the case of no voluntary payment after several reminders an advice is sent by the Attorney General.	There is no deadline in the National legislation.	A legal action may be started against the defaulter.	No deadline stipulated for the issuance of a formal notice or administrative payment injunction. Deadlines are set on a case by case-basis.	An agreement can be reached through bilateral meetings between the FB and the contractor.	The Civil Court First Hall and, when the judgement has been varied on appeal, The Court of Appeal

Member State	2.2. The administrative recovery procedure				2.3. Enforcement	
NL	Request for voluntary payment is made systematically.	Between 4 and 6 weeks.	Ministry of social affairs says that a formal warning is sent six weeks after the first decision, a second warning after two weeks. And two weeks after, a final demand is sent by the legal department. After that, the legal procedure is started. For agriculture funds, a written reminder is sent within 10 days, plus a warning within 30 days, and finally the recovery is transferred to the bailiff after 60 days after the expiry deadline.	No deadline is stipulated for the issuance of formal a notice. It varies from fund and Ministry. In the Social Affairs matters, a formal warning is sent 6 weeks after the first decision, a second within 2 weeks, after that a letter of final demand is sent. In the agriculture field an immediate requesting payment is sent within 10 days, and a warning within maximum of 30 days. The transfer of the recovery to the bailiff within 60 days maximum.	No, enforcement cannot be carried out without referring the matter to the Court.	The administrative court or the Administrative Tribunal for trade and Industry are competent.

Member State	2.2. The administrative recovery procedure				2.3. Enforcement	
AT	For CAP a recovery notice plus a reminder plus final warning are sent to the debtor. In Civil matters there is a notification to the debtor. In ERDF written request is sent to the debtor.	2 or 3 weeks but not legally binding.	CAP: The district court orders that the necessary measures be taken. In civil matters involving sums not exceeding €30 000, the court issues a conditional injunction to pay. ERDF no formal injunction proceedings.	CAP: There is no limit deadline in administrative matter. ERDF no legally binding time limit for injunction proceedings.	Court rulings and administrative decisions to recover funds are enforceable, usually by means of court enforcement procedures. In CAP, debit notes that relate to fairly specific obligation are enforceable administratively. For ERDF only the courts may enforce recovery.	The district court is responsible for enforcement. Where the sum at issue does not exceed €10 000, the district court is responsible for issuing the enforcement notice (ruling or injunction to pay). Where the amount is in excess of €10 000 the enforcement order must be issued by the regional court. The district court is responsible for enforcing the order. For ERDF the grant agreement stipulates that the civil court is usually competent.

Member State	2.2. The administrative recovery procedure				2.3. Enforcement	
PL	A written reminder is sent to the debtor. Voluntary payment is possible.	One week after the date on which the reminder was received. For export refunds on agricultural products the deadline is 1 month from the decision.	A decision or recovery order is issued; if the deadline for payment is not met an enforcement order is issued and sent to the enforcement agency.	Polish law does not specify a deadline for issuing enforcement order but the action of sending a reminder to the debtor should be taken without delay.	Under Polish law, the rule is that jurisdiction in respect of civil enforcement proceedings lies with the district courts and the bailiffs. All enforcement action is taken by the bailiffs, with the exception of action reserved to the courts (Articles 758 and 759 CCP). The heads of tax offices act as the enforcement agencies, they are also authorised to apply all the enforcement measures provided for in connection with administrative enforcement.	In cases involving payments made unduly or the amount of which was excessive, transferred by the Agricultural Market Agency, the provisions of the Code of Civil Procedure apply. Jurisdiction lies with the civil law sections of the courts: the district court – up to an investigated amount of no more than PLN 75 000; the regional court – for amounts in excess of PLN 75 000.

Member State	2.2. The administrative recovery procedure				2.3. Enforcement	
PT	First there is an invitation for comments on the facts established by an audit, if there is no answer a final decision is formally notified to the debtor.	Voluntary payment must take place within 30 days.	A final decision is notified to the debtor.	There is no deadline stipulated in law. Each authority managing the funds (EAGGF, ESF, and ERDF) has its own internal procedures. The period is generally up to six months.	Under Article 149 of the CPA Compliance with obligations deriving from administrative acts can be enforced by the administrative authorities without recourse to the court. The competent authority will issue a certificate with the value of an enforcement order, and the competent tax office will enforce the order.	If enforcement is opposed, the tax enforcement authority must refer the matter within 20 days to the appropriate court of first instance, which will be the first instance tax court, according to the Article 49(1)(a)(iii) of the CPPT.

Member State	2.2. The administrative recovery procedure				2.3. Enforcement	
SI	A Title of execution is required for recovery.	There is no time-limit; the payment is due when the decision has become final.	A title of execution is needed for the repayment procedures.	A direct spending unit must immediately demand repayment to the budget if it finds a sum unduly paid.	In cases when procedures performed by an administrative body require enforcement, in most cases this will be executed by the tax office with local jurisdiction. It is possible that a body responsible for enforcement does not issue an enforcement order, if the title of execution contains deficiencies (e.g. no certificate of enforceability), if the claim has expired, and so on.	The local court has jurisdiction for permitting enforcement, unless otherwise stated by law. (Article 5 of the Execution of Judgements in Civil Matters and Insurance of Claims Act.
SK	A decision is issued in a administrative procedure.	There is a 15 days deadline for the EAGGF, plus 3 extra days.	An execution order is delivered which is effective immediately.	Immediate effect.	Court action to obtain enforcement is not required in situations where a legally binding decision of an administrative authority is issued and the debtor has complied with the liability laid down in the decision by the stipulated deadline.	Act No 99/1963 Coll., the Civil Procedure Code, as amended, stipulates jurisdiction for district courts, regional courts and the Slovak Supreme Court.

Member State	2.2. The administrative recovery procedure				2.3. Enforcement	
FI	There is a decision issued by an administrative authority which constitutes an enforceable recovery order, but there is no specific provision in the case of structural funds.	Finnish law does not stipulate a deadline for voluntary payment.	The amounts paid in breach of the community law are recovered by an order of an administrative authority. The party concerned must be heard for the purposes of the recovery order.	Deadlines are set on a case-by-case basis.	For the purposes of administrative recovery, an enforcement decision by a court is only required in cases where the authority concerned is not empowered by law to issue recovery orders. Such cases involve the administrative contentious procedure referred to in point 2.4; here an authority's statement regarding the fulfilment of the conditions for recovery is interpreted as an opinion that does not legally bind the other party.	According to the Section 70 of the Administrative Judicial Procedure Act (586/1996), administrative disputes are examined by the administrative court in whose jurisdiction the party concerned by a claim has his usual place of residence. Claims against the State, a municipality or any other public entity are examined by the administrative court in whose jurisdiction the authority or institution representing that entity is located.

Member State	2.2. The administrative recovery procedure				2.3. Enforcement	
SE	Recovery order is issued by the authorities and can be executed directly.	Reasonable payment deadline.	Recovery orders are sent by the authorities.	When the payment deadline has expired, two weeks after that day, a reminder is sent to the recipient. When the new payment deadline in the reminder has expired, the authority launches the enforcement procedure by transferring the claim to a debt recovery agency. If there is an appeal against the recovery order, the case is not transferred until final judgment has been given.	Concerning EAGGF, a recovery order has the same legal status as an enforcement order. The authority does not have to take civil court action and the Enforcement authority can execute the order directly as soon as it is enforceable. Concerning Structural Funds, a recovery order issued by an authority does not have the same legal status as an enforcement order.	The civil courts have jurisdiction in cases where court action must be taken to obtain enforcement measures (i.e. district courts, courts of appeal and the Supreme Court).

Member State	2.2. The administrative recovery procedure				2.3. Enforcement	
UK	The RPA (Rural Payment Agency) sends an invoice automatically to the debtor. In the case of ODPM (Office of the Deputy Prime Minister) and DFES (Department for education and skills) a debit is issued. In Northern Ireland recovery is made by offset from future claims. In Scotland a letter will be sent to the debtor.	No deadline stipulated by law, but in practice it might be 7 to 28 days for RPA invoices. For the other situations there is no deadline.	No system of issuing a formal notice equivalent to an administrative payment injunction.	In Scotland there is no deadline stipulated by law, the deadline is set on a case-by-case basis. There is a 6 years limitation for the debtor being advised of the debt.	In general terms, enforcement measures for payment or recovery of sums must be by way of court action. Some extra-judicial procedures may be provided for by statute, but these would be in limited and specific circumstances. In the Forestry Commission, if the debt as not repaid voluntarily they would seek legal recourse and make use of recovery agents.	In Scotland, the Sheriff's Court and Court of Session – both are Civil Courts. In England County Courts has effective unlimited jurisdiction. However cases involving very large debts are pursued in High Court .Small claim courts are empowered to preside over debts up to £5,000, otherwise a Magistrates court handles debt cases. Debts between, £5,000 to £15,000 are normally examined in closed courts and debts exceeding £15,000 in open court with a barrister.

2.4. The administrative contentious procedure

(a) Where the debtor takes proceedings to challenge an administrative recovery order, which courts have jurisdiction?

Administrative court

Civil court

Other (please specify: e.g. proceedings in a Conciliation Court, simplified procedures in the civil courts, etc.)

If a number of courts have jurisdiction, please give their area of jurisdiction and/or the order in which reference must be made to them.

(b) Does an appeal against that court's decision have the effect of suspending enforcement of the recovery order?

(c) What interim or precautionary measures can be ordered by the competent court, and what effects do they have?

Member State	2.4. The administrative contentious procedure		
	a. Jurisdiction	b. effect of an appeal	c. Interim and/or precautionary measures
BE	After an administrative appeal, the debtor can turn to an Ombudsman or an application for the suspension or annulment of the administrative decision, the Council of State is competent. When the litigant wants to invoke a subjective law, the civil court is competent.	In principle, an appeal by a civil court may have suspensory effect unless the judge declares the immediate effect of the decision.	According to the Civil Code, the court may impose a protective attachment as security of the debtor claims. The attachment may refer to corporeal movable property, immobile property, and amounts or chose's owed by third party to the creditor's debtor.
CZ	Administrative Court.	An appeal in cassation does not automatically have suspensory effect, but at the request of the complainant, the Supreme Administrative Court, may exceptionally grant the appeal suspensory effect.	The court may at the request of a concerned party, complainant or administrative body, decide to issue an interim measure ordering the parties concerned to perform, refrain from performing or be subject to some particular action. Third party can be subject to obligations to.

Member State	2.4. The administrative contentious procedure		
	a. Jurisdiction	b. effect of an appeal	c. Interim and/or precautionary measures
DK	The National Tax Court is the administrative appeals body for the vast majority of decisions relating to recovery. Appeals against distraint must be dealt with by the bailiff's court.	Appeals relating to recovery do not have suspensive effect.	Pecuniary claims can be enforced by distraint against a debtor's assets. Distraint may apply to cash and immovable property, movable property, claims and other assets, if identity can be determined.
DE	Administrative Court. Tax Court (e.g. export refunds).	In the case of Administrative Court, yes. In the case of Tax Court, no.	The lodging of a security, such as a bank guarantee.
EE	The appeal can be presented before an administrative court, if it is not allowed it may be sent to a district court and thereafter to the Supreme Court.	The administrative court may suspend the validity of an administrative instrument.	A competent court may apply provisional legal protection, suspending the validity or implementation of the contested administrative instrument, pursuant to Sections 12 of the Code of Administrative Court Procedure.
EL	The Court of Auditors is responsible for deciding appeals against financial rectification decisions, in accordance with the provisions governing its organization and operation. The administrative courts.	An appeal does not suspend enforcement unless a request is lodged.	Seizure, confiscation and mortgage.
ES	The administrative contentious jurisdiction. There is a marginal implication of the civil court, and the criminal court.	No automatic suspension scheme for contentious appeals unless a request is lodged and the judge so decides.	At any stage of the proceedings, all interested parties may ask for the adoption of any measures capable of ensuring the judgement's effectiveness. Some examples: suspension of the project implementation, suspension of payment of aids, request of information and relevant documents.
FR	The administrative court has jurisdiction.	An appeal does not have the effect of suspending proceedings before the administrative court.	The precautionary measures are laid down by law No 91-650 of 9 July 1991, they can take two forms, preventive attachments, which deprive the debtor of the legal freedom to dispose of an asset. Only movable property can be subject whether it is tangible or intangible. And a second form, Judicial restrictive measures, it may concern provisional judicial mortgage.

Member State	2.4. The administrative contentious procedure		
	a. Jurisdiction	b. effect of an appeal	c. Interim and/or precautionary measures
IE	Usually a debtor will defend the actual recovery proceedings, instituted by the creditor and is entitled to make appeal from the initial decision of the court to a higher court, if the decision goes against them. Appeal is on the merits of the case, save from High Court to Supreme Court, when it must be a point of law. Where the debtor wishes to take direct action to challenge the actor intended act of recovery by a state authority this must be done to the high court for relief known as Judicial Review.	Yes, if a stay on the enforcement of the order is sought and granted by the court hearing the case. Where stay is not granted by the lower court, it is possible to appeal this refusal to a superior court. Where stay is not sought then the order could be enforced immediately but this is not common. This applies to recovery through normal court recovery process and in Judicial Review cases.	In a simple debt recovery action for say breach of scheme conditions or similar irregularities very little interim or precautionary measures could be sought from or granted by the District Court. However, it would be possible for a creditor to seek equitable relief by way of injunction directed at the debtor from the Circuit or High Courts, which might result in the debtor not being able to lower their assets to a figure lower than the sum sought pending any appeal
IT	The civil court.	The appeal does not automatically suspend the enforcement of an order; the judge may order the enforcement to be suspended in response to an application from the party.	The civil court may suspend enforcement of the payment order only if there are serious grounds for doing so and the appeal does not appear manifestly unfounded after an initial summary examination. Other precautionary measures are the attachment of assets as well as emergency measures (atypical precautionary measures).
CY	Administrative Court if no court action is taken by the administrative authority. Supreme Court (as an Administrative Court) if the administrative authority has obtained enforcement measures by a Civil Court.	Yes, an appeal has the effect of suspending enforcement of recovery order.	Suspend the enforcement of the recovery order.
LV	Administrative decisions on the recovery of funds may be reviewed by higher institution and then by the Administrative court. But decision of the civil court on forced recovery of monetary amounts may be reviewed by the civil court.	Submitting an application to the court, suspends the operation of the administrative act from the day the application is submitted.	Administrative court or civil court may decide to implement the execution of an administrative act immediately, or suspend the action of the act or take decision on recovery of monetary amounts. Provisional regulation, like, substitution of an administrative act or action of the institution or imposing duty on the relevant institution to carry out specific action. However precautionary measures can not be ordered.

Member State	2.4. The administrative contentious procedure		
	a. Jurisdiction	b. effect of an appeal	c. Interim and/or precautionary measures
LT	The administrative court have jurisdiction. If one of the claims in a lawsuit is related to an administrative legal act of an individual character the legality of which is challenged in the lawsuit, the court of general jurisdiction examining the case shall also adjudicate on the legality of the legal act (Article 26(2), CPC).	The enforcement of the recovery order is suspended on filing an appeal against the court's decision.	The Administrative court may order the following precautionary measures (Article 71, Law on Administrative Proceedings): 1) injunction prohibiting a party from carrying out certain actions; 2) suspension of enforcement under a writ of execution; 3) suspension of the validity of the legal act challenged. A general Jurisdiction court may take such interim measures, seizure of property; record on the prohibition of transfer of ownership rights in the public register; seizure of assets, funds or property rights held by third persons; lien on a chattel owned; prohibition for to participate in certain transactions or perform certain actions; and others (Article 145, CPC).
LU	Where the debtor takes proceedings to challenge an administrative recovery order, it is the judicial courts which have jurisdiction to take cognizance of the appeal lodged against the decision of the Director for Customs and Excise (see Article 8(1)(a) of the Law of 7 November 1996 on the organisation of administrative jurisdictions).	No suspensory effect in general. But it may be requested to the president of the administrative court.	The administrative court may not order precautionary measures but if a petition for suspension is referred to its President, he may order that pending a decision on substance, the contested order will not be implemented.
	If the debtor intends to challenge the administrative recovery order, he has to lodge an appeal in the administrative court, bearing in mind that this court may only examine the legality of the contested order.		

Member State	2.4. The administrative contentious procedure		
	a. Jurisdiction	b. effect of an appeal	c. Interim and/or precautionary measures
HU	Debtors can request the review of the binding decision of the administrative body within 30 days of the publication of the decision on the grounds of breaching the law by submitting a claim against the administrative body bringing the decision at the competent administrative court, it means also before civil courts because there are no separate administrative courts in Hungary.	Appeal's have suspensory effect.	The court can order enforcements for the purposes of security (sections 370 et seq. of the Enforcement of Judgments Act) and interim injunctions. In such cases movable objects may be seized, a charge may be entered in the land register regarding immovable assets or amounts receivable by the debtor may be sequestered. Enforcements for the purposes of security are intended to satisfy a priority right of payment (section 379 EJA). Interim injunctions to recover sums of money (section 370 of the EJA) simply enforce claims provisionally where a claim has been established and there is a real danger that the sum will not be recovered. I
MT	Civil Court	Yes but provisional enforcement can also be applied for and obtained.	There are various precautionary warrants which may be issued by the Court. The most resorted to are the garnishee order (freezing of the debtor's funds in the hands of third parties), the warrant of seizure (seizing the debtor's property) and the issuing of a warrant whereby the debtor is prohibited from transferring immoveable property.
NL	The administrative court or the Administrative Tribunal for trade and Industry are competent.	No, an appeal does not have suspensory effect.	Attachment. This can ultimately lead to sale by the bailiff.

Member State	2.4. The administrative contentious procedure		
	a. Jurisdiction	b. effect of an appeal	c. Interim and/or precautionary measures
AT	Decisions taken by administrative authorities may be contested only by appealing through official administrative channels to the superior administrative authority. After these channels have been exhausted the case may be brought before the higher administrative court. There are no appeal stages involving courts of general jurisdiction. For CAP the higher administrative court is competent. For ERDF the civil court has the jurisdiction.	In CAP administrative matters applications to appeal bodies suspend enforcement but not before administrative courts; enforcement is, however, suspended where provisional legal protection is needed to ensure the effectiveness of future decisions. In civil cases appeals lodged in time prevent a decision from becoming final and enforceable. In ERDF: Yes, appeals suspend enforcement. In export refunds an appeal does not suspend enforcement, just under certain circumstances.	The court can order enforcements for the purposes of security (sections 370 et seq. of the Enforcement of Judgments Act) and interim injunctions. In such cases movable objects may be seized, a charge may be entered in the land register regarding immovable assets or amounts receivable by the debtor may be sequestered. Enforcements for the purpose of security are intended to satisfy priority right of payment. Interim Injunctions to recover sums of money that are in danger to not be recovered.
PL	Objections are examined not by the court but by the enforcement agency (e.g. the head of the tax office). Appeals against decisions may be lodged with the administrative court on the grounds that they are incompatible with the law (Article 16 of the Code of Administrative Procedure). As a rule, court and administrative cases are examined by the provincial administrative courts. Appeals against judgments handed down by provincial administrative courts are heard by the Supreme Administrative Court.	The fact of lodging objections, appeals or complaints does not entail suspension of the proceedings, however in certain cases it might.	The enforcement body may secure amounts owed, mainly in the form of: distraint of funds, remuneration, claims on bank accounts, rights to assets or real estate; imposition of a forced mortgage on the debtor's real estate, including by submitting documents to a document repository in the case of real estate not entered in the land register; establishment of a prohibition on the sale and mortgaging of real estate which are not register or for which the land register has disappeared or been destroyed; those are just a few examples. The court may also suspend the enforcement of an act.

Member State	2.4. The administrative contentious procedure		
	a. Jurisdiction	b. effect of an appeal	c. Interim and/or precautionary measures
PT	The district administrative court is competent. See Article 44 of the ETAF and Articles 46 et seq of the code of Procedure of the Administrative Courts (CPTA).	Contesting an administrative act does not have a suspensory effect, unless it relates to payment of an amount which is certain and which does not constitute a penalty and a guarantee has been lodged, or a protective measure suspending the act has been granted.	The competent court can order, protective measures, whether interim or precautionary, Article 112 CPTA. Some examples: suspension of an administrative act; provisional granting of the freedom to dispose of an asset; provisional authorisation to start or continue an activity or adopt a line of conduct; provisional settlement of a legal situation, whereby the public authority is required to pay an amount on account for sums due or by way of provisional compensation.
SI	The Supreme Court and the Administrative Court hear appeals against a decision issued in first instance administrative proceedings. The Supreme Court adjudicates on extraordinary legal remedies, unless otherwise stated by law.		The only precautionary measures are the constitutional right to own moveable and immoveable property and preliminary and temporary injunctions. Insurance may also be established on the basis of an agreement between the parties.
SK	Act No 99/1963 Coll., the Civil Procedure Code, as amended, stipulates jurisdiction for district courts, regional courts and the Slovak Supreme Court.	A plaint has no suspensory effect on the enforceability of a decision of an administrative body, unless a special act stipulates otherwise. At the request of a party the judge may delay the enforceability of the decision in certain circumstances.	If there is a concern that execution of the decision is endangered, the court may by motion impose a preliminary measure that the party place a monetary sum or item in the court deposit, or that the party not dispose of given items or rights. By Bailiff Actions the court shall prohibit the liable person from disposing of his property, according to the Bailiff Code.
FI	Administrative disputes are examined by the administrative court in whose jurisdiction the party concerned by a claim has his usual place of residence. Claims against the State, a municipality or any other public entity are examined by the administrative court in whose jurisdiction the authority or institution representing that entity is located.	As a rule, it does have a suspensory effect, however the decision may be enforced before it has become final, if there is a provision in law to this effect and If by nature the decision requires immediate enforcement or for a public interest it can not be delayed.	Under Section 9 of the Act on the Enforced Collection of Taxes and Charges, the imposition of an injunction or suspension of enforcement may be made conditional on the applicant providing the enforcement officer with security for the debt if recovery or enforcement of the debt might otherwise be put at risk. If the applicant provides the required security, the court must forbid enforcement or order its suspension. Administrative courts do not have the power to order precautionary measures proper, such as the seizure of assets.

Member State	2.4. The administrative contentious procedure		
	a. Jurisdiction	b. effect of an appeal	c. Interim and/or precautionary measures
SE	Concerning EAGGF appeals against recovery orders can be made to the Swedish Board of agriculture. Appeals against orders issued by the Swedish Board of Agriculture can be made to Administrative courts. Appeals against Enforcement Authority orders can be made to the civil court. Concerning Structural Funds appeals are only accepted if the order concerns grants from EAGF or FIG.	Administrative courts can temporarily suspend the enforcement of a recovery order that would be directly enforceable. Concerning EAGGF enforcement can be suspended if an appeal is lodge.	Under section 28 of the Administrative Courts Procedure Act (1971:291) the administrative courts can decide on interim or precautionary measures. The civil courts can decide on interim or precautionary measures, such as seizure, under Chapter 15 of the Code of Judicial Procedure.
UK	Nationally, Civil Court have jurisdiction. However there may be different recourse action where the debtor challenges a recovery decision as a matter of public law the Administrative Court has exclusive jurisdiction. The County Court or High Court, have also jurisdiction when the debtor challenges a decision in case of offsetting or damage or counterclaim where the authority has taken its own action. Theoretically a debtor could take action by way of judicial review in the Court of Session in relation to a decision to seek repayment (e.g. a letter or invoice). However when legal procedure had been commenced in sheriff court the debtor would have to challenge the decision by defending that sheriff court claim rather than a separate judicial review claim	In the Scottish Executive, no general rule can be stated, but frequently a recovery order would be suspended by an appeal. In RPA in practice an appeal has a suspensory effect. In England the debtor can only appeal if he can prove that they know about the court proceedings or could not attend.	In Scotland The court may take the following interim or precautionary measures: Arrestment on the dependence – an order freezing sums held by a third party; Caution as a condition precedent to further procedure – here the court may require consignment into court of the sum in dispute (or part thereof); Interim decree – this is an order for part payment – usually of a sum not in dispute; The allowing of early extract or the superseding of the extract. Arrestment in execution – a diligence after the case is concluded which freezes sums held by third parties – pending their release to the creditor. In England the court can grant injunctive relief in appropriate case, in particular preservation of assets.

2.5. Priority given to public claims

In your legal system, is public assistance (including Community grants) given priority in the event of an insolvency? If so, please give a brief description of the procedure to be followed and an indication of the ranking of the various categories of priority creditors.

Member State	2.5. Priority given to the public claims		
	Government claim (including Community assistance, but not tax or customs claims) has priority.	Tax or custom claims have priority	Priority order
BE	No.		
CZ	No.	Tax claims do not have priority as a general rule, but if a tax claim arises after bankruptcy has been declared, then it counts as a priority claim and may be satisfied at any point in the course of the bankruptcy proceedings.	The Czech Republic would point out that a new law is being drafted on bankruptcy and procedures for handling it (the Insolvency Act) which should make it possible for “public assistance” to be given priority.
DK	No.	No.	
DE	No.		
EE	No.		
EL	No.		The ranking of the various categories of priority creditors is: (a) funeral costs, (b) maintenance costs, (c) education costs, (d) medical costs, (e) legal costs, (f) insurance costs (Social Insurance Institute - IKA), (g) public authorities.

Member State	2.5. Priority given to the public claims		
	Government claim (including Community assistance, but not tax or customs claims) has priority.	Tax or custom claims have priority	Priority order
ES	No.	Yes.	Enforcement procedures carried out by AEAT to collect due and unpaid debts (seizure, enforcement...), are given priority regarding other creditors (except those holding claims to the title, liens, mortgages and other property rights recorded in the relevant registry before the date on which the claim of the Treasury Department is recorded in it, complying with the “minimum subsistence threshold” established by law. The administration is also entitled to place a lien enforceable against all parties on goods declared to customs for the payment of the customs and tax debt.
FR	No.	Yes.	The claims of paying agencies, as public bodies, are treated in the same way, whether they are national or Community claims. They are regarded as non preferential, unsecured claims, and are ranked after the preferential claims held by the tax and customs authorities, which are themselves ranked after the super preferential claim of employees and court fees. Experience shows that the recovery of preferential claims, and in particular tax and social security claims, in most cases exhausts any sums available for the recovery of EAGGF Guarantee Section claims. It is not possible to rank the latter higher than social security, tax or customs claims. The same is true of the Structural Funds.
IE	Most monies due to Revenue Commissioners have priority over other sums due by the liquidated company or individual debtor. This would encompass most taxes due to the State. EU funding does not per se have any special priority.	Yes.	EU funding does not per se have any special priority and if due, would be deemed to be “unsecured” and would fall into the last category of creditor to be paid out of any funds left over, once all priorities and secured creditors, debenture holders or mortgagees have been paid back.

Member State	2.5. Priority given to the public claims		
	Government claim (including Community assistance, but not tax or customs claims) has priority.	Tax or custom claims have priority	Priority order
IT	Yes.		Where public assistance for the development of productive activities, in the form of incentives, grants, concessions, aid and benefits of any kind, is withdrawn, the administration's claims are given priority. Under section 9 of Legislative Order No 123/1998, claims for the repayment of assistance granted for the above reasons "take priority over any other pre-emptive right, apart from legal costs and costs provided for under section 2751-bis of the Civil Code or prior claims of third parties." These privileges are exercised by law in bankruptcy proceedings (e.g. when bankruptcy is proved) or by means of enforcement procedures. EAGGF refunds are covered by section 6 of Presidential Decree No 532/73, which assigns EAGGF claims a special, movable priority. In the case of bankruptcy, the administration applies for bankruptcy to be proved as a privileged creditor.
CY	No.	Yes.	The ranking of the various creditors is the following: Expenses and fees of the official receiver; Creditors that have security on assets (i.e. mortgages); Hire purchases, fixed charge creditors (i.e. on equipment); Priority creditors which include the amounts due to the Government for duties and income tax and employee salaries, social security contributions and PAYE. Unsecured creditors on a pro rata basis, including Government grants and EU Funds refundable that were not specifically secured during the agreement signed for the payment of those funds.
LV	No.		

Member State	2.5. Priority given to the public claims		
	Government claim (including Community assistance, but not tax or customs claims) has priority.	Tax or custom claims have priority	Priority order
LT	No.	Yes.	The ranking of the various creditors is the following: 1) claims of the workers arising from employment relationships; claims for compensation for damage caused by grievous bodily harm or some other injury, an occupational disease or death due to an accident at work; claims of natural or legal persons for payment for agricultural produce purchased for processing; 2) claims for payment of taxes and other payments into the budget, also for compulsory state social insurance contributions and compulsory health insurance contributions; claims relating to loans obtained on behalf of the State or guaranteed by the State; 3) all claims other than those specified above.
LU	Not mentioned.	Not mentioned.	Not mentioned.
HU	No.	Yes.	Order of satisfaction: 1) costs of liquidation; 2) claims secured by mortgage prior to the starting date of liquidation; 3) alimonies, life annuity payments, compensation benefits [...]; 4) other claims of private individuals not originating from economic activities, claims of small and micro enterprises and agricultural primary producers, 5) social insurance and private pension fund debts, taxes and public debts collectable as taxes, public assistance to be repaid, as well as water and sewage connection charges; 6) other liabilities; 7) irrespective of the time and grounds of occurrence, default interests and late charges as well as surcharges and debts. Order of court enforcement: 1) child support; 2) other support; 3) employee's wages and emoluments considered as such; 4) sums payable to the state established by judgement against the judgement debtor in a criminal, penal enforcement or contravention procedure, claims arising from confiscation of assets (with the exemption of civil law claims); 5) tax and
MT	Money received as public assistance can only be given priority if there is a special law providing	At present there is no such system of priority in place	

Member State	2.5. Priority given to the public claims		
	Government claim (including Community assistance, but not tax or customs claims) has priority.	Tax or custom claims have priority	Priority order
	that debts resulting from such assistance have a prior ranking to other debts.	with regard to public assistance, as distinct from money due as wages and as tax. The exception is where assistance granted is tied to a hypothec created by the recipient of funds as a guarantee should he/she fail to repay the funds received if requested to do so.	
NL	No.	Yes.	In the case of tax recoveries connected with public assistance, the Dutch state has prior claim on all goods of a tax debtor. The priority still applies if the tax debtor becomes insolvent. The priority has preference over other claims except for insolvency costs and claims for damages.
AT	No.		
PL	No.		
PT	No.		
SI	No.		

Member State	2.5. Priority given to the public claims		
	Government claim (including Community assistance, but not tax or customs claims) has priority.	Tax or custom claims have priority	Priority order
SK	No.	Yes.	Under national legislation the following are priority claims in the enforcement of a decision: 1) subsistence claims; 2) claims of compensation for damage caused to the injured party by damage to health; 3) claims of compensation for damage caused by intentional criminal acts; 4) tax, charges and customs receivables, health insurance and social insurance, pension insurance, excess payment receivables for reimbursement of income during temporary inability to perform work, allowances from social insurance, pension insurance, child support, receivables of payments for social services provided under a special rule. In proceedings on insolvency of a debtor in bankruptcy, claims are preferentially satisfied against the assets, which are claims arising after declaration of bankruptcy in connection with the administration and realisation of the assets subject to bankruptcy, subsistence for minors, the commission of the administrator, as well as claims arising after declaration of bankruptcy such as taxes, charges, cu
FI	No.		In insolvency proceedings (bankruptcy, company reorganisation, debt adjustment of a private citizen), creditors are entitled to recover their claim in order of priority (Act on Priority Creditors (1578/1992)). There are few preferential claims. Apart from secured claims, priority is given mainly to claims which have arisen in the course of a reorganisation ending in bankruptcy, claims based on children's maintenance allowances and, until the end of 2010, certain claims based on the supplementary pension system. Non-preferential claims are paid off in proportion to the amount of the claim.
SE	No.		The State has priority in some cases, i.e. concerning recourse for wage securities which have been paid, but this is because the State represents the employee in such cases.
UK	No.		

2.6. Offsetting

(a) Is offsetting possible for public funds (national budget)? If so, does it apply to all categories of debts and claims, or only on a sectoral basis?

(b) Is offsetting used to recover Community funds? If so, does it apply only to debts and claims in the same sector or under the same Community Fund, or between Funds of the same type but managed by the same authority, or between funds managed by different authorities that have established recovery coordination procedures?

Member State	2.6. Offsetting			
	Possible for public funds - national budget (Yes/No)	Applicable to all categories of debts and claims/only on a sectoral basis	Used to recover Community funds (Yes/No)	(If yes) 1) applicable only to debts and claims in the same sector or under the same Community Fund, managed by the same authority 2) between funds managed by different authorities that have established recovery coordination procedures
BE	No (with exception: special rules for VAT and taxes).	Only for VAT and taxes.	Yes, (with the exception of the Flemish community which does not practice offsetting).	1) Between Funds of the same type and managed by the same authority.
CZ	No (with exception of taxes - Section 64 of the Taxes and Charges - Administration).	Only for taxes and charges.	Yes, limited to the EAGGF	1) Between Funds of the same type and managed by the same authority (only EAGGF).

Member State	2.6. Offsetting			
	Possible for public funds - national budget (Yes/No)	Applicable to all categories of debts and claims/only on a sectoral basis	Used to recover Community funds (Yes/No)	(If yes) 1) applicable only to debts and claims in the same sector or under the same Community Fund, managed by the same authority 2) between funds managed by different authorities that have established recovery coordination procedures
DK	In Danish law the term used is “modregning” (set-off), and this method is often used for recovery. Where set-off is not regulated by law the rule is that it must be applied between the same parties (“reciprocity” requirement), that the offsetter’s claim (set-off claim) must be due, and that the period for settlement of the principal’s claim (principal claim) must have begun (“settlement maturity” requirement), that the set-off claim must be legally enforceable, and that the claims are equatable (“computability” requirement, which means that both claims are of the same nature, i.e. that they are both pecuniary, for example).	Applied to all categories.	Yes.	1) The Directorate for Food, Fisheries and Agri-Business uses set-off extensively. The Directorate offsets both EU resources and national resources internally across aid schemes and funds. There are, however, a few exceptions to this set-off practice, for example the retirement schemes for farmers and fishermen, which are aid schemes with a social aim, where applying set-off would run counter to the schemes’ objective. The Directorate also applies external set-off - to a limited extent - in respect of claims received from the tax administration, for example. If set-off cannot be applied or if there is no sum to be offset, the claim is passed on to the Arrears Recovery Authority in the tax administration. In the field of the Social Fund, the National Agency for Enterprise and Construction applies set-off between different payment periods for grants to the same beneficiary, where payments are made as a matter of principle only in respect of costs incurred, or against a guarantee provided by a financial institution. Errors found during controls in the course of carrying out a project may involve set-off, and 20% of the grant is paid out only on approval of a project’s final accounts.
DE	Yes.	Not mentioned.	Yes.	The answer is not detailed enough.
EE	No, Estonia do not offset the state budget funds	Not applicable	Yes.	1) Applicable only to debts and claims in the same sector. The offsetting mechanism is used on a national level if the final recipient has not received the last payment in the project. In such cases the implementation unit deducts from the next payment (in the framework of the same project) a sum in the amount of the infringement.

Member State	2.6. Offsetting			
	Possible for public funds - national budget (Yes/No)	Applicable to all categories of debts and claims/only on a sectoral basis	Used to recover Community funds (Yes/No)	(If yes) 1) applicable only to debts and claims in the same sector or under the same Community Fund, managed by the same authority 2) between funds managed by different authorities that have established recovery coordination procedures
EL	Yes, a claim on the state can be offset against a debt to the state in any situation where the debtor has a financial claim against the state which is cleared and established by a final judgment or public document. The claims should be mutual, certain, cleared and proven . In cases where there are confirmed due debts to the public financial office and existing data show that the debtor has a claim on the state, offsetting is to be carried out automatically by the head of the public financial office.	Applied to all categories.	Yes.	1) Between Funds of the same type.
ES	Yes.	Applied to all categories.	Yes.	1) Between Funds of the same type and managed by the same authority.
FR	Yes. Reciprocal obligations must exist between the same two people. The two obligations must concern interchangeable items of the same type, in this case a sum of money; they must be certain and of a fixed amount and they must be due.	Applied to all categories.	Yes, under very strict conditions.	1) and 2) In principle Offsetting is only possible for a debt to one paying agency against the claim of the same paying agency. However, paying agency can use certain bailiff procedures (attachment of sums of money or of movable property in the hands of a third party, attachment of a debt). In some cases, IT procedures are in place to allow the application of offsetting automatically.

Member State	2.6. Offsetting			
	Possible for public funds - national budget (Yes/No)	Applicable to all categories of debts and claims/only on a sectoral basis	Used to recover Community funds (Yes/No)	(If yes) 1) applicable only to debts and claims in the same sector or under the same Community Fund, managed by the same authority 2) between funds managed by different authorities that have established recovery coordination procedures
IE	Yes, but only in a limited number of areas at a sectoral level, for example in tax recovery cases by the Revenue Commissioners, in cases of overpayment of welfare benefits in the Dept. of Social and Family Affairs and in certain grant payment cases in the Dept. of Agriculture and Food. Where offsetting does not feature, other procedures are in place for debt recovery.	In a limited number of areas at a sectoral level.	Yes.	1) Used 2) Not arisen, but difficulties may arise in this case.
IT	Yes (but only in cases provided for by law).	On a sectoral basis.	Yes.	2) Possible between different sectors of the EAGGF Guarantee Section and between different paying agencies coordinated under a special procedure
CY	Yes.	Only on a sectoral basis.	Yes.	1) For administrative reasons it applies only to debts and claims under the same Community Fund
LV	Yes.	On a sectoral basis.	Yes.	1) Offsetting can be used for recovery in the same sector and under the same Community fund.
LT	No.	Not applicable.	No, legal acts of the Republic of Lithuania do not regulate the offsetting of Community funds.	
LU	No answer received.	No answer received.	No answer received.	No answer received.

Member State	2.6. Offsetting			
	Possible for public funds - national budget (Yes/No)	Applicable to all categories of debts and claims/only on a sectoral basis	Used to recover Community funds (Yes/No)	(If yes) 1) applicable only to debts and claims in the same sector or under the same Community Fund, managed by the same authority 2) between funds managed by different authorities that have established recovery coordination procedures
HU	Yes. There can be offsetting between public debts and subsidies, but only to recover public debts, the person obliged to pay a tax cannot set off its existing claim against its tax liability. The offsetting is possible in cases provided for by law, e.g. under the taxation procedure Act, the public finances Act (when the beneficiary of a subsidy has any tax debt or unpaid liability concerning levies, fees or customs duties).	Applied to all categories.	Yes.	1) EAGGF: The Agricultural and Rural Development Agency (ARDA) shall transfer the appropriate subsidy amounts from the implementation accounts related to the different measure groups to the client's bank account or in the event that the client has public debts as specified in a decision, it shall transfer the sum of such debts to the appropriate account of TFCA separated by tax types. As regards the EAGGF Guarantee Section, debts are not differentiated in terms of the source. ARDA may eliminate the practice of its withholding right upon the client's written request if the default of subsidies makes the client's economic activities impossible.
MT	As general rule offsetting is not applied.	Not applicable.	No offsetting is applied.	Not applicable.
NL	No.	Not applicable.	Yes.	2) Offsetting occurs between Community funds managed by the same body. There is no offsetting between national and Community funds.
AT	Yes, where the claims or obligations are covered by private law.	Applied to all debts and claims.	Yes.	1) Offsetting is used as long as the debtor is also the creditor (reciprocal offsetting) and the claims are of the same time and are payable; offsetting between different types of funds will therefore cause problems. Offsetting is not possible Offset public debts against agriculture claims (i.e. ERDF).

Member State	2.6. Offsetting			
	Possible for public funds - national budget (Yes/No)	Applicable to all categories of debts and claims/only on a sectoral basis	Used to recover Community funds (Yes/No)	(If yes) 1) applicable only to debts and claims in the same sector or under the same Community Fund, managed by the same authority 2) between funds managed by different authorities that have established recovery coordination procedures
PL	Yes, offsetting is possible in the case of public funds (originating from the national budget) and this concerns all debts and claims. Under Polish law, excess payments and interest can be offset automatically against tax arrears plus late interest, late interest or current tax debt.	Applied to all debts and claims.	Yes.	2) between funds managed by different paying agencies that have established recovery coordination procedures.
PT	Yes.	Applied to any debts or claims (irrespective of the nature of the debts and payments concerned) and involves the redemption of obligations.	Yes.	1) Offsetting is possible between established entitlements under the same sector. For ERDF and Cohesion Fund Offsetting is used within the same programme or project. For EAGGF Guarantee section, Offsetting is an established practice at INGA.
SI	Yes.	Applied to all debts and claims.	Yes.	1) 2) Offsetting is used to recover Community funds in all cases, unless otherwise specified by law.
SK	Yes, in accordance to Act No 7/2005 Coll. on bankruptcy and claims from public funds.	Applied to all debts and claims.	Yes.	2) Is possible between claims concerning different branches and different funds.

Member State	2.6. Offsetting			
	Possible for public funds - national budget (Yes/No)	Applicable to all categories of debts and claims/only on a sectoral basis	Used to recover Community funds (Yes/No)	(If yes) 1) applicable only to debts and claims in the same sector or under the same Community Fund, managed by the same authority 2) between funds managed by different authorities that have established recovery coordination procedures
FI	Yes, there are provisions in sectoral public-law legislation (i.e. Tax Levy Act, Act on Discretionary Government Transfers, Pension Act and several Acts regulating recovery or financial aid).	On a sectoral basis, (in situation not covered by sectoral Acts the Courts have taken an unfavourable view of offsetting where there is no basis in law for it).	Yes, (in absence of more specific legislation, section 30 of the Act on Discretionary Government Transfers [668/2001] applies).	1) Offsetting of rural development aid and structural aid is possible if the aid was granted and paid by one and the same agency and if it was granted for projects carried out under the same programme and during the same programming period.
SE	No, there are no specific conditions for offsetting and it is not uncommon that the claim can not be offset or that the offsetting is subject to certain limitations - Special rules for Offsetting amounts that the State is liable to repay or pay according to certain rules that are laid down in the Act on Offsetting repayments concerning taxes and duties (1985:146)	Only for taxes and duties.	*Not possible to offset claims concerning EU-grants in enforcement cases (Case Ö2353-01 - Supreme Court *Not applicable to payments of EU-grants (special rules laid down in the Act on Offsetting repayments concerning Taxes and Fees 1985:146) *Offsetting can be used for payments of debts and claims concerning grants indicated in the Swedish Board of Agriculture 's Rules.	1) Offsetting can be used for the payment of debts and claims concerning the grants indicated in the Swedish Board of Agriculture's Rules for repayment of grants, i.e. payments between funds and different payments which are administrated by the same body. it is not possible to offset claims concerning EU-grants in enforcement cases.
UK	Yes, (but there are not generalised rules for it).	On a sectoral basis.	Yes.	For the Scottish Executive, 1) and 2): Cases involving more than one Department of the Scottish Executive would be handled jointly. In England and Wales 1) and 2) but in this latter case would be a decision for the appropriate secretariat to make.

3. THE DAS PROCEDURE (STATEMENT OF ASSURANCE BY THE MEMBER STATES) FOR CERTIFYING THE PROPER MANAGEMENT OF PUBLIC EXPENDITURE IN THE MEMBER STATES

Introduction

For the tenth consecutive year, the Commission, which is responsible for implementing the budget under Article 274 of the EC Treaty, has failed to obtain a positive statement of assurance for payments under the Community budget, with the exception of administrative expenditure. The main problem, according to the Court's reports, relates to the funds jointly managed with the Member States. Obtaining a positive DAS is one of the Barroso Commission's strategic objectives. On 15 June 2005 the Commission adopted a communication suggesting a number of measures for obtaining a positive DAS for the entire Community budget. The cooperation of Member States is being sought in order to ensure proper implementation of the Community budget and hence effective protection of the Community's financial interests.

The importance of the principle of equivalent protection laid down in Article 280 of the Treaty should be noted in this connection. For instance, it would be helpful to know whether there are certification systems (or statements of assurance) for the accounts used by the Member States for national expenditure. The questionnaire below concerns only ex post checks on payments and not the system of own resources.

3.1. Certification of national funds

3.1.1. By an internal body

In your Member States do you have an annual certification procedure for ensuring the legality and the regularity of public expenditure that is carried out by an internal authority and based on the checks and the reports of an internal auditor ? (Yes/No). If so, does the procedure apply to the budget as a whole or only to certain areas? What are these areas?

Is this certification issued by the internal auditor himself? (Yes/No). If not, by whom? The administrator responsible for the budget? The politician responsible?

Does the certifying body also give an opinion on the amounts which are likely to be recovered by the paying agencies?

At which level (national, regional) is this certification issued?

Is this annual certification of accounts submitted to the national (regional) parliament? (Yes/No). If so, for what purpose?

In your Member State do you have a central organization which has the task of harmonizing and coordinating the work of an internal auditor? (Yes/No).

Are the internal control systems in conformity with the international standards of internal public control (IIA, INTOSAI) or with other internal control standards accepted at international level (COSO, COSO ERM)? If not, are they being brought into line with such standards?

Member State	3.1.1. Certification of national funds by an internal body ⁴⁵							
	Description					Annual certification of accounts submitted to the national (regional) Parliament		Internal control standards
	Yes/No	Exists and is done by the internal auditor	If other, by whom	The certifying body also give an opinion on the amounts which are likely to be recovered by the paying agencies	Level of the certification	Yes/No	If so, for what purpose	
BE	No.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	
CZ	No	No.		No.	National level.	Yes.	information	Yes.
DK	Yes.	Yes.	Noanswer	Yes.	National.	No.	Not applicable.	Yes.
DE	No.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.
EE	Yes.	Yes.		Yes.	Department.	No.		Yes.
EL	No.	No.	No answer.			No.		No answer.
ES	No.	No.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	No answer.

⁴⁵ Internal body: individual, department or service dependent on the management and/or payment service for the budget to be certified.

Member State	3.1.1. Certification of national funds by an internal body ⁴⁵							
	Description					Annual certification of accounts submitted to the national (regional) Parliament		Internal control standards
	Yes/No	Exists and is done by the internal auditor	If other, by whom	The certifying body also give an opinion on the amounts which are likely to be recovered by the paying agencies	Level of the certification	Yes/No	If so, for what purpose	
FR	No.	Not applicable.	Not applicable.	No answer.	Not applicable.	not applicable	Not applicable.	Yes.
IE	Yes	No.	Comptroller and Auditor General	No .	Department	Yes.	For examination.	Not specified.
IT	No.	No.		No.		No.		No.
CY	No.	No.		No.				Yes (INTOSAI)
LV	Yes.	No.		Yes.	Top management.	No.		Yes.
LT	No.	No.		Yes.	National.	Yes.		Yes INTOSAI, IIA)
LU	Yes	Yes	Not applicable.	Oui.	National.	No	Not applicable.	No answer.
HU	Yes.	No.	The heads of budgetary bodies.	No answer.	National.	Yes.	Within the framework of annual budgetary reports.	IFAC, IAS.
MT	No answer received.	No answer received.	No answer received.	No answer received.	No answer received.	No answer received.	No answer received.	No answer received.
NL	Yes.	Yes.	Not applicable.	No.	National.	No(it may be requested)		Yes (IIA, INTOSAI)

Member State	3.1.1. Certification of national funds by an internal body ⁴⁵							
	Description					Annual certification of accounts submitted to the national (regional) Parliament		Internal control standards
	Yes/No	Exists and is done by the internal auditor	If other, by whom	The certifying body also give an opinion on the amounts which are likely to be recovered by the paying agencies	Level of the certification	Yes/No	If so, for what purpose	
AT	No.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	
PL	No.	No.	Not applicable.	No.	Not applicable	No.	Not applicable.	Yes (COSO)
PT	No.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.
SL	No.	No.	Not applicable.	Not applicable.	Not applicable.	No.		Yes.
SK	Yes.	Yes.		Yes.	National/regional.	Yes.	Transparency	YES (INTOSAI and IFAC)
FI	Yes.	No.	General Controller	No.	Agency.	Yes.	Transparency and responsibility	Yes (COSO ERM).
SE	No.	No.	not applicable	not applicable	not applicable	No.		Yes.
UK	Yes.	No.	Different in each region.	Yes.	National, regional and by fund	Yes.		Yes but different in each region.

3.1.2. *By an external body*

In your Member State is there a legal obligation to obtain from an external authority annual certification as to the legality and the regularity of public expenditure? (Yes/No). If so, does it apply to the budget as a whole or only to some areas? Which areas?

Does the certifying body also give an opinion on the amounts which are likely to be recovered by the paying agencies?

At which level (national, regional) is this certification issued?

On the basis of which documents (audits, reports) is this certification issued?

By which body is this certification issued?

Is it a public-law or a private-law body?

Is there legislation governing the approval of these bodies? If so, at which level (national, regional)?

Is this certification of accounts submitted to the national parliament? (Yes/No). If so, for what purpose?

Member State	3.1.2. Certification of national funds by an external body ⁴⁶									
	Description					Certifying body			Annual certification of accounts submitted to the national (regional) Parliament	
	Exists	If yes, it applies to the whole budget or not	Level of the certification	The certifying body also give an opinion on the amounts which are likely to be recovered	Documents on the basis of which the certification is issued	Name of the certifying body	Is it a public law or civil law body	Is there a legislation governing the approval of the certifying body	Yes/Non	If so, for what purpose

⁴⁶ External body: individual, department or service that is independent of the management and/or payment service for the budget to be certified. The annual reports adopted by external bodies and submitted to the national parliament are regarded as account certification systems.

Member State	3.1.2. Certification of national funds by an external body ⁴⁶									
	Description					Certifying body			Annual certification of accounts submitted to the national (regional) Parliament	
	Exists	If yes, it applies to the whole budget or not	Level of the certification	The certifying body also give an opinion on the amounts which are likely to be recovered	Documents on the basis of which the certification is issued	Name of the certifying body	Is it a public law or civil law body	Is there a legislation governing the approval of the certifying body	Yes/Non	If so, for what purpose
BE	Non ⁴⁷ .	Yes.	Regional.	NO	Depends on the Region.	Cour des Comptes.	Public law.		Yes.	Efficiency.
CZ	No.	No reply.	No reply.	NO	No reply.	No reply.	No reply.	No reply.	No reply.	No reply.
DK	Yes.	Yes.	National	Yes.	Audit reports	Rigsrevision.	Public.	Yes.	Yes.	Approval of national public accounts.
DE	Yes.	No.	Federal and regional.	No answer.	No reply.	No reply.	No reply.	No reply.	Yes.	No reply.

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The certification of accounts by an external body does, however, exist for the budget of certain regions.

Member State	3.1.2. Certification of national funds by an external body ⁴⁶									
	Description					Certifying body			Annual certification of accounts submitted to the national (regional) Parliament	
	Exists	If yes, it applies to the whole budget or not	Level of the certification	The certifying body also give an opinion on the amounts which are likely to be recovered	Documents on the basis of which the certification is issued	Name of the certifying body	Is it a public law or civil law body	Is there a legislation governing the approval of the certifying body	Yes/Non	If so, for what purpose
EE	Yes.	Yes.	National.	No answer.		State Audit Office	Public law.	Yes.	Yes.	Efficiency
EL	No			No answer.						
ES	No.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	
FR	Yes.	Whole budget.	National.	Not always (only if it affects to the audit and the presentation of the accounts)	Cycles de contrôle.	Cour des Comptes.	Public law.	Yes.	Yes.	Budgetary choice by the Parliament.

Member State	3.1.2. Certification of national funds by an external body ⁴⁶									
	Description					Certifying body			Annual certification of accounts submitted to the national (regional) Parliament	
	Exists	If yes, it applies to the whole budget or not	Level of the certification	The certifying body also give an opinion on the amounts which are likely to be recovered	Documents on the basis of which the certification is issued	Name of the certifying body	Is it a public law or civil law body	Is there a legislation governing the approval of the certifying body	Yes/Non	If so, for what purpose
IE	Yes.	Whole budget.	National.	No but there is a separate Statement of Assets and Liabilities attached to the accounts which will contain amounts likely to be recovered, but they are not separately identified	Annual audit.	Comptroller and Auditor General	Public.	Yes.	Yes.	For examination.
IT	Yes	No answer.	National.	No answer	No answer.	Court of Auditors	Public law.	Yes.	Yes.	No answer.
CY	Yes.	Yes.	National.	YES	Annual audits of the Supreme Audit Institution.	Auditor General	Public body.		Yes.	Information.

Member State	3.1.2. Certification of national funds by an external body ⁴⁶									
	Description					Certifying body			Annual certification of accounts submitted to the national (regional) Parliament	
	Exists	If yes, it applies to the whole budget or not	Level of the certification	The certifying body also give an opinion on the amounts which are likely to be recovered	Documents on the basis of which the certification is issued	Name of the certifying body	Is it a public law or civil law body	Is there a legislation governing the approval of the certifying body	Yes/Non	If so, for what purpose
LV	Yes.	Yes.		YES	Financial audits.	State Audit Office	Public body.	Yes.	Yes.	Opinion for the Parliament.
LT	Yes.	Yes.	National.	YES	Several.	National Audit Office	Public body.		Yes.	Opinion.
LU	Yes	Yes	National.	YES	No answer	Cour des Comptes	Public body.	No answer.	Yes	No answer
HU	Yes.	Yes.	National.	YES if decided	Audit reports.	State Audit Office.	Public body.		Yes.	Discussion.

Member State	3.1.2. Certification of national funds by an external body ⁴⁶									
	Description					Certifying body			Annual certification of accounts submitted to the national (regional) Parliament	
	Exists	If yes, it applies to the whole budget or not	Level of the certification	The certifying body also give an opinion on the amounts which are likely to be recovered	Documents on the basis of which the certification is issued	Name of the certifying body	Is it a public law or civil law body	Is there a legislation governing the approval of the certifying body	Yes/Non	If so, for what purpose
MT	Yes	Yes	National.	No	Financial Statements of the Accountant General and Accounting Officers	Auditor General	Public law body.	Constitution	Yes	To take corrective actions.
NL	Yes.	Yes.	National.	NO	Court's own research.	Netherlands Court of Auditors.	Public-law body.	Yes.	Yes.	Legality and efficiency.
AT	No ⁴⁸ .	Not applicable.	Not applicable.	N.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.

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Even if Austria's Court of Auditors is not obliged to provide certification of the reliability of federal and provincial accounts, the Court examines whether the utilisation of public funds is in compliance with the principles of efficiency and effectiveness.

Member State	3.1.2. Certification of national funds by an external body ⁴⁶									
	Description					Certifying body			Annual certification of accounts submitted to the national (regional) Parliament	
	Exists	If yes, it applies to the whole budget or not	Level of the certification	The certifying body also give an opinion on the amounts which are likely to be recovered	Documents on the basis of which the certification is issued	Name of the certifying body	Is it a public law or civil law body	Is there a legislation governing the approval of the certifying body	Yes/Non	If so, for what purpose
PL	Yes.	Agriculture expenditure.	national	NO	Audit reports and checks.	Private auditor.	Private law body.		Yes.	discharge of the annual budget
PT	Yes	Yes	National.	No	Audits.	Court of Accounts.	Public body.	Not applicable.	Yes	Approval.
SL	Yes.	Yes.	National.	No answer	No answer.	Court Audit	Public.	No answer.	Yes.	Information.
SK	Yes.	Yes.	National.	YES	Internal auditors reports and own controls.	National Control Authority.	Public body.	Yes.	Yes.	Debate and agreement.

Member State	3.1.2. Certification of national funds by an external body ⁴⁶									
	Description					Certifying body			Annual certification of accounts submitted to the national (regional) Parliament	
	Exists	If yes, it applies to the whole budget or not	Level of the certification	The certifying body also give an opinion on the amounts which are likely to be recovered	Documents on the basis of which the certification is issued	Name of the certifying body	Is it a public law or civil law body	Is there a legislation governing the approval of the certifying body	Yes/Non	If so, for what purpose
FI	Yes.	Yes.	Accounting office.	NO except in cases of abuses or crime.	Final accounts and activity report.	State Audit Office.	Public.	Yes.	Yes.	legality and Efficiency.
SE	Yes.	Yes	National.	NO	Individual authority's annual accounts.	Swedish National Audit Office	Public.		Yes.	Control by the Parliament.
UK	Yes.	Yes.	National and project.	YES	Annual accounts.	Audit Offices from different regions.	Public for national and private for projects.	Yes.	Yes.	Not specified.

3.2. Control of Community funds (jointly managed funds)

3.2.1. EAGGF Guarantee Section

Article 6 of Regulation (EC) No 1258/1999 requires Member States to transmit to the Commission each year the “annual accounts, accompanied by the information required for clearance”. Article 3(1) of Regulation No 1663/1995 states that it refers to the certificate issued each year by the certifying body, which is based on the examination of procedures and of a sample of transaction accompanied by a report that, in particular, states whether the certifying body has gained reasonable assurance that the accounts to be transmitted to the Commission are true, complete and accurate and that the internal control procedures have operated satisfactorily.

Could these certification bodies fulfil the conditions necessary to be recognized by the national authorities as being competent to certify the national accounts? (Yes/No). If not, why?

Does the certifying body also give an opinion on the amounts which are likely to be recovered by the paying agencies?

3.2.2. Structural Funds

As regards the Structural Funds, Article 38(1)(f) of Regulation No 1260/1999 and Article 15 of Regulation No 438/2001 provide for the presentation of a declaration by a person or department having a function independent of the management authority when each assistance is wound up (programming).

Which person/department is competent to issue this declaration?

Is that person/department also competent to certify the national accounts? (Yes/No). If not, why?

Does the certifying body also give an opinion on the amounts which are likely to be recovered by the paying agencies?

Member State	3.2.1. Control of Community funds, EAGGF Guarantee Section		3.2.2. Control of Community funds, Structural Funds		
	The certification body fulfil the conditions necessary to be recognized by the national authorities as being competent to certify the national accounts	The certifying body also give an opinion on the amounts which are likely to be recovered by the paying agencies	Competent person/department	This person or department is also competent to certify the national accounts	The certifying body also give an opinion on the amounts which are likely to be recovered by the paying agencies

Member State	3.2.1. Control of Community funds, EAGGF Guarantee Section			3.2.2. Control of Community funds, Structural Funds		
	The certification body fulfil the conditions necessary to be recognized by the national authorities as being competent to certify the national accounts		The certifying body also give an opinion on the amounts which are likely to be recovered by the paying agencies	Competent person/department	This person or department is also competent to certify the national accounts	The certifying body also give an opinion on the amounts which are likely to be recovered by the paying agencies
	Yes/Non	If not, why?				
BE	No.	No legal basis.	Yes (Wallonia).	Functions of the Region.		Yes, with the exception of the ESF of the Flemish region.
CZ	Yes.		Yes.	Central Harmonisation Unit for Financial Control- Ministry of Finance.	No.	No.
DK	No.	It is a private law body.	Yes.	Several in function of the financial instrument.	Yes/No	Yes.
DE	No reply	No reply.	No reply.	Several at Lander level.	No.	Yes.
EE	No.	No legal basis.	No.	Ministry of Finance.	No.	No.
EL	Yes.		Sometimes.	Committee of Budgetary Control.	No.	
ES	No.	No certification of national accounts.	Not applicable.	Ministry of Economy and Finances for the national level and General Intervention Services for the regions.	Yes	Yes
FR	Yes.		Yes.	Interministerial committee.	No.	Not specified.
IE	Yes	Constitutional provision.	Yes.	Head of internal audit in the relevant Ministry.	No.	Yes.
IT	No.	National accounting rules provide for other control systems.	Yes.	Several ministries.	YES (for the national co-financing).	Yes.
CY	Yes.		Yes.	Internal Audit Service.	No.	No.

Member State	3.2.1. Control of Community funds, EAGGF Guarantee Section			3.2.2. Control of Community funds, Structural Funds		
	The certification body fulfil the conditions necessary to be recognized by the national authorities as being competent to certify the national accounts		The certifying body also give an opinion on the amounts which are likely to be recovered by the paying agencies	Competent person/department	This person or department is also competent to certify the national accounts	The certifying body also give an opinion on the amounts which are likely to be recovered by the paying agencies
LV	Yes.		Yes.	Financial Control Department (MoF).	No.	Yes.
LT	Yes.		Yes.	National Audit Office.	Yes.	Yes.
LU	Yes	Not applicable.	Yes	Inspection Générale des Finances	No answer	Yes
HU	No answer		Yes.	Government control office.	No.	Yes.
MT	No.	. No competencies.	Yes	Internal Audit and Investigations Directorate.	No.	Yes
NL	Yes.		No.	Several ministries.	Yes.	No.
AT	Yes(in the Land of Zollamt/Salzburg/Erstattungen)	Different objectives.	Yes.	Several Federal ministries.	No.	Yes.
PL	Yes.		Yes.	Body for Certifying and issuing declarations on EU assistance.	No.	No.
PT	Yes		Yes	General Inspection of Finances.	Yes	Yes
SL	Yes.		Yes.	Budget Supervision Office.	No.	Yes.
SK	Yes.		Yes.	National Control Authority.	Yes.	Yes.
FI	Yes.		Yes.	Several Ministries.	No.	Yes.
SE	No.	No competences.	No.	Several departments depending on the programmes.	No.	No.

Member State	3.2.1. Control of Community funds, EAGGF Guarantee Section			3.2.2. Control of Community funds, Structural Funds		
	The certification body fulfil the conditions necessary to be recognized by the national authorities as being competent to certify the national accounts		The certifying body also give an opinion on the amounts which are likely to be recovered by the paying agencies	Competent person/department	This person or department is also competent to certify the national accounts	The certifying body also give an opinion on the amounts which are likely to be recovered by the paying agencies
UK	Yes.		In some cases, Yes.	Head of internal audit in the relevant Ministry.	No.	Yes.