



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.7.2004
COM(2004) 509 final

2004/0172 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on mutual administrative assistance for the protection of the financial interests of the
Community against fraud and any other illegal activities**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. PURPOSE

The European Community's financial interests, which are closely intertwined with those of the Member States, are exposed to various forms of fraud and other illegal activities which damage the Community's budget income and expenditure¹. The fight against fraud is a common concern and a common challenge both for the Member States and for the Commission. It is more than ever an important element on the Commission's political agenda.

EC fraud often relies on organised and transnational structures making skilful use of the financial system to launder and conceal the proceeds of EC fraud. Organised crime, taking advantage of the market freedoms provided by European integration, often spreads its activities over several Member States. This is particularly the case in the fields of transnational VAT fraud, laundering of the proceeds of EC fraud and structural funds fraud.

Where Member States' authorities are confronted with complex fraud schemes that are linked to two or more Member States, swift and multilateral administrative cooperation in any necessary investigation is essential. Information has to be exchanged between several Member States' authorities and the connections between all those involved in EC fraud and laundering of criminal proceeds have to be established in order to provide for quick and coordinated action.

The effectiveness of multilateral operational cooperation depends very much on coordination and support. Cooperation in fraud matters in a single market now comprising 25 Member States will be increasingly difficult without support and coordination at European level. Thus, there is a clear added value in giving the Commission a support and coordination role, as it is in the best position to have a general overview of EC fraud activities and also treats all Member States' interests with the same degree of care and attention. This would in turn allow for more targeted and streamlined action by the Member States.

The existing legal framework for administrative cooperation is, however, incomplete in providing for an active role for the Commission in supporting and coordinating Member States' activities, which is in particular the case in the field of VAT fraud and information on money laundering related to EC fraud.

2. MAIN FEATURES

The proposed Regulation would provide added value for the Member States' competent authorities as it would allow the Commission to better fulfil its role as a coordinator of Member States' activities in fighting fraud. It will improve multilateral cooperation between the Member States and with the Commission, for instance via coordination meetings organised by the Commission at European level.

On the one hand, the initiative builds on existing legislation. On the other hand, it aims at completing the already existing cooperation instruments at the level of the Community as well

¹ Fraud and irregularities detrimental to the European Community's financial interests are hereafter referred to in this explanatory memorandum as "EC fraud".

as of the European Union using their features and developing them in new areas of cooperation, thereby achieving equivalent and efficient protection of the Community's financial interests. To this end it uses the standards developed in those other instruments in particular Council Regulation (EC) No 515/97² and Council Regulation (EC) No 1798/2003³.

In view of the need to concentrate its support efforts on cases of particular relevance at Community level, the Commission proposes to link the application of this Regulation to specific thresholds, thereby targeting more precisely complex cases of serious fraud which present a need for criminal follow-up.

This draft regulation is limited to mutual administrative assistance. It does not grant any additional investigative powers to the Commission, including the European Anti-Fraud Office (OLAF). It reinforces the mechanisms for cooperation and the exchange of information. Therefore it provides the basis and tools for multidisciplinary cooperation between the relevant competent authorities of different Member States and between them and the Commission.

If anti-fraud cooperation is to be efficient and effective, the relevant actions performed by all partners must be integrated. Based on the concept of Article 280(3) of the EC Treaty close and regular cooperation applies on a multidisciplinary basis to all authorities designated as responsible by the Member States for the protection of the financial interests of the Community.

According to its coordination role assigned by Article 280 of the EC Treaty the Commission and the European Anti-Fraud Office (OLAF) can support the Member States in their action against EC fraud. This will be achieved by exchanges of information and by using the Commissions facilities and infrastructures (network, databases, administrative cooperation tools, etc.) as well as by assisting subsequently coherent follow-up activities. The latter would be strengthened as information gathered or transferred by the Commission may be used as evidence in administrative or judicial proceedings.

The proposed Regulation would allow the Commission to offer Member States improved and reliable intelligence including detailed reports and in particular a clearer picture of new fraud trends and vulnerable sectors as a result of its analytical work. It will also contribute to linking the information available with the persons behind organised fraud.

Finally, the protection of the Community's financial interests also requires effective follow-up action after an investigation has taken place.

3. SPECIFIC RELEVANCE TO POLICY AREAS OTHER THAN CUSTOMS AND AGRICULTURE

Except in the areas of customs and agriculture (Council Regulation (EC) No 515/97), Community legislation does not yet provide for specific rules on mutual administrative cooperation with the Commission.

² OJ L 82, 22.3.1997, p. 1.

³ OJ L 264, 15.10.2003, p. 1.

3.1 Money laundering legislation and the protection of the Community's financial interests

The concept of Article 280 of the EC Treaty concerns "*fraud and any other illegal activities affecting the financial interests of the Community*" including money laundering related to the proceeds of illegal activities harmful to the Community's financial interests.

In the case of money laundering, generally, information on suspicious financial transactions is required in order to launch an investigation and identify the original illegal activity further upstream. At the same time, it is the discovery of the fraud which, at the stage of seeking to recover funds, allows laundering acts and circuits to be detected, hence administrative information-sharing at European level that focuses on illegal activities detrimental to the Community's financial interests would bring significant added value.

3.2 Mutual administrative assistance in the field of VAT fraud and Council Regulation (EC) No 1798/2003 on administrative cooperation between the Member States in the field of VAT fraud

The current VAT system, based on the sixth Directive⁴ is vulnerable to fraud⁵. The detrimental effects of VAT fraud to the Member States' and to the Community's budget have been estimated by some Member States as being up to 10% and more of their net VAT receipts.

As net VAT receipts contribute towards the calculation of VAT Own Resources payable to the Community Budget which are determined from national volumes of transactions subject to VAT by applying a uniform rate of 0.5%, large-scale VAT fraud may negatively impact Member States' VAT revenues and consequently their contributions to the Community budget. As this aspect affects the financial interests of the Community, the Commission has a strong interest and indeed an obligation to take action in support of Member States' operational activities aimed at combating serious VAT fraud.

Administrative cooperation between the competent authorities of the Member States as provided on the basis of Council Regulation (EC) No 1798/2003 on administrative cooperation in the field of VAT⁶ – to which this proposal is complementary – is indeed an appropriate and sufficient way of exchanging information in order to control the correct application of intra-Community transactions and constitutes an adequate instrument to counter the most common cases of VAT infringements⁷. But there is also an urgent need for supplementary assistance and coordination at European level to tackle the most complex and serious cases of VAT fraud with ramifications in several Member States.

⁴ Sixth Council Directive 77/388/EEC, 17.5.1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2004/15/EC (OJ L 52, 21.2.2004, p. 61).

⁵ Cf. Report from the Commission to the Council and the European Parliament on the use of administrative cooperation arrangements in the fight against VAT fraud, COM(2004) 260 final.

⁶ OJ L 264, 15.10.2003, p. 1.

⁷ Cf. Report from the Commission to the Council and the European Parliament on the use of administrative cooperation arrangements in the fight against VAT fraud, COM(2004) 260 final, paragraphs 1, 4.4 and 5.2.

3.3 Mutual assistance instruments against fraud in fields of Community expenditure other than agriculture

Community expenditure can involve payments, subcontractors and subsidiaries in different Member States so that in the case of irregularities, investigations need to be carried out in more than one Member State. Currently, there are no appropriate instruments providing for rules of horizontal or vertical administrative mutual assistance that allow such fraud schemes to be tackled. The same is true for fraud matters in the fields of EC direct expenditure.

4. RELATIONSHIP WITH EXISTING ANTI-FRAUD INSTRUMENTS

This legislative initiative is concerned with a very specific purpose of administrative cooperation in relation to combating and preventing EC fraud and related money laundering, while being part of a regulatory framework consisting of both administrative and criminal law instruments aimed at strengthening the fight against fraud but without interfering with these existing instruments. It aims at complementing the existing anti-fraud instruments, in particular Regulation (EC) No 1073/1999 of the European Parliament and the Council⁸ and Council Regulation (EC, Euratom) No 2185/96⁹.

Exchange of information between the competent authorities at an early stage would contribute substantially towards deterring irregularities, especially in the field of money laundering¹⁰. The rules on mutual assistance laid down in this proposed Regulation are therefore complementary to instruments of criminal law adopted by the Council under the third pillar.

5. OUTLINE OF THE DRAFT REGULATION

Title I - General provisions: Articles 1 - 4

Article 1 specifies the purpose and the content of the Regulation providing rules on mutual administrative assistance between the authorities of the Member States responsible for the protection of the Community's financial interests for those areas of Community cooperation which have lacked such provisions until now.

Article 2 describes the scope of application of this Regulation and clarifies the relation with the Community legislation in force by underlining the complementary nature of this proposal. The principle of subsidiarity is respected by the limitation to cases of particular relevance at Community level.

Article 3 provides for specific definitions relevant for the application of this Regulation. Corresponding to the "horizontal" scope of this Regulation, its concepts apply to the various areas of the EC budget.

⁸ OJ L 136, 31.5.1999, p. 1.

⁹ Council Regulation (Euratom, EC) No 2185/96 of 11.11.1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities, OJ L 292, 15.11.1996, p. 2.

¹⁰ See the Explanatory Report (OJ C 91, 31.3.1999, p. 8), and in particular the section on Article 7 of the Second Protocol. See also footnote 6.

The notion of “irregularity” used in this Regulation covers relevant conduct detrimental to the Community’s financial interests, including illegal conduct within the meaning of Article 1(2) Council Regulation (EC, Euratom) No 2988/95 on of 18 December 1995 on the protection of the European Communities financial interests¹¹ but is not limited to this concept, in order that it should also cover money laundering and VAT fraud.

The limitation to cases of “particular relevance at Community level” enables the Commission to concentrate on cases where significant added value can be provided to Member States. It also helps to prevent the Commission services from being overloaded with information and requests relating to cases of minor relevance. Relevant cases need to have ramifications in or links with other Member States. For VAT the threshold shall be EUR 500 000 of presumed fiscal damage in the Member States. In the other areas covered by this Regulation the threshold of the supposed damage is EUR 100 000. The thresholds could be raised through implementing rules.

Article 4(1) specifies the “competent authorities”. They comprise the competent Member States’ authorities following a comprehensive and multidisciplinary approach, as well as the Commission, which takes part in or coordinates mutual administrative assistance and the exchange of information between Member States.

Article 4(2) refers to the internal status of the competent authorities setting the rule that cooperation shall not be impeded by reason of their different status under internal Member States’ law.

Title II - Cooperation Duties: Articles 5 - 14

Title II lays down provisions on administrative cooperation and exchange of information between the competent authorities including the Commission.

Chapter I – Mutual assistance and exchange of information

Section 1 - Assistance on Request

Article 5 establishes the possibility of requesting assistance and the obligation to comply with such a request. This article is aimed at facilitating cooperation between the competent authorities. It sets out how information is to be gathered and exchanged.

Article 6 follows the example of Article 7 of Council Regulation (EC) No 515/97 providing for the carrying out of a special watch.

Article 7 lays down rules on the conduct of administrative enquiries at the request of competent authorities and on the participation of officials from the applicant authority in the enquiry.

Article 8 authorises the activity of an official of a competent authority in another Member State concerning access to documents in the requested authority’s offices - following similar provisions in Council Regulation (EC) No 515/97 and in Council Regulation (EC) No 1798/2003.

¹¹ OJ L 312, 23.12.1995, p. 1.

Article 11(1) provides for Commission access to Member States' records on transactions via the VIES (VAT information exchange system)¹². It will add an important element of information to the Commission's coordination capability.

Section 2 - Spontaneous Assistance

Article 12 provides for the supply of information to the Commission about operations which constitute or appear to constitute an irregularity, i.e. those cases where there is a sound suspicion of an irregularity. The information is pooled and analysed by the Commission in order to provide to the Member States enhanced intelligence support and coordination.

Article 13 provides for rules on the conduct of a special watch without a specific request for the purposes of this Regulation and the communication on respective information.

Article 14 lays down rules on the communication of general information by the Member States in order to create fraud-proof Community legislation and to allow the implementation of an overall, Community-wide anti-fraud policy.

Chapter II - Use of Information

Article 15 contains a similar rule as provided for in article 12 of Council Regulation (EC) No 515/97 for the use as evidence in administrative or judicial proceedings of documents and material obtained under the proposed Regulation, aiming at strengthening the follow-up of Member States' investigation activities.

Article 16 shall facilitate the exchange of information gathered by the Commission in the context of multidisciplinary cooperation.

Article 17 ensures that once irregularities have been object of mutual assistance under this Regulation, the Member States keep the Commission informed of their follow-up.

Article 18 provides that information may only be exchanged and used for the purposes of this proposed Regulation on a need-to-know basis. The exchange of information must be organised in accordance with the rules of confidentiality and is subject to professional secrecy.

Article 19 contains the obligation - under certain conditions - to exchange information obtained under this proposed Regulation from a third country in order to afford effective protection of the financial interests of the Community.

Article 20 provides that the Commission shall have the possibility to make use of its own risk analysis capabilities in order to provide the Member States' authorities with reports and risk-related information to enhance their effectiveness in fighting fraud.

Article 21 provides for implementing measures in the execution of this proposed Regulation. Implementing rules shall be adopted by the Commission following the regulatory procedure as laid down in the comitology Decision 1999/468/EC¹³.

¹² VIES = VAT Information Exchange System, established by Council Regulation (EEC) No 218/92 and continued by Council Regulation (EC) No 1798/2003.

¹³ OJ L 187, 17.7.1999, p. 23.

Article 22 specifies that the Commission will be assisted by a Regulatory Committee for the purpose of the adoption of the implementing measures. The Committee shall exercise its functions together with the Committee under Council Regulation (EC) No 515/97 without prejudice to the competencies of other committee in particular the one under Regulation (EC) No 1798/2003. The Committee shall coordinate closely with other committees.

Proposal for a

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**on mutual administrative assistance for the protection of the financial interests of the
Community against fraud and any other illegal activities**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 280(4) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Court of Auditors²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

- (1) The Community and the Member States attach great importance to the protection of the financial interests of the Community and to the fight against fraud and any other illegal activities affecting those interests.
- (2) The Community framework on mutual assistance should permit close and regular cooperation between the competent authorities of the Member States as well as between the latter and the Commission, in order to protect the Community's financial interests in all areas of Community financial resources and expenditure.
- (3) The provisions of this Regulation should not affect the conduct of investigations by the European Anti-Fraud Office through the use of investigative powers and in compliance with the safeguards provided for in Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁴. The scope of this Regulation should be limited to certain forms of assistance, exchange of information and coordination which may precede, follow or accompany OLAF's investigative activities.
- (4) The introduction of new Community measures should not be such as to affect the application of national criminal law and of rules on mutual assistance in criminal matters or the national administration of justice.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ L 136, 31.5.1999, p. 1.

- (5) The fight against transnational fraud and any other illegal activities affecting the financial interests of the Community demands enhanced coordination at Community level as well as multidisciplinary cooperation with the Member States' authorities in the field of fraud and any other illegal activities, which are in many cases related to structures of organised crime and are detrimental to the Community's financial interests. This Regulation should further permit cooperation between all the competent authorities of the Member States, and between the latter and the Commission.
- (6) The provisions of this Regulation should not affect Community legislation which provides for more specific or extensive cooperation between the Member States and the latter and the Commission, such as Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters⁵, or Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92⁶.
- (7) The exchange of information is a key element in the fight against fraud and any other illegal activities affecting the financial interests of the Community. Information provided by the Member States to the Commission should be used by the Commission to form a comprehensive view on Europe-wide fraud and other illegal activities and to communicate that view to the Member States.
- (8) Fraud and any other illegal activities affecting the financial interests of the Community, in particular in transnational cases which often involve organised international fraud schemes in two or more Member States, can be prevented and fought most effectively if information of an operational, statistical or general nature is analysed and subjected to risk analysis at Community level, using the intelligence and risk-analysis capacity of the Commission in general and OLAF in particular.
- (9) The fight against fraud and any other illegal activities affecting the financial interests of the Community also necessitates a coherent follow-up. Information gathered or transferred by the Commission should therefore be admissible as evidence in administrative and judicial proceedings.
- (10) In the interest of successful cooperation between the competent authorities of the Member States and the Commission, the exchange of information should be organised in accordance with the rules of confidentiality where information is subject to professional secrecy, while ensuring that personal data processed pursuant to the new provisions enjoys proper data protection.
- (11) Due consideration should be given to the data protection rules applying to the Community institutions set out in Article 286 of the Treaty and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the

⁵ OJ L 82, 22.3.1997, p. 1. Regulation as amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

⁶ OJ L 264, 15.10.2003, p. 1. Regulation as amended by Regulation (EC) No 885/2004 (OJ L 168, 1.5.2004, p. 1).

Community institutions and bodies and on the free movement of such data⁷, as well as those applying to the Member States on the basis of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.⁸

- (12) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁹.
- (13) Since the objectives of the action to be taken, namely the fight against fraud and any other illegal activities affecting the financial interests of the Community cannot be sufficiently achieved by the Member States and can therefore by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (14) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1 *Subject matter*

This Regulation establishes the legal framework for mutual administrative cooperation and exchange of information between the competent authorities of the Member States and between those authorities and the Commission, in order to ensure equivalent and effective protection of the financial interests of the Community against fraud and any other illegal activities.

Article 2 *Scope*

1. This Regulation shall apply in cases of fraud and any other illegal activities affecting the financial interests of the Community which are of particular relevance at Community level.

⁷ OJ L 8, 12.1.2001 p. 1.

⁸ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁹ OJ L 184, 17.7.1999, p. 23.

The competent authorities of the Member States may also exchange information and provide assistance pursuant to this Regulation in other situations where they consider such exchange of information and assistance at Community level to be necessary in countering fraud and any other illegal activities affecting the financial interests of the Community.

2. The provisions of this Regulation shall not apply to the extent that Community legislation provides for more specific cooperation between the Member States and between the latter and the Commission, or provides for broader access to information by the Commission.

In particular, this Regulation shall not affect the application of Regulation (EC) No 515/97 and the cooperation between Member States under Regulation (EC) No 1798/2003.

3. This Regulation shall not affect the application of Regulation (EC) No 1073/1999.
4. This Regulation shall not affect the application of national criminal law or of rules on mutual assistance in criminal matters or the national administration of justice.
5. The obligation to give assistance provided for in this Regulation shall not cover the provision of information or documents obtained by the competent administrative authorities acting with the authorisation or at the request of the judicial authority.

However, in the event of requests for assistance, such information or documents shall be provided if the judicial authority which is to be consulted on the matter gives its consent.

Article 3 ***Definitions***

For the purposes of this Regulation the following definitions shall apply:

1. “irregularity” means fraud and any other illegal activities with particular relevance at Community level, affecting the financial interests of the Community, and in particular:
 - (a) any infringement of a provision of Community law resulting from an act or omission by an economic operator, including breaches of contracts arising under provisions of Community law, which has, or would have, the effect of prejudicing the general budget of the Community or budgets managed by it, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Community, or by an unjustified item of expenditure;

- (b) any infringement of legislation relating to value added tax (VAT) as referred to in Council Directive 77/388/EEC¹⁰, which has or would have the effect of diminishing the Communities' own resources as referred to in Council Regulation (EEC, Euratom) No 1553/89¹¹;
 - (c) money laundering, within the meaning of Article 1(c) of Council Directive 91/308/EEC¹², in relation to the proceeds of an infringement as referred to in points (a) and (b);
- 2. "irregularities of particular relevance at Community level" means irregularities:
 - (a) which have or might have ramifications in other Member States, or where there are tangible links with operations carried out in other Member States; and
 - (b) which are estimated to cause overall fiscal damage in the Member States concerned in excess of EUR 500 000 in the area of VAT, or to cause damage to the Community's financial interests of EUR 100 000 or more in the other cases covered by this Regulation; in case of money laundering the threshold applies to the predicate offence;
- 3. "legislation relating to VAT" means all the Community provisions governing value added tax and the laws and regulations adopted by the Member States in order to comply with these Community provisions;
- 4. "applicant authority" means a competent authority which makes a request for assistance;
- 5. "requested authority" means a competent authority to which a request for assistance is made;
- 6. "administrative enquiries" means all controls, checks and other action undertaken by the competent authorities in the performance of their duties with a view to establishing whether irregularities have been committed, excluding action taken at the request of, or under a direct mandate from, a judicial authority;
- 7. "financial information" means information on suspicious transactions received by the competent national contact points pursuant to Directive 91/308/EEC and other information that is appropriate for tracing the financial transactions linked to irregularities covered by this Regulation;
- 8. "competent authorities" means the national or Community authorities referred to in Article 4(1).

¹⁰ OJ L 145, 13.6.1977, p. 1.

¹¹ OJ L 155, 7.6.1989, p. 9.

¹² OJ L 166, 28.6.1991, p. 77.

The thresholds set out in point (2)(b) may be increased in accordance with the procedure referred to in Article 22(2).

Article 4 *Competent authorities*

1. Cooperation under this Regulation shall include the following competent authorities, acting within the scope of their respective powers:
 - (a) the Member States' authorities which are :
 - (i) directly responsible for the management of financial funds originating from the Community budget and designated as such by relevant Community law and national law provisions; or
 - (ii) responsible under the applicable national provisions of administrative law for the prevention of and the fight against fraud and any other illegal activities affecting the financial interests of the Community; or
 - (iii) the competent authorities listed in Regulation (EC) No 1798/2003, the respective central liaison offices and liaison departments designated pursuant to that Regulation, other tax investigation authorities competent to investigate VAT fraud or the competent authorities referred to in Council Directive 92/12/EEC¹³ insofar as information gathered may afford evidence of VAT fraud; or
 - (iv) set up as "financial intelligence units" by the Member States pursuant to Council Decision 2000/642/JHA¹⁴ to collect and analyse information received under the provisions of Directive 91/308/EEC.
 - (b) the Commission, including the European Anti-Fraud Office (OLAF).
2. Member States shall take the necessary measures to ensure the exchange of information between their competent authorities, regardless of their competencies and internal status, and between the latter and the Commission.

¹³ OJ L 76, 23.3.1992, p. 1.

¹⁴ OJ L 271, 24.10.2000, p. 4.

TITLE II COOPERATION DUTIES

CHAPTER 1 MUTUAL ADMINISTRATIVE ASSISTANCE AND EXCHANGE OF INFORMATION

Section 1 Assistance on request

Article 5 Assistance on request

1. The competent authorities shall assist each other on request to prevent and detect irregularities. At the request of the applicant authority, the requested authority shall, as far as is required to satisfy the purposes of the request and in accordance with objectives of this Regulation, transmit to the applicant authority all information of relevance for the prevention and detection of irregularities. The information to be transmitted shall include information on the operations constituting the irregularity as well as financial information, both on the underlying operations and on the natural or legal persons involved.
2. In order to obtain the information sought, the requested authority or the administrative authority to which it has recourse shall proceed as though acting on its own account or at the request of another authority in its own Member State.
3. The requested authority shall make available any information in its possession or obtained by it concerning operations or transactions, detected or planned, which constitute or which appear to the applicant authority to constitute, irregularities or, where applicable, concerning findings of a special watch carried out pursuant to Article 6.

It shall supply the applicant authority with any attestation, document or certified true copy of a document in its possession or obtained by it. However, original documents and items shall be provided only where this is not contrary to the legislation in force in the Member State in which the requested authority is based.

4. Requests for assistance and information exchange shall be accompanied by a brief statement of the facts known by the applicant authority.
5. If the applicant authority addresses its request to an authority which is not competent for the assistance requested that authority shall forward the request immediately to the competent authority.

Article 6
Special watch

At the request of the applicant authority, the requested authority shall as far as possible keep a special watch or arrange for a special watch to be kept within its operational area:

- (a) on persons, and more particularly their movements, where there are reasonable grounds for believing that they are committing irregularities;
- (b) on places where goods are stored in a way that gives grounds to suspect that they are intended to supply operations which constitute irregularities;
- (c) on the movements of goods indicated as being the object of potential irregularities;
- (d) on means of transport and financial transactions, where there are reasonable grounds for believing that they are being used to commit irregularities.

Article 7
Administrative enquiries on request

1. At the request of the applicant authority the requested authority shall carry out administrative enquiries concerning operations which constitute or which appear to the applicant authority to constitute an irregularity, or shall arrange to have such enquiries carried out.

The requested authority or the administrative authority to which it has recourse shall conduct these administrative enquiries as though acting on its own account or at the request of another authority in its own Member State. It shall communicate the results of the enquiry to the applicant authority.

2. By agreement between the applicant authority and the requested authority, officials appointed by the applicant authority may be present at the administrative enquiries referred to in paragraph 1. The enquiries shall at all times be carried out by officials of the requested authority.

Officials of the applicant authority may not, on their own initiative, assume powers of inspection conferred on officials of the requested authority; however, they shall have access to the same premises and the same documents as the latter, through officials of the requested Member State as intermediaries and for the sole purpose of the administrative enquiries being carried out.

3. In so far as national provisions on criminal proceedings reserve certain acts for officials specifically designated by national law, the officials of the applicant authority shall not take part in such acts. In no circumstances shall they participate in searches of premises or the formal questioning of persons under criminal law.

Article 8
Activity of officials in another Member State or on mission in a Member State

By agreement between the applicant authority and the requested authority and in accordance with the arrangements laid down by the latter, officials duly authorised by the applicant authority may be permitted to obtain information on irregularities, from the offices where the administrative authorities of the Member State in which the requested authority is based exercise their functions.

The information concerned must be needed by the applicant authority and be derived from documentation to which the officials of those offices have access.

The officials of the applicant authority shall be authorised to take copies of that documentation.

Article 9
Written authority of officials

Officials of the applicant authority who are present in another Member State or on mission in a Member State in accordance with the Articles 7 and 8 must at all times be able to produce written authority stating their identity and their official functions.

Article 10
Time limit for providing assistance and information

1. The requested authority shall provide the assistance and information referred to in Articles 5 and 7 as quickly as possible and not later than six weeks following receipt of the request. However, where the requested authority is already in possession of that information the time-limit shall be four weeks.
2. In particular cases, time limits different from the ones provided for in paragraph 1 may be agreed between the requested and the applicant authorities.
3. Where the requested authority is unable to respond to a request by the deadline, it shall inform the applicant authority forthwith of the reasons for its failure to do so and shall state when it will be able to respond.

Article 11
Data concerning value added tax

1. For the purpose of providing operational and technical assistance and where necessary to help competent authorities of the Member States to detect and investigate irregularities within the meaning of point (1)(b) of the first paragraph of Article 3 of this Regulation, the Commission shall be granted access to the Member States' records stored in national databases as referred to in Article 22 of Regulation (EC) No 1798/2003.

The detailed rules concerning this access, including rules on confidentiality and data protection as well as on the use of information obtained from the Member States' records, shall be laid down in accordance with the procedure referred to in Article 22(2).

2. Insofar as it may afford evidence of irregularities within the meaning of point (1)(b) of the first paragraph of Article 3, Member States' authorities shall communicate to the Commission information gathered on the basis of Directive 92/12/EEC.

Section 2 **Spontaneous Assistance**

Article 12 *Provision of information concerning operations or transactions*

1. The competent authorities of the Member States shall provide the Commission, without prior request, with any relevant information in respect of operations or transactions which constitute or which appear to constitute irregularities.
2. Acting with the help of appropriate technological support, the Commission shall analyse the information provided and shall provide the Member States with the corresponding analytical results, with a view to technical and operational assistance in the detection and investigation of irregularities. Where the Commission considers that irregularities have taken place in one or more Member States, it shall inform the Member States concerned thereof.
3. The obligation to exchange financial information spontaneously between the Member States and the Commission shall apply regardless of whether the transaction is carried out in a single operation or in several operations which seem to be linked.
4. Rules on confidentiality and data protection shall be adopted in accordance with the procedure referred to in Article 22(2).

Article 13 *Special watch without request*

Where they consider it useful for the protection of the financial interests of the Community against irregularities, competent authorities of the Member States shall:

- (a) keep or arrange for a special watch as referred to in Article 6;
- (b) communicate to the Commission and where appropriate to the competent authorities of the Member States concerned any information in their possession, and in particular reports and other documents or certified true copies or extracts thereof concerning operations which constitute or which appear to them to constitute acts affecting the financial interests of the Community.

Article 14
Communication of general information

1. The competent authorities of the Member States shall communicate general information to the Commission on new ways, means, methods and practices of committing irregularities as well as on the detection and prevention of irregularities, which might contribute to the fraud-proofing of relevant legislation, as soon as such information is available to them.
2. The Commission shall communicate to the competent authorities in each Member State, as soon as it becomes available, any information that would enable them to prevent irregularities and to enforce relevant legislation.

CHAPTER 2
USE OF INFORMATION

Article 15
Use as evidence

Findings, certificates, information, documents, certified true copies and any intelligence communicated to a competent authority in the course of assistance provided for in Articles 5, 6, 7 and 12 shall constitute admissible evidence in administrative or judicial proceedings in any Member State, in the same way as if they had been obtained in the Member State where the proceedings take place.

Article 16
Exchange of information

Information obtained under this Regulation as well as under other Community provisions may be exchanged by the Commission with other competent authorities in accordance with and for the purpose of this Regulation, to the extent to which such exchange is compatible with the Community provisions under which the information has been obtained.

Article 17
Follow-up

The competent authorities of the Member States shall inform the Commission of any relevant update of the information communicated and the administrative enquiries conducted under this Regulation, and especially of the administrative or judicial proceedings instituted, insofar as this is compatible with national criminal law.

Article 18
Confidentiality rules and data protection

1. Information communicated or acquired in any form under this Regulation shall be covered by professional secrecy and protected in the same way as similar information is protected by the national legislation of the Member State that received

it and by the corresponding provisions applicable to the Community institutions and bodies.

Such information may not be communicated to persons or authorities other than those within the Community institutions and bodies or in the Member States whose functions require them to know it nor may it be used for purposes other than to ensure effective protection of the financial interests of the Community.

2. The Commission and the Member States shall ensure, when processing personal data pursuant to this Regulation, that the Community and national provisions on the protection of data, in particular those laid down by Directive 95/46/EC and, where applicable, by Regulation (EC) No 45/2001 are complied with.

The European Data Protection Supervisor shall be consulted before adoption of the implementing rules provided for in the second subparagraph of Article 11(1), Article 12(4) and Article 21.

Article 19 ***Relations with third countries***

1. Information obtained by a Member State or the Commission from a third country and falling within the scope of this Regulation shall be communicated to the competent authorities of a Member State or to the Commission if it might enable them to prevent or counter irregularities.
2. Provided that the third country concerned has given a legal undertaking to provide the assistance required to gather proof of the irregular nature of operations which appear to constitute an irregularity, information obtained under this Regulation may be communicated to that third country as part of a concerted action, subject to the agreement of the competent authorities supplying the information, in accordance with their national provisions on the protection of personal data, with Articles 25 and 26 of Directive 95/46/EC, and where applicable with Article 9 of Regulation (EC) No 45/2001.

Article 20 ***Risk analysis by the Commission***

The Commission may use any information of a general or operational nature communicated by Member States under this Regulation to perform both strategic and tactical risk assessments, with the use of appropriate information technology support, leading to the production of intelligence-based reports and alerts in order to raise the awareness of identified threats and thus enhance the effectiveness of appropriate operational responses by the competent national authorities and the Commission, subject to the limits of the latter's competence.

TITLE III

FINAL PROVISIONS

Article 21

Implementing rules

Detailed implementing rules concerning the mutual assistance and exchange of information provided for in Chapter 1 of Title II shall be adopted in accordance with the procedure referred to in Article 22(2).

In addition to the matters referred to in the second subparagraph of Article 11(1) and in Article 12(4) those rules may cover; in particular:

- (a) irregularities within the meaning of point (1)(b) of the first paragraph of Article 3;
- (b) irregularities within the meaning of point (1)(c) of the first paragraph of Article 3;
- (c) irregularities in the structural funds sector.

Article 22

Committee

1. The Commission shall be assisted by the Committee (hereinafter referred to as “the Committee”) set up under Article 43 of Regulation (EC) No 515/97.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period referred to in Article 5(6) of Decision 1999/468/EC shall be three months.

3. The Committee shall adopt its rules of procedure.

Article 23

Evaluation report

Every three years after the date of entry into force of this Regulation, the Commission shall report to the European Parliament, the Court of Auditors and the Council on the application of this Regulation.

Article 24
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Anti-fraud

Activities: Mutual administrative cooperation and exchange of information

TITLE OF ACTION: PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON MUTUAL ADMINISTRATIVE ASSISTANCE FOR THE PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITY AGAINST FRAUD AND ANY OTHER ILLEGAL ACTIVITIES

1. BUDGET LINE(S) + HEADING(S)

24.0106 (fight against fraud)

2. OVERALL FIGURES:

2.1. Total allocation for action (Part B): EUR million for commitment: -

2.2. Period of application: From entering into force on.

2.3. Overall multi-annual estimate of expenditure

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)* - **(not applicable see point 5.1.1)**

EUR million *(to three decimal places)*

	Year [n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. Years]	Total
Commitments							
Payments							

(b) Technical and administrative assistance and support expenditure *(see point 6.1.2)*

Commitments							
Payments							

Subtotal a+b							
Commitments							
Payments							

- (c) Overall financial impact of human resources and other administrative expenditure
(see points 7.2 and 7.3)

Commitments/ payments	1.851	1.851	1.751	1.751	1.751,	1.751	
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(The first two years include each an amount of EUR 100 000 for the development of information systems for internal use of the Commission, see point 7.3)

TOTAL a+b+c							
Commitments	1.851	1.851	1.751	1.751	1.751	1.751	
Payments	1.851	1.851	1.751	1.751	1.751	1.751	

2.4. Compatibility with financial programming and financial perspective

Proposal is compatible with existing financial programming.

2.5. Financial impact on revenue:

Proposal has no financial implications (involves technical aspects regarding implementation of a measure)

3. BUDGET CHARACTERISTICS

Type of expenditure			EFTA contribution	Contributions from applicant countries	Heading in financial perspective
Non-comp	Non-diff	NO	NO	NO	5

4. LEGAL BASIS

Article 280(4) of the EC Treaty.

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention

5.1.1. Objectives pursued

The initiative for a regulation on the basis of article 280 of the EC Treaty concerns a framework dedicated to administrative mutual assistance necessary to strengthen the protection of the financial interests of the Community.

For the purpose of the protection of the financial interests of the Community the Member States and the Commission shall assist each other and exchange information in particular in the field of money laundering of the proceeds of EC fraud, of fraud

on VAT and any other illegal activities detrimental to the Community's financial interests in particular those in the field of structural funds.

Background

Fraud and any other illegal activities affecting the financial interests of the Community warrant a more comprehensive framework for administrative cooperation between Member States authorities and with the Commission. This is reflected by the Commission's firm commitment to the fight against fraud in order to protect the Community's financial interests which is clearly demonstrated in its Communication, adopted on 28 June 2000, on an overall strategic approach for the protection of the Community's financial interests and the fight against fraud¹. This approach underlines the importance of an overall anti-fraud legislative policy by following a horizontal and cross-pillar legislative approach. This legislative policy must be given concrete expression with the drawing up of specific rules, in particular for information exchanges, and close and regular cooperation between the Member States and between the latter and the Commission.

On the basis of this legislative policy the Commission mentions in its working programme for 2003 the preparation of a proposal for a regulation of the European Parliament and of the Council establishing a cooperation mechanism between the competent authorities of the member States and the Commission in order to ensure the protection of the Community's financial interests against illegal activities including matters such as VAT fraud, money laundering and other financial transactions in relation to the proceeds of EC fraud as well as any other illegal activities detrimental to the Community's financial interests in particular concerning fraud concerning structural funds.

The Commission has reiterated in its Communication containing an Action Plan for 2001-2003², the importance of reinforcing cooperation to prevent money laundering of proceeds from fraud and any other illegal activities detrimental to the Community's financial interests and VAT fraud in order to be able to realise an effective action against organised crime, particularly economic and financial crime (including fraud and money laundering). To combat this type of crime, the European Union should take co-ordinated action and have a strategy of cooperation and mutual information between all public partners in addition to existing programmes as *Fiscalis* in the sector of VAT.

¹ Communication from the Commission, Protection of the Communities' financial interests, The fight against fraud - For an overall strategic approach, COM(2000) 358 final. See especially paragraph 1 and 1.2.2 of this communication. The Council (ECOFIN) adopted this communication on 17 July 2000 and the European Parliament, which approved the guidelines. The Parliament approved the guidelines presented in its Resolution of 13 December 2000.

² Adopted by the Commission on 23 May 2001, COM(2001) 254 final. See especially paragraph 2.2.1.

5.1.2. *Measures taken in connection with ex ante evaluation* NOT APPLICABLE

5.1.3. *Measures taken following ex post evaluation* NOT APPLICABLE

5.2. Action envisaged and budget intervention arrangements

NOT APPLICABLE: see point 5.1.1.

5.3. Methods of implementation

NOT APPLICABLE: see point 5.1.1.

6. FINANCIAL IMPACT

NOT APPLICABLE: SEE POINT 5.1.1.

6.1. Total financial impact on Part B - (over the entire programming period)

(The method of calculating the total amounts set out in the table below must be explained by the breakdown in Table 6.2.)

6.1.1. Financial intervention

Commitments (in EUR million to three decimal places)

Breakdown	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. Years]	Total
Action 1							
Action 2							
etc.							
TOTAL							

6.1.2. Technical and administrative assistance, support expenditure and IT expenditure (commitment appropriations)

	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. years]	Total
1) Technical and administrative assistance							
a) Technical assistance							

b) Other technical and administrative assistance: - intra muros: - extra muros: <i>of which for construction and maintenance of computerised management systems</i>							
Subtotal 1							
2) Support expenditure							
a) Studies							
b) Meetings of experts							
c) Information and publications							
Subtotal 2							
TOTAL							

6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing and additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A	2 (1 already occupied)	2 (1 already occupied)	11	<i>Coordination of investigations and intelligence work in the field of fraud in particular on VAT and structural funds and money laundering of proceeds of fraud detrimental to the Community's financial interests.</i>
	B	2 (1 already occupied)	3 (1/2 - 1 already occupied)		
	C	1	1		
Other human resources			4 END	4	<i>Coordination of investigations in the field of VAT, structural funds and money laundering of proceeds of fraud detrimental to the Community's financial interests.</i>
Total		5	10	15	

7.2. Overall financial impact of human resources

Type of human resources	Amount (EUR)	Method of calculation *
Officials	1 188 000	11 x EUR 108 000
Temporary staff		
Other human resources (specify budget line)	173 340	4 (END) x EUR 43 335
Total	1 361 340	

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount EUR	Method of calculation
Overall allocation (Title A7) Overall allocation 24.0106 (fight against fraud)		
A3.010211 Other management expenditure (missions)	117 000	13 (operational and intelligence staff) x missions per year x 1.500 (average costs of Anti-fraud—missions)
	60 000	2 x (each year) a meeting of the Committee (30.000 costs per meeting) ³
A3.0201 Control, studies, analysis and activities specific to the European anti-fraud office	208 000	13 (operational and intelligence staff) x 2 (average No. of investigation coordination meetings) x 8,000 (average costs of such a meeting)
Total per year	385 000	

³ Where multidisciplinary (e.g. Customs and VAT) issues are discussed by the Committee envisaged by this Regulation, the travel costs of two delegates per Member State will be reimbursed by the Commission.

A3.0103 Buildings and related expenditure of policy area	EUR 100 000	Two information systems have to be developed: one for VAT and one for money laundering. The development of each system entails the following costs: system specification: EUR 25 000 development: EUR 35 000 tests: EUR 10 000 user manuals and training: EUR 15 000 installations: EUR 15 000 total (1): EUR 100 000 Total:2 systems: EUR 200 000 cost to be spread over two years
A3 01 60 Documentation and library expenditure	5 000	special library, documentation and purchase of books, subscription to specialised periodicals
Total	1 851 340	

The amounts are total expenditure for twelve months.

¹ Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	EUR 1 851 340 (year 1 and 2) EUR 1 751 340 (from year 3)
II.	Duration of action	does not apply
III.	Total cost of action (I x II)	does not apply

The needs for human and administrative resources shall be covered within the allocation granted to the managing DG in the framework of the annual allocation procedure.

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

The Committee shall adopt an implementing regulation following the comitology procedure in order to determine the relevant implementing modalities of mutual

assistance and exchange of information in specific areas covered by the proposed regulation.

8.2. Arrangements and schedule for the planned evaluation

Every three years after the date of entry into force of the regulation, the Commission shall report to the European Parliament, the Court of Auditors and the Council on the application of the measures provided for in the regulation.

9. ANTI-FRAUD MEASURES

NOT APPLICABLE.