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The EC Budget: Ten Per Cent Fraud?
– A Policy Analysis –

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The EC Budget: Ten Per Cent Fraud?
– A Policy Analysis* –

DICK RUIMSCHOTEL**

1. Political Interests at Stake

1.1 The Historical Context: Growing Concern

Ever since the introduction of the Common Agricultural Policy in the early 1960s, there have been complaints as to the existence and extent of fraud against the European Community. It was an EC customs official, Johannes, who ventured an estimate as to the real extent of fraud some twenty years ago (Johannes, 1971; quoted by Harding, 1982). The first Court of Auditor's report (Court of Auditors, 1978) mentioned the question of fraud – and of the impossibility of revealing all fraud by audit examinations – and has addressed the issue ever since, albeit under the name of irregularity. In its 1987 report an entire chapter was devoted to the subject calling for reforms (Court of Auditors, 1987; see also Kok, 1989, p. 360). Similarly, the European Parliament has expressed its concern over the years, culminating in a 1989 resolution on the prevention and combat of fraud in post-1992 Europe. This mentions legislation as one of the several causes of EC fraud and urges that adequate monitoring powers be invested by the Council in the Commission "to keep track of how Community revenue and expenditure are managed by the Member States" (European Parliament, 1989a and 1989b). One of the most forceful and authoritative statements made with regard to fraud against the Community came from the British House of Lords Select Committee on the European Communities, which referred to it as "a public scandal" (House of Lords, 1989). Moreover, EC

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citizens' concern with fraud has been kept alive by the media with stories of series of large-scale frauds in wine, olive oil and fish, supplemented by the occasional meat or maize fraud.[1]

Until 1988 it appeared that the fight against fraud was only stressed by the Parliament and the Court of Auditors, but since then support from the European Commission, the Council of Ministers and the European Court of Justice has been forthcoming. The *Commission* has coordinated and intensified its anti-fraud actions by establishing the "Unité de Coordination de la Lutte Anti-Fraude" (UCLAF) in 1988 (Commission, 1987, 1989). Its ambitious 45-item working programme, drawn up in 1989, and approved by the Member States and the Council, has now been in force for almost four years (Commission, 1990, 1991, 1992). The general importance of fraud for the Commission is reflected in the President's annual report on the Commission's activities, that contains a paragraph on the fight against fraud. Also in 1989, the *Council of Ministers* (19 June, Luxembourg, 26 and 27 June, Madrid) officially supported the intensified efforts of the Commission in fighting fraud. The *Court of Justice* (Court of Justice, 1989), deciding in a fraud case concerning maize claimed to have been grown in Greece itself but in fact imported from Yugoslavia, held that Member States are obliged to deal with EC fraud cases in a manner similar to the treatment of fraud cases under national laws, and that the enforcement of EC regulations should be sufficiently "effective, proportionate and dissuasive".

The specific political and policy interests at stake when fraud occurs are well known: direct financial loss to the Community, the suboptimal attainment of EC objectives, the distortion of competition, and the threat to the overall credibility of the Community (see, for example, Myhlback, 1985; Harding, 1982). These interests are harmed more when more fraud occurs; ironically credibility is endangered when frauds are being discovered. Some political institutions and scientific commentators have ventured statements as to the overall extent of fraud – referred to as the 'dark number' since official statistics are not conclusive about the real size of the phenomenon – and the most recurrent of these claims is that at least 10 per cent of the total EEC budget is affected by fraudulent practices,[2] whereas others refuse to quantify the overall problem.[3] If fraud can be assumed to exist to varying degrees in different Member States, this clearly undermines the basic value of equality of Member States under the Treaty, threatening any existing fairness of financial contributions and allocations to the EC budget. Such uneven presence of fraud would be particularly unacceptable if it were the result of unequal national laws relating to the subject of law enforcement practices.[4]

The completion of the Single Internal Market as of 1 January 1993 and the threat that EC fraud will increase with the abolition of internal border

checks (European Parliament 1989; Vervaele 1988) together with the impending reform of the Common Agricultural Policy (CAP) make a review of the problems that fraud poses for the EC particularly interesting. I will concentrate on fraud in relation to CAP expenditure,[5] but most of the remarks also apply to other domains such as customs duties and agricultural levies, which, together with a part of Member States' VAT-revenue, constitute the main sources of EC income.

Much has already been written on fraud against the European Community (Delmas-Marty 1982; Leigh 1980; Harding 1982; Tiedemann 1988; Vervaele 1989 and 1991; Sherlock and Harding 1991) and whole conferences have been devoted to the problem (for example, Asser Institute Colloquium 1988; Commission Colloquium 1989).[6] Most of the existing literature is written from a political or legal point of view extended to include all law enforcement aspects (see, for example, Harding, 1982). This paper, instead, aims at an analytical and normative policy analysis to show how the question of the overall extent of fraud against the Community fits into the overall problem of fraud, and how various considerations (political, economic, legal, policy and criminological) all play a role in the fight against fraud and in the pursuit of knowledge about the phenomenon.

1.2 The Context: Implicit Comparisons and Political Motives

To acknowledge the existence of a fraud is one thing, but to interpret it as a problematic or unacceptable phenomenon is another. Let us assume that the 10 per cent thesis is correct. How then does this compare with non-EC fraud between economic actors, or fraud within or against a Member State? This will clearly depend on the context, the most dominant, yet implicit, context for interpretation being some idea about the *usual* level of fraud in similar situations of subsidies and levies, and this will normally be the overall level of fraud at the national level.

The tacit assumption is that fraud against the Community occurs on a bigger scale than fraud against Member States. Implicit causal hypotheses as to why this is the case range from the bad quality of EC regulation, the low level of EC law enforcement by national officials of EC-regulation as compared to the enforcement of national regulations, to the lower level of moral and social discipline of the citizens and the economic actors with regard to EC affairs as opposed to national and regional affairs.

If there are subjective, implicit comparisons involved in labelling a problem big or small, something similar applies to affirming or denying the plausibility of estimates of the extent of the problem. Empirical evidence is hardly ever conclusive in the sense that there is no room to deny it, and

with respect to claims as to the overall extent of fraud there is ample opportunity for non-scientific motives to lend additional support to some conclusion or other. The use of political tactics in making predictions is well established in football, political elections and economic forecasting; depending on whether a more gloomy or a more optimistic presentation of the hidden 'real', rational prediction will have the desired effect, one colours estimates darker or lighter. One phenomenon in this field is so well established that it has been labelled: 'self-fulfilling prediction'. Similarly, in making estimates as to the overall extent of fraud, not everybody is served equally well by advancing a certain estimate or by subscribing to one at all. "Not agreeing on the scale of the problem is one obstacle preventing a clamp-down on the fraudsters" (Tutt, 1989, p. 100). Vice versa: "Thus, up to the present, speculations about the extent of financial damages have become mainly a means and pretense for promoting reform desires concerning both the organization of authorities and agencies and current legislation" (Tiedemann, 1985a, p. 100). A more subtle example of the relationship between interests, belief and action can be found in the words of Lord MacLehose of Beoch: "Following on what Lord Bledisloe said, that detection is the best prevention, one is in a vicious circle because detection is a matter of commitment of resources. People will not commit resources until they are convinced there is a problem and without quantification you cannot say whether a problem really exists or how much is worth spending on it" (House of Lords 1989, p. 91).[7] Generally speaking, an answer, even an uncertain answer, to the question of the extent of EC fraud has multiple functions:

- having an answer means one does not have to look for one;
- a high estimate, or at least an estimate that is not negligible, means that one can put pressure on political, policy and law enforcement officials to do something about it;
- a relatively low estimate means one does not have to worry about it;
- a scientifically approved estimate means that it can be treated as a fact;
- the unfounded character of an estimate means one can either play the number down, or, conversely, postulate that the actual amount may be much higher, or, more rationally, that one needs further research in order to obtain the right figure.

This brief analysis does not attempt to uncover which of these motives corresponds to public statements of belief made by the various parties in the fraud debate, first because it is hard to bring forward evidence for secret motives and tactics, and secondly, because it is part of the same tactics to deny any allegations resulting from such analysis. It is nevertheless safe to

assume that a variety of political and policy interests are at stake in making statements about the overall extent of fraud.

Action to safeguard the various interests of the European Community does not demand the same response to fraud. To protect fair competition it is necessary to keep fraud at a low level as long as competition is not distorted, whereas the maintenance of political credibility only requires visible attempts to reduce it, or even prevent knowledge about dark numbers from coming to light. Politicians and policy-makers are likely to have mixed feelings about the possibility of knowing more about the real level of fraud. First of all, if the figures revealed by dark-number research are several times greater than the current figures for registered fraud, it will look as if there has been a sudden boom in fraud. On the other hand, a proven high number for fraud will be ammunition for action to obtain funds for change, but will at the same time imply a duty to substantially reduce it. If the amount of fraud turns out to be less than expected, then the European fraud fighters at the national and European level cannot easily be accused of doing a bad preventive or repressive job. Finally, whether the amount found is big or small, the margins for politically manoeuvring over the estimates will decrease.

Section 2 summarizes the known facts about fraud against the European Community, and assesses what a 'rational person', that is, someone led by objective evidence and reasoning rather than by personal or political interest, should believe, in particular whether the 10 per cent claim or some higher or lower estimate is most likely to be true (section 2.2). Furthermore I examine whether knowledge about dark numbers is part of the Commission's legal or political responsibility in fighting fraud (section 3.1), and whether it should be so (sections 3.2 and 3.3).

2. The Cases: Facts and Beliefs

2.1 The Known: Some Examples and Statistics

Cases of fraud against the European Community are not very open to inspection. Information is available through the news media on EC fraud cases, and in principle one can check on the cases that come before a national court or the European Court of Justice. Then there are a variety of official communications that cover fraud cases such as the annual progress reports of the Commission on the fight against fraud, regular reports from the European Court of Auditors, and irregular observations from institutions such as the European Parliament, the Council of Ministers or national

parliaments. These different sources yield information on cases such as the following:

> The largest single documented fraud case involved 12.3 million [pounds sterling] of export refunds for beef declared for export to Egypt but shipped to Brazil from le Havre. The EC offers no refunds for exports to Brazil because it is a major producer of beef and doesn't need subsidised imports. Along with the US and Japan it receives a nil rate export refund. Highest rates of subsidy in 1988 were Western Africa at 1.50 [pounds] a kilo and Northern Africa at 1.60 pounds. Middle East Gulf states also qualified for over 1 [pound] in refunds per kilo. International traders took advantage of short-term demand to take up the EC funds. (Tutt, 1989, p. 103)

A second example gives a taste of what EC fraud consists of, and also of the problems of proof and the delicate relationship between the European Parliament, the Commission and the Member States.

> An inquiry was carried out following allegations by a Member of the European Parliament that the Dutch autorities had bought butter into intervention between 1982 and 1987 which had been manufactured from sweet cream, a practice which is illegal. Following preliminary discussions with the national authorities, six creameries were selected for inspection, with the chief aim of examining documents relating to production and the purchase of raw materials. The Commission is awaiting further information before making known its findings about the arrangements for on-the-spot inspections and the quality of butter bought into intervention by the national authorities. (Commission, 1990, p. 12)

If things go according to the book, the official cases are reported by the national governments to Brussels.[8] Just a few cases show up in the reports of UCLAF or DG VI (the agriculture directorate). In principle all cases find their way into the IRENE database.[9]

From the known cases one can infer *methods* or structural similarities in EC fraud cases. We will briefly describe export subvention fraud as the paradigm for EC-fraud. Harding describes three categories of techniques used:

> (1) The export of actual goods, but of a kind not in fact entitled to a subsidy (falsification of the description or the origin of the goods); (2) dealings in actual goods, but a fictitious export in order to obtain a subsidy (falsification of the destination of the goods or the use of fictitious consignees); (3) the export of fictitious goods which exist on paper only. (1982, pp. 251-2)

Tutt provides us with a scheme that makes these techniques almost visually alive.

TABLE 1

Schematic Examples of Fraud Against the Budget of the European Community

a) *Re-export fraud*

	EC		Rest of the World
Day 1		Beef exported for export refund	→
Day 2	←	Exported beef secretly returns	
Day 3		Beef re-exported for second subsidy	→

This fraud relies on meat being secretly brought back within EC borders without Customs being aware of it. Instead of legally receiving one export refund, it illegally receives two subsidies, even more if the meat is re-exported again.

b) *Carousel fraud*

Day 1		Best beef exported for high rate subsidy	→
Day 2	←	Beef imported as offal and low duties	

This fraud relies on Customs not checking the quality of meat being exported or imported at borders. The first export of beef is perfectly legal. But the import of the same consignment disguised as offal attracts lower duties than if it was imported as best beef.

c) *Destination fraud*

The lie for authorities:	Beef exported to Africa for high subsidies	→
The true story:	Beef exported to South America for low subsidies	→

This fraud relies on Customs and payment authorities not checking the ultimate destination of the meat consignment. Because the beef is stated as going to Africa, it receives a higher rate of subsidy. In fact it went to South America, where it should receive only a small subsidy or none at all.

Source: Tutt (1989, p. 102).

TABLE 2

Cases of Fraud ('Irregularities') in the Context EAGGF-Guarantee, Reported to the Commission under Regulation 283/72 by Member States (now Regulation 595/91)

COUNTRY (Accession Date)	1971-79		1980-85		1986		1987		1988		1989		1990		1991		Total	
BELGIUM	12*	(1.4)	23	(6.9)	26	(6.1)	13	(2.7)	4	(0.1)	7	(0.1)	1	(0.0)	24	(3.2)	110	(20.6)
GERMANY	92	(6.3)	1045	(47.2)	150	(1.3)	77	(0.5)	45	(41.1)	71	(17.9)	132	(27.7)	41	(4.2)	1653	(146.2)
DENMARK (1972)	23	(0.1)	214	(1.7)	25	(0.3)	16	(0.1)	16	(0.9)	30	(12.7)	29	(1.5)	24	(1.3)	377	(18.7)
GREECE (1979)	0**		0		0		1	(0.0)	0		3	(0.1)	18	(0.6)	14	(0.2)	36	(0.9)
SPAIN (1985)	0		0		0		0		6	(0.1)	13	(0.3)	57	(1.8)	64	(1.7)	140	(3.8)
FRANCE	36	(1.2)	197	(1.9)	64	(1.5)	75	(3.8)	70	(3.6)	121	(7.5)	115	(2.7)	101	(5.6)	779	(27.6)
IRELAND (1972)	7	(0.1)	67	(1.2)	3	(1.1)	9	(2.1)	14	(2.9)	12	(0.5)	3	(0.0)	10	(0.1)	125	(8.0)
ITALY	32	(2.4)	116	(46.8)	50	(18.9)	133	(79.1)	81	(101.1)	242	(97.1)	95	(92.9)	56	(41.8)	805	(479.9)
LUXEMBOURG	0		0		0		0		0		1	(0.0)	0		0		1	(0.0)
NETHERLANDS	36	(1.2)	84	(2.7)	14	(0.1)	94	(0.3)	41	(0.3)	81	(12.6)	132	(6.9)	93	(3.9)	575	(28.0)
PORTUGAL (1985)	0		0		0		0		0		0		54	(1.1)	16	(0.2)	17	(1.3)
U.K. (1972)	194	(3.4)	279	(3.5)	53	(0.5)	100	(1.2)	109	(2.6)	164	(7.2)	188	(3.2)	131	(5.1)	1216	(26.7)
TOTAL	432	(16.2)	2025	(112.0)	385	(29.8)	518	(89.8)	386	(152.6)	745	(156.1)	824	(138.2)	574	(67.3)	5889	(762.3)

Source: Internal Database DG VI, EC Commission (Situation December 1992).

* The total number of cases for the given period with the total value in mECU between brackets.

** '0' indicates no cases because country not yet a Member State or because no fraud cases reported.

The statistics for the period 1971-1991 reveal a few hundred cases reported per year (see Table 2). These are very unevenly distributed over the years and across countries, yet we see the numbers as well as the value of the domains concerned increase steadily since the early 1970s. Italy stands out, not so much for the number of cases reported, but in terms of the amounts involved. It is responsible for approximately two-thirds of total fraud value in the period 1986-1991. If one consults the appendices of the progress reports, it appears that the frauds have occurred basically in the sectors 'oils and fats' and 'fruits and vegetables'.[10] Germany ranks second, being strong in 'beef and veal' and 'milk products'.

The greatest numbers of irregularities so far were recorded in 1990, accounting for 138 million ECU; with an overall expenditure on EAGGF of 30,000 million ECU, equivalent to 0.46 per cent of this part of the budget. This figure is far removed from the 10 per cent claim, but there is ample reason to think that not all irregularities are detected or reported to the Commission (see below).

Recent statistics for larger fraud cases (over 10,000 ECU) are also available from the traditional own resources, customs duties and agricultural levies, since Regulation 1552/89 came into force. The two years reported so far (1990 and 1991) give the impression that the income side is a worthy counterpart of the expenditure side. In 1990 around 400 cases were reported by the Member States, for a total of 90 million ECU and averaging 225,000 ECU (Commission, 1992).[11] Since the total own resources in 1990 amounted to around 13,000 million ECU, the percentage of reported irregularities and fraud amounted to around 0.7 per cent of this part of the Community's budget. Again, this is a minimum level set by officially reported cases. The actual number of frauds is bound to be higher. The question is, how much higher?

2.2 What is Not Known: Selective Mechanisms and Inconclusive Scientific Research

Selective mechanisms in detecting and reporting

Overall, the absolute numbers of the statistics are hard to interpret, particularly as regards the differences that show up between the number of cases over the years or between countries or domain or between the varying amounts involved. These may reflect real differences in the extent of fraud, resulting from different economic structures in the individual countries agricultural production sector, or may primarily be the result of the selective operations of the national or regional law enforcement agencies. This difficulty of making inferences from reported crime is referred to by the

Commission: "In the Commission's view, this [rise in number of cases reported] does not reflect an increase in the incidence of fraud, but an improvement in the systems operated by the Member States for detecting and reporting cases of fraud" (Commission, 1989, p. 10). In fact, this suggested 'explanation' for increasing figures might apply to decreasing figures, that also appear in Table 2 for EAGGF-Guarantee (e.g. the decrease from 1990 to 1991). However, without more data on the level of law enforcement efforts (quality, intensity), and economic activity (intensity, relative attractiveness of fraud), there is no way of telling whether the explanation holds water. No systematic effort has yet been made to bring to bear this relevant background knowledge for interpreting the available statistics.

There are several other reasons for not taking the figures at face value. First, there is the *selective mechanism of reporting* to the Commission. It has long been recognized that the existing reporting system between the Member States and the Commission leaves much to be desired (see, for example Tiedemann, in House of Lords, p. 92), and this may partially explain the discrepancy between registered cases and dark numbers. Another reason is the *selective processes involved in detecting and following up fraud cases*. Some national agencies simply have more capacity or more motivation to detect fraud cases than others. Once suspected or detected, other well known selective processes take place in terms of follow up, obtaining more evidence, prosecution or conviction. One can safely assume that all these selective mechanisms apply to fraud cases, even more than to classical crimes, since fraud cases are particularly labour intensive for law enforcement officials, and follow up may not meet with unlimited enthusiasm on the part of national agencies.

Even if the number of registered cases of EC fraud is not a fair representation of the *actual number* of cases, registered cases may be characteristic of unregistered fraud as regards who commits fraud, the fraudulent methods used, the regulations or the authorities being defrauded, the average amounts involved and the regulations or domains most often affected. The Court of Auditors and the Commission do indeed generate statistics on the basis of registered cases from time to time, but in my opinion the value of such calculations is offset by the lack of knowledge as to the criteria of data selection, and the description of fraudulent cases may be as much a description of the (selective) operation of law enforcement agencies as of the characteristics of fraudulent persons and companies. If IRENE, the databank containing the few thousand known cases of EC fraud, is to be fully exploited, then the quantified data on cases of fraud registered by Member States must be complemented by qualitative information allowing a more effective interpretation of the data given. That

is, it should cover among other things: the administrative or physical control method used; the number of fraudulent transactions or movements per domain as a percentage of total domain transactions; the policies followed in dealing with suspect cases; and the criteria for the selection and transmission of information, etc.

Scientific research

If official registrations fail to give a valid indication of the total amount of fraud against the EC budget, perhaps one can count on science to give a rational estimate. The most direct *scientific evidence* available on dark numbers in the Community is summed up in Tiedemann's verbal testimony to the House of Lords.

> The first point is that the German Minister of Finance has made an estimate of one per cent on the basis of what fiscal and custom authorities in Germany report. This figure does not cover subsidies administered by other German authorities, nor does it consider the whole dark field of national delinquency. The second point might be that the dark field of delinquency is considered to be particularly high by all continental criminologists as far as EC fraud is concerned. A third point which seems important to me is that wherever national authorities have conducted systematic a posteriori control checks at the branches of trade and production the percentage of discovered irregularities has mostly been very high; that is, between 10-30 % - and often included the whole branch checked. I may also mention the checks of the steel industries in the 1960s revealing that one third in that type of subsidised group was fictitious. The fourth point is the existing fraud reporting system in the EC: I think you all know that it does not really work and covers very few cases. The next point I am willing to explain afterwards is that interviews, the interview technique with "insiders", people working on transportation and so on, reveal that misuses in this field are widespread. Finally I want to say that experience with other types of economic crime, for instance, economic crime committed with and by the help of companies with limited responsibility in Germany and France, or delinquency in the building industry, or something which I have already mentioned, bankruptcy and insolvency, and experience with other reporting systems, I think justifies the conclusion that the EC budgets are subject to a considerable amount of irregularities, reaching at least several per cent. [...] Turkish trade statistics are going to be reduced for the last ten years by one third, because it has been detected and proved that one third of all exports from Turkey have been fictitious, to get export subsidies. [...] It [the Swedish study by Magnusson] was very much discussed (and also published in the newspapers) amongst scientists, criminologists and criminal lawyers, and it was finally agreed that in any case 30 per cent was clearly criminal. The rest, 20 per cent (up to the total of 50 per cent) being things like negligence or smaller cases. (Tiedemann, in House of Lords, pp. 88-9)

This looks like a lot of evidence. However, although the arguments lead to the conclusion that there is a serious and probably substantial problem, they

refer in greater part to indicators for the prevalence of fraud that are rather indirect or inconclusive. Let me substantiate this by shortly reviewing the methods enumerated above taking into account statements and references to the subject from other occasions (see Tiedemann, 1985, p. 714; and Tiedemann, 1988, pp. 106-9). The first point, based on the German Minister's statements refers to *inferences from registered crime*, and is thus not a direct indication of unregistered crime. The second argument, the collective assessment of dark numbers by criminologists, is either an authority argument that is not valid in itself unless backed by more direct evidence, or it is an expectation of a rate of crime based on an assessment of the opportunity for fraud with a large opportunity of fraud leading (presumably) to a large extent of fraud. The systematic research referred to by Delmas-Marty (Delmas-Marty, 1980; and Delmas-Marty and Roche-Pire, 1982) deals with registered crime, although in using questionnaires to measure attitudes to EC regulation and the like, she illuminates the potential causes both of registered and unregistered crime. Thus, although one may describe these observations as a method to *assess dark numbers based on the causes*, the major value probably lies in establishing hypotheses for researching fraud and for indications where improvements in the policy, regulation, and control can lead to the prevention of fraud. Tiedemann's third point seems to be based most directly on evidence, and qualifies as the most decisive ground for the rational assessment of dark numbers (discussed below). The technique of *interviews with insiders*, dealing with first-hand experiences of criminal actors, accomplices and eye witnesses, is highly illuminating, but as far as dark numbers is concerned, the method is basically explorative, giving rise to expectations of finding the crimes that are said to exist on a more universal or representative scale. At best, the scientific status is that of restricted local indirect evidence, and their best use is mainly to allow us to make hypotheses how, where, and by whom fraud is being committed. The last point concerns other types of economic crimes, and can be said to consist of an *extrapolation or generalization from adjoining fields*. If one checks the references, the EC steel industry is mentioned as a case in point, exemplifying that a third of total production is fraudulent.[12] Other writers in different fields give different but generally high estimates. For example, Tiedemann mentions Liebl's, "estimation of the dark number of bankruptcy offences amounting to about 80 per cent and the rate of unemployment caused by bankruptcy reaching per cent" (Tiedemann, 1985, p. 101; referring to Liebl, 1984). Useful as these estimates from adjoining fields may be, one is always stuck with the need to determine what the figures are really telling. Whether one is comfortable or uneasy about extrapolation, there is no rational procedure to determine the similarities of different fields *a priori*, that is, without further empirical

evidence (see Ruimschotel, 1989, pp. 126-8). The fact that EC fraud can be categorized as 'economic crime' does not guarantee sufficient similarity, particularly not of the simple descriptive kind. So again, there is no direct evidence on dark numbers from neighbouring fields of research. The *ex-post* modifications of Turkish trade figures (30%) can even be more safely disregarded, since the field is not only obscurely related to EC transactions, but they also relate to a non-EC country, a country that is held at arm's length especially because it is not deemed to be sufficiently similar to join the EC in the near future.

Control sample research

For direct evidence we probably need to rely on the third method: a posteriori control checks. A closer examination of the claims made by Tiedemann (1984) and the available literature indicate that there has been little serious sample research to date. The Magnusson (1982) study on irregularities with import and export is one, and some empirical evidence comes from fraud with *beefslaughter premiums* in Germany. This last case concerned fraud with respect to a premium in Nordrhein-Westfalen in the mid-1960s context of 'Brucellose-Tilgung', that is the destruction of cattle because of tubercolosis. Apparently in more than 800 out of a total of 35,000 cases it was found that 'earmarks' or 'earmarkpapers' of the cattle had been falsified, that is 2-3 per cent (see Tiedemann, 1974a, pp. 180ff). Another case mentioned by Tiedemann (1988, p. 107) is also supposed to have occurred in Nordrhein-Westfalen and also involving cattle. The fraud involved slaughter premiums in connection with tuberculosis.[13] The newspaper in question reports that in the year 1975-1976 more than 1,000 out of a sample of 10,000 were found to be fraudulent, that is, over 10 per cent. However, one cannot accept such figures as scientific evidence for rational overall estimates, firstly because the source is a newspaper (an admittedly reliable newspaper, but still), and, secondly and more importantly, because these are only two control investigations among hundreds of controls carried out in Europe. Among the existing reported and unreported cases the rate of fraudulent activity will range enormously and it does not count as good scientific practice to select one or two and declare these as conveying information for the whole (set of) domains.[14]

The *Swedish research on import export fraud* (Magnusson, 1982) definitely qualifies as an impressive scientific research effort. Unfortunately it does not bring us much further. The research was based on a control action of Swedish Customs. The investigation concerning imports is based on a random choice of trucks, boats and lorries in Stockholm, Goeteborg and Westerhose (Vasteras). Concerning export, a random choice of shippings on boats in Goeteborg has been investigated. Only certain customs departments

in the cities mentioned have been investigated. The research and the control effort lasted a week. During that period a random choice of shippings on boats (for import) and trucks, boats and lorries (exports) was thoroughly investigated using physical and administrative controls. Estimates for the whole of Sweden were calculated for a year, both in terms of value and proportion of fraud in relation to the total number of transactions. The percentage estimates of cases where some kind of irregularity was involved (40 categories were distinguished!), differed from place to place with the lowest estimated percentage of 25 and the highest 50. Given the relatively small number of controls carried out, these estimates could well be wrong, with true percentages varying from 8 to 82.[15] The value of the irregularities ranged from circa 1 to 10 per cent of declared value. Consequently the estimate for financial loss in terms of unpaid taxation, the crucial percentage, should be in that range of 1 to 10 per cent as well, quite a far cry from the 50 per cent (overall cases) or 30 per cent (serious criminal cases) reported to the House of Lords as being a good indication of the scale of the phenomenon. The main statistics that summarize the research are included in Table 3.

TABLE 3

Estimates of the Share in Percentage of Movements Involving Irregularities and the Value of these Irregularities as Percentages of Declared Value[*]

	Customs Irregularities %		Value Irregularities %	
	Point Estimate	*Interval Estimate*	*Tax Irregularities*	*Value Irregularities*
Vasberga	25	8 - 42	1	4
Norrastation	35	17 - 55	1	4
Solnaterminal	50	18 - 82	0.3	0.9
Vateras-harbour	33	0 - 66	2	8
Skandia-harbours				
Import	33	14 - 52	0.4	3
Export	48	21 - 75	[0?][**]	9

Source: Magnusson (1982).

[*] The percentages in the third column are 25 per cent of the figures in column 4, mirroring the taxation rate of 25 per cent; the percentage 0.4 for Import in the Skandia-harbours reflects a lower rate of about 10 per cent.

[**] Cited thus in the original.

This study indicates the likelihood of a great deal of illegal activity taking place in international transit, but I am afraid that the margins indicated by the research findings for the true value of dark numbers are so wide, that it is tantamount to saying that the exact percentages remain obscure.

In short, our review of the literature on fraud to find the most likely value of dark numbers has yielded some indirect evidence but only a few directly relevant research studies. Due to methodological limitations, they have only little evidential value. Unfortunate as this relative ignorance may be, it is better to acknowledge it than to perpetuate guesses as dogmas. But by now the "10 per cent fraud" hypothesis has gained credence among journalists, politicians and social scientists despite, or perhaps thanks to, lack of evidence. However, we cannot say with any reasonable degree of confidence how much fraud goes on. Before examining who, within the European Community, is responsible for knowledge or action with respect to fraud (see section 3.1), I will indicate how studies into the extent of the fraud problem are possible.

Recommended research: dark-number research in the context of evaluating targeting

One may doubt whether dark-number studies can be undertaken at all. One member of the Court of Auditors phrased his misgivings thus:

> All attempts to quantify the size of the agricultural fraud problem in the Community should be treated with extreme reserve. I regard this statement as axiomatic because, as has often been pointed out, the fraud problem in the Community (or indeed in any other walk of life) is essentially a problem of undetected fraud. There are some contexts where attempts to measure the unmeasurable, however suspect the results, serve some practical purpose, for example, when accountants try to determine a balance sheet value for such intangibles as good will or brand names. But trying to quantify the Community fraud problem is not such a case. Even if divine revelation were to disclose to us the true cost of fraud to the Community budget, that information by itself would be of little use to anyone unless it were supported by evidence as to how, why and where the fraud had arisen. (Carey 1990, p. 12)

This statement is constructive with respect to the need to know more about the qualitative aspects of fraud, that is, fraudulent methods, likely cases of fraud and the homogeneity of domains affected by fraud. However, Carey's pessimism would appear to be scientifically unfounded. We have already cited several methods that yield (more) information as to the overall extent of the problem, ranging from extension of registered cases to interviewing (potential) committers of fraud or law enforcement officials or an analysis of a period of control effort (such as the Magnusson study). Indeed most methods that deal with dark numbers do yield more knowledge about the

background of fraud cases, the personal or socio-economic conditions leading to it, and the imperfections in control procedures of law enforcement systems that generate the opportunities to commit fraud.

The most direct and fruitful approach to obtain a dark number estimate in a specific area would be through control samples of financial transactions. The two kinds of sample fraud research discussed above (the German slaughter premium studies and the Swedish import-export study) point in that direction, but the method can be refined and incorporated into the evaluation of normal control practices.[16] The procedure is simple: in the course of fraud control in a certain area a number of investigations are usually carried out incorporating quite a number of cases. Unfortunately, the outcomes of these controls have only limited information value for the overall extent of fraud, due to a lack of information regarding the selection of control objects.[17] The 'sampling method' used normaly is not at random ('aselect'), but selective, targeted in order to increase the chances of picking out those persons and transactions where, upon closer scrutiny, some form of fraud is involved. So, if customs officials know or believe that big ships or ships coming from Panama are carriers of smuggled freight more often than other ships, the customs will tend to target these ships more often than others. In many domains some kind of targeting is part of the current practice albeit under different names such as 'risk analysis', 'criminal profiles' or 'clues' for the occurrence of crime.[18] One should expect similar selective practices when reading reports of fraud investigations based on a sample of cases, for example a number of warehouses inspected by the Commission.

In the Community context, targeting is sometimes prescribed. Regulation 4045/89 explicitly directs Member States "to ensure that the selection of undertakings for scrutiny gives the best possible assurance of the effectiveness of the measures for preventing and detecting irregularities under the system of financing by the Guarantee Section of the EAGGF. Inter alia the selection shall take account of the financial importance of the undertakings in that system and other risk factors" (art. 2.1). The regulation describes how the control of large receipts or payments should occur more often than for smaller receipts, with the former ones being controlled at least 50 per cent of the cases. This is targeting for output maximalization, that is, minimalization of sums wrongly paid by the Commission or wrongly not received. Whereas these controls are basically a posteriori controls on payments through scrutiny of commercial documents, a sizeable portion of 5 per cent of all goods presented for export refunds is to be the object of physical examination (Regulation 386/90).

To evaluate targeting we can compare the yield (and costs) of the strategy followed either with the yield (and costs) of an alternative strategy,

or with a procedure of non-selection, also referred to as *aselect sampling*. The latter is a much used and recommended procedure in scientific research, because (if executed correctly) the outcomes have a high probability of representing those of the whole population or domain (that is, all elements, be they persons or business activities, researched and not researched); the probability being higher the larger the sample.[19] The, almost surprising, conclusion of this analysis is, that aselect sampling from time to time would not only give a good method of evaluating one's current targeting, but it is also a proper – if not the best – way to indicate the overall extent of a certain practice (say fraud, or smuggling). So it can give the best estimates of the dark numbers of criminal or other activities.[20]

As far as I know, this kind of targeting evaluation combined with dark number estimates is not practised systematically.[21] However, given the required number of controls for Member States, they should be relatively easy to reorganise giving them the double goal of 'output maximalization' and 'information optimalization'. The current analysis also suggests that research into dark numbers does not have to come from external scientific parties, but can become part of rationalized control practices.

3. The Action: The Community's Anti-Fraud Policy

3.1 Responsibility for Action Against Fraud: Ill Allocated and Clearly Defined?

Legal responsibility and policy responsibility

Who is responsible for the extent of fraud against the EC budget? That is, whose duty is it to act against fraud, and who has a legal obligation to know when and where it occurs? At face value the answer is 'nobody', since the term 'fraud' occurs nowhere in legal texts defining the competences and responsibilities of the various EC institutions. Yet, there are legally defined duties that imply a concern with fraud in terms of action. Art. 5 of the Treaty, in particular, states that "Member States shall take all appropriate measures whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty, or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community tasks". This clearly indicates a duty on the part of the Member States to see to it that the Council regulations laying down the policies of the Community are not being undermined by fraudulent actions. This implies that the Commission, as the guardian of the Treaty and the authority responsible for the execution of the budget, has the

duty to see to it that the Member States properly enforce Community legislation (Noël, 1991). The Court of Auditors, which has only recently become a formal institution of the Community,[22] has an obvious role given its mandate to examine all EC revenue and expenditure, in all Member States and in third countries receiving Community funds, administratively and physically, for legality, regularity and sound financial management.[23] The European Parliament, through its role in the discharge procedure vis à vis the Commission for the annual implementation of the general budget, is able to comment on the way fraud at the expense of the Community budget, is dealt with. The Treaty of Rome did not include an autonomous right to create and apply sanctions for infringing Community regulations and the new Treaty does not include one either.[24] This means that, both under the interpretion of the old Treaty and the freshly codified new Treaty, the basic situation for the legal division of powers stands as follows: the Community, in the form of the Council of Ministers, decides the policies and the regulations that can be defrauded; the Parliament controls expenditure; the Commission prepares, implements and executes the policies to be enforced; and the Member States, apart from further implementation of the policies, are responsible for the overall law enforcement, detection, prosecution and sanctioning of abuses. This situation, typical for many areas of EC policy, is sometimes labelled as a 'competence dilemma' for the Commission, but the expression 'competence-interest conflict' covers the situation better, both for the Commission and the Member States; the Commission does not have the complete competence (of control and sanctions) over an area wherein its interests lie, and the Member States have a competence (of control and sanctions) but, apart from fulfilling a duty, they do not have the real interests to exert this competence.

Responsibility is not only couched in legal terms or best conceived in a legal perspective, since legal responsibility is sometimes not sufficient or necessary to be effective. It is equally important to look at the way in which the parties concerned perceive their own and others' responsibilities. Because of their own definition of responsibility, some countries may (be willing to) go further in the fight against fraud than is legally prescribed, whilst others do not even come close to delivering what is legally required of them. The same applies to the institutional partners: the Parliament and the European Court of Auditors have always seen it as part of their task to keep an eye on the extent of fraud against the Community, being both in line with the responsibility that comes within their legal mandate and stretching it a bit. The Court of Auditors conceives of its own task strategically ('systems audit'), so that it is as much part of their job to criticize opportunities for, or likely causes of, fraud as actual or suspected cases.[25] Responsibilities are also fluid, being used in political arguments in setting financial and

organisational priorities. Thus, the Commission has taken upon itself a greater responsibility than it used to do, partly under pressure from the European Parliament. Thus, responsibility is also a psychological and political reality that does not necessarily correspond to the legal situation. The fact that trader or farmer unions officially represent their members' interests does not mean that they should not have an interest in reducing fraud among their members. We will refer to the organisational commitment that follows from political, psychological and moral responsibilities as 'policy responsibility'.

Legal and other responsibilities interact, and yesterday's moral responsibility may be tomorrow's legal responsibility. It is fair to say that in general formal organizations try to harmonize the triad 'legal responsibility', 'policy responsibility' and 'economic or power interest'.[26] For example, the Commission has tried to compensate the drawbacks that stem from the fundamental competence-interest conflict. Basically it has strived for a major (and obtained some) increase of its direct and indirect control powers by having the Council accept regulations that include the right to carry out independent or cooperative controls in Member States. It has also pushed for and obtained more explicit supervisory powers by imposing the duty on Member States to report not only the cases of fraud in a certain area (usually called 'irregularities'), but also to provide other additional information. Thus, national law enforcement systems are put under pressure when we look at the most recent EC legislation that can be described alternatively as 'operationalizing' their law enforcement obligations or diminishing their overall responsibility. When new EC regulations are being formulated, they incorporate increasing powers for the Commission in the area of information gathering, autonomous controls in the Member States, joint controls and thereby an increase of evaluation possibilities of Member States law enforcement activities. Thus, under Regulation 595/91 the Member States will provide the Commission with detailed information on detected cases of irregularity under EAGGF-Guarantee, whereas even in the field of VAT, predominantly a Member State's income and concern, Regulation 1553/89 (art. 12) requires Member States to provide the Commission with yearly reports on the ways in which national agencies collect taxes. Moreover, Member States have increasingly taken on more operational duties to carry out controls, such as under Regulation 4045/89 for EAGGF-Guarantee and, especially, Regulation 386/90, requiring that 5 per cent of all goods presented for export control undergo physical inspection. Regulation 307/91 provides for reinforcement of monitoring expenditure chargeable to EAGGF-Guarantee Section in a number or high risk areas, for example wine, fruit and vegetables, tobacco and cotton.

The Court of Justice plays an active role in bringing legal competence, policy ambition and the own interests of the Community (represented by the Commission) into line. Thus, in Case 68/88 (Commission v. Greece), it elaborated art. 5 into a Member State duty to protect the financial interests of the EC in a manner that is equal to the care of national interests, proportionate, and effective.[27] If this means that Member States have the duty to exert some minimal diligence and severity, then it also affirms a right on the part of the Commission to monitor whether the Member States comply, and to bring the latter before the European Court of Justice, if the Commission observes or believes them to be negligent in doing so. Thus, wittingly or unwittingly, the Court contributes to a dynamic power play.[28] The policy responsibility the Commission felt was 'legalized' by the Court, or, as the Commission would like to put it, the underlying legal principles of proportionality and effectiveness were confirmed. The consequences of this subtle shift in the relation between the Commission and the Member States are interesting to observe. The Commission seemed delighted with the decision and conveyed the message to the Member States in the form of a letter of the President to the Heads of State, in case they had not realized its implications yet. This letter, formulated as a question to the Member States as to whether their law enforcement systems complied with the criteria outlined by the Court, can be regarded as a first overall test to monitor the criteria outlined by the Court. From the reassuring answers received (Commission, 1992, p. 70), one is led to believe that, at least officially, all is well.

The dynamics are continuous. It is likely that the Commission realized that the interpretation of an article in the Maastricht Treaty is not as good as an article in the Treaty itself, and has therefore taken steps to formalize the duty of Member States and the legitimization of the Commission's right of supervision. Indeed, the principle of assimilation, first recognized by the Court as an implicit principle of law, is now an explicit principle of analogous treatment enshrined in the Treaty on European Union.[29] [30]

Thus, although many parties have a legal or policy duty to expose or prevent fraud, none seems to have an explicit duty to be informed on the subject. However, I shall argue that the duty exists by implication.

Operational criteria for national anti-fraud law enforcement

The crucial lines of the decision of the Court in Case 86/88 are as follows:

> Article 5 of the Treaty requires Member States to take all measures necessary *to guarantee the application and effectiveness of Community law.* For that purpose, whilst the choice of penalties remains within their discretion, they must ensure in particular that infringements of Community law are *penalized under conditions*, both procedural and *substantive*, which are *analogous to* those applicable to infringements of *national*

law of similar nature and importance and *which, in any event*, make the penalty *effective, proportionate and dissuasive*. Moreover, the national authorities must *proceed, with respect to infringements of Community law, with the same diligence* as that which they bring to bear in implementing corresponding national laws.[31]

But how far exactly does the Member States' duty stretch, and to what extent has the Commission the right to monitor the proper implementation of policies laid down in regulations? This question is automatically solved when the duty to perform and the right to monitor is explicated as part of the regulations in the various fields as in the examples given above. But, as the Court of Justice says, the duty and right relationship can be upheld even if nothing is spelled out in a particular regulation. This *general legal supervision right* of the Commission (at the same time a policy if not legal duty) can be based on the fundamental guardianship of the Commission that underlies the EEC Treaty, and can therefore be said to have existed since the Treaty came into force. Yet this right is very much operationalized by the oft-cited 68/88 decision. Let me comment on the various criteria, explicated in the Court's decision, to judge to application of Community law, of which I can discern four: 'analogous to national', 'same diligence'; 'effectiveness of Community law', 'effective'; 'proportionate'; and 'dissuasive'.

A. Relevant criteria. The criterion that a penalty be 'dissuasive' would appear redundant: a penalty is effective *because* it is dissuasive. 'Proportionality' is probably an independent criterion, often advocated within a criminal law system, partly because it is judged (by law makers, the judiciary and the general public) to be the right measure of some 'retributive' conception of justice and punishment (in contrast to a more goal-oriented conception of punishment), partly because proportional sanctions are deemed to be more effective (or dissuasive) than non-proportional sanctions. So the criterion cannot be entirely subsumed under effectiveness.

The 'same diligence' criterion (assimilation or analogy principle) is hailed as an important step forward for the Community,[32] probably because the actual situation in some Member States in some domains did not meet this requirement. But the criterion cannot be but a minimum. In cases where countries do not protect their own interests very well, similar treatment would simply mean reaching the same imperfect level.[33] If this were a sufficient criterion, it could be used by Member States to argue against an effective enforcement of Community regulation since they not even require such a high level of protection of themselves; if it suffices to be equal, then effectiveness and proportionality are redundant. This clearly cannot be the case, and would, moreover, be contrary to the intention and the wording of the Court of Justice. One must then suppose that the two absolute criteria

'effective' and 'proportionate' should help to *complement* the assimilation criterion to reach an acceptable degree of law enforcement in case of EC policies. Furthermore, similarity, being the comparative minimum criterion, should not be assumed to introduce dimensions other than those explicitly mentioned. Hence 'similarity' should be interpreted as 'equally effective and equally proportionate'.

The criterion 'effective' implies a more or less serious or extended look at the system at hand, depending on what is meant by 'effective'. If one means 'potentially effective', one can be content with assessing the number of controls, the kind of sanctions and the corresponding maximum penalties,[34] but then this criterion is close if not similar to the criterion of proportionality. Thus, one must interpret 'effective' as 'really effective',[35] which, if taken seriously, would mean getting involved in substantial empirical (evaluation) research into the effects of law enforcement on fraud, including among other things, the long-standing and never fully resolved problem of the general preventive effect on potential offenders. This would imply that real controls and sanctions would have to be assessed and causally coupled to changes of criminal behaviour of those addressed by the norms. Even if the execution of this task would skip the causal connection problem, an assessment of 'effectiveness' would mean an assessment of the overall extent of fraud in all relevant areas of the Member States. In sum, effective law enforcement should decrease the overall extent of fraud, expressed as a decrease of dark numbers or, in an even less causal interpretation, in a general low level of infringements. If one wants to avoid measurement and causation problems, one can take 'effective' in the other conventional sense of 'individual prevention', which is operationally simpler to measure than effectiveness in a generally preventive sense. To be individually effective, is to persuade those found committing infringements not to repeat their illegal actions.

B. Relevant aspects. What sort of activities must Member States engage in to fulfil their obligations? The Court's text speaks of "taking all measures necessary to guarantee the application and effectiveness of Community law", "infringements are penalized" and "must proceed with respect to infringements", all referring, in short, to law enforcement. If one disregards transposition of European legislation into national laws, and policy implementation in the administrative sense, then law enforcement has broadly two aspects: *control*, including supervision, detection, and investigation; and *sanctions*, including prosecution, transactions, punishment and execution of punishment. The importance of the former as the primary, material phase of law enforcement is clear to practitioners in the field such as customs and

police officials, but easily forgotten or downplayed among legal scholars and judges.

The criteria 'effective', 'proportionate' and 'equally effective and proportionate' take on their specific meaning depending on whether they apply to the control or the sanction phase of law enforcement. Proportionality with respect to sanctions is relatively easily defined, since this is a traditional law making practice of having the (maximal) sanction proportional to the seriousness of the infringement. Seriousness is in turn is related to the interests harmed, the amount of fraud involved, the degree of trust betrayed and such like. Control-proportionality should be interpreted proportional to the things controlled, that is, the number of potential and actual infringements, the number of economic actors or actions supervised, the difficulty of controlling and so forth, that is, as the 'problem-proportionality' of control: control efforts should be proportional to the size of the problem of potential infringements. Sanction-proportionality can be operationally conceived as 'proportional to seriousness'.

As discussed above, effectiveness of sanctions actually consists in an impact that reduces the overall level of infringements to an acceptable level. But since this would raise enormous problems of general measurement and causal inference, one can settle for an operational definition of 'individual prevention'; sanctions that are applied should be *de facto* dissuasive to those who infringe. Effectiveness of control appears more difficult to define, but assuming that not all actions in a certain domain are subject to control, it should ideally succeed in identifying those elements among all financial transactions that merit closer scrutiny. This is nothing other than the effectiveness of intelligent targeting, as encountered before.

So, in specifying the criteria developed by the Court of Justice the problem of the extent of infringements, as measured by dark number studies, has emerged as the foundation for 'problem-proportionality' and the success of targeting has proved to be the operationalization of 'effectiveness of control'.

C. National or international standards. Do not the criteria state *too little*? Does not the idea of having a Community and common policies imply that policy regulations are being implemented and controlled in a similar manner in all Member States? Such interpretation would demand, not intra-State assimilation, but inter-State assimilation. The latter should not mean literal equivalence (for example the same number of control personnel), or even proportional equivalence (control capacity equivalent to the number of persons in a country or the number of economic transactions), but *functional equivalence*; that is, roughly the same control density or preventive effect. The question is whether such a criterion can be upheld as an EC principle and subsequently enforced? And who is to assimilate to whom? The lower

to the higher? Or all to the standards of the law enforcement system which represents some empirical or normative average? In any case, it is not clear that there is a criterion here, and if there is one, it is not clear what it is. The problems of applicability and comparison of cases can be circumvented by applying the absolute criteria of effectiveness and proportionality to Member States' law implementation efforts; if these efforts are reasonably proportional and effective, then they should also be relatively similar.

To turn to another aspect of the international dimension, art. 5 of the Treaty expects Member States to *cooperate internationally* to combat infringements such as fraud against the Community budget "by taking all measures necessary to guarantee the application and effectiveness of Community law". This duty to cooperate can be specified in terms of the Court's criteria and operationalized in a similar way as has already been done before. This would mean that *'problem-proportionality'* implies, among other things, to engage in information exchange and coordinated action to the degree needed by the international character of the fraud. This degree, as appears from all investigations, is high, and the duty to collaborate internationally is correspondingly high.[36] To collaborate internationally up to the standard of '*proportionality of sanctions to crime seriousness*' would then appear to mean an obligation among Member States, if not to harmonize definitions of crime, sanction modalities and (potential) penalties involved, then at least to render these elements somewhat consistent, or not too widely divergent. *Control-effectiveness*, the third criterion, means that the cooperation, required under 'problem proportionality', should be effective. One of the best ways to ensure joint effectiveness is to let controls of all Member States complement one another and to share operational information and tactical intelligence, which will in turn lead to improved targeting. Lastly, the criterion of *internationally effective sanctions* incorporates the duty of Member States to cooperate in catching those committing fraud, bringing them to court, passing judgement, applying a sanction, and the execution of any such sanction. Often this type of international cooperation is subject to international conventions that include specific obligations. My argument contends that under the general provisions of the EC Treaty, Member States are obliged to cooperate internationally on all four aspects, and it would not be hard to argue that notions of rational, fair governmental behaviour imply the same criteria, functioning as prime indicators of the quality of law enforcement efforts.

TABLE 4

Criteria for Evaluating Law Enforcement Systems in a National and International Context, Specified for the Phases of Control and Sanctions, with Special Emphasis on the Role of the Extent of the Problem, Dark Numbers (italics)

Criteria	Minimal (More Optimal)	Intra-State Similar	Inter-State Similar	Minimal International Collaboration
CONTROL				
Proportionality (potential effectivity) of capacity or effort	X	X	X?	X
	- depends on the nature and *extent of the problem*, seriousness, social values			
	- to be measured in particular by *aselect (representative) control samples*			
Control-effectivity (targeting quality)	X	X	X?	X
	- depends on intelligent use of knowledge of (*representative*) fraud cases compared to non-fraud cases			
	- to be measured by comparing targeting/select control with *aselect control*			
SANCTIONS				
Seriousness-proportionality of sanctions	X	X	X?	X
	- depends on the seriousness of the problem, damage, violation of social values			
	- to be assessed a priori; not dependent on the extent of the problem (*unless the extent determines the seriousness*)			
Sanction-effectiveness	X	X	X?	X
a. individually preventive	- to be measured by individual recidivism			
b. generally preventive	- to be measured by *aselect (representative) control samples*			

D. Procedure. Concomitantly to different conceptions of the content of the criteria put forward by the Court, one should raise more procedural questions concerning supervisionary and complaint rights; that is to say, who can or should be able to initiate a procedure against whom before which forum? What kinds of outcomes are conceivable? What kinds of sanctions are possible or should be possible? The strong interpretation given above lists a varied set of duties on the part of Member States. Corresponding rights should exist to evaluate whether they are met, to bring complaints and to judge in the matter. The current procedures provided by the Rome and Maastricht Treaties give various forms of complaint action (infringements, art. 169, 170; action for annulment, art. 173, action against failure to act, art. 175) by various parties (Member States, Commission, Council, European

Parliament, Private Parties) against either a Member State (infringement), the Commission (annulment, failure to act), or the Council (annulment, failure to act) (see e.g. Koppen, 1992). My concern here is not with procedure, but with the content of enforceable quality criteria, and its implications for knowing and acting. From the operational criteria it appears that some evaluation and research into the Member States' control and sanction operations are necessary, so corresponding rights of this kind of extended supervision should be assumed to exist. Again this information-duty and right is subject of a number of Regulations, but my argument is that it is general.

All complaint procedures are brought before the Court of Justice, but it is questionable whether the Court of Justice it the best qualified body to decide on the fulfilment or non-fulfilment of the criteria it helped to spell out. In a way, lawyers are not best suited to judge general matters of fact. I can well imagine that the more material task of assessing whether Member States law enforcement systems are 'really effective' or 'similar in practice' should be relegated to the European Court of Auditors. This task would be an extension of the European Court of Auditors' current 'systems audit' practices and would also be in line with the conception of the work of national Courts of Audit, not only to assess the legality of financial transactions, but to assess the effectiveness of governmental expenditure. One can also envisage the Court of Justice taking on all kinds of cases, both formal and more material, if it is helped by evaluative reports coming from Member States, the Commission, the European Court of Auditors or any other (objective) assessment body.

3.2 The Commission's Anti-fraud Policy: The Invisible Role of Dark Numbers

A departmental policy or work programme is typically the place where legal rights and obligations meet with political and material ambitions; it is as close to an operationalization of policy responsibility as one could ever get – assuming there is no secret agenda. Originally, there was no EC policy for fraud control, since fraud or criminality combat is not a primary objective of the Community. Fraud is 'created' as a side effect of the Common Policies, or rather, of the regulations that explicate the policies. Fraud can thus be viewed as part of the costs of a certain policy (too much expenditure or income not collected), or as a set of (illegal) actions that prevent the optimal fulfilment of the primary policy goals. When fraud is widespread, the credibility of programmes and institutions bearing a responsibility for them suffers, and this is exactly what happened at the end of the 1980s.

What at first appears to be a side concern of a set of policies or a simple condition for operation, becomes a prime concern.[37] The creation of UCLAF (*Unité de Coordination de la Lutte Anti-Fraude*) – in response to criticism of the European Parliament and the Court of Auditors – in 1988, and the adoption of its 45-item work programme in 1989 (approved by the Council and Parliament) constituted the Commission's response to fraud.

The original formulation and subsequent reformulation of the Commission objectives in the field of fraud (see Commission papers, 1987, 1988, 1989, 1990, 1991, 1992) show a great deal of continuity of content. There has, however, been a shift of terms especially about the axes on which UCLAF is presumed to work, and there are significant shifts of 'spirit'; from the (still) defensive 1987 report to the more open and inspiring 1988 document, and the realistic yet optimistic 'work in progress' report for the year 1989. The report for the year 1990 is even more realistic, it keeps the optimistic upbeat, but the downbeat is that progress is still slow despite the increasing need for acceleration in view of the more complete realization of the Internal Market. Underlying the text is concern regarding the political will of the Member States to combat fraud against the European Community. The 1992 report, for the year 1991, picks up again in spirit, as if the Commission is reassured that the measures already taken really add up to something that is lastingly effective.

Where then in this programme are observations as to the extent of fraud? The answer is, both everywhere and nowhere. Every page contains something on the fight against fraud, but the item itself is avoided. Similarly there is no overall assessment of the extent to which this fight has been successful. In the remainder of this section I will discuss several possible reasons for this failure to address the crux of fraud combat.

The material problems of combatting fraud are enormous. The progress report for 1989 reveals this better than the reports for 1990 and 1991. The work programme specifies the actions being taken and considered, whereas the regulations that came into force over the last few years (some of which were discussed in section 3.1) mark important steps in the ongoing effort to intensify and monitor the fight against fraud. A lot has still to be done. The major conclusions of the progress reports, although not formulated as such explicitly, are: (1) as soon as inspection by the Commission (UCLAF) in conjunction with national law enforcement authorities takes place, serious irregularities (fraud on the part of economic actors) are observed; (2) as soon as the national inspection systems are reviewed, serious shortcomings (on the part of law enforcing agencies) are observed; (3) some of the policy measures (for example subsidization, stimulation, promotion) do not appear to have had the desired effect.

Similar findings emerge from audit enquiries reported by the European Court of Auditors (1988, 1992) which not only bring fraudulent cases to light, but also comment on the less than optimal performance of national law enforcement agencies. One of its latest recommendations is to establish a Community Anti-fraud Unit to tackle fraudulent operations in an international context (Court of Auditors, 1992, items 4.4-4.8). Like most of the Commission's plans and actions, these suggestions can be interpreted as partial compensations for the void 'created' by the competence-interest conflict. Fighting fraud, so it seems from the perspective of the Commission, and, to some extent, of the European Parliament, is partially fighting the Member States; persuading or prescribing them to take fraud seriously, to give information, and to take minimal measures against it. It is also fighting for the Commission's own inspection rights. Certain efforts by the Commission can, less polemically, be interpreted as a policy responsibility that aims at extending legal duties (on the part of the Member States) and rights (on the part of the Commission), to better guarantee the Community's (political and financial) interests.

The 45 measures that make up the Commission's anti-fraud policy are grouped around three axes: cooperation, prevention and combat. Prevention by simplifying legislation and improving controls (items 1-11) is probably the most direct way for the Commission to reduce – via adoption in the Council and execution by the Member States – the overall amount of fraud. Many measures to further cooperation are necessary precisely because of the division of responsibility, discussed before, where all concrete law enforcement efforts are made at the level of the Member State. Under 'combat' or 'counteraction' we find those measures that either increase the harmonization of sanctions or increase the supervisory powers of the Commission. This means that to a large extent the Commission is not directly in touch with the phenomenon of fraud but only indirectly through the intermediary of Member States.

Even so, the issue of the extent of fraud could have been given a more conspicuous role had the axes used to draw up the work programme been slightly different, stimulating increased focus on the phenomenon. For example, the first anti-fraud document (Commission, 1987) talks about four stages: detection, investigation (effective reactions), follow-up and prevention, and the need to introduce cooperation as an explicit primary objective only came later. My own extended classification distinguishes analytically five areas of convergent or consecutive goals: *detection,* or how much fraud exists, which cases become known and registered and reported; *assessment,* or how much fraud should be assumed to take place (existence), how important or costly are the different types of fraud (relative harmfulness), and how fraud comes about (causal and functional relationships);

reaction, or how to treat known cases of fraudulent action (negotiations, criminal or administrative prosecutions, punishments); *prevention,* or given certain policies, how to take measure to diminish fraudulent action towards EC measures either by changing measures, their implementation or enforcement (detection or reaction); and *feedback or follow up*, that is, how to use the information gathered in the process of detection, reaction or prevention, to evaluate and improve the material policies themselves, or to improve the policies of implementation or law enforcement (detection, reaction or prevention).

This slightly more sophisticated classification would make it easer to recognize the problem of dark numbers as part of the work programme. Under the earlier (1987) classification it would have come in as a crucial element under 'detection', and in my extended version it would fall completely under 'assessment'. But in either case the dimensions are very much interrelated, both conceptually (*a priori*) and empirically. Detection is probably the most useful form of either combat or prevention. Similarly, it is difficult to evaluate the success of detection, or reaction or prevention without assessment of the increase or decrease of actual fraud cases, that is, without having some idea of actual numbers, numbers that are currently dark numbers. Finally, cooperation is not a goal in itself, but is only meaningful with respect to the other dimensions.

The proper execution of the claimed functions certainly relies on cooperation and firm action, but all kinds of knowledge is helpful if not absolutely necessary. For prevention and combat it is useful to know what stimulates fraud; causes may be socio-economic, policy-related or inherent in the implementation or law enforcement stages. Similarly, for prevention, or combat, it is helpful to have some sort of prediction that tells where fraud is likely to be most serious or expected to increase or decrease, and which will cover differenty kinds of descriptive, explanatory and predictive knowledge. This is true in general and dark-number research fulfils many of the intellectual tasks just outlined. Let me sum up the reasons why the Commission, and the Member States, sooner or later will have to concentrate on dark number research:

(1) *delineation of tasks and assessment of control needs*: it is important to know the extent of the problem of fraud, its diversity, its increase or decrease. This knowledge can only partially be obtained from a descriptive evaluation of known cases, such as those incorporated in the IRENE database. Dark number assessment is also crucial to estimate the need for control efforts required under the proportionality criterion;
(2) *explanation of representative cases*: the discovery and testing of causes must be stimulated through acquaintance with fraud cases that are a fair

representation of all the cases (whether registered or not). The registered cases in IRENE can only function as exploratory cases;
(3) *wider explanation-analysis or feedback*: dark-number research, as complementary to known cases analysis can, properly executed by taking into account the wider context of fraud, act as a source for suggesting ways of improvement of policies with respect to regulation, implementation, control, detection or sanctioning. In this way dark number research overlaps with evaluative research and it is the empirical complementary of systems auditing as practised by the Court of Auditors;
(4) *more effective combat and prevention*: increasing sophistication with respect to the first three points (where fraud occurs and why) will lead to corresponding sophistication in prevention and combat;
(5) *evaluation of the effectiveness of combat and prevention*: it is almost impossible to measure or monitor the effect of measurements taken in the context of combat or prevention with respect to regulation, implementation, control, detection or sanctioning without occasional measurement or estimates of dark numbers; such assessment would constitute an assessment of one of the prime criteria to judge national law enforcement efforts, as required by the EEC Treaty and the interpretation of the Court of Justice.

4. Evaluation of Non-Action: Good Reasons and False Arguments

In sum, there are good if not imperative reasons to pay attention to dark number assessment. Why then is this issue of the overall extent of fraud not taken up? One possible reason is that such research is deemed impossible. This argument of *technical-scientific impossibility* has been met by listing a number of possible lines of investigation, the most promising of which is control sample research and analysis.

A second reason not to engage in such research is that knowledge revealing the true extent of fraud would be useless, since the *capacity* of the various national agencies to control, investigate, prosecute or pass sentence is *limited* in terms of personnel, time, financial and other resources. This argument is valid, albeit to a limit extent. After all, dark number analysis could yield information about whether there are good reasons to change the overall capacity, or to reallocate the various sub-capacities within the total capacity, and such allocation corresponding to the extent of the problem is required from Member States under the proportionality criterion. Since such assessment would probably provide insight into methods of fraud, opportunities to commit fraud and other causally relevant factors, one should expect improvements of law enforcement policies and tactics, even with a

given capacity. So the criterion of effectiveness would be both served and would be made measurable in one important sense of general impact.

The *lack of political* will which characterizes the (lack of) efforts by national politicians and policy-makers to combat EC fraud in general makes the topic of research into the prevalence of EC-fraud especially undesirable.[38] After all, for the Member States, exposure of the overall amount of fraud may imply a duty to further reduce it, so more money to be spent on law enforcement of Community regulation while national interests may be deemed to have higher priority.[39] In financial terms, the only effect for a Member State in exposing more fraud is that less Community money will be channelled to economic actors within that country and an increased risk of the need to reimburse EC funds. The positive effect of reducing unfair competition generated by EC fraud within a Member State may be offset by unfair competition in an international context as a result of less stringent law enforcement in other Member States.

The *competence-interest conflict* that stems from the – somewhat vague – division of responsibilities in the Community, is another negative factor both in increasing combat and prevention efforts and in gaining knowledge to optimize these efforts. Unfortunately such barriers for more effective and equal law enforcement within the Community may well be inherent to its institutional system. I have sketched an operational overview of supervisory powers in terms of effectiveness and proportionality, building upon general principles of the Commission's guardianship of the Treaty, Member States' loyal implementation of Community regulations and recent judgements by the Court of Justice. This overview specified criteria both for the control phase and for the sanction phase of national law enforcement in a national and international context. Loyalty of Member States will be put to the test here; which state wants to support efforts for a more or less objective assessment of the effectiveness of its law enforcement agencies, whether in absolute terms or compared to other nations' agencies?

If the responsibility for fraud control remains in the hands of the Member States, as autonomy politics and the subsidiarity principle demand, one should not expect drastic improvements, neither in action nor in analysis. There is a *general slackness of Member States* in documenting the seriousness of *economic crime*. For similar national domains as income tax evasion or frauds involving national subsidies, not much knowledge is obtained or sought. Applying the assimilation principle only may safeguard formal equality of legal standards but would bring Community regulations to the same low national standards of law enforcement.

For the Community in general, and the Commission in particular, increased insight into the overall level of fraud and the conditions that lead to it, is in line with their legal and policy responsibility. Assuming that improved

insight leads to improved prevention and control, the Community stands to gain from dark-numbers knowledge (more income for the Community, less expenses wasted on fraud and greater fulfilment of Community policy objectives). Even so, the Commission may stick to other priorities, as is evident from an analysis of its work programme. Given the current power division and the problems that arise from it, it would be *more practical and at the same time more politically sensible* for the Commission to postpone dark number assessment. First there needs to be better cooperation between Member States and the Commission, more insight into reported cases (cf. the IRENE database) and more understanding of national fraud combatting systems (cf. the DAF database as item in the Commission's work programme). Why seek to know more about dark-number cases if those that come to light at the national level are incompletely reported to the Commission? Why add more cases to a list, if the money that is fraudulently lost, cannot easily be recouped? Judging from the Commission work programme, it looks as if higher priority is given to settling formal issues first, like the varying level of sanctions in the different penal and administrative systems.

Suppose all these technical and political obstacles are straightened out and the competence of the Commission (or the Court of Auditors or the Court of Justice) to judge Member States law enforcement efforts is not questioned, it does not follow that better understanding of the extent of the fraud problem is automatic. The Member States may officially cooperate, but will the national law enforcement agencies also do so? And what if assessment threatens to reveal huge national differences, either in the overall occurrence of presumed fraud or in the operational quality of national anti-fraud systems, for example along the lines of the North-South divide? Would not this alone be sufficient to render such knowledge too politically sensitive? Isn't it more likely that most Member States will be reluctant either to seek such knowledge or for such knowledge to become public?

It is part of analytic policy analysis to throw up such questions and part of normative policy analysis to suggest possible solutions; similarly, it is equally part of social science to critically evaluate knowledge claims as it is to advance methods of investigation. But it is part of politics and policy making to take a stand on these issues.

Appendix

Summary Economic Crime with Respect to Import and Export[1]

The aim of the study has been to investigate empirically economic crime rates connected with import and export. The inquiry contains two parts, the first concerning forms of economic crime, and the second concerning the amounts involved.

The inquiry concerning *forms of criminality* has been done through interviews with customs officers in various parts of the country as well as studies of court decisions and cases which are under investigation. On the basis of these studies a classification of economic crimes concerning import and export has been developed. Around forty different modes of crime related to import and export have been differentiated in the classifications. The classification has been shown to various authorities in the customs for feedback. Also concrete examples of the various types of criminality have been collected and illustrated in the report.

The other part of the study the *amount of crime* related to import and export. The investigation is based on a control action that was executed by the customs authority. The customs service did not think it made practically or financially sense to carry out the control action for the whole country. After all, an investigation into the amount of crime for this type of offenses would require physical control, a control of documents ('administrative control') and, eventually, in case of suspicion, a series of control investigations to the same object of control. At the start of the control action it was not known whether this was practically feasible at all with respect to a large number of objects of investigation since a new customs procedure had been enacted in 1974.

The execution of the control action required great personnel and economic resources.

By means of the control action an evaluation was made of:

1. the total amount of the irregularities for one year related to import or export to and from various selected areas in Sweden;

[1] Translation of the summary of a study carried out by Magnusson of the Brottsforebygande radet (the Swedish Council for Crime Prevention) ''Ekonomisk brottslighet vid import och export'' (1981). The study is one of the very few items on which a rational estimate of EC-fraud can be based. Hence a translation of the Swedish text was deemed desirable. Thanks is due to Michel Habsmeier, Jean Monnet Fellow during the year 1991-1992. Some notes to explain statistical terms are added after the translation.

2. the total amount of, what is called, irregularities related to levies;
3. how great a share of import and export in the researched domains did show false declarations of value.

The investigation related to imports is based on a random choice of trucks, boats and lorries in Stockholm, Goeteborg and Westerhose (Vasteras). Concerning export a random sample on shippings on boats in Goeteborg has been investigated. Only a few customs units in the cities participated in the investigation. In the schemes A. and B. it is specified which ones.

In scheme A. an assessment is shown of the total 'value regularities', in the course of 1980, calculated in millions of [Swedish] crowns. A 'point estimate' is the so called middle and most probable value. The confidence interval has been arrived at through the so called 'normal approximation' [see later 'notes of explanation' of the statistical terms; D.R.]. The customs irregularites have been estimated.

TABLE A

Estimates of Total Value Irregularities in 1980 in Millions of Crowns

	Customs Irregularities		Value Irregularities	
	Point Estimate	*Interval Estimate*	*Point Estimate*	*Interval Estimate*
Vasberga	65	21 - 109	260	16 - 504
Norrastation	5.9	2 - 9.8	23	3 - 43
Solnaterminal	1.9	0 - 4.6	5.9	0 - 15.4
Vateras-harbour	7.6	0 - 21.8	30	0 - 81
Skandia-harbours				
Import	110	0 - 252	936	0 - 2600
Export	–	–	1380	0 - 3520

The value irregularities with truck imports at Vastberga (Westberg) can be evaluated at 260 million crowns. According to very preliminary information, truck traffic to Vastberga amounts to circa 15 percent of truck traffic into the whole country. If one bases one's estimates of the total value regularities of truck import into the country over one year on the data from Vastberga, the value irregularity concerning the import of trucks, will amount to 1.7 billion crown for 1980.

The choice of data is very restricted, so it is not possible to draw definite conclusions for the country as a whole. Nevertheless, the investigation shows,

that economic criminality related to import and export appears to be voluminous, probably amounting to billions each year.

The rate of shipments that show irregularities has also been calculated and scheme B. shows the results.

TABLE B

Estimate of the Share in Percentage of Movements Which Involve Irregularities and the Value of These Irregularities in Percentage of Declared Value

	Customs Irregularities %		Value Irregularities %	
	Point Estimate	*Interval Estimate*	*Tax Irregularities*	*Value Irregularities*
Vasberga	25	8 - 42	1	4
Norrastation	35	17 - 55	1	4
Solnaterminal	50	18 - 82	0.3	0.9
Vateras-harbour	33	0 - 66	2	8
Skandia-harbours				
Import	33	14 - 52	0.4	3
Export	48	21 - 75	[0?]	9

The results of the control action indicate that it should be meaningful to do a countrywide investigation in which the sample is sufficiently great in absolute terms, that the confidence intervals may become smaller. Such investigation will be very expensive.

[end of translation: D.R.]

Notes of explanation

For those not familiar with statistical terms, let me shortly explain the technical terms of the aforegoing summary of the Magnusson research into import-export fraud. In doing research, one often does not, for practical of financial reasons, investigate all elements that are relevant (elements being qualities of persons, actions, economic interactions etc.). Rather one takes a sample of observations. In this case, one selected, at random, a number of import-export transactions at certain locations. By selecting a number of import/export transactions at random, one increases the likelihood that the findings for the sample are approximately

valid for the whole group of elements one is interested in, that is, all import and export transaction that go on in Sweden for one year. So, given that checks in the sample for Vastberga over one week have revealed 25% irregularities, one infers that the percentage of irregularities for Vastberga for all shipments over the whole year is 25 as well. Of course, one does not know this figure to be true and most probably the true figure is either somewhat higher or lower, yet, if one has to pinpoint one and only one percentage, 25% is the most reasonable estimate. Clearly the more observations one has made (the larger the sample!), the more confident one can be that the true percentage for the whole population is not very different than the percentage of the sample. In calculating how much confidence one may have in an estimate, one makes a calculation (on the basis of simple sample theory) what the limits are of all those estimates around 25% that are still somewhat likely; or to put it negatively, one calculates which values cannot be ruled out as the true estimate of the populations given the 25% percentage found in the sample. Thus one arrives at an interval estimate of values that are still somewhat likely: the 'confidence interval'. In calculating these margins, one usually stipulates that the probability for the true value to lie within the 'confidence interval' should be 0.95 or even 0.99. Given the value of 25% and the sample size of the customs research, the lower limit is calculated at 8% and the upper limit at 42%. In this way one complements the precision of the point estimate together with its low probability of being true with an unprecise but highly reliable interval estimate. Due to the small number of control checks in the study, the margins are very wide. This is why Magnusson at the end of the summary recommends greater samples in future research.

As far as I understand table A., it contains absolute figures in millions crones, basically to calculate the annual costs of this type of crime to the national treasury. If we look at the point estimates, then these are the estimates for the selected places of control for a year. Most likely these are the numbers assessed by the customs authority for the one week of the control research, multiplied by 52 or 45 (the number of operational weeks in a year). The values of the first column relate to the value that should have been paid in customs duties, whereas the second column represents the total value of the irregularities involved, that is, the difference of the amount actually put forward by transporters etc. to the customs on their declaration forms and the amount that should have been put forward. Given that the ratio in the upper part is 1 to 4, this means that the taxation or customs rate is 25% of the value. For the last two row in the table the ratio is closer to 1 tot 10, which indicates a much lower taxation or customs rate.

The fact that the confidence intervals are so huge is due to two factors; the size of the sample during the week of investigation concerned, and the fact that this is only one week out of a total number of 52 or 50 weeks.

For purposes of estimating the dark number, table B is the interesting one. As far as I can make out, the first two columns give the percentage of the number of transactions where some kind of irregularity is involved, the first one as point estimate, the second as interval estimate. The third and fourth columns express the total value of the irregularities concerned, the fourth one as a percentage of the total value that has been declared. This is the most important information of the research and it reveals percentages that range from one to nine. The third column expresses the irregularities concerned in terms of the tax amounts not being paid, all depending on the applicable rates. These figures fall in the range from less than 1% to 2%. The figures in column 3 are around 1/4 of the values of column 4, mirroring a tax rate of approximately 25%.

In the summary no table has been given that expresses these last two columns of value irregularities as interval estimates next to point estimates. Clearly the lowest estimates that would have to be accepted as not unlikely, are close to zero. In the table below I have calculated the highest value within the interval that would still be acceptable as an estimate. The highest values within the confidence interval is almost 22% for Vasteras harbour and almost 23% for export from Skandia harbours. This means that the highest estimate for the percentage of customs duties that have not been paid would be around 1/4 of 22 or 23, so between 5 and 6 percent. So interval estimates would range between 0; and 23%.

TABLE C

*Point and Interval Estimates of the Value of Irregularities Expressed as the Percentage of Declared Value**

	Customs Irregularities %		Value Irregularities
	Point Estimate		*Interval Estimate*
	Tax Irr.	Value Irr.	Highest Estimate of Value Irr.
Vastberga	1	4	504/260x4 = 7.7
Norrastation	1	4	43/23x4 = 7.5
Solnaterminal	0.3	0.9	15.4/5.9x0.9 = 2.34
Vasteras-harbour	2	8	81/30x8 = 21.6
Skandia-harbours			
Import	0.4	3	2600/936x3 = 8.3
Export	[0?]	9	3520/1380x9 = 22.9

* Both the percentage that represents the value irregularity/mistake (the value amount evaded) is given and the percentage that represents the extent of tax due.

So, assuming sufficient similarity between EC-fraud and Swedish import-export fraud, one can infer a dark number estimate for EC-fraud from the results from the Swedish study. The best point estimate should then be based on columns 3 and 4 of table B. This means that the most likely figures for the overall value of transactions affected by fraud (irregularity) is between 0.9 and 9 percent. Given the applicable tax scales of 25%, the overall value of tax not paid ranges between 0.5 and 2.5%. Table C reminds us that these estimates are very uncertain.

Notes

1. Generally big scandals are reported in the media. See also Keller & Maier (1987) and Tutt (1989).

2. See for example, the European Parliament (1989a). The British House of Lords reports talks of similar figures under reference to scientific experts such as Tiedemann (1988) or Magnusson (1982). The figure of 10 per cent is also mentioned in Tiedemann (1980), Vervaele (1989), and Morselli & Taminiau (1990).

3. See for example, Carey of the European Court of Auditors in the House of Lords report (pp. 8-9); and in De Doelder (1990, p. 12); or Mennens, from the UCLAF, in De Doelder (1990, p. 33).

4. Cf. also Van de Wijngaart (1983) and Scarlett (1991) who express worries about different definitions of fraud. Similar worries underlie the attempts to reach a Community wide concept of crime and sanctions, as the Commission's draft proposal for Community sanctions in 1976 and recent attempts to revive this drive for harmonization.

5. The expenses occurring under the CAP consist basically of subsidies to agricultural products when exported. The subsidies are paid out of the EAGGF-Guarantee section of the budget (European Agricultural Guarantee and Guidance Fund).

6. The 1989 Commission Colloquium examined the legal protection of the financial interests of the Community, organized by DG XX (Financial Control) and the Legal Service of the Commission. Since then several conferences on legal aspects of EC fraud have been held, organized by Directorate General XX together with recently established national associations of lawyers studying the protection of the Community's financial interests.

7. Tiedemann, in his statement before the House of Lords Select Committee, describes the same vicious circle.

8. Regulation 283/72 for fraud cases with respect to EAGGF-Guarantee (now replaced by Regulation 595/91) and Regulation 1552/89 for traditional own income.

9. Setting up the IRENE database is part of the Commission working programme (item 27, see for a further description and evaluation section 2.2.). IRENE is not a publicly accessible database, and as such cases may be said to ''disappear'' into it as far as the general EC public is concerned.

10. Annex 2 of the progress reports over 1990 (SEC (91) 456 final) and 1991 (SEC (92) 943 final) give both the number of cases and the amount involved for the various sectors of the EAGGF-Guarantee.

11. The EAGGF-Guarantee frauds for 1990 (export subsidies) include around 400 cases (over 10,000 ECU) that average 200,000 ECU. For 1991 there has been a reduction in the total number of cases and the average amounts for EAGGF-Guarantee.

12. In his 1988 publication (p. 107) Tiedemann mentions 20 per cent, but since this is still high, higher than 10 per cent, it counts as an argument for the claim that fraud against the EC should be estimated at 10 per cent, at least.

13. The *Frankfurter Algemeine Zeitung*, 3 January 1978, pp. 5 and 7, reports these cases as funny rather than serious incidents: "pigs become cows".

14. It would be scientifically useful to analyze the results of all extended controls exercised over the years by officials in a variety of domains, be them routine or extraordinary controls. However, the results of such controls are not generally available. Newspapers are not informed about most of these controls, and when they are, they are inclined to select the biggest fraud cases or the most dramatic outcomes.

15. The true percentages are unknown but the values can be calculated on the basis of the percentages found and simple sample theory. See appendix for full text of the summary of Magnusson's research and for explanation for statistical terms.

16. Levi (1985, pp. 62-4) also recommends samples, or 'sample surveys', that is, in-depth audits of samples (for example measuring the adequacy of tax returns); Levi refers to Long, 1980, and the Keith Committee, 1982.

17. For example a fish quota fraud study listed a number of control samples taken over the year by law enforcement agencies, but could not base any hard conclusion on it exactly for this reason (Vervaele, Ruimschotel & Widdershoven, 1990, p. 78). In fact, using control outcomes as a method to estimate the percentage of fraud for the totality of cases, suffers from the same defect as using the official penal registrations as an index for all cases, the black numbers: it is a sample of all cases, where it should be suspected that strong selective mechanisms are operative.

18. For example, the New York Kennedy International Airport Customs official Paul Mazurkewitz, revealing some of his tactics in an interview "It's a giveaway if the man backs off seven steps while the wife talks to me" (*International Herald Tribune*, 10 July 1992, p. 2). The Dutch tax inspectorate of the Finance Department uses statistically refined methods that specify for each relatively homogeneous group of tax payers (taxi drivers, butchers, etc.) what the average costs are and the average deviation from the average. In this way the system automatically signals cases that deserve further investigation.

19. In practice evaluation of targeting is performed under names like benchmarking or updating the 'target group profile'.

20. Aselect allocation of controls has the further advantage of deterrence and prevention. Any transaction, no matter how innocent it may appear, has a chance to be subjected to control. Of course this method is only illuminating if the controls executed indeed are able to reveal frauds that have been committed.

21. Regulation 4045/89 for EAGGF-Guarantee does mention evaluation (art. 9.4) but this evaluation refers to the progress made and will be based mainly on Member States detailed reports on the application of the Regulation (such as difficulties encountered and measures taken to overcome these).

22. The Treaty of Maastricht on the European Monetary Union, recognizes the Court of Auditors as an Institution of the Community. Cf. arts. 4 and 188a-c.

23. See for a general description of the role of the European Court of Auditors Kok (1989).

24. A fundamental proposal to this extent was made as early as 1976, but this has never been adopted (cf. Mulder, 1985). Recent vitalization occurred after the Court's ruling in Case 68/88 (cf. item 39 of the Commission work programme in the context of the anti-fraud policy).

25. Cf. the annual Court of Auditors reports, especially the one referring to the year 1987; see also Kok (1989).

26. Basically this notion is close to consonance or avoidance of dissonance models between various elements used at an individual level (cf. Festinger, 1957; or Heider, 1958). Although this article is mainly descriptive-analytic in character, it also uses the normative and explanatory perspectives of governmental institutions as rational actors (cf. Allison, 1971, for a comparison of various models of analysis). The notorious 'dynamics' between the Community and Member States, and the difficulty to explain it properly, is commented on by various writers, see for example Weiler (1981).

27. The Court has built up its doctrine on 'proportionality' and 'effectiveness' over the years. An important earlier case in the series that built up to the 68/88 decision is case 50/76, the Amsterdam Bulb Case. See also Scarlett (1992).

28. Cf. Rasmussen (1986) on the political function of the Court of Justice.

29. Cf. art. 209a of Title II, art. 78i of Title III and art. 183 a of Title IV.

30. Member States can reduce the disharmony of (political and power) interests and legal responsibility (now assumed to exist after the Court's 68/88 decision) if they stress (or adopt) a policy responsibility for the proper protection of Community law. The Dutch Minister of Justice (1992) has expounded the strong legal interpretation of art. 5 of the Treaty as a policy view; ''the Commission should be able to assess independently how, with what intensity and with what means, the Member States control compliance with Community law and how they react to violations of Community law that have become manifest''. If my theoretical interpretation of (re)establishing balances is correct, one should – over the next few years – witness more Member States outlining that they not only have a legal duty to adhere to the principle of assimilation, but that they 'voluntarily' incorporate the principle in their policies.

31. European Court of Justice, lines 23-25, author's italics.

32. ''It is hard to overestimate the importance of case 68/88'' (Pipkorn, in Commission Seminar, 1989).

33. This is not merely a hypothetical danger. Quite clearly large portions of the Member States' national legislation and policy making are not effective, nor is it equally customary for all Member States to evaluate their own effectiveness.

34. These formal aspects of sanctions are the subject of a comparative study requested by the Council of Justice Ministers on 13 November 1991. The study will be completed by the first quarter of 1993 (see also item 39 of the Commission work programme).

35. The Court of Justice statements in case 68/88 still leave some room to interpret similarity – and hence effectiveness and proportionality – in a formal, potential sense. The letter of the President of the Commission following this case inquired after real equivalence within the Member States, but from the description of their response (cf. Commission, 1992, p. 70) one has to infer that they have conveniently conceived of the question as inquiring after potential or formal similarity (''national legal systems are able to impose appropriate penalties for fraud against the Community budget'').

36. The international dimension of the fraud problem is stressed by many investigations and declared as a major shortcoming of law enforcement by a special Court of Auditors report (1992b). Member States' law enforcement agencies sometimes complain of lack of cooperation from another Member State. For example British customs officials complain that their Italian colleagues do not sufficiently follow up on the information given on Italian traders in meat fraud cases (*Financial Times*, 28 September 1992).

37. Cf. Simon (1964) for a general discussion of the change between goals and conditions in organizations.

38. Lack of political will to combat fraud actively is observed by various writers: House of Lords (1989), Sherlock and Harding (1991), as well as by the Court of Auditors, the Parliament and the Commission on various occasions.

39. Similar points are made by Harding (1982) and Scarlett (1992).

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