



## A NEW LEAF

Agricultural Network  
Exchanging Witnesses  
and Leading Experiences  
Against the Fraud



# FIGHTING FRAUDS

## Legislative framework and models of governance against frauds and corruption

Padova, May 5th 2015

This event is supported by the European Union Programme Hercule III (2014-2020).

This programme is implemented by the European Commission.

It was established to promote activities in the field of the protection of the financial interests of the European Union.  
(for more information see [http://ec.europa.eu/anti\\_fraud/about-us/funding/index\\_en.htm](http://ec.europa.eu/anti_fraud/about-us/funding/index_en.htm))





**A NEW LEAF**

Agricultural Network  
Exchanging Witnesses  
and Leading Experiences  
Against the Fraud



# Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

Padova, May 5th 2015

**Mr. Alberto Mingarelli**

Vice General Public Prosecutor  
Magistrate of the Court of Auditors  
at the Veneto Regional Public Prosecutor's Office

This document reflects the author's view and the European Commission is not responsible for the views displayed in the publications and/or in conjunction with the activities for which the grant is used.  
The information contained in this publication does not necessarily reflect the position or opinion of the European Commission.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

### ABSTRACT

The rules of the EU Treaty request that Member States prosecute frauds committed to the detriment of the Community at the highest level, using the same tools adopted for the prevention of frauds at national level. In this fight against fraud the role of the judiciary section of the Italian Court of Auditors is of great relevance, especially the part of it which acts in the judicial field - a typical feature of the Italian system, where the Court of Auditors carries out judicial activity and auditing activity, while in most other member states similar bodies perform only the auditing activity.

For the purposes of the jurisdiction for State loss of revenue, under the competence of the Court of Auditors, the damage to the European Community has been equated to the damage to the State and other public entities. One requirement is also the relationship among Public Entity and public officers who have been liable for the damage.

The concrete experience of some investigations of the Court of Auditors in the Common Agricultural Policy - CAP funding leads to the belief that control systems are sometimes inadequate for real risk of fraud, especially when producer organizations are involved, and that the principle measures against fraud lie at the level of prevention .



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- Art.310 of the Lisbon Treaty envisages that consistently with Art. 325, the Union and the Member States shall fight against fraud and other illegal activities that affect the financial interests of the Union.
- The budget shall be consistent with the principle of sound financial management. The Member States and the Union shall cooperate in order to use the allocations envisaged in the budget in accordance with this principle.





**A NEW LEAF**

Agricultural Network  
Exchanging Witnesses  
and Leading Experiences  
Against the Fraud

## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- Art. 325 states:1. The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies.
- 2. Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.
- 3. Without prejudice to other provisions of the Treaties, the Member States shall coordinate their action aimed at protecting the financial interests of the Union against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- From Art. 325 there derive the principles of equivalence, effectiveness and cooperation
- Under the principle of equivalence, in particular, the EU Court of Auditors is attributed the same functions as those of the Court of Auditors of Member States in deciding on accountability for fraud affecting the financial interests of the State.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- For structural funds the illegal activities affect at one and the same time the national resources (State or Regional) and the European resources (so-called principle of additionality)
- The case law of the Italian Court of Auditors states that even when fraud affects the financial interests of the EU damage is caused also to the national administration (State, Region, local body or other) that is the recipient of community resources. Once they are assigned to a Member State, they become part of the resources of said State. The bad use of said resources negatively affects the body involved and the community represented by that body.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- The recent “Administrative cooperation agreement between the European Anti-Fraud Office - OLAF - and the General Prosecutor's Office of the Court of Auditors,” signed in Brussels on 25 September 2013, replacing the previous 2006 protocol ,embodies the above-mentioned principles. As pointed out in the press release on that same date, “the agreement envisages cooperation and an exchange of information and data, assistance in investigations, the sharing of strategic analyses and incentives for training as well as assistance by OLAF for the enforcement by the Union of rulings issued by the Court of Auditors on cases of fraud on direct funds”.





## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- The Italian Court of Auditors operates in its twofold role as supreme control body and accounting/financial judge. In the latter role it has the functions of prosecutor and judge. Auditors with these functions are present in all the Regions and there is an Appeal Body in Rome;
- The presence of a Public Prosecutor's Office and Judge "specialised" in cases of State loss of revenue which include fraud against public bodies and the European Community is a characteristic of the Italian State, while in the other EU Countries the jurisdiction over such cases is left generally to the undifferentiated role of the ordinary judge.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- The Court of Auditors has jurisdiction over public accounting matters and in others defined by law.
- In particular, in the presence of loss of revenue for the State or for any public administration, the liability of administrators and employees does not come under the ordinary rules of Civil Law but takes on the specific characteristics of administrative-accounting liability.
- The essential elements of such liability, as indicated in various legal provisions include:
  - an objective element represented by economic damage (and also damaged reputation) affecting the financial interests of the State or public body;

(cont'd)



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- a subjective element (wilful misconduct and gross negligence);
- causal link between conduct and the harmful event;
- a service relationship between the wrongdoer and the economic damage to the public administration;
- a limitation period of five years

This type of liability is characterized by the attribution of jurisdiction to a special judge, namely the Court of Auditors, with attribution of the power to act, exclusively to the regional prosecutor as public body acting on behalf of the “State community”; the prosecutor acts independently of the evaluations and will of the administration that experienced the damage.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- The accounting administrative responsibility that is based on the principles underlying general civil liability, is quite specific in that it is aimed at ensuring the appropriate management of public money.
- The specific characteristics of the civil liability concern the subjective profile, restricted to cases of wilful misconduct and gross negligence, the personal nature of the liability, with limited instances of joint and several liability, the special power of the judge to “reduce” the amount debited to the convicted party, the restriction of the statute barred period to five years, the effects of the sentence that cannot be extended to the heirs of the convicted party except in the case of unjustified accumulation of wealth.





**A NEW LEAF**

Agricultural Network  
Exchanging Witnesses  
and Leading Experiences  
Against the Fraud

## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- Nonetheless, the action taken by the Regional Prosecutors of the Court of Auditors has characteristics that often make it more effective in practice than the criminal action taken by the ordinary judge, as shown by case law, some instances of which are provided below.
- Indeed, the Prosecutor of the Court of Auditors does not need the crime to be ascertained by a criminal judge, he does not need evidence of malice to sentence an individual who has unduly received national or community funds, because evidence of gross negligence is sufficient.
- Under Art. 129 Code of Civil Procedure, the Public Prosecutor is obliged to report suspected cases of State loss of revenue and can hence start investigations;





**A NEW LEAF**

Agricultural Network  
Exchanging Witnesses  
and Leading Experiences  
Against the Fraud

## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- However, these proceedings are in no way conditioned by the outcome of criminal prosecution that often takes place in parallel to prosecution for State loss of revenue.
- Here the procedures are undoubtedly more streamlined than those of the criminal court with the possibility of appeal and of taking the matter to the Supreme Court only for reasons of jurisdiction. There is normally only one hearing based on the examination of documents, and decisions are taken in a fairly short time.
- The Unified Sections, when deciding on issues of jurisdiction, have specified that seeking damages through civil proceedings (or joining the criminal proceedings as civil party) is quite feasible. The mutually independent instruments need to be coordinated through the principle of competition and preference is attached to the instrument ensuring a quicker achievement of the European goal of recovering the sums owed.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- In any case it is pointed out that the jurisdiction of the Court of Auditors over frauds affecting the financial interest of the European Union, has become increasingly consolidated. It concerns all the public funds issued for economic and social development based on the programs contained in Community regulations and in the national legislation. Furthermore, the Court of Auditors takes action not only in the area of frauds that come under criminal law but also in the broader field of frauds involving public finance.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- The cases tried for establishing responsibility initially identified the **officials in charge of payment and audit procedures** as the individuals possibly responsible, at the administrative and accounting level, for omissions linked to gross negligence or wilful misconduct with aspects coming under criminal law.
- However, in the area of professional training positions were emerging stating that there was a 'service provider' relationship also in the case of private bodies implementing training programs. The Unified Sections of the Supreme Court accepted this approach (Ruling n° 814 of 12 October 2001) and stated, with regard to **firms, or, in any case individuals given the assignment to implement training courses**, that they **have a service relationship with the Paying Agency** which implies that the service provider comes under the jurisdiction of the Court of Auditors where there is liability for State loss of revenue.





## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- A fundamental moment in the definition of jurisdiction for these matters was marked by Order n° 4511 of 1 March 2006 of the Unified Civil Sections of the Supreme Court.
- The case examined by the Supreme Court had to do with funds issued for a community operational program for regional development. The Unified Sections pointed out that (with a view to recognizing the jurisdiction of the Court of Auditors, the development of case law interpretation, built up through cases related to the fact that the Administration had increasingly come to operate through bodies that are not part of its organization and in conditions that do not coincide with State accounting schemes and patterns) the title under which public money is managed is irrelevant and it may be in the form of an Employer-employee relationship, a service agreement, but also an administrative concession or a private agreement. The Unified Sections stated that:

*(segue)*



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

*“... the focal point for distinguishing between ordinary jurisdiction and the jurisdiction of the Court of Auditors has shifted from the quality of the body (that may be a private individual or a non-economic public body) to the nature of the damage and of the aims pursued, so that where the private individual, **as a result of his choices, produces a negative impact on the program set up by the public administration** (that he is called upon to implement with the financial aid he has been granted), and the impact is such that the program will not be implemented, he causes damage to the public body for which he must answer before the Court of Auditors. It must be noted that damage is produced also from the standpoint of depriving other companies from having access to the funding that could have led to the implementation of the program, as approved by the public body with the contribution of the entrepreneur himself”.*



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- The Order therefore confirmed the equivalence of **national funds with community funds** as far as administrative liability is concerned. Secondly, with reference to all forms of public subsidies (both national and Community) provided for economic and social development programs (and hence no longer only the cases concerning professional training), it expanded the general framework of subjective positions that come under the jurisdiction of the Court of Auditors, that now covers not only the public officials involved in undue payment or undue utilization of the funds, **but also the beneficiary**, whether it be a physical person (as often occurs in the agricultural sector), or a legal person regulated by public law, whether it be a company or not, and also individuals, including private individuals (as in the case of concessionaire banks) who have done the preparatory work or who have supervised the payment procedure.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- A problem has come up for the recovery of misused funds in the case of fraud by the **administrators of the legal persons that are the direct beneficiaries of the funds.**
- In the case of fraud, from the criminal perspective, these individuals are normally taken to court, but from the standpoint of civil law, the relationship with the Paying Agency is established with the recipient company and so if the Administration seeks damages by bringing civil action, there is no guarantee that the money can be recovered because often the offence becomes statute barred, and even if the administration takes other actions to recover the money, such actions are addressed to the company and not to its administrators.
- This situation has shown up severe criticalities in recovery actions because such actions often involve companies that have few assets or are on the brink of bankruptcy, and because even the normal guarantee instruments like sureties do not operate satisfactorily.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- This is the reason why responsibility actions have been exerted jointly both on the beneficiary legal persons and on their administrators. Also with regard to this situation the Unified Sections of the Supreme Court intervened, in a prior proceeding to determine jurisdiction, and confirmed the jurisdiction of the Court of Auditors over the administrators of companies receiving public funds.
- Again in 2010, the Unified Sections (Ruling n° 5019 of 3 March 2010) stated that the Court of Auditors has jurisdiction also over cases of fraud affecting the financial interests of the State for which action can be taken not only against the company that received the public funds, but also directly against the administrator that diverted the funds thus thwarting the aims pursued by the public administration.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- Furthermore, a distinction needs to be made between **community public funds, paid into the coffers of a public body of a Member State and then transferred to the beneficiary**, and the case of **direct payment by the Community to the beneficiary**.
- In the first instance, according to Order n° 20434/2009 of the Supreme Court, “whatever the origin of the funds”, since they enter the budget of the public body, their misappropriation or misuse negatively affects the financial interests of the body itself, with the ensuing undisputed recognition of the jurisdiction of the Court of Auditors (along the same lines are Rulings 8385/1993, 5567/1994 and 8450/1998).



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- The matter of establishing whether the Court of Auditors has any jurisdiction over cases where damage is made not to a national body but directly to the supranational community body, is a more sensitive issue.
- The recent Ruling 20701/2013 of the Supreme Court concerns a challenge against a proceeding to determine jurisdiction, made by the person responsible for the unlawful use of funds granted by the European Commission as incentive to technological research at the international level, against which the European Commission, in its counterchallenge, asked that the Court of Auditors be declared to have jurisdiction over the matter.
- The plaintiff did not question the consolidated case law of the Unified Sections on indirect community contributions that are entered into the books of the national administration (state, regional and local) to be subsequently distributed to the various applicants through ad hoc procedures.





## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- According to such case law, a service agreement is set up between the Paying Agency and the legal person that is the recipient of the public resource, a service agreement that extends out to include also the physical persons who have represented or administered the legal person that is the beneficiary of the community funds, because such physical persons as well have an impact on the implementation of the Public Administration's program (Unified Sections of the Supreme Court 295/2013; 5019 and 9963/2010; 20434/2009). The Plaintiff, however, deemed that this case law could not apply to the case at hand where he had benefitted from "direct" community funds, funds that had not even entered the books of the national administration, not even temporarily, but had been managed entirely from the publication of the call through to the actual delivery, in accordance with Art. 53 European Regulation, directly by the European Commission itself; his action therefore had affected only the financial interests of the European Union and hence only the measures envisaged in the Community legislation were to be applied; such measures exclude the *interpositio legislatoris* in favour of the Court of Auditors that, being a special national judicial body, has jurisdiction





## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- Furthermore, having recalled the autonomy of the administrative-accounting Ruling and hence the autonomy of the action of responsibility exercised by the Prosecutor of the Court of Auditors with respect to civil, administrative and disciplinary relationships that may exist between the recipients of accounting actions and the individuals that are harmed, the Ruling points out that “there are no obstacles in Community Law against such autonomy in judging administrative liability, which instead protects it, in that Art. 274 of the Treaty states that without prejudice to the competences attributed to the Court of Justice of the European Union by the Treaties, the controversies involving the Union are not, for this reason, removed from the jurisdiction of national judges. Hence, the specific jurisdiction of the Court of Auditors must be included in the application of Community rules, since it cannot be excluded from remedies attributed to the European Community for recovering funds or for imposing sanctions and/or actions for non fulfilment of a contract, without prejudice to the fact that the relevant actions are mutually independent in their institutional profiles”.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- Moreover the Ruling rejects the hypothesis of the plaintiff according to whom the damages that justify the jurisdiction of the Court of Auditors is restricted by Art. 52 R.D. 1214/1934 to damages caused to the State or to any other public national body, and hence for damages caused by illicit activities that directly affect the financial interests of the European Union there is no *interpositio legislatoris* as would be required by the Constitution to justify such special jurisdiction. The Ruling states that “no textual element may justify such limitation, that cannot be inferred from the broad wording of the provision which, by making reference to all administrations and public bodies whose conduct through the agent has caused damage, indistinctly comprises all categories of public legal persons, including the European Community as per Article 47 TEU and 335 TFEU”.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- Since “the general action of administrative liability belonging to the jurisdiction of the Court of Auditors has been extended by Art. 1, (4), Act 20 of 1994 also to the cases in which damage is caused to an administration other than the one to which the perpetrator belongs (and the latter Act constitutes a valid *interpositio legislatoris* in all cases of funds paid indirectly by the European Community), no discrimination shall be made based on the supranational nature of the protected administration or based on the nature of the contribution/fund delivered by such administration”.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- The Ruling further points out that the limitation suggested by the plaintiff is in open contrast with the very tenets inherent in the link between domestic and community legislation, as declared both by the Constitutional Court (Ruling 348 and 349/2007), and by the Court of Justice according to which national judges, when applying domestic law must interpret it, to the extent possible, in the light of the text and the scope of Community provisions so as to ensure that the purpose of the provisions can be achieved (Court of Justice 4 July 2006 in C212/04; October 2004 in C397/01).



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- Finally “the so-called equivalence principle, already adopted by the Unified Criminal Sections (Ruling 1235/2010), in pursuance of which European financial interests are equated to national interests with the consequence that the States are called upon to act with the same means and adopting the same measures as those envisaged by domestic law for the protection of the same legal assets, entails that this should be applied also in matters under the jurisdiction of the Court of Auditors in protecting the financial interests of the European Community from fraud. Even if it were deemed, by way of hypothesis, that the provisions contained in Art. 53 R.D. 1214 of 1934 and 1 Act 20 of 1994 originally intended to protect only national interests, the compulsory application of the principle of equivalence necessarily entails the extension of such jurisdiction also where damage is caused either directly or indirectly to the financial interests of the Community (Court Justice 28 October 2010 cit.; 4 July 2006, Adeneler in C202/04; 15 January 2004, in C230/02)”.





**A NEW LEAF**

Agricultural Network  
Exchanging Witnessess  
and Leading Experiences  
Against the Fraud

## What cases have been dealt with by the Prosecutors of the Court of Auditors?

- The behaviours indicated concern mainly the obtaining of funds on the basis of mendacious statements, failure to carry out the activities funded, the production of untruthful documentation on the activities carried out, the purchase of second-hand machines instead of new ones or the fictitious representation of purchases never made, the lack of qualifications required for being eligible for having access to the funds, receiving agricultural subsidies by persons subject to anti-mafia prevention measures, failure to comply with the limitations on the use of the item produced with the funds, irregularities in carrying out the professional training courses with the complicity of public administrators and officials whose mandate is to exercise control over such activities, joint responsibility of credit institutions whose mandate is to carry out the preliminary examinations for the delivery of the financial aid, failure to provide bank guarantees, failure to reach the level of capitalization of the company required in order to be eligible for the contribution obtained by producing false documents and as a result of failure to carry out controls.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- As Public Prosecutor of the Court of Auditors, I have dealt with two cases of major community fraud in the Veneto region concerning premiums for cattle farmers (special premiums for male bovine animals and payments for extensification) where, in both cases the fraud consisted in mendacious statements about ownership of pasture land where the cattle could graze.
- In substance, consolidated systems were in place that used fictitious contracts indicating land registry data of parcels of land that in actual fact had never been rented out or granted by the true owners, or that could not be used as pasture land (e.g. fuel service stations).
- Parallel to these two proceedings there have been also criminal proceedings that for specific circumstances ended up with the acquittal of the accused.
- The Rulings on the two proceedings were 54 of 2011 by the Veneto Section (the accused was convicted) confirmed on appeal by the First Section of Appeal 281-2013 where also some intermediaries were condemned for producing false contracts so that the farms would





## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- Similar contents are found in the Ruling of the Veneto Section 200-2013 that however acquitted the defendants because prevalence was attached to the acquittal by the Criminal Judge in the parallel criminal proceeding involving the same defendants, but the Prosecutor of the Veneto Court of Auditors has appealed against the Ruling;
- In the first case the Regional Prosecutor had also issued an order for seizure of the assets of the defendants that the Court of Auditors however did not confirm for lack of *periculum in mora*;
- However, the Paying Agency of the Veneto Region (Avepa) in conjunction with the action of the Prosecutor pre-emptively suspended the delivery of funds for attributing subsequent premiums to the same companies responsible for the fraud, and this proved to be effective.
- The two events intertwined with a ruling of the Court of Justice of **24 June 2010** (proc. C-375/08), that issued its verdict on the first case (Rech and others)





## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- The matter was put to the criminal judge in accordance with Art. 234 of the EC Treaty, in order to clarify whether among the preconditions requested by the Community regulations in order for the premiums being challenged in Court to be legitimately received, there might be the requirement of a valid legal document attesting to the right to use the areas under forage, or whether it might be sufficient for there to be the *de facto* availability of such forage areas.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- **The Court of Justice stated that even though the community regulations do not subordinate the admissibility of a request for special premiums for “male bovine animals” and payments for “extensification” to the submission of a valid legal title acknowledging the right of the applicant to use the forage areas that are the subject of the application, they however do not rule out the possibility that the national legislation of the Member States may impose the obligation to produce a valid legal document, provided that *“the goals pursued by the Community regulations and the general principles of community law be complied with, in particular the proportionality principle”*.**





**A NEW LEAF**

Agricultural Network  
Exchanging Witnesses  
and Leading Experiences  
Against the Fraud

## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- Apart from the circumstance that no public benefit can derive from a fact that constitutes an infringement or even an offence, it is evident that the use in practice of plots of land cannot be checked by the public authorities and hence the requirement to have a legal document, even if required by regulatory acts namely the circulars of AGEA (Paying Agency for EU Funds), is to be considered perfectly legitimate also with respect to Community law without it being considered to be in violation of the proportionality principle, as maintained by the lawyers of the plaintiffs;
- This was also the interpretation of the mentioned ruling of the Court of Justice by the Supreme Court, n° 42363/12 filed on 30 October 2012.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- Leaving aside the outcome of the disputes, the two cases have shown up some shortcomings in the preventive control system with regard to the payment of the “premiums to the farmers” and perhaps in general in the CAP funds;
- Indeed the phase where it is decided if a farmer is eligible for community funding is preceded by a control that is limited purely to the forms filled in by some farmer organizations, while the role of the Paying Agencies seems to be that of making available the funds in a timely manner rather than that of making sure that the financial aid is not given to non-eligible people.
- The frauds committed in the two abovementioned cases were discovered after random “in the field” checks, one by the NAC (special unit for Community frauds of the Carabinieri) and in the second case by the Forest Corps of Abruzzo.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- One of the issues being investigated at the present time by several regional prosecutors was the “milk quotas”.
- The issue is linked to overproduction by individual producers and hence the infringement of the rule on the so-called “super-levy” that a Member State must pay whenever it exceeds its quota.
- The action of the Prosecutor of the Court of Auditors (as occurred in the case of the Ruling of the Lombardy section 112/2010) is centred on verifying whether there are conditions that constitute a loss of revenue for the State because the super-levy was not paid.
- The controversy came under the jurisdiction of the Court by virtue of the above mentioned Rulings according to which the discriminating element is not the public nature of the player but the evaluation of the aims to be achieved through the financial aid assigned to him.



## Preventing and fighting frauds in the field of EU funding in agriculture: the experience of the Italian Court of Auditors

- The supplementary contribution is a compulsory contribution intended to implement the policy regulating the domestic and community milk market and this is why failure to pay the supplementary contribution constitutes a loss of revenue.
- The mentioned ruling shows the mechanism that on the one hand has led the EU to impose a penalty on Italy for excess milk production aggravated by failure to pay to AGEA the supplementary contribution.



## Audits by the Court of Auditors on Community funds

- Being an audit body, the Court of Auditors is structured into regional Sections and central Sections and Offices.
- As regards control on funds coming from the European Union, the regional Sections are particularly important since the Regions are the bodies that manage community funds.
- At the Central level the Section for audits on community and international affairs is the main body.





**A NEW LEAF**

Agricultural Network  
Exchanging Witnesses  
and Leading Experiences  
Against the Fraud

## Audits by the Court of Auditors on Community funds

- Besides the Regional Sections and the Section for Audits on Community and International Affairs, there is also the Central Section for Audits on the Management of State Administrations subdivided into Offices that audit the management of State Administrations, when European co-funds are involved.
- The section reports to Parliament at least once a year on:
- a) the management of community structural funds by the administrations and other bodies with reference to the implementation of community support and compliance with the principles laid down by the European Union with special reference to interventions in disadvantaged areas;
- [b) ...]
- c) the state of Community resources allocated to our country and the relevant audit systems;
- d) The size and causes of frauds affecting the financial interest of the Union and .... relevant preventive and repressive measures.







**A NEW LEAF**

Agricultural Network  
Exchanging Witnessess  
and Leading Experiences  
Against the Fraud

## Audits by the Court of Auditors on Community funds

- The Section receives from all central and regional Audit Sections reports on management acts that are in contrast with European Union regulations or principles and may propose to the president of the Court to communicate it in a report to the European Court of Auditors and to the relevant bodies of the Union. If the proposal is accepted, the president of the Court approves the report and gives indications to the Section to fulfil its obligations.
- 3-bis The president of the Section is a member by law of the Unified Audit Chambers
- 3-ter In compliance with the annual program coordinated with the guidelines of the Unified Chambers and in connection with the program of the European Court of Auditors, the Section carries out specific investigations into the management of Community funds, also in collaboration with the other Sections. Moreover, the Section carries out audit activities in cooperation with the European Court of Auditors and with the other higher audit institutes in implementation of the treaties, agreements and memorandums





**A NEW LEAF**

Agricultural Network  
Exchanging Witnesses  
and Leading Experiences  
Against the Fraud

## Audits by the Court of Auditors on Community funds

- The audits by the Court of Auditors on the funds from the European Union focus essentially on checking the correct management of such funds by the relevant bodies, and they are performed in accordance with the normal procedures for audits of the management of national financial resources.
- Every year each Section develops its own program in which it decides which bodies will be audited, taking into account also the policies set every year by the “Unified Audit Chambers” for defining the framework for long-term actions, for investigations into public finance and performance audits and the relevant coordination policies and overall methodological criteria.



## Audits by the Court of Auditors on Community funds

- There are at least two types of audits by the Court of Auditors on European Union funds:
  - The preventive legitimacy audit exercised by the Audit Chamber of the Region of Sicily “on all general and specific administrative acts adopted by the regional government and by the administration in fulfilment of the duties deriving from Italy’s being a member of the European Union (Art. 2 (2), Legislative Decree 200 of 18 June 1999, for the implementation of the Statute of Autonomy)
  - Audits performed in the forms envisaged by Art. 12 of Act 259/1958 on the management of AGEA (Paying Agency for for EU Funds)





**A NEW LEAF**

Agricultural Network  
Exchanging Witnesses  
and Leading Experiences  
Against the Fraud

## Audits by the Court of Auditors on Community funds

- Audits on performance are a “collaborative” activity in that their purpose is not to impose fines because they are aimed at identifying criticalities in the management process and reporting them back to the Administration being audited and above all to the elected political bodies (Parliament, Regional Councils), suggesting corrective measures, if any.
- As regards audits on the management of community funds, besides checking the financial aspects, the Court of Auditors plays an important role especially in verifying whether the control measures adopted by the management bodies work or not (or identifying whether there are cases of failure to exercise control).
- Also follow-up on the measures adopted by the administration following the findings of the Court of Auditors is important.





**A NEW LEAF**

Agricultural Network  
Exchanging Witnesses  
and Leading Experiences  
Against the Fraud

## Audits by the Court of Auditors on Community funds

- Checking the audit systems is of fundamental importance because alongside the positive obligations (that substantiate the principles of cooperation and equivalence) there are specific profiles of Community responsibility for failure to implement protection measures.
- Indeed the Member State must demonstrate that the fraud is not attributable to shortcomings in its management and control activities in order for it to retain an amount as flat-rate recovery costs as laid down in EC Regulation 1290/2005 Articles 32 and 33 and 1083/2006, Art. 70, that envisage that at least a part of the non recovered amounts within the established deadlines, be charged to the Member State, when it has been ascertained that its prevention, contrast and recovery actions are inadequate.





**A NEW LEAF**

Agricultural Network  
Exchanging Witnesses  
and Leading Experiences  
Against the Fraud

## Audits by the Court of Auditors on Community funds

- If in the course of an audit the occurrence of irregularity or fraud is found that affect the financial interests of both the State and the European Union, the Audit Chamber, just like any other administration, has the obligation of informing the Regional Prosecutor that has territorial jurisdiction.
- The Regional Prosecutor, by virtue of the mentioned “principle of equivalence”, will act to protect the financial interests of the Union using the same means it uses to protect the national loss of revenue.

