



COMMISSION OF THE EUROPEAN COMMUNITIES

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97/0188 (CNS)

Proposal for a

**COUNCIL REGULATION (EC, EURATOM)
AMENDING COUNCIL REGULATION (EEC, EURATOM) No 1552/89
IMPLEMENTING DECISION 94/728/EC, EURATOM
ON THE SYSTEM OF THE COMMUNITIES' OWN RESOURCES**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

Pursuant to Decision 94/728/EC, Euratom, Regulation (EEC, Euratom) No 1552/89 delegates collection of traditional own resources to the Member States which are then obliged to make every effort to ensure that these resources are properly established, entered in the accounts, collected and made available.

However, the management of the procedure for collecting own resources suffers from a number of shortcomings, as is frequently observed in the control activities of the Commission and the Court of Auditors and the reports of the European Parliament.

As part of the management of own resources, one of the operational conclusions of phase III of the SEM 2000 initiative ("*Sound and Efficient Management*"), approved by the Madrid European Council of 15-16 December 1995, underlined the need to improve the financial management of own resources by tightening the rules governing their collection.

This proposal aims to meet this objective by introducing two measures covering both the *conditions for the establishment of own resources* contained in Article 2 of Regulation (EEC, Euratom) No 1552/89 and the *procedure for writing off these resources* set out in Article 17(2) of that Regulation under which Member States must ask to be released from their obligation to make available the amounts established when recovery has not been possible.

2. PROPOSED AMENDMENT OF ARTICLE 2

Community rules on own resources do not contain any specific provisions on what happens when own resources cannot be established through entry of the entitlements in the accounts as a result of an error on the part of the customs authorities themselves. This situation flows, in particular, from Article 220(2)(b) of the Community Customs Code when the error on the part of the authorities could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

The same situation also arises when, as a result of an error on the part of the administration, the debtor is not informed of the amount of duty within the three-year period laid down in Article 221 of the Code.

The Commission made a proposal concerning this loophole in the rules when Regulation (EEC, Euratom) No 1552/89 was being amended in 1992.¹ However, the Council did not incorporate this proposal in Council Regulation (EC, Euratom) No 1355/96 which amended the abovementioned regulation.

However, following the review of the Member States' financial liability for their errors and the relevant discussions under SEM 2000, the Commission considers it necessary, for reasons of financial transparency, to re-table a specific proposal to make Member States financially liable for administrative errors involving more than ECU 2 000 which make entry in the accounts impossible with regard to the debtor in accordance with Community customs legislation.

The procedure which the Member States must follow is to enter the amount in the account referred to in Article 6(2)(a), without any obligation to notify the debtor, and to make available debts exceeding ECU 2 000 which cannot be entered into the accounts provided that the debtor is known and the amount of the debt can be calculated.

3. PROPOSED AMENDMENT OF ARTICLE 17(2)

3.1 Practical application of the current rules for writing off debts

The way that the rules contained in Article 17(2) are applied in practice is still unsatisfactory as regards both the quality of the accounting information supplied to the Commission and the actual implementation of the procedure.

Primarily, as the Court of Auditors noted in its annual report for 1995, the entry of these amounts in the accounts is inconsistent, hampering the Commission's controls. Secondly, since Regulation No 1552/89 entered into force in January 1989, only five Member States (Germany, Spain, France, the Netherlands and the United Kingdom) have reported to the Commission cases of amounts written off.

Furthermore, the German authorities informed the Commission in their letter of 11 January 1996 that, under national rules, a debt was not considered definitively irrecoverable until a period of thirty years had elapsed. They therefore withdrew four cases which, in view of their legislation, had been submitted by error.

¹ Proposal for a Regulation amending Regulation No 1552/89 (COM(92) 519 final) submitted to the Council on 11 December 1992, version amended following the opinion of the European Parliament and the Court of Auditors and sent to the Council on 3 November 1994 (COM(94) 458 final).

Some Member States are thus forced by national statutes of limitation to continue recovery procedures for Community purposes without any hope of success. The Member States which have failed to submit the necessary assessment data may also experience the same difficulties.

In the Commission's view, the varying interpretations of the phrase "recovery ... impossible in the long term" in Article 17(2) of Regulation No 1552/89 and the different ways in which the procedure provided for is applied constitute a **problem of substance** which has to be remedied:

- the balance of the B account at Community level gives a picture which is not strictly accurate, since it includes amounts which there is virtually no hope of ever recovering;
- the Member States are subject to unequal treatment in the assessment of their recovery effort;
- administrative costs are incurred in continuing recovery procedures over a number of years with no hope of actual success.

3.2 Principles underlying the proposed amendment

The proposal retains as a basic principle the current procedure for writing off debts introduced by Regulation No 1552/89. Member States are thus released from the obligation to make available to the Commission those amounts which prove irrecoverable for reasons of force majeure or reasons which cannot be attributed to them.

However, for reasons of fairness, the Commission must be able to assess the effort made by all the Member States to ensure recovery of traditional own resources. It therefore proposes the ***inclusion of a cut-off date*** for the examination of entitlements which might never actually be recovered but which have yet to be formally recognized as irrecoverable. The unrecovered amounts must be removed from the B account (written off) within a period of five years:

- ◆ from the date of establishment, or
- ◆ from the date on which the debtor is notified of the final decision (in the event of an administrative or judicial appeal).

This time limit does not affect current procedures under national law since, in accordance with the principle of subsidiarity, it takes effect on the expiry of national procedures.

In order to simplify administration and thus boost the effectiveness of the procedure, the Commission proposes that, in return for this time limit, the Member States should concentrate their efforts on the highest amounts of duty. Without prejudice to the reports of cases of fraud and irregularities (second subparagraph of Article 6(4) of Regulation No 1552/89), it is therefore proposed that the *threshold for the notification of cases to be Commission be raised* from ECU 10 000 to ECU 50 000.

By extrapolating the cases already reported and the contents of the IRENE data base,² it can be estimated that 55% of the cases covered by the existing procedure would be examined under the new threshold; however, these would account for some 90% of the amounts involved. As with the current procedure, the Commission would still be able to check why smaller amounts had not been recovered during its on-the-spot checks of clearance from the B account.

Similarly, and in connection with the introduction of the time limit mentioned above, the Commission is prepared to waive potential Community entitlements in cases where amounts are written off but recovered late in those Member States which apply a longer statute of limitation than the Community.

3.3 Procedure to be followed

As soon as the time limit has expired, the following *procedure* will be applied: the unrecovered amounts will always be removed from the separate account and included in the quarterly statement of this separate account sent to the Commission (Article 6(3)(b) of Regulation No 1552/89) and, where applicable, in the updated fraud report (Article 6(4)) within three months of cancellation.

For cases involving **own resources in excess of the ECU 50 000 threshold**, the Member States have three months to report amounts written off or not recovered within the time limits laid down and give reasons in each case. On the basis of this report the Commission must then evaluate the measures which the Member State has taken to ensure recovery and the detailed reasons why it failed. The necessary information will be set out in the report drawn up by the Commission after consulting the Member States on the reports made under Article 17(3).

When it considers that an amount has not been recovered for reasons attributable to the Member State concerned (negligence on the part of the national authorities or failure of the Member State to comply with binding Community provisions on matters such as guarantees), **the Commission will take a decision** within six months of the report from the Member States and ask for the amounts to be made available in accordance with the rules.

² The IRENE base is a computer data base containing the Member States' half-yearly reports of cases of fraud and irregularities concerning the collection of own resources and the exchange of information between the Commission and the Member States in the form of mutual assistance reports to prevent and prosecute infringements against customs and agricultural legislation; 2 000 fraud reports were made in 1996.

If it feels that the Member State concerned has made a sufficient effort, to no avail, to protect the Community's financial interests, the Commission will remain silent and this may be considered as tacit authorization six months after the initial notification.

4. Amendments proposed to the current wording of Regulation (EEC, Euratom) No 1552/89

Regulation No 1552/89 - current wording

Amendment proposed

TITLE VII

TITLE VII

Provisions concerning inspection measures

Provisions concerning inspection measures

Article 2

Article 2

1c. In cases where the competent administrative authorities do not make an entry in the accounts for the customs debt on the basis of the customs regulations, even though the debtor is known and the amount due may be calculated, and the amount involved exceeds ECU 2 000, an ad hoc entry is made in the account referred to in Article 6(2)(a) without notification of the debtor for the purposes of the establishment referred to in paragraph 1.

Article 17

Article 17

1. Member States shall take all requisite measures to ensure that the amount corresponding to the entitlements established under Article 2 are made available to the Commission as specified in this Regulation.

(unchanged)

2. Member States shall be free of the obligation to place at the disposal of the Commission the amounts corresponding to established entitlements solely if, for reasons of *force majeure*, these amounts have not been collected. In addition, Member States may disregard this obligation to make such amounts available to the Commission in specific cases if, after thorough assessment of all the relevant circumstances of the individual case, it appears that recovery is impossible in the long term for reasons which cannot be attributed to them.

These cases must be mentioned in the report provided for in paragraph 3 if the amounts exceed ECU 10 000, converted into national currency at the rate applying on the first working day of October of the previous calendar year; this report must contain an indication of the reasons why the Member State was unable to make available the amounts in question. The Commission has six months in which to forward, if appropriate, its comments to the Member State concerned.

2. Member States shall be released from the obligation to place at the disposal of the Commission the amounts corresponding to established entitlements which prove irrecoverable:
- (a) either for reasons of force majeure
 - (b) or in specific cases for reasons which cannot be attributed to them.

The unrecovered amounts shall be removed from the separate account referred to in Article 6(2)(b). They shall be included in the quarterly statement referred to in Article 6(3)(b) and, where applicable, in the quarterly statement referred to in Article 6(4):

- as soon as an administrative decision confirms that they cannot be recovered;
- at the latest, after a period of five years from the date on which the amount has been notified in accordance with Article 2 or, in the event of an administrative or judicial appeal, from notification of the final decision.

3. Within three months of the administrative decision mentioned in paragraph 2 or in accordance with the time limit referred to in the second indent of that paragraph, the Member States shall provide the Commission with information on cases where paragraph 2 is being applied if the established entitlements involved exceed ECU 50 000, converted into national currency at the rate applying on the first working day of October of the previous calendar year.

This report, to be made on a model produced by the Commission after consulting the committee referred to in Article 20, must enable the Commission to assess the reasons referred to in paragraphs 2(a) and (b) which prevented the Member State concerned from making available the amounts in question and the measures taken by the Member State to ensure recovery.

4. The Commission must adopt a decision within six months of receipt of the report provided for in paragraph 3 if it considers that the conditions set out in the first subparagraph of paragraph 2 have not been met. In this case, the Member State concerned is obliged to make available to the Commission the amount corresponding to the unrecovered entitlements at the latest on the first working day after the 19th day of the second month following the month during which it was notified of the decision.

If the Commission remains silent for six months, the Member State is released from its obligation to make available the amounts written off.

3. As from 1 July 1996, Member States shall inform the Commission, by means of annual reports, of the details and results of their inspections and of the overall data and questions of principle concerning the most important problems arising out of the application of this Regulation and, in particular, matters in dispute. The report shall be sent to the Commission by 30 April of the year following the financial year in question.

A specimen of the report and duly substantiated amendments thereto shall be drawn up by the Commission after consulting the Committee referred to in Article 20. Any appropriate time limits for implementation shall be provided for.

By 30 June of the same financial year the Commission shall send to the European Parliament and to the Council a summary report on the notifications by the Member States under this Article and Article 6(3).

5. (unchanged)

(unchanged)

By **30 September** of the same financial year the Commission shall send to the European Parliament and to the Council a summary report on the notifications by the Member States under this Article and Article 6**(4)**.

**PROPOSAL FOR A COUNCIL REGULATION (EC, EURATOM)
amending Council Regulation (EEC, Euratom) No 1552/89 implementing
Decision 94/728/EC, Euratom
on the system of the Communities' own resources**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 209 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to Council Decision 94/728/EC, Euratom of 31 October 1994 on the system of the Communities' own resources,³ and in particular Article 8(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Court of Auditors,

Whereas in the light of experience gained in applying Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources,⁴ it appears that the provisions of that Regulation must be adjusted;

Whereas the transparency of the own resources system must be improved by specifying the conditions for satisfying the obligation to establish the own resources referred to in Article 2 of Decision 94/728/EC, Euratom, in particular in cases where the competent administrative authorities do not make an entry in the accounts for the customs debt on the basis of the customs legislation;

Whereas it is important to strengthen the procedure for waiving entitlements when their actual recovery is doubtful; whereas there should be a time limit, on expiry of which the amounts not recovered despite the efforts made by the Member States may be removed from the separate account referred to in Article 6(2)(b) of Regulation (EEC, Euratom) No 1552/89;

Whereas, for amounts exceeding ECU 50 000, the Member States are required to inform the Commission, which then has six months to announce its opposition; whereas, in this event, the Member State concerned is obliged to make available the amount in question;

³ OJ No L 293, 12.11.1994, p. 9.

⁴ OJ No L 155, 7.6.1989, p. 1, as amended by Council Regulation (Euratom, EC) No 3464/93 of 10 December 1993 (OJ No L 317, 18.12.1993, p. 1), Council Regulation (EC, Euratom) No 2729/94 of 31 October 1994 (OJ No L 293, 12.11.1994, p. 5) and Council Regulation (Euratom, EC) No 1355/96 of 8 July 1996 (OJ No L 175, 13.7.1996, p. 3).

HAS ADOPTED THIS REGULATION

Article 1

Regulation (EEC, Euratom) No 1552/89 is amended as follows:

1. In Article 2, the following paragraph 1c shall be added:

“1c. In cases where the competent administrative authorities do not make an entry in the accounts for the customs debt on the basis of the customs regulations, even though the debtor is known and the amount due may be calculated, and the amount involved exceeds ECU 2 000, an ad hoc entry is made in the account referred to in Article 6(2)(a) without notification of the debtor for the purposes of the establishment referred to in paragraph 1.”

2. In Article 17:

paragraph 2 shall be replaced by the following:

(a) “2. Member States shall be released from the obligation to place at the disposal of the Commission the amounts corresponding to established entitlements which prove irrecoverable:

- (a) either for reasons of force majeure
- (b) or in specific cases for reasons which cannot be attributed to them.

The unrecovered amounts shall be removed from the separate account referred to in Article 6(2)(b). They shall be included in the quarterly statement referred to in Article 6(3)(b) and, where applicable, in the quarterly statement referred to in Article 6(4):

- as soon as an administrative decision confirms that they cannot be recovered;
- at the latest, after a period of five years from the date on which the amount has been notified in accordance with Article 2 or, in the event of an administrative or judicial appeal, from notification of the final decision.

Paragraph 3 shall be replaced by the following:

(b) “3. Within three months of the administrative decision mentioned in paragraph 2 or in accordance with the time limit referred to in the second indent of that paragraph, the Member States shall provide the Commission with information on cases where paragraph 2 is being applied if the established entitlements involved exceed ECU 50 000, converted into national currency at the rate applying on the first working day of October of the previous calendar year.

This report, to be made on a model produced by the Commission after consulting the committee referred to in Article 20, must enable the Commission to assess the reasons referred to in paragraphs 2(a) and (b) which prevented the Member State concerned from making available the amounts in question and the measures taken by the Member State to ensure recovery.”

The following paragraph 4 shall be added:

- (c) “4. The Commission must adopt a decision within six months of receipt of the report provided for in paragraph 3 if it considers that the conditions set out in the first subparagraph of paragraph 2 have not been met. In this case, the Member State concerned is obliged to make available to the Commission the amount corresponding to the unrecovered entitlements at the latest on the first working day after the 19th day of the second month following the month during which it was notified of the decision.

If the Commission remains silent for six months, the Member State is released from its obligation to make available the amounts written off.”

Paragraph 3 is renumbered paragraph 5 and its final subparagraph is replaced by the following:

“By 30 September of the same financial year the Commission shall send to the European Parliament and to the Council a summary report on the notifications by the Member States under this Article and Article 6(4).”

Article 2

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

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

Done at Brussels,

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DOCUMENTS

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