



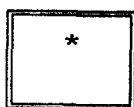
European Communities

EUROPEAN PARLIAMENT

SESSION DOCUMENTS

31 October 1990 Edition

A3-266/90



REPORT

of the Committee on Budgetary Control

on the proposal from the Commission to the Council for a Regulation amending Council Regulation (EEC) No. 283/72 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field (COM(90) 112 final - C3-144/90)

Rapporteur: Mr John E. TOMLINSON

DOC_EN\RR\98290

PE 143.499/fin.

A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)



= Consultation procedure requiring a single reading



= Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment



= Cooperation procedure (first reading)



= Parliamentary assent which requires the votes of a majority of the current Members of Parliament

C O N T E N T S

	<u>Page</u>
Procedural page	3
A. Amendments to the Commission proposal	4
DRAFT LEGISLATIVE RESOLUTION	5
B. EXPLANATORY STATEMENT	6
Opinion of the Committee on Agriculture, Fisheries and Food ...	8
Opinion of the Committee on Budgets	11

By letter of 5 June 1990 the Council requested the European Parliament to deliver an opinion on the proposal from the Commission to the Council for a Regulation amending Council Regulation (EEC) No 283/72 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field.

At the sitting of 11 June 1990 the President of the European Parliament announced that he had referred this proposal to the Committee on Budgetary Control as the committee responsible and to the Committee on Agriculture, Fisheries and Rural Development and the Committee on Budgets for their opinions.

At its meeting of 29 June 1990 the Committee on Budgetary Control appointed Mr TOMLINSON rapporteur.

At its meeting of 29-30 October 1990 it considered the Commission's proposal and the draft report and unanimously adopted the draft legislative resolution.

The following took part in the vote: Price, chairman; Wynn and Blak, vice-chairmen; Tomlinson, rapporteur; Dalsass (for Langes), Goedmakers, Holzfuß, Kellett-Bowman, Marck, Pasty, Pirkl (for Lo Giudice), Sarlis, Schodruch, Simons (for Wettig) and Theato.

The opinions of the Committee on Agriculture, Fisheries and Rural Development and the Committee on Budgets are attached.

The report was tabled on 31 October 1990.

The deadline for tabling amendments will appear in the draft agenda for the part-session at which the report is to be considered.

A

Proposal from the Commission to the Council for a Regulation amending Regulation (EEC) No. 283/72 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field.¹

Commission Text

Text as amended by Parliament

(Amendment No 1)
Article 6a(1)

- | | |
|---|--|
| 1. At the request of the Member State, the Commission shall contribute to the inquiry and recovery costs, to the amount of 10% of the amounts recovered, provided that the Member State has duly informed the Commission in accordance with Articles 3, 4 and 5 and has carried out the recovery procedures as swiftly as possible. | 1. At the request of the Member State, the Commission shall contribute to the inquiry and recovery costs, to the amount of <u>20%</u> of the amounts recovered, provided that the Member State has duly informed the Commission in accordance with articles 3, 4 and 5 and has carried out the recovery procedures as swiftly as possible. |
|---|--|

(Amendment No 2)
Article 9(3)

- | | |
|--|--|
| 3. The names of natural or legal persons may be disclosed to another Member State only in so far as this may assist in preventing or prosecuting an irregularity or in establishing whether an alleged irregularity has taken place. | 3. The names of natural or legal persons may be disclosed to another Member State only in so far as this <u>may be necessary for</u> preventing or prosecuting an irregularity or in establishing whether an alleged irregularity has taken place. |
|--|--|

(Amendment No 3)
Article 11

- | | |
|---|---|
| (a) The existing text becomes paragraph 1 and '1000 u.a.' is replaced by 'ECU 4 000'. | (a) The existing text becomes paragraph 1 and '1000 u.a.' is replaced by ' <u>ECU 2 500</u> ' |
|---|---|

¹ Full text: COM(90) 112 final - OJ C 138, 7.6.1990, p. 6

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission to the Council for a Regulation amending Council Regulation (EEC) No. 283/72 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field

The European Parliament,

- having regard to the proposal from the Commission to the Council (COM(90) 112 final)²
 - having been consulted by the Council (C3-144/90),
 - having regard to the report by the Committee on Budgetary Control and the opinions of the Committee on Agriculture, Fisheries and Rural Development and the Committee on Budgets (Doc. A3-266/90),
1. Approves the Commission's proposal subject to Parliament's amendments and in accordance with the vote thereon;
 2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission's proposal;
 5. Instructs its President to forward this opinion to the Council and the Commission.

² OJ C 138, 7.6.1990, p. 6

EXPLANATORY STATEMENT

This proposal for a regulation contains a number of important additional provisions intended to step up the campaign against fraud and to recover sums wrongly paid. The Committee on Budgetary Control has no reservations or amendments to make to the text.

The notification of hypothetical losses where irregularities are discovered in time (amendment to Article 3(2)) is particularly valuable. The Commission will then be informed of circumstances which might throw light on other irregularities of a similar nature, by the same operator, or on the methods used. It will also be valuable for it to be given details of how the irregularity was discovered (e.g. date of first information leading to suspicion and discovery of irregularities), and of the Member States and third countries involved.

As experience has shown, effective action against these activities is greatly helped if the Commission is told the identity of the natural and legal persons involved.

The unanimous evidence of experts at the various hearings organized by the Committee on Budgetary Control makes it clear that successful action against irregularity and fraud is absolutely dependent on the Commission's knowing the identity of the presumed perpetrators of irregularities and fraud. This is the only hope of keeping such activities within limits, in that it enables the Commission to extend its investigations into possible fraud beyond the individual cases. It can do so by examining similar transactions, including those involving the same persons and Community funds. This is vital to any attempt to combat the activities of organized fraudulent operators. It should not be forgotten that these people are always one step ahead of the national and Community anti-fraud units, and that keeping their names secret only increases their advantage. In this light, the protection against disclosure as provided by Article 9 as amended would seem to be an adequate guarantee against the misuse of such information. It must however be made clear that the new version of Article 9(2), under which information may be sent to persons within the Community institutions, must include the Committee on Budgetary Control of the European Parliament in so far as the latter applies the agreed procedure for protecting confidentiality.

Valuable extra information will be provided under the new version of Article 5 (information on judicial and administrative procedures instituted). It is particularly important that the Commission be informed before a decision is taken to abandon proceedings for recovery, so that the Commission and the national authorities may discuss the procedure to be followed.

Effective action against fraud also requires that servants of the Commission be allowed to take part in all inquiries carried out by officials of the national administrations with a view to establishing whether there has been irregularity (Article 6(1) second subparagraph). It is true that servants of the Commission are still not allowed to take part in purely criminal proceedings. The point is however that they must not be denied the right to information on procedures conducted by administrative authorities endowed under national law with police-type powers to prosecute.

In such cases, where national administrative authorities have special police and prosecuting powers, servants of the Commission must not be prevented from taking part.

The European Parliament attaches the greatest importance to this provision, and to the requirement to give details of the persons concerned, and expects that, after its public statements of 19 June 1989 on the importance of effective action against fraud, the Council will now support the Commission by adopting these essential legislative changes. It should be remembered that in this statement the Council specifically instructed the Commission to propose such amendments. Parliament will judge the Council's genuine will to turn words into deeds by whether it adopts these amendments. The present extent of fraud against the Community budget leaves no other option. If the Council fails to adopt the proposal, the Committee on Budgetary Control will not hesitate to make the matter public.

The financial contribution to be made by the Commission to inquiry and recovery costs where the national authorities have acted to safeguard the Community's financial interests is a great step towards protecting Community funds (insertion of a new Article 6a) in that it will encourage authorities to institute inquiries even where they are costly in money and time.

O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Committee on Agriculture, Fisheries and Rural Development
for the Committee on Budgetary Control

Draftsman: Mr Sierra Bardaji

At its meeting of 18-19 June 1990 the committee appointed Mr Sierra Bardaji draftsman of an opinion.

At its meeting of 26-27 September 1990 the committee considered the draft opinion and adopted it nem. con. with one abstention.

The following took part in the vote: Colino Salamanca, chairman; Sierra Bardaji, draftsman; Böge (for Bocklet), Fernex (for Falqui), Funk, Garcia, Görlach, Howell, Keppelhoff-Wiechert, Lane, Maher (for S. Martin), and Navarro y Partsch (for Verbeek).

1. As part of its Fight against Fraud programme, the Commission has submitted various horizontal proposals for regulations, including COM(90) 112 amending Regulation (EEC) No. 283/72 concerning irregularities and sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field.

The draftsman does not intend to deal with the general aspects and considerations relating to agricultural fraud and the Commission's Fight against Fraud programme, as these were dealt with in the opinions on proposals COM(90) 126 and COM (90) 151 (see PE 143.297 and PE 143.298).

2. The main aim of the proposal in question is to guarantee ease of communication between the Commission and the authorities of the Member States in any administrative or legal inquiries and procedures for the purposes of detecting irregularities and in the recovery of sums wrongly paid.

As an incentive for carrying out such activities, provision is made in certain cases for a financial contribution from the Community and for financial responsibility to be divided between the Commission and the Member States.

3. Generally speaking, the amendments proposed by the Commission are acceptable. However, the following points should be borne in mind:

- (a) An official of the Member State should take part in the inspections and inquiries mentioned in Article 6(3) and (4) carried out by servants of the Commission. Such collaboration would strengthen the authority of the Community officials and ensure that information was passed on by both sides, i.e. the national authorities on the one hand and the Commission on the other. Moreover, it would be a way of obviating any legal difficulties which might arise in some countries regarding prosecution on the basis of the findings established by servants of the Commission in the context of an inquiry (Article 6(5)), since the powers of Commission servants would be deemed to be equivalent to those of national officials, the police, etc.

- (b) Another question arousing concern among the Member States relates to the confidentiality of information concerning natural or legal persons allegedly involved in fraudulent operations. Although disclosure of information may be essential in order to combat fraud, in view of the growing complexity of trade connections in the run-up to the single market, names and facts should be disclosed to other Member States only where strictly necessary for the purposes of preventing or prosecuting irregularities, otherwise the principle of presumed innocence in law until proved guilty may in some cases be jeopardized.

4. On the basis of the above considerations, the Committee on Agriculture, Fisheries and Rural development calls on the Committee on Budgetary Control, as the committee responsible, to include the following amendments in its report:

Commission text

Amendments

(Amendment No. 1)

ARTICLE 1(5)

Article 6(3) (Regulation (EEC) No. 283/72)

3. Where servants of the Commission take part in the inquiry, the Member State concerned shall be informed thereof.

3. Where servants of the Commission join the national officials in the inquiry, the Member State concerned shall be informed thereof.

(Amendment No. 2)

ARTICLE 1(5)

Article 6(4)

4. Commission servants participating in an inquiry must be allowed access to the same premises and documents as the national officials conducting the inquiry.

4. Commission servants participating in an inquiry must be allowed access, together with the national officials responsible, to the same premises and documents as the national officials conducting the inquiry.

(Amendment No. 3)

ARTICLE 1(7)

Article 9(3)

3. The names of natural or legal persons may be disclosed to another Member State only in so far as this may assist in preventing or prosecuting an irregularity or in establishing whether an alleged irregularity has taken place.

3. The names of natural or legal persons may be disclosed to another Member State only in so far as this may be necessary for preventing or prosecuting an irregularity or in establishing whether an alleged irregularity has taken place.

(Amendment No. 4)

Article a (new)

1a. The Commission shall submit a report on the implementation of this Regulation to the Council and the European Parliament by the end of 1992.

O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Committee on Budgets

Letter from the chairman to Mr P. Price, chairman of the Committee on Budgetary Control

Brussels, 20 September 1990

Subject: opinion of the Committee on Budgets on the proposal for a Council Regulation amending Regulation (EEC) No. 283/72 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field (COM(90) 112 final - Doc. C3-0144/90)

Dear Mr Price,

The Committee on Budgets considered this proposal at its meeting of 18 and 19 September 1990.

The proposal provides for a Community contribution estimated at one million ECU per year, to inquiry and recovery costs, to the amount of 10% of the sums recovered.

So that Member States might be encouraged even more in their efforts to uncover irregularities and recover sums wrongly paid, the Community's contribution could be increased.

The Committee on Budgets also favoured a smaller increase in the threshold above which cases of irregularity must automatically be notified by the Member States to 2500 ECU.

Amendments to this effect are attached.

The Committee on Budgets also calls on the rapporteur for the Committee on Budgetary Control to urge the Commission that the funds for this scheme entered in the chapter 100 reserve of the budget for 1990 should be released as soon as possible so that it may take full effect this year, and the Member States offered immediate encouragement.

Yours sincerely,

(sgd) Thomas von der VRING

Annex

Members present: von der Vring, chairman; Lamassoure, vice-chairman; Cochet, Colom i Naval, Goedmakers, Holzfuß, Langes, Lo Giudice, Napolitano (for Colajanni), Pasty and Zavvos.

AMENDMENTS

Commission text

Amendments

Article 1(6)

Article 6a

1. At the request of the Member State, the Commission shall contribute to the inquiry and recovery costs, to the amount of 10% of the amounts recovered, provided that the Member State has duly informed the Commission in accordance with Articles 3, 4 and 5 and has carried out the recovery procedures as swiftly as possible.

1. At the request of the Member State, the Commission shall contribute to the inquiry and recovery costs, to the amount of 20% of the amounts recovered, provided that the Member State has duly informed the Commission in accordance with Articles 3, 4 and 5 and has carried out the recovery procedures as swiftly as possible.

Article 1(9)(a)

(a) The existing text becomes paragraph 1 and '1000 u.a.' is replaced by 'ECU 4000'.

(a) The existing text becomes paragraph 1 and '1000 u.a.' is replaced by 'ECU 2500'.