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SEPARATE ACCOUNTS FOR OWN RESOURCES

JOINT REPORT BY THE DIRECTORATES-GENERAL
FOR BUDGETS AND FOR FINANCIAL CONTROL

(presented by the Commission)

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This report consists of an introduction, three parts and three annexes:

- The introduction sets out the current legal framework for keeping a separate account for own resources.
 - Part One lists the main aspects of the new system.
 - Part Two takes stock of how the system has been applied.
 - Part Three suggests conclusions and a monitoring programme.
 - Annex 1 sets out the procedures followed by each Member State.
- Annex 2 reports on the inspections carried out by the Commission.
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INTRODUCTION

CURRENT LEGAL FRAMEWORK

Previous legal framework

Under the old rules on traditional own resources (Regulation No 2891/77), Member States established the own resources as soon as the entitlement was established and made them available in full to the Commission, even if they had not been collected. The only exception to this principle concerned cases of force majeure.

In the long term, this system could have had an adverse effect on Community receipts. The Member States had nothing to gain by detecting or prosecuting frauds when the amount at stake was to be paid to the Community budget irrespective of whether or not it was collected; indeed, in the event of non-recovery, there was a danger of a net financial loss for the Member State concerned.

The Commission also noted in the course of its inspections that all the Member States paid the Commission the own resources as soon as they were collected. It also noted that, in cases where recovery was still outstanding, some Member States made the own resources available to the Commission immediately, only to reclaim them in certain circumstances if they were not recovered, while other Member States, considering that amounts were "established" only when they were collected, paid over to the Commission only those amounts which were actually collected.

Two judgments by the Court of Justice in the Como butter case on 10 January 1980 (Case 267/78) and in the Pretorè di Cento case (Case 110/76) confirmed that Member States were obliged to establish all own resources and make available all the resources established, including those which had not been collected, except in cases of force majeure.

Furthermore, following findings of the working party of the Commission (DG XIX, XX, Customs Union Service, J.S.), it was proposed to the Member States that, for practical reasons, establishment should occur at the time of entry in the accounts provided for by the customs rules then in force, thus including it in the time limits laid down in the Community rules (Doc. XIX/561/80).

However, this interpretation of establishment, linking it with the administrative procedure of entry in the accounts, did not iron out all the difficulties, for example in the case of errors or disputes. Own resources are collected in accordance with national laws, rules and administrative provisions and if these, for instance, require establishment to be deferred until the end of any dispute, the Commission's interpretation alone would not be enough to demand a change in the national provisions.

On the basis of the report of 4 March 1983 drawn up by Financial Control following a targeted inspection carried out in collaboration with DG XIX.¹ It was proposed to the Commission that the rules in force should be amended to allow Member States to defer payment until their amounts of established own resources were recovered, on condition that:

- (a) the amounts in question were reported to the Commission every month;
- (b) the outstanding entitlements were entered in an account to allow Commission inspections;
- (c) the amounts were paid to the Commission as soon as they were recovered.

Introduction of a new system

The new system proposed by the Commission to the Council and introduced by Regulation No 1552/89 took into account the suggestions mentioned above.

Member States are still obliged to establish all the amounts and make them available to the Commission and a more detailed definition is given of what constitutes establishment.

Under Article 2 of the Regulation, the Community's entitlement to the own resources is established as soon as the amount due has been notified by the competent department to the debtor. Notification must be given as soon as the debtor is known and the amount can be calculated, in compliance with all the relevant Community provisions.

Entitlements established must be entered in the accounts at the latest on the first working day after the 19th day of the second month following the month during which the entitlement was established (Article 6(2)(a) and made available to the Commission within the same time limit. Each Member State must send the Commission a monthly statement of these accounts.

¹ SEC(83)392, 4.3.1983. This document was examined by the ACOR at its 44th meeting on 28 April 1983.

An exception is made for established entitlements which have not yet been collected and for which no security has been provided. These must be entered in a separate account - the B account (Article 6(2)(b)). These entitlements are paid over to the Commission at the latest on the first working day after the 19th day of the second month following the month in which they are collected. The Member States may take the same action in respect of established entitlements covered by a guarantee when these are disputed. A statement of these accounts is sent to the Commission every quarter.¹

Member States are released from the obligation to place at the disposal of the Commission the amounts which have not been collected for reasons of force majeure or for reasons which cannot be attributed to them. These cases must be mentioned in the half-yearly report to the Commission if the amounts exceed ECU 10 000. This report must contain an indication of the reasons why the Member State was unable to recover the amounts in question. The Commission has six months in which to make its comments.

Sharing the risk of non-recovery between Member States and the Commission

With the introduction of the separate B account, Member States are no longer obliged to pay, from their own budget, established entitlements which have not been collected while the Commission has an assurance that the own resources to be collected will be monitored in an account over which it may exercise its powers of inspection.

The new rules have thus resolved the conflict of interests between Member States and the Commission resulting from application of the old regulation, which obliged Member States to make available all the resources established, even those which had not been collected.

Under the new system, the consequences of not collecting resources are ultimately borne by the Community budget, subject to conditions clearly defined in the rules. In exchange, the Member States are obliged to enter uncollected amounts in a separate account. The advantage of this solution is that it promotes improved monitoring by the national authorities and allows the Commission to carry out inspections of the collection stage; under the old rules, this was outside its field of jurisdiction. An improved inspection undertaken by the Commission will contribute to a better recovering in the case of irregularities.

Apart from the surveillance of the monitoring of recovery, the Commission must fulfil its obligations under the general Financial Regulation in connection with the presentation and auditing of accounts. For this purpose, its accounts and its consolidated revenue and expenditure account contain the data from the statements of the separate accounts sent in by the Member States. Hence the need for a bookkeeping procedure which produces comprehensive and reliable data.

1 The Commission makes recommendations on how the Member States should keep these accounts in XIX/158/90, rev. 1: Implementation of separate accounting.

PART ONE

INTRODUCTION OF THE NEW LEGAL FRAMEWORK AND PROBLEMS OF IMPLEMENTATION ARISING FROM THE B ACCOUNTS

Over the past two years, Financial Control and DG XIX have conducted a joint programme of targeted inspections to identify the main problems which still exist following the introduction of the new legal framework.

This programme involved a large number of associated and autonomous inspections in the Member States up to the end of 1992. The main purpose was to examine application of the national rules relating to the separate accounts. A list of these inspections is contained in Annex 2 to this report.

Other problems also arose during the day-to-day management of the cases notified to the Commission.

1.1 Obligation to keep a separate account

Ten Member States have separate accounts for own resources awaiting recovery.

Denmark records all entitlements in the normal account, even those not collected, and makes them available to the Commission.

The Netherlands keeps a B account for agricultural levies, but not for customs duties, which are included in the normal account. However, amounts not collected are deducted from the total.

1.2 Nature of the separate account

Almost all the Member States keep a check on outstanding entitlements at local customs offices and other collection offices.

A number of Member States already had an account for entitlements which had been established but not collected and considered that these accounts could be used as a separate account.

Such amounts are first recorded at local level in an auxiliary account; each office's collection officer makes daily entries in a register which is monitored and cleared.

Those Member States which did not already have such an auxiliary account had to introduce a special procedure.

The main differences between the Member States concern the frequency and stages of the centralization of the entries by local offices and the level of the department responsible for keeping the account proper. These differences are set out in the annex on national procedures.

Greece is a special case. When the separate accounts were introduced, it was the only Member State which did not record outstanding amounts. This situation has improved following contacts with the Commission.

1.3 Time of entry in the accounts

Article 6(2) of Regulation No 1552/89 states that established entitlements must be entered in the accounts at the latest on the first working day after the 19th day of the second month following the month during which the entitlement was established. Hence the importance of being able to determine with accuracy the time of establishment.

Article 2 of the Regulation states that an entitlement is established as soon as the amount due has been notified by the competent department to the debtor. The obligation to calculate the amount due as soon as all the tax data are known and to notify the debtor is set out in Article 2 of Regulation No 1854/89.¹

This obligation is respected in most cases in which customs clearance does not raise any specific problems. In practice, however, application of Article 2 has caused a number of difficulties in the case of post-clearance recovery. This occurs whenever the competent authority notices, once the goods have been released, that all or some of the customs duty legally owing in respect of declared goods has not been demanded from the person liable for payment (Article 5 of Regulation No 1854/89).

In cases of this type, the competent authority, normally the collection officer in the local customs office or similar department, must enter the amount due in the accounts, establish the own resources and recover the amount from the taxable person.

If the amount cannot be recovered and if there is no guarantee, it must be entered in the B account.

In practice, the following problems may arise which, although they have no immediate financial impact, may undermine the completeness and reliability of the B accounts.

Some Member States have recovered amounts long after the date of establishment without, however, entering them in the B account during the period in which they were outstanding.

1 OJ L 186, 30.6.1989.

Some Member States do not always notify the taxable person formally but send informal requests for payment which do not constitute notification within the meaning of Articles 2 and 6 of Regulations No 1552/89 and No 1854/89 and are not therefore followed by an entry in the accounts.

When post-clearance recovery is undertaken in connection with an irregularity of a criminal nature and even if the taxable person has been notified on one or more occasions, some Member States take the view that the amount in question need not be established until it is entered in the collection officer's accounts, i.e. often when the case is taken to court or even later during the trial or on the basis of a court decision.

1.4 Types of entitlement to be entered in the separate account

Article 6(2)(b) of Regulation No 1552/89 states that entitlements which have not yet been recovered and for which no security has been provided must be shown in separate accounts. Member States may adopt this procedure where established entitlements for which security has been provided have been challenged and might upon settlement of the disputes which have arisen be subject to change.

As already stated above, this rule resolved the conflict of interests between the Commission and the Member States, which are now no longer obliged to pay into the Community budget amounts which they have not yet collected.

Special attention should be paid to how the three following matters are dealt with by the Member States:

(a) Security providing partial cover for an entitlement

Member States apply two methods.

- Some enter in B the whole entitlement which is partly covered by a guarantee.
- Others enter the guarantee part of the entitlement in A and the part not covered by the guarantee in B.

(b) Transfer from the normal account to the separate account

In the beginning, the procedure applied by the Member States varied. Some made regular transfers while others could not because of their system of accounts.

All Member States now appear to accept the principle that there is no need for such a transfer except in the special case of sugar levies.

(c) Entry of cases dating from before 1989

Some Member States have entered in their separate account only entitlements established (and not recovered) after the B accounts took effect. Others entered all such entitlements, irrespective of the date of establishment. Finally, this problem does not arise for some Member States since the unrecovered entitlements were made available.

1.5 Clearance of the B account and the responsibility of the Member States for established amounts not made available

Keeping B accounts does not release Member States from the responsibility delegated to them for collecting own resources.

The only exceptions to this obligation to make established entitlements available are those provided for in Article 17(2) of the Regulation, which states that Member States are released from this obligation if the established amounts have not been collected for reasons of force majeure or if it appears that recovery is definitively impossible for reasons which cannot be attributed to them.

In some circumstances, Member States may therefore be held responsible for the non-payment of established entitlements.

One example is when a national department has some power of discretion in fixing the amount of a guarantee which then turns out to be lower than the duties which cannot subsequently be collected. A similar situation may arise when an entitlement cannot be recovered because action is time-barred as a result of excessively long procedures or negligence.

The B account may thus be cleared in full or in part:

- following the recovery of all or part of the entitlements which are made available within the time limits laid down by the rules or
- following a decision to cancel or write off the established entitlements.

The Member States are obliged to notify the Commission of cases involving more than ECU 10 000 which are cleared as a result of decisions to cancel or write off entitlements for reasons of force majeure or for reasons which cannot be attributed to the Member States.

The Commission's statistical analysis of the quarterly statements of the separate accounts reveals that the clearance procedure has not yet reached its cruising speed because of the relatively long legal procedures. This finding is not at all surprising since the B accounts have been operational for only a few years.

At the end of 1992, the third year in which the system applied, the total amount outstanding came to ECU 279.2 million. Six Member States (Germany, UK, France, Netherlands, Italy and Spain) account for 96% of the amount established, 99% of the amount cancelled, 92% of the amount recovered and 96% of the amount outstanding.

While the growth in amounts established but not subsequently recovered has slackened a little (22.8% less than the previous year), the rate of recovery of these amounts has increased by only a small proportion.

The outcome of the recovery procedures may differ from one Member State to the next since it depends on the national procedures, including judicial procedures.

As regards the main instruments for the protection of the Communities' financial interests, the Council meeting of 13 November 1992 (Judicial affairs) asked the Commission to conduct a comparative study of Community law and the criminal and administrative provisions of the Member States. After an evaluation of the study, the Commission will submit appropriate proposals to improve the protection of the financial interests of the Community by legal and administrative penalties.

PART TWO**ASSESSMENT**

The findings of the analysis in Part One can be assessed as follows:

2.1 Obligation to keep a separate account (see 1.1)

The Member States are obliged to keep a separate account.

The procedure applied in Denmark and the Netherlands is acceptable only if it does not have any adverse financial consequences for the Community's finances. It must therefore ensure the same transparency and level of information as the system laid down for the separate account, including presentation of the half-yearly statement of amounts not recovered for the reasons specified in Article 17(2) of Regulation No 1552/89.

2.2 Nature of the separate account (see 1.2)

The amounts recorded in the separate account and not recovered at the end of the year are included in the revenue and expenditure account as a balance to be recovered.

The separate account must therefore satisfy the same criteria and offer the same guarantees of reliability as the A account. It must be kept in accordance with the accounting rules generally applied by the departments concerned and the same administrative responsibilities and the same controls must apply for the supervision of these accounts.

2.3 Time of entry in the accounts (see 1.3)

If an entitlement has been established within the meaning of Article 2 of Regulation No 1552/89 but has still not been recovered, it has to be entered in the separate account within the time limit laid down in the rules.

This applies to cases of post-clearance recovery as well as administrative disputes and court proceedings (civil or criminal).

2.4 Types of entitlement to be entered in the separate account
(see 1.4)

(a) Entitlements partly covered by a guarantee

It is acceptable that only the proportion of the amount not covered by a guarantee be entered in the separate account; however, this solution cannot absolve the Member State from its financial responsibility and must not discriminate against Member States which normally demand a guarantee for all the entitlements involved.

(b) Transfer from the normal account to the separate account

Such transfers must be considered contrary to the provisions in force if due to collection difficulties or the failure to recover an amount.

As an exception, it may be allowed for sugar levies.

(c) Date from which entitlements which have been established but not recovered must be entered in the separate account:

Regulation No 1552/89 entered into force on 1 January 1989. In accordance with the statement concerning Article 6 entered in the Council's minutes allowing the Member States time to adjust, the deadline for introducing the separate account was 1 January 1990.

However, it should be pointed out that the Commission proposed in Annex 1 to XIX/158/90, rev. 1 that the amount outstanding at 1 January 1990 should be reconstituted in order to provide more information on the state of recovery of amounts established before this date and on the cancellation procedures adopted by the Member States.

The Commission's right to monitor own resources established but not recovered before the B accounts were introduced must be guaranteed in respect of all the Member States, including those which have not entered established but unrecovered amounts in the separate accounts for the period prior to their entry in force.

2.5 Clearance of the B account and the responsibility of the Member States for established amounts not made available (see 1.5)

Article 17(2) of Regulation No 1552/89 stipulates that Member States can be released from their obligation to make established amounts available to the Commission only in cases of force majeure and if recovery is not possible for reasons which cannot be attributed to them; their responsibility may therefore be invoked if recovery of an entitlement is barred by the statute of limitations as a result of excessive procedural delays, the negligence of its departments or inadequate procedures for guaranteeing the amounts due.

The principle that Member States are responsible if a guarantee is inadequate was confirmed in a statement entered in the minutes concerning Article 189 of the Customs Code.

The Commission must have full and detailed knowledge of the national procedures implemented between the time of establishment and the time of recovery in the event of difficulties in recovery; this is not always the case at present.

A comparative study must therefore be conducted to ascertain whether the national provisions applicable in this field can be considered to be of equivalent effect and whether they all provide the same guarantees appropriate for the recovery of own resources.

PART THREE

COMMISSION PROPOSALS

It is proposed that the Commission take note of the relatively favourable assessment of the situation of the B accounts presented in Part Two of this report and of the following proposals.

3.1 The Member States are obliged to keep separate accounts.

The Commission will carefully monitor cases where no B account is kept in order to be sure that the conditions in which this is permitted are in fact met.

3.2 The B accounts must be sufficiently transparent and reliable to give amounts for entry in the Commission's revenue and expenditure account which adequately reflect what amounts are still to be recovered.

After carrying out a first series of inspections, the Commission will now conduct spot checks to test the soundness of these entries.

3.3 In particular, some Member States must still take steps to ensure that entries are made on time.

The Commission will check that these entries are punctual.

3.4 Some Member States did not enter past debts when they first opened the separate accounts.

Ad hoc checks will be carried out into the amounts outstanding when the B accounts were introduced in order to ensure that the appropriate amounts are made available.

3.5 The amounts entered in the B accounts must be monitored if a satisfactory level of recovery is to be achieved, in view of the inevitable constraints linked, in particular, with legal procedures.

The Commission plans to monitor the clearance of the B accounts in order to detect abnormal situations which would lead to own resources being made available late.

The Commission has not been supplied with comprehensive information about the specific rules for national recovery procedures (in particular enforced recovery).

The Commission will carry out a comparative study of national provisions governing the recovery of own resources.

ANNEXESAnnex 1. National procedures1. Keeping the separate account**Belgium**

In the case of customs duties, the separate account is kept at Regional Customs Directorate level by the disputes department on the bases of files sent in by the local offices.¹

The data are then collected by the Directorate-General (disputes department).

In the case of agricultural levies, the separate account is kept at the OCCL.²

In both cases the separate accounts are kept on a daily basis.

Germany

The separate account is kept on a monthly basis by the Federal Finance Ministry.³

Every month, the main customs offices inform their Regional Finance Directorate of the amounts by the fifth of the second month following the month in which they are established; each Regional Finance Directorate then passes on this information to the Federal Finance Office by the tenth of the month following the month in which the amounts are established.

This system is now being reorganized.

Greece

The separate accounts are kept by the local customs offices, by the disputes departments (EYTE) and by various offices specializing in specific customs arrangements. They are normally kept on a daily and sometimes on a quarterly basis, depending on the offices,⁴ and does not have a uniform layout.

At the end of every quarter, a statement of the amounts for which recovery is uncertain is then sent to the Customs Inspection and Coordination Directorate.

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- 1 Memo DC 23.150 of 15 December 1989 from the Central Customs and Excise Administration.
 - 2 Memo No 381/1 of 1 August 1989 from the Central Office for Quotas and Licences (OCCL).
 - 3 Vorschriftensammlung Bundesfinanzverwaltung (VSF) H 5045.
 - 4 Ministerial circular T 603/5012/0019 of 19 December 1989.

Spain

The separate account is kept centrally at the Directorate-General for Customs on the basis of the monthly reports sent in by the customs offices by the fifth of the month following the month in which the entitlement is established.⁵

France

France already had a separate account for unpaid entitlements at each customs collection office and at the main revenue office of the DNRED and has adjusted these registers to satisfy the requirements of Community rules.⁶

By the fifteenth of the month following the end of each quarter, the collection officers of each Regional Directorate produce a statement for the regional collection officer concerned.

The regional collection officers aggregate these statements and send them through administrative channels to the Directorate-General (office A/3) by the thirtieth of the month following the end of the quarter.

Ireland

Each surveyor keeps a local daily register.

The separate account is kept monthly at central level by the Accountant General on the basis of the monthly statements sent in by each surveyor, including the surveyor responsible for investigations.⁷

5 Circular of 14 December 1989 from the Ministry of Economic and Budgetary Affairs, Directorate-General for Customs, as amended by the internal instructions of 17 February 1992.

6 DA No 90-S-33 of 25 April 1990 and 90-S-56, administrative memos A/3 MG/SK No 1465 of 15 June 1990 and MG/SF No 3815 of 9 July 1991, amending BOD No 1040 of 12 July 1991.

7 General Order C&E No 32/90 from Customs and Excise.

Italy

The separate account is kept on a daily basis by the Chief Collection Officer for the offices within his jurisdiction.⁸

At local level the account is included in the Z.27 register (closed quarterly).

A quarterly statement is drawn up by each main office and sent to the Regional Directorate. The thirteen quarterly statements drawn up by the Regional Directorates are sent to the Directorate-General for Customs (5th Inspectorate, 12th Division), which sends a single statement to the Commission.

Luxembourg

In the case of customs duties the separate account is kept centrally by the Customs Directorate on the basis of files sent in by the local offices.

In the case of agricultural levies the separate account is kept at the OCCL.⁹

In both cases the separate accounts are kept on a daily basis.

Netherlands

In the case of agricultural levies the separate account is kept on a daily basis by the marketing boards, which send monthly statements to the Finance Ministry via the Agriculture Ministry.

There is no separate account for customs duties, which are recorded in the ordinary account.

Portugal

The separate account is kept on a monthly basis by the Directorate-General for Customs, which centralizes, by the 15th of the following month, the monthly statements drawn up locally by customs offices and regionally by the Accounts Department.

8 Ministerial Circular No 160 of 28 June 1990 supplemented by Ministerial Circular No 236 of 27 December 1990.

9 Memo No 381/1 of 1 August 1989 from the Central Office for Quotas and Licences.

United Kingdom

The separate account is kept locally on a daily basis by the Entry Processing Units in customs offices.¹⁰ At the end of each quarter the EPUs send the regional office a statement of amounts for which C18 post-clearance demand notes have been issued. The regional office produces an aggregate quarterly statement which serves as the basis for the national quarterly statement drawn up by the Accountant and Comptroller General's office.

Denmark

No separate account is kept; entitlements established are recorded in the ordinary account.

¹⁰ Customs instructions C2 - 3A EPU. proc. TA 2/89.

2. Time of entry in the accounts (Compliance with Article 6(2)(b) of Regulation No 1552/89)

Belgium

In the case of customs duties, establishment and entry in the separate account are effected within the time limits set by Articles 2 and 6 of Regulation No 1552/89 and are the same operation as entry in the accounts within the meaning of Regulation No 1854/89.

However, cases of late establishment and entry of agricultural levies have been found at OCCL.

In the case of customs duties, amounts are established and entered in the separate account as soon as the file reaches the Disputes Department of the Regional Customs Directorate.

In the case of agricultural levies the file drawn up by customs is sent to OCCL, which immediately establishes the entitlement and makes the entry in the separate account.

Germany

Establishment is the same operation as the entry in the account within the meaning of Regulation No 1854/89.

In most criminal-law cases the debtor is notified as soon as the main customs office receives the file drawn up by the Investigation Department. Notification is never later than when the file is sent to the court.

In civil-law disputes, entitlements are established by the main offices in compliance with the time limits set.

Greece

Entitlements are established in compliance with Article 2 of Regulation No 1552/89. Some offices still include established entitlements when drawing up the monthly statement; the result of this is that the time limit for entry in the account is not respected, at least for amounts established in the first month of the quarter.

In disputed cases, establishment is sometimes delayed until the time of recovery.

Spain

Establishment is the same operation as entry in the accounts within the meaning of Regulation No 1854/89.

In cases of post-clearance recovery following investigations, amounts are entered in the accounts around a month after the debtor has been notified.

In criminal-law cases, amounts are established and entered in the separate account at the end of the administrative procedure (investigation, calculation of the amount owed and notification of the debtor) without waiting for the decision of the court.

In civil-law cases, the amount established is entered in the separate account within the time limit laid down (Articles 3, 4 and 5 of Regulation No 1854/89).

France

Establishment is the same operation as entry in the accounts within the meaning of Regulation No 1854/89.

Entry in the separate account may be delayed in civil-law cases. The debtor may be notified of the amount owing well before it is entered in the accounts by the Collection Officer.

In criminal-law cases the entry in the separate account is made before the file is sent to the court.

There are three possible decision-making levels (Collection Officers, Regional Directorate and Directorate-General). It is therefore some time before the Collection Officer concerned, acting on the basis of the final decision at the appropriate level, can draw up the collection order and officially notify the debtor, even though as a rule he has already been contacted.

The French authorities are looking into ways of shortening or eliminating this time lag.

Ireland

Establishment and entry in the separate account are the same operation as entry in the accounts within the meaning of Regulation No 1854/89.

In criminal-law cases the Investigation Branch establishes entitlements between the time of finalizing the search report and referring the case to the court.

In civil-law disputes, establishment complies with the conditions set out in Article 2 of Regulation No 1552/89.

Italy

Establishment and entry in the separate account are the same operation as entry in the accounts within the meaning of Regulation No 1854/89.

In civil-law cases the entry in the separate account complies with the conditions set out in Articles 2 and 6 of Regulation No 1552/89.

In criminal-law cases, current practice would appear to be to enter established entitlements in the separate account before the file is sent to the court. (However, some internal instructions would appear not to be consistent with this practice.)

Luxembourg

Establishment is the same operation as entry in the accounts within the meaning of Regulation No 1854/89.

In cases of dispute under criminal and civil law, amounts are established and entered in the separate account as soon as the file reaches the Disputes Department of the Directorate-General for Customs.

Levies are administered by the OCCL.

Netherlands

Establishment of agricultural levies and entry in the separate account complies with the conditions set out in Articles 2 and 6 of Regulation No 1552/89.

In criminal-law cases, amounts are established by the Marketing Board when the report by the Investigation Department is completed and before the criminal procedure begins.

Portugal

Establishment is the same operation as entry in the accounts within the meaning of Regulation No 1854/89.

In criminal-law disputes, establishment is also the same operation as entry in the accounts and comes at the end of the customs investigation when the debtor is notified of the definitive amount due.

In both cases the Directorate-General makes the entry in the separate account.

In civil-law disputes the amount involved is established locally and centralized.

United Kingdom

Establishment and entry in the separate account are the same operation as entry in the accounts within the meaning of Regulation No 1854/89.

In most criminal-law cases the debtor is notified as soon as the file drawn up by the investigation department is received. This notification occurs at the latest when the file is sent to the court.

In civil-law disputes, establishment complies with the conditions set out in Article 2 of Regulation No 1552/89.

3. Conditions for entry in the separate account
(Categories of entitlement to be entered)

All the Member States comply with the provisions of Article 6(2)(b) of Regulation No 1552/89.

3.1 Amount covered by an inadequate guarantee

As a rule the amounts covered by a guarantee are entered in the ordinary account. The part not covered is entered in the separate account.

Some Member States (Belgium, France, Italy, Luxembourg and Netherlands) make entries in the separate account as they come in or every month.

Greece, however, generally applies very strict rules as regards the provision of security to ensure that all entitlements which might be involved are covered.

3.2 Transfer from the ordinary to the separate account of amounts which prove difficult to recover

Belgium, Germany, Spain, Greece, Ireland, Italy, Luxembourg, Portugal, United Kingdom

Not normally.

France

Only when banks refuse cheques of less than FF 10 000.

Netherlands

Agricultural levies which have been entered in the ordinary account but which are then challenged are transferred from the ordinary account to the separate account, but not in cases where they have already been made available.

3.3 Entry of cases predating the introduction of the B account

Belgium and Luxembourg

Entitlements which had not been made available by 1 January 1990 were not entered in the separate account since it was physically impossible to make a list of amounts still to be recovered on that date.

Germany

Amounts established but not recovered before 28 February 1990 were made available to the Commission. These entitlements were not therefore entered in the separate account, which was introduced on 1 March 1990.

Greece

Disputed cases from before 1990 which had not led to establishment were not included in the ordinary account.

Spain

The separate account was introduced on 1 January 1990 and did not include earlier cases.

France

On 1 June 1990 the separate account took over the earlier cases contained in the register of unpaid entitlements.

Ireland

The separate account was introduced on 1 January 1990 and did not include earlier cases.

Italy

Entitlements relating to imports (or cases of fraud) predating the own resources system were not entered in the separate account (Decision of 21 April 1970).

Netherlands

Agricultural levies established before 1 January 1989 were entered in the separate account.

Portugal

The separate account was introduced on 1 April 1990 and did not include earlier cases.

United Kingdom

The earlier cases were not included in the separate account introduced on 1 January 1990.

Annex 2. Commission inspections of the separate accounts

Since the entry into force of Council Regulation No 1552/89 implementing Decision 88/376/EEC on the system of the Communities' own resources, one of the Commission's main concerns has been to achieve satisfactory and uniform application by the Member States of the new provisions relating to the separate accounts referred to at Article 6(2)(b).

The Member States and the Commission therefore had to agree on the interpretation of these rules, and the Commission has devoted one seminar and several meetings of the ACOR to achieving this common interpretation.

In order to ascertain how the Member States had applied the relevant provisions of Regulation No 1552/89, the Commission conducted 33 inspections in the Member States up to the end of 1992 to examine the establishment, entry in the accounts and making available of own resources in cases where recovery was uncertain.

These inspections (seven in 1990, seventeen in 1991 and nine in 1992), of which nineteen were associated inspections and fourteen autonomous inspection measures, took place over the following periods and covered the following aspects:

1. Belgium: 19 to 25 June 1991 and 15 to 19 June 1992

Opening of separate account; details of Belgian accounting system. Time of entry of own resources in the separate account. Clearance of the separate account. Staggered payments under the post-clearance recovery procedure.

2. Denmark: 2 to 6 April 1990 and 13 to 17 May 1991

Time of the establishment of own resources following ex post inspections. Entry of own resources in the accounts in cases of fraud, irregularities and disputes.

3. Germany: 18 to 22 June 1990, 15 to 19 July 1991, 3 to 7 February 1992 and 24 to 28 February 1992

Date of establishment, accounting treatment of cases of fraud, irregularities and disputes.

4. Greece: 3 to 7 June 1991, 11 to 15 November 1991 and 1 to 5 June 1992

Management of separate account. Examination of national rules, powers of departments responsible for dealing with cases of fraud and irregularities.

Examination of entries in the quarterly statements. Clearance of the separate account. Accounting procedure in cases of post-clearance recovery.

5. Spain: 9 to 13 July 1990, 8 to 12 April 1991,
7 to 11 October 1991 and 23 to 27 March 1992

Examination of national rules. Time of establishment in the case of post-clearance recovery and contraband. Features of the Spanish accounting system. Clearance of the separate account. Cancellations and corrections to the accounts.

6. France: 24 to 28 September 1990, 25 February to 1 March 1991,
30 September to 4 October 1991 and 21 to 25 September 1992

Examination of the national system, including establishment and entry in the accounts in the case of disputes. Clearance of the separate account. Cancellations.

7. Ireland: 26 February to 3 March 1990, 27 to 31 May 1991 and
6 to 10 July 1992

Irish accounting system. Clearance of the separate account. Treatment of cases of fraud and irregularities.

8. Italy: 1 to 5 July 1991 and 21 to 25 September 1992

Time of establishment and entry in the separate account. Civil-law and criminal-law disputes.

9. Luxembourg: 4 to 8 November 1991

National accounting system. Post-clearance recovery.

10. Netherlands: 23 to 27 September 1991 and 15 to 19 June 1992

11. Portugal: 5 to 11 November 1990, 11 to 15 March 1991 and
9 to 13 December 1991

Treatment of requests for remission. Examination of accounting records and quarterly statements. Cases of post-clearance recovery arising from frauds and irregularities. Established entitlements in dispute. Clearance of the separate account.

12. United Kingdom: 10 to 14 December 1990, 23 to 27 April 1991,
21 to 25 October 1991 and 6 to 8 April 1992

Introduction of the separate account. Cases of post-clearance recovery and irregularities. Accounting procedure in the case of disputes. Clearance of the separate account.

	(TAUX/RATE/KURS : 12/92)				[TAUX / RATE / KURS : 31 / 12 / 1992]																					
					Différence		Divergence		(3)				Operations/Bewegungen 01.10.1992 - 31.12.1992						Droits constatés							
	Establishments 30.09.92				Taux (4)		Relevés (5)		Establishments 01.10.92				Recouvrements		Annulations		Augmentations		Establishments 31.12.92							
	PA-AL	Suc-Sug	DD-CD	TOTAL	PA-AL	DD-CD	PA-AL	DD-CD	PA-AL	Suc-Sug	DD-CD	TOTAL	PA-AL	Suc-Sug	DD-CD	PA-AL	Suc-Sug	DD-CD	PA-AL	Suc-Sug	DD-CD	TOTAL	PA-AL	Suc-Sug	DD-CD	TOTAL
AA	Zucker	Zölle		AA	Zone	AA	Zölle	AA	Zucker	Zölle		AA	Zucker	Zölle	AA	Zucker	Zölle	AA	Zucker	Zölle		AA	Zucker	Zölle		
B	2.914	0	2.752	5.666	14	13			2.927	0	2.765	5.692	41	0	408	38	0	104	36	0	928	374	2.885	0	3.180	6.066
DK (1)	-	-	-	-	-	-			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DE	29.521	0	98.089	127.610	88	291			29.609	0	98.380	127.989	1.130	0	3.000	0	0	0	12.954	0	6.026	14.851	41.433	0	101.407	142.540
E	211		503	714	-4	-9			207	0	495	701	0	0	9	0	0	2	462	0	87	538	669	0	571	1.239
ES	4.380	0	9.178	13.558	97	204			4.477	0	9.382	13.859	8	0	598	16	0	463	69	0	3.836	2.820	4.523	0	12.157	16.679
F	16.170	0	18.734	34.904	-38	-44			16.132	0	18.689	34.821	42	0	1.487	150	0	435	2.825	0	4.028	4.739	18.766	0	20.794	39.560
FR	0	0	6	6	0	0			0	0	6	6	0	0	3	0	0	0	0	0	17	14	0	0	21	21
I	42.648	0	27.785	70.433	-1.811	-1.180	0	0	40.836	0	26.605	67.441	19	0	117	112	0	10.510	397	0	559	-9.802	41.102	0	16.537	57.639
L	0	0	2	2	0	0			0	0	2	2	0	0	0	0	0	0	0	0	0	0	0	0	2	2
NL (2)	11.239	0	0	11.239	45	0			11.284	0	0	11.284	226	0	0	2.207	0	0	4.805	0	0	2.372	13.656	0	0	13.656
P	1.783	0	2.167	3.951	-17	-21			1.766	0	2.146	3.912	70	0	247	0	0	29	179	0	341	173	1.874	0	2.211	4.055
UK	223	0	8.625	8.848	3	123			226	0	8.748	8.974	60	0	3.037	8	0	1.992	24	0	2.849	-2.224	182	0	6.565	6.747
EUR-12	109.089	0	167.841	276.930	-1.624	-624	0	0	107.465	0	167.218	274.682	1.595	0	8.906	2.530	0	13.536	21.751	0	18.672	13.854	125.090	0	163.447	288.517

(1) DK : inscrit tous les droits const. dans la compt. A / enters all establishments in A accounts / nimmt alle Feststellungen in die A - Buchführung auf

(2) NL : envoie relevés compt. sep. seulement pour PA / sends statements for sep. acc. only for AL / übermittelt Übersichten für getr. Buchf. nur für AA

(3) MBR : monthly booking rate / taux comptable du mois / monatlicher Buchungskurs

(4) : différence taux de change / exchage rate difference / Kursunterschied MBR 12/92 - 31/12/92

(5) : divergence relevés EM / divergence statements MS / Divergenz Übersichten MS 30/09/92 - 01/10/92

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