

European Communities

EUROPEAN PARLIAMENT

Working Documents

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DOCUMENT 1-78/84 *B*

Report

drawn up on behalf of the Committee on Budgets

on a second amendment to the proposal for a Council
Regulation (Doc. 1-1039/83 - COM(83) 621 final)
amending Regulation (EEC, Euratom, ECSC) No. 2891/77
implementing the Decision of 21 April 1970 on the
replacement of financial contributions from Member
States by the Communities' own resources

Rapporteur: Mr H. A. C. M. NOTENBOOM

PE 89.338/fin/*B*
Or. Ne.

EXPLANATORY STATEMENT

1. In July 1982, the Commission submitted to the Council a report on the implementation of Regulation No. 2891/77, together with a number of proposed amendments. Parliament delivered an opinion on 17 December 1982 on the basis of the report drawn up by Mr NOTENBOOM on behalf of the Committee on Budgets (Doc. 1-1006/82). On 20 May 1983 the Commission submitted to the Council an amendment to its original proposal of July 1982 in the light of the opinion delivered by the European Parliament. The Council has not yet taken a decision on this amended proposal. The Commission has since submitted a second amendment to the proposal amending Regulation No. 2891/77.

The second proposal for an amendment contains a new definition of the concept of 'establishment' in Article 2 and replaces the concept of 'force majeure', hitherto the sole exemption to the principle that own resources should be made available to the Commission, by rules for deferring and waiving the making available of own entitlements.

2. In an initial working document (PE 88.495 of 10.1.84) your rapporteur argued that these latest proposals from the Commission further undermine the system of Community own resources, particularly as regards the determination of the moment when an entitlement is established and hence is due to the Community (Article 2 - Decision of 21 April 1970). Your rapporteur has since received an additional information note from the Commission administration and has been able to examine the report on the establishment of own resources in the Member States, on which the present proposals are based. After due consideration and after consulting various experts in this field, your rapporteur has concluded that, although he must stand by his fundamental objections, the Commission's proposals do contain a number of concrete improvements as regards the application of the regulation in question which deserve to be supported.

3. In the following, your rapporteur refers to the basic texts concerning own resources and explains why he stands by his fundamental objections to the proposals. Finally, your rapporteur proposes a new text for the regulation and discusses in more detail the technical improvements proposed by the Commission.

ORIGINAL TEXTS

4. The Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources lays down that agricultural levies and customs duties that are 'established or to be established' shall constitute the Communities' own resources.

This provision was elaborated in implementing regulations.

5. The first proposal dates from 26 May 1970 (Doc. 63/70 of 15.6.70). On 8 October 1970, Parliament delivered an opinion on this proposal (OJ C 129/26 of 26 October 1970) on the basis of the WESTERTERP report on behalf of the Committee on Finance and Budgets (Doc. 121/70). In reply to a list of questions, the Commission stated the following (Doc. 121/70, P.26) :

The Commission proposes a solution which, in accordance with the provisions of the Decision of 21 April 1970, provides that the Communities' own resources are acquired at the moment when the taxable event occurs, so that these resources do not pass through the national budgets and the Community's powers of verification and control are guaranteed. No problem can therefore arise as regards the transfer of this entitlement.

Although this principle was already implicit in the Decision of 21 April, the Commission considered that its proposal should expressly distinguish between the taxable event, giving rise to the entitlement to collection*, and the event giving rise to the availability of the tax i.e. its establishment.

Articles 1 and 4 of the proposal for a regulation specify this quite clearly (Doc. 121/70 p.5) :

Article 1

The Communities' own resources within the meaning of the Decision of 21 April 1970 (hereinafter called 'own resources') shall be acquired in the manner and as from the dates referred to in the above-mentioned decision at the moment when the event giving entitlement to the collection of own resources occurs.

Article 4(b)

For the purposes of application of this Regulation :

b) An entitlement shall be established as soon as the corresponding claim has been duly established or accepted in all its parts by the appropriate department or agency of the Member State, without prejudice to rectifications that might be made later, in particular following a dispute;

This proposal from the Commission was implemented by the Council as Regulation No. 2/71.

Article 2 now read as follows :

1. For the purposes of application of this Regulation, an entitlement shall be deemed to be established as soon as the corresponding claim has been duly determined by the appropriate department or agency of the Member State.
2. The competent department or agency of the Member State shall revise the entitlement established in accordance with paragraph 1 where the need for a rectification arises.

The proposed text of Article 1 was not accepted by the Council.

Article 2 of Regulation 2/71 was taken over practically unchanged in Regulation 2891/77 of 19 December 1977.

6. Since then, a number of regulations and directives relating to customs duties have been issued to ensure uniform application of import or export duties on goods traded between the Community and third countries. These regulations and directives define the concept of 'entry in the accounts', to which the Commission refers in the present second amendment to its proposal for the amendment of Regulation 2891/77. This definition reads as follows :

'"entry in the accounts" means the official act by which the amount of the import duties or export duties to be collected by the competent authorities is duly determined.'

FUNDAMENTAL OBJECTIONS

7. The regulations and directives referred to by the Commission to justify the introduction of the 'entry in the accounts' criterion treat 'entry in the accounts' exclusively from an administrative viewpoint, in particular as a point of reference for calculating time-limits for payment, repayment, remission or post-clearance recovery of entitlements. These regulations and directives even assume in some places that the entitlement already exists prior to the entry in the accounts.

8. This emerges most clearly in the Directive of 25 June 1979 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debts (OJ L 179 of 17.7.79). Articles 2 to 7 specify when a customs debt on imports or exports is incurred and even the moment to be taken into consideration for calculating the debt. Article 8 then contains the following provision :

'Without prejudice to the periods for payment which he may be allowed under the provisions in force, the person liable shall be liable to pay the amount of the import or export duties which constitute the customs debt from the moment when the competent authorities enter these duties in the accounts.'

In this context, the rapporteur is able to subscribe to the use of the 'entry in the accounts' concept.

9. Regulation 2891/77 lays down explicitly that Member States are obliged to make available to the Commission 'established entitlements' and not 'revenues'. This was also the case in Regulation 2/71, even though the Commission proposal on which this regulation was based spoke of 'the amount of own resources received'. A system based on actual revenue is attractive in that the effect is to underline that own resources correspond to autonomous fiscal powers held by the Communities. This should therefore also mean that the Communities have immediate and direct control over the collection of these resources. In present day circumstances this is not the case, and it would not be advisable to reintroduce the concept of 'received own resources' via the back door of a definition of the term 'determination' if this would in fact weaken the fundamental rights of the Community.

RAPPORTEUR'S PROPOSAL

10. As was the case with customs debts, the general regulation, i.e. Regulation 2891/77, should first formulate and fix a general principle. Only then can one look for concrete implementing rules. Such rules then have to be regularly revised and adjusted in line with developments in the economy and in administrative techniques so as to approximate as closely as possible to the general principle at any given time.

11. The rapporteur therefore proposes an amendment that introduces the concept of 'payability', calls on the Commission and Council to harmonize the relevant national legal and administrative provisions and, finally, introduces the concept of 'entry in the accounts' as a reference point for the making available of resources to the Commission by the Member States.

TECHNICAL IMPROVEMENTS

12. Proceeding on this basis a large part of the technical improvements proposed by the Commission can be retained, albeit with some restrictions.

13. The concept of 'force majeure' as an exception to the obligation on Member States to make available established entitlements to the Commission, has in practice been applied in ways that are not compatible with the interpretation normally given to the term: 'force majeure' refers to external unforeseeable and unavoidable events. It may be that collection of entitlements proves to be impossible without there being any 'force majeure' involved. It is in precisely these cases where the differences between Member States can be most marked, for, in the current state of harmonization of customs legislation, it may be presumed that differences are if anything minimal as regards the establishment of entitlements following the normal procedure with declaration and then release of the goods after payment of duties or of a deposit. Difficulties may, however, arise if establishment is not performed by the same agencies as those that release goods or if a declaration is incomplete or incorrect, especially where post-clearance recovery is necessary.

The Commission has been asked to give the rapporteur a summary of the manner in which the various Member States meet their obligations in this field.

14. The Commission wishes to remove the shortcomings noted by introducing more detailed rules for the cases where Member States can be released from their obligation to transfer established but not collected entitlements to the Community. The rapporteur has already emphasized above that such rules should not be regarded as exceptions to the principle of establishment but rather as special arrangements for making available established entitlements.

Broadly speaking, these arrangements are as follows:-

- If a Member State cannot collect an established entitlement within the normal time-limits, it can itself defer making available the entitlement to the Commission until this is actually collected or until it decides to terminate the recovery procedure (Article 10a); the Commission will draw up a list of model cases in which this provision may be applied.
- Where collection proves impossible for reasons not involving an error by the Member State and for reasons also giving rise to the non-collection of national revenues, the Commission may release the member State from the obligation to make available the entitlement (Article 10b). If the Commission refuses to grant such a release, the resources must be transferred.

15. The general aim of these arrangements can be supported. Nevertheless, it would seem appropriate to incorporate the following amendments

- a. in order to make it clear that the power to authorize a Member State to defer making available an entitlement resides with the Community, Article 10 needs to be amended to permit the Member States to make use of the deferral provision only if the reasons invoked are covered by the model cases drawn up by the Commission;
- b. in order to prevent excessive and loose application of these rules and to protect the financial interests of the Community,
 - a time-limit needs to be introduced after which deferral lapses
 - a provision needs to be included to make clear that an unjustified deferral will incur the payment of the interest charges provided for in Article 11 of Regulation 2891/77 for overdue entry of own resources in the Commissions's accounts.

16. Right at the end of the explanatory memorandum accompanying the second proposed amendment under discussion, the Commission remarks that this proposal 'will cause the provisions of Article 9 of Regulation No. 1697/79 (OJ L 197/P.1 of 3.8.79) to lapse'. This Article 9 reads as follows:

'Until the implementation of Community provisions specifying the conditions under which Member States shall establish the own resources accruing from the imposition of import duties or export duties, Member States are not obliged, where, pursuant to this Regulation they have taken no action for the post-clearance recovery of such duties, to establish the corresponding own resources within the meaning of Regulation (EEC, Euratom, ECSC) No. 2891/77.'

The recital corresponding to this Article in the preamble is even more to the point:

'Whereas, pending the implementation of these rules, it appears advisable, at the same time as common rules are laid down by this regulation providing that in certain cases the Communities' own resources comprising customs duties shall not be recovered, to recall that the Member States are not obliged in these cases to make a corresponding establishment.'

17. These provisions are manifestly at variance with the existing basic regulations relating to own resources.

The Commission is urged in future to withdraw its proposals in cases where the Council threatens to mutilate these proposals without consultation and to inform Parliament of the situation. This having been said, it is clear that the dropping of the above provisions cannot be covered by an indirect inference in the explanatory memorandum but must be mentioned explicitly in the regulation itself.

Opinion of the Committee on Economic and Monetary Affairs

Letter from the Chairman of the Committee to Mr LANGE, Chairman of the
Committee on Budgets

Dear Mr Chairman,

At its meeting of 21 December 1983, the Committee on Economic and Monetary Affairs considered the second amended proposal for a Council Regulation (EEC, Euratom, ECSC) amending Regulation (EEC, Euratom, ECSC) No. 2891/77 implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (Doc. 1-1039/83).

The Committee on Economic and Monetary Affairs adopted a favourable standpoint in its opinion on the proposal for a regulation (Doc. 1-561/82/Corr.). The amendments currently proposed do not call for any additional comments and this letter should therefore be considered as expressing the approval of the Committee on Economic and Monetary Affairs .

Yours sincerely,

(sgd) Jacques MOREAU

¹ The following took part in the vote:

Mr MOREAU, chairman,
Mr HOPPER, vice-chairman and draftsman,
Mr BEUMER (deputizing for Mr VERGEER),
Mr von BISMARCK, Mr BONACCINI, Mr CABORN,
Mr CAROSSINO (deputizing for Mr LEONARDI),
Mr CHANTERIE (deputizing for Mr van ROMPUY),
Mr GIAVAZZI, Mr de GOEDE, Mr HALLIGAN
(deputizing for Mr ROGERS), Mr HERMAN,
Mr HUTTON (deputizing for Miss FORSTER),
Mr MARCK (deputizing for Mr FRANZ),
Mr MULLER-HERMANN, Mrs NIKOLAOU (deputizing
for Mr SCHINZEL), Mr ORLANDI (deputizing
for Mrs CINGARI), Mr PURVIS (deputizing
for Mr DE FERRANTI), Mr RADOUX (deputizing
for Mr WAGNER), Sir Brandon RHYS-WILLIAMS,
Mr SEAL (deputizing for Mr HEINEMANN),
Mr WEDEKIND (deputizing for Mr SCHNITKER),
Mr WELSH and Mr von WOGAU