

COMMISSION OF THE EUROPEAN COMMUNITIES

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PROPOSAL FOR A COUNCIL REGULATION ON THE MEASURES TO
BE TAKEN IN THE EVENT OF IRREGULARITIES AFFECTING
THE OWN RESOURCES REFERRED TO IN THE DECISION OF 21 APRIL 1970
AND THE ORGANIZATION OF AN INFORMATION SYSTEM FOR
THE COMMISSION IN THIS FIELD

(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM

1. The European Parliament, in its Decision of 7 July 1977 giving discharge to the Commission in respect of the implementation of the Budget of the European Communities for the financial year 1975¹ called upon the Commission to set up a system to combat irregularities affecting the own resources of the Communities as referred to in the Decision of 21 April 1970² and to recover sums outstanding, this system to resemble the procedure laid down by Regulation (EEC) No 283/72³ in respect of irregularities in the EAGGF sector³.
2. Furthermore, the Special Committee of Inquiry (SCI), in its reports submitted since 1976 setting out the conclusions of the investigations carried out in the various sectors of the agricultural market, found that the number and volume of irregularities concerning the trade regime in these sectors were increasing appreciably. These irregularities directly affect expenditure and may also affect the level of own resources.

The SCI also found that the Commission was insufficiently informed of irregularities affecting Community resources.

To remedy this, the SCI recommended that either an information system similar to that under the abovementioned Regulation (EEC) No 283/72³ be established for own resources or the scope of that Regulation be extended to take in own resources.

3. Regulation (EEC) No 283/72 instituted a system for the notification of irregularities prejudicial to the Guarantee and Guidance Sections of the EAGGF. It assigns to the Commission an initiating role in the centralizing of this information. It provides considerable opportunities for cooperation between the Member States and the Commission in the prevention and penalization of irregularities concerning the EAGGF, thus facilitating the recovery of sums wrongly paid in connection with the financing of the common agricultural policy. This system relates only to expenditure.

¹OJ L 229, 7 September 1977.

²OJ L 90, 28 April 1970.

³OJ L 36, 10 February 1972.

Whereas the application of the main principles of that Regulation to agricultural own resources (levies, compensatory amounts, etc.) might significantly improve the present situation, it would be inappropriate to restrict the proposed rules to this revenue alone once the Community Budget is financed entirely from own resources. Consequently, this proposal covers all the revenue referred to in the Decision of 21 April 1970, i.e. including revenue accruing from customs duties and VAT.

4. At the same time, if the Commission's powers in respect of revenue must not go beyond those already given to it in respect of expenditure by Regulation No 283/72, there is no doubt that - as Parliament wishes - it should have wider powers than at present over information on irregularities relating to own resources in order to perform its functions correctly.

Furthermore, the Commission must be in a position to keep Parliament informed about irregularities which may cause a loss of the Communities own resources and about steps it has taken to safeguard the Communities' financial interests.

5. In conclusion, the proposed system must provide the Commission automatically with information on irregularities relating to each category of revenue referred to in the Decision of 21 April 1970. Additional inspections provided for by the existing rules could be made on the basis of this direct and independent information to ascertain the financial implications of the irregularities and to safeguard the Communities' rights with a view to proper application of the own resources system.

Nevertheless, the automatic provision of information to the Commission regarding irregularities relating to revenue from VAT would concern only irregularities having a direct effect on own resources accruing from VAT, subject to the limitation provided for in Article 9 of this draft proposal. This information, moreover, is not supplied for each case, but is compiled in two provisional half-yearly reports and one final annual report.

Proposal for a Regulation on the measures to be taken in the event of irregularities affecting the own resources referred to in the Decision of 21 April 1970 and the organization of an information system for the Commission in this field

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to Decision 70/243/ECSC EEC Euratom of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources¹, hereinafter referred to as the "Decision of 21 April 1970", and in particular Article 6(2) 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 the full implementation of the own resources arrangements should be accompanied by improved methods for informing the Commission of irregularities in this field, since the Commission has the obligation to see that own resources are established in the correct manner;

Whereas, in order to know the nature of irregular practices and their financial effects, it is necessary to make provision for supplying the Commission with a quarterly statement of irregularities; whereas this statement should be supplemented by information on the progress of legal or administrative procedures to establish the own resources evaded;

¹OJ L 94, 28.4.1970, p. 19

Whereas, because of the special nature of revenue from VAT, it is also necessary to set up an information system, classified by economic activities pertaining to this revenue, based on the transmission by the Member States of provisional half-yearly reports and a final annual report, since the nature of the irregular practices and their financial effects must be known in the case of revenue from VAT also;

Whereas the overall findings should regularly be brought to the notice of the Advisory Committee on Own Resources under a procedure which takes account of their confidentiality;

HAS ADOPTED THIS REGULATION:

TITLE I: General provisions

Article 1

The provisions of this Regulation concern the revenue referred to in Article 2(a) and (b) of the Decision of 21 April 1970 and the revenue from value added tax (VAT) referred to in Article 4(1) of that Decision, both hereinafter called "own resources".

Article 2

The Member States shall inform the Commission of measures which they take in accordance with national and Community laws, regulations and administrative provisions to:

- prevent, and take proceedings against, irregularities relating to own resources;
- establish, within the meaning of Regulation (EEC) No 2891/77¹, sums evaded as a result of irregularities relating to own resources.

¹OJ L 336, 27.12.1977

Article 3

1. Member States shall notify the Commission, at its request, of:
 - the national laws, regulations and administrative provisions under which the measures referred to in Article 2 have been taken;
 - a list of the departments and bodies responsible for applying these measures and the main provisions relating to the role and functioning of these departments and bodies and to the procedures which they are responsible for applying.
2. Amendments concerning the information provided under paragraph 1 shall be notified to the Commission without delay.

Article 4

The competent national and Community authorities shall take all the requisite security measures to ensure that the information exchanged between them remains confidential.

TITLE II: Irregularities affecting own resources
from customs duties and agricultural
levies within the meaning of Article 2(a)
of the Decision of 21 April 1970

Article 5

During the month following the end of each quarter, Member States shall supply the Commission with a statement on customs duties and agricultural levies and shall list irregularities which have been the subject of an initial official record of an administrative or legal nature.

To this end, they shall provide all the available particulars of :

- the provisions which have been infringed;
- the type of own resources concerned and the estimated amount;

- the operation in question;
- the period during which or the time at which the irregularity was committed;
- the practices used to commit the irregularity;
- how the irregularity was detected;
- the national departments or bodies which established the irregularity.

Where some of these facts, particularly those concerning the practices used to commit the irregularity and how it was detected, are not available at the time of the original notification, Member States shall supply them, as far as they are able, in subsequent quarterly reports to the Commission.

Article 6

1. During the month following the end of each quarter, Member States shall inform the Commission of the legal or administrative procedures which have been initiated following discovery of an irregularity and shall provide it with all relevant information thereon.
2. The Commission shall be informed, at its request, of the progress of the procedures referred to in paragraph 1 and the amount established or expected to be established.
3. Where a legal or administrative decision is taken as a result of the procedures referred to in paragraph 1, Member States shall inform the Commission of this decision.

TITLE III: Irregularities affecting own
resources from VAT

Article 7

1. Without prejudice to the provisions of Article 9, Member States shall present a provisional half-yearly report on irregularities involving own resources from VAT.
2. This report, presented in the course of the month following the end of each six-monthly period, shall record for each economic activity, if possible broken down by size of turnover, cases of irregularity according to the following pattern:
 - the number of cases recorded;
 - a breakdown by category of infringement relating to these cases (omission of declaration, false declaration, declaration without payment of the tax due, etc...);
 - a breakdown according to the nature of the procedures set in motion (administrative procedure, legal procedure, compulsory collection, etc...);
 - the year in which the infringements recorded took place;
 - an overall assessment of the own resources evaded.
3. Four months after presentation of the second provisional half-yearly report, Member States shall send the Commission a final annual report informing it of all the VAT own resources evaded which have been or will be established and the number of irregularities revealed in a financial year, following the same break-down as the provisional report.
4. Member States shall also inform the Commission principle which could have serious financial consequences.

Article 8

The presentation by economic activity referred to in Article 7(2) shall include at least the following subdivisions:

- agriculture and fisheries;
- mining industry;
- manufacturing industry;
- construction industry;
- electricity, gas and water distribution;
- retail trade;
- wholesale trade;
- transport;
- services.

The Commission may where necessary, request a more detailed breakdown within the abovementioned subdivisions.

TITLE IV: Common and final provisions

Article 9

In cases where the irregularity concerns a sum less than 1 000 EUA and, as regards revenue from VAT, if the irregularity concerns a basis of assessment less than 100 000 EUA, Member States shall furnish the information provided for in this Regulation only at the express request of the Commission.

Article 10

Each Member State shall without delay inform the other Member States concerned and the Commission of irregularities established or presumed where there is reason to fear that they will have repercussions outside its own territory and of irregularities revealing the use of a new irregular practice.

Article 11

1. The Commission shall maintain appropriate contacts with the Member States concerned for the purpose of supplementing the information provided

about the irregularities, the resulting procedures and, in particular, the facts and amounts established.

2. In addition, it shall keep the Advisory Committee on Own Resources informed, as far as necessary, about these contacts by holding special meetings in order to safeguard the confidentiality of the information in question.

3. Furthermore, the Advisory Committee on Own Resources shall be periodically informed by the Commission of the order of magnitude of the own resources affected by the irregularities detected, and the various categories of irregularity.

4. Should the application of certain provisions in force reveal a deficiency detrimental to the financial interests of the Community, Member States shall immediately alert the Commission, which shall take the measures necessary to remedy the deficiency.

Article 12

The information referred to in Articles 5 and 6 and the reports referred to in Article 7 shall enable the Commission to take the necessary steps as part of its activities to prevent and monitor irregularities in the own resources sector, such as:

- conducting on-the-spot examination of the documents held by administrations concerning the cases revealed;
- conducting any additional checks which prove necessary within the meaning of Article 18(2) of Regulation (EEC) No 2891/77, following examination of the documents and the information received as a result;
- adopting any regulatory provisions which may prove necessary to prevent or check cases of irregularity revealed.

Article 13

The Commission shall each year, on the basis of the information and final reports provided by the Member States, compile a summary document, which shall be submitted to the Advisory Committee on Own Resources, and shall report to the Council and European Parliament on the application of this Regulation.

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

Done at Brussels,

For the Council

The President

FINANCIAL RECORD

1. Budget headings concerned: Chapters 11 and 12.

Title:

Proposal for a Council Regulation on the measures to be taken in the event of irregularities relating to the own resources referred to in the Decision of 21 April 1970 and the organization of arrangements for the information of the Commission in this field.

2. Legal basis:

Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources; Article 201 of the EEC Treaty.

3. Description:

The aim of this Regulation is to secure the automatic reporting to the Commission of irregularities relating to the own resources referred to in the Decision of 21 April 1970, so that the Commission can make additional inspections, for which the existing rules provide, in order to ascertain the financial implications of the irregularities and safeguard the Communities' rights, with a view to the proper application of the own-resources system.

4. Justification:

In its Resolution of 7 July 1977 embodying the comments accompanying the Decision granting the Commission a discharge in respect of the implementation of the 1975 Budget, the European Parliament called on the Commission to establish a system for combating irregularities and for the recovery of funds outstanding similar to that laid down for irregularities in the EAGGF sector (Regulation No 283/72; OJ L 36, 10 February 1972).

The Special Committee of Inquiry has also recommended that the Commission set up a system of this kind in view of the growing number and extent of irregularities encountered.

5. Financial implications for intervention appropriations: None.

6. Financial implications for staff and administrative appropriations:

6.1 Staff required

The following posts are essential to get the new system started:

3	A/5-4
4	A/7-6
1	B/1
2	B/3-2
4	C (including one clerical officer and 3 secretaries).

Justification:

The introduction of the new rules will entail an increase in the workload of the Own Resources and Cash Management Division, viz:

- (a) Processing of the information reported by the Member States on, in particular, the operations concerned, the laws, regulations and administrative provisions infringed, the steps taken to prevent, or institute proceedings against, the irregularity, and the progress of judicial or administrative procedures to establish the own resources evaded, etc.
- (b) Organization of additional inspections, based on records and performed on the spot, within the meaning of Article 18 of Regulation No 2891/77.
- (c) Organization of special meetings of the Advisory Committee on Own Resources, for which the Own Resources Division provides secretarial services and represents the Commission.

Apart from administrative and routine duties, the work consists mainly of planning, research and verification calling for a legal background, sound knowledge of national laws and much experience of taxation, customs and financial matters.

6.2 Staff appropriations required

1st year:

Chapter 11 (rounded off)	218 000 EUA
Chapter 12 (rounded off)	<u>32 000 EUA</u>
Total:	<u>250 000 EUA</u>

2nd year:

Chapter 11 (rounded off)	<u>431 000 EUA</u>
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8. Implications for resources

Apart from the additional revenue accruing (deductions from remunerations etc.), establishing the system will make it possible to recover own resources (customs duties, agricultural levies, sugar levies and VAT revenue) evaded.

9. Inspection arrangements planned

At least three inspection visits each year for each Member State.