



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.04.1998  
COM(1998) 209 final

97/0188 (CNS)

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

(presented by the Commission pursuant to Article 189 a (2)  
of the EC - Treaty)



## EXPLANATORY MEMORANDUM

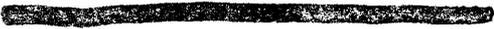
1. On 3 July 1997 the Commission presented a proposal for a Council Regulation amending Council Regulation (EEC, Euratom) No 1552/89 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources<sup>1</sup> in order to improve financial management of own resources. Two measures were proposed to strengthen the rules on the collection of these resources: the conditions for the establishment of own resources referred to in Article 2 of Regulation (EEC, Euratom) No 1552/89 and the procedure for writing off these resources pursuant to Article 17(2) of that Regulation, which states that Member States may be released from their obligation to make available the amounts established if they have not been recovered.

This proposal was sent to the Court of Auditors and Parliament under Article 209 of the Treaty. The Court of Auditors issued its opinion on 21 October 1997 and Parliament approved an amended version of the Commission's proposal on 20 February 1998.

2. In its opinion No 5/97 the Court of Auditors proposes that the two situations covered by the proposed amendment of Article 2 should be specified and criticises the fact that the threshold for waiving entry of entitlements has been raised to ECU 2 000. As regards the writing-off procedure, it considers it premature for the notification threshold to be raised to ECU 50 000. The Court also criticises the system of tacit approval for writing-off operations and suggests that any entitlements recovered after being written off should still accrue to the Community. The five amendments adopted by Parliament take over the substance of the Court of Auditors' opinion.
3. This amended proposal takes account of all the amendments proposed by Parliament which simplify the wording and improve the transparency and fairness of the procedure. The amended Article 2(1c) is intended to specify those situations in which Member States are financially liable. The new Article 17(2) makes a valid distinction between amounts declared irrecoverable by means of a reasoned decision by an administrative authority and amounts deemed irrecoverable on expiry of a period of five years. The amended Article 17(4) also takes over the substance of Parliament's view that, for reasons of fairness and transparency, there should be an explicit procedure for approving applications to write off amounts.

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<sup>1</sup> COM(97) 343 final, 3.7.1997.



However, for reasons of sound financial management and administrative efficiency, the amended proposal does not include the amendment abolishing the threshold of ECU 2 000 for applying the procedure in Article 2 under which the Member States are themselves responsible for establishment. For the same reasons, the proposal does not include the amendment to abolish the threshold of ECU 50 000 in Article 17(3) for the notification of cases written off.

As for the amendment calling for a specific summary report on cases notified by the Member States over the past five years, the proposal in no way changes the Commission's current obligation to report to the budgetary authority. Because of the difficulties involved in monitoring the administration and the accounts, the amendment concerning entry of any amounts recovered after being written off has not been included either.

**Amended proposal for a Council Regulation (EC, Euratom)  
amending Regulation (EEC, Euratom) No 1552/89  
implementing Decision 94/728/EC, Euratom  
on the system of the Communities' own resources**

In the light of the Court of Auditors' opinion and Parliament's amendments, the Commission is making the following changes to its initial proposal:

1. In Article 2, paragraph 1c is replaced by the following:

“1c. An ad hoc entry is made in the account referred to in Article 6(2)(a) without notification of the debtor for the purposes of the establishment referred to in paragraph 1 in cases where:

(a) the competent administrative authorities do not make an entry in the accounts for the customs debt as a result of an error by the customs authorities in the circumstances referred to in Article 220(2)(b) of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, even though the debtor is known and the amount due can be calculated, and the amount involved exceeds ECU 2 000.

However, errors resulting from binding tariff information or information on origin provided by the administrations of other Member States which proves to be inaccurate or incomplete shall not be considered as errors requiring ad hoc entry.

(b) the debtor cannot be notified within the period referred to in Article 221(3) of the Regulation referred to in subparagraph (a) above for reasons which can be attributed to the customs authorities.”

2. In Article 17:

- (a) paragraph 2 is replaced by the following:

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

- (a) either for reasons of *force majeure*;
- (b) or for reasons which cannot be attributed to them.

The amounts of established entitlements shall be declared irrecoverable by a substantiated decision of the competent administrative authority noting the impossibility of recovering them.

The amounts of established entitlements shall be deemed irrecoverable at the latest, after a period of five years from the date on which the amount has been notified in accordance with Article 2 or, in the event of an administrative or judicial appeal, from notification of the final decision.

If payments are staggered, the period of five years shall start from the last actual payment where this does not clear the debt.

The amounts declared or deemed irrecoverable shall be removed from the separate account referred to in Article 6(2)(b). They shall be mentioned in an annex to the quarterly statement referred to in Article 6(3)(b) and, where applicable, in the quarterly statement referred to in Article 6(4). This statement shall distinguish the amounts removed depending on whether they have been declared or are deemed irrecoverable.”

(b) In point (b):

“Paragraph 3 shall be replaced by the following” should read “the following paragraph 3 is added”.

(c) The following paragraph 4 is replaced by the following:

“4. The Commission must adopt a reasoned decision within six months of receipt of the report provided for in paragraph 3 if it considers that the conditions set out in the first subparagraph of paragraph 2 have not been met. In this case, the Member State concerned is obliged to enter the amount corresponding to the unrecovered entitlements in the accounts referred to in Article 6(2)(a) and to make it available to the Commission at the latest on the first working day after the 19th day of the second month following the month during which it was notified of the decision.

If the Commission considers that the conditions of the first subparagraph of paragraph 2 have been met, it has six months to notify the Member State of its agreement to waive the amounts in question.”



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