

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 11 December 1992

Proposal for a

COUNCIL REGULATION (EEC)

amending the Council Regulation

implementing Decision 88/376/EEC, Euratom

on the system of the Communities' own resources

(presented by the Commission)



EXPLANATORY MEMORANDUM

I. INTRODUCTION

1.1 Council Regulation (EEC, Euratom) No 1552/89, implementing Decision 88/376 on the system of the Communities' own resources, hereinafter referred to as the Regulation, was adopted on 29 May 1989 and has applied since 1 January 1989.

Article 22 of the Regulation requires the Commission to submit a report by 1 December 1992 at the latest on its implementation and, if appropriate, to propose any necessary amendments.

The main changes made in 1989 concerned:

- detailed definition of the concept of establishment (Art. 2);
- introduction of a separate set of accounts to record established entitlements which have not been recovered and for which no guarantee has been provided (Art. 6(2));
- supply of more detailed information by Member States on the difficulties encountered in recovering entitlements and in particular a brief description of cases of fraud and irregularities (Art. 6(3));
- possibility for the Commission to undertake on-the-spot inspections on its own initiative (Art. 18(3));
- waiving of the obligation to make amounts available in specific cases where recovery is impossible for reasons which cannot be attributed to the Member States (Art. 17(2)).

1.2 Experience acquired in the three years during which the Regulation has been applied, the conclusions drawn by the Commission from its inspections, the comments of the audit and budget authorities and those of the Member States' government departments reveal the need for a number of adjustments.

These adjustments, which do not affect the fundamental principles of the system, are designed to improve its operation in the following respects:

- greater precision and clarity of the rules in order to ensure consistent and effective application by the national authorities and so improve the collection of Community resources:

these are the proposals for amendments to Articles 2, 4, 6(2)(a), (b) and (c), 6(3)(a), 6(4) and 7(2);

- simplification and streamlining of certain procedures, notably the reporting obligations, in order to rationalize the task of the national authorities:

these are the proposals for amendments to Articles 5, 7, 8, 9, 10 and 17(3);

- tighter enforcement of the obligations on national authorities to supply information on recovery and placing of responsibility with them in cases of negligence in order to improve recovery procedures and Commission controls:

these are the proposals for amendments to Articles 2, 6(2)(a), 6(3)(a) and (b), 6(4), 10(1), 11, 17(2) and 17(3).

II. THE PROPOSED AMENDMENTS

2.1 Article 2 - Point of establishment of own resources

The principle applied here ever since the introduction of the own resources system is that the Communities are entitled to these resources as soon as the customs debt has arisen, even before they have been recovered.

These entitlements must be established as soon as possible after the debt has arisen, i.e. as soon as the debt can be clearly determined: this is what Article 2 states at present.

However, as the Commission has accepted that Member States fulfil their obligation if own resources are established at the time of the customs clearance procedure, application of the customs and financial rules needs to be properly coordinated.

From this point of view, two improvements are required:

- As soon as the debt has been registered by the administrative act of entry in the accounts and the debtor has been notified, its definition is certain. In most cases, in fact, entry in the accounts and notification to the debtor are simultaneous.

Wherever such an entry in the accounts is required by the customs regulations, in order to give practical meaning in procedural terms to the obligation to establish own resources, the Commission considers that this obligation has been satisfied once the entry in the accounts has been effected, followed immediately by the notification to the debtor. The date of entry in the accounts is taken to be the date of establishment.

Hence the proposed amendment in Article 2(1a).

- In order to speed up establishment in contentious cases (disputes, fraud or irregularities), the competent administrative authorities must be in a position to make the establishment even when the calculation of the debt by the competent administrative authorities may subsequently be amended by decision of the judicial authorities. The Commission feels that the date of establishment in such cases should be that of the first administrative decision determining the debt or when judicial action is brought, if this occurs first.

Hence the proposed amendment in Article 2(1c).

As regards sugar resources; it should be pointed out in Article 2(1a) that the establishment procedures for the various levies are set out in the sugar market regulations.

2.2 Article 2 - Establishment in the event of error

Care must be taken not to confuse establishment and entry in the customs accounts. If the competent administrative authorities fail to enter a customs debt in the accounts and to notify the debtor, they must nevertheless establish the Community's entitlement to its own resources if the requirements for establishment are satisfied.

Administrative errors resulting either from incorrect information provided by the competent authorities which are binding on them or from any other cause which could not be detected by a trader acting in good faith cannot be automatically considered as being not attributable to the Member States within the meaning of Article 17(2). So that only cases producing a substantial loss of own resources will be covered, a lower limit of ECU 2 000 is set.

When the amount involved is over ECU 2 000 the resources must therefore be established and although the customs regulations do not provide for entry in the accounts, the Commission is proposing that Article 17(2) should be amended to cover such cases of non-recovery (see paragraph 2.17 below).

Hence the need for an ad hoc entry in the accounting ledgers in such cases without notification of the debtor and the proposed amendment in Article 2(1b).

2.3 Article 4 - Designation of the national departments or agencies responsible

In view of the essential role played by national controls in ensuring proper collection of own resources, the Commission and the Member States need to know the names of the departments responsible and the rules governing them.

Whenever changes are made in this area the Member States must send the Commission the new organization charts and the amended rules.

2.4 Articles 5 and 6 - Accounts for sugar resources

Sugar levies collected in respect of one marketing year must not be booked to two different budget years.

2.5 Article 6 - Monthly closure of accounts

There is no uniformity in the national rules governing the end-of-month closure of accounts. Since these rules affect the making available of own resources, it is proposed that the same date should apply for all accounting officers administering Community resources.

2.6 Article 6 - Total or partial guarantee

In order to make entirely clear what is entered in the separate account, it is proposed that the latter part of Article 6(2)(b) be amended to allow those Member States which so desire to enter in the separate account established entitlements covered by full or partial guarantee, in cases where the entitlement has been challenged and may subsequently change.

2.7 Article 6 - Monthly and quarterly statements

It proposed that specimen statements be annexed to the Regulation.

2.8 Article 6 - Simplified customs clearance procedures

Simplified customs clearance procedures and aggregated payment procedures are designed to rationalize the work of the national authorities and facilitate the control of operations covered by customs entries.

In order not to give traders enjoying payment facilities a financial advantage over those who declare their imports by the normal procedures, the length of time by which payment may be deferred under Article 8(a) of Regulation 1854/89 is shortened when aggregation of entries is allowed, depending on the length of the aggregation period.

The same thing must apply by analogy to the time allowed for making available own resources, which should be shortened in the case of aggregation of entries so that the amounts corresponding to entries made in a given month - whether these be normal entries or simplified entries - are made available by the national authorities under the same conditions.

To allow for the extension already made and the foreseeable extension in the use of simplified customs clearance procedures and simplified payments arrangements, which already shorten the recovery period, the time allowed for making entries in the accounts and, in Article 10(1), for making resources available should be shortened by 15 days.

2.9 Article 6 - Brief description of cases of fraud and irregularities and link with own resources accounts

In order to enable the Commission to improve its monitoring of the administrative and accounting arrangements for the recovery of own resources, in particular in cases of fraud and irregularities, the Member States must send the Commission brief descriptions of such cases. The following arrangements will apply:

- (a) The descriptions must include a number of particulars specified in the proposed article and in particular, for cases where entitlements have already been established, must indicate the stage reached in the recovery procedure when the description is sent in.
- (b) Once a final decision has been taken in a case, the monthly statement must be accompanied by information about whether amounts have been recovered or whether recovery has been given up.
- (c) In order to bring the periodicity of the various reports on cases of fraud and irregularities into line, it is proposed that the description of cases involving entitlements of over ECU 10 000 should be sent in every three months rather than every six as at present.
- (d) The quarterly statement must be accompanied by information about cases of fraud where amounts have already been established.

2.10 Article 6 - Special-status territories: deductions in respect of special situations

Some Member States apply fixed or variable deductions to amounts collected on behalf of special-status territories.

These deductions must be shown in the monthly statement for the month concerned.

2.11 Article 7 - Annual summary account

In order to allow time for any corrections that may have to be made for the preparation of the revenue and expenditure account, the annual summary account, which must be separate from the report on establishment and entry in the accounts, must be produced by no later than 1 March of the year following the year in question.

A time limit should be laid down for relations between the Member States and the Commission, since new entitlements established by Member States in respect of earlier years are deemed to be establishments for the current year and comply with the time limits set by the customs or agricultural regulations.

The reason for this is that the Member State or the Commission may, at a later date, discover errors made by the national authorities in the entry of established entitlements in the accounts or in the drafting of statements.

The accounts kept with the Member States and the monthly statements, which are also supporting documents for the purposes of the Regulation, must then be corrected.

A clause should therefore be entered to the effect that no changes may be made once three years have elapsed from the end of the year in which the entitlements are made available.

2.12 Article 8 - Corrections in respect of cases of fraud and irregularities already reported

In view of the proposal made in paragraph 2.9 (Article 6 - Brief description of cases of fraud and irregularities), the second paragraph of Article 8 can be deleted.

2.13 Articles 9 and 10 - Possibility of making amounts available in ecus

1. The current rules provide that amounts should be made available exclusively in national currencies. However, as regards the VAT and GNP-based resources, the amounts in ecus determined by the budget from bases in national currencies must be converted back at an agreed rate (the rate on the last day of the year preceding the budget year on which a quotation is available) to find the amounts to be paid by the Member States in national currencies; it would be more rational to avoid this double operation and provide for payment in ecus.

Some Member States are in fact beginning to show interest in the use of the ecu for settling transactions with the Commission, including in the field of own resources. Two Member States have already opened an account in ecus for the Commission with their Treasury and negotiations are in progress with a third.

However, payment of own resources in ecus would have to be on a voluntary basis and would have to yield the same amount in ecus for the Community budget as the present system.

At all events, traditional own resources will continue to be paid in national currencies.

2. For the sake of sound treasury management, the Commission needs to know in advance in what currency it is going to be paid. Provision should therefore be made for the Member States to send the Commission notice of payment to give the Commission time to take whatever action is necessary while offering the Member States reasonable scope to plan the nature of their payments.

2.14 Article 10 - Drawings on the EAGGF reserve

When the EAGGF monetary reserve has to be called on to contend with situations resulting from significant movements in the dollar/ecu parity on the markets in relation to the parity used in the budget, the revenue required to cover these drawings must at present be supplied by the Member States.

It may be, however, that the budget situation is such that the Member States do not really need to pay over additional own resources. This was the case in 1991 when ECU 30 million had to be called in even though the outturn forecasts showed that the budget would be in surplus.

Provision must therefore be made to allow the Commission not to call in all or some of the resources corresponding to the drawing on the EAGGF monetary reserve where the overall outturn of the budget permits.

2.15 Article 11 - Interest on late payment

Some Member States, after paying the principal late, then fail to pay any interest. In order to speed up the payment of these own resources, it would therefore appear necessary to charge additional interest.

2.16 Article 15 - Amendment of the Financial Regulation

The changes in the numbering of the articles in the Financial Regulation applicable to the general budget must be taken over in Regulation 1552/89.

2.17 Article 17(2) - Reporting of cases of non-recovery

One of the features of the own resources system is that responsibility for the collection of own resources is delegated to the Member States, an early application of the principle of subsidiarity.

The Community customs regulations allow the Member States a certain degree of latitude to organize collection procedures.

Member States must make available all amounts corresponding to established entitlements unless the amounts have not been recovered for reasons of force majeure or recovery is definitively impossible for reasons that cannot be attributed to the Member States.

When mistakes have been made by the national authorities and the amounts involved exceed ECU 2 000, the resources must be established (see paragraph 2.2 above), entered in the separate account and the Commission must be notified that they cannot be made available because they have not been recovered. The Commission will then give its views on whether or not the amounts must be made available.

In the Commission's view the inadequacy of a security which does not fully cover established own resources which still have to be recovered may not be used by Member States to justify a request to be released from the obligation to make available amounts not recovered.

It is for the Member States to demand all possible guarantees, including those stipulated in the Community customs regulations, to ensure that own resources are duly paid.

2.18 Article 17(3) - Report on the results of inspections and notification of cases where recovery is impossible

In order to ease the workload for national authorities while at the same time enhancing the quality of the reports required by the Regulation, the report on the results of inspections carried out by the Member States, which is currently presented every six months, would in future become annual but would also include details of the inspections.

Notification of cases where recovery is impossible would thus be outside this report. In order to ensure that all such cases are dealt with uniformly and to speed up procedures, notification would be six-monthly.

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