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REPORT ON THE APPLICATION OF
COUNCIL REGULATION (EEC, EURATOM) No 1552/89
of 29 May 1989
implementing Decision 88/376/EEC, Euratom
on the system of the Communities' own resources

(presented by the Commission)

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Under Article 22 of Regulation No 1552/89 the Commission is required to submit a report on the implementation of that Regulation by 1 December 1992 at the latest and, where appropriate, propose any necessary amendments.

This report sets out the Commission's assessment of the application of the Regulation since its entry into force and the conclusions it has drawn. On the basis of the report the Commission is presenting separately a proposal for amending the Regulation, which also takes into account comments by the Court of Auditors and the budgetary authority on the implementation of the own resources arrangements.

1. INTRODUCTION

1.1 The main difficulties encountered up to 1989 in the implementation of the system of traditional own resources - introduced in 1970¹ - may be summed up as follows:

- disagreement between some Member States and the Commission as to the relation between the establishment of resources and the obligation to make them available. Some Member States made available all established entitlements and then later deducted those which had not been recovered, while others made available only those resources which had been recovered;
- problems in the accounting arrangements for resources made available due to a lack of precision in the revenue nomenclature;
- delays by the Member States in sending reports, insufficient data in these reports and a general lack of information from the Member States, especially relating to fraud cases;
- inability of the Commission to carry out inspections tailored to its requirements, as the scope of its control powers was limited to inspections in association with national authorities.

¹ Regulation No 2/71 of 2 January 1971 implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (OJ L 3, 5.1.1971), later replaced by Regulation No 2891/77 of 19 December 1977 (OJ L 336, 27.12.1977).

1.2 Regulation No 1552/89 provided solutions to most of the problems outlined above with the aim of improving the Member States' handling of Community revenue and giving the Commission the means to exercise more effective management and control. More specifically, the Regulation:

- defined the concept of establishment, laid down the situations where Member States were released from the requirement to recover entitlements, made a distinction between the obligation to establish own resources and the obligation to make them available immediately and required Member States to keep separate accounts (B accounts) for amounts which are not made available immediately;
- reinforced the Commission's general right to information and extended it to cover fraud;
- provided for independent on-the-spot inspections by the Commission.

In more general terms, the Regulation laid down more clearly the division of powers between the Member States and the Commission in the collection of own resources: Member States are responsible for recovering own resources on behalf of the Communities in accordance with existing Community and national legislation. The Commission's role is to check that recovery is properly carried out by the national authorities and is as uniform as possible throughout the Member States.

2. APPLICATION OF THE PRINCIPLES INTRODUCED BY REGULATION No 1552/89

2.1 Establishment of traditional own resources

2.1.1 Establishment is the procedure by which a national authority acknowledges the Community's entitlement to an amount it has recovered from a debtor on behalf of the Communities and records the corresponding amount so that it can be entered in the accounts and made available to the Commission by the prescribed deadline.

The following principles apply:

- (a) Member States are required to establish entitlements for each debt as soon as the appropriate conditions are met (existence of debt, debtor and amount known);
- (b) all own resources must be established, including any amounts which, for various reasons, might not be collected.

2.1.2 In the light of the experience gained in the application of Regulation No 1552/89 as regards establishment, the Commission would make the following remarks:

- . There are differences in the way national authorities handle establishment (in normal cases), mainly due to a certain degree of latitude left to them by Community legislation as to the organization of customs clearance procedures.
- . Although the Member States now establish entitlements in disputed cases, both the Commission and the Court of Auditors have observed substantial differences between Member States regarding the date of establishment in such cases.
- As regards the financial implications of errors committed by national authorities, Member States do not establish the entitlements concerned in such cases and have refused to introduce rules on the subject in customs legislation (Customs Code), taking the view that this matter should be resolved by own resources legislation.

To sum up, the introduction of Regulation No 1552/89 marked an important step forward in defining the concept of establishment, leading to more uniformity in the procedures applied by the Member States. However, some differences remain in the way cases are handled in practice and the Commission therefore feels that certain adjustments are required to Article 2 of the Regulation.

2.2 Entry in the accounts

2.2.1 Entry in the accounts of traditional own resources is the area most affected by the changes introduced under Regulation No 1552/89, which provides for separate accounts for established entitlements which have not yet been recovered, the so-called "B accounts".

The B accounts were introduced to improve the monitoring of the recovery of such amounts, particularly in cases of fraud and irregularities.

The Commission takes the view that national authorities are required by the Regulation to keep genuine ad hoc accounts on the same principles as the so-called "A accounts" for amounts which have been recovered or for which security has been provided.

Most of the Member States have had to set up such accounts, as they were not covered by their existing national accounting system.

In a statement on Article 6(2)(b) of Regulation No 1552/89 recorded in the Council Minutes of 29 May 1989, "the Member States undertake to make every effort required to adjust their internal procedures so that they can comply with the new obligations imposed on them as soon as possible". The purpose of this statement was to ensure that Member States which, for technical reasons, could not introduce the separate accounts on the first date of application of Regulation No 1552/89 would be given a transitional period. It was agreed in the Advisory Committee on Own Resources that separate accounts would be introduced from 1 January 1990, and most of the Member States have done so.

2.2.2 Two Member States, Denmark and the Netherlands, do not keep separate accounts (although the Netherlands does have one for agricultural levies). Nevertheless, these two countries make available all established entitlements immediately.

This practice is acceptable provided that amounts not recovered are deducted in accordance with the provisions on corrections to the base (Article 2(2)) and on amounts whose recovery is impossible (Article 17(2)).

One Member State, Greece, has not adopted the Commission's interpretation and merely records amounts whose recovery is in doubt in quarterly statements. The Commission is making representations to urge the Greek authorities to introduce satisfactory arrangements for keeping separate accounts.

All the other Member States keep genuine daily accounts in compliance with the Regulation either at a central department or in the collection offices.

2.2.3 The Commission feels that improvements can still be made to the arrangements for keeping A and B accounts:

- the monthly statements (A account) and quarterly statements (B account) sent to the Commission by the Member States should be completed on the basis of a standard model;
- it should be possible to carry out a final check on the annual summary of the twelve monthly statements before they are incorporated in the revenue and expenditure account;
- the accounts should be closed at the end of the month in similar conditions in all the Member States, which is not yet the case;
- the deadline for entry in the accounts - one month and 19 days - could be shortened;

- the flat-rate or other deductions applied by some Member States when special-status areas are included in their customs territory but do not form part of the Community customs territory should be subject to identical conditions and should be clearly indicated in the monthly statements.

2.3 Making available of own resources

2.3.1 Both the Commission and the Court of Auditors have observed delays in the making available of traditional own resources and mistakes in the amounts concerned. Under present legislation interest should be paid in the event of such delays and the Commission has regularly demanded such interest from the Member States concerned. In many cases the payment of interest has itself been unjustifiably late, which may be explained by the fact that no penalties can then be imposed.

2.3.2 As regards principles, Regulation No 1552/89 introduced the possibility of releasing Member States from the obligation to make amounts available in cases where recovery is impossible for reasons which cannot be attributed to the national authorities concerned ("specific cases"). These exemptions are in addition to those previously covered by the concept of force majeure.

Because of the very restrictive interpretation of force majeure by the Court of Justice, the Member States have only made use of this possibility on very rare occasions since the Regulation entered into force.

The "specific cases" constitute one of the categories for the clearance of the B account and must be shown in the quarterly statements. Moreover, such cases must be reported to the Commission if they involve more than ECU 10 000.

In practice the amounts presented in the clearance of the B account are minimal and so far very few cases have been reported (since the Regulation came into force) where amounts of more than ECU 10 000 have not been recovered.

The cases involving more than ECU 10 000 reported by Germany, the Netherlands and the United Kingdom have been the result of bankruptcies where there were no assets, the disappearance of debtors or insufficient guarantees.

This might suggest that cases where recovery is utterly impossible are rare; the Commission reserves the right to look into this matter in greater depth.

2.3.3 In view of the limited number of cases of non-recovery report to the Commission, it has not been possible to draw up criteria for assessing responsibility when amounts are not recovered.

Nevertheless, the Commission still believes that it is in the interests of the Community and the Member States that the national authorities, having been delegated the task of collecting own resources, should be financially liable for any errors they commit.

2.4 The Commission's control activities

2.4.1 Under the principles laid down in Decision 88/376 and the measures provided for in Article 18 of Regulation No 1552/89, responsibility for the inspection of traditional own resources is shared between the Commission and national authorities according to the following criteria:

- the Member States are responsible for checking the establishment, entry in the accounts and making available of own resources;
- the Commission's role is essentially to promote the uniform and consistent application of Community rules throughout the Community and to guarantee the proper collection of own resources. To this end, the Commission has the right:
 - . to be associated with inspection measures undertaken by the national authorities ("joint inspections");
 - . to carry out its own on-the-spot inspection measures.

2.4.2 Joint inspections were the first form of Community inspection to be introduced after the creation of own resources under the Council Decision of 21 April 1970. These inspections are carried out by the Commission in accordance with the provisions of Regulation No 165/74 determining the powers and obligations of officials appointed by the Commission. They have always produced good results, although the subject and venue are chosen by the national authorities.

Joint inspections may be extended on request when justifiable reasons are given for additional inspections.

In order to extend the Community's control powers beyond the practical limitations imposed by joint inspections, the Council conferred on the Commission the right to carry out its own on-the-spot inspections under Regulation No 1552/89.

After giving the national authorities advance notice, the Commission may carry out on-the-spot checks, deciding for itself the subject, place and date. However, it is obvious that, for the sake of efficiency, national civil servants must also take part in these inspections. The Commission would point out that up to now it has had the full cooperation of all national authorities in this matter.

The general control strategy pursued by the Commission is based essentially on the selection of priority subjects which are of general and widespread importance so as to make the most of the inevitably limited number of staff assigned to control duties and to take into account the fact that inspections, being relatively few in number, must usually take the form of sample checks. In 1991 most man-days of inspectors were spent in monitoring the introduction of the B account in the Member States.

The Commission will shortly be presenting an ad hoc report under Article 18(5) on the criteria used in making the selection, the subjects accorded priority and the results of Community inspections.

2.4.3 On the basis of the experience gained over the three years of the application of Regulation No. 1552/89, it can be concluded that:

- there is no need to make any changes to the existing rules on the Commission's rights and powers of inspection;
- the Commission's control activities should be pursued and intensified by, among other things, targeting inspections at high-risk areas.

2.5 Reports by the Member States and the operation of the Advisory Committee on Own Resources (ACOR)

2.5.1 Under present legislation Member States are required to report to the Commission every year on the establishment and entry in the accounts of own resources (Article 7) and every six months on the outcome of their inspections and on comprehensive information and questions of principle concerning the most important problems arising from the application of the Regulation, in particular matters in dispute (Article 17(3)).

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The main purpose of these reports is to enable the Member States to give an account of the measures they have taken to ensure that they have performed properly their delegated task of collecting own resources.

On the whole Member States have fulfilled their obligations to send in reports. However, improvements should be made to current practice, in particular as regards the presentation and content of reports.

In future a clearer distinction should be made between, on the one hand, accounting information which is provided annually to enable the Commission to finalize in good time the figures for receipts to be included in the revenue and expenditure account and, on the other hand, information on the management and control of recovery by the Member States.

The latter category of information, which could quite easily be supplied annually rather than every six months as at present, should provide a detailed ad hoc account of the control and recovery activities of the national authorities and contain more references to internal implementation reports of the authorities concerned.

As regards the reports of cases of fraud and irregularities involving more than ECU 10 000 under Article 6(3) of the Regulation, the content of these reports is still far from uniform and does not always include certain information which would be useful for targeting inspections at high-risk areas, for example the particular customs arrangements involved or the customs tariff reference.

Furthermore, there is at present no systematic link between these reports and the monthly and quarterly accounting statements, although some Member States do produce this kind of information. The Commission feels that this practice should become the general rule to make it possible to monitor the clearance of a sample of cases of fraud and irregularities which have a major financial impact on own resources.

2.5.2 Over the three years of the application of Regulation No 1552/89, the Advisory Committee on Own Resources has played the role assigned to it by the Regulation, in particular in

- examining the forecasts of own resources;
- considering reports on inspections carried out by the Commission;
- holding detailed discussions on general questions relating to own resources legislation.

The Committee has met more often than in the past (on average six times a year) as the Commission had to secure agreement on a common interpretation of the new rules introduced by the Regulation. For example, the delegations reached agreement on a definition of the detailed arrangements for introducing the B^a accounts.

The Advisory Committee on Own Resources has confirmed its role as an effective means of improving cooperation between the national authorities and the Commission in the practical application of the system of traditional own resources. This role should be strengthened in future.

3. CONCLUSIONS

3.1 Over the last three years progress has been made in the application of Regulation No 1552/89. However, there are still some problems and disparities in the procedures for collecting traditional own resources, as outlined above, which need to be ironed out.

These disparities and problems may result in unequal treatment of Community taxpayers, as regards the tax burden, and perhaps even diversions of trade.

3.2 The disparities and problems in the application of the Regulation can be ironed out through coordinated action by the Commission and the Member States without the need for amendments to legislation where Community legislation is clear and its interpretation is not disputed by any Member State.

The Commission plans to take the necessary steps in this direction in cooperation with the Advisory Committee on Own Resources.

3.3 However, it is clear from the Commission's assessment of the application of Regulation No 1552/89 and remarks by the Court of Auditors and the budgetary authority that the system for collecting own resources could be improved by introducing a number of amendments to make existing provisions clearer and more precise, to streamline certain procedures and to make national authorities more aware of their responsibilities as the bodies delegated the task of collecting Community own resources.

The most important improvements would be:

- as regards establishment, to specify the date more clearly to ensure that, for all the Member States, it is within the acceptable period laid down by Community legislation;

- as regards accounting, to ensure that the accounting statements sent by the national authorities to the Commission have a standard form and content in order to guarantee the quality of the figures in the revenue and expenditure account and balance sheet to be presented to the budgetary authority;
- as regards the making available of own resources:
 - * to introduce more effective penalties for delays in making available amounts due,
 - * to allow an analysis of the reasons for failure to recover own resources so that criteria can be drawn up defining the financial liability of the authorities responsible for collection;
- as regards the reports from the Member States on the action they take to collect own resources:
 - * to provide for more uniform and comprehensive information on fraud and irregularities involving amounts of more than ECU 10 000,
 - * to monitor the recovery procedure more effectively, in particular in cases of fraud and irregularities involving more than ECU 10 000,
 - * to improve the Community's ability to assess the quality and results of the recovery and inspection activities of the national authorities through comprehensive annual reports presented according to a standard model.

The Commission is accordingly presenting a proposal for amending to Regulation No 1552/89 which provides for the changes it deems necessary.

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