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REPORT FROM THE COMMISSION

**ON THE RECOVERY OF TRADITIONAL OWN RESOURCES**

**IN CASES OF FRAUD AND IRREGULARITIES**

**(METHODOLOGY AND SAMPLE A 94)**

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## REPORT

### ON THE RECOVERY OF OWN RESOURCES IN CASES OF FRAUD AND IRREGULARITIES (METHODOLOGY AND SAMPLE A 94)

#### I. METHODOLOGY AND MONITORING OF RECOVERY IN CASES OF FRAUD AND IRREGULARITIES

##### 1. Information sent by Member States concerning cases of fraud and irregularities

- (a) Article 6(3) of Regulation No 1552/89 stipulates that each Member State should send the Commission a brief description of all cases of fraud and irregularities involving entitlements of over ECU 10 000.

In their fraud statements, Member States provide information on the type of goods, the amount involved, and the origin (declared, established or presumed).

DG XIX then incorporates these statements into the "Resources" section of the IRENE 3 base.<sup>1</sup>

As with all cases of fraud and irregularities affecting traditional own resources that are detected by the national authorities, these cases are entered in the accounts and recovery procedures are set in motion in accordance with national rules implementing the Community customs regulations. The process is suspended, however, if an appeal has been lodged with the appropriate legal authorities (see Annexes 1.1 and 1.2).

- (b) Regulation No 1552/89 does not make any provision for these statements being updated although this would undoubtedly help in monitoring the recovery of the resources. Up till now, only two Member States (Belgium and Portugal) have regularly kept the Commission fully informed, although Spain has joined them since the second half of 1993.

Thus it is not always possible to tell from the statements whether a case has been settled or what progress has been made in recovering sums owing.

When Regulation No 1552/89 was being revised, the Commission presented its proposals for remedying the current unsatisfactory situation. Pending the entry into force of these new provisions, the Commission, conscious of its responsibilities vis-à-vis the budgetary authority, decided to conduct a survey into the recovery situation in Member States.

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<sup>1</sup> IRENE 3 is run by UCLAF. It also contains cases reported in other sectors (EAGGF, Structural Funds and Mutual Assistance).

## 2. Selective monitoring of recovery - principles

- (a) The monitoring procedure is based on two main principles:
- making full use of all the statements sent in by Member States and held by the Commission's departments;
  - targeting cases using risk analysis.

With regard to the first principle, the Commission's departments drew on all the information obtained under both Regulation No 1552/89 and other regulatory instruments, including the mutual assistance provisions.

Because of the large number of cases (nearly 5 000 as at 31 May 1995 under Regulation No 1552/89, and nearly 300 notifications under Regulation No 1468/81 on mutual assistance), the Commission had to resort to sampling techniques based on risk analysis.

- (b) Statistical analysis of the cases reported by Member States under Regulation No 1552/89 showed that cases where the amount was greater than ECU 500 000 - about 100 cases covering the period from 1 January 1989 to 30 June 1993 - accounted for about 70% of the total amount evaded. The first sample (A/94) therefore covers cases where the amounts involved exceed this figure.

A second sample (B/94) was taken from cases up until the first half of 1993 of which the Commission had been informed under the mutual assistance arrangements. The cases selected were those in which the amount of the entitlements involved exceeded ECU 1 million, which had been investigated by the Commission's departments, which would soon be time-barred, or which had attracted the attention of the budgetary authority or the Court of Auditors. Six cases were selected, involving a total of approximately ECU 100 million. A report on the progress made on monitoring this sample is currently in preparation and will be available some time during the second half of 1995.

A limited number of cases notified under Regulation No 1552/89 and involving smaller amounts (less than ECU 500 000) will make up sample C/95 which will be selected later this year. In addition, a further sample (D/95) will also be prepared this year, covering cases involving small amounts notified to the Commission outside Regulation No 1552/89 and selected using risk analysis techniques.

A, B, C and D samples will be prepared on a regular basis (initially, each year). Cases appearing in the previous sample and subsequently cleared will be replaced by others; the remainder will stay in the sample until they are cleared - in other words, they will be rolling samples allowing continuous monitoring.

A debt is cleared if:

- it is recovered, or
- it is cancelled, or
- it is written off.

### 3. Monitoring methodology

The method employed by DG XIX was to ask questions using a pre-prepared grid which would allow the information already received to be updated. The Commission followed up each statement received by sending the Member State concerned a request for additional information (as to whether the amount had been entered in the B accounts, whether it had been recovered, whether the amount of the debt had been adjusted or whether it had been written off).

DG XIX uses the information it receives to update the IRENE database. Closed cases can now be identified and the financial outcome known. If, after analysing the replies, the Commission suspects that the Member State is not applying the regulation correctly, it can ask for an explanation or carry out some more specific checks. If a problem should emerge, the Commission can then ask the Member State to take the necessary action and, where appropriate, make good any amounts due.

DG XIX combines the results of its own enquiries with the information it receives from Member States to produce a report on the monitoring of recovery which is then sent to Member States and the budgetary authority.

The first of these reports, which deals with the A/94 sample, now follows.

## II. SAMPLE A/94 (CASES EXCEEDING ECU 500 000)

### 1. Quantitative aspects

The questions concerned cases of fraud and irregularities exceeding ECU 500 000 and stored in the IRENE 3 base as at 31 March 1994. The total amount involved was ECU 301.2 million (104 fraud statements sent to the Commission between the first half of 1989 and the first half of 1993).

The replies revealed that 5 cases had either been notified twice or been wrongly notified by the Member States concerned, and that the number of cases exceeding ECU 500 000 was actually 99, involving a total of ECU 276 million. The breakdown between the nine Member States is as follows:

	B	D	DK	E	F	IRL	I	NL	UK	Total
Number	8	20	2	2	17	4	8	3	35	99
Estimated amount	13.8	125.2	1.8	1.4	22.5	5.7	59	5.2	41.3	276

Analysis of the size distribution of the sample shows that:

- with respect to the number of cases:
  - 45% of the cases notified by Member States involved amounts of between ECU 500 000 and ECU 1 million;

- 35% involved amounts of between ECU 1 and 2 million;
- 20% involved amounts exceeding ECU 2 million.
  
- with respect to thtwo categories of cases accounted for only 27% of the overall total (ECU 276 million);
  
- eight cases, each of which amounted to more than ECU 5 million, accounted for 58% of the total (ECU 160 million).

The age distribution of all the cases notified is as follows:

	1989	1990	1991	1992	1993	Total
Number of cases	15	18	24	26	16	99
Estimated amount	50.7	34.0	87.8	52	52	276
(Percentage of total	18%	13%	30%	19%	19%	100%)

The breakdown by year is fairly constant in terms of the amount and the number of cases, though the high 1991 amount was down to two cases notified by the German authorities involving the giving of false declarations of origin for large quantities of ethyl alcohol.

## 2. Qualitative aspects

About a third of the statements contained insufficient details, particularly as regards origin and the type of product involved. That said, the sample does provide several pointers:

### (a) *Type of product*

The products that cropped up in the sample were mainly agricultural or processed agricultural products (ethyl alcohol, sheep and cattle, meat, dairy products, fish, oils, rice, food preparations, and cigarettes). This confirms that large-scale fraud involving substantial amounts tends to revolve around agricultural products, while there is a much wider spread of frauds or irregularities involving industrial products. The IRENE 3 base shows that, in the category of cases involving amounts lower than ECU 500 000, industrial products come out ahead. The C/95 sample will therefore take this into account.

### (b) *Customs procedure*

The frauds or irregularities in the cases included in the sample involved either the transit procedure ("leaks" from transit) or the release for free circulation procedure (false declarations concerning type of goods or origin). In the case of cigarettes, the goods were usually simply not presented to customs (contraband).

As for industrial products, the frauds or irregularities mainly concerned false declarations of origin at the time of release for home use (mainly textile products or hi-fi or TV equipment).

(c) *Origin*

For agricultural products, the actual origin was very often Eastern Europe, whilst for industrial products it tended to be South-East Asia.

**3. Major cases**

As mentioned above, there were eight cases amounting individually to more than ECU 5 million.

One case notified by Belgium related to the first half of 1993 and concerned milk powder removed from transit (ECU 7.4 million).

Four cases notified by Germany in 1990, 1991 and 1992 involved beef and veal imports (ECU 37.6 million) and alcohol imports (ECU 84.5 million).

Italy notified three cases involving contraband cigarettes, olive oil imported from a non-member country but declared as being from Greece, and a food preparation imported without payment of the variable component (ECU 52 million). According to the Italian authorities, these cases are now before the Italian courts.

**4. Recovery situation**

Member States' replies show the recovery situation to be as follows (see also Annex 2):

(a) *Situation at the time of notification*

The fraud statements are prepared at the beginning of the six-month period following that in which the fraud was discovered and show what progress has been made in recovering the amounts due at that time. Since we were dealing with the 99 largest cases of fraud, it was not to be expected that the entitlements would be recovered quickly. This proved to be the case, since only ECU 1 million had been recovered by the time the statements were prepared:

- Denmark: ECU 780 000 - recovery by offsetting against a VAT refund due;
- Germany: ECU 150 000 - payment in instalments.

Most cases had not progressed beyond the administrative investigation or administrative proceedings stage. Very few had actually reached the courts.

(b) *Cancellations*

According to the replies received from Member States, ten cases had been cancelled, whilst in another five the amount had been corrected.

Partial or total cancellations (ECU 21 million or 7.2% of the amounts originally notified) cover situations where the alleged infringement was not pursued by the administration or by the courts, or cases of seizure involving the destruction of the goods and the subsequent correction or cancellation of the customs debt.

As a result, the actual number of cases of fraud and irregularities contained in the sample is 89, amounting to ECU 255.5 million.

**(c) Recoveries**

Of these 89 cases, 22 had been recovered in full. In addition, there had been partial recovery in another 16 cases. Total recoveries amounted to ECU 22.5 million (or 8.2% of the initial estimate and 8.8% of the corrected amounts).

Only in two of the eight cases exceeding ECU 5 million have any of the amounts owed begun to be recovered (Germany).

A comparison by Member State reveals a considerable degree of variation. Some Member States (Denmark: 100%, Spain: 100%, France: 31.4%) have acceptable recovery levels although, in the cases of Denmark and Spain, very few cases were reported (two each).

Other Member States have been less successful in recovering amounts due, as can be seen from the following table (out of a sample total of ECU 255.5 million):

	F	D	UK	DK	B	NL	E	IRL	I	TOTAL
Recoveries (ECU million)	7.1	5.7	4.6	1.8	1.4	1.1	0.8	-	-	22.5
% of national total	31.40	4.50	11.50	100.0	10.1	20.40	100	-	-	-
% of sample total	31.30	25.00	21.00	8.20	6.20	4.70	3.50	-	-	100%

**(d) Irrecoverables**

Established entitlements that cannot be collected must be justified under Article 17(2) of Regulation No 1552/89 if the Member State wishes to be released from the obligation to make the amount available. This, however, was not the case for an amount claimed by the Netherlands to be irrecoverable.

In addition, the German authorities failed to justify the four total or partial cancellations which could in fact turn out to be amounts to be written off.

The Commission's departments will look into these cases.



(e) *Recovery pending: recording in the separate accounts*

Of the ECU 232.5 million still awaiting recovery, ECU 188.3 million has been recorded in the B account by the national authorities.

The balance is as follows. The cases covered by the United Kingdom's fraud statements - some amounts having been totally or partially recovered - have neither been established nor recorded in the B account. At the request of the Commission, the UK authorities are currently looking into the current status of the cases notified.

The case notified by Belgium, which concerns milk powder removed from transit, has not been entered in the B account pending the outcome of enquiries in Spain and France.

It should be noted that the Danish authorities make the amounts established available directly, without waiting for recovery, and that the Dutch authorities do the same for amounts established by the customs administration. Those established by the agricultural boards (Produktschappen) are entered in the B account if any difficulty is encountered in recovering them.

All other cases are entered in the B account. In addition, Belgium, Germany, Spain and Italy (in just one case) gave the dates when the amounts were entered in the B account. France, on the other hand, provided the dates of recovery rather than the dates of entry in the B account.

The replies from Member States concerning entry in the B account can therefore be judged to be satisfactory overall. However, it was not always possible to determine whether the case was still at the administrative stage or whether legal proceedings had been initiated for the recovery of the sums owing.

The amounts entered in the B accounts pending recovery are broken down in the following table. Amounts not entered are marked with an asterisk.

Notified in	F	D	UK	DK	B	NL	E	IRL	I	Total
1989	0.1	32.5	9.8*		1.6	1.6	-	-		45.6
1990	3.9	7.0	4.6*	-	0.6	-	-	-	0.3	16.4
1991	1.1	66.3	8.5*	-	-	-	-	-	2.0	77.9
1992	4.1	7.7	8.8*	-	5.8	-	-	-	15.2	41.6
1993	2.3	4.0	5.1*	-	7.4*	-	-	0.7	31.6	51.1
Total	11.5	117.5	36.8	-	15.4	1.6	-	0.7	49.1	232.6

It can be seen from the table that some quite large amounts have been outstanding for a number of years.

### III. CONCLUSIONS AND SUGGESTED ACTION

The conclusions reached by the Commission after monitoring the recovery situation are as follows:

#### 1. General observation: low recovery rate

It may be that the period covered - the first five years of the Regulation's application - was not long enough for cases to be concluded, especially those which went to court. It is still too early to say how long on average it takes to clear each case, although those where the amount exceeds ECU 500 000 are likely to be more difficult to resolve. The recovery rates vary from one Member State to another. The Commission intends, with the help of national authorities, to look into the reasons for this situation and will if necessary propose measures to improve the efficiency of recovery within the framework of ACOR's subgroup on recovery.

The study carried out by DG XIX and XX on national procedures for recovering traditional own resources should help to clarify the situation.

#### 2. Obstacles to recovery

In some circumstances, recovery may be hindered by specific aspects of the regulatory framework at national or Community level. In particular:

##### (a) *Shortcomings in the rules concerning guarantees*

Even if the rules are correctly applied, it may be that the risk of non-recovery is not completely covered by the guarantee. This is the case, for example, with:

- the optional guarantee, when applied to customs procedures considered to be high-risk because of the nature of the product or the operators involved;
- the comprehensive guarantee (e.g. reference period too short, simultaneous presentation in different offices in the European Union).

##### (b) *Slowness of inquiry procedures in the event of non-discharge of transit documents*

If there is no notification of the guarantor, securities are released after twelve months although, according to Community rules, fourteen months must elapse before the recovery procedure can be initiated in the case of non-discharge of transit formalities.

Recovery would be helped if there were stricter provisions on notification of the guarantor and if the inquiry procedure was shortened.

(c) *Application of the rules in respect of lapse of time*

The current provisions conspire to make recovery more difficult. For example, the normal time limit of three years from when the customs debt arises allowed by the Customs Code for the debt to be notified to the taxpayer may, in some more complicated cases, be too short. Furthermore, Member States do not interpret this deadline in the same way (interruption/suspension).

All national authorities should interpret these provisions of the Code in like manner.

To remedy the situation, a series of regulatory proposals are in the pipeline and figure in the annual programme on the fight against fraud.

**3. Application of Regulation No 1552/89 - improvements required**

Without prejudice to the proposals for improving Regulation No 1552/89 now being discussed in the Council, the application of the Regulation as it stands now could be improved:

- by matching intelligence data on fraud with accounting data on recovery - a task which poses practical problems in Member States and thus explains some of the delays in monitoring cases. However, some authorities managed to link these two categories of information on an ad hoc basis, whilst others have succeeded in being more systematic.

The systematic link forms part of the Commission's proposal to amend Regulation No 1552/89.

The Commission is currently working with national authorities to try to overcome these problems.

Besides the provisions contained in Regulation No 1552/89 on what information should be provided in cases of fraud or irregularities, better prepared fraud statements would help the Commission to make optimum use of Member States' replies. The Commission is looking into ways of improving the content of the statements, including a guide and computerized data entry.

- By distinguishing between cases being dealt with by the administrative authorities and those which are in the hands of the judicial authorities. The administrative authorities continue to be responsible until the judicial authorities have found in favour of the taxable person.

The Commission is seeking to have this information included in the fraud statement.

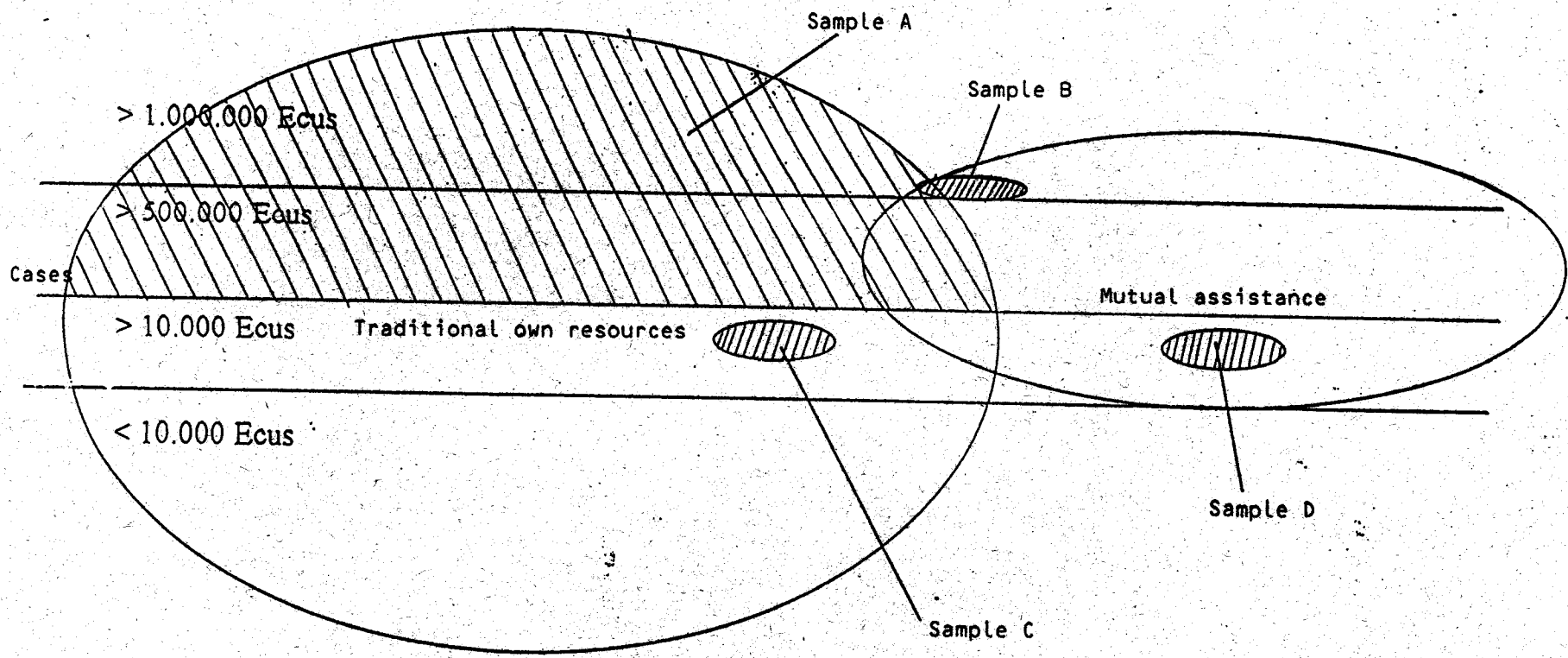
- By notifying the writing-off of irrecoverable amounts to the Commission in accordance with Article 17(2) of Regulation No 1552/89. This was not done in some cases in the sample.

The Commission has asked the Member States concerned to provide further details.

#### **4. Monitoring of sample through to final clearance**

- The Commission will continue to check the grounds given for:
  - writing off;
  - cancellations.
- It will review long-standing debts.
- Where Member States have not yet established the amounts, despite there being nothing to prevent them doing so, the Commission will look into the situation and take any measures that may be required.
- The 67 cases (amounting to ECU 229 million) which have not yet been cleared, will automatically be included in the A/95 sample concerning which a questionnaire will be sent out in the second half of 1995. The situation will be kept under review until final clearance.

Choice of samples



Cases of fraud and irregularities

Recovery situation

Ongoing investigations				No proof of fraud or irregularity
Establishment pending				
Establishment				
Recovered	Recovery pending Before the courts	Cancelled	Irrecoverable Article 17(2)	

Summary table of the recovery situation in respect of cases exceeding  
ECU 500 000

Member States	No of valid statements	Amount evaded (in ECU 000)	Amount already recovered (in ECU 000)	Amount of the correction/cancellation (in ECU 000)	Balance to be recovered (in ECU 000)
B	8	13.787	1.394	2.991	15.384
DK	2	1.845	1.845		
D	20	125.178	5.678	-2.047	117.453
E	2	1.390	778	-611	
F	17	22.492	7.073	-3.904	11.515
IR	4	5.690		-4.955	735
IT	8	59.089		-9.927	49.162
NL	3	5.239	1.070	-2.548	1.621
UK	35	41.318	4.659		36.660
TOTAL	99	276.029	22.497	-21.002	232.530
%			8,2	(7,6)	84,2

Recovery rate, after deduction for cancellations  
8,8%

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