



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.12.1995  
COM(95) 690 final

95/0358 (CNS)

Proposal for a  
COUNCIL REGULATION (EC, Euratom)

concerning on-the-spot checks and inspections by the Commission  
for the detection of frauds and irregularities detrimental to the  
financial interests of the European Communities

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(presented by the Commission)

## EXPLANATORY MEMORANDUM

1. In 1994 the Commission presented to the Council a proposal for a Regulation (EEC, Euratom) on protection of the Community's financial interests<sup>(1)</sup>. This proposal laid down rules applicable to Community measures and administrative penalties and rules to govern on-the-spot checks and inspections. On 29 June 1995 the Council adopted a common position on this proposal, which may be formally adopted once the European Parliament has been consulted a second time.
2. Article 10 of the Council's common position on the abovementioned proposal stipulates that additional general provisions concerning on-the-spot checks and inspections are to be adopted at a later date in accordance with the procedures laid down in Article 235 of the EEC Treaty and Article 203 of the Euratom Treaty.
3. This proposal is the follow-up to the said Article 10.
4. The proposal is based on the following approach:
  - it is left to the Member States to adopt, where appropriate, additional rules for the on-the-spot checks and inspections carried out by their own departments;
  - the proposal leaves the existing Community rules unchanged;
  - the proposal, which is based on the notion of "irregularity" as defined in the common position, lays down rules to govern the powers and obligations of the Commission's inspectors and the means which they may employ for the purposes of on-the-spot checks in the context of a fraud investigation;
  - the draft text incorporates the amendments which Parliament made when first consulted on the proposal for a regulation on the protection of the Community's financial interests and which were accepted by the Commission at the time.
5. Thus, the proposal should be seen as a new and additional legal basis for on-the-spot checks and inspections in the fraud prevention context. It represents an important step towards more effective fraud investigations, particularly where several areas of the Community budget are affected.
6. This proposal does not entail any additional expenditure under the Community budget.

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<sup>(1)</sup> OJ No C 216, 6.8.1994, p. 11.

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**THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the Commission<sup>(1)</sup>,

Having regard to the opinion of the European Parliament<sup>(2)</sup>,

Whereas Community law requires the Commission and the Member States to take steps to protect the financial interests of the Communities against fraud;

Whereas the system of inspection is governed by special detailed provisions tailored to the various Community policies concerned; whereas Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests<sup>(3)</sup> has established a common legal framework for all the fields covered by Community policies;

Whereas that Regulation does not extend to on-the-spot inspections and checks; whereas Article 10 thereof provides for the laying down of additional general provisions by a separate regulation;

Whereas management audits and inspections as to the regularity of accounts in general are covered by provisions relating to special on-the-spot checks in respect of the various fields of the Community budget; indeed, they form part of the Community's existing legislation in the area concerned;

Whereas this Regulation does not affect the provisions of Community sectoral regulations which, although falling within its scope, go beyond its minimum rules.

Whereas, however, in order to step up action to combat organized fraud it is necessary, in dealing with irregularities committed deliberately or through gross negligence and having a impact on the Community budget, to lay down additional common provisions relating to on-the-spot inspections and checks by Commission officials;

Whereas Article 1(2) of Regulation (EC, Euratom) No 2988/95 contains a definition of the term "irregularity";

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<sup>(1)</sup> OJ No C

<sup>(2)</sup> OJ No C

<sup>(3)</sup> OJ No L 312, 23.12.1995, p. 1.

Whereas Article 8 of Regulation (EC, Euratom) No 2988/95 provides that inspection measures shall be appropriate to the particular characteristics of each sector and that the procedure for performing them shall be determined as necessary by sectoral rules; whereas it is therefore in that context that new provisions are to be developed later with a view to ensuring that the same inspections are carried out in all parts of the Community;

Whereas additional general provisions regarding on-the-spot inspections and checks by officials of the Member States may be adopted in line with national provisions laid down by law or regulation;

Whereas, if action to combat fraud and irregularities is to be effective, it should be possible for the Commission to carry out inspections on the premises of government authorities and, if need be, those economic operators who may have been involved in the fraud in question, due regard being had to the fundamental rights of the persons concerned;

Whereas Member States can make a substantial contribution to inspections by the Commission's officials; whereas national officials should therefore be asked to take part in the inspections; whereas in its role as coordinator under the second paragraph of Article 209a of the EC Treaty the Commission may ask officials from other Member States to take part in inspections; whereas the Member States concerned should be informed;

Whereas the organization of on-the-spot inspections and checks in a spirit of cooperation between the Commission and the Member States means that the Commission's inspectors should have access to the same premises and information of whatever kind relating to the operations concerned as do the officials of the Member State in question; whereas the reports by the Commission's inspectors should be usable as evidence which is as valid for that purpose as reports drawn up by national officials;

Whereas the Treaties contain no powers for the adoption of this Regulation other than those provided for in Article 235 of the EC Treaty and Article 203 of the Euratom Treaty,

**HAS ADOPTED THIS REGULATION:**

#### **Article 1**

Without prejudice to any other provisions laid down pursuant to rules governing particular sectors, the provisions of this Regulation shall apply to on-the-spot inspections and checks performed by the Commission as part of its action to combat fraud and for the purpose of detecting any irregularity as defined in Article 1(2) of Regulation (EC, Euratom) No 2988/95.

#### **Article 2**

1. On-the-spot inspections and checks by the Commission may be performed on central, regional and local government authorities and on organizations and departments dependent on or reporting directly to them or to which they have delegated specific powers.
2. Economic operators
  - who directly or indirectly receive a financial benefit, and/or
  - who are subject to obligations imposed by Community legislation, and/or
  - who are directly or indirectly involved, in whatever capacity, in the operations to which the relevant legislation applies

shall also be required to allow on-the-spot inspections and checks to be performed, and in particular shall facilitate access to premises, land, means of transport or other places to be visited for that purpose.

### **Article 3**

1. **Before performing on-the-spot inspections and checks, the Commission shall notify the Member State or States concerned in good time with a view to obtaining all the requisite help.**

**However, in the event of an overriding need to ensure that an inspection can be carried out properly, the above notification may be made just before the on-the-spot inspections and checks begin.**

2. **Officials of the Member State concerned may take part in the inspections.**

### **Article 4**

1. **On-the-spot inspections and checks shall be performed subject to the Commission's liability, by its officials or other servants and by persons put at the Commission's disposal by the Member States and duly empowered by the Commission (hereinafter: "the Commission's inspectors").**

**For the purpose of drawing up the reports referred to in Article 6(3), the Commission's inspectors shall be treated in the same way as those officials of the Member State on whom national law confers special powers to perform inspections and checks.**

**The Commission's inspectors shall produce their written authorization in which their identity and position shall be stated. They shall, when performing on-the-spot inspections and checks, conduct themselves in accordance with the rules and usages observed by officials of the Member States.**

2. **The Commission may ask officials of Member States other than those of the Member State on whose territory the inspections and checks are being performed to take part in them, subject to its bearing the liability therefor.**
3. **Where the Commission has called on outside bodies to provide technical help to officials performing the inspections, they shall act subject to the Commission's liability. The Commission shall ensure that such bodies give every guarantee of technical competence and independence and offer full guarantees with regard to the observation of confidentiality.**

### **Article 5**

1. **Without prejudice to national rules on criminal procedure, the Commission's inspectors shall have access to all the information and documentation on the operations concerned which is required for the proper conduct of the inspections and checks, including that which is obtained by national inspectors and/or that obtained in the course of judicial inquiries and which may be useful in ensuring that inspections are carried through successfully; they shall have power to take copies of appropriate documents. The Commission's inspectors may avail themselves of the same investigating facilities as national inspectors.**

**On-the-spot inspections and checks may concern:**

- **professional books and documents such as invoices, lists of terms and conditions, pay slips, statements of materials used and work done, and bank statements;**
- **computerized data;**
- **production, packing and dispatching systems and methods;**

- physical checks as to the nature and quantity of goods or of completed operations;
- the taking and checking of samples;
- the state of progress of works and investments for which financing has been provided, and the use made of completed investments;
- budgetary and accounting documents;
- the financial and technical implementation of subsidized projects;
- any other document, whatever its nature or origin, which has a direct or indirect bearing either on the subject of the inspection or on the protection of the financial interests of the Community.

2 At the Commission's request the competent authorities of the Member State concerned shall enact the appropriate measures to safeguard the evidence.

#### Article 6

1 All information collected in connection with on-the-spot inspections and checks shall be covered by the rule of confidentiality and by the Community's provisions on data protection. It may not be communicated to anyone except those persons within the institutions of the Community or the Member States who are, by the nature of their duties, required to be acquainted with it, nor may it be used for any purpose other than to ensure that the relevant rules are applied uniformly and effectively, to forestall or detect irregularities, to recover or collect the sums involved and to ensure that penalties are applied.

2 The Commission shall report to the competent authority of the State on whose territory an inspection or check has been performed any fact relating to an irregularity which has come to its notice in the course of the investigation. It shall be authorized to report the said irregularity to the competent authority of any Member State concerned by the findings in question.

3 The reports drawn up, dated and signed by the Commission's inspections shall, as evidence, be considered just as valid as if they had been drawn up by a servant of the Member State in which the information is used, particularly for the purposes of any further administrative or judicial action.

4 Where an on-the-spot inspection or check is performed outside the Community, reports prepared by the Commission's inspectors shall be taken into account in the same way as those referred to in paragraph 3.

#### Article 7

Where the persons referred to in Article 2 resist an on-the-spot inspection or check, the Member State concerned shall give the Commission's inspectors such assistance as they need to enable them to take the appropriate steps to discharge their duty to carry out such on-the-spot inspection or check, in accordance with the Member State's rules of procedure.

**Article 8**

**This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Communities.**

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

**Done at Brussels,**

**For the Council  
The President**

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