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REPORT FROM THE COMMISSION

**Fourth report from the Commission on the operation of the inspection arrangements for
traditional own resources (2000-2002)**

(Article 18(5) of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000)

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1. INTRODUCTION

Every three years the Commission compiles a report for the European Parliament and the Council on the operation of the inspection system for Community own resources, pursuant to Article 18(5) of Council Regulation (EEC, Euratom) No 1150/00 of 22 May 2000¹ implementing Decision 94/728/EC, Euratom on the system of the Community's own resources² ("Regulation No 1150/2000"), which has since been replaced by Council Decision 2000/597/EC, Euratom of 29 September 2000.³

The first report, covering the period 1989-92, was submitted to the budgetary authority on 4 January 1994.⁴ The second, covering the period 1993-96, was submitted on 8 December 1997.⁵ The third report, covering the period 1997-99, was submitted on 5 February 2001.⁶

This report describes and analyses the operation of the inspection system for traditional own resources for the period covering 2000, 2001 and 2002. It outlines the follow-up action on cases up to 31 December 2002. The report is structured as follows: outline of the general objectives pursued by the Commission via inspections concerning traditional own resources and presentation of the legal and regulatory framework surrounding the various inspection arrangements, followed by a description of the inspection system operating at Community level.

The report goes on to describe the Commission's inspection measures carried out between 1 January 2000 and 31 December 2002. It then assesses the results of the inspections and draws conclusions and assesses the Commission's inspection measures.⁷ Finally, the report outlines the financial and regulatory follow-up to these inspections and summarises their impact with regard to the development of the various rules in place. The Commission has considered it appropriate to refer to specific cases to illustrate certain situations concerning the follow-up to inspection visits.

¹ OJ L 130, 31.5.2000, p. 1.

² OJ L 293, 12.11.1994, p. 9.

³ OJ L 253, 7.10.2000, pp. 42-46

⁴ COM(93) 691 final of 4.1.1994.

⁵ COM(97) 673 of 1.12.1997.

⁶ COM (01) 32 of 5.2.2001.

⁷ The report focuses on the checks made by the Community institutions (the Commission and the Court of Auditors). It does not cover the checks made by the Member States, the detailed results of which are set out in the annual report drawn up under Article 280 of the Treaty.

Finally, this fourth report gives an account of the outcome of other Commission moves to improve the arrangements for collecting traditional own resources, in particular the question of the financial liability of the Member States and the joint audit arrangement. It also tackles the aspect of traditional own resources as regards the implementation of the preferential trade agreements and preparation of the acceding countries.

2. LEGAL FRAMEWORK AND OBJECTIVES OF INSPECTIONS

2.1. Legal framework

Inspection of the system of collection of own resources is based on three pieces of legislation.

Council Decision 2000/597/EC, Euratom of 29 September 2000 constitutes the legal basis for the Community own resources system. It defines the own resources that are entered in the Community budget.

The legal arrangements for the implementation of Decision 2000/597⁸ are contained in ***Regulation No 1150/2000 of 22 May 2000***. This regulation establishes the system for the collection of traditional own resources (Article 2), the rules for entering these resources in the normal account (*the "A" account*) or the separate account (*the "B" account*) (Article 6(3)) and the procedure for making them available to the Commission (Article 10). It also contains provisions governing the obligation on Member States to report certain information: communication to the Commission cases of fraud and irregularities exceeding €10 000 (Article 6(5)), applications relating to the waiving of the obligation to make own resources available to the Commission (Article 17(2)) and inspections (Article 18(2) and (3)).

Regulation No 1150/2000 is currently being amended to incorporate the provisions of Council Decision 2000/597/EC, Euratom of 29 September 2000 on own resources.⁹ The new proposal also takes over part of the draft amendment of Article 17(2) sent to the Council in 1997, where it is still being examined. The draft amendment is described at point 4.5.1 of this report.

Council Regulation (EC, Euratom) No 1026/99 of 10 May 1999¹⁰ applies to inspections carried out jointly with the national administrations of the Member States under Article 18(2) and (3) of Regulation No 1150/2000.¹¹ It lays down the rights and obligations of the officials appointed by the Commission in the exercise of their powers of inspection.

⁸ Replacing Decision 94/728/EC, Euratom - OJ L 293, 12.11.1994, p. 9.

⁹ OJ L 253, 7.10.2000.

¹⁰ OJ L 126, 20.5.1999, p. 1.

¹¹ Pursuant to Article 18(2) of Regulation No 1150/00.

2.2. Objectives of inspections

The collection of traditional own resources may be checked in different ways: checks on documents, checks on regulations and on-the-spot checks. Inspections have three specific objectives:¹²

- *to maintain a level playing field* between economic operators, regardless of where goods are cleared through customs in the European Union. The Commission must ensure that the Member States apply Community rules uniformly so that any malfunctioning does not lead to the distortion of competition;
- *to improve the situation as regards recovery*. The Commission must check that the Member States comply with their responsibilities when it comes to collecting own resources. This objective is concerned with ensuring not only that they assume their responsibilities with regard to the Community budget but also that the financial burden is shared out correctly among the Member States;
- *to inform the budgetary authority*. From the inspection findings the Commission is able to judge the effectiveness and diligence of the Member States with regard to collection, take the measures necessary to remedy the situation and ultimately to report to the budgetary authority on this basis on the implementation of the budget in terms of revenue.

3. OPERATION OF THE INSPECTION SYSTEM AT COMMUNITY LEVEL

The system for the collection of traditional own resources is subject to **several types of control** within the Commission: the audits carried out by the Budget Directorate-General in its capacity as authorising department for budget revenue and the inspections relating to recovery of Community entitlements. The Commission is also required to respond to the observations made by the Court of Auditors in connection with the inspections carried out under Article 248 of the Treaty, contained in its Annual Report, special reports or sector letters, and also the requests made by the European Parliament during the discharge procedure in respect of the implementation of the budget.

Responsibility for collecting traditional own resources is delegated to the Member States. They thus assume responsibility for implementing the system and, according to the rules laid down in Council Decision 2000/597/EC, Euratom of 29 September 2000, they are allowed to retain a collection fee of 25%¹³ of all amounts of own resources established. The Commission ensures that the Member States apply the Community regulations correctly and reports to the budgetary authority. This complementarity of the Member States' and the Commission's responsibilities results from the current division of inspection visits between the institutions of the European Union.

¹² These three objectives are described in detail in the Commission's third report (COM (2001)32 of 5.2.2001).

¹³ From 1.1.2001.

The Member States are required to carry out checks themselves¹⁴ and to report to the Commission. However, these checks carried out at national level do not mean that the Commission need not exercise its powers in this field. Its own checks thus enable it to ensure that the Member States are all complying with their Community obligations to the same extent and to see that the own resources made over to the Commission by the Member States correspond to what is legally due. To this end, Community revenue is monitored from the chargeable event to entry in the Commission accounts via the procedures of establishment, entry in the accounts and making available.

To achieve this, the Commission¹⁵ carries out three types of inspection: checks on regulations, checks on documents and on-the-spot checks in the Member States. The Community control and inspection arrangements for traditional own resources, as provided for *at Community level* and implemented by the Commission, can be represented schematically as follows:

Type of check	Scope of inspection	Regulation No 1150/2000	Arrangements
<i>Checks on regulations</i>	Procedure applied to collect traditional own resources in the Member States	Article 4(1)(b)	<i>Checks on Member States' provisions concerning the system for collecting traditional own resources</i>
<i>Checks on documents</i>	Accounting information reported by the Member States	Article 6(4)	<i>Monthly statement of A account and quarterly statement of B account</i>
		Article 7	<i>Annual summary account of entitlements established and recovered</i>
	Other information reported by the Member States	Article 6(5)	<i>Cases of fraud and irregularities involving entitlements of over €10 000</i>
		Article 17(2)	<i>Applications to waive the making available of sums over €10 000</i>
		Article 17(3)	<i>Annual report on outcome of inspections in Member States</i>
<i>On-the-spot checks</i>	Joint inspections	Article 18(2)	<i>Joint inspections by the Member States and the Commission</i>
	Autonomous inspections	Article 18(3)	<i>Autonomous Commission inspections on its own initiative</i>

¹⁴ Article 18(1) of Regulation No 1552/89.

¹⁵ The inspections carried out by the Commission, in particular those conducted by DG BUDG (B/03), are not all the inspections carried out by the Community institutions. The Court of Auditors is empowered to carry out audits in this field (Article 248 of the Treaty) and the European Parliament can also play an inspection role (Article 276 of the Treaty).

3.1. Checks on regulations

This type of check involves looking at the Member State's customs and accounting laws, regulations and administrative provisions. Checks are made in particular during the preparation of inspections, during the follow-up to such inspections or on examination of the reports submitted by the Member States pursuant to Article 17(2) of Regulation No 1150/00 (procedure for writing off entitlements).

3.2. Checks on documents

The documentary checks consist in **analysing** the statements of the "A" account and "B" account submitted under Article 6(4) of Regulation No 1150/2000 and the annual report referred to at Article 7 of that Regulation. They also involve analysis of the annual data provided by the Member States under Article 17(3) - as regards the results of their inspections and the means employed - and examination and monitoring of amounts written off which the Member States present under Article 17(2); this final examination is intended to ascertain whether, by way of exception, the Member States may be released from their obligation to make available to the Commission the amounts corresponding to the entitlements established.

The Commission also *monitors the measures taken by Member States' for the recovery* of traditional own resources on the basis of information it receives from them through the *Ownres* software. This information is mostly on cases of fraud and irregularities - involving duties exceeding €10 000 - reported under Article 6(5) of Regulation No 1150/00. All the information sent via the *Ownres* software is also analysed by the Anti-Fraud Office (OLAF).

Given the very large number of cases of fraud and irregularities reported ("fraud reports" and "mutual assistance reports"), the Commission had established two procedures for processing data: the first, *Sample A*, is a statistical processing of the "fraud reports" and the other, *Sample B*, a detailed examination of certain particularly difficult cases reported under the system of mutual assistance.

As the report drawn up under Article 17(3) of Regulation No 1150/2000 has been based since 1999 solely on amounts exceeding €10 000, the *Sample A* procedure, based on the same data, is superfluous. The Commission now monitors recovery on the basis of the *Sample B* procedure, which is intended to follow the recovery of a number of representative cases until they are finally discharged.

Two reports of this type, B94 and B98, have been drawn up.¹⁶ A third such report was to appear in 2001; however, the original sample had to be modified because of four cases involving irregularities as regards origin which no longer required examination after the Court of First Instance adopted its ruling on Turkish televisions.¹⁷ A new sample has therefore been drawn up, but further information has to be compiled. The third report, which will be called report B2003, should, appear in the course of 2003.

3.3. On-the-spot inspections

Each year the Commission carries out 22 to 25 - joint or autonomous - inspection visits in the Member States to ascertain on the spot the correctness and/or legality of the national authorities' systems and measures for collecting traditional own resources. Each visit is followed by a report which is discussed within the Advisory Committee on Own Resources together with the observations of the Member State concerned and the Commission's analysis. Any legislative and/or financial consequences arising from these observations are monitored up to final clearance. The Court of Auditors is systematically informed of the Commission's inspection programme and the findings of its inspections.

4. INSPECTIONS BY THE COMMISSION IN 2000-2002

4.1. Methodology

Since 1999 the Commission has *gradually redirected* its approach to inspections. The objective now set for these inspections is not so much to check that the underlying transactions are in order as to *check the systems themselves* - i.e. all the national procedures applied by the Member State to ensure proper clearance at both accounting and customs level. This methodology is intended to check that the procedures and the actions carried out in line with them comply with Community rules. Insofar as the inspection method is structured with clearly defined stages, the inspections carried out by the Commission constitute a partial *audit*.

The structured inspection approach used by the Commission brings to light any structural shortcomings which might harm the financial interests of the European Union as well as any anomalies of a one-off kind. The aim of checking a sample of underlying transactions is to confirm, *or invalidate*, the conclusions of the system analysis and to provide a justified evaluation of the capacity of the system inspected to comply with Community rules on collecting own resources, or with regard to the anti-fraud aspect. This new approach has been presented to the Advisory Committee on Own Resources and attracts real consensus from the Member States as it helps produce a more relevant evaluation of how their customs authorities actually administer the various customs and accounting procedures.

¹⁶ Commission Reports on the recovery of traditional own resources in cases of fraud and irregularities ("Sample A94", COM(95) 398 final of 6 September 1995, "Sample B94", COM(97) 259 final of 9 June 1997 and "Sample B98", COM(1999) 160 final of 21 April 1999. The first report, B94, concerns six cases representing entitlements totalling around ECU 124 million and the second, B98, concerns nine cases representing entitlements totalling around ECU 136 million.

¹⁷ *Kaufring AG* judgment of 10 May 2001 (Joined cases T-186/97, T-187/97, T-190/97 to T-192/97, T-210/97, T-211/97, T-216/97 to T-218/97, T-279/97, T-280/97, T-293/97 and T-147/99), ECR II - 01337.

4.2. Procedures for carrying out inspections

The *subjects chosen* for inspection were selected from a variety of subjects, all of which have a bearing on traditional own resources. The choice was made objectively by applying a set of criteria based on an analysis of the inherent risks in customs arrangements or accounting procedures regarded as potentially vulnerable in terms of the impact on traditional own resources.

The following parameters were taken into account: importance for the budgetary authority and other institutions (in particular the European Parliament, the Council and the European Court of Auditors), the European Court of Auditors' audit findings and recommendations, the findings of the Commission inspection and the action taken on its observations, sensitivity/importance for the Member States and possible interest shown by the media, presumed impact on own resources, number of cases of fraud or irregularities detected, time elapsed since last Commission inspection and specific information from other sources.

To enhance the new approach, the Commission has also developed *structured questionnaires* specially designed for the subject of inspection and *checklists* to be used on the spot to ensure that the inspection is consistent. These tools have indeed helped increase the effectiveness of inspections to the extent that they enable the inspection work to be organised more effectively and, above all, allow a distinction to be made between structural errors and one-off errors among the anomalies observed during inspections in the Member States. These tools also standardise the approach to inspections, regardless of the Member State inspected, and increase their quality.

4.3. Summary of inspections

The Commission carries out its inspections on the basis of an *annual programme* drawn up by the Budget Directorate-General and presented to the Advisory Committee on Own Resources; the Member States are then informed of the subjects of joint inspections. Other Commission departments may be involved in implementing the programme, depending on the subject under investigation. The authorising department (DG BUDG/B/03) had eight staff responsible for on-the-spot checks in 2000-02. These on-the-spot checks, including follow-up, account for over 35% of the work of the unit responsible for checking the collection of traditional own resources. Inspections are carried out in close collaboration with the national authorities concerned and follow the procedure described above, which guarantees openness and the dissemination of information. After each inspection a report is drawn up which covers the summary of the inspection and any anomalies discovered. The Member State has three months in which to submit its comments. Each report is presented to the Advisory Committee on Own Resources. The Commission follows up contentious points until the case is finally settled.

4.4. Main results of inspections

The Commission carried out a total of **65 inspections** under Article 18(2) and (3) during the period 2000-02 (as against 70 during the period 1997-1999) - 43 joint inspections and 22 autonomous inspections. Seven of these inspections were carried out under the Joint Audit Arrangement.

Of the **304 anomalies** noted (as against 246 anomalies during the period 1997-1999), 153 had a financial impact (50.30% of the anomalies), 92 a regulatory impact (30.30%) and 59 fell into the category "other" (19.40%). Of these 304 anomalies, 147 arose directly from application of the accounting rules (as against 185 anomalies during the period 1997-1999) with 53 relating to management of the B account and 94 to delays in entering amounts in the A account, delays in making own resources available or the failure to make them available at all. The Commission has taken appropriate measures to resolve the financial consequences of the anomalies observed.

4.4.1 *Management of customs procedures*

- The Commission initiated an inspection operation in the field of **Community transit**. The inspections conducted under the Joint Audit Arrangement in three Member States (DK, NL, A) revealed a number of anomalies for which these Member States have already taken appropriate measures. These observations do not call the national systems into question as regards their compliance with Community rules. The audit work carried out by the internal departments responsible has shown the approach to be valid and effective for both the Commission and the Member States. The *traditional* checks carried out in three Member States (DK, IRL, UK) have revealed anomalies with financial consequences; the procedures in one of these Member States (UK) have been criticised by the Commission;
- As regards the checks concerning **inward processing**, conducted in four Member States (F, IRL, FIN, S), and concerning **processing under customs control**, conducted in one Member State (EL), the management of procedures in the Member States inspected does not call for any specific comments from the Commission. The inspection of **free zones and special territories** covered the procedures applicable in the free zone of Madeira, in the territories of Gers and Haute-Savoie and on consignments of goods to the Vatican). This inspection revealed major shortcomings in the three Member States concerned (FR, I, P);
- The inspection of the **system of customs clearance for fresh bananas** carried out in five Member States (D, E, IT, NL, P) because of the diversion of traffic observed in certain Community ports¹⁸ revealed major systemic errors. The standards for the physical checks laid down in the Community rules were not observed by any of the five Member States inspected. Furthermore, despite the clear harmonised rules on the declaration of the weight of bananas, serious systematic anomalies were detected, with particular regard to the observance of these rules by customs authorities.

In view of the conclusions of these inspections, the Commission departments responsible have since been monitoring this subject with particular care and this does not rule out further inspection visits in 2003. This monitoring has proved even more necessary after Spain, which had brought its previous practice into line with Community rules, informed the Advisory Committee on Own Resources in July 2002 of the possible diversion of traffic to other Member States which offered unfair advantages or facilities to their importers as its own banana imports seemed to have fallen by more than 80%;

¹⁸ Commission Regulation (EC) No 89/97 of 20 January 1997 (creating Article 290a of Commission Regulation (EEC) No 2454/93 of 2 July 1993) – OJ L 17, 21.1.1997, p. 28-29.

- The inspections into the *system for the customs clearance of cereals*¹⁹ in six Member States (B, D, E, F, NL, UK) revealed systematic errors; in particular, the Community rules on specific end-use are not respected by some of the six Member States inspected;
- The inspection of *preferential tariff arrangements* in one Member State (NL) under the Joint Audit Arrangement revealed structural shortcomings (e.g. weaknesses as regards guarantees and delayed recovery). However, overall this Member State's system complies with Community rules. The audit conducted by the national department responsible has also shown the considerable potential which this approach has for both the Commission and the Member States;
- An inspection of *medium-sized customs offices* has been carried out in eleven Member States (B, D, EL, E, F, IRL, IT, LUX, P, S, UK). Inspections are generally carried out in large customs offices distinguished, in particular, by the volume of customs activity and the wide range of procedures handled as well as the resources available to them. This approach can, however, mean that less attention is paid to customs offices in the medium range, even though they handle the *full range of customs procedures and destinations*. These offices are key links in the customs network in most Member States, playing - as such - a vital role in collecting and monitoring traditional own resources. The conclusions drawn from the inspection of *medium-sized customs offices* are deemed satisfactory. The inspection has revealed that, as a rule, the national procedures turn out to be appropriate, despite the discovery of a number of structural errors such as delays in the internal communication chain. The Commission officials have also been able to make the necessary recommendations for changing certain practices and explain the Commission's role, which is to ensure that Community rules are uniformly applied.

4.4.2 *Management of accounting procedures*

- ***Management of the separate account*** - including the *write-off procedure* - is a recurrent subject of inspection for the Commission in all the Member States. The inspection of this subject during the period 2000-02 - both traditional and under the Joint Audit Arrangement (NL and A only) - confirmed the poor reliability of these supporting accounts. Since 1996 the Commission and the European Court of Auditors have issued reservations on the way in which some (local) authorities use them. Of the 147 accounting anomalies noted during the inspections, 53 were directly related to the management of the separate account. Systematic errors persist (entry of guaranteed amounts that were not contested and amounts written off shown as cancellations) along with individual errors (e.g. late clearance and late entry in the account of entitlements due). However, the Commission's inspections and recommendations are beginning to bear fruit as some Member States (in particular B and UK) have already agreed to bring in more reliable management measures;
- A specific inspection of application of the *write-off procedure* was carried out in one Member State (EL). The aim was to test how the Greek administration managed outstanding customs debts and the arrangements made to discover the reasons preventing the administration from carrying out the write-off procedure in full.

¹⁹ Commission Regulation (EC) No 1249/96 of 28.6.1996 – OJ L 161, 29.6.1996, p. 125-130.

Analysis of the system revealed that a lack of transparency in particular in administrative structures for passing routine information between customs offices and to the courts produced a *de facto* situation in Greece which prevents the full application of Community regulations relating to the write-off procedure. Moreover, the situation inflates the balance on the separate account;

- As regards the ***treatment of antidumping duties***, most of the fifteen Member States have introduced systems which ensure that the antidumping measures are properly applied. However, anomalies were found, in particular delays in entering in the accounts provisional anti-dumping duties that have become definitive and the failure to collect definitive antidumping duties;
- The inspection of ***imports to San Marino*** showed that the Italian accounting system for the customs clearance of goods sent to the Republic of San Marino under the Interim Agreement on trade and customs union operates satisfactorily as regards the allocation of the duties collected to either the Republic of San Marino or the European Union.

4.4.3 *Other procedures*

- The Commission also inspected the ***management of cases of fraud and irregularities through the OWNRES system*** in all the Member States. This inspection has revealed certain shortcomings, mainly involving one-off cases (delays in sending fraud reports, failure to send reports and failure to provide updates);
- With the exception of one Member State (UK) which came in for criticism, the inspection of the ***treatment of mutual assistance messages*** in all the Member States showed that, in general, the national systems are appropriate although some structural flaws in the form of delays in the chain of internal communication and feedback to the Commission) were revealed. Similarly, a number of one-off shortcomings were detected. On the basis of the inspection findings, the Commission is considering an improvement of the mutual assistance reports.

4.5. Follow-up to Commission inspection measures

4.5.1 *Regulatory aspects*

Where flaws or loopholes are detected in national regulations or administrative provisions in the course of the inspections, the Member States are asked to take the measures necessary, including legislative and regulatory measures, to bring them into line with Community requirements. Such adjustments, made in both customs law and the financial field, are an important spin-off from the Commission's inspections. The anomalies detected are also an essential source of information on the problems encountered by the Member States in applying customs regulations and their impact in terms of own resources.

Analysis of these anomalies can lead to the reform of existing provisions and improve the clarity of Community legislation:

- Some points in the rules are a source of disagreement between the Commission and the Member States, in particular the procedure allowing the operator to challenge a customs debt and the scope and entry in the accounts of guarantees. The Commission's only option to resolve some of the outstanding cases is thus to use the ***infringement procedure*** provided for in Article 226 of the EC Treaty. At

31.12.2002, 19 cases involving 11 Member States were outstanding and were at a more or less advanced stage of the procedure (formal notice, reasoned opinion, referral). The conclusions resulting from the Court of Justice's examination of the infringement procedures will clarify the questions in dispute and finally clear up the differences of interpretation ;

- The Commission has also taken steps to **amend Regulation No 1150/2000**. This proposed amendment, scheduled to take effect in the course of 2003, has a technical dimension as it incorporates the provisions of Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of own resources, in particular the percentage applied for the costs of collecting traditional own resources (Article 10(1)) and the single rate of interest for late payment (Article 11). Above all, however, there is a matter of substance; the proposal includes a thorough overhaul of Article 17(2) relating to the write-off procedure. Inspections by the European Court of Auditors and the Commission have revealed recurrent anomalies in the keeping of the separate account which prevent it from reflecting the actual budget situation. The separate account must therefore be cleared of those amounts which are not certain to be recovered and which will distort the balance if retained. To remove these amounts from the separate account, the Commission has drawn up a revised version of a proposal made in 1997 which attracted a favourable opinion from the Council. However, no final decision has been taken as agreement has not yet been reached on another point of the proposal;²⁰
- For the first time an **administrative cooperation clause** concerning the *recovery of duty* has been inserted in the draft "bridging" legislation in connection with the EC/Andorra Customs Union. This initiative was given political assent during the meeting of the Working Party on Customs Union on 18 October 2002; formal adoption is expected for the end of January 2003. The underlying problem was revealed in 2000 on examination of write-offs presented by Germany under Article 17(2) of Regulation No 1150/2000.

Other initiatives which are likely to affect traditional own resources have also been taken:

- As regards **transit**, Commission Regulation (EC) No 2787/2000 of 15 December 2000²¹ amended the provisions for the implementation of the Community Customs Code²² from 1 July 2001 by introducing an Article 450a. Under this Article, the period after which a customs debt is deemed to exist is 10 months from acceptance of the transit declaration (as against 14 months previously). Failure to discharge the transit arrangements on expiry of this time limit thus results in a customs debt being established;

²⁰ The 1997 proposal would be withdrawn before the Council agrees to the updated text.

²¹ OJ L 330, 27.12.2000.

²² Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 - OJ L 253, 11.10.1993, p. 1.

- In its communication of 7 November 2001 (SEC(2001) 2029 final) *concerning the fraud-proofing of legislation and contract management* the Commission said it was determined to develop a culture of prevention and strengthen the basic legal instruments in terms of proofing against fraud or any other illegal activity in order to protect the Community's financial interests. The document listed a number of measures and the fields requiring specific action in line with this principle. The amendment of Regulation No 1150/2000 was identified as one of the legislative projects for 2003 to be covered by the OLAF fraud-proofing consultation procedure;
- In view of the consequences of the judgment of the Court of First Instance in the “*Turkish televisions*” case and the considerable losses of traditional own resources for the Community budget, the Commission has produced a draft *Green Paper on the future of rules of origin in preferential trade agreements*. In particular, the Commission has decided, on the basis of a comprehensive analysis of developments in the economic and legal framework of these arrangements, to define new guidelines to ensure preferential arrangements work smoothly thanks to better management and better control of preferential origin, which may include revamping the relevant procedures. The objective of the *Green Paper* is to help the Commission to formulate these guidelines, taking account of the various interests at stake and the contributions expected of those involved in the preferential arrangements.

4.5.2 Financial aspects

Over the reference period (2000-2002), additional entitlements (*principal amounts*) totalling **€140 936 094.49** were paid to the Commission following observations it made in reports on joint or independent inspections; **€2 284 794.00** was paid following inspections by the Court of Auditors, giving a total de **€143 220 888.49**.²³

Interest for late payment was also charged, pursuant to Article 11 of Regulation No 1150/00, for delays in making available own resources detected during inspections by the Commission or by the Court of Auditors. Over the period 2000-02, *interest for late payment* paid by the Member States totalled **€16 991 189.11**; **€12 656 552.42**²⁴ of this sum is the result of action by the Commission.

The figures are still incomplete, especially for 2002, since the recovery of entitlements established as a result of Commission inspections depends on national procedures for collecting the accounting information needed to issue recovery orders.

²³ Including €119 254 808.77 for cases involving military equipment and €38 582 485.48 paid in response to demands pre-dating the reference period.

²⁴ Including €566 241.63 paid in response to demands pre-dating the reference period.

Mention should also be made of the action taken to follow up the inspection of the *management of the cumulative recovery system in the rice sector (CRS)*²⁵ which progressed considerably during the reference period. During the inspection in 1999 the Commission noticed that the price of American rice imported by the Belgian subsidiary of a large American group was higher than that of similar rice imported by its European competitors. OLAF launched further investigations and the findings confirmed the original conclusions, i.e. that the prices declared were too high for the quality of the rice imported. When the Belgian authorities determined the repayments for the importer, they complied with the conclusions of the OLAF investigation report. The firm in question challenged the Belgian authorities' decision before the courts and via a complaint which the United States brought before the WTO in Geneva. At the same time, the American group established close contacts with the Commission and provided further information which OLAF used as a basis for a review; the amount of duty finally payable was reduced by around 81% compared with the figure mentioned in the original report.

On examination of the further evidence provided by the importer and after proper application of the CRS legislation, the Belgian authorities were asked in November 2001 to adopt a decision to repay an additional €8 696 810 (the equivalent of BEF 350 828 447) to the importer. The Belgian administration met this request and the case was closed. This is also the conclusion which will apply to a number of cases still outstanding concerning the Netherlands and the United Kingdom.

4.5.3 *Organisational aspects*

The Commission wishes to maintain or even improve the current quality of its inspections and has taken a number of initiatives as regards their organisation:

- The meetings of the Advisory Committee on Own Resources and the Commission's comments in its inspection reports give the Commission an opportunity to point out the necessary basis for the proper application of the customs and financial rules. During the inspections, the Commission officials can already make a number of **recommendations** or give advice - the Commission's role need not be confined to penalising irregularities.

As a rule, most Member States take appropriate measures as soon as possible to remedy the shortcomings noted mainly in the management of the separate account. These measures aim, for example, to improve the computerised monitoring of the management of procedures or derive greater benefit from risk analysis;

²⁵ Case mentioned in the third Commission report (COM (2001) 32 final).

- Because of the anomalies observed in submitting reports of fraud and irregularities via the current *Ownres* system, the Commission has also taken the necessary steps to develop **a new application** based on the Internet. The Member States thus have a more functional tool allowing them to send the Commission - and update - information on fraud and irregularities *in real time*. The new application does not require any special installation apart from access to the Internet and a password given by the Commission. A presentation and training seminar is scheduled for May 2003. The web application could be running by July 2003. With the new application, the Member States, as the main managers of the tool, will be entirely responsible for sound data management;
- To enhance the new approach to inspections, the Commission, in an effort to ensure better treatment of the subjects of inspection planned each year, is continuing to develop **structured questionnaires** specially designed for the subject of inspection and inspection modules to be used on the spot. During the period under review, inspection tools were specially designed for such subjects as inspection of the separate account, the working methods of medium-sized customs offices and cereal imports. These tools have indeed helped increase the effectiveness of inspections to the extent that they enable the inspection work to be organised more effectively and, above all, allow a (justified) distinction to be made between structural and one-off errors. These tools also standardise the approach to inspections and increase their quality. With this in mind, the Commission has prepared a tool for the general subject of inspection planned for 2003 - electronic customs declarations;
- The Commission is also improving the **checklists**, a tool which is designed for the sole use of its officials, giving them before the inspection an indispensable inventory of all the preparatory stages - and a list of all the aspects to be examined during the visit. This tool also ensures that the visits will be carefully structured and that there will be a uniform approach, regardless of the Member State inspected or the team of inspectors. The structure of the inspection reports has also been modified to take account of relevant factors arising from use of these checklists.

4.5.4 *Production of thematic reports*

Some specific subjects of inspection have led to the production of *thematic reports* based on the Member States' replies to the questionnaires sent to them before the inspection visit and on the inspection findings. These reports give an overall view of the Member States' theoretical approach to certain arrangements and to the subsequent practical application by the offices responsible for customs clearance.

During the period under review, inspection visits have led to the production of three thematic reports, which are available on request.²⁶ The first two reports, on the *treatment of antidumping duties* and the *treatment of mutual assistance reports*, resulted from an investigation conducted in all the Member States. The anomalies revealed were not considered likely to undermine the operation of procedures, even though appropriate comments were made to improve operation. However, the third report, on the *customs clearance of fresh bananas*, which resulted from an investigation conducted in five Member States, led to the conclusion that none of the systems of customs clearance in the Member States inspected were able to guarantee the correct application of Community rules in this field and proper collection of traditional own resources.

These three reports were presented to the Member States and discussed by the Advisory Committee on Own Resources. They are input material for Commission departments in considering any practical difficulties which may arise from certain rules and form the basis for *recommendations* to the Member States to improve the effectiveness of their systems for the management of customs and accounting procedures or to overhaul them completely. The *customs clearance of cereals* and the inspection of *medium-sized customs offices* will also be covered by thematic reports to be published in the course of 2003.

4.6. Financial liability of the Member States

Alongside its development of a more structural approach to inspections, and to ensure sounder and more effective management of the Community's finances, the Commission has improved its approach to recovery by applying the ***principle of financial liability***. This principle has two components, one internal and the other external.

4.6.1 Internal financial liability

The principle of internal financial liability is concerned less with the monitoring of recovery than with the accountability of the Member States for their recovery measures. The Member States are responsible for collecting traditional own resources in the best possible conditions; under this principle, which is incidentally *remunerated (25% of the resources collected)*, the Commission feels that the Member States must cover losses of traditional own resources resulting from their own errors by compensating the Community budget by virtue of their financial liability.

²⁶ These reports are available at DG BUDGET from the Secretariat of Unit BUDG/B/3 (tel.: 02 295 06 63).

Cases of financial liability are identified in particular on the basis of Articles 220(2)(b) (administrative errors which could not have been detected by the person liable for payment) and 221(3) (time-bar resulting from the national authorities' failure to act) of the Community Customs Code, Articles 869 and 889 of the provisions for the implementation of the Code, the debtor's legitimate expectations in relation to the national administration which provided an incorrect authorisation and the lack of diligence in the recovery of entitlements leading to non-recovery (Article 17(2) of Regulation No 1150/2000). At the end of 2002 the total number of cases came to 114, accounting for an aggregate of €50 861 860.00 in principal.

Four Member States (F, IT, A, UK) have made available €7 471 501.00 as a result of administrative errors, thus ensuring that the taxpayer does not have to bear the burden of these errors through payment of the fourth resource. However, the other Member States, although aware of the principle of financial liability, still rely on the lack of an explicit legal base on which the Commission's action can be founded. To resolve the differences of interpretation between these Member States and the Commission, a *test case* on financial liability is now the subject of an infringement procedure under Article 226 of the EC Treaty referred to the Court of Justice on 8 November 2002. The Commission will apply the Court's decision *mutatis mutandis* to all other cases of financial liability. Next year the Commission intends to continue identifying cases in which the Member States are financially liable because of their errors and to carry on negotiating with those Member States which have not yet made available the amounts for which the Commission considers them liable.

4.6.2 *External financial liability*

As well as developing the approach that the national authorities are liable for administrative errors which prevent customs duties from being entered in the accounts, the Commission has taken steps to develop *an external dimension* to this principle with a view to increasing the liability of partners to international trade agreements which the Union has concluded or will conclude with non-member countries.²⁷

To qualify for *preferential tariffs* under these agreements, Community importers must produce certificates of origin validated by the authorities responsible in these third countries. If the documents are not validated, duty will automatically be charged at the full rate when the goods are imported into the European Union. The problem arises when these certificates are the result of "*administrative errors*" on the part of the competent authorities which issue the certificates of origin even though they knew or should reasonably have known that the products in question did not originate in their country.

²⁷ The external dimension of financial liability does not cover autonomous measures such as the generalised system of preferences. As this is not a negotiated instrument, the Commission cannot impose such a clause "unilaterally".

It would then be extremely difficult, not to say impossible, to recover the duty as the Community importer could claim to have been acting in good faith and invoke his legitimate expectations in relation to documents validated by the competent authorities of the European Union's trade partners. The authorities of the Member States claim in their turn that they have been misled by information received from competent authorities in third countries. The final "bill" is then presented to the European Union's taxpayers through the fourth resource (GNP).

Because of the interests at stake, the Commission considers that a clause based on the idea of the *financial liability*²⁸ of the countries qualifying for preferences (Member States of the Union as well as third countries as the agreements are reciprocal) should be systematically included. A clause of this type must ensure that the loss of traditional own resources is covered directly by the authorities which, through their actions, are fully responsible for the resources lost to the budget of the other party to the agreement. This clause already features in the *negotiating directives with the Arab States of the Gulf, Albania and the countries of the ACP group*.

Discussions between the Member States and the Commission are planned in the Council for early 2003 to fix the legal framework for implementing such an approach.

4.7. Application of Article 17(2) of Regulation No 1150/2000

The Commission examines the cases reported by the Member States under Article 17(2), where the traditional own resources involved exceed the €10 000 threshold and recovery is uncertain, to assess the diligence displayed by the Member States in recovering these Community entitlements.

As regards the notification of these cases, the Commission, after obtaining the favourable opinion of the Advisory Committee on Own Resources, adopted Decision C(2002) 416 final of 13 March 2002 amending Decision 97/245/EC, Euratom²⁹ of 20 March 1997 on the procedure for reporting the various items of information to be sent to the Commission under the Communities' own resources system. This amendment, which mainly relates to Annex 6 of the Decision of 20 March 1997, is intended as a further improvement to the procedure used by the Member States to inform the Commission of the follow-up to the measures they have taken to recover own resources.

²⁸ Memorandum to the Commission of 17.7.2001 (C(2001) 1954).

²⁹ OJ L 97, 12.4.1997, p. 12.

In practice, during the period under review, 426 requests to write off own resources totalling €148 103 290.28³⁰ (including 317 requests from Germany alone) were sent to the Commission by Germany, Spain, France, Ireland, Italy, Portugal, Sweden and the United Kingdom. Given the number of cases reported between 2000 and 2002, the Commission has developed a database to improve the management of the write-off procedure. This methodology soon led to practical conclusions on financial liability.

As regards the treatment of cases, the Commission examined 424 cases involving €98 008 529.14 over the same period (see table below). The cases were examined by an interdepartmental working party which met seven times in 2000-02; the representatives of the Commission departments were regularly notified of these cases - and of any relevant information about the examination - before attending the meetings.

Year	Write-off accepted	Rejected	Further information	Inadmissible ³¹	Total
2000	123 cases €17 557 144.81	128 cases €4 310 313.18	5 cases €2 135 024.92	73 cases €17 205 094.60	329 cases €41 207 577.51
2001	9 cases €951 714.27	1 case €406 361.09	1 case €1 055 542.84	---	11 cases €2 413 618.20
2002	27 cases €12 069 872.68	10 cases €2 491 791.54	17 cases €4 546 479.40	30 cases €35 279 189.81	84 cases €54 387 333.43
Total	159 cases = 37.50%	139 cases = 32.80%	23 cases = 5.40%	103 cases = 24.30%	424 cases = 100%
	€30 578 731.76 = 31.20%	€7 208 465,81 = 7.30%	€7 737 047.16 = 7.90%	€52 484 284.41 = 53.60%	€98 008 529.14 = 100%

In view of the number of Member States which have reported cases of write-offs, the Commission considers that there is still a basic problem at this level. It hopes that the new Article 17(2) incorporated in the draft amendment of Regulation No 1150/2000, which is described above, will make the Member States more aware of the concept of *amounts irrecoverable in the long term* and prompt them to take measures to *clear* the separate account to produce a more objective accounting situation.

Germany reported 115 cases to the Commission in 1997. At the time, the Commission was unable to process them as they were not presented on the Community model required by the Commission Decision of March 1997 - a form specially designed to make it easier to deal with applications for write-offs. It therefore called on Germany to present these cases again in line with the provisions of the abovementioned decision. In May 2000 Germany finally submitted a more exhaustive list of 282 cases for the period 1994-1998, plus 35 other cases. The Commission is considering whether to bring an *infringement procedure* under Article 226 of the EC Treaty against Germany in view of its refusal to provide the further information necessary to examine certain cases and its refusal to make available the amounts in cases in which the application to write off the amounts was rejected.

³⁰ 327 cases totalling €42 650 456.00 in 2000, 12 cases totalling €2 434 780.85 in 2001 and 87 cases totalling €103 018 053.43 in 2002.

³¹ Cases covered by the old rules or cases in which the national courts have cancelled the customs debt.

5. ASSESSMENT OF THE INSPECTION ARRANGEMENTS

5.1. General assessment

As in previous years, the anomalies noted in the operation of the inspection arrangements for traditional own resources during the period 2000-02 confirm the benefit which the Commission can derive from the inspections it carries out. The *traditional tools* which the Commission employs to follow up its inspection activities include the adjustment by Member States of national procedures which are not consistent with Community rules, corrections in the accounts for old cases (before they are time-barred), one-off corrections of the anomalies found, explanation of Community texts and concerted improvement of Community legislation in the case of persistent malfunctions.

The financial impact represents the visible impact of the checks carried out on the spot; However, this is not the only reason for the checks. Specific inspections by the authorising officer based on all the information gathered from the Member States can, on analysis, influence the process for improving the rules so that the financial interests of the Union are taken into account.

In addition to the range of measures mentioned above, there are a number of additional measures alongside the traditional system of checks which extend the scope of inspection. These measures are described below.

5.2. Relations with the Court of Auditors

The Commission maintains regular contact with the Court of Auditors to follow up the Court's activities- representing about 20 % of the activities of the unit for the control of traditional own resources - through reciprocal information about the inspections they are planning and copies of every inspection report sent to the Member States and the replies they send. When preparing its own inspections, the Court is able to draw on the information and experience of the Budget Directorate-General.

In 1998 the unit in the Commission responsible for traditional own resources created a special task force to analyse annual and special reports and sector letters from the Court of Auditors and to provide an administrative and financial follow up to the observations contained in the Court's reports. The tasks and responsibilities of this task force were reorganised during the period under review to provide even more effective monitoring with shorter deadlines. The task force also carefully ensures that the Member States reply within the time limits laid down.

In the period under review, the Commission followed up the Court's special reports on *securities and guarantees* and *customs value*, as well as the annual reports for 1999,³² 2000 and 2001. It also contributed to the replies to the questions relating to traditional own resources in the questionnaire³³ drawn up by Mr Blak, Member of the European Parliament, for the 1999 discharge, as well as following up the annual reports on which the discharge was based. The almost permanent attention given to "New Zealand butter" (Special Report 1/98) should be mentioned in this connection. The Commission has taken over the coordinating role of the former "Zepter" Group and replied to all the Court's requests for information about the monitoring of this case.

Over the period 2000-02 the Commission also handled 53 *sector letters*; at the end of this period 30 letters were still outstanding,³⁴ pending replies from the Member States or provision of the own resources concerned or because the follow-up had led to the formal initiation of infringement proceedings³⁵ under Article 226 of the EC Treaty.

In addition, the Court of Auditors regularly audits Commission departments. It conducted two audits concerning traditional own resources during the period under review. The Commission considers that any observations made by the Court are an important contribution for evaluating its activities and the results.

5.3. Joint Audit Arrangement

The Joint Audit Arrangement is a generic term for the cooperation established between the Commission and internal audit departments in certain Member States to help pool internal audit experience, expertise and techniques. The process was launched in 1994 and several development phases have been completed successfully. Created under the auspices of the Advisory Committee on Own Resources, the Audit Sub-Group meets regularly to enable delegations from all Member States to exchange views.

Within this committee, participating Member States have, on their own initiative and liaising closely with the Commission, developed working documents incorporating audit plans and tools. These working documents form audit modules. The modules consist of structured grids which can be used to evaluate the key inspections performed in all Member States to ensure that own resources are duly established, entered in the accounts and made available to the Commission. The module also serves to gauge the capacity of a system as a set of procedures and to reveal any structural flaws which may need to be rectified.³⁶

³² Parliament has noted and welcomed the Commission's efforts and initiatives to follow up the Court of Auditors' observations – see document EP 294.389 of 10.1.2001.

³³ See document EP 294.293 of 30.11.2000.

³⁴ These 30 letters break down as follows: 5 for Germany, 4 for Belgium, France, Italy and the United Kingdom, 3 for Spain, 2 for the Netherlands and Sweden, 1 for Denmark and Austria.

³⁵ 40 letters still have to be closed since 1997.

³⁶ The following modules are currently available: Free circulation, including the A account; External transit (T1 and TIR); Warehousing; Generalised System of Preferences; Inward processing; Separate account.

At present the following countries take part in the initiative: Belgium, Denmark, Spain, France, Ireland, Italy, the Netherlands, Austria, Portugal, Finland, Sweden and the United Kingdom. On the basis of the abovementioned modules, the Commission, in collaboration with some volunteer Member States, developed an alternative method to improve joint inspections (those carried out under Article 18(2) of Regulation No 1150/2000) which require closer cooperation. Denmark, the Netherlands and Austria volunteered to use this approach. Seven inspections of this type have already been carried out with these Member States.

Under this approach, the audit work is done by the internal audit department of the Member State concerned, using as a basis the module covering the preselected customs and/or accounting field. On completing its task, the internal audit department draws up a report which is sent to the national customs authorities and the Commission. The Commission then examines the findings of the audit and visits the Member State to interview the internal audit team and inspect the working documents and the methods used.

Following this inspection visit, the Commission can adopt the main points of the report. The Commission then draws up its own report. Any anomalies, which must be classified as "one-off" or "structural", are dealt with by financial adjustments in the usual way. Where the system analysis suggests that the anomaly is structural in nature, the Commission is informed of the measures proposed by the Member State to remedy the underlying shortcomings in the system.

The Commission and the Member States have found it extremely beneficial to carry out inspections in line with this approach. For the Commission, it offers sufficient guarantees as to the real effectiveness of Member States' internal audit systems. It also saves resources which can be better invested in other sectors, in particular in the candidate countries. For the Member States, this approach means fewer upheavals in the everyday activity of the customs offices and more effective investment in their own administrations. The Commission also presented the Joint Audit Arrangement and its benefits at the 5th meeting of the *Contact Group for Financial Control Organisations* in Malta in October 2002.

5.4. Inclusion of the acceding countries

With 2004 in mind, the Commission endeavoured during the period under review to define a strategy for approaching the question through prior information visits, followed by the underlying measures needed in the administrations of the ten candidate countries to ensure that their customs and accounting systems comply with Community requirements concerning the operational treatment of own resources.

Members of the Commission also played an active role in *seminars* to present the traditional own resources system to officials in the administrations of the countries which have applied for accession. These seminars were held in Lithuania (October 2000), Malta (February 2001), Cyprus (February 2001), Poland (March 2001) and Bulgaria (October 2001). They proved very useful for demonstrating the various aspects which the candidate countries must take into consideration during their reform activities so that they can prepare for accession in the best possible conditions. These seminars have been accompanied by various preparatory activities.

The Commission drew up a *practical guide* listing the measures which the authorities in these countries will have to take to incorporate the body of Community law in their national legislation. This *checklist* is a valuable technical aid in helping them prepare for accession in the specific field of traditional own resources. The *checklist* enabled the Commission to draw up a *questionnaire* which was sent to the 10 candidate countries of the *Laeken Group* - i.e. all the candidate countries with which the Commission was conducting negotiations with the exception of Romania and Bulgaria - to make an initial assessment of the progress they have made in their preparations for calculating and paying own resources. For each administrative condition that has to be met, the countries were asked to state whether there were already national rules and the underlying infrastructures to satisfy this condition. They were also asked to produce mock accounting statements in connection with traditional own resources.

These activities have been supplemented by *visits* to provide technical assistance as well as follow up the replies to the questionnaire. These visits have removed possible misunderstandings about the extremely technical aspects of the own resources system and made it possible to take stock of the progress made so far and the measures to be planned so that the system can be applied in full from day one of accession. They have also provided the opportunity of presenting and jointly preparing a uniform method for the calculation of resources (and expenditure) and assisting negotiations on the budgetary chapter by setting up a common terminology and methodology.

From the (draft) national regulations in the candidate countries and the replies to its questionnaire, the Commission has been able to form a positive opinion about the quality of the national procedures introduced and the progress achieved with a view to future accession. Given the timetable and the efforts still to be made, and the obvious interest shown by the European Court of Auditors in the preparatory measures which it is carrying out, the Commission considers this issue to be an *absolute priority*. That is why the Commission will provide technical assistance throughout 2003 targeted on those fields which still require considerable adjustment. Evaluation of collection systems in real time will also be given priority.

The inclusion of the candidate countries and the effort required of the Commission - at constant staffing levels - will automatically lead to a shift in the implementation of inspections in the current fifteen Member States. The number of *traditional* missions will be confined, in principle, to a single inspection per Member State; in some Member States, the inspections will be under the Joint Audit Arrangement. Of course, this does not rule out additional short-term visits to expand on certain aspects treated during previous inspection programmes. The Commission is also considering the possibility of associating the Member States in the inspection visits.

6. CONCLUSION

The results recorded from 2000 to 2002, and the prospects which emerge, confirm the need for the Commission's inspections of traditional own resources. This inspection activity ensures equality of treatment between the Member States as regards both application of the customs and accounting rules and protection of the European Union's financial interests; i.e. if the Member States fail to comply with these rules, they all face the same consequences.

At the same time as taking the necessary measures for the further improvement of its traditional inspection visits, the Commission intends to expand its activities in the following three areas:

- ***Monitoring*** the acceding countries, so as to obtain a reasonable degree of assurance that these countries' customs and accounting systems will meet Community requirements by the time of accession;
- ***Internal financial liability of the Member States*** the principle under which the Member States must bear responsibility for their errors. The various infringement procedures brought before the Court of Justice should allow certain guidelines to be laid down;
- ***External financial liability*** suitable consideration must be given to provide the ability to remedy the negative financial effects resulting from poor management of preferential agreements.