

COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION

**on the functioning of the inspection arrangements
for traditional own resources**

(Article 18(5) of Council Regulation (EEC, Euratom) N° 1552/89)

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by the Commission
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CONTENTS

I INTRODUCTION

1. Purpose and structure of the report
2. Legal framework

II HOW THE INSPECTION ARRANGEMENTS OPERATE

1. Inspection arrangements at Community level
2. Joint inspections and own inspections
 - 2.1 Methods
 - 2.1.1 Joint inspections
 - 2.1.2 Own inspections
 - 2.2 Inspections carried out and main findings

III ASSESSMENT OF HOW THE INSPECTION ARRANGEMENTS ARE WORKING AND CONCLUSIONS

1. General assessment of the system
2. Conclusions
 - 2.1 Improving existing inspection methods
 - 2.2 Rationalizing the choice of topics and multiannual planning of on-the-spot inspections
 - 2.3 Refining follow-up procedures
 - 2.4 Cementing the partnership between the Member States and the Commission

I INTRODUCTION

1. Purpose and structure of this report

a. Purpose

Article 18(5) of Council Regulation (EEC, Euratom) N° 1552/89 of 29 May 1989 implementing Decision 88/376/EEC/Euratom on the system of the Community's own resources¹ requires the Commission to report every three years to the European Parliament and the Council on the functioning of the inspection arrangements.

This report therefore analyses the working of the inspection arrangements for traditional own resources from **January 1989 to December 1992**.

This covers the first three years in which Regulation 1552/89 was applied. Although the Regulation did not enter into force until 8 June 1989, Article 24 stipulated that it would apply retroactively from 1 January 1989. However, for organizational reasons the new type of inspection (own inspection) could not be put into effect immediately. The first own inspection was carried out in January 1990. The reference period (1989-1992) therefore covers all aspects of the first three years of application of the legislation.

b. Structure

Part I sets out the purpose and structure of this report and the legal framework underlying the various inspection arrangements. **Part II** analyses how the inspection arrangements introduced by Regulation 1552/89 have operated. The various means of inspection available to the Commission are reviewed here. Particular attention is also focused on the way national provisions have been modified to satisfy the Community requirements arising from the Regulation, this being a specific aspect of the functioning of the inspection arrangements and the Commission having given a political commitment to this effect when the Regulation was adopted.

The Commission's assessment of the functioning of the inspection arrangements as a whole and the conclusions which it feels should be drawn from this form the subject of **Part III**.

¹ OJ L 155, 7.6.1989, p. 1.

2. Legal framework

- *Decision 88/376/EEC, Euratom*

Council Decision 88/376/EEC, Euratom of 24 June 1988² provides the legal basis for the Communities' traditional own resources system. Article 2(1) defines the own resources entered in the budget of the Communities. Traditional own resources are defined as revenue from:

- a) levies, premiums, additional or compensatory amounts, additional amounts or factors and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries within the framework of the common agricultural policy, and also contributions and other duties provided for within the framework of the common organization of the markets in sugar;
- b) Common Customs Tariff duties and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries and customs duties on products coming under the Treaty establishing the European Coal and Steel Community.

- *Regulation (EEC, Euratom) N° 1552/89*

Regulation 1552/89³ implements the own resources Decision by establishing the requisite legal arrangements.

The Regulation specifies when entitlement to traditional own resources is established⁴ and lays down rules for entering these resources in the accounts and making them available to the Commission.

It also contains provisions on inspection and on the Advisory Committee on the Communities' Own Resources.

² OJ L 185, 15.7.1988, p. 24.

³ OJ L 155, 7.6.1989, p. 1.

⁴ The Communities' entitlement to traditional own resources is established as soon as the debtor has been notified of the amount due by the competent department of the Member State (Article 2).

Regulation 1552/89 introduces a number of new elements which were not present in the earlier legislation (Council Regulation (EEC, Euratom, ECSC) N° 2891/77 of 19 December 1977 implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources⁵, as last amended by Regulation (EEC, Euratom, ECSC) No 1990/86⁶). The most important of these are:

- definition of the moment of establishment of an entitlement (Article 2);
- introduction of separate accounts (Article 6(2));
- obligation to supply more information on the progress of recovery and on cases of fraud and irregularity (Article 6(3));
- own inspections (Article 18(3));
- possibility of exemption from the obligation to place resources at the disposal of the Commission (Article 17(2)).

- *Regulation (EEC, Euratom, ECSC) N° 165/74*

Council Regulation (EEC, Euratom, ECSC) N° 165/74 of 21 January 1974 determining the powers and obligations of officials appointed by the Commission⁷ applies to inspections carried out in conjunction with the authorities of the Member States, pursuant to Article 18 of Regulation 1552/89.

Regulation 165/74 stipulates that such joint inspections will relate to the establishment, recording and making available of traditional own resources. The officials concerned are bound by professional secrecy and subject to other requirements in the exercise of their powers of investigation.

⁵ OJ L 336, 27.12.1977, p.1.

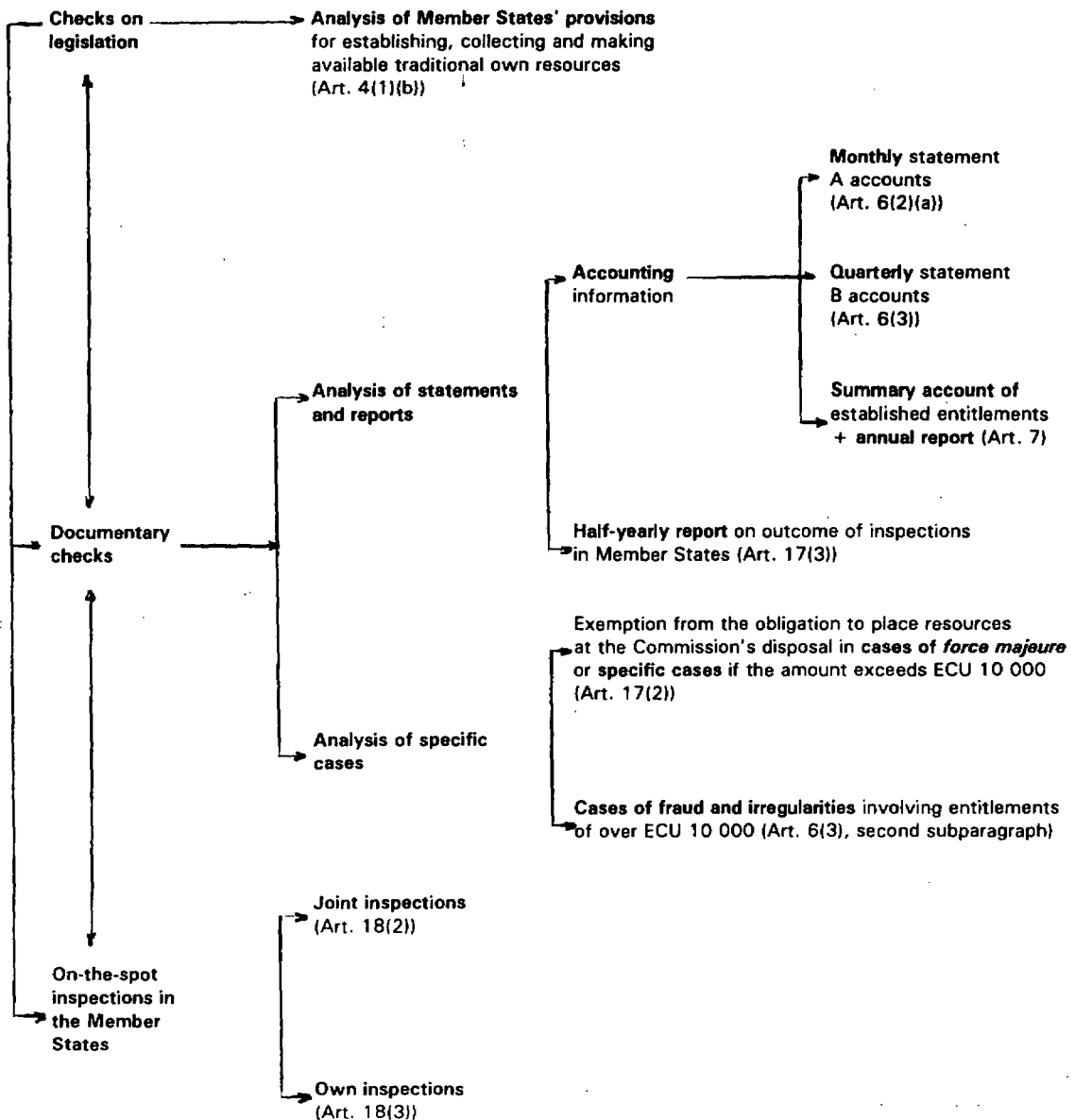
⁶ OJ L 176, 7.7.1988, p. 1.

⁷ OJ L 20, 24.1.1974, p. 1 .

II HOW THE INSPECTION ARRANGEMENTS OPERATE

1. Inspection arrangements at Community level

The Community control and inspection arrangements for traditional own resources, as put in place under **Regulation 1552/89** and implemented by the Commission, can be represented schematically as follows:



Regulation 1552/89 delegates the collection of traditional own resources to the Member States. They therefore carry the prime responsibility for establishing entitlement to own resources, entering them in the accounts and making them available. On the other hand, as the Commission is accountable to the budgetary authority for the management of traditional own resources, it must satisfy itself that these tasks are being carried out in accordance with Community regulations and ensure that the rules are being applied correctly. The complementary nature of the Member States' and the Commission's responsibilities should thus help to ensure that the Community's financial interests are properly protected.

In implementing the revenue side of the budget, the Commission carries out three kinds of inspection, within the limits laid down by the Treaty and secondary legislation. These inspections are in addition to the checks which the Member States themselves are required to carry out.

a. Checks on legislative and administrative provisions

The Member States are required to inform the Commission of the general legislative, regulatory, administrative and accounting provisions relating to the establishment, collection and making available to the Commission of traditional own resources. If, having examined them, the Commission feels that certain national provisions do not satisfy the requirements for the proper collection of traditional own resources, it will contact the Member State in question to seek a solution to the problems. These bilateral contacts mainly take place at an operational level and solutions can usually be found at that level too, avoiding the need for infringement procedures in most cases.

It is obvious that the Member States' obligation under article 4 (1) (b) of Regulation 1552/89 to inform the Commission of the provisions that they adopted shall apply also in regard to future modifications made to these provisions.

b. Documentary checks

The documentary checks carried out by the Commission are designed to enable it to monitor certain accounting information systematically and to analyse other information supplied under the Community regulations on traditional own resources.

Five different types of information are sent to the Commission for the purposes of these checks:

i. Monthly statements of the A accounts

Article 6 of Regulation 1552/89 requires accounts for own resources to be kept by the Treasury or other body appointed in each Member State. Entitlements established in accordance

with Article 2 of the Regulation, i.e. amounts due which have been notified to the debtor, are entered in these accounts. Entries must be made by the first working day after the 19th day of the second month following the month in which the entitlement was established. Because the obligation to enter established entitlements in the accounts for own resources is laid down in subparagraph (a) of Article 6(2) of the Regulation, the accounts are known as **A accounts**.

Each month,⁸ the Member States send the Commission a statement of the established entitlements that have been entered in the A accounts.

The Commission checks that the amounts credited by the Member State to the Treasury account opened in its name correspond to those appearing in the monthly statement. If necessary, the Commission will contact the Member State concerned and make any corrections that are required by amending the statements. It will also examine any corrections made by the Member States themselves to the entitlements established in previous monthly periods. Where necessary, the Commission may charge interest on late payments.

In the case of *sugar* production levies, the monthly statements enable the Commission to compare the total amount of revenue actually received with the theoretical revenue for the relevant marketing period. Any discrepancies are examined in greater detail to determine the cause.

Like all the other administrative and accounting information at the Commission's disposal concerning the establishment, recording and making available of traditional own resources, the information given in the monthly statement is also often used when preparing and carrying out on-the-spot inspections.

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The monthly statement of the A account must be sent to the Commission at the latest by the first working day after the 19th day of the second month following the month in which the entitlement was established.

ii. Quarterly statement of the B accounts

Under Article 6(2)(b) of Regulation 1552/89, established entitlements that have not been entered in the A accounts because they have not yet been recovered and no security has been provided must be entered in separate accounts, known as **B accounts**.

The B accounts may also include established entitlements for which a security has been provided, but which have been challenged and might be subject to change once the dispute has been settled. All the amounts entered in these **separate accounts** are shown in quarterly **statements** sent to the Commission.⁹

The Commission then checks each quarterly statement to satisfy itself that it accords with the previous monthly statement. This check involves comparing the difference between the balance of the quarter covered by the statement and the balance of the previous quarter with the amounts of established entitlements, corrections, cancellations and sums recovered in the course of the quarter covered by the statement. In the event of a discrepancy, the Commission contacts the Member State concerned to ascertain the reason. The Commission also carries out statistical analyses of the B accounts to assess the relative importance of disputes and methods used to settle such cases. To this end it compares the amounts entered in the B accounts and the amounts entered in the A accounts, evaluates the relative weight of corrections and cancellations, and monitors trends in the average time taken to recover debts and the amounts outstanding.

iii. Summary account and annual report

By 1 May of each year, the Member States are required by Article 7 of Regulation 1552/89 to provide the Commission with a **summary account** of all the entitlements established in the previous year.

⁹ The quarterly statement of B accounts must be sent to the Commission, at the latest, by the first working day after the 19th day of the second month following the quarter in which the entitlement was established.

This must be accompanied by a report on the establishment and entry in the accounts of own resources. The Commission evaluates the information in these reports, comparing it with other data from different sources at its disposal.

iv. Half-yearly report

As part of the checks on the collection of the Community's traditional own resources,¹⁰ the Member States notify the Commission twice a year, in half-yearly reports, of the outcome of their inspections. The reports also contain comprehensive information and cover questions of principle involved in the major problems that have arisen, especially in disputed cases. Particular attention is paid to cases involving legal proceedings, both civil and criminal, between the national authorities and debtors regarding the collection of import duties. In addition the reports spell out the reasons behind any cases where Member States have not made available to the Commission some amounts of entitlements that have been established but not collected, either because of *force majeure* or in individual cases where the amount involved exceeds ECU 10 000.

These reports are an invaluable source of information, enabling the Commission to monitor closely the way in which Member States are exercising the powers delegated to them by the Community in the area of traditional own resources. Although all this information is evaluated in different contexts, the Commission pays particular attention to cases where exemption is claimed from the requirement to make established entitlements available for reasons of *force majeure* or in special individual cases.

If a Member State invokes the notion of *force majeure*, the Commission takes care to see that the rules as stated by the Court of Justice are observed.¹¹ The Commission has six months in which to communicate any comments it may have to the Member State concerned.

¹⁰ Article 17 of Regulation (EEC, Euratom) N_ 1552/89.

¹¹ The criteria applied by the Commission to determine whether recourse to the notion of *force majeure* is justified or not are set out in a Commission communication published in OJ C 259, 6.10.1988, p. 10.

v. Half-yearly statement of cases of fraud and irregularities

A final point to be made under the heading of documentary checks is that the Commission monitors the Member States' anti-fraud activities in the field of traditional own resources. It does so by analysing a sample of disputed cases, namely the cases of fraud and irregularities already detected by the Member States.

The second subparagraph of Article 6(3) of Regulation 1552/89 requires Member States to supply a brief description of all such cases involving entitlements of over ECU 10 000.

These cases (of which there are currently about 2 300) are monitored in a coordinated way by various Commission departments, including the Unit on Coordination of Fraud Prevention, the Directorate-General for Financial Control, the Directorate-General for Agriculture and, in particular, the Directorate-General for Customs and Indirect Taxation.

A selection is made of cases to be monitored. Those which meet certain criteria are monitored until they are settled.¹² To this end the Commission maintains regular contacts with the Member States to update the information it has received and note any entries in the accounts or recoveries that might have occurred since the previous statement.

Furthermore, if the Commission learns of a major case of fraud or irregularity that has not been notified pursuant to Regulation 1552/89 (whether through a report by way of mutual assistance under Council Regulation (EEC) N° 1468/81,¹³ or as the result of a joint or own inspection, or from some other source), it will remind the Member State concerned of its obligations under the Community regulations to protect the Community's financial interests. The Commission also asks Member States about the state of progress in establishing and recovering entitlements and any obstacles in their way.

¹² In particular, cases where there is detriment to the Community budget, cases which are already the subject of enquiries by the Commission, cases where responsibility is shared among several Member States, or where there is a time limit, or those in which the budgetary authority or other inspection agencies have a particular interest.

¹³ OJ L 144, 2.6.1981, p. 1.

c. *On-the-spot inspections in Member States*

Although documentary checks and checks on the compatibility of national own resources provisions with Community law have a place among the instruments for verifying the application of Community regulations on traditional own resources, no monitoring system could ever be properly effective and viable without the possibility of on-the-spot inspections. The fact that the Commission can go and see things on the spot enhances the practical dimension of the various matters it handles in connection with the application of the Community rules on traditional own resources. Such inspections are also essential for checking whether the conclusions drawn from its checks on the documents and legislation are in fact accurate.

2. Joint inspections and own inspections

Ensuring Community monitoring on the spot by associating the Commission with inspections was introduced when the system of Community own resources was set up by the Decision of 21 April 1970. Joint inspections of this sort are carried out in accordance with the provisions of Regulations 1552/89 and 165/74.

Article 18(2) of Regulation 1552/89 requires Member States to associate the Commission, at its request, with the inspection measures they carry out. The distinguishing feature of this type of inspection is that the prime responsibility for organizing the inspection (fixing the dates and purpose) and the choice of the site of the inspection rests with the Member State concerned.

The Commission, for its part, has to check that the Community's financial interests are always protected and that the traditional own resources are made available correctly. In order to ensure that entitlements are collected with due regard to the interests of the Community budget, Community law also explicitly confers on the Commission the power to monitor the establishment, recording and making available of traditional own resources, operations which are the responsibility of each Member State.

The Council subsequently introduced a new method of inspection (Article 18(3) of Regulation 1552/89). Unlike the joint inspections, where the initiative and responsibility rest primarily with the Member States, own inspections allow the Commission to conduct its own checks on the spot.

The scope of own inspections and general arrangements for their conduct were set out in a Commission statement entered in the Council minutes, spelling out how it intended to exercise this power (involvement of officials of the Member State concerned, advance notice given to the national authorities, an undertaking not to have unduly frequent recourse to the procedure, etc.).

2.1 Methodology

2.1.1 *Joint inspections*

Certain procedures have been established both to ensure transparency and clarity and to enable the Commission to fulfil its obligations towards the other Community institutions and the Member States as regards monitoring how the latter manage the Community's traditional own resources.

At the end of each year, the Commission department responsible - the Directorate-General for Budgets - drafts a programme for the year ahead. This specifies the number, date and subject matter of inspections and is discussed with the appropriate national authorities before being adopted by joint agreement. The finalized programme is sent by the Commission to the offices of the permanent representatives of all the Member States. Within the Commission prime responsibility for implementing the programme rests with DG XIX, as the authorizing department, but other Commission departments are also involved, depending on the subject under investigation.

Roughly a month before each visit, the Commission writes to the office of the permanent representative of the Member State concerned, confirming the date of the inspection. A certified copy of the letter is issued to each of the appointed officials, stating their name and official position, and this constitutes the terms of reference from the Commission to the national authorities, as provided for in Regulation 165/74.

Before each inspection the various Commission departments participating in the inspection hold an internal coordination meeting to define the objectives of the visit. These preparatory meetings, at which a common approach is decided, help to ensure that the inspections proceed smoothly.

At the initial meeting in the Member State where the joint inspection is taking place, the officials appointed by the Commission are briefed by national officials on the various activities of the department where checks are to be carried out. The Commission officials and the national officials responsible work out the procedures for the inspection and agree on a detailed programme of work.

Once the inspection has been completed, the results are discussed at a final meeting. The national authorities are informed of the Commission officials' full findings from their checks. They are therefore aware of the main points likely to feature in the official version of the inspection report that will be sent to the Member State. The Member State, for its part, may make any comments it sees fit.

The checks carried out by the Commission officials during the joint inspections are based on the supporting documents referred to in national and Community legislation, which Member States are required to keep for at least three years after the end of the year to which the documents relate. The Commission officials must have access to these documents when carrying out their random checks to see that the amounts of traditional own resources paid to the Commission by the Member States are actually what is legally due. In order to do this, the Community procedure is followed from the origin of the debt (operative event) to its entry in the Commission's accounts, by way of the procedures for establishing, recording and making them available.

The results of the inspections carried out by the Commission are also communicated to the Court of Auditors, as well as to the other Member States with a view to discussion in the Advisory Committee on the Communities' Own Resources.

The Advisory Committee, set up under Article 20 of Regulation 1552/89, consists of representatives of the Member States and the Commission and its purpose is, among other things, to examine and discuss the problems raised in inspection reports. The procedure is designed to ensure equal treatment for the Member States, at least for those affected by the issues concerned. Following discussion in the Committee, the Commission adopts its final position and informs the Member State concerned accordingly.

2.1.2 *Own inspections*

In terms of procedure, the preparations for own inspections are similar to those for joint inspections, apart from the fact that Member States are not informed of the annual inspection programme.

The officials appointed by the Commission must have a written authorization to carry out on-the-spot checks. They have access to the supporting documents relating to the establishment, recording and making available of traditional own resources, which are kept for at least three years after the end of the year to which they relate. They also have access to any other papers relating to the supporting documents in question.

The Member State concerned is given due notice of an inspection by the Commission in a letter explaining the reasons for it and its purpose. It is also informed of the names and official positions of the officials appointed by the Commission to carry out the inspection.

Obviously, for reasons of efficiency, the inspection should normally be conducted with the collaboration of national officials appointed by the Member State. However, the refusal of a Member State to cooperate cannot, in principle, prevent the officials appointed by the Commission from proceeding with their inspection.

As regards the practical implementation of the inspections, most of the procedural rules governing joint inspections apply *mutatis mutandis* (preparatory meeting, final meeting, inspection results sent to the Member State concerned, confidentiality of information gathered in the course of the inspection, evaluation of the inspection findings in the Advisory Committee on the Communities' Own Resources).

In the Commission's view, these inspections of its own have the advantage of allowing the Community interest aspect to be emphasized much more forcefully in Community monitoring systems. Equally, they allow issues regarding controls which the Commission regards as a priority, but which do not feature prominently on the national authorities' agenda, to receive the attention they deserve.

2.2 **Inspections carried out and main findings**

During the reference period (1989 - 1992) the Commission carried out a total of 59 joint inspections as follows:

Year	B	DK	D	GR	ES	F	IR	I	L	NL	PT	UK	Total
1989	2	1	3	2	3	3	1	3	1	2	3	4	28
1990	1	1	1	1	2	1	1	1	1	-	1	2	13
1991	-	-	-	1	1	1	1	1	-	-	1	1	7
1992	1	1	-	1	1	2	1	2	-	1	-	1	11

It will be noted that the number of joint inspections has dropped since 1990, when the Commission began conducting its own inspections (under Article 18(3) of Regulation 1552/89).

The breakdown of topics covered in the joint inspections was as follows:

1989	release into free circulation	30%
	trad. own resources accounts	19%
	<i>ex post</i> repayment/recovery	16%
	presentation of goods at customs	11%
	inward processing	8%
	value for customs purposes	6%
	sugar and isoglucose levies	5%
	external Community transit	4%
	imports of fishery products	1%
1990	release into free circulation	35%
	trad. own resources accounts	31%
	inward processing	17%
	presentation of goods	13%
	special customs zones	4%
1991	release into free circulation	45%
	trad. own resources accounts	35%
	inward processing (continued from 1990)	10%
	special customs zones	10%
1992	separate accounts	80%
	imports under preferential agreements	10%
	transit by rail	10%

During this same period the Commission carried out a total of 29 inspections of its own, broken down as follows:

Year	B	DK	D	GR	ES	F	IR	I	L	NL	PT	UK	Total
1989	-	-	-	-	-	-	-	-	-	-	-	-	-
1990	-	-	2	-	1	1	-	1	-	1	1	-	7
1991	1	1	2	1	1	1	1	1	1	1	1	1	13
1992	-	1	2	-	1	-	-	-	1	1	2	1	9

It will be seen that the Commission carried out no inspections of its own in 1989. This was because it proved impossible, for organizational reasons, to implement the new inspection arrangements introduced under Regulation 1552/89 until some time after the Regulation entered into force on 8 June 1989.

The areas covered in the inspections were as follows:

1990	inward processing	29%
	presentation at customs - release into free circulation of fishery products	29%
	separate accounts	14%
	imports of cattle from Eastern Europe - Community transit	14%
	postal traffic	14%
1991	separate accounts	92%
	special destinations	8%
1992	imports under preferential agreements	56%
	sugar and isoglucose levies	33%
	imports of cattle from Eastern Europe - Community transit	14%

The main practical results to emerge from the inspections, both in **regulatory** terms (where Member States have taken measures to implement Community rules or adapted their regulations to bring them into line with Community requirements) and in **financial** terms (where Member States have corrected the amounts of traditional own resources or paid interest when late in making own resources available), are set out below under the major subject headings.

But before looking more closely at these results, the point should be made that it is not always easy to determine the financial impact of inspections in cases where the Member States have had to correct the amount of traditional own resources made available to the Commission following an inspection. This is because their additional payments are included in the overall amount of own resources paid over to the Commission each month. Without any specific indication that these extra payments are in response to the Commission's inspections, it is impossible to make the link between book entries and inspections.

Furthermore, if a particular office inspected was applying national rules that are open to challenge from the point of view of the Community rules, the conclusions from the local inspection have to be extended to the entire territory of the Member State in question.

The Commission's inspections have also brought to light some weaknesses or gaps in national provisions. To rectify these problems the Member States have, where necessary, taken steps to bring their rules into line with Community legislation.

It is not possible to place a figure on the amount of Community own resources saved as a result of the changes in national regulations requested by the Commission, but it is certainly substantial.

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Over the reference period from 1989 to 1992, total additional payments made to the Commission where a link can be established with comments in reports on its own or joint inspections amounted to **ECU 17 717 257**.

The Commission's inspections have also often shown that traditional own resources were not made available within the time limit laid down in Community law - in other words by the first working day after the 19th of the second month following that in which the entitlement was established (Article 10(1) of Regulation 1552/89). Interest from the Member States on late payments over the reference period totalled **ECU 39 731 273**.

The **main results** of the inspections carried out by the Commission in the Member States between 1989 and 1992, broken down by major headings, are as follows:

Implementation of separate accounts in the Member States

One of the major innovations of Regulation 1552/89 was to introduce separate accounts for established entitlements not yet recovered (B accounts) in addition to the accounts for entitlements established, recovered and made available (A accounts).

In financial terms, the separate accounts record potential revenue from traditional own resources for which the recovery procedure has been set in motion, but where the sums due have not yet been recovered. The Member States inform the Commission through their quarterly statements of the position regarding sums still to be recovered. From 1990 to 1992 the figures for the twelve Member States were as follows (at 31.12.1992, in million ECU):

Year	BE	DK	DE	GR	ES	F	IR	IT	L	NL	PT	UK	TOTAL
1990	2 958	-	26 323	178	-	7 770	1 4	31 735	-	-	1 853	6 998	77 829
1991	4 811	-	117 725	504	15 632	32 312	4 4	49 229	2	11 586	2 468	4 502	238 772
1992	6 066	-	142 840	1 240	16 679	39 560	2 1	57 639	2	13 656	4 085	6 749	288 537

Since most of the Member States had to set up separate accounts from scratch, because their accounting systems made no provision for them, the Commission's main priority in its inspections was to concentrate on the implementation of these accounts to ensure that they were in line with Community law.

From 1990 to 1992 the Commission carried out 33 inspections - 19 joint inspections and 14 of its own - covering the B accounts. In some cases recourse to the own inspection formula was dictated by the fact that the Commission had to "impose" its choice of topic, particularly where the topic was not included by the national authorities in their inspection plan for the period in question.

The inspections in the Member States showed that the separate accounts are kept on a daily basis, either centrally or at local offices. Since this is a matter of some importance, the Commission adopted a communication on concerning the implementation of the B accounts in the Member States.¹⁴ This report and the recommendations which it contains are also based on the findings from the traditional own resources inspections in this field.

¹⁴ COM(93) ..., ...10.1993.

In response to the Commission's comments in its inspection reports the Member States have, where necessary, amended their legislation, regulations or administrative and accounting provisions to satisfy the requirements of Regulation 1552/89. Some examples are given below, country by country:

1. In **BELGIUM** the date of entry in the separate accounts was not recorded in the register, causing difficulties in checking compliance with the time limits for entries.

- * From 1 January 1992 the date has been recorded in the register (amendment to Annex 4 of the circular of 15.12.1981).

Similarly, cases of fraud notified to the Commission that involved agricultural levies were entered late in the accounts.

- * In the meantime there has been a reorganization to improve cooperation between Customs and the central office for quotas and licences as regards the establishment and recovery of agricultural levies.

2. In **GERMANY** entries in the separate accounts were being duplicated (with entries being made for principals and those jointly liable).

- * The necessary instructions have been issued to clarify the situation.

Furthermore the quarterly statements submitted to the Commission in accordance with Article 6(3) of Regulation 1552/89 showed only a global figure for all payments, write-offs and remissions, posing some problems for inspections.

- * The forms used in Germany have been modified to show clearly the figures for the different categories. The German authorities are also reorganizing their accounting system for traditional own resources.

3. There were some difficulties over the handling of the separate accounts in **GREECE**, with identical cases that should have involved the entry of established entitlements in the separate accounts being treated differently.

- * National instructions to remedy the shortcomings observed were issued in circulars dated 13.1.1992 and 20.4.1992.

4. In **SPAIN** the amounts of established traditional own resources covered by guarantees were entered in the separate accounts without any evidence that they had been contested, contrary to what is required under Community legislation.

* National procedures have been altered in the light of the Commission's comments.

It was also found that entries in the separate accounts for the temporary admission of goods were being made late.

* In response to the Commission's comments, Spain modified its procedure, shortening the deadline for presentation of evidence of re-export so that the entitlements due can be entered inside the required time limit.

5. In **FRANCE** it was found that entries in the separate accounts were being made late for traditional own resources where recovery is uncertain.

* In the wake of the Commission's findings, the French authorities introduced a special register at the Regional Documentation and Inspection Centres (CERDOC), making it easier for inspectors to check compliance with the time limits for entry in the accounts at customs offices.

It was also found that the implementation date of the B accounting system was not the same in the offices inspected.

* Following the Commission's observations, a training seminar was organized by the French authorities to forestall any difficulties in the implementation of the separate accounts. A note was also sent to all regional directors to ensure compliance with the national instructions on the practical application of Community regulations.

6. There was a lack of transparency in the way the separate accounts were kept at the Accountant General's Office in **IRELAND**.

* A new system was introduced at the Accountant General's Office from October 1991 in response to the Commission's comments.

There were also delays in entering cases of fraud and irregularity in the accounts.

- * The appropriate instructions were issued to the Investigation Branch to ensure that all traditional own resources are entered in the accounts in time.

7. In **ITALY** cases of non-payment entered in the separate accounts which had been passed on to collectors for enforcement action were not being handled adequately.

- * This anomaly was rectified by the publication of a ministerial circular on 12.9.1991.

Also in the event of dispute, the amount due was not being established and entered in the separate accounts immediately after notification to the taxpayer.

- * In response to the Commission's comments, entries are made in the separate accounts as soon as the collector receives confirmation of receipt of the demand for payment, in line with Community rules.

8. In the **NETHERLANDS**, there are differences in the treatment of customs duties and agricultural levies as regards separate accounts. The authority responsible for agricultural levies keeps separate accounts and the relevant statements are notified to the Commission. The customs authorities, on the other hand, do not keep any separate accounts.

As a rule all customs duties payable are established and made available to the Commission under ordinary accounting arrangements. Subsequently, any duties to be refunded are deducted from the amounts made available to the Commission.

As far as the keeping of separate accounts is concerned, the Commission sent some comments to the Dutch authorities on the drawing up of the quarterly statements, and in response they have taken appropriate steps.

9. In the case of **PORTUGAL**, problems have arisen over the date of establishment, entries in the separate accounts and notification of the amount due.

- * New instructions were issued to the departments concerned in circular N^o 273 of 1991 to meet Community requirements.

A problem was also found regarding established entitlements that were contested by the taxpayer. The contested amounts were not recorded anywhere until the court that deals with the application of customs legislation had reached its decision.

- * Following the internal instructions issued in 1991, these amounts are now recorded in the B accounts.

It was also found that some amounts already entered in the A accounts were transferred to the B accounts.

- * The Portuguese authorities have altered their national instructions in response to the Commission's observations.

Lastly the quarterly statements of entitlements established but not yet recovered included information relating not only to established entitlements but also to entitlements that had not been established.

- * The national instructions were modified with effect from 1.1.1992 to comply with Community requirements.

10. In the **UNITED KINGDOM**, the register of irregularities and *ex post* recovery could not be considered adequate for the purposes of separate accounting because not all entries could be identified and outstanding cases could not be monitored, in particular as regards the remainder still to be recovered.

- * The British authorities have reviewed their national instructions and steps have been taken to improve procedures.

In addition the quarterly statements of entitlements established but not yet recovered did not contain any details of recoveries or write-offs made during the quarter in question.

- * The appropriate steps have been taken by the British authorities and the quarterly statement revised.

11. **DENMARK** does not keep B accounts, since all established entitlements are made available to the Commission regardless of whether they are recovered or not. In the very few cases where a national court rules that the amount payable is not the same as that already made available to the Commission, a correction is made.
12. The accounting arrangements applied by **LUXEMBOURG** did not give rise to any comments by the Commission.

Sugar and isoglucose levies

The basic regulation laying down the rules for establishing the sugar levy and the procedures for payment by those liable is Council Regulation (EEC) N^o 1785/81 on the common organization of the markets in the sugar sector.¹⁵ The rules for sugar apply *mutatis mutandis* to isoglucose.

The Commission carried out 6 inspections (3 joint inspections in Spain, Portugal and the Netherlands in 1989 and 3 of its own in Spain, Portugal and the United Kingdom in 1992). In 1990 and 1991 the Commission was unable to carry out any inspections relating to the implementation of the B accounts).

The inspections on sugar and isoglucose brought to light a number of problems involving subsequent additional payments by the Member States.

An initial inspection in **PORTUGAL** in 1989 showed that levies on sugar imported for processing before Portugal's accession to the Community, but not re-exported, had been established late. In this case the Portuguese authorities made levies totalling **ECU 10 226 306**¹⁶ available to the Commission.

A second inspection, also in 1989, revealed another case where levies were established late, this time for surplus sugar that was not exported. The Portuguese authorities paid the Commission **ECU 182 177**¹⁷ in levies, plus interest totalling **ECU 119 163**.¹⁸

¹⁵ OJ L 177, 1.7.1981, p. 4.

¹⁶ Esc. 1 773 374 434 at the 1989 rate of 173.413.

¹⁷ Esc 32 992 510 at the 1990 rate of 181.101.

¹⁸ Esc. 20 819 449 at the 1992 rate of 174.714.

In their inspection in the **UNITED KINGDOM** the Commission officials found that storage levies totalling **ECU 9 082 898¹⁹** were established late. A comment to this effect in the inspection report was contested by the British authorities and the Commission is currently looking into the various aspects of the matter.

Apart from a few minor errors in accounting entries, which were subsequently corrected, the inspections in the other Member States did have any financial implications.

On the Community side, it became apparent that Council Regulation 1552/89 needed to be amended to make it clear that entitlements from sugar and isoglucose levies should in all cases (whether recovered or not) be entered in the A accounts kept by the Member States.

If these entitlements are not subsequently recovered within the time limits laid down, the Member States may correct the entry made and, by way of an exception, enter the entitlements in their separate accounts.

Inward processing arrangements

The Commission conducted 3 joint inspections - one in Ireland in 1989, and the others in Belgium and the United Kingdom in 1990 - concentrating mainly on the application of the Community rules on inward processing. The system, which is designed to promote the export of compensating products obtained from non-Community goods by freeing them from import duties, was laid down in Regulation (EEC) N^o 1999/85.²⁰ The most important of the various implementing regulations is Regulation (EEC) N^o 2228/91,²¹ which lays down the main arrangements for applying the system.

The Commission's inspections prompted the authorities in some of the Member States to rectify their practices in this field in certain respects.

The Commission's inspection in **BELGIUM** showed that the authorizations for inward processing issued by the Belgian authorities did not contain all the information required by the Community rules. The Belgian authorities have undertaken to take the necessary steps to comply with Community legislation. In due course the Commission will carry out an inspection to check whether this undertaking has been kept.

¹⁹ UKL 6 700 000 at the 1992 rate of 0.737650.

²⁰ OJ L 188, 20.7.1985, p. 1.

²¹ OJ L 210, 31.07.1991, p. 1.

The Commission's inspection in **IRELAND** revealed the need for changes in the national provisions governing inward processing. The Irish authorities have since brought in the following amendments:

- Point 9.8 of the national instructions - Customs code, volume VI - has been deleted. This allowed inward processing operations to proceed within the area of Shannon customs-free airport without authorization.
- The inward processing authorization form used by the Irish authorities has been replaced, because it did not include all the particulars contained in the Community model as regards the tariff classification of compensating products and the various customs offices responsible for placing goods under the procedure, monitoring and clearance.
- The customs authorities must now check whether the relevant economic conditions are fulfilled *before* issuing an authorization, rather than afterwards, as provided for in point 11 of the national instructions.

In the **UNITED KINGDOM**, the Commission inspection showed that the British inward-processing authorization form did not comply with the Community rules. The United Kingdom has since agreed to use only the Community model.

The inspection in the **NETHERLANDS** on the inward processing of milk products brought to light a number of departures from the Community rules:

- the validity of inward-processing authorizations issued for milk products had been extended beyond the three-month time limit laid down by Community law;
- economic conditions were being assessed in a way which is not in accordance with Community legislation.

Appropriate steps have been taken by the competent authorities to change their procedures.

An own inspection carried out in **FRANCE** into inward processing concentrated on a specific case of fraud. Once the fraud had been confirmed, the traditional own resources were recovered.

Imports of cattle from Eastern European countries

The point of reference regulation for these inspections is Council Regulation (EEC) No 2726/90 on Community transit,²² which establishes the conditions governing the movement of non-Community goods within the Community's customs territory.

The inspections have concentrated on Germany, since it is the Member State with the longest common frontier with the Eastern European countries involved (Poland and Czechoslovakia especially). Three own inspections carried out by the Commission (one in 1990 and two in 1992) confirmed large-scale fraud in this connection. Following the inspections, the German authorities were asked to take the necessary steps to put a stop to these fraudulent imports and prevent their recurrence as well as to recover the sums evaded on these transit operations discharged on a false basis. The inspections prompted a number of initiatives on the part of the Commission, which alerted the Member States involved and so paved the way for inquiries and arrests by the various national investigation departments.

Moreover, these events led the Commission to adopt Regulation (EEC) No 3712/92²³ with the aim of improving the system of guarantees for Community transit operations.

Regardless of the eventual outcome in the other Member States concerned, Germany has informed the Commission that, for the customs offices involved in the affair, a total of ECU 1 402 290²⁴ in customs duties and ECU 9 032 046²⁵ in agricultural levies had been entered in the separate accounts.

Preventive action was also taken by the German authorities and the following measures were adopted:

- ministerial orders of 30 August 1991 introducing obligatory physical checks on cattle originating in Poland that are put into free circulation or placed under the external Community transit procedure;

²² OJ L 262, 26.9.1990, p.1.

²³ OJ L 378, 23.12.1992, p.15.

²⁴ DM 2 833 061 at the 1992 rate of 2.02031.

²⁵ DM 18 287 940 at the 1992 rate of 2.02031.

- a ministerial order of 1 October 1991:
 - extending the obligation to present the customs office of entry with the import certificates required under Community agricultural regulations to include cases where animals are placed under the external Community transit procedure, particularly if the destination customs office lies within the Community's customs territory; and
 - requiring submission of the original or a certified copy of the purchase contracts when live animals destined for a non-member country are placed under the external Community transit procedure;
- a Ministerial order of 19 November 1991 including instructions to customs offices to establish, in every case of external transit, whether the total guarantee indicated by the principal is sufficient to cover any customs debt on importation which might be incurred;
- a ministerial order of 2 December 1992 instructing customs offices to report on what measures they had already taken or still had to take with regard to guarantees and the recovery of duty evaded.

Imports under preferential arrangements

The regulations on which the preferential arrangements are based are adopted each year by the Council. There are separate regulations for different countries and categories of goods (e.g. industrial goods, textiles, or agricultural products from Bolivia, Albania, the Baltic States, etc.).

In 1992 the Commission carried out six inspections covering the application of the preferential arrangements in six Member States (own inspections in Germany, Denmark, the Netherlands, Luxembourg and Portugal and a joint inspection in Italy).

Inspections of imports of this kind will be carried out in the other Member States in the course of 1993.

To improve the preparation of inspections an analysis of imports in each Member State is first made to identify which goods covered by the generalized system of preferences are major imports in terms of value.

It should be pointed out that, on average, these Commission inspections each cover 600 import dossiers, which represents a substantial amount of work.

Some problems or errors in applying Community and national rules have been pinpointed and brought to the attention of the authorities. In this connection, an inspection in France once again highlighted the specific question of certain preferential bilateral agreements.

Following comments by the Commission on this question, the French authorities modified their inspection procedures to ensure that Community rules on bilateral quotas were strictly applied.

It is also planned to implement Community measures to replace national quotas with Community quotas as soon as possible.

The inspections carried out by the Commission highlighted the existence of problems with the post-clearance controls intended to ensure that all the necessary conditions for the application of the preferential arrangements have been properly met.

It would seem that the Member States have different interpretations of the concept of "grounds for doubt", on the basis of which the customs authorities are meant to initiate the post-clearance inspection procedure. The Commission's departments are currently looking into the problem with a view to proposing a common interpretation of the concept.

Imports of fishery products

Council Regulation No 137/79 on the institution of a special method of administrative cooperation for fishery products²⁶ and Council Regulation No 802/68 on the common definition of the concept of the origin of goods²⁷ provide the basic reference for Commission inspections into imports of fishery products.

In 1990 the Commission carried out two own inspections covering imports of fishery products - in **Spain** and **Portugal** - which brought to light a number of errors in the administration of tariff quotas, notably in relation to imports of fish caught by vessels in mixed ownership (Spain/third country).

²⁶ OJ L 20, 27.1.1979, p.1.

²⁷ OJ L 148, 28.6.1968, p.1.

These errors worked to the detriment of the Community budget. Following detailed examination of the cases raised, the Commission initiated the procedure to regularize the situation as regards the establishment, recovery and making available of the traditional own resources involved. In the meantime, action to regularize the situation created by the incorrect administration of certain tariff quotas has already led to the recovery of **ECU 83 838.**²⁸

²⁸

PTA 10 849 522 at the 1990 rate of 129.411.

III ASSESSMENT OF HOW THE INSPECTION ARRANGEMENTS ARE WORKING AND CONCLUSIONS

1. General assessment of the system

Leaving aside the considerations which prompted it to propose an amendment of Regulation No 1552/89,²⁹ the Commission considers that there is still room for improvement in the traditional own resources inspection system, even though it works well on the whole. There is a certain degree of interaction between the various types of check (legislative, documentary and "on-the-spot") used to monitor the Member States' application of the Community rules on the establishment, entry in the accounts and making available of traditional own resources involves a degree of interaction. This interaction could be enhanced to achieve greater synergy.

- a. The **legislative checks** on the measures adopted by the Member States in the field of traditional own resources provides the Commission with its most important means of measuring the Member States' ability to handle their assigned task of collecting Community revenue. Where anomalies are discovered, every attempt is made to find a solution in consultation with the Member State concerned. The Commission has always found these dialogues most valuable and profitable. This conclusion is supported by the very small number of cases in which the Court of Justice has had to intervene. However, this process to eliminate anomalies should be speeded up.
- b. The **documentary checks** carried out by the Commission on the basis of various statements, reports and other administrative or accounting information enable it to monitor trends in the establishment, entry in the accounts and making available of traditional own resources. The fact that corrections have to be made and interest on late payments demanded from the Member States after the monthly and quarterly statements have been analysed clearly shows the need to continue with these checks.

With regard to the monthly statement in particular, the Commission has found that some Member States are having problems in meeting their obligation under Article 18(2)(b) to identify the financial findings of the inspections carried out in the Member States by means of appropriate notes.

²⁹ COM(92) 519, 11 December 1992.

Without this information it is not always possible to measure the financial impact of a particular inspection at a later date, since in such cases the additional payments made are included in the total amount of traditional own resources made available to the Commission each month. What is more, the quality of the information passed on to the Commission's departments is not always good enough for it to be used to full advantage, and the Member States will be asked to make more effort in this area.

Under Regulation 1552/89 as it stands at the moment, the Commission is not able to undertake systematic monitoring of frauds and irregularities involving entitlements of over ECU 10 000 that are detected by the Member States. This is why the Commission recently set up the system described in Part II to monitor such cases. It hopes that this will lead to more efficient follow-up of recovery operations.

Some aspects of the present system of documentary checks could be strengthened if the Council adopts the proposed amendments to Regulation 1552/89 currently being examined by the budgetary authority. The main alterations proposed to the system described in Part II are:

- the monthly and quarterly statements of accounts would contain annexes making it possible to follow up the establishment and settlement of cases of fraud and irregularities notified under Article 6(3) of the present Regulation;
- the half-yearly statement on the results of national inspections will become a full report on the operation of the Member States' recovery and monitoring systems, enabling the Commission to update the information which it already possesses on these systems, on the inspection effort put in and the results achieved, and on the types of case involved and the problems associated with recovery.

This information would be very useful for the preparation of on-the-spot inspections of traditional own resources and could help enhance the value of the analysis of information supplied on cases of fraud and irregularities.

- c. Any assessment of the effectiveness of **on-the-spot inspections** in general must take account of the fact that their main aim is to ensure that the Community rules on traditional own resources are being properly applied.

As a rule the joint or own inspections organized under Article 18 of Regulation 1552/89 involve a much greater horizontal element than the investigations carried out by other Commission departments.

The inspections carried out under Article 18 therefore have a significant preventive effect. The mere fact that the Commission is carrying out regular inspections should be sufficient to influence the way in which the Community and national rules on traditional own resources are applied and thus improve the overall recovery of its resources.

The inspection findings also prove valuable in other areas. In view of the close links between customs legislation and the rules on the establishment of traditional own resources, inspection findings are taken into consideration when the effectiveness and smooth operation of customs legislation are being evaluated. Similarly, information obtained from inspections can prompt the Commission to propose appropriate legislative measures.

The direct and indirect impact of the inspections carried out during the 1989-1992 reference period covered by this report are encouraging. Thus, the Commission feels that there has been a marked improvement in the way the B accounts are kept in most Member States as a result of its inspection operations. This has helped greatly to improve the scope for monitoring recovery. Similarly - and bearing in mind the limited human resources available to the Commission during the period in question - the results of inspections into economic customs procedures, preferential arrangements and the sugar sector, have enabled the Commission to form a generally favourable picture of the situation in these areas, subject to the proposed improvements.

The Commission much appreciates the cooperation of the Member States, which have given Commission officials every assistance when they have needed to visit an individual taxpayer's premises in the course of an inspection to obtain information which the authorities could not provide.

The positive benefits gained in this area should serve to convince any Member States which may still harbour doubts. It is essential that the principle of own inspections by the Commission, as laid down in Community law, should be applied as comprehensively as possible, and they should not have to depend for their success on good personal relations between the Community administration and the national authorities.

2. Conclusions

2.1 Improving existing methods of inspection

The experience gained over the period from 1989 to 1992 has led the Commission to the following conclusions:

- *Refining legislative checks*

The Commission is planning to devote special attention to a horizontal analysis of national measures relating to areas which are or will be the subject of specific inspections. It aims to assess the relative effectiveness of national measures and, where appropriate, will put forward its ideas on what steps are necessary either by the Member States or through Community legislation.

- *Expanding documentary checks*

Evaluating the accounting statements, reports and other information sent to the Commission is both the basis for risk analysis and the primary area where such techniques are applied. These analyses will be stepped up and integrated better into the documentary inspection system so that the maximum benefit possible can be gained from the information available.

- *Making better use of systems study inspection techniques*

In the Commission's view the existing **systems-study** based inspection techniques should be stepped up and updated. This approach evaluates the system as a whole and not just isolated operations, thus enabling the effectiveness and economy of the system under scrutiny to be measured. As part of this approach, the procedure known as **risk analysis** makes it possible to identify risks within a system where the financial consequences of an improper application of the rules on traditional own resources would be most serious.

The Commission had already begun applying these techniques during the period covered by this report. Their introduction will allow the Commission to make the best possible use of its limited resources, without undermining the effectiveness of the inspections or causing excessive bureaucratic constraints.

It is particularly important in this context to step up the inspection of administrative infrastructures set up by the individual Member States for the establishment, entry in the accounts and making available of traditional own resources. A detailed assessment of the capabilities of the administrative structures under investigation is required. These findings will be taken into account, by means of risk analysis, in the planning of future traditional own resources inspection visits.

2.2 Rationalization of the choice of topics and multiannual planning of on-the-spot inspections

When deciding on specific topics for inspection, the Commission is proposing to make greater use of objective criteria justifying the allocation of limited resources, taking into account both the indicators obtained through more extensive use of systems study techniques and the signals and other information provided by bodies outside the Commission, such as the European Parliament, the Court of Auditors, national administrations and various other sources.

Similarly, the annual planning of specific areas for inspection will tie in more closely with a multiannual strategy for inspection activities, creating, among other things, a greater degree of transparency in relations between the Commission and the Court of Auditors, which also carries out inspections into the collection of traditional own resources. This planning needs to be flexible and capable of adjustment to reflect new priorities requiring a reassessment of the specific topics planned.

2.3 Refining follow-up procedures

It is planned to speed up the procedure for following up inspections, and the Commission is developing appropriate software at the moment. The database being created should make it possible to follow up the results of traditional own resources inspections with optimum efficiency and is due to come into operation by mid-1994.

2.4. Cementing the partnership between the Member States and the Commission

Working relations between the Member States and the Commission are satisfactory. Nevertheless, the Commission feels that they ought to be developed further through a permanent **administrative partnership** with the Member States. The climate of mutual confidence surrounding this consultation structure would have a beneficial impact on the practical operation of the various inspection procedures.

With this in mind, the Commission is planning to organize a workshop on different inspection procedures in the first few months of 1994. The aim of this liaison with the Member States is to gather ideas from the national operational departments on the practical aspects of on-the-spot inspections. The conclusions of this exchange of views will be used in the preparatory work on a proposal to amend Regulation 165/74, which the Commission is planning to put to the Council by the summer of 1994.

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