

OPINION No 2/2006**on a proposal for a Council Decision on the system of the European Communities' own resources***(pursuant to the second subparagraph of Article 248(4) of the EC Treaty)*

(2006/C 203/02)

THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community and in particular Article 248(4), second subparagraph thereof,

Having regard to the Treaty establishing the European Atomic Energy Community and in particular Article 160c(4),

Having regard to the Council Decision of 29 September 2000 on the system of the European Communities' own resources ⁽¹⁾,

Having regard to the Council Regulation of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾,

Having regard to the previous opinions given by the Court of Auditors on the system of the European Communities' own resources and its Opinion No 4/2005 ⁽³⁾ in particular,

Having regard to the Council's request, dated 26 April 2006, for the Court of Auditors' opinion on the proposal ⁽⁴⁾ for a Council Decision on the system of the European Communities' own resources,

Whereas the Fontainebleau European Council of 25 and 26 June 1984 concluded ⁽⁵⁾, *inter alia*, that expenditure policy is ultimately the essential means of resolving the question of budgetary imbalances; that, however, any Member State sustaining a budgetary burden which is excessive in relation to its relative prosperity may benefit from a correction at the appropriate time,

Whereas the Berlin European Council of 24 and 25 March 1999 concluded ⁽⁶⁾, *inter alia*, that the Union's own resources system should be equitable, transparent, cost-effective and simple and that it must be based on criteria which best express each Member State's ability to contribute,

⁽¹⁾ OJ L 253, 7.10.2000, p. 42.

⁽²⁾ OJ L 248, 16.9.2002, p. 1.

⁽³⁾ Opinion No 4/2005 on a proposal for a Council Decision on the system of the European Communities' own resources and on a proposal for a Council Regulation on the implementing measures for the correction of budgetary imbalances in accordance with Article 4 and 5 of the Council Decision of (...) on the system of the European Communities' own resources (OJ C 167, 7.7.2005, p. 1).

⁽⁴⁾ COM(2006) 99 final of 8 March 2006.

⁽⁵⁾ See Bulletin EC 6-1984.

⁽⁶⁾ See Bulletin EU 3-1999.

Whereas the Brussels European Council of 16 and 17 December 2004 took note of the presentation by the Commission of the report on the operation of the own resources system as well as the proposal to introduce a generalised correction mechanism ⁽⁷⁾ and called on the Commission and the Council to continue the examination of all issues arising in this connection, including a possible simplification of the system,

Whereas the Brussels European Council of 15 and 16 December 2005 reached agreement ⁽⁸⁾, *inter alia*, that the own resources arrangements should be guided by the overall objective of equity, that these arrangements should therefore ensure, that no Member State sustains a budgetary burden which is excessive in relation to its relative prosperity and that these arrangements should accordingly introduce provisions covering specific Member States,

HAS ADOPTED THE FOLLOWING OPINION:

I. INTRODUCTION

1. The Commission proposes a new Council decision on the system of the European Communities' own resources. Following its adoption by Member States ⁽⁹⁾, it would replace the Council Decision of 29 September 2000 which is at present in force.

2. The Commission proposal aims to implement the agreement on the 2007 to 2013 Financial Perspective reached by the Brussels European Council on 15 to 16 December 2005 ⁽¹⁰⁾.

3. This agreement does not fundamentally change the current system; in particular, the correction granted to the United Kingdom in respect of budgetary imbalances (the UK correction) is maintained, along with the reduced financing of the correction benefiting, Austria, Germany, the Netherlands and Sweden.

⁽⁷⁾ COM(2004) 501 final of 14 July 2004.

⁽⁸⁾ See paragraph 6 of the Presidency Conclusions (Council Document 15914/1/05, REV 1, CONCL 3 of 30 January 2006) referring to Council Document 15915/05 CADREFIN 268 of 19 December 2005, and in particular paragraph 77 thereof.

⁽⁹⁾ In accordance with Member States' respective constitutional requirements pursuant to Article 269 of the Treaty.

⁽¹⁰⁾ See Council Document 15915/05 CADREFIN 268 of 19 December 2005.

4. The calculation of the UK correction will be adjusted to take enlargement into account. The United Kingdom will progressively participate in the financing of the costs of enlargement, except for Common Agricultural Policy market expenditure. However, for the period 2007 to 2013, the additional contribution from the UK will not exceed a maximum amount of 10,5 billion euro at 2004 prices.

5. In addition, special arrangements are introduced. Austria, Germany, the Netherlands and Sweden will benefit from reduced rates of call on the VAT resource. The Netherlands and Sweden will, furthermore, benefit from a reduction in their annual GNI contributions. These reductions will apply for the period 2007 to 2013 only.

6. As requested by the European Council, the Commission proposal is accompanied by a Commission working document on the calculation, financing, payment and entry in the budget of the correction of budgetary imbalances in favour of the United Kingdom.

7. The European Council has agreed that changes to the current system of own resources should enter into force from no later than the beginning of 2009. They should take effect from 1 January 2007, and be applied retroactively if necessary.

8. The Court has examined the proposal in the light of the principles for the Communities' system of own resources laid down by European Councils since 1984. The Court has also taken into account its previous opinions ⁽¹⁾ and the results of its audit work related to the current system of own resources.

II. GENERAL OBSERVATIONS

9. The overall objective of the Brussels European Council of 15 and 16 December 2005 was to strive for equity and to avoid a situation where a budgetary burden would be excessive in relation to the relative prosperity of a Member State. The Court notes, however, that:

- (a) no criteria have been laid down to determine on an objective basis whether a budgetary burden is excessive and when a Member State should benefit from a correction;
- (b) there is no mechanism for monitoring, over time, whether a budgetary burden continues to be excessive and whether it is still justified that a Member State benefit from a correction ⁽²⁾; and
- (c) there is no mechanism which would allow Member States other than those explicitly mentioned in the proposal to qualify for a correction ⁽²⁾.

10. The Court acknowledges that an effort has been made to streamline the own resources decision, namely by abolishing the so-called VAT 'frozen rate'.

⁽¹⁾ See Opinion No 4/2005 (OJ C 167, 7.7.2005, p. 1), Opinion No 7/2003 (OJ C 318, 30.12.2003, p. 1) and Opinion No 8/99 (OJ C 310, 28.10.1999, p. 1).

⁽²⁾ See paragraph 14 of Opinion No 4/2005.

11. However other serious shortcomings in the system analysed by the Court in its previous opinion ⁽³⁾ have still not been addressed. These shortcomings lead to numerous problems, in particular regarding administration, consistency, complexity of the system and lack of transparency.

12. The proposal adds further complication through the increased number of special arrangements for certain Member States. On the whole, therefore, the new provisions tend to be even more complex and opaque than the existing system.

III. SPECIFIC REMARKS

13. The Court welcomes the Commission' proposal that significant statistical changes to the compilation of GNI should apply for own resources purposes. As the Court has already pointed out ⁽⁴⁾, this would avoid situations where GNI figures used for own resources purposes do not match published national figures, thus preserving transparency.

14. The concept of allocated expenditure needs to be clarified. Article 4 of the proposal merely mentions allocated expenditure, but the concept is only developed in the Commission working document on the UK correction ⁽⁵⁾. The Court recalls its observations in paragraphs 29 to 31 of its Opinion 4/2005, which are still valid in respect of the definition of allocated expenditure.

15. The Court considers that the inclusion of provisions on the calculation, financing, payment and entry in the budget of the correction of budgetary imbalances in favour of the United Kingdom in a Commission working document is not compatible with Article 279 ⁽⁶⁾ of the EC Treaty and infringes the principle of transparency.

IV. CONCLUSIONS AND RECOMMENDATIONS

16. The rules and arrangements in the proposed new Council Decision for the system of the European Communities' own resources tend to be even more complex and lacking in transparency than the existing system. The proposal moves further away from an own resources system based on clear and generally applied mechanisms, towards national contributions negotiated on a country by country basis.

⁽³⁾ See in particular paragraphs 6 to 15 of Opinion No 4/2005.

⁽⁴⁾ See paragraph 23 of Opinion No 4/2005.

⁽⁵⁾ See point 3.2.

⁽⁶⁾ Article 279(2) stipulates that 'the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors, shall determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Community's own resources shall be made available to the Commission (...).'

17. The Court acknowledges that the Commission proposal reflects the result of complex negotiations between the European Parliament, Council and Commission and within the European Council and is considered as an interim solution.

18. The Court welcomes the fact that the Commission has been mandated to undertake a full, wide-ranging review of the own resources system, on which it is to report in 2008/2009. The Court draws attention to the repeated experience that thorough reform of the Communities' system of own resources is very difficult to achieve if the discussion of such a reform is directly combined with negotiations on financial ceilings and amounts to be

spent for Community policies under a multiannual Financial Perspective. The Court therefore welcomes the fact that the review clause agreed by the Brussels European Council of 15 and 16 December 2005 allows the preparation and adoption of an overall reform of the own resources system well in advance of the expiry of the new Financial Perspective.

19. The Court calls on the Commission to reconsider the legal form of the document setting out provisions on calculation, financing, payment and entry in the budget of the correction of budgetary imbalances in favour of the United Kingdom.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 28 June 2006.

For the Court of Auditors
in the absence of Hubert Weber

President
François COLLING
Member of the Court
