

COUNCIL REGULATION (EURATOM, EC) No 1355/96
of 8 July 1996
amending Regulation (EEC, Euratom) No 1552/89 implementing Decision
88/376/EEC, Euratom on the system of the Communities' own resources

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 209 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to Council Decision 88/376/EEC, Euratom of 24 June 1988 on the system of the Communities' own resources⁽¹⁾ and in particular Article 8 (2) thereof,

Having regard to the proposal from the Commission⁽²⁾,

Having regard to the opinion of the European Parliament⁽³⁾,

Having regard to the opinion of the Court of Auditors⁽⁴⁾,

Whereas in the light of experience gained in applying Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources⁽⁵⁾ it appears that the provisions of that Regulation must be adjusted;

Whereas the Community must have the own resources referred to in Article 2 of Decision 88/376/EEC, Euratom available in the best possible conditions and, accordingly, additional arrangements must be laid down for the States to provide the Commission with the own resources allocated to the Communities;

Whereas traditional own resources are levied by the Member States in accordance with laws, regulations and administrative provisions that are, where necessary, adapted to the requirements of Community regulations; whereas the Commission must monitor such adaptation and, where necessary, make proposals;

Whereas the Council and the representatives of the Governments of the Member States, meeting within the Council, adopted a resolution on 13 November 1991 on

the protection of the financial interests of the Community⁽⁶⁾;

Whereas detailed rules must be laid down for satisfying the obligation to establish the own resources referred to in Article 2 (1) (a) and (b) of Decision 88/376/EEC, Euratom;

Whereas the transparency of the own resources system should be improved and more information supplied to the budgetary authority;

Whereas the national authorities responsible for the collection of own resources must be able to produce to the Commission at all times the documents substantiating the own resources collected;

Whereas improvements should be made to the arrangements for the Member States to report to the Commission, in order to enable it to monitor Member States' action to recover own resources, in particular in cases of fraud and irregularities;

Whereas a time limit should be laid down for relations between Member States and the Commission, since new entitlements established by Member States in respect of earlier years are deemed to be establishments for the current year;

Whereas for own resources deriving from sugar levies, which need to be recovered in the budget year corresponding to the marketing year to which the expenditure relates, provision should be made for the Member States to make such levies available to the Community during the budget year in which they are established;

Whereas close collaboration between the Member States and the Commission will facilitate proper application of the financial rules relating to own resources,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC, Euratom) No 1552/89 is hereby amended as follows:

1. In Article 2:

(a) paragraph 1 shall be replaced by the following:

'1. For the purpose of applying this Regulation, the Community's entitlement to the own resources referred to in Article 2 (1) (a) and (b) of Decision 88/376/EEC, Euratom shall be established as soon as the conditions provided for by the customs

⁽¹⁾ OJ No L 185, 15. 7. 1988, p. 24.

⁽²⁾ OJ No C 26, 29. 1. 1993, p. 6 and OJ No C 382, 31. 12. 1994, p. 6.

⁽³⁾ OJ No C 329, 6. 12. 1993, p. 107.

⁽⁴⁾ OJ No C 170, 21. 6. 1993, p. 1.

⁽⁵⁾ OJ No L 155, 7. 6. 1989, p. 1. Regulation as last amended by Regulation (EC) No 2729/94 (OJ No L 293, 12. 11. 1994, p. 5).

⁽⁶⁾ OJ No C 328, 17. 12. 1991, p. 1.

regulations have been met concerning the entry of the entitlement in the accounts and the notification of the debtor.;

- (b) after paragraph 1, the following paragraphs shall be inserted:

'1a. The date of the establishment referred to in paragraph 1 shall be the date of entry in the accounting ledgers provided for by the customs regulations.

As regards the levies and other charges connected with the common organization of the sugar market, the date of the establishment referred to in paragraph 1 shall be the date of notification under the sugar regulations.

Should that notification not be explicitly provided for, the date shall be the date of establishment by the Member States of the amounts due by the debtors, where necessary by way of advance payment or payment of balance.

1b. In disputed cases, the competent administrative authorities shall be deemed, for the purposes of the establishment referred to in paragraph 1, to be in a position to calculate the amount of the entitlement no later than when the first administrative decision is taken notifying the debtor of the debt or when judicial proceedings are brought if this occurs first.

The date of the establishment referred to in paragraph 1 shall be the date of the decision or of the calculation to be made following the abovementioned commencing of judicial proceedings.'

2. Article 3 shall be replaced by the following:

Article 3

Member States shall take all appropriate measures to ensure that the supporting documents concerning the establishment and making available of own resources are kept for at least three calendar years, counting from the end of the year to which these supporting documents refer.

The supporting documents relating to the statistical procedures and bases referred to in Articles 4 and 5 of Directive 89/130/EEC, Euratom shall be kept by the Member States until 30 September of the fourth year following the financial year in question. The supporting documents relating to the VAT resources base shall be kept for the same period.

If verification pursuant to Articles 18 and 19 of this Regulation or Article 11 of Regulation (EEC, Euratom) No 1553/89 of the supporting documents referred to in the first and second paragraphs shows that a correction is required, they shall be kept beyond the time limit provided for in the first paragraph for a sufficient period to permit the correction to be made and monitored.'

3. Article 4 shall be replaced by the following:

Article 4

1. Each Member State shall inform the Commission:

- (a) of the names of the departments or agencies responsible for establishing, collecting, making available and controlling own resources and the basic provisions relating to the role and operation of those departments and agencies;
- (b) of the general provisions laid down by law, regulation or administrative action and those relating to accounting procedure concerning the establishment, collection, making available and control by the Commission of own resources;
- (c) of the precise title of all administrative and accounting records in which are entered the established entitlements as specified in Article 2, in particular those used for drawing up the accounts provided for in Article 6.

The Commission shall be informed immediately of any change in these names or provisions.

2. The Commission shall, at the request of the other Member States, pass on to them the information referred to in paragraph 1.'

4. Article 5 shall be replaced by the following:

Article 5

The rate referred to in Article 2 (1) (d) of Decision 88/376/EEC, Euratom, which shall be set within the budgetary procedure, shall be calculated as a percentage of the sum of the forecast GNP of the Member States in such manner that it fully covers that part of the budget not financed from customs duties, agricultural levies, levies, and other charges connected with the common organization of the market in the sugar sector, VAT resources, financial contributions to supplementary research and technological development programmes, other revenue and, where appropriate, GNP financial contributions.

That rate shall be expressed in the budget by a figure containing as many decimal places as is necessary to fully divide the GNP-based resource among the Member States.'

5. In Article 6:

- (a) the following paragraph shall be inserted:

'1a. For own-resources accounting purposes, the month shall end no earlier than 1 p.m. on the last working day of the month during which establishment took place.;

- (b) paragraph 2 shall be supplemented by the following point:

'(c) Established entitlements relating to levies and other charges connected with the common organization of the sugar market shall be entered in the accounts referred to in point (a). If these entitlements are not then re-

covered within the time limits set, the Member States may correct the entry and, by way of exception, enter the entitlements in the separate accounts.;

(c) paragraph 3 shall be replaced by the following:

'3. (a) As from 1 July 1996, each Member State shall send the Commission, within the time limits specified in paragraph 2, a monthly statement of its accounts for the entitlements referred to in paragraph 2 (a).

Together with these monthly statements the Member States concerned shall provide details or statements of deductions from own resources based on provisions relating to special-status territories.

(b) Each Member State shall send the Commission, within the time limits specified in paragraph 2, a quarterly statement of the separate accounts referred to in paragraph 2 (b).

Detailed rules for the monthly and quarterly statements referred to in this paragraph and duly substantiated amendments thereto shall be laid down by the Commission after consulting the Committee referred to in Article 20. They shall provide for any appropriate time limits for implementation.;

(d) The following paragraph shall be added:

'4. As from 1 July 1996, in the two months following the end of each quarter, each Member State shall send the Commission a description of cases of fraud and irregularities detected involving entitlements of over ECU 10 000.

As far as possible, the Member State shall provide the following details:

- type of fraud and/or irregularity (designation, customs procedure concerned),
- amount of own resources evaded or presumed order of magnitude,
- goods involved (tariff heading, origin, place from which they come),
- concise description of fraud mechanism,
- type of check that led to discovery,
- national departments or agencies which detected the fraud or irregularity,
- stage reached in procedure, including the stage of recovery, with reference to the establishment if already made,
- reference of notification of case under Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administra-

tive authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters (*),

- if appropriate, the Member States involved,
- measures taken or envisaged to prevent the recurrence of the case of fraud or irregularity already detected.

Together with each quarterly statement pursuant to the first subparagraph, each Member State shall give details of the position concerning cases of fraud and irregularities already reported to the Commission whose recovery, cancellation or non-recovery was not indicated earlier.

For this purpose, each Member State shall indicate for each of the cases referred to in the first subparagraph:

- the reference to the original communication,
- the balance to be recovered during the previous quarter,
- the date of establishment,
- the date of entry in the separate accounts provided for in paragraph 2 (b),
- the amounts recovered during the quarter in question,
- rectifications of the base (corrections/cancellations) during the quarter in question,
- amounts written off,
- stage of administrative and judicial procedure reached,
- balance to be recovered at the end of the quarter in question.

Details of the above descriptions and duly substantiated amendments thereto shall be worked out by the Commission after consulting the Committee referred to in Article 20. They shall provide for any appropriate time limits for implementation.

(*) OJ No L 144, 2. 6. 1981, p. 1. Regulation as last amended by Regulation (EEC) No 945/87 (OJ No L 90, 2. 4. 1987, p. 3).'

6. Article 7 shall be replaced by the following:

Article 7

1. Each Member State shall draw up annually a summary account of established entitlements shown in the accounts referred to in Article 6 (2) (a) and shall send it to the Commission before 1 April of the year following the financial year in question. A remark shall be added to explain any difference between the total of the summary account and the sum of the monthly statements sent in by the

Member States from January to December of the year in question. The Commission shall check that the summary account tallies with the amounts made available during the year; it shall have two months after receiving the summary account in which to make any observations to the Member State concerned.

2. After 31 December of the third year following a given year, no further corrections shall be made to the annual summary account referred to in paragraph 1, except on points notified before this date either by the Commission or by the Member State concerned.

7. In Article 10 (6):

(a) the first indent shall be replaced by the following:

— the corrections under the first subparagraph of Article 9 (1) of Regulation (EEC, Euratom) No 1553/89 made by 31 July shall give rise to a general adjustment to be entered in the account referred to in Article 9 (1) of this Regulation on the first working day of December of the same year. However a particular adjustment may be entered before that date if the Member State concerned and the Commission are in agreement;

(b) paragraph 6 shall be supplemented by the following subparagraph:

'However, a particular adjustment may be entered at any time if the Member State concerned and the Commission are in agreement.'

8. In Article 10:

(a) in paragraph 3, ninth subparagraph, referring to the rate of the additional resource, the word 'uniform' shall be deleted;

(b) in paragraph 7, the word 'uniform' referring to the rate used in the previous financial year shall be deleted;

(c) in paragraph 8, the following sentence shall be inserted after the first sentence:

'This adjustment shall be established in the manner laid down in the first subparagraph of paragraph 6.'

9. In Article 16:

(a) the second paragraph shall be replaced by the following:

'Any appreciable differences in relation to original estimates may give rise to a letter of amendment to the preliminary draft budget for the following financial year or a supplementary and amending budget for the current financial year.'

(b) the following paragraph shall be added:

'For the operations referred to in Article 10 (4) to (8), the amount of revenue set out in the budget for the current financial year may be increased or reduced, by means of an amending budget, by the amount resulting from those operations.'

10. In Article 17, paragraph 3 shall be replaced by the following:

'3. As from 1 July 1996, Member States shall inform the Commission, by means of annual reports, of the details and results of their inspections and of the overall data and questions of principle concerning the most important problems arising out of the application of this Regulation and, in particular, matters in dispute. The report shall be sent to the Commission by 30 April of the year following the financial year in question.

A specimen of the report and duly substantiated amendments thereto shall be drawn up by the Commission after consulting the Committee referred to in Article 20. Any appropriate time limits for implementation shall be provided for.

By 30 June of the same financial year the Commission shall send to the European Parliament and to the Council a summary report on the notifications by the Member States under this Article and Article 6 (3).'

Article 2

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

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

Done at Brussels, 8 July 1996.

For the Council

The President

R. QUINN