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(Acts whose publication is obligatory)

REGULATION (EEC, EURATOM, ECSC) No 165/74 OF THE COUNCIL

of 21 January 1974

determining the powers and obligations of officials appointed by the Commission pursuant to Article 14 (5) of Regulation (EEC, EURATOM, ECSC) No 2/71

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 78 (f) thereof;

Having regard to the Treaty establishing the European Economic 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 the Treaty establishing a single Council and a single Commission of the European Communities, and in particular Article 20 thereof;

Having regard to the Decision of 21 April 1970 ⁽¹⁾ on the replacement of financial contributions from Member States by the Communities' own resources, and in particular Article 6 (2) thereof;

Having regard to Council Regulation (EEC, Euratom, ECSC) No 2/71 ⁽²⁾ of 2 January 1971, implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources, and in particular Article 14 (5) thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament ⁽³⁾;

Whereas the Member States are introducing measures of control relating to the establishment and making available of own resources; whereas however, they are obliged to associate the Commission with such measures of controls should the Commission so request;

Whereas that obligation covers both measures of control carried out by the Member States and the addi-

tional recovery control carried out following a reasoned request by the Commission;

Whereas the conditions to be observed by the officials appointed by the Commission during inspections should be defined, particularly with regard to professional secrecy and the detailed rules according to which they exercise their powers of investigation;

Whereas the other provisions for implementing Article 14 of Regulation (EEC, Euratom, ECSC) No 2/71 should be defined;

Whereas, pursuant to Article 14 (3) of Regulation (EEC, Euratom, ECSC) No 2/71, the measures of control referred to in that Article shall not prejudice, *inter alia*, those measures of control carried out by the Member States in accordance with their own provisions laid down by law, regulation or administrative action,

HAS ADOPTED THIS REGULATION:

Article 1

The Commission shall be associated with the measures of control referred to in Article 14 of Regulation (EEC, Euratom, ECSC) No 2/71 in the person of those of its officials whom it has specifically appointed for this purpose.

Article 2

The measures of control referred to in Article 1 shall be all those required for the establishment and the making available of own resources, both being provided for in Regulation (EEC, Euratom, ECSC) No 2/71. They shall be carried out by the departments, agencies or national authorities, a list of which shall be notified to the Commission, at the latter's request.

⁽¹⁾ OJ No L 94, 28. 4. 1970, p. 19.

⁽²⁾ OJ No L 3, 5. 1. 1971, p. 1.

⁽³⁾ OJ No C 112, 27. 10. 1972, p. 13.

Member States and the Commission shall regularly maintain those contacts likely to facilitate the implementation of Article 14 (2) of Regulation (EEC, Euratom, ECSC) No 2/71.

Each inspection visit, with which the Commission has requested to be associated, shall be preceded by contacts between the Member States concerned and the Commission in order to lay down detailed procedures.

For each visit, the Commission officials must be given written terms of reference by the Commission stating their identity and official capacity.

Article 3

1. When the Commission is associated with the measures of control carried out by the Member States, the officials which it has appointed :

- (a) shall conduct themselves during the inspections in a manner compatible with the rules and usages prescribed for officials of the Member States with which they are associated ;
- (b) shall be bound by professional secrecy, under the conditions laid down in Article 5 below ;
- (c) shall be entitled to have contact with debtors only through the responsible national civil servant, on the understanding that it is for the competent national administration to determine where such contacts may take place.

2. As regards organization of work and, more generally, relations with the departments involved in the measures, the measures of control shall be under the direction of the department designated by the Member State pursuant to Article 2 to carry out the measures of control provided for in Article 14 of Regulation (EEC, Euratom, ECSC) No 2/71.

Article 4

1: The Member States shall ensure that the departments or agencies responsible for establishing and making available their own resources and the authorities which they have instructed to carry out measures of control in this respect, afford the officials appointed by the Commission every assistance necessary for carrying out their duties.

2. Such officials may be associated with national measures of control relating to :

- (a) establishment, based on information available to the national departments, of own resources, accounting therefor and making available thereof ;

- (b) conformity of the operations establishing and making available own resources with the Community rules laid down in the Decision of 21 April 1970 and Regulation (EEC, Euratom, ECSC) No 2/71 ;

- (c) the existence of the supporting documents provided for in Article 3 of Regulation (EEC, Euratom, ECSC) No 2/71, and their conformity with the above operations.

Article 5

1. All information gathered on the measures of control dealt with in this Regulation shall be subject to professional secrecy. It may not be communicated to persons other than those within the institutions of the Communities or the institutions whose duty it is to know, or be used for purposes other than those which are laid down in Regulation (EEC, Euratom, ECSC) No 2/71 unless prior consent has been given by the Member State which originally provided that information.

2. This Article shall apply to all officials and servants of the Communities.

Article 6

Save as otherwise provided in Article 5 :

1. The results of the measures of control carried out shall be brought to the attention of the Member State concerned through the appropriate channels within a period of two months, and the Member State may submit its observations within the two months following receipt of the communication.

2. Following the procedure provided for in paragraph 1, these results and observations shall be made known to the other Member States within the Advisory Committee on the Communities' Own Resources.

Article 7

Subject to provisions to be adopted at the appropriate time pursuant to Article 1 of Regulation (EEC, Euratom, ECSC) No 2/71, this Regulation shall not apply to own resources derived from Value Added Tax.

Article 8

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, 21 January 1974.

For the Council

The President

J. ERTL
