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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC, EURATOM) No 1026/1999**of 10 May 1999****determining the powers and obligations of agents authorised by the Commission to carry out controls and inspections 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 94/728/EC, Euratom, of 31 October 1994 on the system of the Communities' own resources ⁽¹⁾, and in particular Article 8(2) thereof,

Having regard to the Commission proposal ⁽²⁾,

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

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

(1) Whereas Council Regulation EEC, Euratom, ECSC ⁽⁵⁾ No 165/74 determined the powers and obligations of officials authorised by the Commission in connection with carrying out the inspections necessary for establishing and making available the own resources, other than those accruing from VAT, with which the Commission is associated;

(2) Whereas, pursuant to Article 18(1) of Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities own resources ⁽⁶⁾, Member States conduct the checks and enquiries concerning the establishment and making available of the own resources referred to in Article 2(1)(a) and (b) of Decision 94/728/EC, Euratom; whereas pursuant to Article 18(2) of Regulation (EEC, Euratom) No 1552/89 the Member States are required to conduct additional inspections in

response to a reasoned request from the Commission and to associate the Commission with all the inspections they carry out; whereas, pursuant to Article 18(3) of Regulation (EEC, Euratom) No 1552/89, the Commission may itself carry out inspection measures on the spot, with agents of the Member State concerned participating in such measures;

(3) Whereas Article 11(2) of Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from VAT ⁽⁷⁾ extended the application of Regulation (EEC, Euratom, ECSC) No 165/74 to controls on the own resources accruing from VAT;

(4) Whereas Article 19 of Regulation (EEC, Euratom) No 1552/89 lays down that the Commission, together with the Member State concerned, shall carry out inspections relating to the own resource based on GNP;

(5) Whereas, for the sake of clarity, Regulation (EEC, Euratom, ECSC) No 165/74 and Article 11(2) of Regulation (EEC, Euratom) No 1553/89 should be repealed, and provisions should be laid down covering the powers and obligations of authorised agents applicable to all own resources, taking into account the specific nature of the own resource accruing from VAT and that based on GNP;

(6) Whereas the conditions under which authorised agents carry out their tasks should be defined, and in particular the rules should be laid down which all the Community's officials and servants and also national experts on secondment, must observe with regard to professional confidentiality and the protection of personal data;

⁽¹⁾ OJ L 293, 12.11.1994, p. 9.

⁽²⁾ OJ C 95, 24.3.1997, p. 33 and OJ C 4, 8.1.1998, p. 5.

⁽³⁾ OJ C 304, 6.10.1997, p. 36.

⁽⁴⁾ OJ C 175, 9.6.1997, p. 1.

⁽⁵⁾ OJ L 20, 24.1.1974, p. 1.

⁽⁶⁾ OJ L 155, 7.6.1989, p. 1. Regulation as last amended by Council Regulation (Euratom, EC) No 1355/96 (OJ L 175, 13.7.1996, p. 3).

⁽⁷⁾ OJ L 155, 7.6.1989, p. 9.

- (7) Whereas it must be established that detached national experts act under the responsibility of the Commission under the same conditions as its agents and that the Member State concerned may raise a duly substantiated objection to the presence, at an inspection or control, of a detached national expert,

HAS ADOPTED THIS REGULATION:

Article 1

The Commission shall:

- (a) be associated with the inspection measures carried out by Member States in respect of own resources, as referred to in the second indent of Article 18(2) of Regulation (EEC, Euratom) No 1552/89,
- (b) carry out on-the-spot inspections of own resources, as referred to in Article 18(3) of Regulation (EC, Euratom) No 1552/89,
- (c) carry out the controls on own resources accruing from VAT, as referred to in Article 11 of Regulation (EEC, Euratom) No 1553/89,
- (d) carry out inspections of GNP-based own resources under Article 19 of Regulation (EEC, Euratom) No 1552/89

in the person of those of its officials or servants whom it has specifically appointed for this purpose, hereinafter referred to as 'authorised agents'.

Persons placed at the disposal of the Commission by the Member States as national experts on secondment may be present at such checks and inspections.

With the explicit and prior agreement of the Member State concerned, the Commission may seek the assistance of officials from other Member States as observers. The Commission shall ensure that the aforementioned officials give every guarantee as regards technical competence, independence and observance of professional secrecy.

Article 2

- 1. Member States and the Commission shall regularly maintain the contacts required to carry out the controls and inspections referred to in Article 1.
- 2. Each on-the-spot control or inspection shall be preceded, in good time, by contacts between the Member State concerned and the Commission in order to lay down detailed procedures.
- 3. For each visit, the authorised agents must be given written terms of reference by the Commission stating their identity and official capacity. For the on-the-spot

inspections referred to in Article 1(b), the terms of reference shall be accompanied by a document indicating the aim and purpose of the inspection.

Article 3

- 1. The authorised agents shall:

- (a) conduct themselves during the on-the-spot controls and inspections in a manner compatible with the rules and usages prescribed for officials of the Member State concerned;
- (b) be bound by professional secrecy, under the conditions laid down in Article 5;
- (c) be entitled, if necessary, to have contact, with debtors solely in the context of the inspections referred to in Article 1(a) and (b) and only through the competent authorities of the Member States in which the on-the-spot inspections take place.

- 2. The preparation and management of:

- (a) the inspections referred to under Article 1(a) as regards organisation of the work and, more generally, relations with the departments involved in the measures, by the department designated by the Member State pursuant to Article 4(1);
- (b) the on-the-spot inspections referred to under Article 1(b) shall be carried out by the authorised agents; as regards organisation of the work and relations with the departments and, where appropriate, the debtors involved in the inspection, these agents shall, prior to any on-the-spot inspections, establish the necessary contacts with the officials designated by the Member State concerned in accordance with Article 4(2);
- (c) the controls and inspections referred to respectively under Article 1(1)(c) and (d) shall be carried out by the authorised agents, who shall establish, as regards organisation of the work, the necessary contacts with the competent administrations in the Member States.

Article 4

- 1. The Member States shall ensure that the departments or agencies responsible for establishing, collecting and making available their own resources, and the authorities which they have instructed to carry out the controls and inspections thereon, afford the authorised agents every assistance necessary for carrying out their duties.
- 2. As regards the on-the-spot inspections referred to under Article 1(b), the Member State concerned shall inform the Commission, in good time, of the identity and capacity of the officials whom it has appointed to take part in these inspections and to afford the authorised agents every assistance necessary for carrying out their duties.

Article 5

1. Information communicated or obtained under this Regulation, in whatever form, shall be subject to professional secrecy and receive the protection granted to similar information under the national law of the Member State in which it was gathered and under the corresponding provisions applicable to the Community institutions.

This information may not be communicated to persons other than those within the institutions of the Community or the Member States whose duty it is to know, neither may it be used for purposes other than those laid down in Regulations (EEC, Euratom) No 1552/89 and (EEC, Euratom) No 1553/89 without the prior consent of the Member State in which it was gathered.

2. This Article shall apply to all officials and servants of the Community and also to national experts.

3. The Commission shall ensure that authorised agents and other persons acting under its authority comply with Community and national provisions concerning the protection of personal data, in particular those laid down by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁾.

Article 6

1. The results of the on-the-spot controls and inspections carried out shall be brought to the attention of the Member State concerned through the appropriate channels within a period of three months, and the Member State shall submit its observations within the three months following receipt of the communication.

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

Done at Brussels, 10 May 1999.

However, for duly substantiated reasons, the Commission may request the Member State concerned to submit its observations on specific points within a period of one month following receipt of the results of the control or inspection. The Member State may decline to respond by means of a communication setting out the reasons which prevent it from responding to the Commission's request.

2. Following the procedure provided for in paragraph 1, these results and observations, together with the summary report prepared in connection with controls on own resources accruing from VAT, shall be brought to the attention of the other Member States within the Advisory Committee on Own Resources. However, the results of inspections of GNP-based own resources shall be brought to the attention of the other Member States within the GNP Committee provided for in Article 6 of Council Directive 89/130/EEC, Euratom, of 13 February 1989 on the harmonisation of the compilation of gross national product at market prices⁽²⁾.

Article 7

1. Regulation (EEC, Euratom, ECSC) No 165/74 is hereby repealed.

References to the repealed Regulation shall be construed as references to this Regulation.

2. Article 11(2) of Regulation (EEC, Euratom) No 1553/89 is hereby repealed.

Article 8

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

For the Council

The President

H. EICHEL

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ OJ L 49, 21.2.1989, p. 26.