

I

(Resolutions, recommendations and opinions)

OPINIONS

COURT OF AUDITORS

OPINION No 2/2008

on a proposal for a Council Regulation amending Regulation (EC, Euratom) No 1150/2000 implementing Decision 2000/597/EC, Euratom on the system of the Communities' own resources

(2008/C 192/01)

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 and Article 279(2) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community and in particular Articles 160c(4) and 183 thereof,

Having regard to the Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources ⁽¹⁾,

Having regard to the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾, as last amended by the Regulation (EC, Euratom) No 1995/2006 ⁽³⁾,

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 2/2006 on a proposal for a Council Decision on the system of the European Communities' own resources ⁽⁴⁾ in particular,

⁽¹⁾ OJ L 163, 23.6.2007, p. 17.

⁽²⁾ OJ L 248, 16.9.2002, p. 1.

⁽³⁾ OJ L 390, 30.12.2006, p. 1.

⁽⁴⁾ OJ C 203, 25.8.2006, p. 50.

Having regard to the Council's request, dated 19 May 2008, for the Court of Auditors' opinion on the proposal for a Council Regulation ⁽⁵⁾ amending Regulation (EC, Euratom) No 1150/2000 ⁽⁶⁾ implementing Decision 2000/597/EC, Euratom on the system of the European Communities' own resources ⁽⁷⁾,

Whereas the Berlin European Council of 24 and 25 March 1999 concluded ⁽⁸⁾, *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,

Whereas the Brussels European Council of 15 and 16 December 2005 reached agreement ⁽⁹⁾, *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,

⁽⁵⁾ COM(2008) 223 final of 29 April 2008.

⁽⁶⁾ OJ L 130, 31.5.2000, p. 1. Regulation amended by Regulation (EC, Euratom) No 2028/2004 (OJ L 352, 27.11.2004, p. 1).

⁽⁷⁾ OJ L 253, 7.10.2000, p. 42.

⁽⁸⁾ See Bulletin EU 3-1999.

⁽⁹⁾ 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.

Whereas the Court noted in its Opinion No 2/2006 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 benefits from a correction; and
- (c) there is no mechanism which would allow Member States other than those explicitly mentioned in the proposal to qualify for a correction,

HAS ADOPTED THE FOLLOWING OPINION:

I. INTRODUCTION

1. The Commission's proposal for a Council Regulation amending Regulation (EC, Euratom) No 1150/2000 updates the rules for the implementation of the new Decision 2007/436/EC, Euratom on the system of the European Communities' own resources, in particular:

- (a) the elimination of the distinction between agricultural duties and import duties;
- (b) the inclusion of gross reductions for the Netherlands and Sweden in their annual GNI-based contributions for the period 2007-2013.

2. Furthermore, it takes into consideration the evolution of Community legislation since the last amendments introduced by Regulation (EC, Euratom) No 2028/2004. The main elements concern:

- (a) the references to GNP/GNI;
- (b) the references to EAGGF ⁽¹⁾ Guarantee Section/EAGF;
- (c) the reserve relating to loans and loan guarantees and reserve for emergency aid;
- (d) the efficient management of own resources accounts; and
- (e) the consolidation of Article 10.

3. The proposed Regulation as well as the Decision 2007/436/EC, Euratom should enter into force once Member States have adopted the Decision in accordance with their constitutional requirements, with retroactive effect as of 1 January 2007.

⁽¹⁾ Furthermore, the references to the EAGGF monetary reserve have been deleted as this reserve was intended to be used during the years 2000-2002.

II. GENERAL OBSERVATIONS

4. The concerns expressed in the Court's Opinion No 2/2006 on the added complexity of the amended system of the European Communities' own resources were not taken into account in Decision 2007/436/EC, Euratom. The Court concluded that this Decision moved further away from an own resources system based on clear and generally applied mechanisms, towards national contributions negotiated on a country by country basis.

5. Furthermore, the Opinion called 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. The Court considers that the Commission proposal under examination should have included such provisions.

6. The modifications proposed by the Commission in COM(2008) 223 final generally update the provisions for the implementation of Decision 2007/436/EC, Euratom.

7. The Court welcomes the other amendments proposed which aim to update references, terms and rules in the areas of GNP/GNI, EAGGF/EAGF and reserves (relating to loans, loan guarantees and for emergency aid), and to provide a revised and consolidated text of Article 10. It also supports the proposed new provisions intended to improve the Commission's management of own resources accounts.

III. SPECIFIC REMARKS

8. Article 1(4) of the Commission's proposal foresees that Article 3(2) of Regulation (EC, Euratom) No 1150/2000 is replaced by a new text regarding the keeping of supporting documents relating to the statistical procedures and bases referred to in the GNI Regulation ⁽²⁾. The previous text also included the same rule relating to VAT resources which in the Court's view should be maintained.

9. Throughout the text of the Commission's proposal ⁽³⁾, the 'UK correction' is referred to as the 'correction granted to the United Kingdom for budgetary imbalances', except for Article 1(6) introducing a modification to Article 6(3)(c), which refers to the 'correction granted to the United Kingdom'. In order to ensure consistency, this needs to be modified.

10. Article 1(8) of the Commission's proposal provides a consolidated version of Article 10. The proposed Article 10(9)

⁽²⁾ Council Regulation (EC, Euratom) No 1287/2003 of 15 July 2003 on the harmonisation of gross national income at market prices (OJ L 181, 19.7.2003, p. 1).

⁽³⁾ This does not apply however to the German and Italian language versions.

concerns the gross reduction granted to the Netherlands and to Sweden, introduced by Decision 2007/436/EC, Euratom. In the second sentence, it is stated that there shall be no subsequent revision of the financing of that gross reduction in the event of subsequent modification of the GNI figure. The Court understands that this lack of subsequent revision might be justified on the basis of cost-effectiveness, but it considers that in principle this is not in line with the objective of equity, recalled by the European Council on several occasions.

11. As in the previous system of the European Communities' own resources, Article 2(7) of Decision 2007/436/EC, Euratom

states that should modifications to the European System of Accounts ⁽¹⁾ (ESA 95) result in significant changes in the GNI as provided by the Commission, the Council, after consulting the European Parliament, shall decide whether these modifications shall apply for the purposes of own resources. The same Decision also introduced a new Article 3(3) which states that should such modifications indeed apply, the ceilings of the annual appropriations for payments and commitments shall be recalculated using a specified formula ⁽²⁾. In order to allow a consistent application of these rules, in case of further revisions of ESA 95, the Court proposes that implementing provisions should be included in the amendment of Regulation (EC, Euratom) No 1150/2000 to set out principles defining the term 'significant changes'.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 3 July 2008.

For the Court of Auditors
Vitor Manuel DA SILVA CALDEIRA
President

⁽¹⁾ Council Regulation (EC) No 2223/96 (OJ L 310, 30.11.1996, p. 1), last amended by Regulation (EC) No 1392/2007 of the European Parliament and of the Council (OJ L 324, 10.12.2007, p. 1).

⁽²⁾ In Council Decision 2000/597/EC, Euratom (OJ L 253, 7.10.2000, p. 42), the recalculation of these ceilings is also foreseen. However, it applies for modifications to ESA 95 which result in changes in the level of GNI (without including the term 'significant').