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I

(Information)

COURT OF AUDITORS

OPINION No 7/2003

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*(pursuant to Article 248(4), second subparagraph, EC)*

(2003/C 318/01)

THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THE FOLLOWING OPINION:

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 Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources ⁽¹⁾,

Having regard to Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources ⁽²⁾,

Having regard to the Commission proposal of 1 July 2003 ⁽³⁾,

Having regard to the Council decision of 16 July 2003 to consult the Court of Auditors on this proposal, received by the Court on 17 July 2003, in accordance with Article 279(2) of the Treaty,

INTRODUCTION

1. The Commission's proposal, which takes on board some content of earlier such proposals, includes the following main elements:

- adjustment to the B-account procedures to require Member States to write off amounts of traditional own resources that are not recovered by a specific deadline (five years) following the date on which the demand for payment became definitively enforceable, together with improved reporting requirements,
- changes in accordance with the Council decision on own resources of 29 September 2000, particularly the amount (namely 25 % instead of 10 %) that Member States can retain by way of collection costs for traditional own resources,
- simpler definition of the method of interest calculation for own resources made available late.

GENERAL REMARKS

2. In general the Court welcomes the amendments proposed by the Commission, several of which respond to concerns expressed by the Court in annual reports ⁽⁴⁾.

⁽¹⁾ OJ L 253, 7.10.2000, p. 42.

⁽²⁾ OJ L 130, 31.5.2000, p. 1.

⁽³⁾ 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 (COM(2003) 366 final — 2003/0131 (CNS)).

⁽⁴⁾ See particularly the annual report concerning the financial year 2001, paragraph 1.26, and the annual report concerning the financial year 1999, paragraph 1.16.

3. The Court believes that use could be made of this opportunity to improve the regulation in respect of the scope of inspection work related to gross national income (Article 19 of Regulation (EC, Euratom) No 1150/2000), and of the information to be provided by Member States about their control activities related to the annual VAT base and gross national income.

SPECIFIC REMARKS

4. There are differences between the French and English versions of the Commission proposal, and the Court suggests that modifications should be made so that both versions refer to Member States' central banks in Article 11(3), and to ensure that entitlements that are deemed irrecoverable by applying the five-

year time limit should be submitted to the reporting procedure set out in the proposed new Article 17(3) and (4).

5. References throughout Regulation (EC, Euratom) No 1150/2000 and this proposed amendment are to gross national product (GNP). The Court notes that Article 2(7) of the Council decision on own resources of 29 September 2000 specifies that GNP shall mean GNI (gross national income), and reiterates the view expressed in its Opinion No 8/1999⁽¹⁾ that it would be beneficial to adjust all such references to gross national income (GNI).

6. In the table shown below the Court sets out those proposed amendments to the regulation on which it has an observation to make.

This opinion was adopted by the Court of Auditors in Luxembourg at the Court meeting of 15 and 16 October 2003.

For the Court of Auditors

Juan Manuel FABRA VALLÉS

President

⁽¹⁾ Opinion No 8/1999 on a Council proposal for a decision concerning the European Union's system of own resources (OJ C 310, 28.10.1999, p. 1), paragraphs 9 and 10.

ANNEX

Commission's proposal (COM(2003) 366 final) (References in bold type are to the number of the Article concerned in Council Regulation (EC, Euratom) No 1150/2000)	Court's proposed modifications	Comment
(throughout)	Substitute GNI for GNP throughout	References throughout Regulation (EC, Euratom) No 1150/2000 and this proposed amendment are to gross national product (GNP). The Court notes that Article 2(7) of the Council decision on own resources of 29 September 2000 specifies that GNP shall mean GNI (gross national income), and considers that it would be beneficial to adjust all these references (and the others in Regulation (EC, Euratom) No 1150/2000) to gross national income (GNI).
(unchanged in Commission proposal) Article 4	Add new paragraph 3: <u>3. Member States shall inform the Commission, by means of annual reports, of the details and results of their inspections or other checks made that ensure the correctness of the financial and economic aggregates on which the VAT and GNI own resources are based. The reports shall be sent to the Commission by 1 March of each year.</u>	The Court believes that use could be made of this opportunity to improve the regulation in respect of the scope of inspection work related to gross national income (Article 19 of Regulation (EC, Euratom) No 1150/2000), and of the information to be provided by Member States about their control activities related to the annual VAT base and gross national income.
Article 1(4.2) Article 6(4)(b) — additional sentence: Together with the final quarterly statement for a given year, Member States shall forward an estimate of the total amount of entitlements contained in the separate account at 31 December of that year for which recovery has become unlikely.		The Court welcomes this addition, which corresponds in part to its recommendation in its annual report concerning the year 1999, paragraph 1.16.
Article 1(8) New Article 10a(2), third subparagraph ... For the purposes of calculating the adjustment, amounts shall be converted between the national currency and the euro at the exchange rate on the last day of quotation of the calendar year preceding the budget year concerned.	For the purposes of calculating the adjustment, amounts shall be converted between the national currency and the euro at the <u>rate of exchange provided for by Article 10(5)</u> .	Article 10(5) states '... the balances ... shall be converted into euro at the rates of exchange applying on the first working day after 15 November preceding the entries provided for in Article 10(4)'. Since the new Article 10a(2) provides that the calculation of the new Article 10a adjustment shall be made at the same time as the determination of GNI balances provided for by Article 10, it is most logical to use the same exchange rate for both operations.
Article 1(9) New Article 11(3) In the case of Member States which do not belong to the economic and monetary union, the rate shall be equal to the rate applied for three-month public financing operations in the national currency on the money market of the Member State concerned, on the final working day of the month preceding the due date, increased by two percentage points. ... (unchanged)		The French and English texts of COM(2003) 366 do not match. The Court notes that it is the French text that matches the intention expressed in the explanatory memorandum.

Commission's proposal (COM(2003) 366 final) (References in bold type are to the number of the Article concerned in Council Regulation (EC, Euratom) No 1150/2000)	Court's proposed modifications	Comment
<p>Article 1(13)</p> <p>Article 17(2) and new Article 17(3) and (4)</p>		<p>The Court welcomes the changes proposed, which correspond to recommendations expressed in its annual reports, but observes that in the English version of COM(2003) 366 final it is not completely clear that established entitlements that are <i>deemed</i> irrecoverable by applying the five-year time limit, are, equally with those earlier <i>declared</i> irrecoverable by administrative decision, to be submitted to the reporting procedure set out in paragraph 3 and the Commission's decision on whether the Member State is released from its obligation to make the amounts available (paragraph 4).</p>
<p>(text unchanged by Commission proposal)</p> <p>Article 19</p> <p>Together with the Member State concerned, the Commission shall each year inspect the aggregates provided for errors in compilation, especially in cases notified by the GNP management committee. In doing so it may, in individual cases, also examine calculations and basic statistics, apart from information about individual companies or persons, where no proper assessment would otherwise be possible. The Commission shall respect national legal provisions on the preservation of the confidentiality of statistics.</p>	<p>Together with the Member State concerned, the Commission shall each year inspect the aggregates provided for errors in compilation, especially in cases notified by the GNP management committee. In doing so it may, in individual cases, also examine calculations and basic statistics, apart from information about individual companies or persons, where no proper assessment would otherwise be possible. The Commission shall respect national legal provisions on the preservation of the confidentiality of statistics.</p>	<p>The inspection should not be restricted to errors in compilation. Moreover, there seems to be a difference of meaning between the French and English versions.</p>
<p>(text unchanged by Commission proposal)</p> <p>Article 21(1)(b)</p> <p>(b) the cases of force majeure referred to in Article 17(2);</p>	<p>(b) the cases of force majeure referred to in Article 17(2);</p>	<p>This is part of a list of items to be considered by the Advisory Committee on the Communities' own resources. The committee should consider all cases falling under Article 17(2) and not only those of force majeure.</p>

OPINION No 8/2003**on a proposal for a decision of the European Parliament and of the Council establishing a Community action programme to promote activities in the field of the protection of the Community's financial interests**

(2003/C 318/02)

THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

taken into account within the existing framework of measures for the protection of the Community's financial interests ⁽²⁾.

Having regard to the Treaty establishing the European Community, and in particular Article 280(4) thereof,

Having regard to the Commission proposal for a decision of the European Parliament and of the Council establishing a Community action programme to promote activities in the field of the protection of the Community's financial interests ⁽¹⁾,

Having regard to the Council's request for an opinion on this proposal, received at the Court on 6 August 2003,

Whereas the decision proposed is based on Article 280(4) of the Treaty, pursuant to which the Council, after consulting the Court of Auditors, adopts the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interest of the Community,

HAS ADOPTED THE FOLLOWING OPINION:

THE PROGRAMME PROPOSED

1. The Court welcomes the Commission proposal as an initiative in favour of the protection of the Community's financial interests. The Court also appreciates that a specific 'basic instrument' is proposed for this initiative. The Court considers, however, that the Commission proposal could be improved as suggested hereafter.

2. The Decision proposed should clearly state which needs the programme, called 'Hercule', should satisfy that are not yet

3. Article 27(3) of the Financial Regulation provides that 'specific, measurable, achievable, relevant and timed objectives' shall be set for all the sectors of activity covered by the budget. The proposed 'Hercule' programme does not fully comply with these provisions, as its objectives are rather indefinite and only refer to activities of a general nature, like 'organisation of seminars and conferences', 'promotion of scientific studies and discussions', 'coordination of activities', 'training and awareness', 'dissemination of scientific information', 'technical assistance', etc. Sometimes the objectives are somewhat contradictory, as when they are defined as 'aligning the substance of activities so as to ensure effective and equivalent levels of protection on the basis of mutually agreed best practice while also respecting the distinct traditions of each Member State'.

4. Article 7 (Monitoring and evaluation) of the draft decision states that 'by 31 December 2009 at the latest, the Commission shall report to the European Parliament and to the Council on the achievement of the objectives of this programme. The report shall be based on the results obtained by the beneficiaries and assess, in particular, their effectiveness in achieving the objectives defined in Article 1 and the Annex'. Clear, technically well-defined and measurable objectives would facilitate a serious, factual and useful evaluation of achievements.

5. Furthermore, a report only after the end of the programme, when the whole of the expenditure has been made, does not seem appropriate. Information on the achievements and results obtained should be presented regularly, e.g. with the annual grants programmes and calls for proposals.

⁽¹⁾ COM(2003) 278 final of 27 May 2003.

⁽²⁾ In particular, the 'Overall strategic approach' for the protection of the Communities' financial interests and the fight against fraud for the period 2001 to 2005, adopted on 28 June 2000 (COM(2000) 358 final of 28 June 2000) and the 'action plans' implementing the approach, which include various activities already carried out by the Advisory Committee for the Coordination of Fraud Prevention (generally known as Cocolaf) and the European Anti-fraud Office (OLAF).

FINANCIAL ASPECTS

6. It appears from the fourth recital of the proposal and the annexed 'legislative financial statement' that the Commission intends to use around 2,0 million euro of the total allocation of around 21,5 million euro to support 'conferences, congresses and meetings in connection with the activities of the associations of European lawyers for the protection of the financial interests of the Community'. It is important that the money be used in the most efficient way. Therefore, the calls for proposals should be

carried out according to the principle of a fair competition among all technically qualified authorities and bodies.

7. According to the 'legislative financial statement', the above-mentioned amount of around 2,0 million euro, spread over the five years of the duration of the programme, should be entered in a specific budget article (24 02 04) and the rest of the annual allocation in another budget article (24 02 05). In accordance with the budgetary principles of specification and transparency ⁽¹⁾, the appropriations relative to the 'Hercule' programme should be entered in a single budget article, as has been done for the 'Pericles' programme. This article could be subdivided into items corresponding to specific activities to be carried out within the framework of the programme, if such activities are clearly identified and described in the decision setting up the programme.

This opinion was adopted by the Court of Auditors in Luxembourg on 11 November 2003.

For the Court of Auditors
Juan Manuel FABRA VALLÉS
President

⁽¹⁾ Articles 21, 29 and 41 of the Financial Regulation of 25 June 2002 (Council Regulation (EC) No 1605/2002 (OJ L 248, 16.9.2002)).