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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
TO THE COUNCIL**

**Sixth report from the Commission on the operation of the inspection arrangements for
traditional own resources (2006-2009)
(Article 18(5) of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000)**

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1. INTRODUCTION

The Commission regularly compiles a report for the European Parliament and the Council on the operation of the inspection system for traditional own resources.¹

The inspection of traditional own resources is based on Council Decision 2007/436/EC, Euratom of 7 June 2007,² Council Regulation No 1150/2000 of 22 May 2000³ and Council Regulation No 1026/1999 of 10 May 1999.⁴

This report, the sixth of its type, describes and analyses the operation of the inspection system for traditional own resources for the period covering **2006 to 2009** (2006 was only partly covered by the previous report adopted in 2007).⁵ It describes the Commission's inspection measures over this period, assesses the measures carried out and draws conclusions.⁶ The report also outlines the financial, legal and regulatory follow-up to these inspections.

Annex 1 to this report describes the objectives of the inspections and how the inspection system operates at Community level.

Traditional own resources: customs and agricultural duties on products imported from third countries, plus sugar levies. Over the period 2006-2009 more than €63 billion was made available.

¹ Article 18(5) of Regulation No 1150/2000.

² OJ L 163, 23.6.2007, p. 17.

³ OJ L 130, 31.5.2000, pp. 1-9, as amended by Council Regulation No 105/2009 of 26 January 2009 (OJ L 36, 5.2.2009, p. 1).

⁴ OJ L 126, 20.5.1999, p. 1.

⁵ COM (06) 874 of 9.1.2007 (fifth report, covering the period 2003-2005).

⁶ The report focuses on the checks made by the Community institutions (the Commission and the Court of Auditors). It does not cover the checks made by the Member States, the detailed results of which are set out in the annual report drawn up under Article 325 of the Treaty on the Functioning of the European Union.

2. INSPECTIONS BY THE COMMISSION IN 2006-2009

The Commission's on-the-spot inspections are based on a precise methodology to check that procedures are consistent with Community standards. They are planned as part of an annual inspection programme containing a number of subjects to be inspected in one or more Member States on the basis of risk analysis. They are carried out using identical procedures for all inspections and involve the use of questionnaires sent to the Member States in advance, the use of check-lists employed on the spot to ensure that the inspection is consistent and the drafting of a report at the end of the inspection.

2.1. Main results of the inspections

The Commission carried out **129 inspections** under Article 18 of Regulation No 1150/2000 during the period 2006-2009.⁷ Eleven of these inspections were carried out under the Joint Audit Arrangement approach.⁸

Of the **436 anomalies** noted, 224 had a financial impact (51.4%) and 110 a regulatory impact (25.2%). The Commission has taken appropriate measures to resolve the financial consequences of the anomalies observed.

129 inspections revealing 436 anomalies.

Joint Audit Arrangements: Special type of joint inspection under which a Member State's internal audit departments conduct an audit in accordance with a method approved by the Commission.

2.1.1. Inspections relating to customs matters.

Between 2006 and 2008 the Commission launched inspection measures into **Community transit** and transit under **TIR carnets** in virtually all the Member States. Several anomalies were detected, particularly as regards the monitoring (including financial monitoring) of transit operations not discharged within the time limits. The Member States were asked to take the measures necessary and they assumed the financial consequences resulting from the anomalies.

Community transit and transit under TIR carnets: procedure allowing the movement of third-country goods free of duties and charges between two points of Community territory or between different parties to the TIR (Transports Internationaux Routiers) Convention.

Inspection measures concerning **inward processing** and **customs warehousing** procedures continued in those Member States in which they had not been carried out before 2006. These measures revealed a number of shortcomings as regards the management and control of this customs procedure, some with financial consequences. The Member States concerned have informed the Commission that they have taken the measures necessary.

Inward processing: customs procedure allowing third-country products to be imported without import duty and re-exported after processing.

In 2008 inspections of **simplified procedures for the release of goods for free circulation** sometimes revealed major shortcomings in the management and control of these procedures.⁹ The Commission asked the Member States concerned to quickly remedy the anomalies noted.

Customs warehousing: customs procedure allowing third-country goods to be stored without

⁷ See Annex 2 for the breakdown of inspection topics between the Member States.

⁸ Inspections in Denmark, the Netherlands and Austria.

⁹ See Annex 2 for the breakdown of inspection topics between the Member States.

¹⁰ BE, BG, DK, AT, RO.

On the other hand, the inspection measures relating to **banana** imports in 2008 did not reveal any serious anomalies. The purpose of these measures was to check whether the Member States had remedied the large number of anomalies noted in 2001 and were correctly applying the new Community provisions in this field. The only shortcomings noted related to compliance with the rules for weighing bananas.

Inspection measures concerning **national customs inspection strategies** were conducted in virtually all the Member States in 2009. They were intended to ensure that the Member States had introduced a general, efficient and effective customs inspection strategy for traditional own resources, together with structures and procedures so that the European Union's financial interests can be protected by means of efficient customs checks based on risk analysis. The Commission asked a number of Member States to remedy the shortcomings noted in inspections at the time of customs clearance as well as during post-clearance inspections and asked them to take the measures needed to improve the efficiency of customs inspections. These inspection measures are continuing in five Member States in 2010.¹⁰

In 2007 and 2008 the Commission examined how five Member States actually conducted a **follow-up to certain observations** made by the Commission and the European Court of Auditors during their previous inspections. These measures do not call for any specific comments on the Commission's part.

2.1.2. *Inspections relating to accounting matters*

Management of the separate account is a recurrent subject of inspection for the Commission in all the Member States.¹¹ This account represents a rich source of information on how administrations carry out their responsibilities as regards the management of traditional own resources (establishment of entitlements, management of guarantees, monitoring of recovery, cancellations, writing-off of irrecoverable debts). Inspections in this field over the period 2006-2009 confirmed that most errors were one-off, despite the guidelines provided by the Commission in December 2007.¹² However, systematic errors persist in a number of Member States, leading to infringement procedures. The Member States assumed the financial consequences resulting from the anomalies noted. However, the general situation is gradually improving as a result of the pressure exerted by the Commission inspections as well as the introduction of IT tools in the customs and/or accounting sector in most of the Member States to reduce the risk of errors. Measures will continue in this field in future.

More comprehensive inspection measures were conducted in a number of Member States, including those which acceded to the EU in 2007, in order to evaluate their **traditional own resources collection systems**. The inspection

import duty.

Simplified procedures: procedures allowing goods to be declared without all the statements or documents necessary and/or without needing to present the goods at the customs office. The situation then has to be regularised.

The Member States book traditional own resources to one of two accounts: - the normal account for amounts recovered or guaranteed (these amounts are paid into the EU budget) - the separate account for amounts which have not been recovered or guaranteed amounts which have been contested.

Traditional own resources collection system: all the systems and procedures introduced by the Member States to ensure that traditional own resources are established, entered in the accounts, recovered and paid.

Any entitlement which is irrecoverable is withdrawn

¹¹ Every inspection visit covers this subject in addition to the main subject.

¹² Document ACOR/2007-12/agenda-04.

findings led to the general conclusion that they had installed appropriate collection systems although they revealed a number of structural and one-off errors.

A number of specific inspection measures were also carried out to examine how the Member States deal with **irrecoverable entitlements**. Major anomalies were identified (amounts for which a waiver was not justified, amounts not reported to the Commission, etc.). Some had financial consequences.

from the separate account. The amount concerned must be made available to the Commission unless it cannot be recovered in cases of force majeure or for reasons which cannot be attributed to the Member State.

2.2. Follow-up to Commission inspection measures

2.2.1 Regulatory aspects

Where flaws or loopholes are detected in national regulations or administrative provisions in the course of the inspections, the Member States are asked to take the necessary measures, including legislative and regulatory measures, to bring them into line with Community requirements. Such adjustments are an important spin-off from the Commission's inspections. The anomalies detected are also an essential source of information on the problems encountered by the Member States in applying customs regulations and their impact in terms of own resources.

2.2.2 Outcome of disputes

Some points in the rules are a source of disagreement between the Member States and the Commission, whose only option is to bring an **infringement procedure** (Article 258 of the Treaty on the Functioning of the European Union). At 31 December 2009 ten cases involving six Member States were at various stages of the procedure (formal notice, reasoned opinion, referral to the Court).

During the period 2006-2009 the Court of Justice delivered a number of important judgments following infringement procedures brought by the Commission. Where necessary, the Member States concerned had to assume the financial consequences. For some of these judgments, these financial consequences are still being evaluated or settled.

In 2006, in its judgment of 23 February,¹³ the Court also upheld the Commission's position concerning the time limit for entering duties in the accounts when Member States carry out *ex post* inspections. The Court also stated that assertion of this right of defence is by no means hindered by the entry in the accounts.

Entry in the accounts:
entry of duties in the
customs accounting
records.

Ex post inspections:
customs inspections carried
out after goods are cleared.

On 5 October 2006 the Court upheld the Commission's position when it ruled that certain Member States were wrong to refuse to pay certain categories of resources into the Community budget, in this case instalments of traditional

Undischarged transit:
transit operations for

¹³ Case C-546/03.

own resources recovered under a payment plan¹⁴ and guaranteed and uncontested duties resulting from undischarged transit operations conducted in the form of Community transit¹⁵ or under a TIR carnet.¹⁶ On the same day the Court rejected a case brought against the Netherlands in connection with the burden of proof, but agreed that Member States must report infringements or irregularities as soon as they are aware of them and thus before expiry of the time limits.¹⁷ The Court also agreed that Member States must keep supporting documents concerning establishment for a period which will allow them to be corrected and checked.¹⁸

which there is no evidence that goods have not reached their destination. The duties and taxes must then be entered in the accounts and recovered.

On 18 October 2007 the Court confirmed that failure to comply with an obligation imposed by a rule of Community law constitutes a breach even if such a failure had no adverse effects for the European Union's financial interests.¹⁹

ATA carnets: carnets allowing the temporary import of third-country goods free of duties and charges between different parties to ATA Convention (Convention for the temporary admission of goods).

On 22 January 2009 the Court upheld the Commission's position on application of the rules for establishing and making available traditional own resources in the event of irregularities noted during temporary admission operations under ATA carnets.²⁰ It also confirmed that this type of operation should be considered guaranteed within the meaning of the rules on traditional own resources.

On 19 March 2009 the Court upheld the Commission's position on the time limits for the entry in the accounts of customs debts resulting from the failure to discharge transit operations. However, unlike the Commission, it considered that, when goods have arrived at their destination in good time and only the discharge is late, no debt has been incurred and, consequently, no default interest can be applied.²¹

Finally, on 15 December 2009, the Court confirmed that Member States cannot refuse to make available duties on imports of military equipment and goods for dual military and civil use as traditional own resources.²² These shortcomings relate to the period before 1 January 2003 as Regulation No 150/2003 of 21 January 2003²³ provided for the suspension of these duties under certain conditions after that date. The Court thus rejected the argument of the Member States concerned which was based on Article 296 of the EC Treaty²⁴ (no Member State should be obliged to supply information if disclosure would be contrary to the essential interests of its security). The financial consequences are still being evaluated as these Member States had so far always refused to provide the accounting data needed for this

¹⁴ Case C-378/03.

¹⁵ Case C-275/04.

¹⁶ Case C-105/02 and Case C-377/03.

¹⁷ Case C-312/04.

¹⁸ Case C-275/04.

¹⁹ Case C-19/05.

²⁰ Case C-150/07.

²¹ Case C-275/07.

²² Cases C-284/05, C-294/05, C-372/05, C-387/05, C-239/06, C-409/05 and C-461/05.

²³ OJ L 25, 30/1/2003, p. 1.

²⁴ Article 346 of the Treaty on the Functioning of the European Union.

evaluation.

2.2.3 Financial aspects

Over the reference period (2006-2009) additional entitlements totalling more than **€130 million** were paid to the Commission following observations it made in its inspection reports, following inspections by the Court of Auditors or following the Commission's other inspection activities.²⁵

Interest for late payment was also charged for delays in making traditional own resources available. The interest for late payment paid by the Member States totalled more than **€107 million**.²⁶

2.3. Commission measures to improve recovery of traditional own resources

Apart from its on-the-spot inspections in the Member States, the Commission has several other means of monitoring the recovery of traditional own resources. Appropriate use of these means effectively improves recovery.

2.3.1 Examination of irrecoverable entitlements which have been written off

Member States must take the measures necessary to make traditional own resources available, except where recovery proves impossible for reasons of *force majeure* or for reasons which cannot be attributed to it (Article 17(2) of Regulation No 1150/2000).

Under the rules, only the Commission can release a Member State from its obligation to make available an irrecoverable amount exceeding €50 000. For amounts below this threshold, the Member States themselves decide whether the conditions for a waiver have been met (without prejudice to on-the-spot inspections by the Commission).

Examination of the waiver requests is a particularly important and ever-growing task for the Commission. With the adoption of Regulation No 2028/2004 of 16 November 2004, the concept of *amounts which are definitively irrecoverable* has been defined along with the specific conditions for deeming amounts irrecoverable. These new conditions have allowed the Member States to "clean up" their separate accounts by withdrawing a large number of amounts that are deemed irrecoverable. A transitional period ending on 30 September 2009 was established for this purpose.

The Commission was therefore confronted by a significant increase in the number of requests, in particular in 2008 and 2009, and succeeded in meeting this challenge. Over the period 2006-2009 it was sent 1 017 cases (including 589 for 2008 alone) involving a gross amount of almost **€394 million**.²⁷ In

Request to be released from the obligation to make irrecoverable entitlements available after they have been written off: procedure allowing the Commission to check whether or not the entitlement is irrecoverable for reasons attributable to the Member State. If the request is refused, the amount has to be paid to the Commission.

The purpose of the Commission's examination of the cases reported is to assess the degree of diligence shown by the State in carrying out its recovery operations. This acts as an incentive for them to carry out their operations properly.

²⁵ This figure does not cover amounts which have been demanded from the Member States but which have not yet been made available.

²⁶ The figures are still incomplete, especially for 2009, since the financial consequences cannot be fully evaluated until the Member States have compiled the necessary accounting data.

²⁷ Over the period 2003-2005 the Commission received 176 cases involving an amount of almost €39 million.

response to the requests examined during this period (outstanding cases and newly presented cases), the Commission granted 497 waivers involving almost **€152 million**. On the other hand, it refused 168 cases involving more than **€62 million** (gross), which must now be made available. The Commission had to ask the Member States for further information in almost 50% of the cases examined. At 31 December 2009, 165 requests involving around **€57 million** were still being processed.

A new database called **WOMIS** (Write-Off Management and Information System) became operational on 1 January 2010. WOMIS is a multilingual tool designed for the transmission of waiver requests by means of a web-based communication and database software reserved for authorised Member State and Commission users. It will allow easier and more secure management of the Member States' requests and can be used to provide data and useful information on the follow-up to these requests.

2.3.2 *Treatment of errors of establishment leading to a loss of traditional own resources*

In its judgment of 15 November 2005²⁸ the Court upheld the Commission's view and expressly recognised that the obligation of the Member States to establish the Communities' entitlement to traditional own resources (and then make them available to the EU budget) arises as soon as the conditions laid down in the customs regulations are met. It is not therefore necessary for establishment actually to take place. Member States are released from their obligation to make own resources available only in cases of *force majeure* or if it is impossible to recover the amount for reasons which cannot be attributed to them. The Member States must therefore assume the financial consequences of errors they make.

On the basis of this case-law, the Commission followed up the administrative errors committed by the Member States to the detriment of the European Union's financial interests during the period 2006-2009 (on-the-spot inspections, reports of national reimbursement or remission decisions based on an administrative error, etc.). As a result of this follow-up, the Commission was able to ask the Member States to make available more than **€85 million** (gross) over the period 2006-2009.

2.3.3 *The OWNRES database*

Under Regulation No 1150/2000 Member States must send the Commission information on cases of fraud and irregularities involving entitlements of more than €10 000. This information is reported via the **OWNRES** database.

This database provides the Commission with the information it needs to monitor recovery and prepare its on-the-spot inspections. The data reported are also used for various analyses by the Anti-Fraud Office (OLAF).

OWNRES database: database maintained by the Member States and covering all cases of fraud and irregularities established by them when the amounts involved exceed €10 000.

²⁸ Case C-392/02.

2.4. *Monitoring measures for the acceding countries*

When preparing for the accession of Bulgaria and Romania, the Commission conducted monitoring visits specifically geared to traditional own resources in 2006. These monitoring visits and the mock accounting exercises conducted enabled the Commission to obtain a reasonable degree of assurance before accession about their administrative capacity to apply the *acquis communautaire* with respect to traditional own resources.

A monitoring programme for Croatia has been operating since 2008 to help prepare for accession as effectively as possible. It will continue in 2010.

3. ASSESSMENT OF THE INSPECTION ARRANGEMENTS

As in previous years, the anomalies noted in the operation of the inspection arrangements for traditional own resources during the period 2006-2009 confirm the benefit which the Commission can derive from the inspections it carries out. The *traditional tools* which the Commission employs to follow up its inspection activities include the adjustment by Member States of national procedures which are not consistent with Community rules, corrections in the accounts, one-off corrections of the anomalies found, explanation of Community texts and concerted improvement of Community legislation in the case of persistent malfunctions.

The financial impact of the checks carried out on the spot is clearly visible; however, this is not the only reason for the checks. Indeed, the main purpose of the various inspections is to ensure that the EU budget is properly financed in terms of traditional own resources. In view of all the information gathered from the Member States, they can also improve compliance with Community rules and even influence the process for improving the rules so that the financial interests of the Union are better protected.

4. CONCLUSION

The results recorded from 2006 to 2009 show that the Commission's inspections of traditional own resources are necessary. This was illustrated by improved compliance with Community provisions on the protection of the European Union's financial interests as well as at the financial level (the net amount made available came to around **€37 million**). This inspection activity ensures equality of treatment between the Member States as regards both application of the customs and accounting rules and protection of the European Union's financial interests.

In future, the Commission therefore intends:

- **to continue with its role as regards on-the-spot inspections**, while improving its inspection methods (audit tools, etc.);

- to continue **strengthening the monitoring of recovery measures** in the Member States;
- to continue **monitoring** the acceding countries, so as to obtain a reasonable degree of assurance that these countries' systems for collecting traditional own resources meet Community requirements by the time of accession.
-