OPINION No 2/91 OF THE COURT OF AUDITORS

on a proposal for a Council (EEC) Decision concerning the refund to Portugal of revenue from the 'accession' compensatory amounts applied to deliveries of common wheat from the other Member States

(91/C 113/02)

THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

having regard to the Treaty establishing the European Economic Community, and especially Article 209 thereof,

having regard to the Act of Accession of Portugal, and especially Article 372 thereof,

having regard to Council Decision No 88/376/EEC/Euratom of 24 June 1988 concerning the system of Community own resources, and especially Article 2 thereof,

having regard to the Commission proposal dated 26 November 1990 [1],

having regard to the Council's request for an opinion dated 21 December 1990,

HAS ADOPTED THE FOLLOWING OPINION:

Statement

1. By virtue of Article 372, paragraphs 1 and 2, of the Act of Accession, revenue from sums established at the moment of import of agricultural produce into Portugal [2] are to be considered own resources with effect from 1 January 1991 in the case of those products that are subject to a staged transitional period [3]. These sums include not only agricultural levies but also 'accession compensatory amounts' (ACMs).

2. Article 372, paragraph 3, of the Act of Accession allows the refund to Portugal, by decision of the Council, of revenue from ACMs applied to imports of cereals from the other Member States.

3. The measure proposed by the Commission has the objective of implementing this refund procedure in respect of quantities of common wheat up to a maximum of 400 000 tonnes.

4. The budgetary technique selected by the Commission consists of a direct deduction of the ACMs from the amount of own resources that are to be credited to the Commission's account [4].

Remarks concerning charging to the budget

5. Direct deduction is not compatible with the provisions of Article 372, paragraph 3, of the Act of Accession, which uses the word 'refund'. This expression implies that the ACMs must be made available to the Community before they can be 'refunded'. That, however, does not mean that the refund cannot be concomitant with the crediting to the Commission's account. The mode of procedure chosen for charging these sums, based as it is on a distinction between gross revenue on the one hand, and sums to be refunded on the other, must ensure budgetary transparency whilst at the same time facilitating control of the quantities concerned and of the sums due.

6. Doubtless the procedure of direct deduction is concomitant, but it does not distinguish between the two operations and therefore does not guarantee an adequate degree of transparency.

7. Direct charging should be chosen as the refund method, either to an expenditure heading or to a revenue heading by a process akin to the one used for the collection costs of traditional own resources.

8. Whereas, in line with its constant concern to ensure that the principle of the universality of the budget is adhered to, the Court prefers these refunds to be charged to expenditure (the budget includes, moreover, a heading 'refunds to Portugal' in respect of VAT resources), it would not consider charging them to a negative revenue heading to be incompatible with the principle of universality. In contrast to the practice of deducting to cover refunds of collection costs [5], the charging of which it criticized in its Annual Report on the financial year 1989 (paragraph 1.5), in this case the operation is not one that can be shown by analysis to be in fact a form of reimbursement of expenses. It is rather an own resource which the Community is forgoing.

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(1) Doc. COM(90) 599 Final.

(2) By virtue of Articles 233 to 345 and Articles 210, paragraph 3, and 213 of the Act of Accession of the Republic of Portugal.

(3) By virtue of Articles 309 to 341 of the Act of Accession of the Republic of Portugal.

(4) Mentioned in Article 9 of Council Regulation (EEC, Euratom)No 1552/89 of 29 May 1989 (OJ No L 155, 7. 6. 1989).

(5) In accordance with Article 10 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 (OJ No L 155, 7. 6. 1989).

9. Consequently, the Court recommends that these funds should be charged to revenue, provided that they are charged to a distinct budgetary heading.

Remarks concerning the import ceiling and control

10. The Court suggests that the text of Article 1 of the Decision should specify that the quantity in question is 400 000 tonnes and that it should use the term 'import' rather than 'delivery'. Whereas the financial memorandum alludes to a ceiling of 400 000 tonnes a year, the text of Article 1, by referring to the period 'from 1 January 1991 to 31 December 1992', is ambiguous as to the period covered by the maximum limit. Moreover, both the text of Article 372 and the customs terminology argue in favour of the use of the word 'import' rather than 'delivery'.

11. The control mentioned in Article 3 of the proposal for a Decision concerns only the question of observance of the 400 000 tonne limit. It should also be provided for as regards the establishment of the actual amount of the funds.

This opinion was adopted by the Court of Auditors at a meeting on 21 February 1991.

For the Court of Auditors
Aldo ANGIOI
President