II

(Preparatory Acts)

COMMISSION

Proposal for a Council Regulation amending the Council Regulation (EEC, Euratom) No 1552/89 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources

(93/C 26/04)

COM(92) 519 final

(Submitted by the Commission on 11 December 1992)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 209 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to Council Decision 88/376/EEC, Euratom of 24 June 1988 on the system of the Communities' own resources [1], and in particular Article 8 (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Court of Auditors,

Whereas in the light of experience gained in applying Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources [2], it appears that the provisions of that Regulation must be adjusted;

Whereas the Community must have the own resources referred to in Article 2 of Decision 88/376/EEC, Euratom available in the best possible conditions and accordingly additional arrangements must be laid down for the States to provide the Commission with the own resources allocated to the Communities;

Whereas traditional own resources are levied by the Member States in accordance with laws, regulations and administrative provisions that are, where necessary, adapted to the requirements of Community regulations; whereas the Commission must monitor this adaptation and, where necessary, make proposals;

Whereas the Council and the representatives of the Governments of the Member States meeting within the Council adopted a resolution on 13 November 1991 on the protection of the financial interests of the Communities;

Whereas detailed rules must be laid down for satisfying the obligation to establish the own resources referred to in Article 2 (1) (a) and (b) of Decision 88/376/EEC, Euratom;

Whereas improvements should be made to the arrangements for the Member States to report to the Commission, in order to enable it to monitor Member States' action to recover own resources, in particular in cases of fraud and irregularities;

Whereas a time limit should be laid down for relations between Member States and the Commission, since new entitlements established by Member States in respect of earlier years are deemed to be establishments for the current year;

Whereas the Community's financial autonomy should be strengthened by a provision to the effect that in certain circumstances the amounts of established entitlements not recovered for reasons attributable to the Member States will have to be borne by them;

Whereas for own resources deriving from sugar levies, which need to be recovered in the budget year corresponding to the marketing year to which the expenditure relates, provision should be made for the Member States to make such levies available to the Community during the budget year in which they are established;

Whereas Member States are showing a growing interest in using the ecu for settling operations with the Commission, including in the field of own resources;

Whereas close collaboration between the Member States and the Commission will facilitate proper application of the financial rules relating to own resources,

HAS ADOPTED THIS REGULATION:

Article 1

Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC,

[1] OJ No L 185, 15. 7. 1988, p. 24.

[2] OJ No L 155, 7. 6. 1989, p. 1.

Euratom on the system of the Communities' own resources is amended as follows:

1. Article 1: the words '[last modified by Regulation . . .]' are added after '1553/89';

2. Article 2: the following paragraphs are inserted:

'1.(a) When the competent administrative authorities make an entry in the accounts within the meaning of the customs regulations, the notification for the purposes of the establishment referred to in paragraph 1 shall be the notification provided for in these regulations.

The date of the establishment referred to in paragraph 1 shall be the date of the entry in the accounts.

As regards the levies and other charges connected with the common organization of the sugar market, the date of the establishment referred to in paragraph 1 shall be the date of notification under the sugar regulations.

(b) In cases where the competent administrative authorities do not make an entry in the accounts for the customs debt on the basis of the customs regulations, even though the debtor is known and the amount due can be calculated as provided in paragraph 1, and the amounts involved exceed ECU 2 000, and *ad hoc* entry is made in the accounting ledgers without notification of the debtor for the purposes of the establishment referred to in paragraph 1.

The date of the establishment referred to in paragraph 1 shall be the date of the entry in the accounting ledgers.

(c) In disputed cases, the competent administrative authorities shall be deemed, for the purposes of the establishment referred to in paragraph 1, to be in a position to calculate the amount of the entitlement no later than when the first administrative decision is taken notifying the debtor of the debt or when judicial action is brought if this occurs first.

The date of the establishment referred to in paragraph 1 shall be the date of the abovementioned decision or of initiation of judicial action.';

3. Article 4:

— Point (a) of paragraph 1 is replaced by the following:

'(a) of the names of the departments or agencies responsible for establishing, collecting, making available and controlling own resources and, where appropriate, their status;'.

— In point (b) of paragraph 1 the phrase 'and collection of own resources and their being made available to the Commission' is replaced by 'collection, making available and control of own resources'.

— The following sentence is added at the end of paragraph 1:

'The Commission shall be informed immediately of any change in these names or provisions.';

4. Article 5: the words 'sugar levies' are inserted after 'agricultural levies' and the last sentence of the Article is deleted;

5. Article 6:

— In point 2(a) the ordinal '19th' is replaced by '5th'.

— The following is added at the end of point 2 (a):

'For accounting purposes the month shall end no earlier than 1 p.m. on the last working day of the month.'

— In the second sentence of point 2 (b) the words 'full or partial' are inserted before 'security'.

— The following new point 2 (c) is inserted:

'Established entitlements relating to levies and other charges connected with the common organization of the sugar market shall be entered in the accounts referred to in point (a). If these entitlements are not then recovered within the time limits set, the Member States may correct the entry and, by way of exception, enter the entitlements in the separate accounts.'

— Point 2 (c) is renumbered point 2 (d).

— The first subparagraph of paragraph 3 is replaced by the following:

'3. (a) Each Member State shall send the Commission, within the time limits specified in paragraph 2, a monthly statement of its accounts for the entitlements referred to in paragraph 2 (a), using the form of which a specimen is annexed to this Regulation.

Together with each monthly statement the Member States shall indicate the cases of fraud and irregularities already reported to the Commission pursuant to paragraph 4 where amounts have been recovered or a decision has been taken to waive recovery and shall give the reference of the initial report.

Together with these monthly statements the Member States concerned shall provide details or statements of deductions from own resources based on provisions relating to special-status territories.

(b) Each Member State shall send the Commission, within the time limits specified in paragraph 2, a quarterly statement of the separate accounts referred to in paragraph 2 (b), using the form of which a specimen is annexed to this Regulation.

Together with the quarterly statement each Member State shall give details of the position concerning cases of fraud and irregularities where entitlements have been established. The presentation shall be the same as that of the quarterly statement and reference shall be made to the initial report.'

— The second subparagraph of paragraph 3 is renumbered paragraph 4 and reads as follows:

'4. In the two months following the end of each quarter, each Member State shall send the Commission a description of cases of fraud and irregularities detected involving entitlements of over ECU 10 000.

As far as possible, each Member State shall provide the following details:

— type of fraud and/or irregularity (designation, customs procedure concerned),

— amount of own resources evaded (or presumed order of magnitude),

— goods involved (tariff heading, origin, place from which they come),

— concise description of fraud mechanism,

— type of check that led to discovery,

— national departments or agencies which detected the fraud or irregularity,

— stage reached in procedure, with reference of establishment if already made,

— reference of notification of case under mutual assistance arrangements (Regulation (EEC) No 1468/81),

— if appropriate, the Member States involved,

— measures taken or envisaged to prevent the recurrence of cases of fraud and irregularities already detected.

Specimen forms for providing the above descriptions shall be drawn up by the Commission after consulting the ACOR. Any changes to these specimen forms shall be adopted by the same procedure.';

6. Article 7 is replaced by the following:

'Article 7

1. Each Member State shall draw up annually a summary account of established entitlements shown in the accounts referred to in Article 6 (2) (a) and shall send it to the Commission before 1 March of the year following the financial year in question. A remark shall be added to explain any difference between the total of the summary account and the sum of the monthly statements sent in by the Member States from January to December of the year in question. The Commission shall check that the summary account tallies with the amounts made available during the year; it shall have two months after receiving the summary account, in which to make any observations to the Member State concerned.

2. After 31 December of the third year following a given year, no corrections shall be made to the summary account referred to in paragraph 1, except on points notified before this date either by the Commission or by the Member State concerned.';

7. Article 8: the second paragraph is deleted;

8. Article 9 is replaced by the following:

'Article 9

1. In accordance with the procedure laid down in Article 10, each Member State shall credit own resources, in ecus or in national currency, to one of the accounts opened in the name of the Commission with its Treasury or the body it has appointed.

These accounts shall be kept free of charge.

2. The amounts credited in national currency shall be converted by the Commission and entered in its accounts in ecus in accordance with Commission Regulation 86/610/EEC, Euratom, ECSC of 11 December 1986 laying down detailed rules for the implementation of certain provisions of the Financial Regulation of 21 December 1977.';

9. Article 10:

— In the first subparagraph of paragraph 1, the phrase 'with any necessary adjustment for amounts of own resources which could not be recovered for reasons attributable to the Member States, entry in national currencies of' is inserted after 'Decision 88/376/EEC, Euratom', and the ordinal '19th' is replaced by the ordinal 'fifth'.

— In the second subparagraph of paragraph 1, the ordinal '19th' is replaced by the ordinal 'fifth'.

— In second paragraph, the ordinal '15' is replaced by the ordinal 'first'.

— The first subparagraph of paragraph 3 is replaced by the following two subparagraphs:

'3. VAT resources, the additional resources, excluding the own resources for the EAGGF monetary reserve, and, where appropriate, GNP

financial contributions shall be credited, in ecus or in national currency at the choice of the Member State, on the first working day of each month, the amounts being one twelfth of the relevant totals in the budget.

If the Member State opts for entry in national currency the amount due is converted at the national currencies rate of exchange of the last day of the calendar year preceding the budget year, as published in the *Official Journal of the European Communities.*

If the Member State opts for entry in ecus the amount of national currency is determined according to the previous subparagraph and converted into ecus at the rate of exchange of the penultimate working day of quotation of the month before entry.

The Member States shall inform the Commission of their choice. They may alter this choice provided they inform the Commission no later than the fifth day of the month before the change takes effect.'

— In the second subparagraph of paragraph 3, the following is added:

'However, if the situation as regards the implementation of the budget for the year is such that the entry relating to the monetary reserve is not necessary to achieve a balance between revenue and expenditure for the year, the Commission may decide to dispense with this entry or part of this entry.'

— In the fifth subparagraph of paragraph 3 after 'preceding the budgetary exercise' Add:

'If the entry is made in ecus the amount in national currency is converted into ecus at the rate of the penultimate working day of quotation in December.'

— In paragraphs 4 and 7 after 'for them to enter it' add: 'in national currencies'.

10. Article 11: the following second paragraph is added:

'Any delay in the payment of interest due shall give rise to the payment of further interest at the rate last applied to the principal.'

11. Article 15: in the second indent of the first paragraph and the first indent of the second paragraph, 'Article 6' is replaced by 'Article 7'.

12. Article 17:

— Paragraph 2 is replaced by the following:

'2. Member States shall be released from the obligation to make available to the Commission the amounts corresponding to established entitlements solely if, for reasons of *force majeure*, these amounts have not been recovered. In addition, Member States may disregard this obligation to make such amounts available to the Commission in specific cases if, after thorough assessment of all the relevant circumstances of the individual case, it appears that recovery is definitively impossible for reasons which cannot be attributed to them.

Inadequate security for the own resources to be recovered shall not be considered a reason which cannot be attributed to the Member State.

The Commission shall be notified every six months of the cases referred to in the previous subparagraph, where the amounts involved exceed ECU 10 000, or ECU 2 000 in the case of errors attributable to the competent administrative authorities or *force majeure*, converted into national currency at the rate applying on the first working day of October of the previous financial year; this notification shall be given within three months of the end of each six-month period and must indicate the reasons why the Member State was unable to make available the amounts in question.

The Commission shall have six months after receiving all the necessary information in which to make any observations to the Member State concerned.'

— Paragraph 3 is replaced by the following:

'3. Member States shall inform the Commission, by means of annual reports, of the details and results of their inspections and of the overall data and questions of principle concerning the most important problems arising out of the application of this Regulation and, in particular, matters in dispute. This report shall be sent to the Commission by 31 March of the year following the financial year in question.'

Article 2

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

It shall apply from ... 1993.

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

ANNEX

SPECIMEN I

Monthly statement

OWN RESOURCES OF THE EUROPEAN COMMUNITIES

(National currency)

Statement of established entitlements (1)

Member State:

Month:

Establishment:

Payment:

Nature of resource	Member State's reference (optional)	Amounts established during month (2) (1)	Corrections to earlier establishments (3) + (2)	Corrections to earlier establishments (3) − (3)	Gross amounts to be paid to the Communities (4) = (1) + (2) − (3)
1210 Customs duties (excluding ECSC and anti-dumping) 1220 ECSC duties 1230 Countervailing and anti-dumping duties on products 1240 Countervailing and anti-dumping duties on services					
12 CUSTOMS DUTIES					
1010 Agricultural levies and compensatory charges on imports 1020 Export levies 1030 Monetary compensatory amounts on imports 1040 Monetary compensatory amounts on exports 1050 Accession compensatory amounts					
10 AGRICULTURAL LEVIES					
1110 Sugar storage levies 1100 Sugar production levies — A and B quotas 1120 Isoglucose production levies 1130 Levies on C sugar and isoglucose not exported 1140 Levies on substitute C sugar and isoglucose 1150 Additional levy					
11 SUGAR AND ISOGLUCOSE LEVIES					
GRAND TOTAL					
				− 10 % collection costs	
				Net amount to be paid to the Communities	

(1) Including entitlements established as a result of inspections and cases of fraud.

(2) Including accounting corrections and amounts recovered after being entered in the separate account.

(3) Corrections to initial establishments, in particular cases of post-clearance recovery and repayment. For sugar, corrections relating to earlier years must be mentioned.

SPECIMEN II

Quarterly statement

OWN RESOURCES OF THE EUROPEAN COMMUNITIES — SEPARATE ACCOUNT (1)

(National currency)

Statement of established entitlements not included in 'A' accounts

Member State:

Quarter:

Nature of resource	Outstanding from previous quarter	Established entitlements for current quarter	Corrections' of establishments (Article 8) (2)	Amounts which cannot be made available (Article 17 (2) (3)	Total (2 + 3) — (4 + 5)	Amounts recovered during quarter (national currency)	Outstanding at end of current quarter
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8) = (6) — (7)
1210 Customs duties (excluding ECSC and anti-dumping)							
1220 ECSC duties							
1230 Countervailing and anti-dumping duties on products							
1240 Countervailing and anti-dumping duties on services							
12 CUSTOMS DUTIES							
1010 Agricultural levies and compensatory charges on imports							
1020 Export levies							
1030 Monetary compensatory amounts on imports							
1040 Monetary compensatory amounts on exports							
1050 Accession compensatory amounts							
10 AGRICULTURAL LEVIES							
1110 Sugar storage levies							
1100 Sugar production levies — A and B quotas							
1120 Isoglucose production levies							
1130 Levies on C sugar and isoglucose not exported							
1140 Levies on substitute C sugar and isoglucose							
1150 Additional levy							
11 SUGAR AND ISOGLUCOSE LEVIES							
TOTAL 12 + 10 + 11							
						— 10 % collection costs	
						Net amount to be recovered	

(1) 'B' account kept pursuant to Article 6 (2) (b) of Regulation (EEC) No 1552/89, including entitlements established as a result of inspections or cases of fraud.

(2) Correction of establishments should also be understood to mean cancellations arising from a revision of the initial establishment, other than those entered in column (5).

(3) Cases involving amounts in excess of ECU 10 000 are referred to in the report required by Article 17 (3).