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(Information)

COURT OF AUDITORS

OPINION No 8/99

on a Council proposal for a decision concerning the European Union's system of own resources

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

(1999/C 310/01)

THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community and in particular Articles 248(4) and 269 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community and in particular Article 173 thereof,

Having regard to the Financial Regulation applicable to the general budget of the European Communities ([1]), as last amended by Council Regulation (EC, ECSC, Euratom) No 2779/98 of 17 December 1998 ([2]), and in particular Articles 2 and 4(1) thereof,

Having regard to Council Directive No 89/130/EEC, Euratom of 13 February 1989 concerning the harmonisation of the calculation of gross national product at market prices ([3]),

Having regard to the European System of Integrated Economic Accounts (ESA, 1995),

Having regard to Council Regulation (EC) No 2223/96 of 25 June 1996, concerning the European system of national and regional accounts in the Community ([4]),

Having regard to the Commission's working document on the procedures for calculating the correction of budgetary imbalances,

Having regard to the proposal for a Council decision on the European Union's system of own resources submitted by the Commission ([5]),

Having regard to the Council's request for the Court of Auditors' opinion, dated 4 August 1999 and received on 9 August 1999,

Whereas the Berlin European Council of 24 and 25 March 1999 concluded that changes to the system of own resources were desirable, stating that the said system must be equitable, transparent, satisfactorily cost effective and simple and that it must be based on criteria that best reflect each Member State's ability to contribute;

Whereas the European Council decided that it would be expedient to increase the share of traditional own resources retained by the Member States by way of collection expenses from 10 % to 25 %;

Whereas it is in the European Union's interest to have a stable system of financing, in which all the Member States contribute towards funding the budget in accordance with the same principles, and that this system must show consistency between the resources chosen and the relevant collection and control procedures;

Whereas the most appropriate information as to any budgetary imbalances is provided by the effects of budgetary policies rather than simple financial flows and it is at the moment of the adoption of the financial perspectives and the budget that the budgetary authorities are able to direct (geographically and otherwise) the effects of Community funding,

([1]) OJ L 356, 31.12.1977, p. 1.
([2]) OJ L 347, 23.12.1998, p. 3.
([3]) OJ L 49, 21.2.1989, p. 26.
([4]) OJ L 310, 30.11.1996, p.1.

([5]) Commission document, ref 99/0139 (CNS) — doc 10029/99 — COM (1999) 333 final of 8 July 1999.

HAS ADOPTED THE FOLLOWING OPINION:

GENERAL OBSERVATIONS

Maintenance of the existing system

1. Following the Berlin European Council's conclusions, the proposal for a decision substantially preserves the existing system of own resources, with some adjustments aimed at modifying the distribution of the financial burden among the Member States. Essentially, this system remains the one that has been in force since 1988. Numerous problems, in particular regarding administration, consistency and lack of transparency, have been brought up in the past, not only by the Court of Auditors ([1]), but also by the European Parliament, the Commission, the Economic and Social Committee and the Committee of the Regions.

A complex system

2. As the Court has already noted ([2]), the structure and workings of the current system, which is as detailed as a traditional budgetary system based on tax revenue, appeared to be disproportionate to the fact that the VAT and GNP resources are financial contributions.

3. For example, the maintenance of both the VAT and GNP resources has the effect of consolidating a structure that is both complicated and not very consistent. Indeed, the VAT resource assessment base, which is not directly based on a tax base declared by taxpayers, is heavily influenced by statistical data. In order to reduce the weight of the VAT resource in the funding of the budget, the system provides that its assessment base should be capped at 50 % of GNP. This will be the case for seven Member States in the year 2000 ([3]). The contributions based on the VAT resource are therefore largely based on the same data as the GNP resource.

4. In order to solve the problem of budgetary imbalances, the system provides that a Member State's payments may be reduced by way of a correction. The calculation of this correction is complex and covers several financial years, given that it is first estimated, then revised and, finally, definitively established. The adoption of this decision could have been an opportunity for simplifying the calculation and funding of this correction, thus making the system more transparent, and this could have been done, *inter alia*, on the basis of the Commission's previous proposals ([4]).

The question of budgetary imbalances

5. In 1984 ([5]), the European Union recognised that 'any Member State sustaining a budgetary burden which is excessive in relation to its relative prosperity may benefit from a correction at the appropriate time'. At the same time, it had also been pointed out that, in the long term, the question of budgetary imbalances could only be resolved by way of expenditure policy.

6. Since then it has not been possible to solve this problem by way of expenditure policy. The principle of a correction on the revenue side has therefore prevailed for 15 years.

7. There is still no precise and objective definition of the notions of 'excessive budgetary burden' and 'the relative prosperity' of a Member State. This also means that it has been impossible to introduce a generalised system, bearing in mind that, in theory, any Member State may benefit from a correction of this sort.

8. The calculation of this correction is based on the net difference between the revenue paid in to the Community budget and the payments received from the European Union. As the Court of Auditors and the Commission have already had occasion to note ([6]), net gains or losses are not good indicators of the advantages to be gained from Community policies. The Berlin European Council also acknowledged that there were 'various factors which act directly or indirectly on budgetary imbalances, such as the overall level of spending, the content of policy reforms, the composition of expenditure, and the own resources structure' ([7]).

SPECIFIC OBSERVATIONS

Articles 2, 3, 4, 8, 10

9. The entry into force of the new decision would render Council Regulation (EC) No 2223/96, concerning a European system for national and regional accounts (ESA 1995), applicable to own resources. The text of the proposed decision refers to gross national product (GNP). This aggregate does not figure among those defined

([1]) Opinion No 8/93 on an assessment of the system of own resources introduced in 1998 in the light of the conclusions of the Edinburgh European Council meeting (not published in the Official Journal); Special Report No 6/98 on the system of own resources based on VAT and the GNP (OJ C 241, 31.7.1998, pp. 58 to 80).

([2]) Special Report No 6/98, paragraph 5.2.

([3]) Greece, Spain, Ireland, Luxembourg, the Netherlands, Portugal, the United Kingdom. Draft general budget for the financial year 2000, volume 1, table 1.

([4]) The financing of the European Union, in particular paragraph 1.3.1 and Annex 4; COM (1998) 560 final of 7 October 1998,

([5]) Fontainebleau European Council of 25 and 26 June 1984.

([6]) Special Report No 6/98, paragraphs 3.29 to 3.33. The financing of the European Union, COM(1998) 560 final of 7 October 1998, paragraph 2, pages 17 to 20.

([7]) Presidency conclusions, paragraph 68.

by the Regulation in question, although it does specify that it is conceptually similar to gross national income (GNI) [1].

10. The reference to GNP is therefore not relevant in this context. In the decision proposal, it would therefore be appropriate to refer to GNI. This would also mean that the Council would not subsequently have to be asked to establish the aggregate applicable to own resources.

Article 2.3

11. It is proposed that the share of traditional own resources (agricultural levies, sugar and isoglucose levies and customs duties) retained by Member States from the funds they collect for and on behalf of the European Union to cover expenses for collection, monitoring, fraud fighting and reporting expenses should be increased from 10 % to 25 %.

12. The current percentage of 10 % is granted as a flat rate to cover all collection expenses, without the Member States having to supply any supporting documents. This appropriation, which actually constitutes an item of expenditure, is entered in the budget as negative revenue — a departure from the principle that revenue and expenditure should be entered without any adjustment against each other [2].

13. Given its scope, its flat-rate character and the fact that it is the same for all Member States, the proposed increase should be explained further. Given that the expenditure in question would amount to several thousand million euro [3], the principle of sound financial management enshrined in the Financial Regulation requires that it should be linked to a precise and measurable objective [4]. In actual fact, in the absence of any evaluation of the effectiveness of the national authorities and any procedure to verify real costs and the progress achieved in recovery, this measure is more like a rebate than compensation for collection expenses.

14. Furthermore, whereas the European Council had stated that the aim of the increase was merely to cover collection expenditure [5], the proposed decision broadens this aim to include other fields like the fight against fraud or even health and safety [6]. If expenditure other than that directly related to the recovery of own resources is to be financed, the creation of appropriate budget expenditure headings constitutes the only lawful and transparent means of doing this in accordance with the principles of Article 271 EC and the Financial Regulation.

15. With regard, in particular, to anti-fraud measures, Article 280 of the EC Treaty in itself constitutes an obligation for the Member States to act against any fraud that might damage the Community's financial interests above and beyond the individual field of traditional own resources.

16. The fact of keeping the 10 % rate of retention for amounts that have been or should have been established before 31 December 2000 complicates the calculation of the amounts to be made available over a period of several years, whereas its financial impact is small. For this reason, it would be better to limit its effects to a transitory period like the one for the amounts established in the financial year 2001 in respect of previous years.

Article 2.4

17. The calculation of the uniform rate for the VAT resource continues to depend on three factors: the maximum rate provided for in Article 2.4 (a) of the proposed decision, the amount of the correction and its financing. For this reason, a certain amount (the so-called 'frozen rate') is excluded from the maximum rate every year to cover the financing of the correction. This situation is a source of needless complications and is based on calculations that are less than transparent. As pointed out in paragraph 4 above, it would have been useful if the simplification proposals put forward by the Commission itself had been taken into account.

18. If Article 2.4 is kept in its current form, it would be useful if the underlying reasons for the existence of the 'frozen rate' were made explicit, for example in the preamble to the decision proposal.

Article 2.7

19. The Court would once again point out its observations in paragraph 10.

Articles 3.1 and 3.2

20. In order to take existing terminology into account, the term 'commitment appropriations' should be replaced with 'appropriations for commitments' and 'payment appropriations' with 'appropriations for payments'. The same applies to the 10th recital of the proposed decision.

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(1) Regulation (EC) No 2223/96, paragraph 8.94 (OJ L 310, 30.11.1996, pages 243 and 244).
(2) Principle laid down in Article 4 of the Financial Regulation.
(3) An amount of EUR 1 600 000 000 was allocated to the Member States for the financial year 1998 as expenses for the collection of traditional own resources. In 1998, the application of a rate of 25 % would have involved an amount of EUR 3 900 000 000.
(4) The second sentence of the first subparagraph of Article 2 of the Financial Regulation: 'quantified objectives must be identified and the progress of their realisation monitored.'
(5) Presidency conclusions, paragraph 71.
(6) COM(1999) 333 final of 8 July 1999, paragraph 2, subparagraph 3, page 4.

Article 3.4

21. The notion of 'significant changes' should be defined so as to specify a threshold or identify who is responsible for taking decisions on this point.

Article 4

22. See the Court's observations in paragraphs 4 and 8.

23. The decisions of the Berlin European Council [1] confirmed the conclusions of the Fontainebleau Council of 1984 and extended the possibility of benefiting from such a correction to all Member States. It would therefore be useful to specify under which conditions a Member State may take advantage of this possibility without an amendment having to be made to the decision on own resources, whose adoption would then be subject to national ratification procedures.

Article 4(b)

24. The decision proposal does not give a definition of 'allocated expenditure'. It should therefore specify the criteria for allocating Community expenditure to the Member States.

Article 4(f)

25. The proposed text would not enable the complete neutralisation of the effect of enlargement expenditure on the correction. Indeed, the expenditure to be taken into account for the calculation of the correction would be limited, after accession, to the expenditure for the year preceding accession. However, in accordance with the financial perspectives [2], post-accession expenditure would, in the long term, be five times higher than pre-accession expenditure. The Berlin European Council wished to guarantee that unabated expenditure should remain unabated after accession [3]. The question remains as to whether the proposed text complies with this condition.

Article 5.1

26. It is suggested that the first sentence of the second subparagraph should be worded as follows: 'the distribution of the cost shall first be calculated with reference to each Member State's gross national income's (GNI) share of the total of the GNIs of the European Union, the United Kingdom being excluded; it shall then be adjusted...'.

Article 5.2

27. In order to take current practice into account, it should be specified that the funding of the correction is already entered under a specific chapter of the budget.

Article 5.3

28. Although the decision provides that 'the Commission shall perform the calculations required', it does not completely specify the criteria for this, as is shown, for example, in paragraph 24. This leads to an ambiguous situation as to the nature of the task entrusted to the Commission. It is unclear whether it is supposed to carry out a simple calculation or is competent to supplement the decision in such a way as to make this calculation possible.

29. Current practice shows that a 'calculation method' has been established by the competent Commission department so as to specify the procedures for the calculation, revision and financing of the correction. This internal document completes, de facto, certain criteria laid down in the decision on own resources, including the definition of 'allocated expenditure'.

30. It is understandable that, for practical reasons in particular, it should be considered preferable to further specify certain criteria necessary for the calculation of the correction in another document. Such an eventuality should take account of the requirement for transparency and legal safety. The Court notes that Article 8(2) of the proposed decision is intended to allow the Council to adopt implementing provisions.

Article 6

31. In an equivalent provision to this Article, the current decision on own resources mentions the rule that revenue should not be allocated to expenditure. This reference to this principle should be kept here.

Article 8.1, first subparagraph

32. In the French version, the last sentence reads 'points a) et b)'. It should read 'points a) **à d)'**.

Article 8.2

33. Article 248(2) EC entrusts the Court with the task of examining the legality, regularity and sound financial management of revenue and expenditure. The second subparagraph of this pro-

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[1] Presidency conclusions, paragraph 68.
[2] Interinstitutional agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and the improvement of the budgetary procedure, OJ C 172, 18.6.1999, p. 15.
[3] Presidency conclusions, paragraph 72.

vision provides that revenue shall be audited on the basis both of the amounts established as due and the amounts actually paid to the Community.

34. Article 8(2) of the proposed Decision, in so far as it interprets the subject of the Court's checks and audits, would be tantamount to amending a provision of the Treaty outside the procedure laid down for that purpose.

35. In any case, the Court feels that the proposed provision cannot have the effect of limiting its audit powers under the Treaty.

Article 9

36. The Commission already submitted a report on the functioning of the system of own resources in 1998 ([1]). It would be useful to specify the nature of the examination that it is asked to carry out with regard to the question of budgetary imbalances.

Article 10.1

37. The last sentence of the third paragraph should read 'Article 2(3) and **Article** 4'.

This opinion was adopted by the Court of Auditors in Luxembourg at the Court meeting of 7 October 1999.

For the Court of Auditors

Jan O. KARLSSON

President

([1]) The financing of the European Union, COM(1998) 560 final of 7 October 1998.