



Council of the  
European Union

Brussels, 6 October 2016  
(OR. en)

12994/16

RESPR 6  
FIN 628

## COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	5 October 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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No. Cion doc.:	COM(2016) 639 final
Subject:	Report from the Commission to the European Parliament and the Council : Eighth Report from the Commission on the operation of the inspection arrangements for traditional own resources (2013–2015) (Article 18(5) of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000

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Delegations will find attached document COM(2016) 639 final.

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Encl.: COM(2016) 639 final



Brussels, 5.10.2016  
COM(2016) 639 final

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

**Eighth report from the Commission on the operation of the inspection arrangements for  
traditional own resources (2013–2015) (Article 18(5) of Council Regulation (EC,  
Euratom) No 1150/2000 of 22 May 2000**

## 1. INTRODUCTION

The Commission regularly compiles a report for the European Parliament and the Council on the operation of the inspection arrangements for traditional own resources (TOR)<sup>1</sup>.

The inspections of TOR are based on Council Decision 2007/436/EC, Euratom of 7 June 2007<sup>2</sup>, Council Regulation No 1150/2000 of 22 May 2000<sup>3</sup> and Council Regulation No 1026/1999 of 10 May 1999<sup>4</sup>.

*Traditional own resources (TOR): customs duties on products imported from third countries, plus sugar levies. Over the period 2013-2015 more than EUR 50 billion was made available (net). The yearly average was EUR 16.8 billion.*

This report, the eighth of this type, describes and analyses the operation of the inspection system for TOR for the period 2013 to 2015<sup>5</sup>. It reports on the inspections carried out by the European Commission of traditional own resources over this period and includes:

- the inspections carried by the Commission on the spot in Member States and their follow-up;
- the follow-up of the European Court of Auditors' preliminary findings letters;
- the examination of irrecoverable entitlements that have been written off;
- the treatment of Member States' errors leading to a loss of traditional own resources;
- the management of the database relating to fraud and irregularities (OWNRES);
- the pilot work on audit of A and B accounts by Member States;
- the assistance to the candidate countries.

## 2. TOR INSPECTIONS' FRAMEWORK AND METHODOLOGY

### 2.1. TOR regulatory and operational framework

The responsibility for collecting TOR is delegated to the Member States. They must make the duties collected available to the EU budget and are allowed to retain, by way of collection costs, 25%

*Type of checks:*

*Checks on regulations: Checks on Member States' provisions*

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<sup>1</sup> Article 18(5) of Regulation No 1150/2000

<sup>2</sup> OJ L 163, 23.6.2007, p. 17

<sup>3</sup> OJ L 130, 31.5.2000, pp. 1-9, as amended by Council Regulation No 1377/2014 of 18 December 2014 (OJ L 367, 23.12.2014, p. 14)

<sup>4</sup> OJ L 126, 20.5.1999, p. 1

<sup>5</sup> The report focuses on the checks made by the EU 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.

of all amounts of TOR made available to the Commission<sup>6</sup>. The Member States are required to carry out checks themselves and to report to the Commission.

However, the Commission retains important inspection powers in this field. To supervise the system for the collection of TOR several types of checks by the Commission are possible: checks on regulations, checks on documents and on-the-spot inspections. The Commission is also required to respond to the observations made by the Court of Auditors in its Annual Report, special reports or preliminary findings letters and also to the observations and recommendations made by the European Parliament during the discharge procedure in respect of the implementation of the budget. The Commission ensures that the Member States apply the EU rules correctly and reports to the budgetary authority.

The Commission's inspection activities have three specific objectives:

- To maintain a level playing field between Member States and economic operators, regardless of where the goods are cleared through customs in the EU. The Commission must ensure that EU rules are applied uniformly so as to prevent distortions of competition;
- To improve the situation as regards recovery. The Commission must reassure itself that the Member States comply with their responsibilities when it comes to collecting and making available TOR. Any administrative and financial impacts should also be shared proportionally among the Member States;
- To inform the budgetary authority. From the inspection findings the Commission is able to judge the effectiveness and diligence of the Member States with regard to the collection and making available of TOR, to take the measures necessary to remedy any shortcomings and ultimately to report to the budgetary authority.

## 2.2. Objectives and methodology of TOR on-the-spot inspections

The general aim of the inspections on traditional own resources is to gain assurance that the procedures in place in Member States comply with the relevant EU legislation and that the EU's financial interests are appropriately protected. Each year various customs and accounting topics are examined.

*concerning the system for collecting TOR.*

***Checks on documents:** Analysis of accounting statements and all kind of accounting documents and files from Member States, including Member States' reports on irrecoverable entitlements.*

***On-the-spot inspections:** check on the conformity with EU legislation of national systems and underlying documents from both the accounting and customs perspective. These inspections are carried out jointly with the Member States concerned or autonomously.*

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<sup>6</sup> At the European Council of 8 February 2013, it was agreed that from 1 January 2014 Member States would retain, by way of collection costs, 20% of the amounts collected. This will be applied retroactively after the entry into force of the new Own Resources Decision.

The Commission's on-the-spot inspections are based on a precise methodology to check that procedures are consistent with EU standards. They are planned as part of an annual inspection programme containing a number of topics to be inspected in one or more Member States. The inspection programme is planned and its topics selected on the basis of risk analysis. All the inspections are carried out using standardized procedures and involve the use of tailor-made audit tools, i.e. questionnaires sent to the Member States in advance and check-lists, including test programs, to be used on the spot. This is to ensure that the inspections are carried out, and that the reports are drafted, in a consistent manner.

### 3. INSPECTIONS CARRIED OUT BY THE COMMISSION OVER THE PERIOD 2013-2015

During the period 2013-2015 the Commission carried out **86 inspections** under Article 18 of Regulation No 1150/2000. Six of these inspections were carried out under the Joint Audit approach<sup>7</sup>.

*86 inspections giving rise to 288 findings.*

*Joint Audit approach: Special types of joint inspection under which Member States' internal audit departments conduct an audit in accordance with a method approved by the Commission.*

Of the 288 findings noted, 122 had a direct financial impact (42.36%) and 63 a regulatory impact (21.88%). The Commission has taken appropriate measures to ensure that Member States make available to the EU budget the amounts involved, where appropriate.

#### 3.1. Inspections relating to customs matters

In 2013 and 2015, the inspections focused on the **entry of goods in the customs territory of the EU**. They covered the presentation of goods to customs, the definition, coverage and accuracy of summary declarations for temporary storage, the authorisations for temporary storage facilities, the monitoring of goods in temporary storage and the timely and correct duty establishment.

Thematic reports are often drafted in order to consolidate the findings made during the inspections on a specific topic and the follow-up to these findings. A **thematic report on entry** was drawn up by the Directorate-General for Budget and was presented to the Member States in the Advisory Committee on Own Resources (ACOR) on 4 December 2014 and to the Customs Policy Group (CPG)<sup>8</sup> of 16-17 December 2014. The eight inspections performed in 2013 and the three inspections in 2015 have shown that in the Member States visited the majority of the defined objectives were properly adhered to. However, 32 findings were communicated to Member States, including compliance issues and requests for improving their procedures.

In 2013 and 2014, the inspections focused on the **end-use customs procedure** which was examined in 18 Member States. They particularly covered the authorising procedures, the

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<sup>7</sup> Inspections in Denmark and Austria

<sup>8</sup> The Customs Policy Group includes Directors General of national customs administrations

customs supervision, the control of the assignment of the goods to the prescribed end-use and the timely and correct entry in the accounts of import duties. The findings communicated related mainly to weaknesses in the authorisations of end-use and in the customs supervision, to insufficient checks and to inconsistencies in the customs declarations.

In 2014, the inspections focused on the **follow-up by Member States of cases of fraud and irregularities**. The fields examined included the management, the assessment and the follow-up of risk information relating to potential cases of frauds and irregularities, the implementation of the Common Priority Control Area Discount and the timely establishment and recovery of the debts.

A **thematic report** on this topic was also drawn up by the Directorate-General for Budget and was presented to the Member States in the Advisory Committee on Own Resources (ACOR) meeting of 7 July 2015 and to the Customs Policy Group on 4 December 2015. The 20 inspections led to the communication of 37 findings to the Member States visited most of which requiring improvements in the monitoring and control procedures to manage Risk Information Forms and Mutual Assistance Communications through the timely set-up of comprehensive risk profiles to cover the identified risk. The findings and their follow-up also concerned Member States' diligence, the monitoring of ex-post checks and other follow-up measures.

In 2015, five inspections concerning the **management of tariff suspensions and quotas** were carried out to examine in particular whether the benefit of tariff suspensions and quotas was only granted to eligible persons and for the quantities available, whether adequate customs controls were carried out and whether corresponding duties were calculated correctly and made available timely. The majority of the Member States were found to be compliant with EU legislation ensuring an adequate protection of the EU's financial interest. Shortcomings were nevertheless identified concerning the management of tariff quotas, the checks performed and the making available of TOR amounts in case of partial allocation or denial of a quota. The Commission asked the Member States concerned to quickly remedy the situation.

In addition, the **management of preferential tariff measures** was examined in four countries. Here attention was focussed on the procedures and conditions for granting the preferential treatment, the monitoring of incomplete declarations and missing proofs of origin, the checks and the risk analysis and the subsequent requests of verification of origin. Although as a whole an adequate protection of the EU's financial interests is ensured, shortcomings were found in relation to the subsequent verifications of proofs of origin and the content and the processing of the customs declarations with preferential origin. It should be noted that the European Court of Auditors published a special report in 2014 on this topic<sup>9</sup>.

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<sup>9</sup> ECA Special Report No 2 'Are preferential trade arrangements appropriately managed?'

Member States are generally committed to improve their systems. Most of the above-mentioned findings have already been addressed or are being so.

### 3.2. Inspections relating to accounting matters

**The management of the separate account<sup>10</sup> combined with the corrections of the normal account** is a recurrent topic which is inspected in all Member States visited, in addition to the main customs topic. This account represents a valuable source of information on how administrations carry out their responsibilities as regards the management of TOR (establishment of entitlements, management of guarantees, monitoring of recovery, cancellations, writing-off of irrecoverable debts). Comprehensive inspections were conducted in three Member States entirely **on this topic**. The inspections carried out over the period 2013-2015 on this topic confirmed that most errors were one-off and that systematic errors were exceptional. The Member States assumed the financial consequences resulting from the findings noted. The Commission's inspections confirmed that the overall situation was improving thanks to the pressure exerted by the Commission's inspections and also to the introduction in most Member States of electronic customs and/or accounting systems reducing the risk of one-off errors. However, Member States must sustain their efforts to ensure the diligent management of the separate account and the corrections of the normal account. The Commission will continue to monitor closely Member States' diligence in their recovery efforts.

*The Member States enter TOR in 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.

**TOR collection system:** All the systems and procedures introduced by the Member States to ensure that TOR are established, entered in the accounts, recovered and paid.

**Irrecoverable TOR** are to be withdrawn from the separate account after a defined period of time. The amounts must be made available (paid) to the Commission unless they cannot be recovered for reasons of force majeure or other reasons which cannot be attributed to the Member State.

A series of inspections was also carried out in six Member States on the **reliability of the normal and separate account statements**. The general conclusion was that the procedures in place to establish these statements complied with the EU provisions and ensured the protection of the EU's financial interests. The findings communicated following these inspections concern one-off errors or systematic shortcomings with a limited financial impact.

Finally, as a follow-up to earlier problems detected in the Belgian TOR collection system, the external audit performed on the customs clearance and on the TOR accounting systems (required by the Commission) was reviewed and found generally acceptable. The external auditor concluded that the Belgian TOR bookkeeping and the resulting amounts transferred to the Commission are free from material error and that the overall reliability of the accounts is not compromised by the errors (some of them with financial impact) found. The follow-up of the remedial action requested by the Commission is ongoing. However, the review of the external audit allowed lifting the Director General's reservation on the reliability of the

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<sup>10</sup> Also called B account

Belgian accounts expressed in his declarations of assurance in the Annual Activity Reports of DG Budget for 2011 and 2012.

#### **4. FOLLOW-UP TO THE COMMISSION'S INSPECTIONS**

##### **4.1. 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 EU requirements. Such adjustments are an important result of the Commission's inspections. The findings identified are also an essential source of information on the problems encountered by the Member States in applying customs regulations and their impact on TOR.

##### **4.2. Outcome of disputes**

Some points in the rules remain a source of disagreement between the Member States and the Commission, whose only option then is to start an infringement procedure (Article 258 of the Treaty on the Functioning of the European Union). During the period 2013-2015, the following infringements were either launched or closed:

- Case No 2007/2230, (ECJ<sup>11</sup>'s judgment of 17 July 2014, Commission versus Portugal, C-335/12): the Court upheld the Commission's position and concluded that the national authorities did not comply with their obligations when they refused to make available amounts corresponding to duties concerning non-exported excess quantities of sugar following their accession to the Union. As the late payment interest requested was paid in full, the case was closed.
- Case No 2013/2103 concerning the United Kingdom: The Member State refused to compensate for the loss of own resources caused by the undue establishment of export certificates by Anguilla, territory under its sovereignty. The letter of formal notice was sent on 27/9/2013 and the reasoned opinion on 16/10/2014.
- Case No 2013/2165 concerning the Netherlands: The Member State refused to compensate for the loss of own resources caused by the undue establishment of EUR.1 certificates by Curacao and Aruba, territories under its sovereignty. The letter of formal notice was sent on 21/11/2013 and the reasoned opinion on 16/10/2014.
- Case No 2013/2251 concerning Italy: The Member State refused to compensate for the loss of own resources caused by the absence of adequate measures for recovery of an amount of customs duties established and entered in the accounts. This case is linked to the write-off cases IT(07)08-917 regarding smuggling of cigarettes. The letter of formal notice was sent on 21/11/2013 and the reasoned opinion on 28/4/2016.

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<sup>11</sup> European Court of Justice



- Case No 2014/2221 concerning Belgium: The Member State refused to make available the interest on late payments related to four cases where the requested guarantees have proved insufficient to cover the customs debt. The letter of formal notice was sent on 25/9/2014 and a complementary letter of formal notice was sent on 22/10/2015.

In its judgment of 3 April 2014 *Commission versus United Kingdom*, the Court also upheld the Commission's position confirming that the national authorities had not complied with their obligations by refusing to make available amounts corresponding to duties owed on imports of fresh garlic covered by erroneous binding tariff information.

The Court has also reached several decisions relating to requests by Member States for annulment of calls for funds letters issued by the Commission services. The General Court ruled that a Commission letter inviting the Member States to pay own resources was not a measure against which an action for annulment may be brought<sup>12</sup>. Appeals against these decisions are pending before the Court of Justice<sup>13</sup>.

#### **4.3. Financial aspects**

Over the reference period (2013-2015) additional entitlements totalling more than **EUR 124 million** were paid to the Commission following observations made in the inspection reports and on the occasion of other inspection activities and as a result of the follow-up of Court of Auditors' findings and Court of Justice's decisions on TOR infringement procedures.

The interest for late payment paid by the Member States totalled more than **EUR 104 million**.

### **5. COMMISSION'S MEASURES TO IMPROVE THE 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 TOR. Appropriate use of these means effectively improves recovery.

#### **5.1. Examination of irrecoverable entitlements which have been written off**

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<sup>12</sup> Slovenia v Commission, Case T-585/14; Slovakia v Commission, Cases T-678/14 and T-779/14; Romania v Commission, Case T-784/14; Spain v Commission, Case T-841/14

<sup>13</sup> Romania v Commission, Case C-599/15P; Slovakia v Commission, Cases C-593/15P and C-594/15P

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

Under the EU rules, Member States must report to the Commission irrecoverable amounts exceeding EUR 50,000 (write-off reports) for which they consider that this outcome is not attributable to them and the Commission issues its comments on each report. For amounts below this threshold, there is no separate reporting requirement but samples of these cases are routinely assessed during the on-the-spot inspections by the Commission.

To help the Member States in assessing their potential financial responsibility for irrecoverable TOR amounts, the Commission issued a working document – the Compendium – with the criteria underlying its comments on the write-off reports during the period 1992-2012. The working document was communicated to Member States during the ACOR meeting of 6 December 2012. It was revised on 25 June 2013 to take into account changes in the EU legislation and the relevant case law on traditional own resources.

When Member States consider that they meet the conditions to be released from the obligation to place at the disposal of the Commission the amounts exceeding EUR 50,000 corresponding to established entitlements which prove irrecoverable, they must report the relevant cases to the Commission using a multilingual database called WOMIS (Write-Off Management and Information System), which became operational on 1 January 2010. This tool, regularly updated, allows for an efficient and secure management of the Member States' reports.

Over the period 2013-2015, 904 reports<sup>14</sup> were communicated to the Commission involving a total amount of EUR 245,523,019. In response to the 791 reports examined during this period (on-going cases and new reports) involving a total amount of EUR 290,520,371, the Commission accepted 106 reports involving EUR 40,831,238. In 264 cases, involving **EUR 87,273,185**, the Commission was of the opinion that the amounts became irrecoverable for reasons attributable to the Member States concerned. In 12 cases, reporting the case to the Commission was considered incorrect or premature (EUR 5,013,866). The Commission had to ask for additional information for more than half of the cases examined (409 reports<sup>15</sup>, for which the Commission's final comments were still outstanding at the end of 2015 (EUR 157,402,082)).

*Write-off report: Procedure under article 17 of Regulation No 1150/2000 for monitoring Member States' potential financial responsibility for irrecoverable amounts of TOR over EUR 50 000. Under the procedure, the Commission issues its opinion on whether the TOR became irrecoverable for reasons not attributable to the Member States. The purpose of the Commission's examination of the cases reported is to assess the degree of diligence shown by the Member States in carrying out their recovery operations.*

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<sup>14</sup> Including cases where Member States requested reassessment

<sup>15</sup> Including cases where Member States requested reassessment

## **5.2. Treatment of errors of establishment leading to a loss of traditional own resources**

In its judgment of 15 November 2005<sup>16</sup> *Commission versus Denmark*, the European Court of Justice upheld the Commission's view that the obligation of the Member State to establish the EU's entitlement to TOR (and to make them available) arises as soon as the conditions laid down in the customs regulations are met under normal circumstances. Therefore, it is not necessary to wait for the establishment to actually take place. As the Member States are released from their obligation to make TOR available only in cases of *force majeure* or if it is impossible to recover the amount for reasons which cannot be attributed to them, they must therefore assume the financial consequences of errors they have made irrespective of the timing of actual establishment or even in the absence of establishment.

On the basis of this case-law, the Commission followed up the administrative errors committed by the Member States to the detriment of the EU's financial interests during the period 2013-2015 (on-the-spot inspections, national repayment or remission decisions due to administrative errors, etc.). As a result of this follow-up, the Commission asked the Member States to make available **EUR 32,704,818** over the period 2013-2015.

The European Court of Justice also clarified in its judgement C-334/08 of 8 July 2010 *Commission versus Italy* that Member States are financially responsible for TOR that should have been made available, from the date when the amount should have been made available if no administrative error had been committed. Interest on late payment is being calculated accordingly.

## **5.3. 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 EUR 10,000. This information is reported via the OWNRES database, which is managed and maintained by the Commission.

This database provides the Commission with essential information necessary to monitor recovery and prepare its on-the-spot inspections. It is also used by the Anti-Fraud Office (OLAF) for various analyses and the data reported is assessed in detail in the annual report from the Commission to the European Parliament and the Council on the protection of the European Union's financial interests — Fight against fraud.

## **5.4. Pilot project on audits of A and B accounts by Member States**

Apart from the Joint Audit Arrangements with Denmark and Austria, the Commission also engaged in a pilot project on audits of A and B accounts management to be carried out by the Member States themselves and subsequently assessed by the Commission services. A project group for a joint audit approach was established in 2012 in accordance with the concept of

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<sup>16</sup> Case C-392/02

the Customs 2013 Action Programme and in which 13 Member States were represented. The group developed recommendations for common objectives and audit tools for the use of the internal audit services (or TOR inspection services) of the national administrations. An audit pilot on TOR accounting was launched in 2014 in which five Member States (Bulgaria, Estonia, Croatia, Italy and Slovenia) participated. They submitted their audit reports in the last quarter of 2014. The Commission then conducted on-the-spot inspections in the concerned Member States to validate their own audit pilot findings. The overall conclusions from the exercise were included in a single Commission report per Member State.

The results were generally positive, though several issues were identified that require further work and reflection. More experience is needed with this type of joint work. A second pilot project on TOR accounting has been launched in 2016 to that effect.

### **5.5. Monitoring measures for the acceding countries**

The Commission provides technical assistance to the candidate countries so that they develop the administrative capacity and put in place the systems necessary to implement the *acquis* with respect to TOR upon accession. It also assesses the preparedness of the candidate countries to that effect.

In this domain, the Commission conducted its last preparatory mission in 2013 in the framework of the accession negotiations concerning Croatia. This fact-finding mission enabled the Commission to obtain reasonable assurance of Croatia's administrative capacity to apply the *acquis*. Technical assistance in the form of own resources workshops was provided to Iceland and Montenegro. Iceland withdrew its application for EU membership and the technical assistance is ongoing for Montenegro.

## **6. OVERALL ASSESSMENT OF THE INSPECTIONS' ARRANGEMENTS**

As in previous periods the findings made during the period 2013-2015 confirm the advantages and reassurance that the EU derives from the TOR inspections arrangements. In its annual reports, the European Court of Auditors also found these arrangements to be effective in protecting the EU financial interest.

The main purpose of the TOR arrangements concerning inspection by the Commission is to ensure that the Member States respect the EU TOR regulatory framework and make the TOR available to the EU budget timely and in full. The financial impact of the inspections reported above is significant and obviously improves recovery and the making available of TOR to the EU budget. But clearly the inspections also improve compliance with the EU rules. As a result of the Commission's inspection findings, Member States regularly revise their own rules and procedures or put in place new ones. The European Court of Justice's rulings also confirm regularly the Commission's views on the protection of the EU financial interest when it comes to the implementation of the own resources legislative framework. Finally, the findings of the Commission inspections influence the legislative process, for example by identifying loopholes and their consequences.

All in all, the TOR inspections by the Commission contribute significantly to a better protection of the financial interest of the EU by monitoring efficiently the timeliness and completeness of the making available of TOR by the Member States.

## 7. CONCLUSION

The results recorded from 2013 to 2015 show that the Commission's inspections of TOR and the systematic follow-up of the shortcomings observed continue to be indispensable and efficient means to improve recovery of TOR and provide reassurance that the financial interests of the EU are properly safeguarded in this domain.

The inspections keep on being a key tool leveraging compliance with the EU rules. Its financial impact is significant, as illustrated by the additional net amount made available to the EU budget (including payments for irrecoverable amounts for reasons attributable to the Member States and payments related to Member States' financial responsibility for errors made by the national administrations) of **around EUR 348 million during 2013-2015**. This results in significant incentives for timely and complete making available of TOR to the EU budget. On top of this, the inspections contribute to ensure equality of treatment among the Member States, as regards both the application of the customs and accounting rules and the protection of the EU's financial interests, providing a powerful mechanism to fight and prevent damaging distortions of competition.

From 1 May 2016, a new customs legislation<sup>17</sup> is applicable and, after ratification by the Member States, a new own resources legislative framework for the period 2014-2020 will be retroactively applied from 1 January 2014. Both require the Commission to continue its TOR inspection activities resolutely and effectively.

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<sup>17</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code; Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code; Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.