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

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for traditional own resources (2010-2012) (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 (TOR)¹.

Traditional own resources (TOR): customs and agricultural duties on products imported from third countries, plus sugar levies. Over the period 2010-2012 more than €48.8 billion was made available (net).

The inspection of TOR is based on Council decision 2007/436/EC, Euratom of 7 June 2007², Council Regulation No 1150/2000 of 22 May 2000³ and Council Regulation No 1026/1999 of 10 May 1999⁴.

This report, the seventh of this type, describes and analyses the operation of the inspection system for TOR for the period covering 2010 to 2012. It describes the Commission's inspections measures over this period, assesses the measures carried out and draws conclusions⁵. The report also outlines the financial, legal and regulatory follow-up of these inspections.

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

2. INSPECTION BY THE COMMISSION IN 2010-2012

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 on the basis of risk analysis. They are carried out by using standardized procedures for all inspections and involve the use of tailor-made audit tools, i.e. questionnaires sent to the Member States in advance and check-lists employed on the spot. This is to ensure that the inspections are carried out and that the reports are drafted in a consistent manner.

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 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.

2.1. Main results of the inspections

The Commission carried out **94 inspections** under Article 18 of Regulation No 1150/2000 during the period 2010-2012⁶. Six of these inspections were carried out under the Joint Audit Arrangement approach⁷.

94 inspections revealing 372 findings.

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

Of the 372 findings noted, 120 had a direct financial impact (32.2%) and 125 a regulatory impact (33.6%). The Commission has taken appropriate measures to resolve the financial consequences of the findings observed.

2.1.1. Inspections relating to customs matters

In 2010, inspection measures concerning **national customs inspection strategies** continued in those Member States in which they had not been carried out before 2010. They were intended to verify that the Member States had introduced a general, efficient and effective customs inspection strategy for TOR, together with appropriate structures and procedures so that the EU's financial interests can be protected by means of effective customs checks based on risk analysis. Shortcomings noted at the time of customs clearance as well as during post-clearance checks were to be remedied and measures needed to improve the effectiveness of customs checks were to be taken. A thematic report on the customs control strategy in the Member States 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 7 July 2011 and to the Customs Policy Group (CPG)⁸ on 30 June 2011. The results of the inspections performed in 2009 and 2010 showed that in general Member States had made efforts towards the development of customs control strategies to be in compliance with the requirements of the legislation and to provide protection for the EU's financial interests. However, 163 findings were communicated to Member States, including compliance issues and requests for improvements of their control procedures. Most of the findings have been or are in the process of being addressed, indicating the Member States' commitment to improve their customs control systems.

In 2010, 2011 and 2012 inspections concerning the **collection of antidumping and countervailing duties** showed that in the majority of the Member States the collection of these duties and the related control strategy was compliant with EU legislation and with the need to ensure adequate protection of the EU's financial interest. However, shortcomings were identified in some Member States concerning accounting of provisional duties which become definitive and concerning risk analysis. The Commission asked the Member States concerned to quickly remedy the situation.

In 2011 inspections on the **local clearance procedure** revealed major shortcomings in the management and control of this procedure. These inspections followed on from findings made by the Commission and the European Court of Auditors in previous years and were intended to evaluate compliance with the EU legislation and to determine whether the EU's financial interests were

Local clearance procedure: Procedure allowing goods to be declared without all the data and documents necessary and/or without needing to present the goods at the customs office. The situation has then to be

⁶ See Annex 2 for the breakdown of inspection topics between Member States.

⁷ Inspections in Denmark, the Netherlands and Austria. The Netherlands stopped their participation from 2012 onwards.

⁸ Directors General of national Customs administrations are members of this CPG.

adequately protected. A thematic report on this topic was drawn up by the Directorate-General for budget and was presented to the ACOR on 6 December 2012 and to the CPG on 12 December 2012. It showed that Member States had made an effort to introduce electronic notifications and customs declarations and to reassess and adapt old authorisations to new legal requirements. This process had served to address many of the findings previously identified. However, some issues still called for special attention.

2011 inspections in four Member States on **binding tariff information (BTI)** showed in general a high level of compliance with EU legislation. Major weaknesses were found as regards the post-clearance recovery of TOR in the case of annulment of a BTI or the absence of control strategies to verify the use of periods of grace.

2012 inspections in 21 Member States on **EU transit** were justified by the high number of shortcomings found in 2006 during inspections on the same topic and by the level of fraud detected in this area. The Commission found that the situation had improved in most of the Member States, particularly as regards the monitoring (including the financial monitoring) of transit operations not discharged within the time limits. Weaknesses were noted concerning the calculation of the guarantee covering the transit movement, the content of transit declarations and the number of checks carried out on the transit movements and on authorised consignors and consignees. A thematic report on this topic is being prepared by the Directorate-General for budget and is to be presented in the ACOR on 5 December 2013.

2.1.2. *Inspections relating to accounting matters*

Management of the separate account is a recurrent topic of inspection for the Commission in all the Member States⁹. 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). Inspections in this field over the period 2010-2012 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 customs and/or accounting computer tools that enable the risk of one-off errors to be reduced.

More comprehensive inspection measures were conducted in 7 Member States in order to evaluate their **TOR collection systems**. The inspection findings led to the general conclusion that the Member

regularised.

BTI: *Written information issued by the customs authorities on the classification of goods in the combined nomenclature or a nomenclature derived therefrom, such as the TARIC.*

Grace period: *Period of extended use of an invalidated BTI granted under certain conditions by the customs authorities.*

EU transit: *procedure allowing the movement of third country goods free of duty and charges between two points of the EU territory.*

Undischarged transit: *transit movement for which there is no evidence that goods have not reached their destination. The duties and taxes must then be recovered.*

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 account, recovered and paid.*

*Any amount which is **irrecoverable** is withdrawn*

⁹ Every inspection visit covers this topic in addition to the main topic.

States had installed appropriate collection systems although they revealed a number of structural and one-off errors.

Special focus was put on the TOR system in Belgium as doubts emerged as to the reliability of the Belgian automated customs clearance and accounting procedures and thus of the correctness of the TOR amounts that Belgium transferred to the EU budget. Taking into account these doubts, the Director General for Budget made a reservation in his Declarations of Assurance in the Annual Activity Reports for 2011 and 2012. The Commission dedicated several on-the-spot inspections and requested action including the enhancement of internal controls and full scale external audits of the accounting system. The line taken by the Commission was accepted by the Belgian authorities and an extensive external audit was commissioned, whose implementation started on 17 January 2013. This audit is to be finalized in 2013, the results of which will be reviewed before any potential lifting of the Director General's reservation.

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

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

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 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.

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 2012 two cases were at various stages of the infringement procedure.

During the period 2010-2012 the Court of Justice delivered a number of important judgments following infringement procedures brought by the Commission. Where needed, the Member States concerned had to assume the financial consequences. For some of these judgments, the financial consequences are still being evaluated or being settled.

In its judgments of 17 June 2010¹⁰, 1 July 2010¹¹, and 7 April 2011¹², the Court upheld the Commission's position concerning the

*Entry in the accounts:
Entry of duties in the*

¹⁰ Case C-423/08

¹¹ Case C-442/08

consequences of delays in entering outstanding customs duties in the accounts in cases of post-clearance recovery or when the authorities of the exporting third country inform them that the goods exported are not eligible for a preferential treatment and that the movement certificates were wrongly issued.

customs accounting records..

Preferential treatment: *Preferential tariff measures contained in agreements concluded by the EU or adopted unilaterally by it for goods originating from the beneficiary country.*

Movement certificate: *Documentary evidence of origin.*

Making available: *actual payment to the Commission.*

In its judgment of 17 March 2011¹³, the Court upheld the Commission's position indicating that, by systematically accepting customs declarations for release for free circulation of fresh bananas while the customs authorities knew or ought reasonably to have known that the declared weight of the bananas did not correspond to their actual weight, the customs authorities concerned did not comply with the EU customs legislation. The Member State should in such a situation compensate for the loss of TOR.

In its judgment of 8 July 2010¹⁴, the Court also upheld the Commission's position and stating that where the failure to (timely) establish or collect TOR arises from the illegal conduct of customs officials, this failure should be attributed to the Member State to which the customs officials belong. In such a situation the Member State should compensate the loss of TOR and interest for late payment would run from the date TOR should have been made available to the Commission, had those been correctly established in relation to the incurrance of the customs debt.

2.2.3. *Financial aspects*

Over the reference period (2010-2012) additional entitlements totalling more than **€249 million**¹⁵ were paid to the Commission following observations made in its inspection reports and in its other inspection activities and as a result of its follow-up of Court of Auditors' findings and Court of Justice decisions on TOR infringement procedures¹⁶.

Interest for late payment was also charged for delays in making TOR available. The interest for late payment paid by the Member States totalled more than **€484.5 million**¹⁷.

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 TOR. Appropriate use of these means effectively improves recovery.

¹² Case C-405/09

¹³ Case C-23/10

¹⁴ Case C-334/08

¹⁵ Including more than **€103 million** relating to the follow-up of Court Decision of 15/12/2009 on imports of military equipment, mentioned in the sixth report on TOR arrangements (COM(2010)219).

¹⁶ This figure does not cover amounts which have been demanded from the Member States but which have not yet been made available.

¹⁷ Including more than **€302 million** relating to the follow-up of Court Decision of 15/12/2009 on imports of military equipment.

2.3.1. Examination of irrecoverable entitlements which have been written off

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 it (Article 17(2) of Regulation No 1150/2000).

Under the EU 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).

To help the Member States in taking their decision, a document (Compendium) giving an overview on the way the Commission assessed during the period 1992-2012 whether the conditions for the waiver were met has been communicated to the members of ACOR.

All requests to be released from the obligation to make available an irrecoverable entitlement are to be transmitted to the Commission using a multilingual database called WOMIS (Write-Off Management and Information System) which became operational on 1 January 2010. This tool was set up to allow an efficient and secure management of the Member States' requests.

Over the period 2010-2012, 424 requests for waiver were sent involving a gross amount of more than **€14 million**. In response to the requests examined during this period (on-going cases and new requests), the Commission granted 395 waivers involving more than €153 million. On the other hand, waiver was refused for 268 requests involving more than **€90 million** (gross) to be made available by the Member States concerned. The Commission had to ask for further information in about one third of the requests examined.

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

In its judgment of 15 November 2005¹⁸, The Court upheld the Commission's view and recognised 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. It is not therefore necessary for establishment actually to 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.

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' financial interests during the period 2010-2012 (on-the-spot inspections, reports of national repayment or remission decisions based on an administrative error, etc.). As a result of this follow-up, the Commission asked the Member States to make available almost **€88 million** (gross) over the period 2010-2012.

Request to be waived from the obligation to make an irrecoverable entitlement available after it has been written off: Procedure allowing the Commission to check whether or not the entitlement is irrecoverable for reasons attributable to the Member States. If the request is refused, the amount has to be paid to the Commission.

The purpose of the Commission's examination of the case reported is to assess the degree of diligence shown by the State in carrying out its recovery operations.

¹⁸ Case C 392/02

As a consequence of the judgment of 8 July 2010 mentioned at 2.2.2 above, interest on late payment is now to be calculated as from the date the amount should have been made available if no administrative error had been committed.

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).

2.4. **Monitoring measures for the acceding countries**

When preparing for the accession of Croatia, the Commission conducted monitoring visits specifically geared to TOR in 2010, 2011 and 2012. These monitoring visits and the accounting simulation exercises conducted enabled the Commission to obtain a reasonable degree of assurance of Croatia's administrative capacity to apply the *acquis* with respect to TOR.

3. **ASSESSMENT OF THE INSPECTION ARRANGEMENTS**

As in previous years the findings made during the period 2010-2012 confirm the benefit which the Commission can derive from the TOR inspections arrangements. In its annual reports the European Court of Auditors found these arrangements to be effective.

The financial impacts of the inspections is clearly visible, however this is not the only reason for the checks. The main purpose of the various inspections is to ensure that the EU budget is properly financed in terms of TOR. As a result of all the information gathered from the Member States, the inspections can also improve compliance with EU rules and even influence the process for improving the rules so that the financial interests of the EU are better protected.

On 27-28 October 2011 a seminar on TOR inspections was held in Berlin to discuss with the Member States how the TOR inspections are functioning and how they can be developed in the future. On the basis of the conclusions drawn up, measures were taken to improve the preparation of the inspections (agenda, filling of the pre-inspection questionnaire, communication of the inspection's check-list etc.). In addition, when preparing the annual inspection programme, Member States are now invited to propose inspections topics. Finally it was decided to take action to reinforce the checks/audits performed by the Member States on TOR to which the Commission may be associated in accordance with Article 18(2) of Regulation No 1150/2000. In this respect a Project Group was established in 2012 in accordance with the concept of the Customs 2013 Action Programme and in which 13 Member States are represented. The group is expected to develop recommendations for common objectives and audit tools for internal audit services (or TOR inspection services) of the customs administrations in order to reinforce the Member States' responsibility in performing TOR inspections themselves. The group's conclusions and recommendations are to be presented to all the members of the ACOR by the end of 2013.

4. CONCLUSION

The results recorded from 2010 to 2012 show that the Commission's inspections of TOR and the systematic follow-up of the shortcomings observed are necessary. This was illustrated by the improved compliance with EU provisions as well as by the financial impact (the additional net amount made available to the EU budget was around **€33.5 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 EU's financial interests.

In future, the Commission therefore intends:

- To continue with its role as regards on-the-spot inspections;
- To continue strengthening the monitoring of recovery measures in the Member States;
- To continue monitoring the acceding countries;
- To reinforce the Member States' capability and willingness to perform TOR inspections themselves.