



COMMISSION OF THE EUROPEAN COMMUNITIES

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96/ 0016 (CNS)

Proposal for a

COUNCIL REGULATION (Euratom, ECSC, EC)

**determining the powers and obligations of agents authorized by the Commission**

**pursuant to Article 18(2) and (3) of**

**Regulation (EEC, Euratom) No 1552/89**

**(presented by the Commission)**

## SUMMARY

The purpose of this proposal is to replace Council Regulation (EEC, Euratom, ECSC) No 165/74 determining the powers and obligations of agents authorized by the Commission to undertake controls on the Community's own resources in order to take account of developments in regulations and administrative practices at Community level firstly by extending the scope of the regulation to cover on-the-spot inspections and secondly by making it possible for the Commission to authorize both officials and other categories of staff for on-the-spot and other inspections.

## 1. Explanatory Memorandum

- 1.1 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<sup>1</sup> took effect on 1 January 1989. One of its innovations - in Article 18(3) - was to confer on the Commission itself the right to carry out inspections on the spot, whereas the Regulations it superseded<sup>2,3</sup> had allowed the Commission only to be associated with inspections organized by the Member States themselves.

As regards the powers and obligations of the officers authorized by the Commission for own resources inspections, Regulation (EEC, Euratom, ECSC) No 165/74<sup>4</sup> was adopted before the introduction of the new inspection arrangement and therefore did not make provision for on-the-spot inspections by the Commission itself. The inspections provided for in Article 18(3) of Regulation No 1552/89 therefore need to be covered explicitly.

- 1.2 The various formalities required when organizing and actually carrying out these on-the-spot inspections need to be stated explicitly. The proposed new Regulation lays down that although the inspections carried out by the Commission itself are under the direction of its authorized agents, contacts with national departments and, if necessary, with taxable persons must be handled through officers of the Member State where the inspection is conducted.

The proposed regulation also includes provisions applying to Commission officials or other staff in the execution of VAT and GNP resources controls.

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<sup>1</sup> OJ No L 155, 7.6.1989, p.1. This regulation was amended by Council Regulation (Euratom, EC) No 1355/96 of 8 July 1996, OJ No L 175, 13.7.1996, p.3.

<sup>2</sup> Council Regulation (EEC, Euratom, ECSC) No 2/71, OJ No L 3, 5.1.1971, p.1.

<sup>3</sup> Council Regulation (EEC, Euratom, ECSC) No 2891/77, OJ No L 336, 27.12.1977, p.1.

<sup>4</sup> OJ No L 20, 24.1.1974, p. 1.

- 1.3 As regards the status of the agents authorized by the Commission for inspections carried out in association with the responsible national departments, Regulation No 165/74 limits the possibility of authorization to Commission officials. However, administrative structures at the Commission have changed greatly since this Regulation was adopted. To perform the tasks assigned to it, the Commission now also makes use of temporary staff and seconded national experts. It is also envisaged that, with the agreement of the Member State concerned, the Commission could request the assistance of officials from other Member States as observers and call in outside agencies under its own responsibility to provide technical assistance.

Extending the range of staff from whom authorized agents may be drawn also appears justified when existing Community law is considered. There is no provision restricting participation to Commission officials (within the meaning of the Staff Regulations) in the case of Community controls in other areas — for instance, ECSC inspections under Decision 379/84/ECSC and EAGGF inspections under Regulation (EEC) No 729/70. Similarly the Regulation implementing Articles 85 and 86 of the EC Treaty contains no such restriction regarding investigations in the field of competition.

- 1.4 It is therefore proposed that Regulation No 165/74 be replaced to take account of developments in regulations and administrative practice by broadening its scope to cover inspections on the spot and by giving the Commission the possibility of authorizing officials and other categories of staff for all types of inspection.

## **2. Article-by-article commentary**

### **Article 1**

The scope of Article 1 of Regulation No 165/74 has been extended in the proposed new Article 1 to cover inspections on the spot carried out by the Commission itself, as provided for in Article 18(3) of Regulation (EEC, Euratom) No 1552/89.

Regulation No 165/74 limits the choice of authorized agent to Commission officials. In line with existing Community legislation in other, similar areas — where there is no such restriction — and to meet the need for a *wider* potential circle of staff to carry out the specialized work of inspections, it is proposed that provision be made for allowing not only *permanent* officials within the meaning of the Staff Regulations but also other servants to be authorized as officers for inspections.

## Article 2

The first part of the first paragraph of Article 2 of Regulation No 165/74 is *superfluous* since the scope and limits of inspections are clearly laid down in Regulation No 1552/89.

The second part of the first paragraph, dealing with the obligation to communicate a list of the national inspection departments, has been rendered superfluous by the wording of Article 4(1)(a) of Regulation No 1552/89, as amended by Council Regulation (EC, Euratom) No 1355/96 of 8 July 1996.<sup>5</sup>

The proposed new paragraph 1 of Article 2 reproduces the second paragraph of Article 2 of Regulation No 165/74, except that the reference to Regulation No 2/71 has been amended to reflect the fact that it has been successively replaced by Regulations No 2891/77 and No 1552/89.

The proposed new paragraph 2 reproduces the third paragraph of Article 2 of Regulation 165/74, with the addition of a reference to on-the-spot inspections by the Commission.

The proposed new paragraph 3 essentially reproduces the fourth paragraph of Article 2 of Regulation No 165/74.

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<sup>5</sup> OJ No L 175, 13.7.1996, p. 3.

### Article 3

Points (a) and (b) of the proposed new Article 3(1) reproduce the corresponding provisions of Regulation No 165/74, amended to cover on-the-spot inspections by the Commission. Point (c) also amends the wording of its counterpart in the old Regulation to cover both types of inspection, on-the-spot inspections by the Commission being under the direction of its authorized agents (see the proposed new Article 3(3)).

Paragraph 2, on the direction of associated inspections of traditional own resources, reproduces the corresponding paragraph in Regulation No 165/74; the reference to the legal base is amended.

Paragraph 3 of the proposal is the counterpart to paragraph 2: on-the-spot inspections carried out by the Commission are under the direction of its authorized agents. They must, however, seek the assistance of officers designated by the Member State in question to establish contacts with the national departments where the inspections are carried out and, if necessary, with the taxpayers concerned.

### Article 4

In paragraph 1 of Article 4, the term "collecting" is inserted and "officials" is replaced by "authorized agents", which is defined in the proposed new Article 1.

Since the substance of *Article 4(2) of Regulation No 165/74* is now incorporated in Regulation No 1552/89, there is no need for this provision in the implementing regulation.

The proposed new paragraph 2 spells out the formalities (designating national officers participating, informing the Commission, etc.) which the Member States must carry out in preparation for an on-the-spot inspection by the Commission.

## Article 5

The changes made do not affect the *substance*. They involve:

- (1) amending the references to the applicable Regulation;
- (2) replacing the term "Communities" by "Community";
- (3) the inclusion of on-the-spot inspections.

## Article 6

The proposed new paragraph 1 incorporates Article 6(1) of Regulation No 165/74, amended to cover on-the-spot inspections by the Commission. In addition, the time limit for producing reports on inspection findings and the time given to the Member States to submit their observations is extended from 2 to 3 months. Experience has shown that the complexity of the issues covered and the need for effective coordination within departments warrant extending the time limit for both the Commission and the Member States. Under the proposal the Commission may also, for duly substantiated reasons, request Member States to submit their observations on specific points; in this case the time limit will be one month. Member States may decline to respond, in which case they must inform the Commission of their reasons.

## Article 7

The provision in Article 7 of Regulation No 165/74 which states that the Regulation does not apply to VAT own resources is deleted, since Article 11(2) of Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax<sup>6</sup> states that Regulation No 165/74 also applies to VAT resources controls.

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<sup>6</sup> OJ No L 155, 7.6.1989, p. 9

However, since these controls are carried out by the Commission in the relevant national departments, in accordance with Article 11(1) of Council Regulation (EEC, Euratom) No 1553/89, the provisions in this proposal for a regulation relating to on-the-spot inspections, as defined by Article 18(3) of Council Regulation (EEC, Euratom) No 1552/89, cannot apply to VAT resources controls.

The new text of Article 7 stipulates, therefore, which of the provisions of the regulation apply to officials or other servants of the Commission in the performance of VAT resources controls.

These provisions also apply to checks on calculations and basic statistics in the field of GNP which the Commission may carry out at the national statistics institutes in the Member States pursuant to Article 19 of Regulation No 1552/89.



**Regulation No 165/74*****Article 1***

The Commission shall be associated with the measures of control referred to in Article 14 of Regulation (EEC, Euratom, ECSC) No 2/71 in the person of those of its officials whom it has specifically appointed for this purpose.

**Proposal for a Regulation  
replacing Reg. 165/74*****Article 1***

1. *For the purposes of:*

- (a) *inspection measures with which the Commission is associated, as provided for in Article 18(2) of Regulation (EEC, Euratom) No 1552/89;*
- (b) *inspection measures carried out by the Commission itself on the spot, as provided for in Article 18(3) of Regulation (EEC, Euratom) No 1552/89;*

the Commission shall be represented by the officials *or other servants* whom it has specifically *authorized* for this purpose, *hereinafter referred to as "authorized agents"*.

*National experts seconded to the Commission may be present at such inspection measures.*

2. *The Commission may, with the agreement of the Member State concerned, request officers from other Member States to act as observers, and employ outside agencies, acting under its responsibility, to provide technical assistance.*

*The Commission shall ensure that these officers and agencies provide all the necessary assurances with respect to technical competence, independence and professional secrecy.*

*Article 2*

The measures of control referred to in Article 1 shall be all those required for the establishment and the making available of own resources, both being provided for in Regulation (EEC, Euratom, ECSC) No 2/71. They shall be carried out by the departments, agencies or national authorities, a list of which shall be notified to the Commission at the latter's request.

Member States and the Commission shall regularly maintain those contacts likely to facilitate the implementation of Article 14(2) of Regulation (EEC, Euratom, ECSC) No 2/71.

Each inspection visit, with which the Commission has requested to be associated, shall be preceded by contacts between the Member States concerned and the Commission in order to lay down detailed procedures.

For each visit, the Commission officials must be given written terms of reference by the Commission stating their identity and official capacity.

*Article 2**Deleted*

1. Member States and the Commission shall maintain regular contacts to facilitate the implementation of *the provisions referred to in Article 1.*
2. *Every inspection with which the Commission is associated or which it carries out itself on the spot* shall be preceded by contacts between the Member State concerned and the Commission in order to lay down detailed procedures.
3. The Commission *shall give its authorized agents* written terms of reference for every such inspection, stating their identity and official capacity.

*Article 3*

1. When the Commission is associated with the measures of control carried out by the Member States, the officials which it has appointed:
  - (a) shall conduct themselves during the inspections in a manner compatible with the rules and usages prescribed for officials of the Member States with which they are associated;
  - (b) shall be bound by professional secrecy, under the conditions laid down in Article 5 below;
  - (c) shall be entitled to have contact with debtors only through the responsible national civil servant, on the understanding that it is for the competent national administration to determine where such contacts may take place.
2. As regards organization of work and, more generally, relations with the departments involved in the measures, the measures of control shall be under the direction of the department designated by the Member State pursuant to Article 2 to carry out the measures of control provided for in Article 14 of Regulation (EEC, Euratom, ECSC) No 2/71.

*Article 3*

1. *The authorized agents:*
  - (a) shall conduct themselves during *all* inspections in a manner compatible with the rules and usages prescribed for officials of the *Member State concerned*;
  - (b) shall be bound by professional secrecy, as laid down in Article 5;
  - (c) may have contact with taxable persons only through *the officers responsible in the Member State where the inspections are carried out.*
2. As regards the organization of work and, more generally, relations with the departments concerned, *inspections with which the Commission is associated* shall be under the direction of the department designated by the Member State pursuant to *Article 4(1)*.
3. *Inspections which the Commission itself carries out on the spot shall be under the direction of its authorized agents; as regards the organization of work, relations with the departments concerned and, where necessary, with the taxable persons concerned, they shall establish appropriate contacts with the officers designated by the Member State concerned pursuant to Article 4(2).*

*Article 4*

1. The Member States shall ensure that the departments or agencies responsible for establishing and making available their own resources and the authorities which they have instructed to carry out measures of control in this respect afford the officials appointed by the Commission every assistance necessary for carrying out their duties.
2. Such officials may be associated with national measures of control relating to:
  - (a) establishment, based on information available to the national departments, of own resources, accounting therefor and making available thereof;
  - (b) conformity of the operations establishing and making available own resources with the Community rules laid down in the Decision of 21 April 1970 and Regulation (EEC, Euratom, ECSC) No 2/71;
  - (c) the existence of the supporting documents provided for in Article 3 of Regulation (EEC, Euratom, ECSC) No 2/71, and their conformity with the above operations.

*Article 4*

1. The Member States shall ensure that the departments or agencies responsible for establishing, *collecting* and making available own resources and the authorities which they have instructed to carry out inspections in this respect afford the Commission's *authorized agents every assistance necessary for carrying out their task.*

**Deleted**

2. *In the case of inspections carried out by the Commission on the spot, the Member State in question shall inform the Commission in good time of the identity and official capacity of the officers it has designated to take part in the inspection and to provide the Commission's authorized agents with every assistance necessary for carrying out their task.*

*Article 5*

1. All information gathered on the measures of control dealt with in this Regulation shall be subject to professional secrecy. It may not be communicated to persons other than those within the institutions of the Communities or the institutions whose duty it is to know, or be used for purposes other than those which are laid down in Regulation (EEC, Euratom, ECSC) No 2/71 unless prior consent has been given by the Member State which originally provided the information.
2. This Article shall apply to all officials and servants of the Communities.

*Article 6*

Save as otherwise provided in Article 5:

1. The results of the measures of control carried out shall be brought to the attention of the Member State concerned through the appropriate channels within a period of two months, and the Member State may submit its observations within the two months following receipt of the communication.

*Article 5*

1. All information gathered *in the context of inspection measures covered by this Regulation* shall be subject to professional secrecy. It may not be *divulged to any persons except those in the institutions of the Community or of the Member States* whose duty it is to know, nor used for purposes other than those laid down in *Regulation (EEC, Euratom) No 1552/89*, unless prior consent has been given by the Member State which originally provided the information.
2. This Article shall apply to all officials and servants of the *Community*.

*Article 6*

*Save as otherwise provided in Article 5:*

1. *The findings of inspections carried out shall be communicated to the Member State concerned through the appropriate channels within three months, and the Member State may submit its observations within three months of receiving them.*

*However, the Commission may, for duly substantiated reasons, request the Member State to submit its observations on specific points within one month of receiving the inspection findings. The Member State may decline to accede to the Commission's request, in which case it shall inform the Commission of its reasons.*

2. Following the procedure provided for in paragraph 1, these results and observations shall be made known to the other Member States within the Advisory Committee on the Communities' Own Resources.

*Article 7*

Subject to provisions to be adopted at the appropriate time pursuant to Article 1 of Regulation (EEC, Euratom, ECSC) No 2/71, this Regulation shall not apply to own resources derived from Value Added Tax.

*Article 8*

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

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

2. Following the procedure provided for in paragraph 1, these results and observations shall be made known to the other Member States within the Advisory Committee on the Communities' Own Resources.

*Article 7*

*The provisions laid down in Articles 2(2), 2(3), 3(1)(a), 3(1)(b), 3(3), 4(1), 5 and 6 shall also apply to inspections carried out by officials or other servants of the Commission pursuant to Article 11(1) of Regulation (EEC, Euratom) No 1553/89 and Article 19 of Regulation (EEC, Euratom) No 1552/89.*

*Article 8*

*Regulation (EEC, Euratom, ECSC) No 165/74 is repealed.*

*References to the repealed Regulation shall be construed as references to this Regulation.*

*Article 9*

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

**Proposal for a Council Regulation (Euratom, ECSC, EC)  
determining the powers and obligations of agents authorized by the Commission  
pursuant to Article 18(2) and 18(3) of  
Regulation (EEC, Euratom) No 1552/89**

**THE COUNCIL OF THE EUROPEAN UNION**

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 78h thereof,

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

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

Having regard to Council Decision 94/728/EC, Euratom of 31 October 1994 on the system of the Communities' own resources<sup>1</sup>, and in particular Article 8(2) thereof,

Having regard to 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,<sup>2</sup> as amended by Council Regulation (Euratom, EC) No 1355/96 of 8 July 1996,<sup>3</sup> and in particular Article 18 thereof,

Having regard to the Commission's proposal,<sup>4</sup>

Having regard to the opinion of the European Parliament,<sup>5</sup>

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<sup>1</sup> OJ No L 293, 12.11.1994, p. 9.

<sup>2</sup> OJ No L 155, 7.6.1989, p. 1.

<sup>3</sup> OJ No L 175, 13.7.1996, p. 3.

<sup>4</sup> OJ No .....

<sup>5</sup> OJ No .....

Having regard to the opinion of the Court of Auditors,<sup>6</sup>

Whereas Article 18(1) of Regulation (EEC, Euratom) No 1552/89 requires Member States to conduct the checks and enquiries concerning the establishment and making available of the own resources referred to in Article 2(1)(a) and (b) of Decision 94/728/EC, Euratom,

Whereas, on the basis of Article 18(2) of that Regulation, Member States are required to associate the Commission, at its request, with these inspection measures; whereas this obligation covers inspection measures initiated by the Member States and additional inspections undertaken in response to a reasoned request from the Commission; whereas, on the basis of Article 18(3), the Commission may itself carry out inspection measures on the spot;

Whereas Council Regulation (EEC, Euratom, ECSC) No 165/74 of 21 January 1974<sup>7</sup> determined the powers and obligations of officials appointed by the Commission in connection with inspections; whereas this regulation, which preceded Regulation (EEC, Euratom) No 1552/89, concerns only inspection measures carried out in association with the Member States; whereas Article 18(3) of Regulation No 1552/89 introduces a new inspection procedure giving the Commission the power to carry out on-the-spot inspections on its own initiative;

Whereas the scope of Regulation (EEC, Euratom, ECSC) No 165/74 should therefore be extended to cover this new inspection procedure by laying down the arrangements for the conduct of on-the-spot and associated inspections and defining the conditions which authorized agents must observe in the performance of their task;

Whereas the inspection measures referred to in Article 18(2) and (3) of Regulation (EEC, Euratom) No 1552/89 are without prejudice to inspections undertaken by Member States in accordance with their own provisions laid down by law, regulation or administrative action;

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<sup>6</sup> OJ No .....

<sup>7</sup> OJ No L 20, 24.1.1974, p. 1.



Whereas certain provisions of the Regulation also apply to inspections conducted by the Commission in the area of VAT own resources and inspections relating to GNP;

Whereas in view of the scale of the changes to be made, Regulation (EEC, Euratom, ECSC) No 165/74 should be replaced,

**HAS ADOPTED THIS REGULATION:*****Article 1***

## 1. For the purposes of:

- (a) inspection measures with which the Commission is associated, as provided for in the second indent of Article 18(2) of Regulation (EEC, Euratom) No 1552/89;
- (b) inspection measures carried out by the Commission itself on the spot, as provided for in Article 18(3) of Regulation (EEC, Euratom) No 1552/89;

the Commission shall be represented by the officials or other servants whom it has specifically authorized for this purpose, hereinafter referred to as "authorized agents".

National experts seconded to the Commission may be present at such inspection measures.

2. The Commission may, with the agreement of the Member State concerned, request officers from other Member States to act as observers, and employ outside agencies, acting under its responsibility, to provide technical assistance.

The Commission shall ensure that these officers and agencies provide all the necessary assurances with respect to technical competence, independence and professional secrecy.

*Article 2*

1. Member States and the Commission shall maintain regular contacts to facilitate the implementation of the provisions referred to in Article 1.
2. Every inspection with which the Commission is associated or which it carries out itself on the spot shall be preceded by contacts between the Member State concerned and the Commission in order to lay down detailed procedures.
3. The Commission shall give its authorized agents written terms of reference for every such inspection, stating their identity and official capacity.

*Article 3*

1. The authorized agents:
  - (a) shall conduct themselves during all inspections in a manner compatible with the rules and usages prescribed for officials of the Member State concerned;
  - (b) shall be bound by professional secrecy, as laid down in Article 5;
  - (c) may have contact with taxable persons only through the officers responsible in the Member State where the inspections are carried out.
2. As regards the organization of work and, more generally, relations with the departments concerned, inspections with which the Commission is associated shall be under the direction of the department designated by the Member State pursuant to Article 4(1).

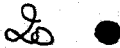
3. Inspections which the Commission itself carries out on the spot shall be under the direction of its authorized agents; as regards the organization of work, relations with the departments concerned and, where necessary, with the taxable persons concerned, they shall establish appropriate contacts with the officers designated by the Member State concerned pursuant to Article 4(2).

#### *Article 4*

1. The Member States shall ensure that the departments or agencies responsible for establishing, collecting and making available own resources and the authorities which they have instructed to carry out inspections in this respect afford the Commission's authorized agents every assistance necessary for carrying out their task.
2. In the case of inspections carried out by the Commission on the spot, the Member State in question shall inform the Commission in good time of the identity and official capacity of the officers it has designated to take part in the inspection and to provide the Commission's authorized agents with every assistance necessary for carrying out their task.

#### *Article 5*

1. All information gathered in the context of inspection measures covered by this Regulation shall be subject to professional secrecy. It may not be divulged to any persons except those in the institutions of the Community or of the Member States whose duty it is to know, nor used for purposes other than those laid down in Regulation (EEC, Euratom) No 1552/89, unless prior consent has been given by the Member State which originally provided the information.
2. This Article shall apply to all officials and servants of the Community.



## *Article 6*

Save as otherwise provided in Article 5:

1. The findings of inspections carried out shall be communicated to the Member State concerned through the appropriate channels within three months, and the Member State may submit its observations within three months of receiving them.

However, the Commission may, for duly substantiated reasons, request the Member State to submit its observations on specific points within one month of receiving the inspection findings. The Member State may decline to accede to the Commission's request, in which case it shall inform the Commission of its reasons.

2. On completion of the procedure laid down in paragraph 1, the findings and observations shall be made known to the other Member States within the Advisory Committee on the Communities' Own Resources.

## *Article 7*

The provisions laid down in Articles 2(2), 2(3), 3(1)(a), 3(1)(b), 3(3), 4(1), 5 and 6 shall also apply to inspections carried out by officials or other servants of the Commission pursuant to Article 11(1) of Regulation (EEC, Euratom) No 1553/89 and Article 19 of Regulation (EEC, Euratom) No 1552/89.

## *Article 8*

Regulation (EEC, Euratom, ECSC) No 165/74 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation.

**Article 9**

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

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

# DOCUMENTS

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