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REPORT

on the Court of Auditors' Special Report No 8/99 on securities and guarantees provided for in the Community Customs Code to protect the collection of traditional own resources together with the Commission's replies (C5-0228/2000 – 2000/2132(COS))

Committee on Budgetary Control

Rapporteur: Salvador Garriga Polledo

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PROCEDURAL PAGE

By letter of 16 February 2000, the President of the Court of Auditors forwarded to Parliament Special Report No 8/99 on securities and guarantees provided for in the Community Customs Code to protect the collection of traditional own resources together with the Commission's replies (C5-0228/2000 – 2000/2132(COS)).

At the sitting of 13 June 2000 the President of Parliament announced that she had referred the special report to the Committee on Budgetary Control as the committee responsible and the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs and the Internal Market for their opinions (C5-0228/2000).

The Committee on Budgetary Control had appointed Salvador Garriga Polledo rapporteur at its meeting of 19 April 2000.

The committee considered Special Report No 8/99 and the draft report at its meetings of 10 October and 7 November 2000.

At the latter meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: Diemut R. Theato, chairman; Herbert Bösch and Lousewies van der Laan, vice-chairmen; Salvador Garriga Polledo, rapporteur; Rijk van Dam, Christopher Heaton-Harris, Michiel van Hulten, Helmut Kuhne, Eluned Morgan, José Javier Pomés Ruiz, Bart Staes, Mogens N.J. Camre, (for Isabelle Caullery), Paulo Casaca (for Anne Ferreira), Christos Folias (for Raffaele Costa), Emmanouil Mastorakis (for Freddy Blak), John Joseph McCartin (for Thierry B. Jean-Pierre), Juan Andrés Naranjo Escobar (for Gabriele Stauner), Heide Rühle (for Claude Turmes) and Esko Olavi Seppänen (for Marianne Eriksson).

The Committee on Economic and Monetary Affairs decided on 29 June 2000 and the Committee on Legal Affairs and the Internal Market decided on 21 June 2000 not to deliver an opinion.

The report was tabled on 13 November 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the Court of Auditors' Special Report No 8/99 on securities and guarantees provided for in the Community Customs Code to protect the collection of traditional own resources together with the Commission's replies (C5-0228/2000 – 2000/2132(COS))

The European Parliament,

- having regard to the Court of Auditors' Special Report No 8/99 (C5-0228/2000¹),
 - having regard to Article 248(4), second subparagraph, of the EC Treaty,
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Budgetary Control (A5-0331/2000),
1. Notes that interest should be levied on traders who effectively use unauthorised credit in their deferment accounts as part of release for free circulation operations; calls on the Commission to obtain assurances from the Member States involved regarding the recovery of this interest and to encourage the Member States to ensure that their computer systems take into account the duties owed to the Community budget by allowing adequate cover;
 2. Points out that in the case of incomplete declarations, at the end of the periods allowed for the production of documents under Community rules the Member States should transfer the duties covered by a guarantee which are not contested into 'A' accounts; calls on the Commission to ensure compliance with these provisions;
 3. Notes that the securities which guarantee the duties credit procedure should also guarantee the automatic payments made by the customs offices after release of goods; therefore calls on the Commission to propose an amendment to Community customs legislation to cover this point;
 4. Points out that many operations to export cigarettes outside the Community are carried out under cover of the Community or common transit system, and that in many cases such regular exports supply the channels for the fraudulent re-importing of such cigarettes into the Community; therefore calls on the Commission to investigate the possibility of requiring the operators behind such operations to produce a comprehensive file including all the information needed to identify accurately the owners of the goods concerned (company articles of association, enrolment in the trade register, identity of those responsible, etc.);
 5. Notes the high level of undischarged transit operations; therefore considers that emphasis must be placed on operational measures and on the swift development of the NCTS; calls

¹ OJ C 70, 10.3.2000.

on the Commission to make sure that the Member States ensure compliance with the application of the transit rules;

6. Notes that centralisation and administrative clearance will be introduced for the multiple guarantee certificate system in connection with the NCTS; calls on the Commission to ensure that the provisions already adopted are properly implemented;
7. Considers it essential for the Member States' customs services to carry out annual overall checks including a review of the operator's accounting and commercial documents and an effective exchange of information with the other national customs authorities involved to ensure that securities and guarantees are set at the required level; calls on the Commission to take the appropriate initiatives needed;
8. Notes that with a view to facilitating the customs authorities' review and to alerting them to potential risks from high-risk goods, the minimum contents of the transit single administrative document must be revised to include consignment values; calls on the Commission to take the appropriate initiatives needed;
9. Stresses the need for the NCTS to come into operation soon in all the Member States and the countries associated with the common transit system, and points out that the protection of Community finances will depend to a large extent on the development of all the functionalities of the NCTS;
10. Points out that guarantee waivers should only be granted to operators whose reliability and financial standing have been proven by means of a rigorously carried out and documented evaluation;
11. Notes that the European Court of Auditors has uncovered a number of cases where the duties owed to the Community budget have not been paid; therefore calls on the Commission to ensure that the duties owed to the Community budget, in the cases reported by the Court of Auditors, are received together with the relevant late payment interest; furthermore, supports the Commission's efforts to ensure that the duties owed to the Community budget are properly established within the requisite periods; encourages the Commission to open infringement proceedings against Member States who fail to comply with these provisions;
12. Notes that in order to bring the problems pointed out by the European Court of Auditors in the use of TIR carnets to a speedy conclusion, appropriate steps should be taken quickly to ensure that the sums owed to the Community budget are settled, given the significant unpaid customs duties; calls on the Commission to take appropriate initiatives to protect the Community's financial interests;
13. Notes that there are significant differences in opinion between the Member States over what constitutes a secured debt, or the conditions indicating that such a debt has been challenged; considers that these differences in opinion may be reduced through a legislative initiative, advice to the Member States' accounting departments or the issuing of new instructions; calls on the Commission to continue the appropriate initiatives already undertaken, monitoring them closely;

14. Questions the extent to which the Member States' national law regarding appeals is consistent with the relevant provisions of the Community Customs Code or legislation with the relevant Community regulations; calls on the Commission to check on this issue;
15. Considers that the protection of the Community's financial interests should be done on the basis of a single body of law and not, as is presently the case, on the basis of vague, disjointed and contradictory legislation, which deals with the protection of the Community's financial interests on a piecemeal basis;
16. Considers that harmonisation in the area of the application of national criminal law and of the administration of justice in the Member States requires the harmonisation of legislation on fighting fraud and other illegal activity in the Community;
17. Notes that the European Commission can only have recourse to the Court in the case of repeated infringements by a Member State in matters of customs duties, contrary to what happens with the Structural Funds and the common agricultural policy, where Community legislation establishes the discretionary power of the European Commission to take financial corrective measures;
18. Reiterates, to the Commission and the Council, its position as expressed in the resolution amending Regulation (EC) No 723/97 adopted on 13 April 2000, that Community legislation for the protection of its financial interests should be in compliance with Article 280 of the Treaty, and should therefore ensure effective and equivalent protection against fraud and any other illegal activities committed against the Community's financial interests in the Member States;
19. Instructs its President to forward this resolution to the Council, the Commission and the Court of Auditors.

EXPLANATORY STATEMENT

1. A guarantee that the customs duties which contribute to the Community budget will be received is normally given through various provisions stipulating that securities and guarantees should be produced, provisions which are part of the Community customs legislation. However, customs rules on the provision of securities and guarantees by operators are not uniform: under some provisions securities and guarantees are compulsory: in this case the securities and guarantees come under Community rules; under other provisions securities and guarantees are optional: in this case it is up to the individual Member States to implement them. This report only deals with compulsory securities and guarantees.

2. Community customs legislation makes the taking of securities mandatory in the following circumstances:

in general: when imported goods are released for free circulation in the Community with approval for a 30-day deferment of payment of the duties involved²,

in specific cases:

- when goods are being moved through the customs territory under a transit procedure,
- when goods are being imported temporarily into the Community,

the guarantee is optional:

- when operators benefit from a suspensive procedure such as customs warehousing, inward processing or processing under customs control,
- when goods are in temporary storage awaiting a customs approved treatment,
- for imported goods which benefit from favourable tariff treatment as a result of their declared end use.

3. Where a security is mandatory the basic principle is that the customs authorities **are required to fix its level equal to the precise amount of the customs debt where this can be established with certainty, or if not, the maximum amount, as estimated by the customs authorities, of the customs debts which have been or may be incurred.** In practice, it is the security or guarantee body that assesses the risks of the operation for which it is responsible. In order for these risks to be precisely assessed the guarantee should thus be fixed at the closest possible level to the customs debt for which the security or guarantee is provided. If these rules were observed, the relevant financial interests would be fully protected.

4. The Court of Auditors considers that a substantial part of the ECU 14 100 million of traditional own resources entered in the Community's accounts for 1998 will have been covered by a security at least once before being made available. However, the consolidated balance sheet of the European Community for 1998 shows **the volume of debts entered in**

² Or when the declarant seeks to benefit from a reduced or zero rate of customs duty but does not have all the necessary supporting documentation, but wishes none the less to have goods released for free circulation immediately.

the 'B'³ accounts at ECU 1739 million (ECU 1362 million in 1997). This balance comprises the unsecured debts arising from fraud and irregularity, on the one hand, and on the other hand both secured but contested debts and insufficiently secured debts, although it is not possible to distinguish between these in the records. The volume of this remainder to be settled, which is constantly growing, is the first problem and demonstrates that the current system of securities and guarantees, as administered by the Commission, is not operating properly.

5. In addition, according to the Court of Auditors there are no reliable statistics on the volume of current, granted or discharged guarantees, which poses a second problem since the data on these securities and guarantees, which are clearly identified in accounting and legal terms, certainly exist in the customs accounting departments of Member States, but there are no procedures to enable them to be collated and known at Community level. Because of this, your rapporteur is unable to provide or examine 'macro-accounting' data on the situation with regard to customs securities in the Community as a whole.

6. This situation, which is well known in customs circles, confirms that customs administrations are still unable to work within a framework that is genuinely a joint one. The Commission is not properly fulfilling its responsibilities in this area. The issue of the operation of customs services is of particular importance given that, at its meeting of 24 and 25 March in Berlin, the European Council agreed that the amount deducted by Member States by way of collection costs for customs duties (which are thus deducted from the only true own resource) would be increased from 10% to 25% effective from 2001.

I. Securities and guarantees given as part of release for free circulation procedures

7. Articles 74(1) and 192 of the Community Customs Code⁴ provide that where a customs debt has been incurred following the acceptance of a customs declaration, the goods in question may only be released to the declarant when the latter pays the import duties or provides security for the debt arising on them. A declarant may only be granted the right to defer payment where he provides security corresponding to the amount of the customs debt in general. It is generally a requirement of the granting of deferral approval that the trader agrees not to exceed the authorised limits.

8. In paragraph 13 of the special report mentioned above, the Court of Auditors remarks that *'in four of the Member States visited, the procedures in operation are not adapted to ensure that [the applicable provisions] are adhered to'*.

³ Unsecured debts and secured but contested debts must be entered in separate accounts (called B accounts). As soon as Community entitlements that have been entered in the B accounts are settled, they are required to be transferred to the A accounts within the prescribed period. On this point, the rapporteur notes that because of the mechanisms of the Community budget's calls for resources amounts entered in the B accounts are financed by GNP contributions from the Member States.

⁴ Regulation (EEC) No 2913/92.

9. In normal circumstances, when deferral monitoring by customs authorities indicates that traders may be about to exceed their authorised limits for secured duties, these traders are required to increase security or make physical payment before release of goods.

10. The Court's findings reveals that some customs authorities cannot effectively monitor the observance of the requirements set out in Community legislation on guarantees in every case because of failures in their systems and their operating or computer procedures. In paragraph 14 of its special report the Court rightly points out the provisions of Article 232(1) of the Community Customs Code concerning late payment interest in case of late payment of customs debts in excess of the authorised limits.

Incomplete declarations

11. Customs authorities may allow traders up to one month to provide missing documents or other particulars in support of a customs declaration⁵. Where the missing documents may enable a declarant to qualify for a reduced or zero rate of duty, customs authorities may grant a further extension of up to three months in which to produce the documents. They are, however, required to take security to cover the difference between the full rate of duty and the reduced or zero rate being sought.

12. Where the necessary documents or particulars are not provided by the end of the time limit set out, the amount of the security taken shall be entered immediately in the A accounts. However, in paragraph 18 of its special report the Court of Auditors notes that in three Member States it found cases where the maximum permitted period had elapsed but the procedures in operation failed to ensure that the secured duties at the full rate were entered in the A accounts to be made available to the Commission at the appropriate time.

13. The Court correctly observes that the delay in entering the duties involved in the A accounts rests with the Member States' administrations rather than with the traders concerned.

II. Compulsory guarantees given within certain customs procedures

Common transit and Community transit

14. External transit procedures allow the movement from one point to another within the customs territory of the Community of⁶:

- non-Community goods, without such goods being subject to import duties and other charges or to commercial policy measures,

⁵ Article 256 of Regulation (EEC) No 2454/93.

⁶ Article 91 of Regulation (EEC) No 2913/92.

- Community goods, which are subject to a Community measure involving their export to third countries and in respect of which the corresponding customs formalities for export have been carried out.

The most significant movements are made under the external/common transit procedure and under cover of a TIR carnet issued pursuant to the TIR convention⁷.

Monitoring and adequacy of comprehensive guarantees

15. Operators using the Community/common transit procedure must have one of three forms of guarantee: **individual**, in particular for a range of listed sensitive goods, **flat-rate**, in general for intermittent users of the procedure and **comprehensive**, for habitual users who satisfy certain criteria.

16. Article 361 of the provisions implementing the Community Customs Code sets out a procedure to estimate the amount of the comprehensive guarantee to be provided by operators. This procedure determines that the amount of the guarantee shall be set on the basis of one week's transit operations. The adequacy of the level of the guarantee must be reviewed and if necessary amended each year by the customs authorities. Customs authorities are required to use information from customs offices of departure in the review process. However, as there are at present no procedures in place to obtain such information from the departure offices in other Member States, the Court rightly observes that the commercial and accounting documentation of the operator must be used to achieve a meaningful result from the process.

17. However, the Court found that the arrangements for carrying out these reviews were poorly implemented:

- in two Member States, the customs authorities used data provided by transit operators covering only a reference period in the year's activities
- in another Member State, the Court noted that a review of guarantees had not been carried out for five years,
- while reviews are carried out in five Member States, the frequency and method of the review do not conform to the requirements of Community legislation. For instance, in one Member State, a computerised review process is in operation but is such that it cannot confirm the continuing adequacy of the level of guarantee because, in common with other Member States, it cannot access details of transit operations commenced in other Member States,
- finally, the customs authorities of two Member States do not make use of a central transit office⁸.

⁷ Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) (OJ L 252, 14.9.1978, p. 2).

⁸ This means that individual customs offices that issue transit certificates cannot monitor transit operations carried out under these certificates at other offices of departure. The national authorities are therefore not in a position to verify that comprehensive guarantees in place are adequate for operations commencing within their own jurisdiction.

Additionally, the Court noted a transit case where the unlawful introduction of cigarettes into the Community gave rise to a demand for customs duties of approximately ECU 2.8 million. The comprehensive guarantee, provided to the customs authority of a third country under common transit arrangements, only amounted to approximately ECU 200 000. In this instance, the insufficient guarantee had already been exhausted by prior claims on it. This case serves to illustrate inadequate way in which the comprehensive guarantee provisions are implemented, thereby weakening the protection of the Community's financial interests. Customs authorities may issue multiple copies of guarantee certificates⁹, each of which may be used up to the limit of the guarantee and from any office of departure in the customs territory. This fact and the time lag in clearing existing transit operations effectively mean that the debts supposed to be covered by a guarantee may be many times greater than it. In the event of a transit failure and subsequent default by the operator in paying his debts, the guarantor will only be liable for debts up to the limit set. This case serves to illustrate the poor implementation of the guarantee provisions, opening up opportunities for fraud.

Waiver of comprehensive guarantee in transit

18. A waiver of the comprehensive guarantee may be granted to an operator provided the operator meets certain conditions: guarantee waiver should not be granted for the movement of goods of value in excess of ECU 100 000.

19. The Court noted *'the use of the waiver provisions in a number of Member States and in two of them was unable to confirm the use by their respective customs authorities of formal procedures to verify the financial suitability of applicants for guarantee waiver.'*

The Court reveals that it was unable to confirm that procedures were in place to monitor compliance with the requirement that movement of goods of value in excess of ECU 100 000 were not granted a guarantee waiver.

20. The fact that the single administrative document (SAD) used for transit purposes does not include information on the value of consignments militates against effective monitoring by Member States of this provision. It also hampers the customs authorities in assessing risk inherent in individual transit operations and in ensuring the adequacy of the guarantees provided. The Commission has made proposals to this effect, but owing to opposition from some Member States they have not come to fruition. The Commission must be encouraged to rework its proposals concerning high-risk goods.

21. Also, given the tendency of Member States to enter all debts arising from undischarged transit operations in the B accounts, the Court questions *'whether the undertakings required to be given as a condition of the granting of guarantee waivers represent 'self-guarantees' and that the associated debts should be deemed to be secured debts under the terms of Council Regulation (EEC, Euratom) No 1552/89 and therefore made available to the Commission without delay.'* The rapporteur agrees with this view.

⁹ Under Article 360 of the amended provisions implementing the Community Customs Code.

It is clear that the grant of a guarantee waiver should be given only to those traders involved in transit operations who have displayed a willingness to abide by the provisions of the scheme and to pay their debts at first demand.

Notification of potential transit debts to guarantors under the transit procedure

22. A guarantor shall not be required to honour his guarantee covering debts arising from undischarged transit operations if he is not notified of the potential debt within a period of 12 months from the date of registration of the operation. The Court noted 10 cases, entered in the B accounts, where the customs authority failed to notify the guarantors within the prescribed period of potential liabilities of approximately ECU 200 000 under guarantees in place.

23. The Court rightly considers that the own resources involved should have been entered in the A accounts and made available to the Commission as the amounts were guaranteed and not subject to challenge within the prescribed time limit. As a consequence of this error on the part of customs, the Member States in question should assume the financial consequences and make the established duties available without delay, independently of whether or not the debts will be recovered from the debtors or guarantors. The Commission should charge interest to compensate for making payments available belatedly, regardless of the reason.

Mutual assistance

24. Council Regulation (EC) No 515/97¹⁰ on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission asserts that '*effective cooperation ... strengthens the protection of the financial interests of the Community*'. During its audit, the Court reviewed the application of mutual assistance procedures in transit and noted one instance involving four Member States where only ECU 99 707 had been collected from a total debt of ECU 645 557, as a result of apparent delays in passing on demands for payment, insufficient guarantee or incorrect name of guarantor.¹¹

¹⁰ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

¹¹ The Court, in its report on the 1994 financial year, commented on inadequacies in cooperation and follow-up by Member States and the Commission in their implementation of the regulations on mutual assistance. The Court has also commented in past reports that the single market has become a reality for traders - especially those who would evade the payment of duties and taxes - while for the Community services it still seems to be constrained within the national borders.

TIR (transport international routiers/international road transport)

25. Article 91(2) of the Community Customs Code¹² provides that movements of non-Community goods can be made, under certain conditions, under the TIR Convention of 14 November 1975 using TIR carnets. In these cases, approved guaranteeing associations act as guarantors up to a maximum of USD 50 000 per TIR, that amount thus providing the specific transit guarantee.

26. In the course of its audit in a number of Member States and at the Commission the Court became aware of difficulties in relation to these insurance policies. The pool of insurance companies, underwriting the potential liabilities of the IRU, refused to honour their policies because of the magnitude of debts arising in trade between the central and east European countries and the Community. Under Community rules, the Member State responsible for the collection of duties in undischarged TIR cases is that in which the goods were last known to be or where the goods were first introduced into the Community where their whereabouts is not known. As a result of its particular geographical position, one Member State accounts for a disproportionate amount of undischarged transit cases.

27. The Court noted from an internal Commission report on a monitoring visit to this Member State that the national authority had concluded an agreement with one of the guaranteeing associations not to press for payment under the Convention but that an arbitration case is in progress. The Commission has taken steps to collect these duties and late payment interest thereon.

28. The difficulties giving rise to the failure to collect the considerable amounts of customs duties and other taxes arising from these TIR operations are attributable to poor implementation and a lack of monitoring in the whole field of transit of goods. The Court rightly observes that *'monitoring here means not only supervision of the adequacy of guarantees and reliability of guarantors but also the timely clearance of operations carried out'*.

29. Phase II of the computer application for monitoring transit operations (NCTS), which has been in development at the Commission since 1995, should allow monitoring of suspended or discharged guarantees by operator. The rapporteur notes with interest that, in the long term, the NCTS will make it possible to resolve the problems associated with checking and monitoring guarantees.

Temporary importation of goods

30. Goods may be imported into the Community customs territory for exhibition, testing or other temporary purpose without the payment of customs duties for a maximum period of 24 months during which goods may remain under the temporary importation procedure. In

¹² Council Regulation (EEC) No 2913/92.

practice, the maximum period of 24 months is normally applied, on the provision of security equivalent to the amount of the duties involved. The Court found that in some Member States the guarantee was not equivalent to the minimum, namely the amount of the duties involved.¹³

31. The Commission should ensure that Member States put in place appropriate monitoring procedures designed to identify, on a timely basis, those declarations relating to temporary importation which are uncleared after the time limit agreed by the customs authorities and, at the latest, 24 months after the initial declaration, and to ensure that guarantees of an adequate level are put in place.

III. Other general observations

Appeals

32. Article 244 of the Community Customs Code permits a customs authority to suspend implementation of a disputed decision which would have given rise to a customs debt provided a security for the debt exists or is lodged. Security need not be provided where this requirement could have serious social or economic consequences for the appellant. The use of this provision gives rise to delaying tactics.

33. The Commission should carry out a review of the provisions of national law relating to security on appeals to establish the extent to which national legislation is inconsistent with the requirements of the Community Customs Code, which may be made nonsensical by national law.

Situations where no security exists

34. In certain circumstances no security is required although own resource debts may arise. Thus, Article 189 of the Community Customs Code provides that no security is required where the debtor or potential debtor is a public authority.

35. Where the customs authorities decide not to take an optional security, such decisions are based on their assessment of the reliability of the principals concerned. This implies that the Member States assume liability for customs debts arising in cases of non-recovery.

36. It is incumbent on the Commission to exercise its supervisory role to ensure that Member States only exercise their prerogative under the Article '*in cases of force majeure*' or where '*it appears that recovery is impossible in the long term for reasons which cannot be attributed to them*'. The Court rightly considers that failure to make a proper assessment of risks of non-collection of customs debts does not constitute a reason for not making available own resources in accordance with this Article.

¹³ In addition, the fact that the Member States' customs authorities set securities at such varying levels for comparable operations risks introducing an element of unfair competition between customs services.

Making available to the Commission secured entitlements

37. Article 6(2) of Council Regulation (EEC, Euratom) No 1552/89 makes detailed provisions regarding the making available of Community own resources.

38. However, these provisions are not widely respected in the Member States, with the consequence that frequently the Community's entitlements are not made available to the Commission when required.

39. To sum up, there is a lack of rigour in the management of customs securities and guarantees: Member States fail to make available own resources on their establishment that are covered or partly covered by security and that do not show evidence of being appealed by the debtors involved, and the Commission does not take sufficient relevant initiatives to ensure that the Community receives the resources to which it is entitled in good time and in a uniform fashion.