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COUNCIL REGULATION (EC, EURATOM) NO 2988/95
of 18 December 1995
on the protection of the European Communities financial interests
(OJ L 312, 23.12.1995, p. 1)

Corrected by:

► C1 Corrigendum, OJ L 36, 10.2.1998, p. 16 (2988/95)

**COUNCIL REGULATION (EC, EURATOM) NO 2988/95****of 18 December 1995****on the protection of the European Communities financial interests**

TITLE I

General principles*Article 1*

1. For the purposes of protecting the European Communities' financial interests, general rules are hereby adopted relating to homogeneous checks and to administrative measures and penalties concerning irregularities with regard to Community law.

2. 'Irregularity' shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.

Article 2

1. Administrative checks, measures and penalties shall be introduced in so far as they are necessary to ensure the proper application of Community law. They shall be effective, proportionate and dissuasive so that they provide adequate protection for the Communities' financial interests.

2. No administrative penalty may be imposed unless a Community act prior to the irregularity has made provision for it. In the event of a subsequent amendment of the provisions which impose administrative penalties and are contained in Community rules, the less severe provisions shall apply retroactively.

3. Community law shall determine the nature and scope of the administrative measures and penalties necessary for the correct application of the rules in question, having regard to the nature and seriousness of the irregularity, the advantage granted or received and the degree of responsibility.

4. Subject to the Community law applicable, the procedures for the application of Community checks, measures and penalties shall be governed by the laws of the Member States.

Article 3

1. The limitation period for proceedings shall be four years as from the time when the irregularity referred to in Article 1 (1) was committed. However, the sectoral rules may make provision for a shorter period which may not be less than three years.

In the case of continuous or repeated irregularities, the limitation period shall run from the day on which the irregularity ceases. In the case of multiannual programmes, the limitation period shall in any case run until the programme is definitively terminated.

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The limitation period shall be interrupted by any act of the competent authority, notified to the person in question, relating to investigation or legal proceedings concerning the irregularity. The limitation period shall start again following each interrupting act.

However, limitation shall become effective at the latest on the day on which a period equal to twice the limitation period expires without the competent authority having imposed a penalty, except where the administrative procedure has been suspended in accordance with Article 6 (1).

2. The period for implementing the decision establishing the administrative penalty shall be three years. That period shall run from the day on which the decision becomes final.

Instances of interruption and suspension shall be governed by the relevant provisions of national law.

3. Member States shall retain the possibility of applying a period which is longer than that provided for in paragraphs 1 and 2 respectively.

TITLE II

Administrative measures and penalties*Article 4*

1. As a general rule, any irregularity shall involve withdrawal of the wrongly obtained advantage:

- by an obligation to pay or repay the amounts due or wrongly received,
- by the total or partial loss of the security provided in support of the request for an advantage granted or at the time of the receipt of an advance.

2. Application of the measures referred to in paragraph 1 shall be limited to the withdrawal of the advantage obtained plus, where so provided for, interest which may be determined on a flat-rate basis.

3. Acts which are established to have as their purpose the obtaining of an advantage contrary to the objectives of the Community law applicable in the case by artificially creating the conditions required for obtaining that advantage shall result, as the case shall be, either in failure to obtain the advantage or in its withdrawal.

4. The measures provided for in this Article shall not be regarded as penalties.

Article 5

1. Intentional irregularities or those caused by negligence may lead to the following administrative penalties:

- (a) payment of an administrative fine;
- (b) payment of an amount greater than the amounts wrongly received or evaded, plus interest where appropriate; this additional sum shall be determined in accordance with a percentage to be set in the specific rules, and may not exceed the level strictly necessary to constitute a deterrent;

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- (c) total or partial removal of an advantage granted by Community rules, even if the operator wrongly benefited from only a part of that advantage;
- (d) exclusion from, or withdrawal of, the advantage for a period subsequent to that of the irregularity;
- (e) temporary withdrawal of the approval or recognition necessary for participation in a Community aid scheme;
- (f) the loss of a security or deposit provided for the purpose of complying with the conditions laid down by rules or the replenishment of the amount of a security wrongly released;
- (g) other penalties of a purely economic type, equivalent in nature and scope, provided for in the sectoral rules adopted by the Council in the light of the specific requirements of the sectors concerned and in compliance with the implementing powers conferred on the Commission by the Council.

2. Without prejudice to the provisions laid down in the sectoral rules existing at the time of entry into force of this Regulation, other irregularities may give rise only to those penalties not equivalent to a criminal penalty that are provided for in paragraph 1, provided that such penalties are essential to ensure correct application of the rules.

Article 6

1. Without prejudice to the Community administrative measures and penalties adopted on the basis of the sectoral rules existing at the time of entry into force of this Regulation, the imposition of financial penalties such as administrative fines may be suspended by decision of the competent authority if criminal proceedings have been initiated against the person concerned in connection with the same facts. Suspension of the administrative proceedings shall suspend the period of limitation provided for in Article 3.

2. If the criminal proceedings are not continued, the suspended administrative proceedings shall be resumed.

3. When the criminal proceedings are concluded, the suspended administrative proceedings shall be resumed, unless that is precluded by general legal principles.

4. Where the administrative procedure is resumed, the administrative authority shall ensure that a penalty at least equivalent to that prescribed by Community rules is imposed, which may take into account any penalty imposed by the judicial authority on the same person in respect of the same facts.

5. Paragraphs 1 to 4 shall not apply to financial penalties which form an integral part of financial support systems and may be applied independently of any criminal penalties, if and in so far as they are not equivalent to such penalties.

Article 7

Community administrative measures and penalties may be applied to the economic operators referred to in Article 1, namely the natural or legal persons and the other entities on which national law confers legal capacity who have committed ►**C1** the irregularity. They may also apply to persons who have taken part in the irregularity and to those who are ◀ under a duty to take responsibility for the irregularity or to ensure that it is not committed.

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TITLE III

Checks*Article 8*

1. In accordance with their national laws, regulations and administrative provisions, the Member States shall take the measures necessary to ensure the regularity and reality of transactions involving the Communities' financial interests.

2. Measures providing for checks shall be appropriate to the specific nature of each sector and in proportion to the objectives pursued. They shall take account of existing administrative practice and structures in the Member States and shall be determined so as not to entail excessive economic constraints or administrative costs.

The nature and frequency of the checks and inspections on the spot to be carried out by the Member States and the procedure for performing them shall be determined as necessary by sectoral rules in such a way as to ensure uniform and effective application of the relevant rules and in particular to prevent and detect irregularities.

3. The setoral rules shall include the provisions necessary to ensure equivalent checks through the approximation of procedures and checking methods.

Article 9

1. Without prejudice to the checks carried out by the Member States in accordance with their national laws, regulations and administrative provisions and without prejudice to the checks carried out by the Community institutions in accordance with the EC Treaty, and in particular Article 188c thereof, the Commission shall, on its responsibility, have checks carried out on:

- (a) the conformity of administrative practices with Community rules;
- (b) the existence of the necessary substantiating documents and their concordance with the Communities' revenue and expenditure as referred to in Article 1;
- (c) the circumstances in which such financial transactions are carried out and checked.

2. In addition, it may carry out checks and inspections on the spot under the conditions laid down in the sectoral rules.

Before carrying out such checks and inspections, in accordance with the rules in force, the Commission shall inform the Member State concerned accordingly in order to obtain any assistance necessary.

Article 10

Additional general provisions relating to checks and inspections on the spot shall be adopted later in accordance with the procedures laid down in Article 235 of the EC Treaty and Article 203 of the EAEC Treaty.

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Article 11

This Regulation shall enter into force on the third 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.