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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC, EURATOM, ECSC) No 2891/77

of 19 December 1977

implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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 Economic 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 the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources ⁽¹⁾, hereinafter referred to as 'the Decision of 21 April 1970', and in particular Article 6 (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Court of Auditors,

Whereas the Treaty of 22 July 1975 amending certain financial provisions of the Treaties establishing the European Communities and of the Treaty establishing a single Council and a single Commission of the European Communities entered into force on 1 June 1977;

Whereas the own resources system established by the Decision of 21 April 1970 will be fully applied as from 1978;

Whereas the Communities are to have disposal over the own resources referred to in Article 4 of the Decision of 21 April 1970 which must necessarily be allocated to them within the limits of the establishments recorded;

Whereas, however, as regards own resources accruing from value added tax, hereinafter called 'VAT resources', the application of Article 22 of sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — common system of value added tax: uniform basis of assessment ⁽³⁾ may create inequalities between the Member States in the making available of the said resources; whereas this source of inequality should be eliminated by laying down that all Member States must make available to the Communities the budget estimate of these resources in the form of fixed monthly twelfths subject to subsequent adjustment of the amounts made available in accordance with the actual VAT assessment basis as soon as it is fully known;

Whereas the own resources may be made available in the form of an entry of the amounts due in an account opened for this purpose in the name of the Commission with the Treasury or with the body appointed by each Member State; whereas in order to restrict the movements of funds to that which is necessary for the implementation of the budget, the Communities may confine themselves to applying levies on the abovementioned accounts intended to cover solely the Commission's cash requirements;

Whereas it is appropriate to specify the balance to be carried over to the following financial year and the conditions under which the revenue and the balance to be carried forward will be allocated to the budget;

⁽¹⁾ OJ No L 94, 28. 4. 1970, p. 19.

⁽²⁾ OJ No C 266, 7. 11. 1977, p. 50.

⁽³⁾ OJ No L 145, 13. 6. 1977, p. 1.

Whereas, in order to guarantee, in every instance, the financing of the Communities' budget, the procedure for making available the contributions based on the gross national product, specified in Article 4 (2) and (3) of the Decision of 21 April 1970, should be laid down;

Whereas the Member States must keep at the disposal of the Commission and where necessary forward to it the documents and information needed to exercise the powers conferred upon it as regards the Communities' own resources and the budgetary procedure;

Whereas the Member States should arrange for verifications and inquiries relating to the establishment and the making available of own resources; whereas the Commission should exercise its powers in accordance with this Regulation;

Whereas a new unit of account, called the 'European unit of account', will be introduced in the budget as from 1978;

Whereas close cooperation between Member States and the Commission will facilitate the application of this Regulation, which aims at enabling the Communities to dispose of their own resources under the best possible conditions;

Whereas the full application of the own resources system involves a general amendment of Council Regulation (EEC, Euratom, ECSC) No 2/71 of 2 January 1971 implementing the Decision of 21 April 1970 on the replacement of financial contributions from the Member States by the Communities' own resources ⁽¹⁾; whereas it consequently appears necessary to replace this Regulation,

HAS ADOPTED THIS REGULATION:

TITLE I

General provisions

Article 1

The Communities' own resources within the meaning of the Decision of 21 April 1970, hereinafter called 'own resources', shall be established by Member States in accordance with their own provisions laid down by law, regulation or administrative action and shall be made available to the Commission and inspected as specified in this Regulation, without preju-

dice to Council Regulation (EEC, Euratom, ECSC) No 2892/77 of 19 December 1977 implementing in respect of own resources accruing from value added tax the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources ⁽²⁾.

Article 2

For the purpose of applying this Regulation, an entitlement shall be deemed to be established as soon as the corresponding claim has been duly determined by the appropriate department or agency of the Member State.

Where it becomes necessary to rectify an establishment recorded in accordance with the first paragraph, the competent department or agency of the Member State shall make a new establishment.

Article 3

Member States shall take all appropriate measures to ensure that the supporting documents concerning the establishment and the making available of own resources are kept for at least three calendar years, as from the end of the year to which these supporting documents refer.

Article 4

1. Each Member State shall inform the Commission, at the latter's request:
 - (a) of the names of the departments or agencies responsible for establishing own resources and, where appropriate, their status;
 - (b) of the general provisions laid down by law, regulation or administrative action and those relating to accounting procedure concerning the establishment of own resources and their being made available to the Commission.

2. The Commission shall, at the request of the other Member States, pass to them the information referred to in paragraph 1.

Article 5

Each Member State shall draw up yearly a summary account together with a report on the establishment and inspection of own resources and shall forward this to the Commission before 1 July of the year following the financial year in question.

⁽¹⁾ OJ No L 3, 5. 1. 1971, p. 1.

⁽²⁾ See page 8 of this Official Journal.

Article 6

The rate referred to in the second subparagraph of Article 4 (1) of the Decision of 21 April 1970 shall be laid down in the budget of the Communities. It shall be expressed as a figure to four decimal places and calculated as a percentage of the estimated assessment basis for the value added tax (VAT) in such a manner that it fully covers that part of the budget not financed from customs duties, agricultural levies, miscellaneous revenue and, where appropriate, financial contributions based on gross national product (GNP).

TITLE II

Accounts for own resources

Article 7

1. Accounts for own resources shall be kept by the Treasury of each Member State or by the body appointed by each Member State and broken down by type of resources.

2. The established entitlements shall be entered in the accounts at the latest on the 20th day of the second month following the month during which the entitlements were established.

VAT resources shall however be included in the accounts as follows:

- on the first working day of each month, the twelfth referred to in Article 10 (3),
- annually, as regards the balance referred to in Article 10 (4).

3. Each Member State shall forward to the Commission a monthly statement of its accounts.

Article 8

The new establishments recorded under the second paragraph of Article 2 shall be entered in the monthly return corresponding to the date of these establishments and shall be added to or subtracted from the total amount of established entitlements.

TITLE III

Making available own resources

Article 9

1. The amount of own resources established shall be credited by each Member State to the account

opened for this purpose in the name of the Commission with its Treasury or with the body it has appointed.

However, the VAT resources and, where appropriate, the financial contributions based on GNP shall be entered in accordance with the procedure laid down in Article 10 (3) and (4).

This account shall be kept free of charge.

2. Each amount shall be entered gross. In the 30 days following notification of any entry, the Commission shall issue a transfer order in favour of the Member State for the amounts corresponding to the standard refund for the expenses incurred in collection as referred to in the fifth subparagraph of Article 3 (1) of the Decision of 21 April 1970.

3. The amounts entered shall be converted by the Commission into, and entered in its accounts in European units of account (EUA) on the basis of the quotations obtaining on the last day corresponding to the time limit for entry or on the first preceding day for which such quotations are available.

Article 10

1. The entry referred to in Article 9 (1) shall be made at the latest by the 20th day of the second month following the month during which the entitlement was established.

2. If necessary, Member States may be invited by the Commission to bring forward by one month the entering of resources other than VAT resources on the basis of the information available to them on the 15th of the same month.

Each entry brought forward shall be adjusted the following month when the entry mentioned in paragraph 1 is made. This adjustment shall entail the negative entry of an amount equal to that given in the entry brought forward.

3. Nevertheless, the VAT resources or, where appropriate, the financial contributions based on GNP, shall be entered on the first working day of each month, the amount being one-twelfth of the total resulting from the budget in this connection.

Any change in the rate of VAT or, if appropriate, in the financial contributions based on GNP shall be occasioned by the final adoption of a supplementary or amending budget and shall give rise to a readjustment of the twelfths which have been entered since the beginning of the financial year.

This readjustment shall be carried out when the first entry is made following the final adoption of the supplementary or amending budget.

Calculation of the one-twelfth for the month of January of each financial year shall be based on the amounts provided for in the draft budget; this amount shall be adjusted when the next month's entry is made. If the budget has not been finally adopted before the beginning of the financial year, the twelfths shall similarly be calculated from the amounts entered in the draft budget; the adjustment shall be made on the first due date following the final adoption of the budget.

4. Each Member State shall, on the basis of the annual statement of VAT resources provided for in Article 10 (1) of Regulation (EEC, Euratom, ECSC) No 2892/77, be debited with an amount calculated from the information contained in the said statement by applying the rate adopted for the previous financial year and credited with the 12 payments made during that previous financial year. The Commission shall work out the balance and shall inform the Member States in good time in order that the latter may enter it in the account referred to in Article 9 (1) of this Regulation on the first working day of August of the same year.

5. With effect from 1 January 1979, those Member States having entered financial contributions based on GNP during the previous financial year shall, on the due dates given in paragraph 3 and by the same method, adjust the said contributions so as to restore, in the light of the actual yield from VAT resources, the original distribution in the budget between the latter and the financial contributions based on GNP.

6. The operations referred to in paragraphs 4 and 5 constitute modifications to revenue in respect of the financial year in which they occur.

Article 11

Any delay in making the entry in the account referred to in Article 9 (1) shall give rise to the payment of interest by the Member State concerned at a rate equal to the highest rate of discount ruling in the Member States on the due date. That rate shall be increased by 0.25 of a percentage point for each month of delay. The increased rate shall be applied to the entire period of delay.

TITLE IV

Management of cash resources

Article 12

1. The Commission shall draw on the sums credited to the accounts referred to in Article 9 (1) to the

extent necessary to cover its cash resource requirements arising out of the implementation of the budget.

2. If the cash resource requirements are in excess of the assets of the accounts, the Commission may draw in excess of the total of these assets. In this event, it shall inform the Member States in advance of any foreseeable excess requirements.

3. The difference between the overall assets and the cash resource requirements shall be divided among the Member States, as far as possible, in proportion to the estimated budget revenue from each of them.

4. The orders and instructions which the Commission sends to the Treasury or to the appropriate department of each Member State shall be carried out as soon as possible.

TITLE V

Procedure for the application of Article 4 (2) and (3) of the Decision of 21 April 1970

Article 13

1. This Article shall apply where it may be necessary to implement the provisional derogations provided for in Article 4 (2) and (3) of the Decision of 21 April 1970.

2. The gross national product at market prices shall be calculated on the basis of statistics compiled by the Statistical Office of the European Communities and corresponding, for each Member State, to the arithmetical average of the first three years of the five-year period preceding the financial year in respect of which the provisions of Article 4 (2) and (3) of the Decision of 21 April 1970 have been applied.

3. The gross national product for each reference year shall be calculated in terms of the EUA on the basis of the average rate of the EUA for the year in question.

4. As long as the derogation provided for in Article 4 (2) of the Decision of 21 April 1970 applies to one or more Member States, the Commission shall, in its preliminary draft budget, fix the estimated percentage of the budget corresponding to the financial contribution(s) of those Member States on the basis of the proportion of their GNP to the sum total of the gross national products of the Member States, and shall fix the VAT rate corresponding to the remainder of the budget to be provided by the other Member States. These figures shall be approved in accordance with budgetary procedure.

Article 14

For the purpose of this Regulation:

- (a) the gross national product at market prices is equivalent to the gross domestic product at market prices plus compensation of employees, property and entrepreneurial income from the rest of the world less the corresponding flows towards the rest of the world;
- (b) the gross domestic product at market prices, which represents the final result of the production activity at resident producer units, is equivalent to the total production of goods and services by the economy, less total intermediate consumption, plus taxes linked to imports.

TITLE VI

Procedure for the application of Article 4 (5) of the Decision of 21 April 1970

Article 15

For the purpose of applying Article 4 (5) of the Decision of 21 April 1970, the balance of a given financial year shall consist of the difference between:

- all the revenue collected in respect of that financial year, and
- the amount of payments made against appropriations for that financial year increased by the amount of the appropriations for the same financial year carried over pursuant to Articles 6 and 95 of the Financial Regulation.

This difference shall be increased or decreased by the net amount resulting from cancellations of appropriations carried forward from previous financial years, and of sums paid in excess of these appropriations as a result of the exchange rate adjustments which occurred between the time when the amount of carryover was determined and the time it was used.

Furthermore, the balance of the 1978 financial year shall be increased by the surplus or reduced by the deficit appearing when, on 1 January 1978, the balance sheet drawn up in units of account on 31 December 1977 is revalued in European units of account.

Article 16

1. The Commission shall, before the end of October in each financial year, make an estimate of the own resources collected for the entire year, on the basis of the data at its disposal at that time.

If appreciable differences from the original estimates appear, the former shall give rise to a letter of amendment relating to the draft budget for the following financial year.

2. At the time of the transactions referred to in Article 10 (4) and (5), the estimate of revenue given in the budget of the current financial year shall be increased or reduced in a ratifying budget by the differences resulting from those operations.

TITLE VII

Provisions concerning inspection measures

Article 17

1. Member States shall take all requisite measures to ensure that the amount corresponding to the entitlements established under Articles 1 and 2 are made available to the Commission as specified in this Regulation.

2. Member States shall be free from the obligation to place at the disposal of the Commission the amounts corresponding to established entitlements solely if, for reasons of *force majeure* these amounts have not been collected.

3. Every six months, Member States shall report to the Commission, where appropriate within the framework of existing procedures, comprehensive information and questions of principle concerning the most important problems arising out of the application of this Regulation and in particular matters in dispute.

Article 18

1. Member States shall carry out the verifications and inquiries concerning the establishment and the making available of own resources. The Commission shall make use of its powers as specified in this Article.

2. Accordingly, Member States shall:

- carry out any additional inspection measures the Commission may ask for in a reasoned request,
- associate the Commission, at its request, with the inspection measures which they carry out.

Member States shall take all steps required to facilitate these inspection measures. Where the Commission is associated with these measures, Member States shall place at its disposal the supporting documents referred to in Article 3. In order to restrict additional

inspection measures to the minimum the Commission may, in specific cases, request that certain documents be forwarded to it.

3. The inspection measures referred to in paragraphs 1 and 2 shall not prejudice:

- (a) the inspection measures undertaken by Member States in accordance with their own provisions laid down by law, regulation or administrative action;
- (b) the measures provided for in Articles 206, 206a and 206b of the Treaty establishing the European Economic Community and Articles 180, 180a and 180b of the Treaty establishing the European Atomic Energy Community;
- (c) the inspection arrangements made pursuant to Article 209 (c) of the Treaty establishing the European Economic Community and Article 183 (c) of the Treaty establishing the European Atomic Energy Community.

4. The Commission shall from time to time report to the European Parliament and to the Council on the functioning of the inspection arrangements.

Article 19

The provisions of Community law applicable to the sectors referred to in the first paragraph of Article 2 of the Decision of 21 April 1970, in particular regarding nomenclature, origin, value for customs purposes, Community transit and inward processing, shall be applied by the appropriate authorities of Member States when establishing own resources.

TITLE VIII

Provisions relating to the Advisory Committee on the Communities' Own Resources

Article 20

1. An Advisory Committee on the Communities' Own Resources, hereinafter called 'the Committee', is hereby set up.

2. The Committee shall consist of representatives of the Member States and of the Commission. Each Member State shall be represented on the Committee by not more than five officials.

The chairman of the Committee shall be a representative of the Commission.

The secretariat services for the Committee shall be provided by the Commission.

3. The Committee shall adopt its own rules of procedure.

Article 21

The Committee shall examine the question raised by its chairman on his own initiative or at the request of the representative of a Member State, which concern the application of this Regulation, in particular as regards:

- (a) the information provided for in Articles 4 (1) (b), 5 and 18 (3);
- (b) cases of *force majeure* referred to in Article 18 (2);
- (c) inspection measures and examinations provided for in Article 19 (2).

TITLE IX

Final provisions

Article 22

The Commission shall, by 30 September 1979, submit a report on the implementation of this Regulation together with, where appropriate, any proposals for amendments thereto.

Article 23

The Council, acting unanimously on a proposal from the Commission, shall adopt the procedures for implementing this Regulation as and when necessary.

Article 24

Regulation (EEC, Euratom, ECSC) No 2/71 shall be repealed with effect from 1 January 1978. References to that Regulation should be understood as referring to the present Regulation.

Article 25

For the financial year 1978, the deadlines laid down in Articles 5 and 10 (4) shall be extended until 1 September 1979 and the first working day of October 1979 respectively.

Article 26

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

It shall have effect from the financial year 1978.

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

Done at Brussels, 19 December 1977.

For the Council

The President

G. GEENS
