II

(Preparatory Acts)

COURT OF AUDITORS

OPINION No 6/93 OF THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES

on the proposal for a Council (EEC) Regulation amending Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 concerning the definitive uniform arrangements for the collection of own resources accruing from Value Added Tax

(93/C 227/01)

THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

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 Council Decision No 88/376/EEC, Euratom, of 24 June 1988 [1] concerning the system of own resources of the Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 [2] concerning the definitive uniform arrangements for the collection of own resources accruing from Value Added Tax (VAT),

Having regard to the proposal submitted by the Commission on 21 December 1992 [3],

Having regard to the Council's request for the Court's opinion on this proposal, received by the Court on 18 February 1993,

Having regard to Council Directive No 91/680/EEC of 19 December 1991 [4] completing the joint arrangements for value added tax and amending, with a view to the abolition of tax frontiers, Directive No 77/388/EEC,

Whereas the revenue method introduced by Council Regulation (EEC, Euratom) No 1553/89, as the uniform method for determining the harmonized VAT own resources base, is based on the principle of a theoretical reconstruction of the Member States' VAT bases using the amounts of VAT recovered; and whereas, by reason of this fact, it brings disparate factors into play, namely:

a) the net revenue received, on the one hand, which is accounted for using a traditional public accounting system, and

b) the weighted average VAT rate, the corrections to net revenue received and compensations applied to the intermediate base, on the other hand, established using multifarious types of data, such as the national accounts, tax or other statistics and estimates,

Whereas the checks carried out by the Court have shown that the data thus used are often based on hypotheses, which vary from one Member State to another; and whereas in certain cases the lack of recent official statistics results in the use of statistical sources of doubtful reliability; and, finally, whereas the calculation methods vary from Member State to Member State and are sometimes open to question;

Whereas, therefore, the revenue method in itself calls for a revision designed to eliminate as far as possible the elements of uncertainty that at present typify the reconstruction of the Member States' VAT bases,

(1) OJ No L 185, 15. 7. 1988, p. 24.
(2) OJ No L 155, 7. 6. 1989, p. 9.
(3) Document COM(92) 580 Final.
(4) OJ No L 376, 31. 12. 1991, p. 2.

HAS ADOPTED THE FOLLOWING OPINION:

PART ONE

General observations

1) The Commission's proposal aims to achieve two objectives:

— on the one hand, the updating of the Regulation so as to take account of the transitional arrangements for taxing intra-Community trade applicable with effect from 1 January 1993, and

— on the other hand, the laying down of common methods for calculating certain components of the VAT own resources base.

2) Updating the Regulation so as to take account of the abolition of fiscal frontiers, which is contemplated in Article 1 of the Commission proposal, is a technical measure. Whilst recognising the usefulness of the corrections proposed by the Commission, the Court wishes to draw attention to the fact that Directive 92/111/EEC of 14 December 1992 [1] amending Directive 77/388/EEC [2] has not been taken into consideration. It would consequently be preferable, in order to avoid the danger of repeated updatings, to refer only to the main directive in the text of the Regulation. Above all, though, the amendment proposed for Article 4, paragraph 2, according to which goods taxed in one Member State but transferred to another must be part of the VAT base of the first State, risks raising problems of practical application. It should have been completed by including a uniform calculation method in the Annex to the proposal for a regulation.

3) The common calculation method for certain components of the VAT own resources base which is provided for in the Annex amounts to an attempt at rationalization in this area of a kind which the Court has in fact called for in the past. The proposed procedures are commented on in detail in the second part of this Opinion. They could usefully be completed by others, concerning, for example, flat-rate farmers and sliding-scale VAT reductions.

4) Laying down a common calculation method is, however, nothing more than a partial measure. A more thorough-going attempt at rationalization should be made, in respect of the areas mentioned below.

[1] OJ No L 384, 30. 12. 1992, p. 47.
[2] OJ No L 145, 13. 6. 1977, p. 1.

Clarification of the provisions of the regulations:

5) Council Regulation (EEC, Euratom) No 1553/89 itself authorizes certain approximations and allows for the possibility of using data of doubtful reliability. This option is in contradiction with the degree of discipline required in the financial sphere, and in particular with the requirement for accuracy to the fourth decimal point in the figure for the weighted average rate.

6) These elements of uncertainty ought to be eliminated in the light of experience and as far as possible. The main examples are listed below:

— rounding up to 10 % in national currency of the turnover ceiling (10 000 ECU) of exempt taxable persons (Article 2, paragraph 3);

— authorization to make use of national accounts prior to the year n − 2, up to a maximum of five years before the reference financial year (Article 4, paragraph 4);

— the option of using any other source, apart from the European System of Integrated Economic Accounts, (Article 4, paragraph 5) or tax data (Article 6, paragraph 1);

— rounding up to a full month of the average period of application of a given rate of VAT (Article 4, paragraph 7);

— authorization to leave certain important operations out of account or to calculate them using 'approximate estimates' (Article 6, paragraph 3);

Stricter definition of the concept of 'net revenue received':

7) As the net revenue received is the basic reference for the purpose of calculating the VAT base, it is important to give as precise a definition of it as possible so as to ensure that the sums in question are accurately determined. For example, the possibility could be envisaged of taking as a reference the date on which the relevant tax authorities enter a given item of VAT revenue in their VAT recovery accounts. The accounting statements in question should also be expressly designated by the Member States, in order to help the Commission to identify them.

Application to the VAT base of the provisions concerning the checking of the calculation of the Gross National Product (GNP):

8) For the purpose of scrutinizing and checking figures for the GNP aggregate communicated by the Member States, procedures are laid down in Title III of the Council Directive of 13 February 1989 (89/130/EEC, Euratom) [3] concerning the harmonization of the calculation of the

[3] OJ No L 49, 21. 2. 1989, p. 26.

Gross National Product at market prices. The Commission implements these procedures through the Statistical Office of the European Communities, which is itself assisted by a committee of specialist statisticians.

9) It would be logical if the precautions that are taken when evaluating the GNP were also applicable to the evaluation of the statistical and macroeconomic components of the VAT base. The weighted average rate, particularly now that the internal frontiers have been eliminated, along with corrections and compensations and the items that go to make them up, should therefore be notified to the Commission in accordance with the same procedures as the figures for the GNP aggregate and should be subjected to the same forms of scrutiny. To this end, it would be sensible to establish a common date for the forwarding of the VAT statements and the GNP figures.

Recording and monitoring of adjustments to VAT statements:

10) In implementation of the provisions of Article 9 of Regulation (EEC, Euratom) No 1553/89, so-called 'reserves' are entered in the event of disagreements as to the adjustments that are to be made to the VAT statements by the Commission or the Member States. These reserves are entered for a maximum period of four years after the forwarding of the statements.

11) The Court has already pointed out, in particular in its annual report on the financial year 1991 [1], that these reserves are not at present subject to anything more than a form of administrative recording, which gives them an unofficial, discretionary aspect. What is more, the resolution of these reserves is subordinated to the need to arrive at an agreement between the Commission and the Member State and the principle of specific time limits is not provided for in the Regulation.

12) These weaknesses should be remedied by introducing a form of official recording of the reserves and establishing rules governing the time limits within which such differences must be settled. In this connection, the adoption of a common calculation method ought to facilitate the detection of cases that are subject to reserves.

PART TWO

Examination of the common calculation method

In the following tabular presentation, the Court sets out the amendments to and comments on the annex to the Commission's proposal which were adumbrated in Part One.

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[1] OJ No C 330, 15. 12. 1992, paragraphs 1.99 — 1.102.

THE COMMISSION'S PROPOSAL	THE COURT'S PROPOSAL	COMMENTS
Common calculation method		
1. Article 2 (3)		
a) For taxed transactions by taxable persons whose annual turnover does not exceed ECU 10 000, the VAT resources base is determined:		This method is appreciably different from the methods used until now; in particular, the proposed wording specifies that Member States must in future make a compensation to the base and not a correction to the revenue, which increases the theoretical consistency of the calculations. More details should be given as regards the reference financial year which is to be taken into consideration and those businesses the turnover of which is not spread over a whole financial year, or which have made purchases totalling more than ECU 10 000, even though their turnover is less than ECU 10 000.
— by adding to this base the net prices of goods and services — purchased by these taxable persons — bearing VAT which is deductible under Article 17 of Directive 77/388/EEC,		Since Article 2 (3) of Regulation (EEC, Euratom) No 1553/89 refers to Article 24 (4) of Directive No 77/388/EEC, it would make sense to bring the two texts into line and thus to treat taxable persons whose annual turnover does not exceed ECU 10 000 as if they were exempted. It is for this reason that the Court, by means of this addendum, wishes to propose an alternative calculation method which involves treating the taxed operations of those taxable persons whose turnover does not exceed ECU 10 000 as if they were operations covered by Annex E to Directive No 77/388/EEC. It should also be noted that the Commission is also proposing a single method for the operations of those taxable persons whose turnover exceeds ECU 10 000 but who are exempted and for those operations covered by Annex F.
— by subtracting from this base the value of goods and services supplied by these taxable persons to non-taxable persons.	Add at the end: 'In addition: the VAT on the net prices of goods and services bearing VAT which is deductible under Article 17 of Directive No 77/388/EEC, corresponding to supplies to taxable persons who themselves will supply direct — or via other supplies to taxable persons — to non-taxable persons, is subtracted from the VAT resources base'.	
b) For exempt transactions by businesses whose annual turnover does not exceed ECU 10 000, the VAT own resources base is determined:	Delete indent b)	Indent b) becomes redundant if, as the Court suggests, the method relating to the operations covered by Annex E to Directive No 77/388/EEC is applied to the taxed operations of those taxable persons whose turnover does not exceed ECU 10 000. Since the calculation is made as if the operations of those taxable persons were exempt, it is no longer necessary to make a specific compensation for operations which were actually exempted.
— by subtracting from this base the net prices of goods and services — purchased by these businesses — bearing VAT which is deductible under Article 17 of Directive 77/388/EEC.		

THE COMMISSION'S PROPOSAL	THE COURT'S PROPOSAL	COMMENTS
2. Article 4 (7)		The most important question, which is not dealt with in this Annex, concerns the method for calculating and rounding off the average interval between the coming into force of a new rate and the corresponding collection of revenue.
The first subparagraph of Article 4 (7) provides for the calculation of two partial weighted average rates and hence the calculation of two partial intermediate VAT bases.		The proposed method is no more specific than the text of Article 4 (7).
In order to calculate the weightings to be applied to the old rates (and/or old legislation) and the new rates (and/or the new legislation), the purchases and supplies referred to in Article 4(2) are broken down on the basis of the periods of the calendar year during which the VAT revenue was yielded at the old rates (and/or under the old legislation) and at the new rates (and/or under the new legislation).		
The second subparagraph of Article 4 (7) provides for a single weighted average rate to be calculated and to be applied to the total net receipts for the year.	Replace by:	
At an intermediate stage, two weighted average rates are calculated, on an annual basis, using, in the first case, the old rates (and/or the old legislation) and, in the second case, the new rates (and/or the new legislation).	The average single rate is obtained by calculating the ratio of VAT revenue charged at the various rates to the total sum of the bases.	Being obliged to calculate average weighted intermediate rates and work out the weighted sum of them in order to obtain the single weighted average rate is an unnecessary complication.
The single weighted average rate is calculated as the weighted sum of each of the average rates calculated as above, taking into account the length of the period during which the VAT was yielded at the old rates (and/or under the old legislation) and at the new rates (and/or under the new legislation).		

THE COMMISSION'S PROPOSAL	THE COURT'S PROPOSAL	COMMENTS
3. Article 6 (1) and (2)		
a) Method to be applied in respect of: — operations by taxable persons whose annual turnover exceeds ECU 10 000 but who are exempted, — the transactions listed in Annex F to Directive 77/388/EEC, which Member States continue to exempt, or which they exempt. The VAT resources base is determined: — by subtracting from this base the net prices of goods and services purchased by these taxable persons bearing VAT which is deductible under Article 17 of Directive 77/388/EEC, — by adding to this base the value of goods and services supplied by these taxable persons to non-taxable persons. In addition: the VAT on the net prices of goods and services bearing VAT which is deductible under Article 17 of Directive 77/388/EEC, corresponding to supplies to non-taxable persons, is subtracted from the VAT resources base, and the VAT on the net prices of goods and services bearing VAT which is deductible under Article 17 of Directive 77/388/EEC, corresponding to supplies to taxable persons who themselves will supply direct, or via other supplies to taxable persons, to non-taxable persons, is subtracted from the VAT resources base (1).		The Court points out that the method proposed for dealing with the operations of those taxable persons whose turnover exceeds ECU 10 000 but who are exempted implies that the operations in question are thereby excluded from the statistical data used to calculate the average weighted rate.
(1) These provisions apply only if the data required for determining the deductible VAT on the net prices of goods and services in question are derived from precise statistical data.	Delete the footnote.	The condition concerning the requirement for precise statistical data is likely to be interpreted in different ways and puts Member States on an unequal footing, depending on whether or not they produce the statistics in question.

THE COMMISSION'S PROPOSAL	THE COURT'S PROPOSAL	COMMENTS
b) For the transactions listed in Annex E to Directive 77/388/EEC, which Member States continue to tax, the VAT resources base is determined: — by adding to this base the net prices of goods and services purchased by these taxable persons bearing VAT which is deductible under Article 17 of Directive 77/388/EEC, — by subtracting from this base the value of goods and services supplied by these taxable persons to non-taxable persons. In addition: the VAT on the net prices of goods and services bearing VAT which is deductible under Article 17 of Directive 77/388/EEC, corresponding to supplies to taxable persons who themselves will supply direct, or via other supplies to taxable persons, to non-taxable persons, is added to the VAT resources base(1).		
(1) This provision applies only if the data required for determining the deductible VAT on the net prices of goods and services in question are taken from precise statistical data	Delete the footnote.	The same remark as above, namely that the absence of precise statistics is to the advantage of the Member State concerned.
c) For the operations referred to in Annex G (1)(a) to Directive 77/388/EEC which are taxed by virtue of an option given to taxable persons by the Member States, the VAT resources base is determined in accordance with the calculation rules set out at (b) above.		

THE COMMISSION'S PROPOSAL	THE COURT'S PROPOSAL	COMMENTS
4. Article 6 (4) a) Where a Member State restricts the exercise of the right to deduct in respect of the purchase of passenger cars used for business purposes, and of expenditure relating to the leasing, hiring, maintenance and repair of such cars, the VAT resources base is determined: — by subtracting from this base the net prices of such purchases and expenditure by taxable persons who have no right or only a limited right to deduct the VAT concerned, provided these cars are used for business purposes, — by adding to this base the net prices of used cars supplied by these taxable persons to non-taxable persons. b) Where a Member State restricts the exercise of the right to deduct in respect of purchases of petroleum products used for business purposes, the VAT resources base is determined by subtracting from this base the net prices of such products by taxable persons having no right or only a limited right to deduct the VAT concerned, provided these products are used for business purposes.	Delete the text relating to Article 6 (4).	The current differences which exist between Member States in these areas make it highly unlikely that a method which is both genuinely single and sufficiently detailed can be applied. The question will have to be reconsidered when the seventh (scheme for the taxation of used goods) and twelfth (scheme for the restriction of the right to deduct) Directives come into force.

This opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 8 July 1993.

For the Court of Auditors
André J. MIDDELHOEK
President

in his absence
Richie RYAN
Member of the Court