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REGULATION (EEC EURATOM ECSC) No 2/71 OF THE COUNCIL

of 2 January 1971

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 78f 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 Treaty establishing a Single Council and a Single Commission of the European Communities, and in particular Article 20 thereof;

Having regard to the Decision of 21 April 1970[1] on the replacement of financial contributions from Member States by the Communities' own resources (hereinafter called '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];

Whereas the Decision of 21 April 1970 lays down that the Council must adopt provisions relating to the control, the making available and the payment of the Communities' own resources, and the procedure for application of Article 3 (3) and Article 4 of that Decision;

Whereas, pursuant to Article 20 of the Treaty establishing a Single Council and a Single Commission of the European Communities, the budgets of the three Communities were combined in a single budget;

Whereas, in application of that Treaty and of the Decision of 21 April 1970, the Communities' own resources must be entered in the Communities' budget in accordance with a procedure to be laid down;

Whereas it is appropriate to determine the time limits within which and the procedure whereby the Communities' own resources are entered into the accounts, paid over, and allocated to the budget; whereas such time limits and procedure should also be determined as regards standard refunds to Member States of the expenses incurred in collection;

Whereas the Member States keep at the disposal of the Commission and provide it where required with 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 related to establishing and making available the Communities' own resources; whereas the Commission should exercise its powers in accordance with this Regulation;

Whereas appropriate provision must be made as regards the share of each Member State and the factors which should be taken into account when applying Article 3 (3) and Article 4 (1) of the Decision of 21 April 1970, and also the adjustments between such shares;

Whereas the application of Article 4 (2), (3) and (4) of the Decision of 21 April 1970 requires a common definition of the gross national product and of the procedure for calculating this;

Whereas it is appropriate to specify the balance to be carried over to the following financial year and the

[1] OJ No L 94, 28.4.1970, p. 19.
[2] OJ No C 129, 26.10.1970, p. 26.

procedure whereby the revenue to be collected and the balance to be carried forward will be allocated to the budget;

Whereas close co-operation 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;

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 in accordance with this Regulation, without prejudice to the provisions to be adopted in due course concerning revenue derived from value added tax.

Article 2

1. For the purposes of application of 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.

2. The competent department or agency of the Member State shall revise the entitlement established in accordance with paragraph 1 where the need for a rectification arises.

Article 3

Member States shall take all requisite measures to ensure that the supporting documents concerning established entitlements and the making available of own resources are kept for three years.

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 statutes;

(b) of the general provisions laid down by law, regulation, administrative action for relating to accounting procedure concerning the establishment of own resources and their being made available to the Commission.

2. The Commission shall pass such information to other Member States at their request.

Article 5

Each Member State shall draw up yearly a closing statement of account together with a report on the establishment and control of own resources and shall forward this to the Commission before 1 June of the year following the financial year concerned.

Article 6

1. Accounts for own resources shall be kept by the Treasury of each Member State and broken down into types of resources.

2. The established entitlements shall be entered in those accounts within a period of sixty days following the end of the month during which the entitlements were established.

Each Member State shall forward to the Commission, within the same period, a monthly statement of those accounts showing the position as regards the entitlements established for the month concerned.

3. The established entitlements shall be entered in the accounts of the Communities as revenue to be collected in so far as the amounts in question have not been paid over.

4. The amounts actually paid over shall be entered as revenue in the budget of the Communities.

TITLE II

Provisions for making available and paying over the Communities' own resources

Article 7

1. The amount of own resources established shall be entered by each Member State to the credit of the account opened with the Treasury for this purpose in the name of the Commission. This account shall be kept free of charge.

2. Each amount shall be entered gross. In the thirty days following notification of each 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.

Article 8

1. Own resources to be established by each Member State together with its financial contribution shall be the subject of a provisional estimate entered in the budget, account being taken of Article 3 (3) and Article 4 (1) of the Decision of 21 April 1970.

2. Payment shall be made of the amount actually established by the Member State for the kind of resources involved; where appropriate, payment shall be made in the proportion fixed by the budget, subject to rectification when closing the accounts.

3. Adjustment shall be made for amounts which a Member State may have overpaid or which might still be owing.

Article 9

1. The entry referred to in Article 7 (1) shall be made within a period of sixty days following the end of the month during which the entitlement was established.

2. Any delay in making the entry 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% for each month of delay.

Article 10

1. The entitlements established under Article 2 (2) shall be entered in the monthly return corresponding to the date of revision and shall be added to or subtracted from the total amount of the established entitlements.

The provisions of Article 9 (2) shall also apply to these new entitlements.

2. The expenses incurred in collection as referred to in the fifth paragraph of Article 3 (1) of the Decision of 21 April 1970 shall be refunded, account being taken of the entitlements established under Article 2 (2).

Article 11

1. The Commission shall have at its disposal for implementation of the budget the amounts credited to its account. Orders and instructions which, in accordance with actual needs, it forwards for this purpose to the Treasury or to the appropriate department of each Member State shall be carried out as soon as possible.

2. In cases of actual liquidity difficulty and where all possibility of obtaining advances against the financial contributions of Member States is exhausted, the Member States shall, at the Commission's request, make an advance on future resources not exceeding one and a half month's estimated revenue.

Advances exceeding the amount indicated in the first subparagraph and justified by the requirements of a rectifiying or supplementary preliminary draft budget may be authorised by the Council acting by a qualified majority on a proposal from the Commission. The method for settling the accounts shall be fixed at the same time as the authorisation is given.

Article 12

Transfer of funds shall be made, so far as possible, from currencies of Member States having a revenue surplus into currencies of the other Member States. They shall be restricted to actual cash requirements.

TITLE III

Provisions concerning measures of control

Article 13

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

2. Member States shall not be required to place at the disposal of the Commission the amounts corresponding to established entitlements solely where, for reasons of *force majeure,* these amounts could not be collected.

3. Every six months Member States shall communicate 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 14

1. Member States shall carry out the verifications and inquiries concerning established entitlements and the making available of own resources. The Commission shall make use of its powers in accordance with this Article.

2. Accordingly, Member States shall:

— carry out any additional measures of control the Commission may ask for in a reasoned request;

— associate the Commission, at its request, with the measures of control which they are carrying out.

Member States shall take all steps required to facilitate these measures of control. Where the Commission is associated with these measures, Member States shall place at is disposal the supporting documents referred to in Article 3. In order to restrict as far as possible additional measures of control the Commission may, in special cases, require that certain documents be put at its disposal.

3. The measures of control referred to in paragraphs 1 and 2 shall not prejudice the following measures:

(a) the measures of control undertaken by Member States in accordance with their own provisions laid down by law, regulation or administrative action;

(b) the measures provided for in Article 206 of the Treaty establishing the European Economic Community and Article 180 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. Before the end of 1973, the Commission shall report to the Council on the functioning of the system.

5. The Council shall, acting unanimously on a proposal from the Commission, determine:

(a) the conditions which officials appointed by the Commission must satisfy when they carry out the verifications provided for in this Article, in particular with regard to professional secrecy and the procedure whereby they exercise their powers of investigation;

(b) where required, other provisions for applying this Article.

Article 15

The provisions of Community law applicable to matters 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 IV

Procedure for application of Article 3 (3) and Article 4 (1) of the Decision of 21 April 1970

Article 16

1. For the purpose of this Regulation, 'share of each Member State' means the proportion of expenditure entered in the budget of the Communities and financed by means of own resources within the meaning of the Decision of 21 April 1970 deriving from that State, and also, where appropriate, by means of the financial contributions of that State, calculated in accordance with the scale shown in Article 3 (2) of that Decision.

2. The upper limit of the share of each Member State for any given financial year shall correspond to its share in the financing of the budget of the Communities of the preceding financial year, calculated in accordance with Article 3 (3) of the Decision of 21 April 1970, plus

— 1% until 31 December 1974;

— 2% between 1 January 1975 and 31 December 1977.

3. The lower limit of the share of each Member State for any given financial year shall correspond to its share in the financing of the budget of the Communities of the preceding financial year, calculated in accordance with Article 3 (3) of the Decision of 21 April 1970, less

— 1·5% until 31 December 1974;

— 2% between 1 January 1975 and 31 December 1977.

Article 17

For the purposes of application of Article 3 (3) and Article 4 (1) of the Decision of 21 April 1970 and without prejudice to Article 3 (5) of that Decision, the following factors shall be taken into account:

(a) the expenditure incurred during the financial year in question, plus the appropriations carried over to the following financial year, less the appropriations carried over from preceding financial years and written off, and also revenues other than own resources and financial contributions from Member States;

(b) for each Member State, the resources for which an entitlement has been established during the financial year in question.

Article 18

1. In so far as the shares of certain Member States do not fall within the limits referred to in Article 16 (2) and (3), the shares above and below the limits shall where necessary be adjusted to bring them within those limits; any deficiency in the budget shall then be apportioned among the other Member States in accordance with the scale laid down in Article 3 (2) of the Decision of 21 April 1970.

2. This operation shall be repeated if necessary.

3. Any surplus resulting from application of this Article shall be carried over to the following financial year.

Article 19

For budgets up to and including that for the financial year ending 31 December 1974, the adjustment provided for in Article 18 shall be carried out when the budget is finally passed and shall be finally adopted when the accounts for revenue and expenditure are submitted.

Article 20

1. From the financial year 1975 up to and including the year ending 31 December 1977, the adjustment to the budget provided for in Article 18 shall be carried out when the accounts for revenue and expenditure are submitted.

2. This adjustment shall give rise to financial compensation between the Member States concerned.

Article 21

1. The financial compensation referred to in Article 20 (2) shall be effected in accordance with the third subparagraph of Article 4 (1) of the Decision of 21 April 1970.

2. The Commission shall communicate to the Member States, during the month following the closure of the accounts for revenue and expenditure, the compensation account which it has drawn up, showing the debit or credit balance of each Member State. Each debtor Member State shall pay to each creditor Member State part of the amount shown in its debit account, that part being proportionate to the share of the creditor Member State in the total amount entered in the credit account.

3. In the month following this communication, the debtor Member States shall pay to the creditor Member States the amount owing in the national currency of the latter at the parity declared to the International Monetary Fund.

Article 22

The percentages to be taken into account for the calculations under Articles 16 to 20 shall, for each operation, be rounded off at the fourth decimal place.

TITLE V

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

Article 23

1. This Article shall be applicable where it may be necessary to take provisional measures in derogation under 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 established by the Statistical Office of the European Communities; it shall correspond, for each Member State, to the arithmetic average for the first three years of the five-year period preceding the financial year in respect of which Article 4 (2) and (3) of the Decision of 21 April 1970 is applicable.

3. The gross national product shall be established in units of account at the parities declared to the International Monetary Fund.

If there is a change in parity in the course of a year, a parity based on the parities declared to the International Monetary Fund and weighted on a time basis shall be applied.

4. As long as the derogation provided for in Article 4 (2) of the Decision of 21 April 1970 is applied to one or more Member States, the Commission shall fix, in its preliminary draft budget,

the estimated percentage of the budget to be covered by the financial contributions of the Member State or States concerned on the basis of the proportion of their gross national product to the sum total of the gross national products of the Member States, and shall establish the rate of the value added tax corresponding to the remainder of the budget to be covered by the other Member States. The amounts shall be approved in accordance with budgetary procedure.

5. If at the close of the accounts of the financial year in question the Commission finds that the Member States which have paid financial contributions on the basis of the gross national product have in terms of percentage actually covered by means of those financial contributions more then their share, it shall establish the necessary adjustments taking account of the provisions of the third subparagraph of Article 4 (1) of the Decision of 21 April 1970.

6. For the purposes of this Regulation:

(a) the gross national product at market prices is equal to the gross domestic product at market prices plus income from employment, property and business received from the rest of the world less the corresponding flow towards the rest of the world;

(b) the gross domestic product at market prices, which represents the final outcome of production by resident productive units, corresponds to the total production of goods and services by the economy, less total intermediate consumption, plus import charges.

TITLE VI

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

Article 24

1. The balance of one financial year to be carried over to the following financial year, in accordance with Article 4 (5) of the Decision of 21 April 1970, shall consist of the difference between:

— expenditure incurred during the financial year in question, plus the appropriations carried over to the following financial year, less appropriations carried over from the preceding financial years and written off; and

— all the revenue credited to the accounts for the financial year in question, less that part of the revenue credited to the accounts for the preceding financial year which was not collected during the financial year in question.

2. The outstanding amounts within the meaning of the second indent of paragraph 1 shall be recorded separately in a suspense account and credited to the account for the financial year during which they are actually collected.

3. The balance to be carried over shall be finally determined in accordance with the budgetary procedure at the same time as the account for revenue and expenditure referred to in Articles 19 and 20 are closed.

TITLE VII

Provisions relating to the Advisory Committee on the Communities' Own Resources, and final provisions

Article 25

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.

Secretarial services for the Committee shall be provided by the Commission.

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

Article 26

The Committee shall examine the questions 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, and in particular:

(a) information and communication provided for in Articles 4 (1) (b), 5 and 13 (3);

(b) cases of *force majeure* referred to in Article 13 (2);

(c) measures of control and inspection provided for in Article 14 (2).

Article 27

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 date of entry into force of the Decision of 21 April 1970.

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

Done at Brussels, 2 January 1971.

For the Council

The President

M. SCHUMANN