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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (1), 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 Decision of 21 April 1970 provides that the Council must adopt provisions relating to the control, the making available to the Commission and the payment of own resources, together with the detailed rules for the application of Article 4 of that Decision;

Whereas Article 4 of the Decision of 21 April 1970 provides that the own resources accruing from value added tax hereinafter called 'VAT own resources' shall be obtained by applying a rate not exceeding 1 % to an assessment basis to be determined in a uniform manner for Member States according to Community rules; whereas these Community rules have been adopted in 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); whereas under the terms of the said Directive VAT own resources are to be levied on all the taxable transactions covered by Article 2 of that Directive with the exception of transactions exempted under Articles 13 to 16 of the same Directive;

Whereas the basis for VAT own resources must be determined in the light of these taxable transactions; whereas it is necessary to adopt detailed rules for determining this basis;

Whereas it is necessary to arrive at a uniform system for the levying of VAT own resources; whereas, it is desirable to prepare the introduction of this system; whereas to this end it is desirable to limit the time during which this Regulation shall have effect to a transitional period of five years; whereas in the course of this transitional period Member States should be allowed to choose between two methods of determining the assessment basis of these resources; whereas it is desirable to lay down the content and rules for the application of the definitive uniform system at the end of this transitional period;

Whereas it is necessary, in specific cases, to authorize the Member States to derogate from the general rules laid down for this purpose;

Whereas there should be a check on the way in which the Member States are applying certain provisions of this Regulation which allow for an appreciable margin of discretion; whereas a Community procedure should be laid down for this purpose;

Whereas in view of complexity of the problems which may arise in the implementation of this Regulation it appears necessary to arrange for close collaboration between the Member States and the Commission and to this end to arrange that such problems are discussed in the Advisory Committee on the Communities' Own Resources referred to in Article 20 of Council Regulation (EEC, Euratom, ECSC) No 2891/77 of 19 December 1977 (4);

Whereas Council Regulation (EEC, Euratom, ECSC) No 2891/77 lays down detailed rules for the accounting, payment, and control of own resources; whereas the present Regulation should lay down specific provisions for VAT own resources,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

The amount accruing to the Communities' VAT own resources shall be determined by applying the Com-

(1) OJ No L 94, 28. 4. 1970, p. 19.
(2) OJ No C 163, 11. 7. 1977, p. 62 and OJ No C 266, 7. 11. 1977, p. 50.
(3) OJ No L 145, 13. 6. 1977, p. 1.

(4) See page 1 of this Official Journal.

munity rate fixed under the budgetary procedure to the basis determined in accordance with the provisions of this Regulation.

Should this rate be changed in the course of a financial year as a result of a supplementary and/or amending budget, the new rate shall apply to the whole of the VAT resources basis for that financial year.

TITLE II

SCOPE

Article 2

1. The VAT own resources basis shall be determined from the taxable transactions referred to in Article 2 of Directive 77/388/EEC, with the exception of transactions exempted under Articles 13 to 16 of the said Directive.

2. For the purposes of applying paragraph 1 hereof, the following shall be taken into account for determining VAT own resources:

— transactions which, in accordance with Article 28 (2) of Directive 77/388/EEC are subject to exemptions with refund of the tax paid at the preceding stage,

— transactions which Member States continue to subject to tax pursuant to Article 28 (3) (a) of Directive 77/388/EEC,

— transactions which Member States continue to exempt pursuant to Article 28 (3) (b) of Directive 77/388/EEC,

— transactions which are taxed under the right of option granted to taxable persons by Member States pursuant to Article 28 (3) (c) of Directive 77/388/EEC.

3. By way of derogation from paragraph 1, transactions performed by taxable persons whose annual turnover, determined according to the rules laid down in Article 24 (4) of Directive 77/388/EEC does not exceed 10 000 EUA, this amount being determined in accordance with the conversion rates set out in Article 31 (2) of that Directive, shall not be taken into account for determining VAT own resources.

TITLE III

METHODS OF CALCULATION

Article 3

Rules for determining the assessment basis

To determine the assessment basis of VAT own resources with regard to a financial year, Member States shall apply either the method defined in Section A or that defined in Section B.

Member States shall inform the Commission before 31 December 1977 of the method they propose to apply.

Where a Member State intends changing the method it applies, it shall inform the Commission of its decision and of the underlying reasons before 1 October of the year preceding the financial year in which the other method would be applied.

The Commission shall communicate the information referred to in the second and third paragraphs to the Member States.

Section A

RULES FOR DETERMINING THE BASIS ACCORDING TO THE RETURNS METHOD

Article 4

1. The VAT own resources basis shall be the difference between:

— the total taxable amounts, as defined in Article 11 of Directive 77/388/EEC of the transactions to be taken into account pursuant to Article 2,

— and the total taxable amounts corresponding to the tax which may be deducted in accordance with Article 17 of the said Directive by taxable persons other than those referred to in Article 2 (3).

2. For the purposes of applying the first indent of Article 2 (2) hereof, the VAT own resources basis relating to the transactions referred to in Article 28 (2) of Directive 77/388/EEC shall be determined from the amounts which would have been taxed but for this provision.

3. Without prejudice to Article 9, the data relating to the above taxable amounts shall be established from the returns made by the taxable persons, drawn up in accordance with Article 22 (4) of Directive 77/388/EEC or by the persons liable for payment of the tax on importation, drawn up in accordance with Article 23 of the said Directive, or, in the absence of any such returns, owing to failure of the taxable person to fulfil his obligations, from the estimated assessment made by the competent authority of the Member State.

Article 5

1. The VAT own resources basis for taxable transactions by farmers using the common flat-rate scheme provided for by Article 25 of Directive

77/388/EEC shall be the added value calculated by the Member States in accordance with Annex C to that Directive.

The VAT own resources basis must be reduced by the amount of the transactions carried out by farmers in respect of which:

(a) they obtain flat-rate compensation in accordance with Article 25 (6) (b) of Directive 77/388/EEC, or

(b) they obtain no flat-rate compensation by reason of the option granted to the Member States by the first subparagraph of Article 25 (3) of the said Directive to reduce the flat-rate compensation percentages to zero.

Subparagraph 2 shall not apply to transactions which do not give rise to deduction of VAT in the hands of the purchaser or customer.

2. With regard to the transactions referred to in Article 24 (1) of Directive 77/388/EEC, the VAT own resources basis shall be determined from the returns to be furnished by taxable persons in accordance with Article 22 of the said Directive and, when there is no return, or the return does not contain the necessary information, from appropriate data such as: other tax returns, professional accounts, complete statistical series.

3. Without prejudice to the cases referred to in paragraph 2 hereof, where the information contained in the returns of taxable persons does not enable the VAT own resources basis to be determined with precision, Member States may be authorized under the procedure laid down in Article 13 either:

(a) to accept without amendment the information contained in the returns where the margin of error resulting from their use to determine the VAT own resources basis is negligible; or

(b) if the margin of error is not negligible, to apply to the information obtained from the returns a correcting factor calculated from appropriate data in order to determine the VAT own resources basis in a way which will only permit a negligible margin of error.

Section B

RULES FOR DETERMINING THE BASIS ACCORDING TO THE REVENUE METHOD

Article 6

For a given year, and without prejudice to Article 9, the VAT own resources basis shall be calculated by dividing the total net VAT revenue collected by a Member State by the rate, expressed as a fraction, at which VAT is levied during the same year.

If several VAT rates are applied in a Member State, the total net VAT revenue collected shall be divided by the average weighted rate of VAT expressed as a fraction. In this case, the Member State shall determine the weighted average rate, calculated to four decimal places, by applying the common method of calculation defined in Article 7.

Article 7

1. In order to calculate the weighting of the various rates as referred to in Article 6, the Member State shall break down, by rate of VAT applied, all transactions which are taxable under its national legislation and which do not give rise to deduction of VAT in the hands of a purchaser or customer taking into account Article 17 of Directive 77/388/EEC.

When this breakdown by rate is performed, a distinction shall be made between the following categories:

— final consumption of households on the territory referred to in Article 3 of Directive 77/388/EEC for the Member State in question and collective consumption by private non-profit institutions,

— current purchases of general government,

— gross fixed-capital formation of general government,

— gross fixed-capital formation of other sectors (where they are liable to non-deductible VAT),

— intermediate consumption (where liable to non-deductible VAT).

Transactions which are subject, pursuant to Article 28 (2) of Directive 77/388/EEC, to an exemption with reimbursement of the taxes paid at the previous stage shall be regarded as zero-rated transactions.

2. This breakdown by rate applied and by category shall be effected by means of data taken from national accounts, in accordance with 'the European system of integrated economic accounts', and broken down, if necessary, with the aid of appropriate data. In order to calculate the VAT own resources basis for any given financial year reference shall be made to the national accounts relating to the penultimate year preceding that financial year.

3. The weighting of each rate applied is thus equal to the ratio between, on the one hand, the value of the transactions relating to that rate and, on the other, the total value of these transactions as a whole.

4. A Member State which, during a financial year, amends the VAT rate applicable to all or some transactions or the tax treatment for certain transactions shall calculate the new average rate in good time. This new average rate shall be applied to the revenue derived from application of the amended rate or tax treatment.

Article 8

1. For the purposes of applying Article 6 Member States shall, if appropriate, add to the revenues actually collected an amount corresponding to the total revenue which would have been collected but for the application of a scheme of graduated tax relief granted pursuant to Article 24 (2) of Directive 77/388/EEC.

2. The revenue actually collected by a Member State shall be reduced by an amount corresponding to the total input tax, with the exeption of that relating to consumption on the farm and direct sales to final consumers, which flat-rate farmers have not recouped by virtue of the application by that Member State of the option to reduce the flat-rate compensation percentages applicable to transactions carried out by flat-rate farmers in accordance with Article 25 (3) of Directive 77/388/EEC.

Section C

COMMON PROVISIONS

Article 9

1. For the purposes of applying Article 2 (1) to the transactions carried out by taxable persons whose annual turnover exceeds 10 000 EUA but who are exempted under Article 24 (2) of Directive 77/388/EEC and to the cases referred to in paragraph 2 hereof, Member States shall determine the VAT own resources basis, from returns to be furnished by taxable persons in accordance with Article 22 of the said Directive and, when there is no return, or the return does not contain the necessary information, from appropriate data such as: other tax returns, professional accounts, complete statistical series.

2. For the purposes of applying the second, third and fourth indents of Article 2 (2):

— with regard to the transactions listed in Annex E to Directive 77/388/EEC which Member States continue to tax pursuant to Article 28 (3) (a) of the said Directive, Member States shall calculate the VAT own resources basis as if these transactions were exempted,

— with regard to the transactions listed in Annex F to Directive 77/388/EEC which Member States continue to exempt pursuant to Article 28 (3) (b) of the said Directive, Member States shall calculate the VAT own resources basis as if these transactions were taxed,

— with regard to the transactions referred to paragraphs (1) (a) and (2) of Annex G to Directive 77/388/EEC, which are taxed under the option granted to taxable persons by Member States, pursuant to Article 28 (3) (c) of the said Directive, Member States shall calculate the VAT own resources basis as if these transactions were exempted.

3. Under the procedure provided for in Article 13, a Member State may be authorized:

— either not to take into account in calculating the VAT resources basis:

  (a) one or more of the categories of transactions listed in Annexes E, F and G to Directive 77/388/EEC to which paragraph 2 hereof applies;

  (b) the amount corresponding to the tax which would have been collected but for the application of a scheme of graduated tax relief granted pursuant to Article 24 (2) of Directive 77/388/EEC,

— or to calculate the VAT own resources basis in the cases referred to in (a) and (b) by using approximate estimates,

where precise calculation of the VAT own resources basis in these cases would be likely to involve administrative burdens which would be unjustified in relation to the effect of the transactions in question on the total VAT own resources basis of that Member State.

Without prejudice to subparagraph 1 the Council acting by a qualified majority on a proposal from the Commission shall lay down the detailed rules for the implementation of this paragraph.

4. Where a Member State makes use of the second subparagraph of Article 17 (6), and of Article 17 (7) of Directive 77/388/EEC to restrict the exercise of the right to deduct, the VAT own resources basis may be determined as if the exercise of the right to deduct had not been restricted.

5. In the case of tax refunds granted by Member States pursuant to Article 6 of Council Directive 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel [1], as amended by Directive 72/230/EEC [2], the taxable amount of the transactions which gave rise to these refunds shall if necessary be subtracted from the VAT own resources basis.

TITLE IV

PROVISIONS RELATING TO THE ACCOUNTING AND MAKING AVAILABLE OF OWN RESOURCES

Article 10

1. The Member States shall, before 1 July, forward to the Commission a summary account indicating the total final amount of the basis relating to transactions for which tax has become chargeable in accordance with Article 10 of Directive 77/388/EEC during the previous calendar year and to which the rate referred to in Article 4 (1) of the Decision of 21 April 1970 shall apply.

This summary account shall indicate separately VAT resources resulting from the transactions referred to in Article 5 (1), (2) and (3), and Articles 8 and 9 (1) to (4) of this Regulation.

The time limit provided for above shall be extended to 1 September 1979 for the financial year 1978.

2. By way of derogation from the first subparagraph of paragraph 1:

— Member States which apply the method laid down in Section A of Title III may calculate the VAT own resources basis relating to transactions for which tax has become chargeable in accordance with Article 10 of Directive 77/388/EEC during a given calendar year from returns made by taxable persons or persons liable for the tax in accordance with Articles 22 (4) and 23 of the said Directive during the calendar year under consideration or any other continuous 12-month period to be determined by the Member States,

— Member States which apply the method laid down in Section B of Title III may calculate the VAT resources basis relating to transactions for which tax has become chargeable in accordance with Article 10 of Directive 77/388/EEC during a given calendar year from the total net VAT revenue collected during the calendar year under consideration or any other continuous 12-month period to be determined by the Member States.

A Member State which intends to avail itself of the option referred to in the first subparagraph shall notify its decision to the Commission which shall inform the Committee referred to in Article 13.

It is understood that this option may in no way call into question the time limit laid down in paragraph 1.

3. Any corrections to the basis shall be allocated to the financial year during which they are made.

4. Member States shall forward to the Commission by 30 April each year an estimate of the VAT own resources basis for the following financial year.

TITLE V

PROVISIONS CONCERNING MEASURES OF CONTROL

Article 11

1. In the case of the financial year 1978, Member States shall inform the Commission as soon as possible, and not later than 30 April 1978, of the solutions they propose to adopt to determine the VAT own resources basis for each of the categories of transactions referred to in Article 5 (2) and (3), and Articles 8 and 9 (1) to (4), indicating, where applicable, the nature of the data which they consider appropriate, and an estimate of the value of the assessment basis for each of these categories of transactions.

In the case of subsequent financial years, Member States shall, by 30 April, inform the Commission of the modifications they intend to make to the solutions referred to in the preceding subparagraph and shall give it an estimate of the value of the assessment basis for each of the categories of transactions referred to in Article 5 (2) and (3), and Articles 8 and 9 (1) to (4).

The Commission shall forward to the other Member States within a period of 30 days the information referred to above which it has received from each Member State.

2. The Commission shall examine in liaison with the competent national authorities any proposed solutions concerning the implementation of the

[1] OJ No L 133, 4. 6. 1969, p. 6.
[2] OJ No L 139, 17. 6. 1972, p. 28.

provisions of Article 5 (2), and Articles 8 and 9 (1), (2) and (4).

Article 12

1. As regards VAT own resources, the Commission's checks shall be carried out with the competent authorities in the Member States. During these checks, the Commission shall ensure, in particular, that the operations to centralize the assessment basis and to determine the weighted average rate referred to in Articles 6 and 7 and also the total net VAT revenue collected have been carried out correctly, and shall ascertain that the data used were appropriate and that the calculations made to determine the amount of VAT resources resulting from the transactions referred to in Article 5 (2) and (3), and Articles 8 and 9 (1) to (4) comply with this Regulation.

2. Council Regulation (EEC, Euratom, ECSC) No 165/74 of 21 January 1974 determining the powers and obligations of officials appointed by the Commission pursuant to Article 14 (5) of Regulation (EEC, Euratom, ECSC) No 2/71 [1] shall apply to checks relating to VAT own resources. For the purposes of applying Article 5 of that Regulation, it shall be understood that the information referred to therein may be communicated only to those persons who, by virtue of their duties in making available and checking VAT resources, must have knowledge of such information.

Article 13

1. The Advisory Committee on the Communities' Own Resources referred to in Article 20 of Regulation (EEC, Euratom, ECSC) No 2891/77, hereinafter called 'the Committee', shall regularly examine, on the initiative of the Commission or at the request of a Member State, problems arising out of application of this Regulation.

2. Member States applying for the authorization provided for in Article 5 (3) or 9 (3), shall refer their application to the Commission as soon as possible and not later than 30 April of the financial year from which the authorization is to apply.

The Commission representative shall submit to the Committee as soon as possible and not later than 60 days after receipt of the application a draft of the decision to be taken. The Committee shall discuss the matter within a period to be fixed by the chairman depending on the urgency of the matter. The opinions of the Committee members shall be recorded in a report which shall be approved by the Committee within a period of 60 days, which period shall start to run from the notification to the Committee of the draft decision.

No later than 30 days following the approval of this report, the Commission shall adopt a decision which it shall communicate to the Member States and which shall apply after a period of 30 days if during this period no Member State has referred the matter to the Council.

The Council may, at the request of a Member State and acting by a qualified majority revise the Commission's decision.

The Commission's decision shall apply after a period of 60 days if the Council has not given a ruling within this period, calculated from the day on which the matter was referred to the Council.

3. On the initative of the Commission or at the request of a Member State, the Committee shall examine the solutions referred to in Article 11 (2).

If the Committee has not been convened within 120 days of the communication of the information referred to in the third subparagraph of Article 11 (1), or if the Committee's examination reveals no differences of opinion, the solution proposed by the Member State shall apply.

If the examination provided for in the first subparagraph should reveal differences of opinion as to the solutions selected, the Committee shall discuss these within a period to be fixed by the chairman depending on the urgency of the matter and in any case within 60 days of this examination. The opinions of the Committee members shall be recorded in a report which shall be approved by the Committee within 120 days of this examination.

No later than 30 days following the approval of this report, the Commission shall adopt a decision which it shall communicate to the Member States and which shall apply after a period of 30 days if during this period no Member State has referred the matter to the Council.

The Council may, at the request of a Member State and acting by qualified majority, revise the Commission's decision.

The Commission's decision shall take effect after a period of 60 days if the Council has not given a ruling within this period, calculated from the day on which the matter was referred to the Council.

TITLE VI

FINAL PROVISIONS

Article 14

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

[1] OJ No L 20, 24. 1. 1974, p. 1.

It shall apply from 1 January 1978 for a transitional period expiring on 31 December 1982.

The Council, acting unanimously on a proposal from the Commission, shall adopt, before 30 June 1982, the provisions relating to the definitive uniform system for levying VAT resources and the detailed rules for implementing this system.

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