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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC, EURATOM, ECSC) No 3760/86

of 8 December 1986

amending Regulation (EEC, Euratom, ECSC) No 2891/77 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 Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources [1], and in particular Article 7 (2) thereof,

Having regard to the proposal from the Commission [2],

Having regard to the opinion of the European Parliament [3],

Having regard to the opinion of the Court of Auditors [4],

Whereas the practical application of Regulation (EEC, Euratom, ECSC) No 2891/77 [5] has revealed that a number of its provisions require adjustment;

Whereas it appears necessary to adjust certain provisions relating to the making available to the Commission of adjustments to the monthly entries of own resources derived from value added tax, hereinafter referred to as 'VAT resources', or financial contributions based on gross national product referred to in Article 3 (7) and (8) of Decision 85/257/EEC, Euratom, hereinafter referred to as 'GNP-based financial contributions', consequent upon an amending or supplementary budget;

Whereas the provisions relating to the making available of VAT resources or GNP-based financial contributions if the budget has not been finally adopted before the beginning of the financial year require clarification;

Whereas the provisions relating to the adjustment of GNP-based financial contributions following receipt of the annual statements of VAT resources require clarification;

Whereas Regulation (EEC, Euratom, ECSC) No 2891/77 should be supplemented so as to contain provisions relating to the budgetary management of corrections to the annual statements of VAT resources;

Whereas the concept of cash resource requirements calls for clarification;

Whereas the balance to be carried forward to the next financial year should be redefined,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC, Euratom, ECSC) No 2891/77 is hereby amended as follows:

1. In Article 1, for 'Decision of 21 April 1970' read 'Decision 85/257/EEC, Euratom';

2. The following paragraph shall be added to Article 3:

   'If verification of these supporting documents by the national administration alone or in conjunction with the Commission shows that a finding to which they relate may have to be corrected, they shall be kept beyond the time limit provided for in the first subparagraph for a sufficient period to permit the correction to be made and monitored.'

3. Article 5 shall become Article 8 and be replaced by the following:

   'Article 8

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

[1] OJ No L 128, 14. 5. 1985, p. 15.
[2] OJ No C 231, 4. 9. 1982, p. 15, and OJ No C 146, 4. 6. 1983, p. 4.
[3] OJ No C 13, 17. 1. 1983, p. 220.
[4] OJ No C 133, 20. 5. 1983, p. 3.
[5] OJ No L 336, 27. 12. 1977, p. 1.

4. Article 6 shall become Article 5 and be replaced by the following:

'Article 5

The rate referred to in Article 3 (3) (a) of Decision 85/257/EEC, Euratom shall be calculated as a percentage of the estimated assessment basis for VAT resources in such a manner that it fully covers that part of the budget not financed from customs duties, agricultural levies, financial contributions to supplementary research programmes, miscellaneous revenue and, where appropriate, GNP-based financial contributions. This rate shall be expressed in the budget by a figure rounded off to the fourth decimal point.'

5. Article 7 shall become Article 6 and its paragraphs 2 and 3 shall be replaced by the following:

'2. The established entitlements shall be entered in the accounts at the latest on the first working day after the 19th 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 12th referred to in Article 10 (3),

— annually, as regards the balance referred to in Article 10 (4) and the adjustments referred to in Article 10 (6), except for the particular adjustments referred to in the first indent of Article 10 (6), which shall be entered in the accounts on the first working day of the month following agreement between the Member State concerned and the Commission.

3. Each Member State shall forward to the Commission a monthly statement of its accounts within the period specified in paragraph 2.'

6. Article 8 shall become Article 7.

7. Article 9 shall be amended as follows:

(a) in paragraph 2 the words 'referred to in the fifth subparagraph of Article 3 (1) of the Decision of 21 April 1970' shall be replaced by 'referred to in Article 5 of Decision 85/257/EEC, Euratom';

(b) paragraph 3 shall be replaced by the following:

'3. The amounts entered shall be converted by the Commission and entered in its accounts in ECU on the basis of the ECU rate used for the month during which such entry took place.'

8. Article 10 shall be amended as follows:

(a) in paragraph 1, '20th' shall be replaced by 'first working day after the 19th';

(b) in paragraph 3, the second, third and fourth subparagraphs shall be replaced by the following:

'Any change in the rates of VAT resources or, if appropriate, in GNP-based financial contributions shall be occasioned by the final adoption of a supplementary or amending budget and shall give rise to a readjustment of the 12ths 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 if it is adopted before the 16th day of the month. Otherwise it shall be carried out when the second entry following final adoption is made. By way of derogation from Article 5 of the Financial Regulation, this readjustment shall be entered in the accounts in respect of the financial year of the amending or supplementary budget in question.

Calculation of the 12th for the month of January of each financial year shall be based on the amounts provided for in the draft budget referred to in Article 78 (3) of the ECSC Treaty, Article 203 (3) of the EEC Treaty and Article 177 (3) of the Euratom Treaty; the adjustment shall be made together with the entry for the following month.

If the budget has not been finally adopted before the beginning of the financial year, the Member States shall enter on the first working day of each month, including January, one 12th of the amount of VAT own resources or, if appropriate, of the GNP-based financial contributions entered in the last budget finally adopted; the adjustment shall be made on the first due date following final adoption of the budget if it is adopted before the 16th of the month. Otherwise, the adjustment shall be made on the second due date following final adoption of the budget.';

(c) in the first sentence of paragraph 4 the phrase 'the rate adopted for the previous financial year' shall be replaced by 'the rate to be applied to each Member State in accordance with Article 3 (3) of Decision 85/257/EEC, Euratom, for the previous financial year';

(d) paragraph 5 shall be replaced by the following:

'5. The Commission shall then calculate adjustments to the financial 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 the GNP. In calculating these adjustments, the balances referred to in paragraph 4 shall be converted into ECU at the rates of exchange applying on the first working day after the 15th day of July preceding the entries

provided for in paragraph 4. For each Member State concerned, the total of VAT balances shall be adjusted by the ratio between VAT resources and the financial contributions entered in the budget. The Commission shall communicate the results of this calculation to the Member States which, during the previous financial year, paid GNP-based financial contributions so that they can make a credit or debit entry as appropriate in the account referred to in Article 9 (1) on the first working day of August of the same year.';

(e) the following paragraph shall be inserted:

'6. Any corrections to the VAT resources basis under Article 10b (1) of Regulation (EEC, Euratom, ECSC) No 2892/77 shall give rise for each Member State concerned to the following adjustments to the balance referred to in paragraph 4 of this Article:

— the corrections under the first subparagraph of Article 10b (1) of the said Regulation shall give rise to a general adjustment to be entered in the account referred to in Article 9 (1) of this Regulation on the first working day of August of the same year. However, a particular adjustment shall be entered before that date if the Member State concerned and the Commission are in agreement,

— where the measures, which the Commission takes under the second subparagraph of Article 10b (1) of Regulation (EEC, Euratom, ECSC) No 2892/77 to correct the basis, lead to an adjustment of the entries in the account as referred to in Article 9 (1) of this Regulation, that adjustment shall be made on the first working day of the month following expiry of the time limit laid down under the application of the said measures.

The adjustments to be made to the VAT balances by the first working day of August of each year under the first subparagraph of this paragraph shall also give rise to the calculation by the Commission of further adjustments to the GNP-based financial contributions. The exchange rates to be employed in calculating these further adjustments shall be those used for the initial calculation referred to in paragraph 5. The Commission shall communicate these adjustments to the Member States so that they can enter them in the account referred to in Article 9 (1) on the first working day of August of the same year.';

(f) the former paragraph 6 shall become paragraph 7 and be amended as follows:

'paragraphs 4 and 5' shall be replaced by 'paragraphs 4, 5 and 6'.

9. Article 11 shall be replaced by the following:

'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 the interest rate applicable on the Member State's money market on the due date for short-term public financing operations, increased by 2 percentage points. This 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.'

10. Article 12 shall be replaced by the following:

'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 subject to the availability of appropriations in the budget and within the limit of the own resources entered in the budget. In this event, it shall inform the Member States in advance of any foreseeable excess requirements.

3. In the sole case of default under a loan contracted pursuant to regulations and decisions of the Council, in circumstances in which the Commission cannot activate other measures provided for by the financial arrangements applying to these loans in time to ensure compliance with the Community's legal obligations to its lenders, the provisions of paragraphs 2 and 4 may provisionally be applied irrespective of the conditions in paragraph 2 in order to service the Community's debts.

4. 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.

5. 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.'

11. The heading of Title V shall be replaced by 'Procedure for the application of Article 3 (7) and (8) of Decision 85/257/EEC, Euratom'.

12. Article 13 is hereby amended as follows:

(a) in paragraph 1 the words 'in Article 4 (2) and (3) of the Decision of 21 April 1970' shall be replaced by 'in Article 3 (7) and (8) of Decision 85/257/EEC, Euratom';

(b) paragraph 2 shall be replaced by the following :

'2. The gross national product at market prices shall be calculated by the Statistical Office of the European Communities, on the basis of statistics prepared according to the European System of Integrated Economic Accounts (ESA), 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 3 (7) of Decision 85/257/EEC, Euratom have been applied. No account shall be taken of any revisions of statistical data made after the final adoption of the budget.' ;

(c) in paragraph 3 'EUA' shall be replaced by 'ECU' ;

(d) in paragraph 4 :

— the beginning of the first sentence shall be amended as follows :

'As long as the derogation provided for in Article 3 (7) of Decision 85/257/EEC, Euratom applies ...'.

— at the end of the first sentence, 'VAT rate' shall be replaced by 'uniform VAT resources rate'.

13. In Article 14, under (b), the word 'taxes' shall be replaced by 'VAT on products and net taxes'.

14. The heading of Title VI shall be replaced by 'Procedure for the application of Article 6 of Decision 85/257/EEC, Euratom'.

15. Article 15 shall be replaced by the following :

'Article 15

For the purposes of applying Article 6 of Decision 85/257//EEC, Euratom, 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 (1) (b) and (c) and 2 (b) and the second subparagraph of Article 88 (4) of the Financial Regulation.

This difference shall be increased or decreased by, on the one hand, the net amount of appropriations carried forward from previous financial years which have lapsed and, on the other hand, by way of derogation from Article 4 of the Financial Regulation, by :

— payments made in excess of non-differentiated appropriations carried over from the previous financial year under Article 6 (1) of the Financial Regulation as a result of changes in ECU rates, and

— the balance resulting from exchange gains and losses during the financial year.'

16. In Article 16 (2), '(4) and (5)' shall be replaced by '(4), (5) and (6)'.

17. Article 17 (3) shall be replaced by the following :

'3. Member States shall notify the Comission, in six-monthly reports, of the outcome of their inspections and of 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.'

18. In the second subparagraph of Article 18 (2) the last sentence shall be replaced by the following :

'In order to restrict additional inspection measures to the minimum :

(a) the Commission may, in specific cases, request that certain documents be forwarded to it ;

(b) in the monthly statement of accounts referred to in Article 6 (3), the amounts entered in the accounts which relate to irregularities or delays in the establishment, entry in the accounts and making available of own resources, discovered during the inspections referred to above, must be identified by means of appropriate notes.'

19. Article 19 shall be replaced by the following :

'Article 19

The provisions of Community law in the sectors referred to in the first paragraph of Article 2 of Decision 85/257/EEC, Euratom shall be applied by the appropriate authorities of Member States when establishing own resources.'

20. In Article 21 (a), 'in Article 5' shall be replaced by 'in Article 8'.

21. Article 22 shall be replaced by the following:

'Article 22

The Commission shall, by the end of 1990, submit a report on the implementation of this Regulation together with any proposals for amendments.'

Article 2

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

It shall apply with effect from the financial year 1987.

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

Done at Brussels, 8 December 1986.

For the Council

The President

N. LAWSON