COMMISSION OF THE EUROPEAN COMMUNITIES

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Second Report by the Commission

on the implementation of 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, as last amended and extended by Council Regulation (ECSC, EEC, Euratom) No 3735/85 of 20 December 1985

Proposal for a

COUNCIL REGULATION (ECSC, EEC, Euratom)

on the definitive uniform arrangements for the collection of VAT own resources

(submitted by the Commission)

CONTENTS

(This report was completed on 15 October 1987)

Part One

Second report by the Commission on the implementation of Regulation No 2892/77 as amended.

1. General context and approach adopted in report

When it adopted Regulation No 3735/85[1] in December 1985 to extend the validity of Regulation No 2892/77[2] until 31 December 1988, the Council set the Commission the task of presenting a report on the implementation of this regulation by 31 December 1987 together with proposals for a uniform method for determining the collection base for own resources accruing from VAT (VAT resources).

This report comes at a time when a new perspective for Community finance has been opened up by the agreements reached at the European Council of 11th to 13th February 1988 (3).

However, the operation of the VAT resources arrangements - which, by virtue of the tax link, directly involve all European taxpayers in the financing of the Community - should be made easier by the future harmonization of the VAT assessment base planned by the Commission as one of the main tax measures needed for completion of the internal market.(4)

In this general context, the time has now come to go a stage further in the VAT resources system and choose a uniform method for determining the collection base and amend the existing rules in line with the many years' experience now acquired.

Since the first report presented by the Commission in 1985[5] already gave a detailed analysis of how the own resources system operates, this report will deal, in the main, with the following:

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1 OJ L 356, 31.12.1986.

2 OJ L 336, 27.12.1977.

3 doc. SI (88) 81 of 22.2.1988.

4 Commission White Paper: COM(87) 310 final.
Proposal for a Directive completing the common VAT system, removal of fiscal frontiers: COM(87) 322 final.

5 COM(85) 170 final.

- description of the situation arising from implementation of Regulation No 2892/77, as amended;

- general review of experience gained by the Commission from its control operations;

- explanation of the reasons for choosing the revenue method as the uniform method of calculating the base.

2. Background

2.1 Implementation of the own resources system

2.1.1 The financial contributions paid by Member States were replaced by the Communities' own resources under the Council Decision of 21 April 1970,[1] which was ratified by the national parliaments.

One component of the own resources provided for by this decision was obtained by applying a rate not exceeding 1% to a VAT assessment base determined uniformly for each Member State. This rate progressed as follows over the years:

- 1979 : 0,7888 %
- 1980 : 0.7322 %
- 1981 : 0.7868 %
- 1982 : 0,9247 %
- 1983 : 0.9989 %
- 1984 : 1 %
- 1985 : 1 %

From 1 January 1986 the Council Decision of 21 April 1970 was replaced by that of 7 May 1985[2] after ratification by the national parliaments. As regards VAT resources, the Council Decision of 7 May 1985 on the Communities' system of own resources differs from the former Decision on only two points: the VAT own resources rate and the adjustment of this rate in favour of the United Kingdom.

The initial maximum rate of 1% was increased to 1.4% to cover the needs of the Community budget.

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[1] OJ L 94, 28.4.1970.
[2] OJ L 128, 14.5.1985.

This rate was then reduced for the United Kingdom to compensate for the imbalance in its budgetary position. The amount conceded to the United Kingdom is divided between the other Member States, with a reduction then being made in the share of the Federal Republic of Germany. In the 1986 budget this produced a VAT own resources rate of 0.6766 for the United Kingdom, 1.3370 for Germany and 1.3999 for the other Member States with the exception of Portugal, which makes a financial contribution whilst the Sixth VAT Directive[1] is not applicable there.

2.1.2 It had been planned that the Community budget would be fully financed by the Communities' own resources from 1 January 1975.

However, before the budget could be financed by VAT resources, it was first necessary that all the Member States should apply VAT in accordance with common standards; it was only with the Sixth VAT Directive (77/388) of 17 May 1977[1] that these were laid down. The enlargement of the Community to nine Member States held up the plan for full financing, since gradual adjustment was needed. Since then, the accession of Greece, followed by Spain and Portugal, have meant that still in 1987 not all the Member States are paying VAT resources to finance the Community budget.

The Member States started or will start paying VAT resources on the following dates:

- Belgium, Denmark, France, Italy, Netherlands, United Kingdom: 1 January 1979;

- Germany, Ireland, Luxembourg: 1 January 1980;

- Greece, Spain: 1 January 1986.

Because of the delay in introducing VAT in Greece, its payments in 1986 were not VAT resources in the strict sense of the term but financial contributions calculated as if VAT had been applied.

- Portugal: 1 January 1989 (the Act of Accession of Portugal to the Communities contains a special provision to this effect).

2.2 Development of rules on VAT resources

Council Regulation (EEC, Euratom, ECSC) No 2891/77 of 19 December 1977[2] laid down the rules governing the entry in accounts, payments and control of own resources in general; the specific provisions for VAT resources were laid down in Council Regulation (EEC, Euratom, ECSC) No 2892/77 of 19 December 1977.[3]

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[1] OJ L 145, 13.6.1977.

[2] OJ L 336, 27.12.1977.

[3] OJ L 336, 27.12.1977

Regulation No 2892/77 was extended to 31 December 1985 by Council Regulation (ECSC, EEC, Euratom) No 3550/82 of 28 December 1982[1] and was then amended by Council Regulation (EEC, Euratom, ECSC) No 3625/83 of 19 December 1983.[2]

Application of the amended Regulation was extended to 31 December 1988 by Council Regulation (ECSC, EEC, Euratom) No 3735/85 of 28 December 1984.[3]

However, as the changes made since Regulation No 2892/77 was adopted concern only a limited number of technical provisions, it may be considered that the same set of rules has applied from when the VAT resources system was introduced up to the moment when this report was drawn up.

Finally, it should be remembered that the legislation which is at present in force leaves the Member States the choice between two methods to calculate the VAT own resources base: the "revenue" and "returns" methods.

3. Analysis of the revenue method

3.1 Basic features

3.1.1 The aim of this method is to reconstruct the VAT resources base from each Member State's VAT receipts by incorporating the corrections to receipts and compensations in the base which have to be calculated in order to obtain what the base would have been if a fully harmonized VAT system had been uniformly applied in all the Member States.

3.1.2 Weighted average rate

Under the revenue method, the VAT resources base is calculated by dividing total net revenue by each Member State's VAT rate.

However, since all the Member States with the exception of Denmark apply more than one VAT rate, a weighted average rate (W.A.R.) has to be determined, including also zero-rated transactions (exemption with deduction of input tax) other than exports.

The basic principle for calculating the weighted average rate is that all the transactions on which non-deductible VAT is charged, corresponding to the VAT collected by the Member State, have to be divided between the different VAT rates for the following categories:

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[1] OJ L 373, 31.12.1982.

[2] OJ L 360, 23.12.1983.

[3] OJ L 356, 31.12.1985.

- final consumption of households;

- intermediate consumption of private non-profit institutions and other sectors;

- gross fixed-capital formation of general government and other sectors;

- building land;

- consumption on the farm by flat-rate farmers and their sales to final consumers.

The breakdown of operations by category is determined from the figures obtained from the national accounts drawn up in accordance with the European System of Integrated Economic Accounts (ESA); the version of these accounts used must, with certain exceptions, be that of the last year but one before the financial year for which the weighted average rate is being calculated.

This amounts to applying the VAT legislation in force in year n - the year under consideration - to the national accounts of year n-2. Because of the time needed to produce these accounts and accompanying data, it is impossible to avoid this time difference. However, since consumption structures remain more or less the same over a short period the situation may be considered acceptable.

But it must be borne in mind that the national accounts were not designed for tax purposes and so the breakdown by VAT rate of the operations they record has inevitably to be calculated using information from other sources.

Where necessary, the breakdown is therefore calculated by means of figures obtained from sources complementary to the ESA (e.g. internal national accounts) or from any other appropriate source (e.g. statistics based on VAT returns, household budget surveys).

In certain cases of minor importance, the breakdown of statistics has to be based on reasonable estimates since no more accurate figures are available.

3.1.3 Corrections to receipts and compensations in the base

In the annual statements that they present, the Member States have to make a number of upward or downward adjustments in order to arrive at the harmonized VAT resources base. These adjustments take the form of corrections to revenue or compensations in the base.

To obtain standardized net revenue, the VAT receipts actually collected (gross receipts) are increased or decreased taking into account specific national considerations, such as :

- fines and interest on late payment;

- collection costs and recovery charges;

- arrangements for small firms (exemptions up to 10 000 ECU, graduated relief);

- arrangements for flat-rate farmers;

- other specific cases: e.g. receipts collected on certain territories excluded from payment of VAT resources, tax aid to farmers, VAT refunds to local authorities and exporters.

The base itself is subject to positive or negative compensations in line with the possibilities available to the Member States under Annexes E (operations which may still be taxed although they should be exempted) and F (operations which may still be exempted although they should be taxed) to the Sixth VAT Directive.

Other compensations are calculated where restrictions are imposed on the right to deduct in respect of motor vehicles and petroleum products.

In a limited number of cases, positive compensations have to be determined to prevent the Member States concerned from deriving financial advantages from infringements of Community rules.

These corrections and compensations are usually determined by means of calculations based on the use of appropriate data which give an accurate picture of the situation; in some cases, however, the Member States are authorized to use approximate data or even estimates.

3.2 Problems and solutions

3.2.1 Several years' experience has shown that the revenue method involves the operation of a delicate mechanism for reconstructing the uniform base, a process which has proved difficult and complicated in a number of cases.

3.2.2 Corrections to receipts

With the exception of Denmark, where the VAT receipts collected can be determined only by means of rather elaborate accounting procedures, the figure for this first step in the revenue method already appears in the Member States' accounts. However, some accounting adjustments are necessary to deduct amounts which are not really VAT receipts (e.g. fines and interest on late payment) or to add amounts of VAT which are sometimes accounted for seperately (e.g. tax stamps).

3.2.2.1 Small firms

Transactions performed by taxable persons with an annual turnover not exceeding 10 000 ECU should, in principle, be excluded from the uniform base. However, since in practice the Sixth VAT Directive allows Member States to choose what method they wish to apply to small firms, a method that was logical, consistent and reliable in the light of what was technically feasible had to be found so that this "own resources relief" could be properly granted.

3.2.2.2 The calculation of the weighted average rate (see 3.2.3) covers all taxable transactions, irrespective of the size of the firms involved. This weighted average rate has to be applied to revenue from all taxable transactions, including revenue which would accrue if small firms were not exempted. A correction should therefore be made to the taxable amount. However, a method of this type is impractical. As it is probable that the breakdown by rate of transactions performed by small firms is the same as that for large firms, the lack of precision resulting from a different method is acceptable.

A correction is therefore made to receipts when there is no exemption limit or where it is less than 10 000 ECU. Compensation is made in the base when the exemption limit exceeds 10 000 ECU.

(a) There is no exemption limit for small firms or where it is less than 10 000 ECU.

The correction consists in subtracting from receipts collected the receipts relating to supplies by these small firms to the final consumer.

As they are subject to VAT, these small firms make returns. The amount of VAT which they have paid can therefore be determined from these returns.

However, if they are to be used, these returns must have been processed by May of the following year at the latest, since the statement of own resources must reach the Commission by 1 July.

As this is not normally the case, previous years' returns, updated in the same way as the statistics (see 3.2.3.2), are used.

A deduction is made from the result obtained representing the percentage of supplies to intermediate consumption, which is normally determined from the activity codes. The amount of receipts calculated in this way represents the amount of VAT paid by small firms in respect of their supplies to final consumers.

(b) The exemption limit for small firms exceeds 10 000 ECU. Instead of a correction to receipts, in this case there is a compensation in the base: the own resources base must be increased by the value added up to final consumption by non-registered firms with a turnover exceeding 10 000 ECU.

As non-registered firms do not make returns, other sources have to be used. The regulation provides for the use of "appropriate data" such as other tax returns, professional accounts or complete statistical series - a wide range of possible sources. As a result, the results obtained are often imprecise.

The value added by these firms must be derived from these data. This value added figure must itself be corrected as follows:

- a deduction is made in respect of the value added in transactions with taxable persons when the non-registered firms cannot invoice their sales to taxable persons, who cannot therefore deduct the input tax. If this correction were not made, these purchases by taxable persons would be counted twice for own resources.

- A deduction is made in respect of the value added in transactions for consumption by firms which, although they need not be registered, have opted for the normal scheme. This value added is already incorporated in the own resources base. As registered firms make returns, this value added can be determined.

(c) Graduated relief

Corrections due in respect of the special arrangements for graduated relief have to be made only when they concern firms with a turnover exceeding 10 000 ECU. If the firms have a turnover below 10 000 ECU, the corrections are included with those described above.

As the firms concerned make returns, it is possible, from this source, to determine the amount of VAT which they have not paid as a result of the graduated relief. However, as a rule, the returns for year n cannot be used when the statement of own resources is drawn up. An updating coefficient is then applied to a previous year. If, because of a change in legislation, no earlier reference data are available from which a coefficient of this type can be calculated, estimates have to be made.

The amount obtained is added to receipts.

3.2.2.3 Flat-rate agricultural arrangements

When, under the flat-rate agricultural arrangements provided for by the Sixth VAT Directive, a Member State deliberately fixes the rate of the flat-rate refund to farmers at a level which will not cover all the VAT they paid on their inputs, the difference between the amount of VAT on inputs and the amount actually repaid must be deducted from VAT receipts so that, in accordance with Regulation No 2892/77, there is no unwarranted increase in the VAT base.

The "mop-up" rate (i.e. the rate which, if applied to sales by flat-rate farmers, would mop up the VAT on their inputs) must therefore be calculated in accordance with the rules in Annex C to the Sixth Directive.

The difference between this mop-up rate and the actual rate of repayment is applied to the taxable turnover of flat-rate farmers in transactions with taxable persons. The amount obtained is deducted from receipts.

By the same method, the correct amount of VAT receipts can be reconstructed in cases where the rate of the flat-rate repayment is higher than the mop-up rate, contrary to the provisions of the Sixth Directive.

3.2.2.4 The most notable of the specific corrections occasioned by special national conditions is the addition to receipts made each year under a Commission Decision on the VAT resources payable by the Federal Republic of Germany by reason of the application of the 20th Council Directive No 85/361 of 16 July 1985[1].

Under this Directive, Germany is provisionally authorized to use VAT to grant farmers special aid in compensation for the dismantling of the compensatory amounts in the agricultural sector. The data and method of calculation used to determine this compensation were set out in the two annual reports which the Commission has already submitted to the Council and Parliament.[2]

3.2.3 Weighted average rate

3.2.3.1 The breakdown of operations taxed according to the various VAT rates is the biggest and most complex administrative task imposed by the revenue method. However, since the approach is the same each year, some national administrations have managed to devise computer applications which make their work a lot easier.

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[1] 85/361/EEC: OJ L 192, 24.7.1985.
[2] COM(86)260 final and COM(87)292 final.

However, the quest for better statistics is constant. The amounts to be broken down by rate and by category have to be taken from the national accounts drawn up in accordance with the European System of Integrated Economic Accounts (ESA), but these accounts may not be sufficiently detailed to permit a breakdown by rate, especially if the Member State in question has a large number of rates.

Similarly, the input-output tables may not be sufficiently detailed to reveal the intermediate consumption and gross fixed-capital formation of exempted branches. Other statistical sources are used in this case, in particular the internal national accounts or, failing these any other appropriate statistical source such as surveys of household consumption or statistics compiled by trade organizations. Finally, estimates sometimes have to be made in a number of extreme cases where no statistics are available.

3.2.3.2 The statistics used must be public in nature, i.e. they must be published. In principle, this rules out the use of special surveys conducted solely for the purpose of establishing own resources. Finally, they must be available when the statement of the base is produced. No corrections are made in the light of new statistics; otherwise adjustments would be never-ending.

In many cases, the statistics for the year in question are not available when the definitive own resources base is established.

Use is then made of the latest statistics available, updated by means of a coefficient. If there are no figures more recent than those for year n-2 (1984 figures for 1986, for example), a coefficient reflecting the change between year n-4 and year n-2 is applied to these figures. This method for updating the figures assumes that the change between year n-2 and year n is the same as that between year n-4 and year n-2. As this cannot, of course, be absolutely true, the actual changes are felt with a two-year time-lag.

.2.3.3 Change in VAT rates

If there is a change in rates or in legislation affecting receipts during the year in question, Regulation No 2892/77 as amended states that a new weighted average rate must be calculated to take account of the new rate or the new legislation.

In practice, the need to calculate more than one weighted average rate for one and the same year and to reconstruct the receipts to which each weighted average rate should apply makes this method virtually inapplicable.

Another, simpler method has therefore been applied. Only one average rate is calculated. However, to break down the value of final consumption

(or non-deductible intermediate consumption or gross-fixed capital formation etc.), the average period between the entry into force of the new rate or new arrangements, and the collection of receipts is taken. If the change enters into force on 1 July and the time-lag is one month, seven twelfths of the figure is allocated to the old arrangements and five twelfths to the new arrangements.

To simplify calculation, this average period may be rounded off to the nearest month upwards or downwards. This method is applied even if the new system enters into force on 1 January since the time-lag is the same. It may also straddle two years if, for example, the new system enters into force on 1 December and the average time-lag is two months. All consumption in the old year will then be allocated to the old rate, but in the new year one twelfth will be allocated to the old rate and eleven twelfths to the new rate.

3.2.4 Compensations in the base

3.2.4.1 As a transitional arrangement, the Sixth Directive authorizes the Member States

- to tax certain goods and services which should in principle be exempted (list in Annex E);
- to exempt certain goods and services which should be taxed (list in Annex F);
- to restrict the right which firms normally enjoy to deduct VAT on their purchases.

Positive or negative compensations must be effected in respect of these operations to ensure that the base is uniform for all the Member States.

3.2.4.2 Operations under Annex E

When Member States tax certain transactions which they should normally exempt (Annex E), it is necessary to find what would be the situation if these operations were exempted.

A distinction must be made between supplies to taxable persons and those for final consumption.

In the case of supplies to taxable persons, the supplier adds VAT to his invoice and deducts the VAT charged on his inputs. The purchaser himself deducts this VAT from that charged on his sales. If the goods or services had been exempted, the supplier would not have charged VAT on sales and would not have deducted the VAT charged on his inputs.

In the case of supplies to final consumption, the consumers will have paid too much VAT since the goods or services were taxed instead of being exempted. The difference between taxation and exemption boils down to the fact that, in the case of taxation,

the additional VAT relates to the value added. The correction to the own resources base thus consists of subtracting the amount of value added.

In practice, the same goods or services are often supplied both to the taxable sector and to final consumption. Since the turnover is known, the breakdown between these two sectors is calculated from statistics. It is assumed that inputs of goods and services used to generate this output have the same breakdown. For example, if 10% of output is supplied to the taxable sector, it is assumed that 10% of inputs are used in generating this output.

To reconstruct the uniform VAT resources base; it is therefore necessary:

- to add the value of inputs corresponding to the proportion of turnover accounted for by the taxable sector;

- to subtract the value added in supplies to final consumption.

The compensation is therefore equal to the amount of inputs corresponding to supplies to taxable persons, less the value added in supplies to final consumption; this compensation can thus be positive or negative.

3.2.4.3 Operations under Annex F

When Member States exempt certain transactions which should normally be taxed, it is necessary to find what would be the situation if these operations were taxed.

The correction mechanism is the reverse of that applied for operations under Annex E. Again, a distinction must be made between supplies to taxable persons and those to final consumers.

It is therefore necessary:

- to deduct from the VAT resources base the amount of deductible inputs corresponding to supplies to taxable persons;

- to add to this base the value added in supplies to final consumers.

Compensation is therefore equal to the turnover accounted for by final consumption, less total deductible inputs; this compensation too can be positive or negative.

3.2.4.4 Restriction of the right to deduct

The laws of some Member States restrict or even deny the right to deduct in respect of motor vehicles for business use and petroleum products. Compensations must therefore be determined to correct the uniform base to the level it would be at if this deduction applied in full.

It has proved rather difficult to calculate this compensation in respect of motor vehicles. Not only is it necessary to eliminate vehicles not qualifying for deduction (those used in connection with exempted activities such as banking and insurance services), but a distinction must also be made between actual business use and private use.

In the absence of precise and common definitions, the distinction between private and business use cannot be drawn in accordance with uniform criteria. Furthermore, in some Member States this compensation is specially calculated whereas other Member States utilize statistics of the private use of business vehicles under household consumption.

4. Analysis of the returns method

4.1 Basic features

Under the returns method, the VAT resources base is determined by means of the returns made by taxable persons in the course of the year.

As the statement of own resources for a given year must be presented to the Commission by 1 July of the following year, the tax authorities in a country using this method must process all the VAT returns early enough for the statement to be ready at the end of June.

For it to be possible to use the returns, they must indicate the turnover subject to VAT during the year in question and the total inputs of goods or services in respect of which VAT may be deducted.

These amounts are added separately to give the total taxed turnover of all firms during the year in question and the total taxed inputs eligible for deduction. The difference between these two totals is the total value added for tax purposes in the Member State and, at the same time, the intermediate own resources base, which will be adjusted if necessary to take account of certain special situations.

As with the revenue method, some of these adjustments derive from the options available to the Member States under the Sixth VAT Directive (corrections for small firms, compensations under Annexes E and F, etc.); others are specific to the returns method.

4.2 Special cases

4.2.1 Zero rate

When the Member States apply a zero rate, i.e. when the goods or services are exempt and the input tax is refunded, calculations have to be made to find what the own resources base would have been if these goods or services had been taxed.

However, the VAT returns of firms which supply zero-rated goods (e.g. foodstuffs) or services are in many cases not very reliable; their returns are made for the sole purpose of obtaining a refund of the VAT on imputs; the tax authorities do not check the returns very closely as no tax will be due. The margin of error contained in these returns must therefore be estimated. If this margin of error is found acceptable, the returns are used without any adjustment to establish the own resources base. If not, the figures they contain are corrected in order to reduce this margin of error as much as possible. This correction is based on whatever statistics are available.

4.2.2 Estimated assessments

The returns method assumes that all taxable persons make regular and correct returns. When the taxable persons fail to make a return, or if the return contains understatements, an estimated assessment for VAT is made. The amount of value added involved in the estimated assessment must then be added to the own resources base. Since the tax authorities generally over-estimate the amount of VAT when making an estimated assessment, the taxable person often claims a correction. If this correction is allowed, the initial estimated assessment will be reduced. This correction then has to be taken into account for own resources, usually in the subsequent years.

4.2.3 Flat-rate farmers

Farmers subject to the flat-rate refund scheme do not make any returns. However, some agricultural products are supplied to taxable persons for whom it represents intermediate consumption. If the flat-rate refund is made by the purchaser, the amount is added to the value of the goods purchased and the purchaser, as usual, deducts the value of the agricultural products which he has purchased from flat-rate farmers: the own resources base does not therefore require correction.

If, on the other hand, the flat-rate refund to the farmers is made by the authorities, or if no refund is provided for, the purchaser may not deduct the amount of his purchases from flat-rate farmers. The value added by these farmers must then be deducted from the base for calculating own resources. The agricultural accounts are used for this purpose. As these accounts cover the entire agricultural sector, the inputs and outputs of farmers subject to the normal VAT arrangements must be deducted.The difference between the output and input totals after these deductions is the value added to be subtracted from the own resources base. However, as consumption on the farm by flat-rate farmers and direct sales to the consumer are final consumption, the amount of these two items must first be subtracted from the amount of value added to be deducted from the own resources base.

4.3. Reasons for abandoning the returns method

4.3.1 When the VAT own resources system was introduced, seven of the nine Member States opted at the time for the revenue method. There were two main reasons why the majority were against the returns method:

- the returns were not suited to the needs of this method;

- the data supplied in the returns could not all be centralized and processed in time to produce the annual statements.

None of these seven member States have changed their mind, while two new Member States - Spain and Greece - later opted for the revenue method. Although it still has to be confirmed by a final decision, the information available to the Commission suggests that Portugal too will use the revenue method.

The two Member States which originally opted for the returns method later decided to use the alternative method - Denmark from 1983 and Ireland from 1986.

4.3.2 Denmark's original choice of the returns method had been prompted by the fact that its system of accounts was already perfectly suited to this method. However, Denmark was then forced to change method because of the adverse effects produced by its very strict national legislation as regards the ability to cancel apperent (but not real) tax debts represented by the estimated assessments.

These are in fact cancelled only if the taxable person dies or if the firm is wound up. By their nature, the estimated assessments are often for higher amounts than the tax actually due.

The Danish authorities therefore felt that, under the returns method, the VAT resources base was excessively inflated by estimated assessments which, although not correct, remained in the Danish tax accounts.

4.3.3 In Ireland, the real returns method was only partly applied because of the extensive application of zero-rating. The proportion of zero-rated transactions in total consumption was around 50% in 1982, 44% in 1983, 36% in 1984 and 33% in 1985.

The revision of the information relating to zero-rated operations in the returns made by taxable persons was based on consumption statistics and produced, over the years, corrections of between 25 and 50% in the declared zero-rate base.

Although a problem involving smaller amounts, the revision of estimated assessments involved the Irish authorities in a good deal of administrative work each year.

In any year, about 8 to 10% of the overall value added determining the VAT base derives from estimated assessments made by the authorities. In subsequent years, following controls and appeals by the taxable persons, some of these estimated assessments are reduced. Hence the base for each year has to be repeatedly corrected downwards in the following years, imposing an additional administrative burden.

This mechanism also meant that each year Ireland paid amounts of VAT resources which subsequently have to be reduced, and did not recover the overpayments until several years later.

It is therefore understandable that the Irish authorities finally opted for the revenue method in order to obtain annual results which would not have to be changed significantly in subsequent years and in order to simplify their administrative work.

5. The Statistical method (IFO study)

5.1 The German authorities brought to the Commission's attention a study dated October 1984 conducted by the Institut für Wirtschaftsforschung (IFO) on behalf of the Federal Ministry of Finance to analyse the possibility of a method based entirely on statistics to replace the methods provided for in Regulation No 2892/77.

IFO's calculation is based on the principle that the VAT resources base can be derived from the uses of gross national product. However, as the determination of uses subject to tax in accordance with the Sixth VAT Directive requires a highly detailed breakdown, IFO had to refer to each Member State's national accounts, which may not always be fully consistent with the ESA.

From these figures, IFO calculated total uses including and excluding VAT for each of the sectors of final consumption listed in Article 7 of Regulation No 2892/77. This approach is similar to that applied for calculating the weighted average rate under the revenue method.

5.2 The general principle of the methodology of the IFO study appears to be in keeping with the desired objective; it is in fact the method used by the Statistical Office of the European Communities for estimating the VAT bases from national accounts aggregates, as described in Annex III to the Commission's first report (COM(85) 170 final).

5.3 No comments are made here on the findings of the IFO study. However, it should be noted that the study related to 1979, 1980 and 1981 and the situation has changed considerably since (see statistical tables I, II, III and IV).

5.4 The basic problem with the IFO method, as well as with any other method for the statistical reconstruction of the VAT resources base, is one of principle. The own resources system was designed and adopted in order to guarantee the Community's financial autonomy and eliminate any reliance on national contributions. Even though the character of "tax receipts" which the Council Decision of 21 April 1970 assigned to VAT resources has admittedly not been entirely respected because of unavoidable technical constraints, under the two methods provided for by Regulation No 2892/77 VAT resources are calculated either from returns or from receipts, i.e. real tax-related elements.

However, the IFO method clearly severs all connections with real taxation. The Commission cannot therefore consider this or any similar statistical method as an acceptable alternative for determining the VAT base.

5.5 The statistical method set out in the IFO study also poses serious technical problems.

- At statistical level, this method aims to reconstruct a new national accounts aggregate - uses subject to tax as specified by the Sixth VAT Directive - which makes it necessary to refer to exclusively national statistical sources. This poses the problem of whether the figures used by the Member States are perfectly harmonized, with the attendant risk that Member States may be treated differently.

- At operational level, the statistical base for a given year could not be reconstructed for at least eighteen months, while the current time-lag is six months. However, since it has already been found that the statistics needed to calculate the weighted average rate are not available until two or even three years later, it would be more realistic to conclude that the statistical base for year n would not be available until year n+3. This delay would obviously lead to a number of budgetary difficulties.

- At administrative level, application of IFO's statistical method could be expected to be just as complicated as application of the current methods: the tasks of the national authorities and the Commission's control operations would be just as difficult as before, even if these difficulties were of a different nature.

6. The Commission's control operations

6.1 Procedures

6.1.1 Under the rules in force, the powers of control granted to the Commission as regards VAT resources are clearly defined.

It is for the Member States to lay down whatever laws and rules are needed to implement the common VAT system, to control taxpayers, to collect receipts (on tax returns), to determine the VAT resources base and make the resources available to the Commission in accordance with Community rules.

The Commission for its part, has to check that Community law - i.e. the VAT directives and the financial regulations - is being fully and correctly applied. The Commission does not therefore have any powers of control

in those sectors not covered by Community law. This is the case, for example, with the control of persons subject to VAT and the application of enforcement measures for the recovery of tax debts; the Commission does not therefore possess any means of direct action as regards VAT frauds.

6.1.2 Each Member State determines its own resources base every year by a uniform method covering each of the constituent elements in turn. The statements are sent to the Commission by 1 July of the following year together with documents relating to the figures and the calculations used for establishing the bases.

These documents are normally fairly sizeable, with a large number of pages of calculations and lists of statistics, especially for the calculation of the weighted average rate.

6.1.3 Every year the Commission control begins with the examination of each country's statement and the data submitted. A control visit organized by the competent national authorities then allows the Commission officials to conduct an on-site check of all accounting, statistical and other figures from which have determined the items appearing in the statement. During this visit, they discuss with the national experts any legal or statistical problems involved in applying Community rules to the specific situation in each Member State.

As required by Council Regulation (EEC,Euratom, ECSC) No 165/74[1] of 21 January 1974 determining the powers and obligations of the officials appointed by the Commission, a report containing the findings of the on-site control is sent to the Member State within two months.

The national authorities then also have two months to send the Commission their comments on the control report. After receiving this reply, the Commission drafts the summary document of the conclusions of the annual control which specifies the corrections to the statement accepted by the Commission and the Member State and matters on which agreement has still not been reached.

6.1.4 These three documents - which together make up the annual control report - are submitted to the Advisory Committee on Own Resources.

All Member States are thus informed not only of the findings of the Commission's controls but also of problems, solutions and any disputes in the determination of each country's base.

The discussions at the Committee's meetings have allowed the national authorities to establish that the Commission's prime concern in its control activities is to see that all the Member States are treated equally; the comparison of situations in different countries and

(1) OJ L 20, 24.1.1974

discussions of certain problems when each Member State and the Commission are given the opportunity to state their views have often led to solutions which all parties can accept.

6.1.5 When corrections have to be made to the statements following a control, they are incorporated in an aggregate statement adopted on 30 June each year. The adjustments to the amounts to be paid as a result of the corrections to the annual statements are generally made at the same time as the technical adjustments which are normally made on 1 August bring the amount of VAT resources already paid by reference to the estimated base into line with the amount resulting from the base calculated in the annual statment.

6.1.6 In the case of disagreement between the Commission and the Member State, it is for the Commission to take the measures necessary to ensure that the Community legislation is correctly applied.

However, in the case of disagreement on what are primarily technical problems, such as the choice of figures or the correct method for calculating compensation, the Commission's usual course has been not to initiate the infringement procedure provided for in Article 169 of EEC Treaty until it has pursued its discussions with the national authorities in the hope of finding a mutually acceptable solution.

This course has proved worthwhile in most cases, even though sometimes discussions have not ended until after a number of controls.

In cases where the incorrect application of provisions of Community law (in particular the Sixth VAT Directive) leads to a reduction in own resources, the Commission has had to issue a formal request to the Member States concerned to pay the VAT resources involved.

In some cases the Member States have responded favourably to these requests and the problems have thus been settled at the pre-litigation stage.

6.1.7 Of the cases in which the infringement procedure has had to be initiated:

- 1 case was dropped as it did not affect own resources;
- in 3 cases the Court of Justice did not consider that there was any infringement of the Sixth VAT Directive;
- in 11 cases the Member States concerned accepted the Commission's arguments without waiting for the Court's judgement;
- 5 infringement procedures are still in progress.

6.1.8 Interest on late payment

Whenever the provisions of Article 11 of Council Regulation No 2891/77 of 12 December 1977 have had to be applied, the Commission has claimed the interest due for any delay in the making available of VAT resources.

These provisions place a clear obligation on the Member States and determine the rate of interest to be charged. However, they do not lay down the rules of procedure for demanding and paying this interest and do not define explicitly what is meant by "any delay in making the entry".

The Commission has therefore gradually had to develop a doctrine on application of the Regulation. As a result of differences which emerged between the Commission and certain Member States, reference was also made to the Court of Justice to lay down certain conditions for applying Article 11 of Regulation No 2891/77 (judgment of 20 March 1986 in Case 303/84; judgment of 18 December 1986 in Case 93/85). These rulings endorsed the Commission's approach.

Commission practice, which is applied uniformly to all Member States, is therefore as follows:

(a) General mechanism

A distinction must be drawn between two situations:

- An amount is credited to the Commission after the due date: only the interest on late payment is demanded.

- An amount is not paid: the principal and the interest on late payment are demanded.

In both these cases, the procedure is initiated (pre-litigation phase) by a "demand" from the Director-General for Budgets to the appropriate Permanent Representative's Office. When only the interest on late payment is demanded, the demand indicates the amount and asks for it to be credited by the end of the second month following despatch. When both principal and interest are due, the demand calls for the amount to be credited, if it is known, or to be calculated and credited if it is not known to the Commission, by the end of the third month following the demand. The Member State is also warned that the interest on late payment provided for in Article 11 will be charged on expiry of this time limit.

If the demand is not met or if the Commission contests any comments which the Member State may make, the Commission may initiate the infringement procedure provided in Article 169 of the EEC Treaty (litigation phase), which consists of three stages:

- letter of formal notice;

- reasoned opinion;

- referral to the Court of Justice.

Whatever stage the case has reached, the procedure may be terminated when the sums demanded by the Commission are credited or when the Commission accepts the arguments put forward by the Member State. Payment of the sums demanded obviously terminates the period for which interest on late payment is counted.

(b) Practical application as regards VAT resources

If the Commission finds that an infringement of the tax regulations or Regulation No 2891/77 as amended involves a loss of VAT resources and that there is no further hope of a direct solution with the Member State, it asks the Member State to calculate the VAT resources involved and to pay them by the end of the third month following the demand. After this deadline, interest will be charged.

The procedure initiated ends when the Member State makes available the VAT resources it has calculated before expiry of the deadline or the VAT resources plus interest in late payment after expiry, subject to a subsequent check of the Member State's calculations in line with normal procedures.

6.1.9 As a result of the Commission's demands, over 10.6 million ECU has been paid in interest on late payments in the VAT sector alone. Virtually all the Member States have been concerned; however, some member States paid the interest demanded while expressing a reservation concerning the basic issue. Other Member States refused to pay the principal and interest on late payment as long as the Court had not ruled on the infringement procedure in respect of the tax regulations.

6.2 Results of the Commission's control operations

6.2.1 Since the prime objective is to ensure correct application of Community rules, the Commission officials not only request that corrections be made to the VAT base in the Community's favour but also draw the attention of the national authorities to cases where corrections should be made in favour of the Member States.

6.2.2 The differences between the bases declared in the annual statements sent in by the Member States and the definitive bases incorporating all the corrections - positive or negative - made up to 30 June 1987 give some idea of the changes made as a result of the Commission's controls. It should,

however, be pointed out that certain Member States indicate the need for a limited number of corrections on their own initiative. Subject to this reservation, the percentage differences by Member States and by year are as follows:

Definitive bases in relation to declared bases (declared bases = 100)

	1980	1981	1982	1983	1984	1985
Germany	101.1	100.2	99.9	99.8	100.2	100.2
Belgium	99.9	99.2	100.1	100	100	100
Denmark	101.1	99.9	100	99.2	100.1	100
France	100.7	99.9	100	100.3	100.1	99.9
Ireland[1]	105.6	102.1	102.4	86.3	97.8	99.5
Italy	107.4	106.9	107.1	99.9	101.7	102.6
Luxembourg	106.2	100.2	100.1	99.1	100.2	100.1
Netherlands	104.5	100	101.5	100.9	100.3	99.9
United Kingdom	101.7	99.6	100.6	100.5	102.1	100.4

The various corrections made to the statements have, since VAT resources were introduced, led to the collection of additional VAT resources of 608 million ECU.

6.2.3 Although significant in itself, the result of the Commission's controls in terms of amounts is less important than its result in terms of application of the rules.

All the legal and practical procedures making up the Commission's control activities which have been introduced over the years have made it possible to achieve the objectives pursued.

- All Member States apply the rules in the same way.
- Uniform or broadly equivalent methods are used in the statistical work which plays an essential role in the determination of the base.
- Most of the corrections to receipts and compensations in the base concerning more than one Member State are determined in identical or comparable manner.

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1) The changes in the Irish bases from 1983 are largely due to the elimination of the effects of estimated assessments as explained at point 4.3.3.

It should, however, be added that not only do a number of specific problems remain to be settled while others may arise in future as regards nine Member States, but also the Commission has not yet begun its controls in Spain, Greece and Portugal.

6.2.4 The Commission would stress that this relatively satisfactory result could not have been achieved without the collaboration and technical assistance of the national authorities, notably in the Advisory Committee on Own Resources. The spirit of mutual understanding which has grown up between the national authorities and the Commission departments has helped to resolve a great many of the difficulties which are bound to arise in a situation where the parties involved are defending their legitimate interests.

7. Choice of the definitive uniform method

7.1 This report has already analysed three methods for establishing the VAT own resources base: the method based on VAT receipts, the method based on the value added declared by taxable persons and the method based on statistics on final consumption.

As far as the Commission can see the two methods provided for in Regulation No 2892/77 as amended and the statistical method analysed in Chapter 5 of this report exhaust all the technical possibilities.

7.2 In practice, the choice of a uniform method has already been made, since eleven Member States now apply the revenue method and Portugal plans to use it in the future.

However, Parliament has, on a number of occasions, expressed a preference for the returns method which the Commission originally proposed as the sole method for determining the VAT resources base.

7.3 In view of this situation and in the light of experience gained, the Commission is realistic enough to recognize that only extremely convincing and clear arguments in favour of the returns method could justify upheaval of the harmonization that has come about. No such arguments exist.

7.4 First of all, as regards the basic objectives behind the creation of Community own resources, it should be pointed out that the VAT resources system was designed to provide a source of Community finance which established a direct link between European taxpayers and the Community budget.

Even though the many different VAT rates applied in most Member States and the various special arrangements under national VAT legislation ruled out any form of direct collection, Parliament and the Commission felt that use of the returns made by taxable persons would have made it possible to

retain this link. Application of the method based on national VAT receipts, by contrast, tended to make the Member States themselves the real European taxpayers.

Experience has shown, however, that, because of the many technical constraints (zero rate, special arrangements, temporary derogations, etc.), the base determined by the returns method must be reconstructed, in part at least, using figures other than those contained in the returns.

The link between taxpayers and the financing of the Community is thus partly broken and the main advantage of the returns method is considerably diminished.

It should, however, be added that even when calculated by the revenue method, VAT resources still have a definite political and psychological impact since they derive from the first tax to be harmonized at European level.

7.5 Secondly, the returns method certainly presents no lesser technical difficulties than the revenue method. Without repeating the comments already made in Chapter 4, it is sufficient here to draw attention to one problem specific to the returns method - the corrections in respect of estimated assessments, which entail revisions of the base over a number of years.

7.6 As regards the work and costs for national administrations, the two methods can only be compared by the two Member States which have used each in turn; however, the fact that these Member States considered it preferable to switch from the returns method to the revenue method suggests that the revenue method is not more cumbersome to administer than the returns method.

7.7 As regards taxable persons, however, the administrative repercussions of the two methods are by no means comparable since only the returns method requires them to record and declare the amount of deductible inputs and taxed supplies.

These figures - which have no other purpose than to determine value added for tax purposes - are secondary to the amounts of VAT on inputs and outputs, which must be recorded and declared for the tax to be collected.

If all the Member States were obliged to implement the returns method, the administrative responsibilities of taxable persons would therefore increase in those countries where at present the returns contain none or only some of the information required to determine value added for tax purposes.

7.8 Finally, from the evidently very important angle of financial yield, there is no evidence to show that the returns method can provide more own resources than the revenue method.

From the information at its disposal, the Commission would tend to think that the two methods give identical - or at any rate similar - yields, as is confirmed by the development of the Danish and Irish bases.

As Tables I and II show, the rate of increase in Denmark's base, which has been steady each year, did not slacken abnormally in 1983 with the changeover from the returns method to the revenue method.

In Ireland's case too, the base reported in the 1986 statement - the first year in which the revenue method was applied - is larger, subject to confirmation after the control, than the 1985 base, which was determined by the returns method.

However, precise comparison of the yield from the two methods is particularly difficult in Ireland's case, since the essential component of the revenue method is the VAT receipts collected during the reference period (a figure which should not need to be revised), while the returns method also takes account of value added from estimated assessments, an item which has to be corrected in subsequent years.

7.9 The conclusions to be drawn is that the returns method does not offer the Community or the Member States any definite and obvious advantage compared with the revenue method.

The Commission therefore considers that a formal decision should be taken to confirm the revenue method as the sole definitive method, a choice already made by all the Member States.

8. Conclusions

8.1 In 1988, eleven years after it was adopted by the Council, Regulation No 2892/77 will cease to be the legal base for the collection of own resources accruing from VAT.

The shortcomings and lack of precision in this legislation - inevitable in such an extremely complex area where there were no precedents to rely on - have almost all been remedied by amendments and, more significantly, by the many practical solutions worked out by the Commission and the Member States together.

8.2 The results of these years of experience can be summed up as follows:

- Despite the numerous difficulties encountered, the rules contained in Regulation No 2892/77 have proved technically viable, with around 101,320 million ECU being collected in VAT resources between 1979 and 1987 and all the Member States being treated alike.

- Within the legal limits laid down by Community law, the Commission's control operations have, all in all, been effective in verifying the amounts due and in ensuring compliance with the rules.

- Of the two methods available to the Member States for determining the VAT resources base, the revenue method was ultimately adopted by all of them because of the more reliable result obtained in comparison with the returns method, which is no less complicated for the national authorities to apply and far more of a burden for taxable persons.

8.3 To conclude, the Commission considers that the decision on the definitive unform arrangements for the collection of VAT resources should not upset this broadly favourable situation which has evolved. It therefore proposes that the new regulation to apply from 1 January 1989 should take the revenue method as the sole method and leave unchanged the provisions contained in the current legislation, except for a number of necessary technical amendments and the introduction of a very limited number of new provisions to deal with questions of substance raised by Parliament and the Court of Auditors.

The proposal for a Regulation is contained in the second part of this document.

Table I

DEFINITIVE BASES 1980-85 (national currencies)

		Belgium Bfr million	Denmark Dkr million	Germany DM million	France FF million	Ireland IRL million	Italy Lit billion	Luxembourg Lfr million	Netherlands Hfl million	United Kingdom UKL million
1980		1.830.719	181.163	845.558	1.472.056	5.793	182.461	97.675	174.832	124.683
	1980=100	100	100	100	100	100	100	100	100	100
1981		1.906.961	191.230	881.594	1.663.052	7.558	212.473	124.394	178.379	121.445
		104	106	104	113	130	116	127	102	97
1982		2.040.535	211.712	868.783	1.931.199	8.145	238.989	147.481	180.607	157.077
		111	117	103	131	140	131	151	103	126
1983		2.050.550	224.654	912.031	2.083.113	8.656	257.473	180.692	189.762	169.008
		112	124	108	142	149	141	185	109	136
1984		2.174.025	250.540	930.957	2.239.525	9.392	298.821	168.343	192.833	190.999
		119	138	110	152	162	164	172	110	153
1985		2.310.346	274.057	934.820	2.431.590	10.203	327.197	180.343	205.917	215.756
		126	151	111	165	176	179	185	118	173

Table II

DEFINITIVE BASES 1980-85 (million ECU)

		Belgium	Denmark	Germany	France	Ireland	Italy	Luxembourg	Netherlands	United Kingdom
1980		45.090	23.150	335.010	250.820	8.570	153.430	2.410	63.340	208.330
	1980=100	100	100	100	100	100	100	100	100	100
1981		46.180	24.140	350.670	275.340	10.940	168.190	3.010	64.280	219.570
		102	104	105	110	128	110	125	101	105
1982		45.640	25.950	365.650	300.300	11.810	180.530	3.300	69.090	280.240
		101	112	109	120	138	118	137	109	135
1983		45.130	27.630	401.600	307.650	12.110	190.730	3.980	74.800	287.920
		100	119	120	123	141	124	165	118	138
1984		47.840	30.760	415.980	325.890	12.940	216.320	3.700	76.430	323.400
		106	133	124	130	151	141	154	121	155
1985		51.440	34.180	419.960	357.850	14.270	225.960	4.020	82.010	366.310
		114	148	125	143	167	147	167	129	176

Table III

DEFINITIVE BASES (percentage of GDP)

	Belgium	Denmark	Germany	France	Ireland	Italy	Luxembourg	Netherlands	United Kingdo
1980	53,1	48,5	57,2	53,2	61,9	46,7	73,5	51,9	54,3
1981	53,6	46,9	57,2	53,5	66,5	45,4	87,4	50,6	48,0
1982	52,6	45,6	54,4	54,1	61,1	43,8	92,3	49,0	57,0
1983	49,8	43,8	54,4	52,9	59,5	40,8	101,7	49,8	56,3
1984	49,4	44,7	53,1	52,3	58,3	41,5	84,5	48,4	59,8
1985	49,1	44,7	50,8	53,0	59,1	40,6	85,2	49,6	61,6

Source: ESA national accounts
Aggregates 1960-85

Table IV

DEFINITIVE BASES (percentage of final consumption of households)

	Belgium	Denmark	Germany	France	Ireland	Italy	Luxembourg	Netherlands	United Kingdom
1980	84,4	87,5	91,8	84,8	94,2	76,6	125,1	85,0	89,1
1981	81,7	84,4	90,4	83,1	100,9	74,5	144,2	83,7	80,1
1982	80,7	83,5	86,3	84,2	101,6	71,6	154,0	81,4	94,4
1983	76,6	81,1	86,4	82,2	100,0	67,0	173,1	82,6	93,0
1984	75,6	82,7	84,5	81,8	101,7	68,1	150,5	82,2	98,2
1985	75,6	82,6	81,6	82,2	104,1	66,4	152,1	84,1	101,9

Source: ESA national accounts

Aggregates 1960-85

Table V

WEIGHTED AVERAGE RATE

	Belgium	Denmark	Germany	France	Italy	Luxembourg	Netherlands	United Kingdom
1980	13,58		11,46	15,73	10,28	7,46	14,23	9,37
1981	14,48		11,46	15,83	10,74	7,37	14,16	9,40
1982	14,20		11,67	16,06	11,41	7,71	14,07	9,23
1983	15,01	22	12,04	16,26	12,48	8,48	14,07	9,33
1984	14,89	22	12,51	16,31	12,62	9,34	14,92	9,44
1985	14,81	22	12,49	16,22	12,54	9,25	15,03	9,77

Table VI

RELATIVE SIZE OF CORRECTIONS

1980 VAT BASE

(%)

		Belgium	Denmark[1]	Germany	France	Italy	Luxembourg	Netherlands	United Kingdom	Ireland[1]
I.1	Gross receipts	100	100	100	100	100	100	100	100	100
I.2	Fines	- 0	-	-	- 0,2	- 0,0	- 0,0	- 0,7	-	-
I.3	Collection costs	-	-	-	+ 0,0	- 0,0	-		-	-
I.4	Small firms	- 0,3	- 0,2	-	-	- 3,8	-	-	-	-
I.5a	Other corrections (+)	-	-	+ 2,9	+ 0,1	+ 3,7	-	-	+ 6,2	+ 55,4
I.5b	Other corrections (-)	- 4,0	+ 0,9	-	- 9,9	-	-	-	- 0,1	- 0,6
I.6	Graduated relief	-	-	+ 0,1	+ 0,5	-	+ 0,1	+ 0,1	-	-
I.7	Flat-rate farmers	-	-	- 0,4	- 0,6	-	-	-	-	+ 42,1
	Total corrections to receipts	- 4,3	+ 0,7	+ 2,6	- 10,1	- 0,1	+ 0,1	- 0,6	+ 6,1	+ 96,9
III.	Intermediate base	100	100	100	100	100	100	100	100	100
IV.1	Small firms	-	-	-	-	-	-	+ 0,2	+ 0,0	+ 0,2
IV.2a	Annex E	- 0,2	- 0,3	- 0,4	- 0,0	- 0,5	-	-	- 0,1	- 0,3
IV.2b	Annex F	+ 1,8	+ 2,5	+ 1,5	+ 0,1	+ 0,2	+ 10,8	+ 1,0	+ 0,2	+ 1,7
IV.3a1	Motor vehicles	[2]	- 0,1	-	- 1,2	- 0,6	-	-	- 1,2	- 0,7
IV.3a2	Petroleum products	[2]	- 0,3	-	- 4,0	- 0,8	-	-	-	- 1,3
	Total compensations	+ 1,6	+ 1,8	+ 1,1	- 5,1	- 1,7	+ 10,8	+ 1,2	- 1,0	- 0,4

[1] Denmark and Ireland were the only countries to use method A. The figures are therefore not for gross receipts but for the intermediate base.

[2] Corrections made to receipts.

Table VII

(%)

RELATIVE SIZE OF CORRECTIONS

1985 VAT BASE

		Belgium	Denmark	Germany	France	Italy	Luxembourg	Netherlands	United Kingdom	Ireland[1]
I.1	Gross receipts	100	100	100	100	100	100	100	100	100
I.2	Fines	- 0,0	-	-	- 0,2	- 0,1	-	- 0,3	-	-
I.3	Collection costs	-	-	-	+ 0,0	+ 0,1	-	-	-	-
I.4	Small firms	- 0,2	- 0,1	-	- 0,1	-	-	-	-	-
I.5a	Other corrections (+)	-	+ 0,8	+ 5,3	+ 0,1	+ 4,5	-	-	+ 7,5	+ 27,6
I.5b	Other corrections (-)	- 1,9	-	-	- 12,4	- 0,0	-	-	- 0,1	- 1,2
I.6	Graduated relief	-	-	+ 0,1	+ 0,1	-	+ 0,0	+ 0,3	-	-
I.7	Flat-rate farmers	-	-	-	- 0,3	-	-	-	-	+ 16,0
	Total corrections to receipts	- 2,1	+ 0,7	+ 5,4	- 12,8	+ 4,5	+ 0,0	+ 0,0	+ 7,4	+ 42,4
III.	Intermediate base	100	100	100	100	100	100	100	100	100
IV.1	Small firms	-	-	-	-	-	-	+ 0,2	+ 0,0	+ 0,3
IV.2a	Annex E	- 0,2	- 0,5	- 0,5	- 0,1	- 0,6	-	-	- 0,3	-
IV.2b	Annex F	+ 1,0	+ 1,4	+ 1,2	+ 0,8	+ 1,4	+ 26,0	+ 1,5	+ 0,1	+ 2,2
IV.3a1	Motor vehicles	[2]	- 0,2	-	- 1,0	- 1,4	-	-	- 0,9	- 1,1
IV.3a2	Petroleum products	[2]	- 0,3	-	- 3,2	- 1,3	-	-	-	- 1,3
	Total compensations	+ 1,8	+ 0,4	+ 0,7	- 3,5	- 1,9	+ 26,0	+ 1,7	- 1,1	+ 0,1

[1] In 1985 Ireland was the only country to use method A. The figures are therefore not for gross receipts but for the intermediate base.

[2] Corrections made to receipts.

PART TWO
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Proposal

for Council Regulation (EEC, Euratom, ECSC) No .....
on the definitive uniform arrangements for the collection
of own resources accruing from value added tax (VAT)

EXPLANATORY MEMORANDUM

Regulation (EEC, Euratom, ECSC) No 2892/77 as last amended by Regulation (ECSC, EEC, Euratom) No 3735/85 is scheduled to apply for a transitional period ending on 31 December 1988. It is also provided that the Commission will present a report on the application of the Regulation before 31 December 1987, together with proposals for a uniform method for determining the collection basis, after consideration of all the possible solutions, for adoption by the Council by 30 June 1988.

The report precedes this proposal.
The conclusions can be summarized as follows:

- Several years' application of Regulation No 2892/77 shows that despite the many difficulties - which have, however, been suitably resolved - these rules have attained their essential objective: ensure harmonized payment to the Community of the VAT resources to which it is entitled.

- The control exercised by the Commission under the Community provisions has proved effective.

- There is no major reason why the revenue method, for which all the Member States have already opted during the transitional period, should not be chosen as the definitive uniform method for determining the VAT resources base.

The Commission accordingly proposes a new regulation to apply from 1 January 1989 accepting the revenue method as the sole method and taking over - subject to appropriate technical amendments - the provisions of Regulation No 2892/77. (See the comments on articles below.)

The Commission is also proposing that the new regulation should contain two new provisions dealing with points of substance raised by Parliament and the Court of Auditors; the first concerns the national systems of control in regard to VAT and, the second concerns the inclusion in the VAT resources base the amounts of VAT that the Member States do not collect because of the writing-off or waiving of VAT debts already established.

Analysis of the national systems of control in regard to VAT

Within the Community institutions, and in particular in the European Parliament, the impact of tax evasion on VAT resources is a matter of constant concern. On a number of occasions the Commission has been asked by Parliament and by the Court of Auditors to play a part itself in combating VAT evasion.

Under the revenue method, which is now being proposed as the sole method for determining the VAT resources base, any evasion of VAT due inevitably reduces these resources. Eliminating evasion is then no longer an exclusively national task but also becomes an objective for Community action.

It is obvious, however, that all the Member States endeavour to make their VAT control systems as extensive and watertight as possible and to constantly enhance their effectiveness. In fact, a very high proportion of VAT receipts end up as national tax revenue, whilst only a relatively small percentage of VAT receipts (between 5 % and 15 % which varies between the Member States) constitutes Community own resources.
The Commission can see no need at present for proposing measures which would mean Commission departments becoming involved in the control operations carried out by national tax authorities.

On the other hand, the Commission feels that it can make a contribution to combating VAT evasion as follows:

- by making the public aware of the Community interest in this task,

- by providing an objective assessment of the effectiveness of the different national control systems, with the aim of highlighting the advantages and drawbacks and promoting convergence towards the highest possible standard.

With the measures envisaged - examination by the Commission of the national VAT control systems and drafting of a three-yearly report - it should be possible, with the help of the national authorities, to attain the above objectives.

Inclusion in the VAT resources base of amounts of tax not collected by the Member States because of the writing-off or waiving of VAT debts already established

In its annual report concerning the financial year 1985,[1] the Court of Auditors claimed, on the basis of information supplied by certain Member States, that quite substantial amounts of VAT resources are not collected by the Member States which determine the VAT resources base by the revenue method because of the writing-off or waiving of VAT debts already established.

(1) OJ C 321, 15.12.1986

The Court also pointed out that the impact of this practice on the VAT resources base varies appreciably from one Member State to another.

Since the revenue method is now the sole method for determining VAT resources, this impact and the inequalities of treatment between Member States that it entails must be reduced to a minimum.

The Commission is therefore proposing that, as a general rule, amounts of VAT that are written off, waived, for whatever reasong, or uncolected because of the expiry of a time-limit, should be reinstated in the net VAT revenue to be taken into account for determining the VAT resources base.

However, amounts not collected where enforcement action has been unsuccesful would not be included in the VAT resources base.

Insignificant amounts, which Member States may waive by virtue of the possibility offered by the last indent of Article 22(9) of the Sixth VAT Directive, are also excluded from the VAT resources base.

x x

x

Finally, it should be noted that procedure regarding the committee had to be adapted in accordance with the Council Decision of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (1).

(1) OJ L 197, 18.7.1987

COMMENTS RELATING TO ARTICLES OF THE REGULATION

Article 1

Apart from the amendment which is required because of the new arrangements which are being proposed for determining the Community VAT resources rate, this Article contains the same provisions as Article 1 of Regulation 2892/77 as amended.

Article 2(1) and (2)

The proposed text corresponds to Article 2(1) and (2) of Regulation No 2892/77 as amended.

Article 2(3)

The proposed text repeats the provisions of Article 2(3) of Regulation No 2892/77 as amended, with the addition of the reference to annual purchases. In accordance with the interpretation adopted for the practical application of these provisions, the transactions which Member States may exclude from the base are those performed by taxable persons whose annual turnover as well as purchases subject to deductible VAT do not exceed 10 000 ECU.

A number of practical rules are also to be specified for the application of these provisions. In order not to overload the Regulation with technical details, these rules appear in point 1 of the statement to be entered in the Council minutes.

Article 3

In order to set out in a single article all the fundamental rules for determining the VAT resources base by the revenue method, this Article contains all the provisions which appeared in Article 6 of Regulation No 2892/77 as amended.

In view of the fact that all the Member States for reasons of facility have chosen to calculate the VAT resources base from total net revenue collected during the calendar year in question, this choice should be formally designated the sole arrangement possible, with the deletion of the other option given by Article 10 of Regulation 2892/77 as amended.

Article 4(1) and (2)

Apart from some alterations to the wording, the proposed text corresponds to Article 7(1) and (2) of Regulation No 2892/77 as amended.

Article 4(3)

Apart from an alteration to the wording, the proposed text corresponds to Article 7(3) of Regulation No 2892/77 as amended.

Point 2 of the statement to be entered in the Council minutes describes an alternative practical arrangement which has already been applied in the past.

Article 4(5)

The proposed text is different from that of Article 7(5) of Regulation 2892/77, since experience has shown that, where the ESA data is not available or is insufficient, it is necessary to use other data than ESA statistics, and to adapt this data so that what is used is not out-of-line with the ESA aggregates.

Article 4(6) to (7)

Apart from some alterations to the wording, the proposed text corresponds to Article 7(6) to (7) of Regulation No 2892/77 as amended. Reference should also be made to point 3 of the statement to be entered in the Council minutes.

Article 5(1)

Apart from some amendments to the wording, the proposed text corresponds to Article 8(1) of Regulation No 2892/77 as amended.

Article 5(2)

It is proposed that the provisions already contained in Article 8(2) of Regulation No 2892/77 as amended are here clarified in line with current practice: VAT receipts are reduced only where a Member State reduces the flat-rate compensation percentage by at least half a point, i.e. excluding any technical rounding off of less than half a point.

Article 5(3)

In order to make it possible to include in net VAT revenue amounts of tax which have been time-barred, written off or waived by the Member States pursuant to their legislation, it is provided that:

- each Member State will account for these amounts of VAT as and when the recovery procedure is dropped, for whatever reason;

- all the amounts not recovered in this way in any year are added to the net VAT revenue from which is determined the VAT resources base for that year.

These provisions will apply for the first time for the determination of the base for 1989.

Exceptions to this rule are made for amounts of VAT which have not been able to be recovered despite enforcement action and the insignificant amounts referred to in the last indent of Article 22(9) of the Sixth VAT Directive, where the Member State does not require the taxable persons to pay such amounts.

Article 6

Apart from some alterations to the wording, the proposed text corresponds to Article 9 of Regulation No 2892/77 as amended. Reference should also be made to point 4 of the statement to be entered in the Council minutes.

Article 7(1) and (2)

Apart from changes required because of the different structure of the Regulation, the proposed text repeats the provisions of Article 10(1) of Regulation No 2892/77 as amended.

Article 7(3)

The purpose of this paragraph is to lay down as a formal rule the practice which has applied since the VAT resources system was first introduced. The data to be used to establish the base are those existing when the statement is drawn up: consequently the relevant statement should not be amended if the data used are subsequently corrected, expanded or refined; on the other hand, if data existing at the time the statement was drawn up are not used, in error or for whatever other reason, they may be used subsequently and will give rise to amendments to the statement, subject to the restrictions set out in Article 9.

Article 8

The final date for sending in estimates of VAT resources bases should be brought forward from 30 April to 31 March so that it will be possible to respect the pragmatic timetable agreed for the preparation of the preliminary draft budget for the following year. It should be added that in recent years the Commission has received estimates of VAT bases from most Member States well before 30 April, initial estimates having even been supplied in January for determining the reference framework.

Article 9(1)

Apart from some alterations to the wording, the proposed text corresponds to Article 10b(1) of Regulation No 2892/77 as amended.

Article 9(2)

It is proposed that a change be made to Article 10b(2) of Regulation No 2892/77 as amended in order to place all Member States on the same footing as regards the time limit, even in cases where the annual control is carried out later than usual.

Articles 10 and 11

Apart from some alterations to the wording, the proposed text corresponds to Articles 11 and 12 of Regulation No 2892/77 as amended.

Article 12

It should be stressed that while the Commission alone will be responsible for drafting the report, it hopes to have the fullest cooperation of the national authorities.

Without this cooperation, the Commission might not be able to produce a thorough and accurate report.

Article 13

The Committee procedure specified in Article 13 of Regulation No 2892/77 as amended is of a hybrid nature which does not correspond to any of the arrangements determined for the various types of committee by the Council Decision of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission.

Moreover, experience in the application of Regulation No 2892/77 as amended has shown that no Member State has ever found it necessary to appeal to the Council against the Commission's decisions under the procedures provided by this Regulation.

Procedure I (the Advisory Committee procedure) laid down in Article 2 of the abovementioned Decision should therefore be applied in this case.

Statement to be entered in the Council minutes

The Council and the Commission state that certain provisions of this regulation will be applied as follows:

1. Article 2(3)

- For the definition of taxable persons whose annual taxable turnover does not exceed 10 000 ECU, reference must be made to the taxable turnover of a firm which has operated for the entire reference year, thus excluding firms which have achieved such a turnover during a period of less than a year.

- Taxable persons who, during the reference year, have made purchases subject to deductible VAT for a total of over 10 000 ECU are not included in the calculation of the correction.

- The 10 000 ECU limit is converted into national currency at the average conversion rate for the reference year; the result may be rounded upwards or downwards by up to 10%.

- Where a Member State allows exemption (no VAT deducted or invoiced) for transactions by taxable persons whose annual turnover is less than 10 000 ECU, the correction is made by subtracting from the base the total amount of normally deductible inputs relating to normally taxable outputs in transactions between these taxable persons and persons subject to the normal VAT arrangements or equivalent arrangements.

- If a Member State subjects these taxable persons to the normal arrangements or an equivalent arrangement (VAT to be deducted and invoiced), the correction is made by subtracting from the base the total amount of value added in respect of taxed outputs realized by these taxable persons in transactions with final consumers.

2. Article 4(3)

- The transactions by flat-rate farmers to be taken into account are those during the last year but one before the budget year. In the calculation of the weighted average rate, the rate to be applied corresponds to the VAT charge on inputs during the budget year expressed as a percentage. If the agricultural accounts for the year in question are not yet available, the percentage charge on inputs calculated for the previous year will be updated.

- For the purposes of calculating the weighted average rate, consumption on the farm and direct sales by flat rate farmers may be counted as being subject to the flat rate compensation percentages applying in the Member States, provided these percentages are determined in accordance with Article 25(3) of Directive 77/388/EEC.

3. Second subparagraph of Article 4(7)

The average period referred to in the second subparagraph of Article 4(7) may be calculated approximately.

For the calculation of the average period, account will be taken of the national provisions governing the frequency of VAT returns and the time allowed for payment of VAT.

4. Article 6

As long as international passenger transport by air and sea is exempted by all the Member States under Article 28 of Directive 77/388/EEC, it will not be taken into account for the determination of VAT resources.

Proposal for a Council Regulation (ECSC, EEC, Euratom) on the definitive uniform arrangements for the collection of own resources accruing from value added tax (VAT)

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 on own resources (1), and in particular Article ..... 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 under Article 14 of Council Regulation (EEC, Euratom, ECSC) No 2892/77 (5), as last amended by Regulation (ECSC, EEC, Euratom) No 3735/85 (6), that Regulation applies for a transitional period ending on 31 December 1988;

Whereas the provisions relating to the definitive uniform arrangements for collecting VAT resources and the detailed rules for giving effect to these arrangements are to apply from 1 January 1989;

Whereas the revenue method should be chosen as the sole definitive method for determining the VAT resources base since this method is reliable and already applied by most Member States;

Whereas the provisions of Regulation (EEC, Euratom, ECSC) No 2892/77 may be retained unless they are no longer necessary or need to be amended in the light of experience acquired;

Whereas amounts of VAT first established as due but subsequently time-barred, written off or waived for whatever reason by the Member States should be reinstated in the VAT revenue from which the VAT own resources base is determined;

Whereas provision should be made for the Commission to examine, in cooperation with the national tax authorities, the national procedures for assessing and recovering VAT and the effectiveness of the VAT control systems applied by the Member States; whereas after this examination the Commission will periodically produce a report on the actual collection of VAT in each Member State,

HAS ADOPTED THIS REGULATION:

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(1)
(2)
(3)
(4)
(5) OJ L 336, 27.12.1977, p. 8.
(6) OJ L 356, 31.12.1985, p. 1.

TITLE I

GENERAL PROVISIONS

Article 1

VAT resources shall be calculated by applying the Community rate, set in accordance with Decision ..... on own resources, to the base determined in accordance with this Regulation.

TITLE II

SCOPE

Article 2

1. The VAT resources base shall be determined from the taxable transactions referred to in Article 2 of Council Directive 77/388/EEC (1), with the exception of transactions exempted under Articles 13 to 16 of that Directive.

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

- transactions which, in accordance with Article 28(2) of Directive 77/388/EEC, are subject to exemption 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, Member States shall have the option of leaving out of account, for the purpose of determining VAT resources, the transactions of taxable persons whose annual turnover, determined in accordance with the rules laid down in Article 24(4) of Directive 77/388/EEC, and annual purchases subject to deductible VAT do not exceed 10 000 ECU converted into national currency at the average rate for the financial year concerned. Member States may round upwards or downwards, by up to 10%, the amounts which result from the conversion.

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(1) OJ L 145, 13.6.1977, p. 1.

TITLE III

METHOD OF CALCULATION

Article 3

For a given calendar year, and without prejudice to Articles 5 and 6, the VAT resources base shall be calculated by dividing the total net VAT revenue collected by a Member State during that year by the rate at which VAT is levied during that same year.

If more than one VAT rate is applied in a Member State, the VAT resources base shall be calculated by dividing the total net VAT revenue collected by the weighted average rate of VAT. In this case the Member State shall calculate the weighted average rate, to four decimal places, by the common method defined in Article 4. This weighted average rate shall be expressed as a percentage.

Article 4

1. In order to calculate the weighting of the various rates as referred to in Article 3, the Member State shall break down, by VAT rate applied, all transactions which are taxable under its national legislation and which do not entitle the customer to deduction of VAT, account being taken of Article 17 of Directive 77/388/EEC, and consumption on the farm by flat-rate farmers and their direct sales to final consumers.

The VAT rates used for the purposes of such calculation shall be those which, in accordance with paragraph 7, affect the VAT revenue collected during the year in question.

Transactions which are subject, pursuant to Article 28(2) of Directive 77/388/EEC, to exemption with refund of the tax paid at the preceding stage shall be regarded as taxable transactions subject to a zero rate.

2. The breakdown by rate of VAT shall be applied to the following categories:

(a) the following categories of transaction, if subject to non-deductible VAT:

- final consumption of households on the territory referred to in Article 3 of Directive 77/388/EEC for the Member State in question, except for the part covered by (b), and intermediate consumption of private non-profit institutions and general government,
- intermediate consumption of other sectors,
- gross-fixed capital formation of general government,
- gross-fixed capital formation of other sectors,
- improved and unimproved building land, as defined in Article 4(3)(b) of Directive 77/388/EEC,
- transactions involving gold other than gold for industrial use;

(b) consumption on the farm by flat-rate farmers and their direct sales to final consumers.

3. For the purposes of the breakdown referred to in paragraph 2, transactions by the flat-rate farmers referred to in (b) thereof shall be subject to a rate equivalent to the charge on inputs.

4. The breakdown of transactions by statistical category shall be effected by means of data taken from national accounts prepared in accordance with the European System of Integrated Economic Accounts (ESA). In order to calculate the VAT own resources base for any given financial year, reference shall be made to the national accounts relating to the last year but one before that financial year.

A Member State may be authorized, in accordance with the procedure provided for in Article 13, to use data relating to another year, which may not be earlier than the fifth year before the financial year in question.

5. For the purpose of identifying transactions subject to non-deductible VAT and effecting the breakdown by rate of VAT, Member States may refer to data taken from sources complementary to the ESA and capable of being adapted thereto, that is, in the first instance, from internal national accounts if they provide the necessary breakdown, or, if not, from any other appropriate source.

6. In order to determine the weighting of each rate, Member States shall calculate the relationship between the value of the transactions to which that rate applies and the aggregate value of all transactions.

7. Should a Member State amend the VAT rate applicable to all or some transactions or the tax treatment for certain transactions in such a way as to affect the VAT revenue collected, it shall calculate a new weighted average rate. The new weighted average rate shall be applied to the revenue derived from application of the amended rate or tax treatment.

By way of derogation from the first subparagraph, the Member State may calculate a single weighted average rate. To this end, transactions in respect of which the rate or treatment has been changed shall be allocated to the old and new rates or to the old and new treatment pro rata temporis, with account being taken of the average period of time elapsing between entry into force of the new rate or treatment and the collection of revenue resulting therefrom, calculated over the entire year in question. This average period may be rounded to the full month.

Article 5

1. For the purposes of applying Article 3, each Member State shall, if appropriate, add to the revenue collected an amount corresponding to the total VAT which would have been collected but for the application of a scheme of graduated tax relief under Article 24(2) of Directive 77/388/EEC.

2. Each Member State shall deduct from revenue collected an amount corresponding to total input VAT, with the exception of that relating to consumption on the farm and direct sales to final consumers, which flat-rate farmers have not recouped because that Member State has reduced the flat-rate

compensation percentages applicable to transactions carried out by flat-rate farmers as permitted by Article 25(3) of Directive 77/388/EEC. The amount of input VAT and the compensated amounts shall be those for the year in question.

This provision may be applied only if the flat-rate compensation percentage determined in accordance with Article 25(3) of Directive 77/388/EEC leaves under-compensation of not less than half a point.

3. For any given year amounts of VAT which become time-barred, are written of or waived during the year pursuant to national provisions shall be added to the revenue collected by a Member State, with the exception of amounts which :

- could not be recovered despite enforcement action,

- were not paid by reason of application of the final indent of Article 22(9) of Directive 77/388/EEC.

Article 6

1. For the purposes of applying Article 2(1) to transactions carried out by taxable persons whose annual turnover exceeds 10 000 ECU but who are exempted under Article 24(2) of Directive 77/388/EEC and to the cases referred to in paragraph 2, Member States shall determine the VAT resources base from the returns to be made by taxable persons in accordance with Article 22 of that Directive or, where there is no return or the return does not contain the necessary information, from appropriate data such as other tax returns, professional accounts or 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 that Directive, Member States shall calculate the VAT resources base 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 that Directive, Member States shall calculate the VAT resources base as if these transactions were taxed,

- with regard to the transactions referred to in paragraph 1(a) of Annex G to Directive 77/388/EEC which are taxed under the option given to taxable persons by Member States pursuant to Article 28(3)(c) of that Directive, Member States shall calculate the VAT resources base 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 base:

  (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 of this article applies;

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

- or to calculate the VAT resources base in the cases referred to in (a) and (b) by using approximate estimates,

where precise calculation of the VAT resources base 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 resources base of that Member State.

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 base may be determined as if the exercise of the right to deduct had not been restricted.

The preceding subparagraph shall apply, in relation to the second subparagraph of Article 17(6) of Directive 77/388/EEC, only in respect of the purchase of petroleum products and passenger cars used for business purposes.

5. Where tax refunds are granted by a Member State 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] the taxable amount of the transactions which gave rise to these refunds shall, if necessary, be subtracted from the VAT resources base.

[1] OJ L 133, 4.6.1969, p. 6.

TITLE IV

PROVISIONS RELATING TO ACCOUNTING AND MAKING AVAILABLE OF OWN RESOURCES

Article 7

1. Before 1 July the Member States shall send the Commission a statement of the total amount of the VAT resources base for the previous calendar year, calculated in accordance with Article 3, to which the rate referred to in Article 1 is to be applied.

2. The statement shall contain all the data used to determine the base which are required for the control referred to in Article 11. It shall indicate separately the base resulting from the transactions referred to in Article 5 and Article 6(1) to (4).

3. The data to be used to establish the base shall be the most recent data which exist when the statement is produced.

Article 8

Member States shall send the Commission by 31 March each year an estimate of the VAT resources base for the following financial year.

Article 9

1. The corrections to the statements referred to in Article 7(1) for previous financial years shall be made by the Commission in agreement with the Member State.

All the corrections to the statements shall be incorporated in an aggregate statement at 30 June.

If the Member State does not give its agreement, the Commission, after re-examining the matter, shall take whatever measures it considers necessary for correct application of this Regulation.

2. No further corrections may be made to the annual statement referred to in Article 7(1) after 30 June of the fourth year following the financial year concerned, unless they concern points previously notified either by the Commission or by the Member State concerned.

TITLE V

PROVISIONS RELATING TO CONTROL

Article 10

1. Member States shall inform the Commission by 30 April of each financial year of the solutions and modifications thereto that they propose to adopt in order to determine the VAT resources base for the each of the categories of transaction referred to in Article 5 and Article 6 (1) to (4), indicating, where applicable, the nature of the data which they consider appropriate and an estimate of the value of the base for each of these categories of transactions.

   Within 30 days the Commission shall send the other Member States the information referred to above which it has received from each Member State.

2. The Commission shall examine, following the procedure laid down in Article 13, the proposed solutions and modifications.

Article 11

1. As regards VAT resources, the Commission's controls shall be carried out with the competent authorities in the Member States. During these controls, the Commission shall ensure, in particular, that the operations to centralize the assessment base and to determine the weighted average rate referred to in Articles 3 and 4 and the total net VAT collected have been performed correctly; it shall also 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 and Article 6(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 VAT resources controls. 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 controlling VAT resources, must have knowledge of such information.

3. Following the controls referred to in paragraph 1, the annual statement for a given financial year shall be corrected as specified in Article 9.

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(1) OJ L 20, 24.1.1974, p.1.

Article 12

1. The Commission shall examine, with the cooperation of the competent authorities in the Member States, the procedures applied by the Member States for registering taxable persons and determining and collecting VAT, and the effectiveness of their VAT control systems.

2. Following this examination the Commission shall produce a report every three years on the actual collection of VAT in each Member State.

3. The Commission shall present this report to Parliament and the Council for the first time by 31 December 1991.

Article 13

1. The Committee referred to in Article 20 of Council Regulation (EEC, Euratom, ECSC) No 2891/77(1), 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 4 (4) or Article 6 (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 31 December of the financial year a draft decision.

3. On the initiative of the Commission or at the request of a Member State, the Committee shall examine the solutions referred to in Article 10.

If the committee's examination reveals differences of opinion as to the solutions envisaged, the Commission representative shall submit a draft decision to the Committee as soon as possible and not later than 31 December of the financial year from which the solution is to apply.

4. The Committee shall deliver its opinion on the draft decisions referred to in paragraphs 2 and 3 within a period which the chairman may lay down according to the urgency of the matter involved, if necessary, by taking a vote.

This opinion shall be recorded in the minutes; each Member State shall also be entitled to request that its position be recorded in these minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee.

5. No later than sixty days after the Committee has delivered its opinion, the Commission shall adopt a decision which it shall communicate to the Member States.

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(1) OJ L 336, 27.12.1977, p. 1.

TITLE VI

FINAL PROVISIONS

Article 14

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

It shall apply from 1 January 1989.

It shall not apply, however, to the production or the correction of statements of the VAT resources base for years before 1989 which have been produced in accordance with Regulation (EEC, Euratom, ECSC) No 2892/77 which remains in force in respect of the statements concerned.

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

Done at Brussels,

For the Council
The President