



Directorate-General XXI

Customs Union and Indirect Taxation

Directorate-General XV

Financial Institutions and Company Law

ACTS OF THE
EUROPEAN COMMUNITIES

IN FORCE IN THE FIELD OF

TAXATION

VOLUME II

(YEARS 1986 - 1990)

COMMISSION DECISION

of 3 February 1986

concerning the French Republic pursuant to Article 13 (2) of Regulation (EEC, Euratom, ECSC) No 2892/77 concerning own resources accruing from value added tax

(Only the French text is authentic)

(86/62/EEC, Euratom, ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Decision 70/243/ECSC, EEC, Euratom of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (1),

Having regard to 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 (2), as last amended by Regulation (EEC, Euratom, ECSC) No 3625/83 (3); and in particular the first subparagraph of Article 9 (3), the second subparagraph of Article 11 (1) and Article 13 (2) thereof,

Whereas, for the years 1979 to 1984, the Commission, pursuant to Article 13 (2) of Regulation (EEC, Euratom, ECSC) No 2892/77, adopted Decision 80/821/EEC, Euratom, ECSC (4), Decision 81/1017/Euratom, ECSC, EEC (5), Decision 82/759/ECSC, EEC, Euratom (6), Deci-

sion 83/142/EEC, Euratom, ECSC (7) and Decision 84/276/Euratom, ECSC, EEC (8);

Whereas the services of travel agents and tour operators for journeys within the Community have been taxed in France since 1 April 1985; whereas there is no longer any need to grant an authorization in respect of such transactions from that date;

Whereas the Advisory Committee on Own Resources has approved the report recording the opinions of its members on this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Point 8 of Article 2 of Decision 83/142/Euratom, ECSC, EEC, is hereby repealed with effect from 1 April 1985.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 3 February 1986.

For the Commission

Henning CHRISTOPHERSEN

Vice-President

(1) OJ No L 94, 28. 4. 1970, p. 19.

(2) OJ No L 336, 27. 12. 1977, p. 8.

(3) OJ No L 360, 23. 12. 1983, p. 1.

(4) OJ No L 239, 12. 9. 1980, p. 20.

(5) OJ No L 367, 23. 12. 1981, p. 33.

(6) OJ No L 320, 17. 11. 1982, p. 18.

(7) OJ No L 96, 15. 4. 1983, p. 46.

(8) OJ No L 135, 22. 5. 1984, p. 20.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 16 June 1986

amending Directive 72/464/EEC on taxes other than turnover taxes which affect the consumption of manufactured tobacco

(86/246/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 99 and 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Whereas under Directive 72/464/EEC⁽³⁾, as last amended by Directive 84/217/EEC⁽⁴⁾, the transition from one stage of harmonization to the next is to be decided on by the Council on a proposal from the Commission;

Whereas the second stage of harmonization, introduced on 1 July 1978 by Directive 77/805/EEC⁽⁵⁾ expired on 31 December 1985;

Whereas the special criteria applicable during the third stage are dealt with in a proposal for a Directive submitted by the Commission⁽⁶⁾; whereas the Council has not yet acted on that proposal;

Whereas, in these circumstances, an additional extension of the second stage is necessary; whereas no specific time limit should be placed on this extension,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 10a (1) of Directive 72/464/EEC is hereby replaced by the following text:

'1. The second stage of harmonization of the structures of the excise duty on manufactured tobacco shall run from 1 July 1978.'

Article 2

This Directive shall apply as from 1 January 1986.

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 16 June 1986.

For the Council

The President

H. RUDING

⁽¹⁾ OJ No C 88, 14. 4. 1986, p. 114.

⁽²⁾ OJ No C 75, 3. 4. 1986, p. 11.

⁽³⁾ OJ No L 303, 31. 12. 1972, p. 1.

⁽⁴⁾ OJ No L 104, 1. 4. 1984, p. 18.

⁽⁵⁾ OJ No L 338, 20. 12. 1977, p. 22.

⁽⁶⁾ OJ No C 264, 11. 10. 1980, p. 6.

TWENTY-FIRST COUNCIL DIRECTIVE

of 16 June 1986

**on the harmonization of the laws of the Member States relating to turnover taxes
— Deferment of the introduction of the common system of value-added tax in
the Hellenic Republic**

(86/247/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 100 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the Greek Government informed the Commission on 16 October 1985 that, for economic and technical reasons, it would be unable to introduce the common system of value-added tax by 1 January 1986, the date set by the Fifteenth Directive ⁽⁴⁾ authorizing deferment for two years of the deadline set by Article 145 of the 1979 Act of Accession, read in conjunction with Annex XII thereto; whereas the Greek Government has therefore requested that the introduction of value-added tax be deferred for one year;

Whereas for the reasons given, the Greek Government's request should be complied with,

HAS ADOPTED THIS DIRECTIVE:

Article 1

At the earliest opportunity, and by 1 January 1987 at the latest, the Hellenic Republic shall put into effect the measures necessary to comply with Directives 67/227/EEC ⁽⁵⁾, 67/228/EEC ⁽⁶⁾ and 77/388/EEC ⁽⁷⁾ and with any other Directive, adopted or to be adopted, relating to the common system of value-added tax.

Article 2

This Directive shall take effect on 1 January 1986.

Article 3

This Directive is addressed to the Hellenic Republic.

Done at Luxembourg, 16 June 1986.

For the Council

The President

H. RUDING

⁽¹⁾ OJ No C 356, 31. 12. 1985, p. 64.

⁽²⁾ OJ No C 148, 16. 6. 1986.

⁽³⁾ OJ No C 75, 3. 4. 1986, p. 15.

⁽⁴⁾ OJ No L 360, 23. 12. 1983, p. 49.

⁽⁵⁾ OJ No 71, 14. 4. 1967, p. 1301/67.

⁽⁶⁾ OJ No 71, 14. 4. 1967, p. 1303/67.

⁽⁷⁾ OJ No L 145, 13. 6. 1977, p. 1.

COUNCIL DECISION

of 21 July 1986

authorizing the United Kingdom to apply flat-rate measures in respect of the non-deductible value added tax charged on fuel expenditure in company cars

(86/356/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax : uniform basis of assessment ⁽¹⁾, as last amended by Directive 84/386/EEC ⁽²⁾, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under the terms of Article 27 (1) of Directive 77/388/EEC, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from the provisions of that Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance;

Whereas the United Kingdom has requested authorization to introduce a special measures designed to determine on a flat-rate basis the proportion of value added tax relating to expenditure on fuel used for private purposes in company cars; whereas that measure derogates from Articles 5 (6) and 17 (6) of Directive 77/388/EEC;

Whereas it is appropriate to accede to this request subject to certain conditions,

HAS ADOPTED THIS DECISION :

Article 1

The United Kingdom is hereby authorized to fix on a flat-rate basis the proportion of value added tax relating to expenditure on fuel used for private purposes in company cars.

Article 2

For a transitional period, the proportion of the tax referred to in Article 1 may be expressed in fixed amounts determined according to engine capacity or type of vehicle. These fixed amounts shall be adjusted annually in line with changes in the average cost of fuel.

Article 3

Where Article 2 is applied, the United Kingdom shall communicate to the Commission annually the following information, broken down by vehicle category :

1. The average cost of fuel per kilometre.
2. The average distance covered per vehicle each year on private journeys.
3. An estimate of the number of vehicles affected by this Decision.

The system which has been set up will be reviewed on the basis of this information and taking account of the harmonization of expenditure not eligible for a deduction of value added tax envisaged in Article 17 (6) of Directive 77/388/EEC.

Article 4

This Decision shall apply from 23 March 1986.

Article 5

This Decision is addressed to the United Kingdom.

Done at Brussels, 21 July 1986.

For the Council

The President

G. HOWE

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽²⁾ OJ No L 208, 3. 8. 1984, p. 58.

COMMISSION DECISION

of 12 September 1986

determining the amount of VAT own resources payable by the Federal Republic of Germany for 1984 in respect of transactions covered by the 20th Council Directive 85/361/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: derogations in connection with the special aids granted to certain farmers to compensate for the dismantlement of monetary compensatory amounts applying to certain agricultural products

(Only the German text is authentic)

(86/475/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to the 20th Council Directive 85/361/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: derogations in connection with the special aids granted to certain farmers to compensate for the dismantlement of monetary compensatory amounts applying to certain agricultural products⁽¹⁾, and in particular Article 5 thereof,

Whereas the Directive authorizes the Federal Republic of Germany to use value added tax to grant a special aid to farmers provided that own resources accruing from VAT are not affected;

Whereas, for the 1984 financial year, the net VAT revenue to be taken into account under Article 6 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⁽²⁾, as last amended by Regulation No 3735/85⁽³⁾ should be increased by DM 1 591 million;

Whereas, the average weighted rate referred to in the said Article is 12,5102 % for 1984 but may be changed again;

Whereas the VAT own resources rate for 1984 is 1 %;

Whereas the Advisory Committee on Own Resources has been consulted,

HAS ADOPTED THIS DECISION:

Article 1

VAT own resources payable by the Federal Republic of Germany for 1984, according to Article 5 of Directive 85/361/EEC, amount to DM 127,2 million.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 12 September 1986.

For the Commission

Henning CHRISTOPHERSEN

Vice-President

⁽¹⁾ OJ No L 192, 24. 7. 1985, p. 18.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 356, 31. 12. 1985, p. 1.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DIRECTIVE

of 24 September 1986

amending Directive 77/794/EEC laying down detailed rules for implementing certain provisions of Directive 76/308/EEC on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties, and in respect of value added tax

(86/489/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties, and in respect of value added tax⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, and in particular Article 22 (1) thereof,

Whereas Commission Directive 77/794/EEC⁽²⁾, as amended by Directive 85/479/EEC⁽³⁾, laid down detailed rules for implementing certain provisions of Directive 76/308/EEC; whereas Article 20 (2) laid down that no request for assistance may be made if the amount claimed is less than 750 ECU unless the request related to the recovery of a claim payable as a result of an irregularity committed in the course of, or in connection with, an operation carried out under arrangements for movement

of goods within the Community introduced by Council Regulation (EEC) No 3/84⁽⁴⁾, as last amended by the Act of Accession of Spain and Portugal, in which case that amount is reduced to 200 ECU;

Whereas, having regard to the increase in administrative costs since 1977, the threshold for the submission of requests for assistance should be increased to 1 500 ECU, except in the specific case referred to above where the threshold must remain 200 ECU so as to ensure the correct implementation of the provisions of Regulation (EEC) No 3/84;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee on Recovery,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The first sentence of Article 20(2) of Directive 77/794/EEC is replaced by the following:

'From 1 January 1987 no request for assistance may be made if the amount of the relevant claim of claims is less than 1 500 ECU.'

⁽¹⁾ OJ No L 73, 19. 3. 1976, p. 18.

⁽²⁾ OJ No L 333, 24. 12. 1977, p. 11.

⁽³⁾ OJ No L 285, 25. 10. 1985, p. 65.

⁽⁴⁾ OJ No L 2, 4. 1. 1984, p. 1.

Article 2

Member States shall take the measures necessary to comply with this Directive not later than 1 January 1987.

Article 3

Each Member State shall inform the Commission of the measures which it takes for implementing this Directive. The Commission shall communicate such information to the other Member States.

Article 4

This Directive addressed to the Member States.

Done at Brussels, 24 September 1986.

For the Commission
COCKFIELD
Vice-President

II

(Acts whose publication is not obligatory)

COUNCIL

THIRTEENTH COUNCIL DIRECTIVE

of 17 November 1986

on the harmonization of the laws of the Member States relating to turnover taxes
— Arrangements for the refund of value added tax to taxable persons not
established in Community territory

(86/560/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 100 thereof,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽¹⁾, and in particular Article 17 (4) 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 Economic and Social Committee⁽⁴⁾,

Whereas Article 8 of Directive 79/1072/EEC⁽⁵⁾ on the arrangements for the refund of value added tax to taxable persons not established in the territory of the country provides that in the case of taxable persons not established in the territory of the Community, Member States may refuse refunds or impose special conditions;

Whereas there is a need to ensure the harmonious development of trade relations between the Community and

third countries based on the provisions of Directive 79/1072/EEC, while taking account of the varying situations encountered in third countries;

Whereas certain forms of tax evasion or avoidance should be prevented,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

1. 'A taxable person not established in the territory of the Community' shall mean a taxable person as referred to in Article 4 (1) of Directive 77/388/EEC who, during the period referred to in Article 3 (1) of this Directive, has had in that territory neither his business nor a fixed establishment from which business transactions are effected, nor, if no such business or fixed establishment exists, his permanent address or usual place of residence, and who, during the same period, has supplied no goods or services deemed to have been supplied in the Member State referred to in Article 2, with the exception of:

- (a) transport services and services ancillary thereto, exempted pursuant to Article 14 (1) (i), Article 15 or Article 16 (1), B, C and D of Directive 77/388/EEC;
- (b) services provided in cases where tax is payable solely by the person to whom they are supplied, pursuant to Article 21 (1) (b) of Directive 77/388/EEC;

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽²⁾ OJ No C 223, 27. 8. 1982, p. 5 and

OJ No C 196, 23. 7. 1983, p. 6.

⁽³⁾ OJ No C 161, 20. 6. 1983, p. 111.

⁽⁴⁾ OJ No C 176, 4. 7. 1983, p. 22.

⁽⁵⁾ OJ No L 331, 27. 12. 1979, p. 11.

2. 'Territory of the Community' shall mean the territories of the Member States in which Directive 77/388/EEC is applicable.

Article 2

1. Without prejudice to Articles 3 and 4, each Member State shall refund to any taxable person not established in the territory of the Community, subject to the conditions set out below, any value added tax charged in respect of services rendered or moveable property supplied to him in the territory or the country by other taxable persons or charged in respect of the importation of goods into the country, in so far as such goods and services are used for the purposes of the transactions referred to in Article 17 (3) (a) and (b) of Directive 77/388/EEC or of the provision of services referred to in point 1 (b) of Article 1 of this Directive.

2. Member States may make the refunds referred to in paragraph 1 conditional upon the granting by third States of comparable advantages regarding turnover taxes.

3. Member States may require the appointment of a tax representative.

Article 3

1. The refunds referred to in Article 2 (1) shall be granted upon application by the taxable person. Member States shall determine the arrangements for submitting applications, including the time limits for doing so, the period which applications should cover, the authority competent to receive them and the minimum amounts in respect of which applications may be submitted. They shall also determine the arrangements for making refunds, including the time limits for doing so. They shall impose on the applicant such obligations as are necessary to determine whether the application is justified and to prevent fraud, in particular the obligation to provide proof that he is engaged in an economic activity in accordance with Article 4 (1) of Directive 77/388/EEC. The applicant must certify, in a written declaration, that, during the period prescribed, he has not carried out any transaction which does not fulfil the conditions laid down in point 1 of Article 1 of this Directive.

2. Refunds may not be granted under conditions more favourable than those applied to Community taxable persons.

Article 4

1. For the purposes of this Directive, eligibility for refunds shall be determined in accordance with Article 17 of Directive 77/388/EEC as applied in the Member State where the refund is paid.

2. Member States may, however, provide for the exclusion of certain expenditure or make refunds subject to additional conditions.

3. This Directive shall not apply to supplies of goods which are or may be exempted under point 2 of Article 15 of Directive 77/388/EEC.

Article 5

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1988 at the latest. This Directive shall apply only to applications for refunds concerning value added tax charged on purchases of goods or services invoiced or on imports effected on or after that date.

2. Member States shall communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive and shall inform the Commission of the use they make of the option afforded by Article 2 (2). The Commission shall inform the other Member States thereof.

Article 6

Within three years of the date referred to in Article 5, the Commission shall, after consulting the Member States, submit a report to the Council and to the European Parliament on the application of this Directive, particularly as regards the application of Article 2 (2).

Article 7

As from the date on which this Directive is implemented, and at all events by the date mentioned in Article 5, the last sentence of Article 17 (4) of Directive 77/388/EEC and Article 8 of Directive 79/1072/EEC shall cease to have effect in each Member State.

Article 8

This Directive is addressed to the Member States.

Done at Brussels, 17 November 1986.

For the Council
The President
N. LAWSON

I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EEC, EURATOM, ECSC) No 3760/86
of 8 December 1986**

**amending Regulation (EEC, Euratom, ECSC) No 2891/77 implementing the
Decision of 21 April 1970 on the replacement of financial contributions from
Member States by the Communities' own resources**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 78h thereof,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 209 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources⁽¹⁾, and in particular Article 7 (2) thereof,

Having regard to the proposal from the Commission⁽²⁾,

Having regard to the opinion of the European Parliament⁽³⁾,

Having regard to the opinion of the Court of Auditors⁽⁴⁾,

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

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

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

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

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

Whereas the concept of cash resource requirements calls for clarification;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

1. In Article 1, for 'Decision of 21 April 1970' read 'Decision 85/257/EEC, Euratom';
2. The following paragraph shall be added to Article 3:
'If verification of these supporting documents by the national administration alone or in conjunction with the Commission shows that a finding to which they relate may have to be corrected, they shall be kept beyond the time limit provided for in the first subparagraph for a sufficient period to permit the correction to be made and monitored.'
3. Article 5 shall become Article 8 and be replaced by the following:

Article 8

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

⁽¹⁾ OJ No L 128, 14. 5. 1985, p. 15.

⁽²⁾ OJ No C 231, 4. 9. 1982, p. 15, and

⁽³⁾ OJ No C 146, 4. 6. 1983, p. 4.

⁽⁴⁾ OJ No C 13, 17. 1. 1983, p. 220.

⁽⁵⁾ OJ No C 133, 20. 5. 1983, p. 3.

⁽⁶⁾ OJ No L 336, 27. 12. 1977, p. 1.

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

Article 5

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

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

'2. The established entitlements shall be entered in the accounts at the latest on the first working day after the 19th day of the second month following the month during which the entitlements were established.

VAT resources shall, however, be included in the accounts as follows:

- on the first working day of each month, the 12th referred to in Article 10 (3),
- annually, as regards the balance referred to in Article 10 (4) and the adjustments referred to in Article 10 (6), except for the particular adjustments referred to in the first indent of Article 10 (6), which shall be entered in the accounts on the first working day of the month following agreement between the Member State concerned and the Commission.

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

6. Article 8 shall become Article 7.

7. Article 9 shall be amended as follows:

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

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

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

8. Article 10 shall be amended as follows:

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

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

'Any change in the rates of VAT resources or, if appropriate, in GNP-based financial contributions shall be occasioned by the final adoption of a supplementary or amending budget and shall give rise to a readjustment of the 12ths which have been entered since the beginning of the financial year.

This readjustment shall be carried out when the first entry is made following the final adoption of the supplementary or amending budget if it is adopted before the 16th day of the month. Otherwise it shall be carried out when the second entry following final adoption is made. By way of derogation from Article 5 of the Financial Regulation, this readjustment shall be entered in the accounts in respect of the financial year of the amending or supplementary budget in question.

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

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

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

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

'5. The Commission shall then calculate adjustments to the financial contributions so as to restore, in the light of the actual yield from VAT resources, the original distribution in the budget between the latter and the financial contributions based on the GNP. In calculating these adjustments, the balances referred to in paragraph 4 shall be converted into ECU at the rates of exchange applying on the first working day after the 15th day of July preceding the entries

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

(e) the following paragraph shall be inserted :

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

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

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

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

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

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

9. Article 11 shall be replaced by the following :

'Article 11

Any delay in making the entry in the account referred to in Article 9 (1) shall give rise to the payment of interest by the Member State concerned at the interest rate applicable on the Member State's money market on the due date for short-term public financing operations, increased by 2 percentage points. This rate shall be increased by 0,25 of a percentage point for each month of delay. The increased rate shall be applied to the entire period of delay.'

10. Article 12 shall be replaced by the following :

'Article 12

1. The Commission shall draw on the sums credited to the accounts referred to in Article 9 (1) to the extent necessary to cover its cash resource requirements arising out of the implementation of the budget.

2. If the cash resource requirements are in excess of the assets of the accounts, the Commission may draw in excess of the total of these assets subject to the availability of appropriations in the budget and within the limit of the own resources entered in the budget. In this event, it shall inform the Member States in advance of any foreseeable excess requirements.

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

4. The difference between the overall assets and the cash resource requirements shall be divided among the Member States, as far as possible, in proportion to the estimated budget revenue from each of them.

5. The orders and instructions which the Commission sends to the Treasury or to the appropriate department of each Member State shall be carried out as soon as possible.'

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

12. Article 13 is hereby amended as follows :

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

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

'2. The gross national product at market prices shall be calculated by the Statistical Office of the European Communities, on the basis of statistics prepared according to the European System of Integrated Economic Accounts (ESA); and corresponding, for each Member State, to the arithmetical average of the first three years of the five-year period preceding the financial year in respect of which the provisions of Article 3 (7) of Decision 85/257/EEC, Euratom have been applied. No account shall be taken of any revisions of statistical data made after the final adoption of the budget.'

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

(d) in paragraph 4 :

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

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

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

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

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

15. Article 15 shall be replaced by the following :

'Article 15

For the purposes of applying Article 6 of Decision 85/257/EEC, Euratom, the balance of a given financial year shall consist of the difference between :

— all the revenue collected in respect of that financial year, and

— the amount of payments made against appropriations for that financial year increased by the amount of the appropriations for the same financial year carried over pursuant to Articles 6 (1) (b) and (c) and 2 (b) and the second subparagraph of Article 88 (4) of the Financial Regulation.

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

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

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

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

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

'3. Member States shall notify the Commission, in six-monthly reports, of the outcome of their inspections and of comprehensive information and questions of principle concerning the most important problems arising out of the application of this Regulation and, in particular matters in dispute.'

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

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

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

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

19. Article 19 shall be replaced by the following :

'Article 19

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

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

21. Article 22 shall be replaced by the following :

Article 2

Article 22

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

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

It shall apply with effect from the financial year 1987.

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

Done at Brussels, 8 December 1986.

For the Council
The President
N. LAWSON

*

CORRIGENDA

Publication of Council Regulation (EEC, Euratom, ECSC) No 3760/86 in *Official Journal of the European Communities* No L 349 of 11 December 1986 shall be deemed never to have taken place.

Application of Article 27 of the Sixth Council Directive of 17 May 1977 on value added tax

(Authorization of a derogation requested by the Government of the United Kingdom)

In its request dated 27 June 1986 and supplemented on 3 September 1986 following a request from the Commission for further information, the United Kingdom Government informed the Commission, pursuant to the above provisions, of its intention to introduce a measure derogating from the Sixth Directive.

The purpose of the measure, which replaces a previously notified derogation the scope of which was too broad, remains that of simplifying calculation of VAT in respect of long of long stays in hotels by assessing on a flat-rate basis the part of the service deemed to correspond to a letting of immovable property exempt under Article 13 (B) (b) (1) of Sixth VAT Directive (77/388/EEC) (1). However, the measure will henceforth apply only to hotel services provided to individuals themselves occupying the accommodation in question. Accordingly, the previous provision is repealed.

The Commission informed the other Member States, by letter dated 9 October 1986, of the request submitted by the United Kingdom Government.

In accordance with Article 27 (4) of the Sixth Directive, the Council Decision authorizing this derogation will be deemed to have been adopted if, within two months of the other Member States being informed as described above, neither the Commission nor any Member State has requested that the matter be discussed by the Council.

As neither the Commission nor any Member State has raised the matter within the prescribed time, the Council Decision is deemed to have been adopted on 10 December 1986.

(1) OJ No L 145, 13. 6. 1977, p. 1.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 15 December 1986

amending Directive 83/643/EEC on the facilitation of physical inspections and administrative formalities in respect of the carriage of goods between Member States

(87/53/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43, 75, 84 and 100 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Council Directive 83/643/EEC of 1 December 1983 on the facilitation of physical inspection and administrative formalities in respect of the carriage of goods between Member States ⁽⁴⁾ contains a series of measures designed to reduce waiting times at the internal frontiers of the Community where the carriage of goods is concerned;

Whereas further progress must be made in the short term so that inspections and formalities in trade between Member States can be facilitated further; whereas the provisions of this Directive must take due account of the objectives pursued and of the results of the activities embarked upon in the context of the realization of the internal market;

Whereas, under the Community transit system in particular, an operator may initiate the transit procedure in the Member State of departure and/or have goods entered for home use or placed under some other customs procedure at a place situated within the Member State of destination

and whereas, in this context, Member States should facilitate recourse to simplified procedures in appropriate cases; whereas they should also endeavour to deploy customs offices in such a way as best to take account of the requirements of commercial operators;

Whereas, in order to take account of the special features of air transport, it is necessary to adapt, on the basis of traffic flow and in such a way as to meet actual needs, the business hours of the departments carrying out inspections at airports;

Whereas cooperation between the departments carrying out inspections and formalities on either side of each frontier post would help to reduce the waiting times at these frontiers;

Whereas the improvement of the practical arrangements for processing goods and documents would also help to reduce waiting time;

Whereas there should be a procedure for persons involved in trade between Member States enabling them to inform national and Community bodies of any problems encountered in crossing frontiers;

Whereas certain work of the inspection services, and in particular that relating to the examination of documents which must be carried, would be facilitated if the authorities responsible for them could delegate powers to one of the other services represented to effect such inspections;

Whereas, in order to facilitate the payment of any sums payable in respect of inspections and formalities, the parties concerned should be afforded the opportunity of using also guaranteed or certified international cheques;

⁽¹⁾ OJ No C 237, 18. 9. 1985, p. 3.

⁽²⁾ OJ No C 352, 31. 12. 1985, p. 291.

⁽³⁾ OJ No C 101, 28. 4. 1986, p. 5.

⁽⁴⁾ OJ No L 359, 22. 12. 1983, p. 8.

Whereas it is desirable that up-to-date information on the operating conditions of inspection posts situated either at frontiers or within Member States be supplied to the Commission,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 83/643/EEC is hereby amended as follows:

1. The present wording of Article 2 shall become paragraph 1 and the following paragraphs shall be added:

'2. Member States shall facilitate, in circumstances which they deem appropriate, the use of simplified procedures, such as those laid down by the regulations for the despatch, distribution and release for consumption of goods, at the place of origin or destination of the goods.

3. Member States shall endeavour to deploy customs offices in such a way, including in the interior of their territory, as best to take account of the requirements of commercial operators.'

2. Article 4 shall be replaced by the following:

Article 4

1. In order to seek appropriate solutions to problems arising at common frontiers, Member States shall take the measures necessary to extend bilateral cooperation between the various departments carrying out inspections and formalities on either side of these frontiers.

2. The cooperation referred to in paragraph 1 shall cover in particular:

- the arrangement of frontier posts,
- the conversion of frontier offices into juxtaposed or combined inspection offices, where possible.

3. Member States shall cooperate in order to harmonize the business hours of the various departments carrying out inspections and formalities on either side of each frontier post. Should any difficulties arise in attaining such harmonization, Member States shall bring them to the Commission's attention so that it may suggest to the Member States concerned such solutions as it deems appropriate to resolve them.

4. Member States shall provide for the possibility of informal consultation at local and, if appropriate, national level between representatives of the various departments involved in inspections and formalities and of carriers, customs agents, persons engaged in services ancillary to transport and transport users.'

3. Article 5 shall be replaced by the following:

Article 5

1. Member States shall see to it that:

(a) where the volume of traffic so warrants, frontier posts are open, except when traffic is prohibited, so that:

— frontiers can be crossed 24 hours a day, with the corresponding inspections and formalities, in the case of goods placed under a customs transit procedure, their means of transport and vehicles travelling unladen, save where frontier inspection is necessary to prevent the spread of disease,

— inspections and formalities relating to the movement of means of transport and goods which are not being carried under a customs transit procedure may be performed from Monday to Friday during an uninterrupted period of at least 10 hours, and on Saturday during an uninterrupted period of at least six hours, unless those days are public holidays;

(b) as regards vehicles and goods transported by air, the hours referred to in the second indent of subparagraph (a) are adapted in such a way as to meet actual needs and for that purpose may be split in accordance with the flow of traffic;

(c) transhipments which, under existing regulations, customs services allow to be carried out without their immediate supervision can be effected at any time in such a way as to meet actual needs.

2. Where general compliance with the periods referred to in paragraph 1 (a), second indent, and (b) poses problems for veterinary services, Member States shall see to it that, with at least 2 hours' notice from the carrier, a veterinary expert is available during those periods: in the case of the transport of live animals, however, this notice may be increased to 18 hours.

3. Where several frontier posts are situated in the same port or airport zone, Member States may derogate from paragraph 1, provided that the other posts in that zone are able to clear goods and vehicles effectively in accordance with that paragraph.

4. For the frontier posts and customs services referred to in paragraph 1, and under the conditions laid down by Member States, the competent authorities of the Member States shall provide, if specifically requested during business hours and for sound reasons, for inspections and formalities to be carried out, as an exception, outside business hours, on condition that, where relevant, payment be made for services so rendered.'

4. Article 6 shall be replaced by the following:

'Article 6

Member States shall take the measures necessary to ensure that waiting time caused by the various inspections and formalities does not exceed the time required for their proper completion. To that end, they shall organize the business hours of the departments which are to carry out inspections and formalities, the staff available and the practical arrangements for processing goods and documents associated with the carrying out of the inspections and formalities in such a way as to reduce waiting time in the flow of traffic to a minimum.'

5. Article 7 shall be replaced by the following:

'Article 7

Member States shall endeavour to establish at frontier posts, where technically possible and justified by the volume of traffic, express lanes reserved for goods placed under a customs transit procedure, for their means of transport and for vehicles travelling unladen.'

6. Article 8 shall be replaced by the following:

'Article 8

1. Member States and the Commission shall see to it that persons involved in trade between Member States can rapidly inform the competent national and Community authorities of any problems encountered when crossing frontiers. The competent authorities shall examine those problems and, if they are not resolved, the Commission shall propose solutions to the Member States concerned.

2. With a view to resolving difficulties with inspections or formalities within the meaning of this Directive, a Member State may request consultations with another Member State. If those consultations do not make it possible to resolve these difficulties, a Member State may inform the Commission so that the latter can submit such solutions as it deems appropriate to resolve the difficulties in question.'

7. The following Articles shall be inserted in the Directive:

'Article 6a

Member States shall as far as possible see to it that, by express delegation by the competent authorities and

on their behalf, one of the other services represented, and preferably the customs service, may carry out certain tasks for which those authorities are responsible, relating in particular to requirements to carry the necessary documents, checking the validity and authenticity thereof and making a summary check on the identity of the goods declared in such documents. In that event the authorities concerned shall seek to ensure that the means required for accomplishing those tasks are made available.'

'Article 7a

Member States shall see to it that any sums payable in respect of the inspections and formalities applied to trade between Member States can also be paid by means of guaranteed or certified international cheques, expressed in the currency of the Member State in which the debt is due.'

'Article 8a

Member States shall supply the Commission in good time with up-to-date information on inspection posts.'

Article 2

1. Member States shall, after consulting the Commission, bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 1 July 1987 at the latest.

2. Each Member State shall communicate to the Commission the texts of the provisions it adopts in order to implement this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 15 December 1986.

For the Council

The President

J. MOORE

COMMISSION DECISION

of 23 January 1987

amending Decision 83/195/EEC, Euratom, ECSC in respect of an authorization granted to the United Kingdom concerning the calculation of value added tax

(Only the English text is authentic)

(87/190/Euratom, ECSC, EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources⁽¹⁾,

Having regard to 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⁽²⁾, as last amended by Regulation (ECSC, EEC, Euratom) No 3735/85⁽³⁾, and in particular the first subparagraph of Article 9 (3), the second subparagraph of Article 11 (1) and Article 13 (2) thereof,

Whereas, for the years 1979 to 1985, the Commission, pursuant to Article 13 (2) of Regulation (EEC, Euratom, ECSC) No 2892/77, adopted Decision 80/774/EEC, Euratom, ECSC⁽⁴⁾, Decision 81/1017/Euratom, ECSC, EEC⁽⁵⁾, Decision 82/810/ECSC, EEC, Euratom⁽⁶⁾, Decision 83/195/EEC, Euratom, ECSC⁽⁷⁾, and Decision 84/280/Euratom, ECSC, EEC⁽⁸⁾;

Whereas the United Kingdom exempts services supplied by hospitals; whereas, however, there is a need for an approximate estimate of the activities which are not

carried out under the social conditions referred to in Article 13 A(1)(b) of the Sixth Council Directive 77/388/EEC⁽⁹⁾;

Whereas, in response to its request, the United Kingdom should be authorized, pursuant to the second indent of the first subparagraph of Article 9 (3) of Regulation (EEC, Euratom, ECSC) No 2892/77, to use approximate estimates for calculating the VAT own resources basis;

Whereas, the Advisory Committee on Own Resources has approved the report recording the opinions of its members on this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The following is hereby added to Article 2 of Decision 83/195/EEC, Euratom, ECSC:

'3. Transactions of hospitals not covered by Article 13 A (1) (b) (Annex F, point 10).'

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 23 January 1987.

For the Commission

Henning CHRISTOPHERSEN

Vice-President

⁽¹⁾ OJ No L 128, 14. 5. 1985, p. 15.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 356, 31. 12. 1985, p. 1.

⁽⁴⁾ OJ No L 222, 23. 8. 1980, p. 11.

⁽⁵⁾ OJ No L 367, 23. 12. 1981, p. 33.

⁽⁶⁾ OJ No L 343, 4. 12. 1982, p. 16.

⁽⁷⁾ OJ No L 108, 26. 4. 1983, p. 16.

⁽⁸⁾ OJ No L 135, 22. 5. 1984, p. 25.

⁽⁹⁾ OJ No L 145, 13. 6. 1977, p. 1.

COUNCIL DIRECTIVE

of 16 March 1987

amending Directive 69/169/EEC as regards a derogation granted to the Kingdom of Denmark relating to the rules governing turnover tax and excise duty on imports in international travel

(87/198/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 100 thereof,

Having regard to the proposal from the Commission,

Whereas, until 31 December 1987, the Kingdom of Denmark enjoys a derogation from Directive 69/169/EEC (1), as last amended by Directive 85/348/EEC (2), with regard to the import of certain products by travellers having their residence in Denmark after having stayed in another country for less than 48 hours; whereas, in addition, the Kingdom of Denmark applied a reduced quantitative limit for certain products until 31 December 1986;

Whereas any change of the above rules would at present cause serious economic difficulties for Denmark; whereas, therefore, the application thereof should be extended until 31 December 1988,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 7c of Directive 69/169/EEC is hereby replaced by the following:

Article 7c

By way of derogation from Article 4 (1) the Kingdom of Denmark shall be authorized:

- (a) to apply to still wine, in travel between Member States, a limit of four litres;
- (b) to apply until 31 December 1988 the following quantitative limits as regards exemption for

imports of goods hereinafter mentioned, where such goods are imported by travellers resident in Denmark after a stay of less than 48 hours in another country:

- cigarettes 60
- or
- smoking tobacco where the tobacco particles have a width of less than 1,5 mm (fine cut) 100 grams
- distilled beverages and spirits of an alcoholic strength exceeding 22 % vol. nil.

Article 2

1. Member States shall bring into force the measures necessary to comply with this Directive not later than 1 January 1987.
2. Member States shall inform the Commission of the provisions which they adopt to implement this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 16 March 1987.

For the Council
The President
L. TINDEMANS

(1) OJ No L 133, 4. 6. 1969, p. 6.
(2) OJ No L 183, 16. 7. 1985, p. 24.

II

(Acts whose publication is not obligatory)

COUNCIL

Application of Article 27 of the sixth Council Directive of 17 May 1977 on value-added tax ⁽¹⁾

(Authorization for a derogation measure requested by the United Kingdom Government)

In its request dated 6 January 1987 the United Kingdom Government informed the Commission, pursuant to the above provisions, of its intention to introduce measures derogating from the sixth Directive with effect from 1 April 1987.

The purpose of the proposed anti-avoidance measures is to prevent taxable persons artificially reducing the price for supplies or imports of goods or for supplies of services to totally or partially exempt persons with whom they have certain family, legal or business ties specified in national legislation. In such circumstances, the free market value may be taken as the consideration for the transaction, irrespective of whether the latter is actually taxed or not, where otherwise there would be loss of tax.

The Commission informed the other Member States, by letter dated 10 February 1987, of the request submitted by the United Kingdom Government.

In accordance with Article 27 (4) of the sixth Directive, the Council's decision will be deemed to have been adopted if, within two months of the other Member States being informed, as described above, neither the Commission nor any Member State has requested that the matter be raised by the Council.

As neither the Commission nor any Member State has requested such action within that period, the Council's decision is deemed to have been adopted on 11 April 1987.

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

II

(Acts whose publication is not obligatory)

COUNCIL

Application of Article 27 of the sixth Council Directive of 17 May 1977 on value added tax ⁽¹⁾

(Authorization for a derogation requested by the Government of the United Kingdom)

By Letter dated 18 February 1987, the United Kingdom Government submitted to the Commission, pursuant to the above provisions a request for a two-year extension of the derogation from the provisions of the sixth Directive which had been authorized for an initial period of two years by Council Decision 85/369/EEC of 13 June 1985 ⁽²⁾.

The measure is intended to prevent tax avoidance by applying a system for collecting value added tax in cases where the marketing structure of certain firms is based on the sale of their products to unregistered resellers.

The Commission informed the other Member States, by letter dated 24 March 1987, of the request for an extension.

In accordance with Article 27 (4) of the sixth Directive, the Council's decision will be deemed to have been adopted if, within two months of the other Member States being informed, as described in the previous paragraph, neither the Commission nor any Member State has requested that the matter be raised by the Council.

Since neither the Commission nor any Member State so requested within that period, the Council's decision is deemed to have been adopted on 25 May 1987.

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽²⁾ OJ No L 199, 31. 7. 1985, p. 60.

COMMISSION DECISION

of 3 July 1987

determining the amount of VAT own resources payable by the Federal Republic of Germany for 1985 in respect of transactions covered by the 20th Council Directive 85/361/EEC on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax : derogations in connection with the special aids granted to certain farmers to compensate for the dismantlement of monetary compensatory amounts applying to certain agricultural products

(Only the German text is authentic)

(87/394/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the 20th Council Directive 85/361/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax : derogations in connection with the special aids granted to certain farmers to compensate for the dismantlement of monetary compensatory amounts applying to certain agricultural products⁽¹⁾, and in particular Article 5 thereof,

Whereas the Directive authorizes the Federal Republic of Germany to use value added tax to grant a special aid to farmers provided that own resources accruing from VAT are not affected,

Whereas, for the 1985 financial year, the net VAT revenue to be taken into account under Article 6 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⁽²⁾, as last amended by Regulation (ECSC, EEC, Euratom) No 3735/85⁽³⁾ should be increased by DM 2 598 million ;

Whereas, the average weighted rate referred to in the said Article is 12,4897 % for 1985 but may be changed again ;

Whereas the VAT own resources rate for 1985 is 1 % ;

Whereas the Advisory Committee on Own Resources has been consulted,

HAS ADOPTED THIS DECISION :

Article 1

VAT own resources payable by the Federal Republic of Germany for 1985, according to Article 5 of Directive 85/361/EEC, amount to DM 208 million.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 3 July 1987.

For the Commission

Henning CHRISTOPHERSEN

Vice-President

⁽¹⁾ OJ No L 192, 24. 7. 1985, p. 18.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 356, 31. 12. 1985, p. 1.

COUNCIL DECISION

of 23 July 1987

authorizing the United Kingdom to apply an optional measure derogating from Article 17 of the Sixth Directive (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes

(87/400/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽¹⁾, hereafter referred to as the 'Sixth Directive', and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under the terms of Article 27 (1) of the Sixth Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from the provisions of that Directive in order to simplify the procedure for charging the tax of to prevent certain types of tax evasion or avoidance;

Whereas the United Kingdom, by means of a letter to the Commission dated 17 March 1987 from its Permanent Representation to the Communities requested authorization to introduce a specific measure derogating from the provisions of paragraph 1 of Article 17 the Sixth Directive; whereas that measure, considered as a simplification measure, forms part of an optional system for enterprises having an annual turnover of less than 340 000 Ecus based on the third subparagraph of paragraph 2 of Article 10 of the Sixth Directive;

Whereas this request can be accepted subject to certain conditions;

Whereas the measure in question should be temporary in order to allow an evaluation after a certain period of application;

Whereas the authorization will run until 30 September 1990, with the Commission presenting before that date a report to the Council on the application of this authorization;

Whereas the Council will determine, on the basis of a proposal for a Decision submitted if appropriate by the Commission and accompanying the abovementioned report, whether to extend the authorization beyond that date;

Whereas the specific measure in question does not have a negative effect on the own resources of the European Communities accruing from VAT;

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from the provisions of paragraph 1 of Article 17 of the Sixth Directive, the United Kingdom shall be authorized, until 30 September 1990, to provide within an optional scheme that enterprises with an annual turnover of less than 340 000 Ecus, must postpone the right of deduction of tax until it has been paid to the supplier.

Article 2

On the basis of a report by the Commission on the application of the authorization cited, in Article 1, accompanied if appropriate by a proposal for a decision, the Council shall determine on the basis of that proposal, before 30 September 1990, whether the said authorization will be extended.

Article 3

This Decision is addressed to the United Kingdom.

Done at Brussels, 23 July 1987.

For the Council

The President

K. E. TYGESEN

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

COUNCIL REGULATION (EURATOM, ECSC, EEC) No 3952/87

of 21 December 1987

introducing a temporary derogation from Regulation (EEC, Euratom, ECSC) No 2891/77 implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 78h thereof,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 209 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to Council Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources⁽¹⁾, and in particular Article 7 (2) thereof,

Having regard to the proposal from the Commission⁽²⁾,

Having regard to the opinion of the European Parliament⁽³⁾,

Having regard to the opinion of the Court of Auditors,

Whereas the shortfall in traditional own resources in 1987 cannot be offset by own resources accruing from value added tax since the maximum rate of mobilization, set at

1,4 % by Decision 85/257/EEC, Euratom, has already been reached; whereas expenditure must, therefore, be reduced;

Whereas expenditure could be reduced by deferring certain refunds provided for in Article 9 (2) of Regulation (EEC, Euratom, ECSC) No 2891/77⁽⁴⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The following subparagraph shall be added to Article 9 (2) of Regulation (EEC, Euratom, ECSC) No 2891/77:

'However, refunds totalling 400 million ECU in respect of the own resources established in June, July, August, September and October 1987 shall be made at the beginning of the 1988 financial year.'

Article 2

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

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

Done at Brussels, 21 December 1987.

For the Council

The President

B. HAARDER

⁽¹⁾ OJ No L 128, 14. 5. 1985, p. 15.

⁽²⁾ OJ No C 241, 8. 9. 1987, p. 6.

⁽³⁾ OJ No C 318, 30. 11. 1987.

⁽⁴⁾ OJ No L 336, 27. 12. 1977, p. 1.

COMMISSION DECISION

of 20 January 1988

concerning authorizations granted to Ireland amending Decision 84/277/Euratom, ECSC, EEC concerning the calculation of value added tax

(Only the English text is authentic)

(88/168/ECSC, EEC, Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Decision 85/257/EEC, Euratom of 7 May 1985, on the Communities' system of own resources ⁽¹⁾,

Having regard to 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 ⁽²⁾, as last amended by Regulation ECSC, EEC, Euratom No 3735/85 ⁽³⁾, and in particular the first subparagraph of Article 9 (3), the second subparagraph of Article 11 (1) and Article 13 (2) thereof,

Whereas from 1980 to 1985 the Commission adopted under Article 13 (2) of Regulation (EEC, Euratom, ECSC) No 2892/77 Decisions 81/368/Euratom, ECSC, EEC ⁽⁴⁾, 82/758/ECSC, EEC, Euratom ⁽⁵⁾, 83/143/EEC, Euratom, ECSC ⁽⁶⁾ and 84/277/Euratom, ECSC, EEC ⁽⁷⁾;

Whereas from 1986 Ireland has chosen to calculate its VAT own resources base using the revenue method; whereas authorization under Article 5 (3) (b) of Regulation (EEC, Euratom, ECSC) No 2892/77 to apply a correcting factor to the information contained in the returns referred

to in Article 22 (4) of the Sixth Council Directive 77/388/EEC ⁽⁸⁾ is therefore no longer of any relevance;

Whereas from 1 July 1986 Ireland has exempted the transactions referred to in Article 13 (A) (1) (e) (Annex E2) of the Sixth VAT Directive as regards services supplied by dental technicians in their professional capacity; whereas an authorization not to take these transactions into account is therefore no longer required;

Whereas the Advisory Committee on Own Resources has approved the report recording the opinions of its members on this Decision,

HAS ADOPTED THIS DECISION:

Article 1

1. Article 1 of Decision 84/277/Euratom, ECSC, EEC is hereby repealed with effect from 1 January 1986.
2. Article 2 (1) of Decision 84/277/Euratom, ECSC, EEC is hereby repealed with effect from 1 July 1986.

Article 2

This Decision is addressed to Ireland.

Done at Brussels, 20 January 1988.

For the Commission
Henning CHRISTOPHERSEN
Vice-President

⁽¹⁾ OJ No L 128, 14. 5. 1985, p. 15.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 356, 31. 12. 1985, p. 1.

⁽⁴⁾ OJ No L 145, 3. 6. 1981, p. 15.

⁽⁵⁾ OJ No L 320, 17. 11. 1982, p. 16.

⁽⁶⁾ OJ No L 96, 15. 4. 1983, p. 48.

⁽⁷⁾ OJ No L 135, 22. 5. 1984, p. 21.

⁽⁸⁾ OJ No L 145, 13. 6. 1977, p. 1.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 19 April 1988

authorizing the French Republic to apply in its overseas departments and in metropolitan France, by way of derogation from Article 95 of the Treaty, a reduced rate of the revenue duty imposed on the consumption of 'traditional' rum produced in those departments

(88/245/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 227 (2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas it is incumbent upon the institutions of the Community to see that the economic and social development of the French overseas departments is made possible;

Whereas the Treaty and secondary legislation are applicable to the French overseas departments, subject to decisions by the Community institutions adopting specific measures commensurate with the economic and social conditions of those departments;

Whereas, for reasons connected with the geographic, economic and social situation of the French overseas departments, the French Republic should be authorized to apply, by way of derogation from Article 95 of the Treaty, a reduced rate of the revenue duty imposed on the consumption of 'traditional' rum produced in those departments;

Whereas this derogation should be limited in terms of its duration, the quantities which can benefit from it and the level of reduction of the duty;

⁽¹⁾ OJ No C 107, 28. 4. 1982, p. 6.

⁽²⁾ OJ No C 96, 11. 4. 1983, p. 109.

Whereas a limit should be proposed to the period of application of this Decision, in accordance with the timetable for the approximation of laws in the Community and the harmonization of excise duties;

Whereas the Commission is currently preparing an action programme for the French overseas departments, comprising specific measures for the adaptation of Community policies and new action designed to ease the economic recovery of these regions,

HAS ADOPTED THIS DECISION:

Article 1

The French Republic is hereby authorized to apply, by way of derogation from Article 95 of the Treaty, in its overseas departments and in metropolitan France, to the consumption of 'traditional' rum produced in those departments, a rate of revenue duty lower than the full rate of that duty applicable to spirits falling within CN codes 2208 20 to 2208 90.

Article 2

The derogation referred to in Article 1 shall be limited to the product obtained exclusively by distillation, after fermentation, of sugar cane juice, sugar cane syrup or sugar cane molasses in the sugar cane producing areas of the French overseas departments, obtained from local raw materials. This product must have a volatile element content, excluding ethyl alcohol, in excess of 225 g/hl at 100 % vol. and must be produced at a pure alcoholic strength by volume of less than 80 % vol.

Article 3

1. In metropolitan France the reduced fiscal duty applicable to the product referred to in Article 2 shall be applied to the following annual quotas:

- in 1988: 99 000 hl of pure alcohol,
- in 1989: 97 000 hl of pure alcohol,
- in 1990: 95 000 hl of pure alcohol,
- in 1991: 92 000 hl of pure alcohol,
- in 1992: 90 000 hl of pure alcohol.

2. The ratio, expressed in percentage terms, between the reduced rate of consumption tax applied in metropolitan France to 'traditional' rum and the full rate applied to spirits may not be less than the ratio between

those two rates obtaining in metropolitan France when this Decision enters into force.

3. This Decision shall apply until 31 December 1992.

Article 4

This Decision is addressed to the French Republic.

Done at Luxembourg, 19 April 1988.

For the Council

The President

I. KIECHLE

I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EEC) No 1227/88
of 3 May 1988**

**extending the date of validity of Regulation (EEC) No 3/84 introducing
arrangements for movement within the Community of goods sent from one
Member State for temporary use in one or more other Member States**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3/84 of 19 December 1983 introducing arrangements for movement within the Community of goods sent from one Member State for temporary use in one or more other Member States⁽¹⁾, as supplemented by Regulation (EEC) No 1568/84⁽²⁾, and in particular the third subparagraph of Article 16 thereof,

Having regard to the proposal from the Commission,

Whereas Regulation (EEC) No 3/84 has been applicable since 1 July 1985; whereas, in accordance with Article 17 of that Regulation, the Commission must submit a report to the Council on the application of the arrangements for movement within the Community based on information supplied by the Member States, before the expiry of a period of three years from the aforementioned date;

Whereas, on the basis of that report, which the Commission presented to the Council on 16 March 1988,

the Commission has expressed to the Council its intention of sending the latter a proposal to extend the facilities granted by Regulation (EEC) No 3/84; whereas it seems appropriate, pending the adoption of that proposal, to extend the period of validity of the said Regulation until 30 June 1989,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 16 of Regulation (EEC) No 3/84, the third subparagraph is replaced by the following:

'It shall be applicable until 30 June 1989.'

Article 2

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

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

Done at Brussels, 3 May 1988.

For the Council
The President
M. BANGEMANN

⁽¹⁾ OJ No L 2, 4. 1. 1984, p. 1.

⁽²⁾ OJ No L 151, 7. 6. 1984, p. 5.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 13 June 1988

amending Directive 83/181/EEC determining the scope of Article 14 (1) (d) of Directive 77/388/EEC as regards exemption from value-added tax on the final importation of certain goods

(88/331/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Whereas the arrangements for exemption from the value-added tax of certain imports, as laid down by Directive 83/181/EEC⁽³⁾, as last amended by Directive 85/346/EEC⁽⁴⁾, refer to the greatest possible degree of uniformity between the system for customs duties and that for value-added tax; whereas the Council, by Regulation (EEC) No 1315/88⁽⁵⁾, has adopted amendments to the system for customs duties; whereas it is appropriate to incorporate some of these amendments into Directive 83/181/EEC, to the extent that they meet the objectives of tax harmonization;

Whereas Directive 83/181/EEC determines not only the scope of Article 14 (1) (d) of Directive 77/388/EEC⁽⁶⁾, as last amended by Directive 84/386/EEC⁽⁷⁾, but is aimed also at establishing Community tax rules for VAT exemption on the final import of goods, which go beyond the scope of the said Article; whereas these rules should

be amended or supplemented in such a way as to bring about a more uniform application thereof at Community level;

Whereas, in the interests of legal clarity, the wording of Article 11 (2) of Directive 83/181/EEC should be accurately rendered,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 83/181/EEC is hereby amended as follows:

1. Article 11 (2) is replaced by the following:

'2. Exemption shall also be granted in respect of presents customarily given on the occasion of a marriage which are received by a person fulfilling the conditions laid down in paragraph 1 from persons having their normal place of residence in a country situated outside the Community. the exemption shall apply to presents of a unit value of not more than 200 ECU. Member States may, however, grant exemption for more than 200 ECU provided that the value of each exempt present does not exceed 1 000 ECU.'

2. Article 22 is replaced by the following:

Article 22

Goods of a total value not exceeding 10 ECU shall be exempt on admission. Member States may grant exemption for imported goods of a total value of more than 10 ECU but not exceeding 22 ECU.

⁽¹⁾ OJ No C 318, 30. 11. 1987, p. 21.

⁽²⁾ OJ No C 180, 8. 7. 1987, p. 14.

⁽³⁾ OJ No L 105, 23. 4. 1983, p. 38.

⁽⁴⁾ OJ No L 183, 16. 7. 1985, p. 21.

⁽⁵⁾ OJ No L 123, 17. 5. 1988, p. 2.

⁽⁶⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽⁷⁾ OJ No L 208, 3. 8. 1984, p. 58.

However, Member States may exclude goods which have been imported on mail order from the exemption provided for in the first sentence of the first subparagraph.'

3. In the second indent of Article 35 (1) (b) the words 'Article 60 (1) (b)' are replaced by 'Article 60'.

4. The following Chapter is inserted after Article 38 :

'Chapter IIa

Reference substances for the quality control of medical products

Article 38 (a)

Consignments which contain samples of reference substances approved by the World Health Organization for the quality control of materials used in the manufacture of medicinal products and which are addressed to consignees authorized by the competent authorities of the Member States to receive such consignments free of tax shall be exempt on admission.'

5. The following is added to Article 56 :

'(d) Awards, trophies and souvenirs of a symbolic nature and of limited value intended for distribution free of charge to persons normally resident in a country other than that of import, at business conferences or similar international events; their nature, unitary value or other features, must not be such as might indicate that they are intended for commercial purposes.'

6. Articles 62 and 63 are replaced by the following :

Article 62

Subject to Article 63, printed advertising matter such as catalogues, price lists, directions for use or brochures shall be exempt on admission provided that they relate to :

- (a) goods for sale or hire by a person established outside the Member State of import, or
- (b) services offered by a person established in another Member State, or
- (c) transport, commercial insurance or banking services offered by a person established in a third country.

Article 63

The exemption referred to in Article 62 shall be limited to printed advertisements which fulfil the following conditions :

- (a) printed matter must clearly display the name of the undertaking which produces, sells or hires out the goods, or which offers the services to which it refers ;

- (b) each consignment must contain no more than one document or a single copy of each document if it is made up of several documents. Consignments comprising several copies of the same document may nevertheless be granted exemption provided their total gross weight does not exceed one kilogram ;

- (c) printed matter must not be the subject of grouped consignments from the same consignor to the same consignee.

However, the conditions under (b) and (c) shall not apply to printed matter relating to either goods for sale or hire or services offered by a person established in another Member State provided that the printed matter has been imported, and will be distributed, free of charge.'

7. The following is added to Article 79 :

- (s) importations of official publications issued under the authority of the country of export, international institutions, regional or local authorities and bodies under public law established in the country of export, and printed matter distributed on the occasion of elections to the European Parliament or on the occasion of national elections in the country in which the printed matter originates by foreign political organizations officially recognized as such in the Member States, insofar as such publications and printed matter have been subject to tax in the country of export and have not benefited from remission of tax on export.'

8. The title of Chapter VI is replaced by the following :

'Fuels and lubricants present in land motor vehicles and special containers'

9. Article 82 is replaced by the following :

Article 82

1. Subject to Articles 83, 84 and 85, the following shall be exempt on admission :

(a) fuel contained in the standard tanks of :

- private and commercial motor vehicles and motor cycles ;
- special containers ;

(b) fuel contained in portable tanks carried by private motor vehicles and motor cycles, up to a maximum of 10 litres per vehicle and without prejudice to national provisions on the holding and transport of fuel.

2. For the purpose of paragraph 1 :

- (a) 'commercial motor vehicle' means any motorized road vehicle (including tractors with trailers) which, by its type of construction and equipment, is designed for, and capable of, transporting, whether for payment or not :

— more than nine persons including the driver,
— goods,
and any road vehicle for a special purpose other than transport as such;

(b) 'private motor vehicle' means any motor vehicle not covered by the definition set out in (a);

(c) 'standard tanks' means:

— the tanks permanently fixed by the manufacturer to all motor vehicles of the same type as the vehicle in question and whose permanent fitting enables fuel to be used directly, both for the purpose of propulsion and, where appropriate, for the operation, during transport, of refrigeration systems and other systems.

Gas tanks fitted to motor vehicles designed for the direct use of gas as a fuel and tanks fitted to ancillary systems with which the vehicle may be equipped shall also be considered to be standard tanks,

— tanks permanently fixed by the manufacturer to all containers of the same type as the container in question and whose permanent fitting enables fuel to be used directly for the operation, during transport, of refrigeration systems and other systems with which special containers are equipped;

(d) 'special container' means any container fitted with specially designed apparatus for refrigeration systems, oxygenation systems, thermal insulation systems, or other systems.

10. The first paragraph of Article 83 is amended as follows:

— in the introduction, the words 'and special containers' are inserted after the words 'commercial motor vehicles',

— after (b), the following is added:

'(c) to 200 litres per special container and per journey.'

11. The following is added at the end of Article 90 (3):

'... or to a reduction in that exemption.'

12. The following is added to Article 91:

'(c) exemptions in the context of agreements entered into on the basis of reciprocity with third countries that are Contracting Parties to the Convention on International Civil Aviation (Chicago 1944) for the purpose of implementing Recommended Practices 4.42 and 4.44 in Annex 9 to the Convention (eighth edition, July 1980).'

Article 2

Member States shall take the measures necessary to comply with this Directive not later than 1 January 1989. They shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 13 June 1988.

For the Council

The President

G. STOLTENBERG

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (ECSC, EEC, EURATOM) No 1990/88
of 30 June 1988

amending Regulation (EEC, Euratom, ECSC) No 2891/77 implementing the
Decision of 21 April 1970 on the replacement of financial contributions from
Member States by the Communities' own resources

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 78h thereof,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 209 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to the Council Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources⁽¹⁾, and in particular Article 7 (2) thereof,

Having regard to the proposal from the Commission⁽²⁾,

Having regard to the opinion of the European Parliament⁽³⁾,

Having regard to the opinion of the Court of Auditors⁽⁴⁾,

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

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

1. in Article 1, 'Decision of 21 April 1970' is replaced by 'Decision 85/257/EEC, Euratom';
2. the following paragraph is added to Article 3:
'If verification of these supporting documents by the national administration alone or in conjunction with the Commission shows that a finding to which they relate may have to be corrected, they shall be kept beyond the time limit provided for in the first subparagraph for a sufficient period to permit the correction to be made and monitored.';
3. Article 5 becomes Article 8 and is replaced by the following:

'Article 8

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

(¹) OJ No L 128, 14. 5. 1985, p. 15.

(²) OJ No C 231, 4. 9. 1982, p. 15 and

OJ No C 146, 4. 6. 1983, p. 4.

(³) OJ No C 13, 17. 1. 1983, p. 220.

(⁴) OJ No C 133, 20. 5. 1983, p. 3.

(⁵) OJ No L 336, 27. 12. 1977, p. 1.

4. Article 6 becomes Article 5 and is replaced by the following :

'Article 5

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

5. Article 7 becomes Article 6 and its paragraphs 2 and 3 are replaced by the following :

'2. The established entitlements shall be entered in the accounts at the latest on the first working day after the 19th day of the second month following the month during which the entitlements were established.

VAT resources shall, however, be included in the accounts as follows :

- on the first working day of each month, the twelfth referred to in Article 10 (3),
- annually as regards the balance referred to in Article 10 (4) and the adjustments referred to in Article 10 (6), except for the particular adjustments referred to in the first indent of Article 10 (6), which shall be entered in the accounts on the first working day of the month following agreement between the Member State concerned and the Commission.

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

6. Article 8 becomes Article 7 ;

7. Article 9 is amended as follows :

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

- (b) paragraph 3 is replaced by the following :

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

8. Article 10 is amended as follows :

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

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

'Any change in the rates of VAT resources or, if appropriate, in GNP-based financial contributions shall be occasioned by the final adoption of a supplementary or amending budget and shall give rise to a readjustment of the twelfths which have been entered since the beginning of the financial year.

This readjustment shall be carried out when the first entry is made following the final adoption of the supplementary or amending budget if it is adopted before the 16th day of the month. Otherwise it shall be carried out when the second entry following final adoption is made. By way of derogation from Article 5 of the Financial Regulation, this readjustment shall be entered in the accounts in respect of the financial year of the amending or supplementary budget in question.

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

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

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

- (d) paragraph 5 is replaced by the following :

'5. The Commission shall then calculate adjustments to the financial contributions so as to restore, in the light of the actual yield from VAT resources, the original distribution in the budget between the latter and the financial contributions based on the GNP. In calculating these

adjustments, the balances referred to in paragraph 4 shall be converted into ECU at the rates of exchange applying on the first working day after the 15th day of July preceding the entries provided for in paragraph 4. For each Member State concerned, the total of VAT balances shall be adjusted by the ratio between VAT resources and the financial contributions entered in the budget. The Commission shall communicate the results of this calculation to the Member States which, during the previous financial year, paid GNP-based financial contributions so that they can make a credit or debit entry as appropriate in the account referred to in Article 9 (1) on the first working day of August of the same year.;

(e) the following paragraph is inserted:

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

— the corrections under the first subparagraph of Article 10b (1) of the said Regulation, prior to 30 June, shall give rise to a general adjustment to be entered in the account referred to in Article 9 (1) of this Regulation on the first working day of August of the same year. However, a particular adjustment shall be entered before that date if the Member State concerned and the Commission are in agreement,

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

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

(1) on the first working day of August of the same year.;

(f) the former paragraph 6 becomes paragraph 7 and is amended as follows:

'paragraphs 4 and 5' is replaced by 'paragraphs 4, 5 and 6';

9. Article 11 is replaced by the following:

Article 11

Any delay in making the entry in the account referred to in Article 9 (1) shall give rise to the payment of interest by the Member State concerned at the interest rate applicable on the Member State's money market on the due date for short-term public financing operations, increased by two percentage points. This rate shall be increased by 0,25 of a percentage point for each month of delay. The increased rate shall be applied to the entire period of delay.;

10. the heading of Title V is replaced by 'Procedure for the application of Article 3 (7) and (8) of Decision 85/257/EEC, Euratom';

11. Article 13 is hereby amended as follows:

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

(b) paragraph 2 is replaced by the following:

'2. The gross national product at market prices shall be calculated by the Statistical Office of the European Communities, on the basis of statistics prepared according to the European System of Integrated Economic Accounts (ESA), and corresponding, for each Member State, to the arithmetical average of the first three years of the five-year period preceding the financial year in respect of which the provisions of Article 3 (7) of Decision 85/257/EEC, Euratom have been applied. No account shall be taken of any revisions of statistical data made after the final adoption of the budget.;

(c) in paragraph 3, 'EUA' is replaced by 'ECU';

(d) in paragraph 4:

— the beginning of the first sentence is amended as follows:

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

— at the end of the first sentence, 'VAT rate' is replaced by 'uniform VAT resources rate';

12. in Article 14 (b), 'taxes' is replaced by 'VAT on products and net taxes';

13. the heading of Title VI is replaced by 'Procedure for the application of Article 6 of Decision 85/257/EEC, Euratom';

14. Article 15 is replaced by the following:

Article 15

For the purposes of applying Article 6 of Decision 85/257/EEC, Euratom, the balance of a given financial year shall consist of the difference between:

- all the revenue collected in respect of that financial year, and
- the amount of payments made against appropriations for that financial year increased by the amount of the appropriation for the same financial year carried over pursuant to Article 6 (1) (b) and (c) and 2 (b) and the second subparagraph of Article 88 (4) of the Financial Regulation.

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

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

15. In Article 16 (2), (4) and (5) is replaced by (4), (5) and (6);

16. Article 17 (3) is replaced by the following:

'3. Member States shall notify the Commission, in six-monthly reports, of the outcome of their inspections and of comprehensive information and questions of principle concerning the most important problems arising out of the application of this Regulation and, in particular, matters in dispute.

This report shall be submitted within two months of the end of each half year and shall include the number of cases of significant irregularities

concerning own resources and an overall estimate of the own resources diverted. The report shall also describe serious irregularities which could have a significant financial impact on own resources.';

17. in the second subparagraph of Article 18 (2), the last sentence is replaced by the following:

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

- (a) the Commission may, in specific cases, request that certain documents be forwarded to it;
- (b) in the monthly statement of accounts referred to in Article 6 (3) the amounts entered in the accounts which relate to irregularities or delays in the establishment, entry in the accounts and making available of own resources, discovered during the inspections referred to above, must be identified by means of appropriate notes.';

18. Article 19 is replaced by the following:

Article 19

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

19. in article 21 (a), 'in Article 5' is replaced by 'in Article 8';

20. Article 22 is replaced by the following:

Article 22

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

Article 2

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

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

Done at Luxembourg, 30 June 1988.

For the Council

The President

Ch. SCHWARZ-SCHILLING

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 24 June 1988

on the system of the Communities' own resources

(88/376/EEC, Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 199 and 201 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 171 (1) and 173 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Council Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources ⁽⁴⁾, as last amended by the Single European Act, raised to 1,4 % the limit for each Member State on the rate applied to the uniform value-added tax (VAT) base previously set at 1 % by the Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources ⁽⁵⁾ hereinafter referred to as 'the Decision of 21 April 1970';

Whereas the resources available within the limit of 1,4 % are no longer sufficient to cover the estimates of Community expenditure;

Whereas the Single European Act opens up new possibilities to the Community; whereas Article 8a of the Treaty establishing the European Economic Community provides for the completion of the internal market by 31 December 1992;

Whereas the Community must possess stable and guaranteed revenue enabling it to stabilize the present situation and operate the common policies; whereas this revenue must be based on the expenditure deemed necessary to this end which was determined in the financial estimates in the Interinstitutional Agreement between the European Parliament, the Council and the Commission, which will take effect on 1 July 1988;

Whereas the European Council meeting in Brussels on 11, 12 and 13 February 1988 reached certain conclusions;

Whereas, in accordance with these conclusions, the Community will, by 1992, be assigned a maximum amount of own resources corresponding to 1,2 % of the total of the Member States' gross national product for the year at market prices, hereinafter referred to as 'GNP';

Whereas observance of this ceiling requires that the total amount of own resources at the Community's disposal for the period 1988 to 1992 does not in any one year exceed a specified percentage of the sum of the Community's GNP for the year in question; whereas that percentage shall correspond to application of the guidelines established for growth in Community expenditure as laid down in the European Council conclusions concerning budgetary discipline and budget management, and a safety margin of 0,03 % of Community GNP aimed at coping with unforeseen expenditure;

Whereas a global ceiling of 1,30 % of the Member States' GNP is set for commitment appropriations; whereas an

⁽¹⁾ OJ No C 102, 16. 4. 1988, p. 8.

⁽²⁾ Opinion delivered on 15 June 1988 (not yet published in the Official Journal).

⁽³⁾ OJ No C 175, 4. 7. 1988.

⁽⁴⁾ OJ No L 128, 14. 5. 1985, p. 15.

⁽⁵⁾ OJ No L 94, 28. 4. 1970, p. 19.

orderly progression of commitment appropriations and payment appropriations must be ensured;

Whereas these ceilings should remain applicable until this Decision is amended;

Whereas, with a view to matching the resources paid by each Member State more closely with its ability to contribute, the composition of Community own resources should be amended and enlarged; whereas it is necessary for this purpose:

- to fix at 1,4 % the maximum rate to be applied to each Member State's uniform base for value added tax, limited where appropriate to 55 % of its GNP;
- to introduce an additional type of own resource to balance budget revenue and expenditure, based on the sum of Member States' GNP; for this purpose, the Council will adopt a Directive on the harmonization of the compilation of gross national product at market prices;

Whereas the customs duties on products coming under the Treaty establishing the European Coal and Steel Community should be included in Community own resources;

Whereas the conclusions of the European Council of 25 and 26 June 1984 on the correction of budgetary imbalances continue to apply for the duration of this Decision's validity; whereas the present compensation mechanism must, however, be adjusted to take account of the capping of the VAT base and the introduction of an additional resource and must provide for financing of the correction on the basis of a GNP key; whereas this adjustment should ensure that the VAT share of the United Kingdom is replaced by its share of payments under the third and fourth resources (those provided by VAT and GNP respectively) and that the effect on the United Kingdom, in respect of a given year, of the capping of the VAT base and of the introduction of the fourth resource which is not compensated by this change will be offset by an adjustment to the compensation in respect of that year; whereas the contributions of Spain and Portugal should be reduced in accordance with the rebates provided for in Articles 187 and 374 of the 1985 Act of Accession;

Whereas the budgetary imbalances should be corrected in such a way as not to affect the own resources available for the Community's policies;

Whereas the conclusions of the European Council of 11, 12 and 13 February 1988 provided for the creation, in the Community budget, of a monetary reserve, hereinafter referred to as the 'EAGGF monetary reserve', to offset the impact of significant and unforeseen fluctuations in the ECU/dollar parity on the expenditure under the Guarantee

Section of the European Agricultural Guidance and Guarantee Fund (EAGGF); whereas that reserve should be covered by specific provisions;

Whereas provisions must be laid down to cover the changeover from the system introduced by Decision 85/257/EEC, Euratom to that arising from this Decision;

Whereas the European Council of 11, 12 and 13 February 1988 provided that this Decision should take effect on 1 January 1988,

HAS LAID DOWN THESE PROVISIONS, WHICH IT RECOMMENDS TO THE MEMBER STATES FOR ADOPTION:

Article 1

The Communities shall be allocated resources of their own in accordance with the following Articles in order to ensure the financing of their budget.

The budget of the Communities shall, irrespective of other revenue, be financed entirely from the Communities' own resources.

Article 2

1. Revenue from the following shall constitute own resources entered in the budget of the Communities:

- (a) levies, premiums, additional or compensatory amounts, additional amounts or factors and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries within the framework of the common agricultural policy, and also contributions and other duties provided for within the framework of the common organization of the markets in sugar;
- (b) Common Customs Tariff duties and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries and customs duties on products coming under the Treaty establishing the European Coal and Steel Community;
- (c) the application of a uniform rate valid for all Member States to the VAT assessment base which is determined in a uniform manner for Member States according to Community rules; however, the assessment base for any Member State to be taken into account for the purposes of this Decision shall not exceed 55 % of its GNP;
- (d) the application of a rate — to be determined under the budgetary procedure in the light of the total of all other revenue — to the sum of all the Member States' GNP established in accordance with Community rules to be laid down in a Directive adopted under Article 8 (2) of this Decision.

2. Revenue deriving from any new charges introduced within the framework of a common policy, in accordance with the Treaty establishing the European Economic Community or the Treaty establishing the European Atomic Energy Community, provided the procedure laid down in Article 201 of the Treaty establishing the European Economic Community or in Article 173 of the Treaty establishing the European Atomic Energy Community has been followed, shall also constitute own resources entered in the budget of the Communities.

3. Member States shall retain, by way of collection costs, 10% of the amounts paid under 1 (a) and (b).

4. The uniform rate referred to in 1 (c) shall correspond to the rate resulting from:

(a) the application of 1,4% to the VAT assessment base for the Member States, and

(b) the deduction of the gross amount of the reference compensation referred to in Article 4 (2). The gross amount shall be the compensation amount adjusted for the fact that the United Kingdom is not participating in the financing of its own compensation and the Federal Republic of Germany's share is reduced by one-third. It shall be calculated as if the reference compensation amount were financed by Member States according to their VAT assessment bases established in accordance with Article 2 (1) (c). For 1988, the gross amount of the reference compensation shall be reduced by 780 million ECU.

5. The rate fixed under paragraph 1 (d) shall apply to the GNP of each Member State.

6. If, at the beginning of the financial year, the budget has not been adopted, the previous uniform VAT rate and rate applicable to Member States' GNP, without prejudice to whatever provisions may be adopted in accordance with Article 8 (2) by reason of the entry of an EAGGF monetary reserve in the budget, shall remain applicable until the entry into force of the new rates.

7. By way of derogation from 1 (c), if, on 1 January of the financial year in question, the rules for determining the uniform basis for assessing VAT are not yet applied in all the Member States, the financial contribution which a Member State not yet applying this uniform basis is to make to the budget of the Communities in lieu of VAT shall be determined according to the proportion of its gross national product at market prices to the sum total of the gross national product of the Member States at market prices in the first three years of the five-year period preceding the year in question. This derogation shall cease to have effect as soon as the rules for determining the uniform basis for assessing VAT are applied in all Member States.

8. For the purposes of applying this Decision, GNP shall mean gross national product for the year at market prices.

Article 3

1. The total amount of own resources assigned to the Communities may not exceed 1,20% of the total GNP of the Community for payment appropriations.

The total amount of own resources assigned to the Communities may not, for any of the years during the 1988 to 1992 period, exceed the following percentages of the total GNP of the Community for the year in question:

- 1988: 1,15,
- 1989: 1,17,
- 1990: 1,18,
- 1991: 1,19,
- 1992: 1,20.

2. The commitment appropriations entered in the general budget of the Communities over the period 1988 to 1992 must follow an orderly progression resulting in a total amount which does not exceed 1,30% of the total GNP of the Community in 1992. A precise ratio between commitment appropriations and payment appropriations shall be maintained to guarantee their compatibility and to enable the ceiling mentioned in paragraph 1 to be observed in subsequent years.

3. The overall ceilings referred to in paragraphs 1 and 2 shall continue to apply until such time as this Decision is amended.

Article 4

The United Kingdom shall be granted a correction in respect of budgetary imbalances. This correction shall consist of a basic amount and an adjustment. The adjustment shall correct the basic amount to a reference compensation amount.

1. The basic amount shall be established by:

(a) calculating the difference, in the preceding financial year, between:

- the percentage share of the United Kingdom in the sum total of the payments referred to in Article 2 (1) (c) and (d) made during the financial year, including adjustments at the uniform rate in respect of earlier financial years, and
- the percentage share of the United Kingdom in total allocated expenditure;

(b) applying the difference thus obtained to total allocated expenditure;

(c) multiplying the result by 0,66.

2. The reference compensation shall be the correction resulting from application of (a), (b) and (c) below, corrected by the effects arising for the United Kingdom from the changeover to capped VAT and the payments referred to in Article 2 (1) (d).

It shall be established by:

- (a) calculating the difference, in the preceding financial year, between:
- the percentage share of the United Kingdom in the sum total of VAT payments which would have been made during that financial year, including adjustments in respect of earlier financial years, for the amounts financed by the resources referred to in Article 2 (1) (c) and (d) if the uniform VAT rate had been applied to non-capped bases, and
 - the percentage share of the United Kingdom in total allocated expenditure;
- (b) applying the difference thus obtained to total allocated expenditure;
- (c) multiplying the result by 0,66;
- (d) subtracting the payments by the United Kingdom taken into account in the first indent of 1 (a) from those taken into account in the first indent of 2 (a);
- (e) subtracting the amount calculated at (d) from the amount calculated at (c).
3. The basic amount shall be adjusted in such a way as to correspond to the reference compensation amount.

Article 5

1. The cost of the correction shall be borne by the other Member States in accordance with the following arrangements:

the distribution of the cost shall first be calculated by reference to each Member State's share of the payments referred to in Article (2) (1) (d), the United Kingdom being excluded; it shall then be adjusted in such a way as to restrict the share of the Federal Republic of Germany to two-thirds of the share resulting from this calculation.

2. The correction shall be granted to the United Kingdom by a reduction in its payments resulting from the application of Article 2 (1) (c). The costs borne by the other Member States shall be added to their payments resulting from the application for each Member State of Article 2 (1) (c) up to a 1,4% VAT rate and Article 2 (1) (d).

3. The Commission shall perform the calculations required for the application of Article 4 and this Article.

4. If, at the beginning of the financial year, the budget has not been adopted, the correction granted to the United Kingdom and the costs borne by the other Member States as entered in the last budget finally adopted shall remain applicable.

Article 6

The revenue referred to in Article 2 shall be used without distinction to finance all expenditure entered in the budget of the Communities. However, the revenue needed to cover in full or in part the EAGGF monetary reserve, entered in the budget of the Communities, shall not be called up from the Member States until the reserve is implemented. Provisions for the operation of that reserve shall be adopted as necessary in accordance with Article 8 (2).

The preceding subparagraph shall be without prejudice to the treatment of contributions by certain Member States to supplementary programmes provided for in Article 130l of the Treaty establishing the European Economic Community.

Article 7

Any surplus of the Communities' revenue over total actual expenditure during a financial year shall be carried over to the following financial year. However, any surplus generated by a transfer from EAGGF Guarantee chapters to the monetary reserve shall be regarded as constituting own resources.

Article 8

1. The Community own resources referred to in Article 2 (1) (a) and (b) shall be collected by the Member States in accordance with the national provisions imposed by law, regulation or administrative action, which shall, where appropriate, be adapted to meet the requirements of Community rules. The Commission shall examine at regular intervals the national provisions communicated to it by the Member States, transmit to the Member States the adjustments it deems necessary in order to ensure that they comply with Community rules and report to the budget authority. Member States shall make the resources under Article 2 (1) (a) to (d) available to the Commission.

2. Without prejudice to the auditing of the accounts and to checks that they are lawful and regular and as laid down in Article 206a of the Treaty establishing the European Economic Community, such auditing and checks being

mainly concerned with the reliability and effectiveness of national systems and procedures for determining the base for own resources accruing from VAT and GNP and without prejudice to the inspection arrangements made pursuant to Article 209 (c) of that Treaty, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, adopt the provisions necessary to apply this Decision and to make possible the inspection of the collection, the making available to the Commission and payment of the revenue referred to in Articles 2 and 5.

Article 9

The mechanism for the graduated refund of own resources accruing from VAT or GNP-based financial contributions introduced for the Kingdom of Spain and the Portuguese Republic up to 1991 by Articles 187 and 374 of the 1985 Act of Accession shall apply to the own resources accruing from VAT and the GNP-based resource referred to in Article 2 (1) (c) and (d) of this Decision. It shall also apply to payments by these two Member States in accordance with Article 5 (2) of this Decision. In the latter case the rate of refund shall be that applicable for the year in respect of which the correction is granted.

Article 10

The Commission shall submit, by the end of 1991, a report on the operation of the system, including a re-examination of the correction of budgetary imbalances granted to the United Kingdom, established by this Decision.

Article 11

1. Member States shall be notified of this Decision by the Secretary-General of the Council of the European Communities; it shall be published in the *Official Journal of the European Communities*.

Member States shall notify the Secretary-General of the Council of the European Communities without delay of the completion of the procedures for the adoption of this

Decision in accordance with their respective constitutional requirements.

This Decision shall enter into force on the first day of the month following receipt of the last of the notifications referred to in the second subparagraph. It shall take effect on 1 January 1988.

2. (a) Subject to (b) and (c), Decision 85/257/EEC, Euratom shall be repealed as of 1 January 1988. Any references to the Decision of 21 April 1970 or to Decision 85/257/EEC, Euratom shall be construed as references to this Decision.

(b) Article 3 of Decision 85/257/EEC, Euratom shall continue to apply to the calculation and adjustment of revenue accruing from the application of rates to the uncapped uniform assessment basis for value added tax in 1987 and earlier years. For 1988 the deduction in favour of the United Kingdom in respect of previous financial years shall be calculated in accordance with points (b) (i), (ii) and (iii) of Article 3 (3) of the said Decision. The distribution of the cost of financing it shall be calculated in accordance with Article 5 (1) of this Decision. The amounts corresponding to the deduction and the distribution of the cost of financing it shall be dealt with in accordance with Article 5 (2) of this Decision. When Article 2 (7) has to be applied, the value added tax payments shall be replaced by financial contributions in the calculations referred to in this paragraph for any Member State concerned; this system shall also apply to the payment of adjustments of corrections for earlier years.

(c) Article 4 (2) of Decision 85/257/EEC, Euratom shall continue to apply to the financial contributions needed to finance the completion of the supplementary programme for the operation of the HFR (high-flux reactor) reactor of 1984 to 1987.

Done at Luxembourg, 24 June 1988.

For the Council

The President

M. BANGEMANN

COMMISSION DECISION

of 26 July 1988

determining the amount of VAT own resources payable by the Federal Republic of Germany for 1986 in respect of transactions covered by the 20th Council Directive 85/361/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value-added tax : derogations in connection with the special aid granted to certain farmers to compensate for the dismantlement of monetary compensatory amounts applying to certain agricultural products

(Only the German text is authentic)

(88/481/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the 20th Council Directive 85/361/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value-added tax : derogations in connection with the special aid granted to certain farmers to compensate for the dismantlement of monetary compensatory amounts applying to certain agricultural products ⁽¹⁾ and in particular Article 5 thereof,

Whereas the Directive authorizes the Federal Republic of Germany to use value-added tax to grant a special aid to farmers provided that own resources accruing from VAT are not affected ;

Whereas, for the 1986 financial year, the net VAT revenue to be taken into account under Article 6 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 ⁽²⁾, as last amended by Regulation (EEC) No 3735/85 ⁽³⁾ should be increased by DM 2 563 million ;

Whereas, the average weighted rate referred to in the said Article is 12,5905 % for 1986 but may be changed again ;

Whereas the rate of VAT own resources payable by the Federal Republic of Germany for 1986 is 1,3370 % ;

Whereas the Advisory Committee on Own Resources has been consulted,

HAS ADOPTED THIS REGULATION :

Article 1

VAT own resources payable by the Federal Republic of Germany for 1986, according to Article 5 of Directive 85/361/EEC, amount to DM 272,16 million.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 26 July 1988.

For the Commission

Henning CHRISTOPHERSEN

Vice-President

⁽¹⁾ OJ No L 192, 24. 7. 1985, p. 18.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 356, 31. 12. 1985, p. 1.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 19 July 1988

authorizing the Kingdom of the Netherlands to apply a measure derogating from Article 21 (1) (a) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes

(88/498/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽¹⁾, hereinafter referred to as the 'Sixth Directive', and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 27 (1) of the Sixth Directive, the Council may authorize any Member State to introduce special measures for derogation from that Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance;

Whereas the Kingdom of the Netherlands, by letter addressed to the Commission and registered on 18 April 1988, requested authorization to introduce a special measure derogating from the Sixth Directive;

Whereas the other Member States were informed on 17 May 1988 of the request made by the Kingdom of the Netherlands; whereas the Council's decision shall be

deemed to have been adopted if, within two months of the other Member States being informed, neither the Commission nor any Member State has requested that the matter be raised by the Council; whereas no such request has been made; whereas the Council's decision shall thus be deemed to have been adopted on 19 July 1988;

Whereas the Kingdom of the Netherlands makes use of the possibility provided by Article 13 (C) (b) of the Sixth Directive of granting a right of option for taxation of the supply of old buildings and of land which has not been built on;

Whereas the exercise of the option for taxation of these supplies leads in certain cases to tax evasion and avoidance;

Whereas, in order to prevent such tax evasion and avoidance, the Kingdom of the Netherlands wishes to introduce into its legislation a provision to the effect that, where that option is exercised, liability for the tax is imposed on the purchaser;

Whereas the measure envisaged is a derogation from Article 21 (1) (a) of the Sixth Directive, whereby, under the internal system, the person liable for the tax is the taxable person who carries out the taxable transaction;

Whereas the derogation will have a favourable effect on the European Communities' own resources arising from value added tax,

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

HAS ADOPTED THIS DECISION:

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Article 1

Notwithstanding Article 21 (1)(a) of the Sixth Directive, the Kingdom of the Netherlands is hereby authorized to apply, in the context of the option for taxation provided for by Article 13 (C) (b) of that Directive and in relation to the transactions mentioned in section B (g) and (h) of that Article, a provision imposing liability for the tax on the purchaser.

Done at Brussels, 19 July 1988.

For the Council

The President

Y. POTTAKIS

COMMISSION REGULATION (EEC) No 3524/88

of 11 November 1988

amending Article 13 and Annex I in Regulation (EEC) No 1751/84 laying down certain provisions for the application of Council Regulation (EEC) No 3599/82 on temporary importation arrangements

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3599/82 of 21 December 1982 on temporary importation arrangements⁽¹⁾, as amended by Regulation (EEC) No 1620/85⁽²⁾, and in particular Article 33 thereof,

Whereas Commission Regulation (EEC) No 1751/84⁽³⁾, as last amended by Regulation (EEC) No 2361/87⁽⁴⁾, laid down certain provisions for the application of Council Regulation (EEC) No 3599/82 on temporary importation arrangements, and in particular established in Annex IV a list of goods to be considered as professional equipment and laid down the procedures for placing goods under temporary importation arrangements and the cases in which a security is not required;

Whereas customs formalities for the temporary importation of instruments and apparatus necessary for doctors to provide assistance for patients awaiting an organ transplant should be facilitated so that the operations can be arranged as quickly as possible; whereas it is therefore necessary to include this equipment in the list of cases in which the obligation to present a written declaration may be suspended and also those in which the relevant authorities shall not require the provision of a security;

Whereas furthermore it is advisable to specify the information which must appear in the inventory provided for in Article 13 (1);

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Committee for Customs procedures with economic impact,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1751/84 is hereby amended as follows:

1. The following fourth indent is added to Article 13 (1):
'The instruments and apparatus necessary or doctors to provide assistance for patients awaiting an organ transplant pursuant to Article 7 of the basic Regulation.'
2. The following subparagraphs (e) and (f) are added to Article 13 (1):
'(e) precise information about the number of items of each type of goods;
(f) the place of use in the cases specified in the fourth indent.'
3. In Annex I:
 1. under point 1 'specified in point 7' is replaced by 'specified in points 7 and 8';
 2. the following point 8 is added:
'8. Temporary importation of instruments and apparatus necessary for doctors to provide assistance for patients awaiting an organ transplant.'

Article 2

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

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

Done at Brussels, 11 November 1988.

For the Commission

COCKFIELD

Vice-President

⁽¹⁾ OJ No L 376, 31. 12. 1982, p. 1.

⁽²⁾ OJ No L 155, 14. 6. 1985, p. 54.

⁽³⁾ OJ No L 171, 29. 6. 1984, p. 1.

⁽⁴⁾ OJ No L 215, 5. 8. 1987, p. 9.

COUNCIL DIRECTIVE

of 21 December 1988

amending Directive 74/651/EEC on the tax reliefs to be allowed on the importation of goods in small consignments of a non-commercial character within the Community

(88/663/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Article 1 (4) of Directive 74/651/EEC ⁽⁴⁾, as last amended by Directive 85/349/EEC ⁽⁵⁾, provides that every two years and for the first time on 31 October 1987 at the latest, the Council, acting in accordance with the procedures laid down by the Treaty in the matter, is to adjust the amounts of the reliefs referred to in paragraphs 2 (d) and 2a of that Article in order to maintain real value;

Whereas, according to the survey conducted by the Commission, the weighted average increase in the price index for the Member States is 11,3% for the period from 1 October 1985 to 31 December 1988;

Whereas the resulting amounts should be rounded off;

Whereas, in the event of the adjustment of the Community relief resulting in a change of less than 5% in the relief expressed in national currency or in a reduction in that relief, the Member State concerned should be permitted to retain the amount, in national currency, obtaining before such change.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 1 of Directive 74/651/EEC is hereby amended as follows:

(a) in paragraph 2 (d), '100 ECU' is replaced by 'ECU 110';

(b) in paragraph 2a, '77 ECU' is replaced by 'ECU 85';

(c) a new paragraph 5 is added after paragraph 4, reading as follows:

'5. Member States may maintain the existing amount of the relief if the conversion of the amounts of the reliefs, expressed in ecus, would result in a change of less than 5% in the relief expressed in national currency or in a reduction in that relief.'

Article 2

1. Member States shall bring into force the measures necessary to comply with this Directive not later than 1 July 1989.

2. Member States shall inform the Commission of the provisions of national law which they adopt to implement this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 21 December 1988.

For the Council

The President

V. PAPANDREOU

⁽¹⁾ OJ No C 5, 9. 1. 1988, p. 5 and

OJ No C 272, 21. 10. 1988, p. 5.

⁽²⁾ OJ No C 235, 12. 9. 1988, p. 139.

⁽³⁾ OJ No C 80, 28. 3. 1988, p. 13.

⁽⁴⁾ OJ No L 354, 30. 12. 1974, p. 57.

⁽⁵⁾ OJ No L 183, 16. 7. 1985, p. 27.

COUNCIL DIRECTIVE

of 21 December 1988

amending for the ninth time Directive 69/169/EEC 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 level

(88/664/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Articles 2 (6) and 7b (4) of Council Directive 69/169/EEC ⁽⁴⁾, as last amended by Directive 87/198/EEC ⁽⁵⁾, provide that every two years, and for the first time on 31 October 1987 at the latest, the Council, acting in accordance with the procedures provided for by the Treaty on this point, is to adjust the amounts of the exemptions referred to in paragraphs 1 and 2 of those Articles in order to maintain their genuine value;

Whereas, according to the survey conducted by the Commission, the weighted average increase in the price index for the Member States is 11,3% for the period from 1 October 1985 to 31 December 1988;

Whereas the resulting amounts should be rounded off;

Whereas, in the event of the adjustment of the Community exemption resulting in a change of less than 5% in the exemption expressed in national currency or in a reduction in that exemption, the Member State concerned should be permitted to retain the amount, in national currency, obtaining before such change,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 69/169/EEC is hereby amended as follows:

1. in Article 2:

- (a) in paragraph 1, '350 ECU' is replaced by 'ECU 390';

- (b) in paragraph 2, '90 ECU' is replaced by 'ECU 100';

2. in Article 7, the following paragraph is added:

'5. Member States may maintain the existing amount of the exemption if the conversion of the amounts of the exemptions, expressed in ecus, adopted during the adjustment referred to in Articles 2 (6) and 7b (4) would result in a change of less than 5% in the exemption expressed in national currency or in a reduction in that exemption';

3. in Article 7b:

- (a) in paragraph 1 (a), '280 ECU' is replaced by 'ECU 310';
- (b) in paragraph 1 (b), '77 ECU' is replaced by 'ECU 85';
- (c) in paragraph 2, '77 ECU' is replaced by 'ECU 85'.

Article 2

1. Member States shall bring into force the measures necessary to comply with this Directive by 1 July 1989.

2. Member States shall inform the Commission of the provisions of national law which they adopt to implement this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 21 December 1988.

For the Council
The President
V. PAPANDEOU

⁽¹⁾ OJ No C 102, 16. 4. 1988, p. 4 and OJ No C 272, 21. 10. 1988, p. 6.

⁽²⁾ OJ No C 235, 12. 9. 1988, p. 138.

⁽³⁾ OJ No C 95, 11. 4. 1988, p. 11.

⁽⁴⁾ OJ No L 133, 4. 6. 1969, p. 6.

⁽⁵⁾ OJ No L 78, 20. 3. 1987, p. 53.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 13 March 1989

amending Directive 69/169/EEC as regards a derogation granted to the Kingdom of Denmark relating to the rules governing travellers' allowances on imports

(89/194/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas, until 31 December 1988, the Kingdom of Denmark enjoyed a derogation from Directive 69/169/EEC ⁽⁴⁾, as last amended by Directive 88/664/EEC ⁽⁵⁾, with regard to the import of certain products by travellers having their residence in Denmark after having stayed in another country for less than 48 hours; whereas, in addition, the Kingdom of Denmark applies a reduced quantitative limit for still wines;

Whereas the same Directive grants the Kingdom of Denmark a derogation to exclude from the travellers' allowance of ECU 390 goods the unit value of which exceeds ECU 310;

Whereas this derogation should be seen in the context of Article 8a of the Treaty, which defines the internal market as an area without internal frontiers in which the free

movement of goods, persons, services and capital is ensured and states that this market should be progressively established over a period expiring on 31 December 1992;

Whereas the Government of the Kingdom of Denmark has announced that it will work actively to arrive at a satisfactory common solution in relation to the approximation of indirect taxation in the Community in the light of the internal market; whereas, with this in mind, the Danish Government has stated that the special excise duties on electronic and household electrical goods will be reduced or abolished and the current rates of excise duties in force in respect of cigarettes, tobacco and alcoholic beverages will not be changed; whereas the Government has also indicated that certain administrative practices relating to the control of travellers entering Denmark from other Member States will be discontinued;

Whereas the immediate cessation of some of the existing derogations could cause economic difficulties for Denmark and whereas their application, in a modified fashion, should be extended to 31 December 1990,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The following is added to Article 7b (1) (a) of Directive 69/169/EEC:

'for the Kingdom of Denmark this threshold figure shall be increased to ECU 340 from 1 January 1990'.

⁽¹⁾ OJ No C 26, 1. 2. 1989, p. 12.

⁽²⁾ Opinion delivered on 17 February 1989 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 25 January 1989 (not yet published in the Official Journal).

⁽⁴⁾ OJ No L 133, 4. 6. 1969, p. 6.

⁽⁵⁾ OJ No L 382, 31. 12. 1988, p. 41.

Article 2

Article 7c of Directive 69/169/EEC is hereby replaced by the following :

Article 7c

By way of derogation from Article 4 (1), the Kingdom of Denmark shall be authorized to apply until 31 December 1990 the following quantitative limits for the importation of the goods in question by travellers resident in Denmark after a stay of less than 48 hours in another country :

- | | |
|---|-------|
| — cigarettes | 80 |
| OR | |
| — smoking tobacco, where the tobacco particles have a width of less than 1,5 mm ("fine cut") | 150 g |
| — distilled beverages and spirit drinks of an alcoholic strength by volume of more than 22.% vol. | nil |

Article 3

By 30 June 1990 the Commission shall review the position and put forward a proposal for the continuation of the derogation, amended as appropriate.

Article 4

1. Member States shall take the measures necessary to comply with this Directive with effect from 1 January 1989.
2. Member States shall inform the Commission of the provisions which they adopt to implement this Directive.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 13 March 1989.

For the Council

The President

C. SOLCHAGA CATALAN

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DIRECTIVE

of 7 March 1989

amending Council Directive 83/181/EEC determining the scope of Article 14 (1) (d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods, to take account of the introduction of the combined nomenclature

(89/219/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾, as last amended by Regulation (EEC) No 20/89⁽²⁾, and in particular Article 15 thereof,

Whereas classification of the goods listed in the Annex to Council Directive 83/181/EEC⁽³⁾, as last amended by Directive 88/331/EEC⁽⁴⁾, is based on the use of the nomenclature of the Customs Cooperation Council;

Whereas the Customs Cooperation Council approved the International Convention on the Harmonized Commodity Description and Coding System (hereafter referred to as the 'HS'); whereas that Convention was approved by the Council by Decision 87/369/EEC⁽⁵⁾ and has been applied since 1 January 1988; whereas a combined nomenclature has accordingly been established to give effect to the HS within the European Economic Community; whereas the references in Article 1 (2) (d) and in the Annex to Directive 83/181/EEC should therefore be based on the said combined nomenclature;

Whereas adapting Directive 83/181/EEC to the combined nomenclature consequently involves a purely technical

amendment which in no way alters the scope of the reliefs provided for in the said Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 83/181/EEC is hereby amended as follows:

1. In Article 1 (2) (d) the reference to heading Nos 22.03 to 22.09 of the Common Customs Tariff is replaced by a reference to CN codes 2203 to 2208.
2. The Annex is replaced by the Annex to this Directive.

Article 2

Member States shall bring into force the measures necessary to comply with this Directive not later than 1 July 1989. They shall immediately inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 7 March 1989.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽²⁾ OJ No L 4, 6. 1. 1989, p. 19.

⁽³⁾ OJ No L 105, 23. 4. 1983, p. 38.

⁽⁴⁾ OJ No L 151, 17. 6. 1988, p. 79.

⁽⁵⁾ OJ No L 198, 20. 7. 1987, p. 1.

ANNEX

ANNEX

Visual and auditory materials of an educational, scientific or cultural character

CN code	Description
3704 00	Photographic plates, film, paper, paperboard and textiles, exposed but not developed :
ex 3704 00 10	- Plates and film :
	- Cinematograph film, positives, of an educational, scientific or cultural character
ex 3705	Photographic plates and film, exposed and developed, other than cinematograph film :
	- Of an educational, scientific or cultural character
3706	Cinematograph film, exposed and developed, whether or not incorporating sound track or consisting only of sound track :
3706 10	- Of a width of 35 mm or more :
	- - Other :
ex 3706 10 99	- - - Other positives :
	- Newsreels (with or without sound track) depicting events of current news value at the time of importation, and imported up to a limit of two copies of each subject for copying purposes
	- Archival film material (with or without sound track) intended for use in connection with newsreel films
	- Recreational films particularly suited for children and young people
	- Other films of educational, scientific or cultural character
3706 90	- Other :
	- - Other :
	- - - Other positives :
ex 3706 90 51	- Newsreels (with or without sound track) depicting events of current news value at the time of importation, and imported up to a limit of two copies of each subject for copying purposes
ex 3706 90 91	- Archival film material (with or without sound track) intended for use in connection with newsreel films
ex 3706 90 99	- Recreational films particularly suited for children and young people
	- Other films of educational, scientific or cultural character :
4911	Other printed matter, including printed pictures and photographs :
	- Other :
4911 99	- - Other :
ex 4911 99 90	- - - Other :
	- Microcards or other information storage media required in computerized information and documentation services of an educational, scientific or cultural character
	- Wall charts designed solely for demonstration and education
ex 8524	Records, tapes and other recorded media for sound or other similarly recorded phenomena including matrices and masters for the production of records, but excluding products of Chapter 37 :
	- Of an educational, scientific or cultural character
ex 9023 00	Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for others uses :
	- Patterns, models and wall charts of an educational, scientific or cultural character, designed solely for demonstration and education
	- Mock-ups or visualizations of abstract concepts such as molecular structures or mathematical formulae
Various	Holograms for laser projection
	Multi-media kits
	Materials for programmed instructions, including materials in kit form with the corresponding printed materials'

COMMISSION DIRECTIVE

of 7 March 1989

amending Council Directive 69/169/EEC 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, to take account of the introduction of the combined nomenclature

(89/220/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾, as last amended by Regulation (EEC) No 20/89⁽²⁾, and in particular Article 15 thereof,

Whereas the classification of the goods listed in Article 5 (6) of Council Directive 69/169/EEC⁽³⁾, as last amended by Directive 88/664/EEC⁽⁴⁾, is based on the use of the nomenclature of the Customs Cooperation Council;

Whereas the Customs Cooperation Council approved the International Convention on the Harmonized Commodity Description and Coding System (hereinafter referred to as the 'HS'); whereas that Convention was approved by the Council by Decision 87/369/EEC⁽⁵⁾ and has been applied since 1 January 1988; whereas a combined nomenclature has accordingly been established to give effect to the HS within the European Economic Community; whereas the reference in Article 5 (6) of Directive 69/169/EEC should therefore be to the said combined nomenclature;

Whereas adapting Directive 69/169/EEC to the combined nomenclature consequently involves a purely technical amendment which in no way alters the scope of the said Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Article 5 (6) of Directive 69/169/EEC the reference to heading Nos 71.07 and 71.08 of the Common Customs Tariff is hereby replaced by a reference to CN codes 7108 and 7109.

Article 2

Member States shall bring into force the measures necessary to comply with this Directive not later than 1 July 1989. They shall inform the Commission thereof immediately.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 7 March 1989.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽²⁾ OJ No L 4, 6. 1. 1989, p. 19.

⁽³⁾ OJ No L 133, 4. 6. 1969, p. 6.

⁽⁴⁾ OJ No L 382, 31. 12. 1988, p. 41.

⁽⁵⁾ OJ No L 198, 20. 7. 1987, p. 1.

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1292/89

of 3 May 1989

amending Regulation (EEC) No 3/84 introducing arrangements for movement within the Community of goods sent from one Member State for temporary use in one or more other Member States

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Regulation (EEC) No 3/84 ⁽⁴⁾ became applicable on 1 July 1985 for an initial experimental period of three years; whereas, in the light of the report on the operation of the arrangements introduced by the abovementioned Regulation, submitted to the Council by the Commission on 15 March 1988, the period of validity of the said Regulation was extended until 30 June 1989 by Regulation (EEC) No 1227/88 ⁽⁵⁾;

Whereas Article 17 (2) of Regulation (EEC) No 3/84 provides that the Council, acting in accordance with Article 235 of the Treaty, and on the basis of the abovementioned report, shall decide on the definitive application of the said Regulation and on any amendments to be made to its provisions, in particular for the purpose of simplifying the arrangements; whereas, following the amendment of the Treaty by the Single European Act, Article 100a provides the legal basis to be used in adopting provisions aimed at the establishment and operation of the internal market; whereas that Article should therefore be the basis for adopting this Regulation;

Whereas, in particular, it emerges from the abovementioned report that since their introduction, the arrangements for the movement of goods within the Community have been fairly widely used and meet a real need on the part of users who appreciate, amongst other things, the fact that no security is required and the

facilities they are afforded when crossing frontiers; whereas, consequently, it appears advisable to retain the said arrangements until the single market is established;

Whereas numerous private individuals and business people have contended that the number of goods and beneficiaries covered by Regulation (EEC) No 3/84 is too restricted; whereas, when the Regulation was adopted, it was deemed appropriate to cover only those goods which, when temporarily imported, were granted tax exemption on an identical basis by all Member States under the terms of international conventions; whereas the main beneficiaries of the arrangements are public, official or approved bodies;

Whereas this situation changed considerably upon adoption of the Seventeenth Council Directive 85/362/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — exemption from value added tax on the temporary importation of goods other than means of transport ⁽⁶⁾, which provides that temporary importation with exemption from VAT shall be granted for a wide range of Community goods which are imported temporarily from one Member State into another, in principle irrespective of the beneficiaries; whereas it would therefore appear logical to extend the scope of Regulation (EEC) No 3/84 along the same lines; whereas, however, in order to enable the arrangements for the movement of goods within the Community to play the role which they can in fact play in regard to the establishment of the internal market, such extension must be effected subject to retention of the existing advantages of the said arrangements and, in particular, without requiring security to be provided, even as an optional requirement, and whereas such an option is provided for in the Seventeenth Directive;

Whereas, moreover, in order to ensure that the Seventeenth Directive and Regulation (EEC) No 3/84 correspond, the period of validity of the Community movement carnet introduced by the abovementioned Regulation must be brought into line with the periods during which goods may remain under the temporary importation arrangements provided for in the Directive;

⁽¹⁾ OJ No C 324, 17. 12. 1988, p. 8.

⁽²⁾ OJ No C 69, 20. 3. 1989 and Decision of 12 April 1989 (not yet published in the Official Journal).

⁽³⁾ OJ No C 102, 24. 4. 1989, p. 11.

⁽⁴⁾ OJ No L 2, 4. 1. 1984, p. 1.

⁽⁵⁾ OJ No L 118, 6. 5. 1988, p. 1.

⁽⁶⁾ OJ No L 192, 24. 7. 1985, p. 20.

Whereas the procedure in respect of the carnet appears in some cases to be awkward and even superfluous ; whereas, in order to mitigate such disadvantages and in the light of Council Regulation (EEC) No 4283/88 of 21 December 1988 on the abolition of certain exit formalities at internal Community frontiers — introduction of common border posts ⁽¹⁾, it would appear possible, in respect of the abovementioned carnet, to abolish certain formalities which are at present carried out on leaving the Member States of transit and use without jeopardizing the correct application of the arrangements for movement within the Community ; whereas, for the same purpose, it would appear appropriate in regard to certain categories of goods to enable them to move under arrangements without formalities throughout the Community ;

Whereas, in the present circumstances, goods under cover of the Community movement carnet cannot cross the territory of third countries ; whereas such a situation may sometimes be detrimental to the movement of the goods in question between two points within the customs territory of the Community ; whereas in such cases, pending the adoption of a suitable solution in conjunction with the third countries concerned, provision should be made for the arrangements for movement within the Community to be suspended while the goods cross such countries, and for them to be re-established when the goods in question again enter the customs territory of the Community ;

Whereas, pursuant to Article 1 thereof, Regulation (EEC) No 3/84 is applicable to goods which leave one Member State and which, after being sent to one or more Member States for the purpose of temporary use there, are intended to be returned without alteration to the territory of the Member State of departure ; whereas, however, in a number of clearly defined and strictly limited cases, the scope of the said Regulation should be extended to cover certain goods which are not likely to be returned to the Member State of departure,

HAS ADOPTED THIS REGULATION :

Article 1

Regulation (EEC) No 3/84 is hereby amended as follows :

1. In Article 1, paragraph 1 is replaced by the following and paragraph 1a is inserted :

'1. Without prejudice to Regulation (EEC) No 4283/88 ⁽¹⁾, other Community provisions and Article 12a of this Regulation, the arrangements governing the movement of goods within the Community, hereinafter referred to as the "arrangements", shall apply to goods sent and/or transported from one

Member State for the purposes of temporary use in one or more other Member States, which, pursuant to the Treaties and the rules deriving therefrom, are not subject to prohibitions or restrictions unless they meet the conditions laid down by these rules, and which are intended to be returned without alteration to the territory of the Member State of departure.

- 1a. The following shall be excluded from the scope of this Regulation :

- (a) means of transport, including pallets and containers, except vehicles designed or specially adapted for use as mobile control posts, workshops or laboratories, equipment for the press, sound or television broadcasting or cinematography for the purposes of reporting, transmitting or recording material or making films, and breakdown vehicles ;
- (b) made-up articles of fur, precious stones, carpets and articles of jewellery ;
- (c) consumable goods, except such goods which are commercial samples, presented as such, provided that they are returned without alteration to the territory of the Member State of departure ;
- (d) those goods referred to in Title III of Regulation (EEC) No 3599/82 ⁽²⁾, as amended by Regulation (EEC) No 1620/85 ⁽³⁾, which are subject to residual duties pursuant to Articles 31 and 130 of the 1985 Act of Accession and which move between the Community of Ten, Spain and Portugal or between these two Member States ;
- (e) works of art other than those referred to in Article 12a.

⁽¹⁾ OJ No L 382, 31. 12. 1988, p. 1.

⁽²⁾ OJ No L 376, 31. 12. 1982, p. 1.

⁽³⁾ OJ No L 155, 14. 6. 1985, p. 54.'

2. In Article 4 (2), (a) is replaced by the following :

'(a) ensure that the procedures referred to in Title II are correctly carried out and that the arrangements are settled before expiry of the period of validity of the carnet referred to in Article 5.'

3. The following is inserted before Article 5 :

Article 4a

The arrangements shall include two procedures :

1. a normal procedure applicable to all goods ;
2. a simplified procedure applicable to the goods referred to in Article 10a.

⁽¹⁾ OJ No L 382, 31. 12. 1988, p. 1.

Section I

Normal procedure'

4. Article 5 (1) is replaced by the following :

'1. For the purposes of movement under the normal procedure, goods shall be covered by a Community movement carnet, hereinafter referred to as a "carnet", issued by the competent authorities of the Member State of departure.'

5. In Article 6 (2), the second indent is replaced by the following :

'— fix the period of validity of the carnet, without prejudice to the limit laid down in Article 12a ; the period shall not exceed 24 months. In the case of racehorses, the period of validity of the carnet may not exceed six months.'

6. Article 10 is replaced by the following :

'Article 10

1. The competent authorities of the Member State in whose territory the goods are temporarily used may, at the request of the beneficiary :

- (a) extend the period during which the goods may remain in their territory, within the period of validity of the carnet ;
- (b) allow the goods to be temporarily used in their territory at one or more places other than that or those stated on the carnet ;

2. The competent authorities referred to in paragraph 1 shall, by way of derogation from Article 1 (1), authorize repairs, including the replacement of defective parts, to the equipment temporarily used in their territory.

3. To this end, they shall enter the necessary particulars on the carnet.'

7. The following sections are inserted after Article 10 :

'Section II

Simplified procedure

Article 10a

1. By way of derogation from Section I, movement under these arrangements of :

- (a) any portable professional equipment ;
- (b) press, broadcasting and television equipment, including the various vehicles specially adapted for this purpose and their equipment,

introduced for professional purposes, shall be exempt from all formalities, without prejudice to the right of the competent authority to exercise its power of supervision where necessary.

2. Professional equipment means the equipment and accessories necessary for carrying out the occupation or profession of a person established in the Member State of departure, who is travelling in

another Member State to carry out a specific job there.

Section III

Common provisions

Article 10b

Where, under the arrangements, goods moving between two points within the Community must cross the territory of a third country, the effects of the arrangements shall be suspended during transit through the third country in question.'

8. Article 12 (2) is replaced by the following :

'2. When a Member State on whose territory an irregularity has been committed in the course of, or in connection with, a movement operation cannot recover the charges due, the competent authorities of the Member State of departure shall recover, on behalf of the other Member State, the amount which the beneficiary is obliged to pay in accordance with Article 4 (2) (c) together with any interest due in view of the delay, where appropriate. Such recovery shall be carried out by the Member State in accordance with its laws, regulations or administrative provisions relating to the recovery of fiscal debts. Where the beneficiary contests the claim against him, he shall lodge his appeal in the Member State which has made the request for recovery. No action for recovery shall be taken until the appeal proceedings have been concluded.

Alternatively, the Member State which is recovering the debt may apply the provisions adopted pursuant to Directive 76/308/EEC (1), as last amended by the Act of Accession of Spain and Portugal.'

9. After Article 12 the following is inserted :

'Title IIIa

Special provisions

Article 12a

By way of derogation from Article 1 (1), this Regulation shall also apply to :

- 1. works of art referred to in Article 29 (1) (d) of the Seventeenth VAT Directive which are accompanied by their authors or their agents ;
- 2. spare parts which are normal equipment for persons required to carry out repairs or maintenance.

In the cases referred to in 1 and 2, the period of validity of the Community carnet may not exceed six months.'

10. The third subparagraph of Article 16 and the whole of Article 17 are deleted.

Article 2

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 July 1989.

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

Done at Brussels, 3 May 1989.

For the Council

The President

P. SOLBES

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC, EURATOM) No 1552/89

of 29 May 1989

implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 209 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to Council Decision 88/376/EEC, Euratom of 24 June 1988 on the system of the Communities' own resources ⁽¹⁾, and in particular Article 8 (2) thereof,

Having regard to the proposal from the Commission ⁽²⁾,

Having regard to the opinion of the European Parliament ⁽³⁾,

Having regard to the opinion of the Court of Auditors ⁽⁴⁾,

Whereas in the light of experience gained in applying Council Regulation (EEC, Euratom, ECSC) No 2891/77 of 19 December 1977 implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources ⁽⁵⁾, as amended by Regulation (ECSC, EEC, Euratom) No 1990/88 ⁽⁶⁾, it appears that the provisions of that Regulation must be entirely redrafted;

Whereas the Community must have the own resources referred to in Article 2 of Decision 88/376/EEC, Euratom available in the best possible conditions and accordingly arrangements must be laid down for the States to provide the Commission with the own resources allocated to the Communities;

Whereas traditional own resources are levied by the Member States in accordance with laws, regulations and

administrative provisions that are, where necessary, adapted to the requirements of Community regulations;

Whereas the concept of establishment must be defined in respect of the own resources referred to in Article 2 (1) (a) and (b) of the said Decision;

Whereas separate accounts should be kept for entitlements which have not been recovered; whereas these accounts and the submission of a quarterly statement of such accounts should enable the Commission to monitor more closely the action taken by Member States to collect own resources, and particularly those compromised by fraud or irregularities;

Whereas provision should be made, as regards the own resources accruing from value added tax, hereinafter called 'VAT resources', referred to in Article 2 (1) (c) of the said Decision, for Member States to make available to the Community, in the form of constant monthly twelfths, the own resources entered in the budget and subsequently to adjust the amounts made available in accordance with the actual base of VAT resources as soon as it is fully known;

Whereas this procedure is also to apply to the additional resource referred to in Article 2 (1) (d) of the said Decision, hereinafter referred to as 'the additional resource', created in accordance with Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonization of the compilation of the gross national product at market prices ⁽⁷⁾;

Whereas the own resources must be made available in the form of an entry of the amounts due in an account opened for this purpose in the name of the Commission with the Treasury or with the body appointed by each Member State; whereas in order to restrict the movements of funds to that which is necessary for the implementation of the budget, the Community must confine itself to drawing on the abovementioned accounts solely to cover the Commission's cash requirements;

⁽¹⁾ OJ No L 185, 15. 7. 1988, p. 24.

⁽²⁾ OJ No C 255, 1. 10. 1988, p. 5, and OJ No C 80, 31. 3. 1989, p. 8.

⁽³⁾ OJ No C 12, 16. 1. 1989, p. 42.

⁽⁴⁾ OJ No C 313, 8. 12. 1988, p. 31.

⁽⁵⁾ OJ No L 336, 27. 12. 1977, p. 1.

⁽⁶⁾ OJ No L 176, 7. 7. 1988, p. 1.

⁽⁷⁾ OJ No L 49, 21. 2. 1989, p. 26.

Whereas the balance to be carried forward to the following financial year should be defined;

Whereas, in order to ensure that the Community budget will be financed in all circumstances, the procedure for making available the contributions based on the gross national product, hereinafter referred to as the 'GNP financial contributions', referred to in Article 2 (7) of Decision 88/376/EEC, Euratom should be laid down;

Whereas the Member States must keep at the disposal of the Commission and, where necessary, forward to it the documents and information needed to allow it to exercise the power conferred upon it as regards the Communities' own resources;

Whereas the Member States should conduct the checks and enquiries relating to the establishment and making available of own resources; whereas the Commission should exercise its powers in accordance with this Regulation; whereas the powers of the Commission should be stipulated with regard to the inspection measures on the additional resource;

Whereas close cooperation between Member States and the Commission is likely to facilitate the correct application of this Regulation,

HAS ADOPTED THIS REGULATION:

TITLE I

General provisions

Article 1

The Community's own resources provided for in Decision 88/376/EEC, Euratom, hereinafter referred to as 'own resources' shall be made available to the Commission and inspected as specified in this Regulation, without prejudice to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾ and Directive 89/130/EEC, Euratom.

Article 2

1. For the purpose of applying this Regulation, the Community's entitlement to the own resources referred to in Article 2 (1) (a) and (b) of Decision 88/376/EEC, Euratom shall be established as soon as the amount due has been notified by the competent department of the Member State to the debtor. Notification shall be given as soon as the debtor is known and the amount of entitlement can be calculated by the competent administrative authorities, in compliance with all the relevant Community provisions.

⁽¹⁾ See page 9 of this Official Journal.

2. Paragraph 1 shall apply when a notification must be corrected.

Article 3

Member States shall take all appropriate measures to ensure that the supporting documents concerning the establishment and the making available of own resources are kept for at least three calendar years, as from the end of the year to which these supporting documents refer.

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

The supporting documents relating to the statistical procedures and bases referred to in Articles 4 and 5 of Directive 89/130/EEC, Euratom shall be kept by the Member States until 30 September of the fourth year following the financial year in question. The supporting documents relating to the VAT resources base shall be kept for the same period.

Article 4

1. Each Member State shall inform the Commission:
 - (a) of the names of the departments or agencies responsible for establishing own resources and, where appropriate, their status;
 - (b) of the general provisions laid down by law, regulation or administrative action and those relating to accounting procedure concerning the establishment and collection of own resources and their being made available to the Commission.
2. The Commission shall, at the request of the other Member States, pass to them the information referred to in paragraph 1.

Article 5

The rate referred to in Article 2 (1) (d) of Decision 88/376/EEC, Euratom, which shall be set within the budgetary procedure, shall be calculated as a percentage of the sum of the forecast GNP of the Member States in such manner that it fully covers that part of the budget not financed from customs duties, agricultural levies, VAT resources, financial contributions to supplementary research and technological development programmes, other revenue and, where appropriate, GNP financial contributions. This rate shall be expressed in the budget by a figure rounded off to the fourth decimal place.

TITLE II

Accounts for own resources

Article 6

1. Accounts for own resources shall be kept by the Treasury of each Member State or by the body appointed by each Member State and broken down by type of resources.
2. (a) Entitlements established in accordance with Article 2 shall, subject to point (b) of this paragraph, be entered in the accounts at the latest on the first working day after the 19th day of the second month following the month during which the entitlement was established.

(b) Established entitlements not entered in the accounts referred to in point (a) because they have not yet been recovered and no security has been provided shall be shown in separate accounts within the period laid down in point (a). Member States may adopt this procedure where established entitlements for which security has been provided have been challenged and might upon settlement of the disputes which have arisen be subject to change.

(c) VAT resources and the additional resources shall, however, be recorded in the accounts as specified in point (a) as follows:
 - the twelfth referred to in Article 10 (3) shall be recorded on the first working day of each month,
 - the balances referred to in Article 10 (4) and (7) and the adjustments referred to in Article 10 (6) and (8) shall be recorded annually, except for the particular adjustments referred to in the first indent of Article 10 (6), which shall be recorded in the accounts on the first working day of the month following agreement between the Member State concerned and the Commission.
3. Each Member State shall send the Commission, within the time limits specified in paragraph 2, a monthly statement of its accounts for the entitlements referred to in paragraph 2 (a) and a quarterly statement for the separate accounts referred to in paragraph 2 (b).

From 1 January 1990, each Member State shall send the Commission a half-yearly statement giving a brief description of cases of fraud and irregularities involving entitlements of over ECU 10 000, indicating, where appropriate, measures taken or under consideration in order to prevent the recurrence of cases of fraud and irregularities already detected.

Article 7

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

Article 8

Corrections carried out under Article 2 (2) shall be added to or subtracted from the total amount of established entitlements. They shall be recorded in the accounts as specified in Article 6 (2) (a) and (b) and in the statements as specified in Article 6 (3) in accordance with the date of these corrections.

Corrections in respect of cases of fraud and irregularities already notified to the Commission shall be singled out.

TITLE III

Making available own resources

Article 9

1. In accordance with the procedure laid down in Article 10, each Member State shall credit own resources to the account opened in the name of the Commission with its Treasury or the body it has appointed.

This account shall be kept free of charge.

2. The amounts credited shall be converted by the Commission and entered in its accounts in ecus in accordance with Commission Regulation 86/610/EEC, Euratom, ECSC, of 11 December 1986 laying down detailed rules for the implementation of certain provisions of the financial regulation of 21 December 1977 ⁽¹⁾.

Article 10

1. After deduction of 10% by way of collection costs in accordance with Article 2 (3) of Decision 88/376/EEC, Euratom, entry of the own resources referred to in Article 2 (1) (a) and (b) of that Decision shall be made at the latest on the first working day following the 19th day of the second month following the month during which the entitlement was established in accordance with Article 2.

However, for entitlements shown in separate accounts under Article 6 (2) (b), the entry must be made at the latest on the first working day following the 19th day of the second month following the month in which the entitlements were recovered.

⁽¹⁾ OJ No L 360, 19. 12. 1986, p. 1.

2. If necessary, Member States may be invited by the Commission to bring forward by one month the entering of resources other than VAT resources and the additional resource on the basis of the information available to them on the 15th of the same month.

Each entry brought forward shall be adjusted the following month when the entry mentioned in paragraph 1 is made. This adjustment shall entail the negative entry of an amount equal to that given in the entry brought forward.

3. VAT resources, the additional resource — excluding the own resources for the EAGGF monetary reserve — and, where appropriate, GNP financial contributions shall be credited on the first working day of each month, the amounts being one-twelfth of the relevant totals in the budget, converted into national currencies at the rates of exchange of the last day of quotation of the calendar year preceding the budget year, as published in the *Official Journal of the European Communities*.

The entry in respect of the EAGGF monetary reserve referred to in Article 6 of Decision 88/376/EEC, Euratom shall be made on the first working day of the month following the charging to the budget of the expenditure concerned and shall be limited to the said expenditure if charging is effected before the 16th day of the month. If such is not the case, the entry shall be made on the first working day of the second month after charging. By way of derogation from Article 5 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities⁽¹⁾, as last amended by Regulation (ECSC, EEC, Euratom) No 2049/88⁽²⁾, that entry will be taken into account in the financial year to which it relates.

Any change in the uniform rate of VAT resources, in the correction granted to the United Kingdom referred to in Article 5 of Decision 88/376/EEC, Euratom and in its financing, in the uniform rate of the additional resource and, where appropriate, in the GNP financial contributions shall require the final adoption of a supplementary or amending budget and shall give rise to readjustments of the twelfths which have been entered since the beginning of the financial year.

These readjustments shall be carried out when the first entry is made following the final adoption of the amending or supplementary budget if it is adopted before the 16th of the month. Otherwise they shall be carried out when the second entry following final adoption is made. By way of derogation from Article 5 of the Financial Regulation hereafter referred to as the Financial Regulation, these readjustments shall be entered in the accounts in respect of the financial year of the supplementary or amending budget in question.

Calculation of the twelfths for January of each financial year shall be based on the amounts provided for in the draft

⁽¹⁾ OJ No L 356, 31. 12. 1977, p. 1.

⁽²⁾ OJ No L 185, 15. 7. 1988, p. 3.

budget, with the exception of the amounts for financing the EAGGF monetary reserve, referred to in Article 78 (3) of the ECSC Treaty, Article 203 (3) of the EEC Treaty and Article 177 (3) of the EAEC Treaty and converted into national currencies at the rates of exchange of the first day of quotation following 15 December of the calendar year preceding the budget year; the adjustment shall be made with the entry for the following month.

If the budget has not been finally adopted before the beginning of the financial year, the Member States shall enter on the first working day of each month, including January, one-twelfth of the amount of VAT own resources, of the additional resource, with the exception of the amounts for financing the EAGGF monetary reserve, and, where appropriate, of the GNP financial contributions entered in the last budget finally adopted; the adjustment shall be made on the first due date following final adoption of the budget if it is adopted before the 16th of the month. Otherwise, the adjustment shall be made on the second due date following final adoption of the budget.

4. Each Member State shall, on the basis of the annual statement on the VAT resources base provided for in Article 7 (1) of Regulation (EEC, Euratom) No 1553/89, be debited with an amount calculated from the information contained in the said statement by applying the uniform rate adopted for the previous financial year and credited with the 12 payments made during that financial year. However, each Member State's VAT own resources base to which the above rate is applied may not exceed 55 % of its GNP as referred to in the first sentence of paragraph 7 of this Article. The Commission shall work out the balance and shall inform the Member States in time for them to enter it in the account referred to in Article 9 (1) of this Regulation on the first working day of December of the same year.

5. The Commission shall then calculate adjustments to the financial contributions so as to restore, in the light of the actual yield from VAT resources, the original distribution in the budget between the latter and the GNP financial contributions. For the calculation of these adjustments, the balances referred to in paragraph 4 shall be converted into ecus at the rates of exchange applying on the first working day after 15 November preceding the entries provided for in paragraph 4. For each Member State concerned, the total of VAT balances shall be adjusted by the ratio between the financial contributions entered in the budget and the VAT resources. The Commission shall communicate the results of this calculation to the Member States which, during the previous financial year, paid GNP financial contributions so that they can make a credit or debit entry as appropriate in the account referred to in Article 9 (1) on the first working day of December of the same year.

6. Any corrections to the VAT resources base under Article 9 (1) of Regulation (EEC, Euratom) No 1553/89 shall give rise for each Member State concerned whose base, allowing for these corrections, does not exceed 55 % of its

GNP to the following adjustments to the balance referred to in paragraph 4 of this Article:

- the corrections under the first subparagraph of Article 9 (1) of Regulation (EEC, Euratom) No 1553/89 made by 31 July shall give rise to a general adjustment to be entered in the account referred to in Article 9 (1) of this Regulation on the first working day of December of the same year, provided that the corrections apply to years after 1987; otherwise the adjustment shall be made on 1 October of the same year. However, a particular adjustment may be entered before that date if the Member State concerned and the Commission are in agreement,
- where the measures which the Commission takes under the second subparagraph of Article 9 (1) of Regulation (EEC, Euratom) No 1553/89 to correct the base lead to an adjustment of the entries in the account referred to in Article 9 (1) of this Regulation, that adjustment shall be made on the date specified by the Commission pursuant to the said measures.

The changes to GNP referred to in paragraph 8 of this Article shall also give rise to an adjustment of the balance of any Member State whose base, allowing for those corrections, is capped at 55% of its GNP. The adjustments to be made to the VAT balances by the first working day of December of each year under the preceding subparagraphs of this paragraph shall also give rise to the calculation by the Commission of further adjustments to the GNP financial contributions. The exchange rates to be employed in calculating these further adjustments shall be those used for the initial calculation referred to in paragraph 5.

The Commission shall inform the Member States of these adjustments in time for them to enter them in the account referred to in Article 9 (1) on the first working day of December of the same year.

7. On the basis of figures for aggregate GNP at market prices and its components from the preceding year, supplied by the Member States in accordance with Article 3 (2) of Directive 89/130/EEC, Euratom, each Member State shall be debited with an amount calculated by applying to GNP the uniform rate adopted for the previous financial year, amended, where appropriate, in the light of any use of the EAGGF monetary reserve, and credited with 12 payments made during that previous financial year. The Commission shall work out the balance and shall inform the Member States in time for them to enter it in the account referred to in Article 9 (1) of this Regulation on the first working day of December of the same year.

8. Any changes to the GNP of previous financial years pursuant to Article 3 (2) of Directive 89/130/EEC, Euratom subject to Article 6 thereof, shall give rise for each Member State concerned to an adjustment to the balance established pursuant to paragraph 7. The Commission shall inform the Member States of these adjustments so that they can enter them in the account referred to in Article 9 (1) of

this Regulation on the first working day of December of the same year. After 30 September of the fourth year following a given financial year, any changes to GNP shall no longer be taken into account, except on points notified within this time limit either by the Commission or by the Member State.

9. The operations referred to in paragraphs 4 to 8 constitute modifications to revenue in respect of the financial year in which they occur.

Article 11

Any delay in making the entry in the account referred to in Article 9 (1) shall give rise to the payment of interest by the Member State concerned at the interest rate applicable on the Member State's money market on the due date for short-term public financing operations, increased by two percentage points. This rate shall be increased by 0,25 of a percentage point for each month of delay. The increased rate shall be applied to the entire period of delay.

TITLE IV

Management of cash resources

Article 12

1. The Commission shall draw on the sums credited to the accounts referred to in Article 9 (1) to the extent necessary to cover its cash resource requirements arising out of the implementation of the budget.

2. If the cash resource requirements are in excess of the assets of the accounts, the Commission may draw in excess of the total of these assets subject to the availability of appropriations in the budget and within the limit of the own resources entered in the budget. In this event, it shall inform the Member States in advance of any foreseeable excess requirements.

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

4. The difference between the overall assets and the cash resource requirements shall be divided among the Member States, as far as possible, in proportion to the estimated budget revenue from each of them.

5. The Member States, or the body designated by them in accordance with Article 9 (1), shall execute the Commission's payment orders as quickly as possible, and within not more than seven working days of receipt, and shall send the Commission a statement of account within not more than seven working days of completing each transaction.

However, in the case of cash movement transactions, the Member States shall execute the orders within the period requested by the Commission.

TITLE V

Procedure for the application of Article 2 (7) of Decision 88/376/EEC, Euratom

Article 13

1. This Article shall apply where it may be necessary to implement the provisional derogation provided for in Article 2 (7) of Decision 88/376/EEC, Euratom.

2. The GNP at market prices shall be calculated by the Statistical Office of the European Communities, on the basis of statistics prepared according to the European System of Integrated Economic Accounts (ESA), and corresponding, for each Member State, to the arithmetic mean of the first three years of the five-year period preceding the financial year in respect of which the provisions of Article 2 (7) of Decision 88/376/EEC, Euratom have been applied. No account shall be taken of any revisions of statistical data made after the final adoption of the budget.

3. The GNP for each reference year shall be calculated in terms of the ecu on the basis of the average rate of the ecus for the year in question.

4. For such time as the derogation provided for in Article 2 (7) of Decision 88/376/EEC, Euratom applies to one or more Member States, the Commission shall, in its preliminary draft budget, fix the percentage corresponding to the financial contributions of those Member States on the basis of the proportion of their GNP to the sum total of the GNPs of the Member States, and shall determine the amount of that part of the budget to be financed by VAT resources at the uniform rate and by the GNP financial contributions.

These figures shall be approved in accordance with budgetary procedure.

Article 14

1. The definition of GNP at market prices shall be that given in Articles 1 and 2 of Directive 89/130/EEC, Euratom.

2. The figures to be used in calculating the percentage of the GNP financial contributions shall be those supplied

pursuant to Article 3 (2) of Directive 89/130/EEC, Euratom, and subject to Article 6 thereof. In the absence of such figures the Statistical Office of the European Communities shall use the data available.

TITLE VI

Procedure for the application of Article 7 of Decision 88/376/EEC, Euratom

Article 15

For the purposes of applying Article 7 of Decision 88/376/EEC, Euratom, the balance of a given financial year shall consist of the difference between:

- all the revenue collected in respect of that financial year, and
- the amount of payments made against appropriations for that financial year increased by the amount of the appropriations for the same financial year carried over pursuant to Articles 6 (1) (b) and (c) and 2 (b) of the Financial Regulation.

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

- payments made in excess of non-differentiated appropriations carried over from the previous financial year under Article 6 (1) of the Financial Regulation as a result of change in ecu rates, and
- the balance resulting from exchange gains and losses during the financial year.

Article 16

The Commission shall, before the end of October in each financial year, make an estimate of the own resources collected for the entire year, on the basis of the data at its disposal at that time.

If appreciable differences from the original estimates appear, the former may give rise to a letter of amendment to the draft budget for the following financial year.

TITLE VII

Provisions concerning inspection measures

Article 17

1. Member States shall take all requisite measures to ensure that the amount corresponding to the entitlements

established under Article 2 are made available to the Commission as specified in this Regulation.

2. Member States shall be free from the obligation to place at the disposal of the Commission the amounts corresponding to established entitlements solely if, for reasons of *force majeure*, these amounts have not been collected. In addition, Member States may disregard this obligation to make such amounts available to the Commission in specific cases if, after thorough assessment of all the relevant circumstances of the individual case, it appears that recovery is impossible in the long term for reasons which cannot be attributed to them. These cases must be mentioned in the report provided for in paragraph 3 if the amounts exceed ECU 10 000, converted into national currency at the rate applying on the first working day of October of the previous calendar year; this report must contain an indication of the reasons why the Member State was unable to make available the amounts in question. The Commission has six months in which to forward, if appropriate, its comments to the Member State concerned.

3. Member States shall notify the Commission, in half-yearly reports, of the outcome of their inspections and of comprehensive information and questions of principle concerning the most important problems arising out of the application of this Regulation and, in particular, matters in dispute.

Article 18

1. Member States shall conduct the checks and enquiries concerning the establishment and the making available of the own resources referred to in Article 2 (1) (a) and (b) of Decision 88/376/EEC, Euratom. The Commission shall exercise its powers as specified in this Article.

2. Accordingly, Member States shall:

- carry out additional inspection measures at the Commission's request. In its request the Commission shall state the reasons for the additional inspection,
- associate the Commission, at its request, with the inspection measures which they carry out.

Member States shall take all steps required to facilitate these inspection measures. Where the Commission is associated with these measures, Member States shall place at its disposal the supporting documents referred to in Article 3.

In order to restrict additional inspection measures to the minimum:

- (a) the Commission may, in specific cases, request that certain documents be forwarded to it;
- (b) in the monthly statement of accounts referred to in Article 6 (3), the amounts entered in the accounts which relate to irregularities or delays in the establishment, entry in the accounts and making available of own resources, discovered during the inspections referred to above, must be identified by means of appropriate notes.

3. Without prejudice to paragraphs 1 and 2, the Commission may itself carry out inspection measures on the spot. The agents authorized by the Commission for such inspection measures shall have access, in so far as the correct application of this Regulation so requires, to the supporting documents referred to in Article 3 and to any other appropriate document connected with those supporting documents. In a duly substantiated communication, the Commission shall give notice of this inspection in good time to the Member State in which the inspection measure is to take place. Agents of the Member State concerned shall participate in such inspection measures.

4. The inspection measures referred to in paragraphs 1, 2 and 3 shall not prejudice:

- (a) the inspection measures undertaken by Member States in accordance with their own provisions laid down by law, regulation or administrative action;
- (b) the measures provided for in Articles 206, 206a and 206b of the EEC Treaty and Articles 180, 180a and 180b of the EAEC Treaty;
- (c) the inspection arrangements made pursuant to Article 209 (c) of the EEC Treaty and Article 183 (c) of the EAEC Treaty.

5. The Commission shall report every three years to the European Parliament and to the Council on the functioning of the inspection arrangements.

Article 19

Together with the Member State concerned, the Commission shall each year inspect the aggregates provided for errors in compilation, especially in cases notified by the GNP management committee. In doing so it may, in individual cases, also examine calculations and basic statistics, apart from information about individual companies or persons, where no proper assessment would otherwise be possible. The Commission shall respect national legal provisions on the preservation of the confidentiality of statistics.

TITLE VIII

Provisions relating to the Advisory Committee on the Communities' Own Resources

Article 20

1. An Advisory Committee on the Communities' own resources, hereinafter called 'the committee', is hereby set up.

2. The committee shall consist of representatives of the Member States and of the Commission. Each Member State shall be represented on the committee by not more than five officials.

The chairman of the committee shall be a representative of the Commission. The secretariat services for the committee shall be provided by the Commission.

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

Article 21

1. The committee shall examine the questions raised by its chairman on his own initiative or at the request of the representative of a Member State which concern the application of this Regulation, especially as regards:

- (a) the information and reports referred to in Articles 4 (1) (b), 6, 7 and 17 (3);
- (b) the cases of *force majeure* referred to in Article 17 (2);
- (c) the inspection measures laid down in Article 18 (2).

The committee shall also examine estimates of own resources.

2. At the request of the chairman, the committee shall deliver its opinion within a time limit which the chairman may lay down according to the urgency of the matter in hand, if necessary by taking a vote. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in these minutes. The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

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

Done at Brussels, 29 May 1989.

TITLE IX

Final provisions

Article 22

The Commission shall, by 1 December 1992 at the latest, submit a report on the implementation of this Regulation and, where appropriate, propose any necessary amendments.

Article 23

Regulation (EEC, Euratom, ECSC) No 2891/77 is hereby repealed.

References to the repealed Regulation shall be construed as references to this Regulation.

Article 24

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

It shall apply from 1 January 1989.

For the Council
The President
C. ROMERO HERRERA

COUNCIL REGULATION (EEC, EURATOM) No 1553/89

of 29 May 1989

on the definitive uniform arrangements for the collection of own resources accruing from value added tax

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 209 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to Council Decision (EEC, Euratom) 88/376 of 24 June 1988 on the Communities' own resources (1), and in particular Article 8 (2) thereof,

Having regard to the proposal from the Commission (2),

Having regard to the opinion of the European Parliament (3),

Having regard to the opinion of the Court of Auditors (4),

Whereas by virtue of Article 14 thereof, 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 (5) as last amended by Regulation (ECSC, EEC, Euratom) No 3735/85 (6), applies for a transitional period ending on 31 December 1988;

Whereas the provisions relating to the definitive uniform arrangements for collecting resources from value added tax, hereinafter referred to as '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 the experience acquired in implementing the procedures for correcting the statements has shown the need

to clarify the scope thereof, stipulating that it is generally applicable to all corrections;

Whereas Member States must provide the Commission with information concerning the procedures which they apply for registering taxable persons and determining and collecting VAT and on the modalities and results of their VAT control systems; whereas the Commission should consider, together with the Member State concerned, whether improvements to these procedures can be contemplated with a view to improving their effectiveness; whereas the Commission should produce a report every three years on the procedures applied in the Member States and on any improvements contemplated;

Considering the powers of the Court of Auditors pursuant to Article 206a of the EEC Treaty and Article 180a of the EAEC Treaty,

HAS ADOPTED THIS REGULATION:

TITLE I

General provisions

Article 1

VAT resources shall be calculated by applying the uniform rate, set in accordance with Decision 88/376/EEC, Euratom, 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 of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (7) as last amended by Decision 84/386/EEC (8), with the exception of transactions exempted under Articles 13 to 16 of that Directive.

(1) OJ No L 185, 15. 7. 1988, p. 24.

(2) OJ No C 128, 17. 5. 1988, p. 4 and OJ No C 15, 19. 1. 1989, p. 11.

(3) OJ No C 309, 5. 12. 1988, p. 30.

(4) OJ No C 191, 20. 7. 1988, p. 3.

(5) OJ No L 336, 27. 2. 1977, p. 8.

(6) OJ No L 356, 31. 12. 1985, p. 1.

(7) OJ No L 145, 13. 6. 1977, p. 1.

(8) OJ No L 208, 3. 9. 1984, p. 58.

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, does not exceed ECU 10 000 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.

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, if subject to non-deductible VAT:

- final consumption of private households, including consumption on the farm by flat-rate farmers and their direct sales to final consumers,
- intermediate consumption of private non-profit institutions and general government,
- intermediate consumption of other sectors,
- gross fixed capital formation of private non-profit institutions and 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

carried out in the territory referred to in Article 3 of Directive 77/388/EEC in respect of the Member State concerned.

3. For the purposes of the breakdown of final consumption, consumption on the farm by flat-rate farmers and their direct sales to final consumers 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 off to the full month.

Article 5

1. For the purposes of applying Article 3, Member States 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. The revenue collected by a Member State shall be corrected if the flat-rate compensation percentage fixed pursuant to Article 25 (3) of Directive 77/388/EEC applicable to transactions carried out by flat-rate farmers does not correspond to the percentage of the input VAT charge which was actually applied to such transactions with the exception of that relating to consumption on the farm and direct sales to final consumers during the year in question. The amount of the correction shall be equal to the difference between the two percentages.

Article 6

1. For the purposes of applying Article 2 (1) to transactions carried out by taxable persons whose annual turnover exceeds ECU 10 000 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, and of expenditure relating to the leasing and hiring and also the maintenance and repair of such cars.

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⁾ as last amended by Directive 89/194/EEC⁽²⁾, the taxable amount of the transactions which gave rise to these refunds shall, if necessary, be subtracted from the VAT resources base.

TITLE IV

Provisions relating to accounting and making available of own resources

Article 7

1. Before 31 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 available when the statement is produced.

Article 8

Member States shall send the Commission by 15 April each year an estimate of the VAT resources base for the following financial year.

Article 9

1. Any corrections, for whatever reason, to the statements referred to in Article 7 (1) for previous financial years shall be made in agreement between the Commission and the Member State concerned.

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.

All corrections shall be incorporated in aggregate statements at 31 July, which shall amend the previous statements for the financial years concerned.

2. No further corrections may be made to the annual statement referred to in Article 7 (1) after 31 July of the

(¹) OJ No L 133, 4. 6. 1969, p. 6.
 (²) OJ No L 73, 17. 3. 1989, p. 47.

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 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, in accordance with 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 value added tax collected have been performed correctly; it shall also ascertain that the data used where 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⁽³⁾ 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.

(³) OJ No L 20, 24. 1. 1974, p. 1.

Article 12

1. The Member States shall provide the Commission with information concerning the procedures which they apply for registering taxable persons and determining and collecting VAT and on the modalities and results of their VAT control systems.

2. The Commission shall consider, together with the Member State concerned, whether improvements to these procedures can be contemplated with a view to improving their effectiveness.

3. The Commission shall produce a report every three years on the procedures applied in the Member States and on any improvements contemplated.

The Commission shall submit that 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 Regulation (EEC, Euratom, ECSC) No 1552/89 ⁽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 a draft decision to the committee as soon as possible and not later than 31 December of the financial year.

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.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

5. No later than 60 days after the committee has delivered its opinion, the Commission shall adopt a Decision which it shall communicate to the Member States.

TITLE VI

Final provisions

Article 14

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

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, 29 May 1989.

For the Council
The President
C. ROMERO HERRERA

⁽¹⁾ See page 1 of this Official Journal.

COMMISSION DECISION

of 5 July 1989

determining the amount of VAT own resources payable by the Federal Republic of Germany for 1987 in respect of transactions covered by the 20th Council Directive 85/361/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: derogations in connection with the special aids granted to certain farmers to compensate for the dismantlement of monetary compensatory amounts applying to certain agricultural products

(Only the German text is authentic)

(89/425/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to the 20th Council Directive 85/361/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: derogations in connection with the special aids granted to certain farmers to compensate for the dismantlement of monetary compensatory amounts applying to certain agricultural products⁽¹⁾, and in particular Article 5 thereof,

Whereas the Directive authorizes the Federal Republic of Germany to use value added tax to grant a special aid to farmers provided that own resources accruing from VAT are not affected;

Whereas, for the 1987 financial year, the net VAT revenue to be taken into account under Article 6 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⁽²⁾ as last amended by Regulation (ECSC, EEC, Euratom) No 3735/85⁽³⁾ should be increased by DM 2 392 million;

Whereas, the average weighted rate referred to in the said Article is 12,5804 % for 1987 but may be changed again;

Whereas the rate of VAT own resources payable by the Federal Republic of Germany for 1987 is 1,3459 %;

Whereas the Advisory Committee on Own Resources has been consulted,

HAS ADOPTED THIS DECISION:

Article 1

VAT own resources payable by the Federal Republic of Germany for 1987 according to Article 5 of Directive 85/361/EEC, amount to DM 255 910 000.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 5 July 1989.

For the Commission

Peter SCHMIDHUBER

Member of the Commission

⁽¹⁾ OJ No L 192, 24. 7. 1985, p. 18.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 356, 31. 12. 1985, p. 1.

EIGHTEENTH COUNCIL DIRECTIVE

of 18 July 1989

on the harmonization of the laws of the Member States relating to turnover taxes — Abolition of certain derogations provided for in Article 28 (3) of the Sixth Directive, 77/388/EEC

(89/465/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Article 28 (3) of the Sixth Council Directive, 77/388/EEC, of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ⁽⁴⁾, as last amended by the Act of Accession of Spain and Portugal, allows Member States to apply measures derogating from the normal rules of the common system of value added tax during a transitional period; whereas that period was originally fixed at five years; whereas the Council undertook to act, on a proposal from the Commission, before the expiry of that period, on the abolition, where appropriate, of some or all of those derogations;

Whereas many of those derogations give rise, under the Communities' own resources system, to difficulties in calculating the compensation provided for in Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽⁵⁾; whereas, in order to ensure that that system operates more efficiently, there are grounds for abolishing those derogations;

Whereas the abolition of those derogations will also contribute to greater neutrality of the value added tax system at Community level;

Whereas some of the said derogations should be abolished respectively from 1 January 1990, 1 January 1991, 1 January 1992 and 1 January 1993;

Whereas, having regard to the provisions of the Act of Accession, the Portuguese Republic may, until 1 January 1994 at the latest, postpone the abolition of the exemption of the transactions referred to in points 3 and 9 in Annex F to Directive 77/388/EEC;

Whereas it is appropriate that, before 1 January 1991, the Council should, on the basis of a Commission report, review the situation with regard to the other derogations provided for in Article 28 (3) of Directive 77/388/EEC, including the one referred to in the second subparagraph of point 1 of Article 1 of this Directive, and that it should take a decision, on a proposal from the Commission, on the abolition of these derogations, bearing in mind any distortion of competition which has resulted from their application or which may arise in connection with the future completion of the internal market,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 77/388/EEC is hereby amended as follows:

1. With effect from 1 January 1990 the transactions referred to in points 1, 3 to 6, 8, 9, 10, 12, 13 and 14 of Annex E shall be abolished.

Those Member States which, on 1 January 1989, subjected to value added tax the transactions listed in Annex E, points 4 and 5, are authorized to apply the conditions of Article 13A (2) (a), final indent, also to services rendered and goods delivered, as referred to in Article 13A (1) (m) and (n), where such activities are carried out by bodies governed by public law.

2. In Annex F:
 - (a) The transactions referred to in points 3, 14 and 18 to 22 shall be abolished with effect from 1 January 1990;
 - (b) The transactions referred to in points 4, 13, 15 and 24 shall be abolished with effect from 1 January 1991;
 - (c) The transaction referred to in point 9 shall be abolished with effect from 1 January 1992;
 - (d) The transaction referred to in point 11 shall be abolished with effect from 1 January 1993.

⁽¹⁾ OJ No C 347, 29. 12. 1984, p. 3 and OJ No C 183, 11. 7. 1987, p. 9.

⁽²⁾ OJ No C 125, 11. 5. 1987, p. 27.

⁽³⁾ OJ No C 218, 29. 8. 1985, p. 11.

⁽⁴⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽⁵⁾ OJ No L 155, 7. 6. 1989, p. 9.

Article 2

The Portuguese Republic may defer until 1 January 1994 at the latest the dates referred to in Article 1, point 2 (a), for the deletion of point 3 from Annex F and in Article 1, point 2 (c), for the deletion of point 9 from Annex F.

Article 3

By 1 January 1991 the Council, on the basis of a report from the Commission, shall review the situation with regard to the other derogations laid down in Article 28 (3) of Directive 77/388/EEC, including that referred to in the second subparagraph of point 1 of Article 1 of this Directive and, acting on a Commission proposal, shall decide whether these derogations should be abolished, having regard to any distortions of competition which have resulted from their having been applied or which might arise from measures to complete the Internal Market.

Article 4

In respect of the transactions referred to in Article 1, 2 and 3, Member States may take measures concerning deduction of value added tax in order totally or partially to prevent the

taxable persons concerned from deriving unwarranted advantages or sustaining unwarranted disadvantages.

Article 5

1. Member States shall take the necessary measures to comply with this Directive not later than the dates laid down in Article 1 and 2.
2. Member States shall inform the Commission of the main provisions of national law which they adopt in the field governed by this Directive.

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 18 July 1989.

For the Council
The President
R. DUMAS

COUNCIL DECISION

of 18 July 1989

authorizing the United Kingdom to apply a measure derogating from Article 11 (A) (1) (b) of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(89/466/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 27 (1) of the Sixth Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from that Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance;

Whereas the United Kingdom, by letter addressed to the Commission and registered on 9 January 1989, requested authorization to introduce a special measure derogating from Article 11 of the said Directive;

Whereas the other Member States were informed of the United Kingdom's request on 9 February 1989;

Whereas, by letter dated 10 April 1989, the Commission, having decided that it had fundamental objections to the United Kingdom Government's request, asked, in accordance with Article 27 (4) of the Sixth Directive, that the matter be raised by the Council;

Whereas, by a note dated 10 May 1989, the United Kingdom informed the Council that it was modifying and narrowing the scope of the derogation notified to the Commission on 9 January 1989;

Whereas the United Kingdom currently exempts all building land under Article 28 (3) (b), read in conjunction with point 16 of Annex F to the Sixth Directive;

Whereas, in order to comply with the spirit of the Court of Justice ruling in Case 416/85, the United Kingdom wishes to tax supplies of buildings and the land on which they stand where these are used for commercial or industrial purposes, while retaining zero rating for supplies of residential buildings and exemption for supplies of building land;

Whereas, in order to simplify the procedure for charging the tax and to prevent certain types of tax evasion or avoidance, the United Kingdom wishes to apply the tax to transactions relating to commercial or industrial buildings and to the land on which they stand before first occupation on the basis of the open market value at the time they are taken into use; whereas, in the case of supply or letting with the developer option for taxation under Article 13 (C) (a) of the Sixth Directive, this objective is achieved because the price of the supply or the rent necessarily reflects the value of the land at the time of such supply or letting;

Whereas, in order to achieve the objective in question where the building is to be occupied by a taxable person who has constructed it and who is not entitled to full deduction of the tax or where the same taxable person lets the building on an exempt basis under Article 13 (B) (b) of the Sixth Directive, the United Kingdom intends to make use of the option provided for in Article 5 (7) (a) and (b) of the said Directive to tax such occupation or letting of the property on the basis of its open market value;

Whereas, as a result of the taxable amount being determined by reference to the open market value in this way, the amended request derogates from Article 11 (A) (1) (b) of the Sixth Directive, which stipulates that, in respect of supplies referred to in Article 5 (6) and (7), the taxable amount is the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time of supply;

Whereas it is appropriate to accede to the request of the United Kingdom pending deletion of point 16 of Annex F to the Sixth Directive, which permits Member States to exempt temporarily supplies of new buildings and building land;

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

Whereas the said special measure will not have a negative effect on the European Communities' own resources accruing from value added tax,

Article 2

This authorization shall be granted pending the deletion of point 16 of Annex F to the Sixth Directive.

HAS ADOPTED THIS DIRECTIVE:

Article 3

This Directive is addressed to the United Kingdom.

Article 1

By way of derogation from Article 11 (A) (1) (b) of the Sixth Directive, the United Kingdom is hereby authorized to use the open market value as the taxable amount for the supply, within the meaning of Article 5 (7) (a) and (b) of the said Directive, of buildings or parts of buildings before first occupation and of the land on which they stand.

Done at Brussels, 18 July 1989.

For the Council
The President
R. DUMAS

COUNCIL DECISION

of 28 July 1989

authorizing the French Republic to apply a measure derogating from the second subparagraph of Article 17 (6) of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(89/487/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

having regard to the Treaty establishing the European Economic Community,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ⁽¹⁾, hereafter referred to as the 'Sixth Directive', as last amended by the 1985 Act of Accession, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 27 (1) of the Sixth Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from that Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance;

Whereas, by letter, receipt of which was recorded by the Commission on 17 April 1989, the French Republic requested authorization to introduce a special measure derogating from the second subparagraph of Article 17 (6) of the Sixth Directive;

Whereas certain supplies made to a taxable person concerning in particular his representational expenditure are excluded in France from the right of deduction, in accordance with Article 17 (6), second subparagraph, of the Sixth Directive; whereas this measure is aimed at excluding other expenditure in respect of accommodation, restaurants, hospitality and entertainment from the right to deduct VAT previously charged, in order to prevent tax evasion and avoidance; whereas the exclusion does not concern expenditure incurred by a taxable person in respect of the supply by him of accommodation, meals, food or drink for consideration, expenditure on accommodation provided free of charge for security, caretaking or supervisory staff on works, sites or business premises, or expenditure incurred by a taxable person in carrying out his contractual or legal responsibility towards his customers;

Whereas the authorization requested by the French Republic can be granted only on a temporary basis and until such time

as Community rules determining expenditure not eligible for a deduction of value added tax pursuant to the first subparagraph of Article 17 (6) of the Sixth Directive come into force;

Whereas the said derogation does not have a negative effect on the European Communities' own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

1. By way of derogation from the second subparagraph of Article 17 (6) of the Sixth Directive, the French Republic is hereby authorized, on a temporary basis and until such time as Community rules determining the treatment of expenditure referred to in the first subparagraph of that paragraph come into force, to exclude expenditure in respect of accommodation, food, hospitality and entertainment from the right to deduct value added tax previously charged.

2. The exclusion referred to in paragraph 1 shall not apply to:

- expenditure incurred by a taxable person in respect of the supply by him of accommodation, meals, food or drink for consideration,
- expenditure on accommodation provided free of charge for security caretaking or supervisory staff on works, sites or business premises,
- expenditure incurred by a taxable person in carrying out his contractual or legal responsibility towards customers.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 28 July 1989.

For the Council

The President

M. CHARASSE

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

COUNCIL DECISION

of 28 July 1989

authorizing the French Republic to apply a measure derogating from Article 17 (2) of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(89/488/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ⁽¹⁾, hereafter referred to as the 'Sixth Directive', as last amended by the 1985 Act of Accession, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 27 (1) of the Sixth Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from that Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance;

Whereas, by letter, receipt of which was recorded by the Commission on 17 April 1989, the French Republic requested authorization to introduce a special measure derogating from Article 17 (2) of the Sixth Directive;

Whereas the French Republic intends to introduce an arrangement permitting deduction of the entire amount of tax charged on goods and services used for both business and private purpose while, at the same time, providing for taxation of the private use of such goods and services, in accordance with Articles 5 (6) and 6 (2) of the Sixth Directive;

Whereas, the French Republic would like to retain the right to exclude altogether the deduction of input VAT while refraining from taxing self-supplies in cases where private use accounts for more than 90 % of the use to which a particular good or service is put;

Whereas such a measure is necessary and appropriate to avoid certain tax evasion and fraud and whereas it contributes to the simplification of collecting value added tax;

Whereas the said measure constitutes a derogation from Article 17 (2) of the Sixth Directive, whereby a taxable person is entitled to deduct the tax charged on goods and services used by him in so far as those goods and services are used for the purposes of his taxable transactions;

Whereas the said request can be accepted subject to certain conditions;

Whereas the measure in question should be temporary in order to allow an evaluation after a certain period of application;

Whereas the authorization will run until 31 December 1992, with the Commission presenting before that date, a report to the Council on the application of this authorization.

Whereas the Council will determine, on the basis of a proposal for a Decision submitted if appropriate by the Commission and accompanying the abovementioned report, whether to extend the authorization beyond that date;

Whereas the derogation will not affect, except to a negligible degree, the amount of tax due at the final consumption stage; whereas it does not have a negative effect on the European Communities' own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from the provisions of Article 17 (2) of the Sixth Directive, the French Republic is hereby authorized until 31 December 1992 to exclude expenditure in respect of goods and services in cases, where private use of those goods and services accounts for more than 90 % of their total use,

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

from the right to deduct value added tax previously charged.

Article 3

This Decision is addressed to the French Republic.

Article 2

On the basis of a report by the Commission on the application of the authorization cited in Article 1, accompanied if appropriate by a proposal for a Decision, the Council shall determine on the basis of that proposal before 31 December 1992 whether the said authorization shall be extended.

Done at Brussels, 28 July 1989.

For the Council
The President
M. CHARASSE

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 11 April 1989

authorizing the United Kingdom to apply a measure derogating from Article 21 (1) (a) of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(89/533/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — common system of value added tax : uniform basis of assessment⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, hereinafter referred to as the 'Sixth Directive' and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 27 (1) of the Sixth Directive, the Council acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from the provisions of that Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance;

Whereas the United Kingdom was authorized by a Council Decision deemed to have been adopted on 14 April 1987, in accordance with the procedure laid down by Article 27 (4) of the Sixth Directive, to introduce, for a period of two years from 1 April 1987, a derogation measure to combat tax avoidance;

Whereas the purpose of that measure is to prevent groups of businesses which are treated as a single taxable person

within the meaning of Article 4 (4) of the Sixth Directive and are not entitled to deduct tax in full from being able to enjoy full deduction of the tax on certain transfers of assets;

Whereas to prevent tax avoidance of this type the United Kingdom applies a legislative provision laying down that the company to which such assets are transferred becomes liable to tax;

Whereas the said measure constitutes a derogation from Article 21 (1) (a) of the Sixth Directive, whereby, under the internal system, the person liable for the tax is the taxable person who carries out the taxable transaction;

Whereas the United Kingdom has, by a letter registered at the Commission on 9 January 1989, requested authorization to extend the said measure by one year pending adoption of other provisions to be based on Article 20 of the Sixth Directive;

Whereas the other Member States were informed on 9 February 1989 of the request made by the United Kingdom; whereas the Council's Decision is deemed to have been adopted if, within two months of the other Member States being informed, neither the Commission nor any Member State being informed, neither the Commission nor any Member State has requested that the matter be raised by the Council; whereas no such request has been made; whereas the Council's Decision is thus deemed to have been adopted on 11 April 1989;

Whereas the said derogation measure will have a favourable effect on the European Communities' own resources arising from value added tax,

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

HAS ADOPTED THIS DECISION:

company to which the assets are transferred becomes liable for tax.

Article 1

By way of derogation from the provisions of Article 21 (1) (a) of the Sixth Directive 77/388/EEC, the United Kingdom is hereby authorized to apply until 31 March 1990 a provision whereby, when assets are totally or partially transferred to a company which is a member of a group of businesses treated as a single taxable person within the meaning of Article 4 (4) of the said Directive and which is not entitled to full deduction of tax, the

Article 2

This Decision is addressed to the United Kingdom.

Done at Luxembourg, 11 April 1989.

For the Council

The President

C. SOLCHAGA CATALAN

COUNCIL DECISION

of 24 May 1989

authorizing the United Kingdom to apply, in respect of certain supplies to unregistered resellers, a measure derogating from Article 11 A (1) (a) of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(89/534/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 27 (1) of the Sixth Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from that Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance;

Whereas the United Kingdom was authorized by Council Decision 85/369/EEC⁽²⁾, deemed to have been adopted on 13 June 1985, in accordance with the procedure laid down by Article 27 (4) of the Sixth Directive, to introduce for a two-year period a derogation from the Sixth Directive to combat tax avoidance;

Whereas certain marketing structures based on sales of goods effected by taxable persons to non-taxable persons with a view to their resale at the retail stage result in avoidance of tax at the stage of final consumption;

Whereas, in order to prevent such tax avoidance, the United Kingdom applies a measure permitting the tax authorities to adopt administrative decisions the effect of which is to tax supplies made by the taxable persons operating such marketing structures on the basis of the open market value of the goods at the retail stage;

Whereas that measure constitutes a derogation from Article 11 A (1) (a) of the Sixth Directive, which stipulates that, within the territory of the country, the taxable amount in respect of supplies of goods is everything

which constitutes the consideration which has been, or is to be, obtained by the supplier from the purchaser or a third party for such supplies;

Whereas the United Kingdom was authorized by the Council Decision deemed to have been adopted on 25 May 1987⁽³⁾ to extend for two years the derogation authorized by Decision 85/369/EEC;

Whereas the United Kingdom's application for that extension was limited to two years because of the proceedings in Joined Cases 138 and 139/86: reference to the Court of Justice by the 'London Value Added Tax Tribunal' for a preliminary ruling in the proceedings pending before that Tribunal between 'Direct Cosmetics Ltd' and 'Laughtons Photographs Ltd' against 'Commissioners of Customs and Excise' on the interpretation of Article 27 of the Sixth Directive and on the validity of Decision 85/369/EEC; whereas, in its judgment of 12 July 1988⁽⁴⁾, the Court of Justice confirmed the validity of that Decision;

Whereas the United Kingdom, by letter received by the Commission on 24 February 1989, requested authorization to extend the said measure for an indefinite period;

Whereas, in its judgment of 12 July 1988, the Court of Justice ruled *inter alia* that Article 27 of the Sixth Directive permitted the adoption of a derogating measure such as that at issue on condition that the resultant difference in treatment was justified by objective circumstances;

Whereas, in order to satisfy itself that this condition is met, the Commission must be informed of any administrative decisions adopted by the tax authorities in connection with the derogation in question;

Whereas the other Member States were notified of the United Kingdom's request on 22 March 1989; whereas the Council Decision is deemed to have been adopted if, within two months of the other Member States being informed, neither the Commission nor any Member State has requested that the matter be raised by the Council; whereas no such request has been made; whereas the Council's Decision is thus deemed to have been adopted on 24 May 1989;

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽²⁾ OJ No L 199, 31. 7. 1985, p. 60.

⁽³⁾ OJ No L 188, 8. 7. 1987, p. 52.

⁽⁴⁾ OJ No C 205, 6. 8. 1988, p. 5.

Whereas the said measure will not have a negative effect on the European Communities' own resources accruing from value added tax,

HAS ADOPTED THIS DECISION :

Article 1

By way of derogation from Article 11 A (1) (a) of the Sixth Directive, the United Kingdom is hereby authorized to prescribe, in cases where a marketing structure based on the supply of goods through non-taxable persons results in non-taxation at the stage of final consumption, that the taxable amount for supplies to such persons is to be the open market value of the goods as determined at that stage.

Article 2

The United Kingdom shall inform the Commission of any administrative decisions subsequently adopted in connection with the derogation.

Article 3

This Decision is addressed to the United Kingdom.

Done at Brussels, 24 May 1989.

For the Council

The President

C. SOLCHAGA CATALAN

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 8 September 1989

amending Decision 83/194/EEC, Euratom, ECSC in respect of the authorizations granted to the Netherlands to use approximate estimates for the calculation of the VAT own resources basis

(Only the Dutch text is authentic)

(89/554/EEC, Euratom, ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaties establishing the European Communities,

Having regard to 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⁽¹⁾, as amended by Regulation (ECSC, EEC, Euratom) No 3735/85⁽²⁾, and in particular Article 13 thereof,

Whereas, for the years 1979 to 1987, the Commission, pursuant to Council Regulation (EEC, Euratom, ECSC) No 2892/77 adopted a series of decisions concerning the Netherlands, including Decision 83/194/EEC, Euratom, ECSC⁽³⁾,

Whereas the Netherlands exempts services supplied by notaries and bailiffs acting in their capacity as public officials and whereas the corresponding own resources basis must therefore be calculated by means of approximate estimates; whereas Decision 83/194/EEC, Euratom, ECSC must accordingly be amended for the year 1988;

Whereas, the Advisory Committee on Own Resources has approved the report recording the opinions of its members on this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The following is hereby added to Article 2 of Decision 83/194/EEC, Euratom, ECSC for the year 1988:

'6. Services supplied by notaries and bailiffs (Annex F, point 2).'

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 8 September 1989.

For the Commission

Peter SCHMIDHUBER

Member of the Commission

⁽¹⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽²⁾ OJ No L 356, 31. 12. 1985, p. 1.

⁽³⁾ OJ No L 108, 26. 4. 1983, p. 14.

COMMISSION DECISION

of 8 September 1989

authorizing the Hellenic Republic to use certain approximate estimates when calculating the VAT own resources basis

(Only the Greek text is authentic)

(89/555/EEC, Euratom, ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaties establishing the European Communities,

Having regard to 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⁽¹⁾, as last amended by Regulation (ECSC, EEC, Euratom) No 3735/85⁽²⁾, and in particular Article 13 thereof,

Whereas paragraph 2 (b) of Section II (Taxation) of Annex VIII to the Act of Accession of the Hellenic Republic to the European Communities authorizes Greece to exempt certain activities from value added tax in accordance with Article 28 (3) (b) of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽³⁾, as last amended by Directive 87/400/EEC⁽⁴⁾;

Whereas, on the basis of the second subparagraph of Article 9 (2) of Regulation 2892/77, the VAT own resources basis is to be calculated as if those activities were taxed;

Whereas pursuant to the second indent of the first subparagraph of Article 9 (3) of Regulation 2892/77, Greece has requested authorization to make those calculations using approximate estimates;

Whereas the Advisory Committee on Own Resources has approved the report recording the opinions of its members on this Decision,

HAS ADOPTED THIS DECISION:

Article 1

When calculating its VAT own resources basis for 1987 and 1988, Greece is authorized to use approximate estimates for the following categories of transactions referred to in Annex F of Directive 77/388/EEC:

1. Services supplied by lawyers and other members of the liberal professions (point 2);
2. Treatment of animals by veterinary surgeons (point 9);
3. The supply of water by public authorities (point 12);
4. Supplies of those buildings and land described in Article 4 (3) of Directive 77/388/EEC (point 16);
5. The supply, modification, repair, maintenance, chartering and hiring of aircraft, including equipment incorporated or used therein, used by State institutions (point 23);
6. The supply, modification, repair, maintenance, chartering and hiring of warships (point 25).

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 8 September 1989.

For the Commission

Peter SCHMIDHUBER

Member of the Commission

⁽¹⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽²⁾ OJ No L 356, 31. 12. 1985, p. 1.

⁽³⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽⁴⁾ OJ No L 213, 4. 8. 1987, p. 40.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 23 November 1989

amending Directive 83/183/EEC on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals

(89/604/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas, when it adopted Directive 83/183/EEC ⁽⁴⁾, the Council undertook to adopt unanimously, on a proposal from the Commission, provisions permitting a substantial relaxation and even the removal of the formalities relating to the grant of tax exemptions applicable to permanent imports from a Member State of the personal property of individuals; whereas the *ad hoc* Committee on a People's Europe, in its first report, endorsed by the Brussels European Council of 29 and 30 March 1985, invited the Commission to present such a proposal;

Whereas it is necessary to facilitate the free movement of persons within the Community as far as possible;

Whereas, pending the abolition of tax frontiers required to achieve a true internal market, it is necessary to harmonize and relax certain formalities necessary for the grant of the import exemption provided for in Directive

83/183/EEC, particularly as regards the drawing-up of an inventory of the property and proof of the existence of the normal residence; whereas it is necessary to ease the existing rules relating to the period of use of imported property and to the quantitative limits on certain items,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 83/183/EEC is hereby amended as follows:

1. Article 2 (2) (b) shall be replaced by the following:

- (b) of which the person concerned has had the actual use before the change of residence is effected or the secondary residence established. In the case of motor-driven vehicles (including their trailers), caravans, mobile homes, pleasure boats and private aircraft, Member States may require that the person concerned should have had the use of them for a period of at least six months before the change of residence.

For the goods referred to in the second sentence of (a), Member States may require:

- in the case of motor-driven vehicles (including their trailers), caravans, mobile homes, pleasure boats and private aircraft, that the person concerned should have had the use of them for a period of at least 12 months,
- in the case of other goods, that the person concerned should have had the use of them for a period of at least six months,

before the change of residence.'

⁽¹⁾ OJ No C 5, 9. 1. 1987, p. 2 and OJ No C 179, 8. 7. 1988, p. 8.

⁽²⁾ OJ No C 318, 30. 11. 1987, p. 23.

⁽³⁾ OJ No C 150, 9. 6. 1987, p. 6.

⁽⁴⁾ OJ No L 105, 23. 4. 1983, p. 64.

2. Article 4 shall be reworded as follows :

'The motor-driven vehicles (including their trailers), caravans, mobile homes, pleasure boats and private aircraft imported shall not be disposed of, hired out or lent during the period of 12 months following their importation free of duty, except in circumstances duly justified to the satisfaction of the competent authorities of the Member State of importation.'

3. Article 5 (1) shall be replaced by the following :

'1. Member States may impose limits on the duty-free importation of goods listed in Article 4 (1) of Directive 69/220/EEC ⁽¹⁾, as last amended by Directive 89/220/EEC ⁽²⁾. However, those limits may not be less than four times the quantities shown in column II of the said Article, except in the case of tobacco products, the duty-free importation of which may be limited to the quantities shown in the said column.'

⁽¹⁾ OJ No L 133, 4. 6. 1969, p. 6

⁽²⁾ OJ No L 92, 5. 4. 1989, p. 15.'

4. In Article 7 :

(a) paragraph 1 shall become subparagraph 1 (a) :

(b) in paragraph 1 the following subparagraph shall be added :

'(b) The grant of the exemption shall, without prejudice to any Community transit procedure which may apply, be subject to the drawing-up of an inventory of goods on plain paper accompanied, if the State so requires, by a declaration, the model for and content of which shall be defined in accordance with the procedure laid down in Article 17 (2) and (3) of Regulation (EEC) No 678/85 ⁽¹⁾. No reference to value may be demanded on the inventory of goods.'

⁽¹⁾ OJ No L 274, 15. 10. 1985, p. 1.'

(c) the following shall be added to paragraph 2 :

'Where, in accordance with Article 3, the property is imported in a number of operations within the period referred to above, only on the occasion of their first importation may Member States require the submission of a full inventory to which reference may also be made in the event of subsequent removals by other customs offices. Such inventory may be supplemented subject to the agreement of the competent authorities of the Member State of importation.'

5. In Article 8 (2) :

(a) the words 'for a period of at least 12 months' at the end of the first subparagraph shall be replaced by 'before establishment of the secondary residence' ;

(b) the third subparagraph shall be deleted.

6. In Article 9 :

(a) the beginning of paragraph 1 shall be replaced by the following :

'1. Without prejudice to Articles 2 to 5, any person shall on marrying be entitled to exemption from the taxes referred to in Article 1 when importing into the Member State to which he intends to transfer his normal residence personal property which he acquired or of which he had the use, provided that :'

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

'2. Exemption shall also be granted in respect of presents customarily given on the occasion of a marriage which are received by a person fulfilling the conditions laid down in paragraph 1 from persons having their normal place of residence in a Member State other than the Member State of import. The exemption shall apply to presents of a unit value of not more than ECU 350 provided that the value of each exempt present does not exceed ECU 1 400.'

7. In Article 11 :

(a) in paragraph 1, the words 'Until the entry into force of the Community tax rules adopted pursuant to Article 14 (2) of Directive 77/388/EEC' shall be deleted ;

(b) in paragraph 2, the reference to 'Article 2 (2)' shall be replaced by 'Article 2 (2) (a)'

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 July 1990. They shall forthwith inform the Commission thereof.

2. Member States shall inform the Commission of the provisions which they adopt to implement this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 23 November 1989.

For the Council

The President

E. CRESSON

COUNCIL DECISION

of 21 December 1989

authorizing the French Republic to apply a measure derogating from Article 2 of the Sixth Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes

(89/683/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ⁽¹⁾, as last amended by Directive 89/465/EEC ⁽²⁾, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 27 (1) of the aforementioned Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from that Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance;

Whereas the Eighteenth Council Directive 89/465/EEC repeals, as from 1 January 1990, the transitional derogation provided for in Article 28 (3) (b) of the Sixth Directive 77/388/EEC, read in conjunction with point 20 of Annex F thereto, which permits Member States to continue to exempt supplies of recuperable material and fresh industrial waste; whereas the arrangements for taxing such supplies pose problems in France because some waste recovery operators have been accustomed in the past to issuing false invoices designed to transfer an entitlement to tax deduction with the taxes invoiced not being repaid to the Treasury; whereas, by registered letter to the Commission dated 29 September 1989, the French Republic requested authorization to introduce a special measure derogating from Article 2 of the Sixth Directive 77/388/EEC;

Whereas that special measure consists of:

- exempting transactions carried out by taxable persons whose annual turnover in respect of such products is below a given amount and restricting taxation to transactions carried out by firms which, by their very

structure, show themselves to be reliable and of good repute in tax matters; whereas the authorities are to check these conditions under an authorization procedure which may involve the provision of a guarantee,

- suspending payment of the tax relating to non-exempt supplies of fresh industrial waste and recuperable material where these consist of non-ferrous metals and their alloys, such supplies, however, being considered taxable transactions, for the application of deductions,
- exempting imports;

Whereas this measure constitutes a derogation from Articles 2 and 10 (2) of the Sixth Directive 77/388/EEC, according to which:

- all supplies of goods effected for consideration within the territory of a country by a taxable person acting as such and all imports of goods are subject to value added tax,
- the chargeable event shall occur and the tax shall become chargeable when the goods are delivered;

Whereas the request for authorization can be accepted under certain conditions;

Whereas the derogation will be temporary, in accordance with the request for authorization made by the Republic of France, which will permit an assessment of the effects of the authorization granted by this Decision after a certain period of application;

Whereas the Commission will submit a report to the Council, before 1 January 1993, on the application of this authorization, accompanied, where appropriate, by a proposal for a Decision to extend the said authorization; whereas the Council will decide before that date on the extension of the authorization;

Whereas this derogation will not have a negative effect on the European Communities' own resources accruing from value added tax;

Whereas the other Member States were informed of the French Republic's request on 27 October 1989,

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽²⁾ OJ No L 226, 3. 8. 1989, p. 21.

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 2 of the Sixth Directive 77/388/EEC, the French Republic is hereby authorized, until 31 December 1992 and in respect of fresh industrial waste and recuperable material, to exempt from value added tax (hereinafter referred to as 'VAT'):

- on the one hand, supplies made by:
 - undertakings whose annual turnover is less than FF 500 000,
 - undertakings which do not have a permanent establishment or which, although they have a permanent establishment, have achieved in the previous year a turnover figure in respect of such products of less than FF 6 million, unless they are authorized to subject such transactions to VAT,
- on the other hand, imports.

Article 2

By way of derogation from Article 10 (2) of the Sixth Directive 77/388/EEC, the French Republic is hereby authorized to introduce in respect of supplies to taxable persons of fresh industrial waste and recuperable material in the form of non-ferrous metals and their alloys, where these supplies are not exempt from VAT on the basis of Article 1,

arrangements suspending payment of the tax relating to these transactions.

The taxable persons receiving these supplies shall pay the tax on them where these products are intended neither for the export as such nor for the manufacture or resale as such of products liable to VAT.

Article 3

In the light of a report from the Commission on the application of the authorization referred to in Articles 1 and 2, accompanied, where appropriate, by a proposal for a Decision extending the said authorization, the Council, acting on the basis of that proposal, shall decide, before 1 January 1993, whether the said authorization is to be extended.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 21 December 1989.

For the Council
The President
E. CRESSON

COUNCIL DECISION

of 22 December 1989

establishing a programme of options specific to the remote and insular nature of the French overseas departments (Poseidom)

(89/687/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 227 (2) and 235 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Article 227 (2) of the Treaty stipulates that the institutions of the Community will, within the framework of the procedures provided for in this Treaty, take care that the economic and social development of the French overseas departments is made possible; whereas, therefore, it is appropriate to introduce a multiannual and multisectoral programme, the better to attain this objective; whereas, in the case in point, the Treaty has not provided the powers required for the adoption of this Decision and it is therefore appropriate to have recourse to Article 235 of the Treaty;

Whereas the French overseas departments, which also constitute regions within the meaning of the French law of 2 August 1984, suffer from a serious structural lack of development aggravated by a number of constraints (remoteness, isolation, small size, difficult terrain and climate, and economic dependence on a small number of products) whose unchanging nature and combined impact have serious adverse effects on their economic and social development; whereas these constraints differentiate sharply the social and economic context of the French overseas departments from that of the other Community regions, particular in the area of unemployment, the level of which is among the highest in the Community and primarily affects young people;

Whereas the Community authorities have repeatedly shown their solidarity with the French overseas departments, whether through assistance from Community funds or by taking their specific nature into account in applying Community rules; whereas the European Parliament stated

in its resolution of 11 May 1987 on the regional problems of the French overseas departments that it was convinced 'that the serious situation which exists in the French overseas departments justifies, and makes it imperative to pursue, economic and social development in various sectors' and called on the Community authorities to implement a broad range of highly diverse operations;

Whereas the special constraints on the French overseas departments make it necessary to step up Community support in order to promote their economic and social development; whereas such support should be forthcoming immediately in order to facilitate the integration of their economies in the 1993 internal market;

Whereas the French overseas departments form an integral part of the Community pursuant to Article 227 of the Treaty, as interpreted by decisions of the Court of Justice, which has ruled that the provisions of the Treaty and secondary legislation apply automatically to the French overseas departments, it being understood that it is always possible to adopt specific measures to assist them to the extent that, and for as long as, there remains an objective need for such measures with a view to the 'economic and social development of these areas';

Whereas, however, while forming an integral part of the Community, the French overseas departments are located in developing regions which lie in tropical latitudes; whereas any operation concerning these departments must therefore be based on a clear understanding of this twofold dimension and be aimed both at the objective of completing the internal market and at that of recognizing the regional reality; whereas the objective of completing the internal market should be reflected in the maintenance, modification or abolition of rules in force in the French overseas departments in line with those which will become the norm in the Community as a whole, while enabling the departments to catch up with the average Community economic and social level;

Whereas Community rules must be adopted to the need to protect the environment and natural resources to take account of the fragile nature of island territories and of their being particularly vulnerable to the increasing pressures of tourism;

Whereas attainment of these objectives may mean that general Community rules will have to be adjusted in so far as they do not take sufficiently into account the features peculiar to the French overseas department; whereas a coordinated approach should therefore be adopted in the framework of a comprehensive programme of operations;

⁽¹⁾ OJ No C 53, 2. 3. 1989, p. 12.

⁽²⁾ Opinion delivered on 14 December 1989 (not yet published in the Official Journal).

⁽³⁾ OJ No C 159, 26. 6. 1989, p. 56.

Whereas implementation of the programme would require the adoption of legal acts, either by the Council or by the Commission as the case may be, some of which could apply solely to the French overseas departments while others would be of only incidental concern to them in texts of general scope;

Whereas, in order to be effective, such a programme must be carried out over a period of years, which could extend, in the case of certain aspects of the programme, beyond the 31 December 1992 deadline, given the permanent constraints which are a particular feature of the French overseas departments;

Whereas the economic effects of any special arrangements must remain strictly limited to the territory of the French overseas departments without affecting directly the functioning of the common market;

Whereas some of the tropical products originating in the French overseas departments are not yet covered by common measures, which means that the aims set out in Article 39 of the Treaty cannot be attained in respect of the producers concerned; whereas this will therefore mean that, on the one hand, the existing common organizations of the market will have to be applied to the French overseas departments, subject to adjustments being made, and, on the other, that the arrangements under certain common organizations will have to be adjusted or *ad hoc* solutions provided for; whereas it will be necessary, as regards in particular the banana market, to give a ruling on provisions which take account of the objectives of the Single European Act; whereas measures will have to be adopted, for the French overseas departments, which take account of the economic and social importance of this product in certain of the said departments and of the objective of bringing about a fair standard of living for producers;

Whereas the exceptional geographical situation of the French overseas departments in relation to sources of supply for products used as inputs in certain food sectors, which are essential for current consumption, entail costs that are a severe handicap for those departments; whereas more of their requirements in agricultural and food products should be met from local production, particularly in the case of livestock farming, where inputs account for a substantial proportion of the cost of the end product; whereas this handicap should accordingly be mitigated by appropriate measures;

Whereas the French overseas departments are suppliers, on the Community market in Europe, of tropical products that are similar to, and in competition with, those produced in part at lower cost in neighbouring developing countries which enjoy preferential terms of access to the Community market, so that the principle of Community preference is difficult to apply in practice to products obtained from the French overseas departments; whereas, for the French overseas departments, the neighbouring countries moreover represent a potential outlet for their products as the important tourist industry in the region is generally supplied with products from other sources at lower cost; whereas greater regional cooperation could provide the French

overseas departments with a means of making better use of this outlet; whereas this handicap too should be mitigated by means of appropriate measures;

Whereas numerous national rules specific to the French overseas departments have been adopted, many of them being of long standing, in order to promote their economic and social development; whereas the drive to complete the internal market requires that a decision be taken before 31 December 1992 on maintaining, modifying or abolishing these rules in accordance with the general principles of the Treaty, while taking into account the special constraints affecting the regions concerned;

Whereas it is important to have available regular means of transport, at the lowest cost, in order to overcome the obstacles posed by remoteness and insularity of the departments; whereas air transport is an instrument of regional development and the most appropriate forms of greater liberalization should be sought in the context of partnership with local authorities;

Whereas, in this context, traditional rum is a product of prime economic and social importance in the French overseas departments; whereas Council Decision 88/245/EEC⁽¹⁾ authorized France, notwithstanding Article 95 of the Treaty, to maintain special tax arrangements on the French internal market until 31 December 1992; whereas between now and then it will be necessary to study the implications of the threefold context of the new Community definition, the abandonment of the allocation among Member States of the quota granted to the ACP States and the abolition of the special tax arrangements after 1 January 1993; whereas, as a result, structural measures designed to safeguard the essential interests of Community rum producers should be taken as soon as possible;

Whereas, in this context also, the French overseas departments have their own tax arrangements, particularly in the form of dock dues, which encourage self-reliant management by local authorities in their own development by providing them with own resources and help support local production activities; whereas completion of the internal market will require that this system be adapted in order to make it compatible with Community law while fostering its function as an effective instrument for development in the regions concerned;

Whereas in the context of rationalizing the aims of the Structural Funds, the Brussels European Council of 12 and 13 February 1988 laid down five priority objectives, including promotion of the development and structural adjustment of the less-developed regions; whereas it explicitly and definitively included the French overseas departments in the list of regions covered by this objective and stated that contributions to all the less-developed regions from the Structural Funds would be doubled in real terms between 1987 and 1992; whereas assistance for the French overseas departments will be provided from the Structural Funds, the European Investment Bank and the other existing financial instruments on the basis of the corresponding Community support framework, in a coordinated and

(1) OJ No L 106, 27. 4. 1988, p. 33.

concentrated manner that will be complementary to national and local initiatives, pursuant to Regulation (EEC) No 2052/88 (1);

Whereas a programme which is both cohesive and which combines all the aid mechanisms of the Community and the national and regional authorities may permit optimum and more effective use of the resources of the Structural Funds;

Whereas such programming must provide a guarantee of the active involvement of local, regional and national authorities and the complementarity of Community measures, in compliance with the principles of partnership and a joint contribution;

Whereas, moreover, the French overseas departments are surrounded, in their two geographical areas, by States and territories with which the Community maintains relations of a varied nature, which take the form of cooperation policies that are relatively uncoordinated; whereas, however, the development of the different constituents of a given geographical area, each of which has similar constraints and characteristics, requires the implementation of regional projects common to the various constituents, irrespective of their status in relation to Community law, as this makes it possible to achieve economies of scale and strengthens regional cooperation among the partners concerned;

Whereas, furthermore, these neighbouring entities are traditionally faced with similar problems despite their differing legal status; whereas regional cooperation that is geared to local realities involves more direct dialogue between the parties concerned; whereas it is therefore appropriate to foster regional consultation procedures, in close cooperation with the Member States concerned in the case of regions or territories that are the responsibility of Member States,

HAVE DECIDED AS FOLLOWS:

Article 1

A multiannual action programme for the French overseas departments, known as Poseidom (Programme of options specific to the remote and insular nature of the French overseas departments) contained in the Annex, is hereby established. This programme shall deal with legislative measures and financial commitments.

The Council shall adopt, to the extent to which it is concerned, the provisions necessary for the execution of this programme and invite the Commission to submit to it as soon as possible relevant proposals.

Article 2

This Decision shall take effect on 1 January 1990.

Article 3

This Decision shall be published in the *Official Journal of the European Communities*.

Done at Brussels, 22 December 1989.

For the Council
The President
E. CRESSON

(1) OJ No L 185, 15. 7. 1988, p. 9.

ANNEX

PROGRAMME OF OPTIONS SPECIFIC TO THE REMOTE AND INSULAR NATURE OF THE FRENCH OVERSEAS DEPARTMENTS (POSEIDOM)

TITLE I

General principles

1. Poseidom will be based on the twofold principle that the French overseas departments form an integral part of the Community and that the regional reality, characterized by the special features and constraints specific to the regions concerned as distinct from the Community as a whole, must be recognized.
- 2.1. Implementation of the Poseidom programme will in principle be carried out from 1 January 1990 to 31 December 1992, through the adoption either by the Council or by the Commission, as appropriate, of the necessary legal acts, in accordance with the provisions and procedures laid down in the Treaty.
- 2.2. Given the permanent and specific constraints on the French overseas departments, certain measures under the programme may continue to apply after 31 December 1992 so as to make possible the economic and social development of these areas.
3. The Poseidom programme will help attain the general aims of the Treaty by contributing to the achievement of the following specific objectives:
 - (a) making possible the realistic integration of the French overseas departments into the Community by establishing an appropriate framework for the application of common policies in those areas;
 - (b) helping the French overseas departments catch up economically and socially, with a view to the completion of the internal market by 31 December 1992, through coordinated and concentrated action involving the Structural Funds, the European Investment Bank and other existing financial instruments; measures adopted by national or regional authorities must be integrated with such actions.
4. The Poseidom programme will help attain the aims listed in Annex VII to the Final Act of the Third Lomé Convention and in the identical Declaration attached to the Fourth ACP-EEC Convention, signed at Lomé on 15 December 1989, as well as in the first part of Title VII of Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community⁽¹⁾, as amended by Decision 87/341/EEC⁽²⁾, and in the corresponding provisions of the Decision which will succeed it, whose aim is to promote regional cooperation in the developing areas where the French overseas departments are situated, notably through the provision of appropriate instruments for participating in joint regional projects or programmes.

TITLE II

Application of common policies in the French overseas departments

5. Community measures already taken for the French overseas departments will be maintained, extended or adapted in accordance with this Decision in order to provide a better response to their specific characteristics and the need to make their economic and social development possible.
6. Directives or other measures to be adopted in connection with the internal market, social matters, technological research and development, without prejudice to the Community framework programme on this topic, and environmental protection will have to take into account the special character of the French overseas departments and the need to make their economic and social development possible.
7. The Community and the Member State will develop any actions designed to enable the multiplicity of Community airlines, particularly local airlines, to serve the French overseas departments in the interests of their development.

⁽¹⁾ OJ No L 175, 1. 7. 1986, p. 1.

⁽²⁾ OJ No L 173, 30. 6. 1987, p. 10.

8.1. On the basis of a product-by-product analysis to be carried out by the Commission in the light of objective criteria, agricultural products not covered by common measures shall qualify for *ad hoc* measures which may take the form of assistance for processing or marketing, while not ruling out, in particular cases, the possibility of assistance for production. The Council or the Commission, as appropriate, will adopt the first measures necessary to this end within six months of the date on which this Decision takes effect.

8.2. In view of the economic and social importance of bananas for the French overseas departments and the objective of a fair standard of living for producers, the Commission will, without waiting for the adoption of common rules in particular under Structural Fund rules, decide on actions to assist this sector. With a view to improving the conditions of production and competition, such actions will take the form *inter alia* of measures concerning research, harvesting, processing and treatment, transport, storage, marketing and commercial promotion.

The Council will, on a proposal from the Commission, give a ruling on provisions for bananas with a view to the completion of the single market between now and 31 December 1992.

8.3. In the case of rum, the Commission will examine the economic and social implications of the threefold context of the new Community definition, the changes agreed under the negotiations for the Fourth ACP-EEC Convention regarding access to the Community market of rum originating in the ACP States, and the abolition of the special tax arrangements, taking into account the interests of Community producers and producers in territories and third countries in respect of which the Community has given specific undertakings.

The Council and the Commission, each to the extent to which it is concerned, will adopt as soon as possible the structural measures required to safeguard the essential interests of Community rum producers in order to improve their competitiveness, restructure the chain and assist the marketing of their production with a view to the gradual abolition of national shares. The Commission will submit the relevant proposals to the Council by 30 June 1990. It will report by 31 December 1992 on the situation of Community producers and on the implementation of the above measures.

9.1. Within six months from the date on which this Decision takes effect the Council or the Commission, as appropriate, will take action intended to mitigate the effects of the exceptional geographical situation of the French overseas departments in relation to the continental territory of the Community, taking into account the aims of regional cooperation.

Such action shall take the form of measures, on the one hand, to facilitate supplies to the French overseas departments and, on the other, to assist certain lines of agricultural production in the French overseas departments.

9.2. Regarding supplies to the French overseas departments, the latter will benefit from the following measures:

(a) firstly, the measures in question will concern inputs for local livestock farming: to that end, grain originating in developing countries and intended for livestock production will be exempted from the levy when imported directly into the French overseas departments.

Where there are difficulties recognized by the Commission with supplies of such products originating in developing countries, this measures may, by way of exception, be extended to grain originating in other third countries;

(b) secondly, the measures in question may also concern products intended for human consumption; such products originating in the overseas countries and territories or the ACP States may be exempted from the levy or, where appropriate, from customs duty when imported directly into the French overseas departments.

Where there are difficulties recognized by the Commission with supplies of such products originating in the overseas countries and territories or neighbouring ACP States, this measure may be extended to products originating in other developing countries;

(c) the measures referred to in (a) and (b) will be limited to local market requirements and involve measures making it possible to ensure that the products in question are not re-dispatched to the rest of the Community.

9.3. Regarding their production of agricultural products, the French overseas departments will benefit from the following measures to be adopted on the basis of a product-by-product analysis to be carried out by the Commission in the light of objective criteria:

- (a) provision will be made for Community measures to develop certain lines of production for which there are outlets on the French overseas departments' own markets, on the markets of neighbouring areas or on the markets of the rest of the Community;
 - (b) in the case of other lines of production, provision may be made for measures taking particular account of the effectiveness of their contribution to the economic and social development of the French overseas departments.
- 10.1. National measures which have specific effects favouring the French overseas departments shall be listed systematically in order that a decision may be taken before 31 December 1992 on whether to maintain, modify or abolish them in line with the general principles of the Treaty, while taking into account the special constraints on those areas.
- 10.2. With regard to aid within the meaning of Article 92 of the Treaty, the Commission:
- (a) will, after compiling the list of measures referred to in paragraph 1, examine the aid in the light of that provision and shall adopt measures within the scope of its powers or, where appropriate, shall propose to the Council any measures that prove necessary, pursuant to Articles 92, 93 and 94 of the Treaty, taking into account the specific position of the French overseas departments and the impact of the Community measures provided for in this programme or adopted in implementation of it;
 - (b) shall continue, even after 31 December 1992, to examine at regular intervals the aid given with a view to making any changes required by developments in the situation.
11. The system of charges applied in the French overseas departments under the heading of dock dues shall be converted in accordance with Decision 89/688/EEC (1).

TITLE III

Action involving the Structural Funds, the European Investment Bank and other financial instruments

- 12.1. The aims and procedures set out in Regulation (EEC) No 2052/88 will apply, as from the entry into force of the Regulation and on the terms laid down therein, to assistance to the French overseas departments from the Structural Funds, the European Investment Bank and other existing financial instruments with a view to promoting their development and structural adjustment.
- 12.2. Structural aid will take account of the additional handicaps of remoteness and insularity borne by the French overseas departments.
- 12.3. Pursuant to Article 8 of Regulation (EEC) No 2052/88, the French authorities and the Commission will ensure that measures to assist the French overseas departments that are covered by Community support frameworks are carried out primarily through the implementation of operational programmes, in accordance with the principles of partnership and additionality.
- 12.4. Within the scope of its powers and in accordance with the eligibility rules of the Structural Funds the Commission will speed up the grant of assistance in cases where aid from the Funds is needed to repair damage caused by natural disasters endemic to the tropical regions concerned, notably hurricanes, where such repair is not covered by emergency aid.

TITLE IV

Regional cooperation

- 13.1. In order to make possible better regional cooperation, consultations shall be encouraged between the different States, the overseas countries and territories and the French overseas departments in the geographical areas concerned, in conjunction with the authorities of the relevant Member States in the case of the French overseas departments and the overseas countries and territories.

(1) See page 46 of this Official Journal.

- 13.2. Regional trade cooperation could take the form of regional trade agreements, in accordance with the provisions of the Treaty.

Moreover, common commercial promotion measures by the French overseas departments, the overseas countries and territories and neighbouring ACP States could be financed, in accordance with the methods indicated in paragraph 3, in a way that is coordinated and complies with the respective rules and responsibilities of each Fund.

- 13.3. Within the framework of its management powers with regard to the Structural Funds, and in accordance with the eligibility rules of the said Funds, the Commission shall ensure that the French overseas departments receive assistance from the Structural Funds in the context of regional projects or programmes common to French overseas departments, overseas countries and territories and ACP States in the same geographical region, provided and to the extent that:

- these joint regional projects or programmes are those defined, as regards their aims, scope and procedural rules, in Articles 101 to 113 of the Third Lomé Convention, in Articles 54 to 66 of Decision 86/283/EEC and, once they enter into force, in the corresponding provisions of the Fourth Lomé Convention and in the Decision that will succeed that Decision,
- the procedural rules for financing these projects or programmes are those specific to each of the Community Funds concerned.

The Commission shall ensure coordination of the financing timetable and also of the subsequent implementation of the projects or programmes.

TITLE V

Final provision

14. The Commission shall submit to the Council an annual progress report on the implementation of the Poseidon programme.

COUNCIL DECISION

of 22 December 1989

concerning the dock dues in the French overseas departments

(89/688/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 227 (2) and 235 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas, pursuant to Article 227 (2) of the Treaty, the institutions of the Community will, within the framework of the procedures provided for in the Treaty, take care that the economic and social development of the French overseas departments is made possible; whereas, in the case in point, the Treaty has not provided the powers required to this end and it is therefore appropriate to have recourse to Article 235 of the Treaty;

Whereas action to promote the economic and social development of the French overseas departments in the past has taken the form of isolated measures; whereas, however, by means of Decision 89/687/EEC (4), the Council established an action programme for the said departments, known as 'Poseidon'; whereas this programme contains a tax component which needs to be implemented;

Whereas the dock dues at present constitute a means of support for local production, which has to contend with the problems of remoteness and insularity;

Whereas they also are a vital instrument of self-reliance and local democracy, the resources of which must constitute a means of economic and social development of the French overseas departments;

Whereas the dock dues system in its present form has features, however, which necessitate its reform as a means of integrating the French overseas departments fully into the process of completing the internal market, while taking account of their fragile economic structure;

Whereas this system should be adjusted, over a period of time that is convenient for both local and national authorities, into a system of internal taxation applicable to all products marketed in the French overseas departments;

Whereas, however, for the purposes of creating, maintaining and developing activities in the French overseas departments, it would be advisable to authorize the local authorities to exempt local activities either totally or partially, according to economic requirements, from the application of the new dock dues for a period not exceeding, in principle, 10 years;

Whereas, in order to see to it that exemptions comply with the rules of the Treaty and to ensure the necessary coordination with the general aims pursued by the Community, the Council should entrust the Commission with the task of giving a ruling, within a period of two months, bearing in mind the economic and social development strategy of each French overseas department, on the exemption arrangements, submitted by regional authorities, the object of which must be to help the economic and social development of these regions, in accordance with Article 227 (2) of the Treaty;

Whereas these exemption arrangements should be temporary and should normally be terminated 10 years after the reform of the system; whereas at the end of this time the tax arrangements should therefore as a rule be fully in line with the principles of Article 95 of the Treaty, it being understood that support measures with the same aims can still be adopted in the context of regional aid and in compliance with the provisions of Articles 92 to 94; whereas the Commission will present a report to the Council before the expiry of this 10-year period, concerning the implementation of the arrangements and their impact on the development of the overseas departments, together, where appropriate, with a proposal directed towards maintaining the possibility of exemptions;

Whereas, pending reform of dock dues, France should be authorized to maintain, until 31 December 1992 at the latest, dock dues arrangements in their present form, subject to certain conditions which guarantee that they affect the common market as little as possible and are used with the sole aim of Article 227 (2) of the Treaty,

HAS ADOPTED THIS DECISION,

Article 1

By 31 December 1992 at the latest, the French authorities shall take the necessary measures for the dock dues

(1) OJ No C 53, 2. 3. 1989, p. 12.

(2) Opinion delivered on 14 December 1989 (not yet published in the Official Journal).

(3) OJ No C 159, 26. 6. 1989, p. 56.

(4) See page 39 of this Official Journal.

arrangements at present in force in the French overseas departments to apply, in accordance with the principles and procedures set out in Articles 2 and 3, to all products whether imported into or produced in those areas.

Article 2

1. The revenue from this tax shall be put to use by the competent authorities of each French overseas department in such a way as to encourage as effectively as possible its economic and social development. The Commission shall be informed at the earliest opportunity of the measures adopted by the competent authorities in order to achieve this objective.

2. The competent authorities of each French overseas department shall establish a basic rate of tax. This rate may be adjusted according to the categories of products. This adjustment shall in no case be such as to maintain or introduce discrimination against products from the Community.

3. In the light of the specific constraints on the French overseas departments and with a view to achieving the objective referred to in Article 227 (2) of the Treaty, partial or total exemptions from the charge according to economic requirements, may be authorized for local production activities for a period of not more than 10 years from the date of introduction of the system of changes under the conditions laid down in Article 3. These exemptions must contribute to the promotion or maintenance of an economic activity in the French overseas departments and be in line with the economic and social development strategy of each French overseas department, taking account of its Community aid framework, while not being such as to adversely affect the terms of trade to an extent contrary to the common interest.

Exemption arrangements adopted by the competent authorities in each French overseas department shall be notified to the Commission, which shall inform the Member States thereof and define its position within two months on the basis of the above criteria. If the Commission has not defined its position within that period, the arrangement shall be deemed to be approved.

The Commission shall submit to the Council a report on the implementation of the exemption arrangements no later than five years after the introduction of the system of charges in question.

Article 3

Not later than one year before the end of the period provided for in Article 2 (3), the Commission shall submit to the

Council a report on the implementation of the arrangements referred to in Article 2, in order to ascertain the impact of the measures adopted on the economies of the French overseas departments and their contribution to the promotion or maintenance of local economic activities. The matters to be covered in the report shall include the effect of the system of charges in question on the economic and social adjustment of the French overseas departments taking as criteria the level of unemployment, the balance of trade, the regional gross domestic product both on the free movement of products within the Community and on regional cooperation between the French overseas departments and their neighbours.

In the light of the report's conclusions, the Commission, taking into account the objective regarding the economic and social development of the French overseas departments set out in Article 227 (2) of the Treaty shall, if necessary, at the same time submit to the Council a proposal for maintaining the possibility of exemptions.

Support measures with the same objectives may be taken in the context of regional aid.

Article 4

Pending implementation of the reform of the dock dues arrangements in accordance with the principles set out in Article 1, the French Republic shall be authorized to maintain the current dock dues arrangements, until not later than 31 December 1992, on condition that any proposal concerning extension of the list of products subject to dock dues or any increase in the rates thereof is notified to the Commission, which may oppose it within two months. The Commission shall also examine with the competent local authorities any changes that have taken place since 1 January 1980.

Article 5

This Decision is addressed to the French Republic.

Done at Brussels, 22 December 1989.

For the Council
The President
E. CRESSON

COUNCIL DECISION

of 12 March 1990

authorizing the United Kingdom to apply a measure derogating from Articles 5 (8) and 21 (1) (a) of the Sixth Directive (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment

(90/127/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment⁽¹⁾, as last amended by the Eighteenth Directive (89/465/EEC)⁽²⁾, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 27 (1) of the Sixth Directive (77/388/EEC), the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from that Directive in order to simplify the procedure for changing the tax or to prevent certain types of tax evasion or avoidance;

Whereas the United Kingdom was authorized by Council Decision, deemed to have been adopted on 14 April 1987 in accordance with the procedure laid down by Article 27 (4) of the Sixth Directive (77/388/EEC), to introduce, for a period of two years from 1 April 1987, a derogation aimed at combating tax avoidance;

Whereas the United Kingdom was authorized by Council Decision, deemed to have been adopted on 11 April 1989, to extend that derogation until 31 March 1990;

Whereas, by letter dated 29 November 1989 and received by the Commission on 1 December 1989, the United Kingdom requested authorization to extend the derogation until 31 December 1992 but at the same time to limit its scope;

Whereas the other Member States were informed on 27 December 1989 of the United Kingdom's request;

Whereas the purpose of the derogation is to prevent groups of enterprises which are treated as a single taxable person within the meaning of Article 4 (4) of the Sixth

Directive (77/388/EEC) and which are not entitled to deduct tax in full from being able to benefit from full deduction of the tax on certain transfers of assets made in the United Kingdom under Article 5 (8) of the said Directive;

Whereas, to prevent tax avoidance of this type, the United Kingdom applies a legislative provision stipulating that the transfer of assets to a member company of a VAT group is not wholly liable to tax is to be treated as a supply within the meaning of the Sixth Directive (77/388/EEC), with the result that the person liable for the tax is then the recipient of the transferred assets and not the taxable person who carries out the taxable transaction;

Whereas the United Kingdom will henceforth limit the scope of the abovementioned derogation in view of the introduction, on 1 April 1990, of a scheme for the adjustment of VAT deductions initially made in respect of certain capital goods, based on Article 20 (2) of the Sixth Directive (77/388/EEC);

Whereas, under Article 5 (8) of the said Directive, Member States may, in the event of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof, consider that no supply of goods has taken place and that the recipient is to be treated as the successor to the transferor;

Whereas the United Kingdom makes general use of the option provided for in Article 5 (8) of the Sixth Directive (77/388/EEC);

Whereas, therefore, the measure planned by the United Kingdom derogates from Article 5 (8) of the said Directive in that a supply is deemed to take place where part of a totality of assets is transferred to a company which, as a member of a group of enterprises which are treated as a single taxable person within the meaning of Article 4 (4) of the said Directive, is not entitled to deduct tax in full;

Whereas the measure planned by the United Kingdom also constitutes a derogation from Article 21 (1) (a) of the Sixth Directive (77/388/EEC), according to which, under the internal system, the person liable for the tax is the taxable person who carries out the taxable transaction;

⁽¹⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽²⁾ OJ No L 226, 3. 8. 1989, p. 21.

Whereas the derogation will have a favourable effect on the European Communities' own resources arising from value-added tax (VAT),

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Articles 5 (8) and 21 (1) (a) of the Sixth Directive (77/388/EEC), the United Kingdom is hereby authorized to apply until 31 December 1992:

- a provision whereby a supply of goods is deemed to occur where assets other than the capital goods subject to adjustment of the deductions initially made pursuant to legislation adopted by the United Kingdom on the basis of Article 20 of the Sixth Directive (77/388/EEC) are totally or partially transferred to a company which is a member of a group of

enterprises treated as a single taxable person within the meaning of Article 4 (4) of the said Directive and which, as a member of that group, is not entitled to deduct tax in full;

- a provision whereby the company which is the recipient of the supply of assets referred to in the first indent becomes liable to tax.

Article 2

This Decision is addressed to the United Kingdom.

Done at Brussels, 12 March 1990.

For the Council

The President

A. REYNOLDS

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 23 March 1990

authorizing France not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

(Only the French text is authentic)

(90/176/Euratom, EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax⁽¹⁾, and in particular Article 13 thereof,

Whereas 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⁽²⁾ ceased to be applicable on 31 December 1988; whereas the authorizations given under Article 13 thereof must be renewed from 1 January 1989 pursuant to Article 13 of Regulation (EEC, Euratom) No 1553/89;

Whereas, under Article 28 (3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of

assessment⁽³⁾, hereinafter called 'the Sixth Directive', as last amended by Directive 84/386/EEC⁽⁴⁾, the Member States may continue to exempt or tax certain transactions; whereas these transactions must be taken into account for the determination of the VAT resources base;

Whereas France is unable to make a precise calculation of the VAT own resources base for two categories of transactions listed in Annex F to the Sixth Directive; whereas such calculation is likely to involve an unjustified administrative burden in relation to the effect of these transactions on France's total VAT resources base; whereas France should therefore be authorized not to take these transactions into account for the calculation of the VAT base;

Whereas France is able to make a calculation using approximate estimates for six categories of transactions listed in Annex F to the Sixth Directive; whereas it should therefore be authorized to calculate the VAT base using approximate estimates;

Whereas the Advisory Committee on Own Resources has approved the report recording the opinions of its members on this Decision,

⁽¹⁾ OJ No L 155, 7. 6. 1989, p. 9.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽⁴⁾ OJ No L 208, 3. 9. 1984, p. 58.

HAS ADOPTED THIS DECISION :

Article 1

For the purpose of calculating the VAT own resources base from 1 January 1989, France is authorized not to take into account the following categories of transactions referred to in Annex F to the Sixth Directive :

1. Supply of services by means of agricultural machinery for individual or associated agricultural undertakings (Annex F, point 3);
2. Transactions carried out by blind persons or workshops for the blind provided these exemptions do not give rise to significant distortion of competition (Annex F, point 7);
3. The supply of goods and services to official bodies responsible for the construction, setting out and maintenance of cemeteries, graves and monuments commemorating war dead (Annex F, point 8).

Article 2

For the purpose of calculating the VAT own resources base from 1 January 1989, France is authorized to use approximate estimates in respect of the following categories

of transactions referred to in Annex F to the Sixth Directive :

1. Admission to sporting events (Annex F, point 1);
2. Services supplied by members of certain professions (Annex F, ex point 2);
3. The supply of water by public authorities (Annex F, point 12);
4. Passenger transport (Annex F, ex point 17);
5. Supplies of recuperable material and fresh industrial waste (Annex F, point 20);
6. Transactions concerning gold other than gold for industrial use (Annex F, point 26).

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 23 March 1990.

For the Commission

Peter SCHMIDHUBER

Member of the Commission

COMMISSION DECISION

of 23 March 1990

authorizing Belgium not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

(Only the Dutch and French texts are authentic)

(90/177/Euratom, EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax⁽¹⁾, and in particular Article 13 thereof,

Whereas 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⁽²⁾ ceased to be applicable on 31 December 1988; whereas the authorizations given under Article 13 thereof must be renewed from 1 January 1989 pursuant to Article 13 of Regulation (EEC, Euratom) No 1553/89;

Whereas, under Article 28 (3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽³⁾, hereinafter called 'the Sixth Directive', as last amended by Directive 84/386/EEC⁽⁴⁾, the Member States may continue to exempt or tax certain transactions; whereas these transactions must be taken into account for the determination of the VAT resources base;

Whereas Belgium is unable to make a precise calculation of the VAT own resources base for two categories of transactions listed in Annexes E and F to the Sixth Directive; whereas such calculation is likely to involve an unjustified administrative burden in relation to the effect of these transactions on Belgium's total VAT resources base; whereas Belgium should therefore be authorized not to take these transactions into account for the calculation of the VAT base;

Whereas Belgium is able to make a calculation using approximate estimates for six categories of transactions listed in Annexes E and F to the Sixth Directive; whereas it should therefore be authorized to calculate the VAT base using approximate estimates;

Whereas the Advisory Committee on Own Resources has approved the report recording the opinions of its members on this Decision,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of calculating the VAT own resources base from 1 January 1989, Belgium is authorized, in accordance with the first indent of Article 6 (3) of Council Regulation (EEC, Euratom) No 1553/89, not to take into account the following categories of transactions referred to in Annexes E and F to the Sixth Directive:

1. Transactions referred to in Article 13 (A) (1) (f) of the Sixth Directive other than those of groups of a medical or paramedical nature (Annex E, ex point 3);
2. Services supplied by authors, artists, performers, in so far as these are not services specified in Annex B to the Second Council Directive 67/228/EEC⁽⁵⁾:
 - services rendered to conference organizers by lecturers,
 - services rendered to show and concert organizers, to publishers of records and other sound recording media and to makers of films and other image-recording media by actors, conductors, musicians and other artists in the context of theatrical, choreographical, cinematographical or musical productions or circus, music-hall or artistic cabaret performances, and
 - services rendered to organizers of sporting competitions or events by persons taking part in these competitions or events (Annex F, ex point 2).

⁽¹⁾ OJ No L 155, 7. 6. 1989, p. 9.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽⁴⁾ OJ No L 208, 3. 9. 1984, p. 58.

⁽⁵⁾ OJ No 71, 14. 4. 1967, p. 1303/67.

Article 2

For the purpose of calculating the VAT own resources base from 1 January 1989, Belgium is authorized to use approximate estimates in respect of the following categories of transactions referred to in Annexes E and F to the Sixth Directive :

1. The services of travel agents referred to in Article 26 of the Sixth Directive, and those of travel agents acting in the name and on account of the traveller, for journeys outside the Community (Annex E, point 15);
2. Services supplied by lawyers, notaries and bailiffs (for all activities), in so far as these are not services specified in Annex B to the Second Directive 67/228/EEC (Annex F, ex point 2);

3. Treatment of animals by veterinary surgeons (Annex F, point 9);
4. Supplies of land described in Article 4 (3) of the Sixth Directive (Annex F, ex point 16).

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 23 March 1990.

For the Commission

Peter SCHMIDHUBER

Member of the Commission

COMMISSION DECISION

of 23 March 1990

authorizing Luxembourg not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

(Only the French text is authentic)

(90/178/Euratom, EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax⁽¹⁾, and in particular Article 13 thereof,

Whereas 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⁽²⁾ ceased to be applicable on 31 December 1988; whereas the authorizations given under Article 13 thereof must be renewed from 1 January 1989 pursuant to Article 13 of Regulation (EEC, Euratom) No 1553/89;

Whereas, under Article 28 (3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽³⁾, hereinafter called 'the Sixth Directive', as last amended by Directive 84/386/EEC⁽⁴⁾, the Member States may continue to exempt or tax certain transactions; whereas these transactions must be taken into account for the determination of the VAT resources base;

Whereas Luxembourg is unable to make a precise calculation of the VAT own resources base for four categories of transactions listed in Annex E and F to the Sixth Directive; whereas such calculation is likely to involve an unjustified administrative burden in relation to the effect of these transactions on Luxembourg's total VAT

resources base; whereas Luxembourg should therefore be authorized not to take these transactions into account for the calculation of the VAT base;

Whereas Luxembourg is able to make a calculation using approximate estimates for three categories of transactions listed in Annex F to the Sixth Directive; whereas it should therefore be authorized to calculate the VAT base using approximate estimates;

Whereas the Advisory Committee on Own Resources has approved the report recording the opinions of its members on this Decision,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of calculating the VAT own resources base from 1 January 1989, Luxembourg is authorized not to take into account the following categories of transactions referred to in Annexes E and F to the Sixth Directive:

1. Transactions referred to in Article 13 (A) (1) (f) of the Sixth Directive other than those of groups of a medical or paramedical nature (Annex E, point 3);
2. Services supplied by travel agencies acting on behalf and for the account of the traveller, for journeys outside the Community (Annex E, ex point 15);
3. Admission to sporting events (Annex F, point 1);
4. Management of credit and credit guarantees by a person or body other than the one which granted the credit (Annex F, point 13).

Article 2

For the purpose of calculating the VAT own resources base from 1 January 1989, Luxembourg is authorized to use approximate estimates in respect of the following categories of transactions referred to in Annex F to the Sixth Directive:

⁽¹⁾ OJ No L 155, 7. 6. 1989, p. 9.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽⁴⁾ OJ No L 208, 3. 9. 1984, p. 58.

1. Telecommunications services supplied by public postal services and supplies of goods incidental thereto (Annex F, point 5);

Article 3

This Decision is addressed to the Grand Duchy of Luxembourg.

2. The supply of water by public authorities (Annex F, point 12);

Done at Brussels, 23 March 1990.

3. The domestic parts of international transport operations (Annex F, ex point 17).

For the Commission

Peter SCHMIDHUBER

Member of the Commission

COMMISSION DECISION

of 23 March 1990

authorizing the Federal Republic of Germany to use statistics for years earlier than the last year but one and not to take into account certain categories of transactions or to use certain approximate estimates for the calculation of the VAT own resources base

(Only the German text is authentic)

(90/179/Euratom, EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax⁽¹⁾, and in particular Article 13 thereof,

Whereas 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⁽²⁾ ceased to be applicable on 31 December 1988; whereas the authorizations given under Article 13 thereof must be renewed from 1 January 1989 pursuant to Article 13 of Regulation (EEC, Euratom) No 1553/89;

Whereas, under Article 28 (3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽³⁾, hereinafter called 'the Sixth Directive', as last amended by Directive 84/386/EEC⁽⁴⁾, the Member States may continue to exempt or tax certain transactions; whereas these transactions must be taken into account for the determination of the VAT resources base;

Whereas, for the purposes of the breakdown of transactions by statistical category, Germany is unable to use definitive figures from the national accounts for the last year but one before the financial year for which the VAT resources base has to be calculated; whereas Germany should therefore be authorized to use figures taken from the national accounts for years earlier than the last year but one;

Whereas Germany is unable to make a precise calculation of the VAT own resources base for three categories of

transactions listed in Annexes E and F to the Sixth Directive; whereas such calculation is likely to involve an unjustified administrative burden in relation to the effect of these transactions on Germany's total VAT resources base; whereas Germany should therefore be authorized not to take these transactions into account for the calculation of the VAT base;

Whereas Germany is able to make a calculation using approximate estimates for tax not collected because of the graduated tax relief granted under Article 24 (2) of the Sixth Directive and four categories of transactions listed in Annexes E and F to the Sixth Directive; whereas it should therefore be authorized to calculate the VAT base using approximate estimates;

Whereas the Advisory Committee on Own Resources has approved the report recording the opinions of its members on this Decision,

HAS ADOPTED THIS DECISION:

Article 1

In order to perform breakdown by rate referred to in Article 4 (4) of Council Regulation (EEC, Euratom) No 1553/89 Germany is hereby authorized from 1 January 1989 to use figures obtained from the national accounts for the last year but two or the last year but three before the financial year for which the VAT resources base has to be calculated.

Article 2

For the purpose of calculating the VAT own resources base from 1 January 1989, Germany is authorized not to take into account the following categories of transactions referred to in Annexes E and F to the Sixth Directive:

1. The services of travel agents acting in the name and on account of the traveller for journeys outside the Community (Annex E, ex point 15);
2. Transactions carried out by blind persons or workshops for the blind (Annex F, point 7);

⁽¹⁾ OJ No L 155, 7. 6. 1989, p. 9.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽⁴⁾ OJ No L 208, 3. 9. 1984, p. 58.

3. Management of credit and credit guarantees by a person or body other than the one which granted the credits (Annex F, point 13);

Article 3

For the purpose of calculating the VAT own resources base from 1 January 1989, Germany is authorized to use approximate estimates to calculate the tax not collected because of the graduated tax relief granted under Article 24 (2) of the Sixth Directive and for certain categories of transactions referred to in Annexes E and F to the Sixth Directive :

1. Graduated tax relief for small undertakings;
2. Supplies of dental prostheses and the provision of services relating thereto by dental technicians and supplies of dental prostheses by dentists when these prostheses are made by dentists themselves (Annex E, ex point 2);
3. Telecommunications services and supplies of goods incidental thereto supplies by public postal services, excluding the supply and maintenance of secondary

telephone installations by the Federal Post Office (Annex F, ex point 5);

4. The safekeeping and management of securities (Annex F, ex point 15);

5. Supplies of those buildings and land described in Article 4 (3) of the Sixth Directive (land with new buildings and building land) (Annex F, ex point 16).

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 23 March 1990.

For the Commission

Peter SCHMIDHUBER

Member of the Commission

COMMISSION DECISION

of 23 March 1990

authorizing the Netherlands not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

(Only the Dutch text is authentic)

(90/180/Euratom, EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax⁽¹⁾, and in particular Article 13 thereof,

Whereas 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⁽²⁾ ceased to be applicable on 31 December 1988; whereas the authorizations given under Article 13 thereof must be renewed from 1 January 1989 pursuant to Article 13 of Regulation (EEC, Euratom) No 1553/89;

Whereas, under Article 28 (3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽³⁾, hereinafter called 'the Sixth Directive', as last amended by Directive 84/386/EEC⁽⁴⁾, the Member States may continue to exempt or tax certain transactions; whereas these transactions must be taken into account for the determination of the VAT resources base;

Whereas the Netherlands is unable to make a precise calculation of the VAT own resources base for two categories of transactions listed in Annex F to the Sixth Directive; whereas such calculation is likely to involve an unjustified administrative burden in relation to the effect of these transactions on the Netherlands' total VAT resources base; whereas the Netherlands should therefore be authorized not to take these transactions into account for the calculation of the VAT base;

Whereas the Netherlands is able to make a calculation using approximate estimates for six categories of transac-

tions listed in Annex F to the Sixth Directive; whereas it should therefore be authorized to calculate the VAT base using approximate estimates;

Whereas the Advisory Committee on Own Resources has approved the report recording the opinions of its members on this Decision,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of calculating the VAT own resources base from 1 January 1989, the Netherlands is authorized not to take into account the following categories of transactions referred to in Annex F to the Sixth Directive:

1. Services supplied by authors, artists, performers, lawyers and other members of the professions, other than the medical and paramedical professions, in so far as these are not services specified in Annex B to the Second Council Directive 67/228/EEC⁽⁵⁾. Services supplied by writers, composers, journalists and press photographers (Annex F, ex point 2);
2. Transactions carried out by blind persons or workshops for the blind, provided these exemptions do not give rise to significant distortion of competition (Annex F, point 7).

Article 2

For the purpose of calculating the VAT own resources base from 1 January 1989, the Netherlands is authorized to use approximate estimates in respect of the following categories of transactions referred to in Annex F to the Sixth Directive;

1. Services supplied by notaries and bailiffs (Annex F, ex point 2);
2. Services supplied by undertakers and cremation services, together with the supply of goods related thereto (Annex F, point 6);

(¹) OJ No L 155, 7. 6. 1989, p. 9.

(²) OJ No L 336, 27. 12. 1977, p. 8.

(³) OJ No L 145, 13. 6. 1977, p. 1.

(⁴) OJ No L 208, 3. 9. 1984, p. 58.

(⁵) OJ No 71, 14. 4. 1967, p. 1303/67.

3. Treatment of animals by veterinary surgeons (Annex F, point 9);
4. Services of exports in connection with insurance claim assessments (Annex F, point 11);
5. The transport by ferry-boat of passengers and goods accompanying passengers (Annex F, ex point 17);
6. The services of travel agents referred to in Article 26 of the Sixth Directive, and those of travel agents acting in the name and on account of the traveller for journeys within the Community (Annex F, point 27).

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 23 March 1990.

For the Commission

Peter SCHMIDHUBER

Member of the Commission

COMMISSION DECISION

of 23 March 1990

authorizing Italy to use certain approximate estimates for the calculation of the VAT own resources base

(Only the Italian text is authentic)

(90/181/Euratom, EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax⁽¹⁾, and in particular Article 13 thereof,

Whereas 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⁽²⁾ ceased to be applicable on 31 December 1988; whereas the authorizations given under Article 13 thereof must be renewed from 1 January 1989 pursuant to Article 13 of Regulation (EEC, Euratom) No 1553/89;

Whereas, under Article 28 (3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽³⁾, hereinafter called 'the Sixth Directive', as last amended by Directive 84/386/EEC⁽⁴⁾, the Member States may continue to exempt or tax certain transactions; whereas these transactions must be taken into account for the determination of the VAT resources base;

Whereas a precise calculation of the base is likely to involve an unjustified administrative burden in relation to the effect of these transactions on Italy's total VAT resources base; whereas Italy is able to make a calculation using approximate estimates for two categories of transactions listed in Annexes E and F to the Sixth Directive; whereas it should therefore be authorized to calculate the VAT base using approximate estimates;

Whereas the Advisory Committee on Own Resources has approved the report recording the opinions of its members on this Decision,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of calculating the VAT own resources base from 1 January 1989, Italy is authorized to use approximate estimates in respect of the following categories of transactions referred to in Annexes E and F to the Sixth Directive:

1. Transactions referred to in Article 13 (B) (g) of the Sixth Directive: Transfer of buildings or parts thereof and the land on which they stand, other than those referred to in Article 4 (3) (a), when they are carried out by taxable persons entitled to a deduction of input tax on the building concerned (Annex E, ex point 11);
2. Services provided by undertakers and cremation services and supplies of goods related to such services (Annex F, point 6).

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 23 March 1990.

For the Commission

Peter SCHMIDHUBER

Member of the Commission

⁽¹⁾ OJ No L 155, 7. 6. 1989, p. 9.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽⁴⁾ OJ No L 208, 3. 9. 1984, p. 58.

COMMISSION DECISION

of 23 March 1990

authorizing the United Kingdom not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

(Only the English text is authentic)

(90/182/Euratom, EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax⁽¹⁾, and in particular Article 13 thereof,

Whereas 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⁽²⁾ ceased to be applicable on 31 December 1988; whereas the authorizations given under Article 13 thereof must be renewed from 1 January 1989 pursuant to Article 13 of Regulation (EEC, Euratom) No 1553/89;

Whereas, under Article 28 (3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽³⁾, hereinafter called 'the Sixth Directive', as last amended by Directive 84/386/EEC⁽⁴⁾, the Member States may continue to exempt or tax certain transactions; whereas these transactions must be taken into account for the determination of the VAT resources base;

Whereas the United Kingdom is unable to make a precise calculation of the VAT own resources base for one category of transactions listed in Annex E to the Sixth Directive; whereas such calculation is likely to involve an unjustified administrative burden in relation to the effect of these transactions on the United Kingdom's total VAT resources base; whereas the United Kingdom should

therefore be authorized not to take these transactions into account for the calculation of the VAT base;

Whereas the United Kingdom is able to make a calculation using approximate estimates for two categories of transactions listed in Annex F to the Sixth Directive; whereas it should therefore be authorized to calculate the VAT base using approximate estimates;

Whereas the Advisory Committee on Own Resources has approved the report recording the opinions of its members on this Decision,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of calculating the VAT own resources base from 1 January 1989, the United Kingdom is authorized not to take into account the following category of transactions referred to in Annex E to the Sixth Directive: transactions referred to in Article 13 (A) (1) (p) of the Sixth Directive: the supply of transport services of a commercial nature by duly authorized bodies for sick or injured persons in vehicles specially designed for the purpose (Annex E, ex point 6).

Article 2

For the purpose of calculating the VAT own resources base from 1 January 1989, the United Kingdom is authorized to use approximate estimates in respect of the following categories of transactions referred to in Annex F to the Sixth Directive:

1. Transactions of hospitals not covered by Article 13 (A) (1) (b) (Annex F, point 10);
2. Goods for the fuelling and provisioning of pleasure boats and aircraft for private use proceeding outside the national territory (Annex F, points 21 and 22).

⁽¹⁾ OJ No L 155, 7. 6. 1989, p. 9.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽⁴⁾ OJ No L 208, 3. 9. 1984, p. 58.

Article 3

This Decision is addressed to the United Kingdom.

Done at Brussels, 23 March 1990.

For the Commission
Peter SCHMIDHUBER
Member of the Commission

COMMISSION DECISION

of 23 March 1990

authorizing Ireland not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

(Only the English text is authentic)

(90/183/Euratom, EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax⁽¹⁾, and in particular Article 13 thereof,

Whereas 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⁽²⁾ ceased to be applicable on 31 December 1988; whereas the authorizations given under Article 13 thereof must be renewed from 1 January 1989 pursuant to Article 13 of Regulation (EEC, Euratom) No 1553/89;

Whereas, under Article 28 (3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽³⁾, hereinafter called 'the Sixth Directive', as last amended by Directive 84/386/EEC⁽⁴⁾, the Member States may continue to exempt or tax certain transactions; whereas these transactions must be taken into account for the determination of the VAT resources base;

Whereas Ireland is unable to make a precise calculation of the VAT own resources base for two categories of transactions listed in Annexes E and F to the Sixth Directive; whereas such calculation is likely to involve an unjustified administrative burden in relation to the effect of these transactions on Ireland's total VAT resources base; whereas Ireland should therefore be authorized not to take these transactions into account for the calculation of the VAT base;

Whereas Ireland is able to make a calculation using approximate estimates for six categories of transactions listed in Annex F to the Sixth Directive; whereas it

should therefore be authorized to calculate the VAT base using approximate estimates;

Whereas the Advisory Committee on Own Resources has approved the report recording the opinions of its members on this Decision,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of calculating the VAT own resources base from 1 January 1989, Ireland is authorized not to take into account the following categories of transactions referred to in Annex E to the Sixth Directive:

1. Supplies covered by Article 13 (B) (g) in so far as they are made by taxable persons who are entitled to deduction of input tax on the building concerned (Annex E, point 11);
2. Supplies referred to in Article 15, point 12, of the Sixth Directive (Annex E, point 14).

Article 2

For the purpose of calculating the VAT own resources base from 1 January 1989, Ireland is authorized to use approximate estimates in respect of the following categories of transactions referred to in Annex E to the Sixth Directive:

1. Admission to sporting events (Annex F, point 1);
2. Supply of greyhounds (Annex F, ex point 4);
3. Services supplied by undertakers and cremation services, together with goods related thereto (Annex F, point 6);
4. Treatment of animals by veterinary surgeons (Annex F, point 9);
5. The services of travel agents referred to in Article 26 of the Sixth Directive and those of travel agents acting in the name and on account of the traveller, for journeys within the Community (Annex F, point 27).

⁽¹⁾ OJ No L 155, 7. 6. 1989, p. 9.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽⁴⁾ OJ No L 208, 3. 9. 1984, p. 58.

Article 3

This Decision is addressed to Ireland.

Done at Brussels, 23 March 1990.

For the Commission
Peter SCHMIDHUBER
Member of the Commission

COMMISSION DECISION

of 23 March 1990

authorizing Denmark not to take into account certain categories of transactions and to use certain approximate estimates for the calculation of the VAT own resources base

(Only the Danish text is authentic)

(90/184/Euratom, EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax⁽¹⁾, and in particular Article 13 thereof,

Whereas 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⁽²⁾ ceased to be applicable on 31 December 1988; whereas the authorizations given under Article 13 thereof must be renewed from 1 January 1989 pursuant to Article 13 of Regulation (EEC, Euratom) No 1553/89;

Whereas, under Article 28 (3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽³⁾, hereinafter called 'the Sixth Directive', as last amended by Directive 84/386/EEC⁽⁴⁾, the Member States may continue to exempt or tax certain transactions; whereas these transactions must be taken into account for the determination of the VAT resources base;

Whereas Denmark is unable to make a precise calculation of the VAT own resources base for two categories of transactions listed in Annex F to the Sixth Directive; whereas such calculation is likely to involve an unjustified administrative burden in relation to the effect of these transactions on Denmark's total VAT resources base; whereas

Denmark should therefore be authorized not to take these transactions into account for the calculation of the VAT base;

Whereas Denmark is able to make a calculation using approximate estimates for two categories of transactions listed in Annex F to the Sixth Directive; whereas it should therefore be authorized to calculate the VAT base using approximate estimates;

Whereas the Advisory Committee on Own Resources has approved the report recording the opinions of its members on this Decision,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of calculating the VAT own resources base from 1 January 1989, Denmark is authorized not to take into account the following categories of transactions referred to in Annex F to the Sixth Directive:

1. Services supplied by authors, artists and performers (Annex F, ex point 2);
2. Management of credit and credit guarantees by a person or body other than the one which granted the credit (Annex F, point 13).

Article 2

For the purpose of calculating the VAT own resources base from 1 January 1989, Denmark is authorized to use approximate estimates in respect of the following categories of transactions, referred to in Annex F to the Sixth Directive:

1. Services of undertakers and cremation services other than the supply of goods related thereto (Annex F, ex point 6);
2. Transactions relating to the safekeeping and management of shares (Annex F, ex point 15);

⁽¹⁾ OJ No L 155, 7. 6. 1989, p. 9.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽⁴⁾ OJ No L 208, 3. 9. 1984, p. 58.

Article 3

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 23 March 1990.

For the Commission
Peter SCHMIDHUBER
Member of the Commission

COMMISSION DECISION

of 23 March 1990

authorizing Greece to use certain approximate estimates for the calculation of the VAT own resources base

(Only the Greek text is authentic)

(90/185/Euratom, EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax⁽¹⁾, and in particular Article 13 thereof,

Whereas 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⁽²⁾ ceased to be applicable on 31 December 1988; whereas the authorizations given under Article 13 thereof must be renewed from 1 January 1989 pursuant to Article 13 of Regulation (EEC, Euratom) No 1553/89;

Whereas, under Article 28 (3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment⁽³⁾, hereinafter called 'the Sixth Directive', as last amended by Directive 84/386/EEC⁽⁴⁾, the Member States may continue to exempt or tax certain transactions; whereas these transactions must be taken into account for the determination of the VAT resources base;

Whereas paragraph 2 (b) of Section III (Taxation) of Annex VIII to the Act of Accession of the Hellenic Republic to the European Communities⁽⁵⁾ authorizes Greece to exempt certain activities listed in Annex F to the Sixth

Directive from value added tax in accordance with Article 28 (3) of the Sixth Directive;

Whereas precise calculation of the base is likely to involve an unjustified administrative burden in relation to the effect of these transactions on Greece's total VAT resources base; whereas Greece is able to make a calculation using approximate estimates for the categories of transactions listed in Annex F to the Sixth Directive; whereas it should therefore be authorized to calculate the VAT base using approximate estimates;

Whereas the Advisory Committee on Own Resources has approved the report recording the opinions of its members on this Decision,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of calculating the VAT own resources base from 1 January 1989, Greece is authorized to use approximate estimates in respect of the following categories of transactions referred to in Annex F to the Sixth Directive:

1. Services supplied by lawyers and other members of the liberal professions (Annex F, ex point 2);
2. Treatment of animals by veterinary surgeons (Annex F, point 9);
3. The supply of water by public authorities (Annex F, point 12);
4. Supplies of those buildings and land described in Article 4 (3) of the Sixth Directive (Annex F, point 16).
5. The supply, modification, repair, maintenance, chartering and hiring of aircraft, including equipment incorporated or used therein, used by State institutions (Annex F, point 23);
6. The supply, modification, repair, maintenance, chartering and hiring of warships (Annex F, point 25).

⁽¹⁾ OJ No L 155, 7. 6. 1989, p. 9.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽⁴⁾ OJ No L 208, 3. 9. 1984, p. 58.

⁽⁵⁾ OJ No L 291, 19. 11. 1979, p. 164.

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 23 March 1990.

For the Commission
Peter SCHMIDHUBER
Member of the Commission

COMMISSION DIRECTIVE

of 4 May 1990

amending the Seventeenth Council Directive 85/362/EEC on the harmonization of the laws of the Member States relating to turnover taxes — Exemption from value added tax on the temporary importation of goods other than means of transport

(90/237/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾, as last amended by Regulation (EEC) No 1251/90⁽²⁾, and in particular Article 15 thereof,

Whereas the classification of goods given in Article 29 (2) of Council Directive 85/362/EEC⁽³⁾ is based on the nomenclature of the Customs Cooperation Council;

Whereas the Customs Cooperation Council has approved the International Convention on the Harmonized Commodity Description and Coding System (hereinafter referred to as the 'HS'); whereas the Council approved the Convention by Decision 87/369/EEC⁽⁴⁾; whereas the HS has been in force since 1 January 1988;

Whereas, accordingly, a combined nomenclature was drawn up with a view to implementation of the HS in the Community; whereas, therefore, the references in Article 29 (2) of Directive 85/362/EEC must be based on the combined nomenclature;

Whereas the aforementioned adaptation of Directive 85/362/EEC to the combined nomenclature is, therefore, simply a technical adaptation which in no way alters the scope of the exemptions laid down in the Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 29 (2) of Directive 85/362/EEC is hereby amended as follows:

1. in the first indent, 'heading No 99.01 of the Common Customs Tariff' is replaced by 'CN code 9701 10 00';
2. in the second indent, 'heading No 99.02 of the Common Customs Tariff' is replaced by 'CN code 9702 00 00';
3. in the third indent, 'heading No 99.03 of the Common Customs Tariff' is replaced by 'CN code 9703 00 00';
4. in the fourth indent, 'heading No 58.03 of the Common Customs Tariff' and 'subheading ex 62.02 B IV of the Common Customs Tariff' are replaced by 'CN code ex 5805 00 00' and 'CN codes ex 6304 92 00, ex 6304 93 00 and ex 6304 99 00' respectively.

Article 2

Member States shall bring into force the measures necessary to comply with this Directive not later than 1 July 1990 and shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 4 May 1990.

For the Commission

Christiane SCRIVENER

Member of the Commission

⁽¹⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽²⁾ OJ No L 121, 12. 5. 1990, p. 29.

⁽³⁾ OJ No L 192, 24. 7. 1985, p. 20.

⁽⁴⁾ OJ No L 198, 20. 7. 1987, p. 1.

COMMISSION DECISION

of 1 August 1990

determining the amount of VAT own resources payable by the Federal Republic of Germany for 1988 in respect of transactions covered by the 20th Council Directive 85/361/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: derogations in connection with the special aids granted to certain farmers to compensate for the dismantlement of monetary compensatory amounts applying to certain agricultural products

(Only the German text is authentic)

(90/418/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to the 20th Council Directive 85/361/EEC of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: derogations in connection with the special aids granted to certain farmers to compensate for the dismantlement of monetary compensatory amounts applying to certain agricultural products⁽¹⁾, and in particular Article 5 thereof,

Whereas Directive 85/361/EEC authorizes the Federal Republic of Germany to use value added tax to grant a special aid to farmers provided that own resources accruing from VAT are not affected;

Whereas, for the 1988 financial year, the net VAT revenue to be taken into account under Article 6 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⁽²⁾ as last amended by Regulation (ECSC, EEC, Euratom) No 3735/85⁽³⁾ should be increased by DM 2 481 million;

Whereas, the average weighted rate referred to in the said Article is 12,6527 % for 1988 but may be changed again;

Whereas the rate of VAT own resources payable by the Federal Republic of Germany for 1988 is 1,2661 %.

Whereas the Advisory Committee on Own Resources has been consulted,

HAS ADOPTED THIS DECISION:

Article 1

VAT own resources payable by the Federal Republic of Germany for 1988 according to Article 5 of Directive 85/361/EEC amount to DM 248 260 000.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 1 August 1990.

For the Commission

Peter SCHMIDHUBER

Member of the Commission

⁽¹⁾ OJ No L 192, 24. 7. 1985, p. 18.

⁽²⁾ OJ No L 336, 27. 12. 1977, p. 8.

⁽³⁾ OJ No L 356, 31. 12. 1985, p. 1.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 23 July 1990

on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States

(90/434/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal of the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States may be necessary in order to create within the Community conditions analogous to those of an internal market and in order thus to ensure the establishment and effective functioning of the common market; whereas such operations ought not to be hampered by restrictions, disadvantages or distortions arising in particular from the tax provisions of the Member States; whereas to that end it is necessary to introduce with respect to such operations tax rules which are neutral from the point of view of competition, in order to allow enterprises to adapt to the requirements of the common market, to increase their productivity and to improve their competitive strength at the international level;

Whereas tax provisions disadvantage such operations, in comparison with those concerning companies of the same Member State; whereas it is necessary to remove such disadvantages;

Whereas it is not possible to attain this objective by an extension at the Community level of the systems presently in force in the Member States, since differences between these systems tend to produce distortions; whereas only a common tax system is able to provide a satisfactory solution in this respect;

Whereas the common tax system ought to avoid the imposition of tax in connection with mergers, divisions, transfers of assets or exchanges of shares, while at the same time safeguarding the financial interests of the State of the transferring or acquired company;

Whereas in respect of mergers, divisions or transfers of assets, such operations normally result either in the transformation of the transferring company into a permanent establishment of the company receiving the assets or in the assets becoming connected with a permanent establishment of the latter company;

Whereas the system of deferral of the taxation of the capital gains relating to the assets transferred until their actual disposal, applied to such of those assets as are transferred to that permanent establishment, permits exemption from taxation of the corresponding capital gains, while at the same time ensuring their ultimate taxation by the State of the transferring company at the date of their disposal;

Whereas it is also necessary to define the tax regime applicable to certain provisions, reserves or losses of the transferring company and to solve the tax problems occurring where one of the two companies has a holding in the capital of the other;

Whereas the allotment to the shareholders of the transferring company of securities of the receiving or acquiring company would not in itself give rise to any taxation in the hands of such shareholders;

⁽¹⁾ OJ No C 39, 22. 3. 1969, p. 1.

⁽²⁾ OJ No C 51, 29. 4. 1970, p. 12.

⁽³⁾ OJ No C 100, 1. 8. 1969, p. 4.

Whereas it is necessary to allow Member States the possibility of refusing to apply this Directive where the merger, division, transfer of assets or exchange of shares operation has as its objective tax evasion or avoidance or results in a company, whether or not it participates in the operation, no longer fulfilling the conditions required for the representation of employees in company organs,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General provisions

Article 1

Each Member State shall apply this Directive to mergers, divisions, transfers of assets and exchanges of shares in which companies from two or more Member States are involved.

Article 2

For the purposes of this Directive:

- (a) 'merger' shall mean an operation whereby:
- one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company in exchange for the issue to their shareholders of securities representing the capital of that other company, and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities,
 - two or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form, in exchange for the issue to their shareholders of securities representing the capital of that new company, and, if applicable, a cash payment not exceeding 10 % of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities,
 - a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities representing its capital;
- (b) 'division' shall mean an operation whereby a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to two or more existing or new companies, in exchange for the pro rata issue to its shareholders of securities representing the capital of the companies receiving the assets and liabilities, and, if applicable, a cash payment not exceeding 10 % of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities;

- (c) 'transfer of assets' shall mean an operation whereby a company transfers without being dissolved all or one or more branches of its activity to another company in exchange for the transfer of securities representing the capital of the company receiving the transfer;
- (d) 'exchange of shares' shall mean an operation whereby a company acquires a holding in the capital of another company such that it obtains a majority of the voting rights in that company in exchange for the issue to the shareholders of the latter company, in exchange for their securities, of securities representing the capital of the former company, and, if applicable, a cash payment not exceeding 10 % of the nominal value or, in the absence of a nominal value, of the accounting par value of the securities issued in exchange;
- (e) 'transferring company' shall mean the company transferring its assets and liabilities or transferring all or one or more branches of its activity;
- (f) 'receiving company' shall mean the company receiving the assets and liabilities or all or one or more branches of the activity of the transferring company;
- (g) 'acquired company' shall mean the company in which a holding is acquired by another company by means of an exchange of securities;
- (h) 'acquiring company' shall mean the company which acquires a holding by means of an exchange of securities;
- (i) 'branch of activity' shall mean all the assets and liabilities of a division of a company which from an organizational point of view constitute an independent business, that is to say an entity capable of functioning by its own means.

Article 3

For the purposes of this Directive, 'company from a Member State' shall mean any company which:

- (a) takes one of the forms listed in the Annex hereto;
- (b) according to the tax laws of a Member State is considered to be resident in that State for tax purposes and, under the terms of a double taxation agreement concluded with a third State, is not considered to be resident for tax purposes outside the Community;
- (c) moreover, is subject to one of the following taxes, without the possibility of an option or of being exempt:
- impôt des sociétés/vennootschapsbelasting in Belgium,
 - selskabsskat in Denmark,
 - Körperschaftsteuer in the Federal Republic of Germany,
 - φόρος εισοδήματος νομικών προσώπων κερδοσκοπικού χαρακτήρα, in Greece,
 - impuesto sobre sociedades in Spain,
 - impôt sur les sociétés in France,
 - corporation tax in Ireland,
 - imposta sul reddito delle persone giuridiche in Italy,

- impôt sur le revenu des collectivités in Luxembourg,
 - vennootschapsbelasting in the Netherlands,
 - imposto sobre o rendimento das pessoas colectivas in Portugal,
 - corporation tax in the United Kingdom,
- or to any other tax which may be substituted for any of the above taxes.

TITLE II

Rules applicable to mergers, divisions and exchanges of shares

Article 4

1. A merger or division shall not give rise to any taxation of capital gains calculated by reference to the difference between the real values of the assets and liabilities transferred and their values for tax purposes. The following expressions shall have the meanings assigned to them:

- value for tax purposes: the value on the basis of which any gain or loss would have been computed for the purposes of tax upon the income, profits or capital gains of the transferring company if such assets or liabilities had been sold at the time of the merger or division but independently of it,
- transferred assets and liabilities: those assets and liabilities of the transferring company which, in consequence of the merger or division, are effectively connected with a permanent establishment of the receiving company in the Member State of the transferring company and play a part in generating the profits or losses taken into account for tax purposes.

2. The Member States shall make the application of paragraph 1 conditional upon the receiving company's computing any new depreciation and any gains or losses in respect of the assets and liabilities transferred according to the rules that would have applied to the transferring company or companies if the merger or division had not taken place.

3. Where, under the laws of the Member State of the transferring company, the receiving company is entitled to have any new depreciation or any gains or losses in respect of the assets and liabilities transferred computed on a basis different from that set out in paragraph 2, paragraph 1 shall not apply to the assets and liabilities in respect of which that option is exercised.

Article 5

The Member States shall take the necessary measures to ensure that, where provisions or reserves properly constituted by the transferring company are partly or wholly exempt from tax and are not derived from permanent establishments abroad, such provisions or reserves may be carried over, with the same tax exemption, by the permanent

establishments of the receiving company which are situated in the Member State of the transferring company, the receiving company thereby assuming the rights and obligations of the transferring company.

Article 6

To the extent that, if the operations referred to in Article 1 were effected between companies from the Member State of the transferring company, the Member State would apply provisions allowing the receiving company to take over the losses of the transferring company which had not yet been exhausted for tax purposes, it shall extend those provisions to cover the take-over of such losses by the receiving company's permanent establishments situated within its territory.

Article 7

1. Where the receiving company has a holding in the capital of the transferring company, any gains accruing to the receiving company on the cancellation of its holding shall not be liable to any taxation.

2. The Member States may derogate from paragraph 1 where the receiving company's holding in the capital of the transferring company does not exceed 25%.

Article 8

1. On a merger, division or exchange of shares, the allotment of securities representing the capital of the receiving or acquiring company to a shareholder of the transferring or acquired company in exchange for securities representing the capital of the latter company shall not, of itself, give rise to any taxation of the income, profits or capital gains of that shareholder.

2. The Member States shall make the application of paragraph 1 conditional upon the shareholder's not attributing to the securities received a value for tax purposes higher than the securities exchanged had immediately before the merger, division or exchange.

The application of paragraph 1 shall not prevent the Member States from taxing the gain arising out of the subsequent transfer of securities received in the same way as the gain arising out of the transfer of securities existing before the acquisition.

In this paragraph the expression 'value for tax purposes' means the amount on the basis of which any gain or loss would be computed for the purposes of tax upon the income, profits or capital gains of a shareholder of the company.

3. Where, under the law of the Member State in which he is resident, a shareholder may opt for tax treatment different from that set out in paragraph 2, paragraph 1 shall not apply to the securities in respect of which such an option is exercised.

4. Paragraphs 1, 2 and 3 shall not prevent a Member State from taking into account when taxing shareholders any cash payment that may be made on the merger, division or exchange.

TITLE III

Rules applicable to transfers of assets

Article 9

The provisions of Articles 4, 5 and 6 shall apply to transfers of assets.

TITLE IV

Special case of the transfer of a permanent establishment

Article 10

1. Where the assets transferred in a merger, a division or a transfer of assets include a permanent establishment of the transferring company which is situated in a Member State other than that of the transferring company, the latter State shall renounce any right to tax that permanent establishment. However, the State of the transferring company may reinstate in the taxable profits of that company such losses of the permanent establishment as may previously have been set off against the taxable profits of the company in that State and which have not been recovered. The State in which the permanent establishment is situated and the State of the receiving company shall apply the provisions of this Directive to such a transfer as if the former State were the State of the transferring company.

2. By way of derogation from paragraph 1, where the Member State of the transferring company applies a system of taxing world-wide profits, that Member State shall have the right to tax any profits or capital gains of the permanent establishment resulting from the merger, division or transfer of assets, on condition that it gives relief for the tax that, but for the provisions of this Directive, would have been charged on those profits or capital gains in the Member State in which that permanent establishment is situated, in the same way and in the same amount as it would have done if that tax had actually been charged and paid.

TITLE V

Final provisions

Article 11

1. A Member State may refuse to apply or withdraw the benefit of all or any part of the provisions of Titles II, III

and IV where it appears that the merger, division, transfer of assets or exchange of shares:

(a) has as its principal objective or as one of its principal objectives tax evasion or tax avoidance; the fact that one of the operations referred to in Article 1 is not carried out for valid commercial reasons such as the restructuring or rationalization of the activities of the companies participating in the operation may constitute a presumption that the operation has tax evasion or tax avoidance as its principal objective or as one of its principal objectives;

(b) results in a company, whether participating in the operation or not, no longer fulfilling the necessary conditions for the representation of employees on company organs according to the arrangements which were in force prior to that operation.

2. Paragraph 1 (b) shall apply as long as and to the extent that no Community law provisions containing equivalent rules on representation of employees on company organs are applicable to the companies covered by this Directive.

Article 12

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 1992 and shall forthwith inform the Commission thereof.

2. By way of derogation from paragraph 1, the Portuguese Republic may delay the application of the provisions concerning transfers of assets and exchanges of shares until 1 January 1993.

3. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 13

This Directive is addressed to the Member States.

Done at Brussels, 23 July 1990.

For the Council

The President

G. CARLI

ANNEX

List of companies referred to in Article 3 (a)

- (a) companies under Belgian law known as 'société anonyme' / 'naamloze vennootschap', 'société en commandite par actions' / 'commanditaire vennootschap op aandelen', 'société privée à responsabilité limitée' / 'besloten vennootschap met beperkte aansprakelijkheid' and those public law bodies that operate under private law;
- (b) companies under Danish law known as: 'aktieselskab', 'anpartsselskab';
- (c) companies under German law known as: 'Aktiengesellschaft', 'Kommanditgesellschaft auf Aktien', 'Gesellschaft mit beschränkter Haftung', 'bergrechtliche Gewerkschaft';
- (d) companies under Greek law known as: 'ανώνυμη εταιρεία';
- (e) companies under Spanish law known as: 'sociedad anónima', 'sociedad comanditaria por acciones', 'sociedad de responsabilidad limitada' and those public law bodies which operate under private law;
- (f) companies under French law known as 'société anonyme', 'société en commandite par actions', 'société à responsabilité limitée' and industrial and commercial public establishments and undertakings;
- (g) the companies in Irish law known as public companies limited by shares or by guarantee, private companies limited by shares or by guarantee, bodies registered under the Industrial and Provident Societies Acts or building societies registered under the Building Societies Acts;
- (h) companies under Italian law known as 'società per azioni', 'società in accomandita per azioni', 'società a responsabilità limitata', and public and private entities carrying on industrial and commercial activities;
- (i) companies under Luxembourg law known as 'société anonyme', 'société en commandite par actions', 'société à responsabilité limitée';
- (j) companies under Dutch law known as: 'naamloze vennootschap', 'besloten vennootschap met beperkte aansprakelijkheid';
- (k) commercial companies or civil law companies having a commercial form as well as other legal persons carrying on commercial or industrial activities, which are incorporated in accordance with Portuguese law;
- (l) companies incorporated under the law of the United Kingdom.

COUNCIL DIRECTIVE

of 23 July 1990

on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States

(90/435/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal of the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the grouping together of companies of different Member States may be necessary in order to create within the Community conditions analogous to those of an internal market and in order thus to ensure the establishment and effective functioning of the common market; whereas such operations ought not to be hampered by restrictions, disadvantages or distortions arising in particular from the tax provisions of the Member States; whereas it is therefore necessary to introduce with respect to such grouping together of companies of different Member States, tax rules which are neutral from the point of view of competition, in order to allow enterprises to adapt to the requirements of the common market, to increase their productivity and to improve their competitive strength at the international level;

Whereas such grouping together may result in the formation of groups of parent companies and subsidiaries;

Whereas the existing tax provisions which govern the relations between parent companies and subsidiaries of different Member States vary appreciably from one Member State to another and are generally less advantageous than those applicable to parent companies and subsidiaries of the same Member State; whereas cooperation between companies of different Member States is thereby disadvantaged in comparison with cooperation between companies of the same Member State; whereas it is necessary to eliminate this disadvantage by the introduction of a common system in order to facilitate the grouping together of companies;

Whereas where a parent company by virtue of its association with its subsidiary receives distributed profits, the State of the parent company must:

— either refrain from taxing such profits,

— or tax such profits while authorizing the parent company to deduct from the amount of tax due that fraction of the corporation tax paid by the subsidiary which relates to those profits;

Whereas it is furthermore necessary, in order to ensure fiscal neutrality, that the profits which a subsidiary distributes to its parent company be exempt from withholding tax; whereas, however, the Federal Republic of Germany and the Hellenic Republic, by reason of the particular nature of their corporate tax systems, and the Portuguese Republic, for budgetary reasons, should be authorized to maintain temporarily a withholding tax,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Each Member State shall apply this Directive:

- to distributions of profits received by companies of that State which come from their subsidiaries of other Member States,
- to distributions of profits by companies of that State to companies of other Member States of which they are subsidiaries.

2. This Directive shall not preclude the application of domestic or agreement-based provisions required for the prevention of fraud or abuse.

Article 2

For the purposes of this Directive 'company of a Member State' shall mean any company which:

- (a) takes one of the forms listed in the Annex hereto;
- (b) according to the tax laws of a Member State is considered to be resident in that State for tax purposes and, under the terms of a double taxation agreement concluded with a third State, is not considered to be resident for tax purposes outside the Community;
- (c) moreover, is subject to one of the following taxes, without the possibility of an option or of being exempt:
 - impôt des sociétés/vennootschapsbelasting in Belgium,
 - selskabsskat in Denmark,
 - Körperschaftsteuer in the Federal Republic of Germany,

⁽¹⁾ OJ No C 39, 22. 3. 1969, p. 7 and Amendment transmitted on 5 July 1985.

⁽²⁾ OJ No C 51, 29. 4. 1970, p. 6.

⁽³⁾ OJ No C 100, 1. 8. 1969, p. 7.

- φόρος εισοδήματος νομικών προσώπων κερδοσκοπικού χαρακτήρα in Greece,
- impuesto sobre sociedades in Spain,
- impôt sur les sociétés in France,
- corporation tax in Ireland,
- imposta sul reddito delle persone giuridiche in Italy,
- impôt sur le revenu des collectivités in Luxembourg,
- vennootschapsbelasting in the Netherlands,
- imposto sobre o rendimento das pessoas colectivas in Portugal,
- corporation tax in the United Kingdom,

or to any other tax which may be substituted for any of the above taxes.

Article 3

1. For the purposes of applying this Directive,
 - (a) the status of parent company shall be attributed at least to any company of a Member State which fulfils the conditions set out in Article 2 and has a minimum holding of 25 % in the capital of a company of another Member State fulfilling the same conditions;
 - (b) 'subsidiary' shall mean that company the capital of which includes the holding referred to in (a).
2. By way of derogation from paragraph 1, Member States shall have the option of:
 - replacing, by means of bilateral agreement, the criterion of a holding in the capital by that of a holding of voting rights,
 - not applying this Directive to companies of that Member State which do not maintain for an uninterrupted period of at least two years holdings qualifying them as parent companies or to those of their companies in which a company of another Member State does not maintain such a holding for an uninterrupted period of at least two years.

Article 4

1. Where a parent company, by virtue of its association with its subsidiary, receives distributed profits, the State of the parent company shall, except when the latter is liquidated, either:
 - refrain from taxing such profits, or
 - tax such profits while authorizing the parent company to deduct from the amount of tax due that fraction of the corporation tax paid by the subsidiary which relates to those profits and, if appropriate, the amount of the withholding tax levied by the Member State in which the subsidiary is resident, pursuant to the derogations provided for in Article 5, up to the limit of the amount of the corresponding domestic tax.

2. However, each Member State shall retain the option of providing that any charges relating to the holding and any losses resulting from the distribution of the profits of the subsidiary may not be deducted from the taxable profits of the parent company. Where the management costs relating to the holding in such a case are fixed as a flat rate, the fixed amount may not exceed 5 % of the profits distributed by the subsidiary.

3. Paragraph 1 shall apply until the date of effective entry into force of a common system of company taxation.

The Council shall at the appropriate time adopt the rules to apply after the date referred to in the first subparagraph.

Article 5

1. Profits which a subsidiary distributed to its parent company shall, at least where the latter holds a minimum of 25 % of the capital of the subsidiary, be exempt from withholding tax.

2. Notwithstanding paragraph 1, the Hellenic Republic may, for so long as it does not charge corporation tax on distributed profits, levy a withholding tax on profits distributed to parent companies of other Member States. However, the rate of that withholding tax must not exceed the rate provided for in bilateral double-taxation agreements.

3. Notwithstanding paragraph 1, the Federal Republic of Germany may, for as long as it charges corporation tax on distributed profits at a rate at least 11 points lower than the rate applicable to retained profits, and at the latest until mid-1996, impose a compensatory withholding tax of 5 % on profits distributed by its subsidiary companies.

4. Notwithstanding paragraph 1, the Portuguese Republic may levy a withholding tax on profits distributed by its subsidiaries to parent companies of other Member States until a date not later than the end of the eighth year following the date of application of this Directive.

Subject to the existing bilateral agreements concluded between Portugal and a Member State, the rate of this withholding tax may not exceed 15 % during the first five years and 10 % during the last three years of that period.

Before the end of the eighth year the Council shall decide unanimously, on a proposal from the Commission, on a possible extension of the provisions of this paragraph.

Article 6

The Member State of a parent company may not charge withholding tax on the profits which such a company receives from a subsidiary.

Article 7

1. The term 'withholding tax' as used in this Directive shall not cover an advance payment or prepayment (*précompte*) of corporation tax to the Member State of the subsidiary which is made in connection with a distribution of profits to its parent company.

2. This Directive shall not affect the application of domestic or agreement-based provisions designed to eliminate or lessen economic double taxation of dividends, in particular provisions relating to the payment of tax credits to the recipients of dividends.

Article 8

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them

to comply with this Directive before 1 January 1992. They shall forthwith inform the Commission thereof.

2. Member States shall ensure that the texts of the main provisions of domestic law which they adopt in the field covered by this Directive are communicated to the Commission.

Article 9

This Directive is addressed to the Member States.

Done at Brussels, 23 July 1990.

For the Council
The President
G. CARLI

ANNEX

List of companies referred to in Article 2 (a)

- (a) companies under Belgian law known as 'société anonyme' / 'naamloze vennootschap', 'société en commandite par actions' / 'commanditaire vennootschap op aandelen', 'société privée à responsabilité limitée' / 'besloten vennootschap met beperkte aansprakelijkheid' and those public law bodies that operate under private law;
- (b) companies under Danish law known as: 'aktieselskab', 'anpartsselskab';
- (c) companies under German law known as: 'Aktiengesellschaft', 'Kommanditgesellschaft auf Aktien', 'Gesellschaft mit beschränkter Haftung', 'bergrechtliche Gewerkschaft';
- (d) companies under Greek law known as: 'άνωνυμη εταιρία';
- (e) companies under Spanish law known as: 'sociedad anónima', 'sociedad comanditaria por acciones', 'sociedad de responsabilidad limitada' and those public law bodies which operate under private law;
- (f) companies under French law known as 'société anonyme', 'société en commandite par actions', 'société à responsabilité limitée' and industrial and commercial public establishments and undertakings;
- (g) the companies in Irish law known as public companies limited by shares or by guarantee, private companies limited by shares or by guarantee, bodies registered under the Industrial and Provident Societies Acts or building societies registered under the Building Societies Acts;
- (h) companies under Italian law known as 'società per azioni', 'società in accomandita per azioni', 'società a responsabilità limitata', and public and private entities carrying on industrial and commercial activities;
- (i) companies under Luxembourg law known as 'société anonyme', 'société en commandite par actions', 'société à responsabilité limitée';
- (j) companies under Dutch law known as: 'naamloze vennootschap', 'besloten vennootschap met beperkte aansprakelijkheid';
- (k) commercial companies or civil law companies having a commercial form cooperatives and public undertakings incorporated in accordance with Portuguese law;
- (l) companies incorporated under the law of the United Kingdom.