

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(76) 248 final.

Brussels, 2nd June 1976.

Proposal for a
COUNCIL REGULATION (EEC, EURATOM, ECSC)

amending Regulation No 2/71 implementing the Decision of 21 April
1970 on the replacement of financial contributions from Members States
by the Communities' own resources

(submitted to the Council by the Commission)

COM(76) 248 final.

EXPLANATORY MEMORANDUM

1. Council Regulation (EEC, Euratom, ECSC) No 2/71 implementing the Decision of 21 April 1970 on the replacement of financial contributions from the Member States by the Communities' own resources was adopted on 2 January 1971.

The financial year 1978 marks the entry into full operation of the own resources system as provided for in the Decision of 21 April 1970. Mainly for this reason, Regulation No 2/71 must now be modified or amended.

2. The principle of the financial autonomy of the Communities is one of the fundamental elements of the own resources system. This system, which was incorporated in the budget by the Decision of 21 April 1970¹, will be in full operation as from 1978.

From that year, the principle of financial autonomy will come into full operation, as was repeatedly stated during the negotiations on the replacement of contributions from the Member States by the Communities' own resources, and referred to in debates of the European Parliament.

The full application of the principle means that Regulation No 2/71 and the Financial Regulation itself must be amended.

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Council decision of 21 April 1970 on the replacement of financial contributions from the Member States by the Communities' own resources (70/243/ECSC/EEC/Euratom). O.J. EC L 94, 28 April 1970, p. 19

The Community will have full disposal of its own resources, which will be assigned to it on the basis of the normal rate of establishment of amounts, in accordance with current regulations whereby the own resources belong to the Community as soon as they have been established.

Moreover, it is expressly stated in Article 4(5) of the Decision of 21 April 1970: "any surplus of the Communities' own resources over and above the actual expenditure during a financial year shall be carried over to the following financial year".

The Commission's proposal simply gives practical effect to this Article by explicitly stating that any surplus remains available to the Community. Such surplus will be used to honour commitments entered into during the financial year during which that surplus has arisen and for which payment will not fall due until later. That part of the surplus which exceeds the amount required to meet these obligations will make for a greater flexibility in the event of unforeseen contingencies, and would make it easier for the budgetary authority to adopt - if this were necessary - a supplementary budget which, under these conditions, could then be financed out of existing resources.

This autonomy is of course limited: first of all by the maximum rate of 1% of the uniform basis of assessment of VAT, the amount corresponding to which may be made available to the Communities by the budgetary authority; secondly because such autonomy would apply only within the framework of the Community Budget, which incorporates all revenue and all expenditure; and thirdly because it is subject to compliance with the Treaties and with the requirements of sound financial management and because all actions are subject to the internal and external financial controls stipulated.

The application of the principle of financial autonomy makes it necessary to introduce into the Financial Regulation a new budget concept for revenue, in that all revenue collected in one financial year is to be credited under that year, irrespective of the date of establishment. This new budget concept in respect of revenue will permit continuous monitoring of the volume of revenue compared with total expenditure.

3. Furthermore, Title II of Regulation No 2/71 - Provisions for making available and paying over the Communities' own resources - has been supplemented by provisions setting out the procedures for paying over the GNP contributions referred to in Article 4(2) and (3) of the Decision of 21 April 1970. In the very unlikely event of certain Member States not yet applying the Sixth Directive on VAT in 1978, it is proposed to class GNP payments with own resources. The Parliament and several Member States so consider them in practice, pending assignment to the budget of the revenue from VAT.

4. The foregoing points together with the application of the European unit of account to the budget make it necessary to amend Title V of the Regulation, - Procedure for application of Article 4(2), (3) and (4) of the Decision of 21 April 1970 - as regards the calculation of the GNP. These amendments are intended to bring up to date the calculation, which will be based on the data for the year preceding that during which the preliminary draft budget is drawn up, and the value of the GNP in EUA will be calculated by applying an average rate for the EUA of the year taken into consideration for calculating the GNP.

5. For the original Member States the transitional period ends on 31 December 1977. From that date the "relative shares" system will no longer be in force. This advance into the definitive system means that Title IV of Regulation No 2/71 - Procedure for application of Article 3(3) and Article 4(1) of the Decision of 21 April 1970 - must be deleted.

However, Article 131 of the Act of Accession provides that for the new Member States, the transitional period will run for two more years. For this reason it has been necessary to introduce into Regulation No 2/71 a particular provision for applying this Article in respect of the new Member States.

6. Title III - Provisions concerning measures of control - has been modified to take account of the provisions of the Treaty of 22 July 1975, which changed the distribution of budgetary powers among the Institutions

and established a European Court of Auditors. Inter alia the Treaty provides that the Court takes the place of the Audit Board. All the provisions relating to the powers and jurisdiction of the Audit Board which are not inconsistent with the Treaty of 22 July 1975 will henceforth apply to the Court of Auditors, pending the formulation of a more detailed and specific set of rules after consulting the Court once it has been set up. All those amendments relating to the Court of Auditors which derive from the Treaty of 22 July 1975 will apply only when that Treaty has come into force and, as regards the defining of the powers of the Court of Auditors, when subsequent amendment has been made to the Financial Regulation.

7. The Commission proposes to put forward in due course the provisions which will become necessary when the uniform basis of assessment for VAT provided for in the Sixth Directive comes into force.

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COUNCIL REGULATION (EEC, Euratom, ECSC)

Amending Regulation No 2/71 implementing the Decision of
21 April 1970 on the replacement of financial contributions from Member States
by the Communities' own resources;

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

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

Having regard to the Treaty establishing a Single Council and a Single Commission
of the European Communities, and in particular Article 20 thereof;

Having regard to the Council Decision of 21 April 1970 on the replacement of financial
contributions from Member States by the Communities' own resources¹ and in
particular Article 6 (2) thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament (.....);

Whereas the principle of the financial autonomy of the Communities is
the fundamental element of the system of own resources, and whereas this system
will be fully applied as from 1978;

Whereas the full application of this principle necessitates amendment to Council
Regulation No 2/71² and at the same time amendment to the Financial Regulation
of 25 April 1973 application to the general budget of the European Communities³;

¹OJ No L 94, 28 April 1970, p. 19.

²Council Regulation (EEC, Euratom, ECSC) No 2/71 of 2 January 1971;
OJ No L 3, 5 January 1971.

³Financial Regulation of 25 April 1973 (EEC, Euratom, ECSC);
OJ No L 116, 1 May 1973.

Whereas the Communities are to have full disposal of their resources as referred to in Article 4 of the Decision of 21 April 1970, the entering as revenue of which is to follow the natural rate of establishment of amounts or of requirements;

Whereas, in application of the principles laid down above, Regulation No 2/71 requires amendment in respect of that section which implements Article 4(5) of the Decision of 1 April 1970;

Whereas the introduction of the new unit of account, called the European unit of account, makes it necessary inter alia to amend the provisions adopted to implement Article 4(2), (3) and (4) of the Decision of 21 April 1970 and to bring up to date the calculation of the gross national product of the Member States;

Whereas from 1 January 1978 Title IV of Regulation No 2/71 will no longer be applicable; and whereas particular provisions should be prepared for the application of Article 131 of the Act of Accession in respect of the new Member States and for the period of time laid down in that Article.

Whereas the Council Regulation of 2 April 1973 amending the Council Regulation No 2/71 will no longer be applicable; its provisions being incorporated in the amended regulation.

HAS ADOPTED THIS REGULATION,

Article 1

Council Regulation (EEC, EURATOM, ECSC) No 2/71 of 2 January 1971 is amended as follows:

1. The following Articles shall read as follows :

// Article 3

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

. Article 6

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

2. The established entitlements shall be entered in those accounts at the latest on the fifteenth day of the second month following the month during which the entitlements were established.

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

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

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

Article 8

1. The own resources to be paid over by each Member State, together with the contribution referred to in Article 4(2) and (3) of the Decision of 21 April 1970, where applicable, shall be the subject of a provisional estimate entered in the budget.

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2. Payment shall be made of the amount actually established by the Member State for the kind of own resources in question; the contributions referred to in Article 4(2) and (3) of the Decision of 21 April 1970 shall be due up to the amounts entered in the budget; they shall be paid over on the basis of the requirements determined every month by the Commission, and they shall be divided among the Member States in the proportion provided for in the budget.

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

Article 9

1. The Commission shall notify each Member State of the amount of the contributions which it is required to pay. The corresponding payments shall be made at the latest by the fifteenth day of the month following the month in which notification was made by the Commission, by crediting them to the account referred to in Article 7(1).

2. The entry of own resources established referred to in Article 7(1) shall be made at the latest by the fifteenth day of the second month following the month during which the entitlement was established.

3. Any delay in making the entry shall give rise to the payment of interest by the Member State concerned at a rate equal to the highest rate of discount ruling in the Member States on the due date. That rate shall be increased by 0.25% for each month of delay. The increased rate shall be applied to the entire period of delay.

Article 11

1. The Commission shall have at its disposal the amounts credited to its account. The orders and instructions which it forwards to the Treasury or to the appropriate department of each Member State shall be carried out as soon as possible.

2. In cases of actual liquidity difficulty and where all possibility of drawing upon the contributions referred to in Article 4(2) and (3) of the Decision of 21 April 1970 is exhausted, the Member States shall, at the Commission's request, bring forward the entry of future resources to an amount not exceeding one and a half month's estimated revenue. Appropriate adjustment shall be made subsequently.

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2. Article 12 shall be deleted

3. The following Articles shall read as follows:

Article 14

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

2. Accordingly, Member States shall:

- carry out any additional measures of control the Commission may ask for in a reasoned request;
- associate the Commission, at its request, with the measures of control which they are carrying out.

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

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

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

4. The Commission shall from time to time report to the European Parliament and to the Council on the functioning of the system.

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

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

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

4. Title IV "procedure for application of Article 3(3) and Article 4(1) of the Decision of 21 April 1970" (Articles 16-22) shall be deleted.

5. Title V becomes Title IV

Article 23 becomes Article 22 and shall read as follows:

Article 22

1. This Article shall be applicable where it may be necessary to take provisional measures in derogation under Article 4(2) and (3) of the Decision of 21 April 1970.

2. The gross national product at market prices shall be calculated on the basis of statistics established by the Statistical Office of the European Communities and on that of the data for the financial year preceding the year in which the preliminary draft budget is drawn up.

3. The gross national product is to be calculated in the European Unit of Account defined in Article 10 of the Financial Regulation on the average of the rates for the EUA of the financial year taken as the basis for the calculation referred to in paragraph (2) above.

4. As long as the derogation provided for in Article 4(2) of the Decision of 21 April 1970 is applied to one or more Member States, the Commission shall fix, in its preliminary draft budget, the estimated percentage of the budget to be covered by the financial contributions of the Member State or States concerned on the basis of the proportion of their gross national product to the sum total of the gross national products of the Member States, and shall establish the rate of the value added tax corresponding to the remainder of the budget to be covered by the other Member States. The amounts shall be approved in accordance with budgetary procedure.

5. For the purpose of this Regulation:

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

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

Article 23

The calculations provided for in Article 131(1)(a) and (b) of the Act of Accession shall be made by the Commission during the budgetary procedure. These calculations shall be considered final at the time when the budget is adopted and shall not be subject to revision when the accounts are closed.

6. Title VI "procedure for application of Article 4 (5) of the Decision of 21 April 1970" shall become Title V.

Article 24 shall read as follows:

Article 24

For the purposes of the application of Article 4(5) of the Decision of 21 April 1970, the balance of a financial year shall consist of the difference between:

- all the revenue collected in respect of the financial year in question, and
- the total amount of payments made in respect of the same financial year together with the appropriations carried over pursuant to Article 6 of the Financial Regulation (proposal).

If there is a surplus of revenue over the total amount referred to above, to the difference are added the sums cancelled at the end of the financial year against appropriations originating in previous financial years.

If there is a deficit, these sums are subtracted from that difference.

7. Title VII "provisions relating to the Advisory Committee on the Communities' Own Resources, and final provisions" shall become Title VI.

Article 27 shall read as follows:

Article 27

1. The provisions amending Articles 8, 9, 11, 23(2) and (3) and the new Articles 24 and 27 shall not apply until 1 January 1978
2. The provisions of Articles 8, 9, 11, 12, 16 to 22, 23 and 24 of Regulation (EEC, Euratom, ECSC) No 2/71 of 2 January 1971 implementing the Decision of 21 April 1970 on the replacement of financial contributions from the Member States by the Communities' own resources shall remain in force until 31 December 1977.

3. Sub-paragraph b of paragraph 3 of Article 14 of this Regulation shall come into force on the day on which the Treaty of the 22nd of July 1975 comes into force, which Treaty amends certain financial provisions of the Treaties establishing the European Communities and of the Treaty establishing a Single Council and a Single Commission of the European Communities.

ARTICLE 2

The Council Regulation of 2 April 1973 amending Regulation No 2/71 is hereby repealed.

ARTICLE 3

This Regulation shall enter into force on 1st January 1978.

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

Done at Brussels,