

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 120 final.

Strasbourg, 20 April 1977

Proposal for a
Council Regulation (EEC, Euratom, ECSC)

implementing in respect of the own resources from VAT,
the Decision of 21 April 1970 on the replacement of
financial contributions from Member States by the
Communities' own resources

(submitted to the Council by the Commission)

COM(77) 120 final.

Explanatory memorandum

I. Introduction

1. At its meeting of 21 October 1976, the Council assigned the Commission the task of preparing a memorandum setting out the basic features of the financial regulation on the collection of own resources accruing from VAT.

In executing this task the Commission sent to the Council on 17 November 1976 a working document entitled "Guidelines for a Financial Regulation concerning the establishment and making available by the Community of own resources accruing from VAT" (Doc. COM(76)610 final).

This document listed a number of principles with which the future regulation must comply, e.g.:

- the financial regulation to be adopted for VAT own resources must correspond as closely as possible with the measures implemented for the own resources which the Communities already have at their disposal;
- the provisions of this financial regulation must correspond with the provisions (if necessary amended) of the proposals presented by the Commission in respect of the revision of the financial regulation and Regulation No 2/71;
- all the exemptions from the normal system provided for by the Sixth Directive must be covered by this regulation along with the provisions or procedure necessary for re-establishing the assessment base for some exemptions.

2. As the standard bases of common assessment have now been laid down by the Sixth VAT Directive, it is necessary to implement, as from 1 January 1978, Article 4 of the Decision of 21 April 1970 which states that the Communities' own resources shall include - apart from customs duties and agricultural levies - resources accruing from the value added tax and obtained by applying a rate not exceeding 1% to an assessment basis which is determined in a uniform manner for Member States according to Community rules.

The aim of this proposal for a regulation is to permit the establishment, the entry in accounts, the making available and the inspection of the collection of these own resources accruing from the value added tax.

3. The technique based on the difference between the sale price and the purchase price¹ has been adopted for the establishment of VAT own resources under the normal system, since:

- taxable persons are not then required to show on the bills the amount of Community VAT corresponding to the transactions invoiced;
- knowledge of the various national rates is not needed;
- Member States are entrusted with separating the Community share of VAT from the national resources according to a method more in keeping with modern computerized management techniques.

4. But the Sixth VAT Directive allows certain exceptional and transitional exemptions from the rules applying uniformly to all the Member States. In the case of remission applied at the national level, these operations are intended to give rise to the collection of corresponding own resources which the Member States are to establish from the declarations of the taxable persons or, in their absence, from other appropriate data.

¹ See point 6.

Before the start of each financial year, each Member State shall inform the Commission of the solution and type of appropriate data which it proposes to adopt for each category of exemption. The Commission reserves the right to inspect this choice. Once the type of data is laid down with the approval of the Commission, the corresponding amount of own resources shall be subject to the same treatment by the Member State as the resources normally collected on a uniform assessment basis.

If the Commission finds the solution adopted by the Member State for one category of exemption unacceptable, the question shall be examined with the Member State and referred to the Committee, and the Commission shall decide which data are to be used.

5. The inspection of VAT own resources contemplated by the Commission is no different in type from that laid down for existing resources; it should be conducted in accordance with the existing procedure provided for in Regulation No 165/74 as regards the auditing and sample surveys conducted in association with the Member States.

It should however be noted that:

- the determination of own resources from appropriate data requires special attention;
- the aggregation of the components of assessment before the application of the Community VAT rate by the national administrations is still the basic object of inspection;
- the on-the-spot inspection of establishment is less important than in the case of existing resources as the Member States transfer to the Community Budget only a negligible proportion of their national revenue, not exceeding 1% of the uniform assessment basis.

On the other hand, the problems of fraud are to be dealt with in a separate text currently in preparation.

II. Structures of the draft regulation

A. Establishment

(a) Establishment of own resources under normal VAT application arrangements and under certain special arrangements

6. Wherever possible, own resources shall be established in line with the general principle from the particulars contained in the declarations made by taxable persons (an official declaration may be made by the administration if necessary) using the technique based on the difference between the sale price and purchase price, which may be summed up as follows:

- (a) any taxable person subject to normal VAT arrangements must show in his periodic statement the total amount -- at prices net of VAT -- of deductible goods and services (inputs) and the sales of taxed goods and services (outputs) which he has made during the period covered by the declaration;
- (b) once this declaration has been submitted, the own resources accruing from VAT are considered as established. For this purpose, the competent national administration, having collected all the data stemming from the declarations of taxable persons, calculates the difference between the overall outputs and overall inputs declared by the persons liable;
- (c) this difference (which constitutes the value added achieved during the period considered by all the persons liable) forms the basis for applying the rate of own resources accruing from VAT.
- (d) if only one national rate of VAT exists, the base to be adopted for applying the Community rate may evidently be obtained from the amounts of tax on the inputs and outputs without asking the taxable persons to declare the total amount of the prices of these inputs and outputs net of VAT.

7. The taxable persons shall declare those transactions subject to exemptions with refunds of taxes paid at the preceding stage, in force in the Member States before 31 December 1975 and

taxable under the general system.

Transactions conducted by taxable persons with an annual turnover not exceeding 10 000 EUA shall not be considered taxable as part of own resources.

(b) Establishment from declarations by the taxable persons or from appropriate data

8. If the taxable operations are conducted by farmers covered by the common flat-rate scheme, the assessment basis for calculating own resources shall be fixed by the Member States in accordance with the common method of calculation laid down in Annex C of the Sixth Directive.

9. Transactions conducted by taxable persons with an annual turnover of more than 10 000 EUA and entitled to an exemption on a national basis and operations exempt under the option allowed to the Member States under Article 28 of the Sixth Directive shall be assessed according to the added value established from declarations by the taxable persons or, failing this, from the most appropriate data. The Member States shall inform the Commission before the beginning of each financial year of the type of data which they consider appropriate.

The Commission may conduct a previous examination, possibly on the spot, of the problems to which the nature of the data proposed could give rise. If the Commission does not recognize the data adopted by the Member States as appropriate, the committee must be consulted and there must be concertation between the Commission and the Member State concerned to find the most suitable solution.

B. ENTRY INTO ACCOUNTS AND MAKING AVAILABLE

10. Under the normal system, the Member States would gather information on taxable persons to enable VAT own resources to be established, and after centralizing this information, would calculate an aggregate sum by applying the Community VAT rate adopted in the budgetary procedure for the financial year of this chargeable event to the value added by all taxable persons during that monthly period.

There are two exceptions:

- (a) cases where own resources are determined according to declarations made by taxable persons; the Member States should proceed according to the normal system;
- (b) cases where the assessment of own resources is determined from appropriate data; the aggregate calculations should be made as soon as the corresponding assessment base is established and in any case before the end of the financial year.

11. The Member States keep accounts of the information referred to in points 8 and 9. They enter the amount of VAT own resources - the amount obtained by the application of the Community VAT rate and the individual rates - in the special account kept by the national Treasury so that VAT resources can be made available to the Communities by the 15th of the second month after the establishment at the latest.

12. Likewise, by the same deadline, each Member State sends the Commission a monthly statement of the total amount of own resources paid over in a given month. This statement must itemize resources resulting from the application of the rate to the basis of assessment determined under the normal system and those paid over on the basis of appropriate data for each of the cases provided for.

A VAT credit balance is added in the summary account which is reported yearly by each Member State regarding the establishment of own resources.

C. INSPECTION OF OWN RESOURCES

13. Member States will be responsible for monitoring the establishment and making available of VAT own resources. The Commission will, where it so requests, be invited to take part in this monitoring procedure.

These inspections will be designed primarily to check the conformity and regular nature of the operations for establishing and making available VAT own resources, and in particular operations relating to the aggregation of the components.

During these inspections, the Commission will ensure that the appropriate data are adopted so as to guarantee to all Member States that own resources are fairly established on the basis of appropriate data.

14. All Member States will be notified of the reports drawn up by the Commission following joint inspections once the Member State concerned has made known its views on them.

D. COMMITTEE PROCEDURE

15. Since own resources accrue to the Community upon their establishment, the Commission is responsible for managing them within the context of the implementation of the Communities' budget.

The Commission considers it essential that a committee should be set up to assist it in matters relating to this regulation, in view of complex problems of its application such as the exemption arrangements (e.g. definition of the appropriate data).

The Commission stresses that the setting-up of an own resources committee would not duplicate the work of the VAT Committee provided for in the Sixth Directive, which would deal solely with problems relating to application of the common VAT system.

16. In the event of disagreement between the Commission and the Member State on the solutions contemplated to determine the assessment of each of the exemptions allowed under Article 4(2) of the Regulation, the Commission shall refer the matter to the committee while observing the following principles:

(a) the powers of the Commission operate as between the Member State and the Commission, the rights and obligations of the taxable persons being laid down by the Sixth Directive. The decision-making procedure thus relates to the appropriate data.

(b) before taking a decision, and after having, where necessary, consulted the Member State concerned, the Commission shall consult the committee, which contains representatives of all the Member States.

(c) in all cases it is the Commission that makes the decision.

17. The main reasons for which the Commission has found it necessary to propose this formula are as follows:

(a) it is essential to maintain the balance between the two institutions constituting the budgetary authority, namely the European Parliament and the Council, and to avoid introducing a formula which would put the latter in a privileged position;

(b) as each Member State is made responsible for proposing appropriate methods for fixing the bases to be used in calculating the compensatory payments, and as the Commission is responsible to the joint budgetary authority for its administration of the budget, it is reasonable that the Commission should be the arbiter of what is a suitable method, within the limits imposed by the principles listed under point 16(a).

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Regulation (EEC, Euratom, ECSC) implementing in respect of the own resources from VAT, the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources*(Submitted by the Commission to the Council on 20 April 1977)*

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 Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources ⁽¹⁾ (hereinafter called 'Decision of 21 April 1970'), 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 Decision of 21 April 1970 provides that the Council must adopt provisions relating to the control, the making available and the payment of the

Communities' own resources, together with detailed rules for the application of Articles 3 (3) and 4 thereof;

Whereas, pursuant to Article 20 of the Treaty establishing a Single Council and a Single Commission of the European Communities, the budgets of the three Communities have been combined in a single budget;

Whereas Article 4 of the Decision of 21 April 1970 provides that the own resources accruing from value added tax shall be obtained by applying a rate not exceeding 1% to an assessment basis to be determined in a uniform manner for Member States according to Community rules; whereas this assessment basis has been provided by the Sixth Council Directive . . . of . . . 1977 on the harmonization of the legislation of Member States on turnover taxes — common system of added value tax: uniform assessment basis;

Whereas detailed rules should be laid down for the determination of own resources accruing from value added tax, in particular in those cases where, in the absence of declarations from the taxable persons, these resources are to be determined from appropriate data:

Whereas Council Regulation (EEC, Euratom, ECSC) No 2/71 of 2 January 1971 ⁽²⁾ lays down detailed rules for the accounting, payment, allocation to the Communities' budget and control of own resources; whereas provision should be made to adapt these

⁽¹⁾ OJ No L 94, 28. 4. 1970, p. 19.

⁽²⁾ OJ No L 3, 5. 1. 1971, p. 1.

I

(Information)

COMMISSION

EUROPEAN UNIT OF ACCOUNT ⁽¹⁾

5 May 1977

Currency amount for 1 EUA:

Belgian and Luxembourg franc:		United States dollar	1.13209
— commercial market	40.7127	Swiss franc	2.85043
— financial market	40.7495	Spanish peseta	78.0274
German mark	2.65879	Swedish krona	4.89571
Dutch guilder	2.76349	Norwegian krone	5.95215
Pound sterling	0.658462	Canadian dollar	1.18558
Danish krone	6.80655	Portuguese escudo	43.6130
French franc	5.60120	Austrian schilling	18.9142
Italian lira	1003.83	Finnish markka	4.60551
Irish pound	0.658462	Japanese yen	312.214

⁽¹⁾ — Article 2 (2) of Council Decision 75/250/EEC of 21 April 1975 on the definition and conversion of the European unit of account applied in the ACP-EEC Convention of Lomé.

— Article 2 (2) of Commission Decision 3289/75/ECSC of 18 December 1975 on the definition and conversion of the European unit of account used for the purposes of the ECSC Treaty.

rules as appropriate in order to deal with own resources from VAT;

Whereas implementation of this Regulation, in particular as regards the definition of appropriate data having a direct budgetary effect, requires that the Commission be able to take the corresponding decisions quickly; whereas the establishment of a VAT own-resources committee will permit close cooperation between the Member States and the Commission in this field:

HAS ADOPTED THIS REGULATION:

TITLE I

General provisions

Article 1

The amount accruing to the Communities' own resources from value added tax in accordance with Article 4 (1) of the Decision of 21 April 1970⁽¹⁾ (hereinafter called 'VAT resources') shall be determined by the Member States and made available to the Commission as provided in this Regulation.

Article 2

1. The amount of VAT resources shall be determined by applying to the assessment base determined in accordance with the provisions of this Regulation the Community rate fixed under the budgetary procedure.

2. Should this rate be changed in the course of a financial year as a result of a supplementary and/or amending budget, the new rate shall be applied to the whole of the assessment base for that financial year.

3. The Community rate shall constitute an integral part of the national rates of value added tax and shall apply to all taxable transactions referred to in Article 2 of the Sixth Council Directive of ... on the harmonization of the legislation of Member States on turnover taxes (hereinafter called the 'Sixth VAT Directive'), with the exception of those transactions exempted under Articles 13, 14 and 15 of the aforesaid Directive in so far as these are not subject to the optional taxation provided for in Article 28 (3) (a) and (c) of the same Directive.

⁽¹⁾ OJ No L 94, 28. 4. 1970.

Article 3

1. Where taxable transactions qualify for a deduction under Article 17 of the Sixth VAT Directive, the assessment base shall be the difference between the taxable amount of these transactions and the taxable amount of the goods and services in respect of which the tax is deductible.

2. Transactions to be regarded as taxable for the purposes of paragraph 1 shall include those which, in accordance with Article 28 (2) of the Sixth VAT Directive, are subject in the Member States to exemptions with refund of the tax paid at the preceding stage.

3. Transactions to be regarded as taxable for the purposes of paragraph 1 shall not include those performed by taxable persons whose annual turnover, determined according to the rules laid down in Article 24 (4) of the Sixth VAT Directive, does not exceed 10 000 EUA, this amount being determined in accordance with the conversion rates set out in Article 31 (2) of that Directive.

Article 4

1. With regard to taxable transactions effected by farmers taking advantage of the common flat-rate scheme provided for in Article 25 of the Sixth VAT Directive, the assessment base shall be the added value calculated by the Member States in accordance with the common method of calculation provided for in Annex C to that Directive.

2. The assessment base for:

- (a) operations effected by taxable persons with an annual turnover, calculated in accordance with the provisions of Article 24 (4) of the Sixth VAT Directive, of more than 10 000 EUA and with an exemption under Article 24 (2);
- (b) transactions as set out in Annex F to the Sixth VAT Directive which the Member States exempt in accordance with the option provided for in Article 28 (3) (b) of that Directive;

shall be the added value as established from declarations to be made by the taxable persons or, failing these, from appropriate data.

3. The Member States shall inform the Commission, before the beginning of each financial year and prior to its presenting the preliminary draft budget, of the solutions they propose to adopt to

determine the assessment base for each of the categories of transaction referred to in paragraph 2, indicating where applicable the nature of the data which they consider appropriate.

This information for the financial year 1978 shall be sent as soon as possible and not later than 1 October 1977.

4. Either on its own initiative or at the request of a Member State the Commission shall examine, on the spot if need be, problems arising from implementation of the provisions of paragraph 2.

Article 5

1. VAT resources shall be determined:
 - in the cases referred to in Article 3 (1) and (2) of this Regulation, when the declaration is lodged by the taxable person, in accordance with the provisions of Article 22 (4) of the Sixth VAT Directive, or by the person liable for payment of the tax on importation, in accordance with Article 23 of the Directive, or, in the absence of such declaration, when they are established officially by the competent authority of the Member State,
 - in the cases referred to in Article 4 (1) and (2), as soon as the assessment base has been determined by the competent authority of the Member State. Such determination must be made as soon as possible and in any event in good time for inclusion of the corresponding VAT resources in the monthly statement under Article 6 of Regulation (EEC, Euratom, ECSC) No 2/71 for December of the financial year in question.
2. Correction by the competent authority of the Member State of an incorrect or incomplete determination shall be regarded as a fresh determination.
3. For the purposes of this Regulation, but without prejudice to the second indent of the first paragraph, VAT resources for any one financial year shall cover all transactions in respect of which a determination was made in the course of that financial year. The Community rate to be used for such determination shall be that fixed for the financial year in which occurs the chargeable event as defined by Article 10 of the Sixth VAT Directive.

Article 6

Where tax is refunded by a Member State under Article 17 (4) of the Sixth VAT Directive or under

Article 4 of Directive 72/210/EEC of 17 June 1972 ⁽¹⁾ amending Directive 69/169/EEC of 28 May 1969 ⁽²⁾, the assessment base determined in accordance with Article 3 (1) shall be reduced by the taxable amount of the transactions giving rise to such refunds.

TITLE II

Provisions relating to the accounting and making available of own resources

Article 7

1. — The accounting of VAT resources shall be governed by the provisions of Articles 5 and 6 of Regulation (EEC, Euratom, ECSC) No 2/71,
 - the making available of VAT resources shall be governed by the provisions of Articles 7 (1), 8, 9, 10 (1) and 11 of Regulation (EEC, Euratom, ECSC) No 2/71.
2. The closing statement of account provided for in Article 5 of Regulation (EEC, Euratom, ECSC) No 2/71 and the monthly statement sent to the Commission in accordance with Article 6 (2) thereof shall distinguish between VAT resources determined in accordance with the first indent of Article 5 (1) of this Regulation and each category officially determined in accordance with the second indent of the said Article 5 (1). The monthly statement must also include a breakdown of VAT resources by rate and financial year.

Article 8

If the Community rate is changed in the course of a financial year, the Member States shall recalculate the amount of own resources and make the additional amount thereof available to the Commission not later than the fifteenth day of the month following the change in the rate.

TITLE III

Provisions concerning measures of control

Article 9

The provisions of Articles 3, 4, 13 and 14 (3) of Regulation (EEC, Euratom, ECSC) No 2/71 shall apply to VAT resources.

⁽¹⁾ OJ No L 139, 17. 6. 1972.

⁽²⁾ OJ No L 133, 4. 6. 1969.

Article 10

1. The Member States shall conduct the verifications and inquiries concerning the determination and making available of VAT resources. They shall associate the Commission with these checks at its request. During these checks the Commission shall also ascertain that the appropriate data have been used and that the calculations made to determine the amount of own resources in the cases provided for in Article 4 (1) and (2) comply with the provisions of this Regulation.

2. The Commission may request the Member States to conduct additional checks. It may be associated in them on request.

3. The provisions of Council Regulation (EEC, Euratom, ECSC) No 165/74 of 21 January 1974 shall apply to checks relating to VAT resources.

TITLE IV

Provisions relating to the VAT resources Committee and final provisions*Article 11*

1. A Committee on VAT 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. Secretariat services for the Committee shall be provided by the Commission.

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

Article 12

1. The Committee shall examine 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, and in particular the following:

- (a) the information and communications provided for in Articles 4 (1) (b), 5 and 13 (3) of Regulation (EEC, Euratom, ECSC) No 2/71;
- (b) cases of *force majeure* as referred to in Article 13 (2) of Regulation (EEC, Euratom, ECSC) No 2/71;
- (c) measures of control and inspection as provided for in Article 10;
- (d) the determination by the Member States of the added value established in accordance with the provisions of Article 4 (2).

2. If the Commission considers that the data supplied by the Member States under Article 4 (2), failing declarations from taxable persons, are not adequate for the determination of the own resources, it shall contact the Member State concerned and the Committee shall be consulted within two months of this contact having been made.

After consulting the Committee the Commission shall determine the data to be used for the determination of the own resources referred to in Article 4 (2) of this Regulation.

Article 13

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

It shall have effect from 1 January 1978, except for Article 4 (3), which shall have effect from 1 September 1977.

