

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 316 final

Brussels, 20 July 1982

REPORT ON THE IMPLEMENTATION OF 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

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

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(submitted to the Council by the Commission)

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## FINANCIAL STATEMENT

The proposed amendment to Article 9(1) of Regulation No 2891/77 is that the balances on the Commission's accounts with the Member States' Treasuries should bear interest at the discount rate in force in the Member State concerned less half a point.

The Commission estimates that this would yield 140 million ECU in revenue in a full year. This revenue will be entered in a new article in the statement of revenue of Section III (Commission) of the General Budget of the Communities.

This estimate is based on the monthly balances in three accounts during 1981, which were calculated for the purposes of Article 12(3). Using the breakdown by Member State required for this article, it was possible to determine the average amount that the Commission had on deposit at each Treasury; interest on these deposits was calculated at the discount rates in force in each Member State on 20 April 1982 less half a point.

Article 2

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

It shall apply from the financial year 1983.

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

Done at Brussels,

available to the Commission of funds in accordance with cash requirements laid down in Article 31 of the Financial Regulation of 25 April 1973 <sup>(1)</sup>. Henceforth the Community would receive all the own resources allocated to it. The new Regulation therefore included provisions to allow the Commission to manage the Community's own resources and cash. A partial but important derogation was made in the case of the establishment and making available of own resources derived from VAT where the time allowed for taxable persons to make their returns varied from one Member State to another to such an extent that, if own resources had been made available to the Community as they were established, unacceptable disparities between the Member States would have arisen. Hence the Regulation states that each month Member States must pay one twelfth of the estimate entered in the budget and that the actual amount of VAT own resources will be determined the following year, when the resulting adjustment is made.

Similarly, should any Member State still be paying financial contributions based on gross national product, an adjustment is made to restore the original distribution in the budget between these payments and the VAT own resources. These operations are entered in an amending budget for the year in question.

A further important consequence of the full implementation of the own resources system was the determination at the end of each financial year of the budget balance. Even though the budget has to be established with revenue and expenditure in balance, the outturn differs from the estimates. Previously, the differences had been offset by adjusting the financial contributions at the end of the year so that the outturn was in balance. Henceforth, the Member States would pay only own resources to the Community budget and these, by their very nature, did not allow for any extra payments by or refunds to the Member States. These resources do not belong to them; they belong to the Community as of right. At the end of the financial year the Commission therefore determines the balance as specified in the regulation and enters it in the amending budget for the following year.

There are now unlikely to be any major developments in the field of own resources comparable with those which led to the replacement of Regulation (EEC, Euratom, ECSC) No 2/71 in 1977 and so requiring the similar amendment of Regulation (EEC,

Euratom, ECSC) No 2891/77. In general, the Regulation has proved satisfactory but improvements can be made to underline the Community nature of own resources, to benefit from the experience of operation and to remedy the shortcomings. It should also be borne in mind in connection with the provisions relating to VAT that experience relates only to two incomplete years, since Article 10 (4) and (5) on the determination of actual resources was implemented only in respect of 1979 and 1980 and only six Member States applied the Sixth Directive in 1979. No final conclusions can yet be reached on the provisions on the inspection of VAT own resources, which are amplified by those in Regulation (EEC, Euratom, ECSC) No 2892/77, since the Commission has completed inspections of real VAT bases only for 1979. Inspection of the nine 1980 bases is currently in progress.

The proposed amendments attached to this report are designed to achieve the above objectives. Some are changes of substance while others are of a more technical nature. They include amendments to bring the Regulation into line with the proposed amendments to the Financial Regulation which the Commission presented to the Council on 12 December 1980 <sup>(2)</sup>.

## II. THE ESTABLISHMENT AND MAKING AVAILABLE OF OWN RESOURCES

No major difficulties arose in the establishment and making available of traditional own resources, which is not surprising since the provisions derive directly from those of Regulation (EEC, Euratom, ECSC) No 2/71. However, there were some small problems.

### II.1. Concept of the 'establishment' of own resources

The Commission has found that not all the Member States apply Article 2 of the Regulation in the same way as regards the moment and even the concept of the establishment of Community own resources other than those derived from VAT.

<sup>(1)</sup> OJ No L 116, 1. 5. 1973.

<sup>(2)</sup> COM(80) 760 final.

After investigating the current rules and practices in the Member States, the Commission, bearing in mind that, under the present provisions:

- (a) the Member States are required to make an establishment every time a taxable event takes place;
- (b) this establishment must be made as soon as possible under Community and national rules;
- (c) all own resources must be established, including any sums which are not collected, and all duties established must be made available to the Community unless recovery has been prevented by *force majeure*,

decided

1. to accept, for practical reasons, that establishment should take place when the entry in the accounts is made. This enables the Member States to use a procedure which is clearly defined at Community level and which is already applied in all the Member States;
2. to remind the Member States that the obligation to make an establishment cannot be overridden by a national rule or practice which allows establishment to be abandoned if recovery proves difficult;
3. that, in cases where a dispute arises and to avoid any distortions between the Member States, checks will be carried out to determine how far national administrations which make establishments later than others could make an establishment even before the dispute has been resolved. The possibility of making an establishment as soon as the authorities have the information they need to determine their claim would not prejudice the outcome of the dispute and a subsequent definitive establishment as provided for by the second paragraph of Article 2 of Regulation (EEC, Euratom, ECSC) No 2891/77.

The Member States were informed of this decision and it has been considered by the ACOR. Its implementation requires examination of the provisions of all national legislations on this matter and full respect of the Directives on deferred payment of duties (78/453/EEC), customs debt (79/623/EEC), entry for free circulation (79/693/EEC), etc.

Discussions with the Member States are continuing so that a common position can be reached on establishment, particularly in relation to cases of dispute, since it is here that the Member States' provisions differ.

When this work has been completed, the Commission will consider in the second half of 1982 whether Article 2 requires amendment.

## II.2. Entry in the accounts of own resources

The Commission considers that the purpose of the two reports drawn up by the Member States under Articles 5 and 17 (3) should be made clearer and a clear distinction made between them in the Regulation. The first is concerned with accounts of the duties established and the second with the results of inspections carried out by the Member States. Article 5 has therefore been amended by deleting references to the inspection of own resources and then transferred to Title II of the Regulation (Accounts of own resources). The Commission asks each Member State to supply in the report submitted under Article 8 (former Article 5) details of the duties established, which must correspond to the own resources made available to the Community, with any discrepancies noted and commented upon in the report. By way of derogation from the date given in the existing Regulation, this document must be transmitted by the date agreed by the Member States for the annual report now sent to the Commission. The section of the report dealing with inspections is placed in Article 17 (3) (see Section V of this report).

## II.3. Making available of own resources

The following provisions govern the entry by the Member States of own resources in the Commission's accounts with their treasuries:

- (a) agricultural levies, sugar and isoglucose levies and customs duties must be entered not later than the 20th day of the second month following their establishment;
- (b) one twelfth of the VAT own resources — or the financial contribution — estimated in the budget must be entered on the first working day of each month. Nevertheless:
  - in January and if the budget has not been finally adopted before the beginning of the financial year, the twelfths are calculated on the basis of the draft budget,
  - following adoption of an amending and supplementary budget, the twelfths are adjusted on the first working day of the following month,
  - VAT balances and any adjustments to financial contributions are made on the first working day in August.



The Commission considers that some of these provisions concerning VAT should be amended and new ones adopted to take account of difficulties experienced and developments that have occurred since the Regulation came into force.

II.3.1. *Adjustments to entries of VAT own resources following adoption of an amending and supplementary budget*

The Commission proposes to amend the provisions relating to the adjustments required following adoption of amending and supplementary budgets to give the Member States a reasonable amount of time to make the adjustment. The due date becomes the first working day of the second month following adoption of the budget if it is adopted after the 15th of the month.

II.3.2. *Entry of VAT own resources if the budget has not been finally adopted before the beginning of the financial year*

The Commission proposes to clarify the provisions on the making available of monthly twelfths in this case. If there is no budget, for whatever reason, the Member States would, under the Commission's proposals, make available to the Community monthly twelfths calculated on the VAT base in the draft budget as it stood at the beginning of the financial year, even if this had been rejected by Parliament. This is in line with the proposed amendments to Article 8 of the Financial Regulation. In accordance with the second subparagraph of Article 4 (1) of the Decision of 21 April 1970, the VAT rate to be applied to this base is that of the last budget finally adopted. It is also proposed that the twelfths should be calculated according to the VAT base in the preliminary draft budget if no draft budget has been adopted. This provision fills a gap in the present article and brings it into line with Article 8 of the Financial Regulation.

II.3.3. *Calculation of adjustments to financial contributions following the determination of VAT balances*

Article 10 (1) of Regulation (EEC, Euratom, ECSC) No 2892/77 requires Member States to send to the Commission by 1 July each year a statement showing the total final amount of the VAT base for the

previous year. The statement is produced in the national currency since the taxable operations are denominated in that currency.

As required by Article 10 (4) of Regulation (EEC, Euratom, ESCS) No 2891/77 the Member States enter in the Commission's accounts on 1 August the balance between the monthly amounts calculated by reference to the estimated base and the amount due according to the final base. Article 10 (5) then provides that 'Member States having entered financial contributions based on GNP during the previous financial year shall, on the due dates given in paragraph 4 and by the same method, adjust the said 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 GNP'.

A problem arose in the interpretation of this article. It concerned the rate for converting the VAT balances entered in order to calculate the adjustments to the financial contributions. The balances are entered in national currencies and need to be converted into the unit of account in which the financial contributions are denominated in the budget. The rate chosen must be such as to satisfy the requirement of Article 10 (5) that the original distribution between VAT own resources and GNP-based financial contributions must be restored in the light of the actual yield of VAT own resources. The Commission proposes that the conversion rate should be that applying on the first working day after the 15 July preceding the entry of the VAT balances on 1 August. The reason for this choice is that the rates for converting into national currency the monthly twelfths of VAT own resources and financial contributions are also those applying on the first working day after the 15th of the month preceding the entries. The distribution between VAT own resources and financial contributions is thus maintained when the VAT balances and the adjustments to the financial contributions are entered. The Member States endorsed the use of these rates on 6 November 1980 when the Council entered in draft Supplementary and Amending Budget No 1/1980 amounts calculated on this basis. Parliament accepted these amounts when it finally adopted the budget on 20 November 1980.

II.3.4. *Entry in the accounts of the results of corrections to the annual statements of VAT bases*

It was noted earlier in this report that it is still too early to draw final conclusions from the inspection of the annual statements of VAT bases. Nevertheless, there is one gap in the present regulation which

should be filled now — this is the budgetary procedure to be followed when errors are discovered in the statements either by the Commission as the result of an inspection or by the Member States themselves. The Commission's proposals on how these corrections to the VAT own resources base should be entered in the accounts are contained in Article 10 (b) of the proposed amendments to Regulation (EEC, Euratom, ECSC) No 2892/77 because this Regulation specifies how the VAT base is determined. The provisions on how the resulting adjustments to VAT balances and financial contributions should be made available are contained in a new Article 10 (6) of Regulation (EEC, Euratom, ECSC) No 2891/77, the Regulation concerned with how own resources are made available to the Community. These additional provisions specify that the adjustments are to be entered within one month of the correction being made to the base; this is the same as that allowed by Article 10 (4) for the entry of the original VAT balances.

There is also provision for the consequential adjustments to be made to financial contributions paid by the Member States not applying the Sixth Directive. The conversion rates to be used for these calculations are those applied for the initial adjustments, that is the ones provided for in the proposed amendment to Article 10 (5) (see Section II.3.3 of this report). The total adjustments to the financial contributions will therefore be the same as if the VAT statements sent to the Commission had been correct and not required later amendment.

Finally, in accordance with the second paragraph of Article 5 of the Financial Regulation<sup>(1)</sup> which states that 'the revenue of a financial year shall be entered in the accounts for the financial year on the basis of the amounts collected during the financial year', adjustments to the VAT balances and financial contributions referred to above shall be entered in the amending budget provided for in Article 16 (2).

This procedure was followed in 1981 for the adjustments in respect of 1979, with the exception of some amendments to the time required for initial implementation and a disagreement between the

Commission and one Member State on the conversion rates to be used.

### II.3.5. *Financial autonomy of the Community*

The Commission considers that the financial autonomy that the Community derives from its own resources should be strengthened. Own resources belong to the Community as soon as they are established — this is necessary both for financial autonomy and to ensure that revenue and expenditure within the budget are balanced. They are due irrespective of whether a budget has been adopted, the Member States being obliged to enter them in the Commission's accounts on the dates specified in the Regulation.

Furthermore, the budget is now financed entirely by own resources, Greece's financial contributions being only a temporary derogation from this principle. It therefore seems logical that the amounts entered in the Commission's accounts should bear interest, thereby demonstrating that these resources are exclusively the Community's. The Commission is not proposing that sums be drawn from the accounts in excess of its cash requirements; it proposes that the balance of the accounts should yield interest — to be entered each month — at the discount rate of the Member State concerned less half a point. This reduction is to pay for the services of the national departments responsible for the management of the accounts, as happens between national financial institutions in such cases, account being taken of the type and number of transactions likely to be effected on the Commission's accounts.

The Commission therefore proposes that Article 9 (1) be amended accordingly.

The Commission also proposes an amendment to the provisions concerning the interest paid by the Member States under the conditions referred to in Article 11 when own resources are made available to the Commission after the due dates. The obligation imposed on the Member States to pay interest bears witness to the Community's financial autonomy, but the current system is no longer fair since it provides for the application in any Member State of the highest rate of discount in the Community. Because of the increased divergences between discount rates in Member States, the difference between the highest rate and the rate applied in each of the Member States varies considerably and the financial burdens to be borne are not comparable. The Commission therefore proposes that the rate to be applied should be the rate of discount in the Member State in

<sup>(1)</sup> OJ No L 356, 31. 12. 1977.

question, plus five points. This increase would cancel out any benefit which a Member State might derive from delaying the transfer of own resources. This new system is more equitable, but it is equally effective and avoids losses to the Community treasury.

### III. MANAGEMENT OF CASH RESOURCES

The Regulation provides that own resources should be made available each month on the basis of the establishments made two months earlier for those derived from customs duties, agricultural levies and sugar and isoglucose levies, and, in the case of own resources derived from VAT, in twelve monthly payments of one twelfth of the estimated base. The regulation nevertheless recognizes that the collection of own resources may not always keep pace with expenditure and that estimates of revenue and expenditure entered in the budget may differ from the outturn.

Article 12 (1) states that the Commission may draw on the amounts standing to its credit in its accounts with Member States' treasuries only to the extent necessary to cover its cash resource requirements arising out of the implementation of the budget; if the revenue collected exceeds requirements, the balance remains in the accounts with the treasuries. Article 12 (3) requires the balances in the accounts to be divided among the Member States in proportion to the estimated budget revenue from each of them. The Commission has observed this condition by preparing a monthly estimate of revenue and expenditure and making the resulting transfers. It should be pointed out in this connection that these estimates would be more accurate if national administrations could communicate the amount of customs duties and agricultural levies in advance at the end of the month preceding entry. In the reverse situation — if expenditure exceeds cash available — the Commission may make use of Article 10 (2) and ask the Member States to advance by one month the entry of own resources other than VAT own resources. Each advance entry is settled the following month. This provision is to cope with any slackening, even if only temporary, in the rate of inflow of own resources or any sudden increase in the rate of expenditure, e.g. because of the concentration of certain items at the beginning of the financial year. It is not intended to deal with an overestimation of traditional own resources where a shortfall is not due to the rate of inflow and advancing the payment of own resources other than VAT will not provide a remedy since the position will have to be settled the following month. This situation is dealt with by

Article 12 (2), which allows the Commission to draw in excess of its total assets with national Treasuries provided it informs the Member States of its foreseeable excess requirements. The situation is cleared during the financial year either by an amending budget — reducing estimates of traditional own resources and increasing those derived from VAT or reducing expenditure — or by a letter of amendment to the draft budget for the following year containing a provisional deficit for the current year and a corresponding increase in VAT own resources or a reduction in expenditure. The second subparagraph of Article 16 (1) provides for such a letter of amendment, which would also have to be presented if own resources were higher than forecast.

No such cases have yet arisen and no use has been made of Articles 10 (2), 12 (2) or the second subparagraph of Article 16 (1). The Commission has, however, under the first subparagraph of Article 1 (5) of the Financial Regulation, presented preliminary draft amending budgets which have included amendments to the overall total of traditional own resources.

### IV. PROVISIONS RELATING TO THE SURPLUS OR DEFICIT OF A FINANCIAL YEAR

Article 15, which deals with the calculation of the balance for the financial year, requires amendment. At present it allows for the net amount of sums paid in excess of non-differentiated appropriations carried forward from the previous years as a result of exchange rate adjustments which occurred before they were used to be included directly in the calculation of the balance. This provision has, however, never been used and is contrary to Article 4 of the Financial Regulation which reads: 'No revenue shall be collected and no expenditure charged unless credited to or charged against an article in the budget'. Since variations in exchange rates produce gains or losses which tend to cancel each other out so requiring a whole series of releases or additional commitments of funds, it is proposed that Article 15 be amended to include a derogation from Article 4 of the Financial Regulation. It is also proposed that exchange differences proper, i.e. arising from bank transactions and the use of different ECU rates during the year, should be incorporated in the balance. Net gains pose no problem in the present system because a token entry in the revenue section of the budget allows them to be included in the accounts; a net loss however can only be charged to

expenditure if the item concerned has sufficient funds. But for exchange losses, Article 850 also carries a token entry. It would therefore require a transfer, which must be an 'open' transfer since the amount required cannot be determined until the accounts for the year are closed.

#### V. PROVISIONS RELATING TO THE INSPECTION OF OWN RESOURCES OTHER THAN THOSE DERIVED FROM VAT

During the nine years from 1974 to 1982, Commission officials have conducted an annual programme of visits to Member States in accordance with Article 18 of Regulation (EEC, Euratom, ECSC) No 2891/77 and Regulation (EEC, Euratom, ECSC) No 165/74. The annual programme comprises some thirty visits covering all the Member States, the number for each State depending on the objectives of the programme, the scale of the problems encountered in the country with the application of the own resources arrangements and the geographical characteristics of the country concerned. The constant aim of inspections is each year to ensure that the rules are properly applied, in particular for the establishment and making available of all types of own resources.

The Directorate-General for Budgets is chiefly responsible for coordinating these operations. Officials from Financial Control, the Directorate-General for Agriculture and especially the Customs Union Service regularly participate, their respective expertise giving maximum effectiveness to the inspections. On average three Commission officials take part in each visit, accompanied sometimes by officials from the Court of Auditors (and, previously, the Audit Board) in accordance with the Financial Regulation.

Under Article 18 of Regulation (EEC, Euratom, ECSC) No 2891/77, the Member States shall 'associate the Commission ... with the inspection measures which they carry out'. Community legislation <sup>(1)</sup> is however silent about the precise way in which these inspections are to be carried out and the Commission found from the beginning that each Member State had rather different ideas on this subject.

It is of course true that the Member State itself is best placed to assess the inspection requirements of its own administrations and these inspections are inevitably organized to take account of the traditional responsibilities of each department which have evolved differently in the various countries.

Despite the eight years of regular contact with the national administrations concerned and the continuous progress towards a common view of what cooperation should involve, procedural differences in the various inspections with which the Commission is associated still persist.

The Commission considers that the inspection of revenue goes beyond an examination of and check on documents relating to past activities and must include checks and assessments of the way in which national systems are currently being applied. It also finds that the shortage of staff available to undertake own resources inspections means that it must concentrate on the systems in operation in each Member State and on ascertaining that these are adequate. This is in line with the fact that the main responsibility for the inspection of own resources lies with the Member State. If the Member States view the Commission's association with national controls in a restrictive sense, it cannot fully achieve its aims. The judgment of the Court of Justice in the *Como* case <sup>(2)</sup>, which recognized that the Commission may exercise its powers of inspection from the moment of establishment and have access to all procedures, documents and reports concerning what is described as the pre-establishment phase, allows the Commission to seek a more effective approach to the inspections which it carries out in association with the national authorities. The Commission considers that the restriction on its powers imposed by the association requirement limits its ability to ensure that the Community's own resources are correctly established and it would like to see its role develop along the lines indicated by the Court.

This is not to say that the facilities accorded to the Commission within the framework of associated inspections have not produced useful and interesting results over recent years. Some disparities in the application of Community legislation on own resources have been brought to light and corrected and systematic checks have been made on the statements supplied to the Commission by the Member States under Article 7(3) of Regulation (EEC, Euratom, ECSC) No 2891/77. A whole series

<sup>(1)</sup> Council Regulation (EEC, Euratom, ECSC) No 165/74 of 21 January 1974, OJ No L 20, 24. 1. 1974.

<sup>(2)</sup> Case 267/78 *Commission of the European Communities v. Italian Republic* [1980] ECR 31.

of problems have arisen and been considered by the various Commission departments and the Member States in the Advisory Committee on Own Resources and other committees set up to deal with specific matters. The positive results of this work include greater mutual understanding arising from cooperation on a basis of equality between Commission officials and those of the Member States working within their own administrations. Not the least positive aspect has been that national officials in the most remote offices of the Member States have derived, from working with Commission officials, a clearer sense of the Community's existence and their own contribution to the Community's management of its own resources.

Since the Community budget has been totally financed from own resources, a number of steps have been taken to strengthen the Commission's powers of inspection of own resources. The imbalance between the Commission's powers over expenditure and those over budgetary resources has made itself apparent on more than one occasion. Regulation (EEC) No 283/72 <sup>(1)</sup>, for example, which deals with the financing of agricultural expenditure, allows the direct inspection of national administration by Commission officials. Over the last ten years these inspections have always been carried out in complete agreement with national authorities and appear to be highly effective since they afford the Commission full knowledge of the operations taking place in the Member States. It is only reasonable that the Commission should have the same powers in the field of own resources since it has on a number of occasions been forced to the conclusion that its information on, for example, irregularities affecting Community resources was inadequate.

Direct inspection by the Commission of the national authorities responsible for implementing Regulation (EEC, Euratom, ECSC) No 2891/77 would be one way in which it could more easily satisfy itself that own resources were being established and collected correctly, equitably and consistently. Associated inspections would be retained and direct inspections by the Commission carried out only when necessary. The Commission is proposing an amendment to Article 18 for this purpose. It is also proposing that corrections made as a result of inspections should be identified in the monthly statements (Article 7) of own resources which it receives. In this way further inspections to check that corrections have been made can be avoided.

The proposed amendment to Article 17 (3) on the submission of six-monthly reports follows on from the above provisions — it can be explained by the fact that the Commission should have a right to information on the implementation of the Community own resources system. A breakdown of data supplied is therefore requested to permit easier identification of irregularities discovered during the year and their financial consequences. Serious cases would be the subject of special scrutiny. If these changes are implemented, the Commission's inspections, whether direct or in association with the Member States, could be more efficiently directed and fuller information supplied to the outside control bodies (Parliament's Committee on Budgetary Control and the Court of Auditors).

Since the provisions of Regulation (EEC, Euratom, ECSC) No 2891/77 apply to all own resources except where Regulation (EEC, Euratom, ECSC) No 2892/77 makes specific provisions on VAT, the proposals on inspections would extend at least in part to VAT — this would be true in particular of the Commission's right to initiate on-the-spot checks.

#### VI. ADVISORY COMMITTEE ON OWN RESOURCES

The ACOR, whose chairman and secretariat are supplied by the Commission, has been meeting regularly since 1971 and considers problems arising out of Regulation (EEC, Euratom, ECSC) No 2891/77 and in particular the results of inspections by national authorities with which the Commission has been associated concerning the establishment and making available of customs duties and agricultural levies.

In 1978 the Committee approved a detailed plan for setting out the information in the six-monthly and annual reports which the Member States transmit to the Commission.

On a number of occasions, the Commission has drawn the attention of the Member States to the differences in the quality of their reports under Articles 5 and 17 and the lack of information on some cases in dispute.

The reports containing the results of inspections have been considered from the point of view of the information which they contain about the inspections they describe and the problems which arose during the visits.

<sup>(1)</sup> OJ No L 36, 10. 2. 1972, p. 1.

As noted in paragraph II.1 above; the main general problems referred to the Committee by the Commission have been:

#### — The concept of establishment

The Commission set up an interdepartmental working party to consider this matter and then adopted an interpretation of establishment which it circulated to the Member States. The findings of the working party and this interpretation were discussed by the delegations in the Committee.

The Committee will give further consideration to this matter on the basis of information gathered in the Member States during a targeted inspection of establishments directed particularly at establishments in cases in dispute.

#### — The concept of *force majeure*

At the request of certain Member States and in connection with the concept of establishment, the Commission has reminded the Member States through the Committee of the interpretation which should be given to Article 17 (2) of Regulation (EEC, Euratom, ECSC) No 2891/77.

In addition to these general matters, the Committee has considered all the difficulties encountered in implementing the rules on traditional own resources.

When the Committee began work in 1971, it adopted, by common agreement among the national delegations, rules of procedure which have not created any problems, their interpretation being sufficiently flexible to overcome the difficulties caused by the many highly technical and complex national rules.

These practical problems increased in number once own resources derived from VAT were made available to the Community.

Although previously four meetings a year had usually been adequate to consider the problems arising from traditional own resources, the situation changed completely with the implementation of Regulation (EEC, Euratom, ECSC) No 2892/77 on VAT own resources and the Committee now usually meets ten times a year. Normally the four original meetings already mentioned are spent wholly or in part on traditional own resources — principally looking at the content of the annual reports made by the Member States under Articles 5 and 17 of the Regulation and the results of inspections of own resources carried out in the Member States under Article 6 of

Regulation (EEC, Euratom, ECSC) No 165/74. The 'estimates' subcommittee considers the own resources estimates to be entered in the preliminary draft budgets and the rate of inflow of revenue.

The introduction of VAT own resources required a further six to eight meetings a year, at least during the first two years, and intensive work was needed to ensure that the bases of the nine Member States were thoroughly reviewed.

Although the Advisory Committee on Own Resources is a single body, it employs a special procedure when meeting under Article 13 of Regulation (EEC, Euratom, ECSC) No 2892/77. Such meetings are limited to consideration of specific problems arising from VAT own resources, which fall outside the scope of this report.

## VII. SUNDRY TECHNICAL AMENDMENTS

1. It is proposed that the supporting documents referred to in Article 3 should be kept for longer than three calendar years if they reveal that an amendment of the corresponding establishment may be required. This is in order to allow the correction to be made and checked.

2. In Article 6 (new Article 5) it is proposed that the provision requiring the VAT rate to be 'expressed as a figure to four decimal places' be deleted, since at least ten places are required for VAT own resources to be apportioned accurately among the Member States. A further proposal is to specify that VAT own resources are intended to finance the whole of the budget not covered by customs duties, agricultural levies, *contributions to Euratom supplementary programmes*, miscellaneous revenue and, if appropriate, financial contributions based on gross national product. It seems better to include such contributions since they are provided for in Article 4 (6) of the Decision of 21 April 1970.

3. It is proposed that the date for the entry in the accounts of established entitlements to own resources given in Article 7 (2) (new Article 6 (2)) and Article 10 (1) should be changed from 'the 20th day of the second month following the month during which the entitlements were established' to 'the first working day after the 19th day of the second month during which the entitlements were established'. This arises from the situation which occurs when the 20th is no a working day when entry in the accounts is deferred until the next working day, and is desirable even though the application of Article 3 (4) of Regulation

(EEC, Euratom, ECSC) No 1182/71 <sup>(1)</sup> produces the same result. This proposal is also designed to introduce a standard procedure for all types of own resources. Article 7 (3) sets a date by which monthly statements of own resources must be submitted.

4. In Article 9 (1) the references to certain paragraphs of Article 10 are corrected and brought into line with the new numbering.

5. The provisions of Article 9 (3) have been deleted since those dealing with the conversion into ECU and entry in the accounts of amounts expressed in national currencies are included in the proposed amendments to Article 30 of the Financial Regulation.

6. The Commission considers it necessary to specify in the fourth subparagraph of Article 10 (3) that the draft budget which determines the entries to be made on the first working day in January is the one adopted by the Council in its first reading. This clarification in no way alters the present method of applying the rules.

7. References in Article 10 (7) (formerly Article 10 (6)) to other paragraphs of that article are brought into line with the new numbering.

8. In Article 13 (2) it is specified that the gross national product of each Member State is calculated on the basis of statistics drawn up according to the European System of Integrated Economic Accounts (ESA) and cannot be changed after the budget has been adopted. This is a continuation of existing practice as agreed within the Council following the Decision of 21 April 1970.

9. Subparagraph (b) of Article 14 incorporates the definition of GNP given in the second edition of the ESA (1979).

<sup>(1)</sup> OJ No L 124, 8. 6. 1971.

10. The final paragraph of Article 15 is deleted since it is no longer relevant.

11. It is proposed that Article 16 (1) be amended to make the submission of a letter of amendment arising from appreciable differences between the October estimates of own resources for the year in question and the original estimates optional rather than obligatory. This is in line with the proposed amendment to Article 27 of the Financial Regulation which provides that the balance for a financial year shall be entered either in an amending or supplementary budget for the following year or in the budget of the year after that.

12. The references in Article 16 (2) to certain paragraphs of Article 10 are brought into line with the new numbering.

13. The references to certain other paragraphs of Article 18 in Article 18 (3) (new Article 18 (4)) are brought into line with the new numbering.

14. The exclusive reference to customs regulations in Article 19 is deleted in view of developments in the field of own resources.

15. References to other articles in Article 21 are brought into line with the new numbering.

16. All references to the European unit of account (EUA) have been replaced by the ECU. This is in line with Article 1 of Council Regulation (EEC, Euratom) No 3308/80 of 16 December 1980 on the replacement of the European unit of account by the ECU in Community legal instruments <sup>(2)</sup>.

<sup>(2)</sup> OJ No L 345, 20. 12. 1980.

## EXPLANATORY MEMORANDUM

### I. INTRODUCTION

Council 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 <sup>(1)</sup>, hereinafter referred to as 'Regulation No 2891', was adopted on 19 December 1977 and was applicable from 1978.

<sup>(1)</sup> OJ No L 336, 27. 12. 1977, p. 1.

Article 22 of the Regulation provides for the Commission to submit a report on its implementation together with proposals for any amendments required. This report is attached to these proposed amendments. This explanatory memorandum sets out briefly the reasons for the proposed amendments which are dealt with in more detail in the report.

The Regulation replaced Council 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 Member States by the Communities' own resources <sup>(1)</sup>. This was necessary because the system of own resources provided for by the Decision of 21 April 1970 became fully effective from 1 January 1978 with the payment to the Community of own resources derived from VAT, and the European unit of account was applied to the general budget of the Communities. The new Regulation came into force at the same time as the new Financial Regulation <sup>(2)</sup>. The amendments to Regulation No 2891, Regulation No 2892 <sup>(3)</sup> and the Financial Regulation based on the Commission's proposals <sup>(4)</sup> should also come into force at the same time so that the three Regulations are kept in line. If one Regulation were amended before the others, transitional measures would be required.

The Commission's proposals include amendments of substance and some changes of a more technical nature. They are designed to bring out more clearly the fact that own resources belong to the Community, to take account of experience acquired in applying the Regulation and to remedy its shortcomings.

Regulation 2891 is divided into nine titles:

- Title I: General provisions;
- Title II: Accounts for own resources;
- Title III: Making available own resources;
- Title IV: Management of cash resources;
- Title V: Procedure for the application of Article 4 (2) and (3) of the Decision of 21 April 1970;
- Title VI: Procedure for the application of Article 4 (5) of the Decision of 21 April 1970;
- Title VII: Provisions concerning inspection measures;
- Title VIII: Provisions relating to the Advisory Committee on the Communities' Own Resources;
- Title IX: Final provisions.

The Commission's proposals are presented under these headings.

## II. TITLE ONE — GENERAL PROVISIONS

Technical amendments to Articles 3 and 6 are proposed.

The first requires Member States to keep supporting documents for longer than three calendar years if,

<sup>(1)</sup> OJ No L 3, 5. 1. 1971, p. 1.

<sup>(2)</sup> OJ No L 356, 31. 12. 1977, p. 1.

<sup>(3)</sup> COM(82).

<sup>(4)</sup> COM(80) 760 final.

upon examination within that time, it is found that the establishment to which they relate may have to be corrected. The period is extended sufficiently to allow the correction to be made and checked.

The second amends the provisions relating to the VAT rate. The stipulation that this should be 'expressed as a figure to four decimal places' is dropped because at least ten places of decimals are required for VAT resources to be divided equitably between the Member States.

Contributions to Euratom supplementary programmes are specifically listed as budget revenue since they are mentioned in Article 4 (6) of the Decision of 21 April 1970.

## III. TITLE II — ACCOUNTS FOR OWN RESOURCES

The Commission proposes that the purpose of the reports drawn up by the Member States under Articles 5 and 17 (3) be made clearer. In future the report under Article 5 will deal solely with the establishment and entry in the accounts of own resources; this Article has therefore been moved to Title II of the Regulation and renumbered Article 8. Articles 6, 7 and 8 therefore become Articles 5, 6 and 7. The inspection part of the report is now included in the report provided for under Article 17 (3) (see Title VIII below).

Three technical amendments to Article 7 (2) and (3) are also proposed.

The first concerns the date when traditional own resources are entered in the accounts. This becomes the first working day after the 19th day of the month to avoid the problems which arise when the 20th is a holiday, a Saturday or a Sunday. There is a consequential identical amendment to Article 10 (1).

The date by which the Commission must receive the monthly statement from the Member States is specified to fill a gap in the Regulation. The date by which adjustments to the VAT balances under the new Article 10 (6) of the Regulation must be entered in the accounts is also given.

## IV. TITLE III — MAKING AVAILABLE OWN RESOURCES

This title contains some of the most important Commission proposals.



First of all, the Commission proposes an amendment to Article 9 (1) to stipulate that the accounts in the name of the Commission with national Treasuries should bear interest. The reason for this is as follows.

The Community's financial autonomy and the balancing of revenue and expenditure within the budget mean that own resources belong to the Community as soon as they are established. They are due whether or not a budget has been adopted, the Member States being obliged to enter them in the Commission's accounts on the dates specified in the Regulation. Furthermore, the budget is now financed entirely from own resources, the financial contributions payable by Greece being only a temporary derogation from this principle. It therefore seems logical that the amounts entered in the Commission's accounts should bear interest, thereby demonstrating that these resources are exclusively the Community's. The Commission is not proposing that sums be drawn from the accounts in excess of its cash requirements; it proposes that the balance of the accounts should yield interest — to be entered each month — at the discount rate of the Member State concerned less half a point. This reduction is to pay for the services of the national departments responsible for the management of the accounts, as happens between national financial institutions in such cases, account being taken of the type and number of transactions likely to be effected on the Commission's accounts.

The Commission also proposes an amendment to the interest rate applied in the calculation of the interest provided for in Article 11. Instead of the highest rate of discount in the Member States, it proposes the rate of discount in the Member State in question, increased by five percentage points. The current system is no longer fair because of the increased divergences between discount rates in the Member States. This new system is more equitable, but it is equally effective and avoids losses to the Community treasury.

Secondly, a number of amendments are proposed to Article 10.

The provisions in the first subparagraph of Article 10 (3) dealing with the readjustment following the adoption of an amending or supplementary budget are amended to give the Member States a reasonable amount of time to make the appropriate entries if such a budget is adopted during the second half of the month.

The provisions of the fourth subparagraph of Article 10 (3) laying down the procedure to be followed

when there is no budget at the beginning of the financial year are expanded to bring the Regulation — now the own resources system is fully operational — into line with the Decision of 21 April 1970, which states that the VAT rate to be applied in these circumstances is that of the last budget to be finally adopted, and to make it compatible with the proposed amendments to the Financial Regulation specifying which budget is to be taken into consideration for the provisional twelfths arrangements.

The problems with the interpretation of Article 10 (5) have prompted the Commission to clarify the method of calculating adjustments to GNP-based financial contributions in order to restore the original distribution in the budget between VAT own resources and financial contributions once the actual yield of VAT own resources has been determined from the Member States' annual statements of their VAT bases. One of the new provisions specifies the rates of exchange to be used. A paragraph 6 has been added to deal with the budgetary implications of any corrections to these statements following inspections by the Commission.

Finally a technical amendment to Article 9 (3) proposes that the method which the Commission uses to convert the own resources credited to it by the Member States into ECU and enter them in its accounts shall in future be as specified in the basic Financial Regulation.

#### V. TITLE IV — MANAGEMENT OF CASH RESOURCES

The Commission is proposing no amendments under this title.

#### VI. TITLE V — PROCEDURE FOR THE APPLICATION OF ARTICLE 4 (2) AND (3) OF THE DECISION OF 21 APRIL 1970

These paragraphs concern the calculation of financial contributions payable by any Member State which does not pay VAT own resources to the Community. Articles 13 and 14 of the Regulation are amended to allow for the definition of gross domestic product contained in the latest edition of the European System of Integrated Economic Accounts (1979). It is also proposed that the present practice of not altering GNP scales once the budget has been adopted be given force of law.

VII. TITLE VI — PROCEDURE FOR THE APPLICATION OF ARTICLE 4 (5) OF THE DECISION OF 21 APRIL 1970

This title describes how the surplus or deficit of a financial year is carried forward to the next financial year. Each year two balances are calculated. According to Article 15 of the Regulation, the first, the 'budgetary' balance, is the difference between the revenue of a financial year and the expenditure plus carryovers to the following year, while Article 10 (4) defines the second, the 'VAT' balance, as the difference between VAT own resources due on the actual bases and those paid over on the estimated bases.

The Commission is proposing a number of technical amendments to the rules for calculating the 'budgetary' balance. The most important concerns the direct incorporation in the calculation of the balance of exchange differences arising from bank transactions and the use of a number of different ECU rates during the year. Under the present system these amounts are first charged to the budget and then included in the balance for the year as an item of expenditure.

The system creates difficulties on the budgetary level: a net gain is not a problem because a token entry in the revenue section of the budget allows the amount to be entered in the accounts. A loss, however, cannot be charged to expenditure unless the item concerned carries an adequate appropriation. Here too a token entry is made and so a transfer is required. This has to be an 'open' transfer because the amount required cannot be determined until the end of the financial year. The proposed amendment would require a derogation from Article 4 of the Financial Regulation, which states that: 'No revenue shall be collected and no expenditure effected unless credited to or charged against an article in the budget.' This derogation would also have to apply to the provision that amounts paid in excess of appropriations carried forward are to be directly incorporated in the calculation of the balance. This provision of the existing Regulation has never been applied because it is in conflict with the Financial Regulation.

Article 16 (1) provides that, if own resources are appreciably more or less than the amount estimated for the financial year, the difference must be entered in the budget for the following year by means of a letter of amendment to the draft. The Commission

proposes that this be made optional in line with the proposed amendment to Article 27 of the Financial Regulation, which states that the balance for a financial year is to be entered either in an amending or supplementary budget for the following year or in the budget for the year after that.

VIII. TITLE VIII — PROVISIONS CONCERNING INSPECTION MEASURES

The Commission proposes that Article 18 be amended to allow it to conduct inspections by itself in national departments in addition to being associated with inspections as already provided. This power would enable it to ascertain more closely that own resources are being correctly and uniformly established and collected, something which is of greater importance now that the budget is financed entirely from own resources. It should be pointed out that Regulation (EEC) No 283/72 provides for direct inspection of the financing of agricultural expenditure by Commission officials.

It is also proposed that the corrections made by the Member States as a result of inspections should be shown separately in the monthly statements of own resources sent to the Commission under Article 7 (3). This would reduce the need for further missions to check that corrections have in fact been made.

The amendment to Article 17 (3), which follows on from the above proposals, would require the Member States to draft two six-monthly reports setting out the results of their inspections. Analysis of these data would help to bring irregularities to light and assist the Commission in determining the subjects of its own inspections.

Finally, in view of developments in own resources, the exclusive reference to customs regulations in Article 19 is deleted.

IX. TITLE VIII — PROVISIONS RELATING TO THE ADVISORY COMMITTEE ON OWN RESOURCES

The only change in this title is to bring the reference to another article into line with the proposed amendments.

X. TITLE IX — FINAL PROVISIONS

The Commission is proposing no amendments under this title.

## II

**Proposal for a Council Regulation 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 Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources<sup>(1)</sup>, hereinafter referred to as 'the 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,

Having regard to the opinion of the Court of Auditors,

Whereas the conciliation procedure provided for in the joint declaration of 4 March 1975 by the European Parliament, the Council and the Commission<sup>(2)</sup> has taken place in the Conciliation Committee;

Whereas Article 22 of Council Regulation (EEC, Euratom, ECSC) No 2891/77<sup>(3)</sup>, provides that the Commission shall, where appropriate, make any proposals for amendments thereto;

Whereas the application of Regulation (EEC, Euratom, ECSC) No 2891/77 since it came into force has revealed that a number of its provisions require adjustment;

Whereas certain provisions must be adjusted to bring them into line with Council Regulation (ECSC, EEC, Euratom) No ... of ... amending the Financial Regulation of 21 December 1977;

Whereas, in view of the Community nature of own resources, the Community's financial autonomy should be enhanced by a provision that the balances

in the Commission's accounts with the Treasuries of the Member States should bear interest;

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, 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 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, in view of the increased divergences between rates of discount in the Member States, it is necessary to adjust the rates of interest applied when own resources are not made available by the due date;

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

Whereas the provisions governing verifications and inquiries concerning the establishment and making available of own resources should be extended to permit direct inspections by the Commission,

HAS ADOPTED THIS REGULATION:

*Article 1*

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

1. The following paragraph is added to Article 3:  
'If examination of these supporting documents shows that an establishment to which they relate may have to be corrected, they shall be kept beyond this time limit for a sufficient period to permit the correction to be made and inspected'.
2. Article 5 becomes Article 8. It is amended as follows:

<sup>(1)</sup> OJ No L 94, 28. 4. 1970, p. 19.

<sup>(2)</sup> OJ No C 89, 22. 4. 1975, p. 1.

<sup>(3)</sup> OJ No L 336, 27. 12. 1977, p. 1.

- (a) after 'a summary account' the words 'of entitlements established' are inserted;
- (b) 'inspection' is replaced by 'entry in the accounts';
- (c) 'July' is replaced by 'April'.
3. Article 6 becomes Article 5. It is amended as follows:
- In the second sentence the words 'expressed as a figure to four decimal places and' are deleted and, after 'agricultural levies', the words 'financial contributions to Euratom supplementary programmes' are inserted.
4. Article 7 becomes Article 6. It is amended as follows:
- (a) in the first subparagraph of paragraph 2, '20th' is replaced by 'first working day after the 19th';
- (b) in the second indent of the second subparagraph of paragraph 2, the words 'and the adjustments referred to in Article 10 (6)' are added;
- (c) paragraph 3 is replaced by the following:
- '3. Each Member State shall forward to the Commission each month a statement of its accounts within the period specified in paragraph 2'.
5. Article 8 becomes Article 7.
6. Article 9 is amended as follows:
- (a) in the second subparagraph of paragraph 1, 'Article 10 (3) and (4)' is replaced by 'Article 10 (3), (4), (5) and (6)';
- (b) in the third subparagraph of paragraph 1 the words 'be kept free of charge' are replaced by 'yield interest calculated at the discount rate in force in the Member State where the account is held, less half a point. The interest for each month shall be entered on the first working day after the following month';
- (c) in paragraph 3 the words 'in European units of account (EUA) on the basis of the quotations obtaining on the last day corresponding to the time limit for entry or on the first preceding day for which such quotations are available' are replaced by 'in ECU as provided for in Article 30 (2) of the Financial Regulation'.
7. Article 10 is amended as follows:
- (a) in paragraph 1 '20th' is replaced by 'first working day after the 19th';
- (b) the following is added to the third subparagraph of paragraph 3: '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.';
- (c) the following is inserted in the first sentence of the fourth subparagraph of paragraph 3 after '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';
- (d) in the second sentence of the fourth subparagraph of paragraph 3 the words 'shall similarly be calculated from the amounts entered in the draft budget' are replaced by 'of VAT resources shall be calculated by reference to the VAT base in the draft budget or, if there is no draft budget, in the preliminary draft budget, using the rate fixed for the last budget to have been finally adopted.
- Twelfths of financial contributions shall be calculated on the basis of the amounts entered in the draft budget or, if there is no draft budget, in the preliminary draft budget. This "draft budget" shall be the draft in the form in which it stands at the beginning of the financial year for which the budget has not been finally adopted. Where the absence of a budget is due to the rejection of the draft budget by Parliament as provided for by Article 78 (8) of the ECSC Treaty, Article 203 (8) of the EEC Treaty and Article 177 (8) of the Euratom Treaty, the "VAT base" and the "financial contributions" shall be those contained in the rejected draft budget or, where appropriate, the draft budget established after the rejection decision but before the start of the financial year; at the end of the second limb of the sentence, the following is added: 'if it is adopted before the 16th day of the month. Otherwise, it shall be made on the second due date.';
- (e) paragraph 5 is replaced by the following:
- '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 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 15 July before 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 financial contributions based on GNP 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.’;

(f) the following new paragraph 6 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) 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,

— the corrections under the second subparagraph of Article 10b (1) shall give rise to an adjustment to be entered in the account referred to in Article 9 (1) of this Regulation one month after the expiry of the period allowed by the Commission in its reasoned decision for making the correction.

The adjustments to be made to the VAT balances by the first working day of August 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-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.’;

(g) paragraph 6 becomes paragraph 7. It is amended as follows: ‘paragraphs 4 and 5’ are replaced by ‘paragraphs 4, 5 and 6.’

8. In Article 11 the words ‘the highest rate of discount ruling in the Member States on the due date’ are replaced by ‘the rate of discount applied in the Member State on the due date, increased by five points’.

9. Article 13 is amended as follows:

(a) in paragraph 2 the words ‘on the basis of statistics compiled by the Statistical Office of the European Communities’ are replaced by

‘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 the following sentence is added:

‘No account shall be taken of any revisions of statistical data made after the final adoption of the budget.’;

(b) in paragraph 3 ‘EUA’ is replaced by ‘ECU’.

10. In Article 14, under (b), the word ‘taxes’ is replaced by ‘VAT on products and net taxes’.

11. Article 15 is amended as follows:

(a) in the second indent of the first paragraph the words ‘Articles 6 and 95’ are replaced by ‘Article 6 (1) (b) and (c), (2) (b) and (3) (b) and the third subparagraph of Article 88 (5)’;

(b) the second paragraph is replaced by the following:

‘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.’;

(c) the third paragraph is deleted.

12. Article 16 is amended as follows:

(a) in the second subparagraph of paragraph 1 the words ‘shall give rise to’ are replaced by ‘may give rise to’;

(b) in paragraph 2 the words ‘Article 10 (4) and (5)’ are replaced by ‘Article 10 (4), (5) and (6)’.

13. Article 17 (3) is amended as follows:

(a) the words ‘Member States shall report to the Commission, where appropriate within the framework of existing procedures,’ are replaced by ‘Member States shall send to the Commission two separate reports, one on the results of their inspections and the other containing’;

(b) the following two sentences are added:  
‘These reports shall be submitted during the month following the end of each half year and shall include the number of cases of

irregularities concerning own resources, an overall estimate of the own resources evaded and the amount of own resources established or still to be established. The reports shall also describe serious irregularities which could have a significant financial impact on own resources.'

14. Article 18 is amended as follows:

(a) in the third sentence of the second subparagraph of paragraph 2, after 'minimum', the remainder of the sentence is replaced by:

'(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 7 (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.';

(b) the following new paragraph 3 is inserted:

'3. Without prejudice to the inspections referred to in paragraph 2, the Commission may itself undertake on-the-spot inspections. The officials appointed by the Commission to undertake these inspections shall, to the extent necessary for the correct application of this Regulation, have access to the supporting

documents referred to in Article 3 and to all other related documents. The Commission shall give adequate notice of the inspection to the Member State concerned by the inspection or on whose territory the inspection is to take place. Representatives of the Member State concerned may take part in these inspections.';

(c) paragraph 3 becomes paragraph 4. The words 'paragraphs 1 and 2' are replaced by 'paragraphs 1, 2 and 3';

(d) paragraph 4 becomes paragraph 5.

15. In Article 19 the words 'in particular regarding nomenclature, origin, value for customs purposes, Community transit and inward processing,' are deleted.

16. In Article 21, under (c), the words 'and (3)' are added after '9 (2)'.

#### Article 2

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

It shall apply from the financial year 1983.

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

## I

*(Information)*

## COMMISSION

ECU <sup>(1)</sup>

3 September 1982

Currency amount for one unit:

Belgian and Luxembourg franc con.	45.2411	United States dollar	0.956270
Belgian and Luxembourg franc fin.	47.4549	Swiss franc	1.99765
German mark	2.35481	Spanish peseta	106.528
Dutch guilder	2.58145	Swedish krona	5.86624
Pound sterling	0.550688	Norwegian krone	6.36158
Danish krone	8.24782	Canadian dollar	1.18109
French franc	6.63316	Portuguese escudo	82.4304
Italian lira	1327.30	Austrian schilling	16.5698
Irish pound	0.684762	Finnish markka	4.52315
Greek drachma	66.7859	Japanese yen	245.044
		Australian dollar	0.985845
		New Zealand dollar	1.30460

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day.

Users of the service should do as follows:

- call telex number Brussels 23789;
- give their own telex code;
- type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the EUA;
- the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

*Note:* The Commission also has an automatic telex answering service (No 21791) providing daily data on calculation of monetary compensatory amounts for the purposes of the common agricultural policy.

<sup>(1)</sup> Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1).  
Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349,  
23. 12. 1980, p. 34).

Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).  
Financial Regulation of 16 December 1980 concerning the general budget of the European  
Communities (OJ No L 345, 20. 12. 1980, p. 23).

Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).  
Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No  
L 311, 30. 10. 1981, p. 1).

## II

*(Preparatory Acts)*

## COMMISSION

**Report on the implementation of 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**

**Proposal for a Council Regulation 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**

*(Submitted by the Commission to the Council on 23 July 1982)*

## I

**Report on the implementation of 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**

## I. INTRODUCTION

Article 22 of Regulation (EEC, Euratom, ECSC) No 2891/77 <sup>(1)</sup> provides that the Commission shall, by 30 September 1979, submit a report on the implementation of the Regulation together with, where appropriate, any proposals for amendments thereto. The delay in implementing the Sixth Directive, however, made it impossible to report on the provisions relating to own resources derived from VAT since six Member States did not apply these arrangements until 1 January 1979. The annual statements of VAT own resources provided for in Article 10 (1) of Regulation (EEC, Euratom, ECSC) No 2892/77 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 <sup>(1)</sup> were sent to the Commission in respect of 1979 by six Member States in July 1980 and in respect of 1980 by nine Member States in July 1981. The balances referred to in Article 10 (4) of Regulation (EEC, Euratom, ECSC) No 2891/77 were entered in the Commission's accounts on the first working days in August 1980 and 1981 and inspections by the Commission of the statements for 1979 were completed in October 1981.

The Commission therefore decided to delay presentation of its report until it could draw on its experience of these VAT own resources and so propose amendments to Regulation (EEC, Euratom, ECSC) No 2891/77.

It may be recalled that the main reasons why the Council, acting on a proposal from the Commission and after consulting Parliament, decided to replace Council 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 Member States by the Communities' own resources <sup>(2)</sup> by Regulation (EEC, Euratom, ECSC) No 2891/77 were the full implementation from 1 January 1978 of the own resources system set out in the Decision of 21 April 1970 and the use of the European unit of account in the general budget of the Communities. The new Regulation therefore had to provide for the establishment, making available and inspection of the new own resource derived from VAT, the entry in the accounts of own resources and, where appropriate, financial contributions in EUA.

Full implementation of the own resources system brought to an end the system of relative shares payable by the Member States and the making

<sup>(1)</sup> OJ No L 336, 27. 12. 1977, p. 1.

<sup>(2)</sup> OJ No L 3, 5. 1. 1971, p. 1.