

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(84) 465 final

Brussels, 31 July 1984

Third Amendment to the Proposal for a
COUNCIL REGULATION (EEC, EURATOM, ECSC)

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

(submitted to the Council by the Commission pursuant to the second
paragraph of Article 149 of the EEC Treaty and the second
paragraph of Article 119 of the Euratom Treaty)

COM(84) 465 final

EXPLANATORY MEMORANDUM

1. On 23 July 1982 the Commission sent the Council a 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, together with a proposal for amendments to that regulation.¹

The Council consulted Parliament and the Court of Auditors on the proposed amendments. The Court of Auditors adopted its opinion on 16 November 1982² and Parliament adopted its opinion on 17 December 1982.³ On 20 May 1983 the Commission sent the Council an amendment to its original proposal under Article 149 of the EEC Treaty and Article 119 of the Euratom Treaty.⁴

2. On 24 October 1983 the Commission sent the Council a second amendment under Article 149 of the EEC Treaty and Article 119 of the Euratom Treaty.⁵ The purpose of this amendment, notice of which had been given in the report of 23 July 1982 on the implementation of Council Regulation (EEC, Euratom, ECSC) No 2891/77 of 19 December 1977,¹ was to:

- (a) define more precisely the concept of establishment in Article 2;
- (b) add an article specifying in what circumstances and subject to what conditions the making available of established entitlements may be deferred (Article 10a);
- (c) add an article specifying in what circumstances and subject to what conditions a Member State may be definitively released from its obligation to make entitlements available (Article 10b).

Since these were amendments of substance to the rules governing the system of Community own resources, the Council consulted Parliament and the Court of Auditors. The Court gave its opinion on 27 March⁶ and Parliament did so on 24 May.⁷

¹ OJ No C 231, 4.9.1982, p. 15.
² OJ No C 133, 20.5.1983, p. 3.
³ OJ No C 13, 17.1.1983, p. 222.
⁴ OJ No C 146, 4.6.1983, p. 4.
⁵ OJ No C 303, 10.11.1983, p. 19.
⁶ OJ No /, 1984, p.
⁷ OJ No /, 1984, p.

3. The opinions of Parliament and the Court of Auditors have led the Commission to amend its original proposal as follows:

- (a) Parliament wishes it to be made absolutely clear that own resources belong to the Community from the moment that the event giving rise to them has occurred and that the harmonization of the Community own resources system, and therefore of the rules, particularly those applying to customs duties, on which the system is based, should continue. The Commission is accordingly amending Article 1 of the Regulation, for which there had not previously been a proposal for amendment. Consequential adjustments are also required in the proposed amendments to the recitals (Proposals Nos 1, 2 and 3);
- (b) in the light of comments by Parliament and the Court of Auditors, the Commission is again amending its proposal concerning Article 2 to eliminate any ambiguity between establishment following entry in the accounts and the determination of the amount of an entitlement (Proposal No 4);
- (c) the new structure of the proposed amendments requires technical amendments to the second paragraph of Article 2, Article 10(1) and Article 10a(2)(a)(Proposals Nos 5, 6 and 7);
- (d) following Parliament's opinion, the Commission has simplified the wording of Article 10a(2)(b) to clarify the role of the Commission and the Advisory Committee on Own Resources in preparing lists of model cases where establishment may be deferred without prior authorization (Proposal No 7);
- (e) at Parliament's request, the Commission is introducing a time-limit on deferment authorizations (proposal No 8);
- (f) in line with a suggestion by the Court of Auditors, the Commission is clarifying the wording of paragraph 2(a) of that Article (proposals Nos 9 and 10);
- (g) as requested by Parliament and for reasons of equity, the Commission is providing that in the application of Article 11 on interest on late payments allowance may be made for problems arising from delays in applications for deferment, the waiving of the requirement to make own resources available or the need to review such decisions (Proposal No 11);

(h) as requested by Parliament, the Commission is making explicit the fact, mentioned in the Explanatory Memorandum to the previous amendments but not included in the proposals, that this Regulation will cause Article 9 of Council Regulation No 1697/79 of 24 July 1979 on post-clearance recovery to lapse (Proposal No 12).

4. This third amendment takes up all the amendments adopted by Parliament. The Commission does not, however, intend to adopt the suggestion in the opinion of the Court of Auditors that there should be a monthly statement of cases where the making available of own resources has been deferred. Besides the administrative problems which such a provision would create, the Commission considers that the supervision of such cases is adequately ensured by the proposals now under consideration for amending Regulation No 2891/77 and the proposal for a Council Regulation on the measures to be taken in the event of irregularities affecting own resources and the organization of an information system for the Commission in this field, on which the Commission has just asked the Council to resume work.

Third Amendment to the Proposal for a
COUNCIL REGULATION (EEC, EURATOM, ECSC)

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

1. After the third recital, insert the following two new recitals:

"Whereas, pending harmonization measures which will make possible harmonized application of the system of own resources, it is necessary for the time being to give a precise definition of the concept of establishment of own resources;¹

whereas Community customs legislation has introduced the concept of "entry in the accounts", defined as the official act by which the amount of the import duties or export duties to be collected by the competent authorities is duty determined; whereas provision should be made for entitlements to be established, even in cases where it is not possible to make an entry in the accounts as so defined;"

2. After the fifth recital, insert the following new recital:

"Whereas entitlements should be made available following their establishment; whereas, however, where recovery is delayed or proves impossible, provision should be made for the making available of entitlements to be deferred or for the entitlements to be waived; whereas this possibility should be strictly limited in order to protect the Community's financial interests; whereas appropriate procedures should be laid down."

3. Article 1 is replaced by the following:

"Article 1

The Community's own resources provided for in the Decision of 21 April 1970 hereinafter called 'own resources', shall belong to the Community from the moment that the event giving rise to them takes place.

¹OJ No C 231, 4.9.1982, p. 15.

II

(Preparatory Acts)

COMMISSION

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

(COM(84) 465 final)

(Submitted by the Commission to the Council pursuant to the second paragraph of Article 149 of the EEC Treaty and the second paragraph of Article 119 of the Euratom Treaty on 3 August 1980)

(84/C 219/09)

1. After the third recital, insert the following two new recitals:

'Whereas, pending harmonization measures which will make possible harmonized application of the system of own resources, it is necessary for the time being to give a harmonized definition of the concept of establishment of own resources ⁽¹⁾;

Whereas Community customs legislation has introduced the concept of "entry in the accounts", defined as the official act by which the amount of the import duties or export duties to be collected by the competent authorities is duly determined; whereas provision should be made for entitlements to be established, even in cases where it is not possible to make an entry in the accounts as so defined;

2. After the fifth recital, insert the following new recital:

'Whereas entitlements should be made available following their establishment; whereas, however, where recovery is delayed or proves impossible, provision should be made for the making available of entitlements to be deferred or for the entitlements to be waived; whereas this possibility should be strictly limited in order to protect the Community's financial interests; whereas appropriate procedures should be laid down.'

3. Article 1 is replaced by the following:

'Article 1

The Community's own resources provided for in the Decision of 21 April 1970, hereinafter called "own resources", shall belong to the Community from the moment that the event giving rise to them takes place.

These own resources shall be established by Member States in accordance with their own provisions laid down by law, regulation or administrative action, account being taken of all the relevant provisions of Community law. They shall be made available to the Commission and inspected as specified in this Regulation without prejudice to Council Regulation (EEC, Euratom, ECSC) No 2892/77 of 19 December 1977 implementing, in respect of own resources accruing from value added tax, the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources.'

4. The first (unnumbered) paragraph of Article 2 is numbered paragraph 1 and is amended as follows:

'1. For the purpose of applying this Regulation:

- (a) in cases where Community rules impose an obligation to enter an entitlement in the accounts, the entitlement shall be deemed to be established as soon as it has been entered in the accounts;
- (b) in cases not yet covered by these rules, however, an entitlement shall be deemed to be established as soon as its amount has been determined for the first time or can be estimated by the appropriate department or agency of the Member States.'

⁽¹⁾ OJ No. C 231, 4. 9. 1982, p. 15.

5. The second (unnumbered) paragraph of Article 2 is numbered paragraph 2; the word '(unnumbered)' is deleted.
6. Article 10 (1) is replaced by the following:
 '1. Subject to the provisions of Articles 10a and 10b, the entry referred to in Article 9 (1) shall be made not later than the first working day after the 19th day of the second month following that in which the entitlement was established as provided for in Article 2.'
7. Article 10a (2) (a) and (b) are replaced by the following:
 '(a) The Commission may authorize the Member States to defer making available an entitlement established in accordance with Article 2 (1) (b) where the entitlement cannot be recovered within the normal time allowed.
 (b) After consulting the Committee referred to in Article 20, the Commission shall draw up a list of model cases in which this provision may be applied without prior authorization.'
8. The following subparagraph (e) is added to Article 10a (2):
 '(e) Unless the Commission decides otherwise in accordance with paragraphs a and b, the making available of an entitlement may not be deferred for longer than three months. The authorization permitting deferral may be renewed.'
9. Article 10b (1) (a) is replaced by the following:
 '(a) A Member State may be authorized not to make available to the Commission the amounts corresponding to established entitlements in cases where recovery of the entitlement proves impossible or the Member State is released under Community law from the obligation to recover the entitlement and, in either case:
 — the non-recovery referred to in the previous Article is not the result of an error by the Member State,
 — the event generating the own resources has not given rise to the collection of national revenue.'
10. The following is added to the second indent of subparagraph (a) of Article 10b (2):
 'The entries in the special section of the own resources accounts referred to in Article 10a (2) (c) shall be amended accordingly.'
11. The following Article 10c is inserted after Article 10b:
 '*Article 10c*
 The request for authorization referred to in Articles 10a and 10b shall affect the application of Article 11 only in cases where such authorization is actually granted. However, in the event of authorization being refused, the Commission may, for reasons of equity, waive interest on late payments.'
12. The following Article 24a is inserted after Article 24:
 '*Article 24a*
 Article 9 of Council Regulation (EEC) No 1697/79 is repealed. (1)'

(1) OJ No L 197, 3. 8. 1979, p. 1.

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the accounts", defined as the official act by which the amount of the import
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even in cases where it is not possible to make an entry in the accounts as so
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2. After the fifth recital, insert the following new recital:

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