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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 412 final

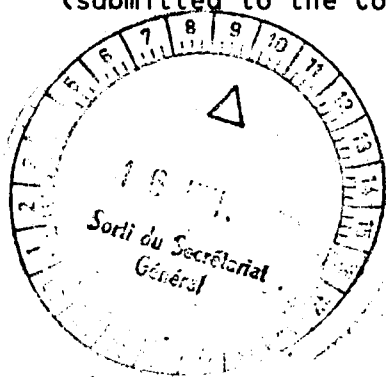
Brussels, 9 July 1982

Proposal for a

COUNCIL REGULATION (ECSC, EEC, EURATOM)

amending and extending the term of validity 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

(submitted to the Council by the Commission)



COM(82) 412 final

EXPLANATORY MEMORANDUM

Article 14 of Regulation No 2892/77 states that the Regulation should apply from 1 January 1978 for a transitional period expiring on 31 December 1982 and that the Council, acting unanimously on a proposal from the Commission, should adopt, before 30 June 1982, the provisions relating to the definitive uniform system for levying VAT resources and the detailed rules for implementing this system.

I - THE TRANSITIONAL PERIOD AND THE CHOICE OF A SINGLE METHOD OF DETERMINING THE VAT OWN RESOURCES BASE

1. Although the Council, when it adopted Regulation No 2892/77, considered it necessary to arrive at a uniform system for the levying of VAT own resources, the Member States were given the choice of two methods of determining the own resources base for a transitional period of five years:

- (i) method A or returns method (Section A of Title III of Regulation No 2892/77) where the base is determined by reference to the information contained in the returns made by taxable persons for a given year;
- (ii) method B or revenue method (Section B of the same Title), where the base is determined by applying a weighted average rate calculated essentially from statistical data to total revenue collected in a given year.

The five year transitional period was to be used for preparing the introduction of a definitive system; its content and the rules for its application at the end of this period should have been laid down on the basis of a Commission proposal to the Council (fourth recital of Regulation No 2892/77).

However, most of the Member States had difficulty introducing the Sixth VAT Directive* with effect from 1 January 1978, and only two Member States did in fact manage to do so. A Ninth VAT Directive** deferred by one year, i.e. to 1 January 1979, the deadline by which the other seven should implement it.

*Council Directive 78/388/EEC of 17 May 1977, OJ L 145, 13.6.1977.
 **Council Directive 78/583/EEC of 26 June 1978, OJ L 194, 19.7.1978.

For 1979 only four more Member States were able to comply. The last three Member States were unable to implement the Sixth Directive until some time in 1979 or 1 January 1980.

The derogation provided for in Article 4(2) of the Decision of 21 April 1970* could be effective only if the uniform basis of assessment was applied in at least three Member States; this was not the case until 1 January 1979. Effective application of Regulation No 2892/77 thus had to be deferred to 1 January 1979 in the case of six Member States and to 1 January 1980 in the case of the three others.

2. One of the consequences of the entry in force of the Sixth Directive being staggered over three years has been to shorten - by two years in the case of some Member States - the five years considered necessary by the Council and provided for by Regulation No 2892/77 to prepare for the introduction of a definitive system for VAT own resources.

In addition to this delay in actually applying Regulation No 2892/77 (two years in the case of three Member States and one year in the case of six Member States), it should also be borne in mind that the Member States are then allowed six months for preparing the statement of the definitive base for a financial year (application of Article 10 of Regulation No 2892/77) and the Commission needs time to perform its inspections (application of Article 12).

For the purposes of assessing the operation of the new VAT own resources system, the Commission did not therefore have full information concerning all the Member States until it was able to check the first statements from the three Member States which did not put the Sixth Directive in effect until 1 January 1980. The Commission received these statements by 1 July 1981 and checked them in the third quarter of that year, but not all the problems could be settled.

3. Subject to the observations in point 2, the Commission can already draw some conclusions from its inspection activities.

The revenue method has proved extremely complicated in practice; to implement it, the Commission has already had to give its interpretation of many of the relevant Community rules, and the Member States have had to devote considerable effort to interpreting statistics.

*OJ L 94, 28.4.1970.

The Commission still maintains that the revenue method does not present the same guarantees of consistency and accuracy as the returns method. However, it must be added that the Commission's experience of the returns method is limited to Denmark and Ireland, and some problems of application have arisen.

In this connection, the Commission is aware that, because of the complexity of the revenue method, some Member States are considering abandoning it in favour of the returns method. Should they do so, the Commission would then acquire wider experience of the returns method and could give a more authoritative opinion on its operation.

However, the Commission at present has no information which would make it go back on the position it took initially when, in its proposal to the Council, it declared its preference for the returns method. However, before all the Member States could adopt this method, some of them would have to take internal measures, which would require some time to prepare.

4. The Commission maintains that it has not been able to make use of the full five years envisaged by the Council for establishing the content of the definitive system and the rules for its application. However, it can be seen that this amount of time is in fact necessary since neither the Commission nor the Member States have yet come to any conclusion on the matter. The Commission therefore feels that the choice of a definitive system should be deferred and that the transitional period should be extended by at least the two years which were lost from the original five years specified by the Council.

Three years are in fact requested to allow sufficient time to draft the necessary provisions.

II - AIM OF THE PROPOSAL

5. Since Regulation No 2892/77 expires on 31 December 1982, the Commission must send the Council a proposal for a new regulation.

The present proposal extends the existing provisions while improving or supplementing certain points.

Although, for the reasons set out in section I above, the Commission has been unable to propose a definitive uniform system, it has considered it necessary, in requesting extension of the transitional period, to propose important amendments to specific points of the existing provisions, mainly as regards application of the revenue method and the administration of the system by the Commission.

To date there have been no proposals under Article 28(4) for amending the transitional provisions of the Sixth VAT Directive. The corresponding provisions of Article 9 of Regulation No 2892/77, which deal with the determination of the VAT own resources base where these transitional provisions are applied, have therefore not been amended either, except for the deletion of the reference to paragraph 2 of Annex G to the Sixth VAT Directive.

6. As regards the follow-up to the findings of inspections*, it may be noted that each inspection of VAT own resources so far conducted by the Commission has led to observations by the Commission's officials and that these observations have nearly always had implications for the VAT own resources base. The Commission, which implements the revenue side of the Community budget, must be able to administer the VAT own resources.

Where the Commission's inspectors make observations in their findings, one of two things can happen:

- (i) the Member State accepts the Commission's point of view and undertakes to modify this aspect of the method for determining its VAT own resources base:

*See the report annexed.

the Commission acts accordingly and adjusts the amount given by the Member State in the annual statement of the base;

- (ii) the Member State does not accept the Commission's point of view, in which case the Commission must take any appropriate measures within its powers and its obligations to administer own resources.

The new provisions proposed in this field, contained essentially in Article 10b, would enable the Commission:

- (i) to make these adjustments all together once a year;
- (ii) in certain cases not covered by the existing provisions, to take an immediate decision to safeguard its rights, without having each time to bring a case before the Court of Justice;

Given that the Commission's inspections are annual, it is also proposed that no corrections to the Member States' statements should be allowed after three years have passed.

8. As regards the calculation of the weighted average rate for the Member States applying the revenue method, the inspections conducted by the Commission's officials have revealed just how complex are the operations performed by the Member States' authorities to keep national statistics for the sole purpose of own resources.

The various methods applied in the Member States to determine taxable final expenditure and break it down by rate have one feature in common: the general economic statistics drawn from the national accounts and presented in accordance with the European System of Integrated Economic Accounts must be interpreted and broken down to reveal the actual tax situation which has to be analysed. Furthermore, the statistics needed for this analysis are not always available in time or for each year.

The provisions proposed in the new Article 7 are designed to provide a better definition of final expenditure of year $n-2$, which represents the Member State's assessment base for the year n . They also amend the existing provisions for dealing with cases where the Member States have experienced difficulties, e.g. to adjust for a change in VAT rates during the year or to take account of the final consumption of flat-rate farmers (consumption on the farm and direct sales by these farmers).

III - DETAILS OF THE PROPOSED AMENDMENTS

The proposed amendments are presented below in the same order as in the original Regulation.

9. TITLE I - GENERAL PROVISIONS

The Commission is not proposing any amendments to this title.

10. TITLE II - SCOPE

Article 2(3)

Three changes to Article 2(3) should guarantee uniform application of the Regulation and make it easier for the Member States to determine the correction, in their favour, of the VAT own resources base in respect of transactions performed by taxable persons whose annual turnover does not exceed 10 000 ECU:

- (a) this provision is made optional;
- (b) a rule for converting the 10 000 ECU limit is proposed;
- (c) a method of calculation is proposed which should put all the Member States on an equal footing. The correction must be calculated in such a way as to come into line, as regards own resources, with countries not applying the exemption arrangements.

11. TITLE III - METHODS OF CALCULATION

Article 3

The only proposal concerning this article is a redrafting to remove the reference to the first year in which the Regulation entered into force.

Article 4(3)

The object of the proposal is to clarify the term "estimated assessment", since this type of assessment is not used solely in cases where there is an absence of returns, owing to failure of the taxable person to fulfil his obligations.

Article 6

This article is redrafted so that the methods of calculation are harmonized.

Article 7

The proposals relating to this article are some of the most important.

Having conducted inspections in all the Member States, in some of them for two financial years, the Commission sees the need for amendments to the provisions governing the determination of the weighted average rate so that the calculation methods used by the Member States will be as uniform as possible.

- (a) In order to produce a more accurate statistical picture of final consumption for the year $n-2$, the categories of consumption to be taken into consideration are more clearly defined.
- (b) A notional rate is applied to final consumption corresponding to consumption on the farm and direct sales by flat-rate farmers in the calculation of the weighted average rate (new paragraph 3).
- (c) The sources of statistics are ranked so that preference can be given to figures from national accounts prepared in accordance with the European System of Integrated Economic Accounts (ESA) for the penultimate year preceding the financial year.

These national accounts prepared in accordance with the ESA should be the main source of data; internal national accounts or other sources should not be used unless adequate statistics of this type are not available.

If the Member States have difficulties obtaining the statistics for year $n-2$ in good time, they may, as in the past, seek authorization to use data relating to a previous year under the procedure laid down in Article 13 (new paragraphs 4 and 5).

- (d) A simpler method than the present one is proposed which would enable Member States to avoid having to calculate a new weighted average rate when VAT rates are changed during the reference year (new paragraph 7).
- (e) The provision for determining the weighting of each rate is redrafted.

Article 8(2)

It is proposed that more detailed rules be laid down for the calculation of the undercompensation of flat-farmers for their input tax charge in some Member States.

Since Article 8(2) of the Regulation refers to Article 25(3) of the Sixth Directive, it would be appropriate to point out that this is a restatement of the principle of the special scheme that Member States may undercompensate flat-rate farmers for their input tax charge. But from the point of view of the calculation of the compensation, as with the calculation of any other compensation under the own resources arrangements, the exact effect of the structural undercompensation must be found for the year in question. To do this, it is necessary to calculate the difference between the flat-rate percentage applied to the agricultural production of the flat-rate farmers and the input VAT charge for that year.

The reference in the same article to the average of the three previous years is of relevance only for the calculation of the flat-rate compensation percentages which, being fixed in advance for the sales of the coming year, must relate to an average production figure in order to eliminate annual fluctuations, which are frequent in agriculture.

Article 9

It is proposed that the provision be adapted:

- (i) to take into account the expiry of the three years specified in paragraph 2 of Annex G to the Sixth Directive;
- (ii) to specify the limited scope of paragraph 4 in line with the statement entered in the Council minutes.

12. TITLE IV - PROVISIONS RELATING TO THE ACCOUNTING AND MAKING AVAILABLE OF OWN RESOURCES

Article 10

It is proposed that the article be adapted:

- (i) to clarify the obligations of the Member States as regards the content of the annual statement of the total final amount of the base;

(ii) to reflect the fact that all the Member States have chosen the calendar year as the twelve-month period.

Article 10a

Since most Member States have each year supplied an estimate of the value of the base for each category of transaction qualifying for financial compensation, this article sets out, in greater detail, the provisions previously contained in Article 10(4).

Article 10b

It is proposed that the current paragraph 3 be replaced by an article containing the same statement of principle as regards correction of the VAT base, while two further paragraphs be added stating how the Commission takes into account the corrections made to the annual statement on its own initiative from information provided either by the Commission or by the Member States.

The consequences of these corrections as regards the annual adjustment of the VAT base of the Member States are dealt with in Regulation No 2891/77.

13. TITLE V - PROVISIONS CONCERNING MEASURES

Article 11

It is proposed that the first paragraph of this article be redrafted as regards the provisions for the entry in force of the Regulation.

Article 12

A third paragraph is added to indicate that the checks referred to in Article 12 give rise, in most cases, to a correction of the VAT base of the Member States as contained in the annual statement for a given financial year.

Article 13

Since the Commission may wish to draw conclusions from the checks relating to year n before proposing decisions relating to year n+1, it is not realistic to allow only sixty days after receipt of the application. It is therefore proposed that this time limit be removed.

14. TITLE VI - FINAL PROVISIONS

Article 14

The proposed amendments should enter into force on 1 January 1983.

For the reasons set out in the first part of the explanatory memorandum, it is proposed that the transitional period be extended by three years to 31 December 1985.

PRELIMINARY REPORT ON THE INSPECTION VISITS CONCERNED WITH VAT OWN RESOURCES

Article 12 of Regulation No 2892/77 describes the objectives and procedure for the Commission's associated inspections of own resources accruing from VAT. These rules of procedure supplement those contained in Council Regulation No 165/74 which apply to all the Communities' own resources.

A. These inspections mainly involve the examination and final verification of the annual statement of VAT resources which each Member State must send to the Commission; they are not intended to ensure that the Member States are applying the provisions of the Sixth VAT Directive correctly. Nevertheless, establishment of the uniform VAT own resources base depends on the correct application of this Directive.

Article 12 of Regulation No 2892/77 reads as follows:

"1. As regards VAT own resources, the Commission's checks shall be carried out with the competent authorities in the Member States. During these checks, the Commission shall ensure, in particular, that the operations to centralize the assessment basis and to determine the weighted average rate referred to in Articles 6 and 7 and also the total net VAT revenue collected have been carried out correctly, and shall ascertain that the data used were appropriate and that the calculations made to determine the amount of VAT resources resulting from the transactions referred to in Article 5 (2) and (3), and Articles 8 and 9 (1) to (4) comply with this Regulation.

2. Council Regulation (EEC, Euratom, ECSC) No 165/74 of 21 January 1974 determining the powers and obligations of officials appointed by the Commission pursuant to Article 14 (5) of Regulation (EEC, Euratom, ECSC) No 2/71 shall apply to checks relating to VAT own resources. For the purposes of applying Article 5 of that Regulation, it shall be understood that the information referred to therein may be communicated only to those persons who,

by virtue of their duties in making available and checking VAT resources, must have knowledge of such information."

The wording of Article 12 shows that the inspection of VAT own resources is different in character from the inspection of traditional own resources.

The VAT own resources base is determined as follows:

- (i) under method A, the returns method, by reference to the particulars contained in the returns made by taxable persons for the year in question;
- (ii) under method B, the revenue method, by applying to the total revenue collected during the financial year in question a weighted average rate calculated mainly from statistics.

These VAT bases must be corrected by applying compensation as provided in Article 9 of Regulation No 2892/77.

Only six Member States paid VAT own resources for 1979, the others having delayed application of the Sixth VAT Directive harmonizing the VAT base.

In July 1980 the Commission received the statements of the 1979 VAT base (Article 10 of Regulation No 2892/77) from the six Member States concerned and conducted the checks referred to in the abovementioned Article 12 between September 1980 and March 1981.

The statements of the 1980 VAT bases for all nine Member States were available from 1 July 1981 and the Commission inspected this second batch between September 1981 and March 1982, beginning with the three Member States which had not paid VAT own resources the previous year.

B. In these first two years of operation for the VAT own resources system, the Commission concentrated on checking the accuracy of the base calculated by the Member States, i.e. all the results of the calculations set out in

the annual statements for 1979 and 1980.

In view of the differing nature of the operations described below for the entry in the accounts and centralization of revenue and for the determination of the weighted average rate, different national authorities generally deal with these subjects: a special department specializing in the processing of statistics is given the task of calculating the weighted average rate while another department is responsible for determining the net revenue. In some Member States, these two operations are even performed in two different geographical locations.

The following aspects have thus been checked:

1. Centralization (revenue or returns)

The entry in the accounts and centralization of revenue (method B) or returns (Method A) is an integral part of the national tax accountancy systems and, as such, is generally subject to strict internal checks. However, it is important for the Commission to examine the following aspects in detail:

- (i) centralization;
- (ii) comparison of accounting documents at central and local level;
- (iii) correction procedures and their application;
- (iv) analysis of the data-processing systems and inspection of computer output data.

Regulation No 2892/77 does not expressly state that the Commission, as part of its ordinary inspections, must check the validity and accuracy of the individual returns made by taxable persons which determine the payment or refund of VAT. However, Regulation No 165/74 does not rule out such checks.

2. The weighted average rate (method B only)

The weighting of the weighted average rate reflects the total value of the categories of transaction subject of the different national VAT rates, themselves broken down into the five categories of consumption

and investment specified in Article 7 of Regulation No 2892/77. This breakdown of final expenditure by rate is derived from national accounts statistics drawn up in accordance with the European System of Integrated Economic Accounts; if necessary, appropriate data can be used to produce this breakdown. The national accounts in question must relate to the penultimate year preceding the financial year in question.

The object of the checks must therefore be to establish:

- (i) whether the national accounts statistics used have actually been drawn up in accordance with the European System of Integrated Economic Accounts (ESA);
- (ii) whether the data used in the analysis of the national accounts actually were "appropriate data" within the meaning of Article 7(2);
- (iii) whether all the categories of expenditure covered by the VAT own resources base have actually been taken into account;
- (iv) whether the breakdown by rate and by category of expenditure has been effected correctly.

The officials of the Statistical Office (SOEC) have the statistical documents required and the specialist knowledge and the necessary experience of national accounts to conduct inspections in this field in a competent manner. Officials from the Office have therefore taken part in these inspections.

3. Adjustments and compensation provided for by Regulation No 2892/77

Some articles of the Regulation provide for adjustment of revenue or the base for various reasons.

Article 9 of Regulation No 2892/77, which refers to Article 28(3) of the Sixth VAT Directive and the lists of exceptions to the uniform basis of assessment (Annexes E, F and G) provides that the Member States' VAT bases should be adjusted to offset these exceptions during the transitional period laid down by the Sixth Directive. Any Member State which makes use of the possibility of taxing, during this transitional period, certain categories of transactions exempted under the Directive is required to calculate the VAT own resources base

as if these transactions were exempted (Annex E); on the other hand, any Member State exempting certain categories of transactions which should be taxed must calculate the VAT own resources base as if these transactions were taxed (Annex F).

Annex G allows Member States to opt between exemption or taxation for certain restricted categories of taxpayer, but only for three years when it does not concern transactions listed in Annexes E and F.

The object of the inspection was to ensure that the data sources and methods of calculation proposed by the Member States for finding these parts of the base could be considered appropriate.

C. The Member States were very cooperative and positive in their responses to the Commission's requests in the three areas covered by the inspection (see above). The degree of participation with the competent national authorities varied from one Member State to another. There can be no criticism whatsoever of the Member States, which have provided all the cooperation required for the inspections to be performed correctly.

The Member States recognized the major difference between inspections of VAT own resources and those of traditional own resources, in that the officials designated by the Commission assume an administrative responsibility for VAT own resources which requires them to find solutions with the national authorities to the problems encountered in all the areas of inspection in accordance with the complex procedures laid down in Articles 9 and 13 of Regulation No 2892/77 and elsewhere. The inspectors were concerned with all corrections, whether to the advantage or the disadvantage of the Member States.

The six statements for 1979 and the nine statements for 1980 which have so far been inspected have all needed changes following inspection. These changes related to all aspects of the statements, including the accuracy of the various calculations. The errors occurred even though the Commission had gone to great pains beforehand producing a standard form for the statement together with detailed annexes and arranging briefings before the actual inspections. In each Member State, the Commission officials were able to check each stage of the centralization process.

The errors found in centralization mainly concerned marginal aspects of the calculations, such as the adjustments or compensation

for which clear rules are laid down in Regulation No 2892/77 (e.g. Article 2(3) or Article 8(1)) but for which the calculations in the statements were approximate or incomplete.

Requests by Germany and Luxembourg to reduce their net revenue for reasons not allowed by the Regulation were not accepted.

The errors established in the determination of the weighted average rate were mainly to do with the incorrect breakdown of transactions by VAT rate, in particular where a large number of rates exist, or a "distortion" caused by a change in the VAT rate at the beginning of or during a year. Since the existing breakdown of statistical series is not sufficient in such cases, appropriate data had to be used (Article 7(2) of the Regulation).

The weighted average rates of several Member States had to be adjusted following inspection; in one case the Commission rejected the calculation completely, the Netherlands being then required to determine a new weighted average rate. Despite this recalculation, no major difference is expected to result in this Member State's VAT own resources base.

Another aspect of the weighted average rate which proved unsatisfactory on inspection was the breakdown of transactions into the categories laid down in Article 7(1) of Regulation No 2892/77. The breakdown given in the Regulation was not applied in its entirety by any Member State. Each Member State used its own definition of the categories depending on the extent to which its national accounts are harmonized with the European System of Integrated Economic Accounts (ESA); they did, however, attempt to make this breakdown for the total value of transactions which are taxable under national legislation and constitute final expenditure.

The imperfections found in some aspects of the procedure for determining the weighted average rate, such as the treatment of the final consumption of flat-rate farmers (direct sales and on-the-farm consumption) or changes in VAT rates during the year, are due to the inadequacies of Regulation No 2892/77 itself.

It was found that the methods used by some Member States for calculating the compensation and other adjustments provided for by Regulation No 2892/77

(Article 5(2) and Article 9(3)) were more accurate than those used by others. The Commission's inspectors asked for many corrections to be made.

D. In most of the cases where points were contested, the Member States and the Commission were eventually able to agree on a revised calculation and the Commission made a corresponding adjustment to the VAT bases of the Member States concerned. But there are still a number of issues unresolved. Many of these issues concern matters of principle arising from the Member States' interpretation of the provisions of the Sixth VAT Directive.

The following examples can be given:

- Germany: Exemption of the services of Federal Post Office carriers
(Article 13A(1)(a) of the Sixth VAT Directive)

Such an exemption is not covered by the Sixth VAT Directive since this is possible only for the services performed by the post office itself.

- United Kingdom: Exemption of certain services carried out by the medical and paramedical professions: supply of corrective spectacles (Article 13A(1)(c) of the Sixth VAT Directive)

Under the Sixth VAT Directive only the supply of services in this sector can be exempted.

- Italy: Procedure for calculating the flat-rate compensation percentages for flat-rate farmers: pigmeat and beef

The Sixth VAT Directive does not allow overcompensation of the input tax.

Other disputes involving application of Regulation No 2892/77:

- Denmark: Taxation of certain services which the State and the local authorities supply to themselves (first paragraph of Article 6 of Regulation No 2892/77)

Since these transactions are subject to VAT, Denmark must include them in its calculation of the base. It has in fact now done so.

- Denmark: Exemption of transactions relating to buildings and building land (Article 9(3) of Regulation No 2892/77)

The Commission finds the method of calculating the compensation provided for in Article 9 of Regulation No 2892/77 unsatisfactory.

- France: Exemption of the domestic section of international passenger transport operations (Articles 9 and 11 of Regulation No 2892/77)

France may exempt operations of this type under point 17 of Annex F to the Sixth Directive provided that they are included in the French VAT own resources base, which is not the case.

- France: Exclusion of passenger transport between Corsica and France from the scope of VAT (Articles 9 and 11 of Regulation No 2892/77)

France may exempt operations of this type under point 17 of Annex F to the Sixth Directive provided that they are included in the French VAT own resources base, which is not the case.

Exclusion of these operations from the scope of VAT, instead of exemption, is in itself a presumed infringement of the Sixth Directive.

- United Kingdom: Refusal to allow deductions for the use of company cars (Article 9(4) of Regulation No 2892/77 and Article 7(6) and (7) of the Sixth VAT Directive)

The Commission finds the method of calculating the compensation provided for in Article 9 of Regulation No 2892/77 unsatisfactory.

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Article 6 of Regulation No 165/74 states that the Member States may submit observations on the results of the Commission's inspection measures; this procedure is still in progress for the 1980 base. Whatever the outcome of current contacts with the Member States to try and settle the problems outstanding it would be desirable for the Commission to present a more definitive version of the report as soon as it has drawn all the conclusions from its inspection of VAT own resources for 1979 and 1980.

The conclusions outlined above may be summed up as follows:

- The first checks revealed imperfections in the system; to remedy this, the Commission is proposing amendments to the current provisions of Regulation No 2892/77.
- After the first checks the Commission had to ask for many corrections to the statements presented by the Member States for 1979 and 1980. In most cases the Member States accepted these corrections and the VAT bases have already been adjusted accordingly.
- Less frequently the Member States have refused the corrections requested by the Commission in cases where there is disagreement about the interpretation of the Sixth VAT Directive and Regulation No 2892/77. In these cases the Member States' figures for their VAT bases are too low. The Commission is endeavouring to resolve the disputes, where necessary by initiating the infringement procedure against the Member States.

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PROPOSAL FOR A COUNCIL REGULATION (ECSC, EEC, EURATOM) AMENDING AND EXTENDING THE TERM OF VALIDITY 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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to Council Decision 70/243/ECSC, EEC Euratom of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources¹, 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 Parliament²,

Having regard to the opinion of the Court of Auditors³,

Whereas the conciliation procedure provided for in the joint declaration of 4 March 1975 by the European Parliament, the Council and the Commission⁴ has taken place in the Conciliation Committee;

Whereas Article 14 of Regulation (EEC, Euratom, ECSC) No 2892/77⁵ states that that Regulation shall apply from 1 January 1978 for a transitional period expiring on 31 December 1982;

Whereas, because of the delay in the entry into force in the Member States of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system

¹OJ L 94, 28.4.1970, p. 19.

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³

⁴OJC 89, 22.4.1975, p. 1.

⁵OJ L 336, 27.12.1977, p. 8.

of value added tax: uniform basis of assessment¹, the Commission has not had the benefit of the five-year transitional period laid down by the Council for establishing provisions relating to the definitive uniform system for levying VAT own resources and the detailed rules for its implementation;

Whereas this transitional period should be extended to 31 December 1985 and the provisions of Regulation (EEC, Euratom, ECSC) No 2892/77 should remain in force for the time being so that the Commission can draw up these measures;

Whereas the practical application of Regulation (EEC, Euratom, ECSC) No 2892/77 since its entry into force has revealed the need to adapt and supplement several of its provisions, even before a definitive uniform system is chosen;

Whereas, in particular, it is necessary to eliminate the difficulties in establishing a weighted average rate encountered by the Member States which apply the revenue method;

Whereas provisions must be added to Regulation (EEC, Euratom, ECSC) No 2892/77 for the correction of the annual summary accounts of VAT own resources;

HAS ADOPTED THIS REGULATION:

¹OJ L 145, 13.6.1977, p. 1.

Article 1

Regulation (EEC, Euratom, ECSC) No 2892/77 is hereby amended as follows.

1. Article 2 (3) is replaced by the following:

"3. By way of derogation from paragraph 1, Member States shall have the option of leaving out of account, for the purpose of determining VAT own resources, transactions performed by taxable persons whose annual turnover, determined according to the rules laid down in Article 24(4) of Directive 77/388/EEC, does not exceed 10 000 ECU converted into the national currencies at the average rate for the financial year. Member States may round upwards or downwards by up to 10% the equivalent sum in the national currency.

Member States which exercise this option shall calculate the own resources basis as though taxable persons who may be eligible for exemption under Article 24(2) of the said Directive were subject to the normal rules laid down therein for the application of value added tax".

2. Article 3 is amended as follows:

(a) The following is added to the first paragraph:

"..., informing the Commission of the method they propose to apply."

(b) The second paragraph is deleted.

(c) The last paragraph is replaced by the following:

"The Commission shall communicate the information referred to in the first and second paragraphs to the Member States."

3. In Article 4(3) the words:

"..., in the absence of any such returns, owing to failure of the taxable person to fulfil his obligations, from the estimated assessment made by the competent authority of the Member State are replaced by the words: "...derived from the estimated assessment made by the competent authority of the Member State".

4. Article 6 is replaced by the following:

"Article 6

For a given year, and without prejudice to Article 9, the VAT own resources basis shall be calculated by reference to the total net VAT revenue collected and the rate at which VAT is levied during the same year.

If several VAT rates are applied in a Member State, the VAT own resources basis shall be calculated by reference to the total net VAT revenue collected and the weighted average rate of VAT. In this case, the Member State shall determine the weighted average rate per hundred currency units by applying the common method of calculation defined in Article 7, the result being rounded off to four decimal places."

5. Article 7 is amended as follows:

(a) The second subparagraph of paragraph 1 is replaced by the following:

"The VAT rates used for the purposes of such calculation shall be those in force in the Member State for the year in question".

- (b) Paragraphs 2, 3 and 4 are replaced by the following paragraphs 2 to 7:

"2. The breakdown by rate of VAT shall be applied to the following statistical categories:

(a) the following categories of transaction subject to non-deductible VAT:

- final consumption of households, including consumption on the farm and direct sales by flat-rate farmers, on the territory referred to in Article 3 of Directive 77/388/EEC for the Member State in question;
- intermediate consumption of general government, private non-profit institutions, insurance enterprises and credit institutions;
- gross fixed-capital formation of general government, private non-profit institutions, insurance enterprises and credit institutions;

(b) the following categories of transaction where they are subject to non-deductible VAT:

- intermediate consumption of non-financial corporate and quasi-corporate enterprises;
- gross fixed-capital formation of non-financial corporate and quasi-corporate enterprises;

(c) transactions corresponding to the sale of building land.

3. For the purposes of the breakdown by rate of VAT referred to in the preceding paragraph, transactions relating to consumption on the farm and direct sales by flat-rate farmers which are not subject to VAT shall be classified at a notional rate which would produce revenue equivalent to the value added tax charge on inputs.

4. The breakdown of transactions by statistical category shall be effected by means of data taken from national accounts prepared in accordance with the European system of integrated economic accounts (ESA). In order to calculate the VAT own resources basis for any given financial year reference shall be made to the national accounts relating to the penultimate year preceding that financial year.

Member States may be authorized under the procedure laid down in Article 13 to use data relating to an earlier year.

5. For the purposes of identifying transactions subject to non-deductible VAT and effecting the breakdown by rate of VAT Member States may in addition refer to data taken from sources other than the ESA, and in particular from internal national accounts if they provide the necessary breakdown, or in the absence of such accounts, to any other appropriate source.

6. In order to determine the weighting of each rate, Member States shall calculate the ratio between the value of the transactions to which that rate applies and the aggregate value of all relevant transactions.

7. Should a Member State during a financial year amend the VAT rate applicable to all or some transactions or the tax treatment for certain transactions in such a way as to affect the VAT revenue collected during the calendar year in question, it shall calculate a new weighted average rate. The new weighted average rate shall be applied to the revenue derived from application of the amended rate or tax treatment."

By way of derogation from the foregoing subparagraph, the Member State may calculate a single weighted average rate; transactions in respect of which the rate or treatment has been changed shall then be allocated to the old and new rates or to the old and new treatments pro rata temporis, account being taken of the average period of time elapsing between entry into force of the new rate or treatment and the collection of revenue resulting therefrom."

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

"2. The revenue actually collected by a Member State shall be reduced by an amount corresponding to the total input tax, with the exception of that relating to consumption on the farm and direct sales to final consumers, which flat-rate farmers have not recouped by virtue of the application by that Member State of the option to reduce the flat-rate

compensation percentages, calculated in accordance with Article 25(3) of Directive 77/388/EEC, applicable to transactions carried out by flat-rate farmers.

The amount of input taxes and the amount of compensation shall be those relating to the year in question.

This provision may be applied only where the flat-rate percentages fixed in accordance with Article 25(3) of Directive 77/388/EEC do not provide full compensation in respect of a three-year average of the value added tax charge on inputs expressed as a percentage rounded down to the nearest half-point, calculated in accordance with the method described in Annex C of the said Directive."

7. Article 9 is amended as follows:

- (a) In the third indent of paragraph 2 the words "paragraphs 1(a) and (2)" are replaced by the words "paragraph 1(a)".
- (b) The second subparagraph of paragraph 3 is deleted.
- (c) The following second subparagraph is added to paragraph 4:

"The preceding subparagraph shall apply in relation to the second subparagraph of Article 17(6) only in respect of the purchase of petroleum products and passenger cars used for business purposes."

8. Article 10 is amended as follows:

- (a) The second subparagraph of paragraph 1 is replaced by the following:
- "The summary account shall contain all the data used to determine the basis which are required for the checks referred to in Article 12. It shall indicate separately the basis resulting from the transactions referred to in Article 5(1), (2) and (3) and Articles 8 and 9(1) to (4)."
- (b) The third subparagraph of paragraph 1 is deleted.
- (c) In the first indent of the first subparagraph of paragraph 2, the words "... or any other continuous 12-month period to be determined by the Member States" are deleted.
- (d) In the second indent of the first subparagraph of paragraph 2, the words "... or any other continuous 12-month period to be determined by the Member States" are deleted.
- (e) The third subparagraph of paragraph 2 is deleted.
- (f) Paragraph 4 is deleted.

9. The following new Articles 10a and 10b are inserted:

"Article 10a

Member States shall forward to the Commission by 30 April each year an estimate of the VAT own resources basis for the following financial year. They shall inter alia give an estimate of the basis of assessment for each of the categories of transaction referred to in Article 5(2) and (3) and Articles 8 and 9(1) to (4)."

"Article 10a

1. Corrections to the summary account referred to in Article 10(1) shall be made by the Commission and shall be incorporated in a summary estimate adopted on 30 June.

The Commission may, however, by reasoned decision, call on Member States to make such corrections within three months.

2. No further corrections may be made to the annual summary account referred to in Article 10(1) after three years have elapsed from the end of a given financial year, unless they concern points previously notified either by the Commission or by the Member State concerned."

10. The first and second subparagraphs of Article 11(1) are replaced by the following:

" Member States shall inform the Commission by 30 April of each financial year of the solutions they propose to adopt in order to determine the VAT own resources basis for each of the categories of transaction referred to in Article 5(2) and (3) and Articles 8 and 9(1) to (4), indicating, where applicable, the nature of the data which they consider appropriate and an estimate of the value of the assessment basis for each of these categories of transaction.

They shall inform the Commission of the modifications they intend to make to the solutions adopted under Article 13 for previous financial years, subject to the same conditions".

11. The following paragraph 3 is added to Article 12:

"3. Following the checks referred to in paragraph 1 the annual summary account for a given financial year shall be corrected by the Commission in accordance with Article 10b."

12. In the second subparagraph of Article 13(2), the words "... and not later than 60 days after receipt of the application ..." are deleted.

13. Article 14 is amended as follows:

(a) In the second paragraph, "1982" is replaced by "1985".

(b) In the third paragraph, "1982" is replaced by "1985".

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 1 January 1983.

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