

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 458 final
Brussels, 28.10.1994

Amended proposal for a

COUNCIL REGULATION (EC)

AMENDING COUNCIL REGULATION (EEC, EURATOM) NO 1552/89 OF 29
MAY 1989 IMPLEMENTING DECISION 88/376/EEC, EURATOM ON THE
SYSTEM OF THE COMMUNITIES' OWN RESOURCES

(presented by the Commission pursuant to Article 189 A (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

On 11 December 1992 the Commission presented a proposal for a Council Regulation amending Regulation (EEC, Euratom) No 1552/89 implementing Decision 88/376/EEC, Euratom.¹

The amendments proposed by the Commission were intended to improve operation of the own resources system in the light of experience as regards the shortcomings detected.

The Council has consulted the institutions concerned under Article 209 of the EC Treaty: the Court of Auditors issued its opinion on 1 April 1993² and Parliament on 15 and 16 November 1993.

The Commission, in accordance with Article 189a(2) of the Treaty establishing the European Community, has drawn up this amended proposal following the consultations with the Court of Auditors and the Parliament.

I. Amendments proposed by the Commission

Establishment of sugar levies

These resources should be uniformly identified in the terms employed in the agricultural regulations governing the sugar sector and the conditions for establishing and making available these levies should be specified in greater detail (new Article 2(1a), Article 5, Article 6(2) and Article 10(1)).

Establishment in the event of errors

The lower limit of ECU 2 000 for the establishment of own resources which are not collected as a result of errors by national departments is not retained (new first subparagraph of Article 2(1b) and second subparagraph of Article 17(2)). There is no justification for waiving own resources of less than ECU 2 000.

Keeping of supporting documents

The wording has been changed to cover VAT and GNP-based resources as well (Article 3).

¹ COM(92)519 final.

² OJ C 170, 21.6.1993 - Opinion No 1/93.

Information on national rules and national departments

This information should relate to the role and operation of the national departments or agencies involved in the collection of own resources. It was also felt that Member States should identify all the accounting records containing established entitlements and that this list should be sent to the Commission (Article 4(1)).

Closure of accounts

The conditions for the closure of accounts in which established entitlements are entered should be laid down in a specific article (Article 6(1a)).

Information on the handling of cases of fraud

There is no need for decisions to waive recovery under Article 17(2) to be attached to the monthly statement.

Cases of fraud and irregularities reported in the quarterly statement will already have been reported to the Commission under Article 6(4) (Article 6(3)(a) and (3)(b)).

Payment of recovery costs

In view of the particular difficulties involved in ex-post recovery in cases of fraud and irregularities, Member States should be allowed to deduct 10% of the amounts recovered in compensation (Article 10(1a)).

Obligation to draw on reserves

Reserves must be drawn on to keep the budget in balance.

Establishment of the rate of the additional resource

The word "uniform" must be deleted since this does not apply to the additional resource (sixth and seventh paragraphs of Article 10(3)).

Entry of adjustments

The entry of VAT and GNP adjustments should be simplified and their establishment harmonized (Article 10(6) and (8)).

Presentation of supplementary and amending budgets

The revenue entered in the budget may be adjusted in the course of the financial year so that the estimates can be made to match outturn (Article 16).

Annual report to Parliament

The Commission will draw up an annual summary of the information it receives from the Member States on the collection of own resources and send it to the Council and Parliament (new second subparagraph of Article 17(3)).

Spot checks

Commission inspections of national departments responsible for the collection of own resources may take the form of a spot check in order to increase their impact (new second subparagraph of Article 18(3)).

II. Amendments rejected by the Commission

Making available of own resources in ecus

The Commission wishes to retain the optional nature of its proposal (payment in either ecus or national currency):

- in order to secure the agreement of all Member States on a proposal designed to see that more use is made of the ecu;
- in order to avoid difficulties in budget implementation: since a large proportion of expenditure operations are still performed in national currency, the Commission would have to convert the ecus it received from the Member States.

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To take account of the opinions of Parliament and the Court of Auditors, the Commission is presenting the following amended proposal:

Proposal for a RegulationAmended proposal

amending Council Regulation No 1552/89 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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 Council Decision 88/376/EEC, Euratom of 24 June 1988 on the system of the Communities' own resources,¹ and in particular Article 8(2) thereof,

Having regard to the proposal from the Commission,⁴

Having regard to the opinion of the European Parliament,³

Having regard to the opinion of the Court of Auditors,⁵

Whereas in the light of experience gained in applying Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources,³ it appears that the provisions of that Regulation must be adjusted;

Whereas the Community must have the own resources referred to in Article 2 of Decision 88/376/EEC, Euratom available in the best possible conditions and accordingly additional arrangements must be laid down for the States to provide the Commission with the own resources allocated to the Communities;

Whereas traditional own resources are levied by the Member States in accordance with laws, regulations and administrative provisions that are, where necessary, adapted to the requirements of Community regulations; whereas the Commission must monitor this adaptation and, where necessary, make proposals;

1 OJ No L 185, 15.7.1988, p.24.

2 OJ No C

3 OJ No C

4 OJ No C

5 OJ No L 155, 7.6.1989, p.1.

Whereas the Council and the representatives of the Governments of the Member States meeting within the Council adopted a resolution on 13 November 1991 on the protection of the financial interests of the Communities;

Whereas detailed rules must be laid down for satisfying the obligation to establish the own resources referred to in Article 2(1)(a) and (b) of Decision 88/376/EEC;

Whereas improvements should be made to the arrangements for the Member States to report to the Commission, in order to enable it to monitor Member States' action to recover own resources, in particular in cases of fraud and irregularities;

Whereas a time limit should be laid down for relations between Member States and the Commission, since new entitlements established by Member States in respect of earlier years are deemed to be establishments for the current year;

Whereas the Community's financial autonomy should be strengthened by a provision to the effect that in certain circumstances the amounts of established entitlements not recovered for reasons attributable to the Member States will have to be borne by them;

Whereas for own resources deriving from sugar levies, which need to be recovered in the budget year corresponding to the marketing year to which the expenditure relates, provision should be made for the Member States to make such levies available to the Community during the budget year in which they are established;

Whereas Member States are showing a growing interest in using the ecu for settling operations with the Commission, including in the field of own resources;

Whereas close collaboration between the Member States and the Commission will facilitate proper application of the financial rules relating to own resources,

HAS ADOPTED THIS REGULATION:

Whereas Member States should be urged to bear the additional costs resulting from ex post recovery in cases of fraud and irregularities, with the possibility of retaining 10% of sums recovered;

Whereas the transparency of the own resources system should be improved and more information supplied to the budgetary authority;

Whereas the national authorities responsible for the collection of own resources must be able to produce to authorized Commission officials at all times the documents substantiating the own resources collected,

TITLE I

General provisions

Article 1

The Community's own resources provided for in Decision 88/376/EEC, Euratom, hereinafter referred to as 'own resources' shall be made available to the Commission and inspected as specified in this Regulation, without prejudice to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax and Directive 89/130/EEC, Euratom.

Article 2

1. For the purpose of applying this Regulation, the Community's entitlement to the own resources referred to in Article 2(1)(a) and (b) of Decision 88/376/EEC, Euratom shall be established as soon as the amount due has been notified by the competent department of the Member State to the debtor. Notification shall be given as soon as the debtor is known and the amount of entitlement can be calculated by the competent administrative authorities, in compliance with all the relevant Community provisions.

1a. When the competent administrative authorities make an entry in the accounts within the meaning of the customs regulations, the notification for the purposes of the establishment referred to in paragraph 1 shall be the notification provided for in these regulations. The date of the establishment referred to in paragraph 1 shall be the date of the entry in the accounts.

8 As regards the levies and other charges connected with the common organization of the sugar market, the date of the establishment referred to in paragraph 1 shall be the date of notification under the sugar regulations.

1b. In cases where the competent administrative authorities do not make an entry in the accounts for the customs debt on the basis of the customs regulations, even though the debtor is known and the amount due can be calculated as provided in paragraph 1, and the amounts involved exceed ECU 2 000, an ad hoc entry is made in the accounting ledgers without notification of the debtor for the purposes of the establishment referred to in paragraph 1.

The date of the establishment referred to in paragraph 1 shall be the date of entry in the accounting ledgers.

1c. In disputed cases, the competent administrative authorities shall be deemed, for the purposes of the establishment referred to in paragraph 1, to be in a position to calculate the amount of the entitlement no later than when the first administrative decision is taken notifying the debtor of the debt or when judicial action is brought if this occurs first.

The date of the establishment referred to in paragraph 1 shall be the date of the abovementioned decision or of initiation of judicial action.

Should that notification not be explicitly provided for, the date shall be the date of establishment by the Member States of the amounts due by the debtors, where necessary by way of advance payment or payment of balance.

Delete the phrase "and the amounts involved exceed ECU 2 000,"

2. Paragraph 1 shall apply when a notification must be corrected.

Article 3

Member States shall take all appropriate measures to ensure that the supporting documents concerning the establishment and the making available of own resources are kept for at least three calendar years, as from the end of the year to which these supporting documents refer.

If verification of these supporting documents by the national administration alone or in conjunction with the Commission shows that a finding to which they relate may have to be corrected, they shall be kept beyond the time limit provided for in the first paragraph for a sufficient period to permit the correction to be made and monitored.

The supporting documents relating to the statistical procedures and bases referred to in Articles 4 and 5 of Directive 89/130/EEC, Euratom shall be kept by the Member States until 30 September of the fourth year following the financial year in question. The supporting documents relating to the VAT resources base shall be kept for the same period.

Article 4

1. Each Member State shall inform the Commission:

- (a) of the names of the departments or agencies responsible for establishing, collecting, making available and controlling own resources and, where appropriate, their status;
- (b) of the general provisions laid down by law, regulation or administrative action and those relating to accounting procedure concerning the establishment, collection, making available and control of own resources.

The Commission shall be informed immediately of any change in these names or provisions.

2. The Commission shall, at the request of the other Member States, pass to them the information referred to in paragraph 1.

The supporting documents relating to the statistical procedures and bases referred to in Articles 4 and 5 of Directive 89/130/EEC, Euratom shall be kept by the Member States until 30 September of the fourth year following the financial year in question. The supporting documents relating to the VAT resources base shall be kept for the same period.

If verification pursuant to Articles 18 and 19 of this Regulation or of Article 11 of Council Regulation (EEC, Euratom) No 1553/89 of the supporting documents referred to in the above paragraphs shows that an establishment to which they relate may have to be corrected, they shall be kept beyond the time limit provided for in the first paragraph for a sufficient period to permit the correction to be made and monitored.

Deleted.

- (a) of the names of the departments or agencies responsible for establishing, collecting, making available and controlling own resources and the basic provisions relating to the role and operation of those departments and agencies;
- (c) The precise title of all administrative and accounting records in which the established entitlements as specified in Article 2 of this Regulation, in particular those used for drawing up the accounts provided for in Article 6 of this Regulation, are entered."

Article 5

The rate referred to in Article 2(1)(d) of Decision 88/376/EEC, Euratom, which shall be set within the budgetary procedure, shall be calculated as a percentage of the sum of the forecast GNP of the Member States in such manner that it fully covers that part of the budget not financed from customs duties, agricultural levies, sugar levies, VAT resources, financial contributions to supplementary research and technological development programmes, other revenue and, where appropriate, GNP financial contributions.

TITLE II

Accounts for own resources

Article 6

1. Accounts for own resources shall be kept by the Treasury of each Member State or by the body appointed by each Member State and broken down by type of resources.

2.(a) Entitlements established in accordance with Article 2 shall, subject to point (b) of this paragraph, be entered in the accounts at the latest on the first working day after the 5th day of the second month following the month during which the entitlement was established. For accounting purposes the month shall end no earlier than 1300 hours on the last working day of the month.

(b) Established entitlements not entered in the accounts referred to in point (a) because they have not yet been recovered and no security has been provided shall be shown in separate accounts within the period laid down in point (a). Member States may adopt this procedure where established entitlements for which full or partial security has been provided have been challenged and might upon settlement of the disputes which have arisen be subject to change.

(c) Established entitlements relating to levies and other charges connected with the common organization of the sugar market shall be entered in the accounts referred to in point (a). If these entitlements are not then recovered within the time limits set, the Member States may correct the entry and, by way of exception, enter the entitlements in the separate accounts.

(d) VAT resources and the additional resources shall, however, be recorded in the accounts as specified in point (a) as follows:

- the twelfth referred to in Article 10(3) shall be recorded on the first working day of each month,
- the balances referred to in Article 10(4) and (7) and the adjustments referred to in Article 10(6) and (8) shall be recorded annually, except for the particular adjustments referred to in the first indent of Article 10(6), which shall be recorded in the accounts on the first working day of the month following agreement between the Member State concerned and the Commission.

The rate referred to in Article 2(1)(d) of Decision 88/376/EEC, Euratom, which shall be set within the budgetary procedure, shall be calculated as a percentage of the sum of the forecast GNP of the Member States in such manner that it fully covers that part of the budget not financed from customs duties, agricultural levies, levies, and other charges connected with the common organization of the sugar sector, VAT resources, financial contributions to supplementary research and technological development programmes, other revenue and, where appropriate, GNP financial contributions.

1a. For own-resources accounting purposes, the month shall end no earlier than 1300 hours on the last working day of the month.

The last sentence of Article 6(2)(a) is deleted.

3.(a) Each Member State shall send the Commission, within the time limits specified in paragraph 2, a monthly statement of its accounts for the entitlements referred to in paragraph 2(a), using the form of which a specimen is annexed to this Regulation.

Together with each monthly statement the Member States shall indicate the cases of fraud and irregularities already reported to the Commission pursuant to paragraph 4 where amounts have been recovered or a decision has been taken to waive recovery and shall give the reference of the initial report.

Together with these monthly statements the Member States concerned shall provide details or statements of deductions from own resources based on provisions relating to special-status territories.

(b) Each Member State shall send the Commission, within the time limits specified in paragraph 2, a quarterly statement of the separate accounts referred to in paragraph 2(b), using the form of which a specimen is annexed to this Regulation.

Together with the quarterly statement each Member State shall give details of the position concerning cases of fraud and irregularities where entitlements have been established. The presentation shall be the same as that of the quarterly statement and reference shall be made to the initial report.

4. In the two months following the end of each quarter, each Member State shall send the Commission a description of cases of fraud and irregularities detected involving entitlements of over ECU 10 000.

As far as possible, each Member State shall provide the following details:

- type of fraud and/or irregularity (designation, customs procedure concerned);
- amount of own resources evaded (or presumed order of magnitude);
- goods involved (tariff heading, origin, place from which they come);
- concise description of fraud mechanism;
- type of check that led to discovery;
- national departments or agencies which detected the fraud or irregularity;
- stage reached in procedure, with reference of establishment if already made;
- reference of notification of case under mutual assistance arrangements (Regulation 1468/81);
- if appropriate, the Member States involved;
- measures taken or envisaged to prevent the recurrence of cases of fraud and irregularities already detected.

Specimen forms for providing the above descriptions shall be drawn up by the Commission after consulting the ACOR. Any changes to these specimen forms shall be adopted by the same procedure.

Article 7

"1. Each Member State shall draw up annually a summary account of established entitlements shown in the accounts referred to in Article 6(2)(a) and shall send it to the Commission before 1 March of the year following the financial year in question. A remark shall be added to explain any difference between the total of the summary account and the sum of the monthly statements sent in by the Member States from January to December of the year in question. The Commission shall check that the summary account tallies with the amounts made available during the year; it shall have two months after receiving the summary account in which to make any observations to the Member State concerned.

2. After 31 December of the third year following a given year, no corrections shall be made to the summary account referred to in paragraph 1, except on points notified before this date either by the Commission or by the Member State concerned."

Delete the phrase "or a decision has been taken to waive recovery".

Together with the quarterly statement each Member State shall give details of the position concerning cases of fraud and irregularities already reported to the Commission pursuant to paragraph 4 where entitlements have been established. The presentation shall be the same as that of the quarterly statement and reference shall be made to the initial report.

Article 8

Corrections carried out under Article 2(2) shall be added to or subtracted from the total amount of established entitlements. They shall be recorded in the accounts as specified in Article 6(2)(a) and (b) and in the statements as specified in Article 6(3) in accordance with the date of these corrections.

TITLE III

Making available own resourcesArticle 9

1. In accordance with the procedure laid down in Article 10, each Member State shall credit own resources, in ecus or in national currency, to one of the accounts opened in the name of the Commission with its Treasury or the body it has appointed.

These accounts shall be kept free of charge.

2. The amounts credited in national currency shall be converted by the Commission and entered in its accounts in ecus in accordance with Commission Regulation 86/610/EEC, Euratom, ECSC of 11 December 1986 laying down detailed rules for the implementation of certain provisions of the Financial Regulation of 21 December 1977.

Replace "Commission Regulation 86/610/EEC, Euratom, ECSC of 11 December 1986" by "Commission Regulation (Euratom, ECSC, EC) No 3418/93 of 9 December 1993".

Article 10

1. After deduction of 10% by way of collection costs in accordance with Article 2(3) of Decision 88/376/EEC, Euratom, with any necessary adjustment for amounts of own resources which could not be recovered for reasons attributable to the Member States, entry in national currencies of the own resources referred to in Article 2(1)(a) and (b) of that Decision shall be made at the latest on the first working day following the 5th day of the second month following the month during which the entitlement was established in accordance with Article 2.

However, for entitlements shown in separate accounts under Article 6(2)(b), the entry must be made at the latest on the first working day following the 5th day of the second month following the month in which the entitlements were recovered.

2. If necessary, Member States may be invited by the Commission to bring forward by one month the entering of resources other than VAT resources and the additional resource on the basis of the information available to them on the 15th of the same month.

Each entry brought forward shall be adjusted the following month when the entry mentioned in paragraph 1 is made. This adjustment shall entail the negative entry of an amount equal to that given in the entry brought forward.

3. VAT resources, the additional resource - excluding the own resources for the EAGGF monetary reserve - and, where appropriate, GNP financial contributions shall be credited, in ecus or in national currency at the choice of the Member State, on the first working day of each month, the amounts being one twelfth of the relevant totals in the budget.

If the Member State opts for entry in national currency the amount due is converted into the national currency at the rate of exchange of the last day of the calendar year preceding the budget year, as published in the Official Journal of the European Communities.

If the Member State opts for entry in ecus the amount in national currency is determined according to the previous subparagraph and converted into ecus at the rate of exchange of the penultimate working day of quotation of the month before entry.

The Member States shall inform the Commission of their choice. They may alter this choice provided they inform the Commission no later than the 5th day of the month before the change takes effect.

However, the Member States may, no later than the first working day following 15 December, enter the balance of production levies and the additional levy provided for in the common organization of the sugar market.

1a. Furthermore, the Member States may keep an amount equal to 10% of the sums recovered in connection with cases of fraud and irregularities in accordance with Article 6(4).

The entry in respect of the EAGGF monetary reserve referred to in Article 6 of Decision 88/376/EEC, Euratom shall be made on the first working day of the month following the charging to the budget of the expenditure concerned and shall be limited to the said expenditure if charging is effected before the 16th day of the month. If such is not the case, the entry shall be made on the first working day of the second month after charging. By way of derogation from Article 5 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities,¹ as last amended by Regulation (ECSC, EEC, Euratom) No 2049/88,² that entry will be taken into account in the financial year to which it relates. However, if the situation as regards the implementation of the budget for the year is such that the entry relating to the monetary reserve is not necessary to achieve a balance between revenue and expenditure for the year, the Commission may decide to dispense with this entry or part of this entry.

Any change in the uniform rate of VAT resources, in the correction granted to the United Kingdom referred to in Article 5 of Decision 88/376/EEC, Euratom and in its financing, in the uniform rate of the additional resource and, where appropriate, in the GNP financial contributions shall require the final adoption of a supplementary or amending budget and shall give rise to readjustments of the twelfths which have been entered since the beginning of the financial year.

These readjustments shall be carried out when the first entry is made following the final adoption of the amending or supplementary budget if it is adopted before the 16th of the month. Otherwise they shall be carried out when the second entry following final adoption is made. By way of derogation from Article 5 of the Financial Regulation hereafter referred to as the Financial Regulation, these readjustments shall be entered in the accounts in respect of the financial year of the supplementary or amending budget in question.

Replace "(ECSC, EEC, Euratom) No 2049/88" by (Euratom, ECSC, EEC No 610/90)".

The last sentence of the fifth subparagraph of Article 10(3) is deleted.

The word "uniform" in the third line of the sixth subparagraph of Article 10(3) is deleted.

¹ OJ No L 356, 31.12.1977, p. 1.

² OJ No L 185, 15.7.1988, p. 3.

Calculation of the twelfths for January of each financial year shall be based on the amounts provided for in the draft budget, with the exception of the amounts for financing the EAGGF monetary reserve, referred to in Article 78(3) of the ECSC Treaty, Article 203(3) of the EEC Treaty and Article 177(3) of the EAEC Treaty and converted into national currencies at the rates of exchange of the first day of quotation following 15 December of the calendar year preceding the budget year; if the entry is made in ecus, the amount in national currency is converted into ecus at the rate of the penultimate working day of quotation in December; the adjustment shall be made with the entry for the following month.

If the budget has not been finally adopted before the beginning of the financial year, the Member States shall enter on the first working day of each month, including January, one-twelfth of the amount of VAT own resources, of the additional resource, with the exception of the amounts for financing the EAGGF monetary reserve, and, where appropriate, of the GNP financial contributions entered in the last budget finally adopted; the adjustment shall be made on the first due date following final adoption of the budget if it is adopted before the 16th of the month. Otherwise, the adjustment shall be made on the second due date following final adoption of the budget.

4. Each Member State shall, on the basis of the annual statement on the VAT resources base provided for in Article 7(1) of Regulation (EEC, Euratom) No 1553/89, be debited with an amount calculated from the information contained in the said statement by applying the uniform rate adopted for the previous financial year and credited with the 12 payments made during that financial year. However, each Member State's VAT own resources base to which the above rate is applied may not exceed 55% of its GNP as referred to in the first sentence of paragraph 7 of this Article. The Commission shall work out the balance and shall inform the Member States in time for them to enter it in national currencies in the account referred to in Article 9(1) of this Regulation on the first working day of December of the same year.

5. 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 GNP financial contributions. For the calculation of these adjustments, the balances referred to in paragraph 4 shall be converted into ecus at the rates of exchange applying on the first working day after 15 November preceding the entries provided for in paragraph 4. For each Member State concerned, the total of VAT balances shall be adjusted by the ratio between the financial contributions entered in the budget and the VAT resources. The Commission shall communicate the results of this calculation to the Member States which, during the previous financial year, paid GNP financial contributions 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 December of the same year.

6. Any corrections to the VAT resources base under Article 9(1) of Regulation (EEC, Euratom) No 1553/89 shall give rise for each Member State concerned whose base, allowing for these corrections, does not exceed 55% of its GNP to the following adjustments to the balance referred to in paragraph 4 of this Article:

- the corrections under the first subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89 made by 31 July 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 December of the same year, provided that the corrections apply to years after 1987; otherwise the adjustment shall be made on 1 October of the same year. However, a particular adjustment may be entered before that date if the Member State concerned and the Commission are in agreement,

- the corrections under the first subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89 made by 31 July 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 December of the same year. However a particular adjustment may be entered before that date if the Member State concerned and the Commission are in agreement;

- where the measures which the Commission takes under the second subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89 to correct the base lead to an adjustment of the entries in the account referred to in Article 9(1) of this Regulation, that adjustment shall be made on the date specified by the Commission pursuant to the said measures.

The changes to GNP referred to in paragraph 8 of this Article shall also give rise to an adjustment of the balance of any Member State whose base, allowing for those corrections, is capped at 55% of its GNP. The adjustments to be made to the VAT balances by the first working day of December 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 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 inform the Member States of these adjustments in time for them to enter them in the account referred to in Article 9(1) on the first working day of December of the same year.

7. On the basis of figures for aggregate GNP at market prices and its components from the preceding year, supplied by the Member States in accordance with Article 3(2) of Directive 89/130/EEC, Euratom, each Member State shall be debited with an amount calculated by applying to GNP the uniform rate adopted for the previous financial year, amended, where appropriate, in the light of any use of the EAGGF monetary reserve, and credited with 12 payments made during that previous financial year. The Commission shall work out the balance and shall inform the Member States in time for them to enter it in the account referred to in Article 9(1) of this Regulation on the first working day of December of the same year.

8. Any changes to the GNP of previous financial years pursuant to Article 3(2) of Directive 89/130/EEC, Euratom subject to Article 6 thereof, shall give rise for each Member State concerned to an adjustment to the balance established pursuant to paragraph 7. The Commission shall inform the Member States of these adjustments so that they can enter them in the account referred to in Article 9(1) of this Regulation on the first working day of December of the same year. After 30 September of the fourth year following a given financial year, any changes to GNP shall no longer be taken into account, except on points notified within this time limit either by the Commission or by the Member State.

9. The operations referred to in paragraphs 4 to 8 constitute modifications to revenue in respect of the financial year in which they occur.

However, a particular adjustment may be entered at any time if the Member State concerned and the Commission are in agreement.

The word "uniform" in the fourth line of Article 10(7) is deleted.

8. After the first sentence of paragraph 8, add the following sentence: "This adjustment shall be established in the manner laid down in the first subparagraph of paragraph 6."

Article 11

Any delay in making the entry in the account referred to in Article 9(1) shall give rise to the payment of interest by the Member State concerned at the interest rate applicable on the Member State's money market on the due date for short-term public financing operations, increased by two percentage points. This rate shall be increased by 0.25 of a percentage point for each month of delay. The increased rate shall be applied to the entire period of delay.

Any delay in the payment of interest due shall give rise to the payment of further interest at the rate last applied to the principal.

TITLE IV

Management of cash resources

Article 12

1. The Commission shall draw on the sums credited to the accounts referred to in Article 9(1) to the extent necessary to cover its cash resource requirements arising out of the implementation of the budget.

2. If the cash resource requirements are in excess of the assets of the accounts, the Commission may draw in excess of the total of these assets subject to the availability of appropriations in the budget and within the limit of the own resources entered in the budget. In this event, it shall inform the Member States in advance of any foreseeable excess requirements.

3. In the sole case of default under a loan contracted pursuant to Council Regulations and Decisions, in circumstances in which the Commission cannot activate other measures provided for by the financial arrangements applying to these loans in time to ensure compliance with the Community's legal obligations to its lenders, the provisions of paragraphs 2 and 4 may provisionally be applied, irrespective of the conditions in paragraph 2 in order to service the Community's debts.

4. The difference between the overall assets and the cash resource requirements shall be divided among the Member States, as far as possible, in proportion to the estimated budget revenue from each of them.

5. The Member States, or the body designated by them in accordance with Article 9(1), shall execute the Commission's payment orders as quickly as possible, and within not more than seven working days of receipt, and shall send the Commission a statement of account within not more than seven working days of completing each transaction.

However, in the case of cash movement transactions, the Member States shall execute the orders within the period requested by the Commission.

TITLE V

Procedure for the application of Article 2(7) of Decision 88/376/EEC, EuratomArticle 13

1. This Article shall apply where it may be necessary to implement the provisional derogation provided for in Article 2(7) of Decision 88/376/EEC, Euratom.
2. The GNP at market prices shall be calculated 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 corresponding, for each Member State, to the arithmetic mean of the first three years of the five-year period preceding the financial year in respect of which the provisions of Article 2(7) of Decision 88/376/EEC, Euratom have been applied. No account shall be taken of any revisions of statistical data made after the final adoption of the budget.
3. The GNP for each reference year shall be calculated in terms of the ecu on the basis of the average rate of the ecu for the year in question.
4. For such time as the derogation provided for in Article 2(7) of Decision 88/376/EEC, Euratom applies to one or more Member States, the Commission shall, in its preliminary draft budget, fix the percentage corresponding to the financial contributions of those Member States on the basis of the proportion of their GNP to the sum total of the GNPs of the Member States, and shall determine the amount of that part of the budget to be financed by VAT resources at the uniform rate and by the GNP financial contributions.

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These figures shall be approved in accordance with budgetary procedure.

Article 14

1. The definition of GNP at market prices shall be that given in Articles 1 and 2 of Directive 89/130/EEC, Euratom.
2. The figures to be used in calculating the percentage of the GNP financial contributions shall be those supplied pursuant to Article 3(2) of Directive 89/130/EEC, Euratom, and subject to Article 6 thereof. In the absence of such figures the Statistical Office of the European Communities shall use the data available.

TITLE VI

Procedure for the application of Article 7 of Decision 88/376/EEC, Euratom

Article 15

For the purposes of applying Article 7 of Decision 88/376/EEC, Euratom, the balance of a given financial year shall consist of the difference between:

- all the revenue collected in respect of that financial year, and
- the amount of payments made against appropriations for that financial year increased by the amount of the appropriations for the same financial year carried over pursuant to Articles 6(1)(b) and (c) and 2(b) of the Financial Regulation.

This difference shall be increased or decreased on the one hand, by the net amount of appropriations carried over from previous financial years which have been cancelled 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.

Article 16

The Commission shall, before the end of October in each financial year, make an estimate of the own resources collected for the entire year, on the basis of the data at its disposal at that time.

If appreciable differences from the original estimates appear, the former may give rise to a letter of amendment to the draft budget for the following financial year.

Any appreciable differences in relation to original estimates may give rise to a letter of amendment to the draft budget for the following financial year or a supplementary and amending budget for the current financial year.

For the operations referred to in Article 10(4) to (8), the amount of revenue set out in the budget for the current financial year may, whatever the circumstances, be increased or reduced, by means of an amending budget, by the amount resulting from those operations.

TITLE VII

Provisions concerning inspection measures

Article 17

1. Member States shall take all requisite measures to ensure that the amount corresponding to the entitlements established under Article 2 are made available to the Commission as specified in this Regulation.

2. Member States shall be released from the obligation to make available to the Commission the amounts corresponding to established entitlements solely if, for reasons of force majeure, these amounts have not been recovered. In addition, Member States may disregard this obligation to make such amounts available to the Commission in specific cases if, after thorough assessment of all the relevant circumstances of the individual case, it appears that recovery is definitively impossible for reasons which cannot be attributed to them.

Inadequate security for the own resources to be recovered shall not be considered a reason which cannot be attributed to the Member State.

The Commission shall be notified every six months of the cases referred to in the previous subparagraph, where the amounts involved exceed ECU 10 000, or ECU 2 000 in the case of errors attributable to the competent administrative authorities or force majeure, converted into national currency at the rate applying on the first working day of October of the previous financial year; this notification shall be given within three months of the end of each six-month period and must indicate the reasons why the Member State was unable to make available the amounts in question.

The Commission shall have three months after receiving all the necessary information in which to make any observations to the Member State concerned.

3. Member States shall inform the Commission, by means of annual reports, of the details and results of their inspections and of the overall data and questions of principle concerning the most important problems arising out of the application of this Regulation and, in particular, matters in dispute. This report shall be sent to the Commission by 31 March of the year following the financial year in question.

Delete the phrase "or ECU 2 000 in the case of errors attributable to the competent administrative authorities"

By 30 June of the same financial year the Commission shall send to the Council and Parliament a summary report on the notifications by the Member States under this Article and Article 6(3).

Article 18

1. Member States shall conduct the checks and enquiries concerning the establishment and the making available of the own resources referred to in Article 2(1)(a) and (b) of Decision 88/376/EEC, Euratom. The Commission shall exercise its powers as specified in this Article.

2. Accordingly, Member States shall:

- carry out additional inspection measures at the Commission's request. In its request the Commission shall state the reasons for the additional inspection,
- associate the Commission, at its request, with the inspection measures which they carry out.

Member States shall take all steps required to facilitate these inspection measures. Where the Commission is associated with these measures, Member States shall place at its disposal the supporting documents referred to in Article 3.

In order to restrict additional inspection measures to the minimum:

- (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 6(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.

3. Without prejudice to paragraphs 1 and 2, the Commission may itself carry out inspection measures on the spot. The agents authorized by the Commission for such inspection measures shall have access, in so far as the correct application of this Regulation so requires, to the supporting documents referred to in Article 3 and to any other appropriate document connected with those supporting documents. In a duly substantiated communication, the Commission shall give notice of this inspection in good time to the Member State in which the inspection measure is to take place. Agents of the Member State concerned shall participate in such inspection measures.

Where the proposed inspections concern the operation of a government department, the Commission may carry out a spot check.

4. The inspection measures referred to in paragraphs 1, 2 and 3 shall not prejudice:

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

5. The Commission shall report every three years to the European Parliament and to the Council on the functioning of the inspection arrangements.

Article 19

Together with the Member State concerned, the Commission shall each year inspect the aggregates provided for errors in compilation, especially in cases notified by the GNP management committee. In doing so it may, in individual cases, also examine calculations and basic statistics, apart from information about individual companies or persons, where no proper assessment would otherwise be possible. The Commission shall respect national legal provisions on the preservation of the confidentiality of statistics.

TITLE VIII

Provisions relating to the Advisory Committee on the Communities' own resources

Article 20

1. An Advisory Committee on the Communities' own resources, hereinafter called 'the committee', is hereby set up.

2. The committee shall consist of representatives of the Member States and of the Commission. Each Member State shall be represented on the committee by not more than five officials.

The chairman of the committee shall be a representative of the Commission. The secretariat services for the committee shall be provided by the Commission.

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

Article 21

1. The committee shall examine the questions raised by its chairman on his own initiative or at the request of the representative of a Member State which concern the application of this Regulation, especially as regards:

- (a) the information and reports referred to in Articles 4(1)(b), 6, 7 and 17(3);
- (b) the cases of *force majeure* referred to in Article 17(2);
- (c) the inspection measures laid down in Article 18(2).

The committee shall also examine estimates of own resources.

2. At the request of the chairman, the committee shall deliver its opinion within a time limit which the chairman may lay down according to the urgency of the matter in hand, if necessary by taking a vote. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in these minutes. The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

TITLE IX

Final provisions

Article 22

The Commission shall, by at the latest, submit a report on the implementation of this Regulation and, where appropriate, propose any necessary amendments.

Article 23

Regulation (EEC, Euratom, ECSC) No is hereby repealed.

- References to the repealed Regulation shall be construed as references to this Regulation.

Article 24

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

It shall apply from

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

ISSN 0254-1475

COM(94) 458 final

DOCUMENTS

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Catalogue number : CB-CO-94-482-EN-C

ISBN 92-77-81380-6

Office for Official Publications of the European Communities
L-2985 Luxembourg