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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC, EURATOM, ECSC) No 2891/77

of 19 December 1977

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 78h thereof,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 209 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources ⁽¹⁾, hereinafter referred to as 'the Decision of 21 April 1970', and in particular Article 6 (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Court of Auditors,

Whereas the Treaty of 22 July 1975 amending certain financial provisions of the Treaties establishing the European Communities and of the Treaty establishing a single Council and a single Commission of the European Communities entered into force on 1 June 1977;

Whereas the own resources system established by the Decision of 21 April 1970 will be fully applied as from 1978;

Whereas the Communities are to have disposal over the own resources referred to in Article 4 of the Decision of 21 April 1970 which must necessarily be allocated to them within the limits of the establishments recorded;

Whereas, however, as regards own resources accruing from value added tax, hereinafter called 'VAT resources', the application of Article 22 of 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 of value added tax: uniform basis of assessment ⁽³⁾ may create inequalities between the Member States in the making available of the said resources; whereas this source of inequality should be eliminated by laying down that all Member States must make available to the Communities the budget estimate of these resources in the form of fixed monthly twelfths subject to subsequent adjustment of the amounts made available in accordance with the actual VAT assessment basis as soon as it is fully known;

Whereas the own resources may be made available in the form of an entry of the amounts due in an account opened for this purpose in the name of the Commission with the Treasury or with the body appointed by each Member State; whereas in order to restrict the movements of funds to that which is necessary for the implementation of the budget, the Communities may confine themselves to applying levies on the abovementioned accounts intended to cover solely the Commission's cash requirements;

Whereas it is appropriate to specify the balance to be carried over to the following financial year and the conditions under which the revenue and the balance to be carried forward will be allocated to the budget;

⁽¹⁾ OJ No L 94, 28. 4. 1970, p. 19.

⁽²⁾ OJ No C 266, 7. 11. 1977, p. 50.

⁽³⁾ OJ No L 145, 13. 6. 1977, p. 1.

Whereas, in order to guarantee, in every instance, the financing of the Communities' budget, the procedure for making available the contributions based on the gross national product, specified in Article 4 (2) and (3) of the Decision of 21 April 1970, should be laid down;

Whereas the Member States must keep at the disposal of the Commission and where necessary forward to it the documents and information needed to exercise the powers conferred upon it as regards the Communities' own resources and the budgetary procedure;

Whereas the Member States should arrange for verifications and inquiries relating to the establishment and the making available of own resources; whereas the Commission should exercise its powers in accordance with this Regulation;

Whereas a new unit of account, called the 'European unit of account', will be introduced in the budget as from 1978;

Whereas close cooperation between Member States and the Commission will facilitate the application of this Regulation, which aims at enabling the Communities to dispose of their own resources under the best possible conditions;

Whereas the full application of the own resources system involves a general amendment of Council Regulation (EEC, Euratom, ECSC) No 2/71 of 2 January 1971 implementing the Decision of 21 April 1970 on the replacement of financial contributions from the Member States by the Communities' own resources ⁽¹⁾; whereas it consequently appears necessary to replace this Regulation,

HAS ADOPTED THIS REGULATION:

TITLE I

General provisions

Article 1

The Communities' own resources within the meaning of the Decision of 21 April 1970, hereinafter called 'own resources', shall be established by Member States in accordance with their own provisions laid down by law, regulation or administrative action and shall be made available to the Commission and inspected as specified in this Regulation, without preju-

dice to Council Regulation (EEC, Euratom, ECSC) No 2892/77 of 19 December 1977 implementing in respect of own resources accruing from value added tax the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources ⁽²⁾.

Article 2

For the purpose of applying this Regulation, an entitlement shall be deemed to be established as soon as the corresponding claim has been duly determined by the appropriate department or agency of the Member State.

Where it becomes necessary to rectify an establishment recorded in accordance with the first paragraph, the competent department or agency of the Member State shall make a new establishment.

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.

Article 4

1. Each Member State shall inform the Commission, at the latter's request:

- (a) of the names of the departments or agencies responsible for establishing 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 of own resources and their being made available to the Commission.

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

Article 5

Each Member State shall draw up yearly a summary account together with a report on the establishment and inspection of own resources and shall forward this to the Commission before 1 July of the year following the financial year in question.

⁽¹⁾ OJ No L 3, 5. 1. 1971, p. 1.

⁽²⁾ See page 8 of this Official Journal.

Article 6

The rate referred to in the second subparagraph of Article 4 (1) of the Decision of 21 April 1970 shall be laid down in the budget of the Communities. It shall be expressed as a figure to four decimal places and calculated as a percentage of the estimated assessment basis for the value added tax (VAT) in such a manner that it fully covers that part of the budget not financed from customs duties, agricultural levies, miscellaneous revenue and, where appropriate, financial contributions based on gross national product (GNP).

TITLE II

Accounts for own resources

Article 7

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. The established entitlements shall be entered in the accounts at the latest on the 20th day of the second month following the month during which the entitlements were established.

VAT resources shall however be included in the accounts as follows:

- on the first working day of each month, the twelfth referred to in Article 10 (3),
- annually, as regards the balance referred to in Article 10 (4).

3. Each Member State shall forward to the Commission a monthly statement of its accounts.

Article 8

The new establishments recorded under the second paragraph of Article 2 shall be entered in the monthly return corresponding to the date of these establishments and shall be added to or subtracted from the total amount of established entitlements.

TITLE III

Making available own resources

Article 9

1. The amount of own resources established shall be credited by each Member State to the account

opened for this purpose in the name of the Commission with its Treasury or with the body it has appointed.

However, the VAT resources and, where appropriate, the financial contributions based on GNP shall be entered in accordance with the procedure laid down in Article 10 (3) and (4).

This account shall be kept free of charge.

2. Each amount shall be entered gross. In the 30 days following notification of any entry, the Commission shall issue a transfer order in favour of the Member State for the amounts corresponding to the standard refund for the expenses incurred in collection as referred to in the fifth subparagraph of Article 3 (1) of the Decision of 21 April 1970.

3. The amounts entered shall be converted by the Commission into, and entered in its accounts in European units of account (EUA) on the basis of the quotations obtaining on the last day corresponding to the time limit for entry or on the first preceding day for which such quotations are available.

Article 10

1. The entry referred to in Article 9 (1) shall be made at the latest by the 20th day of the second month following the month during which the entitlement was established.

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 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. Nevertheless, the VAT resources or, where appropriate, the financial contributions based on GNP, shall be entered on the first working day of each month, the amount being one-twelfth of the total resulting from the budget in this connection.

Any change in the rate of VAT or, if appropriate, in the financial contributions based on GNP shall be occasioned by the final adoption of a supplementary or amending budget and shall give rise to a readjustment of the twelfths which have been entered since the beginning of the financial year.

This readjustment shall be carried out when the first entry is made following the final adoption of the supplementary or amending budget.

Calculation of the one-twelfth for the month of January of each financial year shall be based on the amounts provided for in the draft budget; this amount shall be adjusted when the next month's entry is made. If the budget has not been finally adopted before the beginning of the financial year, the twelfths shall similarly be calculated from the amounts entered in the draft budget; the adjustment shall be made on the first due date following the final adoption of the budget.

4. Each Member State shall, on the basis of the annual statement of VAT resources provided for in Article 10 (1) of Regulation (EEC, Euratom, ECSC) No 2892/77, be debited with an amount calculated from the information contained in the said statement by applying the rate adopted for the previous financial year and credited with the 12 payments made during that previous financial year. The Commission shall work out the balance and shall inform the Member States in good time in order that the latter may enter it in the account referred to in Article 9 (1) of this Regulation on the first working day of August of the same year.

5. With effect from 1 January 1979, those Member States having entered financial contributions based on GNP during the previous financial year shall, on the due dates given in paragraph 3 and by the same method, adjust the said contributions so as to restore, in the light of the actual yield from VAT resources, the original distribution in the budget between the latter and the financial contributions based on GNP.

6. The operations referred to in paragraphs 4 and 5 constitute modifications to revenue in respect of the financial year in which they occur.

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 a rate equal to the highest rate of discount ruling in the Member States on the due date. That 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.

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. In this event, it shall inform the Member States in advance of any foreseeable excess requirements.

3. 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.

4. The orders and instructions which the Commission sends to the Treasury or to the appropriate department of each Member State shall be carried out as soon as possible.

TITLE V

Procedure for the application of Article 4 (2) and (3) of the Decision of 21 April 1970

Article 13

1. This Article shall apply where it may be necessary to implement the provisional derogations provided for in Article 4 (2) and (3) of the Decision of 21 April 1970.

2. The gross national product at market prices shall be calculated on the basis of statistics compiled by the Statistical Office of the European Communities and corresponding, for each Member State, to the arithmetical average of the first three years of the five-year period preceding the financial year in respect of which the provisions of Article 4 (2) and (3) of the Decision of 21 April 1970 have been applied.

3. The gross national product for each reference year shall be calculated in terms of the EUA on the basis of the average rate of the EUA for the year in question.

4. As long as the derogation provided for in Article 4 (2) of the Decision of 21 April 1970 applies to one or more Member States, the Commission shall, in its preliminary draft budget, fix the estimated percentage of the budget corresponding to the financial contribution(s) of those Member States on the basis of the proportion of their GNP to the sum total of the gross national products of the Member States, and shall fix the VAT rate corresponding to the remainder of the budget to be provided by the other Member States. These figures shall be approved in accordance with budgetary procedure.

Article 14

For the purpose of this Regulation:

- (a) the gross national product at market prices is equivalent to the gross domestic product at market prices plus compensation of employees, property and entrepreneurial income from the rest of the world less the corresponding flows towards the rest of the world;
- (b) the gross domestic product at market prices, which represents the final result of the production activity at resident producer units, is equivalent to the total production of goods and services by the economy, less total intermediate consumption, plus taxes linked to imports.

TITLE VI

**Procedure for the application of Article 4 (5) of the .
Decision of 21 April 1970**

Article 15

For the purpose of applying Article 4 (5) of the Decision of 21 April 1970, 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 and 95 of the Financial Regulation.

This difference shall be increased or decreased by the net amount resulting from cancellations of appropriations carried forward from previous financial years, and of sums paid in excess of these appropriations as a result of the exchange rate adjustments which occurred between the time when the amount of carryover was determined and the time it was used.

Furthermore, the balance of the 1978 financial year shall be increased by the surplus or reduced by the deficit appearing when, on 1 January 1978, the balance sheet drawn up in units of account on 31 December 1977 is revalued in European units of account.

Article 16

1. 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 shall give rise to a letter of amendment relating to the draft budget for the following financial year.

2. At the time of the transactions referred to in Article 10 (4) and (5), the estimate of revenue given in the budget of the current financial year shall be increased or reduced in a ratifying budget by the differences 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 Articles 1 and 2 are made available to the Commission as specified in this Regulation.
2. Member States shall be free from the obligation to place at the disposal of the Commission the amounts corresponding to established entitlements solely if, for reasons of *force majeure* these amounts have not been collected.
3. Every six months, Member States shall report to the Commission, where appropriate within the framework of existing procedures, comprehensive information and questions of principle concerning the most important problems arising out of the application of this Regulation and in particular matters in dispute.

Article 18

1. Member States shall carry out the verifications and inquiries concerning the establishment and the making available of own resources. The Commission shall make use of its powers as specified in this Article.
2. Accordingly, Member States shall:
 - carry out any additional inspection measures the Commission may ask for in a reasoned request,
 - 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 the Commission may, in specific cases, request that certain documents be forwarded to it.

3. The inspection measures referred to in paragraphs 1 and 2 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 Treaty establishing the European Economic Community and Articles 180, 180a and 180b of the Treaty establishing the European Atomic Energy Community;
- (c) the inspection arrangements made pursuant to Article 209 (c) of the Treaty establishing the European Economic Community and Article 183 (c) of the Treaty establishing the European Atomic Energy Community.

4. The Commission shall from time to time report to the European Parliament and to the Council on the functioning of the inspection arrangements.

Article 19

The provisions of Community law applicable to the sectors referred to in the first paragraph of Article 2 of the Decision of 21 April 1970, in particular regarding nomenclature, origin, value for customs purposes, Community transit and inward processing, shall be applied by the appropriate authorities of Member States when establishing own resources.

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

The Committee shall examine the question 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, in particular as regards:

- (a) the information provided for in Articles 4 (1) (b), 5 and 18 (3);
- (b) cases of *force majeure* referred to in Article 18 (2);
- (c) inspection measures and examinations provided for in Article 19 (2).

TITLE IX

Final provisions

Article 22

The Commission shall, by 30 September 1979, submit a report on the implementation of this Regulation together with, where appropriate, any proposals for amendments thereto.

Article 23

The Council, acting unanimously on a proposal from the Commission, shall adopt the procedures for implementing this Regulation as and when necessary.

Article 24

Regulation (EEC, Euratom, ECSC) No 2/71 shall be repealed with effect from 1 January 1978. References to that Regulation should be understood as referring to the present Regulation.

Article 25

For the financial year 1978, the deadlines laid down in Articles 5 and 10 (4) shall be extended until 1 September 1979 and the first working day of October 1979 respectively.

Article 26

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

It shall have effect from the financial year 1978.

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

Done at Brussels, 19 December 1977.

For the Council

The President

G. GEENS

COUNCIL REGULATION (EEC, EURATOM, ECSC) No 2892/77
of 19 December 1977

implementing in respect of own resources accruing from value added tax the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources ⁽¹⁾, and in particular Article 6 (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Court of Auditors,

Whereas the Decision of 21 April 1970 provides that the Council must adopt provisions relating to the control, the making available to the Commission and the payment of own resources, together with the detailed rules for the application of Article 4 of that Decision;

Whereas Article 4 of the Decision of 21 April 1970 provides that the own resources accruing from value added tax hereinafter called 'VAT own resources' shall be obtained by applying a rate not exceeding 1 % to an assessment basis to be determined in a uniform manner for Member States according to Community rules; whereas these Community rules have been adopted in 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 of value added tax: uniform basis of assessment ⁽³⁾; whereas under the terms of the said Directive VAT own resources are to be levied on all the taxable transactions covered by Article 2 of that Directive with the exception of transactions exempted under Articles 13 to 16 of the same Directive;

Whereas the basis for VAT own resources must be determined in the light of these taxable transactions; whereas it is necessary to adopt detailed rules for determining this basis;

Whereas it is necessary to arrive at a uniform system for the levying of VAT own resources; whereas, it is

desirable to prepare the introduction of this system; whereas to this end it is desirable to limit the time during which this Regulation shall have effect to a transitional period of five years; whereas in the course of this transitional period Member States should be allowed to choose between two methods of determining the assessment basis of these resources; whereas it is desirable to lay down the content and rules for the application of the definitive uniform system at the end of this transitional period;

Whereas it is necessary, in specific cases, to authorize the Member States to derogate from the general rules laid down for this purpose;

Whereas there should be a check on the way in which the Member States are applying certain provisions of this Regulation which allow for an appreciable margin of discretion; whereas a Community procedure should be laid down for this purpose;

Whereas in view of complexity of the problems which may arise in the implementation of this Regulation it appears necessary to arrange for close collaboration between the Member States and the Commission and to this end to arrange that such problems are discussed in the Advisory Committee on the Communities' Own Resources referred to in Article 20 of Council Regulation (EEC, Euratom, ECSC) No 2891/77 of 19 December 1977 ⁽⁴⁾;

Whereas Council Regulation (EEC, Euratom, ECSC) No 2891/77 lays down detailed rules for the accounting, payment, and control of own resources; whereas the present Regulation should lay down specific provisions for VAT own resources,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

The amount accruing to the Communities' VAT own resources shall be determined by applying the Com-

⁽¹⁾ OJ No L 94, 28. 4. 1970, p. 19.

⁽²⁾ OJ No C 163, 11. 7. 1977, p. 62 and
OJ No C 266, 7. 11. 1977, p. 50.

⁽³⁾ OJ No L 145, 13. 6. 1977, p. 1.

⁽⁴⁾ See page 1 of this Official Journal.

munity rate fixed under the budgetary procedure to the basis determined in accordance with the provisions of this Regulation.

Should this rate be changed in the course of a financial year as a result of a supplementary and/or amending budget, the new rate shall apply to the whole of the VAT resources basis for that financial year.

TITLE II

SCOPE

Article 2

1. The VAT own resources basis shall be determined from the taxable transactions referred to in Article 2 of Directive 77/388/EEC, with the exception of transactions exempted under Articles 13 to 16 of the said Directive.

2. For the purposes of applying paragraph 1 hereof, the following shall be taken into account for determining VAT own resources:

- transactions which, in accordance with Article 28 (2) of Directive 77/388/EEC are subject to exemptions with refund of the tax paid at the preceding stage,
- transactions which Member States continue to subject to tax pursuant to Article 28 (3) (a) of Directive 77/388/EEC,
- transactions which Member States continue to exempt pursuant to Article 28 (3) (b) of Directive 77/388/EEC,
- transactions which are taxed under the right of option granted to taxable persons by Member States pursuant to Article 28 (3) (c) of Directive 77/388/EEC.

3. By way of derogation from paragraph 1, 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 EUA, this amount being determined in accordance with the conversion rates set out in Article 31 (2) of that Directive, shall not be taken into account for determining VAT own resources.

TITLE III

METHODS OF CALCULATION

Article 3

Rules for determining the assessment basis

To determine the assessment basis of VAT own resources with regard to a financial year, Member

States shall apply either the method defined in Section A or that defined in Section B.

Member States shall inform the Commission before 31 December 1977 of the method they propose to apply.

Where a Member State intends changing the method it applies, it shall inform the Commission of its decision and of the underlying reasons before 1 October of the year preceding the financial year in which the other method would be applied.

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

Section A

RULES FOR DETERMINING THE BASIS ACCORDING TO THE RETURNS METHOD

Article 4

1. The VAT own resources basis shall be the difference between:

- the total taxable amounts, as defined in Article 11 of Directive 77/388/EEC of the transactions to be taken into account pursuant to Article 2,
- and the total taxable amounts corresponding to the tax which may be deducted in accordance with Article 17 of the said Directive by taxable persons other than those referred to in Article 2 (3).

2. For the purposes of applying the first indent of Article 2 (2) hereof, the VAT own resources basis relating to the transactions referred to in Article 28 (2) of Directive 77/388/EEC shall be determined from the amounts which would have been taxed but for this provision.

3. Without prejudice to Article 9, the data relating to the above taxable amounts shall be established from the returns made by the taxable persons, drawn up in accordance with Article 22 (4) of Directive 77/388/EEC or by the persons liable for payment of the tax on importation, drawn up in accordance with Article 23 of the said Directive, or, 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.

Article 5

1. The VAT own resources basis for taxable transactions by farmers using the common flat-rate scheme provided for by Article 25 of Directive

77/388/EEC shall be the added value calculated by the Member States in accordance with Annex C to that Directive.

The VAT own resources basis must be reduced by the amount of the transactions carried out by farmers in respect of which:

- (a) they obtain flat-rate compensation in accordance with Article 25 (6) (b) of Directive 77/388/EEC, or
- (b) they obtain no flat-rate compensation by reason of the option granted to the Member States by the first subparagraph of Article 25 (3) of the said Directive to reduce the flat-rate compensation percentages to zero.

Subparagraph 2 shall not apply to transactions which do not give rise to deduction of VAT in the hands of the purchaser or customer.

2. With regard to the transactions referred to in Article 24 (1) of Directive 77/388/EEC, the VAT own resources basis shall be determined from the returns to be furnished by taxable persons in accordance with Article 22 of the said Directive and, when there is no return, or the return does not contain the necessary information, from appropriate data such as: other tax returns, professional accounts, complete statistical series.

3. Without prejudice to the cases referred to in paragraph 2 hereof, where the information contained in the returns of taxable persons does not enable the VAT own resources basis to be determined with precision, Member States may be authorized under the procedure laid down in Article 13 either:

- (a) to accept without amendment the information contained in the returns where the margin of error resulting from their use to determine the VAT own resources basis is negligible; or
- (b) if the margin of error is not negligible, to apply to the information obtained from the returns a correcting factor calculated from appropriate data in order to determine the VAT own resources basis in a way which will only permit a negligible margin of error.

Section B

RULES FOR DETERMINING THE BASIS ACCORDING TO THE REVENUE METHOD

Article 6

For a given year, and without prejudice to Article 9, the VAT own resources basis shall be calculated by

dividing the total net VAT revenue collected by a Member State by the rate, expressed as a fraction, at which VAT is levied during the same year.

If several VAT rates are applied in a Member State, the total net VAT revenue collected shall be divided by the average weighted rate of VAT expressed as a fraction. In this case, the Member State shall determine the weighted average rate, calculated to four decimal places, by applying the common method of calculation defined in Article 7.

Article 7

1. In order to calculate the weighting of the various rates as referred to in Article 6, the Member State shall break down, by rate of VAT applied, all transactions which are taxable under its national legislation and which do not give rise to deduction of VAT in the hands of a purchaser or customer taking into account Article 17 of Directive 77/388/EEC.

When this breakdown by rate is performed, a distinction shall be made between the following categories:

- final consumption of households on the territory referred to in Article 3 of Directive 77/388/EEC for the Member State in question and collective consumption by private non-profit institutions,
- current purchases of general government,
- gross fixed-capital formation of general government,
- gross fixed-capital formation of other sectors (where they are liable to non-deductible VAT),
- intermediate consumption (where liable to non-deductible VAT).

Transactions which are subject, pursuant to Article 28 (2) of Directive 77/388/EEC, to an exemption with reimbursement of the taxes paid at the previous stage shall be regarded as zero-rated transactions.

2. This breakdown by rate applied and by category shall be effected by means of data taken from national accounts, in accordance with 'the European system of integrated economic accounts', and broken down, if necessary, with the aid of appropriate data. 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.

3. The weighting of each rate applied is thus equal to the ratio between, on the one hand, the value of the transactions relating to that rate and, on the other, the total value of these transactions as a whole.

4. A Member State which, during a financial year, amends the VAT rate applicable to all or some transactions or the tax treatment for certain transactions shall calculate the new average rate in good time. This new average rate shall be applied to the revenue derived from application of the amended rate or tax treatment.

Article 8

1. For the purposes of applying Article 6 Member States shall, if appropriate, add to the revenues actually collected an amount corresponding to the total revenue which would have been collected but for the application of a scheme of graduated tax relief granted pursuant to Article 24 (2) of Directive 77/388/EEC.

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

Section C

COMMON PROVISIONS

Article 9

1. For the purposes of applying Article 2 (1) to the transactions carried out by taxable persons whose annual turnover exceeds 10 000 EUA but who are exempted under Article 24 (2) of Directive 77/388/EEC and to the cases referred to in paragraph 2 hereof, Member States shall determine the VAT own resources basis, from returns to be furnished by taxable persons in accordance with Article 22 of the said Directive and, when there is no return, or the return does not contain the necessary information, from appropriate data such as: other tax returns, professional accounts, complete statistical series.

2. For the purposes of applying the second, third and fourth indents of Article 2 (2):

— with regard to the transactions listed in Annex E to Directive 77/388/EEC which Member States

continue to tax pursuant to Article 28 (3) (a) of the said Directive, Member States shall calculate the VAT own resources basis as if these transactions were exempted,

— with regard to the transactions listed in Annex F to Directive 77/388/EEC which Member States continue to exempt pursuant to Article 28 (3) (b) of the said Directive, Member States shall calculate the VAT own resources basis as if these transactions were taxed,

— with regard to the transactions referred to in paragraphs (1) (a) and (2) of Annex G to Directive 77/388/EEC, which are taxed under the option granted to taxable persons by Member States, pursuant to Article 28 (3) (c) of the said Directive, Member States shall calculate the VAT own resources basis as if these transactions were exempted.

3. Under the procedure provided for in Article 13, a Member State may be authorized:

— either not to take into account in calculating the VAT resources basis:

(a) one or more of the categories of transactions listed in Annexes E, F and G to Directive 77/388/EEC to which paragraph 2 hereof applies;

(b) the amount corresponding to the tax which would have been collected but for the application of a scheme of graduated tax relief granted pursuant to Article 24 (2) of Directive 77/388/EEC,

— or to calculate the VAT own resources basis in the cases referred to in (a) and (b) by using approximate estimates,

where precise calculation of the VAT own resources basis in these cases would be likely to involve administrative burdens which would be unjustified in relation to the effect of the transactions in question on the total VAT own resources basis of that Member State.

Without prejudice to subparagraph 1 the Council acting by a qualified majority on a proposal from the Commission shall lay down the detailed rules for the implementation of this paragraph.

4. Where a Member State makes use of the second subparagraph of Article 17 (6), and of Article 17 (7) of Directive 77/388/EEC to restrict the exercise of the right to deduct, the VAT own resources basis may be determined as if the exercise of the right to deduct had not been restricted.

5. In the case of tax refunds granted by Member States pursuant to Article 6 of Council Directive 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel ⁽¹⁾, as amended by Directive 72/230/EEC ⁽²⁾, the taxable amount of the transactions which gave rise to these refunds shall if necessary be subtracted from the VAT own resources basis.

TITLE IV

PROVISIONS RELATING TO THE ACCOUNTING AND MAKING AVAILABLE OF OWN RESOURCES

Article 10

1. The Member States shall, before 1 July, forward to the Commission a summary account indicating the total final amount of the basis relating to transactions for which tax has become chargeable in accordance with Article 10 of Directive 77/388/EEC during the previous calendar year and to which the rate referred to in Article 4 (1) of the Decision of 21 April 1970 shall apply.

This summary account shall indicate separately VAT resources resulting from the transactions referred to in Article 5 (1), (2) and (3), and Articles 8 and 9 (1) to (4) of this Regulation.

The time limit provided for above shall be extended to 1 September 1979 for the financial year 1978.

2. By way of derogation from the first subparagraph of paragraph 1:

- Member States which apply the method laid down in Section A of Title III may calculate the VAT own resources basis relating to transactions for which tax has become chargeable in accordance with Article 10 of Directive 77/388/EEC during a given calendar year from returns made by taxable persons or persons liable for the tax in accordance with Articles 22 (4) and 23 of the said Directive during the calendar year under consideration or any other continuous 12-month period to be determined by the Member States,
- Member States which apply the method laid down in Section B of Title III may calculate the

VAT resources basis relating to transactions for which tax has become chargeable in accordance with Article 10 of Directive 77/388/EEC during a given calendar year from the total net VAT revenue collected during the calendar year under consideration or any other continuous 12-month period to be determined by the Member States.

A Member State which intends to avail itself of the option referred to in the first subparagraph shall notify its decision to the Commission which shall inform the Committee referred to in Article 13.

It is understood that this option may in no way call into question the time limit laid down in paragraph 1.

3. Any corrections to the basis shall be allocated to the financial year during which they are made.

4. 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.

TITLE V

PROVISIONS CONCERNING MEASURES OF CONTROL

Article 11

1. In the case of the financial year 1978, Member States shall inform the Commission as soon as possible, and not later than 30 April 1978, of the solutions they propose to adopt to determine the VAT own resources basis for each of the categories of transactions 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 transactions.

In the case of subsequent financial years, Member States shall, by 30 April, inform the Commission of the modifications they intend to make to the solutions referred to in the preceding subparagraph and shall give it an estimate of the value of the assessment basis for each of the categories of transactions referred to in Article 5 (2) and (3), and Articles 8 and 9 (1) to (4).

The Commission shall forward to the other Member States within a period of 30 days the information referred to above which it has received from each Member State.

2. The Commission shall examine in liaison with the competent national authorities any proposed solutions concerning the implementation of the

⁽¹⁾ OJ No L 133, 4. 6. 1969, p. 6.

⁽²⁾ OJ No L 139, 17. 6. 1972, p. 28.

provisions of Article 5 (2), and Articles 8 and 9 (1), (2) and (4).

Article 12

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⁽¹⁾ 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.

Article 13

1. The Advisory Committee on the Communities' Own Resources referred to in Article 20 of Regulation (EEC, Euratom, ECSC) No 2891/77, hereinafter called 'the Committee', shall regularly examine, on the initiative of the Commission or at the request of a Member State, problems arising out of application of this Regulation.

2. Member States applying for the authorization provided for in Article 5 (3) or 9 (3), shall refer their application to the Commission as soon as possible and not later than 30 April of the financial year from which the authorization is to apply.

The Commission representative shall submit to the Committee as soon as possible and not later than 60 days after receipt of the application a draft of the decision to be taken. The Committee shall discuss the matter within a period to be fixed by the chairman depending on the urgency of the matter. The opinions of the Committee members shall be recorded in a report which shall be approved by the Committee within a period of 60 days, which period shall start

to run from the notification to the Committee of the draft decision.

No later than 30 days following the approval of this report, the Commission shall adopt a decision which it shall communicate to the Member States and which shall apply after a period of 30 days if during this period no Member State has referred the matter to the Council.

The Council may, at the request of a Member State and acting by a qualified majority revise the Commission's decision.

The Commission's decision shall apply after a period of 60 days if the Council has not given a ruling within this period, calculated from the day on which the matter was referred to the Council.

3. On the initiative of the Commission or at the request of a Member State, the Committee shall examine the solutions referred to in Article 11 (2).

If the Committee has not been convened within 120 days of the communication of the information referred to in the third subparagraph of Article 11 (1), or if the Committee's examination reveals no differences of opinion, the solution proposed by the Member State shall apply.

If the examination provided for in the first subparagraph should reveal differences of opinion as to the solutions selected, the Committee shall discuss these within a period to be fixed by the chairman depending on the urgency of the matter and in any case within 60 days of this examination. The opinions of the Committee members shall be recorded in a report which shall be approved by the Committee within 120 days of this examination.

No later than 30 days following the approval of this report, the Commission shall adopt a decision which it shall communicate to the Member States and which shall apply after a period of 30 days if during this period no Member State has referred the matter to the Council.

The Council may, at the request of a Member State and acting by qualified majority, revise the Commission's decision.

The Commission's decision shall take effect after a period of 60 days if the Council has not given a ruling within this period, calculated from the day on which the matter was referred to the Council.

TITLE VI

FINAL PROVISIONS

Article 14

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

⁽¹⁾ OJ No L 20, 24. 1. 1974, p. 1.

It shall apply from 1 January 1978 for a transitional period expiring on 31 December 1982.

The Council, acting unanimously on a proposal from

the Commission, shall 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.

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

Done at Brussels, 19 December 1977.

For the Council

The President

G. GEENS

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 19 December 1977

concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation

(77/799/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas practices of tax evasion and tax avoidance extending across the frontiers of Member States lead to budget losses and violations of the principle of fair taxation and are liable to bring about distortions of capital movements and of conditions of competition; whereas they therefore affect the operation of the common market;

Whereas, for these reasons the Council adopted on 10 February 1975 a resolution on the measures to be taken by the Community in order to combat international tax evasion and avoidance ⁽³⁾;

Whereas the international nature of the problem means that national measures, whose effect does not

extend beyond national frontiers, are insufficient; whereas collaboration between administrations on the basis of bilateral agreements is also unable to counter new forms of tax evasion and avoidance, which are increasingly assuming a multinational character;

Whereas collaboration between tax administrations within the Community should therefore be strengthened in accordance with common principles and rules;

Whereas the Member States should, on request, exchange information concerning particular cases; whereas the State so requested should make the necessary enquiries to obtain such information;

Whereas the Member States should exchange, even without any request, any information which appears relevant for the correct assessment of taxes on income and on capital, in particular where there appears to be an artificial transfer of profits between enterprises in different Member States or where such transactions are carried out between enterprises in two Member States through a third country in order to obtain tax advantages, or where tax has been or may be evaded or avoided for any reason whatever;

Whereas it is important that officials of the tax administration of one Member State be allowed to be present in the territory of another Member State if both the States concerned consider it desirable;

⁽¹⁾ OJ No C 293, 13. 12. 1976, p. 34.

⁽²⁾ OJ No C 56, 7. 3. 1977, p. 66.

⁽³⁾ OJ No C 35, 14. 2. 1975, p. 1.

Whereas care must be taken to ensure that information provided in the course of such collaboration is not disclosed to unauthorized persons, so that the basic rights of citizens and enterprises are safeguarded; whereas it is therefore necessary that the Member States receiving such information should not use it, without the authorization of the Member State supplying it, other than for the purposes of taxation or to facilitate legal proceedings for failure to observe the tax laws of the receiving State; whereas it is also necessary that the receiving States afford the information the same degree of confidentiality which it enjoyed in the State which provided it, if the latter so requires;

Whereas a Member State which is called upon to carry out enquiries or to provide information shall have the right to refuse to do so where its laws or administrative practices prevent its tax administration from carrying out these enquiries or from collecting or using this information for its own purposes, or where the provision of such information would be contrary to public policy or would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or where the Member State for which the information is intended is unable for practical or legal reasons to provide similar information;

Whereas collaboration between the Member States and the Commission is necessary for the permanent study of cooperation procedures and the pooling of experience in the fields considered, and in particular in the field of the artificial transfer of profits within groups of enterprises, with the aim of improving those procedures and of preparing appropriate Community rules,

HAS ADOPTED THIS DIRECTIVE:

Article 1

General provisions

1. In accordance with the provisions of this Directive the competent authorities of the Member States shall exchange any information that may enable them to effect a correct assessment of taxes on income and on capital.

2. There shall be regarded as taxes on income and on capital, irrespective of the manner in which they are levied, all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the disposal of movable or immovable property, taxes on the amounts of

wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The taxes referred to in paragraph 2 are at present, in particular:

in Belgium:

Impôt des personnes physiques/Personenbelasting

Impôt des sociétés/Vennootschapsbelasting

Impôt des personnes morales/Rechtspersonenbelasting

Impôt des non-résidents/Belasting der niet-verblijfhouders

in Denmark:

Indkomstskatten til staten

Selsskabsskat

Den kommunale indkomstskat

Den amtskommunale indkomstskat

Folkepensionsbidragene

Sømandsskatten

Den særlige indkomstskat

Kirkeskatten

Formueskatten til staten

Bidrag til dagpengefonden

in Germany:

Einkommensteuer

Körperschaftsteuer

Vermögensteuer

Gewerbsteuer

Grundsteuer

in France:

Impôt sur le revenu

Impôt sur les sociétés

Taxe professionnelle

Taxe foncière sur les propriétés bâties

Taxe foncière sur les propriétés non bâties

in Ireland:

Income tax

Corporation tax

Capital gains tax

Wealth tax

in Italy:

Imposta sul reddito delle persone fisiche
 Imposta sul reddito delle persone giuridiche
 Imposta locale sui redditi

in Luxembourg:

Impôt sur le revenu des personnes physiques
 Impôt sur le revenu des collectivités
 Impôt commercial communal
 Impôt sur la fortune
 Impôt foncier

in the Netherlands:

Inkomstenbelasting
 Vennootschapsbelasting
 Vermogensbelasting

in the United Kingdom:

Income tax
 Corporation tax
 Capital gains tax
 Petroleum revenue tax
 Development land tax

4. Paragraph 1 shall also apply to any identical or similar taxes imposed subsequently, whether in addition to or in place of the taxes listed in paragraph 3. The competent authorities of the Member States shall inform one another and the Commission of the date of entry into force of such taxes.

5. The expression 'competent authority' means:

in Belgium:

De minister van financiën or an authorized representative
 Le ministre des finances or an authorized representative

in Denmark:

Ministeren for skatter og afgifter or an authorized representative

in Germany:

Der Bundesminister der Finanzen or an authorized representative

in France:

Le ministre de l'économie or an authorized representative

in Ireland:

The Revenue Commissioners or their authorized representative

in Italy:

Il Ministro per le finanze or an authorized representative

in Luxembourg:

Le ministre des finances or an authorized representative

in the Netherlands:

De minister van financiën or an authorized representative

in the United Kingdom:

The Commissioners of Inland Revenue or their authorized representative

*Article 2***Exchange on request**

1. The competent authority of a Member State may request the competent authority of another Member State to forward the information referred to in Article 1 (1) in a particular case. The competent authority of the requested State need not comply with the request if it appears that the competent authority of the State making the request has not exhausted its own usual sources of information, which it could have utilized, according to the circumstances, to obtain the information requested without running the risk of endangering the attainment of the sought after result.

2. For the purpose of forwarding the information referred to in paragraph 1, the competent authority of the requested Member State shall arrange for the conduct of any enquiries necessary to obtain such information.

*Article 3***Automatic exchange of information**

For categories of cases which they shall determine under the consultation procedure laid down in Article 9, the competent authorities of the Member States shall regularly exchange the information referred to in Article 1 (1) without prior request.

*Article 4***Spontaneous exchange of information**

1. The competent authority of a Member State shall without prior request forward the information

referred to in Article 1 (1), of which it has knowledge, to the competent authority of any other Member State concerned, in the following circumstances:

- (a) the competent authority of the one Member State has grounds for supposing that there may be a loss of tax in the other Member State;
 - (b) a person liable to tax obtains a reduction in or an exemption from tax in the one Member State which would give rise to an increase in tax or to liability to tax in the other Member State;
 - (c) business dealings between a person liable to tax in a Member State and a person liable to tax in another Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the other Member State or in both;
 - (d) the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
 - (e) information forwarded to the one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Member State.
2. The competent authorities of the Member States may, under the consultation procedure laid down in Article 9, extend the exchange of information provided for in paragraph 1 to cases other than those specified therein.
3. The competent authorities of the Member States may forward to each other in any other case, without prior request, the information referred to in Article 1 (1) of which they have knowledge.

Article 5

Time limit for forwarding information

The competent authority of a Member State which, under the preceding Articles, is called upon to furnish information, shall forward it as swiftly as possible. If it encounters obstacles in furnishing the information or if it refuses to furnish the information, it shall forthwith inform the requesting authority to this effect, indicating the nature of the obstacles or the reasons for its refusal.

Article 6

Collaboration by officials of the State concerned

For the purpose of applying the preceding provisions, the competent authority of the Member State providing the information and the competent authority of the Member State for which the information is intended may agree, under the consultation procedure laid down in Article 9, to authorize the presence in the first Member State of officials of the tax administration of the other Member State. The details for applying this provision shall be determined under the same procedure.

Article 7

Provisions relating to secrecy

1. All information made known to a Member State under this Directive shall be kept secret in that State in the same manner as information received under its domestic legislation.

In any case, such information:

- may be made available only to the persons directly involved in the assessment of the tax or in the administrative control of this assessment,
- may in addition be made known only in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or relating to, the making or reviewing the tax assessment and only to persons who are directly involved in such proceedings; such information may, however, be disclosed during public hearings or in judgments if the competent authority of the Member State supplying the information raises no objection,
- shall in no circumstances be used other than for taxation purposes or in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or in relation to, the making or reviewing the tax assessment.

2. Paragraph 1 shall not oblige a Member State whose legislation or administrative practice lays down, for domestic purposes, narrower limits than those contained in the provisions of that paragraph, to provide information if the State concerned does not undertake to respect those narrower limits.

3. Notwithstanding paragraph 1, the competent authorities of the Member State providing the information may permit it to be used for other purposes in the requesting State, if, under the legislation of the informing State, the information could, in similar circumstances, be used in the informing State for similar purposes.

4. Where a competent authority of a Member State considers that information which it has received from the competent authority of another Member State is likely to be useful to the competent authority of a third Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

Article 8

Limits to exchange of information

1. This Directive shall impose no obligation to have enquiries carried out or to provide information if the Member State, which should furnish the information, would be prevented by its laws or administrative practices from carrying out these enquiries or from collecting or using this information for its own purposes.

2. The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.

3. The competent authority of a Member State may refuse to provide information where the State concerned is unable, for practical or legal reasons, to provide similar information.

Article 9

Consultations

1. For the purposes of the implementation of this Directive, consultations shall be held, if necessary in a Committee, between:

- the competent authorities of the Member States concerned at the request of either, in respect of bilateral questions,
- the competent authorities of all the Member States and the Commission, at the request of one of those authorities or the Commission, in so far

as the matters involved are not solely of bilateral interest.

2. The competent authorities of the Member States may communicate directly with each other. The competent authorities of the Member States may by mutual agreement permit authorities designated by them to communicate directly with each other in specified cases or in certain categories of cases.

3. Where the competent authorities make arrangements on bilateral matters covered by this Directive other than as regards individual cases, they shall as soon as possible inform the Commission thereof. The Commission shall in turn notify the competent authorities of the other Member States.

Article 10

Pooling of experience

The Member States shall, together with the Commission, constantly monitor the cooperation procedure provided for in this Directive and shall pool their experience, especially in the field of transfer pricing within groups of enterprises, with a view to improving such cooperation and, where appropriate, drawing up a body of rules in the fields concerned.

Article 11

Applicability of wider-ranging provisions of assistance

The foregoing provisions shall not impede the fulfilment of any wider obligations to exchange information which might flow from other legal acts.

Article 12

Final provisions

1. Member States shall bring into force the necessary laws, regulations and administrative provisions in order to comply with this Directive not later than 1 January 1979 and shall forthwith communicate them to the Commission.

2. Member States shall communicate to the Commission the texts of any important provisions of

national law which they subsequently adopt in the field covered by this Directive.

Done at Brussels, 19 December 1977.

Article 13

This Directive is addressed to the Member States.

For the Council

The President

G. GEENS

COUNCIL DIRECTIVE

of 19 December 1977

on a derogation accorded to the Kingdom of Denmark relating to the rules governing turnover tax and excise duty applicable in international travel

(77/800/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 100 thereof,

Having regard to the proposal from the Commission,

Whereas, pursuant to Annex VII, Part V 1 (a) to Article 133 of the Act of Accession, the Kingdom of Denmark was granted a derogation regarding the application of certain provisions of Council Directive 69/169/EEC of 28 May 1969 on the harmonization of provisions laid down by law, regulation of administrative action relating to exemption from turnover tax and excise duty on imports in international travel ⁽¹⁾, amended by Council Directive 72/230/EEC ⁽²⁾; whereas this derogation was extended by Directive 76/134/EEC ⁽³⁾ and Directive 77/82/EEC ⁽⁴⁾ adopted pursuant to the provisions of Annex VII, Part V 1 (c) of the Act of Accession; whereas, pursuant to Article 9 (2) of the Act of Accession, the option to extend further this derogation on this basis expires on 31 December 1977;

Whereas the Danish Government has asked that it be granted a further period in which to apply the harmonized rules stemming from Directive 69/169/EEC;

Whereas progress in the attainment of economic and monetary union and, in particular, in fiscal harmonization does not yet allow the full application of such rules in Denmark without the risk of serious economic consequences;

Whereas, therefore, the Kingdom of Denmark should be authorized to maintain provisionally the exceptional arrangements which it has enjoyed hitherto; whereas, however, in order to facilitate adaptation,

provision should be made over a five-year period, for the gradual approximation of these arrangements to the harmonized Community rules,

HAS ADOPTED THIS DIRECTIVE:

Article 1

By way of derogation from Directive 69/169/EEC, the Kingdom of Denmark shall have the right, in respect of exemption for imports of tobacco products, alcoholic beverages (distilled beverages and spirits of an alcoholic strength exceeding 22°) and beer (if the quantity exceeds two litres):

- (a) to maintain the rules currently in force up to and including 31 December 1979, where such goods are imported by travellers who are not resident in Denmark and whose stay in Denmark is for less than 24 hours;
- (b) to apply the following quantitative limits, where such goods are imported by travellers resident in Denmark, after a stay in another country:

— until 31 December 1980, when the stay is less than 72 hours, and from 1 January 1981 to 31 December 1982, when the stay is less than 48 hours:

cigarettes (until 31 December 1981)	40
(from 1 January 1982 to 31 December 1982)	60
or	
cigarillos (cigars of a maximum weight of 3 g each)	20
or	
cigars	20
or	
smoking tobacco	100 g

⁽¹⁾ OJ No L 133, 4. 6. 1969, p. 6.

⁽²⁾ OJ No L 139, 17. 6. 1972, p. 28.

⁽³⁾ OJ No L 21, 29. 1. 1976, p. 9.

⁽⁴⁾ OJ No L 23, 27. 1. 1977, p. 50.

distilled beverages and spirits of an
alcoholic strength exceeding 22° nil

beer

two litres.

Article 3

This Directive is addressed to the Kingdom of Denmark.

Article 2

Done at Brussels, 19 December 1977.

The Kingdom of Denmark shall communicate to the Commission the texts of the measures which it adopts in order to enable the rules provided for in this Directive to enter into force with effect from 1 January 1978.

For the Council

The President

G. GEENS
