

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 31 October 1994

on the system of the European Communities' own resources

(94/728/EC, Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 201 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 173 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

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

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Council Decision 88/376/EEC, Euratom of 24 June 1988 on the system of the Communities' own resources ⁽⁴⁾ expanded and amended the composition of own resources by capping the VAT resources base at 55 % of gross national product ('GNP') for the year at market prices, with the maximum call-in rate being maintained at 1,4 %, and by introducing an additional resource based on the total GNP of the Member States;

Whereas the European Council meeting in Edinburgh on 11 and 12 December 1992 reached certain conclusions;

Whereas the Communities must have adequate resources to finance their policies;

Whereas, in accordance with these conclusions, the Communities will, by 1999, be assigned a maximum amount of own resources corresponding to 1,27 % of the total of the Member States' GNPs for the year at market prices;

Whereas observance of this ceiling requires that the total amount of own resources at the Community's disposal for the period 1995 to 1999 does not in any one year exceed a specified percentage of the sum of the Member States' GNPs for the year in question;

Whereas on overall ceiling of 1,335 % of the Member States' GNPs is set for commitment appropriations; whereas an orderly progression of commitment appropriations and payment appropriations should be ensured;

Whereas these ceilings should remain applicable until this Decision is amended;

Whereas, in order to make allowance for each Member State's ability to contribute to the system of own resources and to correct the regressive aspects of the current system for the least prosperous Member States, in accordance with the Protocol on economic and social cohesion annexed to the Treaty on European Union, the

(1) OJ No C 300, 6. 11. 1993, p. 17.

(2) OJ No C 61, 28. 2. 1994, p. 105.

(3) OJ No C 52, 19. 2. 1994, p. 1.

(4) OJ No L 185, 15. 7. 1988, p. 24.

Communities's financing rules should be further amended:

- by lowering the ceiling for the uniform rate to be applied to the uniform value added tax base of each Member State from 1,4 to 1,0 % in equal steps between 1995 and 1999,
- by limiting at 50 % of GNP from 1995 onwards the value added tax base of the Member States whose per capita GNP in 1991 was less than 90 % of the Community average, i.e. Greece, Spain, Ireland and Portugal, and by reducing the base from 55 to 50 % in equal steps over the period 1995 to 1999 for the other Member States;

Whereas the European Council has examined the correction of budgetary imbalances on numerous occasions, particularly at its meeting on 25 and 26 June 1984;

Whereas the European Council of 11 and 12 December 1992 confirmed the formula for calculating the correction of budgetary imbalances defined in Decision 88/376/EEC, Euratom;

Whereas the budgetary imbalances should be corrected in such a way as not to affect the own resources available for Community policies;

Whereas the monetary reserve, hereinafter referred to as 'the EAGGF monetary reserve', is covered by specific provisions;

Whereas the conclusions of the European Council provided for the creation in the budget of two reserves, one for the financing of the Loan Guarantee Fund, and the other for emergency aid in non-member countries; whereas these reserves should be covered by specific provisions;

Whereas the Commission will by the end of 1999 submit a report on the operation of the system, which will contain a review of the mechanism for correcting budgetary imbalances granted to the United Kingdom; whereas it will also by the end of 1999 present a report containing the results of a study on the feasibility of creating a new own resource, as well as on arrangements for the possible introduction of a fixed uniform rate applicable to the VAT base;

Whereas provisions must be laid down to cover the changeover from the system introduced by Decision 88/376/EEC, Euratom to that arising from this Decision;

Whereas the European Council provided that this Decision should take effect on 1 January 1995,

HAS LAID DOWN THESE PROVISIONS, WHICH IT RECOMMENDS TO THE MEMBER STATES FOR ADOPTION:

Article 1

The Communities shall be allocated resources of their own in accordance with the detailed rules laid down in the following Articles in order to ensure the financing of their budget.

The budget of the Communities shall, without prejudice to other revenue, be financed wholly from the Communities' own resources.

Article 2

1. Revenue from the following shall constitute own resources entered in the budget of the Communities:

- (a) levies, premiums, additional or compensatory amounts, additional amounts or factors and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries within the framework of the common agricultural policy, and also contributions and other duties provided for within the framework of the common organization of the markets in sugar;
- (b) Common Customs Tariff duties and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries and customs duties on products coming under the Treaty establishing the European Coal and Steel Community;
- (c) the application of a uniform rate valid for all Member States to the VAT assessment base which is determined in a uniform manner for Member States according to Community rules. However, the assessment base to be taken into account for the purposes of this Decision shall, from 1995, not exceed 50 % of GNP in the case of Member States whose per capita GNP, in 1991 was less than 90 % of the Community average; for the other Member States the assessment base to be taken into account shall not exceed:
 - 54 % of their GNP in 1995,
 - 53 % of their GNP in 1996,
 - 52 % of their GNP in 1997,
 - 51 % of their GNP in 1998,
 - 50 % of their GNP in 1999;

The cap of 50 % of their GNP to be introduced for all Member States in 1999 shall remain applicable until such time as this Decision is amended;

- (d) the application of a rate — to be determined pursuant to the budgetary procedure in the light of the total of all other revenue — to the sum of all the Member States' GNP established in accordance with the

Community rules laid down in Directive 89/130/EEC, Euratom ⁽¹⁾.

2. Revenue deriving from any new charges introduced within the framework of a common policy, in accordance with the Treaty establishing the European Community or the Treaty establishing the European Atomic Energy Community, provided the procedure laid down in Article 201 of the Treaty establishing the European Community or in Article 173 of the Treaty establishing the European Atomic Energy Community has been followed, shall also constitute own resources entered in the budget of the Communities.

3. Member States shall retain, by way of collection costs, 10 % of the amounts paid under 1 (a) and (b).

4. The uniform rate referred to in paragraph 1 (c) shall correspond to the rate resulting from:

(a) the application to the VAT assessment base for the Member States of:

- 1,32 % in 1995,
- 1,24 % in 1996,
- 1,16 % in 1997,
- 1,08 % in 1998,
- 1,00 % in 1999.

The 1,00 % rate in 1999 shall remain applicable until such time as this Decision is amended;

(b) the deduction of the gross amount of the reference compensation referred to in Article 4 (2). The gross amount shall be the compensation amount adjusted for the fact that the United Kingdom is not participating in the financing of its own compensation and the Federal Republic of Germany's share is reduced by one-third. It shall be calculated as if the reference compensation amount were financed by Member States according to their VAT assessment bases established in accordance with Article 2 (1) (c).

5. The rate fixed under paragraph 1 (d) shall apply to the GNP of each Member State.

6. If, at the beginning of the financial year, the budget has not been adopted, the previous uniform VAT rate and rate applicable to Member States' GNPs, without prejudice to the provisions adopted in accordance with Article 8 (2) as regards the EAGGF monetary reserve, the reserve for financing the Loan Guarantee Fund and the reserve for emergency aid in third countries, shall remain applicable until the entry into force of the new rates.

7. For the purposes of applying this Decision, GNP shall mean gross national product for the year at market prices.

Article 3

1. The total amount of own resources assigned to the Communities may not exceed 1,27 % of the total GNPs of the Member States for payment appropriations.

The total amount of own resources assigned to the Communities may not, for any of the years during the period 1995 to 1999, exceed the following percentages of the total GNPs of the Member States for the year in question:

- 1995 : 1,21,
- 1996 : 1,22,
- 1997 : 1,24,
- 1998 : 1,26,
- 1999 : 1,27.

2. The commitment appropriations entered in the general budget of the Communities over the period 1995 to 1999 must follow an orderly progression resulting in a total amount which does not exceed 1,335 % of the total GNPs of the Member States in 1999. An orderly ratio between commitment appropriations and payment appropriations shall be maintained to guarantee their compatibility and to enable the ceilings mentioned in paragraph 1 to be observed in subsequent years.

3. The overall ceilings referred to in paragraphs 1 and 2 shall remain applicable until such time as this Decision is amended.

Article 4

The United Kingdom shall be granted a correction in respect of budgetary imbalances. This correction shall consist of a basic amount and an adjustment. The adjustment shall correct the basic amount to a reference compensation amount.

1. The basic amount shall be established by:

(a) calculating the difference in the financial year, between:

- the percentage share of the United Kingdom in the sum total of the payments referred to in Article 2 (1) (c) and (d) made during the financial year, including adjustments at the uniform rate in respect of earlier financial years, and
- the percentage share of the United Kingdom in total allocated expenditure;

⁽¹⁾ OJ No L 49, 21. 2. 1989, p. 26.

- (b) applying the difference thus obtained to total allocated expenditure;
- (c) multiplying the result by 0,66;

2. The reference compensation shall be the correction resulting from application of (a), (b) and (c) of this paragraph, corrected by the effects arising for the United Kingdom from the changeover to capped VAT and the payments referred to in Article 2 (1) (d).

It shall be established by:

- (a) calculating the difference, in the preceding financial year, between:
 - the percentage share of the United Kingdom in the sum total of VAT payments which would have been made during that financial year, including adjustments in respect of earlier financial years, for the amounts financed by the resources referred to in Article 2 (1) (c) and (d) if the uniform VAT rate had been applied to non-capped bases, and
 - the percentage share of the United Kingdom in total allocated expenditure;
- (b) applying the difference thus obtained to total allocated expenditure;
- (c) multiplying the result by 0,66;
- (d) subtracting the payments by the United Kingdom taken into account in the first indent of point 1 (a) from those taken into account in point (a), first indent of this subparagraph;
- (e) subtracting the amount calculated at (d) from the amount calculated at (c).

3. The basic amount shall be adjusted in such a way as to correspond to the reference compensation amount.

Article 5

1. The cost of the correction shall be borne by the other Member States in accordance with the following arrangements.

The distribution of the cost shall first be calculated by reference to each Member State's share of the payments referred to in Article 2 (1) (d), the United Kingdom being excluded; it shall then be adjusted in such a way as to restrict the share of the Federal Republic of Germany to two-thirds of the share resulting from this calculation.

2. The correction shall be granted to the United Kingdom by a reduction in its payments resulting from the application of Article 2 (1) (c) and (d). The costs borne by the other Member States shall be added to their

payments resulting from the application for each Member State of Article 2 (1) (c) and (d).

3. The Commission shall perform the calculations required for the application of Article 4 and this Article.

4. If, at the beginning of the financial year, the budget has not been adopted, the correction granted to the United Kingdom and the costs borne by the other Member States as entered in the last budget finally adopted shall remain applicable.

Article 6

The revenue referred to in Article 2 shall be used without distinction to finance all expenditure entered in the budget. However, the revenue needed to cover in full or in part the EAGGF monetary reserve the reserve for the financing of the Loan Guarantee Fund and the reserve for emergency aid in third countries, entered in the budget shall not be called up from the Member States until the reserves are implemented. Provisions for the operation of those reserves shall be adopted as necessary in accordance with Article 8 (2).

The first paragraph shall be without prejudice to the treatment of contributions by certain Member States to supplementary programmes provided for in Article 130l of the Treaty establishing the European Community.

Article 7

Any surplus of the Communities' revenue over total actual expenditure during a financial year shall be carried over to the following financial year.

Any surpluses generated by a transfer from EAGGF Guarantee Section chapters, or surplus from the Guarantee Fund arising from external measures, transferred to the revenue account in the budget, shall be regarded as constituting own resources.

Article 8

1. The Community own resources referred to in Article 2 (1) (a) and (b) shall be collected by the Member States in accordance with the national provisions imposed by law, regulation or administrative action, which shall, where appropriate, be adapted to meet the requirements of Community rules. The Commission shall examine at regular intervals the national provisions communicated to it by the Member States, transmit to the Member States the adjustments it deems necessary in order to ensure that they comply with Community rules and report to the budget authority. Member States shall make the resources

provided for in Article 2 (1) (a) to (d) available to the Commission.

2. Without prejudice to the auditing of the accounts and to checks that they are lawful and regular as laid down in Article 188c of the Treaty establishing the European Community, such auditing and checks being mainly concerned with the reliability and effectiveness of national systems and procedures for determining the base for own resources accruing from VAT and GNP and without prejudice to the inspection arrangements made pursuant to Article 209 (c) of that Treaty, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, adopt the provisions necessary to apply this Decision and to make possible the inspection of the collection, the making available to the Commission and payment of the revenue referred to in Articles 2 and 5.

Article 9

The mechanism for the graduated refund of own resources accruing from VAT or GNP-based financial contributions introduced for Greece up to 1985 by Article 127 of the 1979 Act of Accession and for Spain and Portugal up to 1991 by Articles 187 and 374 of the 1985 Act of Accession shall apply to the own resources accruing from VAT and the GNP-based resources referred to in Article 2 (1) (c) and (d) of this Decision. It shall also apply to payments by the two last-named Member States in accordance with Article 5 (2) of this Decision. In the latter case the rate of refund shall be that applicable for the year in respect of which the correction is granted.

Article 10

The Commission shall submit, by the end of 1999, a report on the operation of system, including a re-examination of the correction of budgetary imbalances granted to the United Kingdom, established by this Decision. It shall also by the end of 1999 submit a report on the findings of a study on the feasibility of creating a new own resource, as well as on arrangements for the possible introduction of a fixed uniform rate applicable to the VAT base.

Article 11

1. Member States shall be notified of this Decision by the Secretary-General of the Council and the Decision shall be published in the *Official Journal of the European Communities*.

Member States shall notify the Secretary-General of the Council without delay of the completion of the procedures for the adoption of this Decision in accordance with their respective constitutional requirements.

This Decision shall enter into force on the first day on the month following receipt of the last of the notifications referred to in the second subparagraph. It shall take effect on 1 January 1995.

2. (a) Subject to (b), Decision 88/376/EEC, Euratom shall be repealed as of 1 January 1995. Any references to the Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities own resources⁽¹⁾, to Council Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources⁽²⁾, or to Decision 88/376/EEC, Euratom shall be construed as references to this Decision.

(b) Article 3 of Decision 85/257/EEC, Euratom shall continue to apply to the calculation and adjustment of revenue from the application of rates to the uncapped uniform VAT base for 1987 and earlier years.

Articles 2, 4 and 5 of Decision 88/376/EEC, Euratom shall continue to apply to the calculation and adjustment of revenue accruing from the application of a uniform rate valid for all Member States to the VAT base determined in a uniform manner and limited to 55 % of the GNP of each Member State and to the calculation of the correction of budgetary imbalances granted to the United Kingdom for the years 1988 to 1994. When Article 2 (7) of that Decision has to be applied, the value added tax payments shall be replaced by financial contributions in the calculations referred to in this paragraph for any Member State concerned; this system shall also apply to the payment of adjustments of corrections for earlier years.

Done at Luxembourg, 31 October 1994.

For the Council

The President

K. KINKEL

⁽¹⁾ OJ No L 94, 28. 4. 1970, p. 19.

⁽²⁾ OJ No L 128, 14. 5. 1985, p. 15. Decision repealed by Decision 88/376/EEC, Euratom.