



EUROPEAN COMMISSION

Brussels, 9.11.2011
COM(2011) 740 final

2011/0184 (APP)

Amended proposal for a

COUNCIL REGULATION

**laying down implementing measures for the system of own resources of the European
Union**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 29 June 2011 the Commission adopted a proposal for a Regulation laying down implementing measures for the system of own resources of the European Union pursuant to Article 311(4) of the Treaty on the Functioning of the European Union (hereinafter "TFEU")¹. It also announced that relevant amendments would be presented by the end of 2011.

The purpose of this amended proposal is to refine the proposal made on 29 June. It ensures coherence with the proposed Council Directive on a common system of financial transaction tax (hereinafter "the FTT Directive")² adopted on 28 September 2011, and the proposals for Council Regulations on making the own resource based on the FTT available to the EU budget³ and on calculating and making available the own resource based on value added tax (VAT)⁴ adopted together with this proposal.

2. CONTENT OF THE PROPOSAL

Three main changes are included in this amended proposal⁵ compared to the proposal made on 29 June 2011.

Firstly, making explicit reference to the various types of financial transactions would be redundant given the provisions laid down in the FTT Directive and the amended proposal for the ORD. It is proposed to specify the share of the minimum rates defined in the FTT Directive that should be used for the FTT-based own resource. Consequently, this share of the receipts resulting from the application of the minimum rates defined in the FTT Directive will accrue to the EU budget and the rest will accrue to the Member States budgets.

Furthermore, the original proposal provided for the possibility that the FTT would be collected by economic operators rather than by the Member States. In line with the FTT Directive, the Member States' administrations will be responsible for collecting the FTT. Therefore, reference to economic operators is no longer necessary.

Last, regarding the new VAT own resource, the text now refers explicitly to the calculation method (set out in the proposal on the making available of the new VAT resource) which determines the basis on which to apply the share of the resource.

¹ COM(2011)511 of 29 June 2011.

² Proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC, COM(2011)594 of 28.9.2011.

³ Proposal for a Council Regulation on the methods and procedure for making available the own resource based on the financial transaction tax, COM(2011)738 of 9.11.2011.

⁴ Proposal for a Council Regulation on the methods and procedure for making available the own resource based on the value added tax, COM(2011)737 of 9.11.2011.

⁵ **Additions to the original proposal are highlighted in bold and are underlined.** Provisions to be eliminated are identified using ~~strikethrough~~.

Amended proposal for a

COUNCIL REGULATION

laying down implementing measures for the system of own resources of the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the fourth paragraph of Article 311, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to Council Decision ... of ... on the system of own resources of the European Union ⁶, and in particular Article 9 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the consent of the European Parliament⁷,

Having regard to the opinion of the Court of Auditors⁸,

Having regard to the opinion of the European Economic and Social Committee⁹,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Parliamentary oversight is particularly important for provisions of a general nature applicable to all types of own resources and covering control and supervision of revenues including supplementary reporting requirements.
- (2) In order to maintain unchanged the amount of financial resources put at the disposal of the Union, it is appropriate to adapt the ceilings of the Union's own resources for payments and commitments as determined, respectively, in Article 3(1) and (2) of Decision ... expressed in per cent of Gross National Income (GNI) in case of amendments to Regulation (EU) No ... of

⁶ OJ L [...], [...], p. [...].

⁷ OJ C [...], [...], p. [...].

⁸ OJ C [...], [...], p. [...].

⁹ OJ C [...], [...], p. [...].

[...] on the European system of national and regional accounts in the European Union¹⁰ which entail a significant change in the level of GNI.

- (3) The transparency of the Union's own resources system should be ensured with adequate information supplied to the budgetary authority. Therefore, the Member States should keep at the disposal of the Commission and, where necessary, forward to it the documents and information needed to allow it to exercise the power conferred upon it as regards the Union's own resources.
- (4) The arrangements whereby the Member States ~~or economic operators~~ responsible for collecting own resources report to the Commission, should make it possible for the Commission to monitor their action to recover own resources, in particular in cases of fraud and irregularities.
- (5) In order to ensure a balanced budget, any surplus of the Union's revenue over total actual expenditure during a financial year should be carried over to the following financial year. Therefore, the balance to be carried over should be defined.
- (6) Member States ~~and economic operators responsible for collecting own resources~~ should conduct checks and enquiries relating to establishing, **and** making available ~~and paying~~ the Union's own resources. In order to facilitate application of the financial rules relating to own resources it is necessary to ensure collaboration between Member States ~~or economic operators responsible for collecting own resources~~ and the Commission.
- (7) For the sake of consistency and clarity, provisions should be laid down covering the powers and obligations of agents authorised by the Commission to carry out inspections in relation to the Union's own resources, taking into account the specific nature of each own resource. The conditions under which authorised agents carry out their tasks should be set out, and in particular the rules which all Union officials, other servants and seconded national experts must observe with regard to professional confidentiality and the protection of personal data should be laid down. It is necessary to establish the status of seconded national experts and the possibility for the Member State concerned to object to the presence, at an inspection, of officials of other Member States.
- (8) For reasons of coherence, certain provisions of Council Decision (EC, Euratom) No 2007/436 of 7 June 2007 on the system of the European Communities' own resources¹¹ and Council Regulation (EC, Euratom) No 1150/2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources¹² should be included in this Regulation. Those provisions concern the reference GNI and significant changes thereto, the rate of call of the own resource referred to in Article 2(1)(d) of Decision [.../...], the calculation and budgeting of the balance, control and supervision of own resources and supplementary reporting requirements, as well as the Advisory Committee on Own Resources ~~(ACOR)~~.
- (9) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council

¹⁰ OJ L [...], [...], p. [...], as last amended by [...]

¹¹ OJ L 163, 23.6.2007, p. 17.

¹² OJ L 130, 31.5.2000, p. 1.

of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers¹³.

- (10) The advisory procedure should be used for the adoption of implementing acts in order to establish detailed rules on reporting fraud and irregularities affecting entitlements to traditional own resources, ~~and measures for examining estimates of own resources~~ **and Member States' annual reports on their inspections** given the technical nature of those acts required for reporting purposes.
- (11) Council Regulation (EC, Euratom) No 1026/1999 of 10 May 1999 determining the powers and obligations of agents authorised by the Commission to carry out controls and inspections of the Communities' own resources¹⁴ should be repealed.
- (12) For reasons of consistency, this Regulation should apply on the same day as Decision ... ,

HAS ADOPTED THIS REGULATION:

Chapter I

Determining own resources

Article 1

Applicable shares and rates

1. The **share in the financial transaction** tax rates applicable¹⁵ **referred to as** the own resource referred to in Article 2(1)(b) of Decision ... shall be **two-thirds of the minimum rates set out in Council Directive (EU) No [.../...]**¹⁶.

(a) ~~...% for transactions on bonds, stocks and similar securities;~~

(b) ~~...% for other transactions.~~

2. The **share in VAT referred to as** tax rate applicable to the own resource referred to in Article 2(1)(c) of Decision shall be 1.0% **of the net value of supplies of goods and services, intra-Community acquisitions of goods and importation of goods subject to a standard rate of VAT in every Member State determined according to Union rules.**

3. The uniform rate referred to in Article 2(1)(d) of Decision ... shall be set within the budgetary procedure and shall be calculated as a percentage of the sum of the forecast of the Gross National

¹³ OJ L 55, 28.2.2011, p. 13.

¹⁴ OJ L 126, 20.5.1999, p. 1.

¹⁵ ~~Should the legislative act referred to in article 2(1)(b) of Decision ... provide for differentiated rates for transactions executed in regulated markets and outside regulated markets, the tax rates applicable to the own resources will be adjusted on this basis.~~

¹⁶ OJ L [...], [...], p. 1.

Income (GNI) of the Member States in such a manner that it fully covers that part of the budget not financed from the revenue referred to in Article 2(1)(a), (b) and (c) of Decision ..., from financial contributions to supplementary research and technological development programmes and other revenue.

That rate shall be expressed in the budget by a figure containing as many decimal places as is necessary to fully divide the GNI-based resource among the Member States.

Article 2

Reference GNI and significant changes thereto

1. GNI referred to in Article 2(1)(d) of Decision ... shall mean an annual GNI at market price, as provided by the Commission in application of Regulation
2. Where amendments to Regulation ... result in significant changes in the GNI, the Commission shall inform the European Parliament and Council on the dates of application of those changes for the purposes of Decision
3. Where amendments to Regulation ... result in significant changes in the level of GNI, the ceilings for payments and commitments as determined in Article 3(1) and (2) of Decision ... shall be recalculated by the Commission on the basis of the following formula:

$$\frac{1.23\%(1.29\%)*}{GNI_{t-2} + GNI_{t-1} + GNI_{t \text{ ESA modified}}}$$

In that formula, "t" is the latest full year for which the data defined by Council Regulation (EC, Euratom) No 1287/2003¹⁷ is available.

Article 3

Calculation and budgeting of balance

1. For the purpose of applying Article 7 of Decision ... 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 Article 9 of Regulation ... (hereinafter "the Financial Regulation")¹⁸.

That difference shall be increased or decreased by the net amount of appropriations carried over from previous financial years which have been cancelled. By way of derogation from Article 5(1) of the Financial Regulation, the difference shall also be increased or decreased by the following:

¹⁷ OJ L 181, 19.7.2003, p. 1.

¹⁸ OJ L [...], [...], p. [...]

- (a) payments made in excess of non-differentiated appropriations carried over from the previous financial year under Article 9(1) and (4) of the Financial Regulation as a result of change in euro rates;
- (b) the balance resulting from exchange gains and losses during the financial year.

2. 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. 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 an amending budget for the current financial year.

Chapter II

Provisions concerning control and supervision, including supplementary reporting requirements

Article 4

Reporting fraud and irregularities affecting entitlements

1. In the two months following the end of each quarter, Member States shall send the Commission a description of cases of fraud and irregularities detected involving entitlements of over EUR 10 000 concerning the own resource referred to Article 2(1)(a) of Decision

Within the period referred to in the first subparagraph, each Member State shall give details of the position concerning cases of fraud and irregularities already reported to the Commission whose recovery, cancellation or non-recovery was not indicated earlier.

2. For the own resource referred to in Article 2(1)(c) of Decision ... every six month Member States shall send to the Commission a description of cases of fraud and irregularities detected involving entitlements of over EUR 10 000 during the preceding six months.

3. ~~For The economic operators responsible for collecting~~ the own resource referred to in Article 2(1)(b) of Decision ... **Member States** shall notify the Commission, within one month of the circumstances coming to their attention of any instances of fraud or irregularity involving entitlements of over EUR 10 000.

4. The Commission shall adopt implementing acts establishing details of the descriptions mentioned in paragraphs 1, 2 and 3 of this Article as well as measures for examining estimates of own resources. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 9(2).

5. A summary of the notifications referred to in paragraphs 1, 2 and 3 of this Article shall be included in the Commission report referred to in Article 325(5) of the Treaty.

Article 5

Control and supervision measures

1. Member States ~~or economic operators responsible for collecting own resources~~ shall take all measures that are necessary to ensure that the amount corresponding to the entitlements established under Article 2(1) of Decision ... are made available ~~or paid~~ to the Commission.
2. 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), **(b)** and (c) of Decision

~~Economic operators responsible for collecting own resources shall conduct checks and enquiries concerning the collection of the own resources referred to in Article 2(1)(b) of Decision ..., together with the processes for paying them to the Commission.~~

3. Member States ~~or economic operators responsible for collecting own resources~~ shall carry out additional inspection measures at the Commission's request. In its request the Commission shall state the reasons for the additional inspection. Member States ~~or economic operators~~, shall, if the Commission so requests, associate it with the inspections, which they carry out. The Commission may, instead, request that certain documents be forwarded to it.

~~4. Economic operators responsible for collecting own resources shall make available to the Commission any internal or external audit report or consultancy report available to them, which includes analysis of the systems that they use to collect own resources, or to pay those resources to the Commission.~~

- ~~5.~~**4.** The Commission may itself carry out inspections on the spot. The agents authorised by the Commission for such inspections shall have access, in so far as the application of this Regulation so requires, to the supporting documents concerning establishing, **and** making available ~~or paying~~ own resources, and to any other appropriate document related to those supporting documents. **Member States shall facilitate those inspections.**

The Commission may request the Member States to forward to it certain documents or reports including internal audit or consultancy reports which contain analysis of the systems used to collect own resources or to make them available to the Commission.

- ~~6. Member States or economic operators responsible for collecting own resources shall facilitate the inspection measures referred to in paragraph 5.~~

- ~~7.~~**5.** Where the Commission is associated with an inspection, the Commission shall have the same access to supporting and related documents as is set out for the inspections in **the first subparagraph of paragraph 5.**

- ~~8.~~**6.** Where the inspection concern GNI-based own resources the Commission shall also have access to the documents relating to the statistical procedures and basic statistics referred to in Article 3 of Regulation (EC, Euratom) No 1287/2003.

- ~~9.~~**7.** The inspections referred to in paragraph 2 shall be without prejudice to the following:

- (a) the inspections carried out by Member States in accordance with their national laws, regulations or administrative provisions;
- (b) the measures provided for in Articles 287 and 319 of the Treaty;
- (c) the inspection arrangements made pursuant to Article 322(1)(b) of the Treaty.

~~108.~~ 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 GNI committee established by Regulation (EC, Euratom) No 1287/2003. In doing so it may, in individual cases, also examine calculations and statistical bases, except the information about individual companies or persons, where no proper assessment would otherwise be possible. The Commission shall respect national rules on the confidentiality of statistics.

Article 6

Reporting by Member States of their inspections

Member States shall submit detailed annual reports to the Commission on their inspections relating to the correct collection of own resources and the results of those inspections, the overall data and any questions of principle concerning the most important problems arising out of the application of the regulations implementing Decision [...] and, in particular, matters in dispute. The reports shall be sent to the Commission by 1 March of the year following the financial year concerned. On the basis of those reports, the Commission shall prepare a summary report, which shall be brought to the attention of all Member States.

The Commission shall adopt implementing acts establishing a form for the Member States' annual reports mentioned in **the first** paragraph **4 of this Article**. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 9(2).

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

Article 7

Powers and obligations of the authorised agents of the Commission

1. The Commission shall specifically appoint for the purpose of making the inspections referred to in Article 5 certain of its officials or other servants (hereinafter "authorised agents").

For each inspection, the Commission shall provide the authorised agents with written terms of reference stating their identity and official capacity.

Persons placed at the disposal of the Commission by the Member States as national experts on secondment may participate at the inspections.

With the explicit and prior agreement of the Member State ~~or economic operator responsible for collecting own resources~~ concerned, the Commission may seek the assistance of officials from other Member States as observers. The Commission shall ensure that those officials comply with paragraph 3.

2. During the on-the-spot and associated inspections the authorised agents shall act in a manner compatible with the rules applicable to the officials of the Member State concerned. They shall be bound by professional secrecy, under the conditions laid down in paragraph 3.

The authorised agent may, if necessary, contact debtors, but only in the context of the inspections referred to in Article 5, and only through the competent authorities whose own resources collection procedures are the subject of the inspection.

3. Information communicated or obtained under paragraphs 1 and 2, in whatever form, shall be subject to professional secrecy and receive the protection granted to similar information under the national law of the Member State in which it was gathered and under the corresponding provisions applicable to the institutions of the Union.

That information may not be communicated to persons other than those within ~~the organisations inspected~~, the institutions of the Union or the Member States whose duty it is to know, neither may it be used for purposes other than those laid down in this Regulation without the prior consent of the Member State ~~or economic operator responsible for collecting own resources~~ **in which** ~~from whom~~ it was gathered.

The first and second subparagraph shall apply to the officials and other servants of the Union, and national experts on secondment.

4. The Commission shall ensure that authorised agents and other persons acting under its authority comply with Directive 95/46/EC of the European Parliament and of the Council¹⁹ and Regulation (EC) No 45/2001 of the European Parliament and of the Council²⁰ and other Union and national rules concerning the protection of personal data

Article 8

Preparation and management of inspections

1. In a duly substantiated communication, the Commission shall give notice of an inspection in good time to the Member State ~~or economic operator responsible for collecting own resources whose procedures are being examined~~. Where the inspection concerns an economic operator responsible for collecting own resources, the Member State in which the inspection is to take place shall also be notified. Agents of the Member State concerned may participate in such inspection.

2. For inspections where the Commission is associated under Article 5(3) the organisation of the work and relations with the departments involved in the inspection shall be ensured by the department designated by the Member State ~~or by the economic operator responsible for collecting the own resources concerned~~.

¹⁹ OJ L 281, 23.11.1995, p. 31.

²⁰ OJ L 8, 12.1.2001, p. 1.

3. On-the-spot inspections referred to in the first subparagraph of Article 5(~~54~~) shall be carried out by the authorised agents. For the purposes of the organisation of the work and relations with the departments, and where appropriate the debtors involved in the inspection, those agents shall, prior to any on-the-spot inspections, establish the necessary contacts with the officials designated by the Member State ~~or with the economic operator responsible for collecting the own resources concerned~~. For this type of inspection the terms of reference shall be accompanied by a document indicating the aim and purpose of the inspection.

4. Inspections concerning the GNI-based own resource referred to in Article 5(~~86~~) shall be carried out by the authorised agents. For the purposes of the organisation of the work, those agents shall establish the necessary contacts with the competent administrations in the Member States.

5. The Member States ~~or economic operators concerned~~ shall ensure that the departments or agencies responsible for establishing, collecting and making available the own resources, and the authorities which they have instructed to carry out the inspections thereon, provide the authorised agents with the assistance necessary for carrying out their duties.

For the purposes of on-the-spot inspections referred to in the first subparagraph of Article 5(~~54~~), Member States ~~or the economic operators~~ concerned shall inform the Commission in good time of the identity and capacity of the persons appointed to take part in these inspections and to afford the authorised agents every assistance necessary for carrying out their duties.

6. The results of the on-the-spot inspections carried out and those with which the Commission is associated shall be brought to the attention of the Member State ~~or of the economic operator~~ concerned through the appropriate channels within a period of three months. The Member State ~~recipient of the report~~ shall submit its observations within the three months following receipt of the report. However, for duly substantiated reasons, the Commission may request the Member State ~~recipient~~ concerned to submit observations on specific points within a period of one month following receipt of the report. The Member State ~~or the economic operator~~ concerned may decline to respond by means of a communication stating the reasons which prevent it from responding to the Commission's request.

Thereafter the results and observations arising from the on-the-spot and associated inspections of Member States shall be brought to the attention of all Member States.

Where the on-the-spot or associated inspections identify the need for amendment or correction of data in the statements or declarations sent to the Commission regarding own resources and the resultant corrections are to be made via a current statement or declaration then the relevant changes shall be identified, in the statement or declaration so used, by means of appropriate notes.

Chapter III

Committee and final provisions

Article 9

Committee procedure—~~Advisory Committee on Own Resources (ACOR)~~

1. The Commission shall be assisted by a committee, the Advisory Committee on Own Resources (ACOR). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 10

Final provisions

Regulation (EC, Euratom) No 1026/1999 is repealed.

References to the repealed Regulation and to the provisions of Decision (EC, Euratom) No 2007/436, repealed by Decision ..., and of Regulation (EC, Euratom) No 1150/2000 repealed by Council Regulation ...²¹, which are referred to in the correlation table set out in the Annex to this Regulation shall be construed as references to this Regulation and shall be read in accordance with that correlation table.

Article 11

Entry into force

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

It shall apply from 1 January 2014.

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

Done at Brussels,

For the Council
The President

²¹ OJ L [...], [...], p. [...].

ANNEX

Correlation table

Decision (EC, Euratom) No 2007/436	Regulation (EC, Euratom) No 1026/1999	Regulation (EC, Euratom) No 1150/2000	<u>This Regulation</u>
			Article 1(1)
			Article 1(2)
		Article 5	Article 1(3)
Article 2(7) first subparagraph			Article 2(1)
Article 2(7) second subparagraph			Article 2(2)
Article 3(3)			Article 2(3)
		Article 15	Article 3(1)
		Article 16	Article 3(2)
		Article 6(5)	Article 4
		Article 17(1)	Article 5(1)
		Article 18(1)	Article 5(2)
		Article 18(2) <u>first subparagraph and third subparagraph, point a)</u>	Article 5(3)
		Article 18(3)	Article 5(54) <u>first subparagraph</u>
			Article 5(4) <u>second subparagraph</u>
		Article 18(2) <u>second subparagraph, first sentence</u>	Article 5(64) <u>first subparagraph</u>
		Article 18(2) <u>second subparagraph, second sentence</u> and (3)	Article 5(75)
			Article 5(86)
		Article 18(4)	Article 5(97)
		Article 19	Article 5(108)
		Article 17(5) and 18(5)	Article 6
	Article 1		Article 7(1)
	Article 3(1)		Article 7(2)
	Article 5		Article 7(3) & <u>and</u> (4)
	Article 2(1) & <u>and</u> (2)		Article 8(1)
	Article 3(2)		Article 8(2), (3) & <u>and</u>

			(4)
	Article 4		Article 8(5)
	Article 6	Article 18(2)	Article 8(6)
		Articles 20 and 21	Article 9
			Article 10
			Article 11