



**COUNCIL OF  
THE EUROPEAN UNION**

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**RESPR 17  
FIN 858  
CADREFIN 335  
POLGEN 248**

**NOTE**

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From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	16848/11 RESPR 16 FIN 882 CADREFIN 133 POLGEN 192 - COM(2011) 742 final
Subject:	Amended proposal for a Council Regulation on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements (Recast)  - <i>Political agreement</i>

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**I. INTRODUCTION**

1. On 9 November 2011, the Commission submitted the above-mentioned proposal to the Council. The proposed Council Regulation is part of the package of proposals on a new own resources system made in the context of the next multiannual financial framework (MFF) 2014-2020.

2. The proposed Regulation lays down the methods and procedure for making available the budget revenue provided under the arrangements relating to the Union's own resources and determines the measures to be applied to meet cash requirements pursuant to Article 322(2) of the Treaty on the Functioning of the European Union (TFEU). The Commission's proposal of 9 November 2011 is limited to traditional own resources and the own resource based on gross national income (GNI).
3. The Commission proposal is based on the recasting technique for legal acts<sup>1</sup>, differentiating between amendments to provisions of the earlier act and the unchanged provisions of that act. Where, in the course of the legislative procedure, it appears necessary to introduce substantive amendments in the recasting act to those provisions which remain unchanged in the Commission's proposal, such amendments shall be made to that act in compliance with the procedure laid down by the Treaty according to the applicable legal basis.
4. The European Court of Auditors adopted an opinion on the Commission's proposal on 20 March 2012<sup>2</sup>. The European Parliament has not yet issued an opinion, as foreseen in Article 322(2) TFEU.

## **II. WORK WITHIN THE COUNCIL**

5. The Working Party on Own Resources examined the proposal between January 2012 and November 2013, together with the Commission's amended proposal for a Council Decision on the system of own resources of the European Union<sup>3</sup> and the Commission's amended proposal for a Council Regulation laying down implementing measures for the system of own resources of the European Union<sup>4</sup>.

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<sup>1</sup> Based on the Interinstitutional Agreement on a more structured use of the recasting technique for legal acts (doc. 11220/01).

<sup>2</sup> OJ C 112, 18.4.2012, p. 1.

<sup>3</sup> Doc. 16846/11.

<sup>4</sup> Doc. 16847/11.

6. The Working Party on Own Resources notably took into account the European Council conclusions of 7/8 February 2013 regarding the revenue side of the MFF<sup>1</sup>. It took note that the existing own resource based on value added tax (VAT) would not be replaced at this stage. It therefore agreed to include provisions relating to the existing VAT-based own resource in the proposed Regulation.
7. Further modifications to the Commission's proposal agreed by the Working Party on Own Resources mainly relate to:
  - including specific provisions in order to take into account the effects of the corrections in favour of the United Kingdom, Germany, the Netherlands, Sweden, Denmark and Austria foreseen in the European Council conclusions of 7/8 February 2013;
  - rejecting the Commission' request to increase (from one or two to four) the number of months, and to extend the scope of eligible funds, for which Member States may be invited to bring forward the entry of one-twelfth of the amounts in the budget;
  - clarifying the provisions for reporting on irrecoverable amounts in case of entitlements established as a result of the same circumstances.
8. The last discussion on the proposal in the Working Party on Own Resources took place on 18 November 2013. The Working Party reached agreement on most elements of the proposed Regulation, as set out in the Annex.
9. However, agreement could not be reached at the level of the Working Party on the issue outlined under point III below.

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<sup>1</sup> Doc. EUCO 37/13, paragraphs 111-118.

### III. OUTSTANDING ISSUE

#### Article 11 - Interest on amounts made available belatedly

10. In its proposal for a Council Regulation (Recast), the Commission proposed to introduce in Article 11, paragraph 1, a "*de minimis*" clause for the payment of interest on amounts made available belatedly by Member States. According to this clause, recovery of amounts of interest below EUR 500 shall be waived. The Commission emphasized that only this additional provision has been proposed in this article, and that - in line with the existing rules for recast proposals - all other elements of this article are not open for modification.
11. While Member States accept the Commission's proposal to set a minimum threshold, several Member States would also like to set a maximum limit. In consequence, they would like to modify the provisions in paragraphs 2 and 3 of this article foreseeing an increase of the interest rate on amounts made available belatedly by 0.25 of a percentage point for each month of delay. According to their suggestion, the rate of interest applicable to the entire period of delay should respect the principle of proportionality and be in line with interest rates applicable on the financial markets.
12. The Presidency has taken note of the fact that, according to the existing rules for recast proposals, the Council is not in a position to include such a provision in the revised Regulation. It considers, however, that a statement to be adopted by the Permanent Representatives Committee, requesting the Commission to submit a further proposal for amending this Regulation, taking up the above-mentioned elements, could be a solution.

### IV. CONCLUSION

13. The Permanent Representatives Committee is invited to examine the text as set out in the Annex to this note and, if possible, resolve the outstanding issue with a view to allowing the Council to reach a political agreement on the text, subject to legal-linguistic revision.

**DRAFT COUNCIL REGULATION**

**on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements**

**(Recast)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 322(2) thereof,

In conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament<sup>1</sup>,

Having regard to the opinion of the European Court of Auditors<sup>2</sup>,

Whereas:

- (1) Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000, implementing Decision 2007/436/EC, Euratom on the system of the European Communities own resources<sup>3</sup>, has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C 112, 18.4.2012, p. 1.

<sup>3</sup> OJ L 130, 31.5.2000, p. 1.

- (2) Certain provisions of Regulation (EC, Euratom) No 1150/2000 have been included in Council Regulation (EU) No [...] laying down implementing measures for the system of own resources of the European Union<sup>1</sup> and should thus not be covered by this Regulation. Those provisions concern the rate of call of the own resource based on Gross National Income (GNI) referred to in Article 2(1)(c) of Council Decision [...] on the system of own resources of the European Union<sup>2</sup>, the calculation and budgeting of the balance, control and supervision of own resources and relevant reporting requirements, as well as the Advisory Committee on Own Resources (ACOR).
- (3) The Union must have the own resources referred to in Article 2 of Decision [...] available in the best possible conditions and accordingly rules should be laid down for the Member States to provide the Commission with those own resources. This Regulation takes over the rules on making available the traditional own resources referred to in Article 2(1)(a) of Decision [.../...], the own resources based on value added tax (VAT) referred to in Article 2(1)(b) of that Decision (hereinafter "VAT-based own resource") and those in Article 2(1)(c) of that Decision (hereinafter "GNI-based own resource"), previously included in Regulation (EC, Euratom) No 1150/2000.
- (4) The concept of establishment should be defined in respect of the own resources and detailed rules should be laid down for satisfying the obligation to establish the traditional own resources referred to in Article 2(1)(a) of Decision [.../...].
- (5) For own resources deriving from sugar levies, which need to be recovered in the budget year corresponding to the marketing year to which the expenditure relates, provision should be made for the Member States to make such levies available to the Commission during the budget year in which they are established.
- (6) The Member States must 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 own resources of the Union.

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<sup>1</sup> OJ L , [...], [...], p. [...].

<sup>2</sup> OJ L , [...], [...], p. [...].

- (7) The national authorities responsible for the collection of own resources must be able to produce to the Commission at all times the documents substantiating the own resources collected.
- (8) Separate accounts should be kept for entitlements which have not been recovered. These accounts and the submission of a quarterly statement of such accounts should enable the Commission to monitor more closely the action taken by Member States to collect own resources, and particularly those compromised by fraud or irregularities.
- (9) A time limit should be laid down for relations between Member States and the Commission, since new entitlements established by Member States in respect of earlier years are deemed to be establishments for the current year.
- (10) In order to ensure that the budget of the Union will be financed in all circumstances, a procedure should be laid down, as regards the VAT-based own resource and the GNI-based own resource created in accordance with Council Regulation (EC, Euratom) No 1287/2003 of 15 July 2003 on the harmonisation of gross national income at market prices<sup>1</sup>, for Member States to make available to the Union, in the form of constant monthly twelfths, the own resources entered in the budget and subsequently to adjust the amounts made available in accordance with the actual base of the VAT-based own resource and the relevant changes to GNI as soon as they are fully known.
- (11) The impact of modifications in the GNI data made after the end of each financial year on the financing of gross reductions should be clarified.
- (12) The own resources must 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. In order to restrict the movements of funds to that which is necessary for the implementation of the budget, the Union must confine itself to drawing on the abovementioned accounts solely to cover the Commission's cash requirements.

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<sup>1</sup> OJ L 181, 19.7.2003, p. 1

- (13) The Commission must have sufficient cash resources to comply with the regulatory requirements for payments concentrated in the opening months of the year, in particular for the specific needs of paying expenditure of the European Agricultural Guarantee Fund (EAGF) pursuant to Council Regulation (EC) No 73/2009<sup>1</sup>.
- (14) In accordance with the principle of sound financial management, care should be taken that the cost of recovery of interest due on own resources made available belatedly should not exceed the amount of the interest payable.
- (15) The reporting of write-off cases concerning established entitlements declared or deemed irrecoverable should be harmonized.
- (16) Close collaboration between Member States and the Commission will facilitate proper application of the financial rules relating to own resources.
- (17) 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 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 powers<sup>2</sup>.
- (18) The advisory procedure should be used for the adoption of implementing acts in order to establish detailed rules for the monthly statements of the accounts for the entitlements to traditional own resources and the quarterly statements of the separate accounts, as well as for the cases concerning irrecoverable amounts exceeding EUR 50 000, given the technical nature of those acts required for reporting purposes.

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<sup>1</sup> OJ L 30, 31.1.2009, p. 16.

<sup>2</sup> OJ L 55, 28.2.2011, p. 13.



(19) Regulation (EC, Euratom) No 1150/2000 should be repealed.

(20) For reasons of consistency and taking account of Article 11 of Decision [.../...], this Regulation should enter into force on the same day as that Decision and should apply from 1 January 2014,

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

#### *Subject matter*

This Regulation lays down rules on making available to the Commission the own resources of the Union referred to in Article 2(1)(a), (b) and (c) of Decision [.../...].

#### *Article 2*

#### *Date of establishment of traditional own resources*

1. For the purpose of applying this Regulation, the Union's entitlement to the traditional own resources referred to in Article 2(1)(a) of Decision [.../...] shall be established as soon as the conditions provided for by the customs regulations have been met concerning the entry of the entitlement in the accounts and the notification of the debtor.
2. The date of the establishment referred to in paragraph 1 shall be the date of entry in the accounting ledgers provided for by the customs regulations.

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

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

3. In disputed cases, the competent administrative authorities shall be deemed, for the purposes of the establishment referred to in paragraph 1, to be in a position to calculate the amount of the entitlement not later than when the first administrative decision is taken notifying the debtor of the debt or when judicial proceedings are brought if this occurs first.

The date of the establishment referred to in paragraph 1 shall be the date of the decision or of the calculation to be made following the initiation of those judicial proceedings.

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

### *Article 3*

#### *Conservation of supporting documents*

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

The supporting documents relating to the statistical procedures and bases referred to in Article 3 of Regulation (EC, Euratom) No 1287/2003 shall be kept by the Member States until 30 September of the fourth year following the financial year in question. The supporting documents relating to the VAT-based own resource base shall be kept for the same period.

If verification pursuant to Article 3(3) of Regulation (EU) [...] or Article 11 of Council Regulation (EEC, Euratom) No 1553/89<sup>1</sup> of the supporting documents referred to in the first and second paragraphs shows that a correction is required, they shall be kept beyond the time limit provided for in the first paragraph for a sufficient period to permit the correction to be made and monitored.

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<sup>1</sup> Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 155, 7.6.1989, p. 9).

Where a dispute between a Member State and the Commission concerning the obligation to make available a certain amount of own resources is settled by mutual agreement or by a decision of the Court of Justice of the European Union, the Member State shall transmit the supporting documents necessary for the financial follow-up to the Commission within two months after that settlement.

#### *Article 4*

##### *Administrative cooperation*

1. Each Member State shall inform the Commission of the following:
  - (a) the names of the departments or agencies responsible for establishing, collecting, making available and controlling own resources and the basic provisions relating to the role and operation of those departments and agencies;
  - (b) the general provisions laid down by law, regulation or administrative action and those relating to accounting procedure concerning the establishment, collection, making available and control by the Commission of own resources;
  - (c) the precise title of all administrative and accounting records in which are entered the established entitlements as specified in Article 2, in particular those used for drawing up the accounts provided for in Article 5.

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

2. The Commission shall, at the request of a Member State, transmit to all Member States the information referred to in paragraph 1.

## CHAPTER II

### ACCOUNTS FOR OWN RESOURCES

#### *Article 5*

##### *Entry in the accounts and reporting*

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. For own-resources accounting purposes, the month shall end no earlier than 1 p.m. on the last working day of the month during which establishment took place.
3. Entitlements established in accordance with Article 2 shall, subject to the second subparagraph of this paragraph, be entered in the accounts at the latest on the first working day after the nineteenth day of the second month following the month during which the entitlement was established.

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

The VAT-based own resource and the GNI-based own resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances and the gross reduction granted to Austria, Denmark, the Netherlands and Sweden, shall, however, be recorded in the accounts as specified in the first subparagraph as follows:

- the twelfths referred to in Article 9(3) shall be recorded on the first working day of each month,

- the balances referred to in Article 9(4) and (6) and the adjustments referred to in Article 9(5) and (7) shall be recorded annually, except for the particular adjustments referred to in the first indent of Article 9(5), which shall be recorded in the accounts on the first working day of the month following agreement between the Member State concerned and the Commission.

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

4. Each Member State shall send the Commission, within the time limits specified in paragraph 3:
  - (a) a monthly statement of its accounts for the entitlements referred to in the first subparagraph of paragraph 3;
  - (b) a quarterly statement of the separate accounts referred to in the second subparagraph of paragraph 3.

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

Together with the final quarterly statement for a given year, Member States shall forward an estimate of the total amount of entitlements contained in the separate account at 31 December of that year for which recovery has become unlikely.

The Commission shall adopt implementing acts establishing detailed rules for the monthly and quarterly statements. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in the second paragraph of Article 15.

## *Article 6*

### *Accounting corrections*

After 31 December of the third year following a given year, no further corrections shall be made to the sum of the monthly statements communicated by Member States under the first subparagraph of Article 5(4) for the year in question, except on points notified before this date either by the Commission or by the Member State concerned.

## *Article 7*

### *Corrections of establishments*

Corrections carried out under Article 2(4) shall be added to or subtracted from the total amount of established entitlements. They shall be recorded in the accounts referred to in the first and second subparagraph of Article 5(3) and in the statements referred to in Article 5(4) in accordance with the date of those corrections.

## **CHAPTER III**

### **MAKING AVAILABLE OWN RESOURCES**

## *Article 8*

### *Treasury and accounting arrangements*

1. In accordance with the procedure laid down in Article 9, each Member State shall credit own resources to the account opened in the name of the Commission with its Treasury or the body it has appointed.

This account shall be kept in national currency and is free of charge.

2. Member States or the bodies appointed by them shall transmit to the Commission, by electronic means:
  - (a) on the working day on which the own resources are credited to the account of the Commission, a statement of account or a credit advice showing the entry of the own resources;
  - (b) without prejudice to point (a), at the latest on the second working day following the crediting of the account, a statement of account showing the entry of the own resources.
3. The amounts credited shall be accounted for in euro in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union (hereinafter "Financial Regulation")<sup>1</sup> and Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012<sup>2</sup>.

#### *Article 9*

##### *Determining amounts, timing for making available, adjustments*

1. After deduction of collection costs in accordance with Article 2(3) and Article 10(3) of Decision [.../...], entry of the traditional own resources referred to in Article 2(1)(a) of that Decision shall be made at the latest on the first working day following the nineteenth day of the second month following the month during which the entitlement was established in accordance with Article 2 of this Regulation.

However, for entitlements shown in separate accounts under the second subparagraph of Article 5(3) of this Regulation, the entry must be made at the latest on the first working day following the nineteenth day of the second month following the month in which the entitlements were recovered.

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<sup>1</sup> OJ L 298, 26.10.2012, p. 1.

<sup>2</sup> OJ L 362, 31.12.2012, p. 1.

2. If necessary, Member States may be invited by the Commission to bring forward by one month the entry of resources other than the VAT-based own resource and the GNI-based own resource on the basis of the information available to them on the fifteenth 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. The VAT-based own resource and the GNI-based own resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances and of the gross reduction granted to Austria, Denmark, the Netherlands and Sweden, shall be credited on the first working day of each month, the amounts being one-twelfth of the relevant totals in the budget, converted into national currencies at the rates of exchange of the last day of quotation of the calendar year preceding the budget year, as published in the *Official Journal of the European Union*, C Series.

For the specific needs of paying expenditure of the EAGF pursuant to Regulation (EC) No 73/2009, and depending on the Union's cash position, Member States may be invited by the Commission to bring forward by one or two months in the first quarter of the financial year the entry of one-twelfth or a fraction of one-twelfth of the amounts in the budget for the VAT-based own resource and the GNI-based own resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances and of the gross reduction granted to Austria, Denmark, the Netherlands and Sweden.

After the first quarter, the monthly entry requested may not exceed one-twelfth of the VAT and GNI-based own resources, while remaining within the limit of the amounts entered in the budget for that purpose.

The Commission shall notify the Member States thereof in advance, no later than two weeks before the entry requested.



The eighth subparagraph concerning the amount to be entered in January each year and the ninth subparagraph applicable if the budget has not been finally adopted before the beginning of the financial year shall apply to these advance entries.

Any change in the uniform rate of the VAT-based own resource, in the rate of the GNI-based own resource, in the correction granted to the United Kingdom for budgetary imbalances and in its financing referred to in Article 4 and 5 of Decision [.../...], and in the financing of the gross reduction granted to Austria, Denmark, the Netherlands and Sweden shall require the final adoption of an amending budget and shall give rise to readjustments of the twelfths which have been entered since the beginning of the financial year.

These readjustments shall be carried out when the first entry is made following the final adoption of the amending budget if it is adopted before the sixteenth of the month. Otherwise they shall be carried out when the second entry following final adoption is made. By way of derogation from Article 11 of the Financial Regulation, these readjustments shall be entered in the accounts in respect of the financial year of the amending budget in question.

Calculation of the twelfths for January of each financial year shall be based on the amounts provided for in the draft budget, referred to in Article 314(2) of the Treaty and converted into national currencies at the rates of exchange of the first day of quotation following 15 December of the calendar year preceding the budget year; the adjustment shall be made with the entry for the following month.

If the budget has not been finally adopted at the latest two weeks before the entry for January of the following financial year, the Member States shall enter on the first working day of each month, including January, one-twelfth of the amount of the VAT-based own resource, and the GNI-based own resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances and of the gross reduction granted to Austria, Denmark, the Netherlands and Sweden, entered in the last budget finally adopted; the adjustment shall be made on the first due date following final adoption of the budget if it is adopted before the sixteenth of the month. Otherwise, the adjustment shall be made on the second due date following final adoption of the budget.

4. Each Member State shall, on the basis of the annual statement on the VAT-based own resource base provided for in Article 7(1) of Regulation (EEC, Euratom) No 1553/89, be debited with an amount calculated from the information contained in the said statement by applying the uniform rate adopted for the previous financial year and credited with the twelve payments made during that financial year. However, each Member State's VAT-based own resource base to which the above rate is applied may not exceed the percentage determined by Article 2(1)(b) of Decision [...] of its GNI, as referred to in the first subparagraph of Article 2(7) of that Decision. The Commission shall work out the balance and shall inform the Member States in time for them to enter it in the account referred to in Article 8(1) of this Regulation on the first working day of December of the same year.
5. Any corrections to the VAT-based own resource base under Article 9(1) of Regulation (EEC, Euratom) No 1553/89 shall give rise for each Member State concerned whose base, allowing for these corrections, does not exceed the percentages determined by Articles 2(1)(b) and 10(2) of Decision [...] to the following adjustments to the balance referred to in paragraph 4 of this Article:
- the corrections under the first subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89 made by 31 July shall give rise to a general adjustment to be entered in the account referred to in Article 8(1) of this Regulation on the first working day of December of the same year. However, a particular adjustment may be entered before that date if the Member State concerned and the Commission are in agreement;
  - where the measures which the Commission takes under the second subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89 to correct the base lead to an adjustment of the entries in the account referred to in Article 8(1) of this Regulation, that adjustment shall be made on the date specified by the Commission pursuant to the said measures.

The changes to GNI referred to in paragraph 7 of this Article shall also give rise to an adjustment of the balance of any Member State whose base, allowing for those corrections, is capped at the percentages determined by Articles 2(1)(b) and 10(2) of Decision [.../...].

The Commission shall inform the Member States of these adjustments in time for them to enter them in the account referred to in Article 8(1) on the first working day of December of the same year.

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

6. On the basis of figures for aggregate GNI at market prices and its components from the preceding year, supplied by the Member States in accordance with Article 2(2) of Regulation (EC, Euratom) No 1287/2003, each Member State shall be debited with an amount calculated by applying to GNI the rate adopted for the previous financial year and credited with the payments made during that previous financial year. The Commission shall work out the balance and shall inform the Member States in time for them to enter it in the account referred to in Article 8(1) of this Regulation on the first working day of December of the same year.
7. Any changes to the GNI of previous financial years pursuant to Article 2(2) of Regulation (EC, Euratom) No 1287/2003, subject to Article 5 thereof, shall give rise for each Member State concerned to an adjustment to the balance established pursuant to paragraph 6 of this Article. This adjustment shall be established in the manner laid down in the first subparagraph of paragraph 5 of this Article. The Commission shall inform the Member States of these adjustments so that they can enter them in the account referred to in Article 8(1) of this Regulation on the first working day of December of the same year. After 30 September of the fourth year following a given financial year, any changes to GNI shall no longer be taken into account, except on points notified within this time limit either by the Commission or by the Member State.

8. The operations referred to in paragraphs 4 to 7 constitute modifications to revenue in respect of the financial year in which they occur.

The amount of revenue set out in the budget for the current financial year may be increased or reduced, by means of an amending budget, by the amount resulting from those operations in accordance with Article 2(2) of Regulation (EU) [.../...].

9. There shall be no subsequent revision of the financing of the gross reductions granted to Austria, Denmark, the Netherlands and Sweden in the event of modifications of the GNI data pursuant to Article 2(2) of Regulation (EC, Euratom) No 1287/2003.

#### *Article 10*

##### *Opt-out adjustment*

1. Where, pursuant to the Treaty and its Protocols 21 and 22, a Member State does not take part in the financing of a specific Union action or policy, it shall be entitled to an adjustment, calculated in accordance with paragraph 2 of this Article, of the amount it has paid in own resources in respect of each year in which it has not taken part.
2. The Commission shall calculate the adjustment during the year following the financial year concerned, at the same time as it determines the GNI balances provided for in Article 9 of this Regulation.

The calculation shall be made on the basis of the figures relating to the relevant financial year:

- (a) aggregate GNI at market prices and its components,
- (b) the budgetary outturn of operational expenditure corresponding to the measure or policy in question.

The adjustment shall be equal to the product of multiplying the total amount of the expenditure in question, with the exception of that financed by participating third countries, by the percentage that the GNI of the Member State entitled to the adjustment represents of the GNI of all Member States. The adjustment shall be financed by the participating Member States according to a scale determined by dividing their respective GNI by the GNI of all the participating Member States. For the purposes of calculating the adjustment, amounts shall be converted between the national currency and the euro at the exchange rate on the last day of quotation of the calendar year preceding the budget year concerned.

The adjustment for each relevant year shall be made only once and it shall be final in the event of subsequent modification of the GNI figure.

3. The Commission shall inform the Member States in good time of the amount of the adjustment so that they can credit it to the account referred to in Article 8(1) of this Regulation on the first working day of December.

#### *Article 11*

##### *Interest on amounts made available belatedly*

1. Any delay in making the entry in the account referred to in Article 8(1) shall give rise to the payment of interest by the Member State concerned.

However, recovery of amounts of interest below EUR 500 shall be waived.

2. In the case of Member States belonging to the Economic and Monetary Union, the interest rate shall be equal to the rate as published in the *Official Journal of the European Union*, C series which the European Central Bank applied to its main refinancing operations, on the first day of the month in which the due date fell, increased by two percentage points.

This rate shall be increased by 0.25 of a percentage point for each month of delay. The increased rate shall be applied to the entire period of delay.

3. In the case of Member States not belonging to the Economic and Monetary Union, the rate shall be equal to the rate applied on the first day of the month in question by the Central Banks for their main refinancing operations, increased by two percentage points, or, for the Member States for which the Central Bank rate is not available, the most equivalent rate applied on the first day of the month in question on the Member State's money market, increased by two percentage points.

This rate shall be increased by 0.25 of a percentage point for each month of delay. The increased rate shall be applied to the entire period of delay.

4. For the payment of interest referred to in paragraph 1, Article 8(2) and (3) shall apply *mutatis mutandis*.

## *Article 12*

### *Irrecoverable amounts*

1. Member States shall take all requisite measures to ensure that the amount corresponding to the entitlements established under Article 2 are made available to the Commission as specified in this Regulation.
2. Member States shall be released from the obligation to place at the disposal of the Commission the amounts corresponding to entitlements established under Article 2 which prove irrecoverable for either of the following reasons:
  - (a) for reasons of *force majeure*;
  - (b) for other reasons which cannot be attributed to them.

Amounts of established entitlements shall be declared irrecoverable by a decision of the competent administrative authority finding that they cannot be recovered.

Amounts of established entitlements shall be deemed irrecoverable, at the latest, after a period of five years from the date on which the amount has been established in accordance with Article 2 or, in the event of an administrative or judicial appeal, the final decision has been given, notified or published.

If part payment or payments have been received, the period of five years at maximum shall start from the date of the last payment made, where this does not clear the debt.

Amounts declared or deemed irrecoverable shall be definitively removed from the separate accounts referred to in the second subparagraph of Article 5(3). They shall be shown in an annex to the quarterly statement referred to in the first subparagraph of Article 5(4) and, where applicable, in the quarterly descriptions referred to in Article 6 of Regulation (EU) [.../...].

3. Within three months of the administrative decision mentioned in paragraph 2 of this Article or in accordance with the time limits referred to in that paragraph, Member States shall provide a report to the Commission with information on those cases where paragraph 2 of this Article has been applied provided the established entitlements involved exceed EUR 50 000.

That report shall include all the facts necessary for a full examination of the reasons referred to in paragraph 2(a) and (b) of this Article, which prevented the Member State concerned from making available the amounts in question, and the recovery measures the Member State took in the case or cases in question.

That report shall cover all entitlements established as a result of the findings of the same clearance or post-clearance control to the same operator and relating to the same irregularity or the same type of goods where, regardless of their individual amount, the total amount of these entitlements declared or deemed irrecoverable exceeds EUR 50 000.

That report shall be made on a form established by the Commission. For that purpose the Commission shall adopt implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in the second paragraph of Article 15.

4. The Commission shall, within six months from the receipt of the report provided for in paragraph 3, communicate its comments to the Member State concerned.

Where the Commission finds it necessary to request additional information, the six-months time-limit shall run from the date of receipt of the requested supplementary information.

## **CHAPTER IV**

### **MANAGEMENT OF CASH RESOURCES**

#### *Article 13*

##### *Requirements on management of cash resources*

1. The Commission shall draw on the sums credited to the accounts referred to in Article 8(1) to the extent necessary to cover its cash resource requirements arising out of the implementation of the budget.
2. If the cash resource requirements are in excess of the assets of the accounts, the Commission may draw in excess of the total of these assets subject to the availability of appropriations in the budget and within the limit of the own resources entered in the budget. In this event, it shall inform the Member States in advance of any foreseeable excess requirements.
3. In the sole case of default under a loan contracted or guaranteed pursuant to Council regulations and decisions, in circumstances in which the Commission cannot activate other measures provided for by the financial arrangements applying to these loans in time to ensure compliance with the Union's legal obligations to the lenders, paragraphs 2 and 4 may provisionally be applied, irrespective of the conditions in paragraph 2, in order to service the Union's debts.
4. The difference between the overall assets and the cash resource requirements shall be divided among the Member States, as far as possible, in proportion to the estimated budget revenue from each of them.



## *Article 14*

### *Execution of payment orders*

1. The Member States, or the bodies appointed by them, shall execute the Commission's payment orders following the Commission's instructions and within not more than three working days of receipt. However, in the case of cash movement transaction, the Member States shall execute the orders within the period requested by the Commission.
2. The Member States, or the bodies appointed by them, shall send to the Commission, by electronic means and on the second working day following the completion of each transaction at the latest, a statement of account showing the related movements.

## **CHAPTER V**

### **FINAL PROVISIONS**

## *Article 15*

### *Committee procedure*

The Commission shall be assisted by the Advisory Committee on Own Resources established by Regulation (EU) No [.../...]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

*Article 16*

*Transitional provision on interest rate*

The rate provided for in Article 11 of Regulation (EC, Euratom) No 1150/2000 in its version before the entry into force of Council Regulation (EC, Euratom) No 2028/2004 of 16 November 2004 amending Regulation (EC, Euratom) No 1150/2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources<sup>1</sup> shall continue to apply for the calculation of interest for late payment where the due date falls before 1 December 2004.

*Article 17*

*Repeal*

1. Regulation (EC, Euratom) No 1150/2000 is repealed.
2. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

*Article 18*

*Entry into force*

This Regulation shall enter into force on the day of entry into force of Decision [.../...].

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*

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<sup>1</sup> OJ L 352, 27.11.2004, p. 1.