



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 29 November 2013
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NOTE

From: Presidency

To: Permanent Representatives Committee

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Subject: Amended proposal for a Council Regulation laying down implementing
measures for the system of own resources of the European Union
- *Agreement in principle*

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 implementing measures for the Union's own resources system, as provided for in the proposed Council Decision on the system of own resources of the European Union, pursuant to Article 311 of the Treaty on the Functioning of the European Union (TFEU). The Commission's proposal of 9 November 2011 also covers the proposed new own resources based on value added tax (VAT) and on a financial transaction tax (FTT), while the existing VAT-based own resource was supposed to no longer exist.
3. The European Court of Auditors adopted an opinion on the Commission's proposal on 20 March 2012¹. The European Economic and Social Committee adopted an opinion on the proposal on 29 March 2012². The Council still needs to seek the consent of the European Parliament on the text it intends to adopt, as foreseen in Article 311 TFEU.

II. WORK WITHIN THE COUNCIL

4. 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 Union³ and the Commission's amended proposal for a Council Regulation on the methods and procedure for making available the traditional and GNI-based own resources and on the measures to meet cash requirements (Recast)⁴.

¹ OJ C 112, 18.4.2012, p. 1.

² OJ C 181, 21.6.2012, p. 45.

³ Doc. 16846/11.

⁴ Doc. 16848/11.

5. 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 MFF¹, concluding *inter alia* that a Council Regulation laying down implementing measures will be established. It took note that the existing VAT-based own resource would not be replaced, and that the proposed new own resources based on VAT and on FTT would not be introduced at this stage. It therefore agreed to include provisions relating to the existing VAT-based own resource in the proposed Regulation, while excluding the provisions foreseen in the proposal relating to the new VAT- and FTT-based own resources.
6. Further modifications to the Commission's proposal agreed by the Working Party on Own Resources mainly concern the streamlining of the structure of provisions concerning control and supervision, thus avoiding supplementary reporting requirements for Member States.
7. 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.
8. However, agreement could not be reached at the level of the Working Party on the issue outlined under point III below.

III. OUTSTANDING ISSUE

Article 1 - Applicable rates

9. In its proposal for a Council Regulation, the Commission proposed to introduce in Article 1 the provisions on calculating and setting the uniform rate applied for the own resource based on gross national income (GNI). Similar provisions are currently included in Article 5 of the existing Regulation (EC, Euratom) No 1150/2000 which will be repealed.

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

10. Several Member States would like to move these provisions from the proposed Council Regulation laying down implementing measures to the proposed Council Decision on the system of own resources of the European Union.
11. The Commission, nevertheless, considers that these provisions are one of the most important elements of substance in the proposed Council Regulation laying down implementing measures. It emphasized that it would not be appropriate to include them in the proposed Council Decision, as arrangements of this nature have so far been settled at the level of a Regulation.

IV. CONCLUSION

12. 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 reaching an agreement in principle on the text, subject to legal-linguistic revision.
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DRAFT 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, and 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 Union¹, and in particular Article 9 thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament²,

Having regard to the opinion of the European Court of Auditors³,

Having regard to the opinion of the European Economic and Social Committee⁴,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) 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.

¹ OJ L [...], [...], p. [...].

² OJ L [...], [...], p. [...].

³ OJ C 112, 18.4.2012, p. 1.

⁴ OJ C 181, 21.6.2012, p. 45.

- (2) The arrangements whereby the Member States 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.
- (3) 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.
- (4) Member States should conduct checks and enquiries relating to establishing and making available 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 and the Commission.
- (5) 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.
- (6) For reasons of coherence, certain provisions of Council Regulation (EC, Euratom) No 1150/2000 implementing Decision 2007/436/EC, Euratom on the system of the European Communities' own resources¹ should be included in this Regulation. Those provisions concern the rate of call of the own resource referred to in Article 2(1)(c) of Decision [.../...], 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.

¹ OJ L 130, 31.5.2000, p. 1.

- (7) 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 powers¹.
- (8) 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 Member States' annual reports on their inspections given the technical nature of those acts required for reporting purposes.
- (9) Appropriate parliamentary oversight, as set out in the Treaties, is required for provisions of a general nature applicable to all types of own resources and covering control and supervision of revenues including relevant reporting requirements.
- (10) 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 resources² should be repealed.
- (11) 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:

¹ OJ L 55, 28.2.2011, p. 13.

² OJ L 126, 20.5.1999, p. 1.

Chapter I

Determining own resources

Article 1

Applicable rates

The uniform rate referred to in Article 2(1)(c) 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 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) and (b) 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 own resource among the Member States.

Article 2

Calculation and budgeting of the 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 13 of 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 "the Financial Regulation")¹.

¹ OJ L 298, 26.10.2012, p.1.

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 8(1) of the Financial Regulation, the difference shall also be increased or decreased by the following:

- (a) payments made in excess of non-differentiated appropriations carried over from the previous financial year under Article 13(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 relevant reporting requirements

Article 3

Control and supervision measures

1. The own resources referred to in Article 2(1) of Decision [...] shall be inspected as specified in this Regulation, without prejudice to Regulation (EEC, Euratom) No 1553/89¹ and Regulation (EC, Euratom) No 1287/2003².
2. Member States shall take all measures that are necessary to ensure that the own resources referred to in Article 2(1) of Decision [...] are made available to the Commission.

¹ OJ L 155, 7.6.1989, p. 9.

² OJ L 181, 19.7.2003, p. 1.

3. Where control and supervision measures concern the traditional own resources referred to in Article 2(1)(a) of Decision [.../...]:
- a) Member States shall conduct the checks and enquiries concerning the establishment and the making available of those own resources.
 - b) Member States shall carry out additional inspection measures at the Commission's request. In its request the Commission shall state the reasons for the additional inspection. The Commission may also request that certain documents be forwarded to it.
 - c) Member States shall, if the Commission so requests, associate it with the inspections which they carry out. Where the Commission is associated with an inspection, the Commission shall have access, in so far as the application of this Regulation so requires, to the supporting documents concerning establishing and making available own resources, and to any other appropriate document related to those supporting documents.
 - d) The Commission may itself carry out inspections on the spot. The agents authorised by the Commission for such inspections shall have access to documents as set out for the inspections in point (c). Member States shall facilitate those inspections.
 - e) The inspections referred to in points (a) to (d) shall be without prejudice to the following:
 - the inspections carried out by Member States in accordance with their national laws, regulations or administrative provisions;
 - the measures provided for in Articles 287 and 319 of the Treaty;
 - the inspection arrangements made pursuant to Article 322(1)(b) of the Treaty.
4. Where control and supervision measures concern the own resource based on value added tax (VAT) referred to in Article 2(1)(b) of Decision [.../...] they shall be carried out in accordance with Article 11 of Regulation (EEC, Euratom) No 1553/89.

5. Where control and supervision measures concern the GNI-based own resource referred to in Article 2(1)(c) of Decision [.../...]:
- a) The Commission shall each year inspect, together with the Member State concerned, 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.
 - b) The Commission shall 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.
6. For the purposes of the control and supervision measures under paragraphs 3, 4 and 5, the Commission may request the Member States to forward to it relevant documents or reports relating to the systems used to collect own resources or to make them available to the Commission.

Article 4

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 3 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 in the inspections.

With the explicit and prior agreement of the Member State 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 inspections of traditional own resources and of the VAT-based own resource, referred to in Article 3(3) and (4) respectively, 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.

For the purposes of the inspections of the GNI-based own resource referred to in Article 3(5) the Commission shall respect national rules on the confidentiality of statistics.

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

3. Information communicated or obtained under this Regulation, 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 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 in which 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 Council¹ and Regulation (EC) No 45/2001 of the European Parliament and of the Council² and other Union and national rules concerning the protection of personal data.

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L 8, 12.1.2001, p. 1.

Article 5

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 in which the inspection is to take place. Agents of the Member State concerned may participate in such inspection.
2. For inspections of traditional own resources where the Commission is associated under Article 3(3), and of the VAT-based own resource under Article 3(4), 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 concerned.
3. On-the-spot inspections of traditional own resources referred to in Article 3(3)(d) 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 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 3(5) 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 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 of traditional own resources referred to in Article 3(3)(d), Member States 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 controls and inspections under Article 3, except the inspections carried out by the Member States under Article 3(3)(a) and (b), shall be brought to the attention of the Member State concerned through the appropriate channels within a period of three months. The Member State 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 concerned to submit observations on specific points within a period of one month following receipt of the report. The Member State 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 referred to in the first subparagraph, together with the summary report prepared in connection with controls on the VAT-based own resource, shall be brought to the attention of all Member States.

Where the on-the-spot or associated inspections of traditional own resources 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.

Article 6

Reporting fraud and irregularities affecting entitlements to traditional own resources

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 traditional own resources 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. The Commission shall adopt implementing acts establishing details of the descriptions mentioned in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 8(2).
3. A summary of the notifications referred to in paragraph 1 of this article shall be included in the Commission report referred to in Article 325(5) of the Treaty.

Article 7

Reporting by Member States of their inspections of traditional own resources

1. Member States shall submit detailed annual reports to the Commission on their inspections relating to traditional 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 relevant 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.
2. The Commission shall adopt implementing acts establishing a form for the Member States' annual reports mentioned in the first paragraph of this article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 8(2).
3. The Commission shall report every three years to the European Parliament and to the Council on the functioning of the inspection arrangements for traditional own resources referred to in Article 3(3).

Chapter III

Committee and final provisions

Article 8

Committee procedure

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 9

Final provisions

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

References to the repealed Regulation and to the provisions of Regulation (EC, Euratom) No 1150/2000 repealed by Council Regulation [.../...] ¹, 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.

¹ OJ L [...], [...], p. [...].

Article 10

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
