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NOTE

From:	Presidency
To:	Permanent Representatives Committee
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Subject:	Amended proposal for a Council Decision on the system of own resources of the European Union - *Political agreement*

I. INTRODUCTION

1. On 9 November 2011, the Commission submitted the above-mentioned proposal to the Council. The proposed Council Decision 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 Decision lays down the main provisions relating to the Union's own resources system and establishes the different categories of revenue pursuant to Article 311 of the Treaty on the Functioning of the European Union (TFEU). It proposes in particular the introduction of new own resources based on value added tax (VAT) and on a financial transaction tax (FTT), while the existing VAT-based own resource would no longer exist. The Decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

3. The European Court of Auditors adopted an opinion on the Commission's proposal on 20 March 2012[1]. The European Economic and Social Committee adopted an opinion on the proposal on 29 March 2012[2]. The European Parliament has not yet issued an opinion, 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 Regulation laying down implementing measures for the system of own resources of the European Union[3] 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. 16847/11.
[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 MFF[1]. 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 Decision, 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 relate to:

   – setting the costs retained by Member States for the collection of traditional own resources to 20 % of the amounts collected by them, as foreseen in the European Council conclusions of 7/8 February 2013;

   – including the correction mechanisms in favour of the United Kingdom, Germany, the Netherlands, Sweden, Denmark and Austria foreseen in the European Council conclusions of 7/8 February 2013;

   – including the provisions on the reference GNI and significant changes thereto in the Council Decision (rather than in the Council Regulation laying down implementing measures, as proposed by the Commission);

   – applying the new Regulation (EU) No 549/2013 on the system of national and regional accounts in the European Union ("ESA 2010") for defining the statistical base for the GNI-based own resource.

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 Decision, 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.

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

III. <u>OUTSTANDING ISSUE</u>

Recital 3 - Reference to the 1984 Fontainebleau European Council

9. In its proposal for a Council Decision, the Commission proposed to introduce a recital (recital 10) referring to the conclusion of the 1984 Fontainebleau European Council that "expenditure policy is ultimately the essential means of resolving the question of budgetary imbalances", and that "any Member State sustaining a budgetary burden which is excessive in relation to its relative prosperity may benefit from a correction at the appropriate time".

10. Many Member States did not agree with the text proposed by the Commission as, from their point of view, it went beyond the wording of the corresponding recital in the current Own Resources Decision[1]. The Presidency therefore suggests to include - in recital 3 of the proposed text set out in the Annex - a reference to the 1984 Fontainebleau European Council taking up the same wording already used in the current Own Resources Decision.

11. Several Member States, nevertheless, insist on a deletion of this recital. Other Member States, on the contrary, indicated that the reference to the 1984 Fontainebleau European Council is very important for them as it is the basis for the different corrections included in the system of own resources.

IV. <u>CONCLUSION</u>

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

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[1] Recital 1 in the Council Decision of 7 June 2007 on the system of the European Communities' own resources (2007/436/EC, Euratom) (OJ L 163, 23.6.2007, p. 17).

ANNEX

DRAFT COUNCIL DECISION

on the system of own resources of the European Union

(//EU, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the third paragraph of Article 311 thereof, and the Treaty establishing the European Atomic Energy Community, and in particular Article 106a 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 opinion of the European Parliament[1],

Having regard to the opinion of the European Court of Auditors[2],

Having regard to the opinion of the European Economic and Social Committee[3],

Acting in accordance with a special legislative procedure,

Whereas:

(1) The own resources system of the Union must ensure adequate resources for the orderly development of the policies of the Union, subject to the need for strict budgetary discipline. The development of the own resources system can and should also contribute to wider budgetary consolidation efforts undertaken in Member States and participate, to the greatest extent possible, in the development of the policies of the Union.

[1] Opinion delivered on XX.XX.XXXX.
[2] OJ C 112, 18.4.2012, p.1.
[3] OJ C 181, 21.6.2012, p. 45.

(2) The own resources Decision can only enter into force once it has been approved by all Member States in accordance with their respective constitutional requirements, thus fully respecting national sovereignty.

(3) The European Council of 7 and 8 February 2013 concluded, inter alia, that the own resources arrangements should be guided by the overall objectives of simplicity, transparency and equity.

Those arrangements should therefore ensure, in line with the relevant conclusions of the 1984 Fontainebleau European Council, that no Member State sustains a budgetary burden which is excessive in relation to its relative prosperity. It is therefore appropriate to introduce provisions covering specific Member States.

(4) The European Council of 7 and 8 February 2013 concluded that Germany, the Netherlands and Sweden shall benefit from reduced call rates for the own resource based on value added tax (VAT) for the period 2014-2020 only. It also concluded that Denmark, the Netherlands and Sweden will benefit from gross reductions in their annual contributions based on gross national income (GNI) for the period 2014-2020 only and that Austria will benefit from gross reductions in its annual GNI-based contributions for the period 2014-2016 only. The European Council of 7 and 8 February 2013 concluded that the existing correction mechanism in favour of the United Kingdom shall continue to apply.

(5) The European Council of 7 and 8 February 2013 concluded that the system for collection of traditional own resources will remain unchanged. However, from 1 January 2014, Member States shall retain, by way of collection costs, 20 % of the amounts collected by them.

(6) In order to ensure strict budgetary discipline, and taking into account the Commission Communication of 16 April 2010 on the adaptation of the ceiling of own resources and of the ceiling for appropriations for commitments following the decision to apply FISIM for own resources purposes[1], the ceiling of own resources should be equal to 1.23 % of the sum of the Member States' GNIs at market prices for appropriations for payments and the ceiling of 1.29 % of the sum of the Member States' GNIs should be set for appropriations for commitments. Those ceilings are based on ESA 95 including financial intermediation services indirectly measured (FISIM) as the data based on the revised European System of Accounts set up by Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union[2] (hereinafter "ESA 2010") is not available at the time of the adoption of this Decision. In order to maintain unchanged the amount of financial resources put at the disposal of the Union, it is appropriate to adapt these ceilings expressed in percentages of GNI. Those ceilings should be adapted as soon as all Member States have transmitted their data on the basis of ESA 2010. Should there be any amendments to ESA 2010 which entail a significant change in the level of GNI, the ceilings for own resources and for commitment appropriations should be adapted again.

(7) The European Council of 7 and 8 February 2013 called upon the Council to continue working on the proposal of the Commission for a new own resource based on VAT to make it as simple and transparent as possible, to strengthen the link with EU VAT policy and the actual VAT receipts, and to ensure equal treatment of taxpayers in all Member States. The European Council concluded that the new VAT-based own resource could replace the existing own resource based on VAT. The European Council also noted that on 22 January 2013 the Council adopted the Council Decision authorising enhanced cooperation in the area of financial transaction tax. It invited the participating Member States to examine if it could become the base for a new own resource for the EU budget. It concluded that this would not impact non-participating Member States and would not impact the calculation of the United Kingdom correction.

[1] COM(2010)162 final.
[2] OJ L 174, 26.6.2013, p.1.

(8) The European Council of 7 and 8 February 2013 concluded that a Council regulation laying down implementing measures for the Union's own resources system will be established, as set out under the fourth paragraph of Article 311 of the Treaty. Accordingly, provisions of a general nature, applicable to all types of own resources and for which appropriate parliamentary oversight, as set out in the Treaties, is required, should be included in that regulation. This means in particular the procedure for calculating and budgeting the annual budgetary balance and aspects of control and supervision of revenues. That regulation should also include, where relevant, the uniform rates for own resources established in this Decision.

(9) For reasons of coherence, continuity and legal certainty, provisions must be laid down to cover the transition from the system introduced by Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources[1] to that arising from this Decision.

(10) Decision 2007/436/EC, Euratom should be repealed.

(11) For the purposes of this Decision, all monetary amounts should be expressed in euros.

(12) In order to ensure transition to the revised system of own resources and to coincide with the financial year this Decision should apply from 1 January 2014,

HAS ADOPTED THIS DECISION:

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[1] OJ L 163, 23.6.2007, p. 17.

Article 1

Subject matter

This Decision lays down rules on the allocation of own resources of the Union in order to ensure, pursuant to Article 311 of the Treaty, the financing of the Union's annual budget.

Article 2

Categories of own resources and specific methods for their calculation

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

   (a) traditional own resources consisting of levies, premiums, additional or compensatory amounts, additional amounts or factors, Common Customs Tariff duties and other duties established or to be established by the institutions of the Union in respect of trade with non-member countries, customs duties on products under the expired Treaty establishing the European Coal and Steel Community, as well as contributions and other duties provided for within the framework of the common organisation of the markets in sugar;

   (b) without prejudice to the second subparagraph of paragraph 4, the application of a uniform rate valid for all Member States to the harmonised VAT assessment bases determined according to Union rules. The assessment base to be taken into account for this purpose shall not exceed 50 % of Gross National Income (GNI) for each Member State, as defined in paragraph 7;

   (c) without prejudice to the second subparagraph of paragraph 5, the application of a uniform rate, to be determined pursuant to the budgetary procedure in the light of the total of all other revenue, to the sum of GNI of all the Member States.

2. Revenue deriving from any new charges introduced within the framework of a common policy, in accordance with the Treaty, provided that the procedure laid down in Article 311 of the Treaty has been followed, shall also constitute own resources entered in the budget of the Union.

3. Member States shall retain, by way of collection costs, 20 % of the amounts referred to in point (a) of paragraph 1.

4. The uniform rate referred to in paragraph 1(b) shall be fixed at 0.30 %.

For the period 2014-2020 only, the rate of call of the VAT-based own resource for Germany, the Netherlands and Sweden shall be fixed at 0.15 %.

5. The uniform rate referred to in paragraph 1(c) shall apply to the GNI of each Member State.

For the period 2014-2020 only, Denmark, the Netherlands and Sweden shall benefit from gross reductions in their annual GNI-based contribution of EUR 130 million, EUR 695 million and EUR 185 million respectively. Austria shall benefit from a gross reduction in its annual GNI-based contribution of EUR 30 million in 2014, EUR 20 million in 2015 and EUR 10 million in 2016. All these amounts shall be measured in 2011 prices and adjusted to current prices by applying the most recent GDP deflator for the EU expressed in euro, as provided by the Commission, which is available when the draft budget is drawn up. These gross reductions shall be granted after the calculation of the correction in favour of the United Kingdom and its financing referred to in Articles 4 and 5 of this Decision and shall have no impact thereupon. These gross reductions shall be financed by all Member States.

6. If, at the beginning of the financial year, the budget has not been adopted, the existing VAT and GNI rates of call shall remain applicable until the entry into force of the new rates.

7. GNI referred to in paragraph 1(c) shall mean an annual GNI at market price, as provided by the Commission in application of Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union[1] (hereinafter "ESA 2010").

Should amendments to ESA 2010 result in significant changes in the GNI referred to in paragraph 1(c), the Council, acting unanimously on a proposal of the Commission and after consulting the European Parliament, shall decide whether these amendments shall apply for the purposes of this Decision.

Article 3

Own resources ceiling

1. The total amount of own resources allocated to the Union to cover annual appropriations for payments shall not exceed 1.23 % of the sum of all the Member States' GNIs.

2. The total annual amount of appropriations for commitments entered in the Union's budget shall not exceed 1.29 % of the sum of all the Member States' GNIs.

An orderly ratio between appropriations for commitments and appropriations for payments shall be maintained to guarantee their compatibility and to enable the ceiling pursuant to paragraph 1 to be respected in subsequent years.

3. For the purposes of this Decision, as soon as all Member States have transmitted their data on the basis of ESA 2010, the Commission shall recalculate the ceilings set out in paragraphs 1 and 2 on the basis of the following formula:

$$1.23\%\ (1.29\%) \times \frac{\text{GNIt–2 + GNIt–1 + GNIt ESA 95}}{\text{GNIt–2 + GNIt–1 + GNIt ESA 2010}}$$

1 OJ L 174, 26.6.2013, p. 1.

In that formula, "t" is the latest full year for which the data for the calculation of GNI are available.

4. Where amendments to ESA 2010 result in significant changes in the level of GNI, the Commission shall recalculate the ceilings set out in paragraphs 1 and 2, as recalculated in accordance with paragraph 3, on the basis of the following formula:

$$x\ \%\ (y\ \%) \times \frac{GNIt{-}2 + GNIt{-}1 + GNIt\ \text{ESA}\ \textit{current}}{GNIt{-}2 + GNIt{-}1 + GNIt\ \text{ESA}\ \textit{amended}}$$

In that formula, "t" is the latest full year for which the data for the calculation of GNI are available.

In that formula, "x" and "y" respectively are the ceilings as recalculated according to paragraph 3.

Article 4

Correction mechanism in favour of the United Kingdom

The United Kingdom shall be granted a correction in respect of budgetary imbalances.

This correction shall be established by:

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

- the percentage share of the United Kingdom in the sum of uncapped VAT assessment bases, and

- the percentage share of the United Kingdom in total allocated expenditure;

(b) multiplying the difference thus obtained by total allocated expenditure;

(c) multiplying the result under (b) by 0.66;

(d) subtracting from the result under (c) the effects arising for the United Kingdom from the transition to capped VAT and the payments referred to in Article 2(1)(c), namely the difference between:

- what the United Kingdom would have had to pay for the amounts financed by the resources referred to in Article 2(1)(b) and (c), if the uniform rate had been applied to non-capped VAT bases, and

- the payments of the United Kingdom pursuant to Article 2(1)(b) and (c);

(e) subtracting from the result under (d) the net gains of the United Kingdom resulting from the increase in the percentage of resources referred to in Article 2(1)(a) retained by Member States to cover collection and related costs;

(f) adjusting the calculation, by reducing total allocated expenditure by total allocated expenditure in Member States that have acceded to the EU after 30 April 2004, except for agricultural direct payments and market-related expenditure as well as that part of rural development expenditure originating from the EAGGF, Guarantee Section.

Article 5

Financing the correction mechanism in favour of the United Kingdom

1. The cost of the correction set out in Article 4 shall be borne by the other Member States in accordance with the following arrangements:

   (a) the distribution of the cost shall first be calculated by reference to each Member State's share of the payments referred to in Article 2(1)(c), the United Kingdom being excluded and without taking account of the gross reductions in the GNI-based contributions of Austria, Denmark, the Netherlands and Sweden referred to in Article 2(5);

(b) it shall then be adjusted in such a way as to restrict the financing share of Austria, Germany, the Netherlands and Sweden to one fourth of their normal share resulting from this calculation.

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

3. The Commission shall perform the calculations required for the application of Article 2(5), Article 4 and this article.

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

Article 6

Universality principle

The revenue referred to in Article 2 shall be used without distinction to finance all expenditure entered in the Union's annual budget.

Article 7

Surplus carry-over

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

Article 8

Collecting own resources and making them available to the Commission

1. The Union's own resources referred to in Article 2(1)(a) shall be collected by the Member States in accordance with the national provisions imposed by law, regulation or administrative action, which shall, where appropriate, be adapted to meet the requirements of Union rules.

   The Commission shall examine the relevant national provisions communicated to it by Member States, transmit to Member States the adjustments it deems necessary in order to ensure that they comply with Union rules and report, if necessary, to the budgetary authority.

2. Member States shall make the resources provided for in Article 2(1)(a), (b) and (c) available to the Commission, in accordance with regulations adopted under Article 322(2) of the Treaty.

Article 9

Implementing measures

The Council shall, in accordance with the procedure set out in the fourth paragraph of Article 311 of the Treaty, lay down implementing measures as regards the following elements of the own resources system:

(a) the uniform rate of call of the own resource established under Article 2(1)(c);

(b) the procedure for calculating and budgeting the annual budgetary balance as set out in Article 7;

(c) the provisions and arrangements necessary for controlling and supervising the revenue referred to in Article 2, including any relevant reporting requirements.

Article 10

Final and transitional provisions

1. Subject to paragraph 2, Decision 2007/436/EC, Euratom is repealed. Any references to the Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources[1], to Council Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources[2], to Council Decision 88/376/EEC, Euratom of 24 June 1988 on the system of the Communities' own resources[3], to Council Decision 94/728/EC, Euratom of 31 October 1994 on the system of the Communities' own resources[4], to Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the Communities' own resources[5] or to Decision 2007/436/EC, Euratom shall be construed as references to this Decision and shall be read in accordance with the correlation table set out in the Annex to this Decision.

2. Articles 2, 4 and 5 of Decisions 94/728/EC, Euratom, 2000/597/EC, Euratom and 2007/436/EC, Euratom shall continue to apply to the calculation and adjustment of revenue accruing from the application of a rate of call to the VAT base determined in a uniform manner and limited between 50 % and 55 % of the GNP or GNI of each Member State, depending on the relevant year, and to the calculation of the correction of budgetary imbalances granted to the United Kingdom for the years until 2013.

3. Member States shall continue to retain, by way of collection costs, 10 % of the amounts referred to in Article 2(1)(a) which should have been made available by the Member States before 28 February 2001 in accordance with the applicable Union rules.

   Member States shall continue to retain, by way of collection costs, 25 % of the amounts referred to in Article 2(1)(a) which should have been made available by the Member States between 1 March 2001 and 28 February 2014 in accordance with the applicable Union rules.

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[1] OJ L 94, 28.4.1970, p. 19.
[2] OJ L 128, 14.5.1985, p. 15.
[3] OJ L 185, 15.7.1988, p. 24.
[4] OJ L 293, 12.11.1994, p. 9.
[5] OJ L 253, 7.10.2000, p. 42.

4. For the purposes of this Decision, all monetary amounts shall be expressed in euros.

Article 11

Entry into force

Member States shall be notified of this Decision by the Secretary-General of the Council.

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

This Decision shall enter into force on the first day of the month following receipt of the last of the notifications referred to in the second paragraph.

It shall apply from 1 January 2014.

Article 12

Publication

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council

The President