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2018/0135 (CNS)

Amended proposal for a

COUNCIL DECISION

**amending Decision (EU, Euratom) 2020/2053 on the system of own resources of the
European Union**

{SWD(2023) 331 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

In 2020, the European Parliament, the Council and the Commission agreed on a roadmap for the introduction of new own resources taking account NextGenerationEU¹. According to this agreement, “the expenditure from the Union budget related to the repayment of the European Union Recovery Instrument should not lead to an undue reduction in programme expenditure or investment instruments under the MFF. It is also desirable to mitigate the increases in the GNI-based own resource for the Member States”. Hence “the Institutions will work towards introducing sufficient new own resources with a view to covering an amount corresponding to the expected expenditure related to the repayment. In accordance with the principle of universality, this would not imply an earmarking or assignment of any particular own resource to cover a specific type of expenditure”.

In December 2021, the Commission proposed three new sources of revenues for the EU budget² with contributions from the Emissions Trading System (ETS), from the EU Carbon Border Adjustment Mechanism (CBAM) and from a share of the residual profits of the largest multinational enterprises that would be reallocated to the EU under the OECD/G20 Pillar 1 agreement. This basket of own resources was consistent with the proposed sectorial legislation on both the revised ETS Directive and on the Carbon Border Adjustment Mechanism proposed earlier in the same year.

In addition, the Commission committed to come forward with further proposals for new own resources by the end of 2023 that includes a contribution linked to the corporate sector. The package aims at generating sufficient revenues to support the repayment of NextGenerationEU borrowing amidst uncertainties related to the development of funding costs, in line with the Inter Institutional Agreement. The Commission therefore proposes a new own resource based on statistics on company profits.

2. CONTENT OF THE AMENDING PROPOSAL

2.1. Emission Trading System-based own resource

The agreement on sectorial legislation requires some adjustment to the own resource proposal. As the Social Climate Fund will initially be financed with external assigned revenues as of 2026, the Commission proposes to postpone the introduction of the own resource from the new emissions trading system covering buildings, road transport and additional sectors from 2027 to 2028³. Moreover, Member States applying a national carbon tax may opt to exempt relevant emissions from the new ETS. The Member States concerned will be required to

¹ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources (OJ L 433I , 22.12.2020, p. 28–46). For the own resources see also Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union, OJ L 424, 15.12.2020, p.1.

² Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union (OJ L 424, 15.12.2020, p.1).

³ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275 25.10.2003, p. 32).

cancel the relevant allowances. The Commission therefore proposes to include this option in the valuation mechanism allowing the valuation of allowances which are not auctioned.

In contrast to expectations prevailing at the time of the Fit-For-55 proposals, the market value of ETS allowances has increased significantly in the months following those proposals. In 2022, allowance auctions cleared on average close to EUR 80 by far exceeding the price level of EUR 55 used by the Commission in its Impact Assessment. The Commission proposes to apply a higher call rate to the ETS-revenues generated. In all cases, 30% of the revenues generated by EU emissions trading will accrue to the EU Budget. With such a call rate, the revenues for both Member States and the EU budget will still be higher as compared to the expectations of 2021 when the proposal for amending the ETS was tabled.

2.2. Own resource based on the Carbon Border Adjustment Mechanism

The proposal of December 2021 remains largely unchanged, with the exception of limited adaptations reflecting the recent entry into force of the CBAM Regulation.

2.3. Statistical Own Resource based on company profits

The implementation of the OECD/G20 Pillar 1 agreement remains an essential priority in the area of corporate taxation for the EU and its Member States. Substantive progress has been made following the October 2021 agreement and the Commission will continue to promote efforts to help finalise the discussions. However, the multilateral convention has not yet been signed and ratified, which means that it cannot yet enter into force.

As announced in the Commission Work Programme⁴, the Commission intends to propose its Business in Europe: Framework for Income Taxation (BEFIT) in the third quarter of 2023 which will improve the functioning of the Single Market. Until the possible establishment of an own resource based on a underlying tax proposal, the Commission is proposing a statistical own resource based on national accounts statistics, prepared under the European system of accounts (ESA). This own resource will be defined by multiplying a call rate of 0.5% to the sum of gross operating surplus recorded for the sectors of non-financial and financial corporations in national accounts. ESA is already a harmonised framework of statistics and the statistical own resource on company profits will help to further improve the comparability of data.

3. LEGAL BASIS

3.1. Own Resources Decision

Pursuant to Article 311(3) of the Treaty on the Functioning of the European Union (TFEU), the Council, after consulting the European Parliament ‘may establish new categories of own resources or abolish an existing category’. This provision explicitly allows for amending the Own Resources Decision to add new own resources as agreed in the Interinstitutional Agreement. In accordance with the special legislative procedure set out in Article 311(3) TFEU, the Council adopts the revised decision by unanimity after consulting the European Parliament. The decision will enter into force once it is approved by the Member States in accordance with their constitutional requirements.

3.2. Implementing legislation

In parallel, the Council needs to amend the implementing measures related to the own resources system adjusting the rules to reflect the recent agreement on the Carbon Border

⁴ Commission Work Programme 2023. A Union standing firm and united. COM(2022)548.

Adjustment Mechanism and to add provisions covering the statistical own resource. Additionally, the Council needs to amend the making available provisions. The Commission submits two separate proposals to that effect.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 311, third paragraph thereof,

Having regard to 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,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) NextGenerationEU, established by Council Regulation (EU) 2020/2094⁵, will deploy EUR 750 billion in 2018 prices, raised on financial markets as a temporary recovery instrument to ensure a sustainable and resilient recovery throughout the Union and facilitate the implementation of economic support in the exceptional situation caused by the COVID-19 pandemic, and promote the green and digital transition.
- (2) The repayment of the principal of such funds to be used for expenditure under the European Union Recovery Instrument and the related interest due will have to be financed by the general budget of the Union, including by sufficient proceeds from new own resources introduced after 2021. In the framework of the Interinstitutional Agreement of 16 December 2020⁶, the European Parliament, the Council and the Commission recognised the importance of the context of the European Union Recovery Instrument and acknowledged that ‘expenditure from the Union budget related to the repayment of the European Union Recovery Instrument should not lead to an undue reduction in programme expenditure or investment instruments under the MFF’. The Interinstitutional Agreement also stated that ‘it is also desirable to mitigate the increases in the GNI-based own resource for the Member States’.

⁵ Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ L 433I, 22.12.2020, p. 23).

⁶ Interinstitutional Agreement between the European Parliament, the Council and the European Commission of 16 December 2020 on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap for the introduction of new own resources (OJ L 433I, 22.12.2020, p. 28).

- (3) The EU Emissions Trading System, established by Directive 2003/87/EC of the European Parliament and of the Council⁷, is a central part of the climate policy of the Union. Considering the close link of emissions trading to the climate policy objectives of the Union, it is appropriate to allocate a share of the revenues concerned to the Union budget. **30% of the auction revenues should be transferred to the Union budget.**
- (4) The emissions trading own resources includes a share of revenues generated from the auctioning of allowances in all sectors falling under the scope of Directive 2003/87/EC. Under Directive 2003/87/EC and Regulation (EU) 2018/842 of the European Parliament and of the Council⁸, Member States may decide not to auction some of the total quantity of allowances specified under Directive 2003/87/EC or to have it transferred and auctioned for the Modernisation Fund established by that Directive. Those allowances should also be used to calculate the amount of own resources based on emission trading. It is appropriate to exclude allowances for **RePower EU**, the initial endowment of the Modernisation Fund as well as allowances for the Innovation Fund. **The 50 million of allowances that will be auctioned in 2025 for the purposes of the Social Climate Fund are not covered by the scope of the emission trading own resource.**
- (5) To avoid an excessively regressive impact on contributions from the emissions trading, a maximum contribution should be established for eligible Member States. For the period from 2023 to 2027, Member States are eligible if the gross national income per capita, measured in purchasing power standard and calculated on the basis of Union figures for 2020 is below 90% of the EU average. For the period from 2028 to 2030, the gross national income per capita in 2025 should be used. The maximum contribution should be established by comparing Member States' shares in the total emission trading based own resource with the shares of those Member States in the Union gross national income. A minimum contribution should be established for all Member States if their share of the total amount of ETS-based own resources is lower than 75% of their share in the Union gross national income.
- (6) Regulation (EU) 2023/956 of the European Parliament and of the Council⁹ establishes a carbon border adjustment mechanism to complement the EU Emissions Trading System and to ensure the effectiveness of the climate policy of the Union. Considering the close link of the carbon border adjustment mechanism to the Union's climate policy, a share of the revenues from the sale of certificates should be transferred to the Union budget as an own resource.
- (7) In line with the Interinstitutional Agreement, a financial contribution linked to the corporate sector should be introduced. Until the possible establishment of an own resource linked to the Business in Europe: Framework for Income Taxation (BEFIT) initiative, an own resource proportional to a statistical indicator that**

⁷ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

⁸ Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156, 19.06.2018, p. 26)

⁹ Regulation (EU) 2023/956/EC of the European Parliament and of the Council establishing a carbon border adjustment mechanism (OJ L 130, 16.05.2023, p. 52).

may be used as an approximation of company profits should be provisionally established. This own resource should be calculated based on national accounts statistics prepared under the European System of Accounts 2010 (ESA 2010) in application of Regulation (EU) No 549/2013¹⁰ of the European Parliament and of the Council. This statistical system is applied in a harmonised manner across Member States. This own resource should therefore be calculated by multiplying a call rate to the sum of gross operating surplus provided for the sectors of non-financial and financial corporations (ESA sectors S12 and S11), as defined in Regulation (EU) No 549/2013¹¹.

- (87) In October 2021, the Organisation for Economic Co-operation and Development and the G20 Inclusive Framework on Base Erosion and Profit Shifting reached an agreement on the allocation to participating market jurisdictions of 25% of residual profits of large multinational enterprises above the profitability threshold of 10% ('OECD/G20 IF Pillar 1 Agreement'). The own resource should consist in applying a uniform call rate to the share of residual profits of the multinational enterprises, re-allocated to Member States [pursuant to the Directive on implementation of the global agreement on re-allocation of taxing rights.]
- (98) The provisions concerning the contribution from the auctioning of allowances under the current Emissions Trading System **and from the statistics on company profits** should apply **from 1 January 2024** ~~as of 1 January 2023. Once Directive 2003/87/EC has been amended, t.~~ The provisions concerning the contribution from the auctioning of allowances under the ~~new revised~~ Emissions Trading System **covering buildings road transport and additional sectors** should apply from **1 January 2028** ~~the first day following the last day of the period for transposing that amendment.~~ The provisions concerning the contribution from the carbon border adjustment mechanism should apply from **1 January 2026** ~~the date of application of the Regulation.~~ [The provisions on the OECD/G20 IF Pillar 1 Agreement shall enter into force once the Directive on implementation of the global agreement on re-allocation of taxing rights applies and the Multilateral Convention entered into effect.]

HAS ADOPTED THIS DECISION:

Article 1

Amendments to Decision (EU, Euratom) 2020/2053

Decision (EU, Euratom) 2020/2053 is amended as follows:

- (1) Article 2 is amended as follows:
- (a) in paragraph 1, the following point (e) is added:
- “(e) the application of a uniform rate of **30%** to:

¹⁰ 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 (OJ L 174, 26.6.2013, p. 1)

¹¹ Gross operating surplus (ESA balancing item B.2g) equals the sector's 'Gross value added' (ESA balancing item B.1g) plus 'Other subsidies on production' (ESA item D.39) minus 'Compensation of employees' (ESA item D.1) and 'Other taxes on production' (ESA item D.29).

- (1) the revenues generated from the auctioning of allowances by the Member States pursuant to Articles 3d, 10 and 30d of Directive 2003/87/EC of the European Parliament and of the Council¹;
- (2) the amount calculated by multiplying the annual amount of allowances in respect of which the relevant Member State applies any of the following:
 - (a) the option for transitional free allocation referred to in Article 10c of Directive 2003/87/EC;
 - (b) the possibility of limited cancellation referred to in Article 6(1) of Regulation (EU) 2018/842 of the European Parliament and of the Council²;
 - (c) the use of allowances referred to in Article 10d(4) of Directive 2003/87/EC to auctioning for the Modernisation Fund referred to in Article 10d(3) of that Directive;

with the average weighted price of allowances auctioned on the common auction platform by Member States pursuant to Articles 3d and 10 of Directive 2003/87/EC in the year in which these allowances would have been auctioned.

(3) the amount calculated by multiplying the amount of allowances cancelled in accordance with Article 30e(3) of Directive 2003/87/EC with the average weighted price of allowances auctioned on the common auction platform by Member States pursuant to Article 30d of that Directive in the year in which these allowances would have been auctioned.

(b) in paragraph 1, the following point (f) is added:

“(f) the application of a uniform call rate equal to 75% of the revenues from the sale of certificates of the carbon border adjustment mechanism established by Regulation (EU) [XXX] of the European Parliament and of the Council³.”

(c) in paragraph 1, the following point (g) is added:

“(g) the application of a uniform call rate of 15% to the share of residual profit of multinational enterprises reallocated to Member States pursuant to [the Directive on implementation of the global agreement on re-allocation of taxing rights⁴].”

(d) "in paragraph 1, the following point (h) is added:

“(h) the application of a uniform call rate equal to 0.5% to the sum of gross operating surplus (B.2g) of the sectors of non-financial corporations (S.11) and financial corporations (S.12) of each Member State, as provided by the Commission in

¹ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

² Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156, 19.6.2018, p. 26).

³ Regulation (EU) 2023/956 of the European Parliament and of the Council establishing a carbon border adjustment mechanism (OJ L 130, 16.05.2023, p. 52).

⁴ [Directive (EU) XXX giving effect to the OECD/G20 IF Pillar 1 Agreement].

accordance with the definitions of the European System of Accounts 2010 (ESA 2010) set up by Regulation (EU) 549/2013.”

(~~ed~~) the following paragraph 2a is inserted:

“2a. By way of derogation from paragraph 1, point (e), the following shall apply until the financial year 2030:

- (a) where a Member State’s share in the total amount of revenue resulting from the application of paragraph 1, point (e), is lower than 75% of its share in the Union gross national income, that Member State shall make available an amount that is equal to 75% of that gross national income share, multiplied by the total amount of revenue resulting from the application of paragraph 1, point (e).
- (b) a Member State’s share in the total amount of revenue resulting from the application of paragraph 1, point (e), shall not be higher than 150% of that Member State’s share in the Union gross national income for Member States with a gross national income per capita below 90% of the Union’s average, measured in purchasing power standard and calculated on the basis of the figures for 2020, for the period from 2023 to 2027, and on the basis of the figures for 2025, for the period from 2028 to 2030.

Gross national income as referred to in points (a) and (b) shall mean the gross national income at market prices as referred to in Article 1(1) of Regulation (EU) 2019/516 of the European Parliament and of the Council⁵.”

Article 2

Entry into force and application

The Secretary-General of the Council shall notify the Member States of this Decision.

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

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

Article 1(1), point (a), shall apply from **1 January 2024**~~1 January 2023~~ for the revenues pursuant to Article 3d and 10 of Directive 2003/87/EC, and from **1 January 2028**~~the day following the last day of the period for transposing Directive (EU) [XXX] of the European Parliament and of the Council⁶ amending Directive 2003/87/EC~~ for the revenues pursuant to Article 30d of Directive 2003/87/EC.

Article 1(1), point (b), shall apply from **1 January 2026**~~the date of application of Regulation (EU) [XXX] establishing a carbon border adjustment mechanism~~.

⁵ Regulation (EU) 2019/516 of the European Parliament and of the Council of 19 March 2019 on the harmonisation of gross national income at market prices and repealing Council Directive 89/130/EEC, Euratom and Council Regulation (EC, Euratom) No 1287/2003 (GNI Regulation) (OJ L 91, 29.3.2019, p. 19).

⁶ Directive (EU) XXX/XXXX of the European Parliament and of the Council of dd/mm/yy

Article 1(1), point (c), shall apply from the first day of the date of application of the [Directive on implementation of the global agreement on re-allocation of taxing rights] or the day of the entry into force and effect of the Multilateral Convention, whichever is the later.

Article 1(1), point (d), shall apply from 1 January 2024.

Addressees

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*