



EUROPÄISCHER
RECHNUNGSHOF

Sehr geehrte Damen und Herren!

Hiermit teilen wir Ihnen mit, dass der Europäische Rechnungshof soeben die Stellungnahme Nr. 02/2021 **zu dem Legislativvorschlag für eine Verordnung des Rates zur Änderung der Bereitstellungsverordnung** veröffentlicht hat. Diese Stellungnahme wurde unter der Leitung von Marek Opiola, Mitglied des Hofes, erstellt.

Das System zur Finanzierung des Haushalts der Europäischen Union wurde seit 1988 keiner größeren Reform unterzogen. Die jüngsten Änderungsvorschläge, die gleiche Bedingungen für alle Mitgliedstaaten garantieren sollen, sind insgesamt ein Schritt in die richtige Richtung, doch gibt es Spielraum für Verbesserungen. Zu diesem Schluss gelangt der Hof in einer Stellungnahme zu den geplanten Änderungen am EU-Verfahren zur Einnahmenerhebung.

Um die Stellungnahme in englischer Sprache und die in 23 EU-Sprachen verfügbare Pressemitteilung aufzurufen, klicken Sie bitte [hier](#); andere EU-Sprachversionen werden demnächst bereitgestellt.

Für weitere Auskünfte über die Arbeit des Hofes stehen wir Ihnen gerne zur Verfügung. Zudem finden Sie Informationen auf unserer Website eca.europa.eu. Um auf das Publikationsportal des Hofes zu gelangen, klicken Sie bitte [hier](#).

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Direktion "Dienste des Präsidenten"

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Gemäß der [Verordnung \(EU\) 2018/1725](#) – der neuen Verordnung zum Schutz natürlicher Personen bei der Verarbeitung personenbezogener Daten durch die EU-Organe, die am 11. Dezember 2018 in Kraft trat – setzen wir Sie davon in Kenntnis, dass Ihre Daten vom Europäischen Rechnungshof verarbeitet werden. Bitte klicken Sie [hier](#), um zu erfahren, wie der Europäische Rechnungshof Ihre personenbezogenen Daten behandeln wird und wie er sie schützt. Falls Sie keine Nachrichten vom Europäischen Rechnungshof mehr erhalten möchten, klicken Sie bitte [hier](#).



Pressemitteilung
Luxemburg, den 5. Oktober 2021

EU-Prüfer: Reformvorschläge zur Finanzierung des EU-Haushalts gehen nicht weit genug

Das System zur Finanzierung des Haushalts der Europäischen Union wurde seit 1988 keiner größeren Reform unterzogen. Die jüngsten Änderungsvorschläge, die gleiche Bedingungen für alle Mitgliedstaaten garantieren sollen, sind insgesamt ein Schritt in die richtige Richtung, doch gibt es Spielraum für Verbesserungen. Zu diesem Schluss gelangt der Europäische Rechnungshof in einer heute veröffentlichten Stellungnahme zu den geplanten Änderungen am EU-Verfahren zur Einnahmenerhebung.

Der Haushalt der Europäischen Union hat drei Haupteinnahmequellen: traditionelle Eigenmittel (TEM), Eigenmittel auf der Grundlage des Bruttonationaleinkommens (BNE) der Mitgliedstaaten und Eigenmittel auf der Grundlage der Mehrwertsteuer (MwSt.). 2021 wurde das System der EU-Finanzierung durch Änderungen an zwei dieser Einnahmequellen (TEM und MwSt.-Beitrag) reformiert. Außerdem wurde eine neue Eigenmittelkategorie eingeführt, eine Abgabe auf nicht recycelte Verpackungsabfälle aus Kunststoff. Der wichtigste Rechtsakt für die EU-Einnahmenerhebung ist die sogenannte Bereitstellungsverordnung, an der die Europäische Kommission mehrere Änderungen vorschlägt. Der Europäische Rechnungshof begrüßt einige dieser Änderungen, weist jedoch auch auf Schwachstellen hin.

"Einige der vorgeschlagenen Änderungen an den Einnahmeströmen der EU sind sehr sinnvoll", so Marek Opióła, das für die Stellungnahme zuständige Mitglied des Hofes. "Die Änderungen, die die Bereitstellung der Eigenmittel für die EU betreffen, werden den Mitgliedstaaten mehr Planbarkeit verschaffen und den Verwaltungsaufwand für die Europäische Kommission verringern. Andere Vorschläge sind jedoch nicht so vielversprechend. So unterscheiden sich beispielsweise die vorgeschlagenen Streitbeilegungsverfahren teilweise von den Bestimmungen anderer geltender Verordnungen, wodurch das Eigenmittelsystem komplizierter werden und die Rechtssicherheit leiden könnte."

Diese Pressemitteilung enthält die Hauptaussagen der Stellungnahme des Europäischen Rechnungshofs. Stellungnahme im Volltext unter eca.europa.eu.

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Der Hof weist auch darauf hin, dass die vorgeschlagenen Bestimmungen für die Verwaltung nicht mehr eintreibbarer Beträge das System nicht vereinfachen würden und es keinen Nachweis dafür gebe, dass sie die Einnahmenerhebung effizienter machen würden. Außerdem lägen in einigen Fällen, etwa bei den Änderungen an der Kassenmittelverwaltung, einfach nicht genügend Informationen vor, um den Nutzen der neuen Bestimmungen bewerten zu können.

Generell begrüßt der Hof die vorgeschlagenen Änderungen beim Umgang mit Zahlungsverzug durch die Mitgliedstaaten. Er kommt zu dem Schluss, dass sie voraussichtlich zu Effizienzgewinnen führen würden, auch wenn nur wenige Fälle pro Jahr von den Änderungen betroffen sein dürften. Außerdem vermerken die Prüfer, dass einige wenige Mitgliedstaaten finanzielle Vorteile erlangen könnten, sollte die Begrenzung der Verzugszinsen auf Altfälle ausgeweitet werden.

In seiner Stellungnahme macht der Hof zudem Vorschläge, wie die Änderungen an den Bestimmungen verbessert werden könnten. Seiner Ansicht nach wird im Rahmen des EU-Systems zur Beilegung von Streitigkeiten mit den Mitgliedstaaten über die Eigenmittel ein einheitliches Überprüfungsverfahren benötigt. Außerdem sollten die Gesetzgeber die Einführung einer allgemeinen Frist für die Herausnahme nicht mehr eintreibbarer Forderungen aus der Buchführung für TEM überdenken.

Schließlich bedauert der Hof, dass im Legislativvorschlag zur Änderung der Bereitstellungsverordnung keine allgemeine Zusammenführung aller geltenden Bestimmungen über die Einnahmenerhebung vorgesehen sei, was das System einfacher und transparenter machen würde.

Hintergrundinformationen

Die Stellungnahme Nr. 02/2021 des Hofes ist in englischer Sprache auf der [Website des Hofes](#) abrufbar; weitere Sprachen folgen demnächst. Der Europäische Rechnungshof hat zu den Legislativverhandlungen über das neue Finanzierungssystem der EU auch mit seiner [Stellungnahme von 2018 zum Vorschlag der Kommission über das neue Eigenmittelsystem der Europäischen Union](#) und mit seiner [Stellungnahme von 2020 zum Vorschlag zur Vereinfachung der Berechnung der MwSt.-Komponente des EU-Finanzierungssystems](#) beigetragen.

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EUROPEAN
COURT
OF AUDITORS

EN

Opinion 2/2021

(pursuant to Article 322(2) TFEU)

**concerning the Commission's
proposal for a Council Regulation
amending Regulation (EU, Euratom)
No 609/2014 in order to enhance
predictability for Member States and
to clarify procedures for dispute
resolution when making available
the traditional, VAT and GNI based
own resources (COM(2021) 327 final
of 25.6.2021, 2021/0161 (NLE))**

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THE COURT OF AUDITORS OF THE EUROPEAN UNION,

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

Having regard to the Commission's proposal for a Council Regulation amending Regulation (EU, Euratom) No 609/2014 in order to enhance predictability for Member States and to clarify procedures for dispute resolution when making available the traditional, VAT and GNI based own resources (COM(2021) 327 final of 25.6.2021, 2021/0161 (NLE));

Having regard to the Council's request for an opinion, received on 6 July 2021;

Having regard to Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom¹;

Having regard to Council Regulation (EU, Euratom) No 609/2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements², as last amended by Regulation (EU, Euratom) 2016/804 of 17 May 2016³;

Having regard to Council Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from VAT⁴, as last amended by Council Regulation (EU, Euratom) 2021/769 of 30 April 2021⁵;

Having regard to Council Regulation (EU, Euratom) 2021/768 of 30 April 2021 laying down implementing measures for the system of own resources of the European Union and repealing Regulation (EU, Euratom) No 608/2014⁶;

Having regard to Council Regulation (EU, Euratom) 2021/770 of 30 April 2021 on the calculation of the own resource based on plastic packaging waste that is not recycled, on the methods and procedure for making available that own resource, on measures

¹ OJ L 424, 15.12.2020, p. 1.

² OJ L 168, 7.6.2014, p. 39.

³ OJ L 132, 21.5.2016, p. 85.

⁴ OJ L 155, 7.6.1989, p. 9.

⁵ OJ L 165, 11.5.2021, p. 9.

⁶ OJ L 165, 11.5.2021, p. 1.

to meet cash requirements, and on certain aspects of the own resource based on GNI⁷; and

Having regard to the European Court of Auditors' previous opinions⁸ on the EU's system of own resources, in particular Opinions Nos 7/2015 and 5/2018.

HAS ADOPTED THE FOLLOWING OPINION:

⁷ OJ L 165, 11.5.2021, p. 15.

⁸ Opinions No 11/2020 (OJ C 26, 22.1.2021, p. 1), No 5/2018 (OJ C 431, 29.11.2018, p. 1), No 7/2015 (OJ C 5, 8.1.2016, p. 1), No 7/2014 (OJ C 459, 19.12.2014, p. 1), No 2/2012 (OJ C 112, 18.4.2012, p. 1), No 2/2008 (OJ C 192, 29.7.2008, p. 1), No 2/2006 (OJ C 203, 25.8.2006, p. 50), No 4/2005 (OJ C 167, 7.7.2005, p. 1) and No 7/2003 (OJ C 318, 30.12.2003, p. 1).

Introduction

01 The system for financing the European Union (EU) budget has not been significantly reformed since 1988. In the last 33 years, the main categories of revenue have been Traditional Own Resources (TOR), and the Value Added Tax (VAT) and Gross National Income (GNI)-based own resources.

02 In the context of the Multiannual Financial Framework (MFF) 2021-2027, a new Own Resources Decision (ORD)⁹ entered into force on 1 June 2021 and has applied retroactively since 1 January 2021 once the ratification process in the Member States had been completed. The reformed system of EU financing kept the three existing sources of revenue, but with some changes for two of them (TOR and the VAT-based own resource). It also introduced a new own resource composed of national contributions based on the weight of non-recycled plastic packaging waste.

03 The current legal framework implementing the ORD includes two regulations on making own resources available: one for TOR, VAT- and GNI-based own resources (the Making Available Regulation, or 'MAR')¹⁰, and another for the new own resource based on non-recycled plastic packaging waste¹¹. There is also a separate regulation covering some of the arrangements for collecting the VAT-based own resource¹².

04 The MAR is a key pillar of the system of EU financing, and establishes the procedures for making the above three own resources available to the EU budget. The MAR aims to guarantee the timely collection of own resources, while ensuring a level playing field between Member States. The current version of the MAR entered into force on 1 October 2016, and has applied retroactively since 1 January 2014.

05 On 25 June 2021, the Commission presented its proposal¹³ for a Council Regulation amending the MAR with the aim of enhancing predictability for Member States and clarifying procedures for dispute resolution when making own resources

⁹ Council Decision (EU, Euratom) 2020/2053 (see footnote 1).

¹⁰ Council Regulation (EU, Euratom) No 609/2014 (see footnotes 2 and 3).

¹¹ Council Regulation (EU, Euratom) 2021/770 (see footnote 7).

¹² Council Regulation (EEC, Euratom) No 1553/89 (see footnote 5).

¹³ COM(2021) 327 final of 25.6.2021.

available ('the Proposal'). It responds to the Council's conclusions of July 2020¹⁴, which invited the Commission to "assess presenting a proposal for the revision of the above regulation to tackle some of the challenges with respect to making available own resources". On 6 July 2021, the Council asked us to give an opinion on the Proposal.

06 This Opinion assesses whether the proposed amended provisions of the MAR are in line with the objective of improving the arrangements for making own resources available, as set out by the Commission in its Proposal. Our assessment takes account of the Proposal's potential impact on the EU budget, general principles of internal control, and the results of our previous annual reports and opinions in the area of own resources. Throughout our opinion, we include suggestions for consideration by the Commission and legislators.

¹⁴ EUCO 10/20, special meeting of the European Council (17, 18, 19, 20 and 21 July 2020), conclusions, point 142.

Comments

07 Our comments on the Proposal are grouped in the following areas, covering the changes proposed by the Commission that we considered most significant (with reference to the relevant provisions):

- (a) Treasury management (Article 9(1));
- (b) Rules for making own resources available (Articles 10a(2) and 10b(5));
- (c) Interest regime for late payments (Article 12(3) and 12(5));
- (d) Management of TOR irrecoverable amounts (Article 13(2));
- (e) Procedures for dispute resolution (Articles 10b(7), 13(5) and 13b); and
- (f) Consistency of the rules for managing the different own resources.

Treasury management

08 The Proposal provides for an option of the Commission opening a **centralised own resources account** with a financial institution of its choice to collect payments from Member States¹⁵. This would add to or replace the current dual system that includes the management of accounts opened in the name of the Commission with Member State treasuries or national central banks, and of accounts opened in the name of the Commission with commercial banks. The system is associated with a large number of bank transfers of different volumes from the Member States to the Commission at the latter's request. The introduction of the proposed Commission centralised treasury would be implemented in the future on an opt-in basis at the Member States' request.

Our assessment of the proposed changes in treasury management

09 A centralised own resources account would simplify the treasury system, and allow a pooled approach to cash management. It could potentially reduce the number and frequency of bank transfers from Member States to the Commission. Although this new model might reduce the administrative burden entailed by using several bank accounts, we note that this proposal is not supported by a detailed cost-benefit

¹⁵ Article 9(1) of the proposed amendment to the MAR.

analysis associated with centralised treasury management for both the Commission and Member States. Furthermore, the operational details about how this system of centralised treasury management would work in practice have not yet been drawn up. As a result, we cannot fully assess whether this proposed amendment to the MAR has the potential to improve the way own resources are made available.

Rules for making own resources available

10 The Proposal provides for the possibility of Member States making **advance payments of VAT- and GNI-based own resources**, in particular when the EU budget is amended at year-end¹⁶. This is an exceptional procedure based on an existing administrative practice, and is subject to authorisation by the Commission following a duly substantiated request from the Member States with at least three weeks' prior notice. The Member States mainly request these advance payments because of their national budget procedures. Some Member States prefer contributions to be made in the same year as the EU budget for which the contribution is requested, even if the call for funds envisages the own resources being made available in January of the following year.

11 The Commission also proposes **postponing the deadline for making available the adjustments to the VAT- and GNI-based own resources of previous financial years** (the 'balances') from June of the year in which the Commission informed Member States of the amounts in question (year N+1) to March of the following year (N+2)¹⁷. These balances entail redistributing the overall amount between Member States, depending on the respective shares in the GNI-based own resource.

Our assessment of the proposed rules for making own resources available

12 We welcome the proposed provisions on advance payments because they formalise existing practices and provide greater legal certainty for Member States. They are also neutral to the EU budget, since any additional costs linked to advance payments such as negative interest will be borne by Member States.

13 We support postponing the deadline to make balances to the VAT- and GNI-based own resources available, as this ensures that the payments to be made by Member States are more predictable, and may facilitate national budgetary

¹⁶ Article 10a(2) of the proposed amendment to the MAR.

¹⁷ Article 10b(5) of the proposed amendment to the MAR.

procedures. We have previously supported the proposed procedure to allow for more time between the notification date and the date when Member States have to make amounts available¹⁸. While the Proposal is neutral to the EU budget, it will further reduce budgetary and liquidity uncertainty for Member States, and thus improve the system of own resources.

Interest regime for late payments

14 The Proposal **increases the threshold for waiving interest on late payments of own resources** from €500 to €1 000¹⁹ in order to make recovery procedures more cost-efficient. It also extends the **capping of interest on late payments of own resources – currently limited to 16 percentage points – to old cases** where capping does not apply under the current rules²⁰. In the past, some Member States accumulated very large amounts of interest due on delayed payments based on the rules stipulated in the MAR (an interest rate of 0.25 percentage points accrued for each month of delay).

15 In order to prevent disproportionate amounts of interest from accumulating, the previous amendment to the MAR²¹ had already introduced a cap on the increase in the interest rate to 16 percentage points for exceeding the deadline for making own resources available; this applied to late payments of own resources due from 1 October 2016. We previously welcomed the proposal to cap the maximum increase in the interest rate²².

16 The Proposal extends capping the increase in interest to cases to which the current cap does not apply, i.e. those involving the late payment of own resources due before 1 October 2016. The Commission estimates that this proposal would lead to a potential decrease of €27.5 million per year in interest revenue collected for the EU budget. Between 2015 and 2019, more than 70 % of interest on late payments was owed by only five Member States.

¹⁸ Paragraph 11 of our Opinion No 7/2015.

¹⁹ Article 12(3) of the proposed amendment to the MAR.

²⁰ Article 12(5) of the proposed amendment to the MAR.

²¹ Council Regulation (EU, Euratom) 2016/804 (see footnote ³).

²² Paragraph 17 of our Opinion No 7/2015.

Our assessment of the proposed interest regime for late payments

17 We welcome doubling the threshold for waiving interest, which is likely to make the recovery process more cost-efficient. We found that such an increase would benefit only seven out of 94 cases per year²³, and would therefore have a limited impact. However, we acknowledge that the interest regime for late payments should also provide strong incentives for Member States to pay on time.

18 While we agree that the proposed extension on capping interest on late payments simplifies the current system as a whole, we point out that it may also entail benefits for Member States that have not fulfilled their obligation to make payments on time.

Management of TOR irrecoverable amounts

19 Member States collect customs duties, register them in specific accounts, and make them available to the EU on a monthly basis. Duties established but not yet paid by an importer are kept in Member States' separate accounts. There could be several reasons for this, e.g. an appeal submitted by an importer against the decision establishing customs debts, lack of payment, or the importer's insolvency.

20 The amounts registered in these separate accounts should be declared irrecoverable when the national authorities consider they cannot recover them, and should be deemed irrecoverable no more than five years after the date the amount was established. For all cases with irrecoverable amounts exceeding €100 000, the Commission should assess whether the reasons for non-recovery are imputable to the Member States, thereby requiring them to make such amounts available to the EU budget. In the event of a judicial appeal or partial payment, the five-year period commences either from the date the final court decision is issued or the date the last payment is made²⁴.

21 In our recent annual reports²⁵, we reported persistent weaknesses in the management of certain Member States' separate accounts, e.g. writing off or late

²³ Average figure based on the information provided by the Commission for cases of late interest payments for 2018, 2019 and 2020.

²⁴ Council Regulation (EU, Euratom) No 609/2014, Article 13(2).

²⁵ See our annual reports since 2012, e.g. paragraph 3.9 of our 2019 report, paragraph 4.10 of our 2018 report, paragraph 4.15 of our 2017 report, and paragraph 4.15 of our 2016 report.

recording of debts in the accounting system, or delays in enforcing the recovery of the debts. In the 2020 EU consolidated accounts, receivables from the separate accounts totalled €1.4 billion and were subject to an impairment of €892 million, including the amounts of irrecoverable duties (in 2019, the same aggregates were €1.6 billion and €931 million, respectively)²⁶.

22 In order to improve management and avoid the accumulation of interest on late payments in old cases (see paragraphs **14** to **18**), the Commission proposes introducing **a general time limit (of 10 years) for amounts of irrecoverable debts to be removed from these separate accounts**, the aim being to ensure that cases are assessed and regularised within a reasonable period of time, irrespective of ongoing judicial appeals or partial payments²⁷. This proposal is not supported by any assessment showing that such a change would improve the management of TOR.

Our assessment of the proposed changes to the way irrecoverable amounts of TOR are managed

23 Although the proposed amendment will result in a significant reduction in the custom debts recorded in the TOR separate accounts, it is unlikely to make the Member States' management of own resources more straightforward. The proposed change entails an additional burden on the Commission, as it would have to assess whether the Member States are financially liable in cases that are still under judicial appeal. For these cases, the final decision might cancel the debt.

24 In our view, it is not demonstrated to what extent the proposed changes actually make the systems for making TOR available more efficient. As we pointed out in our previous annual reports²⁸, the management of these accounts should preferably be improved by the Commission taking continuous action not only to clarify the rules for recording established customs duties that have not been collected, but also to provide Member States with relevant support in applying them. In addition, the Commission should also enhance monitoring the separate accounts compiled by national customs authorities.

²⁶ COM(2021) 381 final of 30.6.2021.

²⁷ Article 13(2) of the proposed amendment to the MAR (fifth sub-paragraph).

²⁸ See recommendation 4.2 of our 2018 annual report; recommendation 2 of our 2015 annual report; and recommendation 4 of our 2014 annual report.

Suggestion 1 – Reconsider introducing a general time limit for removing irrecoverable debts from the TOR separate accounts

As it is not demonstrated that this proposed amendment to the MAR will make the management of own resources at EU and national level more efficient, we suggest reconsidering the introduction of a general time limit for removing irrecoverable debts from the TOR separate accounts.

Procedures for dispute resolution

25 The current MAR does not provide Member States with any review procedure for resolving divergences of views with the Commission about the making available of own resources. However, Member States may bring an action for unjust enrichment before the Court of Justice of the European Union (CJEU) to contest the payments. This action requires Member States to prove enrichment on the part of the Commission and impoverishment on their own part, evidence for which is difficult to provide due to national obligations under EU law governing the system of own resources²⁹.

26 The Proposal introduces a new **review procedure for dispute resolution** about TOR and the VAT-based own resource between a Member State and the Commission³⁰. The new procedure provides for a structured dialogue about disputed amounts with a view to making it easier to reach an agreement. The review procedure does not affect the Member States' obligation to pay their contributions by the statutory deadlines.

27 In the event of disagreement between a Member State and the Commission concerning the amounts of TOR or of VAT-based contributions, the Proposal also makes provision for the Member States **to express reservations** about the Commission's position when making own resources available. As a result, the period during which interest has accrued is interrupted³¹. These "payments under reservation" are already used in the current system based on the existing practice.




²⁹ Paragraphs 82 to 85 of the CJEU's judgment on case C-575/18 (Czech Republic v Commission).

³⁰ Articles 10b(7), 13(5) and 13b of the proposed amendment to the MAR.

³¹ Article 13a of the proposed amendment to the MAR.

28 The Proposal sets out different arrangements for the review procedure (including deadlines for Member States to submit requests and for the Commission to provide comments), depending on the type of own resource concerned (see [Table 1](#)).

Table 1 – Procedural differences in the review procedure for the VAT-based own resource and TOR, as envisaged by the Proposal

Type of own resource	Time limit for the request by Member States	Justification of the request	Time limit for the Commission's comments
			
VAT-based own resource	2 months	Reasons MAY be given	3 months
TOR	3 months	Reasons MUST be given	6 months

Source: ECA, based on the Proposal.

29 Council Regulation (EEC, Euratom) No 1553/89³² had already introduced a review procedure for the VAT-based own resource. This review follows the same requirements as the procedure proposed under the MAR as regards the time limits both for the Member State's request and for the Commission's communication of the outcome of the procedure, and as regards the contents of the request. However, it concludes with the adoption of a Commission decision that may be subject to an action of annulment by the Member State before the CJEU. The same procedure has also been introduced for the new own resource based on non-recycled plastic packaging waste, as envisaged in Council Regulation (EU, Euratom) 2021/770³³. As we have noted previously³⁴, this latter instrument gives Member States an additional possibility of initiating legal proceedings if they disagree with the Commission's decision about making own resources available.

³² Article 9(1)a; see footnote 5.













³³ Article 9(4); see footnote 7.

³⁴ Paragraph 34 of our Opinion No 11/2020.

30 In addition, the Proposal refers to the above-mentioned existing procedure concerning the VAT-based resource. Provision is made to suspend the review under the proposed amendment to the MAR in the event that a Member State brings an action for annulment before the CJEU against a decision adopted by the Commission on the same case, pursuant to Council Regulation (EEC, Euratom) No 1553/89³⁵.

31 *Table 2* provides an overview of the review procedures for own resources that are set out in other legal acts already in force, and of their differences compared to those of the Proposal.

Table 2 – Comparison between the review procedures for own resources under existing legal acts and those under the Proposal

Type of own resource ▼	Legal basis ▼	Procedure ends with a Commission's decision ▼	Possibility of the Member State to bring an action for annulment before the CJEU ▼	Possibility of the Member State to bring an action for unjust enrichment before the CJEU ▼
Non-recycled plastic packaging waste-based own resource	Regulation 2021/770			
VAT-based own resource	Regulation 1553/89			
	Proposal			
TOR	Proposal			

Source: ECA, based on Council Regulation (EU, Euratom) 2021/770, Council Regulation (EEC, Euratom) No 1553/89 and the Proposal.

³⁵ Article 13b(4) of the proposed amendment to the MAR.

Our assessment of the proposed procedures for dispute resolution

32 We welcome the proposed provision on payments under reservation, which formalises an existing practice not yet included in the MAR. In order for it to be effective, the Commission will need to draw up internal procedures clarifying in particular where such payments are used, how they are monitored, and in which cases the conditionality due to Member States' reservations ends by making the payments final.

33 We take note that the Commission has proposed that a review procedure should be introduced under the MAR in the event of disagreement between the Commission and Member States about making TOR and the VAT-based own resource available. Although the procedure provides a framework for structured dialogue to allow Member States to ask the Commission to reconsider its position on the calculation, establishment and collection of own resources, it does not necessarily ensure that disputes will be resolved effectively. As the procedure is not ended by a Commission's decision, Member States cannot initiate legal proceedings for its annulment. However, Member States can bring an action for unjust enrichment before the CJEU if a payment under reservation has been made.

34 Furthermore, the Proposal results in parallel and partially different rules governing review procedures for VAT-based own resources. This makes the system for EU financing more complex, affects legal certainty and the predictability of Member State payments, and may also create a considerable administrative burden for the Commission.

35 In addition, we note that the Commission has not proposed introducing such a procedure for the GNI-based own resource, which is calculated using statistical data, as is the new own resource based on non-recycled plastic packaging waste. The GNI-based resource represents the largest source of revenue for the EU budget (70 % in 2020).

Suggestion 2 – Propose a single review procedure for dispute resolution on making own resources available

In order to streamline the process for dispute resolution and provide an effective instrument for resolving disagreements between Member States and the Commission, we suggest that a single review procedure should be proposed on making own resources available. Such a procedure should ensure a balance between the Member States' right of defence, and the potential administrative burden that this might entail for the Commission. The specific characteristics of individual sources of revenue and their respective legal frameworks should also be taken into account. In order to avoid any undue burden on the management of TOR due to the large number of small individual underlying transactions, the Commission could set a threshold to trigger the review procedure only for cases with a significant financial impact.

Consistency of the rules for managing the different own resources

36 We note that the rules which the Proposal introduces for managing own resources are not always consistent with those set out in Council Regulation (EU, Euratom) 2021/770 (applicable to the own resource based on non-recycled plastic packaging waste) and Council Regulation (EEC, Euratom) No 1553/89 (applicable to the VAT-based own resource). These concern the provision to allow advance payments by Member States (see paragraph 10), postponement of the date when adjustments are made available (see paragraph 11), the threshold for waiving interest on late payment (see paragraph 14), and the procedures for dispute resolution (see paragraphs 25 to 31).

37 In the Proposal, the Commission takes the view that all provisions for making own resources available should be merged in the future when new sources of revenue are introduced, as agreed in the inter-institutional agreement for the 2021-2027 MFF³⁶. Although we take note of this objective, we regret that the current Proposal does not envisage the merging of all provisions for making own resources available. We

³⁶ Inter-institutional Agreement of 16 December 2020 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).

reiterate that a single regulation with a comprehensive set of provisions for own resources would make the system simpler and more transparent³⁷.

38 The *Annex* includes suggested changes to certain provisions of the Proposal. Our suggestions concern some of the issues described above, and another minor editorial point.

³⁷ Paragraph 12 of our Opinion No 5/2018.

Conclusion

39 In our view, the Commission's proposal to amend the Making Available Regulation is a positive step towards improving the current legal framework. It formalises a number of existing practices, such as possibility to provide advance payments (see paragraph 12) and enhances to a certain extent the predictability of cash management in particular by postponing deadline for adjustments to the resources made available in previous financial years (see paragraph 13). This may help reducing administrative burden. The Proposal also introduces a procedure for dispute resolution that did not previously exist, i.e. one which provides for a structured dialogue about disputed amounts with a view to making it easier to reach an agreement (see paragraph 33).

40 However, we have identified a number of drawbacks. Extending the capping of interest for late payments to old cases may result in financial benefits for a few Member States due to the significant amounts potentially involved (see paragraph 18). The proposed procedures for dispute resolution on making own resources available differ from the rules set out in other existing regulations for the VAT-based own resource and the new own resource based on non-recycled plastic packaging waste (see paragraph 34).

41 In addition, some of the proposed amendments to the current provisions of the MAR are not supported by sufficient evidence, meaning that their impact on the efficiency of making own resources available cannot be demonstrated. This concerns establishing centralised treasury accounts (see paragraph 09) and changing the rules on the management of TOR irrecoverable amounts (see paragraph 23). We also regret that this Proposal does not envisage the merging of all provisions to make own resources available (see paragraph 37).

42 We therefore believe that the legislative proposal could be improved by:

- reconsidering the proposed introduction of a general time limit for removing irrecoverable debts from the TOR separate accounts; and
- further revising the procedures for dispute resolution, by proposing a single review procedure for own resources.

This Opinion was adopted by Chamber V, headed by Tony Murphy, Member of the Court of Auditors, in Luxembourg on 22 September 2021.

For the Court of Auditors

A handwritten signature in black ink, appearing to read 'K-H Le', written in a cursive style.

Klaus-Heiner Lehne

President

Annex – Our suggested changes to the Proposal

The Commission's proposal for a Council Regulation amending Regulation (EU, Euratom) No 609/2014 in order to enhance predictability for Member States and to clarify procedures for dispute resolution when making available the traditional, VAT- and GNI-based own resources (COM(2021) 327 final of 25.6.2021, 2021/0161 (NLE))

Reference to the proposed provisions	Our suggested changes	Comments
Article 13(2)	The text of the provision currently in force should be kept.	We suggest that introducing the general time-limit of 10 years for removing irrecoverable debts from the TOR separate accounts should be reconsidered (see paragraphs 19 to 24 and Suggestion 1).
Article 13b	The proposed provision should be redrafted to introduce a single review procedure for dispute resolution on making own resources available.	A single review procedure should be proposed on making own resources available. Such a procedure should take into account the specific characteristics of individual sources of revenue and their respective legal frameworks (see paragraphs 25 to 35 and Suggestion 2).

Article 13b(2)	“Within six months of receiving the request provided for in paragraph 1, the Commission shall communicate ... (...)”.	The proposed review procedure refers to TOR. In order to avoid any ambiguity, we suggest specifying that it refers to Article 13(5) of the proposed amendment to the MAR. Similarly, the Commission referred to Article 10b(7) when providing for the procedure on the VAT-based own resource in the last sentence of Article 13b(2): “In case of a disagreement between a Member State and the Commission referred to in Article 10b(7), the Commission shall communicate ... (...)”. This suggestion should be read in conjunction with the above comments on Article 13b.
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