



EUROPEAN COMMISSION

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2011/0184 (APP)

Proposal for a

COUNCIL REGULATION

**laying down implementing measures for the system of own resources of the European
Union**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The purpose of this proposal is to lay down implementing measures as provided in Article 9 of Council Decision ... of ... on the system of own resources of the European Union¹ pursuant to Article 311(4) of the Treaty on the Functioning of the European Union (hereinafter "TFEU").

These implementing measures cover all the practical arrangements for the Union's resources which should be governed by a more streamlined procedure in order to make the system flexible within the framework and limits set out by the own resource Decision with the exception of those aspects relating to making the own resources available and to meeting cash requirements. Provisions of a general nature, applicable to all types of own resources and for which appropriate parliamentary oversight is particularly important have also been included in this proposal. This means in particular, aspects of control and supervision of revenues including supplementary reporting requirements and the related powers of Commission inspectors.

These implementing measures shall be complemented, in accordance with Article 322(2) TFEU, by regulations determining the methods and procedure whereby own resources revenue shall be made available or paid to the Commission, and the measures to be applied, if need be, to meet cash requirements.

Article 9 of Decision ... foresees that implementing measures shall be provided for:

- (a) the tax rates or rates of call of the own resources established under Articles 2(1)(b), (c) and (d) of Decision ...;
- (b) the reference Gross National Income (GNI), the provisions to adjust GNI and the provisions to recalculate the ceilings for payments and commitments in case of significant changes to GNI, for the purpose of applying Articles 2(1)(d) and 3 of Decision ...;
- (c) the procedure for calculating and budgeting the annual budgetary balance as set out in Article 7 of Decision ...;
- (d) the provisions and arrangements for controlling and supervising own resources revenue referred to in Article 2 of Decision ..., including supplementary reporting requirements.

¹ OJ L [...], [...], p. [...].

The elements proposed by the Commission relate thus to implementing measures:

- for the new own resources established under Article 2(1)(b) and (c) of Decision ..., notably their tax rates, control and supervision;
- taken over from Council Decision 2007/436² (hereinafter referred to as "ORD 2007"), such as reference to the European system of regional and national accounts (ESA) which is now a Regulation of both the European Parliament and Council;
- taken over from Council Regulation 1150/2000³ implementing ORD 2007, for the calculation of the surplus and for the control and supervision of own resources revenue, including supplementary reporting requirements, which are not strictly related to the making available of own resources;
- and taken over from Council Regulation 1026/1999⁴ for the powers and obligations of Commission inspectors as well as the preparation and management of inspections.

In further details, the proposal of the Commission may be summarised as follows:

1.1 Chapter I 'Determining own resources'

- Article 1 of the proposal, 'Applicable rates': The Article provides for the tax rates to be applied to the new categories of own resources set out in Article 2(1)(b) and (c) of Decision Furthermore, provisions under Article 5 of Regulation 1150/2000 are taken over and updated.
- Article 2 of the proposal, 'Reference GNI and significant changes thereto': Provisions under Articles 2(7)§1 and 3(3) of ORD 2007 are taken over and updated
- Article 3 of the proposal, 'Calculation and budgeting of balance': Provisions under Articles 15 and 16 of Regulation 1150/2000 are taken over and updated.

1.2 Chapter II 'Provisions concerning control and supervision, including supplementary reporting requirements'

- Article 4 of the proposal, 'Reporting fraud and irregularities affecting entitlements': Provisions under Article 6(5) of Regulation 1150/2000 are taken over, updated and simplified.
- Article 5 of the proposal, 'Control and supervision measures': Provisions under Articles 17(1) and 18 of Regulation 1150/2000 are taken over, updated and completed in relation to the new own resources set up in Article 2(1)(b) and (c) of Decision....

² OJ L 163, 23.6.2007, p. 17

³ OJ L 130, 31.5.2000, p. 1, as amended by Council Regulations 2028/2004 of 16.11.2004 (OJ L 352, 27.11.2004, p. 1) and 105/2009 of 26.1.2009 (OJ L 36, 5.2.2009, p. 1).

⁴ OJ L 126, 20.5.1999, p. 1

- Article 6 of the proposal, 'Reporting by Member States of their inspections': Provisions under Articles 17(5) and 18(5) of Regulation 1150/2000 are taken over and updated.
- Articles 7 and 8 of the proposal 'Powers and obligations of the authorised agents of the Commission' and 'Preparation and management of inspections': Provisions from Regulation 1026/1999 are taken over, reorganised for clarity and updated, and that Regulation is repealed in Article 10 'Final provisions' of this proposal.

1.3 Chapter III 'Committee and final provisions'

- Article 9 of the proposal, 'Committee procedure – Advisory Committee on Own Resources (ACOR)': Provides for implementing powers to be conferred on the Commission in accordance with Regulation (EU) No 182/2011. For other specific tasks, the Commission may also decide to set up an expert group.

Proposal for a

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, in conjunction with 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 Union⁵, and in particular Article 9 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 consent of the European Parliament⁶,

Having regard to the opinion of the Court of Auditors⁷,

Having regard to the opinion of the European Economic and Social Committee⁸,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Parliamentary oversight is particularly important for provisions of a general nature applicable to all types of own resources and covering control and supervision of revenues including supplementary reporting requirements.
- (2) In order to maintain unchanged the amount of financial resources put at the disposal of the Union, it is appropriate to adapt the ceilings of the Union's own resources for payments and commitments as determined, respectively, in Article 3(1) and (2) of Decision ... expressed in per cent of Gross National Income (GNI) in case of amendments to Regulation (EU) No ... of

⁵ OJ L [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

⁷ OJ C [...], [...], p. [...].

⁸ OJ C [...], [...], p. [...].

[...] on the European system of national and regional accounts in the European Union⁹ which entail a significant change in the level of GNI.

- (3) 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.
- (4) The arrangements whereby the Member States or economic operators 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.
- (5) 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.
- (6) Member States and economic operators responsible for collecting own resources should conduct checks and enquiries relating to establishing, making available and paying 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 or economic operators responsible for collecting own resources and the Commission.
- (7) 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.
- (8) For reasons of coherence, certain provisions of Council Decision (EC, Euratom) No 2007/436 of 7 June 2007 on the system of the European Communities' own resources¹⁰ and Council Regulation (EC, Euratom) No 1150/2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources¹¹ should be included in this Regulation. Those provisions concern the reference GNI and significant changes thereto, the rate of call of the own resource referred to in Article 2(1)(d) of Decision [.../...], the calculation and budgeting of the balance, control and supervision of own resources and supplementary reporting requirements, as well as the Advisory Committee on Own Resources (ACOR).
- (9) 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

⁹ OJ L [...], [...], p. [...], as last amended by [...]

¹⁰ OJ L 163, 23.6.2007, p. 17.

¹¹ OJ L 130, 31.5.2000, p. 1.

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 powers¹².

- (10) 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 measures for examining estimates of own resources given the technical nature of those acts required for reporting purposes.
- (11) 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 resources¹³ should be repealed.
- (12) For reasons of consistency, this Regulation should apply on the same day as Decision ... ,

HAS ADOPTED THIS REGULATION:

Chapter I

Determining own resources

Article 1

Applicable rates

1. The tax rates applicable¹⁴ to the own resource referred to in Article 2(1)(b) of Decision ... shall be:
 - (a) ...% for transactions on bonds, stocks and similar securities;
 - (b) ...% for other transactions.
2. The tax rate applicable to the own resource referred to in Article 2(1)(c) of Decision... shall be 1.0%.
3. The uniform rate referred to in Article 2(1)(d) 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), (b) and (c) of Decision ..., from financial contributions to supplementary research and technological development programmes and other revenue.

¹² OJ L 55, 28.2.2011, p. 13.

¹³ OJ L 126, 20.5.1999, p. 1.

¹⁴ Should the legislative act referred to in article 2(1)(b) of Decision ... provide for differentiated rates for transactions executed in regulated markets and outside regulated markets, the tax rates applicable to the own resources will be adjusted on this basis.

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 resource among the Member States.

Article 2

Reference GNI and significant changes thereto

1. GNI referred to in Article 2(1)(d) of Decision ... shall mean an annual GNI at market price, as provided by the Commission in application of Regulation
2. Where amendments to Regulation ... result in significant changes in the GNI, the Commission shall inform the European Parliament and Council on the dates of application of those changes for the purposes of Decision
3. Where amendments to Regulation ... result in significant changes in the level of GNI, the ceilings for payments and commitments as determined in Article 3(1) and (2) of Decision ... shall be recalculated by the Commission on the basis of the following formula:

$$1.23\%(1.29\%)* \frac{GNI_{t-2} + GNI_{t-1} + GNI_{t \text{ ESA current}}}{GNI_{t-2} + GNI_{t-1} + GNI_{t \text{ ESA modified}}}$$

In that formula, "t" is the latest full year for which the data defined by Council Regulation (EC, Euratom) No 1287/2003¹⁵ is available.

Article 3

Calculation and budgeting of 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 9 of Regulation ... (hereinafter "the Financial Regulation")¹⁶.

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 5(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 9(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.

¹⁵ OJ L 181, 19.7.2003, p. 1.

¹⁶ OJ L [...], [...], p. [...]

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 supplementary reporting requirements

Article 4

Reporting fraud and irregularities affecting entitlements

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 own resource 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. For the own resource referred to in Article 2(1)(c) of Decision ... every six month Member States shall send to the Commission a description of cases of fraud and irregularities detected involving entitlements of over EUR 10 000 during the preceding six months.

3. The economic operators responsible for collecting the own resource referred to in Article 2(1)(b) of Decision... shall notify the Commission, within one month of the circumstances coming to their attention of any instances of fraud or irregularity involving entitlements of over EUR 10 000.

4. The Commission shall adopt implementing acts establishing details of the descriptions mentioned in paragraphs 1, 2 and 3 of this Article as well as measures for examining estimates of own resources. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 9(2).

5. A summary of the notifications referred to in paragraphs 1, 2 and 3 of this Article shall be included in the Commission report referred to in Article 325(5) of the Treaty.

Article 5

Control and supervision measures

1. Member States or economic operators responsible for collecting own resources shall take all measures that are necessary to ensure that the amount corresponding to the entitlements established under Article 2(1) of Decision ... are made available or paid to the Commission.

2. Member States shall conduct the checks and enquiries concerning the establishment and the making available of the own resources, referred to in Article 2(1)(a) and (c) of Decision

Economic operators responsible for collecting own resources shall conduct checks and enquiries concerning the collection of the own resources referred to in Article 2(1)(b) of Decision ..., together with the processes for paying them to the Commission.

3. Member States or economic operators responsible for collecting own resources shall carry out additional inspection measures at the Commission's request. In its request the Commission shall state the reasons for the additional inspection. Member States or economic operators, shall, if the Commission so requests, associate it with the inspections, which they carry out. The Commission may, instead, request that certain documents be forwarded to it.

4. Economic operators responsible for collecting own resources shall make available to the Commission any internal or external audit report or consultancy report available to them, which includes analysis of the systems that they use to collect own resources, or to pay those resources to the Commission.

5. The Commission may itself carry out inspections on the spot. The agents authorised by the Commission for such inspections shall have access, in so far as the application of this Regulation so requires, to the supporting documents concerning establishing, making available or paying own resources, and to any other appropriate document related to those supporting documents.

6. Member States or economic operators responsible for collecting own resources shall facilitate the inspection measures referred to in paragraph 5.

7. Where the Commission is associated with an inspection, the Commission shall have the same access to supporting and related documents as is set out for the inspections in paragraph 5.

8. Where the inspection concern GNI-based own resources the Commission shall also 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.

9. The inspections referred to in paragraph 2 shall be without prejudice to the following:

(a) the inspections carried out by Member States in accordance with their national laws, regulations or administrative provisions;

(b) the measures provided for in Articles 287 and 319 of the Treaty;

(c) the inspection arrangements made pursuant to Article 322(1)(b) of the Treaty.

10. Together with the Member State concerned, the Commission shall each year inspect 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. The Commission shall respect national rules on the confidentiality of statistics.

Article 6

Reporting by Member States of their inspections

Member States shall submit detailed annual reports to the Commission on their inspections relating to the correct collection of 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 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.

The Commission shall adopt implementing acts establishing a form for the Member States' annual reports mentioned in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 9(2).

The Commission shall report every three years to the European Parliament and to the Council on the functioning of the inspection arrangements referred to in Article 5.

Article 7

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 5 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 at the inspections.

With the explicit and prior agreement of the Member State or economic operator responsible for collecting own resources 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 on-the-spot and associated inspections 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.

The authorised agent may, if necessary, contact debtors, but only in the context of the inspections referred to in Article 5, and only through the competent authorities whose own resources collection procedures are the subject of the inspection.

3. Information communicated or obtained under paragraphs 1 and 2, 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 organisations inspected, 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 or economic operator responsible for collecting own resources from whom 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 Council¹⁷ and Regulation (EC) No 45/2001 of the European Parliament and of the Council¹⁸ and other Union and national rules concerning the protection of personal data

Article 8

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 or economic operator responsible for collecting own resources whose procedures are being examined. Where the inspection concerns an economic operator responsible for collecting own resources, the Member State in which the inspection is to take place shall also be notified. Agents of the Member State concerned may participate in such inspection.

2. For inspections where the Commission is associated under Article 5(3) 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 or by the economic operator responsible for collecting the own resources concerned.

3. On-the-spot inspections referred to in Article 5(5) 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 or with the economic operator responsible for collecting the own resources 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 5(8) 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 or economic operators concerned shall ensure that the departments or agencies responsible for establishing, collecting and making available the own resources, and the authorities

¹⁷ OJ L 281, 23.11.1995, p. 31.

¹⁸ OJ L 8, 12.1.2001, p. 1.

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 referred to in Article 5(5), Member States or the economic operators 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 on-the-spot inspections carried out and those with which the Commission is associated shall be brought to the attention of the Member State or of the economic operator concerned through the appropriate channels within a period of three months. The recipient of the report shall submit its observations within the three months following receipt of the report. However, for duly substantiated reasons, the Commission may request the recipient concerned to submit observations on specific points within a period of one month following receipt of the report. The Member State or the economic operator 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 arising from the on-the-spot and associated inspections of Member States shall be brought to the attention of all Member States.

Where the on-the-spot or associated inspections 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.

Chapter III

Committee and final provisions

Article 9

Committee procedure – Advisory Committee on Own Resources (ACOR)

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 10

Final provisions

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

References to the repealed Regulation and to the provisions of Decision (EC, Euratom) No 2007/436, repealed by Decision ..., and of Regulation (EC, Euratom) No 1150/2000 repealed by Council

Regulation ...¹⁹, 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.

Article 11

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

¹⁹ OJ L [...], [...], p. [...].

ANNEX

Correlation table

Decision (EC, Euratom) No 2007/436	Regulation (EC, Euratom) No 1026/1999	Regulation (EC, Euratom) No 1150/2000	<u>This Regulation</u>
			Article 1(1)
			Article 1(2)
		Article 5	Article 1(3)
Article 2(7) first subparagraph			Article 2(1)
Article 2(7) second subparagraph			Article 2(2)
Article 3(3)			Article 2(3)
		Article 15	Article 3(1)
		Article 16	Article 3(2)
		Article 6(5)	Article 4
		Article 17(1)	Article 5(1)
		Article 18(1)	Article 5(2)
		Article 18(2)	Article 5(3)
			Article 5(4)
		Article 18(3)	Article 5(5)
		Article 18(2)	Article 5(6)
		Article 18(2) and (3)	Article 5(7)
			Article 5(8)
		Article 18(4)	Article 5(9)
		Article 19	Article 5(10)
		Article 17(5) and 18(5)	Article 6
	Article 1		Article 7(1)
	Article 3(1)		Article 7(2)
	Article 5		Article 7(3)&(4)
	Article 2(1)&(2)		Article 8(1)
	Article 3(2)		Article 8(2),(3)&(4)
	Article 4		Article 8(5)
	Article 6	Article 18(2)	Article 8(6)
		Articles 20 and 21	Article 9
			Article 10
			Article 11