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*Plenary sitting*

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**A9-0048/2021**

18.3.2021

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## **REPORT**

on the draft Council regulation 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 the measures to meet cash requirements, and on certain aspects of the own resource based on gross national income  
(13142/2020 – C9-0018/2021 – 2018/0131(NLE))

Committee on Budgets

Rapporteurs: José Manuel Fernandes, Valérie Hayer

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the draft Council regulation 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 the measures to meet cash requirements, and on certain aspects of the own resource based on gross national income (13142/2020 – C9-0018/2021 – 2018/0131(NLE))**

**(Consultation)**

*The European Parliament,*

- having regard to the Council draft (13142/2020),
- having regard to Article 322(2) of the Treaty on the Functioning of the European Union and Article 106a of the Treaty establishing the European Atomic Energy Community pursuant to which the Council consulted Parliament (C9-0018/2021),
- having regard to the Interinstitutional 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<sup>1</sup>,
- 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, Euratom<sup>2</sup>, and in particular Article 10 thereof,
- having regard to its resolutions of 14 March 2018 on the next MFF: preparing the Parliament's position on the MFF post-2020<sup>3</sup> and on reform of the European Union's system of own resources<sup>4</sup>,
- having regard to its resolution of 30 May 2018 on the 2021-2027 multiannual financial framework and own resources<sup>5</sup>,
- having regard to its interim report of 14 November 2018 on the multiannual financial

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<sup>1</sup> Interinstitutional 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).

<sup>2</sup> OJ L 424, 15.12.2020, p. 1.

<sup>3</sup> OJ C 162, 10.5.2019, p. 51.

<sup>4</sup> OJ C 162, 10.5.2019, p. 71.

<sup>5</sup> Texts adopted, P8\_TA(2018)0226.

- framework 2021-2027 – Parliament’s position with a view to an agreement<sup>6</sup>,
- having regard to its resolution of 10 October 2019 on the 2021-2027 multiannual financial framework and own resources: time to meet citizens' expectations<sup>7</sup>,
  - having regard to the statements by the Commission and the Council of 10 October 2019 on the 2021-2027 multiannual financial framework and own resources: time to meet citizens’ expectations,
  - having regard to its resolution of 15 May 2020 on the new multiannual financial framework, own resources and the recovery plan<sup>8</sup>,
  - having regard to its legislative resolution of 16 September 2020 on the draft Council decision on the system of Own Resources of the European Union<sup>9</sup>,
  - having regard to Rule 82 of its Rules of Procedure,
  - having regard to the report of the Committee on Budgets (A9-0048/2021),
1. Approves the Council draft as amended;
  2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  3. Asks the Council to consult Parliament again if it intends to substantially amend its draft;
  4. Instructs its President to forward its position to the Council and the Commission.

## **Amendment 1**

### **Draft regulation**

#### **Recital 13**

<i>Council draft</i>	<i>Amendment</i>
<p><b>(13) <i>A reliable and rapid review procedure should be established in order to resolve possible disputes that may arise between a Member State and the Commission concerning the amount of any adjustments to the statements relating to the own resource based on non-recycled plastic packaging waste or concerning whether an alleged failure to</i></b></p>	<p><b><i>deleted</i></b></p>

<sup>6</sup> Texts adopted, P8\_TA(2018)0449.

<sup>7</sup> Texts adopted, P9\_TA(2019)0032.

<sup>8</sup> Texts adopted, P9\_TA(2020)0124.

<sup>9</sup> Texts adopted, P9\_TA(2020)0220.

*provide data can be attributed to a Member State, thereby avoiding time-consuming and costly infringement proceedings before the Court of Justice of the European Union.*

## **Amendment 2**

### **Draft regulation Recital 15**

#### *Council draft*

(15) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards establishing forms for the statements relating to the own resource based on non-recycled plastic packaging waste ***and as regards further specifying the procedure for the review to resolve possible disputes between a Member State and the Commission.*** Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

#### *Amendment*

(15) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards establishing forms for the statements relating to the own resource based on non-recycled plastic packaging waste. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

## **Amendment 3**

### **Draft regulation Article 9 – paragraph 4**

#### *Council draft*

***4. The Member State concerned may request the Commission to review the adjustment communicated in the letter referred to in paragraph 3 within two months from the day of the receipt of that letter. The review shall be concluded with a decision to be adopted by the Commission at the latest three months from the day of receipt of the Member State's request. Where the Commission's decision reviews the amounts in full or partially corresponding to the adjustment communicated in the***

#### *Amendment*

***deleted***

*letter referred to in paragraph 3, the Member State shall make available the corresponding amount. Neither the Member State's request to review the adjustment nor an action for annulment against the Commission's decision shall affect the Member State's obligation to make available the amount corresponding to the adjustment.*

#### **Amendment 4**

##### **Draft regulation**

##### **Article 9 – paragraph 5**

*Council draft*

*Amendment*

**5.** *The Commission may adopt implementing acts further specifying the procedure for the review referred to in paragraph 4 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(3).* **deleted**

#### **Amendment 5**

##### **Draft regulation**

##### **Article 11 – paragraph 1 – subparagraph 4**

*Council draft*

*Amendment*

*Disputes between a Member State and the Commission as to whether the alleged failure referred to in point (d) of the first subparagraph of this paragraph can be attributed to the Member State shall be resolved by the review referred to in Article 9(4).* **deleted**

#### **Amendment 6**

##### **Draft regulation**

##### **Article 11 – paragraph 2**

*Council draft*

*Amendment*

*(2) Where a Member State initiates the review referred to in Article 9(4), interest shall be calculated as from the date specified by the Commission in accordance with Article 9(3).*

*deleted*

## EXPLANATORY STATEMENT

The Making Available Regulation (MAR) is one of the implementing regulations which, in conjunction with the Own Resources Decision<sup>10</sup>, constitute the EU's system of own resources. The MAR establishes the procedures and deadlines for the making available to the Commission of the different categories of own resources. While the traditional own resources (TOR) and VAT and GNI-based own resources are covered by the Making Available Regulation (MAR1)<sup>11</sup> which was revised in 2015/2016, the Commission proposed a separate Making Available Regulation (MAR2) for the new own resources. Among the proposed new categories, Common Consolidated Corporate Tax Base, European Emissions Trading-based and plastic-waste-based own resources, only the latter one is part of the new Own Resources Decision as adopted in December 2020 (awaiting ratification) and therefore subject of the draft regulation MAR2 referred to the EP by Council for consultation on 10 February 2021.

The regulation covers primarily the rights and obligations of the Member States and of the Commission in the levying, collection, and transfer of the amounts due of the plastic levy, a statistics-based national contribution. The regulations comprises provisions on the conservation of documents, administrative cooperation, entry into the accounts and reporting, the calculation method, treasury and accounting arrangements, adjustments of previous years, the bringing forward of twelfths, late payment interests and comitology procedures.

The co-rapporteurs acknowledge that the Making Available of own resources has, broadly speaking, functioned adequately for existing own resources and that therefore comparable rules and automatism should also be applied for the plastic-waste-based own resource and future new own resources to be introduced under the IIA roadmap. They aim therefore for a swift adoption of the legislative opinion so that the new plastic based own resources can be implemented with retroactive effect as soon as the ratification of the Own Resources Decision is completed.

The co-rapporteurs would however like to draw the attention to one potentially problematic new provision in the MAR2, which could also risk becoming a benchmark for a future consolidated MAR and thus all existing and new own resources: the rapid review procedure. The co-rapporteurs propose to call on the Council to delete these new paragraphs before adopting the regulation.

### **Background and justification**

A review procedure for payments under reservation has been suggested by the German presidency of the Council in MAR2<sup>12</sup> for the plastic based own resource and the application of the same procedure to all own resources has been requested by a majority of Member States.

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<sup>10</sup> Council Decision 2014/335/EU, Euratom of 26 May 2014 on the system of own resources of the European Union.

<sup>11</sup> Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements.

<sup>12</sup> Commission proposal COM(2018) 326 final, latest Council document 13142/20 of 16 December 2020.

The co-rapporteurs consider the introduction of a rapid review provision as potentially superfluous and counter-productive. Firstly, the recent European Court case law<sup>13</sup> confirms that Member States do have access to legal recourse, even in cases of payments subject to reservations. Secondly, such a mechanism would allow Member States to contest their liability which would cause delays. It might also entail a ‘suspensive effect’ on the late payment interests in certain circumstances, thus potentially disrupting the incentivising purpose of these interest payments.

Once introduced in the MAR2 for the plastic-based own resources, there would be pressure to apply the same procedure to traditional own resources and in the future to the new own resources. The review procedure in the present draft of the MAR2 and also the draft regulation on the VAT-based own resources, would risk to result in a reversal of the ‘burden of proof’ concerning the accuracy of the calculations and provision of data. The position of the Commission could be weakened. The number of cases brought before the European Court of Justice might multiply.

The rapid review clause could thus result in a proliferation of requests for reviews and ensuing interruptions and disturbances of the making available ‘machinery’. It would bind administrative capacities and would require additional staff at national level and in the Commission. The administrative costs involved and the consequences for eventual late payment interest could be disproportionate. The proper functioning of the own resources system could be severely compromised. This in turn, could also be used by some as a justification for rejecting the introduction of new own resources.

The co-rapporteurs therefore propose to delete recital 13 and 15 as well as paragraphs 4 and 5 of Article 9, the last subparagraph of paragraph 1 of Article 11 and paragraph 2 of Article 11.

The co-rapporteurs look forward to discussing general principles, but also legal and technical details of the own resources system with the other institutions in the framework of the regular dialogue that has been established in the Interinstitutional Agreement and the roadmap towards the introduction of new own resources. The occasion of the legislative proposals for new own resources based on a digital levy, the revised ETS and a Carbon Border Adjustment Mechanism in by mid-2021 could be used to revisit and consolidate the implementing and making available rules under Article 311(4) and 322(2) in a spirit of efficiency, efficacy and mutual trust.

On a general note, the co-rapporteurs think that a deep reform of the own resources system through the introduction of new own resources is of paramount importance for the future of the EU and the completion of the recovery plan as they will constitute the reimbursement part that should avoid putting the repayment costs on the shoulders of citizens or leading to cuts in EU programmes. The co-rapporteurs emphasise that the implementing rules are an integral part of the own resources system. They should be robust, yet open and flexible to accommodate also additional own resources with different characteristics. In this context, the co-rapporteurs recall the relevance of the Interinstitutional Agreement including its roadmap towards the introduction of own resources. It encompasses the different steps of the introduction of new own resources, but also the modalities of cooperation between the institutions and the principles that should govern the own resources reform. The amount of the proceeds of the new resources should be

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<sup>13</sup> Czech Republic/Commission (C-575/18 P)

sufficient to cover, at least, the repayment costs of the borrowing under NGEU.

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Proposal for a Council Regulation on the methods and procedure for making available the Own Resources based on the Common Consolidated Corporate Tax Base, on the European Union Emissions Trading System and on Plastic packaging waste that is not recycled, and on the measures to meet cash requirements	
<b>References</b>	13142/2020 – C9-0018/2021 – COM(2018)0326 – C8-0203/2018 – 2018/0131(NLE)	
<b>Date of consultation / request for consent</b>	23.5.2018	
<b>Committee responsible</b> Date announced in plenary	BUDG 31.5.2018	
<b>Committees asked for opinions</b> Date announced in plenary	CONT 5.7.2018	ENVI 5.7.2018
<b>Not delivering opinions</b> Date of decision	CONT 4.12.2019	ENVI 11.3.2021
<b>Rapporteurs</b> Date appointed	José Manuel Fernandes 10.10.2019	Valérie Hayer 10.10.2019
<b>Discussed in committee</b>	4.3.2021	
<b>Date adopted</b>	17.3.2021	
<b>Result of final vote</b>	+: –: 0:	32 4 4
<b>Members present for the final vote</b>	Rasmus Andresen, Robert Biedroń, Anna Bonfrisco, Olivier Chastel, Lefteris Christoforou, David Cormand, Paolo De Castro, José Manuel Fernandes, Eider Gardiazabal Rubial, Vlad Gheorghe, Valentino Grant, Elisabetta Gualmini, Francisco Guerreiro, Valérie Hayer, Niclas Herbst, Monika Hohlmeier, Mislav Kolakušić, Moritz Körner, Joachim Kuhs, Zbigniew Kuźmiuk, Ioannis Lagos, Hélène Laporte, Pierre Larrourou, Janusz Lewandowski, Margarida Marques, Silvia Modig, Siegfried Mureşan, Victor Negrescu, Andrey Novakov, Jan Olbrycht, Dimitrios Papadimoulis, Karlo Ressler, Bogdan Rzońca, Nicolae Ştefănuţă, Nils Torvalds, Nils Ušakovs, Johan Van Overtveldt, Rainer Wieland, Angelika Winzig	
<b>Substitutes present for the final vote</b>	Henrike Hahn	
<b>Date tabled</b>	18.3.2021	

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

32	+
NI	Mislav Kolakušić
PPE	Lefteris Christoforou, José Manuel Fernandes, Niclas Herbst, Monika Hohlmeier, Janusz Lewandowski, Siegfried Mureşan, Andrey Novakov, Jan Olbrycht, Karlo Ressler, Rainer Wieland, Angelika Winzig
Renew	Olivier Chastel, Vlad Gheorghe, Valérie Hayer, Moritz Körner, Nicolae Ştefănuţă, Nils Torvalds
S&D	Robert Biedroń, Paolo De Castro, Eider Gardiazabal Rubial, Elisabetta Gualmini, Pierre Larrourou, Margarida Marques, Victor Negrescu, Nils Ušakovs
The Left	Silvia Modig, Dimitrios Papadimoulis
Verts/ALE	Rasmus Andresen, David Cormand, Francisco Guerreiro, Henrike Hahn

4	-
ID	Anna Bonfrisco, Valentino Grant, Joachim Kuhs
NI	Ioannis Lagos

4	0
ECR	Zbigniew Kuźmiuk, Bogdan Rzońca, Johan Van Overtveldt
ID	Hélène Laporte

Key to symbols:

+ : in favour

- : against

0 : abstention