AMENDMENTS 001-007
by the Committee on Budgets

Report
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Predictability for Member States and procedures for dispute resolution when making available the traditional, VAT and GNI based own resources


Amendment 1

Proposal for a regulation
Recital 1

Text proposed by the Commission

1. While Council Regulation (EU, Euratom) No 609/2014 has provided a solid and stable anchor for the financing mechanics of the Union, the provisions on the making available of own resources need to be improved to enhance predictability for Member States and to clarify procedures for dispute resolution.

Amendment

1. While Council Regulation (EU, Euratom) No 609/2014 has provided a solid and stable anchor for the financing mechanics of the Union, certain provisions on the making available of own resources need to be improved to enhance predictability for Member States.

7. In order to ensure the proportionality of the system while maintaining the deterrent effect, Regulation (EU, Euratom) No 609/2014 limits the increase in interest above the base rate to 16 percentage points. This ‘capping’ of 16 percentage points is only applicable to all cases that became known after the entry into force of Council Regulation (EU, Euratom) 2016/804. Consequently, cases already known before the entry into force of Regulation 2016/804, where particularly high amount of interest are at stake, cannot benefit from that limit regardless of whether the amount of interest has already been notified to the Member States. In those cases, Member States are still required to pay amounts of interest that are not proportional compared to the amount of the principal due. In order to clarify and simplify the relevant provisions of Regulation (EU, Euratom) No 609/2014, the limitation of the increase to 16 percentage points should be applied to any amount of interest not notified to the Member State before the entry into force of this Regulation.

Amendment 3

Proposal for a regulation
Recital 10

Text proposed by the Commission

10. In case of disagreement between Member States and the Commission regarding the making available of traditional own resources, a review procedure should be formalised and introduced in Regulation (EU, Euratom) No 609/2014 to improve transparency and to clarify Member States’ rights of defense. Provisions should also be introduced to reflect the current practice of the payment under reservation, which opens the possibility to initiate an action for unjust enrichment against the Commission in accordance with Article 268 TFEU and Article 340(2) TFEU.

Amendment 4

Proposal for a regulation
Article 1 – paragraph 1 – point 4 – point b
Regulation (EU, Euratom) No 609/2014
Article 10b – paragraph 7

Text proposed by the Commission

(b) the following paragraph 7 is added:

‘7. If the Member State and the Commission cannot agree on particular adjustments to the VAT based own resources, as referred to in paragraph 2, first subparagraph, point (c), of this Article, the Member State may request the Commission to review its assessment in accordance with Article 13b.’;

Amendment 5

Proposal for a regulation
Article 1 – paragraph 1 – point 5 – point b
Regulation (EU, Euratom) No 609/2014
Article 12 – paragraph 5 – subparagraph 3

Text proposed by the Commission

(b) in paragraph 5, the third subparagraph is replaced by the following:

‘The total increase pursuant to the first and the second subparagraphs shall not exceed 16 percentage points. The limitation of the increase to 16 percentage points shall apply to any case for which the amount of interest has not been communicated to a Member State before … [insert date - the entry into force of this (amending) Regulation]. The increased rate shall be applied to the entire period of delay.’;

Justification

A modification of the methodology of calculating late payment interest could result in a weakening of Member States’ incentives for protecting the financial interests of the Union and for the timely making available of own resources. The proper functioning of the own resources system could be compromised. Protracted making available procedures in turn, could also be used by some as a justification for rejecting the introduction of new own resources.

Amendment 6

Proposal for a regulation
Article 1 – paragraph 1 – point 6 – point c
Regulation (EU, Euratom) No 609/2014
Article 13 – paragraph 5

Text proposed by the Commission

(c) the following paragraph 5 is added:

‘5. If the Member State and the Commission cannot agree on the reasons referred to in paragraph 2, first subparagraph, of this Article, the Member State may request the Commission to review its assessment in accordance with Article 13b.’;
Amendment 7

Proposal for a regulation
Article 1 – paragraph 1 – point 7
Regulation (EU, Euratom) No 609/2014
Article 13b

Text proposed by the Commission

Article 13b

Amendment

deleted

Review procedure

1. In case of a disagreement between a Member State and the Commission referred to in Article 13(5), or concerning other traditional own resources amounts due to the budget of the Union, the Member State may request the Commission to review its assessment within three months from its receipt. In case of a disagreement between a Member State and the Commission referred to in Article 10b(7), the Member State may request the Commission to review its assessment within two months from its receipt. Except for cases referred to in Article 10b(7) such request shall provide reasons for the review requested, and include supporting documents. The request and the ensuing procedure shall not change the obligation of the Member States to make available own resources when they are due to the budget of the Union.

2. Within six months from the receipt of the request provided for in paragraph 1, the Commission shall communicate to the Member State its comments on the reasons provided in the request. Where the Commission finds it necessary to request additional information, the six-month time-limit shall run from the date of receipt of the requested additional information. The Member State concerned shall provide the additional information within three months. In case of a disagreement between a Member
State and the Commission referred to in Article 10b(7), the Commission shall communicate to the Member State its comments on the reasons provided in the request within three months from the receipt of the request.

3. Where the Member State cannot provide any further relevant information for the review procedure, it may request the Commission to reply on the basis of the information available. The six-month time-limit shall in that case run from the date of receipt of that request.

4. In case a Member State files an action for annulment against a decision adopted by the Commission pursuant to Article 9(1a) of Regulation 1553/89, and if the Commission has not replied yet under the review procedure concerning the same VAT correction, the Commission shall suspend the review procedure pending the final judgement of the Court of Justice of the European Union.

Justification

The review procedure would risk resulting in a reversal of the ‘burden of proof’ concerning the accuracy of the calculations and provision of data. The process of making available could be weakened and become protracted. 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.