



Plenary sitting

A9-0347/2021

10.12.2021

REPORT

on the 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)0327 – C9-0257/2021 – 2021/0161(NLE))

Committee on Budgets

Rapporteur: 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 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)0327 – C9-0257/2021 – 2021/0161(NLE))

(Consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2021)0327),
- 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 (C9-0257/2021),
- 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 resources¹,
- 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, Euratom², and in particular Article 10 thereof,
- 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 the measures to meet cash requirements, and on certain aspects of the own resource based on gross national income³,
- having regard to the Opinion 2/2021 of the European Court of Auditors of 22 September 2021 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))⁴,
- having regard to its legislative resolution of 25 March 2021 on the draft Council regulation on the calculation of the own resource based on plastic packaging waste that

¹ OJ L 433I, 22.12.2020, p. 28.

² OJ L 424, 15.12.2020, p. 1.

³ OJ L 165, 11.5.2021, p. 15.

⁴ OJ C 402I, 5.10.2021, p.1.

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 income⁵,

- having regard to Rule 82 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgets (A9-0347/2021),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union and Article 106a of the Treaty establishing the European Atomic Energy Community;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
 5. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

1. While Council Regulation (EU, Euratom) No 609/2014¹¹ 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.***

¹¹ 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 (OJ L 168, 7.6.2014, p. 39).

Amendment

1. While Council Regulation (EU, Euratom) No 609/2014¹¹ 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.

¹¹ 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 (OJ L 168, 7.6.2014, p. 39).

⁵ Texts adopted, P9_TA(2021)0104.

Amendment 2

Proposal for a regulation Recital 7

Text proposed by the Commission

Amendment

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) 2016/804¹². 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.*

deleted

¹² Council Regulation (EU, Euratom) 2016/804 of 17 May 2016 amending 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 requirements (OJ L 132, 21.5.2016, p. 85).

Amendment 3

Proposal for a regulation Recital 10

Text proposed by the Commission

Amendment

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. **deleted**

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

Amendment

(b) the following paragraph 7 is added: **deleted**

‘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

Amendment

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

‘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

Amendment

(c) the following paragraph 5 is added: **deleted**

‘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

Amendment

Article 13b

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.

EXPLANATORY STATEMENT

The Making Available Regulation (MAR) is one of the implementing regulations which, in conjunction with the Own Resources Decision⁶, constitute legal framework for 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 Council adopted new Making Available rules for the new plastic-based own resource (so-called MAR2) and the VAT-based own resource earlier this year, the present proposal for an Amending Regulation would introduce certain modifications to the so-called MAR1, mainly relevant for the operational handling of the Traditional Own Resources. The Commission has submitted this proposal upon the insistence of some Member States that wish to see introduced certain changes in the ground rules of the making available of own resources.

In previous legislative consultation procedures, the European Parliament - based on Reports of the Committee on Budgets - mustered broad majorities for legislative resolutions, which stressed the necessity for maintaining the principle of sincere cooperation in the levying, collection and making available of own resources and a collective notion of responsibility for defending the financial interests of the Union. The Parliament defended consistently the deterring high level of late payment interest and the possibility for the Commission services to react swiftly in cases on disputes as this has proven to be instrumental for the reliable functioning of the system including treasury and cash flow management.

Against this background, your co-rapporteurs propose the following approach to the Amending Regulation:

Some of the technical updates and changes concerning the timing of certain adjustments or the optional use of a central account, appear justifiable on grounds of procedural efficiency and better predictability for Member States and can be supported. However, there are two proposed amendments in particular that would risk upsetting the previously well-functioning procedures and institutional division of tasks.

1. The changes to the **methodology of calculating late payment interests** could undermine the incentive to make available all amounts due without unnecessary delay and to the detriment of all other Member States. The lowering of the 'capping' to 16% could be the first step in a dynamic process that would further dilute the disciplining effect of prohibitively high late payment interests for national authorities.

2. The **review procedure** as proposed in the Commission text would, as such, constitute a comparatively minor change. However, given the present mood in the Working Party Own Resources, it is foreseeable that the Council will use these provisions as a 'hook' to further amend the Commission text with the objective to "strengthen the Member States' rights of legal defence at the expense of the present prerogatives of the Commission services.

The co-rapporteurs consider the introduction of a review provision as superfluous and

⁶ 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 (OJ L 424, 15.12.2020, p. 1).

potentially counter-productive. Firstly, the recent European Court case law⁷ confirms that Member States already have access to legal recourse, even in cases of payments subject to reservations. Secondly, such a new mechanism could allow - or even encourage - Member States to unduly contest certain liabilities. This would result in a high level of bureaucratic and legal effort, perhaps even necessitating formal Commission decisions adopted by the College in response to multiple, relatively minor case of legal controversy over traditional own resources. Such a trend would unduly burden the available administrative capacities in the institutions and inject an element of political polarisation into the making available 'machinery'.

Your co-rapporteurs therefore suggest deleting the relevant paragraphs, recitals and references in order to prevent a deterioration of the own resources implementing rules. In view of the future introduction of new own resources, it is particularly important to maintain a stable foundation of ground rules where Member States have clear incentives to fulfil their role in diligently levying and collecting the own resources on behalf of the Union.

We observe that the spirit of putting into doubt the primacy of EU law over national 'competences' threatens to encroach also on the implementation of the own resources system. Our present amendments would send a signal to the Commission and the Member States in Council that we expect them to cooperate sincerely and to protect the financial interests of the Union.

On a general note, the co-rapporteurs think that a deep reform of the own resources system through the introduction of new own resources remains of paramount importance for the future of the EU and the completion of the Next Generation EU recovery plan as they will provide resources for the reimbursement of the debt. 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 the near future. In this context, the co-rapporteurs recall the relevance of the Interinstitutional Agreement including its roadmap towards the introduction of own resources. The roadmap encompasses the different steps of the introduction of new own resources, but also the modalities of cooperation between the institutions, including a regular dialogue, and the principles that should govern the own resources reform like the principle of sincere cooperation.

⁷ Czech Republic/Commission (C-575/18 P).

PROCEDURE – COMMITTEE RESPONSIBLE

Title	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	
References	COM(2021)0327 – C9-0257/2021 – 2021/0161(NLE)	
Date of consultation / request for consent	6.7.2021	
Committee responsible Date announced in plenary	BUDG 8.7.2021	
Rapporteurs Date appointed	José Manuel Fernandes 14.7.2021	Valérie Hayer 14.7.2021
Discussed in committee	9.11.2021	
Date adopted	9.12.2021	
Result of final vote	+: 34 -: 4 0: 2	
Members present for the final vote	Rasmus Andresen, Robert Biedroń, Anna Bonfrisco, Olivier Chastel, Lefteris Christoforou, David Cormand, Paolo De Castro, Andor Deli, José Manuel Fernandes, Eider Gardiazabal Rubial, Alexandra Geese, Vlad Gheorghe, Valentino Grant, Elisabetta Gualmini, Valérie Hayer, Eero Heinäluoma, Niclas Herbst, Monika Hohlmeier, Moritz Körner, Joachim Kuhs, Zbigniew Kuźmiuk, Hélène Laporte, Pierre Larrouturou, Janusz Lewandowski, Silvia Modig, Siegfried Mureşan, Victor Negrescu, Andrey Novakov, Jan Olbrycht, Dimitrios Papadimoulis, Karlo Ressler, Bogdan Rzońca, Nicolae Ştefănuţă, Nils Torvalds, Nils Ušakovs, Rainer Wieland, Angelika Winzig	
Substitutes present for the final vote	Jonás Fernández, Mario Furore, Henrike Hahn	
Date tabled	10.12.2021	

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

34	+
NI	Andor Deli, Mario Furore
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, Jonás Fernández, Eider Gardiazabal Rubial, Elisabetta Gualmini, Eero Heinäluoma, Pierre Larrourou, Victor Negrescu, Nils Ušakovs
The Left	Silvia Modig, Dimitrios Papadimoulis
Verts/ALE	Rasmus Andresen, David Cormand, Alexandra Geese, Henrike Hahn

4	-
ECR	Zbigniew Kuźmiuk, Bogdan Rzońca
ID	Joachim Kuhs, Hélène Laporte

2	0
ID	Anna Bonfrisco, Valentino Grant

Key to symbols:

+ : in favour

- : against

0 : abstention