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2018/0133 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The purpose of this proposal is to simplify the Own Resources aspects of Value Added Tax considerably by amending Council Regulation (EEC, Euratom) No 1553/89¹: the focus is switched to standard-rated supplies (so the weighted average rate will not be needed), while the number of corrections are reduced to an absolute minimum and the financial compensations have been removed. In addition, a common percentage is proposed, based on Member State's most recent fiscal data.

This proposal constitutes an integral part of the reform of the Own Resources system as set out in the proposal for a Council Decision on the system of Own Resources of the European Union². That reform follows the recommendations proposed of the High-Level Group on Own Resources, which published its final report in December 2016³.

The proposal draws on past experiences in administering Own Resources and aims to simplify the calculation of the Own Resource based on Value Added Tax. It also streamlines the practical arrangements. It is explained in more detail in section 5 below.

Given the nature of the Own Resources, their management relies on the correct application of other Union policies, in particular on the internal market and taxation.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

The proposed Regulation has its legal basis in Article 322(2) of the Treaty on the Functioning of the European Union. Article 8(2) of Council Decision 2014/335/EU, Euratom⁴ and Article 6(3) of the proposed Own Resources Decision mention that Member States shall make the resources available to the Commission 'in accordance with regulations' adopted under Article 322(2) of the Treaty on the Functioning of the European Union. In addition, since this Regulation amends an existing regulation, it is appropriate to use the same type of instrument.

By the nature of the Union budget and the Own Resources that constitute its revenue side, the system of Own Resources and their being made available have to be managed from a Union perspective and this cannot be done by the Member States.

This proposed Regulation complements the already existing 'making available' provisions, in particular Regulation (EU, Euratom) No 609/2014⁵.

It is in the interests of the Union and its Member States to ensure that the system of Own Resources works well and the proposed Regulation is designed to facilitate cooperation between them.

¹ Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 155, 7.6.1989, p. 9).

² COM(2018) 325 final of 2.5.2018.

³ Future financing of the EU. Final report and recommendations of the High Level Group on Own Resources. December 2016.

⁴ Council Decision of 26 May 2014 on the system of Own Resources of the European Union (2014/335/EU, Euratom) (OJ L 168, 7.6.2014, p. 105).

⁵ 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).

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND CONSULTATIONS AND IMPACT ASSESSMENTS

This proposal is part of the Own Resources legislative package for the 2021-2027 period. In order to simplify the Own Resource based on Value Added Tax, the current Value Added Tax Own Resources Regulation should be amended.

The explanatory memorandum for the proposal for a new Own Resources Decision provides more information on recent reports and documents analysing the need to reform the Own Resources system.

This proposal is not linked to the Regulatory Fitness Programme. It targets Member States and not microenterprises, small and medium-sized enterprises or other stakeholders. It is in principle neutral on sectoral Union competitiveness and international trade. The proposal has no consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

The budgetary implications of this proposal and the Own Resources legislative package are detailed in a Legislative Financial Statement attached to the proposal for the Making Available Regulation for new Own Resources⁶. The reformed Own Resources system, including the reformed system of the Value Added Tax, can be implemented with the same level of administrative appropriations and staff resources as the present system.

5. OTHER ELEMENTS

The application of this Regulation will be discussed on a regular basis in the Advisory Committee on Own Resources, as it is currently the case.

The Commission's proposal may be summarised as follows:

Article 1(1) of the proposal deletes the previous subdivision in 6 titles of Regulation (EEC, Euratom) No 1553/89.

Article 1(2) of the proposal amends Article 1 of Regulation (EEC, Euratom) No 1553/89 as follows:

- Article 1 is updated to reflect the fact that the Value Added Tax Own Resource is to focus on standard-rated supplies to final consumption. It also refers to the uniform call rate referred to in the proposed new Own Resources Decision. The standard rate of Value Added Tax should be understood as the rate of Value Added Tax referred to in Article 96 of Council Directive 2006/112/EC, on the common system of Value Added Tax⁷.

Article 1(3) of the proposal deletes Article 2 of Regulation (EEC, Euratom) No 1553/89.

- The enacting terms have been moved to Article 3, while the non-normative provisions, setting the framework, are now contained in the recitals.

Article 1(4) of the proposal replaces Articles 3 and 4 of Regulation (EEC, Euratom) No 1553/89 as follows:

⁶ COM(2018) 326 final of 2.5.2018.

⁷ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

- Article 3(1): to provide an unquestionable and reliable data source, the standard-rated Value Added Tax Own Resource base is to be derived from the total net Value Added Tax receipts collected in a calendar year in each Member State, corrected for the specific territorial issues listed in the Value Added Tax Directive;
- Article 3(2): to arrive at the standard-rated supplies to final consumption, the corrected net receipt is multiplied by the common Union share;
- Article 3(3): as Member States apply different standard rates, the receipts cannot be used to apply the uniform call rate. Therefore, the standard-rated supplies to final consumption should be divided by the Member State's standard rate to obtain the standard rated Value Added Tax base instead;
- Article 3(4): the uniform call rate is applied to the standard-rated Value Added Tax base to obtain the standard-rated Value Added Tax Own Resource that accrues to the EU budget;
- Article 3(5): where a Member State infringes the Value Added Tax Directive, the collected net Value Added Tax receipts should be corrected to ensure an equal treatment between Member States;
- Article 4: when a Member State, following the proper procedures, chooses to change its standard rate of Value Added Tax, Article 4 provides the standardised method for taking that change into account. The method takes into account the rates before and after the change.

Article 1(5) of the proposal deletes Articles 5 and 6 of Regulation (EEC, Euratom) No 1553/89:

- Articles 5 and 6 are deleted, as the proposal provides for a minimal use of corrections and no compensations.

Article 1(6) of the proposal amends Article 7 of Regulation (EEC, Euratom) No 1553/89 as follows:

- Article 7 remains virtually unchanged. It replaces 'before' with 'by' at the beginning of paragraph 1. In paragraph 2, it includes the consequential changes related to the deletion of Articles 5 and 6, and to the move of Article 11 to Article 4(7) Council Regulation (EU, Euratom) No 20xx/xxxx.

Article 1(7) of the proposal replaces Article 8 of Regulation (EEC, Euratom) No 1553/89:

- Article 8 remains unchanged in essence. It replaces the reference to the 'VAT resources base' with 'standard rated Value Added Tax resource base'.

Article 1(8) of the proposal replaces Article 10 of Regulation (EEC, Euratom) No 1553/89:

- Article 10 remains unchanged in essence but it is amended to reflect the scope of the present proposal. The reference to Articles 5 and 6 has been removed, as it is proposed that compensations and certain corrections will be discontinued. To simplify procedures, Article 10(2) has been changed from 'The Commission shall examine [...]' to 'The Commission may adopt [...]'

Article 1(9) of the proposal amends Article 11 of Regulation (EEC, Euratom) No 1553/89:

- Article 11: Article 11(1) is moved to Article 4(7) of Council Regulation (EU, Euratom) No 20xx/xxxx. The moved text remains unchanged in principle, but has

been adapted to the fact that the weighted average rate is not part of the present proposal. Article 11(3) has been reformulated to reflect the move of the control provisions to Council Regulation (EU, Euratom) No 20xx/xxxx.

Article 1(10) of the proposal amends Article 12 of Regulation (EEC, Euratom) No 1553/89:

- Article 12 remains unchanged in essence, but it is amended to reflect the scope of the proposal. Member States are required to provide information on Value Added Tax collection in more general terms and only on relevant changes in the administrative processes and procedures for Value Added Tax collection. Also, the reporting period for the Commission has been brought into line with periods laid down in other tax regulations and directives. To assess the effectiveness of Value Added Tax collection procedures, it is more relevant to report on improvements made by Member States to Value Added Tax collection than on the procedures themselves. The text has been amended accordingly.

Article 1(11) of the proposal replaces Article 13 of Regulation (EEC, Euratom) No 1553/89:

- Article 13: This Article is amended to reflect the scope of the proposal. This is achieved by removing the references to ‘authorisations’.

Article 2 of the proposal deals with its entry into force, application and retroactivity, and its impact on the Value Added Tax Own Resources regime.

This Regulation should enter into force at the same time as the new Own Resources Decision. It is planned that the new Value Added Tax Own Resources regime will apply retroactively from the beginning of the period, i.e., 1 January 2021, so corrections of statements produced before that date will follow the rules in force at the time.

Lastly, there is a general terminological change from ‘VAT resources’ to ‘Value Added Tax Own Resources’.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament⁸,

Having regard to the opinion of the European Court of Auditors⁹,

Whereas:

- (1) The Own Resource of the Union based on a share of the Value Added Tax referred to in Article 2(1)(b) of Council Decision 20xx/xxxx/EU, Euratom¹⁰ ('standard rated Value Added Tax Own Resource'), should be made available to the Union in the best possible conditions. Accordingly, rules should be laid down for the Member States on making that resource available to the Union budget.
- (2) For the sake of simplicity and transparency, and in order to reduce administrative burden, the standard rated Value Added Tax Own Resource should be calculated on the basis of a common Union share of standard rated transactions. That share should represent the average of the lowest shares of standard rated supplies to final consumption in Member States over a period of five years that has been calculated using national accounts and fiscal data approved by the Advisory Committee on Own Resources.
- (3) The arrangements for calculating the standard rated Value Added Tax Own Resource base should be determined in a uniform manner starting from actually collected receipts for every given calendar year as the sole definitive method for determining the standard rated Value Added Tax Own Resource base.
- (4) It is therefore appropriate to amend Regulation (EEC, Euratom) No 1553/89 accordingly.
- (5) For reasons of consistency, this Regulation should enter into force on the same day as Decision 20xx/xxxx/EU, Euratom and should apply from 1 January 2021. However, the amendments to Regulation (EEC, Euratom) No 1553/89 should not apply to the

⁸ OJ C [...], [...], p. [...].

⁹ OJ C [...], [...], p. [...].

¹⁰ OJ L [...], [...], p. [...].

correction of statements of the Value Added Tax Own Resource base for financial years before 2021,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC, Euratom) No 1553/89 is amended as follows:

- (1) the following subdivisions and their titles are deleted:
 - (a) 'Title I General provisions';
 - (b) 'Title II Scope';
 - (c) 'Title III Method of calculation';
 - (d) 'Title IV Provisions relating to accounting and making available of Own Resources';
 - (e) 'Title V Provisions relating to control';
 - (f) 'Title VI Final provisions';
- (2) Article 1 is replaced by the following:

“Article 1

The standard rated Value Added Tax Own Resource shall be calculated by applying a uniform call rate, set in accordance with Council Decision 20xx/xxxx/EU*, to the standard rated Value Added Tax Own Resource base determined in accordance with this Regulation.

The standard rate of Value Added Tax is the rate of Value Added Tax referred to in Article 96 of Council Directive 2006/112/EC**.

* Council Decision 20xx/xxxx/EU, Euratom of [DATE] on the system of Own Resources of the European Union (OJ L [...], [...], p. [...]).

** Council Directive 2006/112/EC on the common system of Value Added Tax (OJ L 347, 11.12.2006, p. 1).”;

- (3) Article 2 is deleted;
- (4) Articles 3 and 4 are replaced by the following:

“Article 3

1. For a given calendar year the standard rated Value Added Tax Own Resource base shall be calculated by each Member State from the total net Value Added Tax receipts collected from the taxable transactions referred to in Article 2 of Directive 2006/112/EC, by that Member State during that same calendar year. That amount shall be corrected to take account of the following amounts:
 - (a) any amounts which should be treated for Own Resource purposes as being transactions originating in or destined for a Member State although originating or destined for a territory referred to in Article 6 of Directive 2006/112/EC;
 - (b) any amounts accruing from one of the places referred to in Article 7 of Directive 2006/112/EC, insofar as Member States can show that the revenue has been transferred to that place.

2. The amount obtained in accordance with paragraph 1 shall be multiplied by 45%.
3. The amount obtained in accordance with paragraph 2 shall be divided by the standard rate of Value Added Tax applicable in the Member State concerned pursuant to Directive 2006/112/EC in the year in which the Value Added Tax receipts were collected.
4. The amount obtained in accordance with paragraph 3 shall be multiplied by the uniform call rate referred in Article 1(1) of Council Regulation (EU, Euratom) No 20xx/xxxx* to obtain the standard rated Value Added Tax Own Resource to be made available to the Union budget.
5. Where an infringement of Directive 2006/112/EC takes place and, as a consequence, the Union's standard rated Value Added Tax Own Resources are reduced, the Union is entitled to receive the whole amount of the Own Resources in question, plus the interest for the delay, in accordance with Article 12 of Council Regulation (EU, Euratom) No 609/2014**.

Article 4

1. The standard rated Value Added Tax Own Resource base shall be calculated based on calendar years.
2. Where a Member State introduces a change in the standard rate of Value Added Tax, the revised rate shall apply from the first day of the month following the month in which the new standard rate took effect. A pro rata temporis of the two rates shall be computed for the purpose of the calculation referred to in Article 3(3).

* Council Regulation (EU, Euratom) No 20xx/xxxx of [DATE] laying down implementing measures for the system of Own Resources of the European Union (OJ L [...], [...], p. [...]).

** 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) Articles 5 and 6 are deleted;

(6) in Article 7, paragraphs 1 and 2 are replaced by the following:

“1. By 31 July, the Member States shall send the Commission a statement of the total amount of the standard rated Value Added Tax Own Resource base for the previous calendar year, calculated in accordance with Article 3, to which the rate referred to in Article 1 is to be applied.

2. The statement shall contain all the data used to determine the base that are required for the inspections referred to in Article 4(7) of Regulation (EU, Euratom) No 20xx/xxxx.”;

(7) Article 8 is replaced by the following:

“Article 8

Member States shall send to the Commission by 15 April of each year an estimate of the standard rated Value Added Tax Own Resource base for the following financial year.”;

(8) Article 10 is replaced by the following:

“Article 10

1. Member States shall inform the Commission by 30 April of each financial year of the solutions and related modifications that they propose to adopt in order to determine the amount referred to in Article 3(1). The solution proposed shall indicate, where applicable, the nature of the data that they consider appropriate, and an estimate of the value of the base for each of these corrections.

By 31 May, the Commission shall send to the other Member States the information referred to in the first subparagraph which it has received from each Member State.

2. The Commission may adopt implementing acts on the solutions proposed by Member States in accordance with paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 13(2).”;

- (9) Article 11 is amended as follows:

- (a) paragraph 1 is deleted;
- (b) paragraph 3 is replaced by the following paragraph:

“Following the controls referred to in Article 4(7) of Regulation (EU, Euratom) 20xx/xxxx, the annual statement for a given financial year shall be corrected as specified in Article 9.”;

- (10) Article 12 is replaced by the following:

“Article 12

1. Each year the Member States shall provide the Commission with information concerning all relevant changes in their administrative processes and procedures which they apply for the collection of Value Added Tax.
2. The Commission shall consider, together with the Member State concerned, whether improvements to these processes and procedures can be contemplated with a view to improving their effectiveness.
3. The Commission shall produce a report every five years on the measures taken and progress made by the Member States in the collection of Value Added Tax and on any improvements contemplated.

The Commission shall submit that report to the European Parliament and the Council for the first time by 31 December 2023.”;

- (11) Article 13 is replaced by the following:

“Article 13

1. The Commission shall be assisted by the Advisory Committee on Own Resources established by Article 9 of Regulation (EU, Euratom) No 20xx/xxxx. That committee shall be a committee within the meaning of Regulation (EU) no 182/2011 of the European Parliament and of the Council*.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

* Regulation (EU) No 182/2011 of the European Parliament and of the Council 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 powers (OJ L 55, 28.2.2011, p. 13).”.

Article 2

This Regulation shall enter into force on the date of entry into force of Decision 20xx/xxxx/EU, Euratom.

It shall apply from 1 January 2021.

However, Article 1 shall not apply to the correction of statements of the Value Added Tax Own Resource base for financial years before 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council
The President*