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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Delegations

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

On 6 November 2020, the Permanent Representatives Committee decided to forward the revised text of the draft Council Regulation, as set out in the Annex, to the European Parliament, and invite the European Parliament to take it into consideration when drawing up its opinion, as well as to the European Court of Auditors, and request the European Court of Auditors to deliver an opinion on the revised text.

DRAFT COUNCIL REGULATION (EU, Euratom)

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

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 Parliament¹,

Having regard to the opinion of the European Court of Auditors²,

Whereas:

- (1) The own resource of the Union based on Value Added Tax (VAT) established by Council Decision 20xx/xxxx/EU, Euratom³ (the 'VAT-based 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 own resource available to the Union budget.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ Council Decision 20xx/xxxx/EU, Euratom of ... on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom (OJ L ...).

- (2) The provisions relating to the definitive uniform arrangements for collecting the VAT -based own resource and the detailed rules for giving effect to these arrangements are to apply from 1 January 2021.
- (3) For the sake of simplicity and transparency, and in order to reduce administrative burden, the VAT-based own resource should be calculated on the basis of a definitive multi-annual weighted average rate. The arrangements for calculating the base for the VAT-based own resource should be determined in a uniform manner starting from receipts that were actually collected in a given calendar year as the sole definitive method for determining the base for the VAT-based own resource.
- (4) The definitive weighted average rate of VAT from the financial year 2016 in each Member State should be used as a definitive multi-annual weighted average rate.
- (5) Council Regulation (EEC, Euratom) No 1553/89⁴ should therefore be amended accordingly.
- (6) 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, this Regulation should not apply to the production or correction of statements of the base for the VAT-based own resource for financial years before 2021,

HAS ADOPTED THIS REGULATION:

⁴ 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).

Article 1

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

- (1) the titles of the following subdivisions 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 VAT-based own resource shall be calculated by applying the uniform call rate under point (b) of Article 2(1) of Council Decision 20xx/xxx/EU, Euratom* to the base determined in accordance with this Regulation.

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

- (3) Article 2 is replaced by the following:

"Article 2

The VAT-based own resource shall be determined from the taxable transactions referred to in Article 2 of Council Directive 2006/112/EC* (the VAT Directive) on the common system of value added tax, as amended.

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

- (4) Articles 3 and 4 are replaced by the following:

"Article 3

1. For a given calendar year, the base for the VAT-based own resource shall be calculated by dividing the total net VAT receipts collected by a Member State during that year corrected in accordance with paragraph 2 by the weighted average rate of VAT, as calculated in accordance with the method set out in Article 4.

This definitive multi-annual weighted average rate shall be expressed as a percentage, applying the common method set out in Article 4.

2. The total net VAT receipts collected from the taxable transactions referred to in Article 2 of this Regulation shall be corrected to take account of the following amounts:
 - (a) any amounts which should be treated for own resource purposes as transactions originating in or destined for a Member State although originating in 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 a Member State is able to prove that the revenue has been transferred to that place;
 - (c) any amount due following a correction resulting from an infringement of Directive 2006/112/EC.
3. The amount obtained by application of paragraph 1 shall be multiplied by the uniform call rate referred to in point (b) of Article 2(1) of Decision 20xx/xxxx/EU, Euratom** to obtain the VAT-based own resource that is to be made available to the Union budget.

Article 4

1. The VAT-based own resource shall be calculated on the basis of calendar years.
2. The definitive multi-annual weighted average rate shall be calculated on the basis of the following method:
 - (a) it shall be expressed as a percentage calculated by the Member State for the financial year 2016, respecting the provisions of this Article as applicable before 2021;
 - (b) the percentage in which the definitive multi-annual weighted average rate is expressed shall be calculated to the fourth decimal place;
 - (c) the percentage in which the definitive multi-annual weighted average rate is expressed shall have been inspected and shall be free from notifications concerning outstanding issues as referred to in Article 9(2) as applicable before 2021;
 - (d) a weighted average rate under notification shall be used in the interim, and shall be considered as the provisional multi-annual weighted average rate;

- (e) once the issues under notification have been resolved, the resulting percentage shall replace the provisional multi-annual weighted average rate, and shall become the definitive multi-annual weighted average rate from the financial year 2021 onwards;
- (f) the budgetary implications of any difference between the provisional and the definitive multi-annual weighted average rate shall be addressed under the procedure outlined in Article 10b(5) of Council Regulation (EU, Euratom) No 609/2014* known as the yearly balance exercise.

* 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).

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

- (5) Articles 5 and 6 are deleted;
- (6) Article 7 is replaced by the following:

"Article 7

1. By 31 July of each year, the Member States shall send the Commission a statement of the total amount of the base for the VAT-based own resource 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 2(4) of Council Regulation (EU, Euratom) No 20xx/xxxx.
3. The data used to determine the base shall be the most recent data available when the statement is produced.

4. Member States may request an extension of the time limit referred to in paragraph 1 of this Article if exceptional circumstances beyond their control make it impossible to perform the calculations in accordance with Article 3 and therefore to adhere to that time limit. Such a request shall be made to the Commission in writing and shall set out the reasons for the exceptional circumstances.
5. The Commission, after examining a request referred to in paragraph 4 of this Article, may grant a single extension of the time limit referred to in paragraph 1 of this Article for a maximum of 2 months. The Commission shall report the number of requests and its corresponding decisions to the committee referred to in Article 13(1) on an annual basis.";

(7) Article 8 is replaced by the following:

"Article 8

For budgetary purposes, Member States shall send to the Commission by 15 April of each year an estimate of the base for the VAT-based own resource for the following financial year.";

(8) Article 9 is replaced by the following:

"Article 9

1. Any corrections to the statements referred to in Article 7(1) for previous financial years, for whatever reason, shall be made in agreement between the Commission and the Member State concerned.

If the Member State and the Commission do not agree on a correction, the Commission shall inform the Member State concerned in a letter about the necessary correction. That letter shall constitute "measures" as referred to in point (c) of Article 12(2) of Council Regulation 609/2014.

2. The Member State concerned may request the Commission to review the correction communicated in accordance with the second subparagraph of paragraph 1 within two months from the day of the receipt of the letter mentioned in the second subparagraph of paragraph 1. This review procedure shall be concluded with a decision by the Commission to be adopted by the Commission at the latest three months after 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 correction, the Member State shall make available the corresponding amount. Neither the Member State's request to review the correction 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 correction.

All corrections shall be incorporated in aggregate statements, which shall amend the previous statements for the financial years concerned.

3. The Commission shall adopt implementing acts further detailing the procedural modalities for the review procedure referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13(3). The adoption of these implementing acts shall be without prejudice to the application of the review procedure set out in paragraph 2.
4. No further corrections shall be made to the statements referred to in Article 7(1) after 31 July of the fourth year following the financial year concerned, unless those corrections concern points previously notified either by the Commission or by the Member State concerned.";

(9) Article 10 is replaced by the following:

"Article 10

1. By 30 April of each year, each Member State shall inform the Commission of any solutions and related modifications that it proposes to adopt in order to determine the amounts referred to in points (a) and (b) of Article 3(2). The proposed solution shall indicate, where applicable, the nature of the data that the Member State considers appropriate, and shall include an estimate of the value of the base for each item.

By 31 May of the same year, the Commission shall send to the other Member States the information referred to in the first subparagraph that it has received from a Member State.

2. The Commission may adopt implementing acts as regards 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) within 60 days after the committee referred to in Article 13(1) has delivered its opinion.";

(10) Article 11 is amended as follows:

(a) paragraph 1 is deleted;

(b) paragraph 3 is replaced by the following:

"3. Following the controls referred to in Article 2(4) of Regulation (EU, Euratom) 20xx/xxxx, the annual statement for a given financial year shall be corrected as specified in Article 9.";

(c) the following paragraph is added:

"2. With respect to the weighted average rate referred to in Article 4 paragraphs 2 and 3, the Commission shall assess the corrections referred to in Article 9 submitted by the Member States in order to lift any notifications concerning outstanding issues on the weighted average rate."

(11) 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 VAT in comparison to their previous submission.
2. The Commission shall consider, together with the Member State concerned, whether these processes and procedures can be improved.
3. Every five years, the Commission shall produce a report on the measures taken and progress made by the Member States in relation to the collection of VAT and on any improvements.

The Commission shall submit that report to the European Parliament and the Council for the first time by 31 December 2025.";

(12) Article 13 is replaced by the following:

"Article 13

1. The Commission shall be assisted by the Advisory Committee on own resources (ACOR/VAT) established by Article 7(1) 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.
3. Where reference is made to this paragraph, Article 5 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).";

(13) After Article 13, a new Article 13a is inserted:

"Article 13a

1. The Commission shall produce a report on the functioning of the VAT-based own resource system at the latest by 1 January 2025. The report shall state:
 - (a) the number of Member States that still apply a weighted average rate subject to any notifications concerning outstanding issues;
 - (b) any changes to national VAT rates.
2. The report referred to in paragraph 1 shall include an assessment of whether the VAT-based own resource system and, in particular, the multi-annual weighted average rate are effective and adequate. If appropriate, the report shall be accompanied by a proposal to modify this Regulation with a view to determining the multi-annual weighted average rate on the basis of more recent data."

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 production or correction of statements of the base for the VAT-based own resource 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