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2021/0161 (NLE)

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The purpose of this proposal is to lay down, in accordance with Article 322(2) of the Treaty on the Functioning of the European Union, provisions necessary to determine the methods and procedures for the making available of own resources.

This proposal responds to the European Council conclusions of July 2020[1], which invited the Commission "to assess presenting a proposal for the revision of the Making Available Regulation in order to tackle some of the challenges with respect to making available own resources".

This proposal aims to amend Council Regulation (EU, Euratom) No 609/2014[2], which together with the Own Resources Decision[3], establishes the procedures and deadlines for the making available to the EU budget of traditional own resources, Value-Added Tax-based own resources and Gross National Income-based own resources.

While Council Regulation (EU, Euratom) No 609/2014 has provided a solid and stable anchor for the financing mechanics of the EU, improvements to the existing provisions on the making available of own resources seem desirable namely in order to enhance predictability for Member States and to enact procedures for dispute resolution.

This proposal sets forth a carefully calibrated system to ensure regular and timely payments to the EU budget, which is essential for the smooth functioning of the EU system of own resources, the daily management of the Union budget and, in turn, the functioning of the EU as a whole.

One of the novelties is a review procedure for dispute resolution, which many Member States have asked for. The procedure codifies and strengthens the procedural rules applicable to the exchanges between the Commission and the Member States on the making available of own resources. The proposal also reflects 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.

The proposal amends the rules for interest on late payments at different levels. Council Regulation (EU, Euratom) 2016/804 had already capped the increase in interest above the base rate to 16 percentage points. The present proposal extends the capping on the increase of interests to all cases. This addresses directly comments received from Member States about the very high interest rates provided for by Council Regulation (EU, Euratom) No 609/2014

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1 Point 142: 'Regarding the Council Regulation on the methods and procedure for making available own resources and on the measures to meet cash requirements, the Commission is invited to assess presenting a proposal for its revision in order to tackle challenges with respect to making available own resources.'

2 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 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.*

for cases already known before 1 October 2016. The proposal also raises the threshold to waive interest from EUR 500 to EUR 1,000. In addition, a time limit of 10 years is introduced for keeping traditional own resources amounts in the B accounts.

In order to increase the predictability of national contributions to the EU budget, the proposal amends the annual balances adjustment and postpones the making available by Member States of the adjustments to year N+2. This was a request by many Member States to facilitate the national budgetary procedures.

In addition, the proposal includes a new Article that codifies the procedure of advance payments, again a request from Member States. The proposal also inserted the possibility for the Commission to establish a centralised own resources account.

The proposal is part of a broader package that includes Council Regulation (EU, Euratom) 2021/770 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[4] and proposals for new own resources expected to be soon adopted, in line with the Interinstitutional agreement of 16 December 2020[5].

Finally, Germany is proposed to be included as beneficiary of lump-sum corrections and the reference to the United Kingdom correction is deleted.

The Commission's proposal is explained in more detail in section five below. This explanatory memorandum also includes in section six the Commission's assessment of Council Regulation (EU, Euratom) No 609/2014 requested in the European Council conclusions of July 2020.

The making available provisions for all own resources should be merged at the occasion of their future revision including new proposed Regulations related to the making available of new own resources.

- **Consistency with existing policy provisions in the policy area**

The legal basis for this Regulation is Article 322(2) TFEU. The proposal complements other own resources legislation such as Council Decision (EU, Euratom) 2020/2053[6], Council Regulation (EU, Euratom) 2021/768[7], Council Regulation (EU, Euratom) 2021/769[8] and Council Regulation (EU, Euratom) 2021/770.

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4 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 income, OJ L 165, 11.5.2021, p. 15.

5 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.

6 Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union, OJ L 424, 15.12.2020, p. 1.

7 Council Regulation (EU, Euratom) 2021/768 of 30 April 2021 laying down implementing measures for the system of own resources of the European Union, OJ L 165, 11.5.2021, p. 1.

- **Consistency with other Union policies**

The management of the own resources relies on the correct application of other Union policies:

– Traditional own resources (mainly customs duties, trade defence duties and sugar levies) are linked to the customs union, the common commercial policy, and the common agricultural policy;

– Own resources based on Value Added Tax are linked to the Single Market and taxation policy.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this proposal is Article 322(2) TFEU.

- **Subsidiarity (for non-exclusive competence)**

Not applicable.

- **Proportionality**

The scope of the proposal is to enhance predictability for Member States in the making available of own resources to the EU budget and to enact procedures for dispute resolution. The proposal is consistent with the principle of proportionality because it does not go beyond what is necessary and is proportionate to achieve this objective satisfactorily.

- **Choice of the instrument**

Article 322(2) TFEU does not specify the instrument to be used[9]. However, Article 8(2) of Council Decision 2014/335/EU, Euratom and Article 9(3) of Council Decision (EU, Euratom) 2020/2053 require Member States to make the resources available to the Commission 'in accordance with regulations' adopted under Article 322(2) TFEU.

Furthermore, the proposal amends Council Regulation (EU, Euratom) No 609/2014 on the making available of own resources. In this context, the use of a Regulation as a choice of instrument is appropriate.

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8 Council regulation (EU, Euratom) 2021/769 of 30 April 2021 amending Regulation (EEC, Euratom) No 1553/89 on the definitive arrangements for the collection of own resources accruing from value added tax, OJ L 165, 11.5.2021, p. 9.

9 '*The Council, acting on a proposal from the Commission and after consulting the European Parliament and the Court of Auditors, shall determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Union's own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements.*'

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

- **Ex-post evaluations/fitness checks of existing legislation**

In preparation for this proposal, the Commission submitted a detailed questionnaire to the Member States, the European Parliament and the European Court of Auditors to assess the substance and practical functioning of Council Regulation (EU, Euratom) No 609/2014. The replies to the questionnaire confirmed that said Regulation functioned generally well. However, Member States also put forward several requests for improvement.

The proposal was also informed by a comprehensive discussion of the system under Council Regulation (EU, Euratom) No 609/2014 held in the Council Working Party on Own Resources and by a series of bilateral meetings between the Commission and Member States, the European Parliament and the European Court of Auditors.

4. BUDGETARY IMPLICATIONS

The proposal aims to strengthen the functioning of Council Regulation (EU, Euratom) No 609/2014 and, in particular, improves the procedures for the making available of own resources by Member States. Therefore, the proposal contributes to improving the current own resources system.

When compared to Council Regulation (EU, Euratom) No 609/2014, the proposal would not change the human and administrative resources required. However, the extension of the capping on the increase of interest to all cases will lead to a decrease of interest revenue collected for the EU budget. Its financial impact, based on reference amounts of the past years (as from the entry into force of Council Regulation (EU, Euratom) 2016/804) is estimated at EUR 27.5 million/year.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

The application of the own resources legislation, including the methods and procedures for making available own resources, is discussed on a regular basis in the Advisory Committee on Own Resources.

The Commission proposal can be summarised as follows:

Chapter I and II on ‘General provision’ and ‘Accounts for own resources’

No amendments are made in these chapters.

Chapter III on ‘Making available of own resources’

Under Article 9(1) the possibility is inserted for the Commission to establish a centralised own resources account. Currently, only Member States keep these own resources accounts. The Commission should in the future be able to modernise the management of accounts opened in its name. The reduction in the number of bank accounts used for collection of own resources will bring efficiency and allow pooled approach to cash management.

Under 10a(2) on making available the VAT and GNI-based own resources, a specific paragraph is added to allow advance payments on a case-by-case basis. The provision ensures that any cost associated with the advance payment will be borne by the Member State making it.

Article 10b(5) postpones the date of making available the adjustments to the VAT and GNI-based own resources of previous financial years to the first working day of March of the year following that in which the Commission informed Member States of these amounts.

Article 10b(7) defines the period when Member States may request the Commission to review the making available of the VAT-based own resource, while Article 13(5) defines this period for traditional own resources.

In order to prevent the accumulation of very high amounts of interest, Council Regulation (EU, Euratom) 2016/804 introduced a capping on the increase of the interest rate to 16 percentage points for late payment of own resources. That capping applied to late payment interests of own resources that were due after the date of entry into force of that Regulation – 1 October 2016, or were due prior to that date, where those own resources only became known to the Commission or to the Member State concerned after that date. That rule is contained in Article 12(5), third subparagraph of Council Regulation (EU, Euratom) No 609/2014. The proposal extends the capping on the increase of interest to cases to which the current capping does not apply. However, the capping will not apply to any amount of interest that has already been notified to a Member State before the entry into force of this proposal.

Under Article 12(3), it is also proposed to increase the threshold for waiving interest from EUR 500 to EUR 1,000.

Under Article 13(2) fifth subparagraph, for irrecoverable amounts, a general time limit for amounts to be taken out of the separate account is introduced to ensure that the cases in the separate accounts are regularly reviewed.

Finally, Articles 6 and 10a are aligned with the new Own Resources Decision to include Germany as beneficiary of lump-sum corrections and the reference to the United Kingdom correction has been deleted from both articles.

Chapter III bis on ‘Payment under reservation and review procedure’

A new Chapter III bis is added. It provides under a new article 13a the possibility for Member States to make available amounts under reservation. This option is codifying current practice.

A new Article 13b introduces a review procedure in case of manifest disagreement between a Member State and the Commission. This new procedure provides for clear deadlines and obligations for both the Member States and the Commission. It ensures a constructive dialogue on the disputed amounts in question and aims to facilitate reaching an agreement between both sides.

6. ANNEX

- **Commission assessment of Council Regulation (EU, Euratom) No 609/2014**

In line with the European Council's mandate, the Commission has assessed Council Regulation (EU, Euratom) No 609/2014 on substance, bearing in mind the need to guarantee the legality and regularity of the own resources payments. This is particularly important also in view of the upcoming new own resources.

Notwithstanding the overall largely positive track-record of the functioning of that Regulation, Member States have asked for changes in several areas. In the course of the discussions in the Council Working Party on Own Resources during the last two years, particular attention has been drawn to:

- Applicable interest rules for belated payments
- Conditional payments and Member States' rights of defence
- Advance payments of own resources
- Derogations on making available under Article 13(2), second subparagraph
- Assessment of write-off cases
- Adjustments of the GNI-based and VAT-based own resources
- Merging provisions on making available own resources

In its review, the Commission assessed in detail all the issues that Member States raised regarding the functioning of the making available of own resources and reached the conclusions explained below. These conclusions formed the amendment proposal that the Commission has adopted.

Applicable interest rules for belated payments

The budget of the EU depends on payments made on time. Interests for belated payment are a powerful incentive for that purpose. The Court of Justice of the European Union has many times, most recently in its ruling C-575/18 P, confirmed that the obligation to pay default interest is inseparable from the obligation to make the own resources available to the Commission.

A significant decrease of the amounts of interest due is noticeable since the entry into force of the capping on the increase of interest rate on 1 October 2016. Before that date, the interest rate accrued without any ceiling as long as the principal was not paid. With the introduction of the capping, the increase in interest became limited to 16 percentage points for the entire period of delay. A sample of 22 cases involving capping shows a total decrease of MEUR 9 in interest due as compared to the method applicable before the capping. In these cases, Member States have been released from paying an amount of late interest equivalent to 83% of the amount of interest that has been actually requested.

However, the capping on the increase of interest is applicable for cases after 1 October 2016 only. For cases already known before 1 October 2016, the capping does not apply. This

resulted in several cases where the amount of interest due was quite high. An extension of the capping to all cases is associated with a moral hazard risk but it seems nonetheless useful to simplify the currently rather complex system.

Conditional payments and Member States' rights of defence

For what concerns the Member States' rights of defence and judicial protection, the recent Court judgment in case C-575/18 P confirms that the existing own resources legislation already affords Member States effective rights of defence. However, in the interest of clarity and transparency, it is useful to set clearer time-limits for the dialogue and exchanges between the Commission and the Member States in case of disagreement.

Advance payments of own resources

Council Regulation (EU, Euratom) No 609/2014 does not contain a provision allowing for the advance payment of own resources. However, there have been cases, namely involving the late adoption of amending budgets (e.g. AB8/2013, AB6/2016 and AB6/2018) where Member States paid, after having requested and received the Commission's agreement, their national contributions in advance of the due date. In those cases, the Commission has not objected to the payments if specific conditions were respected. In the interest of legal certainty, the Commission proposes expressly providing for this possibility.

Derogations on making available under Article 13(2), second subparagraph

Article 13 of Regulation No 609/2014 provides for a procedure, known as "write-off procedure, to monitor Member States' potential financial responsibility for irrecoverable amounts of traditional own resources over EUR 100,000. The last amending Council Regulation (EU, Euratom) 2016/804 introduced in Article 13(2), second subparagraph the possibility for Member States to be released from the obligation to make available to the Union's budget amounts that prove irrecoverable due to deferred entry in the accounts or notification of customs debts, in order not to prejudice criminal investigations affecting the financial interests of the Union. Since the changes introduced in 2016, no Member State has presented a write-off case to the Commission based on Article 13(2), second subparagraph. The Commission continues to monitor carefully the developments in this regard, but no changes seem necessary or warranted for now.

Assessment of write-off cases

The "write-off" procedure under Article 13 of Council Regulation (EU, Euratom) No 609/2014 monitors Member States' potential financial responsibility for irrecoverable amounts of traditional own resources over EUR 100,000. Under this procedure, the Commission issues its opinion on whether the traditional own resources became irrecoverable for reasons not attributable to the Member States. The purpose of the Commission's examination of the write-off reports is to assess the degree of diligence shown by the Member States in carrying out their efforts to establish and recover from the economic operators the traditional own resources (customs duties). The Commission has always strived to give its comments on the so-called write-off reports in a timely manner. Article 13(4) of Council Regulation (EU, Euratom) No 609/2014 requires the Commission to issue its comments within six months as soon as the necessary information is available. Currently, this is the only legal deadline for the Commission, which has always respected it.

However, the Commission acknowledges that the assessment of individual write-off cases frequently requires repeated exchanges with Member States that could be accelerated by joint efforts of Member States and the Commission. More importantly, Member States' requests for review of disputed cases following the first Commission assessment have so far not been subject to legal deadlines, and accumulated sometimes considerable delays. In this light, the Commission proposes additional binding deadlines for communication with the Member States.

Adjustments of the GNI-based and VAT-based own resources

Currently, Member States are required to make available the adjustments to the VAT and GNI-based own resources of previous financial years ("balances") on the first working day of June of the year n+1. There is an immediate redistribution of the overall amount of adjustments among Member States according to their respective shares in the GNI-based own resource to avoid that Member States pay larger amounts upfront and only get their share of the redistribution of the total amount of the adjustment months later. These annual adjustments are entirely neutral to the EU budget but may have significant financial implications for Member States. Several Member States have requested changes to the procedure to improve predictability and facilitate their national budget procedures. It is appropriate to propose a corresponding amendment proposal, shifting the making available of the adjustments by Member States to the following year, even though it is recognised that this will also correspondingly delay the cashing of negative adjustments by Member States. Member States have not raised any objections to this delay.

Merging provisions on making available own resources

The new Own Resources Decision under approval in Member States already includes a new own resource, the plastics-based one, and the corresponding making available Council Regulation [MAR2, no 2018/0131] has been proposed and is under consideration by the Council and the European Parliament.

In line with the inter institutional agreement from 16 December 2020, the Commission intends to make proposals on a digital levy, a carbon border adjustment mechanism and a revised EU Emissions Trading System as well as an accompanying proposal to introduce new own resources on that basis by June 2021 with a view to their introduction by 1 January 2023.

The making available provisions for all own resources should be merged at the occasion of their future revision including new proposed Regulations related to the making available of new own resources.

2021/0161 (NLE)

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

THE COUNCIL OF THE EUROPEAN UNION,

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

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 Parliament[10],

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

Whereas:

1. While Council Regulation (EU, Euratom) No 609/2014[11] 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.

2. Currently, only Member States manage own resources accounts opened in the name of the Commission. A reduction in the number of bank accounts used for collection of own resources would be more efficient and allow for a common approach to cash management. In order to modernise the management of own resources accounts, the Commission should be able to establish a centralised own resources account.

3. Regulation (EU, Euratom) 609/2014 does not allow Member States to make advance payments. However, in the past some Member States paid their national contributions in advance following agreement by the Commission. In the interest of legal certainty, Member States should have the possibility to make advance payments on a case-by-case basis, after informing the Commission in advance. Where a Member State uses this possibility, the other Member States should for reasons of fairness not bear any costs related to this advanced payment, such as negative interest.

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10 OJ C , , p. .

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).

4. The date of payment by the Member States of the adjustments to the VAT and GNI-based own resources of previous financial years should be moved to March of the following year to enhance predictability for the national budgetary procedures.

5. To provide a stable budget that is necessary to finance the policy objectives of the Union, the procedure for calculating interest should ensure in particular that own resources are made available in a timely manner and in full.

6. The current threshold below which interest amounts are waived needs to be adapted. It is therefore necessary to increase the amount for which the recovery of interests is waived to improve the cost-effectiveness of the recovery procedures.

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[12]. 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.

8. In the interest of sound management of the separate account, as referred to in Article 6(3), the second subparagraph, of Regulation (EU, Euratom) No 609/2014, unsecured amounts need to be assessed and regularised within a reasonable period of time. Therefore, the provisions of Regulation (EU, Euratom) No 609/2014 regarding irrecoverable amounts should be amended to introduce a general time limit for amounts to be taken out of that separate account to ensure that the cases in this separate account are regularly reviewed.

9. Regulation (EU, Euratom) No 609/2014 only contains one deadline in Article 13(4), requiring the Commission to communicate its comments to the Member State concerned within six months from the receipt of the report by that Member State. In order to conduct the follow-up of write-off reports in a timely manner and to support a swift and fully transparent assessment of the Member State's decision not to make the irrecoverable amount of traditional own resources available, further procedural deadlines for the Commission and Member States should be introduced.

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

[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).

opens the possibility to initiate an action for unjust enrichment against the Commission in accordance with Article 268 TFEU and Article 340(2) TFEU.

11. Articles 6 and 10a of Regulation (EU, Euratom) No 609/2014 should be adapted to delete the reference to the correction granted to the United Kingdom and to include Germany as beneficiary of lump-sum corrections in line with Council Decision (EU, Euratom) 2020/2053[13].

12. Regulation (EU, Euratom) No 609/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU, Euratom) No 609/2014 is amended as follows:

(1) in Article 6(3), third subparagraph, the introductory sentence is replaced by the following:

'The VAT-based own resource and the GNI-based own resource, taking into account the effect on these resources of the gross reduction granted to Denmark, Germany, the Netherlands, Austria and Sweden, shall, however, be recorded in the accounts as specified in the first subparagraph as follows:';

(2) in Article 9(1) the first subparagraph is replaced by the following:

'In accordance with the procedure laid down in Articles 10, 10a and 10b, each Member State shall credit own resources to the account opened in the name of the Commission with its treasury or national central bank or to a central account opened for this purpose by the Commission in the financial institution of its choice. Subject to the application of negative interest as referred to in the third subparagraph, that account may only be debited upon instruction by the Commission';

(3) Article 10a is replaced by the following:

'Article 10a

Making available the VAT and GNI-based own resources

1. The VAT-based own resource and the GNI-based own resource, taking into account the effect on these resources of the gross reduction granted to Denmark, Germany, the Netherlands, Austria and Sweden, shall be credited on the first working day of each month, the amounts being one-twelfth of the relevant totals in the budget, converted into national currencies at the rates of exchange of the last day of quotation of the calendar year preceding the budget year, as published in the *Official Journal of the European Union*, C series.

[13] 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).

2. For the specific needs of paying expenditure of the European Agricultural Guarantee Fund pursuant to Regulation (EU) No 1307/2013 of the European Parliament and of the Council[14], and depending on the Union's cash position, Member States may be invited by the Commission to bring forward, by up to two months in the first quarter of the financial year, the entry of one-twelfth, or a fraction thereof, of the amounts in the budget for the VAT-based own resource and the GNI-based own resource, taking into account the effect on these resources of the gross reduction granted to Denmark, Germany, the Netherlands, Austria and Sweden.

Subject to the third subparagraph, for the specific needs of paying expenditure of the European Structural and Investment Funds pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council[15], and depending on the Union's cash position, Member States may be invited by the Commission to bring forward, in the first six months of the financial year, the entry of up to an additional half of one-twelfth of the amounts in the budget for the VAT-based own resource and the GNI-based own resource, taking into account the effect on these resources of the gross reduction granted to Denmark, Germany, the Netherlands, Austria and Sweden.

The total amount that Member States may be invited by the Commission to bring forward in the same month under the first and second subparagraphs shall, in any event, not exceed an amount corresponding to two additional twelfths.

After the first six months, the monthly entry requested may not exceed one-twelfth of the VAT and GNI-based own resources, while remaining within the limit of the amounts entered in the budget for that purpose.

The Commission shall notify the Member States thereof in advance, no later than two weeks before an entry requested pursuant to the first and second subparagraphs.

The Commission shall inform the Member States well in advance, and no later than six weeks before an entry requested pursuant to the second subparagraph, of its intention to request such an entry.

Paragraph 4, concerning the amount to be entered in January each year, and paragraph 5, applicable if the budget has not been finally adopted before the beginning of the financial year, shall apply to these advance entries.

A Member State may exceptionally and in duly justified cases request an authorisation from the Commission to advance the making available of own resources, in particular in the context of amending budgets at year's end. The Member State shall submit a duly justified request with at least three weeks prior

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14 Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

15 Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

notice. The Commission shall assess the request taking into account the cash situation and liquidity needs of the Commission. The Member State may only execute the advanced payment following authorisation by the Commission. Any additional cost linked to this making available in advance must be borne by the Member State requesting it.

3. Any change in the uniform rate of the VAT-based own resource, in the rate of the GNI-based own resource, in the financing of the gross reduction granted to Denmark, Germany, the Netherlands, Austria and Sweden shall require the final adoption of an amending budget and shall give rise to readjustments of the twelfths that have been entered since the beginning of the financial year.

Those readjustments shall be carried out when the first entry is made following the final adoption of the amending budget if it is adopted before the 16th of the month. Otherwise, they shall be carried out when the second entry following final adoption is made. By way of derogation from Article 10 of the Financial Regulation, those readjustments shall be entered in the accounts in respect of the financial year of the amending budget in question.

4. Calculation of the twelfths for January of each financial year shall be based on the amounts provided for in the draft budget, referred to in Article 314(2) of the Treaty on the Functioning of European Union (TFEU) and converted into national currencies at the rates of exchange of the first day of quotation following 15 December of the calendar year preceding the budget year. The adjustment shall be made with the entry for the following month.

5. If the budget has not been finally adopted at the latest two weeks before the entry for January of the following financial year, the Member States shall enter on the first working day of each month, including January, one-twelfth of the amount of the VAT-based own resource, and the GNI-based own resource, taking into account the effect on these resources of the gross reduction granted to Denmark, Germany, the Netherlands, Austria and Sweden, entered in the last budget finally adopted. The adjustment shall be made on the first due date following final adoption of the budget if it is adopted before the 16th of the month. Otherwise, the adjustment shall be made on the second due date following final adoption of the budget.

6. There shall be no subsequent revision of the financing of the gross reduction granted to Denmark, Germany, the Netherlands, Austria and Sweden in the event of modifications of the GNI data pursuant to Article 2(2) of Regulation (EU) No 2019/516 of the European Parliament and of the Council[16].'

(4) Article 10b is amended as follows:

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

'The Commission shall inform the Member States of the amounts resulting from this calculation before 1 February of the year following that in which the data for the adjustments was supplied. Each Member State shall enter the net

[16] Regulation (EU) 2019/516 of the European Parliament and of the Council of 19 March 2019 on the harmonisation of gross national income at market prices and repealing Council Directive 89/130/EEC, Euratom and Council Regulation (EC, Euratom) No 1287/2003 (OJ L 91, 29.3.2019, p. 19).

amount in the account referred to in Article 9(1) on the first working day of March of the year following that in which the Commission informed the Member States of the amounts resulting from the calculation.';

(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.';

(5) Article 12 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. The recovery of amounts of interest below EUR 1 000 shall be waived.';

(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.';

(6) Article 13 is amended as follows:

(a) in paragraph 2, the fifth subparagraph is replaced by the following:

'If part payments have been received, the period of five years at maximum shall start from the date of the last payment made, where this does not clear the debt. A period of ten years from the date on which the amount has been established in accordance with Article 2 at maximum shall not be exceeded, irrespective of administrative or judicial appeals or part payments.';

(b) in paragraph 4, the second subparagraph is replaced by the following:

'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.';

(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.';

(7) the following Chapter IIIa is inserted:

'CHAPTER IIIa

PAYMENT UNDER RESERVATION AND REVIEW PROCEDURE

Article 13a

Payment under reservation

1. In case of a disagreement between a Member State and the Commission referred to in Article 10b(7) or Article 13(5) or concerning other amounts of traditional own resources due to the budget of the Union, the Member State may, when making a payment of the contested amount, express reservations as to the position of the Commission.

2. Entry in the account under Article 9 of the payment under reservation shall interrupt the period for which interest accrues, as referred to in Article 12.

Article 13b

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.'

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT 'REVENUE'- FOR PROPOSALS HAVING BUDGETARY IMPACT ON THE REVENUE SIDE OF THE BUDGET

1. NAME OF THE PROPOSAL:

Amendment of Regulation 609/2014

2. BUDGET LINES:

Revenue line (Chapter/Article/Item):

Titles 1 and 2 (Chapter 21) and Article 410

3. FINANCIAL IMPACT

☐ Proposal has no financial implications

× Proposal has no financial impact on expenditure but has a financial impact on revenue

☐ Proposal has a financial impact on assigned revenue

The effect is as follows:

(EUR million to one decimal place)

Revenue line	Impact on revenue[17]	XX months period starting dd/mm/yyyy *(if applicable)*	Year N
Title 1	-		2021
Title 2/ Chapter 21	-		2021
Article 410	*TBD*		2021

Situation following action					
Revenue line	2022	2023	2024	2025	2026
Title 1	-	-	-	-	-
Title 2/ Chapter 21	-	-	-	-	-
Article 410					

[17] In the case of traditional own resources (agricultural duties, sugar levies, customs duties), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

4. ANTI-FRAUD MEASURES

No measures to be taken.

5. OTHER REMARKS

The proposal aims to strengthen and improve the functioning of Council Regulation (EU, Euratom) No 609/2014. It provides in particular for administrative measures in order to facilitate the making available for own resources for Member States. These include measures to enhance the predictability on the making available of own resources, such as the possibility to make payments in advance or the modifications proposed for the balances exercise.

Both proposals have no budgetary impact. The provision, providing that the making available of the adjustments by Member States to the following year (N+ 2), is budgetary neutral since Member States' obligation to pay is simply shifted to the next budget year. The global 'balances exercise' remains thus neutral for the EU budget.

The proposal also provides for certain procedural changes, i.e. it codifies the procedure for the constructive dialogue as well as exchanges between the Commission and the Member States in case of disputes. This review procedure aims to improve the making available own resources by providing clarity and transparency in the cooperation and communication between the Commission and Member States. The proposed review procedure does not have a financial impact for the Union.

The proposal finally extends the capping on the increase of interests to all cases. Council Regulation (EU, Euratom) 2016/804 had already limited the increase in interest above the base rate to 16 percentage points (capping of 16 %). This limitation does however not apply to cases already known before 1 October 2016. The extension of the capping to all cases will lead to a decrease of interest revenue collected for the EU budget. Its financial impact, based on reference amounts of the past years (as from the entry into force of Council Regulation 2016/804) is estimated at EUR 27.5 million/year.