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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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

COUNCIL REGULATION (EU, Euratom) 2022/...

of ...

**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,

Having regard to the opinion of the Court of Auditors¹,

¹ OJ C 402I, 5.10.2021, p. 1.

Whereas:

- (1) While Council Regulation (EU, Euratom) No 609/2014¹ 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 its 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. It should be possible for Member States to choose whether to use that centralised own resources account or an account opened in the name of the Commission with their treasury or national central bank. In order to enable Member States to make an informed choice, the Commission should produce a detailed cost-benefit analysis of the use of the centralised own resources account.

¹ 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) Currently, Regulation (EU, Euratom) No 609/2014 does not allow Member States to make advance payments. However, in the past some Member States have paid their national contributions in advance following agreement by the Commission. In the interest of legal certainty, that Regulation should provide that Member States have the possibility to make advance payments on a case-by-case basis, provided they inform the Commission in advance. For reasons of fairness, where a Member State avails itself of that possibility, the other Member States should not bear any costs related to the advanced payment, such as negative interest.
- (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. The date of payment by the Member States of adjustments should also apply to amounts for which information has been provided by the Commission before the entry into force of this Regulation.
- (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 interest is waived to improve the cost-effectiveness of the recovery procedures.

(7) Regulation (EU, Euratom) No 609/2014 limits the increase in interest above the base rate to 16 percentage points. However, this ‘capping’ at 16 percentage points only applies to cases that became known after the entry into force of Council Regulation (EU, Euratom) 2016/804¹. Consequently, cases already known before the entry into force of Regulation (EU, Euratom) 2016/804, where particularly high amounts 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 disproportionate compared to the amount of the principal due. In order to ensure the proportionality of the system while maintaining the deterrent effect, the increase in interest above the base rate should be further limited to 14 percentage points. In order to clarify and simplify the relevant provisions of Regulation (EU, Euratom) No 609/2014, the limitation of the increase to 14 percentage points should be applied to any amount of interest not communicated to the Member State before the entry into force of this Regulation.

¹ 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).

- (8) Under the current legal framework, the practice has demonstrated that it can be difficult to identify the starting date of late payment interest due to the difficulty in identifying the exact point in time at which recovery efforts can be deemed to have been insufficient. For the purposes of simplification, there should be a ‘grace period’ of five years following the date of establishment of the amount, under the condition that the amount has been established, entered in a timely manner in the separate accounts and kept in the separate accounts in accordance with Regulation (EU, Euratom) No 609/2014. Accordingly, the interest should only start running after five years, while the liability for the principal amount should be maintained.
- (9) In order to ensure the fair treatment of cases where amounts corresponding to established entitlements of traditional own resources prove irrecoverable, Member States should be released from the obligation to place at the disposal of the Commission the amounts corresponding to established entitlements of traditional own resources, where the Member State can prove that an error committed by the Member State after the establishment of the entitlements had no influence on the irrecoverability of the amount corresponding to those entitlements. Examples of such an error could include a belated entry in the separate accounts or shortcomings in the recovery procedure.

- (10) Regulation (EU, Euratom) No 609/2014 contains only one deadline, requiring the Commission to communicate its comments on the write off cases reported to the Commission 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 and more flexible 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, procedural deadlines for the Commission and Member States should be adjusted.
- (11) In order to allow for the interruption of the period for which interest accrues, in the case of a disagreement between the Members States and the Commission, provisions should be introduced to reflect the current practice of the payment under reservation concerning amounts of own resources due to the budget of the Union, which opens the possibility to initiate an action for unjust enrichment against the Commission in accordance with Article 268 and Article 340, second paragraph, of the Treaty on the Functioning of European Union (TFEU).

- (12) In the case of a disagreement between Member States and the Commission regarding the making available of traditional own resources, a review procedure should be provided for in Regulation (EU, Euratom) No 609/2014 to improve transparency and to clarify Member States' rights of defense. At the request of the Member State concerned, the outcome of the review procedure, as well as the state of play of pending cases, should be discussed with the Commission at a yearly meeting to be organised. That meeting should be held at an appropriate level of managerial representation with a view to reconsidering the respective positions and to striving to prevent the recourse to possible infringement proceedings, in accordance with the case law of the Court of Justice.
- (13) The Commission should review the functioning of the review procedure in the framework of a possible revision of Regulation (EU, Euratom) No 609/2014 or by the end of 2026 at the latest and, in particular, assess opportunities to streamline the review procedure, which, if appropriate, may be concluded by a Commission decision.
- (14) 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) 2020/2053¹.

¹ 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).

- (15) In line with the principles of better regulation, the parallel existence of several making available regulations should be only temporary and such legal acts should be merged into one single regulation as soon as possible.
- (16) 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:

‘However, the VAT-based own resource and the GNI-based own resource, taking into account the effect on those resources of the gross reduction granted to Denmark, Germany, the Netherlands, Austria and Sweden, shall be recorded in the accounts as specified in the first subparagraph as follows:’;
- (2) Article 9 is amended as follows:
 - (a) paragraph 1 is replaced by the following:
 - ‘1. In accordance with the procedure laid down in Articles 10, 10a and 10b, each Member State shall credit own resources to an account voluntarily chosen among the following:
 - (a) an account opened in the name of the Commission with the Member State’s treasury;

- (b) an account opened in the name of the Commission with the national central bank; or
- (c) a central account opened for this purpose by the Commission in the public financial institution of its choice.

Subject to the application of negative interest as referred to in the third and fourth subparagraph, as applicable, that account may only be debited upon instruction by the Commission.

The accounts referred to in the first subparagraph, points (a) and (b), shall be kept in national currency and shall be free of any charge or interest. Where negative interest is applied to those accounts, the Member State concerned shall credit the account with an amount corresponding to the negative interest applied, at the latest on the first working day of the second month following the application of negative interest.

Member States shall credit the account referred in the first subparagraph, point (c), with amounts in their national currency. Where negative interest is applied to the central account, the Member State concerned shall credit the central account with an amount corresponding to its share of own resources that is credited to this account, at the latest on the first working day of the second month following the application of negative interest.

The Commission shall carry out its operations of cash management on the accounts referred to in the first subparagraph in accordance with the Article 14(4), first subparagraph.

The Commission shall produce a detailed cost-benefit analysis of the use of the account referred to in the first subparagraph, point (c), without undue delay and shall report to the Council on implementation of the central account within three years of the entry into force of this Regulation.’;

(b) the following paragraph is inserted:

‘2a. Each month, the Commission shall transmit by electronic means to Member States a forecast of the cash resource requirements for the following four months.’;

(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 those 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 to be credited shall be 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*.

2. For the specific needs of paying the expenditure of the European Agricultural Guarantee Fund pursuant to Regulation (EU) No 1307/2013 of the European Parliament and of the Council* and subsequent relevant Union legislation, and depending on the Union's cash position, the Commission may invite Member States 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 those 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** and subsequent relevant Union legislation, and depending on the Union's cash position, the Commission may invite Member States 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 those resources of the gross reduction granted to Denmark, Germany, the Netherlands, Austria and Sweden.

The total amount that the Commission may invite Member States 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.

Member States may, in exceptional and duly justified cases, request an authorisation from the Commission to advance the making available of the VAT and GNI-based own resources, in particular in the context of amending budgets at year's end, taking into account the effect on these own resources of the gross reduction granted to Denmark, Germany, the Netherlands, Austria and Sweden. Any advance payment shall be preceded by at least seven working day's prior notice and its request should be duly justified by the Member State concerned. The Commission shall assess the request taking into account the cash position and liquidity needs of the Commission. Member State may only execute the advanced payment following authorisation by the Commission. Any additional costs linked to the making available in advance of the VAT and GNI-based own resources shall 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.

These 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, those readjustments shall be carried out when the second entry following final adoption is made. By way of derogation from Article 10 of the Financial Regulation, these 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 shall be 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 final adoption of the budget has not taken place by 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 those 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 the budget 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***.

* 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).

** 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).

*** 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 (GNI Regulation) (OJ L 91, 29.3.2019, p. 19).’;

(4) in Article 10b(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 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.

The deadline for the Member States to pay the adjustments shall also apply to amounts for which information has been provided by the Commission before ... [OJ: please insert the date of entry into force of this amending Regulation].’;

(5) Article 12 is amended as follows:

(a) in paragraph 1, the following subparagraphs are added:

‘For the traditional own resources as referred to in Article 2(1), point (a), of Council Decision (EU, Euratom) 2020/2053*, interest shall be due for the period starting from the moment the amount should have been made available until the moment when the amount was actually paid into the Commission account referred to in Article 9.

Without prejudice to Article 13(1), and on condition that the amount has been established pursuant to Article 2, entered in a timely manner in the separate account pursuant to Article 6 and kept in the separate accounts in accordance with Article 13(2), no interest shall be due for a period of five years from the date of establishment of the amount.

In the event of an administrative or judicial appeal, the period of five years shall start after the final decision has been given, notified or published. If part payments have been received, the period of five years shall at the latest start from the date of the last payment made, where this does not clear the debt.

* 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).’;

(b) paragraph 3 is replaced by the following:

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

(c) in paragraph 4, the third subparagraph is replaced by the following:

‘The total increase pursuant to the first and the second subparagraphs shall not exceed 14 percentage points. The limitation of the increase to 14 percentage points shall apply to any case in which the amount of interest has not been communicated to the Member State concerned before ... [OJ: please insert the date of entry into force of this amending Regulation]. The increased rate shall be applied to the entire period of delay as referred to in paragraph 1.’;

(d) 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 14 percentage points. The limitation of the increase to 14 percentage points shall apply to any case in which the amount of interest has not been communicated to the Member State concerned before ... [OJ: please insert the date of entry into force of this amending Regulation]. The increased rate shall be applied to the entire period of delay as referred to in paragraph 1.’;

(6) Article 13 is amended as follows:

(a) in paragraph 2, the following subparagraph is inserted after the first subparagraph:

‘Member States shall be likewise released from the obligation to place at the disposal of the Commission the amounts corresponding to entitlements established under Article 2 where they prove that an error committed by the Member State after establishing these entitlements, such as those leading to a belated entry in the separate accounts, had no influence on the irrecoverability of the amount corresponding to entitlements under Article 2.’;

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

‘If part payments have been received, the period of five years shall at the latest start from the date of the last payment made, where this does not clear the debt.’;

(c) paragraph 4 is replaced by the following:

‘4. Within three months from the receipt of the report provided for in paragraph 3, the Commission shall communicate its comments to the Member State concerned. The Commission may extend that time limit once by another three months and inform the Member State concerned accordingly.’

The Commission may request additional information. In such cases, the time limit provided in the first subparagraph shall run from the date of receipt of the requested additional information. The Member State concerned shall provide the additional information within three months. At the request of the Member State concerned, that time limit shall be extended once by another three months.

Where the Member State cannot provide any additional information requested by the Commission, it may notify the Commission thereof. The Commission shall then communicate its final comments within three months from the date of receipt of that notification on the basis of the information available. The Commission may extend that time limit once by another three months and inform the Member State concerned accordingly.’;

(d) the following paragraph is added:

- ‘5. If the Member State and the Commission cannot agree on the reasons referred to in paragraph 2 the Member State may request the Commission to review its comments in accordance with Article 13b.’;

(7) the following Chapter is inserted:

‘CHAPTER IIIa

PAYMENT UNDER RESERVATION AND REVIEW PROCEDURE

Article 13a

Payment under reservation

1. In the case of a disagreement between a Member State and the Commission concerning amounts of traditional own resources due to the budget of the Union or concerning VAT amounts subject to the measures referred to in Article 12(2), point (c), the Member State may, when making a payment of the contested amount, express reservations as to the position of the Commission.

Member States shall provide information about those reservations, for the amounts related to traditional own resources, together with their monthly statement referred to in Article 6(4) and, for the amounts related to VAT own resource, together with their statement referred to in Article 10b(1). Member States shall notify the lifting of reservations to the Commission as soon as possible.

2. If a disagreement as referred to in paragraph 1 is resolved in favour of the Member State, that Member State shall be authorised by the Commission to deduct the amount paid from its next own resources payment or payments.
3. 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.
4. By the end of September of each year, the Commission shall provide an annual information note showing the overview of the total amount paid under reservation and the total amount of reservations lifted during the preceding year.

Article 13b

Review procedure

1. In the case of a disagreement between a Member State and the Commission concerning traditional own resources amounts due to the budget of the Union, the Member State may request the Commission to review its assessment within six months from its receipt. Such request shall provide reasons for the review requested, and include the evidence and the supporting documents on which it is based. 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 three months from the receipt of a request referred to in paragraph 1, the Commission shall notify to the Member State concerned its comments on the reasons provided in the request. In duly justified cases, the Commission may extend that time limit once by another three months and inform the Member State concerned accordingly.
3. Where the Commission finds it necessary to request additional information, the time limit referred to in paragraph 2 shall run from the date of receipt of the requested additional information. The Member State concerned shall provide the additional information within three months of receipt of the Commission's request for additional information. At the request of the Member State concerned, the Commission shall extend that time limit once by another three months.
4. Where the Member State cannot provide any additional information, it may notify the Commission thereof. The Commission shall then notify its comments on the basis of the information available. The time limit referred to in paragraph 2 shall in that case run from the date of receipt of that notification.
5. The review procedure shall end at the latest 2 years after the Member State sent its request for the review referred to in paragraph 1.

6. A Member State may request once per year a high level meeting with the Commission to discuss the state of play of cases that are or have been subject to the review procedure and to scrutinise them with a view to reconsidering the respective positions and to striving to reach an agreement.
7. In the framework of a possible revision of this Regulation or by the end of 2026 at the latest, the Commission shall carry out an assessment of the functioning of the review procedure referred to in this Article. This assessment shall include consultations with Member States and shall take into account their findings and positions. The Commission shall submit, if appropriate, proposals with a view to improving the functioning of the review procedure.’.

Article 2

This Regulation shall enter into force on the twentieth day following the date 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
