



EUROPEAN COMMISSION

Brussels, 9.11.2011
COM(2011) 739 final

2011/0183 (CNS)

Amended proposal for a

COUNCIL DECISION

on the system of own resources of the European Union

(//EC, Euratom)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

On 29 June 2011 the Commission proposed replacing the current system of financing for the EU budget with a new system making full use of the possibilities introduced by the Lisbon Treaty¹.

The proposals included three main elements complementing each other: the simplification of Member States' contributions, the introduction of new own resources and the reform of correction mechanisms.

It also announced that it would present the relevant detailed regulations or amendments to existing legal acts as well as the related regulations pursuant to Article 322(2) TFEU by the end of 2011.

Accordingly, this amended proposal for a Council Decision on the system of own resources of the European Union refines and completes the proposal made on 29 June².

It ensures coherence with the proposed Council Directive on a common system of financial transaction tax (hereinafter "the FTT Directive")³ adopted on 28 September 2011, the proposals for Council Regulations on making the own resource based on the FTT available to the EU budget⁴ and on calculating and making available the own resource based on value added tax (VAT)⁵ as well as the amended proposal for a Council Regulation implementing the own resources Decision⁶ adopted together with this proposal.

2. CONTENT OF THE REVISED PROPOSAL

The following sections present the main amendments and proposed additions in relation to the organization of the own resources system. The proposals only bear on aspects dealing with the two new own resources based, respectively, on the financial transaction tax and the value added tax. Other issues, such as corrections, are not affected by these proposals.

2.1. The legal instruments

The legal form of the financial transaction tax is defined in the FTT Directive. The Directive proposes all the practical elements necessary to create and implement the FTT. Logically, the

¹ See COM(2011)510, COM(2011)511, COM(2011)512 and SEC(2011)876 of 29 June 2011.

² **Additions to the original proposal are highlighted in bold and are underlined.** Provisions to be eliminated are identified using ~~striketrough~~.

³ Proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC, COM(2011)594 of 28.9.2011.

⁴ Proposal for a Council Regulation on the methods and procedure for making available the own resource based on the financial transaction tax, COM(2011)738 of 9.11.2011.

⁵ Proposal for a Council Regulation on the methods and procedure for making available the own resource based on the value added tax, COM(2011)737 of 9.11.2011.

⁶ Amended proposal for a Council Regulation laying down implementing measures for the system of own resources of the European Union, COM(2011)740 of 9.11.2011.

function of the FTT as an own resource can only be envisaged together with the successful implementation of the FTT.

In order to ensure that receipts generated by the FTT can be used effectively to finance a part of the EU budget, rules need to be defined in the context of the own resources legislation. In practice, three legal acts enter into play: (i) the own resources Decision (ORD), which contains the main provisions on own resources such as the list of own resources and the timing for their implementation; (ii) the Regulation implementing the ORD, which notably contains rules on control and supervision for the collection of own resources; (iii) a Regulation on making the FTT-based own resource available to the EU budget. Whereas the first two legal acts have already been proposed by the Commission and merely need refinements to ensure full coherence with the FTT Directive, the proposal for a Council Regulation on making the FTT-based own resource available to the EU budget is a new piece of legislation.

In addition, the Commission also proposes a new legislation on the calculation and the making available of the new own resource based on VAT. This completes the provisions already included in the ORD and in the Regulation implementing it, which are slightly adjusted to ensure consistency with the proposals related to the FTT-based own resource.

2.2. Proposed changes in the ORD

The proposal made on 29 June 2011 includes the list of new own resources, together with the timing for their introduction and relevant limits to their application. It contains in particular a maximum limit to the rates applicable to the new own resources, whereas the proposed implementing regulation pursuant to Article 311(4) presents actual rates to be applied.

This amended proposal simplifies greatly the way the FTT-based own resource is determined by referring to the rates defined in the FTT Directive for the purpose of determining the FTT-based own resource. Possible adjustments to the rates would be made only in the FTT Directive. This ensures full coherence between the FTT Directive and the rules set out for the own resources system.

In line with the FTT Directive, it is now proposed to use the FTT as an own resource as of 1 January 2014. This means that from the start of its implementation the FTT will partly be used as an own resource.

Minor changes are also brought to provisions regarding the new VAT own resource, in order to ensure full consistency with the provisions set out in the amended proposal for a Regulation on the implementation of the the ORD and the new proposal on the making available of this resource. For consistency, the timing for the introduction of the new VAT resource is aligned to that of the FTT.

Last, changes are brought to provisions relating to the administration and collection of the own resource to ensure coherence with the other parts of the legislation.

2.3. Proposed changes in the regulation implementing the ORD

The regulation pursuant to Article 311(4) TFEU contains all those practical arrangements for the Union's resources which should be governed by a more streamlined procedure in order to make the system sufficiently flexible within the framework and limits set out by the own

resource Decision, with the exception of those aspects of the own resources system that relate to making own resources available and to meeting cash requirements.

Provisions of a general nature, applicable to all types of own resources and for which appropriate parliamentary oversight is particularly important have also been included in this regulation. This means in particular aspects of control and supervision of revenues.

Three main changes are included in the amended proposal.

Explicit reference to the various types of financial transactions to which the rates would be applied is redundant with provisions laid down in the FTT Directive and the amended proposal for the ORD. It is now proposed to specify the share of the minimum rates defined in the FTT Directive that should be used for the purpose of the FTT-based own resource. Consequently, this share of the receipts resulting from the application of the minimum rates defined in the FTT Directive will accrue to the EU budget and the rest will accrue to the Member States budgets.

The original proposal envisaged the possibility that the FTT would be collected by economic operators rather than by the Member States. In line with the FTT Directive, the Member States administrations will be responsible for collecting the FTT. Therefore, reference to economic operators is no longer necessary.

Last, regarding the new VAT own resource, the text now refers explicitly to the calculation method (set out in the proposal on the making available of the new VAT resource) which determines the basis on which to apply the call rate of the resource.

2.4. Making the FTT-based and the VAT-based own resources available to the EU budget

As a complement to the own resources Decision and the regulation pursuant to Article 311(4) TFEU, a new proposal for a Council Regulation pursuant to Article 322(2) TFEU comprises the elements concerning the methods and procedures for making the FTT-based own resources available to the EU budget.

In addition, a new proposal for a Council Regulation includes the arrangements on calculating and making available to the EU budget the own resource based on value added tax (VAT).

These proposals include the rules on the establishment of the two own resources, treasury and accounting arrangements, entry in the accounts and corrections, reporting and conservation of supporting documents. Moreover, regarding specifically the new VAT resource, detailed provisions on the calculation method are included.

Both proposals draw heavily on experience accumulated in dealing with traditional own resources (customs duties) and with the current VAT-based own resource. They aim to provide simple and transparent rules with a maximum predictability for the Member States.

Amended proposal for a

COUNCIL DECISION

on the system of own resources of the European Union

(//EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the third paragraph of Article 311 thereof, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament⁷,

Having regard to the opinion of the Court of Auditors⁸,

Having regard to the opinion of the European Economic and Social Committee⁹,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The own resources system of the Union must ensure adequate resources for the orderly development of the policies of the Union, subject to the need for strict budgetary discipline. The development of the own resources system can and should also contribute to wider budgetary consolidation efforts undertaken in Member States and participate, to the greatest extent possible, in the development of the policies of the Union.
- (2) The public consultation launched to prepare the EU Budget Review generated many contributions related to the functioning of the Union's financing system. These indicated a high degree of satisfaction with traditional own resources and with the existence of a residual resource to ensure budgetary stability and balanced budgets. However, a large number of respondents identified a need to eliminate all correction mechanisms and to end the own resource based on Value Added Tax (VAT). The consultation also highlighted a wide range of views on introducing new own resources.

⁷ Opinion delivered on XX.6.2011

⁸ OJ C

⁹ OJ C

- (3) In the communication of 19 October 2010 on the EU Budget Review¹⁰ the Commission noted that the introduction of a new phase in the evolution of the Union's financing could include three closely linked dimensions – the simplification of Member States' contributions, the introduction of one or several new own resources and the progressive phasing-out of all correction mechanisms. As changes were phased in, essential elements of the Union's financing system should be retained: a stable and sufficient financing of the Union's annual budget, respect for budgetary discipline and a mechanism to ensure a balanced budget.
- (4) The own resources system should, as far as possible rely on autonomous own resources in the spirit of the Treaty, rather than on financial contributions from Member States which they widely perceive as national expenditures.
- (5) The Lisbon Treaty introduced changes to the provisions related to the own resources system, which enable reducing the number of existing resources and ~~to~~ creating new own resources.
- (6) The own resources Decision can only enter into force once it has been approved by all Member States in accordance with their respective constitutional requirements, thus fully respecting national sovereignty.
- (7) Compared to the own resource based on Gross National Income (GNI), the current VAT-based own resource has little added value. It results from a complex mathematical calculation thus contributing to the opacity of Member States' contributions to the budget. The calculation of a harmonised base and the existing of a capping mechanism make that there is no direct link between the actual VAT basis in a Member State and its contribution to the Union's annual budget. Ending the VAT-based own resource in its current form as of 1 January 2014 should simplify the system of contributions.
- (8) In order to better align Union's financing instruments with the policy priorities of the Union, to reduce Member States' contributions to the Union's annual budget and to participate in their budgetary consolidation efforts, this Decision should include a new own resources – **a resource based on the** financial transaction tax and a new VAT **own** resource.
- (9) The key principles, variables and dates for the adaptation of the legal framework of the Union for the purposes of the new own resources **arising** from **the** financial transaction tax and a new VAT **own** resource should be set out in this Decision. **The legal framework of the underlying taxes is defined in separate legal acts.**
- (10) The 1984 Fontainebleau European Council indicated that expenditure policy is ultimately the essential means of resolving the question of budgetary imbalances. It acknowledged, nevertheless, that any Member State sustaining a budgetary burden which is excessive in relation to its relative prosperity may benefit from a correction at the appropriate time. Those principles should be confirmed and consistently applied.

¹⁰ COM(2010)700 of 19.10.2010.

- (11) Any correction mechanism should be closely related to the expenditure policy enshrined in the multiannual financial framework provided for in Article 312 of the Treaty. Past or current existence of a correction mechanism does not, by itself, constitute a justification for maintaining it in the future. A correction should be transparent and easy to understand, and last only as long as it serves its purpose, as defined by the Fontainebleau principles. It should avoid creating any incentive not to spend Union funds properly. These objectives can best be achieved through a system of lump sum reductions in the GNI-based own resource payments.
- (12) The objective conditions underpinning correction mechanisms have evolved considerably over time. Nevertheless, a limited number of Member States are still faced with a budgetary burden that might be currently considered excessive when compared to their relative prosperity. This Decision should therefore include temporary corrections in favour of Germany, the Netherlands, Sweden and the United Kingdom. These corrections should reflect, inter alia, the important developments in the financing of the Union set out in this Decision, the evolution of expenditures proposed in the financial framework, including the completion of the phasing-in of expenditure in those Member States which acceded to the Union in 2004 and 2007, and take account of the high levels of prosperity achieved by Germany, the Netherlands, Sweden and the United Kingdom.
- (13) In order to ensure the necessary parallelism between the multiannual financial framework and the implementation of correction mechanisms, the new system of lump sums should replace all pre-existing correction mechanisms as of 1 January 2014.
- (14) The retention, by way of collection costs, of 25% of the amounts collected by the Member States for traditional own resources constitutes a hidden correction mechanism. In view of the proposal to incorporate the correction mechanisms into lump sums, the retention should be restricted to 10%, in line with the system in place until 2000.
- (15) In order to ensure strict budgetary discipline, and taking into account the Commission Communication of 16 April 2010 on the adaptation of the ceiling of own resources and of the ceiling for appropriations for commitments following the decision to apply FISIM for own resources purposes¹¹, the ceiling of own resources should be equal to 1.23 % of the sum of the Member States' GNIs at market prices for appropriations for payments and the ceiling of 1.29 % of the sum of the Member States' GNIs should be set for appropriations for commitments. In order to maintain unchanged the amount of financial resources put at the disposal of the Union, it is appropriate to adapt these ceilings expressed in percentages of GNI where amendments to Regulation of the European Parliament and of the Council of [...] on the European system of national and regional accounts in the European Union¹² entail a significant change in the level of GNI. Such an adaptation should be made under the procedure set out under the fourth paragraph of Article 311 of the Treaty.

¹¹ COM(2010)162 final.

¹² OJ ...

- (16) In order to implement this Decision, it is necessary to provide for the adoption of specific implementing measures. Accordingly, provisions of a general nature, applicable to all types of own resources and for which appropriate parliamentary oversight is particularly important should be included in a separate implementing regulation. This means in particular the procedure for calculating and budgeting the annual budgetary balance and aspects of control and supervision of revenues. That ~~R~~regulation should also include, **where relevant, the precise share in certain harmonised taxes to be used as own resources,** ~~the tax rates and the rates of call for each of the~~ **other** own resources established in ~~this~~ Decision and technical issues related to GNI, to allow limited flexibility within the limits set out in this Decision.
- (17) For reasons of coherence, continuity and legal certainty, provisions must be laid down to cover the changeover from the system introduced by Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources¹³ to that arising from this Decision. Accordingly, following the ending of the VAT-based own resource, Decision 2007/436/EC, Euratom should continue to apply for the calculation and adjustment of revenue accruing from the application of a rate of call to the VAT base, the procedures for making it available and the arrangements for inspection, depending on the relevant years. In addition, the calculation of the correction of budgetary imbalances granted to the United Kingdom for the years until 2012 should be treated in accordance with the provisions laid down in Decision 2007/436/EC, Euratom. The correction granted to the United Kingdom for 2013, to be budgeted in 2014, should be replaced by a lump sum gross reduction in 2014.
- (18) Decision 2007/436/EC, Euratom should be repealed.
- (19) For the purposes of this Decision, all monetary amounts should be expressed in euros and in current prices.
- (20) In order to ensure transition to the new system of own resources and to coincide with the financial year this Decision should apply from 1 January 2014,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

This Decision lays down rules on the allocation of own resources of the Union in order to ensure the financing of the Union's annual budget.

¹³ OJ L 163, 23.6.2007, p. 17

Article 2

Categories of own resources

1. Revenue from the following shall constitute own resources entered in the budget of the Union:

(a) traditional own resources consisting of levies, premiums, additional or compensatory amounts, additional amounts or factors, Common Customs Tariff duties and other duties established or to be established by the institutions of the Union in respect of trade with non-member countries, customs duties on products under the expired Treaty establishing the European Coal and Steel Community as well as contributions and other duties provided for within the framework of the common organisation of the markets in sugar;

(b) the financial transaction tax to be levied pursuant to in accordance with Council Directive ~~[legislative act]~~ (EU) No [.../...]¹⁴, with the applicable tax rates in the amount of a share not exceeding the minimum rates set out in Article 8(3) of that Directive ~~not exceeding ...%~~;

(c) ~~a share of the Value Added Tax (VAT) on supplies of goods and services, intra-Community acquisitions of goods and importation of goods subject to a standard rate of VAT in every Member State~~ to be levied pursuant to Council Directive 2006/112/EC¹⁵, with the rate applicable in accordance with Regulation (EU) No .../... in the amount of a share not exceeding 2% of the net value of supplies of goods and services, intra-Community acquisitions of goods and importation of goods subject to a standard rate of VAT in every Member State determined according to Union rules ~~two percentage points of the standard rate~~;

(d) the application of a uniform rate, to be determined pursuant to the budgetary procedure in the light of the total of all other revenue, to the sum of Gross National Income (GNI) of all the Member States.

2. Revenue deriving from any new charges introduced within the framework of a common policy, in accordance with the Treaty, provided that the procedure laid down in Article 311 of the Treaty has been followed, shall also constitute own resources entered in the budget of the Union.

3. Member States shall retain, by way of collection costs, 10% of the amounts referred to in point (a) of paragraph 1.

4. If, at the beginning of the financial year, the budget has not been adopted, the previous GNI rates of call shall remain applicable until the entry into force of the new rates.

¹⁴ OJ L [...], [...], p. 1.

¹⁵ OJ L 347, 11.12.2006, p. 1.

Article 3

Own resources ceiling

1. The total amount of own resources allocated to the Union to cover annual appropriations for payments shall not exceed 1.23 % of the sum of all the Member States' GNIs.
2. The total annual amount of appropriations for commitments entered in the Union's budget shall not exceed 1.29 % of the sum of all the Member States' GNIs.

An orderly ratio between appropriations for commitments and appropriations for payments shall be maintained to guarantee their compatibility and to enable the ceiling pursuant to paragraph 1 to be respected in subsequent years.

Article 4

Correction mechanisms

1. The uniform rate fixed under Article 2(1)(d) shall apply to the GNI of each Member State.
2. For the period of 2014–2020, a gross reduction in annual GNI contributions shall be granted to the following Member States:
 - EUR 2500 million for Germany,
 - EUR 1050 million for the Netherlands,
 - EUR 350 million for Sweden,
 - EUR 3600 million for the United–Kingdom.

Article 5

Financing the correction mechanisms

The cost of the corrections set out in Article 4 shall be borne by the Member States in proportion to each Member State's share of the payments referred to in Article 2(1)(d).

Article 6

Universality principle

The revenue referred to in Article 2 shall be used without distinction to finance all expenditure entered in the Union's annual budget.

Article 7

Surplus carry-over

Any surplus of the Union's revenue over total actual expenditure during a financial year shall be carried over to the following financial year.

Article 8

Collecting own resources and making them available ~~or paying them~~ to the Commission

1. The Union's own resources referred to in Article 2(1)(a), **(b)** and ~~, from 1 January 2018 at the latest, those referred to in Article 2(1)(c);~~ shall be collected by the Member States in accordance with the national provisions imposed by law, regulation or administrative action, which shall, where appropriate, be adapted to meet the requirements of Union rules.

The Commission shall examine the relevant national provisions communicated to it by Member States, transmit to Member States the adjustments it deems necessary in order to ensure that they comply with Union rules and report, if necessary, to the budgetary authority.

~~2. The Union's own resources referred to in Article 2(1)(b) shall be collected from 1 January 2018 at the latest in accordance with the relevant Union legislation supplemented, where necessary, by the national provisions imposed by law, regulation or administrative action. These national provisions shall, where appropriate, be adapted to meet the requirements of Union rules.~~

~~The Commission shall examine the relevant national provisions communicated to it by Member States, transmit to Member States the adjustments it deems necessary in order to ensure that they comply with Union rules and report, if necessary, to the budgetary authority.~~

~~3.~~**2.** Member States shall make the resources provided for in Article 2(1)(a), **(b)**, (c) and (d) available to the Commission, in accordance with regulations adopted under Article 322(2) of the Treaty.

~~The resources provided for in Article 2(1)(b) shall be made available or paid to the Commission in accordance with the regulation adopted under Article 322(2) of the Treaty.~~

Article 9

Implementing measures

The Council shall, in accordance with the procedure set out in the fourth paragraph of Article 311 of the Treaty, lay down implementing measures as regards the following elements of the own resources system:

(a) the **share in the taxes referred to in** ~~tax rates of the own resources established under~~ Articles 2(1)(b) and (c) and the rate of call of the own resource established under Article 2(1)(d);

(b) the reference GNI, the provisions to adjust GNI and the provisions to recalculate the ceilings for payments and commitments in case of significant changes to GNI, for the purposes of applying Articles 2(1)(d) and 3;

(c) the procedure for calculating and budgeting the annual budgetary balance as set out in Article 7;

(d) the provisions and arrangements necessary for controlling and supervising the revenue referred to in Article 2, including any supplementary reporting requirements.

Article 10

Final and transitional provisions

1. Subject to paragraph 2, Decision 2007/436/EC, Euratom is repealed. Any references to the Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources¹⁶, to Council Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources¹⁷, to Council Decision 88/376/EEC, Euratom of 24 June 1988 on the system of the Communities' own resources¹⁸, to Council Decision 94/728/EC, Euratom of 31 October 1994 on the system of the Communities' own resources¹⁹, to Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the Communities' own resources²⁰ or to Decision 2007/436/EC, Euratom shall be construed as references to this Decision and shall be read in accordance with the correlation table set out in the Annex to this Decision.

2. Articles 2, 4, 5 and 8(2) of Decisions 94/728/EC, Euratom, 2000/597/EC, Euratom and 2007/436/EC, Euratom shall continue to apply to the calculation and adjustment of revenue accruing from the application of a rate of call to the VAT base determined in a uniform manner and limited to between 50 % and 55 % of the GNP or GNI of each Member State, the procedures for making it available and the arrangements for inspection, depending on the relevant year, and to the calculation of the correction of budgetary imbalances granted to the United Kingdom for the years until 2012.

3. Member States shall continue to retain, by way of collection costs, 10 % of the amounts referred to in Article 2(1)(a) which should have been made available by the Member States before 28 February 2001 in accordance with the applicable Union rules.

Member States shall continue to retain, by way of collection costs, 25 % of the amounts referred to in Article 2(1)(a) which should have been made available by the Member States between 1 March 2001 and 28 February 2014 in accordance with the applicable Union rules.

4. For the purposes of this Decision, all monetary amounts shall be expressed in euros and in current prices.

¹⁶ OJ L 94, 28.4.1970, p. 19.

¹⁷ OJ L 128, 14.5.1985, p. 15.

¹⁸ OJ L 185, 15.7.1988, p. 24.

¹⁹ OJ L 293, 12.11.1994, p. 9.

²⁰ OJ L 253, 7.10.2000, p. 42.

Article 11

Entry into force

Member States shall be notified of this Decision by the Secretary-General of the Council.

Member States shall notify the Secretary-General of the Council without delay of the completion of the procedures for the adoption of this Decision in accordance with their respective constitutional requirements.

This Decision shall enter into force on the first day of the month following receipt of the last of the notifications referred to in the second paragraph.

It shall apply from 1 January 2014.

Article 12

Publication

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council
The President*

ANNEX

Correlation table

Decision 2007/436/EC	This Decision
Article 1	Article 1
Article 2(1)(a)	Article 2(1)(a)
Article 2(1)(b)	-
Article 2(1)(c)	Article 2(1)(c)
Article 2(2)	Article 2(2)
Article 2(3)	Article 2(3)
Article 2(4)	-
Article 2(5)	Article 4(1)
Article 2(6)	Article 2(4)
Article 2(7)	
Article 3(1)	Article 3(1)
Article 3(2)	Article 3(2)
Article 3(3)	-
Article 4	-
Article 5(1)	Article 5(1)
Article 5(2)	-
Article 5(3)	-
Article 5(4)	-
Article 6	Article 6
Article 7	Article 7
Article 8(4)	Article 8
Article 9	-
Article 10(1)	Article 10(1)
Article 10(2)	Article 10(2)
Article 10(3)	Article 10(3)
Article 11	Article 11
Article 12	Article 12