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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC, EURATOM) No 2028/2004**of 16 November 2004****amending Regulation (EC, Euratom) No 1150/2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 279(2) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the Communities' own resources⁽¹⁾, and in particular Article 8(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Court of Auditors⁽³⁾,

Whereas:

(1) The Berlin European Council of March 1999 issued a number of conclusions concerning the system of the Communities' own resources, which led to the adoption of Decision 2000/597/EC, Euratom.

(2) Under Article 2(3) and Article 10(2)(c) of Decision 2000/597/EC, Euratom, the percentage retained by Member States by way of collection costs should be set at 25% of the amounts referred to in paragraphs 1(a) and (b) of Article 2 of that Decision which are established after 31 December 2000 with the exception of those amounts that, to comply with the own resources Regulations, should have been made available to the Communities before 28 February 2001, for which the rate of 10% should continue to apply.

(3) The Berlin European Council decided that, in sharing out the financial burden borne by the other Member States for the correction for budgetary imbalances in favour of the United Kingdom, the shares of Austria, Germany, the Netherlands and Sweden should be adjusted so that their financial contribution is limited to one quarter of their normal contribution.

(4) In accordance with the Amsterdam Treaty and Protocols 4 and 5 attached thereto, Denmark, the United Kingdom and Ireland need not participate in measures falling under Title IV of the EC Treaty and are not therefore obliged to bear the financial consequences as a result of measures taken, other than the administrative costs. They can therefore obtain an adjustment to the own resources paid for each year in which they do not participate.

(5) Given that the Member States are under an equal obligation to pay interest in the event of delays in entering own resources in the accounts and that difficulties are currently being encountered in the determination of the interest rates to be applied which, in practice, lead to differences between the rates notified by the Member States participating in the Economic and Monetary Union which are difficult to justify, the reference rate for these States should be standardised on the basis of the rate used by the European Central Bank for its refinancing operations, which is comparable to those proposed as reference rates for Member States outside the euro area.

(6) The dual account system introduced in 1989 was set up to distinguish between recovered and outstanding duties. This system has only partly met its objectives regarding the mechanism used to discharge items from the separate account. Checks by the European Court of Auditors and the Commission have highlighted recurrent anomalies in the keeping of the separate account, which prevent the account from reflecting the real situation as regards recovery. The separate account should be cleansed of those amounts where recovery is unlikely at the end of a given period and the retention of which gives an inaccurate balance. In addition, from the cost-effectiveness angle, Member States will no longer incur the administrative costs involved in monitoring these amounts.

⁽¹⁾ OJ L 253, 7.10.2000, p. 42.

⁽²⁾ Opinion delivered on 26 February 2004 (not yet published in the Official Journal).

⁽³⁾ OJ C 318, 30.12.2003, p. 1.

- (7) The Commission should act in close cooperation with the Member States. In particular, it should have the possibility to forward its comments to the Member State concerned.
- (8) Taking into account the need to find a temporary solution concerning certain administrative difficulties, it is advisable to provide for some transitional arrangements.
- (9) In response to a request of the Court of Auditors and in order to ensure that the separate account provides a better picture of the actual budgetary situation, the Member States should send to the Commission, together with the final quarterly statement for a given year, an estimate of the total amount of entitlements contained in the separate account for which recovery is unlikely.
- (10) According to Article 2(7) of Decision 2000/597/EC, Euratom, for the purposes of applying that Decision 'GNP' shall mean GNI for the year at market prices as provided by the Commission in application of the ESA 95 in accordance with Council Regulation (EEC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community⁽¹⁾ In addition, Council Regulation (EC, Euratom) No 1287/2003⁽²⁾ lays down rules on the harmonisation of gross national income at market prices.
- (11) In accordance with Decision 2000/597/EC, Euratom, the Commission shall undertake, before 1 January 2006, a general review of the own resources system. New proposals made by the Commission on the basis of this review should give particular attention to Article 2(3), Article 4 and Article 5 of that Decision.
- (12) Regulation (EC, Euratom) 1150/2000 should therefore be amended accordingly⁽³⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC, Euratom) No 1150/2000 is hereby amended as follows:

1. in the title, Article 1, Article 2 and Article 5:
 - (a) the references to 'Decision 94/728/EC, Euratom' shall be replaced by 'Decision 2000/597/EC, Euratom';
 - (b) in Article 1, the new reference to 'Decision 2000/597/EC, Euratom' shall be accompanied by the following footnote: '(*) OJ L 130, 31.5.2000, p. 1.;

2. in Article 6:

(a) paragraph 3(c) shall be replaced by the following:

'(c) VAT resources and the additional resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances shall, however, be recorded in the accounts as specified in point (a) as follows:

— the twelfth referred to in Article 10(3) shall be recorded on the first working day of each month,

— the balances referred to in Article 10(4) and (7) and the adjustments referred to in Article 10(6) and (8) shall be recorded annually, except for the particular adjustments referred to in the first indent of Article 10(6), which shall be recorded in the accounts on the first working day of the month following agreement between the Member State concerned and the Commission.;

(b) the following shall be added at the end of paragraph 4(b):

'Together with the final quarterly statement for a given year, Member States shall forward an estimate of the total amount of entitlements contained in the separate account at 31 December of that year for which recovery has become unlikely.;

3. Article 7 shall be replaced by the following:

'Article 7

After 31 December of the third year following a given year, no further corrections shall be made to the sum of the monthly statements sent in by Member States under Article 6(4)(a) for the year in question, except on points notified before this date either by the Commission or by the Member State concerned.;

4. in Article 9:

(a) the following paragraph shall be inserted:

'1a. The Commission shall receive, from the Member States or the bodies appointed by them by any appropriate means, preferably electronic ones, as a general rule on the day on which they are entered, but within three working days at the latest, a statement of account showing the entry of the own resources.;

⁽¹⁾ OJ L 310, 30.11.1996, p. 1. Regulation as last amended by Regulation (EC) No 1267/2003 of the European Parliament and of the Council (OJ L 180, 18.7.2003, p. 1).

⁽²⁾ OJ L 181, 19.7.2003, p. 1.

⁽³⁾ OJ L 130, 31.5.2000, p. 1.

(b) paragraph 2 shall be replaced by the following:

'2. The amounts credited shall be accounted for in euro in accordance with the Financial Regulation (*) applicable to the general budget of the European Communities and its implementing rules.

(*) Council Regulation (EC, Euratom) No 1605/2002 of the Council of 25 June 2002 relating to the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1).';

5. in Article 10:

(a) the first subparagraph of paragraph 1 shall be replaced by the following:

'1. After deduction of collection costs in accordance with Article 2(3) and Article 10(2)(c) of Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources (*), entry of the own resources referred to in Article 2(1)(a) and (b) of that Decision shall be made at the latest on the first working day following the 19th day of the second month following the month during which the entitlement was established in accordance with Article 2 of this Regulation.

(*) OJ L 253, 7.10.2000, p. 42.;

(b) the first and second subparagraphs of paragraph 3 shall be replaced by the following:

'3. VAT resources and the additional resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances-excluding the reserve relating to loans and loan guarantees and to the reserve for emergency aid-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.

For the specific needs of paying EAGGF Guarantee Section expenditure, pursuant to Regulation (EEC) No 1765/92 and depending on the Community's cash position, Member States may be invited by the Commission to bring forward by one or two months in the first quarter of the financial year the entry of one-twelfth or a fraction of one-twelfth of the amounts

in the budget for VAT resources and/or the additional resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances, but excluding own resources to cover the reserve for loan guarantees and the reserve for emergency aid.;

(c) the sixth subparagraph of paragraph 3 shall be replaced by the following:

'The entry in respect of the EAGGF monetary reserve referred to in Article 6 of Decision 2000/597/EC, Euratom, the reserve relating to loans and loan guarantees and the emergency aid reserve created by Decision 94/729/EC (*), shall be made on the first working day of the month following the charging to the budget of the expenditure concerned and shall be limited to the said expenditure if charging is effected before the 16th day of the month. If such is not the case, the entry shall be made on the first working day of the second month after charging.

(*) Decision repealed and replaced by Regulation (EC) No 2040/2000 (OJ L 244, 29.9.2000, p. 27).';

(d) in the seventh subparagraph of paragraph 3, the text 'Article 6 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (13), hereafter named "Financial Regulation" shall be replaced by "Article 8 of the Financial Regulation".

(e) the ninth, tenth, eleventh and twelfth subparagraphs of paragraph 3 shall be replaced by the following:

'Any change in the uniform rate of VAT resources, in the rate of the additional resource, and in the correction granted to the United Kingdom for budgetary imbalances and in its financing referred to in Articles 4 and 5 of Decision 2000/597/EC, Euratom, shall require the final adoption of an amending budget and shall give rise to readjustments of the twelfths which 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 they shall be carried out when the second entry following final adoption is made. By way of derogation from Article 8 of the Financial Regulation, these readjustments shall be entered in the accounts in respect of the financial year of the amending budget in question.

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 272(3) of the EC Treaty and Article 177(3) of the EAEC Treaty 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.

If the budget has not been finally adopted before the beginning of the financial year, the Member States shall enter on the first working day of each month, including January, one-twelfth of the amount of VAT resources, and the additional resource taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances, 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.;

(f) paragraph 4 shall be replaced by the following:

'4. Each Member State shall, on the basis of the annual statement on the VAT resources base provided for in Article 7(1) of Regulation (EEC, Euratom) No 1553/89, be debited with an amount calculated from the information contained in the said statement by applying the uniform rate adopted for the previous financial year and credited with the 12 payments made during that financial year. However each Member State's VAT resources base to which the above rate is applied may not exceed the percentage determined by Article 2(1) of Decision 2000/597/EC, Euratom of its GNP, as referred to in the first sentence of paragraph 7 of this Article. The Commission shall work out the balance and shall inform the Member States in time for them to enter it in the account referred to in Article 9(1) of this Regulation on the first working day of December of the same year.;

(g) paragraph 5 shall be deleted.

(h) The first subparagraph of paragraph 6 shall be replaced by the following:

'6. Any corrections to the VAT resources base under Article 9(1) of Regulation (EEC, Euratom) No 1553/89 shall give rise for each Member State concerned whose base, allowing for these corrections, does not exceed

the percentages determined by Articles 2(1)(c) and 10(2)(b) of Decision 2000/597/EC, Euratom...'

(i) the first sentence of the second subparagraph of paragraph 6 shall be replaced by the following:

'The changes to GNP referred to in paragraph 8 of this Article shall also give rise to an adjustment of the balance of any Member State whose base, allowing for those corrections, is capped at the percentages determined by Articles 2(1)(c) and 10(2)(b) of Decision 2000/597/EC, Euratom.;

(j) the following paragraph shall be added:

'10. In conformity with Article 2(7) of Decision 2000/597/EC, Euratom, for the purposes of applying that Decision, "GNP" shall mean GNI for the year at market prices as defined by Regulation (EC, Euratom) No 1287/2003 of 15 July 2003 on the harmonisation of gross national income at market prices(*).

(*) OJ L 181, 19.7.2003, p. 1.;

6. the following Article shall be inserted:

'Article 10a

1. Where, pursuant to the Amsterdam Treaty and its Protocols 4 and 5, a Member State does not take part in the financing of a specific Union action or policy, it shall be entitled to an adjustment, calculated in accordance with paragraph 2, of the amount it has paid in own resources in respect of each year in which it has not taken part. This adjustment shall be made only once and it shall be final in the event of subsequent modification of the GNP figure.

2. The Commission shall calculate the adjustment during the year following the financial year concerned, at the same time as it determines the GNP balances provided for in Article 10 of this Regulation.

The calculation shall be made on the basis of the figures relating to the financial year in question:

— aggregate GNP at market prices and its components,

— the budgetary outturn of operational expenditure corresponding to the measure or policy in question.

The adjustment shall be equal to the product of multiplying the total amount of the expenditure in question, with the exception of that financed by participating third countries, by the percentage that the GNP of the Member State entitled to the adjustment represents of the GNP of all Member States. The adjustment shall be financed by the participating Member States according to a scale determined by dividing their respective GNP by the GNP of all the participating Member States. For the purposes of calculating the adjustment, amounts shall be converted between the national currency and the euro at the exchange rate on the last day of quotation of the calendar year preceding the budget year concerned.

There shall be no subsequent revision of this adjustment in the event of subsequent modification of the GNP figure.

3. The Commission shall inform the Member States in good time of the amount of the adjustment so that they can credit it to the account referred to in Article 9(1) of this Regulation on the first working day of December.;

7. Article 11 shall be replaced by the following:

'Article 11

1. Any delay in making the entry in the account referred to in Article 9(1) shall give rise to the payment of interest by the Member State concerned.

2. In the case of Member States belonging to the Economic and Monetary Union, the interest rate shall be equal to the rate as published in the *Official Journal of the European Union*, C series which the European Central Bank applied to its refinancing operations, on the first day of the month in which the due date fell, increased by two percentage points.

This rate shall be increased by 0,25 of a percentage point for each month of delay. The increased rate shall be applied to the entire period of delay.

3. In the case of Member States not belonging to the Economic and Monetary Union, the rate shall be equal to the rate applied on the first day of the month in question by the Central Banks for their main refinancing operations, increased by two percentage points, or, for the Member States for which the Central Bank rate is not available, the most equivalent rate applied on the first day of the month in question on the Member State's money market, increased by two percentage points. This rate shall be increased by 0,25 of a percentage point for each month of delay. The increased rate shall be applied to the entire period of delay.

4. For the payment of interest, referred to in paragraph 1, Article 9(2) and (3) shall apply *mutatis mutandis*.

8. Article 12(5) shall be replaced by the following:

'5. The Member States, or the body designated by them in accordance with Article 9(1), shall execute the Commission's payment orders as quickly as possible, and within not more than five working days of receipt, and shall send the Commission a statement of account by any appropriate means, preferably electronic ones, within not more than three working days of completing each transaction. However, in the case of cash movement transaction, the Member States shall execute the orders within the period requested by the Commission.;

9. Title V shall be deleted.

10. the heading of Title VI shall be replaced by the following:

'Procedure for the application of Article 7 of Decision 2000/597/EC, Euratom';

11. Article 15 shall be replaced by the following:

'Article 15

For the purpose of applying Article 7 of Decision 2000/597/EC, Euratom, the balance of a given financial year shall consist of the difference between:

— all the revenue collected in respect of that financial year,

and

— the amount of payments made against appropriations for that financial year increased by the amount of the appropriations for the same financial year carried over pursuant to Article 9 of the Financial Regulation. This difference shall be increased or decreased on the one hand, by the net amount of appropriations carried over from previous financial years which have been cancelled and on the other hand, by way of derogation from Article 5(1) of the Financial Regulation, by:

— payments made in excess of non-differentiated appropriations carried over from the previous financial year under Article 9(1) and (4) of the Financial Regulation as a result of change in euro rates,

and

— the balance resulting from exchange gains and losses during the financial year.;

12. in Article 16:

the second subparagraph shall be replaced by the following:

'2. Any appreciable differences in relation to original estimates may give rise to a letter of amendment to the preliminary draft budget for the following financial year or an amending budget for the current financial year';

13. in Article 17:

(a) Paragraph 2 shall be replaced by the following:

'2. Member States shall be released from the obligation to place at the disposal of the Commission the amounts corresponding to established entitlements which prove irrecoverable either:

(a) for reasons of *force majeure*; or

(b) for other reasons which cannot be attributed to them.

Amounts of established entitlements shall be declared irrecoverable by a decision of the competent administrative authority finding that they cannot be recovered.

Amounts of established entitlements shall be deemed irrecoverable, at the latest, after a period of five years from the date on which the amount has been established in accordance with Article 2 or, in the event of an administrative or judicial appeal, the final decision has been given, notified or published.

If part payment or 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.

Amounts declared or deemed irrecoverable shall be definitively removed from the separate account referred to in Article 6(3)(b). They shall be shown in an annex to the quarterly statement referred to in Article 6(4)(b) and where applicable, in the quarterly statement referred to in Article 6(5).';

(b) the following paragraphs shall be inserted:

'3. Within three months of the administrative decision mentioned in paragraph 2 or in accordance with the time limits referred to in that paragraph, Member States shall provide the Commission with information on those cases where paragraph 2 has been applied provided the established entitlements involved exceed EUR 50 000.

This timeframe may be extended by up to three years by Member States for cases of established entitlements, which have been declared irrecoverable or deemed irrecoverable prior to 1 July 2006.

This report, which shall be made on a form to be produced by the Commission after consulting the committee referred to in Article 20, shall include all the facts necessary for a full examination of the reasons referred to in paragraph 2(a) and (b), which prevented the Member State concerned from making available the amounts in question, and the recovery measures the Member State took in the case or cases in question.

4. The Commission has six months from the receipt of the report provided for in paragraph 3 to forward its comments to the Member State concerned.

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 supplementary information.;

(c) current paragraph 3 becomes paragraph 5 and reads as follows:

'5. Member States shall inform the Commission, by means of annual reports, of the details and results of their inspections and of the overall data and questions of principle concerning the most important problems arising out of the application of this Regulation and, in particular, matters in dispute. The reports shall be sent to the Commission by 1 March of the year following the financial year in question. The summary report on the notifications by Member States under this Article shall be contained in the Commission report referred to in Article 280(5) of the Treaty. A report and duly substantiated amendments thereto shall be drawn up by the Commission after consulting the committee referred to in Article 20. Any appropriate time limits for implementation shall be provided for.;

14. in Article 18(1), the reference to 'Decision 94/728/EC, Euratom' shall be replaced by 'Decision 2000/597/EC, Euratom';

15. in Article 21, paragraph 1(c) shall be replaced by the following:

‘(c) the inspection measures and controls laid down in Article 18(2) and (3).’;

16. the following Title IX shall be inserted:

TITLE IX

Transitional provisions

Article 21a

The rate provided for in Article 11 of this Regulation shall continue to apply for the calculation of interest for late payment where the due date falls before the end of the month in which Council Regulation (EC) 2028/2004 of 16 November 2004 amending Regulation (EC, Euratom)

No 1150/2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (*) enters into force.

(*) OJ L 352 of 27.11.2004, p. 1.’;

17. the current Title IX becomes Title X.

Article 2

The other provisions of Regulation (EC, Euratom) No 1150/2000 shall remain in force in so far as they are not specifically amended by this Regulation.

Article 3

This Regulation shall enter into force on the day following 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, 16 November 2004.

For the Council

The President

G. ZALM
