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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC, EURATOM) No 105/2009

of 26 January 2009

**amending Regulation (EC, Euratom) No 1150/2000 implementing Decision 2000/597/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 2007/436/EC, Euratom of 7 June 2007 on the system of the European 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 European Council meeting in Brussels on 15 and 16 December 2005 issued a number of conclusions concerning the system of the Communities' own resources, which led to the adoption of Decision 2007/436/EC, Euratom.

(2) Under Article 2(1)(a) of Decision 2007/436/EC, Euratom there is no distinction between agricultural levies and customs duties.

(3) According to the second subparagraph of Article 2(5) of Decision 2007/436/EC, Euratom, for the period 2007-2013, the Netherlands and Sweden shall benefit from a gross reduction of their respective gross national income (GNI) contributions to be financed by all Member States. There shall be no subsequent revision of the financing of that gross reduction in the event of subsequent modifications of the GNI figure.

(4) Taking into account the fact that Decision 2007/436/EC, Euratom makes reference to GNI instead of gross national product (GNP), it is appropriate to align Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources ⁽⁴⁾. The system of the European Communities' own resources no longer provides for the GNP financial contributions, therefore there is no longer any need to refer to them in Regulation (EC, Euratom) No 1150/2000.

(5) With a view to the efficient management of the Commission's own resources accounts, specific provisions should be laid down in order to align the transmission of data and reporting periods with current banking practice.

(6) From the 2007 budget onwards, the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ⁽⁵⁾ no longer envisages a specific financing mechanism for the reserve relating to loans and loan guarantees and the reserve for emergency aid. The emergency aid reserve is entered in the budget as a provision and the reserve for loans and loan guarantees is considered a compulsory expenditure of the general budget.

⁽¹⁾ OJ L 163, 23.6.2007, p. 17.

⁽²⁾ Opinion of the European Parliament of 21 October 2008 (not yet published in the Official Journal).

⁽³⁾ OJ C 192, 29.7.2008, p. 1.

⁽⁴⁾ OJ L 130, 31.5.2000, p. 1.

⁽⁵⁾ OJ C 139, 14.6.2006, p. 1.

- (7) Regulation (EC, Euratom) No 1150/2000 should therefore be amended accordingly.
- (8) Taking account of Article 11 of Decision 2007/436/EC, Euratom, this Regulation should enter into force on the same day as that Decision and should apply from 1 January 2007,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. in the title the term 'Decision 2000/597/EC, Euratom on the system of the Communities' own resources' shall be replaced by the following:

'Decision 2007/436/EC, Euratom on the system of the European Communities own resources';

2. Article 1 shall be replaced by the following:

'Article 1

The European Communities' own resources provided for in Decision 2007/436/EC, Euratom (*) hereinafter referred to as "own resources", shall be made available to the Commission and inspected as specified in this Regulation, without prejudice to Regulation (EEC, Euratom) No 1553/89 (**), Regulation (EC, Euratom) No 1287/2003 (***) and Directive 89/130/EEC, Euratom (****).

(*) OJ L 163, 23.6.2007, p. 17.

(**) Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 155, 7.6.1989, p. 9).

(***) Council 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).

(****) OJ L 49, 21.2.1989, p. 26.;

3. in Article 2(1) the term 'Article 2(1)(a) and (b) of Decision 2000/597/EC, Euratom' shall be replaced by the following:

'Article 2(1)(a) of Decision 2007/436/EC, Euratom';

4. in Article 3 the second paragraph shall be replaced by the following:

'The supporting documents relating to the statistical procedures and bases referred to in Article 3 of Regulation (EC, Euratom) No 1287/2003 shall be kept by the Member States until 30 September of the fourth year following the financial year in question. The supporting documents

relating to the VAT resources base shall be kept for the same period';

5. Article 5 shall be replaced by the following:

'Article 5

The rate referred to in Article 2(1)(c) of Decision 2007/436/EC, Euratom which shall be set within the budgetary procedure, shall be calculated as a percentage of the sum of the forecast of the gross national income, (hereinafter referred to as GNI) of the Member States in such a manner that it fully covers that part of the budget not financed from the revenue referred to in Article 2(1)(a) and (b) of Decision 2007/436/EC, Euratom, from financial contributions to supplementary research and technological development programmes and other revenue.

That rate shall be expressed in the budget by a figure containing as many decimal places as is necessary to fully divide the GNI-based resource among the Member States.;

6. in Article 6(3), point (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 and to the gross reduction granted to the Netherlands and to Sweden shall, however, be recorded in the accounts as specified in point (a) as follows:

— the 12th 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 (6) and the adjustments referred to in Article 10(5) and (7) shall be recorded annually, except for the particular adjustments referred to in the first indent of Article 10(5), 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.;

7. Article 9(1a) shall be replaced by the following:

'1a. Member States or the bodies appointed by them shall transmit to the Commission, by electronic means:

(a) on the working day on which the own resources are credited to the account of the Commission, a statement of account or a credit advice showing the entry of the own resources;

(b) without prejudice to point (a), at the latest on the second working day following the crediting of the account, a statement of account showing the entry of the own resources.;

8. Article 10 shall be replaced by the following:

Article 10

1. After deduction of collection costs in accordance with Article 2(3) and Article 10(3) of Decision 2007/436/EC, Euratom entry of the own resources referred to in Article 2(1)(a) 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.

However, for entitlements shown in separate accounts under Article 6(3)(b) of this Regulation, the entry must be made at the latest on the first working day following the 19th day of the second month following the month in which the entitlements were recovered.

2. If necessary, Member States may be invited by the Commission to bring forward by one month the entry of resources other than VAT resources and the additional resource on the basis of the information available to them on the 15th of the same month.

Each entry brought forward shall be adjusted the following month when the entry mentioned in paragraph 1 is made. This adjustment shall entail the negative entry of an amount equal to that given in the entry brought forward.

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 and of the gross reduction granted to the Netherlands and to 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.

For the specific needs of paying EAGF expenditure, pursuant to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (*) 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 and of the gross reduction granted to the Netherlands and to Sweden.

After the first quarter, the monthly entry requested may not exceed one-twelfth of VAT and GNI-based 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 the entry requested.

The eighth subparagraph concerning the amount to be entered in January each year and the ninth subparagraph applicable if the budget has not been finally adopted before the beginning of the financial year shall apply to these advance entries.

Any change in the uniform rate of VAT resources, in the rate of the additional resource, in the correction granted to the United Kingdom for budgetary imbalances and in its financing referred to in Articles 4 and 5 of Decision 2007/436/EC, Euratom and in the financing of the gross reduction granted to the Netherlands and to Sweden 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 and of the gross reduction granted to the Netherlands and to 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.

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)(b) of Decision 2007/436/EC, Euratom of its GNI as referred to in the first sentence of paragraph 7 of that 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.

5. 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)(b) and 10(2) of Decision 2007/436/EC, Euratom to the following adjustments to the balance referred to in paragraph 4 of this Article:

- the corrections under the first subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89 made by 31 July shall give rise to a general adjustment to be entered in the account referred to in Article 9(1) of this Regulation on the first working day of December of the same year. However a particular adjustment may be entered before that date if the Member State concerned and the Commission are in agreement,
- where the measures which the Commission takes under the second subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89 to correct the base lead to an adjustment of the entries in the account referred to in Article 9(1) of this Regulation, that adjustment shall be made on the date specified by the Commission pursuant to the said measures.

The changes to GNI referred to in paragraph 7 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)(b) and 10(2) of Decision 2007/436/EC, Euratom.

The Commission shall inform the Member States of these adjustments in time for them to enter them in the account referred to in Article 9(1) on the first working day of December of the same year.

However, a particular adjustment may be entered at any time if the Member State concerned and the Commission are in agreement.

6. On the basis of figures for aggregate GNI at market prices and its components from the preceding year, supplied by the Member States in accordance with Article 2(2) of Regulation (EC, Euratom) No 1287/2003, each Member State shall be debited with an amount calculated by applying to GNI the rate adopted for the previous financial year and credited with the payments made during that previous financial year. 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.

7. Any changes to the GNI of previous financial years pursuant to Article 2(2) of Regulation (EC, Euratom) No 1287/2003 subject to Article 5 thereof, shall give rise for each Member State concerned to an adjustment to the balance established pursuant to paragraph 6 of this Article. This adjustment shall be established in the manner laid down in the first subparagraph of paragraph 5 of this Article. The Commission shall inform the Member States of these adjustments so that they can enter them in the account referred to in Article 9(1) of this Regulation on the first working day of December of the same year. After 30 September of the fourth year following a given financial year, any changes to GNI shall no longer be taken into account, except on points notified within this time limit either by the Commission or by the Member State.

8. The operations referred to in paragraphs 4 to 7 constitute modifications to revenue in respect of the financial year in which they occur.

9. The gross reduction granted to the Netherlands and to Sweden shall be financed by all Member States. There shall be no subsequent revision of the financing of that gross reduction in the event of subsequent modification of the GNI figure.

10. In conformity with Article 2(7) of Decision 2007/436/EC, Euratom, for the purposes of applying that Decision "GNI" shall mean GNI for the year at market prices as defined by Regulation (EC, Euratom) No 1287/2003, except for the years prior to 2002, for which GNP at market prices, as defined by Directive 89/130/EEC, Euratom, continues to be the reference for calculation of the additional resource.

(*) OJ L 270, 21.10.2003, p. 1.;

9. In Article 10a the references to 'GNP' shall be replaced by the following:

'GNI';

10. Article 11(4) shall be replaced by the following:

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

11. Article 12(5) shall be amended as follows:

(a) the first sentence shall be replaced by the following:

'The Member States, or the bodies appointed by them, shall execute the Commission's payment orders following the Commission's instructions and within not more than three working days of receipt.'

(b) the following subparagraph shall be added:

'The Member States, or the bodies appointed by them, shall send to the Commission, by electronic means and on the second working day following the completion of each transaction at the latest, a statement of account showing the related movements.'

12. in the heading of Title VI, the term 'Decision 2000/597/EC, Euratom' shall be replaced by the following:

'Decision 2007/436/EC, Euratom';

13. in the introductory sentence of Article 15 the term 'Decision 2000/597/EC, Euratom' shall be replaced by the following:

'Decision 2007/436/EC, Euratom';

14. in Article 16 the reference to 'Article 10(4) to (8)' shall be replaced by the following:

'Article 10(4) to (7)';

15. Article 18 shall be amended as follows:

(a) in paragraph 1, the first sentence shall be replaced by the following:

'1. Member States shall conduct the checks and enquiries concerning the establishment and the making available of the own resources, referred to in Article 2(1)(a) of Decision 2007/436/EC, Euratom.'

(b) paragraph (4)(c) shall be replaced by the following:

'(c) the inspection arrangements made pursuant to Article 279(1)(b) of the EC Treaty and Article 183(1)(b) of the EAEC Treaty.'

16. in Article 19 the reference to 'GNP' shall be replaced by the following:

'GNI'.

Article 2

This Regulation shall enter into force on the day of entry into force of Decision 2007/436/EC, Euratom.

It shall apply from 1 January 2007.

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

Done at Brussels, 26 January 2009.

For the Council
The President
A. VONDRA