

I

(Legislative acts)

REGULATIONS

COUNCIL REGULATION (EU, Euratom) 2021/768**of 30 April 2021****laying down implementing measures for the system of own resources of the European Union and
repealing Regulation (EU, Euratom) No 608/2014**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the fourth paragraph of Article 311 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to 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 ⁽¹⁾, and in particular Article 10 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 consent of the European Parliament ⁽²⁾,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The procedure for calculating and budgeting the annual budgetary balance, the provisions and arrangements necessary for controlling and supervising the collection of own resources and any relevant reporting requirements are important components of the system of own resources of the Union which complement in a more detailed manner the provisions of Decision (EU, Euratom) 2020/2053.
- (2) For reasons of consistency, the provisions concerning inspections of Council Regulation (EEC, Euratom) No 1553/89 ⁽³⁾ should be included in this Regulation.
- (3) In order to ensure a balanced budget, any surplus of the Union's revenue over total actual expenditure during a financial year should be carried over to the following financial year. Therefore, the balance to be carried over should be defined.
- (4) Member States should conduct checks and enquiries relating to calculating, establishing and making available the Union's own resources. In order to facilitate the application of the financial rules relating to own resources, it is necessary to ensure that the Member States and the Commission collaborate.

⁽¹⁾ OJ L 424, 15.12.2020, p. 1.

⁽²⁾ Consent of 25 March 2021 (not yet published in the Official Journal).

⁽³⁾ 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).

- (5) The transparency of the system of own resources of the Union should be ensured by the provision of adequate information to the European Parliament and to the Council. Therefore, the Member States should put at the disposal of the Commission the documents and information necessary for the Commission to exercise the power conferred upon it as regards the Union's own resources and, where necessary, send those documents and information to the Commission.
- (6) For the sake of consistency and clarity, provisions should be laid down covering the powers and obligations of officials, other servants and seconded national experts who take part in inspections in relation to the Union's own resources. In particular, the rules which all Union officials, other servants and seconded national experts have to observe with regard to professional confidentiality and the protection of personal data should be laid down. It is necessary to specify the status of seconded national experts and the possibility for the Member State concerned to object to the presence of officials of other Member States at an inspection.
- (7) The arrangements whereby the Member States responsible for collecting own resources report to the Commission should make it possible for the Commission to monitor the actions of Member States to recover own resources, in particular in cases of fraud and irregularities.
- (8) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards establishing detailed rules on the reporting of fraud and irregularities that affect entitlements to traditional own resources and Member States' annual reports on their inspections. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽⁴⁾.
- (9) The advisory procedure should be used for the adoption of implementing acts in order to establish detailed rules on the reporting of fraud and irregularities that affect entitlements to traditional own resources and Member States' annual reports on their inspections, given the technical nature of those acts required for reporting purposes.
- (10) Appropriate parliamentary oversight, as set out in the Treaties, is required for provisions of a general nature applicable to all categories of own resources.
- (11) Council Regulation (EU, Euratom) No 608/2014 ⁽⁵⁾ should be repealed.
- (12) For reasons of consistency, this Regulation should enter into force on the same day as Decision (EU, Euratom) 2020/2053 and should apply from the same date of application as that Decision, that is, from 1 January 2021,

HAS ADOPTED THIS REGULATION:

CHAPTER I

DETERMINING OWN RESOURCES

Article 1

Calculation and budgeting of the balance

1. For the purposes of applying Article 8 of Decision (EU, Euratom) 2020/2053 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 12 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁶⁾ ('the Financial Regulation').

⁽⁴⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁽⁵⁾ Council Regulation (EU, Euratom) No 608/2014 of 26 May 2014 laying down implementing measures for the system of own resources of the European Union (OJ L 168, 7.6.2014, p. 29).

⁽⁶⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

That difference shall be increased or decreased by the net amount of appropriations carried over from previous financial years which have been cancelled. By way of derogation from Article 8(1) of the Financial Regulation, the difference shall also be increased or decreased by the following:

- (a) payments made in excess of non-differentiated appropriations carried over from the previous financial year under Article 12(1) and (4) of the Financial Regulation as a result of changes in euro rates;
- (b) the balance resulting from exchange gains and losses during the financial year.

2. The Commission shall, before the end of October in each financial year, make an estimate of the own resources collected for the entire year, on the basis of the data at its disposal at that time. Any appreciable differences in relation to original estimates may give rise to a letter of amendment to the draft budget for the following financial year or an amending budget for the current financial year.

CHAPTER II

PROVISIONS CONCERNING CONTROL AND SUPERVISION AND RELEVANT REPORTING REQUIREMENTS

Article 2

Control and supervision measures

1. The own resources referred to in Article 2(1) of Decision (EU, Euratom) 2020/2053 shall be inspected as specified in this Regulation, without prejudice to Regulation (EEC, Euratom) No 1553/89 and Regulation (EU) 2019/516 of the European Parliament and of the Council ⁽⁷⁾.

2. Member States shall take all measures that are necessary to ensure that the own resources referred to in Article 2(1) of Decision (EU, Euratom) 2020/2053 are made available to the Commission.

3. Where control and supervision measures concern the traditional own resources referred to in point (a) of Article 2(1) of Decision (EU, Euratom) 2020/2053:

- (a) Member States shall conduct the checks and enquiries concerning the establishment and the making available of those own resources;
- (b) Member States shall carry out additional inspection measures at the Commission's request. In its request the Commission shall state the reasons for the additional inspection. The Commission may also request that certain documents be sent to it;
- (c) Member States shall, if the Commission so requests, involve it in the inspections that they carry out. Where the Commission is involved in an inspection, the Commission shall have access, in so far as the application of this Regulation so requires, to the supporting documents concerning the establishment and the making available of the own resources, and to any other appropriate document related to those supporting documents;
- (d) the Commission may itself carry out on-the-spot inspections. The agents authorised by the Commission for the purpose of such inspections shall have access to documents as set out for the inspections referred to in point (c). Member States shall facilitate those inspections.

4. Where control and supervision measures concern the own resource based on VAT referred to in point (b) of Article 2(1) of Decision (EU, Euratom) 2020/2053 the Commission's inspections shall be carried out together with the competent authorities of the Member State concerned. During those inspections, the Commission shall make sure, in particular, that the operations to calculate the total net VAT collected were performed correctly. It shall also confirm that the data used were appropriate, and that the calculations made to determine the amount of that own resource as referred to in Article 3(1) of Regulation (EEC, Euratom) No 1553/89 comply with that Regulation.

⁽⁷⁾ 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).

5. Where control and supervision measures concern the own resource based on plastic packaging waste that is not recycled referred to in point (c) of Article 2(1) of Decision (EU, Euratom) 2020/2053 the Commission shall have access to the documents relating to the procedures and to the data referred to in European Parliament and Council Directive 94/62/EC ⁽⁸⁾ and in Commission Decision 2005/270/EC ⁽⁹⁾. The Commission's inspections shall be carried out together with the competent authorities of the Member State concerned. During those inspections, the Commission shall make sure that the operations to calculate the weight of plastic packaging waste that is not recycled as referred to in the second subparagraph of Article 2(2) of the Decision (EU, Euratom) 2020/2053 were performed correctly.

6. Where control and supervision measures concern the own resource based on gross national income (GNI) referred to in point (d) of Article 2(1) of Decision (EU, Euratom) 2020/2053:

- (a) the Commission shall each year inspect the aggregates provided for errors in compilation, together with the Member State concerned, especially in cases notified by the expert group referred to in Article 4 of Regulation (EU) 2019/516; in doing so, it may also examine calculations and statistical bases in individual cases, except for information about individual companies or persons, if no proper assessment would otherwise be possible;
- (b) the Commission shall also have access to the documents relating to the sources and methods referred to in Article 3 of Regulation (EU) 2019/516.

7. The control and supervision measures referred to in this Article shall be without prejudice to the following:

- (a) the inspections carried out by Member States in accordance with their national laws, regulations or administrative provisions;
- (b) the measures provided for in Articles 287 and 319 of the Treaty on the Functioning of the European Union (TFEU);
- (c) the inspection arrangements made pursuant to point (b) of Article 322(1) TFEU.

8. For the purposes of the control and supervision measures under paragraphs 3 to 6, the Commission may request the Member States to send it relevant documents or reports relating to the systems used to collect own resources or to make such documents or reports available to the Commission.

Article 3

Powers and obligations of the authorised agents of the Commission

1. The Commission shall specifically appoint for the purpose of carrying out the inspections referred to in Article 2 certain of its officials or other servants ('authorised agents').

For each inspection, the Commission shall provide the authorised agents with written terms of reference stating their identity and official capacity.

Experts seconded to the Commission by the Member States as national experts may participate in the inspections.

With the explicit and prior agreement of the Member State concerned, the Commission may seek the assistance of officials from other Member States as observers. The Commission shall ensure that those officials comply with paragraph 3.

2. During the inspections referred to in Article 2 the authorised agents shall act in a manner compatible with the rules applicable to the officials of the Member State concerned. They shall be bound by professional secrecy, under the conditions laid down in paragraph 3 of this Article.

The Commission shall respect the principle of statistical confidentiality as established in Regulation (EC) No 223/2009 of the European Parliament and of the Council ⁽¹⁰⁾.

⁽⁸⁾ European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

⁽⁹⁾ Commission Decision 2005/270/EC of 22 March 2005 establishing the formats relating to the database system pursuant to Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste (OJ L 86, 5.4.2005, p. 6).

⁽¹⁰⁾ Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

An authorised agent may, if necessary, contact debtors, but only in the context of the inspections of traditional own resources, and only through the competent authorities whose own resources collection procedures are the subject of the inspection.

3. Information communicated or obtained under this Regulation, in whatever form, shall be subject to professional secrecy and receive the protection granted to similar information under the national law of the Member State in which it was gathered and under the corresponding provisions applicable to the institutions of the Union.

The information referred to in the first subparagraph shall not be communicated to persons other than those persons within the institutions of the Union or within the Member States whose duty it is to know that information nor shall it be used for purposes other than those laid down in this Regulation without the prior consent of the Member State in which it was gathered.

The first and second subparagraphs shall apply to the officials and other servants of the Union, and seconded national experts.

4. The Commission shall ensure that authorised agents and other persons acting under its authority comply with Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽¹⁾ and Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽²⁾ and other Union and national rules concerning the protection of personal data.

Article 4

Preparation and management of inspections

1. In a duly substantiated communication, the Commission shall give notice of an inspection in good time to the Member State in which the inspection is to take place. Agents of the Member State concerned may participate in such inspection.

2. Inspections shall be carried out by the authorised agents. For the purposes of the organisation of the work, the authorised agents shall establish the necessary contacts with the competent authorities of the Member States.

3. For the inspections in which the Commission is involved, the organisation of the work and relations with the departments involved in the inspection shall be ensured by the department designated by the Member State concerned.

4. On-the-spot inspections relating to traditional own resources referred to in point (d) of Article 2(3) shall be carried out by the authorised agents. For the purposes of the organisation of the work and relations with the departments, and where appropriate, the debtors involved in the inspection, the authorised agents shall, prior to any on-the-spot inspections, establish the necessary contacts with the officials designated by the Member State concerned. For this type of inspection, the terms of reference shall be set out in a document indicating the aim and purpose of the inspection.

5. The Member States shall ensure that the departments or agencies responsible for calculating, establishing, collecting and making available the own resources, and the authorities which they have instructed to carry out the inspections thereon, provide the authorised agents with the assistance necessary for carrying out their duties.

For the purposes of on-the-spot inspections relating to traditional own resources referred to in point (d) of Article 2(3) Member States concerned shall inform the Commission in good time of the identity and capacity of the persons appointed to take part in these inspections and shall afford the authorised agents every assistance necessary for carrying out their duties.

⁽¹⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽²⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

6. The results of the controls and inspections referred to in Article 2, except the inspections carried out by the Member States, shall be brought to the attention of the Member State concerned through the appropriate channels within a period of three months. The Member State shall submit its observations within three months following receipt of the report. However, for duly substantiated reasons, the Commission may request the Member State concerned to submit observations on specific points within a period of one month following receipt of the report. The Member State concerned may decline to respond by means of a communication stating the reasons which prevent it from responding to the Commission's request.

The results and observations referred to in the first subparagraph, together with the summary report prepared in connection with controls on the own resources referred to in points (b) and (c) of Article 2(1) of Decision (EU, Euratom) 2020/2053, shall be brought to the attention of all Member States.

If the on-the-spot inspections or other inspections in which the Commission is involved, where the inspections relate to traditional own resources, identify the need for amendment or correction of data in the statements or declarations sent to the Commission regarding own resources and the resultant corrections are to be made via a current statement or declaration then the relevant changes shall be identified, in the statement or declaration so used, by means of appropriate notes.

Article 5

Reporting of fraud and irregularities that affect entitlements to traditional own resources

1. Within two months following the end of each quarter, Member States shall send the Commission a description of detected cases of fraud and irregularities involving entitlements of over EUR 10 000 concerning the traditional own resources referred to in point (a) of Article 2(1) of Decision (EU, Euratom) 2020/2053.

Within the period referred to in the first subparagraph, each Member State shall give details of the position concerning cases of fraud and irregularities already reported to the Commission, the recovery, cancellation or non-recovery of which was not indicated earlier.

2. The Commission shall adopt implementing acts establishing details of the descriptions referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 7(2).

3. A summary of the descriptions referred to in paragraph 1 of this Article shall be included in the Commission's report referred to in Article 325(5) TFEU.

Article 6

Reporting by Member States on their inspections of traditional own resources

1. Member States shall submit detailed annual reports to the Commission on their inspections relating to traditional own resources and the results of these inspections, the overall data and any questions of principle concerning the most important problems arising out of the application of the relevant regulations implementing Decision (EU, Euratom) 2020/2053 and, in particular, matters in dispute. The reports shall be sent to the Commission by 1 March of the year following the financial year concerned. On the basis of those reports, the Commission shall prepare a summary report, which shall be brought to the attention of all Member States.

2. The Commission shall adopt implementing acts establishing a form for the Member States' annual reports referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 7(2).

3. The Commission shall report every three years to the European Parliament and to the Council on the functioning of the inspection arrangements for traditional own resources referred to in Article 2(3).

CHAPTER III

COMMITTEE AND FINAL PROVISIONS*Article 7***Committee procedure**

1. The Commission shall be assisted by the Advisory Committee on Own Resources (ACOR) and by other committees where necessary. The ACOR and the other committees shall be committees within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

*Article 8***Final provisions**

Regulation (EU, Euratom) No 608/2014 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex to this Regulation.

*Article 9***Entry into force**

This Regulation shall enter into force on the date of entry into force of Decision (EU, Euratom) 2020/2053.

It shall apply from 1 January 2021.

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

Done at Brussels, 30 April 2021.

For the Council
The President
A. P. ZACARIAS

ANNEX

CORRELATION TABLE

Regulation (EU, Euratom) No 608/2014	This Regulation
Article 1	Article 1
Article 2(1)	Article 2(1)
Article 2(2)	Article 2(2)
Article 2(3)(a)	Article 2(3)(a)
Article 2(3)(b)	Article 2(3)(b)
Article 2(3)(c)	Article 2(3)(c)
Article 2(3)(d)	Article 2(3)(d)
Article 2(3)(e)	Article 2(7)
Article 2(4)	Article 2(4)
—	Article 2(5)
Article 2(5)	Article 2(6)
Article 2(6)	Article 2(8)
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 7	Article 7
Article 8	Article 8
Article 9	Article 9