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### Information and Notices

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## III

*(Preparatory acts)*

## COURT OF AUDITORS

**OPINION No 2/2012**

*(pursuant to the second subparagraph of Article 287(4) and Article 311 and Article 322(2) of the Treaty on the Functioning of the European Union in conjunction with Article 106a of the Treaty establishing the European Atomic Energy Community)*

**on an amended proposal for a Council Decision on the system of own resources of the European Union — COM(2011) 739,**

**on an amended proposal for a Council Regulation laying down implementing measures for the system of own resources of the European Union — COM(2011) 740,**

**on an amended proposal for a Council Regulation on the methods and procedure for making available the traditional and GNI-based own resources and on the measures to meet cash requirements — COM(2011) 742,**

**on a 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,**

**on a 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**

(2012/C 112/01)

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THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 287(4), second subparagraph, Article 311 and Article 322(2) thereof,

Having regard to the previous opinions given by the Court of Auditors on the system of the European Communities' own resources and its Opinions No 4/2005 <sup>(1)</sup>, No 2/2006 <sup>(2)</sup> and No 2/2008 <sup>(3)</sup> on a proposal for a Council Decision on the system of the European Communities' own resources, in particular,

Having regard to the Council's requests, dated 21 October and 12 December 2011, for an opinion on the aforementioned proposals,

Whereas the Fontainebleau European Council of 25 and 26 June 1984 concluded <sup>(4)</sup>, inter alia, that expenditure policy is ultimately the essential means of resolving the question of budgetary imbalances. However, any Member State sustaining a budgetary burden which is excessive in relation to its relative prosperity may benefit from a correction at any time.

Whereas the Berlin European Council of 24 and 25 March 1999 concluded <sup>(5)</sup>, inter alia, that the Union's own resources system should be equitable, transparent, cost-effective and simple and that it must be based on criteria which best express each Member State's ability to contribute.

Whereas the Brussels European Council of 15 and 16 December 2005 reached agreement <sup>(6)</sup>, inter alia, that the own resources arrangements should be guided by the overall objective of equity, that these arrangements should therefore ensure that no Member State sustains a budgetary burden which is excessive in relation to its relative prosperity and that these arrangements should accordingly introduce provisions covering specific Member States,

HAS ADOPTED THE FOLLOWING OPINION:

## INTRODUCTION

1. In the Court's view, the current EU budget financing system is complex and lacks transparency. The Commission has reviewed this system, seeking to remedy some of the current weaknesses. Its proposal builds on the opportunities presented by the Treaty on the Functioning of the European Union <sup>(7)</sup> (TFEU) which allow for the creation of new resources and takes into account the need for budgetary consolidation to address the ongoing financial crisis.

<sup>(1)</sup> OJ C 167, 7.7.2005, p. 1.

<sup>(2)</sup> OJ C 203, 25.8.2006, p. 50.

<sup>(3)</sup> OJ C 192, 29.7.2008, p. 1.

<sup>(4)</sup> See Bulletin EC 6-1984.

<sup>(5)</sup> See Bulletin EU 3-1999.

<sup>(6)</sup> See paragraph 6 of the Presidency Conclusions (Council Document 15914/1/05, REV 1, CONCL 3 of 30 January 2006) referring to Council Document 15915/05 CADREFIN 268 of 19 December 2005, and in particular paragraph 77 thereof.

<sup>(7)</sup> Article 311(3).

2. On 9 November 2011 the Commission proposed a Council Decision and four Council Regulations concerning the system of own resources for the period 2014-20. The proposed Council Decision and its explanatory memorandum provide the rationale for the new paradigm for EU budget financing and set out the main elements of the new 'own resources' system. The proposed regulations set out in more detail how the own resources decision is to be implemented.

3. The Commission proposes five significant changes to the way the European Union's budget is to be financed for the period 2014-20:

- the elimination of the existing own resource based on value added tax (VAT),
- the introduction of a new resource drawn from Member States' VAT receipts,
- the introduction of an own resource drawn from Member States' receipts from the proposed financial transaction tax (FTT),
- the reform of the correction mechanisms, and
- a reduction in the percentage of traditional own resources (TOR) retained by Member States to cover collection costs.

4. This opinion covers the decision and the regulations together as a package. In Part I, paragraphs 5 to 51 describe the proposed changes and set out the Court's observations thereon and are based, where relevant, on previous Court opinions. Paragraphs 52 to 54 address arrangements related to the gross national income (GNI)-based own resource that are not changed significantly by the new regulations but on which the Court has some observations. Part II contains the Court's list of comments per legislative proposal.

## PART I

### Summary

5. The Court notes that the proposal for the elimination of the current VAT-based own resource responds to weaknesses identified by the Parliament, the Council and by the Court in previous opinions.

6. The Court considers that the proposed own resource based on VAT will still be complex, but less so than the existing VAT-based resource. It is important that the control and access requirements of the Commission are clearly defined. Reference should also be made to the European Court of Auditors' access rights pursuant to Article 287 of the TFEU.

7. The use of the FTT as an own resource depends on the introduction of that tax in all EU Member States. There is an unpredictability to the amount of own resources that can be raised from this source. Any such revenue would reduce reliance on the resource based on GNI.

8. The proposed fixed lump sum corrections for four Member States are simpler than the current system, but there are still drawbacks.

9. The Court comments that the link between the retention rate and the cost of collection of TOR remains unclear.

10. The own resource based on GNI is unaltered by the Commission's proposals. However, the Court notes that, as in the current and previous funding periods, the Commission refers to actions to be taken in cases of 'significant changes in GNI' but has not defined what constitutes 'significant change'.

11. The overall impact of the changes proposed by the Commission would be to alter the composition of the resources as well as the share paid by individual Member States to the EU budget.

### **Specific observations**

#### **Elimination of the own resource based on VAT**

12. The Commission proposes that the existing VAT-based own resource be eliminated from 2014 onwards. It states in the explanatory memorandum to the proposed Decision that removing this complex own resource would considerably simplify national contributions and reduce the administrative burden for both the Commission and Member States. The VAT-based own resource made up 11,2 % of own resources in 2010.

13. The Court has criticised this own resource on a number of occasions<sup>(1)</sup> for the complexity of its calculation which involves significant administrative resources<sup>(2)</sup> and its lack of a direct link to the tax base. The Court notes that the proposal addresses these weaknesses.

#### **Introduction of a resource drawn from Member States' VAT receipts**

14. The Commission proposes to introduce a new own resource to be drawn from Member States VAT receipts. The proposal states that the share of VAT to be made available by each Member State to the Commission as own resources would be 1 %<sup>(3)</sup> of the net value of supplies of goods and services, intra-Community acquisitions of goods and importation of goods that are subject to a standard rate of VAT in every Member State determined according to Union rules.

<sup>(1)</sup> For example: Opinion No 4/2005, paragraphs 9 to 11, and Response by the ECA to the Commission's communication 'Reforming the budget, Changing Europe' of 9 April 2008.

<sup>(2)</sup> For example: Significant administrative resources are required at Member State and Commission level to set and subsequently lift reservations. As of 31 December 2010 there were 152 outstanding reservations, some covering years as far back as 1995. See paragraph 2.22 of the Court's 2010 Annual Report.

<sup>(3)</sup> The maximum rate is set at 2 % in the Commission's amended proposal for a Council Decision COM(2011) 739 of 9.11.2011.

15. The detailed calculation method is set out in the 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 November 2011. This requires the Commission to determine, prior to 2014, a single Union average proportion of the value of chargeable supplies<sup>(4)</sup> compared to the value of total supplies.

16. The new VAT own resource would be introduced from 1 January 2014, and made available monthly by Member States in a manner similar to that of traditional own resources, but with no retention for costs of collection. According to the Commission, by 2020 this own resource would contribute 18 % of own resources.

*New VAT resource is simpler but clarification needed on circumstances leading to updates of calculations*

17. This new resource is intended to be simpler and involve lower administrative costs. However, the calculation of the average proportion referred to in paragraph 15 would depend on the same type of complex statistical data used for the calculation of the current VAT-based own resource. It would be a one-off calculation of the average proportion which would be valid for whole period 2014-20. Thus the accuracy of this calculation is important. There is a provision to update this calculation on the basis of duly justified reasons. The Commission's proposal does not specify what these circumstances would be.

18. The determination of the EU entitlement also involves making corrections to the VAT collected, albeit fewer than under the current VAT-based system. Thus the proposed own resources based on a share of VAT would still be complex, but less so than the existing VAT-based resource.

*Rationale for fraud and irregularities reports unclear*

19. The Commission proposes that for the new VAT<sup>(5)</sup> own resource Member States report to the Commission cases of fraud and irregularities detected involving entitlements of over 10 000 euro. This requirement is based on the current system for reporting TOR fraud and irregularities. The share of collected VAT to be allocated as own resources is small. The Court supports the fight against fraud and irregularities but it suggests that the Commission should clarify whether the potential advantages of the reporting requirement outweigh the likely disadvantages in terms of administrative costs for Member States.

<sup>(4)</sup> Defined as a supply subject to the standard rate of VAT applied in every Member State.

<sup>(5)</sup> Amended proposal for a Council Regulation laying down implementing measures for the system of own resources of the European Union — COM(2011) 740.

*Control and access requirements need to be specified*

20. Articles 5 to 8 of the 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 November 2011 set out the provisions concerning control and supervision of the new own resources regime. These largely reflect the existing arrangements in Council Regulation (EC, Euratom) No 1150/2000 <sup>(1)</sup>.

21. Article 5(4) states that the Commission inspectors shall have access to the supporting documents concerning establishing and making available own resources 'and to any other appropriate document related to those supporting documents'. The introduction of the new VAT own resource may necessitate the access of Commission authorised agents to Member States' collection and enforcement records, because of the direct link between the tax collected and the own resource. The precise limits and extent of this access should be set out explicitly. In addition reference should be made to the access rights of the European Court of Auditors pursuant to Article 287 of the TFEU.

22. These provisions would not discriminate between TOR, where all revenue accrues to the EU (less retention of collection costs) and the VAT, where the revenue accrues to the Member State and subsequently a share is allocated to the EU <sup>(2)</sup>. Thus it should be clarified whether the possibility for the Commission inspectors to contact debtors, as set out in Article 7(2) of the proposed regulation, should include Member States' VAT debtors.

*Member States' reports will help the Commission to monitor internal controls*

23. Article 5(4), second subparagraph, of COM(2011) 740 is new and requires Member States to forward to the Commission, on request, documents such as relevant internal audit reports. This would allow the Commission to gain extra assurance on the operation of internal control systems.

*Procedures for recoveries and write-offs should be harmonised*

24. There is a difference in the treatment of Community debts subject to recovery procedures between those amounts which have been unduly paid under the common agriculture policy and customs duty debts. This is notably the case under current EU legislation for write-off procedures <sup>(3)</sup>. Article 12 of

<sup>(1)</sup> Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2007/436/EC, Euratom on the system of European Communities' own resources (OJ L 130, 31.5.2000, p. 1), as amended.

<sup>(2)</sup> Recital 7 of COM(2011) 740 states that the provisions should take into account the specific nature of each own resource.

<sup>(3)</sup> Article 32 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ L 209, 11.8.2005, p. 1) and Article 17 of Regulation (EC, Euratom) No 1150/2000, as amended.

the amended proposal for a Council Regulation on the methods and procedure for making available the traditional and GNI-based own resources and on the measures to meet cash requirements — COM(2011) 742 of 9 November 2011 would maintain this inconsistency. The Court considers that, as all Community debts should receive the same treatment, the procedures should also be harmonised.

**Introduction of an own resource drawn from Member States' receipts from the financial transaction tax**

25. The introduction of the financial transaction tax was proposed on 28 September 2011 in COM(2011) 594: Proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC. The Court has not been requested to provide an opinion on this proposal. It has been requested to give an opinion on the tax's suitability as an own resource.

26. The financial transaction tax would be an EU-wide tax on:

- (a) the purchase and sale of a financial instrument;
- (b) the transfer between entities of a group of the right to dispose of a financial instrument as owner and any equivalent operation implying the transfer of the risk associated with the financial instrument; and
- (c) the conclusion or modification of a derivatives agreement.

27. As for VAT, the proceeds of the tax would accrue to Member States. The Commission proposes that a share of this tax should form part of own resources. This share would be two thirds of the minimum rates set out in Article 8(2) of the proposed Directive on the FTT. These minimum rates are fixed at 0,1 % of the taxable amounts (0,01 % in the case of derivatives).

28. It is proposed that the FTT own resource be introduced from 1 January 2014, be collected by Member States and made available monthly in a manner similar to that of traditional own resources, but with no retention for costs of collection. According to the Commission, by 2020 the EU share of the FTT would make up 23 % of own resources.

29. This would be a new revenue stream which, according to the Commission's explanatory memorandum, could reduce the Member States existing contributions and contribute to the general budgetary consolidation effort.



*Introduction of FTT could contribute to budgetary consolidation of Member States*

30. Recital 8 of the amended proposal for a Council Decision on the system of own resources of the European Union — COM(2011) 739 of 9 November 2011 states that the development of the own resources system should reduce Member States contributions to the Union's annual budget and participate in their budgetary consolidation efforts. The introduction of an FTT, as proposed in COM(2011) 594, could provide more resources to the national budgets of Member States and thus contribute to their budgetary consolidation.

*Risks to the assumptions about FTT revenue*

31. The Commission claims, in the explanatory memorandum, that the initiative to introduce such a tax in the European Union would constitute a first step towards the application of a FTT at the global level. The revenue potential for the FTT at national level is assessed as significant <sup>(1)</sup>, with the anticipated contribution of 37 billion euro to the EU budget by 2020.

32. The Court considers that, in the absence of a global FTT, the risk of relocation, whereby financial institutions move in order to execute transactions in jurisdictions outside the EU, would materially affect this assumption.

33. The proposal to allocate a share of the FTT as an own resource assumes that the Council will accept the Commission's proposal that all Member States should introduce that tax. It is not for the Court to comment on the likelihood or the desirability of such a decision.

34. The VAT- and GNI-based own resources used in the period 2007-13 are relatively stable and predictable tax bases. An own resource drawn from the FTT by contrast would be narrowly based on an economic activity which is subject to significant and unpredictable variations. Such volatility could have an impact on the level of own resources to be raised from that source.

*Changes in the composition of Member States contributions*

35. The transfer of a share of FTT collected to the EU budget would, by the same amount, reduce the contributions based on GNI. The effect on contributions to the Union's annual budget would be neutral at the EU-27 level. However, the allocation of a share of FTT as an EU own resource would significantly change the incidence of Member States contributions to the Union's annual budget.

<sup>(1)</sup> Commission staff working paper: Executive summary of the impact assessment, accompanying the document COM(2011) 594 (SEC(2011) 1103), Section 6.1.

*Control and access requirements need to be specified*

36. Articles 5 to 8 of COM(2011) 740 set out the provisions concerning control and supervision of the new own resources regime. The Court's observations on the control and access requirements for the new VAT own resource are set out in paragraphs 20 to 22. The Court's observations apply also to the proposed FTT.

**Reform of correction mechanisms**

37. The 1984 Fontainebleau European Council set out 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'. Successive own resources Decisions have since included a correction for the United Kingdom. There have also been temporary mechanisms of corrections for Germany, the Netherlands, Austria and Sweden.

38. The Commission proposes to restructure the mechanisms to correct excessive budgetary burdens. All existing corrections would be replaced by lump sum corrections to four Member States where the Commission has assessed such a burden falls (United Kingdom, Germany, the Netherlands and Sweden) <sup>(2)</sup>. These lump sums would be fixed in advance and would be applied each year over the period 2014-20.

39. The lump sum corrections represent gross reductions to the annual GNI contributions of those four Member States. These corrections would be financed by all Member States, including the four Member States concerned. According to the Commission's calculations the gross reduction of 7 500 million euro would lead to total net reductions of 4 334 million euro for the four Member States <sup>(3)</sup> annually.

*Lump sum correction is simpler but still not transparent*

40. The Court has previously stated <sup>(4)</sup> that the existence of any correction mechanism compromises the simplicity and transparency of the own resources system and that net balances are not good indicators for assessing the overall advantages to be gained from Union policies, as they do not take into account the multiplier effect of these policies. The Commission staff working paper <sup>(5)</sup> states that: 'any new correction mechanism will need to be carefully justified, not only by way of debatable accounting measurements, but in view of the overall balance of benefits brought by the EU budget and policies...'. There is no evidence that this has been done by the Commission.

<sup>(2)</sup> Article 4(2) of COM(2011) 739.

<sup>(3)</sup> The gross and net reductions in GNI contributions expressed in euro would be as follows: Germany 2 500 million gross and 990 million net; Netherlands 1 050 million gross and 683 million net; Sweden 350 million gross and 119 million net; United Kingdom 3 600 million gross and 2 542 million net. Data provided by the Commission.

<sup>(4)</sup> Paragraph 19 of Opinion No 4/2005.

<sup>(5)</sup> SEC(2011) 876, which accompanies the amended proposal for a Council Decision. See notably page 44.



41. The current Council Decision on the system of own resources entered into force two and a half years after the beginning of this multiannual financial perspective<sup>(1)</sup>. This is because Member States could not reach agreement on financing corrections by the end of formal negotiations. The Commission's proposal is not clear regarding the rules for financing corrections, in particular, how net corrections have been arrived at. The Court considers that greater transparency on financing corrections would enable the Council to adopt respective legislation on time.

42. The proposed lump sums would nevertheless be a relative improvement in the simplicity and transparency of the own resources system. The existing UK correction is a mechanism whose complexity has led to its precision being compromised and its calculation to contain errors<sup>(2)</sup>.

#### *Lack of criteria for determining 'excessive budgetary burden'*

43. The Commission informed the Court that it based its decision on which Member States would benefit from a lump sum correction on a net balance indicator and analysed the ratio of that balance to relative prosperity, and that the corrections were calibrated so that the four Member States arrive at a comparable ratio. However, the Court has not been provided with these calculations and so cannot comment on them.

44. It is not clear from the Commission's proposal what were the criteria used to define 'the excessive budgetary burden'. There is scope to consider the inclusion of clear rules in relation to the relative prosperity for allocating the corrections to Member States that fulfil the criteria thereby ensuring equal treatment of all Member States. Furthermore, the negotiation process on the financing of the EU budget would become more transparent and facilitate greater focus on the future of the expenditure side of the EU budget.

#### *Mid-term review of applicability of the corrections required*

45. In previous opinions<sup>(3)</sup> the Court has criticised the lack of a monitoring procedure to check that the corrections are still justified or whether other Member States qualify for a correction.

46. The notion of a correction being payable 'at the appropriate time' in the 1984 declaration is repeated in recital 10 of COM(2011) 739. Similarly recital 11 states that 'a correction

should only last as long as it serves its purpose'. The fixing of lump sum amounts for seven years is not compatible with this.

47. Thus it is for consideration whether there should be a mid-term review to ensure that the four Member States (United Kingdom, Germany, Netherlands and Sweden) still meet the criteria to benefit from a lump sum correction, determine whether the amounts should be modified and reassess whether any other Member States meet the criteria.

#### **Reduction in the percentage of traditional own resources retained by Member States to cover collection costs**

48. The Commission proposes to reduce the rate of TOR to be retained by Member States as collection costs from 25 % to 10 %. The latter was the retention rate until 2000. TOR is forecast to make up 19 % of own resources in 2020 (13 % in 2010).

#### *Link between retention rate and cost of collection remains unclear*

49. The Commission considers the retention by Member States of the 25 % of the amounts collected for TOR to be a hidden correction as it is likely to exceed the costs actually incurred. The Council 2005 Discharge decision recommended that the Commission carry out an assessment of administration costs of operating the own resources system. There is no evidence that this has been carried out. The reduction of the retention rate to 10 % contributes to removing this perceived hidden correction.

50. The Court recommends that consideration should be given by the Council as to whether a higher retention rate could serve as an incentive to encourage Member States in their *ex-post* audit activity. Few customs checks are carried out at import, the key control being *ex-post* audits at the trader's premises. Such audits should be frequent and thorough enough to protect the financial interests of the EU.

#### *Increase in TOR may be less than forecast despite reduction in retention rate*

51. The Commission's own analysis foresees an increase in the TOR share of own resources from 14,7 % in 2012 to 18,9 % in 2020. This would reduce Member States' (GNI) contributions. Reducing the rate of retention from 25 % to 10 % would help achieve such an increase. However, it should be considered that the long-term trend in TOR is downwards, due largely to EU trade policy and WTO trade liberalisation and there is therefore a risk that the predicted increase in the share of TOR over the period may not materialise.

<sup>(1)</sup> In the current financial framework, the first contribution under the Decision 2007/436/EC, Euratom was made on 1 June 2009.

<sup>(2)</sup> For example paragraphs 2.16 and 2.31 to 2.33 of the Court's 2010 Annual Report.

<sup>(3)</sup> Paragraph 14 of Opinion No 4/2005 and paragraph 9(b) and (c) of Opinion No 2/2006.

### Own resource based on gross national income

52. The own resource based on GNI is unaltered by the Commission's proposals. The Commission forecasts that it will make up 40 % of own resources in 2020 (76 % in 2010).

#### Lack of definition of 'significant changes in GNI'

53. As in the current and previous own resources systems, Article 2 of COM(2011) 740 refers to actions that would need to be taken in case of 'significant changes in the GNI'. This concerns notably the GNI data to be taken into account for the payment of own resources due to the modification of the ESA accounting framework. It also concerns the related revision of ceilings for payments and commitments in the budget

(expressed as a percentage of the sum of all the Member States' GNI in Article 3 of COM(2011) 739). The Court has previously stated<sup>(1)</sup> that the Commission should define what constitutes 'significant changes'. The Commission has not yet provided such a definition.

54. The definition of 'materiality criteria' is particularly important as, according to Article 2, it is no longer foreseen that the Council shall decide (acting unanimously on a proposal of the Commission and after consulting the European Parliament) whether modifications to the ESA accounting framework shall apply for the purposes of own resources. The proposed new provision only says that the Commission shall inform the Council and the European Parliament on the dates of application of these changes in the ESA.

## PART II

### List of comments per legislative proposal

Amended proposal for a Council Decision on the system of own resources of the European Union — COM(2011) 739	
Reference	Comments
Section 2.2 of the explanatory memorandum to COM(2011) 510 (the original version of COM(2011) 739)	The risk of relocation, whereby financial institutions move in order to execute transactions in jurisdictions outside the EU if there is no global FTT, would materially affect the EU budget revenue estimates of the Commission (see paragraph 32).
Citations	The citation should refer to the European Court of Auditors.
Recital 8	The introduction of the FTT own resource would not achieve the stated aim of reducing national contributions at the EU-27 level. However, the incidence of Member States contributions would change (see paragraph 35).
Recitals 10 and 11 and Article 2	The fixing of lump sum amounts for seven years is not compatible with the notion of a correction being payable 'at the appropriate time' and that 'a correction should only last as long as it serves its purpose' unless a mid-term review is carried out (see paragraphs 45 to 47).
Article 2(1)(b)	This Article should refer to Article 8(2) of the proposed FTT Directive (COM(2011) 594), rather than Article 8(3).
Article 2(3)	In respect of amounts recovered as a result of customs <i>ex-post</i> audits the percentage to be retained could be higher than 10 % in order to encourage such <i>ex-post</i> audit activity (see paragraph 50).
Article 4(2)	The existence of any correction mechanism compromises the simplicity and transparency of the own resources system and net balances are not good indicators for assessing the overall advantages to be gained from Union policies, as they do not take into account the multiplier effect of these policies (see paragraph 40).
Correlation table in the Annex	The reference should be to Article 5 rather than Article 5(1).

### Amended proposal for a Council Regulation laying down implementing measures for the system of own resources of the European Union — COM(2011) 740

Reference	Comments
COM(2011) 740	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) which is quoted in COM(2011) 740 refers to GNI in application of ESA 95. In view of the planned introduction of ESA 2010 there should be a reference to a <u>new</u> Regulation or an amendment of Regulation (EC, Euratom) No 1287/2003.

<sup>(1)</sup> Paragraph 11 of Opinion No 2/2008.

Reference	Comments
Citations	The citation should refer to the <u>European</u> Court of Auditors.
Article 2(1)	In 2014 ESA 95 is to be replaced by ESA 2010. This may well have a significant impact on GNI. Article 2(1) should clarify that GNI shall mean an annual GNI at market price in application of the ESA in force for the year concerned.
Article 4(2)	The requirement for Member States to provide a description every six months to the Commission of cases of VAT fraud and irregularities detected involving entitlements above 10 000 euro would be an additional burden for Member States (see paragraph 19).
Articles 5(4) and 7(2)	The precise limits of the access of the Commission inspectors (and those of the European Court of Auditors) should be made explicit in respect of VAT and FTT (see paragraphs 20 to 22 and 36).
Article 7	This Article should read 'participate <u>in</u> '.

**Amended proposal for a Council Regulation on the methods and procedure for making available the traditional and GNI-based own resources and on the measures to meet cash requirements — COM(2011) 742**

Reference	Comments
COM(2011) 742	Regulation (EC, Euratom) No 1287/2003 which is quoted in COM(2011) 742 refers to GNI in application of ESA 95. In view of the planned introduction of ESA 2010 there should be a reference to a <u>new</u> Regulation or an amendment of Regulation (EC, Euratom) No 1287/2003.
Article 12	The difference in the treatment of Community debts subject to recovery procedures between those amounts which have been unduly paid under the common agriculture policy and customs duty debts is maintained (see paragraph 24).

**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**

Reference	Comments
Article 2(1)	The Court recommends that reference should be made to 'intra-Union' acquisitions, in order to reflect the terminology derived from the Treaty of Lisbon.
Article 3	One element of the calculation required to determine the VAT to be paid as an own resource depends on the type of complex statistical data used for the calculation of the current VAT-based own resource (see paragraph 17). However, the element of the calculation would be made only once for the whole EU and the whole seven-year period.

This Opinion was adopted by the Court of Auditors in Luxembourg on 20 March 2012.

*For the Court of Auditors*  
 Vítor Manuel da SILVA CALDEIRA  
 President











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