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## III

*(Preparatory Acts)*

## COURT OF AUDITORS

**OPINION No 7/2014***(pursuant to Articles 287(4), second subparagraph, and 322(2) TFEU)***concerning a proposal for a Council Regulation amending Regulation (EC, Euratom) No 1150/2000 implementing Decision 2007/436/EC, Euratom on the system of the European Communities' own resources***(2014/C 459/01)*

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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, and Article 322(2) thereof,

Having regard to the Commission's proposal <sup>(1)</sup>,

Having regard to the Council's request for an opinion on the above-mentioned proposal, received at the Court of Auditors on 13 November 2014,

Having regard to the previous opinions given by the Court of Auditors on the system of the European Communities' own resources <sup>(2)</sup>,

Having regard to the special report No 11/2013 of the Court of Auditors <sup>(3)</sup>,

HAS ADOPTED THE FOLLOWING OPINION:

### **Introduction**

1. On 12 November 2014 the Commission adopted a proposal for a Council Regulation amending Regulation (EC, Euratom) No 1150/2000 <sup>(4)</sup> implementing Decision 2007/436/EC, Euratom <sup>(5)</sup> on the system of the European Communities' own resources. It proposed amending the existing rules to give Member States the possibility, under specific circumstances, of making available after the current deadline the amounts of own resources resulting from the value added tax (VAT) and gross national income (GNI) balances and adjustments.

### **Own resources financing the EU budget**

2. In the context of the annual budgetary procedure, VAT- and GNI-based own resources are calculated by applying uniform rates to Member States' forecast data. These resources are made available on a monthly basis by the payment of 'twelfths' <sup>(6)</sup>, and are recorded in the budget under title 1 'own resources'. The purpose of GNI own resource is to balance the EU budget *ex ante*.

### **Calculation of VAT/GNI balances and adjustments and amending budgets**

3. Following the Member States' annual transmission of revised VAT and GNI data on 31 July <sup>(7)</sup> and on 22 September <sup>(8)</sup> respectively, the Commission calculates balances and adjustments <sup>(9)</sup> in accordance with Article 10(4) to 10(7) of Regulation (EC, Euratom) No 1150/2000, subject to the opinion of the GNI Committee on the appropriateness of GNI data for own resources purposes. This opinion is generally issued at the end of October.

4. The amounts resulting from VAT and GNI balances and adjustments should be made available by Member States on the first working day of December of the same year <sup>(10)</sup>. This deadline is compulsory.

5. The VAT and GNI balances and adjustments lead to a modification on the revenue side of the budget. The amount resulting from this positive or negative variation <sup>(11)</sup> can be carried over to the following year thus decreasing or increasing Member States' contributions for year N+1.

<sup>(1)</sup> COM(2014) 704 final of 12 November 2014.

<sup>(2)</sup> Opinions No 2/2012 (OJ C 112, 18.4.2012, p. 1), No 2/2008 (OJ C 192, 29.7.2008, p. 1), No 2/2006 (OJ C 203, 25.8.2006, p. 50), No 4/2005 (OJ C 167, 7.7.2005, p. 1) and No 7/2003 (OJ C 318, 30.12.2003, p. 1).

<sup>(3)</sup> Getting the gross national income (GNI) data right: a more structured and better-focused approach would improve the effectiveness of the Commission's verification (<http://eca.europa.eu>).

<sup>(4)</sup> OJ L 130, 31.5.2000, p. 1, as last amended by Council Regulation (EC, Euratom) No 105/2009 of 26 January 2009 (OJ L 36, 5.2.2009, p. 1).

<sup>(5)</sup> Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources (OJ L 163, 23.6.2007, p. 17).

<sup>(6)</sup> See Article 10(3) of Regulation (EC, Euratom) No 1150/2000.

<sup>(7)</sup> See Articles 7(1) and 9(1) of 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).

<sup>(8)</sup> See Article 2(2) of Council Regulation (EC, Euratom) No 1287/2003 of 15 July 2003 on the harmonisation of gross national income at market prices (GNI Regulation) (OJ L 181, 19.7.2003, p. 1).

<sup>(9)</sup> These balances and adjustments referring to year N are calculated by comparing Member States' VAT- and GNI-based contributions made available in the year N-1 with payments calculated using actual and updated data for these aggregates.

<sup>(10)</sup> See Article 10 of Regulation (EC, Euratom) No 1150/2000.

<sup>(11)</sup> Since 2005, the overall result of these balances and adjustments was positive, with the exception of the years 2009, 2010 and 2013.

6. As set out in Article 16 of Regulation (EC, Euratom) No 1150/2000, the total net amount resulting from VAT and GNI balances and adjustments may also be compensated by a reduction or an increase in own resources for the current year N by means of an amending budget. It is common practice for the Commission to amend the budget in order to absorb the variation of those balances and adjustments <sup>(1)</sup>.

### **Commission's proposal**

7. The proposed provision amending Regulation (EC, Euratom) No 1150/2000 foresees that under specific circumstances Member States may make available the amounts resulting from VAT and GNI balances and adjustments, where these amounts are exceptionally high <sup>(2)</sup>, at any moment between the first working day of December of the current year and the first working day of September of the following year.

8. Member States have to inform the Commission before the first working day of December of their decision, and of the date (or dates) for the payment of their amounts due. Any delay in Member States' making available of these resources gives rise to interest under the conditions set out in Article 11 of Regulation (EC, Euratom) No 1150/2000.

9. This proposal was presented by the Commission because the calculation of VAT and GNI balances and adjustments made in October 2014 showed that situations could occur where exceptionally large amounts have to be paid under the current own resources system. In 2014, this resulted in particular from significant revisions of GNI data carried out by some Member States due to changes in sources and methods, and to the work on the existing GNI reservations set by the Commission <sup>(3)</sup>, which made updates of data possible for the years since 2002 <sup>(4)</sup>.

### **Observations**

10. The Commission's proposal aims to provide more flexibility in terms of delaying payment for Member States which have to make available exceptionally large amounts resulting from VAT and GNI balances and adjustments.

11. In its opinions No 2/2012, No 2/2008 and No 2/2006, the Court expressed concerns about the complexity and lack of transparency of the current and future system of own resources financing the EU budget.

12. In its special report No 11/2013, the Court highlighted weaknesses in the application of the current system of own resources which lead to budgetary uncertainty in Member States. In particular, it found that the long verification process and the excessive use of general reservations by the Commission mean that Member States' GNI data is subject to corrections more than 10 years after the years concerned.

13. While this proposed amendment does not tackle the issue of Member States' budgetary uncertainty which remains a risk in the current system of own resources, the Court acknowledges that the VAT and GNI balances and adjustments may result in exceptionally large amounts, as it occurred in 2014, and takes note of the Commission's approach allowing Member States to defer the payment of these amounts with the introduction of new paragraph 7a in Article 10 of Regulation (EC, Euratom) No 1150/2000.

14. The two criteria set out by the Commission in the proposed amendment, defining the eligibility conditions to be met in order to be allowed to defer payments, are suitable, although they partially overlap <sup>(5)</sup> (see paragraph 7).

15. The proposed modification is applicable under Decision 2007/436/EC, Euratom on the system of own resources currently in force. On 26 May 2014 the Council adopted its Decision 2014/335/EU, Euratom <sup>(6)</sup> replacing the above mentioned 2007 Decision. When the new Decision enters into force <sup>(7)</sup>, Regulation (EC, Euratom) No 1150/2000 will be repealed and Council Regulation (EU, Euratom) No 609/2014 <sup>(8)</sup> will be applied retroactively from 1 January 2014.

<sup>(1)</sup> Since 2005, VAT and GNI balances and adjustments have been budgeted in the last amending budget, except for years 2010 and 2013.

<sup>(2)</sup> Exceeding either two twelfths of the total for the contribution of individual Member States (individual threshold), or half of a twelfth for the total contributions of all Member States (global threshold).

<sup>(3)</sup> The rules relating to the calculation of own resources allow for the possibility of revising VAT and GNI data for a given year until the 31 July and the 30 September of the year N+4 respectively. This four-year rule may be extended in cases where the Commission and/or Member States consider that the quality of data should be improved in some points for a given financial year

<sup>(4)</sup> With the exception of one specific reservation covering the period 1995-2001.

<sup>(5)</sup> Based on the Commission's assessment of the years since 2004, both criteria would have been met in the two years 2007 and 2014 if the provision proposed had been applied.

<sup>(6)</sup> OJ L 168, 7.6.2014, p. 105.

<sup>(7)</sup> Once it has been approved by all Member States in accordance with their respective constitutional requirements.

<sup>(8)</sup> Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements (OJ L 168, 7.6.2014, p. 39).

16. The Court draws the attention to the fact that the proposed modification of Regulation (EC, Euratom) No 1150/2000 should therefore be reflected in the above-mentioned Regulation. It is important to ensure that the proposed amendment to Regulation (EU, Euratom) No 609/2014 is adopted by the date of entry into force of Decision 2014/335/EU, Euratom.

17. While it is aware of the tight timetable for the adoption of this proposal, the Court considers that the current Commission's provision should be completed, in line with the observations of the Court (see paragraphs 20, 23 and 25), to form a fully-fledged mechanism in the context of the entry into force of the new Regulation (EU, Euratom) No 609/2014.

18. The proposed provision refers only to the postponement of the deadline for the Member States to make resources available in case significant amounts result from 'positive' VAT and GNI balances and adjustments.

19. Where Member States have large 'negative' VAT and GNI balances and adjustments, the Commission could be obliged to collect additional revenue by means of an amending budget (see paragraphs 5 and 6). This may create a situation of budgetary uncertainty similar to the one which occurred in October 2014.

20. In order to ensure consistent application among Member States of Article 10 of Regulation (EC, Euratom) No 1150/2000, the Commission should be empowered to defer the reimbursement of the amounts resulting from such 'negative' balances and adjustments.

21. Based on the existing rules, the Commission calculates the amounts resulting from VAT and GNI balances and adjustments in October of year N. Where necessary, it launches a procedure to amend the budget with a view to having it approved by the end of the same year. The Commission's proposal provides for these amounts to be made available between the beginning of December in the year N and the beginning of September in the year N+1 under specific exceptional circumstances (see paragraph 7).

22. Taking into account that Member States should decide on the date(s) of deferred payments by the first working day of December, there is a risk that the Commission may only be able to set the final amount of the amending budget at a very late stage in the procedure.

23. Whilst the date for the Member States' decision on the deferred payments resulting from VAT and GNI balances and adjustments was set with a view to applying the new provision in the current year 2014, this deadline should be brought forward to the beginning of November from 2015 onwards. This also involves modifying the reference date for the calculation of the thresholds to meet the eligibility criteria for deferred payments (i.e. before 15 November).

24. The Court considers that the Commission's proposal may increase the complexity of the system of own resources (see paragraph 11) and the administrative burden on the Commission for collecting own resources.

25. The amended Regulation should thus set a common pre-determined schedule for these deferred payments in order to limit uncertainty in respect of the dates, the number of instalments and the amounts.

### **Conclusion**

26. The Court takes note of the Commission's proposal to allow deferred payments of VAT and GNI balances and adjustments in case of exceptional circumstances. It draws the attention to the fact that this provision may increase the complexity of the system of own resources and the Member States' budgetary uncertainty. The Court therefore considers that this proposal should be completed to address the observations raised by the Court in the context of the entry into force of the new Regulation (EU, Euratom) No 609/2014.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 27 November 2014.

*For the Court of Auditors*

Vítor Manuel da SILVA CALDEIRA

*President*

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