



EUROPEAN COMMISSION

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COM(2011) 737 final

2011/0333 (CNS)

Proposal for a

COUNCIL REGULATION

**on the methods and procedure for making available the own resource based on the value
added tax**

EXPLANATORY MEMORANDUM

1 CONTEXT OF THE PROPOSAL

1.1. Introduction

On 29 June 2011 the Commission adopted a proposal for a Council Decision [...] on the system of own resources of the European Union (hereinafter "ORD 2014")¹. This proposal included the creation of a new own resource based on "a share of the Value Added Tax" (VAT) on supplies of goods and services, acquisitions and importations "subject to a standard rate of VAT in every Member State" throughout the European Union (hereinafter referred to as the "new VAT own resource"). The Commission announced that it would present the relevant detailed regulations by the end of 2011.

The purpose of this proposal is to lay down, in accordance with Article 322(2) of the Treaty on the Functioning of the European Union (hereinafter "TFEU"), the method Member States should use to calculate this new own resource and the procedures for making it available to the EU budget. These arrangements complement the provisions laid down in the ORD 2014 and the implementing measures laid down under Article 311(4) TFEU concerning control and supervision and supplementary reporting requirements².

This proposal draws upon past experience in administering an own resource derived from VAT. It aims to simplify the calculation of national contributions thereby reducing administrative costs while increasing transparency and facilitating democratic scrutiny of the resource, thus fostering a genuine link between EU VAT policy, the public finances of the Member States and EU budget financing.

1.2. A new calculation method

1.2.1. Basic principles

The new calculation method being proposed can be described in the following four main steps.

- The method uses as its starting point the most definite and easily obtained data available – the VAT receipt figures held by the Member States. To ensure that only VAT receipts are included about half the Member States will need to continue to correct their figures to exclude interest and penalties. Additionally a minority of Member States will also need to continue to make adjustments to take into account overseas territories, the specific VAT treatment granted to some peripheral regions and subsidies they deliver via the VAT system.
- In order to obtain maximum simplicity and transparency combined with minimal administrative costs it is proposed that the Commission arrange to have determined a single EU-wide average proportion of VAT receipts accruing from standard-rated supplies to final consumption (that is made to households or other entities not

¹ OJ L [...], [...], p. [...].

² Amended proposal for a Council Regulation laying down implementing measures for the system of own resources of the European Union, COM(2011)740 of 9.11.2011.

entitled to deduct the VAT they have been charged), which are standard-rated in every Member State. To ensure predictability, this same average would be used for the duration of a single financial framework.

- Member States apply the single EU-wide average proportion to their adjusted receipts. The resulting 'chargeable VAT receipts' figure is converted to a tax-exclusive base value using each Member State's actual VAT standard-rate.
- Once the value of the chargeable base has been determined, the share set out in the Regulation implementing the own resources Decision is applied to calculate the actual contribution. There would be no artificial capping of the chargeable bases.

In summary, each month Member States make a simple calculation using their (adjusted) VAT receipts for the month, the single EU-wide average proportion of VAT receipts accruing from standard-rated supplies to final consumption provided by the Commission, their standard rate and the share defined for the new VAT own resource.

1.2.2. Main advantages compared to the current method

Compared to the method currently used for the calculation of the VAT own resource, this simplified method presents three key advantages:

- It reduces the number of corrections Member States need to apply to their VAT receipts. There will no longer be any need to make corrections concerning flat-rate agricultural schemes. The current correction is very complex but the adjustments ultimately obtained are limited - less than 1% of receipts for all but two Member States in 2009. Similarly, the correction concerning graduated relief schemes will no longer be required.
- It eliminates the need to calculate compensations. This is justified as the various adjustments appear overall not to have had a significant effect on Member State contributions (this is especially true once the role of the GNI-based resource is taken into account) despite the administrative burdens they place on Member States³.

In practice, the eighteen compensations covering items for which Directive 2006/112/EC permitted Member States to opt whether or not to tax will no longer be required because of the focus on consistently standard-rated supplies only.

Other compensations applicable in some Member States will also disappear. This includes those concerning variations in registration thresholds, which have a significant outcome only in two Member States and the importance of which will decrease with the proposed focus on standard-rated supplies. Similarly, the very complex compensations related to the VAT input tax treatment of business vehicles will also be eliminated. A compensation is calculated by most Member States but the actual reduction in VAT own resource contributions for each Member State can be estimated to be less than three hundredths of 1%.

³ See Annex to the Commission Staff Working Paper "financing the EU budget: report on the operation of the own resources system", SEC(2011)876, p. 104.

Finally, should any adjustment be needed because of instances where EU law has been infringed these in future would be dealt with by an adjustment to receipts .

- The focus on those supplies to final consumption consistently subject to standard-rate VAT only, together with the proposed centralized calculation of a single EU-wide average proportion for such transactions eliminates the need for Member States to calculate a weighted average rate (WAR).

The proposed method thus constitutes an enormous simplification of the system while making it more transparent and predictable with only limited loss of accuracy.

1.3. Making the new VAT own resource available to the EU budget

1.3.1. Basic principles

The proposed arrangements for making the own resource available and for the other accounting and administrative issues are a combination of the relevant elements from the previous VAT-based own resource arrangements together with those for traditional own resources. Two major features of the proposal need to be highlighted:

- The entitlement to the own resource will arise only when a Member State has actually collected the revenue. This will create a close and automatic link between the national VAT receipts and economic circumstances, and the EU budget. The new VAT own resource will be directly impacted by EU and national VAT policies.
- To enable the own resource to be collected more rapidly and more efficiently it is proposed that the revenue be made available via a system of monthly statements giving a clear date by which amounts of own resources must be made available. The amounts will be transferred to the same account as is used for the other own resources.

In this context, it should also be noted that with the Green Paper on the future of VAT⁴, the Commission launched an initiative to reform the VAT system in order *inter alia* to broaden the tax base and limit fraud and avoidance. The proposed new VAT own resource is sufficiently flexible to continue to work with the changes resulting from that reform.

1.3.2. Main advantages compared to the current system

The proposed procedure for making the new VAT own resource available to the EU budget is considerably simpler and more transparent than the current VAT-based own resource.

Using receipts actually obtained by the Member States will eliminate the need for forecast exercises and subsequent adjustments plus end of year VAT balance exercises. This will significantly reduce the administrative management and the related costs of the resource.

The content of the legal proposal is summarised overleaf:

⁴ COM(2010) 695, 1.12.2010. Commission Staff Working Document, SEC(2010) 1455, 1.12.2010.

2. LEGAL ELEMENTS OF THE PROPOSAL

2.1 Introduction

This proposal forms part of a package, which also includes a proposal for a proposal for a Council Regulation concerning the arrangements for making available to the EU budget the own resource based on the financial transaction tax⁵ as well as an amended recast of the existing Council Regulation on making available the traditional own resources and the GNI-based own resource⁶.

The Commission will examine the possibility to consolidate the provisions for determining and making available all the own resources of the Union in one single Regulation following an overall agreement on the own resources package.

2.2 Chapter I 'General Provisions'

- Article 1 of the proposal, 'Subject matter' . This Article specifies that the proposed arrangements apply to the new VAT own resource set out in Article 2(1)(c) of Decision [.../...]
- Article 2 of the proposal, 'Definitions' explains firstly the concept of 'supplies' as used in this Regulation by referring to Title IV of Council Directive 2006/112/EC⁷.

In addition this Article sets out the characteristics of supplies, acquisitions and importations which are chargeable for the purposes of the new VAT own resource. Any taxable transaction in the sense of Title IV of Council Directive 2006/112/EC which is subject to a standard-rate of VAT in every Member State throughout the European Union will be so chargeable. It will not be necessary for a supply actually to have been subject to a VAT charge for it to be considered a chargeable supply for the purposes of this Regulation. The chargeability of the supply will be governed by the liability of the transaction rather than its actual circumstances. So a supply of goods or services properly subject to a reduced rate of VAT in accordance with the provisions of Directive 2006/112/EC in any Member State of the Union is not a chargeable supply regardless of the fact that the same transaction might actually be liable to the standard-rate of VAT in one or more other Member States in the Union. Similarly a supply of goods or services properly exempted from VAT, or exempted from VAT with a right to deduct VAT at the preceding stage under that same Directive in one or more Member States is not a chargeable supply.

- Article 3 of the proposal, 'Union average of chargeable supplies' This Article sets out the concept of obtaining a single EU-wide proportion of chargeable supplies for use in calculating the monthly value of the share in the new VAT own resource together with the frequency with which it shall be determined. In preparing the average proportion the Commission, or the body so appointed by the Commission, may need to approach the authorities of Member States to obtain information and views.

⁵ 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 of 9.11.2011.

⁶ 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 9.11.2011 amending COM (2011)512 of 29.6.2011.

⁷ OJ L 347 11.12.2006 p.1.

Member States should therefore ensure that the relevant departments or agencies provide the authorised agents with the assistance necessary for carrying out their duties.

2.3 Chapter II 'Calculating the share'

- Article 4 of the proposal, 'Calculation method': This Article sets out the steps to be followed to calculate a Member State's contributions to the new VAT own resource. The proposed method is very different to that used previously. The key variation is the provisions by the Commission of a single average proportion that will represent the proportion of taxable supplies to final consumption which are subject to a standard-rate of VAT throughout the EU. Each Member State will apply this same proportion for the calculation and it will normally continue for the full period of a financial framework. This proportion will be applied to that Member State's net VAT receipts figure – once any necessary adjustments have been made to include any peripheral receipts and to exclude any amounts that although related to VAT are not direct VAT receipts. Furthermore, some Member States will also need to adjust their initial figures to take account of refunds made to non-taxable persons or to taxable persons for other than taxable supplies, where those refunds are not in accordance with the provisions of Directive 2006/112/EC. The resulting value will be grossed-up to the tax-exclusive value of supplies by using the VAT standard-rate applied within the relevant Member State. That chargeable base value will then be subject to a share set out in Regulation [.../...].
- Article 5 of the proposal, 'Calculation periods' proposes that Member States be given the maximum flexibility to make the periods used to make the new VAT own resource calculations mesh with the accounting arrangements they have in place and thus avoid the need for adjustments to receipts solely for issues of timing.

2.4 Chapter III 'Making the new VAT own resource available'

- Article 6 of the proposal, 'Accounting arrangements': This Article sets out the arrangements proposed for the new VAT own resource which are equivalent to those already in use under Article 9 of Regulation 1150/2000 for the existing own resources. The summary account specified may be incorporated within the similar account kept for other own resources pursuant to Article 6(1) of Council Regulation (EC, Euratom) No 1150/2000⁸.
- Article 7 of the proposal, 'Entry in the accounts, reporting and timing for making amounts available': This article sets out the arrangements proposed for the new VAT own resource which are equivalent to those already in use under Regulation 1150/2000 for the existing own resources. The same date by which the resource shall be made available has been retained, namely the first working day of the month. Changes to the previous arrangements for VAT include the use of a monthly statement to be furnished at least ten days before the deadline for making the resources available which is the first working day of the second month following the month in which the Member State obtained payment. Entry in the summary account

⁸ This regulation is the subject of an amended proposal for a recast. The provision now appears in Article 5 of the amended proposal for a recast.

should normally be made at the time when the monthly statement is sent, but in any event by the same deadline.

- Article 8 of the proposal, 'Accounting corrections' proposes that an equivalent time limit to that currently used for other own resources under Article 7 of Regulation 1150/2000⁹ applies to the new VAT own resource too.
- Article 9 of the proposal, 'Interest on amounts made available belatedly': It is proposed that any delays in making the new VAT own resource available be subject to an interest regime equivalent to that currently applied under Article 11 of Regulation 1150/2000.¹⁰

2.5 Chapter IV 'Administrative arrangements'

- Articles 10 and 11 of the proposal, 'Conservation of supporting documents' and 'Administrative cooperation' propose that the obligations currently laid upon Member States concerning the other own resources under Articles 3 and 4 respectively of Regulation 1150/2000¹¹ be similarly applied for the new VAT own resource.

2.6 Chapter V 'Final Provisions'

- Article 12 of the proposal 'Committee Procedure': Provides for the new VAT own resource to be dealt with by the Advisory Committee on Own Resources (ACOR) currently operating under Article 20 of Regulation 1150/2000 and in accordance with Regulation (EU) No 182/2011.

⁹ This regulation is the subject of an amended proposal for a recast. The provision now appears in Article 6 of the amended proposal for a recast.

¹⁰ This regulation is the subject of an amended proposal for a recast. The provision now appears in Article 11 of the amended proposal for a recast.

¹¹ This regulation is the subject of an amended proposal for a recast. The provision now appears in Articles 3 and 4 of the amended proposal for a recast.

Proposal for a

COUNCIL REGULATION

on the methods and procedure for making available the own resource based on the value added tax

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 322(2) thereof in conjunction with the Treaty establishing the European Atomic Energy Community¹², and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament¹³,

Having regard to the opinion of the European Court of Auditors¹⁴,

Whereas:

- (1) The own resource of the Union based on a share of the value added tax (VAT) referred to in Article 2(1)(c) of Council Decision [...] on the system of own resources of the European Union (hereinafter "VAT own resource") should be made available to the Union in the best possible conditions and accordingly rules should be laid down for the Member States on making that resource available to the Commission.
- (2) For the sake of simplicity and transparency, and in order to reduce administrative costs, an Union average proportion of the value of chargeable supplies compared to the value of total supplies should be determined.
- (3) The arrangements for calculating the VAT own resource should be determined in a uniform manner.
- (4) The VAT own resource should be made available in the form of an entry of the amounts due in an account opened for this purpose under Council Regulation [...] on the methods and procedure for making available the traditional and GNI-based own resources and on the measures to meet cash requirements¹⁵. In order to restrict the movements of funds to what is necessary for the implementation of the budget, the Union should limit itself to drawing on those accounts only to cover the Commission's cash requirements.

¹² OJ L [...], [...], p. [...].

¹³ OJ L [...], [...], p. [...].

¹⁴ OJ L [...], [...], p. [...].

¹⁵ OJ L [...], [...], p. [...].

- (5) Member States should pay interest in the event of delays in entering the VAT own resource in the accounts. In accordance with the principle of sound financial management, care should be taken that the cost of recovery of interest due does not exceed the amount of the interest payable.
- (6) Member States should keep at the disposal of the Commission and, where necessary, forward to it the documents and information needed to allow it to exercise the power conferred upon it as regards the own resources of the Union.
- (7) The national authorities responsible for the collection of own resources should be able to provide the Commission at all times with the documents substantiating the own resources collected.
- (8) It is necessary to ensure close collaboration between Member States and the Commission in order to facilitate proper application of the financial rules relating to own resources.
- (9) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with 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 powers¹⁶.
- (10) The advisory procedure should be used for the adoption of implementing acts in order to establish detailed rules for the monthly statements of the accounts for the VAT own resource, and for determining and updating the Union average proportion, given the technical nature of those measures.
- (11) 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 tax¹⁷ should be repealed.
- (12) This Regulation should apply on the same day as Decision [.../...],

¹⁶ OJ L 55, 28.2.2011, p. 13.

¹⁷ OJ L 155, 7.6.1989, p. 9.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This regulation lays down rules on calculating and making available to the Commission the own resource of the Union based on a share of the value added tax (VAT), referred to in Article 2(1)(c) of Decision [..../....] (hereinafter "VAT own resource").

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

(1) "supply" means a supply of goods or services, intra-community acquisitions of goods and importations of goods as defined by Title IV of Council Directive 2006/112/EC¹⁸;

(2) "chargeable supply" means a supply subject to the standard rate of VAT applied in every Member State.

Article 3

Union average proportion of chargeable supplies

1. The Commission shall determine, prior to the start of each multi-annual financial framework, a single Union average proportion of the value of chargeable supplies compared to the value of total supplies. This proportion shall be expressed as a percentage.

2. The Union average proportion referred to in paragraph 1 shall be used for the duration of a multi-annual financial framework.

However, the Commission may decide, on the basis of duly justified reasons, to update the Union average proportion. The updated proportion shall apply as from the beginning of the calendar year following the update.

¹⁸ OJ L 347, 11.12.2006, p. 1.

3. Member States shall provide the Commission, or the body appointed by the Commission, with the assistance and the information necessary to determine and update the Union average proportion referred to in paragraph 1.

4. The Commission shall adopt implementing acts for the determination and the update of the Union average proportion, referred to in paragraph 1 and 2 of this Article, respectively. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 12(2).

CHAPTER II

CALCULATING THE VAT OWN RESOURCE

Article 4

Calculation method

1. For any given month the VAT own resource shall be calculated by each Member State using the net total of VAT collected by that Member State during the preceding month. That amount shall be corrected to take account of:

- (a) any payments received in respect of any penalties charged because of the failure by a taxable person to fulfil any obligation related to VAT, or payments received in respect of any interest payable because these obligations were discharged belatedly;
- (b) any amounts which should be treated for own resource purposes as being transactions originating in or destined for a Member State although originating or destined for a third territory according to Article 6 of Directive 2006/112/EC;
- (c) any amounts accruing from one of the places referred to in Article 7 of Directive 2006/112/EC, insofar as Member States can show that the revenue has been transferred to that place;
- (d) any amounts which are revenue accruing to another Member State, insofar as Member States can show that the revenue has been so transferred;
- (e) any adjustment required as a result of the application of a second or lower standard-rate in specific locations pursuant to Article 104 or 105 or 120 of Directive 2006/112/EC;
- (f) refunds or repayments made for social and similar reasons to non-taxable persons or for non-taxable activities except any such items permitted under Directive 2006/112/EC.

2. The amount obtained according to paragraph 1 shall be multiplied by the Union average proportion of chargeable supplies made to final consumption, referred to in Article 3.

3. The result from paragraph 2 shall be multiplied by the reciprocal of the standard-rate VAT percentage applicable in that Member State pursuant to Directive 2006/112/EC.

4. The result from paragraph 3 shall be multiplied by the percentage set out in Article 1(2) of Regulation [...] to obtain the VAT own resource to be made available to the Union budget.

Article 5

Calculation periods

1. The VAT own resource shall be calculated on the basis of calendar months.
2. By way of derogation from paragraph 1, periods other than calendar months may be used to calculate the VAT own resource without any adjustment other than those set out in Article 4(1) in either of the following cases:
 - (a) where Member States operate their accounting arrangements on the basis of standard-accounting periods not identical to calendar months;
 - (b) where Member States make particular arrangements at certain times of the year to close normal accounting periods.
3. Where a Member State introduces a change in its standard-rate of VAT, the revised rate shall be used for the purpose of applying Article 4(3) as from the first day of the second month following the month in which the new standard-rate took effect.

CHAPTER III

MAKING THE VAT OWNRESOURCE AVAILABLE

Article 6

Accounting arrangements

1. Each Member State shall credit the VAT own resource to the account opened pursuant to Article 9 of Council Regulation (EC, Euratom) 1150/2000¹⁹ in the name of the Commission with its Treasury or the body it has appointed.
2. Member States or the bodies appointed by them shall transmit to the Commission by electronic means:
 - (a) at the latest on the second working day following the crediting to the account of the Commission, a statement of account showing the entry of the VAT own resource;
 - (b) where the statement referred to in point (a) is not available on the working day on which the own resources are credited to the account of the Commission, a credit advice showing the entry of the VAT own resource;

¹⁹ OJ L 130, 31.5.2000, p.1.

3. The amounts credited shall be accounted for in euro in accordance with Council Regulation EC, Euratom No 1605/2002²⁰.
4. A summary account for the VAT own resource shall be kept by the Treasury of each Member State or by the body appointed by each Member State.

Article 7

Entry in the accounts, reporting and timing for making available

1. Amounts calculated in accordance with Article 4 shall be entered in the accounts specified in Article 6(1), on the first working day of the second calendar month following the month for which the calculation was made.
2. At least ten working days before the date specified in paragraph 1, each Member State shall send to the Commission a monthly statement of the accounts for the VAT own resource.
3. An entry in the summary account specified in Article 6(4) shall be made at the latest by the first working day of the second calendar month following the month for which the calculation was made.
4. The Commission shall adopt implementing acts establishing detailed rules for the monthly statements referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 12(2).

Article 8

Accounting corrections

Member States shall notify to the Commission any corrections to the monthly statements sent in under Article 7(2).

After 31 December of the third year following a given year no further corrections shall be made to the monthly statements for the year in question, except on points notified before that date either by the Commission or by the Member State concerned.

Article 9

Interest on amounts made available belatedly

1. Any delay in making the entry in the account referred to in Article 6(1) shall give rise to the payment of interest by the Member State concerned.

However, recovery of amounts of interest below EUR 500 shall be waived.

²⁰ OJ L 248, 16.9.2002, p. 1)

2. Interest shall be levied at the rates and conditions provided for in Article 11(2) and (3) of Regulation (EC, Euratom) No 1150/2000.
3. For the payment of interest referred to in paragraph 1, Article 6(2) and (3) shall apply *mutatis mutandis*.

CHAPTER IV

ADMINISTRATIVE ARRANGEMENTS

Article 10

Conservation of supporting documents

Member States shall take all appropriate measures to ensure that the supporting documents concerning making the VAT own resource available are kept for at least three calendar years, counting from the end of the year to which these supporting documents refer.

If verification pursuant to Article 5 of Regulation (EU) [...] of the supporting documents referred to in the first subparagraph shows that a correction is required, they shall be kept beyond the time limit provided for in the first subparagraph for a sufficient period to permit the correction to be made and monitored.

Where a dispute between a Member State and the Commission concerning the obligation to make available a certain amount of VAT own resource is settled by mutual agreement or by a decision of the Court of Justice of the European Union, the Member State shall transmit the supporting documents necessary for the financial follow-up to the Commission within two months after that settlement.

Article 11

Administrative cooperation

1. Each Member State shall provide the Commission with the following information:
 - (a) the names of the departments or agencies responsible for collecting, controlling and making available the VAT own resource and the basic provisions relating to the role and operation of those departments and agencies;
 - (b) the general provisions laid down by law, regulation or administrative action and those relating to the accounting procedures concerning the collection of VAT, calculating the VAT own resource contributions and making them available to the Commission;

- (c) the precise title of all administrative and accounting records in which is entered the VAT own resource, in particular those used for drawing up the calculation provided for in Article 4 and the accounts provided for in Article 7.

The Commission shall be informed immediately of any change in that information.

2. The Commission shall, at the request of a Member State, transmit to all Member States the information referred to in paragraph 1.

CHAPTER V

FINAL PROVISIONS

Article 12

Committee procedure

1. The Commission shall be assisted by the Advisory Committee on Own Resources established by Regulation (EU) No [.../...]. That committee shall be a committee 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 13

Regulation (EEC, Euratom) No 1553/89 is repealed. However, the provisions of that Regulation shall continue to apply for calculating and making available own resources accruing from value added tax collected by Member States before 1 January 2014.

Article 14

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2014.

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

Done at Brussels,

For the Council
The President