

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU, Euratom) 2021/769

of 30 April 2021

amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from 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),

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Court of Auditors ⁽²⁾,

Whereas:

- (1) The own resource based on value added tax (VAT), which was established by Council Decision (EU, Euratom) 2020/2053 ⁽³⁾ (the 'VAT-based own resource') should be made available to the Union on the best possible conditions. Accordingly, rules should be laid down for Member States to make that own resource available to the Union budget.
- (2) For the sake of simplicity and transparency, and in order to reduce administrative burden, the VAT-based own resource should be calculated on the basis of a definitive multi-annual weighted average rate. The arrangements for determining the base for the VAT-based own resource should be established in a uniform manner, starting from receipts that were actually collected in a given calendar year, which should be the sole definitive method for determining the base for the VAT-based own resource.
- (3) The definitive weighted average rate of VAT for the financial year 2016 in each Member State should be used as the definitive multi-annual weighted average rate.
- (4) A reliable and rapid review procedure should be established in order to resolve possible disputes that may arise between a Member State and the Commission concerning the amount of any corrections to the statements of the base for the VAT-based own resource, thereby avoiding time-consuming and costly infringement proceedings before the Court of Justice of the European Union.

⁽¹⁾ Opinion of 25 March 2021 (not yet published in the Official Journal).

⁽²⁾ Opinion of 8 December 2020 (not yet published in the Official Journal).

⁽³⁾ 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 (OJ L 424, 15.12.2020, p. 1).

- (5) In order to ensure uniform conditions for the implementation of Council Regulation (EEC, Euratom) No 1553/89 ⁽⁴⁾, implementing powers should be conferred on the Commission as regards further specifying the procedure for the review of corrections to the statements of the base for the VAT-based own resource and as regards the solutions and related modifications proposed by Member States in order to determine certain amounts to be taken into account for the purpose of calculating the total amount of net VAT receipts. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽⁵⁾.
- (6) Regulation (EEC, Euratom) No 1553/89 should therefore be amended accordingly.
- (7) 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. However, the amendments set out in this Regulation to Regulation (EEC, Euratom) No 1553/89 should not apply to the production or correction of statements of the base for the VAT-based own resource for financial years before 2021,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC, Euratom) No 1553/89 is amended as follows:

- (1) before Article 1, the words 'Title I General provisions' are deleted;
- (2) Article 1 is replaced by the following:

'Article 1

The VAT-based own resource shall be calculated by applying the uniform call rate under point (b) of Article 2(1) of Decision (EU, Euratom) 2020/2053 ^(*) to the base determined in accordance with this Regulation.

^(*) 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 (OJ L 424, 15.12.2020, p. 1).;

- (3) before Article 2, the words 'Title II Scope' are deleted;
- (4) Article 2 is replaced by the following:

'Article 2

The VAT-based own resource shall be calculated on the basis of the taxable transactions referred to in Article 2 of Council Directive 2006/112/EC ^(*).

^(*) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).;

- (5) before Article 3, the words 'Title III Method of calculation' are deleted;

⁽⁴⁾ 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⁾ 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).

(6) Articles 3 and 4 are replaced by the following:

Article 3

1. For a given calendar year, the base for the VAT-based own resource shall be determined by dividing the total amount of net VAT receipts collected by a Member State from the transactions referred to in Article 2 during that year, corrected in accordance with paragraph 2 of this Article, by the definitive multi-annual weighted average rate, as calculated in accordance with the method set out in Article 4.

That definitive multi-annual weighted average rate shall be expressed as a percentage, applying the method set out in Article 4.

2. The total amount of net VAT receipts referred to in paragraph 1 of this Article shall be corrected to account for the following:

- (a) any amounts to be treated for own resource purposes as transactions originating in or destined for a Member State although originating in or destined for a territory referred to in Article 6 of Directive 2006/112/EC;
- (b) any amounts accruing from transactions originating in or intended for one of the places referred to in Article 7 of Directive 2006/112/EC, insofar as a Member State is able to prove that the revenue has been transferred to that place;
- (c) any amounts due following corrections resulting from infringements of Directive 2006/112/EC.

3. The amount determined by application of paragraph 1 of this Article shall be multiplied by the uniform call rate under point (b) of Article 2(1) of Decision (EU, Euratom) 2020/2053 to obtain the VAT-based own resource that is to be made available to the Union budget.

Article 4

1. The VAT-based own resource shall be calculated on the basis of calendar years.

2. The definitive multi-annual weighted average rate shall be calculated on the basis of the method set out in paragraphs 3 to 8.

3. The definitive multi-annual weighted average rate shall be the percentage calculated by each Member State, respectively, for the financial year 2016, in accordance with the provisions of this Article as applicable before 1 January 2021.

4. The percentage in which the definitive multi-annual weighted average rate is expressed shall be calculated to the fourth decimal place.

5. The definitive multi-annual weighted average rate shall have been inspected and shall be free from notifications concerning outstanding points as referred to in Article 9(2).

6. A weighted average rate under notification shall be used until the points that were notified as referred to in Article 9(2) have been resolved, and shall be considered as the provisional multi-annual weighted average rate.

7. Once the points that were notified as referred to in Article 9(2) have been resolved, the resulting percentage shall replace the provisional multi-annual weighted average rate, and shall become the definitive multi-annual weighted average rate from the financial year 2021 onwards.

8. The budgetary implications of any difference between the provisional and the definitive multi-annual weighted average rate shall be addressed under the procedure outlined in Article 10b(5) of Council Regulation (EU, Euratom) No 609/2014 (*) (the "yearly balance exercise").

(*) 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).;

- (7) Articles 5 and 6 are deleted;
- (8) before Article 7, the words 'Title IV Provisions relating to accounting and making available of own resources' are deleted;
- (9) Articles 7, 8 and 9 are replaced by the following:

Article 7

1. By 31 July of each year, Member States shall send the Commission a statement of the total amount of the base for the VAT-based own resource for the previous calendar year, determined in accordance with Article 3, to which the uniform call rate referred to in Article 1 is to be applied.
2. The statement referred to in paragraph 1 of this Article shall contain all the data used to determine the base that are required for the inspections referred to in Article 2(4) of Council Regulation (EU, Euratom) 2021/768 (*).
3. The data used to determine the base for the VAT-based own resource shall be the most recent data available when the statement is produced.
4. Member States may request an extension of the time limit referred to in paragraph 1 of this Article if exceptional circumstances beyond their control make it impossible to perform the calculations in accordance with Article 3 and therefore to adhere to that time limit. Such a request shall be made to the Commission in writing and shall set out the reasons for the exceptional circumstances.
5. The Commission, after examining the request referred to in paragraph 4 of this Article, may grant a single extension of the time limit referred to in paragraph 1 of this Article for a maximum of two months. The Commission shall report the number of requests and its corresponding decisions to the committee referred to in Article 13(1) on an annual basis.

Article 8

By 15 April of each year, for budgetary purposes, Member States shall send to the Commission an estimate of the base for the VAT-based own resource for the following financial year.

Article 9

1. Any corrections to the statements referred to in Article 7(1) of this Regulation for previous financial years, for whatever reason, shall be made in agreement between the Commission and the Member State concerned.

If the Member State concerned and the Commission do not agree on a correction, the Commission shall inform that Member State in a letter about the necessary correction. That letter shall constitute "measures" as referred to in point (c) of Article 12(2) of Regulation (EU, Euratom) No 609/2014.

- 1a. The Member State concerned may request the Commission to review the correction communicated in the letter referred to in the second subparagraph of paragraph 1 of this Article within two months from the day of the receipt of that letter. The review shall be concluded with a decision to be adopted by the Commission at the latest three months from the day of receipt of the Member State's request.

Where the Commission's decision reviews the amounts in full or partially corresponding to the correction communicated in the letter referred to in the second subparagraph of paragraph 1 of this Article, the Member State shall make available the corresponding amount. Neither the Member State's request to review the correction nor an action for annulment against the Commission's decision shall affect the Member State's obligation to make available the amount corresponding to the correction.

All corrections to the statements referred to in Article 7(1) shall be incorporated in aggregate statements, which shall amend the previous statements for the financial years concerned.

1b. The Commission may adopt implementing acts further specifying the procedure for the review referred to in paragraph 1a. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13(3).

2. No further corrections shall be made to the statements referred to in Article 7(1) after 31 July of the fourth year following the financial year concerned, unless those corrections concern points previously notified either by the Commission or by the Member State concerned.

(*) 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 (OJ L 165, , p. 1).;

(10) before Article 10, the words 'Title V Provisions relating to control' are deleted;

(11) Articles 10 to 13 are replaced by the following:

Article 10

1. By 30 April of each year, each Member State shall inform the Commission of any solutions and related modifications that it proposes to adopt in order to determine the amounts referred to in points (a) and (b) of Article 3(2). The proposed solution shall indicate, where applicable, the nature of the data that the Member State considers appropriate, and shall include an estimate of the value of the base for the VAT-based own resource for each item.

By 31 May of the same year, the Commission shall send to the other Member States the information referred to in the first subparagraph of this paragraph that it has received from a Member State.

2. The Commission may adopt implementing acts as regards the solutions and related modifications proposed by Member States in accordance with paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 13(2), within 60 days after the committee referred to in Article 13(1) has delivered its opinion.

Article 11

1. Following the inspections referred to in Article 2(4) of Regulation (EU, Euratom) 2021/768, the statement referred to in Article 7(1) of this Regulation shall be corrected as specified in Article 9 of this Regulation.

2. With respect to the definitive multi-annual weighted average rate referred to in Article 4(2), the Commission shall assess the corrections referred to in Article 9 submitted by Member States in order to resolve any notifications concerning outstanding points regarding the weighted average rate.

Article 12

1. Each year, each Member State shall provide the Commission with information concerning all relevant changes to the administrative processes and procedures which it applies for the collection of VAT in comparison with the information that it previously submitted.

2. The Commission shall consider, together with the Member State concerned, whether the processes and procedures referred to in paragraph 1 can be improved.

3. Every five years, the Commission shall produce a report on the measures taken and progress made by Member States in relation to the collection of VAT and on any improvements.

The Commission shall submit that report to the European Parliament and the Council for the first time by 31 December 2025.

Article 13

1. The Commission shall be assisted by the Advisory Committee on Own Resources (ACOR/VAT) established by Article 7(1) of Regulation (EU, Euratom) 2021/768. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council (*).
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

(*) 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).;

(12) after Article 13, the following Article is inserted:

'Article 13a

1. The Commission shall produce a report on the functioning of the VAT-based own resource system at the latest by 1 January 2025. The report shall state:
 - (a) the number of Member States that still apply a weighted average rate subject to any notifications concerning outstanding points;
 - (b) any changes to national VAT rates.
2. The report referred to in paragraph 1 shall include an assessment of whether the VAT-based own resource system, in particular, the multi-annual weighted average rate, is effective and adequate. If appropriate, the report shall be accompanied by a proposal to modify this Regulation with a view to calculating the definitive multi-annual weighted average rate on the basis of more recent data.;

(13) before Article 14, the words 'Title VI Final provisions' are deleted.

Article 2

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.

However, Article 1 shall not apply to the production or correction of statements of the base for the VAT-based own resource for financial years before 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