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COM(2018) 327 final

2018/0132 (APP)

Proposal for a

**COUNCIL REGULATION**

**laying down implementing measures for the system of Own Resources of the European  
Union**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

The purpose of this proposal is to lay down implementing measures as provided in Article 7 of the Commission proposal for a Council Decision on the system of Own Resources of the European Union<sup>1</sup> pursuant to the fourth paragraph of Article 311 of the Treaty on the Functioning of the European Union. It is to repeal and replace Council Regulation (EU, Euratom) No 608/2014<sup>2</sup>.

The proposed new Own Resources Decision will maintain and reform the existing three Own Resources: Traditional Own Resources, a modified version of the Value Added Tax-based Own Resource and the Own Resource based on the Gross National Income.

In addition, the Own Resources Decision proposal introduces three new Own Resources, based on the Common Consolidated Corporate Tax Base, on the European Union Emissions Trading System, and on Plastic packaging waste that is not recycled.

This proposal for a regulation covers all the practical arrangements for the Union's Own Resources. In the same spirit as Regulation (EU, Euratom) No 608/2014, the proposed Regulation sets out a streamlined procedure in order to make the system flexible within the framework and limits set out by the Own Resources Decision.

The proposal includes provisions of a general nature that are applicable to all types of Own Resources, and for which appropriate parliamentary oversight is particularly important. They mainly cover matters of control and supervision of revenues, including relevant reporting requirements and the related powers of Commission inspectors.

These implementing measures are complemented, in accordance with Article 322(2) of the Treaty on the Functioning of the European Union, by regulations determining the methods and procedure by which Own Resources revenue is to be made available or paid to the Commission, including measures to meet cash requirements where necessary.

This initiative is part of the broader Own Resources legislative package that the Commission is proposing together with a Multiannual Financial Framework Regulation for 2021-2027<sup>3</sup>. It includes the Own Resources Decision referred to above, a specific Making Available

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<sup>1</sup> COM(2018) 325 final of 2.5.2018.

<sup>2</sup> Council Regulation (EU, Euratom) No 608/2014 of 26 May 2014 laying down implementing measures for the system of Own Resources of the European Union (OJ L 168, 7.6.2014, p. 29).

<sup>3</sup> COM(2018) 322 final of 2.5.2018.

Regulation for the new Own Resources<sup>4</sup> and an amendment<sup>5</sup> to the Regulation on the Value Added Tax Own Resources<sup>6</sup>. The initiative is not part of the Regulatory Fitness Programme.

The current Regulation (EU, Euratom) No 608/2014 lays down implementing measures for the system of Own Resources of the European Union, pursuant to Article 9 Decision No 2014/335/EU, Euratom<sup>7</sup>. The proposed Own Resources Decision includes new Own Resources and Article 7 requires implementing measures to be provided for:

- (a) the detailed rules for calculating and establishing the amounts of the Own Resources;
- (b) the provision and arrangements necessary for controlling and supervising the revenue stemming from the Own Resources;
- (c) the reference Gross National Income, the provisions to adjust the Gross National Income and the provisions to recalculate the ceilings for payments and commitments in case of significant changes to the Gross National Income;
- (d) the procedure for calculating and budgeting the annual budgetary balance.

In view of the above, the elements proposed by the Commission relate to implementing measures for:

- all the Own Resources established under Article 2 of the Own Resources Decision, as it is the case now with the current implementing Regulation (EU, Euratom) No 608/2014, including their:
  - call rates,
  - control and supervision;
  - reporting requirements;
  - powers and obligations of Commission inspectors as well as the preparation and management of inspections;
  - Committee procedure;
- the calculation and budgeting of the surplus;
- the definition of reference Gross National Income and provisions to address significant changes to the European system of regional and national accounts, taken over from the current Own Resources Decision No 2014/335/EU, Euratom,

The Commission proposal is explained in more in Section 5.

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<sup>4</sup> COM(2018) 326 final of 2.5.2018, which accompanies and complements 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).

<sup>5</sup> COM(2018) 328 final of 2.5.2018.

<sup>6</sup> 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>7</sup> Council Decision of 26 May 2014 on the system of Own Resources of the European Union (2014/335/EU, Euratom) (OJ L 168, 7.6.2014, p. 105).

- **Consistency with existing policy provisions in the policy area**

The legal basis for the Own Resources Decision is the third paragraph of Article 311 of the Treaty on the Functioning of the European Union. The fourth paragraph of Article 311 and Article 322(2) of the Treaty are the legal basis for the acts that will lay down the implementing measures for the system of Own Resources and for the making those Own Resources available.

This Regulation's legal basis is the fourth paragraph of Article 311 of the Treaty. It is further referred to in Article 7 of the new Own Resources Decision (Article 9 of the 2014 Own Resources Decision). Finally, it is connected to the Making Available Regulations, specifically: (i) the current Regulation (EU, Euratom) No 609/2014 for Traditional Own Resources and the Own Resources based on Value Added Tax and Gross National Income; and (ii) the proposed complementary Making Available Regulation for the new Own Resources based on the Common Consolidated Corporate Tax Base, the European Union Emissions Trading System, and Plastic packaging waste.

- **Consistency with other Union policies**

Given the nature of Own Resources, their management relies on the correct application of other Union policies:

- Traditional Own Resources (mainly customs duties), are linked to the customs union;
- Own Resources based on Value Added Tax and on the Common Consolidated Corporate Tax Base are linked to Single Market and taxation policy;
- Own Resources based on the European Union Emissions Trading System and on Plastic packaging waste are linked to policies on the environment and climate action.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

This Regulation's legal basis is the fourth paragraph of Article 311 of the Treaty on the Functioning of the European Union. It is further referred to in Article 7 of the new Own Resources Decision (Article 9 of the 2014 Own Resources Decision)..

- **Subsidiarity (for non-exclusive competence)**

By the nature of the Union budget and the Own Resources that make up its revenue, implementing measures for the system of Own Resources need to take a Union-wide perspective and cannot be achieved by the Member States.

- **Proportionality**

This proposal for a new Regulation takes over most of the current implementing measures in force. The inclusion of new Own Resources in the Own Resources Decision calls for updated legislation that includes implementing measures for these new Own Resources and that improves the existing measures.

The implementing measures included in this proposal follow the current system and also follow the Commission proposal of 2011 (COM(2011) 740) while adapting it to the new landscape of multiple and new Own Resources. It is in the interests of the Union and its Member States to ensure that the system of Own Resources works well, so the control and

inspection measures are designed to allow smooth cooperation between the Union bodies and the Member States.

In addition, provisions for which appropriate parliamentary oversight is particularly important have been included in this proposal.

- **Choice of the instrument**

The fourth paragraph of Article 311 of the Treaty on the Functioning of the European Union specifically states ‘The Council, acting by means of regulations (...) shall lay down implementing measures for the Union’s Own Resources system’.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

The explanatory memorandum for the proposal for a new Own Resources Decision provides more information on recent reports and documents analysing the need to reform the Own Resources system.

Following on from that, a new Regulation laying down implementing measures for the system of Own Resources is necessary since the current Regulation (EU, Euratom) No 608/2014 only refers to Traditional Own Resources and Own Resources based on Value Added Tax and Gross National Income, while the proposed Own Resources Decision introduces new Own Resources for which control and inspection measures are needed.

The implementing measures follow provisions already in force, since the proposal extends the system already in place in Council Regulation (EU, Euratom) No 608/2014 to the new Own Resources. In addition, it complements and makes reference to the relevant legislation on the new Own Resources. Therefore, the implementing measures proposed will be a continuation of the system in place, expanding it to the new Own Resources.

This proposal is not linked to the Regulatory Fitness Programme; it is targeted at Member States and not at microenterprises or small and medium-sized enterprises or other stakeholders; it is in principle neutral on sectoral Union competitiveness or international trade. The proposal has no consequences for the protection of fundamental rights.

### **4. BUDGETARY IMPLICATIONS**

The budgetary implications of this proposal and of the Own Resources legislative package are included in a Legislative Financial Statement attached to the proposal for the Making Available Regulation for the new own resources. The reformed Own Resources system can be implemented at the same level of administrative appropriations and staff resources as the present system.

### **5. OTHER ELEMENTS**

The application of the Own Resources legislation, including the implementing measures Regulation, is discussed on a regular basis in the Advisory Committee on Own Resources.

The Commission proposal may be summarised as follows:

### ***Chapter I 'Determining Own Resources'***

- Article 1 of the proposal, 'Applicable call rates': the Article provides for the uniform call rates to be applied to the categories of Own Resources set out in Article 2(1)(b), (c), (d) and (e) (i.e., the Own Resources based on Value Added Tax, Common Consolidated Corporate Tax Base, the European Union Emissions Trading System and Plastic packaging waste) of the Commission proposal for the new Own Resources Decision.
- Article 2 of the proposal, 'Reference Gross National Income and significant changes thereto': provisions under Articles 2(7) and 3(4) of Own Resources Decision No 2014/335/EU, Euratom are taken over and updated.
- Article 3 of the proposal, 'Calculation and budgeting of the balance': provisions under Article 1 of Regulation (EU, Euratom) No 608/2014 are taken over and updated.

### ***Chapter II 'Provisions concerning control and supervision and relevant reporting requirements'***

- Article 4 of the proposal 'Control and supervision measures': provisions under Article 2 of Regulation (EU, Euratom) No 608/2014 are taken over and updated in relation to the new Own Resources set up in Article 2(1)(c), (d) and (e) of the proposed Own Resources Decision. In addition, specific inspection provisions for the Own Resource based on Value Added Tax have been taken over from Article 11(1) of Council Regulation (EEC, Euratom) 1553/89. Simplification has been sought, aiming as much as possible at a system that is applicable to all Own Resources.
- Article 5 of the proposal 'Powers and obligations of the authorised agents of the Commission': provisions are taken over and updated from Article 3 of Regulation (EU, Euratom) No 608/2014. Simplification has been sought, aiming at a system that is applicable to all Own Resources.
- Articles 6 of the proposal 'Preparation and management of inspections': provisions are taken over and updated from Article 4 of Regulation (EU, Euratom) No 608/2014. Simplification has been sought, aiming as much as possible at a system that is applicable to all Own Resources.
- Article 7 of the proposal, 'Reporting fraud and irregularities affecting entitlements to Traditional Own Resources': provisions under Article 5 of Regulation (EU, Euratom) No 608/2014 are maintained, unchanged, since these provisions are only relevant for Traditional Own Resources.
- Article 8 of the proposal, 'Reporting by Member States of their inspections of Traditional Own Resources': provisions under Article 6 of Regulation (EU, Euratom) No 608/2014 are maintained, unchanged, since these provisions are only relevant for Traditional Own Resources.

### ***Chapter III 'Committee and final provisions'***

- Article 9 of the proposal, 'Committee procedure': provides for implementing powers to be conferred on the Commission in accordance with Regulation (EU) No 182/2011.
- Article 10 of the proposal, 'Final provisions': repeals Regulation (EU, Euratom) No 608/2014.

- Article 11 of the proposal, ‘Entry into force’: states that the Regulation should enter into force at the same time as the Own Resources Decision. This Regulation will apply retroactively from 1 January 2021 for the own resources based on the European Union Emissions Trading System and on Plastic packaging waste. Concerning the own resource based on the Common Consolidated Corporate Tax Base, those provisions will apply from the second year following the end of the transposition period for the Directive on the Common Consolidated Corporate Tax Base.

Proposal for a

## **COUNCIL REGULATION**

### **laying down implementing measures for the system of Own Resources of the European Union**

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to Council Decision 20xx/xxxx/EU, Euratom of [DATE] on the system of Own Resources of the European Union<sup>8</sup>, and in particular Article 7 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the consent of the European Parliament<sup>9</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Appropriate Parliamentary oversight, as set out in the Treaties, is required for provisions of a general nature applicable to all types of Own Resources including the setting of the applicable call rates of the Own Resources within the upper limits set in points (b) to (e) of Article 2(1) of Decision 20xx/xxxx/EU, Euratom.
- (2) For reasons of coherence, certain provisions of Council Decision (EU, Euratom) No 2014/335<sup>10</sup> such as the reference Gross National Income and significant changes thereto and the uniform call rate of the resource referred to in Article 2(1)(f) of Decision 20xx/xxxx should be included in this Regulation.
- (3) In order to maintain the amount of financial resources put at the disposal of the Union unchanged, it is appropriate to adapt the ceilings of the Union's Own Resources for payments and commitments as determined, respectively, in Article 3(1) and (2) of Decision 20xx/xxxx/EU, Euratom expressed in per-cent of Gross National Income in case of amendments to Regulation (EU) No 549/2013 of the European Parliament and

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<sup>8</sup> Council Decision of [DATE] on the system of Own Resources of the European Union (20xx/xxxx/EU, Euratom) (OJ L [...], [...], p. [...]).

<sup>9</sup> OJ C [...], [...], p. [...].

<sup>10</sup> Council Decision of 26 May 2014 on the system of Own Resources of the European Union (2014/335/EU, Euratom) (OJ L 168, 7.6.2014, p. 105).

of the Council<sup>11</sup> which entail a significant change in the level of Gross National Income.

- (4) For reasons of coherence, certain provisions of Council Regulation (EU, Euratom) No 608/2014<sup>12</sup> should be maintained in this Regulation. Those provisions concern the calculation and budgeting of the balance, control and supervision of Own Resources and relevant reporting requirements, as well as the Advisory Committee on Own Resources.
- (5) For reasons of coherence, the provisions concerning inspections of Council Regulation (EEC, Euratom) 1553/89, should be included in this Regulation.
- (6) In order to ensure a balanced budget, any surplus of the Union's revenue over total actual expenditure during a financial year should be carried over to the following financial year. Therefore, the balance to be carried over should be defined.
- (7) Member States should conduct checks and enquiries relating to calculating, establishing and making available the Union's Own Resources. In order to facilitate application of the financial rules relating to Own Resources, it is necessary to ensure collaboration between Member States and the Commission.
- (8) The transparency of the Union's Own Resources system should be ensured by the supply of adequate information to the budgetary authority. Therefore, the Member States should keep at the disposal of the Commission, and where necessary provide them to it, the documents and information needed to allow it to exercise the power conferred upon it as regards the Union's Own Resources.
- (9) For the sake of consistency and clarity, provisions should be laid down covering the powers and obligations of officials, other servants and seconded national experts taking part in inspections in relation to the Union's Own Resources. In particular the rules which all Union officials, other servants and seconded national experts have to observe with regard to professional confidentiality and the protection of personal data should be laid down. It is necessary to establish the status of seconded national experts and the possibility for the Member State concerned to object to the presence, at an inspection, of officials of other Member States.
- (10) The arrangements whereby the Member States responsible for collecting Own Resources report to the Commission, should make it possible for the Commission to monitor their action to recover Own Resources, in particular in cases of fraud and irregularities.
- (11) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards establishing detailed rules on reporting fraud and irregularities affecting entitlements to Traditional Own Resources and Member States' annual reports. Those powers should be exercised

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<sup>11</sup> Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union Text with EEA relevance (OJ L 174, 26.6.2013, p. 1).

<sup>12</sup> Council Regulation (EU, Euratom) No 608/2014 of 26 May 2014 laying down implementing measures for the system of Own Resources of the European Union (OJ L 168, 7.6.2014, p. 29).

in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>13</sup>.

- (12) The advisory procedure should be used for the adoption of implementing acts in order to establish detailed rules on reporting fraud and irregularities affecting entitlements to Traditional Own Resources and Member States' annual reports on their inspections given the technical nature of those acts required for reporting purposes.
- (13) For reasons of consistency and taking account of Article 9 of Decision 20xx/xxxx/EU, Euratom, this Regulation should enter into force on the same day as that Decision and should apply from 1 January 2021. The provisions covering the Own Resource referred to in Article 2(1)(c) of Decision 20xx/xxxx/EU, Euratom should apply from the day set in accordance with Article 9 of that Decision,

HAS ADOPTED THIS REGULATION:

## **CHAPTER I**

### **DETERMINING OWN RESOURCES**

#### *Article 1*

##### **Applicable call rates**

1. The uniform call rate applied to a share of Value Added Tax receipts collected from the standard rated taxable supplies divided by the national Value Added Tax standard rate referred to as Own Resource in Article 2(1)(b) of Decision 20xx/xxxx/EU/Euratom shall be 1 %;
2. The uniform call rate applied to the share of taxable profits attributed to each Member State pursuant to Union rules on the Common Consolidated Corporate Tax Base referred to as Own Resource in Article 2(1)(c) of Decision 20xx/xxxx/EU/Euratom shall be 3 %;
3. The uniform call rate applied to the amount representing the revenue generated by the allowances to be auctioned referred to in Article 10(2)(a) of Directive 2003/87/EC and the market value of transitional free allowances for the modernisation of the energy sector as determined in Article 10c(3) of that Directive referred to as Own Resource in Article 2(1)(d) of Decision 20xx/xxxx/EU/Euratom shall be 20 %;
4. The uniform call rate applied to the weight of plastic packaging waste that is not recycled referred to as Own Resource in Article 2(1)(e) of Decision 20xx/xxxx/EU/Euratom shall be EUR 0.80 per kilogram.

For the purposes of the first subparagraph, 'plastic' shall mean a polymer within the meaning of Article 3(5) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council, to which additives or other substances may have been added; 'packaging waste' and 'recycling' shall have the meaning defined in Article 3 of Directive 94/62/EC.

The weight of plastic packaging waste that is not recycled shall be the difference between the weight of the plastic packaging waste generated in a Member State in a given year and the weight of the plastic packaging waste that is recycled in that year that is established pursuant to Directive 94/62/EC.

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<sup>13</sup> 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).

## Article 2

### Reference Gross National Income and significant changes thereto

1. Gross National Income referred to in Article 2(1)(f) of Decision 20xx/xxxx/EU, Euratom shall mean an annual Gross National Income at market price, as provided by the Commission in application of Regulation (EU) No 549/2013.

2. Where amendments to Regulation (EU) No 549/2013 result in significant changes in the Gross National Income, the Commission shall inform the European Parliament and the Council of the results of technical adjustments to the Multiannual Financial Framework, as established in Article 5 of Council Regulation (EU, Euratom) No 20xx/xxxx<sup>14</sup> on the dates of application of those changes for the purposes of Decision 20xx/xxxx/EU, Euratom.

3. Where amendments to Regulation (EU) No 549/2013 result in significant changes in the level of Gross National Income, the ceilings for payments and commitments as determined in Article 3(1) and (2) of Decision 20xx/xxxx/EU, Euratom shall be recalculated by the Commission on the basis of the following formula:

$$1,29 \% (1,35 \% ) * \frac{GNI_{t-2} + GNI_{t-1} + GNI_{t \text{ ESA current}}}{GNI_{t-2} + GNI_{t-1} + GNI_{t \text{ ESA modified}}}$$

In that formula, ‘GNI’ is the Gross National Income, ‘t’ is the latest full year for which the data defined by Council Regulation (EC, Euratom) No 1287/2003<sup>15</sup> is available; and ‘ESA’ is the European system of national and regional accounts in the Union.

## Article 3

### Calculation and budgeting of the balance

1. For the purposes of applying Article 5 of Decision 20xx/xxxx/EU, Euratom the balance of a given financial year shall consist of the difference between all the revenue collected in respect of that financial year and the amount of payments made against appropriations for that financial year increased by the amount of the appropriations for the same financial year, carried over pursuant to Article 13 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>16</sup> (‘the Financial Regulation’).

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

- (a) payments made in excess of non-differentiated appropriations carried over from the previous financial year under Article 13(1) and (4) of the Financial Regulation as a result of changes in euro rates;
- (b) the balance resulting from exchange gains and losses during the financial year.

<sup>14</sup> OJ L [...], [...], p. [...]. [Multiannual Financial Framework Regulation]

<sup>15</sup> 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>16</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

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

## CHAPTER II

### PROVISIONS CONCERNING CONTROL AND SUPERVISION AND RELEVANT REPORTING REQUIREMENTS

#### *Article 4*

#### **Control and supervision measures**

1. The Own Resources referred to in Article 2(1) of Decision 20xx/xxxx/EU, Euratom shall be inspected as specified in this Regulation, without prejudice to Council Directive on the Common Consolidated Corporate Tax Base, Commission Regulation (EU) No 1031/2010<sup>17</sup>, and Council Regulation (EC, Euratom) No 1287/2003<sup>18</sup>.

2. Member States shall take all measures that are necessary to ensure that the Own Resources referred to in Article 2(1) of Decision 20xx/xxxx/EU, Euratom are made available to the Commission. Member States shall provide the Commission with certain documents upon request.

3. Member States shall conduct the checks and enquiries concerning the calculation, establishment and the making available of the Own Resources referred to in Article 2(1) of Decision 20xx/xxxx/EU, Euratom.

4. Member States shall carry out additional inspection measures at the Commission's request. In its request the Commission shall state the reasons for the additional inspection.

5. Member States shall, if the Commission so requests, associate it with the inspections that they carry out. Where the Commission is associated with an inspection, the Commission shall have access, in so far as the application of this Regulation so requires, to the supporting documents concerning calculating, establishing and making available Own Resources, and to any other appropriate document related to those supporting documents.

6. The Commission may itself carry out inspections on the spot. The agents authorised by the Commission for such inspections shall have access to documents as set out for the inspections referred to in paragraph 5. Member States shall facilitate those inspections.

7. Where control and supervision measures concern the Own Resource based on Value Added Tax referred to in Article 2(1)(b) of Decision 20xx/xxxx/EU, Euratom, the Commission's inspections shall be carried out together with the competent authorities in the Member States. During these inspections, the Commission shall ensure, in particular, that the operations to centralise the assessment base and the total net Value Added Tax collected have been performed correctly. It shall also ascertain that the data used where appropriate, and that the calculations made to determine the amount of standard rated Own Resource based on

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<sup>17</sup> Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302, 18.11.2010, p. 1).

<sup>18</sup> 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).

Value Added Tax resulting from the transactions referred to in Article 3(1) of Council Regulation (EEC, Euratom) No 1553/89, comply with that Regulation.

8. Where the inspections concern the Own Resource based on Plastic packaging waste which is not recycled referred to in Article 2(1)(e) of Decision 20xx/xxxx/EU, Euratom, the Commission shall also have access to the documents relating to the procedures and to the data referred to in Directive 94/62/EC.

9. Where control and supervision measures concern the Own Resource based on Gross National Income referred to in Article 2(1)(f) of Decision 20xx/xxxx/EU, Euratom:

- (a) the Commission shall each year inspect, together with the Member State concerned, the aggregates provided for errors in compilation, especially in cases notified by the Gross National Income committee established by Regulation (EC, Euratom) No 1287/2003; in doing so, it may, in individual cases, also examine calculations and statistical bases, except the information about individual companies or persons, where no proper assessment would otherwise be possible;
- (b) the Commission shall also have access to the documents relating to the statistical procedures and basic statistics referred to in Article 3 of Regulation (EC, Euratom) No 1287/2003.

10. The checks and enquiries referred to in this Article shall be without prejudice to the following:

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

11. For the purposes of the control and supervision measures referred to in this Article, the Commission may request the Member States to forward to it relevant documents or reports or to make them available to the Commission.

#### *Article 5*

##### **Powers and obligations of the authorised agents of the Commission**

1. The Commission shall specifically appoint for the purpose of making the inspections referred to in Article 4 certain of its officials or other servants ('authorised agents').

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

Persons placed at the disposal of the Commission by the Member States as national experts on secondment may participate in the inspections.

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

2. During the inspections of Own Resources referred to in Article 4 the authorised agents shall act in a manner compatible with the rules applicable to the officials of the Member State

concerned. They shall be bound by professional secrecy, under the conditions laid down in paragraph 3 of this Article.

The Commission shall respect the principle of statistical confidentiality as established in Regulation (EC) No 223/2009 of the European Parliament and of the Council<sup>19</sup>.

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

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

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

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

4. The Commission shall ensure that authorised agents and other persons acting under its authority comply with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>20</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>21</sup> and other Union and national rules concerning the protection of personal data.

## *Article 6*

### **Preparation and management of inspections**

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

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

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

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<sup>19</sup> Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

<sup>20</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (OJ L 119, 4.5.2016, p. 1).

<sup>21</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

4. On-the-spot inspections of Own Resources shall be carried out by the authorised agents. For the purposes of the organisation of the work and relations with the departments, and where appropriate, the debtors involved in the inspection, those agents shall, prior to any on-the-spot inspections, establish the necessary contacts with the officials designated by the Member State concerned. For this type of inspection, the terms of reference shall be established by a document indicating the aim and purpose of the inspection.

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

For the purposes of on-the-spot inspections of Own Resources Member States concerned shall inform the Commission in good time of the identity and capacity of the persons appointed to take part in these inspections and to afford the authorised agents every assistance necessary for carrying out their duties.

6. The results of the controls and inspections referred to in Article 4, except the inspections carried out by the Member States, shall be brought to the attention of the Member State concerned through the appropriate channels within a period of three months. The Member State shall submit its observations within the three months following receipt of the report. However, for duly substantiated reasons, the Commission may request the Member State concerned to submit observations on specific points within a period of one month following receipt of the report. The Member State concerned may decline to respond by means of a communication stating the reasons which prevent it from responding to the Commission's request.

Thereafter the results and observations referred to in the first subparagraph, together with the summary report prepared in connection with controls on the Own Resources referred to in Article 2(1)(b), (c), (d) and (e) of Decision 20xx/xxxx/EU, Euratom, shall be brought to the attention of all Member States.

Where the on-the-spot or associated inspections of Traditional Own Resources identify the need for amendment or correction of data in the statements or declarations sent to the Commission regarding Own Resources and the resultant corrections are to be made via a current statement or declaration then the relevant changes shall be identified, in the statement or declaration so used, by means of appropriate notes.

#### *Article 7*

##### **Reporting fraud and irregularities affecting entitlements to Traditional Own Resources**

1. In the two months following the end of each quarter, Member States shall send the Commission a description of cases of fraud and irregularities detected involving entitlements of over EUR 10 000 concerning the Traditional Own Resources referred to Article 2(1)(a) of Decision 20xx/xxxx/EU, Euratom.

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

2. The Commission shall adopt implementing acts establishing details of the descriptions referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 9(2).

3. A summary of the notifications referred to in paragraph 1 of this Article shall be included in the Commission report referred to in Article 325(5) Treaty on the Functioning of the European Union.

#### *Article 8*

#### **Reporting by Member States of their inspections of Traditional Own Resources**

1. Member States shall submit detailed annual reports to the Commission on their inspections relating to Traditional Own Resources and the results of these inspections, the overall data and any questions of principle concerning the most important problems arising out of the application of the relevant regulations implementing Decision 20xx/xxxx/EU, Euratom and, in particular, matters in dispute. The reports shall be sent to the Commission by 1 March of the year following the financial year concerned. On the basis of those reports, the Commission shall prepare a summary report, which shall be brought to the attention of all Member States.

2. The Commission shall adopt implementing acts establishing a form for the Member States' annual reports mentioned in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 9(2).

3. The Commission shall report every three years to the European Parliament and to the Council on the functioning of the inspection arrangements for Traditional Own Resources.

### **CHAPTER III**

#### **COMMITTEE AND FINAL PROVISIONS**

#### *Article 9*

#### **Committee procedure**

1. The Commission shall be assisted by an Advisory Committee. 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 10*

#### **Final provisions**

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

References to the repealed Regulation and to the provisions of Regulation (EC, Euratom) No 1026/1999 and of Regulation (EC, Euratom) No 1150/2000 shall be construed as references to this Regulation.

#### *Article 11*

#### **Entry into force**

This Regulation shall enter into force on the day of entry into force of Decision 20xx/xxxx/EU, Euratom.

It shall apply from 1 January 2021.

The provisions of this Regulation shall apply to the Own Resource based on the Common Consolidated Corporate Tax Base as from 1 January of the second year following the date of

application of national provisions transposing the Council Directive on a Common Consolidated Corporate Tax Base.

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

Done at Brussels,

*For the Council*

*The President*