



EUROPEAN
COURT
OF AUDITORS

Opinion No 7/2015

(pursuant to Article 287(4), second subparagraph, and 322(2) of the TFEU)

concerning a proposal for a Council Regulation amending Regulation (EU, Euratom) No 609/2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements

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THE COURT OF AUDITORS OF THE EUROPEAN UNION,

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

Having regard to the Commission's proposal¹,

Having regard to the Council's request for an opinion on the above-mentioned proposal, received at the Court of Auditors on 22 September 2015,

Having regard to the previous opinions given by the Court of Auditors on the system of the European Communities' own resources²,

HAS ADOPTED THE FOLLOWING OPINION:

INTRODUCTION

1. On 14 September 2015 the Commission adopted a proposal for a Council Regulation, amending Regulation (EU, Euratom) No 609/2014³, on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements.
2. Regulation (EU, Euratom) No 609/2014 will replace Regulation (EC, Euratom) No 1150/2000⁴ and will enter into force on the same day as Decision 2014/335/EU, Euratom⁵,

¹ COM(2015) 447 final of 14 September 2015.

² Opinions No 7/2014 (OJ C 459, 19.12.2014, p. 1), No 2/2012 (OJ C 112, 18.4.2012, p. 1), No 2/2008 (OJ C 192, 29.7.2008, p. 1), No 2/2006 (OJ C 203, 25.8.2006, p. 50), No 4/2005 (OJ C 167, 7.7.2005, p. 1) and No 7/2003 (OJ C 318, 30.12.2003, p. 1).

³ 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).

⁴ Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2007/436/EC, Euratom on the system of the European Communities own resources (OJ L 130, 31.5.2000, p. 1), as last amended by Regulation (EU, Euratom) No 1377/2014 (OJ L 367, 23.12.2014, p. 14).

once this Decision has been approved by all Member States in accordance with their respective constitutional requirements⁶. Therefore the proposed modifications do not refer to or impact the rules currently in force.

3. Regulation (EU, Euratom) No 609/2014 sets the rules for making available own resources (including timing for making available, adjustments, interest on amounts made available belatedly and irrecoverable amounts) and the measures to meet the Commission's cash requirements. It also includes other practical arrangements in respect of the conservation of supporting documents by the Member States, administrative cooperation in respect of information provided by Member States and rules on the accounts to be kept by Member States for own resources.

4. The most significant changes proposed by the Commission are the following:

- bringing forward monthly twelfths of VAT and GNI-based own resources;
- streamlining the annual adjustments to the VAT and GNI-based own resources;
- postponing time-barring of GNI data in the fourth year after a given financial year;
- changes to interest on amounts made available belatedly;
- allowing Member States to be released from financial responsibility in cases of deferred entry in the accounts or deferred notification of the customs debt in order not to prejudice criminal investigations;
- raising the threshold for irrecoverable amounts to be reported.

⁵ Council Decision 2014/335/EU, Euratom of 26 May 2014 on the system of own resources of the European Union (OJ L 168, 7.6.2014, p. 105).

⁶ Decision 2014/335/EU, Euratom and Regulation (EU, Euratom) No 609/2014 will apply retroactively from 1 January 2014.

GENERAL REMARKS

5. In its opinions No 7/2014, No 2/2012, No 2/2008 and No 2/2006, the Court expressed concerns about the complexity and lack of transparency of the system of own resources to finance the EU budget. The proposed modifications do not significantly change the system in place; they merely address elements of the process of making available the amounts requested. Some of the proposed changes may address the Commission's needs regarding liquidity and cash management. The Court also notes that some of the proposed changes address points raised by the Court in its previous opinions, annual reports and special reports.

SPECIFIC REMARKS

Bringing forward monthly twelfths of VAT and GNI-based own resources

6. Under Regulation (EU, Euratom) No 609/2014 the Commission may invite Member States to bring forward by one or two months in the first quarter of the financial year the entry of one-twelfth of the amounts in the budget for the VAT-based own resource and GNI-based own resource. In practice this means that the Commission can bring forward two twelfths during the first quarter. The Commission shall notify the Member States in advance no later than two weeks before the entry requested.

7. The Commission proposes to increase from two to three twelfths the amount that can be brought forward and to extend the period from the first quarter to the first six months of the financial year. The limit of two weeks, for the notification of Member States, is maintained. In practice the Commission will be able to bring forward up to three twelfths at any time during the first six months of the financial year, with a minimum two weeks' notice for the Member States.

8. The Court considers that the Commission should be able to request the necessary cash to finance the payment requests in due time. However, as such requests may create liquidity difficulties in Member States, the Commission should develop a system to better plan its cash needs and increase the minimum time of notification for requests of additional twelfths.

Streamlining the annual adjustments to the VAT and GNI-based own resources

9. Pursuant to Article 10 of Regulation (EC, Euratom) No 1150/2000, the adjustment⁷ to the own resources based on VAT and GNI takes place every year on the first working day of December. These adjustments vary from year to year and may be positive (additional payments required by Member States) or negative (amounts to be refunded to Member States). These adjustments may result in very high amounts. Therefore the Council adopted Regulation (EU, Euratom) No 1377/2014, amending Regulation (EC, Euratom) No 1150/2000, allowing Member States (retroactively as of 30 November 2014) to make available the adjustments until the first working day of September of the following year in exceptional circumstances. In its opinion No 7/2014 the Court noted that this modification could increase the complexity of the system of own resources.

10. According to the present proposal, the Commission will calculate the VAT and GNI adjustments⁸ and formally notify the final amounts to Member States in January of year n+1. At the same time the Commission will provide a calculation redistributing the total amount of adjustments among Member States, according to their respective share in the GNI of all Member States of the budget of year n+1.

11. Under this proposal no amending budget is necessary and the Commission alleviates the impact on Member States' cash requirements to pay the amounts related to the

⁷ Every year Member States have to provide updates of their GNI and VAT data for the years still subject to change (four years) or to address the points under reservation. The Commission uses this information to recalculate Member States' VAT and GNI contributions for the previous years.

⁸ On the basis of the VAT and GNI data for year n-1 and previous years transmitted by the Member States to the Commission in year n in accordance with Article 7(1) of Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 155, 7.6.1989, p. 9) and Article 2(2) of Council Regulation (EC, Euratom) No 1287/2003 of 15 July 2003 on the harmonisation of gross national income at market prices (GNI Regulation) (OJ L 181, 19.7.2003, p. 1).

adjustments⁹. It also allows more time between the notification date (before 1 February) and the moment when Member States have to make the amounts available (1 June), thus reducing the budgetary and liquidity uncertainty in Member States. The Court considers this proposal a step forward in the simplification of the system of own resources.

Postponing time-barring of GNI data in the fourth year after a given financial year

12. Under Regulation (EU, Euratom) No 609/2014, changes to GNI data can only be taken into account until 30 September of the fourth year after a given financial year.

13. The Commission proposes to extend this deadline to 30 November of the fourth year after a given financial year.

14. As the GNI data is provided by Member States on the 22 September¹⁰, the Commission may not have sufficient time to assess it before it becomes time barred. Therefore the Court welcomes the proposed extension.

Changes to interest on amounts made available belatedly

15. Regulation (EU, Euratom) No 609/2014 provides for a basic rate (European Central Bank – or non-euro national central bank - main refinancing rate), increased by 2 percentage points plus an increase of 0,25 percentage points for every month of delay. The rate is applicable to the whole period of delay (from the due date to the date when the amount is finally credited in the Commission's accounts).

16. The Commission's proposal raises the increase from 2 to 3,5 percentage points whilst maintaining the monthly increase of 0,25 percentage points. In addition it proposes to cap the total of the increases at 20 percentage points.

⁹ The impact in the Commission budget and accounts will be nil. The Member States will only need to pay (or receive) the amounts calculated taking into consideration the GNI respective share.

¹⁰ See Article 2(2) of Regulation (EC, Euratom) No 1287/2003.

17. The Court considers that a balance should be sought between the incentive for Member States to comply with their payment obligations and the principle of proportionality in the application of interest on amounts made available belatedly. The Court therefore welcomes the proposal to cap the maximum increase of the interest rate.

Allowing Member States to be released from financial responsibility in cases of deferred entry in the accounts or deferred notification of the customs debt in order not to prejudice criminal investigations

18. Under Article 13(2) of Regulation (EU, Euratom) No 609/2014 Member States shall be released from the obligation to place at the disposal of the Commission the amounts corresponding to established entitlements of traditional own resources which prove irrecoverable for (i) reasons of force majeure or (ii) for other reasons which cannot be attributed to them.

19. The Commission proposes to add an additional paragraph whereby Member States shall also be released from the obligation to place at its disposal the amounts in situations where a deferment in the entry in the accounts or the notification of the debt is needed in order not to prejudice a criminal investigation. This release shall only occur when three conditions¹¹ are complied with.

20. In the Court's view this introduction is in line with a similar reference in the Union Customs Code¹² and may allow Member States to better protect the EU's financial interest. However, there is no harmonisation on the definition of a crime (and therefore criminal investigation) in the Member States. In addition, the Court considers that the proposed conditions leave too much room for interpretation.

¹¹ The conditions are the following:
 (a) the criminal investigations are justified to protect the financial interests of the Union;
 (b) the criminal investigations are carried out diligently;
 (c) national duties and taxes are not subject to a more favourable treatment than the irrecoverable entitlements.

¹² See Article 102(3) and 105(6) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, P.1).

Raising the threshold for irrecoverable amounts to be reported

21. Under Regulation (EU, Euratom) No 609/2014, Member States shall provide the Commission with a report containing information on the cases considered irrecoverable for established entitlements exceeding 50 000 euro¹³.

22. The Commission proposes that in order to reduce the administrative burden on its services and at Member State level the threshold be doubled to 100 000 euro.

23. The Court welcomes this change and notes that the threshold has not been revised since 2004¹⁴. The Commission calculated the new threshold based on historical data, with a view to reducing the administrative burden without jeopardizing unduly the amounts at stake. The Court also notes that cases can still be assessed by the Commission during the yearly inspections at Member States.

CONCLUSION

24. The proposed changes to Regulation (EU, Euratom) No 609/2014 should improve the current situation regarding the procedures for making available the amounts of own resources.

¹³ This refers to the bookings that are written off from the traditional own resources accounts as irrecoverable. The Commission analyses the cases and assesses if the conditions of Article 13(2) of Regulation (EU, Euratom) No 609/2014 apply to allow Member States to be released from the obligation to place at the disposal of the Commission the amounts concerned.

¹⁴ See Article 1(13) of Council Regulation (EC, Euratom) No 2028/2004 of 16 November 2004 amending Regulation (EC, Euratom) No 1150/2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ L 352, 27.11.2004, p. 1).

This opinion was adopted by Chamber IV, headed by Mr Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 11 November 2015.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA
President