Council Regulation (EU, Euratom) 2016/804 of 17 May 2016 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

COUNCIL REGULATION (EU, Euratom) 2016/804

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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

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,

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) Council Regulation (EC, Euratom) No 1150/2000[(3)] was recast by Council Regulation (EU, Euratom) No 609/2014[(4)]. Regulation (EU, Euratom) No 609/2014 is to enter into force on the day of entry into force of Council Decision 2014/335/EU, Euratom[(5)]. That Decision has not yet entered into force.

(2) In order to give the Commission (Eurostat) sufficient time to assess relevant gross national income (GNI) data and to give the GNI Committee sufficient time to establish an opinion on the GNI data, any changes to the GNI of a given financial year should be possible until 30 November of the fourth year after that financial year. The period for keeping supporting documents related to the value added tax (VAT) and GNI own resources should, consequently, also be extended from 30 September to 30 November of the fourth year following the financial year to which they refer.

(3) This Regulation should reflect the existing practice whereby the Commission accounts for own resources purposes referred to in Article 9 of Regulation (EU, Euratom) No 609/2014 (‘Commission own resources accounts’) are kept with Member States' treasuries or with their national central banks. The notion of treasury should cover also other public entities exercising similar functions.

(4) The Commission own resources accounts should be kept free of any charge and interest. The application of charges or negative interest would reduce the Union's budget and lead

to unequal treatment of Member States. Therefore, where negative interest is applicable to Commission own resources accounts, the Member States concerned should credit an amount equal to the amount of negative interest. Since some Member States do not have the possibility of avoiding the financial impact of the obligation to credit such amounts of negative interest to the Commission own resources accounts, it is appropriate that the Commission, when covering its cash resource requirements, aim to reduce that impact by drawing with priority on the sums credited to the accounts concerned.

(5) The Commission own resources accounts should only be debited upon the Commission's instruction. This should be without prejudice to the application of negative interest.

(6) In the interest of clarity and readability, Article 10 of Regulation (EU, Euratom) No 609/2014 should be divided into several Articles.

(7) The Commission should, at any time, have sufficient cash resources available to comply with payment requirements arising from the implementation of the budget, which are particularly concentrated in the first months of the year. The Commission already has the possibility of inviting Member States to bring forward up to two additional twelfths for the specific needs of paying expenditure of the European Agricultural Guarantee Fund (EAGF) pursuant to Regulation (EU) No 1307/2013 of the European Parliament and of the Council[(6)]. In order to further reduce the risk of payment delays due to temporary shortages of cash resources, it should be possible for the Commission to invite Member States to bring forward up to an additional half of one twelfth for the specific needs of paying expenditure of the European Structural and Investment Funds pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council[(7)], in so far as it is justified by cash requirements. However, to avoid excessive pressure on national treasuries, the total amount that can be brought forward to the same month should not exceed two additional twelfths. Moreover, due to the specific payment requirements applicable to the EAGF, this is not to be applied to the detriment of the EAGF.

(8) Pursuant to Regulation (EU, Euratom) No 1150/2000, the Commission is to calculate adjustments to the VAT and GNI-based own resources, and inform Member States thereof, in time for them to enter these adjustments in the Commission own resources account on the first working day of December. The amounts of the adjustments to be made available on the first working day of December 2014 were of an unprecedented size. In order to prevent unreasonably heavy budgetary constraints on Member States just before the year-end, Council Regulation (EU, Euratom) No 1377/2014[(8)] amended Regulation (EC, Euratom) No 1150/2000 to allow Member States to defer, in certain exceptional circumstances, the entry of these adjustments in the Commission own resources account.

(9) Regulation (EC, Euratom) No 1150/2000, as thus amended, will cease to apply once Regulation (EU, Euratom) No 609/2014 enters into force. However, this should not prejudice the validity of those deferments to the entry of adjustments already formally requested under Regulation (EU, Euratom) No 1377/2014 while this latter Regulation was still in force.

(10) In the interest of simplification, and in order to limit the fiscal strain on Member States and the Commission in particular towards the end of the year, the procedure for adjusting the VAT and GNI own resources should be streamlined. There should be more time between the formal notification to Member States of the required adjustments and their entry in the Commission own resources account. Such notification and entry should occur in the same year, that year being also relevant for recording the impact on the government accounts and for the purposes of the Stability and Growth Pact. There should be an immediate redistribution of the overall amount of adjustments among Member States according to their respective shares in the GNI-based own resource. This would eliminate the need for the derogation introduced by Regulation (EU, Euratom) No 1377/2014.

(11) In order to achieve the Union's objectives, the procedure for calculating interest should ensure in particular that own resources are made available in a timely manner and in full.

(12) In order to improve legal certainty and clarity, cases where interest for late payment is due should be defined for the VAT and GNI-based own resources. In view of the specificities of those own resources, which have a verification cycle allowing for corrections and adjustments respectively within a period of four years, any changes to VAT and GNI-based own resources following from such corrections or adjustments should not give rise to the retroactive calculation of interest. Interest in respect of those resources should therefore be payable only for delays in entering amounts of monthly twelfths and amounts resulting from the annual calculation of adjustments for previous financial years. Moreover, to maintain a proper incentive for taking corrective action, interest should also be payable in case of delays in entering amounts resulting from particular corrections to VAT statements on the date specified pursuant to measures taken by the Commission under the second subparagraph of Article 9(1) of Council Regulation (EEC, Euratom) No 1553/89[(9)]. Furthermore, when a Member State fails to provide, within the explicit time limit set by the Commission, corrections to GNI data necessary for addressing points notified by the Commission or by a Member State, interest should also be applied to any increase of own resources resulting from an adjustment carried out as a consequence of addressing the notified point. This interest should be applied as from the moment where the amount of the adjustment should have been entered, that is, the first working day of June of the year following that in which the explicit time limit expired, until the moment where that adjusted amount is entered in the account. In line with existing rules and practice, any delay in making an entry in respect of traditional own resources should give rise to the calculation of interest.

(13) The interest rate system set out in Article 12 of Regulation (EU, Euratom) No 609/2014 contains a fixed increase of 2 percentage points to the basic rate and a progressive increase of 0,25 of a percentage point for each month of delay, the increased rate being applicable to the entire period of delay. That interest rate system has been instrumental in ensuring that own resources are made available in a timely manner and in full, and its main elements should therefore be maintained.

(14) Nevertheless, the existing rules providing for an ever increasing rate have led to the payment of very high interest rates in exceptional cases involving delays of many years.

In order to ensure the proportionality of the system while maintaining the deterrent effect, the accumulated increase to that basic rate should be limited to an annual maximum of 16 percentage points.

(15) On the other hand, the existing fixed increase of 2 percentage points to the basic rate for short periods of delay in particular may lead to a disincentive to make own resources available in a timely manner in circumstances where refinancing costs on the money market are higher than the interest payable. In order to further reinforce the smooth functioning of the system, the fixed increase to the basic rate should therefore be raised to 2,5 percentage points and the resulting interest rate applied should not be lower than that percentage, even where the applicable basic rate is negative. This should, in particular, prevent delays in making available the monthly twelfths of the own resources based on VAT and on GNI, which currently constitute more than 80 % of the Union's budget revenue.

(16) In order to promote effective protection of the financial interests of the Union and to take into account the newly introduced provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council[(10)], it should be possible for Member States to be released from the obligation to make available to the Union's budget those amounts of traditional own resources that prove irrecoverable due to deferred entry in the accounts or deferred notification of customs debts in order not to prejudice criminal investigations affecting the financial interests of the Union. The Commission should communicate with the least possible delay to Member States, and update, where necessary, the criteria that will guide the assessment of cases involving this possibility.

(17) The reporting threshold for cases of traditional own resources declared or deemed irrecoverable should be raised in order to reduce the administrative burden for the Member States and for the Commission.

(18) It should be clarified that the possibility for the Commission pursuant to Article 14(3) of Regulation (EU, Euratom) No 609/2014 to draw in excess of its assets to ensure compliance with the Union's obligations in the sole case of default under a loan contracted or guaranteed pursuant to Council regulations and decisions also covers regulations and decisions which, following the Treaty of Lisbon, are to be adopted not just by the Council, but by the European Parliament and the Council pursuant to the Treaty on the Functioning of the European Union.

(19) Save in exceptional cases, the Commission should notify to Member States, or to their national central banks, its orders of cash movement transactions affecting the accounts opened for own resources purposes at least one day before those orders are to be executed.

(20) Regulation (EU, Euratom) No 609/2014 should therefore be amended accordingly.

(21) For reasons of consistency, this Regulation should enter into force on the same day as Regulation (EU, Euratom) No 609/2014. The amendment set out in this Regulation to Article 18 of Regulation (EU, Euratom) No 609/2014 should apply from 1 January 2014 so as to safeguard the continued application of the derogation introduced by Regulation (EU, Euratom) No 1377/2014 until the date of entry into force of this Regulation. The

amendment set out in this Regulation to Article 12 of Regulation (EU, Euratom) No 609/2014 should apply where the due date of the own resource occurs after the entry into force of this Regulation. However, for reasons of proportionality, Member States should also benefit from the limitation on the total increase of the interest rate, as well as from the limitation on the payment of interest for the VAT-based own resources only in relation to delays specified in Article 12 of Regulation (EU, Euratom) No 609/2014, as amended by this Regulation, for own resources that were due prior to the date of entry into force of this Regulation, where those own resources became known after that date,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU, Euratom) No 609/2014 is amended as follows:

(1) In Article 3, the second paragraph is replaced by the following:

> The supporting documents relating to the statistical procedures and bases referred to in Article 3 of Regulation (EC, Euratom) No 1287/2003 shall be kept by the Member States until 30 November of the fourth year following the financial year in question. The supporting documents relating to the VAT-based own resource base shall be kept for the same period..

(2) Article 6 is amended as follows:

(a) paragraph 1 is replaced by the following:

> 1. Accounts for own resources shall be kept by the treasury of each Member State or a public entity exercising similar functions ('treasury'), or by the national central bank of each Member State. Those accounts shall be broken down by type of resources.;

(b) in paragraph 3, the third subparagraph is amended as follows:

(i) in the first indent the reference to 'Article 10(3)' is replaced by a reference to 'Article 10a(1)';

(ii) the second indent is replaced by the following:

— the result of the calculation referred to in the first subparagraph of Article 10b(5) shall be recorded annually, except for the particular adjustments referred to in Article 10b(2)(b), which shall be recorded in the accounts on the first working day of the month following agreement between the Member State concerned and the Commission..

(3) Article 9 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first and the second subparagraphs are replaced by the following:

> 1. In accordance with the procedure laid down in Articles 10, 10a and 10b, each Member State shall credit own resources to the account opened in the name of the Commission with its treasury