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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

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

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 2014/335/EU, Euratom of 26 May 2014 on the system of own resources of the European Union[(1)], and in particular Article 9 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,

Acting in accordance with a special legislative procedure,

Whereas:

(1) 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 forward to it, the documents and information needed to allow it to exercise the power conferred upon it as regards the Union's own resources.

(2) 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.

(3) 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.

(4) Member States should conduct checks and enquiries relating to 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.

(5) For the sake of consistency and clarity, provisions should be laid down covering the powers and obligations of agents authorised by the Commission to carry out inspections

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in relation to the Union's own resources, taking into account the specific nature of each own resource. The conditions under which authorised agents carry out their tasks should be set out, and 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.

(6) For reasons of coherence, certain provisions of Council Regulation (EC, Euratom) No 1150/2000[(2)] should be included 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.

(7) 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[(3)].

(8) 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.

(9) Appropriate parliamentary oversight, as set out in the Treaties, is required for provisions of a general nature applicable to all types of own resources and covering control and supervision of revenues including relevant reporting requirements.

(10) Council Regulation (EC, Euratom) No 1026/1999[(4)] should be repealed.

(11) The European Court of Auditors and the European Economic and Social Committee were consulted and have adopted opinions[(5)].

(12) For reasons of consistency and taking account of Article 11 of Decision 2014/335/EU, Euratom, this Regulation should enter into force on the same day as that Decision and should apply from 1 January 2014,

HAS ADOPTED THIS REGULATION:

CHAPTER I

DETERMINING OWN RESOURCES

Article 1

Calculation and budgeting of the balance

1 For the purpose of applying Article 7 of Decision 2014/335/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

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carried over pursuant to Article 13 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[(6)] ('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.

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, INCLUDING RELEVANT REPORTING REQUIREMENTS

Article 2

Control and supervision measures

1 The own resources referred to in Article 2(1) of Decision 2014/335/EU, Euratom shall be inspected as specified in this Regulation, without prejudice to Council Regulation (EEC, Euratom) No 1553/89[(7)] and Council Regulation (EC, Euratom) No 1287/2003[(8)].

2 Member States shall take all measures that are necessary to ensure that the own resources referred to in Article 2(1) of Decision 2014/335/EU, Euratom are made available to the Commission.

3 Where control and supervision measures concern the traditional own resources referred to in Article 2(1)(a) of Decision 2014/335/EU, Euratom:

a Member States shall conduct the checks and enquiries concerning the establishment and the making available of those own resources.

b 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. The Commission may also request that certain documents be forwarded to it.

c Member States shall, if the Commission so requests, associate it with the inspections which 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 establishing and making available own resources, and to any other appropriate document related to those supporting documents.

d 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 point (c). Member States shall facilitate those inspections.

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e The inspections referred to in points (a) to (d) shall be without prejudice to the following:

(i) the inspections carried out by Member States in accordance with their national laws, regulations or administrative provisions;

(ii) the measures provided for in Articles 287 and 319 of the Treaty on the Functioning of European Union (TFEU);

(iii) the inspection arrangements made pursuant to Article 322(1)(b) TFEU.

4 Where control and supervision measures concern the own resource based on value added tax (VAT) referred to in Article 2(1)(b) of Decision 2014/335/EU, Euratom, they shall be carried out in accordance with Article 11 of Regulation (EEC, Euratom) No 1553/89.

5 Where control and supervision measures concern the own resource based on gross national income (GNI) referred to in Article 2(1)(c) of Decision 2014/335/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 GNI 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 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.

6 For the purposes of the control and supervision measures under paragraphs 3, 4 and 5 of this Article, the Commission may request the Member States to forward to it relevant documents or reports relating to the systems used to collect own resources or to make them available to the Commission.

Article 3

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 2 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 traditional own resources and of the VAT-based own resource, referred to in Article 2(3) and (4) respectively, 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.

For the purposes of the inspections of the GNI-based own resource referred to in Article 2(5), the Commission shall respect national rules on the confidentiality of statistics.

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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.

That information shall not be communicated to persons other than those within the institutions of the Union or the Member States whose duty it is to know 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 Directive 95/46/EC of the European Parliament and of the Council[(9)] and Regulation (EC) No 45/2001 of the European Parliament and of the Council[(10)] and other Union and national rules concerning the protection of personal data.

Article 4

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 For inspections of traditional own resources where the Commission is associated under Article 2(3), and of the VAT-based own resource under Article 2(4), 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.

3 On-the-spot inspections of traditional own resources referred to in Article 2(3)(d) 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 accompanied by a document indicating the aim and purpose of the inspection.

4 Inspections concerning the GNI-based own resource referred to in Article 2(5) 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.

5 The Member States shall ensure that the departments or agencies responsible for 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 traditional own resources referred to in Article 2(3)(d), Member States concerned shall inform the Commission in good time of